

THE PATH TO SECULAR DEMOCRACY IN AFGHANISTAN:
THROUGH EDUCATIONAL REFORM AND RULE OF LAW

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ABSTRACT

Since the early 1970s, when the third major historical wave of democratization began, the Muslim world has seen little evidence of improvements in reaching for this new wave of political reform. As more and more countries around the world are embracing openness, transparency and power sharing in governance, Islam has become an important point of reference in debates about how the Muslim nation states should be governed. In spite of the “democracy gap” in many Muslim countries, history shows that Islam is not inherently incompatible with freedom, secularism, modernism and democratic values. This thesis explores Afghanistan and its possible path to secular democracy. It focuses on establishing a secular democracy with a concentration on educational reform and rule of law in order for political, social and economic reform.

In order to validate the hypothesis, the methodology used was divided into four principal parts. First, analyzing the political history of Afghanistan and demonstrating that modern democratic initiatives have been the quest of the Afghan political forces for years. Secondly, reviewing the process of democratization of Turkey and Indonesia and using their models as a blueprint for necessary reforms while considering the relevant lessons from past political experiences in order to create a practical framework. The work of Nurcholish Madjid and his neo-modernist ideologies was also reviewed to illustrate his

belief that for Islam to be victorious in the global struggle of ideas, it needs to embrace the concepts of tolerance, democracy, and pluralism. Thirdly, we assessed the rise of the Taliban and their political ideologies, confirming that reconciliation with a fundamentalist regime will be a path to democratic failure. Fourth, we established the importance of rule of law initiatives for promoting civil liberties and rights of the Afghan people.

Afghanistan has been besieged by foreign conquests and invasions for centuries. It is a county which has experienced instability and armed conflict for the last thirty years. This period is an extension to its struggle for freedom, political stability, security and development. As Afghanistan attempts to build peace, sustain democracy and maintain co-existence after more than thirty years of violence, there continues to be limited attention given to two of the main contributors to social, political, and economical advancement: education and rule of law.

A new curriculum for Afghanistan together with upgraded teacher capacities is the most pertinent factors to ensure that democracy is established and maintained in Afghanistan. A free and fair political system, protection of human rights, a vibrant civil society, public confidence in the police and courts are just some areas covered under the rule of law. The rule of law is the cornerstone for all other elements of democracy and is a requirement for economic growth and political stability.

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INTRODUCTION

ISLAM, DEMOCRACY, SECULARISM AND AFGHANISTAN

Democracy is one of the greatest challenges faced by the Islamic world. There is a dramatic expanding gap in the levels of freedom and what is known as the “democracy gap” between Islamic countries and the rest of the world. Only a few Muslim countries have made significant progress in establishing democratic systems, whereas most of them still remain largely authoritarian. Since the early 1970s, when the third major historical wave of democratization began, the Muslim world has seen little evidence of improvements in reaching for this new wave of political reform. As more and more countries around the world are embracing openness, transparency and power sharing in governance, Islam has become an important point of reference in debates about how the Muslim nation states should be governed. Many on the left spectrum contend that Islam’s foundational documents do not provide a prescriptive blueprint for governing Muslim society. Those on the right advocate the opposite, believing that all that is needed to order social and political life can be derived from Islam’s source documents, or by replicating Islam’s past systems and practices.¹

In countries with a Muslim majority, only eleven of forty-seven have democratically elected governments.² In the non-Islamic world, there are over seventy-six percent electoral democracies. It is said that a non-Islamic state is more than three times

¹ Clinton Bennett, *Muslims and Modernity: An Introduction to the Issues and Debates* (New York: Continuum, 2005), 43.

² Azyumardi Azra, *Indonesia, Islam, and Democracy: Dynamics in a Global Context* (Jakarta: Equinox Publishing, 2006), 6.

more likely to be democratic than an Islamic state.³ In the forty-seven countries with majority Muslim populations, there are ten presidential parliamentary democracies, one parliamentary democracy, nine countries with authoritarian presidents, seven dominant party states in which opposition parties are nominal, six presidential parliamentary systems with features of authoritarian rule, nine traditional monarchies, and three one party states. Until November 2001, there was also one fundamentalist theocracy, Afghanistan, under the rule of the Taliban.⁴

A study done by Freedom House states that there is an even more dramatic gap in freedom between majority Muslim states and the rest of the world. Freedom House is an independent nongovernmental organization that supports the expansion of freedom worldwide. The ratings used in their study are *free*, *partly free*, and *not free*. *Free* demonstrates that the inhabitants of the country are enjoying a broad range of rights, there is a broad scope for open political competition, a climate of respect for civil liberties, significant independent civic life and independent media. *Partly Free* describes a nation where its political rights and civil liberties are more limited, in which corruption, dominant ruling parties, weak rule of law, and in some cases, ethnic or religious strife are often the norm. *Not Free* describes a country whose inhabitants are denied basic political rights and civil liberties.⁵ In the Islamic world, there is just one free country, Mali, while

³ Ibid.

⁴ Adrian Karatnycky, "The Democracy Gap," *Freedom in the World* (2002), <http://www.freedomhouse.org/template.cfm?page=130&year=2002> (accessed February 2, 2011).

⁵ Freedom House, "Map of Freedom: North East and North Africa," http://www.freedomhouse.org/uploads/fiw10/FIW_2010_Map_MENA.pdf (accessed January 29, 2011). The Map of Freedom: Middle East and North Africa reflects the findings of Freedom House's Freedom in the World 2010 survey,

18 are partly free and 28 are not free. Among the non-Islamic countries, 85 are free, 39 are partly free and 21 are not free. Since 1981, in the non-Islamic world the number of free countries has increased by 35, the number of partially Free states has grown by 8, and the number of not free countries has declined by 21. Over this 20 year period, an opposite trend prevailed in the Islamic world. The number of free countries remained at one, the number of partially free countries declined by two, and the number of not free countries increased by ten. While the rest of world: Latin America, Africa, East and Central Europe, and South and East Asia experienced significant gains for democracy and freedom over the last 20 years, the Islamic world experienced an equally significant increase in the number of repressive regimes.⁶

In spite of the “democracy gap” in many Muslim countries, recent history shows that Islam is not inherently incompatible with freedom, secularism and democratic values. The democracy among Muslim countries that exist today such as Indonesia, Malaysia, Bangladesh and Turkey and their new flourishing ideas are great examples of nations states that encouraged their communities to set aside cultural differences and work toward a common goal, that of democratization and secularization. As well as Islamic populations of North America and Western Europe, the majority of the world’s Muslims live under democratically constituted governments.

One must note that democracy, civil society, and secularism in the Islamic world have existed in the past but merely as a strategy to gain power and attract Western

which rates the level of political rights and civil liberties in 194 countries and 14 related and disputed territories during 2009. Based on these ratings, countries are divided into three categories.

⁶ Ibid.

sympathy. Most Islamic nation states are ‘only nominally nation states’ that lack the basic institutions that are required to establish a democratically designed political community.⁷ The fundamental approach to democratic movement is to have each country, culture, government, and people “speak the language of democracy, in their own tongues.”⁸

I. Classic Islamic State

The view that secularism is incompatible with Islam and that religion cannot be separated from politics is due to the primary concern with Islamic values. It was thought by early Islamic *ulama*'s (Muslim clergy) and jurists that if religion was separated from politics, the rulers would totally neglect these fundamental Islamic values and would behave in a manner that would only satisfy their greed for power. During the classical period of Islam (seventh to the fifteenth century CE) there was no concept of secularism as a philosophy of humanism. The *ulama* were afraid that if religion and politics were separated there would be absolutely no check on the conduct of the rulers. In fact, one does not find clear articulation to this effect that religion cannot be separated from politics in Islam, in the *Qur'an*, *Hadith*, or *Sunnah*. This formulation itself is of nineteenth-century origin when colonial powers began to impose secular laws in Islamic countries, laws which were not basically derived from the *shari'ah*.

⁷ Bennett, *Muslims and Modernity*, 43.

⁸ *Ibid.*

In the early Islamic period (seventh to fifteen century CE) there were no other laws but *shari'ah*. Since there was no such concept of the state in the *Qur'an*, the structure of the Islamic state evolved over a period of time. The *Qur'an* and *hadith* were the primary sources for the new state. It is important to note that before Islam there was no state in Mecca or Medina. There was only a senate of tribal chiefs who took collective decisions and it was tribal chiefs who enforced those decisions in their respective tribal jurisdiction.

However, after Islam appeared on the social horizon of Mecca, the scenario began to change. In Medina the prophet laid the framework of governance through what is known as *Mithaq-e-Madina* (Covenant of Medina). This covenant also basically respects tribal customs to which adherents of Judaism, Islam and pre-Islamic idol worshippers belonged.⁹ Each tribe, along with religious tradition belonged to and was treated as an autonomous unit in the Covenant. Thus the Covenant of Medina respected both the tribal as well as religious autonomy of the inhabitants of the town.¹⁰ It can also be said to be the first constitution of the state in making. The Covenant laid down certain principles which are valid even today in a secular state. When the covenant was drawn up by the Prophet of Islam, *shari'ah* as a body of law had not evolved. In this important *Medinan*

⁹ Asghar Ali Engineer, "Islam and Modern Age: Intellectual approach to Islam," *Centre for Study of Society and Secularism* (September 2002), <http://ecumene.org/IIS/csss89.htm> (accessed February 2, 2011).

¹⁰ Ameer Ali, "The Church Militant of Islam," in *The Spirit of Islam* (London: Methuen, 1967), 212, quoted in John Kelsay, *Human Rights and the Conflict of Cultures: Western and Islamic Perspectives on Religious Liberty* (Columbia, SC: University of South Carolina Press, 1988), 45.

document, for example, it is clear that the Prophet did not compel the different tribes of Jews and idol worshippers to follow the Islamic law.

Overtime the classic Islamic state was founded on certain clear principles. Because it was founded on the basis of religion, it could also be rightly termed a theocracy, but the mere term 'theocracy' would be of no use in our discussion unless we define it more closely. The Muslim conception that God is the true sovereign of the community, the ultimate source of authority, and the sole source of legislation can be directed to 'theocracy' by its very nature and definition. In an Islamic theocracy, sovereignty belongs to God and one has to obey the dictates of those who interpret the Holy Book.¹¹ In this case if we define Theocracy as a "form of government in which a god or deity is recognized as the state's supreme civil ruler, or in a higher sense, a form of government in which a state is governed by immediate divine guidance or by officials who are regarded as divinely guided," we can definitely say that the classic Islamic state was a theocracy.¹²

The classic Islamic states of Mecca and Medina as founded by the holy Prophet Muhammad (PBUH) and developed further by his immediate successors was classified as a theocracy. He was able to be both a governmental as well as a religious leader at that time. An interesting fact in regards to the authority that the Prophet had over this newly formed *Medinan* community of Muslims, Jews and Pagans was that the allegiance of the

¹¹ Ibn Warraq, "Democracy vs. Theocracy- Secularism in the Islamic World," *International Humanist and Ethical Union* (August 2009), <http://www.iheu.org/democracy-vs-theocracy-secularism-islamic-world> (accessed January 25, 2011).

¹² *Memidex*, s.v. "Title," <http://www.memidex.com/theocracy> (accessed January 30, 2011).

non-Muslims was nothing more than political.¹³ Prophet Muhammad (PBUH) as the head of the state did not derive his authority from the fact that he was the Prophet but because he was the leader of the majority of the people in Medina (Yathrib). Therefore, there was no divine right to rule, not even for the Prophet (PBUH). Thus, the city-state of Medina or more appropriately the “Medinan Confederation of tribes” was hardly an ‘Islamic’ state. Rather it was a practical political alliance designed to fulfill the collective needs of all the people who resided in the city.¹⁴

Many have said that the emergence and sustainability of secularism and civil society is not possible in the Muslim world and could be feasible in Europe because Christianity, unlike Islam or Judaism, distinguishes between political and religious authorities that allow for their ultimate separation.¹⁵

The idea that religion and political authority, church and state are different, and can or should be separated originated in the teachings of Jesus Christ. Islam’s initial rejection to secularism was attributed to the differences of beliefs and experiences from Christianity. As said by Bernard Lewis, “the state was the church and the church was the state, and God was head of both, with the Prophet as his representative

¹³ Yasser Latif Hamdani, “Are Secularism and Islam Incompatible?,” CHOWK: Ideas, Identities and Interactions (October 2003), http://www.chowk.com/Religion/Islam/Are-Secularism-and-Islam-Incompatible?article_id=614%2560%2560 (accessed February 3, 2011).

¹⁴ Ibid.

¹⁵ It is important here to mention the idea of Caesaropapism. During the Roman Empire this idea of combining the power of secular government with, or making it superior to, the spiritual authority of the Church was practiced. It was seen almost as a political theory in which the emperor was also the supreme head of the church.

on earth.”¹⁶ The first Muslim encounter with secularism was in the French revolution, which the Muslims saw as de-Christianizing and not as “secular.” Their lack of interest in secularization had to do more with the origins of the theory versus the opposition of the theory in itself. The term “civil society” has various definitions and seem to direct the perceptions of civility in many different ways. In the more generally accepted interpretation of the term, civil is opposed, not to religious or to military authority, but to authority as such. Bernard Lewis defines it further by saying as follows:

Civil society is part of society, between the family and the state, in which the mainsprings of association, initiative, and action are voluntary, determined by opinion or interest or other personal choice, and distinct from-though they may be influenced by-the loyalty owed by birth and the obedience imposed by force.¹⁷

In Islam the need for civil society in terms of the latter definition was not necessary because the rule of God was the rule of law and there was no separation between family, state and religion. There was no need for a civil society when their society was civil in their mindset.

Civil society is one of those concepts that is constantly debated in Islam along with democracy, the rule of law, human rights, citizenship, justice and freedom. In analyzing why, it can be stated that the process of conceptualization was not rooted in or initiated by the historical familiarity that shapes the collective memory of the Muslim people. Muslims therefore would have to accept something that was not written in the *Qur'an, Hadith, or Sunnah*. Although through translation of such words and complete examination of the concept, such ideas can be transported across cultures, but not without

¹⁶ Bernard Lewis, *What Went Wrong? The Clash between Islam and Modernity in the Middle East* (New York: Oxford University Press, 2002), 97.

¹⁷ *Ibid.*, 110.

resistance. The concepts mentioned above will remain abstract and complex to those traditionalist Muslims who reject the terminology on the basis that they are foreign in the Muslim language and have roots in Christianity. This is definitely the case for the majority of Islamic communities since the modern secularized languages were developed in European societies versus Islamic.¹⁸

If we examine the principal cause of Western social progress, we can observe that it is the separation of church and state and the creation of a civil society governed by secular laws. To a Western observer, schooled in the theory and practice of Western freedom and under a democratic state, it is precisely the lack of freedoms that come with a democratic state that underlies so many of the troubles of the Muslim world. But the road to democracy, as the Western experience demonstrates, is long and hard, replete with pitfalls and obstacles.

II. Secularism Redefined

The meaningful interpretation and application of the term secularism is certainly not an easy task. At the core of the problem is that complex of phenomena crystallized in the term ‘secular’, the fact that it is in the context of a secular society that the religious communities wish to pass down the faith to their children.¹⁹ The problem is exacerbated by widespread confusion over what may be understood by the term ‘secular’. In Europe it often has political overtones. It is not a question of defining it on paper and deriving satisfaction out of it. It is therefore difficult to visualize any blueprint of the correct

¹⁸ Mohammed Arkoun, “Locating Civil Society in Islamic Contexts,” in *Civil Society in the Muslim World: Contemporary Perspectives*, ed. Aryn B. Sajoo (New York: I.B. Tauris & Co. Lts, 2003), 35.

¹⁹ Jorgen S. Nielsen, *Towards a European Islam* (New York: St. Martin’s Press, 1999), 68.

model of secularism. There are no two identical experiences with this notion of secularism and the secular state anywhere. Every secular state has to be distinctive and specific to its history, to its state formation, power relations, religious formations and everything that is specific to its society.

Nevertheless it might be possible to set out some broad parameters. First and foremost, the dominant mode of understanding being focused on in this paper is that which favors a modern secular democracy that aims to define secularism in terms of control of religion more than freedom of or from religion, and as opposed to Islam as a political movement.²⁰ This school of thought constitutes a version of Islam that advocates no political or national interest in the furthering of Islam. The ‘secular’ state can quite easily include religion, but only as a component. The moment religion becomes the basic frame of reference against which everything else is tested, on which it is grounded, and in the language of which it is expressed, is when we are no longer dealing with a secular context.²¹ In secular order, religion is depoliticized and no longer serves as a tool of government. It is restored to its original and respectable place and relegated to the conscience of individuals. Application of secular law to civil affairs and religious rules to religious affairs is one of the principles upon which contemporary democracies are built. Public affairs cannot be regulated according to religious rules which are not the basis for these regulations.²²

²⁰ Hakan M. Yavuz, *Secularism and Muslim Democracy in Turkey* (New York: Cambridge University Press, 2009), 146.

²¹ Nielsen, *Towards a European Islam*, 68.

²² Yavuz, *Secularism and Muslim Democracy*, 154.

It is also important to mention that when religion, in this case Islam, is still a dominant source of morality, the nation state needs to reconcile itself with religion to a certain extent if it does not want to be cut off from the people. In the end, a country is dependent on a moral consensus of the people that is formulated in civil society and the public domain.²³

Since Christianity is based on the principle of “render unto Caesar the things that are Caesar’s and unto God the things that are God’s” and since Islamic classical law does not recognize these realms as separate and seeks to control all domains of human activity, the approach of secularism in Islam requires a form of secularism that stresses control of religion more than separation.

III. Traditionalist Views

Many followers of Islamic movements and traditionalists, or those who consider themselves as "conscious" Muslims, equate secularization with Westernization or Europeanization, and for that reason particularly reject secularism as a form of internal colonization and the loss of religion.²⁴ It is seen as a product of the West, one that retains its essential Eurocentric core. Under secularism, the Western ideas of liberty and freedom become the only basis for the future of Muslim societies and cultures because they are seen as the only universal standard by which liberty and freedom are assessed and understood. Secular democracies are seen as a neo-colonial ploy, part of the West’s

²³ Evert van der Zweerde and Gerrit Steunebrink, *Civil Society, Religion, and the Nation: Modernization in Intercultural Context: Russia, Japan, Turkey* (New York: Rodopi, 2004), 169.

²⁴ *Ibid.*, 145.

conspiracy to destroy Islam through Westernized agents who promote political ideology that stresses common cultural, linguistic or regional rather than Islamic identity.²⁵ In order to embrace secularism in its totality, it is believed that one should have to give up the Islamic notions of community, where absolute freedom of the individual is restricted by public interest and concerns of the community, and certain moral principles which play an important part in shaping individual, social and cultural behavior.²⁶

It is important to note that Islam is a faith that is looked at by Muslims as being Allah's final message to humanity. It is seen as a comprehensive system dealing with all spheres of life: state and religion, government and nation, culture and law, and knowledge and jurisprudence. Traditionalists or Islamists believe Islam fuses religion and politics, with normative political values determined by the divine texts.²⁷ Secularism is often condemned by Muslims who do not feel that religious values should be removed from the public sphere. It is best said by the founder of *Jamaat e-Islami*- a religious political movement that promoted Islamic values and practices in south Asia, Mawlana Maududi in 1948, "those who participated in secular politics were raising the flag of revolt against Allah and his messenger."²⁸

Saudi scholars denounced secularism as strictly prohibited in Islamic tradition. The Saudi Arabian Directorate of Ifta', Preaching and Guidance, has issued a directive

²⁵ Bennett, *Muslims and Modernity*, 57.

²⁶ Ziauddin Sardar, "Searching for Secular Islam," *New Humanist* 119, no. 5 (September/October 2004), <http://newhumanist.org.uk/798/searching-for-secular-islam> (accessed January 28, 2011).

²⁷ Richard Bonney, *Jihad: From Qur'an to Bin Laden* (New York: Palgrave Macmillan, 2004), 149.

²⁸ *Ibid.*, 153.

decreeing that whoever believes that there is guidance more perfect than that of the Prophet, or that someone else's rule is better than his is a *kafir* (pagan).²⁹ The following are examples of a number of specific beliefs that some traditionalists would regard as punishable because of its defiant nature to what is believed to be rejecting Islamic law: if one is to believe that human made laws and constitutions are superior to the *Shari'ah*, the opinion that Islam is limited to one's relation with God, and has nothing to do with daily affairs of life, to disapprove of the application of the *hudud* (legal punishments decreed by God) that are incompatible in the modern age, and whoever allows what God has prohibited.

IV. Islam and Secularism

Oliver Roy believes that there are two theories summoned to make the case of Islam and secularism. The first is theological and says that the separation between religion and politics is foreign to Islam; the second is cultural and posits that Islam is more than a religion: it is a culture.³⁰ Regardless of what has been said in the past and the objections made towards such a movement, Muslim attitudes towards secularism has begun to change as a result of political disappointments of the past. The failure of the theocratic state in Iran, and the Islamic movements in general, led many Muslim scholars to rethink their position on secularism.³¹ Writers and thinkers in Iran, Indonesia, Pakistan and Turkey began to argue that secularism has a role to play in Muslim societies. But if

²⁹ Ibrahim M. Abu-Rabi', *The Blackwell Companion to Contemporary Islamic Thought* (Malden, MA: Blackwell Publishing Ltd, 2006), 338.

³⁰ Oliver Roy, *Secularism Confronts Islam* (New York: Columbia University Press, 2007), 23.

³¹ Sardar, "Searching for Secular Islam."

Muslims were to accept secularism, both secularism and religion will have to be reformulated.³²

V. Afghanistan's Case

The weakness of a secular democratic culture in many of the majority Muslim states has often contributed to political conflict. For the purpose of this paper we will be examining the case of Afghanistan. Throughout Afghan history, every attempt to uplift the country and its people out of economic, political and social strife, to spread literacy, and to “attain the principle of governance in which all persons, institutions and entities, public and private, including the state itself achieve genuine national independence has met with external and internal opposition.³³

The area that is now Afghanistan has been besieged by foreign conquests and invasions for centuries. It is a county which has experienced instability and armed conflict for the last thirty years. This period is an extension to its struggle for freedom, political stability, security and development. As the result, secular democracy, civil society, the rule of law culture and its institutions collapsed before they got off the ground. A majority of Afghans throughout have experienced injustices and human rights abuses.³⁴ As this paper will show, establishing a secular democracy promoting civil

³² Faisal Gazi, “Why Secularism is Key to Islam,” *Forum: The Daily Star* 3, no. 8 (August 2009), <http://www.thedailystar.net/forum/2009/august/live.htm> (accessed February 3, 2011).

³³ Agnes Hurwitz and Reyko Huang, *Civil War and the Rule of Law* (London: Lynne Rienner, 2008), 3.

³⁴ Afghanistan Independence Human Rights Commission (AIHRC), “A Call for Justice: A National Consultation on past Human Rights Violations in Afghanistan” (January 25, 2005), http://www.aihrc.org.af/Rep_29_Eng/rep29_1_05call4justice.pdf (accessed February 17, 2011), 8.

society in a country such as Afghanistan requires a different and more comprehensive plan.

The Taliban ruled Afghanistan by the most extremist Islamic laws from 1996 to 2001. This period contributed to fundamentalism and strengthened the hardliner values in Afghanistan. In addition, Afghanistan never experienced nor was introduced to the modern legal standards of the rule of law. Education, especially higher education, was not available for the last decade categorizing Afghanistan among the least developed countries in the world.

In 2001, the Bonn Agreement mandated the newly democratic government of Afghanistan to comply with internationally accepted standards of human rights.³⁵ The formation of the independent human rights commission in Afghanistan was another step to implement the modern legal standards in a pre-modern democratic civil society. The Afghan government and other contributing countries were under great scrutiny to implement human rights, especially women's rights in a national level and guarantee women's participation in a new government. But these laws offended the traditional people (majority) of Afghans due to the conflict between religious and traditional norms with these new standards. Introduction of these new norms to Afghans were not supported by educational programs, culture building, and social acceptance. These laws, which have a cultural impact, were adopted as a reaction to past abuses and their roots were not progressively stemmed in society. These well accepted principles in the

³⁵ United Nations Security Council (UNSC), "Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions" (December 5, 2001), <http://www.nps.edu/Academics/centers/ccp/publications/OnlineJournal/2006/Feb/johnsonFeb06-figure1-bonnagreement.pdf> (accessed February 2011), 5.

international society have been imposed in Afghan society without any consideration of the possible cultural conflict and without any study and preparation. In effect, this became a roadblock to introducing any kind of change that was not familiar to them in *“their tongue.”*

Afghanistan is situated in a very strategic front in the fight against terrorism and Islamic fundamentalism. As such, it is my opinion that the notion of establishing a secular democracy with a concentration on education, rule of law, civil rights and liberties in that region is essential for its political, social and economic growth and development. This leads to the focus of this paper: Is Afghanistan capable of being a secular democracy and if it is how we can prevent further conflict in a society with such different levels of religious practice and tradition?

In order to validate this hypothesis, I intend to structure this paper into four principal parts. First, I will approach this topic by examining and tracing Afghanistan’s historic struggles and the changing nature of political authority. It is fundamental to analyze the background and see what has made Afghanistan into what it is today. Its royal government is one of the few to survive outside of Europe; no other Islamic country has been as successful in fending off European political control. This relative freedom did not exempt Afghans from pressures for change induced from the outside. The leaders of Afghanistan have been increasingly caught between the need for innovation and the restraints imposed by tradition. This chapter will introduce the concepts and information necessary to a general understanding of the political forces at play in Afghanistan. It

focuses upon the setting and the process of political change and emphasizes on the failed reforms, institutions, policies and goals.

Secondly, I will analyze critically the history of secularism in the Muslim world. This will be accomplished by examining the case of Turkey and Indonesia. I will discuss the steps taken in both Turkey and Indonesia, their challenges, socially and politically in bringing a secular democracy into what was considered the Muslim world. Using lessons learned from Turkey and Indonesia we can reconcile or eliminate the misunderstandings of such interpretations with regard to establishing a foundation for secular democracy in war-torn Afghanistan. I will then tap into the work of Nurcholish Madjid, an orientalist and neo-modernist, who demonstrated by examining the *Qur'an* and the *Hadith* that democracy, modernism, civil society and secularism is compatible with Islam today and is feasible practically and theoretically.

Third, I will discuss the role of the majority religious groups, in this case the Taliban, in violating minority rights and the power and governance they demand. I will assess the steps that are necessary to recognize the value of pluralism and respect for people's will for both Islamists and secularists in post-war Afghanistan. I will also discuss why the reconciliation with the Taliban to pave a new road towards democracy in Afghanistan will not work and instead will create more conflict.

Fourth, we will discuss secular democracy as a solution to the conflict in Afghanistan and its existence to provide fair political game with protecting the rights of the people and allowing the country to prosper socially and politically. I will assess the process of secularization and the quest for modernization through institutional

dimensions of secularism in Afghanistan. This will be done by reviewing the rule of law and what prevents Afghanistan in recognizing normal rules of decency and basic human rights and civil liberties in governance to move forward towards democracy and pluralism.

A close and careful understanding of words such as “*modernity*” and “*modernization*” will be assessed. Must one become culturally “Western” to be truly modern? Must religion follow the course outlined by modernization theorists for Christianity in the West? Must religion become more than personal belief? It is questions like these that Muslim intellectuals debated while ushering this new era of neo-modernism and secular democracy among Muslim nations.

The development of neo-modernistic Islamic ideas that support a secular democracy as seen in Turkey and Indonesia is a sincere theological response to the changing social environment in many Muslim countries, including Afghanistan. After reviewing the analysis it would lead one to conclude that the existence of a secular democracy is viable in Afghanistan today. Islam should not be regarded as a comprehensive system dealing solely with state and religion or government and nation. The solution is to not regard Islam and its traditional sources as absolute authorities but as efforts to reach solutions in their respective context. Islam should be viewed as being more tolerant, inclusive and in favor of religious pluralism within its own society and religious groups.

In spite of shaky foundations and gradual developments, one would see that democratic ferment in an Islamic state is possible. The democracy among Muslim

countries that exist today such as Indonesia, Turkey, Malaysia and Bangladesh and its new flourishing ideas of cultural Islam, liberal Islam, civil Islam or neo-modernistic Islam, raises hope for secular democracy in Afghanistan.

CHAPTER 1

AFGHANISTAN'S POLITICAL HISTORY

About five thousand years ago Aryan tribes settled at the feet of the Hindu-Kush, in the Indian Caucasus, founding the land of Aryana, or as we know it today as Afghanistan. It is been a country devastated of war, destruction, terrorism, but also of life, culture, political, economical and social advancement. Afghanistan has a cultural heritage that belongs not only to Afghanistan, but to the world.¹

Afghanistan's history, its internal political development, its foreign relations, and its very existence as an independent state has been largely determined by its location at the crossroads of Central, West and South Asia. Many say that the world has so often come to Afghanistan. Located on the trade routes between East and West, the country has always been at a crossroads of civilizations, cultures, empires and peoples which has given rise to an enriched yet also very turbulent history.² The list of people and conquerors who have touched or influenced Afghan history reads like a roster of nearly every aggressive force that has set foot in Asia over the past 4,000 years.³ The Indo-Aryans are the first people recorded to have invaded the region. They were followed by the Persians, who conquered most of the region in the sixth century B.C.E. The Silk Road provided a vector for Buddhism to come from the east, while Hellenistic and even

¹ Lauren Comiteau, "Afghanistan's 'Hidden' Art Treasures," Voice of America (February 2008), http://www.afghan-web.com/culture/treasure_exhibit.html (accessed February 5, 2011).

² Shaista Wahab and Barry Youngerman, *A Brief History of Afghanistan* (New York: InfoBase Publishing, 2007), 13.

³ Richard S. Newell, *The Politics of Afghanistan* (London: Cornell University Press Ltd., 1972), 35.

Egyptian influences flowed the other way.⁴ Alexander the Great's eastward conquest left several colonies manned by his Greek mercenaries and essentially ended there in the 4th century B.C. E., and Chinese pilgrim Xuanzang passed through in the 7th century A.D. on his quest for Buddhist texts.⁵

It is said that, “Amsterdam, Berlin and London today are the Afghanistan of 2,000 years ago.”⁶ It can be best described as a crucible of different cultures that came together and melded, showing the enrichment, not impoverishment of different cultures. Although the area has been part of many great empires and flourishing trade, Afghanistan did not become a truly independent nation state until the twentieth century.⁷

I. Physical and Social Settings

Afghan society has been molded by an extraordinary set of physical and environmental factors. It inherited a severe climate and a forbidding terrain. The geographical features of Afghanistan have had a great impact on the cultural development of its people. Of the 25 million plus population of Afghanistan, 20% live in urban areas and 80 percent in rural areas.⁸ The mountainous features of Afghanistan make it necessary for many villages to be self-sufficient. There are many rural areas in the

⁴ Lauren Comiteau, “Saving Afghanistan’s Art,” *TIME* (January 2008), <http://www.time.com/time/arts/article/0,8599,1701306,00.html> (accessed January 23, 2011).

⁵ Ibid.

⁶ Arley Loewen and Josette McMichael, *Images of Afghanistan: Exploring Afghan Culture through Art and Literature* (New York: Oxford University Press, 2010), 2-15.

⁷ Library of Congress, Federal Research Division, *Afghanistan: A Country Study* (Baton Rouge: Claitor’s Publishing, 2001), 2.

⁸ Neamatollah Nojumi, *The Rise of the Taliban in Afghanistan: Mass Mobilization, Civil War, and The Future of the Region* (New York: Palgrave, 2002), 1.

country that do not have a strong connection or interaction with urban centers. It's interesting to note that the very success of the Afghans in resisting British imperialism deprived them of a number of the prerequisites of a modern state. Where the British colonized they left behind an infrastructure, an efficient civil service, an independent judiciary, an integrated national railway network and well-organized armed forces. In countries like Pakistan and India the British left the machinery of state.⁹ Had the rulers of Afghanistan inherited such power their efforts to develop the country would have met with great success. Instead the villages and local communities have had to try to finance their own development with scarce resources and implement their decisions with a completely inadequate system of government. They built their houses, grew their crops, and protected their community. The local government's survival and effectiveness as a facilitator of relations between the local communities and the central government depended on the continued good relations with the people. Because of the self sufficient nature of the rural communities and the fact that many villages not only produced their food without help but also managed their administrative affairs, the role of the central government in the affairs of the rural communities was marginal.¹⁰ When an issue arose that the local leaders and citizens were not able to solve, it would be time for government intervention, but that rarely was the case.

These influences stamped traits upon Afghan life which have emphasized survival and a strong sense of independence within an over-all pattern of ethnic and cultural

⁹ Mark Urban, *War in Afghanistan* (New York: St. Martin's Press, 1990), 4.

¹⁰ Larry P. Goodson, *Afghanistan's Endless War: State Failure, Regional Politics and the Rise of the Taliban* (Seattle: University of Washington Press, 2001), 10-22.

diversity. Physical resources offer the country at least modest opportunities for industrial and other forms of modern development. Nevertheless, Afghanistan has never been able to integrate regional economies on a national scale and the environmental factors and have weakened Afghanistan's attempts to build a strong, modern political system.¹¹

Afghanistan's population is comprised of eight major ethnic groups or tribes (Pashtun, Tajiks, Hazaras, Aimaqs, Turkmen, Uzbeks, Kirghiz, and Baluchis) and dozens of small sub-ethnic minorities. While the main national languages are Dari and Pashto, there are between 20 and 40 different languages and dialects in Afghanistan.¹² The relationship between all of these various ethnic and linguistic groups is based on two main points: ethnic identity and national identity. On an ethnic level the members of an ethnic group, in particular within a tribe, share "a common ancestor, a common leader and a common territory in a positive way and harbor negative attitudes toward members of other tribes."¹³ Tribes have existed for millennia in Afghanistan. They emerged over centuries in various sections of the country, taking form along extended kinship lines.

There are Afghans who do not have a tribal background and who do not have a tribal identity, therefore their relationships with other Afghans are based on national identity.¹⁴ Because of these unusual factors, the political system in Afghanistan took shape in a unique way. The tribes' chief worked as a political leader and came together

¹¹Library of Congress, *Afghanistan: A Country Study*, 6-15. For additional reading on this point see Robert I. Rotberg, *Building a New Afghanistan* (Cambridge: Brookings Institution Press, 2007), 23-41.

¹² Urban, *War in Afghanistan*, 4.

¹³ *Ibid.*, 2.

¹⁴ Arturo Munoz, "Pashtun, Tribalism and Ethnic Nationalism," *Cultural and Geographic Research: Tribal Analysis Center* (March 2010), <http://www.tribalanalysiscenter.com/PDF-TAC/Pashtun%20Tribalism%20and%20Ethnic%20Nationalism.pdf> (accessed February 4, 2011). 3-4.

traditionally when there was a national crisis and recruited their tribal forces, which then led them in a united effort against invaders.¹⁵ Most tribes were led by a council of elders who provided protection, financial support, a means to resolve disputes, and punished those who had committed crimes or broken tribal codes of conduct.¹⁶

This traditional methodology allowed tribal chiefs to form the establishment of the modern Afghanistan state in 1747, by electing Ahmad Khan of the Abdali tribe through a *jirga*, or council.¹⁷ The creation of the kingdom of Afghanistan was the direct results of association of tribal leaders who were legitimized by the support of the populace and religious leaders.

II. Political Elements of Afghan Society

The historical code of national politics that has formed national ideology in Afghanistan consists of nationalism and Islam. Nationalism brought the various ethno-tribal and religious communities together in a united effort against the external aggressions, but the need for such a united effort melted when the external threat disappeared. For example, in 1919 nationalism was at an all time high prior to the British defeat in Afghanistan and the subsequent independence of Afghanistan.¹⁸ After achieving independence, nationalism plummeted when the political and ethnic factions began a bloody civil war. Struggles between the Afghan people and external forces make the

¹⁵ Ibid.

¹⁶ Rullah Khapalwak and David Rohde, "A Look at America's New Hope: The Afghan Tribes," *New York Times* (January 30, 2010), <http://www.nytimes.com/2010/01/31/weekinreview/13rohde.html> (accessed February 11, 2011).

¹⁷ Ibid.

¹⁸ Peter Hopkirk, *The Great Game: The Struggle for Empire in Central Asia* (New York: Kodansha International, 1994), 124.

national history of this land eventful. These struggles have created their own psychological, traditional, and sociopolitical elements within Afghanistan, which are an important part of Afghan cultural identification.

The Afghan people have an immense respect for religion. The majority of Afghans are Muslim, with a sprinkling of native Jews and Hindus, who account for about one percent of the population. Due to the conditions of isolation and social segmentation, Islam is the strongest unifying cultural force within Afghan society.¹⁹ When Islam became the dominant religion in Afghanistan, it inspired the need for national unity. It completed culturally the need for national unification of the numerous Afghan ethno-tribal populations therefore completing the bond of Islam and nationalism.²⁰ Islam was not only part of the legal and moral basis of society, but also mediated through and coexisting with tribal codes and local customs. For many centuries all teaching and education in the country had taken place within an exclusively religious framework. It was also required by all those in public offices to be trained in the Islamic religion.²¹ The Afghan people led by the clergy, maintained their conservative beliefs and forms of worship throughout the twentieth century.

One must note that the Afghan views of Islam have also tended to limit mental horizons because of the role of religious leaders. While there is no organized system which determines the power and influence of the *mullahs* or *ulema*, they are the primary

¹⁹ Newall, *The Politics of Afghanistan*, 27.

²⁰ Meredith L. Runion, *The History of Afghanistan* (Westport, CT: Greenwood Publishing Group, 2007), 75-96.

²¹ Stephan Tanner, *A Military History from Alexander the Great to the War against the Taliban* (Cambridge, MA: Da Capo Press, 2009), 23.

source of education and moral attitudes for most Afghans. Their leadership is largely a function of the personal qualities of learning, piety, and guidance possessed by individual mullahs.²² This in turn contributes to the narrowness of experience and attitude when it comes to modernization of Islam because of the strong puritanical interpretation given to Islam by most mullahs. The faith emphasizes clear cut rules of behavior whose purpose is mainly to purify and reinforce the faith of the believer. People of religious training have been very influential in Afghanistan for centuries now. They were in charge of all education, of the interpretation of the *Shari'ah*, of the administration of justice and the enforcement of public morals.²³ Their role in the local communities was fundamental since the government could only operate effectively by receiving the seal of approval from the religious community. This relationship played a fundamental role in the national political system and still does today. Religion is strongly integrated in the daily life of the people because of the power that these religious leaders have been given in the past that has carried on in today's time.

One of the major downfalls of decentralizing power was that the Afghan government always had to balance their powers between chieftains, religious leaders, middle class, and national bourgeoisie. It was fundamental to obtain their support and agreement in order to move forward with government policies.²⁴ In the following discussion we will review the governments struggle in modernizing and creating a secular

²² Ibid., 24.

²³ Amin Saikal, *Modern Afghanistan: A History of Struggle and Survival* (New York: I.B Tauris, 2004), 18.

²⁴ Nojumi, *The Rise of the Taliban*, 7.

form of government. The fundamental structure that arose in the 19th century and continued throughout the 20th century was one of the main factors of why a secular democracy in Afghanistan has not been able to succeed thus far.

III. Amir Habibullah Khan 1901-1919

Amir Habibullah Khan was born in Tashkent, the eldest son of the Emir Abdur Rahman Khan, whom he succeeded by right of primogeniture in October 1901.²⁵ Habibullah was a relatively secular, reform-minded ruler who attempted to modernize his country. Afghanistan experienced one of its smoothest successions when Habibullah ascended the throne. He was well trained and sufficiently mature to build upon the accomplishments of his father, Abdur Rahman Khan.

During his reign he worked to bring Western medicine and other technology to Afghanistan.²⁶ During his control the movement of foreign, technical, ideological, and aesthetic influences increased very rapidly. It was a time where economical, ideological and political implications due to global changes were difficult to overlook. In 1904, Habibullah founded the *Habibia School* as well as a military academy. He was concerned that many aspects of modernization would meet hostility from tribal and religious leaders and believed that the government could shield Islamic institutional intervention by furthering military and economic innovations and at the same time win the support of tribal and religious leaders by giving them honors and appointing them in certain

²⁵ Newell, *The Politics of Afghanistan*, 48.

²⁶ Munoz, "Pashtun, Tribalism and Ethnic Nationalism, 5-8.

positions.²⁷ He also published a weekly paper called *Siraj-ul-Akhbar* (The Lamp of News), which campaigned for reform.

Habibullah knew that “Pan-Islamism” was an issue that could unite the radical conservative and modernists among his subjects which would benefit his plans for gaining approval for his reform movements, so he encouraged Muslim states, especially Turkey in their struggles with the Christian powers of Europe. He strictly maintained the country's neutrality in World War I, despite strenuous efforts by the Sultan of Turkey, to enlist Afghanistan on its side. He also greatly reduced tensions with India, signing a treaty of friendship in 1905 and paying an official state visit in 1907.²⁸

Because of Habibullah’s sensitivity to Afghanistan’s traditional political structure, he was able to form a modernist and nationalist elite group for the first time in Afghanistan. This small group advocated social, cultural, and economical changes. As mentioned before, the greatest progress was made in education, journalism, and technology. Even though he knew that these areas of development were potentially going to face opposition, he believed modern education would invariably bring western science and sociopolitical ideas into the schools.²⁹ The conflict was that of the *mullahs*’ insistence that education was primarily for learning the precepts and theology of Islam. The

²⁷ Asta, Olesen, *Islam and Politics in Afghanistan* (London: Curzon Press Ltd., 1995), 95.

²⁸ *Ibid.*, 98.

²⁹ Runion, *A History of Afghanistan*, 45.

modernists argued that such alien teachings ultimately would enable Afghanistan to survive as an Islamic society.³⁰

Habibullah's strategy was to conduct educational training discreetly. Only a small number of royal family members, their relatives, and close retainers were allowed access to the training established at the military school or at *Habibya*.³¹ The risk of opposition for educational advancements was further minimized by a gradual introduction of new subjects. He also founded several professional and vocational schools in the fields of administration, arts and crafts and teacher training. His objective for these schools was to produce the first group of leaders whose ideas and goals were influenced by norms outside of traditional patterns.

Habibullah's approach was a bit different than many. He brought about innovation, education and change but he used like-minded intellectuals to test Afghan receptivity to innovations without having to associate himself directly. On February 20, 1919, Habibullah, was assassinated on a hunting trip. He had not declared a successor, but left his third son, Amanullah, in charge in Kabul. Because Amanullah controlled both the national treasury and the army, he was well situated to seize power.³² Within a few months, the new amir had gained the allegiance of most tribal leaders and established control over Afghanistan.

³⁰ Library of Congress, "Afghanistan: A Country Study," 16.

³¹ Urban, *War in Afghanistan*, 65.

³² *Ibid.*, 72.

IV. Amanullah Khan 1919-1929

In 1919 after Amanullah Khan became the king of Afghanistan, he maintained strong support from the Afghan educated middle class and eventually won the support and participation of the tribal chiefs, the community elders, and the religious leaders in the War of Independence against the British. In this war, the combination of Afghan political factions created such a strong movement that not only were the British defeated in the western frontiers, but an anti-British movement in India was also triggered.³³

Amanullah Khan was crowned the Amir of Afghanistan after his father, Amir Habibullah, was assassinated in February 1919. Amanullah's ten years of reign initiated a period of dramatic change in Afghanistan in both foreign and domestic politics. Starting in May 1919 when he won complete independence in the month-long Third Anglo-Afghan War with Britain, Amanullah altered foreign policy in his new relations with the outside world and transformed domestic politics with his social, political, and economic reforms.³⁴ Although his reign ended abruptly, he achieved some notable successes, and his efforts failed as much due to the neglect of his power balance that helped him gain success in defeating the British. His vision was to convert Afghanistan into a stable and prosperous kingdom on modern railway lines, and highway systems, adapting the best of western practice, but cautiously, to Afghan conditions.³⁵

³³ Leon P. Poullada, *Reform and Rebellion in Afghanistan, 1919-1929: King Amanullah's Failure to Modernize a Tribal Society* (New York: Cornell University Press, 1973), 174.

³⁴ *Ibid.*, 123.

³⁵ Senzil K. Nawid, *Religious Response to Social Change in Afghanistan, 1919-1929: King Amanullah and the Afghan Ulama* (Costa Mesa, CA: Mazda Publishers, 2000), 88-102.

After the Anglo-Afghan war, King Amanullah became a national hero and turned his attention to reforming and modernizing his country. King Amanullah and his urban educated colleagues tried to centralize the government authorities all over the country. The objective of the central government was to impose the government decisions over the local community. This policy tried to abolish the traditional role of the tribal and communal chiefs and elders who had proved their outstanding positions during the War of Independence.³⁶ Traditionally, these community leaders and tribal chieftains were always the intermediaries between the government and the members of the tribe or the community.

The political and judicial reforms Amanullah proposed were equally drastic for the tribal and communal chiefs and included the creation of Afghanistan's first constitution (in 1923), the guarantee of personal freedom, equal and civil rights (first by decree and later constitutionally) to all Afghans, national registration and identity cards for the citizenry, the establishment of a legislative assembly, a court system to enforce new secular penal, civil, and commercial codes, prohibition of blood money, and abolition of subsidies and privileges for tribal chiefs and the royal family. He had a vision of modernization that would be parallel to many democratic states in our time today. Amanullah even built a new capital, named *Darulaman* (abode of peace) which included a monumental parliament and other government buildings.

His transforming social and educational reforms included: a new dress code which permitted women in Kabul to go unveiled and encouraged officials to wear

³⁶ Nojumi, *The Rise of the Taliban*, 8.

Western dress, women were able to travel abroad for higher education, introduction of secular education (for girls as well as boys); adult education classes, education for nomads, founded schools in which French, German and English was the primary language of education, removal of the traditional right to betroth children; the dismissal of government officials who chose to have more than one wife; abolishing slavery and forced labor, the changing of the weekly holiday from Friday to Thursday; the abolition of the prayer system (the system of following a religious leader) in the army; the suspension of allowances to the *Ulema*; the introduction of secular codes of laws along with the *Shari'a*, which relegated the *Shari'a* to second place; and finally the imposition of limitations on the almost unlimited discretion of the *Qazi* and *Mutfi* (the judge and prosecutor) in criminal matters.³⁷ Unfortunately, Modernization proved costly and was not greeted so warmly in Afghanistan and was resented by the traditional elements of Afghan society.

Amanullah's domestic reforms were no less dramatic than his foreign policy initiatives, but those reforms could not match his achievement of complete, lasting independence.³⁸ Mahmoud Beg Tarzi, Amanullah's father-in-law, encouraged the King's interest in social and political reform but urged that it be gradually built upon the basis of a strong army and central government, as had occurred in Turkey under Kemal Atatürk.³⁹ Amanullah, however, was unwilling to put off implementing his changes. He pursued

³⁷ Nawid, *Religious Response to Social Change*, 145.

³⁸ Olesen, *Islam and Politics in Afghanistan*, 55.

³⁹ Poullada, *Reform and Rebellion in Afghanistan*, 74.

economic reform in the form of restructuring, reorganizing, and rationalizing the entire tax structure, establishing diplomatic and commercial relations with many European and Asian states, anti-smuggling and anticorruption campaigns, a livestock census for taxation purposes, the first budget (in 1922), implementing the metric system (which did not take hold), establishing the *Bank-i-Melli* (National Bank) in 1928, and introducing the *afghani* as the new unit of currency in 1923.⁴⁰

It is apparent that Amanullah's reforms touched on many areas of Afghan life. In 1921 he even established an air force, with only a few Soviet planes and pilots that received training in France, Italy, and Turkey. Although he came to power with army support, Amanullah alienated many army personnel by reducing both their pay and size of the forces and by altering recruiting patterns to prevent tribal leaders from controlling who joined the service. Amanullah's Turkish advisers suggested the king retire the older officers, men who were set in their ways and might resist the formation of a more professional army.⁴¹ Amanullah's minister of war, General Muhammad Nadir Khan, a member of the Musahiban branch of the royal family, opposed these changes, preferring instead to recognize tribal sensitivities. The fundamental issue with Amanullah's political, social, and economic reforms were that he restricted the role of the tribal leaders and community leaders without initial delicacy.

If fully enacted, Amanullah's reforms would have totally transformed Afghanistan. Most of his proposals, however, died with his abdication. Conventional

⁴⁰ Nawid, *Religious Response to Social Change*, 149.

⁴¹ Poullada, *Reform and Rebellion in Afghanistan*, 85.

wisdom holds that the tribal revolt overthrew Amanullah out of opposition to his reform programs.⁴² The king had managed to alienate religious leaders and army members which were referred to as political misbehavior. He struggled to coordinate and balance a governmental structure that was in existence before his time. This structure was what he used to his advancement in the struggle against the British that successfully led the third Afghan-British war and secured Afghanistan's independence. King Amanullah enjoyed the support of the religious leaders on his decision to declare war on the British. The religious and community leaders had declared *jihad* on the British, and they personally participated in the war under the command of King Amanullah.⁴³ When he was initiating reforms, he attempted to marginalize some of the political elements and lost the balance between traditional political forces. Because the king concentrated heavily on the modernization element without any proper consideration of other key players of what built the traditional political structure, his government deteriorated very quickly in 1929.

Indeed, modernization has been the most dominant theme of Afghan politics during the 20th century. History has proved that modernization without social and political participation results in like those during Amanullah Khan's time.

V. Musahiban Rule: Nadir Khan (Shah), Zahir Khan (Shah) 1929-1963

A. Nadir Khan: 1929-1933

Nadir Khan, the leader of the Musahiban family, which were descended from the royal *Sadozai* and *Mohammedzai* clans and therefore was an eligible claimant to the

⁴² Saikal, *Modern Afghanistan*, 63.

⁴³ Nojumi, *The Rise of the Taliban*, 8.

throne in the view of other Pushtuns became the next leader of Afghanistan after Amanullah Khan. He was a military man who had commanded the government forces against the Mangals in 1912, was awarded the title of 'General' for his services, and appointed commander-in-chief in 1914.⁴⁴ As a commander-in-chief he had led Afghan units in their most successful engagements against the British in the third Anglo- Afghan war in 1919. Due to policy differences with King Amanullah, Nadir Khan was appointed Afghan minister to Paris in 1924. After King Amanullah was overthrown and after several abortive campaigns Nadir Khan captured Kabul in 1929 with his brothers Shah Wali Khan and Shah Mahmud Khan. Two days later, Nadir Khan was proclaimed Afghanistan's King.

Nadir Khan quickly abolished most of Amanullah's reforms, fought those who favored the return of King Amanullah and executed some of his supporters. These actions suggested that great caution was required in the installation of social or even technical changes. Nadir Khan recognized that his regime had to establish a stronger political and military power which would require the allegiance of tribal and religious leaders before further changes could be entertained. Thus, he concentrated his efforts on the rebuilding of government authority. Despite his efforts, military forces remained weak while the religious and tribal leaders grew strong.⁴⁵

Nadir Khan named a ten-member cabinet, consisting mostly of members of his family, and in September 1930 he called into session a loya jirga of 286 which confirmed

⁴⁴ Newell, *The Politics of Afghanistan*, 58.

⁴⁵ *Ibid.*, 59.

his accession to the throne. In 1931 the king promulgated a new constitution. Despite its appearance as a constitutional monarchy, the document officially instituted a royal oligarchy, and popular participation was merely an illusion.

The new regime stressed Islamic traditions and laws as the basis of its authority, discarding Amanullah's secularist, nationalist theory of legitimacy. Concessions were made to religious conservatives in the fields of women's rights and Islamic law.⁴⁶ The one girl's school that was re-opened was to train nurses and not to provide a general modern education. The government relaxed its claim of control over school curricula, and *Qazi's* were given more latitude to interpret law than they had had since before the reign of Abdur Rahman (1880).⁴⁷ Initially most of the reforms that were taken to advance the people of Afghanistan in a foot forward direction where civil liberties, freedom and modernization were introduced had been reversed.

Although Nadir Khan placated religious factions with a constitutional emphasis on orthodox denominational principles, he did actually take steps into developing better communication systems and improving road construction. His concentration in economic development is what Nadir Khan can be accredited for. He forged commercial links with the same foreign powers that Amanullah had established diplomatic relations with in the 1920s, and under the leadership of several prominent entrepreneurs, he initiated a banking system and long-range economic planning.

⁴⁶ Goodson, *Afghanistan's Endless War*, 35.

⁴⁷ *Ibid.*

In 1932, the *Bank-i-Milli* (national bank) was established and it was to hold both government and private deposits. These funds were used to develop foreign trade and to set up industrial operations within the country. As the volume of trade grew, the government was able to extract a growing share of revenue which it used to build its civil and military administration. Although his efforts to improve the army did not bear fruit immediately, by the time of his death in 1933 Nadir Khan had created a 40,000-strong force from almost no national army at all. A modest industrial foundation was laid and for the first time since the First World War, the country's hydroelectric capacity was expanded.⁴⁸ It is notable that Afghanistan's regeneration was carried out with no external assistance whatsoever.

During his reign, Nadir Khan did eventually reopen many schools. He established the faculty of Medicine, which later became Kabul University with the addition of a few more faculties. Nadir Khan's brief four year reign ended violently, but he nevertheless reunited a fragmented Afghanistan by reintroducing the structure of traditional politics. Nadir Khan was assassinated in 1933 by a young man whose family had been feuding with the king since his accession to power. This tragedy illustrates the continuing influence of tribal and religious leaders within the political system.

B. Muhammad Zahir Khan (Shah): 1933- 1973

It is important to note that the Musahiban regime continued under the leadership of Nadir Khan's three surviving brothers, Mohammed Hashim Khan, Shah Mahmud, and Wali Shah. They ran the government jointly after having placed Nadir Khan's oldest son,

⁴⁸ Ibid., 62.

Zahir Khan on the throne. Muhammad Zahir was the last in the 226-year dynasty of Pashtun monarchs to rule Afghanistan. He was the son of King Nadir Khan and replaced his father on the throne of the Durrani dynasty after his father was assassinated. He was educated in both his native country and France and was thrust suddenly into power at the age of 19.

For the first thirty years he did not effectively rule, ceding power to his paternal uncles and was also a period that fostered growth in Afghanistan's relations with the international community. In 1934, Afghanistan joined the League of Nations and was formally recognized by the United States. Throughout the 1930s, agreements on foreign assistance and trade had been reached by Germany, Italy and Japan and the *Treaty of Saadabad* with Iran, Iraq and Turkey in 1937, reinforced Afghanistan's regional ties to neighboring Islamic states.⁴⁹ This created a policy of international neutrality within the international community that would further economic and political development.

The single greatest achievement Zahir Khan's time was the promulgation of the 1964 constitution. The constitution turned Afghanistan into a modern democratic state by introducing free elections, a parliament, civil rights, civil liberties, liberation for women, human rights and universal suffrage. He instituted programs of political and economic modernization, ushering in a democratic legislature, education for women and other such reforms knowing that these reforms put him at odds with the tribal and religious leaders who opposed him.

⁴⁹ Runion, *The History of Afghanistan*, 67.

Muhammad Daoud Kahn, who served as prime minister under King Zahir Shah from 1953-1963, re-introduced process of liberal reforms that had essentially ceased upon the death of Amanullah Khan. Daoud sought to make a sweeping gesture of support for liberal reforms, backed by an army newly strengthened by Soviet support. In 1959, Daoud and senior members of the government found the opportunity for such a gesture when they appeared at a public political event with their wives and daughters unveiled, unequivocally announcing to the people of Afghanistan the government's commitment to secular reforms.⁵⁰ Much like the reaction to Amanullah's reforms, traditionalist religious forces responded with riots and acts of resistance in the North. Daoud, backed by a newly strengthened army, quickly suppressed protests from the traditionalists' quadrants and moved full steam ahead with his socialist reform agenda. As Prime Minister, Daoud flexed his pushed for the introduction of women into the modern workforce and advocated co-education. The reaction to Daoud's reforms was violent in traditionalist strongholds such as the Pushtun regions, with rioters targeting girls' schools, a women's public bathhouse and a cinema as symbols of foreign corruption.

King Zahir Shah not only supported Daoud's progressive reforms but also took them a step further with the creation of the Constitutional Advisory Committee. The Constitutional Advisory Committee included both men and women and was tasked with revising the constitution to give legal equality to both women and men and precedence of the secular legal system over *Shar'ia* law, upsetting the prior ambiguity established in the

⁵⁰ Peter Marsden, *The Taliban: War and Religion in Afghanistan* (New York: Zed Books, 2002), 20.

1931 constitution.⁵¹ Zahir Shah also expanded the primary and secondary education system as well as the public university system. Educational establishments were centers of influence that challenged the authority of the mosque. The king hoped that the secular education system would act as unifying force for the creation of a nationalist ideology, and limiting the emphasis on Islamic studies to a corollary instead of central tenet of education. A separate benefit of the system was the pragmatic promotion of technical education, which was seen as the key to progress. By the 1960's, ninety percent of all secular school graduates were employed by the expanding government.⁵²

This expansion of the educational opportunities available to students led to a marked increase in the student population at the universities, especially the premiere Kabul University. This new generation of students came from all parts of Afghanistan and the diversity of backgrounds was reflected in the sharp campus divisions between those who wished to speed the reforms and those who opposed the imposition of what was called a western value system on an Islamic populace.

Kabul University became a hot bed for the secular and religious tensions that were straining the nation as both the radical Marxist People's Democratic Party of Afghanistan (PDPA) and the seeds of the reactionary Islamist movement were sown among the student population. The PDPA drew mostly on students from the Institute for

⁵¹ Ibid., 22.

⁵²U.S. Library of Congress, "Education," <http://countrystudies.us/afghanistan/71.htm> (accessed February 12, 2011)

the Sciences, while the religious opposition drew from the humanities and theological study departments at Kabul University.⁵³

The PDPA comprised of a small group of men, followers of Noor Mohammad Taraki and Babrak Karmal, both avowed Marxist-Leninists with a pro-Moscow orientation.⁵⁴ The aims of Taraki's regime were soon set out in a document entitled 'Main Guidelines of the Revolutionary Tasks of the Democratic Republic of Afghanistan' (DRA). Despite constant assurances that they would respect custom and tradition it was quiet clear that the PDPA wanted to engineer a complete revolution in society. The guidelines set out plans for the redistribution of land, equality for the ethnic minorities, emancipation for women, and education for all. On paper it seemed a laudable and completely necessary plan to bring Afghanistan into the 20th century. Although the People's Democratic Party leadership took great pains to assure their people that they were not anti-religious or pro-Moscow they showed naivety in enunciating their revolutionary program as candidly as they did.

Taraki's most acute dilemma was establishing a party line on Islam. His early pronouncements, and those of his government, stressed a respect for the principles of Islam. Nevertheless, the Marxist-Leninist principles embodied in the PDPA's program and policies were clear enough. Taraki told a Western German journalist: "We want to clean Islam in Afghanistan of the ballast and dirt of bad traditions, superstition, and

⁵³ Farshad Rastegar, *The Mobilizing Role of Secular Education in Islamist Movements: The Case of Afghanistan* (Los Angeles: G.E. von Grunebaum Center for Near Eastern Studies, 1992) 7-10.

⁵⁴ Urban, *War in Afghanistan*, 18.

erroneous belief. Therefore we will have progressive, modern, pure Islam.”⁵⁵ He decided to summon tribal and religious leaders from around the country to Kabul. He wanted to allay their fears by giving a careful explanation of government policy. Taraki asked for their cooperation, saying: “These progressive and national aims of ours can only be attained when the entire patriotic population of the country, whether workers, peasants, toilers or intellectuals, give us help and support and fearlessly defend their people’s revolution.”⁵⁶ Taraki and Karmal wanted the people of Afghanistan to know that the theme of the PDPA regime was pro-Islamic and the party had profound respect for the principles of the holy religion of Islam.

In the 1969 parliamentary elections, voter turnout was very low. Most of the urban liberals and all of the female delegates lost their seats. Few leftists remained in the new parliament, although Karmal had been elected from districts in and near Kabul. Between 1969 and 1973, instability ruled Afghan politics. The parliament was at a standstill with reforms and changes. Public dissatisfaction over the unstable government prompted growing political polarization as both the left and the right began to attract more members. Zahir Khan nevertheless came under increasing criticism for not supporting his own prime ministers. It was in this atmosphere of internal discontent and polarization that a coup d’état had been planned in response to the "anarchy and the anti-

⁵⁵ Ibid., 22.

⁵⁶ Library of Congress, “Afghanistan: A Country Study,” 18-25.

national attitude of the regime."⁵⁷ While the king was out of the country for medical treatment, a small military group seized power in an almost bloodless coup.

After assuming power, the PDPA's radical orientation and its purges of opponents instigated one of the first massive waves of Afghan refugees to Pakistan. The PDPA, which ignored the lessons of earlier attempts to impose rapid reforms on Afghan society, undertook a massive and rapid program of communist reforms. The reforms imposed a ceiling on landholdings, set a minimum age for marriage, and most significantly embarked upon a nation-wide literacy campaign through the promotion of a universal secular education program aimed at both men and women of all ages. It was this imposition of a uniform education system with no regard for the separate education of the sexes and with a wholly secular curriculum tailored for a socialist state that met with the most unified backlash in the countryside. The disgruntlement with the reforms of Zahir Shah boiled over with the PDPA's nationwide imposition of secular education; a call for *Jihad* was raised by many of the rural religious leaders.

The imposition of secular education in Afghanistan was a catalyst, or in the formulation or best said by Eckstein, "a precipitant, for the mobilization of Islamist movements in Afghanistan."⁵⁸ The new resistance formed from a loose confederation of tribes and regions encouraged a return to *Shari'ah* law and the suppression of what was viewed as the alien forces of secularism. The fact that the government's bureaucracy was recruited primarily from the secular university did not help to mitigate the perception

⁵⁷ Ibid., 30.

⁵⁸ Harry Eckstein, "On the Etiology of Internal War," in *Anger, Violence and Politics*, ed. Ivo Feirerabend (Englewood Cliffs, NJ: Prentice Hall, 1972), 29.

among rural villagers that those who received secular education were the self-same government officials that many viewed as infringing on what had hitherto been matters of local concern.

Madrassas, local religious schools that were more prominent in the rural villages of Afghanistan despite the mandated secular school system, were viewed as producing local religious leaders and village judges by the rural populace, and thus had more local legitimacy than the state schools. Graduates of *madrassas* in rural Afghanistan possessed greater respect and control over the day-to-day affairs and well being of the populace than did their counterparts in the communist government.⁵⁹

Faced with popular revolt led by the rural religious forces, the PDPA government in Kabul called on the Soviet Union for military assistance and support in quashing the rebellion. As organizational discord within the PDPA grew, the Soviet Union decided to seize control of the situation and invaded Afghanistan in December of 1979.

The great *jihad* of the twentieth century commenced in Afghanistan against the Soviet forces. For over a decade Afghanistan became a bloody battleground for both Soviet forces and its own internal clash of ideologies and identity. It was in this haze of conflict that an ultra-conservative strand of Islam, the Deoband School of Hanafite theology, took root and flourished in the rural regions of the Pushtun North and among the millions of Afghan refugees who had crossed the border to Pakistan. As will be explored further in the third section, the Islamist parties in Pakistan supported by the U.S., the ISI in Pakistan and various Saudi funders, saw in the Afghans fleeing from the

⁵⁹ Rastegar, *The Mobilizing Role*, 3-5.

PDPA and Soviet control, the opportunity to promote a particularly reactionary Islamic ideology through the support of *madrassas* in the refugee camps and orphanages in the border regions of Afghanistan and Pakistan.

In this chapter we confirmed that in Afghanistan's political history, democracy, secularism and modernization, were not foreign terms and ideas that were left for the "West" to undertake. We established that the governmental leaders often have made repeated mistakes by either neglecting or overpowering the participation of tribal and religious leaders, not using education to bring western science and sociopolitical ideas into schools, nongovernmental and private sectors while undertaking modern reforms. Many of the leaders had a vision but their fundamental strategy for reform should have been focused on educational training. It is very clear that the introduction of new subjects or reforms could be minimized by gradual educational advancements. Our focus was to demonstrate that modern initiatives have been the quest of the Afghan political forces for years. If these initiatives take place in the spotlight of social, economic, and cultural requirements, local support as well as the participation of a variety of political forces would be encouraged within Afghan society. In our next chapter we will direct our findings from this chapter to two Muslim countries that have flourished and defeated the typecast that Muslim countries are not compatible with Democracy. We will examine these models and use relevant and crucial lessons learned from their past political experiences to create a practical framework for a progressive agenda for Afghanistan. We will also discuss the findings of Nucholish Majid, a neo-modernist reformist, who was a proponent for modernization within Islam. Throughout his career he continued to argue

that for Islam to be victorious in the global struggle of ideas, it needs to embrace the concepts of democracy, tolerance, and pluralism.

CHAPTER 2

TURKEY AND INDONESIA'S PATH TO DEMOCRACY

Two countries in the Muslim world where the prospects of liberal democracy seem brightest are Turkey and Indonesia. In recent years, both have registered significant gains for political development, despite their historical experiences. This is reflected in the annual rankings by Freedom House, in which Turkey and Indonesia have registered some of the highest scores for political rights and civil liberties in comparison to the other members of the Organization of Islamic Conference.¹ One of the intriguing aspects of Turkish and Indonesian politics in recent years has been the central role played by Muslim intellectuals and political parties in advancing liberal democracy. “This development on its own shatters one of the key assumptions of modernization and dependency theory- and the writings of many liberal philosophers in the West have long maintained that religious politics and political development are structurally incompatible.”² In both Turkey and Indonesia there is a shortage of popular demand for an Islamic state and the implementation of the *Shari'ah* in contrast with other parts of the Muslim world. An acceptance of pluralism, universal standards of human rights, and political secularism has flourished in recent years in these countries, significantly

¹ According to the 2007 Freedom House rankings, on a scale of 1 (most free) to 7 (least free), Indonesia received a 2 for political rights and a 3 for civil liberties, while Turkey's score was 3 for political rights and 3 for civil liberties. These were some of the highest rankings among the members of Organization of Islamic Conference. www.freedomhouse.org/template.cfm?page=372&year=2011.

² Nader Hashemi, *Islam, Secularism, and Liberal Democracy: Toward a Democratic Theory for Muslim Societies* (New York: Oxford University Press, 2009), 152.

transforming their respective political cultures and directing them in a liberal democratic path.

I. Turkey

More than a century ago, the French aristocrat Alexis de Tocqueville remarked that Islam was not compatible with democracy, but as we will review in this chapter, his view point was not shared by all.³ When speaking of a modern, democratic, Islamic nation nurturing pluralist ideals, it appears that Turkey is one of its key blueprints. From its free-market economic system, to its compatible ideals with the West, the promotion of the Turkish model should be in the interest of all Islamic nation states. Turkey in a way signifies the emergence of a modernist Islam, which seeks to balance religion with the modern world.

Before the collapse of the Ottoman Empire, there existed a separate religious institution that was formed to control religious activities and to also create a state-centric Islam. This institutionalization of Islam prevented the autonomy of religion and Islam therefore religion and Islam always remained under the control of the state. After the collapse of the Ottoman state, Turkey adopted a whole-hearted western and secular orientation during most of the twentieth century. In the words of President Bush, Turkey has “provided Muslims around the world with a hopeful model of a modern and secular democracy.”⁴ Turkey can constitute an important model for Afghanistan because of all

³ Alexis de Tocqueville, *Democracy in America* (New York: Penguin Putnam, 2001), 58.

⁴ Laura Peterson, “The Pentagon Talks Turkey,” *The American Prospect* 13, no. 16 (2002), http://prospect.org/cs/articles?article=the_pentagon_talks_turkey (accessed February 23, 2011).

the countries in the Islamic world, Turkey has come closest to the ideals of secular democracy and can clearly demonstrate that democracy and Islam are not incompatible.

The Turkish example is a unique one, it is a modernizing and a nationalistic model in one, embracing the nationalist view of what makes people who they are yet reforming their views to improve their ways of life to keep up with the globalizing and changing world around them. Rapid modernization required a true cultural revolution, breaking the power of the religious leaders who presided over the people. Catching up to the twentieth century meant containing traditional religion, concentrating power on a superficially Westernized bureaucratic elite and even trying to impose a reformed sense of religion from above.⁵ Turkish Republicans declared that Islam from now on would be a purely personal affair between each individual and their God, with no influence on domestic or foreign affairs. They even attempted to make this reformed religion an instrument of cultural modernization, bringing Islam under the tight control of a national Directorate of Religious Affairs, suppressing most other expressions of Islam.

While there are crucial lessons that can be learned from Turkey's *Kemalist* model, it should be kept in mind that all is not perfect with the model. A model does not mean it is an exact blueprint for necessary reforms or the exact emulation for a particular country. A more realistic conception should consider a model to offer relevant lessons from past political experience and become a practical framework for a progressive agenda.

Using Turkey as a model for Muslim nations has and will draw opposition because many Muslim countries see Turkey as a former colonial master that has turned

⁵ Hakan M. Yavuz, *Secularism and Muslim Democracy in Turkey* (New York: Cambridge University Press, 2009), 154.

its back on Islam. For the purpose of this paper, we will look at the many lessons that can be learned from Turkey's political system and the country's experience with its three phases of reformation. We will also review its six arrows or principles that guided Turkey to have free elections and a parliamentary democracy as well as form its determination to improve human rights and economic development.

The Ottoman Empire was historically the "intimate enemy" of Europe. In religious and military terms, "the Turks represented the Islamic 'Other,' which played a crucial role in consolidating Europe's own Christian identity."⁶ After centuries of colonial rule came to an end and territorial regression began the Ottoman elite sought salvation in what can be said was one of the earliest projects of modernization in the Islamic world. The Ottoman Empire faced major difficulties in adapting to modernization without compromising its Islamic pride and its self-esteem.⁷ Thus, the Ottoman Empire had a very weak political structure that was a disorganized co-existence between traditional and modernized institutions. The situation improved during the first half of the twentieth century, under the leadership of Mustafa Kemal Atatürk and later under his *Kemalist* successors.

It is important to recognize Mustafa Kemal Atatürk, known as the founder of modern Turkey, for the role he played in popularizing national independence but also because the whole modernization project in Turkey is closely associated with him.

Mustafa Kemal Atatürk was born in 1881, in Salonika (now Thessaloniki, Greece), a port

⁶ Omer Taspinar, "An Uneven Fit? The 'Turkish Model' and the Arab World," *The Brookings Project of U.S. Policy towards the Islamic World* 5 (August 2003), http://www.brookings.edu/papers/2003/08islamicworld_taspinar.aspx (accessed February 22, 2011), 23.

⁷ *Ibid.*, 24.

city that was then part of the Ottoman Empire. His father, a customs clerk and later a small businessman, died when he was seven. As a young teenager Atatürk left home to enter military school and graduated near the top of his class. Atatürk's crucial leadership in the military resistance (1919-1922) against occupying powers initially formed his values of patriotism, independence, and national sovereignty.

As Allied forces threatened to overrun what remained of the Ottoman Empire after World War I, and the sultanate proved powerless to fend off Italian, French, British, and Greek incursions, Atatürk sought to salvage Turkish independence. He left Istanbul for Anatolia, the heartland of the Turkish people, and in Ankara organized what remained of the Ottoman army to resist invading Greek forces. He mobilized provincial religious leaders and devout Anatolian masses in the name of saving the Sultanate-Caliphate. In that sense, he personally witnessed the organizational strength and moral authority of local religious leaders that joined the military resistance. It is important to mention that most of these religious leaders who had joined the resistance movement did so with Islamic ideals and were very surprised to see Atatürk's radical secularist reforms after the proclamation of the Turkish Republic.⁸

Fearing his growing power and under pressure from the Allies, the Sultan ordered his dismissal, prompting Atatürk to establish a provisional nationalist government in Ankara to which he was elected president. From Ankara, Atatürk planned campaigns against the Greeks who had invaded part of Anatolia, ultimately defeating them in 1922. The Sultan was then deposed by the nationalist government, and the modern state of

⁸ Paul Dumont, "Hojas for the Revolution: The Religious Strategy of Mustafa Kemal Ataturk," *American Institute for the Study of the Middle Eastern Civilization Journal* 1, no. 3 (1981): 17-32.

Turkey was established in 1923 with Atatürk as its leader. Upon becoming the first president of Turkey, Mustafa Kemal took the surname Atatürk (“*Father Turk*”) and instituted drastic and sweeping political and cultural changes to transform Turkey into a modern, secular democracy.

The movement of radical reforms carried out in Turkey under Atatürk’s leadership was from its very inception, both pragmatic and dynamic. The Atatürk paradigm of modernization was neither a replica of Capitalist or Marxist models of development.⁹ It derived its applicability and viability from the fact that it was both national and pragmatic in orientation. The Atatürk revolution was a national movement of radical reforms and was in no way class based. He created a struggle for liberation that encompassed all classes and ethnicities within a single nation. Independence cannot be achieved through the efforts or in the name of a single class or ethnic background. Atatürk’s main objective was of modernization and second, of development.¹⁰ “Together they were to lead to a level of ‘contemporary civilization,’ which was the ultimate goal of the Revolution. The fundamental aspect of contemporary democratic society is ensuring the freedom of the individual in all areas of life. Freedom does not only entail economic and social security, educational opportunities or material prosperity but at the same time it encompasses the need for political freedoms, and the right to choose among political alternatives.”¹¹

⁹ Suna Kili, *The Ataturk Revolution: A Paradigm of Modernization* (Istanbul: Turkiye Bankasi Kultur Yayinlari, 2003), 93.

¹⁰ *Ibid.*, 94.

¹¹ *Ibid.*, 102.

What is most impressive about Atatürk as a reformer is the totality of his approach and his drive to institute change in all areas of life, from the roots up. His step by step implementation of these objectives testifies to a sense of realism and excellent timing.¹² Movements for independence, modernization or other forms of radical reform do not materialize from thin air. As we have seen in the past couple of months through Tunisia, Egypt and Libya, reformist movements need something that ignites, propels and directs them. Rebellions may be initiated by the masses and may even become full-fledged revolutions. It is important to note that it is not difficult to persuade people to join forces to fight for independence, but as seen in Afghanistan, once independent, it is the traditional elements of society that becomes impediments to nation-building and the acquisition of national identity. Thus, what may have served to unite and band together the masses to fight for independence becomes ineffectual once that independence has been achieved. National identity before modernization becomes possible.

Among his many accomplishments, the following stand out in particular: creation of a modern republican state structure with a constitution, an elected parliament and other western-type institutions; founding of a political party as the chief agent of modernization, and the brief experiments with a multi-party system; recruitment of a modern bureaucracy; building of new capital at Ankara; disestablishment of religion by removing religious officials from their institutionalized positions and secularizing education and the courts; emancipation of women both politically (through passive, then active voting rights) and socially (by instituting monogamy and discouraging the veil);

¹² Jacob M. Landau, *Atatürk and the Modernization of Turkey* (Colorado: Westview Press, Inc, 1984), xi.

adoption of Latin in place of the Arabic alphabet, and reformation of the Turkish language; and urging men to adopt western clothing.

The impact of all these reforms in such a short period of time was incredible. Atatürk knew that in order for them to succeed to the point where they set new everyday norms, a radical change was imperative. Like in Afghanistan, the old habits and traditions were deeply ingrained in the people, especially in the countryside where the bulk of the people lived. Some of the reforms were actively opposed by various religious and communal sectors of the population. Atatürk therefore set out to alter the mentality of the people by encouraging national pride, this being perhaps his most difficult task. This was not an easy task because it entailed the abandonment of old loyalties: to Islam, to the Ottoman Empire, and to the people of the Turkic origins beyond the borders of the new republic.¹³ Atatürk's primary goal was a modernized, secular Turkey, which could compete successfully with other states, nations and societies at the highest level of contemporary civilization. But he also wanted to mold a Turk who, while modernized, would still be proud of his own heritage and deeply attached to his fatherland.¹⁴ According to a generally held Turkish belief, Atatürk almost single-handedly inspired his war-weary country to reestablish its independence by a new Turkish identity through a Cultural Revolution.

Within the context of modernization, revolutionary reform is the transformation of thought into action. It is taking thought and using it to transform the structure of state

¹³ Niyazi Berkes, *The Development of Secularism in Turkey* (New York: Routledge, 1999), 22.

¹⁴ *Ibid.*, 37.

and society. The success and failures of reform movements become apparent with the positive or negative consequences of its policies. Atatürk had three main phases of his radical reform movements. The first phase was the provisions of *national unity*; the second was the formation of *authority* and the third was the realization of *equality*.¹⁵ Atatürk's reforms were also based on six principles upon which its ideological components were based. There was an intimate relationship between Atatürk's six principles and *unity*, *authority*, and *equality*. The stages formed the basis for implementation of the radical reform movements while the six principles served to facilitate and strengthen the implementation of the phases of the model.¹⁶

The resolution of the problem of national identity was undoubtedly a prerequisite to the formation of the nation, the reinforcement of national existence, and the attainment of national "unity." Moreover, solving the problem of "authority" was necessary for the existence and strengthening of the state. "Equality," on the other hand, was a significant factor in ensuring that modernization and the condition of the citizen were placed on sound footing.¹⁷

II. The Six Principles

The contents of the six principles of the Atatürk Revolution- republicanism, nationalism, populism, laicism, etatism, and revolutionism were not clearly delineated during the first years of the revolution. They became part of the bylaws and program of the political party of the revolutionary reform movement in 1927 and 1931. Becoming known as *Kemalism* in 1935, these principles formed the official ideology of the political

¹⁵ Kili, *The Ataturk Revolution*, 171.

¹⁶ *Ibid.*, 201.

¹⁷ Berkes, *The Development of Secularism*, 125-143.

regime when they became part of the constitution of the Republic in 1937.¹⁸ These principles were regarded as fundamental and unchanging values that guided the republic, and therefore were written into the constitution.

A. Republicanism

Kemalism accepts the Republic as the only legitimate regime which can best represent the wishes of the people. The ideology replaced the absolutism of the monarchy, the Ottoman dynasty, with the rule of law, popular sovereignty and civic virtue with an emphasis on liberty practiced by its citizens.¹⁹ Through the Republic, political *authority* is attained in the nation and its people. As Atatürk said himself, “The New Turkish State is a people’s state; it is the state of the people. In the past, it was the state of a single person or only a few people.”²⁰

B. Nationalism

Nationalism placed a high value on Turkish citizenship. According to *Kemalist* ideology, Turkishness was not necessarily one’s race or religion but the degree to which a person associated himself with the ideas, ideals and goals of the Turkish nation, and by determination to protect all that had been won as a result of great hardships; and also by commitment to the Turkish modernization.²¹ Bernard Lewis remarks that “Kemal Atatürk’s nationalism was healthy and reasonable; there was no arrogant trampling on the

¹⁸ Ibid.

¹⁹ Donald E. Webster, *The Turkey of Atatürk: Social Process in the Turkish Reformation* (New York: AMS Press, 1973), 245.

²⁰ Kili, *The Ataturk Revolution*, 202.

²¹ Webster, *The Turkey of Ataturk*, 215.

rights or aspirations of other nations, no neurotic rejection of responsibility for the past.”²² It is said that Atatürk’s nationalism had a secular trait much different than most of the Arab world. It was meant to preserve the independence of Turkey and help the Republic’s political development and rejected Islamic nationalism. It was not only against anti-imperialism; one of its fundamental tasks was to eliminate the inferiority complex created in the Turkish nation by the decline of the Ottoman Empire. In short, it believed in the principle that the Turkish state was an indivisible whole comprising its territory and its people.

C. Populism

Populism along with Nationalism was among the leading concepts during the Atatürk’s presidency. *Kemalism* was against class privileges and class distinctions and it recognized no individual, no family, no class and no organization as being above others. The *Kemalist* ideology was, in fact, based on the supreme value of Turkish citizenship. A sense of pride associated with this citizenship would give the needed psychological spur to the people to make them work harder and to achieve a sense of unity and national identity. In a speech Atatürk had given to the Grand National Assembly on March 1, 1921 he said, “Our domestic policy can be characterized by the principle of populism; that is to say, this principle which makes the people master of their destiny has been established by our own constitution.”²³ Therefore, Atatürk’s principle of populism declared that sovereignty belonged unconditionally to the people.

²² Bernard Lewis, *The Emergence of Modern Turkey* (London: Oxford University Press, 1961), 286.

²³ Kili, *The Ataturk Revolution*, 217.

D. Etatism/Statism

The official definition of Etatism is that “the state would organize the general needs of economic activity, directly taking economic initiative itself in areas where private initiative shows no interest or has not been successful, as well as those areas of public interest.”²⁴ Atatürk made it clear in his following statement that Turkey’s complete modernization was very much dependent on economic and technological development. In the application of etatism, the state emerged not only as the principle source of economic activity but also the owner of the major industries in Turkey.²⁵ Atatürk’s goal was to get the country to use its own resources and establish a national economy. Atatürk made his views concerning industrialization and planned economy known in a speech he made to the Assembly on November 1, 1937.

Industrialization is among our most important national causes. In order for it to work and to survive, we shall establish all kinds of industry, whether it be large or small scale, for which the requisite economic inputs exist in our own country. It is paramount that we make national defense our primary concern, increase the value of our national products, and reach the ideal of the most progressive and prosperous Turkey by the shortest route.

E. Laicism

Laicism was one of the fundamental principles of Atatürk’s reforms. It did not merely mean separation of state and religion, but also the separation from educational, cultural and legal affairs. It meant the realization of independence of thought and institutions from the dominance of religious thinking and religious institutions. The

²⁴ Cihan Tugal, *Passive Revolution: Absorbing the Islamic Challenge to Capitalism* (Stanford: Stanford University Press, 2009), 63.

²⁵ Berkes, *The Development of Secularism*, 125.

principle of laicism under *Kemalism* is also the recognition of religious freedom to the individual and the safeguarding of this freedom.²⁶ Individuals are equal before the law irrespective of religious differences. It is important to note that Laicism did not advocate atheism; it was not an anti-God principle. It was a rationalist, anti-clerical secularism. It was not against an enlightened Islam, but against an Islam which was opposed to modernization.

F. Revolutionism-Reformism

Modernization is consciously oriented toward innovation and reform. As a modernizing “ideology” *Kemalism* is receptive to innovation and assumes the ongoing movement toward it as its principle of Revolutionism-Reformism.²⁷ The principle carries with it an understanding that new institutions and systems of thought, through the realization of progressive reforms in Turkey, would replace the old ones that served to undermine the development of the country. Revolutionism-Reformism was instituted to further an actively progressive worldview and to prevent the stagnation and the backwardness of society. The Atatürk revolution was not only to transform Turkey into a modern democratic state but to also have on-going development to improve life and carry out a modern level of civilization for all people in Turkey.

III. Secular Turkey

An important part of Turkey’s success with secularism appears to be rooted in its imperial state tradition. It is very important to review the understanding of a secular

²⁶ Ibid., 127.

²⁷ Andrew Mango, *From Sultan to Ataturk: Turkey: The Peace Conferences of 1919-1923 and the Aftermath* (London: Haus Publishing, 2010), 189.

model in terms of how Turkey defines it versus how it has been defined in the West. In most of Europe, secularization took a parallel form of reformation, wars of religion and economic development and democratization.²⁸ The century's long struggle between the church and sovereign kings during the Ottoman Empire was a catalyst for the beginning steps and processes to the path of secular democracy. At the end the necessity of separating political and religious realms emerged as an imperative to avoid the devastations of wars.

It is safe to say that Europe did not rise and develop because of religious unity, or the gathering of all Christians under one banner. On the contrary, it grew in strength because it carried out religious reforms, removing the influence of religious codes, priests and upper-level ecclesiastical officials from state practices. The internalization of secularism in Europe took time. The emergence of a secular Europe became possible only after some improvements had been made in mass education, living standards, and representative democracy. Secularism, in that sense, emerged as the outcome of an evolutionary process, during which religion slowly lost its primary relevance in shaping society and politics.

In its Turkish context, the path to secularism followed a bit of a different course. There was no direct confrontation between state and religion as in Europe. The Ottoman system had a state hegemony over the religious establishments and ultimate authority, while sovereignty rested with the Sultan and the palace officials. The Ottoman Sultan

²⁸ Carter Vaughn Findley Ph.D, *Turkey, Islam and Modernity: A History 1789-2007* (New Haven, CT: Yale University Press, 2010), 250.

could make regulations and enact laws entirely on his own initiative, known as *Kanun*²⁹. Such authority was based on a legal framework operating independently of Islamic law, and was based on rational rather than religious principles.

It is important to note that the Sultan's political hegemony over religion had to be legitimate. With that being said, religion was the key in maintaining political control without undermining social harmony. Even with this authority the Sultanate had to avoid confrontation with the *ulema* for that reason "co-optation through integration" emerged as the best way of shunning away tension between state and Islam. Religion was simply incorporated within the state. So, even though Islamic ideology had played a leading role in the Ottoman Empire, it failed to compete with the rising ideology of *Kemalism* in the twenties and thirties.

Religion was relying upon institutions that had political implications inconsistent with the basic principles of the new state; those institutions could no longer stand, even inharmoniously, side by side the secularized sector. . . A secular conception of national unity negated both the traditional and the 'modernist' view of a state associated with or based upon religion. This negation was symbolized by the abolition of the sultanate, soon followed by the abolition of the caliphate, and the establishment of a republican form of government based upon the sovereignty of the people constituting a nation.³⁰

The secularization program of the early republican period was unique and unprecedented for a Muslim country. Although secularization had started a century earlier, it was with the establishment of the republic that a radical program of

²⁹ Ibid., 234-244.

³⁰ Niyazi Berkes, *The Development of Secularism in Turkey* (Montreal: McGill University Press, 1964), 481, 510.

secularization was put into effect.³¹ Atatürk's secularism confined religion to the private sphere. It is closer to the paradigm of French *laïcité* than the more liberal tradition of Secularism seen in the West. Secularism in Turkey did not attempt to strictly separate state and religion, but instead the *Kemalist* regime maintained a firm control over the religious establishment. After the abolition of the Sultanate-Caliphate and all other Islamic institutions of the Ottoman Empire, a new governmental agency called the Presidency of Religious Affairs (PRA) was formed in 1925. The incorporation of the PRA in the state apparatus allowed the centralized nation-state to expand its control over the religious establishments since it remained under the direct supervision of the central authority.

It is important to note that the definition of secularism that has been demonstrated in Turkey is related to “social engineering” and the efforts taken to influence society on a larger scale. Turkey was once an Anatolian community that had defined itself primarily on religious terms, but then had to create a secular national identity to be able to conform to the reforms of modernization.

The most positive dimension of the Turkish model is democracy. It is important to note that what characterized this process in Turkey is “democratic gradualism.” Turkey's experience with democratization also indicates that a better balance between democracy, secularism and Islam is clearly possible if radical reforms are adopted steadily and not all at one time.

³¹ Bernard, *The Emergence of Modern Turkey*, 45.

Atatürk's approach was to use education as the road to a successful transition to democracy. Education is fundamental when binging about radical modern reforms in a country that only knows traditional values and views. Improving literacy rates, living standards, gender equality and the creation of a middle class were just some of the steps taken for a gradual process of democratization. Turkey's *Kemalist* transformation conveys three major lessons of major relevance for transition to democracy: free elections should be seen as a step of the democratization process, rather than the only dimension, a clear separation of mosque and state is feasible but cannot be done with force and shock therapy, and establishing a positive education system should be a top priority.³²

This last lesson of education in Turkey's modernization plans can be a guiding factor for many Muslim nations that are looking into adapting any kind of democratic reform in an orderly and natural manner. Reforms in educational systems and national curricula will prove crucial for creating a domestic constituency that would itself demand democratization. Education reform would tackle the essential problem of "human development" that plagues most of the Muslim world, especially Afghanistan. As the UNDP Human development report stated, problems such as illiteracy and the gender gap have to be urgently addressed. Data that was taken in 2010 UNDP report show that adult literacy aged fifteen and above is twenty-eight percent in Afghanistan. The percentage of the population aged twenty-five and older that has attained a secondary or higher level of education expressed as a female-male ratio is at seventeen percent and gender inequality which is the composite index measuring three dimensions of human development:

³² Ibid., 54.

reproductive health, empowerment, and labor market due to inequality between genders is at eighty percent.³³ Literacy is associated with positive aspects of human civilization and is fundamental for social and economic development.

Young Turks and their Kemalist successors inherited a political system where the role of Islam in shaping politically important decisions was rather minimal. The state tradition and *raison d'état* were deeply rooted in the Ottoman framework. Islam certainly played a crucial role in the educational, cultural and social context. And it was precisely these areas that Kemalist secularist reforms targeted. Like Western Orientalists, the Kemalists saw in Islam the causes of social, political and economic backwardness. They complained that Islam had a theological insistence on incorporating all social and political forces within the religious realm.

The application of the principle of secularism in Turkey is not similar to those western countries. It is natural that the principle of secularism is shaped by the conditions prevailing in each country and by the characteristics of each religion. It is also important to remember that model countries or universal principles and guidelines for democratization are much less important than the domestic attributes of each country. Maximum attention must be paid to variables such as literacy rates, economic development, and past political experience. At the end of the day, the prospects for constitutional liberalism and pluralism will primarily depend on improvements in human

³³ “Human development” is a concept that goes beyond the rise and fall of national incomes. Encompassing much broader dynamics, human development is about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests. <http://hdrstats.undp.org/en/countries/profiles/AFG.html>

and social capital.³⁴ Since democratization has to come from within no external model or well-intentioned guidance can substitute the domestic willingness and demand for change.

IV. Indonesia

One of the distinguishing features of religious politics in Indonesia in contrast with other parts of the Muslim world has been its tolerant, democratic, pluralist, and secular orientation. Similar to other Muslim societies, Indonesia experienced an Islamic resurgence in the final two decades of the twentieth century. This resurgence played a central role in opposing the authoritarianism of the Suharto regime (1966-1998) and in the democratic transition that followed.³⁵ Islam has made important contributions to nation-building and socioeconomic development in Indonesia.³⁶ Since the dawn of Islam in the Indonesian archipelago in the seventh century, the *ulama* (religious scholars) have played a significant role in the integration of its many ethnic communities. Successions of Western rulers caused various Muslim communities to band together to resist and repel the infidels (*kafir*) who, it was believed, only came to exploit the archipelago's economic resources and erode local cultural and religious values.³⁷ Having been exposed to the Western way of life, twentieth-century Indonesian Muslims were acquainted with the concept of “neo-modernism”, with "modern" social structures and schools. Islam became

³⁴ Tugal, *Passive Revolution*, 123.

³⁵ Hashemi, *Islam, Secularism and Liberal Democracy*, 158.

³⁶ Giora Eliraz, *Islam in Indonesia: Modernism, Radicalism, and The Middle East Dimension* (Eastbourne: Sussex Academic Press, 2004), 35.

³⁷ *Ibid.*

a bonding force against the imperial system, encouraging communities to set aside cultural differences and work toward a common goal, that of democratization. Muslim organizations became actively concerned with socio-cultural, economic, and political life to further bring together the two worlds of Islam and democracy.

V. Propagation of Islam

Three successive processes led to the “Islamization” of Indonesia. The first was the arrival of Muslim traders who propagated Islam between the seventh to twelfth centuries CE. The second was the integration of foreign settlers into local communities in the eleventh to twelfth centuries. Thirdly, the creation of states ruled by Muslim sultans in the thirteenth to seventeenth centuries.³⁸ The religious landscape into which Islam came about was one of indigenous beliefs such as the Hindu-Buddhist religions. The Islam that came through Hindu-Buddhist areas had already adapted to specific circumstances before coming to the archipelago, particularly between Islamic Sufism and Hindu-Buddhist Sufism.³⁹ The first process of Islam that was brought by traders through a “Sufistic” approach was more tolerant and made Islam a bit more easily to receive. This approach allowed a less resistant conversion from local traditions to Islam and also localized Islam by immersing both cultural norms and Islamic teachings. This in some ways made Islam in Indonesia more unique and different from Islam in other parts of the world. Indonesia is home to the largest population of Muslims in the world. Islam is practiced by more than eighty-five percent of Indonesia’s two hundred twenty million

³⁸ Ibid., 65.

³⁹ Ibid.

people and coexists with significant minorities of other religions and faiths, including Christianity, Buddhism and Hinduism.⁴⁰ It represents the coming together of diverse people and cultural traditions brought together by the subjective boundaries of the former Dutch East Indies, although tensions between Muslims and Christians have risen since the downfall of Suharto's authoritarian regime in 1998. In addition, fundamentalist Muslim groups have begun to advocate the implementation of Islamic law, Shar'iah, although they have not gained broad political support from the majority of moderate Indonesian Muslims. It is nevertheless not identified as an Islamic state, and all citizens are equal before the law.

VI. Opposition to Dutch Colonialism

Another part of Indonesia's history that played a major role in shaping its policy is the national struggle for independence from the Dutch. Dutch colonialists, who arrived in the seventeenth century were perceived as a threat to the authority of local rulers and also affected the intellectual activities of the *ulama*. Islamic resistance to foreign rule became unavoidable, particularly as urbanization took place.⁴¹ Dutch rule began to be perceived as imperialistic exploitation and as an attempt to forcibly westernize the country. As a result, Muslims were determined to overthrow the Dutch government. The *ulama*, along with students from their network of traditional religious schools, rose in support of this resistance and peasant revolts broke out across the country. Local social associations were set up, including the Islamic Trade Association (Sarekat Dagang Islam,

⁴⁰ Azyumardi Azra, *Indonesia, Islam and Democracy: Dynamics in a Global Context* (Jakarta: Equinox Publishing, 2006), 10.

⁴¹ *Ibid.*, 70.

or SDI) in 1905, which became the Islamic Association (Sarekat Islam, or SI) in 1912, which became the first mass organization to participate in the economy and in the struggle for independence.⁴² In its anti-colonialist activities, the SI was active at various levels. It campaigned against the suppression of Indonesians, and Islamic ideology became the basis of its political struggle. It is important to note that Muslims did not concentrate solely on politics. They were also concerned with social issues that covered the areas primarily on poverty and illiteracy. The beginning steps of what we call neo-modernism in Islam and politics was actively being pursued but on an unconscious level.

Furthermore, the unification of Indonesian communities as a result of the Dutch colonization provided new opportunities for solidarity among ethnic and Islamic groups that had different backgrounds and adhered to different approaches and strategies. At the time, during the last days of Japanese rule in 1945, Islamic political ideology could not provide a strong enough unifying focus. This led to secular nationalists eventually claiming the “most powerful heroes and creating the most powerful myths, pushing Muslim nationalists into the background.”⁴³

It’s important to note that Indonesia’s independent and active policies are not neutral but rather a policy that does not align itself with super powers. In the struggle against the Dutch, the Indonesians had been let down by the United States when the US chose to back their Dutch allies instead of helping the Indonesians fight for their independence. With this in mind, the Indonesian government realized that self reliance as

⁴² Ibid.

⁴³ Ibid., 88.

a nation state is vital for survival, so in turn it adopted its “non-alignment” policy. “Non-alignment was a policy that encompassed the Indonesian philosophy of self-reliance and non-reliance on outside powers.”⁴⁴ It is very important to note that Indonesian foreign policy is a function of an ideology based on a strong sense of “nationalism” and self-reliance as is demonstrated from its history. Indonesia’s position is demonstrated throughout the years in reference to regional and international organizations. In 1950, Indonesia refused to join in a pro-western and anti-communist regional organization proposed by the Philippines and in 1954, the Indonesian government refused to join the Southeast Asian Treaty Organization (SEATO) that had been formed to counter the spread of communism in mainland Southeast Asia.⁴⁵ Indonesia did join the Association of Southeast Asian Nations with Malaysia, the Philippines, Singapore, and Thailand but only after establishing the understanding that ASEAN’s main role was for social, economic, and cultural cooperation. The ongoing steps to the path of democratization through the history of Indonesia were clear yet an inadvertent level through what we call today the era of Islamic modernization.

VII. Political Islam

Indonesia’s Islamic politics cannot be fully understood without an understanding of its history. Political Islam itself is a modern phenomenon. Many studies revealed that it has roots in the sociopolitical conditions of Muslim countries in the nineteenth and twentieth century’s. In the history of Islamic involvement in Indonesia’s politics, most of

⁴⁴ Michael Leifer, *Indonesia’s Foreign Policy* (London: George Allen & Unwin Publishers Ltd, 1983), 68.

⁴⁵ Ibid.

it has been colored by the tension and conflict between the government, the ruling authorities, Islam and between the society itself particularly between Islam and non-Islam. From the pre-independence to the post-Suharto period, Indonesian Muslims utilized Islam both as their banner of resistance to colonialism, exploitation, repression, and a source of religious nationalism. It also can be said that during Suharto's authoritarian New Order, Islam became more radical than ever before. Those periods also marked disunity among Indonesian Muslims where Islam in Indonesia was also split along "ideological and generational lines."⁴⁶ The lines that divided Indonesian Islam into different Muslim categories; traditionalists, modernists, and neo-revivalists, which we will cover in more detail later in this paper.

VIII. Pancasila

Despite its nature as the largest Muslim country in the world, the identity of Indonesian state has never been defined in terms of Islam. In fact, "Indonesia defines itself as neither secular nor theocratic."⁴⁷

For Indonesia, their state ideology is known as Pancasila. Pancasila was included in the Preamble of the Constitution and is a set of five principles enunciated by Sukarno in June of 1945. It consists of "the belief of God, a just and civilized humanitarianism, Indonesian national unity, Indonesian democracy through consultation and consensus,

⁴⁶ Eliraz, *Islam in Indonesia*, 70.

⁴⁷ Franklin B. Weinstein, *Indonesian Foreign Policy and Dilemma of Dependence* (London: Cornell University Press, 1976), 75.

and social justice.”⁴⁸ Its main purpose was to fend off demands for an Islamic state and to reconcile the cultural diversity of Indonesia. All Indonesia’s internal and foreign policies are based on this ideology, therefore the Islamic leadership in Indonesia is also highly decentralized. There is a diversity of ethnic cultural traditions, where Islam in many parts of Indonesia differs in many aspects. The core and the basic religious ideas are the same, but the norms that have been selected are quite different. It is very difficult and much less impossible to foresee a country where a standardized belief system, values, and norms are requisite.

The initial purpose of Pancasila was to create common grounds for the establishment of an independent, unified Indonesia. The impetus was to be an ideology that would appeal to all Indonesians, regardless of their religion, ethnicity or regional origins. “Pancasila was designed as a statement of universal values, brilliantly couched by Sukarno in indigenous terms, upon which all Indonesians could agree.”⁴⁹ Its core value was tolerance, and was directed towards religion and its role to demonstrate that the new state of Indonesia would not prioritize Islam over other religions and that it would respect the religious diversity of all of its citizens. The role of Islam in Indonesia has always been secondary and the adoption of the religion-neutral ideology also reflected the primacy of “nationalism” over religion.

Islam in Indonesia is divided into three broad categories: traditionalists, modernists, and neo-revivalists. There are many academic categorizations for Islam and

⁴⁸ Douglas E. Ramage, *Politics in Indonesia: Democracy, Islam and the Ideology of Tolerance* (London: Routledge, 1995), 6.

⁴⁹ *Ibid.*, 7.

Islamic intellectualism in Indonesia. Clifford Geertz, an anthropologist, classified Muslims in Indonesia in three categories: priyayi (bureaucrats), abangan (syncretics), and santri (devout Muslims). For the purpose of this paper we will go with the former categorization of traditionalists, modernists, and neo-revivalists versus that of Geertz. Traditional Islam is represented in the Nahdlatul Ulama (the Awakening of Islamic Scholars), founded in 1926. The Nahdlatul Ulama (NU) is the largest Muslim organization in Indonesia with over 35 million followers.⁵⁰ They rely on a traditional Islamic education system called pesantren, a Muslim school in Indonesia operated by religious leaders that is known to produce young militants skilled in jihad. NU “was created in reaction to the emergence of the reform movement”⁵¹ that wanted to abolish the madhhab schools of Malikite, Shafi’ite, Hanafite, or Hanbalite in Indonesia. The second category, the modernists, are largely centered in Muhammadiyah and are the second largest Islamic organization with around 30 million followers that was founded in 1912. It “has always been most concerned with promoting the necessity of *tajdid*, or renewal, in Indonesian Islam.”⁵² Meanwhile, neo-revivalist Islam in Indonesia, which aims to purify Islamic teachings and bring Islam back to its earlier history, is represented by many smaller Islamic organizations with different traditions. They are Dewan Dawah Islamiyah Indonesia (DDII/Indonesian Council of Islamic Propagations), Darul Islam

⁵⁰ Donald J. Porter, *Managing Politics and Islam in Indonesia* (New York: Routledge Curzon, 2002), 24.

⁵¹ Ibid.

⁵² Ibid., 25.

(DI/Islamic State), Ikhwanul Muslim Indonesia (IMI/Indonesian Muslim Brotherhood) and Majelis Mujahiddin Indonesia (MMI/Council of Indonesian Holy Fighters).

The course of action of these Islamic organizations is very different when compared to each other. NU is primarily focused on Islamic education in rural areas with a traditional boarding school system (pesantren). NU is Java-centric as most of its followers live in rural areas of Java and Madura.⁵³ Muhammadiyah, in contrast adopts a modern education system and operates thousands of schools, colleges and universities through Indonesia. Other smaller Islamic organizations adopt either the NU or Muhammadiyah system or mix them. Many of these organizations do not affiliate with political parties in Indonesia, even though they sponsor or support many Islamic or Muslim-based political parties. NU facilitated the establishment of Partai Kebangkitan Bangsa (PKB- the National Awakening Party) in 1998, while some Muhammadiyah figures were involved in the creation of Partai Amanat Nasional (PAN/the National mandate Party) in 1998, and DDII functionaries sponsored the establishment of an Islamic political party, Partai Bulan Bintang (the Crescent Moon and Star Party) in the same year.⁵⁴

When looking at the development of liberal interpretations of Islam in Indonesia, NU and Muhammadiyah are the most important players. Interestingly, NU, which is labeled traditionalist, has influenced the renewal of Islamic thinking in Indonesia. Two of the most well-known neo-modernists from this tradition, Abdurrahman Wahid, and

⁵³ Ibid.

⁵⁴ Ibid., 26.

another prominent figure of the Muhammadiyah, Nurcholish Madjid, are influential thinkers on Islamic renewal and are most significant neo-modernist figures of this time. Nurcholish Madjid, was the founder of Parmadina Mulya University and former chairman of Himpunan Mahasiswa Islam/HMI (Islamic Student Association), the largest student organization in Indonesia. Abdurrahman Wahid was a former chairman of NU (1984-2000) and former president of Indonesia (1999-2001). Both can be classified as neo-modernists or orientalists. Although they espouse different traditions, they share many similarities in their thoughts on the relationship between religion and state, Islam and democracy, human rights, and Islam in Indonesia in general. For the purpose of this paper, the concepts and thought process of Nurcholish Madjid will only be discussed.

IX. Neo-Modernism

The New Order replaced Suharto's revolutionary rhetoric with the key words of "modernity" and "modernization". The question then was what did these terms really mean? Must one become culturally "Western" to be truly modern? Must religion follow the course outlined by modernization theorist for Christianity in the West? Must religion become more than personal belief? Its questions like these that Muslim intellectuals debated across Indonesia and started this new era of neo-modernism thinking.

The neo-modernists promote ideas that might be called "modern" and they formulate these ideas by consulting not only the Qur'an and Sunnah, but also traditional normative and intellectual sources.⁵⁵ The school of thought of neo-modernism's

⁵⁵ Greg Barton, "Neo-Modernism: A Vital Synthesis of Traditionalist and Modernist Islamic Thought in Indonesia," *Studia Islamika* 2, no. 3 (1995): 31-59.

significance falls on its position on Islam, secularization and its ambiguity. It constitutes a version of Islam in Indonesia which advocates that Islam not use politics or the state for furthering Islam. Islamic modernists are actually accused of neglecting the textual importance of classical Islam as the neo-revivalists themselves find it a valuable instrument in arriving at answers to questions and problems important in the Islamic world of today. Neo-modernists do not treat these “classical authors” as absolute authorities, according to Nurcholish “no human being can ever say he has reached the truth, but as important efforts of each author to reach solutions to challenges in his respective context.”⁵⁶ The neo-modernists propose the development of a “contextualized” *ijtihad* to reach a universal interpretation of Islam. Supposedly this interpretation takes the historical and cultural context of the Qur’an and sunnah into consideration as well as the context of modern societies.⁵⁷ Secondly, if Islam can be adequately reformed, that is if it can respond positively to the challenges of modernity and rapid social change, then the future of Islam in the 21 century can be better than any other age in the past.⁵⁸ Thirdly, substance or content of belief and practice is more important than its outer form. Fourthly, it is impossible for any person to be certain that he or she understand the will of God better than any other human being. Therefore, Muslims must be tolerant toward each other and toward adherents of other faiths.⁵⁹ Fifthly, the neo-modernists find the current

⁵⁶ Nurcholish Madjid, “Islamic Roots of Modern Pluralism,” *Studia Islamika* 1, no. 1 (1994): 134.

⁵⁷ Abdullah Saeed, “Ijihad and Innovation in Neo-Modernist Islamic Thought in Indonesia,” *Islam and Christian-Muslim Relations* 8, no. 3 (1997): 279-295.

⁵⁸ Barton, “Neo-Modernism,” 38.

⁵⁹ *Ibid.*

structure of the Indonesian state, based on the five principles of *Pancasila*, as the most appropriate mode for Indonesia's pluralistic society and accept it as permanent.⁶⁰ Finally, neo-modernists advocate a separation between "church" and state and their slogan is "Islam Yes-Islamic Parties No."⁶¹

Neo-modernism, although said to be controversial from a theological point of view, has had the possibility to develop and openly involve in debate all the time during the thirty-two years of dictatorship under President Suharto. This is in spite of the strictly controlled and repressive political climate that was a cornerstone of Suharto's rule, especially against political Islam. As the neo-modernists themselves expressed opposition to Islamic political parties they were never a threat to the regime, at least not as long as Suharto himself held on to this policy, and they were actually accused of being the regime's chief supporters.⁶² The neo-modernists argued that their generation had experienced the failure of Islamic parties. This failure included not only election defeats and intellectual stagnation but also quarrels between and inside Islamic parties that made them weaker. Or put another way, "the low politicization of Islam seemed only to have corrupted Islam's high political ideal."⁶³ Instead the neo-modernists promoted ideas that were against sectarian formations and aimed to strengthen the community and Islam. In

⁶⁰ Ibid.

⁶¹ Madjid, "Islamic Roots of Modern Pluralism," 136.

⁶² Barton, "Neo-Modernism," 52.

⁶³ Robert W. Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton: Princeton University Press, 2000), 44.

short neo-modernism changed the Muslim focus in Indonesia from a political approach to a cultural one.⁶⁴

A. Nurcholish Madjid

Nurcholish Madjid, known as Cak Nur, is the most influential neo-modernist Islam thinker in Indonesian history. He was born in Mojoanyar, Jombang, East Java on March 17, 1939. While he was studying at IAIN Syarif Hidayatullah, he was elected the general chairman of HMI for two consecutive periods, 1966-1969 and 1969-1972. He was the only chairman from more than one period in this organizations history, although he often said that it was a historical accident that made him hold the chairmanship for two periods. During his leadership in HMI, Indonesia experienced political turmoil following the failed coup by the Indonesian Communist Party and some elements in the military. During that period was also a time when Suharto's New Order regime took power from President Soekarno and began to launch a massive campaign of political murder and arrest of communists and Soekarno sympathizers.⁶⁵ Therefore, Madjid's leadership in HMI came at a crucial moment for the development and the future of the organization. He was also the president of the Untied Islamic Students of Southeast Asia and assistant to the Secretary General of the international Islamic Federation of Students Organization (IIFSO) in the early 1970s.

In a series of public presentations in the late 1960s and early 1970s Madjid asserted that the Muslim community bore some responsibility for its failure to achieve

⁶⁴ Ibid.

⁶⁵ Ibid., 63.

influence under the New Order. The party organizations that Muslim politicians were attempting to revive, Madjid argued, had in the 1950s already demonstrated their inability to capture the hearts and minds of most Indonesians. Rather than repeating the mistakes of that period, the Muslim community should develop new organizations capable of winning the moral allegiance of all Indonesian Muslims. His intellectual reputation soared in the public eye following his controversial speech on January 3, 1970, entitled, “The Necessity of Renewing Islamic Thought and the Problem of the Integration of the Umma.”⁶⁶ The speech was controversial because Madjid argued for the need for a liberalization process in the teaching and views of Islam.

For Madjid, the “liberalization of outlook towards the present teachings of Islam in Indonesia”⁶⁷ should involve secularization, intellectual freedom and the idea of progress and open attitudes. In his view, that process is needed to allow renewal of Islam so it can free itself from traditional values and seek “values which are oriented toward the future.”⁶⁸ Secularization as “all forms of liberating development’ is needed toward the future,” and is needed by the *umma* because they are “no longer capable of distinguishing among values which they consider Islamic, those that are transcendental from those that are temporal.”⁶⁹ As a part of Islamic renewal, he stated that intellectual freedom must be guaranteed because “among the freedoms of the individual, the freedom to think and to

⁶⁶ Ibid., 78.

⁶⁷ Madjid, “Islamic Roots of Modern Pluralism,” 138.

⁶⁸ Ibid.

⁶⁹ Ibid.

express opinions is the most valuable” and Muslims “must have a firm conviction that all ideas and forms of thought...should be accorded means of expression.”⁷⁰

In his account, the backwardness of the Muslim community is, among other things, caused by the lack of fresh ideas which has made Muslims lose their “psychological striking force,” making them inferior and less innovative than the Westerners. Madjid also voiced the need for open attitudes and acceptance of idea of progress, because the “idea of progress springs from the concept that man is intrinsically good, pure, and yearns for truth and good.”⁷¹ It is very important to look at the meaning of what he proposed: in order to make progress, an open attitude “in the form of a readiness to accept and to take temporal values from whatever source as long as they contain truth”⁷² is particularly needed. This speech was also historical as Madjid stated the famous slogan of “Islam yes, Islamic Party No” that was mentioned before.

Madjid also asserts that when requiring an Islamic state, Qur’anic teaching runs counter to such projects. They violate the doctrine of the primacy of the oneness of God. “The merely human must be desacralised so as not to detract from the oneness of God.”⁷³ In Madjid’s words what is implied is secularism, which is “to make worldly such values that must have a worldly feature, and liberate the Muslim community from the tendency

⁷⁰ Nurcholish Madjid, “The Issue of Modernization among Muslims in Indonesia: From a Participant Point of View,” in *Readings on Islam in Southeast Asia*, ed. Yasmin Hussain, Ahmad Ibrahim and Sharon Siddique (Pasir Panjang, Singapore: Institute of Southeast Asian Studies, 1985), 379.

⁷¹ Ibid., 139.

⁷² Bahtiar Effendy, *Islam and the State in Indonesia* (Athens, OH: Ohio University Press, 2004), 172-179.

⁷³ Ibid.

to make such values sacred.”⁷⁴ This position does not of course minimize the importance of Islamic values in life of Muslims. Pursuit of Islamic values would be through the institutions of civil society as with the civil role played by religion in countries like the US.

A central concept introduced by Nurcholish Madjid is *Musyawah*, is “to mutually give each other signals or indications” on what is right or wrong. Basically humans are good, but because of their inherited weakness there is a possibility that human beings are wrong. In short, *musyawah* is an expression of the open minded attitude that, according to Nurcholish, is strongly recommended in Islamic doctrine. Madjid’s ideas were a representative of a new genre of Muslim scholarship that combined Qur’an-inspired commentary with practical political analysis and sophisticated social theory.⁷⁵

Perhaps the most important concept in Nurcholish’s argumentation is the Indonesian word *peradaban*, which means civilization or culture. The modern technical term “civil society”, with the Indonesian translation “a civilized and well organized society based on respect”⁷⁶ reflects the same understanding of *peradaban*.

Inspired by Adam Malik, a former Indonesian vice president, Nurcholish views *Pancasila* as a basis for developing a social climate that promotes religious tolerance and pluralism in Indonesia. According to Malik the so-called “Constitution of Medina”,

⁷⁴ R. Michael Feener, *Muslim Legal Thought in Modern Indonesia* (New York: Cambridge University Press, 2007), 147-153.

⁷⁵ Hefner, *Civil Islam*, 55.

⁷⁶ Madjid, “Islamic Roots of Modern Pluralism,” 140.

created by the Prophet, and *Pancasila* are similar in spirit. This “constitution” proclaimed that all citizens, weather Muslims or Jews, were one nation or *umma* and that they all had the same rights and duties. Malik interprets this as “a formula for a state based of the idea of social and religious pluralism.”⁷⁷

Nurcholish further stresses the importance of finding similarities and continuities between religions. All Abrahamic religions originate from the same God and it is not surprising to find similarities in their respective sources. “Nor is it surprising to find differences, as the respective prophets and messengers all act in response to the demands and challenges of their own time and space.”⁷⁸ Also Hindus, Buddhists and followers of Chinese religions has some kind of Holy books containing the fundamental doctrines on the unity of God, *tawhid*, or monotheism. According to Ibn Taymiyya, the great fourteenth century reformer popular among Islamist conservatives, Allah has sent down the Qur’an to support and protect the messages in the already existing Holy books, although their messages can be changed or totally removed in accordance with the Qur’an. “This depends on the changing demands in time and space and not on the validity of the earlier revealed sources.”⁷⁹ In conclusion, according to Nurcholish’s comprehensive understanding, there is no fundamental difference between the messages of the world’s great religions.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

A concept of growing importance in Nurcholish's perception of Islam is *taqwa*, which most often signifies "god consciousness", "god-fearing" and, by extension, "piety."⁸⁰ In Nurcholish's view *taqwa* is a deep awareness of God's eternal presence in our lives, his direct and constant supervision and his judgment of our behavior. So, according to Nurcholish, after having attained this awareness our primary intentions are to reach Allah's approval and avoid his anger, in all of our actions in life. In this process he advocates *dhikr* as the most important element of *taqwa* or rather as means of assistance to instill this understanding of *taqwa*.⁸¹ *Dhikr* is there to be understood in a wider sense as remembrance of Allah, and not as the specific method of Sufi rituals.⁸² People living accordance with these guidelines have many characteristics in common. Firstly, they have an open-minded attitude and promote religious tolerance and pluralism. Secondly, they are aware of their personal responsibility towards God. Thirdly, they accept *taqwa* as the base for a true and correct life.⁸³

The development of neo-modernistic ideas has grown and benefited from the strategy on political Islam that was carried out by the Suharto regime in Indonesia. The strategy not only provided the neo-modernists like Nurcholish Madjid with the possibility of freedom of thought but also the freedom to express his thoughts. We cannot say that neo-modernism is a product of only political reform; according to Greg Barton "it is a

⁸⁰John L. Esposito, "Taqwa," in *the Oxford Encyclopedia of the Modern Islamic World*, (Oxford: Oxford University Press, 1995), vol. 4.

⁸¹ Madjid, "The Issue of Modernization," 380.

⁸² Ibid.

⁸³ Ibid.

sincere theological response by Islamic intellectuals to the changing social environment in Indonesia, and a product of their educational and other experiences.”⁸⁴

Islamic Neo-modernists are a group of Muslim intellectuals that have what we can call a double education. Methodologically they advocate a “contextualized” *ijtihad* by consulting not only the *Qur’an* and *sunnah* but also traditional normative and intellectual sources. They stress the importance of not regarding these traditional sources as absolute authorities but as efforts to reach solutions in their respective context. Neo-modernists like Madjid, interpret Islam as being more tolerant, inclusive and in favor of religious pluralism. They stress the importance of substance of belief rather than its outer form and they are open to a separation of “church” and state.

In this chapter we discussed how Turkey and Indonesia are shining examples of Islamic democracies and can offer hope and inspire governments such as Afghanistan to seek peaceful coexistence and harmony among religious and ethnic groups. When we analyzed the patterns of co-existence between Islam and democracy cross-nationally, Turkey and Indonesia emerged as a positive reference for political Islam’s potential to accommodate successful democratic governance. Our focus was to illustrate how these two countries serve as a catalyst for reforms socially, politically and economically. One must note, however, the road to a mature democratic state will take time; will be rocky and filled with challenging hurdles that are uncommon as established in the lessons learned from Turkey and Indonesia. The coexistence model of Turkey and Indonesia is not absolute, deterministic or complete, but rather models on how democracy- building is

⁸⁴ Barton, “Neo-Modernism,” 55.

an ongoing process and is a feasible concept for war-torn Afghanistan. We also tapped into the work of Nurcholish Madjid who confirmed that democracy, modernism, and secularism is attuned with Islam today.

New thinking on how political secularism can be advanced in Muslim societies by studying the process of modernization in Europe with special focus on the relationship between a religious reformation and secularization and learning the lessons from recent political gains for liberal democracy in Turkey and Indonesia. In the following chapter we will examine the rise of the Taliban, their political ideology and why reconciliation with such a fundamentalist regime is a descent from secular democracy.

CHAPTER 3

THE EMERGENCE OF THE TALIBAN

Since their rise in 1994, the Taliban have been a source of conflicting opinions. Some of their opponents have accused them of being created by Pakistan with the support of Saudi Arabia and the US oil company, UNOCAL, to secure trade routes to the Central Asia.¹ Their supporters, on the other hand, hold that the Taliban are a religious and moral force that arose on their own from villages to save Afghans from the terror, lawlessness and corruption of Mujahedeen era and to re-unite Afghanistan. The reality, however, seems somewhere in the middle. It is true, however, that the immediate cause of the rise of Taliban was the fighting among Mujahedeen groups that had virtually divided Afghanistan in separate ethnic factions, resulting in the destruction of Kabul, killing of thousands of civilians, and general lawlessness. It is also true that once the Taliban entered the military and political stage, they received support from foreign sources to continue their military march. In this brief introduction, we will try to answer who the Taliban are by discussing the historical context of their rise. Second, we will discuss their goals, policies, and practices and why reconciliation with the Taliban is not to the advantage of the Afghan people and the country's long term goal to become a modernized secular democracy.

According to many accounts, since the beginning of the Soviet-Afghan war, many radicals and ideologically motivated fighters came to Afghanistan from across the Arab

¹ Richard Labévière, *Dollars for Terror: The United States and Islam*, ed. Martin DeMers (New York: Algora Publishing, 2000), 265.

and Muslim world to exercise jihad.² The Afghan Mujahedeen were a loosely affiliated patchwork of tribal fighters whose only common goal was to expel the Soviets, rather than a unified insurgency. Many were ardent Islamist supporters, young students raised and recruited from the destitute refugee camps their families had fled to in Pakistan, along with the more traditional rural populace. As Michael Griffin best put it,

No mujahedeen group was without its band of taliban during the Soviet war. Young, unmarried and with a tolerance for *shahadat*, or martyrdom higher than their comrades, they maintained a distinct and separate identity during operations, even eating and sleeping apart. At the wars end they returned to their spiritual studies, only to watch in disgust the behavior of the political order they had helped install.³

The Mujahedeen were “freedom fighters” who fought against the PDPA and Soviet forces, and believed that they were engaged in a *jihad*.⁴ Through the covert support of both the U.S. and Pakistan governments in training, arms and supplies, the mujahedeen fighters transformed from an ad-hoc tribal resistance to well skilled and equipped strike teams.

I. Pakistan’s link to the Taliban

A major change took place in Pakistan’s Afghan policy when the Soviet Union invaded Afghanistan in 1979. The soviet invasion completely changed the complexion of the region. The Red Army now posed a direct threat, not only to Pakistan, but also to the entire Persian Gulf region. Although the situation created challenges for Pakistan, as it

² John K. Cooley, *Unholy War* (London: Pluto, 2002), 81.

³ Michael Griffin, *Reaping the Whirlwind: Afghanistan, Al Qaeda and the Holy War* (London: Pluto Press, 2003), 50.

⁴ Peter Marsden, *The Taliban: War and Religion in Afghanistan* (New York: Zed Books, 2002), 26.

was forced to confront an ideologically hostile super power, it simultaneously created opportunities that would allow Pakistan to redress some of its security concerns by neutralizing previous bitter experiences with regards to Afghanistan. It is best said that Pakistan decided “to fight the battle for Pakistan” in Afghanistan.⁵

Pakistan, a strategically located country, became vulnerable to communist expansion. Keeping in view their historically rough relationship with both Afghanistan and the Soviet Union, the Soviet invasion of Afghanistan had direct, wide-ranging and far-reaching impacts upon Pakistan’s internal and external security.

After Pakistan’s independence, two new intelligence agencies were created in Pakistan called Intelligence Bureau (IB) and Military Intelligence (MI). The weak performance of the MI in sharing intelligence during the Indo-Pakistani war of 1947 led to the creation of the Directorate for Inter-Services Intelligence (ISI) in 1948.⁶ The ISI was structured to be manned by officers from the three main military services, and to specialize in the collection, analysis and assessment of external intelligence, either military or non-military.⁷ Its main role was in safeguarding Pakistan’s interests.

During the soviet war, ISI played a central role in the US backed guerilla war to oust the Soviet Army from Afghanistan in the 1980s. A special Afghan section was created under the command of Colonel Mohammed Yousaf to oversee the coordination of

⁵ Mehrunnisa Ali, *Pak-Afghan Discord: A Historical Perspective* (Karachi, Pakistan: Pakistan Study Centre, 1990), 35.

⁶ Global Security: Intelligence, “Directorate for Inter-Services Intelligence (ISI),” GlobalSecurity.org, <http://www.globalsecurity.org/intell/world/pakistan/isi.htm> (accessed February 27, 2011).

⁷ Ibid.

the war.⁸ A number of officers from the ISI's Covert Action Division received training in the US and many covert action experts of the CIA were attached to the ISI to guide it in its operations against the Soviet troops by using the Afghan Mujahedeen, specifically the fighters loyal to Gulbuddin Hekmatyar.⁹

Throughout the Soviet invasion of Afghanistan and the Afghan civil war, Gulbuddin Hekmatyar, an Afghan born militant leader, was the leader of the Hezb-e-Islami and was backed by the Pakistani government and the ISI. Hezb-e-Islami Gulbuddin received some of the strongest support from Pakistan and Saudi Arabia, and worked with thousands of foreign mujahedeen who came to Afghanistan. The Hezb-e-Islami favored a more radical approach of Islam, which Pakistan supported. Hekmatyar's Hezb-e-Islami was formed as an "elitist avant-garde" based on a strictly disciplined Islamist ideology within a uniform organization, best referred to as "Leninist". It had operational bases in many refugee camps and formed a social and political network and operated everything from schools to prisons with the support of the Pakistani government and the ISI. Hekmatyar trained a variety of militant Islamists from around the world, killed significant numbers of mujahedeen from other parties, and taking a virulently anti-Western line.

⁸ Shuja Nawaz, "Focusing the Spy Glass on Pakistan's ISI," *The Huffington Post* (October 2, 2008), http://www.huffingtonpost.com/shuja-nawaz/focusing-the-spy-glass-on_b_131153.html?show_comment_id=16407996 (accessed March 17, 2011).

⁹ Larry P. Goodson, *Afghanistan's Endless War: State Failure, Regional Politics, and the Rise of the Taliban* (DC: University of Washington Press, 2001), 24-35.

II. Withdrawal of the Soviet Union

By the mid-1980s the Mujahedeen resistance movement was beginning to have a significant impact on both the morale and effectiveness of the Soviet Army, thus the Soviets were unable to successfully control Afghanistan and announced their intentions to withdraw in 1988 under the Soviet leader, Mikhail Gorbachev. The road from Gorbachev's decision to the actual withdrawal was long and painful. The Soviet leaders did not come up with an actual timetable until the fall of 1987. Gorbachev made the public announcement on February 8, 1988, and the first troops started coming out in May 1988, with complete withdrawal on February 15, 1989.¹⁰

Gorbachev himself, in his book cites at least two factors to explain why it took the reformers so long to withdraw the troops. According to Gorbachev, the Cold War frame held back the Soviet leaders from making more timely and rational moves, because of fear of the international perception that any such withdrawal would be a humiliating retreat.¹¹ In addition to saving face, the Soviet leaders kept trying against all odds to ensure the existence of a stable and friendly Afghanistan with some veneer of a national reconciliation process in place before they left.¹² In Gorbachev's book it states that "before withdrawal of troops could be carried out, the Afghan internal situation had to be

¹⁰ Selig Harrison and Diego Cordovez, *Out of Afghanistan: The Inside Story of the Soviet Withdrawal* (New York: Oxford University Press, 1995), 34-35.

¹¹ Mikhail Gorbachev, *Gorbachev: On my Country and the World*, ed. George Shriver (New York: Columbia University Press, 2000), 260-285.

¹² *Ibid.*

stabilized and a new government should be able to rely on its domestic power base and a trained and equipped army able to deal with the mujahedeen opposition.”¹³

The Soviets sought to secure the Afghan borders through some kind of compromise with the two other most important outside players, Pakistan, through which weapons and aid reached the opposition, and the United States, provider of the bulk of that aid. In the process of Geneva negotiations on Afghanistan, which were initiated by the United Nations in 1982, the United States, in the view of the Soviet reformers, was dragging its feet, unwilling to stop arms supplies to the rebels and hoping and planning for the fall of the pro-Soviet Najibullah regime after the Soviet withdrawal.¹⁴

Internally, the People’s Democratic Party of Afghanistan did everything possible to prevent or slow down the Soviet withdrawal, putting pressure on the Soviet military and government representatives to expand military operations against the rebels. Persistent pleading on the part of Najibullah’s government as late as January 1989 created an uncharacteristic split in the Soviet leadership, with Foreign Minister Eduard Shevardnadze suggesting that the withdrawal should be slowed down or some forces should remain to help protect the regime, while the military leadership argued strongly in favor of a complete and decisive withdrawal.¹⁵

By this time, however, the Soviet leaders well realized that the goal of building socialism in Afghanistan was illusory; and at the same time the goal of securing the

¹³ Ibid., 274.

¹⁴ Peter Hopkirk, *The Great Game: The Struggle for Empire in Central Asia* (New York: Kodansha International, 1992) 502-510.

¹⁵ Ibid.

southern borders of the Soviet Union seemed to be still within reach with the policy of national reconciliation of the Najibullah government. So the troops came out completely by February 15, 1989.

After the Soviets left Afghanistan in 1989, the country was essentially split into ethnic and tribal enclaves continuously clashing with each other in a quest for political dominance. The civil war reduced Afghanistan to a collection of territories held by competing warlords.¹⁶

III. Afghan Civil War

As Afghanistan collapsed into anarchy, the once triumphant supporters of the Mujahedeen fell silent as it became apparent that the great *jihad* victory against the Soviet Union was the beginning of a civil war. Kabul was shelled on a daily basis as various Mujahedeen factions tried to seize power. It was in this vacuum of power that the Taliban emerged publicly and powerfully declaring “ the purging of all foreign and corruptive influences, such as mujahedeen and communists who have become killers, thieves and drug traffickers in the name of Islam,”¹⁷ and to restore order to the anarchy and chaos which had characterized the post-Soviet period.

The Taliban viewed the failure of the Mujahedeen to unite and introduce a pure form of Islamist government of Afghanistan as a direct result of the Mujahedeen’s corrupt reliance on western support and lax view of secular conduct. Indeed, part of the founding mythology of the Taliban revolves around an incident that occurred in a village

¹⁶ Ahmed Rashid, *Taliban: Militant Islam, Oil and Fundamentalism in Central Asia* (London: Yale University Press, 2000), 35.

¹⁷M.J. Gohari, *The Taliban: Ascent to Power* (Oxford: Oxford University Press, 2000), 119.

in Kandahar, where two girls were abducted and raped by local Mujahedeen. It is reported that Mohammed Omar, a prominent local Pushtun *mullah* with a strong following of religious students, or “talibs” mobilized thirty talibs or Taliban to exact revenge against the lawless Mujahedeen.¹⁸ According to the legend, Mohammed Omar swore to restore honor and dignity to the Islamic people through a strict adherence to *Shari’ah* law and thus protect his people. Taliban spokesman Mullah Wakil Ahmed stated on Oct. 23, 1996:

After the Mujahedeen parties came to power in 1992, the Afghan people thought that peace would prevail in the country. However, the leaders began to fight over power in Kabul....Therefore, after these incidents, a group of students from religious schools decided to rise against these leaders in order to alleviate the suffering of the residents of Kandahar Province.¹⁹

Discipline and order were central to the Taliban’s code of conduct in the immediate period of its ascension to power. The discipline of the Taliban mirrored the obedience that the students had learned from an early age through the strict discipline of the madrassa system. This rigid adherence to religiously proscribed behaviors was in direct and marked contrast to the disorder and lawlessness of the Mujahedeen factions fighting for control of the country. According to many eyewitness accounts there were no rapes, individual looting or other such unruly behaviors as the Taliban initially moved out of the Pashtun bases of the South and East Afghanistan into other areas of the country.²⁰

The Taliban’s popularity with the Afghan people surprised the country’s other

¹⁸ Griffin, *Reaping the Whirlwind*, 32.

¹⁹ Ahmed Rashid, *Taliban: Islam, Oil and the New Great Game in Central Asia* (London: I.B. Tauris Publishers, 2002), 60.

²⁰ *Ibid.*, 43.

warring factions. Many Afghans, weary of conflict and anarchy, were relieved to see corrupt and often brutal warlords replaced by the devout Taliban, who had some success in eliminating corruption, restoring peace, and allowing commerce to resume. But, the Taliban also surprised the world around them demonstrating their extreme ideology that led to a series of notorious events, such as the “banning of girl’s education”, employment for women, imprisonment for shaving one’s beard, and massacres of ethnic minorities in the center and north of the country.²¹

Mohammed Omar claimed that the Taliban were a neutral force, appointed by God and the people to become a peacekeeping force, disarm the factions, and restore Islamic *Shari’ah* law to Afghanistan. It is important to mention here that traditional societies, whatever their validity of the term, are organized according to anthropological rationales, such as tribalism, codes of behavior and customary laws in which Islam actually plays a small role.²² As Oliver Roy stated, “the Taliban in Afghanistan never managed to replace the tribal code of the Pashtun tribes from which they came (pashtunwali) with the *shari’ah*, whose values are very different.”²³ This proves that Islam in fact has experienced secularization from both the political and the sociopolitical point of view. All authorities in Islam were secular in the sense that they were not determined by religious criteria as demonstrated by the Taliban’s use of tribal codes versus the *Shari’ah*.

²¹Ibid., 97.

²² Oliver Roy, *Secularism Confronts Islam*, ed. George Holoch (New York: Columbia University Press, 2007), 51.

²³ Ibid.

In September of 1996, The Taliban captured Kabul after two years of controlling southern Afghanistan and advancing north. It was said to have been a well-orchestrated and rapid advance. Due to the nature of the advance and technical skill it required, it has been posited that the Taliban forces were receiving direct support from Pakistan's ISI. The ISI provided transportation, fuel, communications equipment and advice to the Taliban movement.²⁴ Pakistan's direct military involvement in the emergence of the Taliban is still unclear, but its financial, political and ideological support of the madrassas system, a crucial recruitment area for the Taliban, was extensive.

IV. Ahmad Shah Massoud

Ahmad Shah Massoud was the only major anti-Taliban leader who never left Afghanistan for exile and who was able to defend vast parts of his territory against the Taliban. In areas under his control Massoud set up democratic institutions and signed the Women's Rights Declaration.²⁵ In the area where he ruled, women and girls did not have to wear the Afghan burqa. They were allowed to work and to go to school. In at least two known instances, Massoud personally intervened against cases of forced marriage.²⁶ He believed in equal rights of men and women. He stated:

It is our conviction and we believe that both men and women are created by the Almighty. Both have equal rights. Women can pursue an education, women can pursue a career, and women can play a role in society- just like men.²⁷

²⁴ Hassan M. Kakar, *Afghanistan: The Soviet Invasion and the Afghan Response, 1979-1982* (Berkeley: University of California Press, 1995), 78.

²⁵ Marcela Grad, *Massoud: An Intimate Portrait of the Legendary Afghan Leader* (Saint Louis: Webster University Press, 2009), 310.

²⁶ *Ibid.*

²⁷ *Ibid.*, 313.

It was said that Massoud was adamant that in Afghanistan women had suffered oppression for generations. He knew that the cultural environment of the country suffocated women and that the Taliban exacerbated that with oppression. His most ambitious project was to shatter the cultural prejudice and give more space, freedom and equality to the women, so they would have the same rights as men.²⁸ While it was Massoud's stated conviction that men and women are equal and should enjoy the same rights, he also had to deal with Afghan traditions which he said would need a generation or more to overcome. Massoud believed that the only way such reforms and changes in the minds of the people could only be achieved through education. This is a reoccurring point in this paper. Education is a fundamental pillar of a developing nation state when considering sustainable political change in the direction of democracy and governance, civil rights, civil liberties and the rule of law.

The Taliban repeatedly offered Massoud a position of power to make him stop his resistance against them. Massoud declined. He explained in one interview:

The Taliban say: Come and accept the post of prime minister and be with us, and they would keep the highest office in the country, the presidency. But for what price? The difference between us concerns mainly our way of thinking about the very principles of the society and the state. We cannot accept their conditions of compromise, or else we would have to give up the principles of modern democracy. We are fundamentally against the system called "the Emirate of Afghanistan". There should be an Afghanistan where every Afghan finds himself or herself happy. And I think that can only be assured by democracy based on consensus.²⁹

²⁸ Ibid., 315.

²⁹ Piotr Balcerowicz, "The Last Interview with Ahmad Shah Massoud," *Omaid Weekly* (August 2001), http://www.orient.uw.edu.pl/balcerowicz/texts/Ahmad_Shah_Masood_en.htm (accessed March 9, 2011).

V. Taliban Ideology

The Taliban are "barely literate," and do not include scholars who studied Islamic law and history. The refugee students, brought up in totally male societies, do not have education in mathematics, science, history or geography, but also have no traditional skills of farming, herding, or handicraft-making, or even the knowledge of their tribal and clan lineages.³⁰ Many observers such as Peter Singer have argued that madrassas with a radical orientation such as this were allowed to flourish in the refugee camps and border regions of Pakistan simply because the state was unable to provide alternatives, and thus radical Islamist parties were more than willing to fill the void. This "failed state" argument links the rise of Madrassas to the poor Pakistani public school system:

The reason for the madrassas new centrality stems from the weakening of the Pakistani state...the madrassas became immensely popular by targeting the lower class and refugee populations, whom the Pakistani state has failed to provide proper access to education.³¹

In such an environment, war meant employment, peace meant unemployment. Dominating women simply affirmed manhood. For their leadership, rigid fundamentalism was a matter not only of principle, but of political survival. Taliban leaders repeatedly express that if they give women greater freedom or a chance to go to school, they would lose the support of their rank and file.³²

³⁰ Rashid, *Taliban*, 32.

³¹ P.W. Singer, "Pakistan's Madrassahs: Ensuring a System of Education not Jihad," *Brookings Institution's Analysis Papers* 41(2001): 2.

³² Rashid, *Taliban*, 111.

The Taliban government is a dictatorial regime. They do not hold elections, and believe that the *Shari'ah* does not allow politics or political parties. They model their decision making process on the Pashtun tribal council together with what they believe to be the early Islamic model. Instead of an election, Mullah Omar, gained leadership legitimacy from an oath of allegiance, an imitation of the Prophet and the first four caliphs, and recognized himself as the “commander of the faithful.”³³ Decisions were made by this commander, the highest authority, and no one would be able to implement any decision to which he did not agree. To the Taliban, general elections were incompatible with the *Shari'ah* and therefore were rejected. The Taliban are very reluctant to share power.

The ideology of the Taliban is clearly incompatible with political change towards democracy. Elections provide an important opportunity to advance democratization and encourage political liberalization. For an election to be free and fair, certain civil liberties, such as the freedoms of speech, association and assembly, are required. They can be a primary tool to foster political openings and expand political participation and offers political parties and civic groups an opportunity to mobilize and organize supporters and share alternative platforms with the public. They also serve to encourage political debate and public dialogue. This view of governance is clearly unimaginable to the Taliban.

It has been noted that countries affected by chronic civil conflict, fundamentalist revivalist movements often take root by espousing a return to what are regarded as the

³³ Marsden, *War, Religion and the New Order*, 46.

absolute truths of the religion, and to eradicate any influences that have appeared to weaken religious belief.³⁴ As best said by Karen Armstrong,

Fundamentalism represents a rebellion against modern secular society, the separation of religion and politics. Basically, fundamentalists want to drag religion and/or God from the sidelines to which they've been relegated in modern secular society and bring them back to center stage. And, in this, they've enjoyed considerable success in some ways, though in other ways... it can represent a defeat for religion.³⁵

In the case of Afghanistan, the adoption and spread of a particularly fundamentalist sect of Islam, that of the Deobandis School, through the madrassas in Pakistan and Northern Afghanistan, was aided both by the *jihad* against the Soviets and the subsequent failure of the Mujahedeen to bring a purely Islamist government to power after the withdrawal of the Soviets. It was this latter factor, combined with a war-weary and destitute populace, which may have opened the door to the embrace of the Taliban who heralded a return to the basic tenets of *Shari'ah* law in face of the chaos around them. The Taliban's claim to religious legitimacy rested on its portrayal as a conservative force trying to reclaim Islam from the infighting of the Mujahedeen who just a mere couple of years before were touted as the Islamic warriors of faith in the Soviet *Jihad*.

One must note that the imposition of the Soviet system on Afghanistan emboldened the spread of the followers of the Deobandis School in several important ways. Firstly, the Soviet military drove millions of Afghans into the border provinces of Pakistan. In the border area of Pakistan where most of the Afghan refugees fled, the North Indian school of Deobandism was already the most dominant form of madrasa

³⁴ Rashid, *Taliban*, 59.

³⁵ Karen Armstrong, *The Battle for God* (New York: Ballantine Publishing Group, 2000), 309.

schooling and the influx of refugees were fertile ground for a school who traced its origins to colonial resistance. The United States also contributed to the rise of Deobandis influence in Pakistan's border areas by providing Deobandis madrassas with massive amounts of aid during the Soviet invasion to strengthen anti-Soviet resistance.

The evolution and growth of Deobandis affiliated madrassas in the Pakistan border regions during the Afghan war highlights the importance of education in conflict situations. While there is a substantial amount of literature on the experience of Afghan refugees in Pakistan border camps in terms of health and security at the camps, there is little systematic study of educational interventions provided at the camps. Refugee education is an emerging area of concern for humanitarian aid agencies, both for practical camp management reasons and the growing concern of radicalism spread through informal camp education networks. It is said that not only is the field of educational planning in emergencies and reconstruction still young but that, "to date no assessment has been conducted on the impact, value or relevance of the education children received in the camps."³⁶

Research into the area of the relationship between education in refugee camps and educational preferences post-repatriation are almost entirely comprised of descriptive reports for NGO's and project reports about a wide variety of education initiatives. UNESCO produced a summary in 2003 about the state of Afghan Refugee education in Pakistan estimating that only 45% of refugee children were enrolled in primary school, of

³⁶ Lyndsey Bird, "Surviving School, Education for Refugee Children from Rwanda 1994-1996," *International Institute for Educational Planning-UNESCO* (2003), 142.

which only 1/3 were girls.³⁷ The report confirms that most educational initiatives in the camps had been ad hoc and decentralized. This means that the quality of the education, indeed even the type of instruction varied significantly from camp to camp.³⁸ While there is relatively little information on the impact of refugee education on the future educational experiences of returnees, there is a growing body of literature on refugee camp curriculums and the theoretical debates about refugee education in crisis situations.

The funding literature by UNHCR, ICR and other NGO's and humanitarian assistance agencies increasingly highlight the importance of education, as a multifaceted response to meeting the rights and protection needs of in particular refugee children but also for those who lack education altogether. There is, as mentioned, an increasing recognition that not only does education have a potentially positive impact on refugee children and society in general, but also that shortfalls in education are directly linked to more acute protection problems of military recruitment, radicalization and exploitation like those who joined the Taliban regime. Many of these organization reports stress that education is a key issue in durable solutions.³⁹

VI. Role of Education in Internal Conflict

The role of education in Afghan politics is now, perhaps more than ever, fundamental for the strength and legitimacy of the post- Taliban government. Education

³⁷ United Nations Educational, Scientific and Cultural Organization (UNESCO), "Refugee Education Trust for Post-Primary Education," (October 5, 2002), <http://www.ineesite.org/about/pakistan.asp> (accessed March 12, 2011).

³⁸ United Nation as High Commissioner for Refugees Evaluation and Policy Analysis Unit, "Meeting the Rights and Protection Needs of Refugee Children: An Independent Evaluation of the Impact of UNHCR's activities," (Oxford, U.K., May 2002), 19.

³⁹ Ibid., 16.

is indisputably linked with progressive reforms that will allow a country to prosper economically, socially and politically. As has been demonstrated through the successive coups and civil discord in Afghanistan over the past century, tension over control of the institutions of education has often been both a precursor and a precipitant for internal conflict.⁴⁰ If the international donor community and the Karzai government move to quickly reform the institutions of education, without a proper base of legitimacy and the support of the rural populace, the new regime could suffer the fate of King Amanullah's reforms. If they wait too long, the risk of a re-entrenchment of fundamentalist madrassas with an anti-modernist message in the border regions will strengthen.

With the fall of the Taliban government in 2002, the UNHCR has assisted over 3.1 million Afghan refugees repatriate with an agreement with Pakistan to help it close its decade's old refugee camps by late 2005.⁴¹ This repatriation of Afghan refugees is the largest number of returning refugees in the world since 1972. The civic, political and logistical implications for repatriating millions of refugees in Afghanistan present some of the most difficult challenges for the Afghan government.⁴² One of the areas of utmost importance and primary concern is the reintegration of refugee children into Afghan schools and the ability of Afghanistan's educational system to accommodate and educate its population.

⁴⁰ Oliver Roy, *The Failure of Political Islam* ed. Carol Volk (Cambridge: Harvard University Press, 1996), 32.

⁴¹ The repatriation movement that followed the fall of the Taliban regime in late 2001 was spontaneous and overwhelming. In order to assist the returnees, UNHCR launched its repatriation operation on 1 March 2002, <http://www.un.org.pk/unhcr/about.htm>.

⁴² The UNHCR estimates that only 45% of children in refugee camps in Pakistan attended school, <http://www.ineesite.org/about/pakistan.asp>.

Following the Bonn Agreement in December 2001, millions of dollars of aid money flowed into the country and the education system was highlighted as the one of the key areas for support in the post conflict situation. However, after the initial influx of international aid, monies earmarked for education diminished dramatically in 2004 and 2005.⁴³

In 2002 one of the primary UN agencies working on education in Afghanistan had a budget of over \$90 million; in 2005 its budget was less than \$10 million. Instead of a widespread and coordinated effort to examine the national education curriculum and infrastructure left in shambles after Taliban rule, international aid centered on a “Back-to-School Campaign” which focused on enrolling children in schools, not necessarily on the content or quality of the curriculum.⁴⁴ This joint UNICEF and USAID initiative did succeed in dramatically increasing school enrollment, especially for primary school-aged children, but at the same time heavily relied on reprinting some of the same textbooks which were in circulation during the 1980’s in the Pakistan refugee camps. These UNO (University of Nebraska Omaha) textbooks from the 1980’s were the same that had emphasized violent imagery and holy war against the communists.⁴⁵ Thus the large initial influx of aid was used primarily to expand the distribution of outdated and outmoded textbooks from the mujahedeen years and expand the enrollment of children, without a systematic review of the national curriculum.

⁴³ Jeaniene Spink, “Education and Politics in Afghanistan: The Importance of an Education System in Peace-building and Reconstruction,” *Journal of Peace Education* 2, no. 2 (2005): 195-207.

⁴⁴ Ibid.

⁴⁵ Ibid.

In recognition of this problematic use of textbooks from the 1980's filled with violent imagery, UNICEF in conjunction with a research team from Columbia University Teachers College worked with Afghanistan's new Ministry of Education to reform the primary school textbooks. However, the proposed changes to the textbooks removed some of the religious content and were ultimately rejected by the Minister of Education, Yunous Qanooni, one of the primary opposition candidates to Hamid Karzai.⁴⁶ Minister Qanooni expressed his strong disapproval of the UNICEF curriculum as being developed by 'outsiders'. A compromise curriculum which would have included a more moderate version of Islam was never enacted due to diminishing finances in the ministry. The reform of the national curriculum remains an unanswered topic still today.

By the start of 2004, a study done by UNICEF stated that there were more than four million Afghan children enrolled in school. In addition to the concerns of forming a national curriculum, a survey conducted by the Agha Khan foundation in the northern provinces of Afghanistan found that over 10 percent of teachers have never attended a school, and of the rest, the majority had been educated only in madrassas near the border region of Pakistan.⁴⁷ Thus, in addition to the materials and textbooks, teacher training remains a primary concern as the Afghan government promotes its "Back-to-School" campaigns.

Since the collapse of the Taliban government the struggle for state versus local control of the schools has continued. The return of 3 million refugees, many of who were

⁴⁶ Ibid.

⁴⁷ Jeaniene Spink, "Situational Analysis: Teacher Education and Professional Development in Afghanistan," *Afghanistan Research and Evaluation Unit* (2004): 15.

educated for years in the refugee camps in Pakistan, have a significant impact on the nature of the education system and affect the balance between strict madrassas and more liberal institutions. The enrollment of girls in school and the general educational attainment level of the populace as a whole needs to improve.

In this chapter we discussed the rise of the Taliban. Our focus was to demonstrate that in order to have a democracy based on consensus, higher education, civil liberties, free elections, women's rights and rule of the rule of law, Afghanistan cannot be governed by the Taliban. The country needs civil society and fair elections. The term civil society refers to the independent, non-governmental realm of citizen activity. Civil society is crucial in ensuring citizen participation, association and expression in a democracy. It can help transform Afghanistan through informing public opinion, mobilizing constituencies for reform, and engaging government and political parties in policy debate. In post-conflict situations, civil society can encourage reconciliation, represent citizens' concerns and ensure transparency and good governance in the reconstruction process.⁴⁸ In order for civil society to hold strong and flourish we established that the reshaping and metamorphosis of the educational system is of greatest importance to the stability and growth of a secular democratic Afghanistan. In the next chapter we will exam another pillar of democracy, the rule of law, and will attempt to express why the sustainability, accountability, and maintainability of the rule of law are extremely vital in a post-conflict country such as Afghanistan.

⁴⁸ http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/civil_society/

CHAPTER 4

IMPORTANCE OF THE RULE OF LAW AND LESSONS TO BE LEARNED

Implementation and formation of the rule of law in post-conflict societies play a major role in the transition of a nation state to a stable and peaceful democracy. A free and fair political system, protection of human rights, a vibrant civil society, public confidence in the police and the courts are just some areas covered under the rule of law. The rule of law is the cornerstone for all other elements of democracy. It is the requirement of economic growth and political stability.¹ Reaching human development targets and maintaining these achievements depend on the effectiveness of the rule of law in contemporary societies, including war-shattered Afghanistan.² Legal and judicial development is only one element of a far larger picture of a society's progress, in which the rule of law institutions and practices are linked with the goals of economic prosperity, individual growth, and government legitimacy.³

It is essential to understand that establishing democratic institutions, creating economic growth, and implementing the rule of law are all complementing factors that mutually strengthen each other. In post-conflict settings, re-establishing the rule of law is the first step in the rebuilding process. Establishing peace and security and rebuilding

¹ Qian Yingyi, "The Modern Market Economy and the Rule of Law," *Perspectives* 1, no. 5, (2000), http://www.oycf.org/Perspectives2/5_043000/modern_market_economy_and_the_ru.htm (accessed March 9, 2011).

² Center for Policy and Human Development, "Bridging Modernity and Tradition: Rule of Law and the Search for Justice," *Afghanistan Human Development Report* (2007), <http://hdr.undp.org/en/reports/nationalreports/asiathepacific/afghanistan/nhdr2007.pdf> (accessed March 16, 2011), 46.

³ Gregory Leyh, *Legal Hermeneutics: History, Theory, and Practice* (Berkeley: University of California Press, 1992), 4.

justice institutions can help to develop the necessary climate for reconciliation, public confidence, and subsequent economic growth. In addition, it “also means that advances in one sector cannot be sustained in the absence of progress across society.”⁴

Afghanistan has experienced conflict for the last three decades, including foreign invasions and civil wars. As a result, the development of the rule of law and its institutions collapsed before they were able to gain momentum and resulted in widespread injustices and human rights abuses in the nation-state.⁵ Establishing a rule of law in a country such as Afghanistan requires a different and more comprehensive plan. Afghanistan is a land that has not seen or experienced such modern rule of law concepts and has been ruled by pre-modern fundamentalist elements for its history.

The rule of law is one of the fundamental elements of democracy that requires extra attention in introducing and implementing. Throughout history it is evident that when peace- building, elections were the main deciding force to determine whether a society and or country was going towards a democracy. It was a way to demonstrate to the world that democracy building around the globe was spreading.⁶ Elections were also used to legitimize the new democracies and in turn its importance and its political significance reduced the priority of establishing the rule of law and introducing an

⁴ Center for Policy, “Bridging Modernity,” 38.

⁵ Afghanistan Independence Human Rights Commission (AIHRC), “A Call for Justice: A National Consultation on past Human Rights Violations in Afghanistan” (January 25, 2005), http://www.aihrc.org.af/Rep_29_Eng/rep29_1_05call4justice.pdf (accessed March 17, 2011), 10.

⁶ Fareed Zakaria, “The Rise of Illiberal Democracy,” *Foreign Affairs* (1997), <http://www.foreignaffairs.com/articles/53577/fareed-zakaria/the-rise-of-illiberal-democracy> (accessed February 22, 2011).

independent and functioning judiciary system.⁷ Presently, research from decades of democratization theory demonstrates that more than an election is needed to make a democracy.⁸

Long-term, sustainable economic and social development requires democratic governance rooted in the rule of law. It fosters five essential elements: order and security, legitimacy, checks and balances, fairness, and effective application.⁹ Order and security is necessary because the rule of law cannot flourish when public order breaks down and citizen's fear for their safety. Legitimacy is fundamental because laws are only valid when they represent societal consensus. Rule of law depends on checks and balances for separation of governmental powers. Fairness consists of four sub-elements: equal application of law; procedural fairness; protection of human rights and civil liberties; and access to justice. These sub-elements are key to empowering the poor and disadvantaged, including women.¹⁰ Effective application is the element pertaining to enforcing and applying laws. Without consistent enforcement and application for all citizens and other inhabitants, there can be no rule of law.

⁷ F. Gregory Gause III, "Can Democracy Stop Terrorism?" *Foreign Affairs* (2005), <http://www.foreignaffairs.com/articles/61021/f-gregory-gause-iii/can-democracy-stop-terrorism> (accessed March 3, 2011).

⁸ Mathew J. Morgan, *A Democracy is Born: An Insider's Account of the Battle Against Terrorism in Afghanistan* (Westport, CT: Praeger Security International, 2007), 143.

⁹ Dr. Corbin Lyday and Jan Stromsem, "Rebuilding the Rule of Law in Post-Conflict Environments," United States Agency for International Development (May 2005), http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/Consolidated-Rebuilding-the-Rule-of-Law-in-Post-Conflict-Environments-2005-Publication.pdf (accessed March 22, 2011), 43.

¹⁰ Ibid.

Not only are there five essential elements to the rule of law but also it has become clear that underlying conditions do have a big impact on democratic success as well.

There are five that are of special importance: “the level of economic development; the degree of concentration of sources of national wealth; the coherence and capability of the state; the presence of identity-based divisions, such as along ethnic, religious, tribal, or clan lines; and the amount of historical experience with political pluralism.”¹¹

When taking these five conditions into consideration, the Muslim world, specifically Afghanistan, would not fit the criteria or the pr-conditions put forth. Poverty is widespread; Ethnic divisions are serious; tribal tensions haunt the country; the coherence of basic state institutions has long been shockingly low and historically, in much of the region there is little experience with pluralism.¹² A hard road ahead for democracy is almost certain. But it is important to note that the five factors mentioned above are indicators of likelihood, not pre-conditions. Their absence only indicates a difficult path, not an impossible one. After all, India failed this five-part test almost completely when it became independent, but has made a good go of democracy.

Throughout Afghan history, every attempt to uplift the country and its people out of economic and social underdevelopment, to spread literacy, and to “attain the principle of governance in which all persons, institutions and entities, public and private, including

¹¹ Thomas Carothers, “Rule of Law Temptations,” *Fletcher Forum of World Affairs* 33, no. 1 (2009), http://www.carnegieendowment.org/files/Rule_of_Law_Temptations.pdf (accessed March 12, 2011), 49.

¹² *Ibid.*, 53.

the state itself achieve genuine national independence has met with external and internal opposition.”¹³

I. Afghanistan’s Legal Tradition

The legal tradition of Afghanistan consists of the Islamic *Shari’ah*, positive law, and customary law. Islamic *Shari’ah* “refers to legislation, legitimacy, and legality in the modern Arabic literature.”¹⁴ *Shari’ah* in Islamic jurisprudence is the substance of the Islamic law. It derives from two major sources: the *Quran* and *Sunnah* and also the consensus of Islamic jurists on a ruling and analogical reasoning which is derived from new cases and questions not usually found in the primary source of the *Shari’ah*.

Positive law in Afghanistan “refers to the secular state law in contrast to the *Shari’ah* and customary law.”¹⁵ This is the body of law influenced by the Russians and Iranians that had developed in Afghanistan during the 1960’s and 70’s. Afghanistan’s positive laws were adopted as the law of the land by the Bonn Agreement during the interim government of Hamid Karzai after the fall of the Taliban regime.

Customary laws may be described in the Afghan context as those law-like unwritten social/moral codes of behavior that are deeply present in the collective conscience of members of a community such as a tribe, ethnic group, or village that all have binding effects socially or morally on members of the society. These codes of

¹³ Agnes Hurwitz and Reyko Huang, *Civil War and the Rule of Law* (London: Lynne Rienner, 2008), 3.

¹⁴ Center for Policy, “Bridging Modernity,” 43.

¹⁵ *Ibid.*

behavior are used as a guide for local settlement disputes within the contexts of *jirgas* (tribal assembly) and *shuras* (consultation).¹⁶

II. Policies and Plans for the Rule of Law

A. Bonn Agreement

After the initial U.S. military invasion of Afghanistan (phase I of “Operation Enduring Freedom”), a UN-supported conference was held in Bonn, Germany to re-establish the post-invasion state of Afghanistan.¹⁷ Participants at the Bonn conference included representatives from the U.S., Russia, the six nations surrounding Afghanistan, as well as representatives from four Afghan factions.¹⁸ The defeated Taliban regime had no representative at the talks.

The Bonn Agreement provided the framework for the transformation of the Afghan political system. The agenda of the Bonn conference was an extraordinarily ambitious one: to establish an interim government (the Afghan Interim Administration), lay out a road map for the reform of state institutions, and provide guidance for the foundation of peace and security in the region. The Bonn Agreement stipulated as follows:

The interim arrangements are intended as a first step toward the establishment of a broad-based, gender sensitive, multi-ethnic and fully representative government, and are not intended to remain in place beyond the specific period of time...this

¹⁶ Thomas Barfield, “Informal Dispute Resolution and the Formal Legal System in Contemporary Northern Afghanistan,” *United States Institute for Peace* (April 2006): 2-3, http://www.usip.org/files/file/barfield_report.pdf (accessed March 1, 2011).

¹⁷ Larry Goodson, “Afghanistan’s Long Road to Reconstruction,” *Journal of Democracy* 14, no. 1 (2003): 82-99.

¹⁸ *Ibid.*, 51.

interim authority is to act in accordance with the basic principles and provisions contained in international instruments on human rights and international humanitarian law; cooperate in the fight against terrorism, drugs and organized crime; ensure the participation of women as well as the equitable representation of all ethnic and religious communities.¹⁹

It was extraordinarily ambitious in scope but provided little detail how its most essential objectives can or should be accomplished.²⁰ The agreement laid out the powers of an interim authority, which was to be replaced by a transitional government authority after six months. The agreement provided guidance as to the laws and institutions that should control these decisions.

The Bonn Agreement was not a peace accord, but rather a “first step” in the anticipated peace-building process. The agreement set two simultaneous processes in motion: a state-building process and a peace process. The agreement provided for the drafting of a new constitution, to be approved by a constitutional *loya jirga*, a traditional mode of participatory governance and consultation that was held in June 2002 as the first step in a process leading to a new constitution and functioning government.²¹ A timetable for national elections was set with the target date of June 2004, a particularly ambitious one for a country which had never held a democratic election.²² In the meantime, the Afghan Transitional Authority, (now called the Islamic Transitional

¹⁹ United Nations Security Council (UNSC), “Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions” (December 5, 2001), <http://www.nps.edu/Academics/centers/ccp/publicationsOnlineJournal/2006/Feb/johnsonFeb06-figure1-bonnagreement.pdf> (accessed February 2011), 7-10.

²⁰ William J. Durch, *Twenty-first Century Peace Operations* (Washington, DC: US Institute of Peace and the Henry L. Stimson Center, 2006, 481.

²¹ UNSC, “Agreement on Provisional Arrangements in Afghanistan,” 8.

²² *Ibid.*, 9.

Government of Afghanistan (ITGA)), was established under the leadership of Hamid Karzai with the support of the US, Russia and Iran.

Until the adaptation of a new constitution, the 1964 constitution would be enforced, but without a king or legislature, thus excluding imperative provisions that were stated and made in the Bonn Agreement. This agreement also allowed for the operation of existing laws that did not contradict the provisions of the agreement or the 1964 constitution. In addition, the chairmen of the interim and transitional administrations were given the power to make laws by decree of the agreement of their cabinets, which in turn simplified pressing legal issues.²³

The phase of disarmament, demobilization and reintegration of local security forces is particularly problematic in Afghanistan. The resurgence of the Taliban in the past years has fed into the re-militarization of regional factions.²⁴ It was best said by the Secretary General:

Security remains the most serious challenge facing the peace process in Afghanistan. Security must be improved to allow the re-establishment of the rule of law, ensure the protection of human rights, promote the reconstruction effort and facilitate the success of the complex political processes, including the development of the new constitution and the holding of free and fair elections. Afghans in many parts of the country remain unprotected by legitimate State security structures. Criminal activity by armed groups has of late been particularly evident in the north, east and south, and in many areas, confrontation between local commanders continues to contribute to instability.²⁵

²³ Durch, *Twenty-first Century*, 481.

²⁴ William J. Durch, "Peace and Stability Operations in Afghanistan: Requirements and Force Options," *The Henry L. Stimson Center* (2003), <http://www.stimson.org/images/uploads/research-pdfs/afghansecurityoptions070103.pdf> (accessed March 11, 2011).

²⁵ United Nations Security Council (UNSC), "The Situation in Afghanistan and its Implications for International Peace and Security," Report Of the Secretary-General (New York: General Assembly 57th Session, Agenda Item 37, March 2003), 13.

The Bonn agreement called for the creation of three commissions: independent human rights commission, a judicial commission, and a civil service commission.²⁶ The independent human rights commission was to be responsible for deciding how to address past abuses, conducting investigations, and educating on human rights issues. The commission was given an enormous and somewhat unattainable mandate with twenty five years of atrocities to address, some of which were committed by still powerful faction leaders but with new abuses being committed. The judicial commission was similarly saddled with an unfathomable large mandate to reform and reconstruct the country's laws and judiciary. The civil service commission was charged with recreating of civil service employment, including the "establishment of transparent and fair appointment processes."²⁷

The pre-modern societies that lack national functioning judicial systems traditionally rely on informal methods for their conflict resolutions, especially since the disputes are not complicated due to the "simplicity" of life. The international community and the United States required Afghanistan to establish a new judicial system, which was independent of any religious affiliation and tribal codes that functioned like any modern judicial structure. Formation of this type of formal judiciary system was supposed to illegitimatize the informal system.²⁸

²⁶ UNSC, "Agreement on Provisional Arrangements in Afghanistan," 6.

²⁷ *Ibid.*, 7.

²⁸ *Ibid.*

A majority of Afghans were denied access to fair dealings because the plans of rebuilding Afghanistan focused on the formal judiciary system as the sole legitimate structure. This formal system lacked the capacity to develop the nation of Afghanistan due to the lack of infrastructure, legal personnel such as judges and lawyers, and enforcement personnel. As the result, the allocation of responsibility to an institution which has no sufficient capacity undermined its importance.

The adoption of new laws that had not originated from Afghan society itself and did not have its roots in the cultural history was a clear road to failure. The implementation of those internationally accepted norms, in particular those norms which have conflict with the society's culture, should have been set to be the ends of the progress not the means to the end. The legal reform project had to lead the society to those ends and the means to achieve those goals should have been a gradual process which included cultural and institutional building, increasing the public education and familiarity with the benefit of those standards.

The rule of law projects in Afghanistan since the Bonn Agreement lacked four major elements: priority of the rule of law in comparison to other politically motivated objectives, respect and legitimacy of judicial systems, connection between informal and formal justice systems, and harmony between the Afghan culture and the modern legal standards that have been imposed on the people of Afghanistan.

B. The Afghanistan Compact

The UK hosted a major international conference on Afghanistan, co-chaired by Afghanistan and the UN on the 31st of January through the 1st of February 2006. The

conference had three aims: the first to launch the Afghanistan Compact- the successor to the Bonn Agreement. The agreement provided guidelines for other countries commitments in Afghanistan; it set goals, mutual obligations, and points of reference.²⁹ These measures intend to provide better cooperation between the Afghan government and the international community. Secondly, its aim was to provide an opportunity for the government of Afghanistan to present its interim national development strategy to the international community.³⁰ The strategy sets out the government's priorities for accelerating development, increasing security, tackling the drug trade, and strengthening governance.³¹ Thirdly, its aim was to ensure the government of Afghanistan had adequate resources to meet its domestic ambitions and international commitments.

The Afghanistan Compact outlined the commitments and expectations of the international community in regards to the rule of law. The goal of the Afghanistan Compact for establishing the rule of law included the following: the Afghan government will “give priority to the coordinated establishment in each province of functional institutions including civil administration, police, prisons and judiciary.”³²

The Bonn agreement provided a legal framework for these mentioned institutions. It also provided procedures for appointments and certain methods for auditing. Under the Bonn agreement the government of Afghanistan had been mandated to establish a

²⁹ International Security Assistance Force (ISAF), “Building on Success: The London Conference on Afghanistan” (2006), http://www.nato.int/isaf/docu/epub/pdf/afghanistan_compact.pdf (accessed March 16, 2011), 4.

³⁰ Ibid.

³¹ Ibid., 6.

³² Ibid.

functional and stable administration, which would be capable to hold future elections under the supervision of the Afghanistan Independent Elections Commission.³³

The Afghanistan compact called attention to reforming the justice system in Afghanistan. The reform would be a priority for the Afghan government and the international community in establishing the country's path to democracy. In setting the goals in reforming the judicial system, the Compact declared that "the aim will be to ensure equal, fair trials and enforceable verdicts."³⁴ The Compact also provided measures for the reform which included increasing the capacity of the judicial system, creating new laws for both the private and public sectors, and promoting human rights and increasing legal awareness.

The Afghanistan Compact set certain timelines for its rule of law objectives. It provided the end of 2010 as its final deadline.³⁵ By 2010, the legal structure and framework of Afghanistan which included criminal, civil and commercial laws should have been established. The Compact also required functioning institutions of justice to be operational throughout the provinces in Afghanistan. In addition, it set forward a mandate to establish procedures to stop corruption and increase credibility and integrity of the judicial system.³⁶ Finally, it also required the government of Afghanistan to

³³ Ibid., 7.

³⁴ Ibid.

³⁵ Ibid., 9.

³⁶ Ibid., 10.

develop and restructure the jail systems, particularly the facilities for women and youth. Unfortunately, the deadline for the compact was not reached.

C. Peace, Reconciliation and Justice in Afghanistan Action Plan

The government in Afghanistan adopted a five-point action plan for peace, reconciliation and justice in June 2005. The action plan was mainly adopted to satisfy the recommendations of the Afghanistan Compact. Based on the decree of the President of the Islamic Republic of Afghanistan, the Afghan Independent Human Rights Commission (AIHRC) was mandated to “undertake national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past.”³⁷ The AIHRC published a report in 2005 that the action plan relied on and was accepted by president Karzai called “A Call for Justice.”

President Karzai developed the action plan to establish a national strategy for peace and reconciliation. He included the AIHRC and the United Nation Assistance Mission (UNAMA) recommendations in the plan.

The action plan committed the government and the international community to reforming the justice system and setting up a five-member task force to draw up a plan to deal with the different abuses.³⁸ The elements for the action plan were as follows “(1) acknowledgement of the suffering of the Afghan people; (2) ensuring credible and accountable state institutions; (3) truth-seeking and documentation; (4) promotion of

³⁷ United Nations Assistance Mission in Afghanistan (UNAMA), “Protection of Civilians in Armed Conflict,” (August 2010), http://unama.unmissions.org/Portals/UNAMA/Publication/August102010_MID-YEAR%20REPORT%202010_Protection%20of%20Civilians%20in%20Armed%20Conflict.pdf (accessed March 17, 2011), 12.

³⁸ Ibid., 13.

reconciliation and national unity; (5) establishment of effective and reasonable accountability mechanisms.”³⁹

Richard Bennett, head of the U.N. Human Rights office in Kabul, called it "an important step forward", and added "the important thing now that the plan has been adopted is to ensure it is implemented fully in accordance with the timelines."⁴⁰

D. Afghan National Development Strategy (ANDS)

Afghanistan developed a national strategy in 2006. The plan included the rule of law project as one of the main objectives in Afghanistan’s development strategy, which was in accordance with the Afghanistan Compact. The Afghan National Development Strategy recognized the short comings of the Afghan legal system, and reported that 90% of Afghans do not have access to the judicial system. They also recognized the human right abuses and nationwide violations of individual protections which had been granted by the constitution and international treaties.⁴¹ ANDS refused to recognize a secular legal system and established Islam’s jurisprudence and Islamic law as the main sources of Afghanistan’s legal system.

They introduced constraints of the rule of law sector stating that there was an immaturity in the Afghan legal framework. Its incomprehensiveness, its lack of sufficient laws and regulations were all basic elements of its limitations. The Afghan National

³⁹ Ibid., 15.

⁴⁰ Richard Bennett, comment on “Afghan President’s TJ Action Plan,” Transitional Justice Forum, comment posted December 16, 2005, <http://tj-forum.org/archives/001621.html> (accessed March 20, 2011).

⁴¹ United Nations Development Program (UNDP), “A Strategy for Security, Governance, Economic Growth and Poverty Reduction,” *Afghan National Development Strategy* (2006), http://www.undp.org/af/publications/KeyDocuments/ANDS_Full_Eng.pdf (accessed February 23, 2011), 61-67.

Development Strategy wanted to revitalize the Islamic laws and have the ability to create new institutions for training the clerics because of its recognition that the clerics were under isolation in the past few decades and uninformed about the new developments in the Islamic jurisprudence around in the Islamic world. It also recognized the broad state of impunity in Afghanistan due to the lack of efficient policing and enforcement.⁴²

E. The UN Assistance Mission in Afghanistan (UNAMA)

UNAMA was established through the United Nation Security Council resolution and was created to support the rebuilding process and reconciliation plans outlined in the Bonn Agreement. UNAMA sought to have narrow responsibilities in Afghanistan in comparison to prior UN missions in Kosovo and East Timor.⁴³ The reason for this limited involvement was that a light UN footprint would encourage donor nations to accept their responsibility for assisting Afghanistan. It was to prevent those donor countries from shifting responsibility to the UN without satisfying their own commitments and then blaming the UN for future failures.⁴⁴ “Despite initial promises of billions of dollars in foreign aid, the mission spent about \$41 million in its first twelve months, and \$39 million in the remainder of calendar year 2003.”⁴⁵ UNAMA’s budget for 2004 was about

⁴² Ibid.

⁴³ UNAMA, “Protection of Civilians,” 16.

⁴⁴ Ibid.

⁴⁵ Laurel Miller and Robert Perito, “Establishing the Rule of Law in Afghanistan,” *United States Institute of Peace Report* (March 2004): 3, <http://www.usip.org/files/resources/sr117.pdf> (accessed February 27, 2011).

\$57.6 million and \$63.6 million in 2005. Of that budget, 10 percent went toward security-related equipment and personnel.⁴⁶

UNAMA's priorities included establishing the capacity of the Afghan government in all positions and cabinets, including the development of law, order and security. In addition, UNAMA would contribute in strengthening Afghan institutions and helping the Afghan administration in establishing the rule of law, and protecting human rights.⁴⁷

F. The Results

The outcome of the rule of law project in Afghanistan demonstrated the mismatch between introduced goals and assigned resources. It was also evident that international actors did not pay much attention to the importance of rule of law. At this time "Afghanistan cannot be said to have a genuine *system* of justice at present."⁴⁸

III. USIP

The US Institute for Peace conducted a research about the implementation of the rule of law programs in Afghanistan, which were published in 2004. Even though the report is not current the problems mentioned in this report still exist.

A. The Justice System

Afghanistan lacks a comprehensive justice system. It cannot satisfy the required elements of a functioning system. Even though there are some basic elements such as court rooms, jails, and judges, they lack the capacity, comprehensiveness, and systematic

⁴⁶ UNAMA, "Protection of Civilians," 24.

⁴⁷ Ibid.

⁴⁸ Miller and Perito, "Establishing the Rule of Law," 4.

relations of a real justice system. The Afghan judicial system lacks procedure for judicial appointments and most of the appointments are made by personal and governmental connections.⁴⁹ Afghanistan's courts are suffering from the absence of a management system, central judicial and procedural authorities.⁵⁰ Moreover, the current judicial apparatus failed to comply with existing laws in important respects such that the decision of the courts had no reference to the written laws, the enforcement of the decisions were not guaranteed, there were no defense lawyers presented in trials, despite a theoretical right to counsel.⁵¹ To a great extent, the judicial system was not based on written laws and the laws were not respected in practice by judges and lawyers. In consequence, Afghanistan "has many laws, but no implementation, and it is because Afghans do not trust the judiciary."⁵² Unfortunately, the political attention that had been paid to judicial reform did not match its importance. As an outcome, little progress has been made toward building and improving Afghanistan's judicial system.⁵³

IV. A Call for Justice, AIHRC Report

The Afghan Independent Human Rights Commission had been given a mandate by president Karzai to "undertake national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past."⁵⁴ AIHRC conducted a

⁴⁹ Ibid., 5.

⁵⁰ Ibid., 8.

⁵¹ Ibid.

⁵² Ibid., 9

⁵³ Ibid., 10.

⁵⁴ AIHRC, "A Call for Justice," 12.

widespread study of over 4500 surveys and collaborated with over 200 focus groups involved in Afghanistan on both issues in Afghanistan and in its neighboring countries; Iran and Pakistan.⁵⁵ “A Call for Justice” report is outcome of that study. “A Call for Justice” analyzed different aspects of the rule of law, including the concept of justice among Afghans. Seventy-six percent of Afghans believed that bringing war criminals to justice would increase stability and bring security to the country.⁵⁶ Unfortunately, the reality of what action was taken was completely different. Many war criminals and human right violators are still in power in Afghanistan today. This reality in turn generates a great amount of disappointment among the Afghans. Many Afghans strongly associated justice with the rule of law, and justice for the Afghans was the priority after so many years of war and bloodshed. Afghans strongly supported the notion that criminal justice would prevent future crimes, restore the dignity of victims, and also can be seen as a method for reconciliation since it would prevent revenge killings, and hatred in their general terms.⁵⁷

The majority of Afghans do not trust the legal system in Afghanistan. The reason for their distrust was and still is the corruption and the fact that “justice is under the influence of power,”⁵⁸ and the lack of familiarity with the formal legal system. This unfamiliarity, in some extent, is due to the inaccessibility of justice throughout

⁵⁵ Ibid.

⁵⁶ Ibid., 13.

⁵⁷ Ibid., 15.

⁵⁸ Ibid., 45.

Afghanistan. More than sixty-five percent of the Afghans think that judges are not trustworthy because bribery and corruption exist among many of them.

The reports about the situation of judiciary system in Afghanistan left no clearer conclusion other than the fact that the implementation of the rule of law in Afghanistan has not been successful in the past. The reports show that the crimes and human right abuses have not disappeared and Afghans do not believe in their legal and justice systems. Implementation of the rule of law was not a priority among donor nations in the last ten years. As the result, the government of Afghanistan took steps that damaged the concept of the rule of law in Afghanistan, and the effects of those mistakes are tough to correct. When people distrust a new system, it is challenging to regain that trust. This reality is very damaging to the establishment of the rule of law especially since trust is one of the main elements required in establishing a rule of law.⁵⁹

V. Shortcomings of the Past

The government of Afghanistan failed in establishing the rule of law and implementing the law reform due to these fundamental shortcomings; the lack of priority for implementing the rule of law, the lack of adequate legitimacy and fairness for the Afghan justice system, the lack of harmony and connection between formal and informal legal systems, and the unfamiliarity and sometimes resentment of the domestic culture with modern and international legal standards.

⁵⁹ Ibid., 46.

A. The lack of priority

The plan for establishing the rule of law in Afghanistan was not introduced in the early stages of the rebuilding process. The Bonn agreement introduced to the new government and its authorities revalidated the 1965 constitution and other laws but did not mention the actual plan and objectives in establishing the rule of law, and left everything to the interim administration. The rule of law and judiciary system was not high priority for the interim administration at the time. Their focus fell on implementing the democratic reforms in the legislative and executive branches. The main impetus for misdirected attention was because of international demand, particularly the U.S. policy to push the Afghan government to carry elections and “create democracy” in Afghanistan.

A good example is the USAID budget for the rule of law project in Afghanistan which was one percent of their total aid to Afghanistan.⁶⁰ The budget approved by the interim government of Afghanistan was \$27 million for the justice sector for the financial year ending March 2004. As a result, judicial institutions are only authorized to ask for \$27 million from international donors.⁶¹ The US contributed only \$5 million per year for FY2003-FY2006 to the Human Rights Commission and \$2 million to the Afghan Judicial reform in the year ending 2004.⁶² The Judicial branch budget is part of the development

⁶⁰ USAID Afghanistan Budget and Obligations, <http://afghanistan.usaid.gov/en/about/budget> (accessed March 18, 2011).

⁶¹ Amnesty International, “Afghanistan: Re-establishing the Rule of Law” (August 14, 2003), <http://www.amnesty.org/en/library/asset/ASA11/021/2003/en/18f584dc-f7a9-11dd-8fd7-f57af21896e1/asa110212003en.pdf> (accessed March 1, 2011), 28.

⁶² Kenneth Katzman, “Afghanistan: Post-War Governance, Security, and U.S. Policy,” *CRS Report for Congress*, August 23, 2006, <http://www.coherentbabble.com/CRS/CRS-RL30588.pdf> (accessed March 8, 2011).

budget and is not an independent section in Afghanistan's budget and aid obligations supported by the US.

The history of Afghanistan shows that there was no working justice system for the last thirty years. It was not like Kosovo where the fundamental elements of a modern judicial system were in place and the task of the new government was to revitalize that system with minor modifications. Afghanistan's rule of law project was part of a bigger plan of establishing a judicial system in a country lacking a functioning structure for decades. The achievement of this institution building process required more attention and resources than what had been assigned to it. Assigning wrong sets of priority to both the rule of law and building a new judicial system left the vital projects of this sector insufficiently funded and left uncompleted. As the result, after many years, Afghanistan lacks a comprehensive plan to answer to its obligation to building a functional judiciary system.

B. Judicial system lacks respect and legitimacy

The Afghan judicial system lacks respect and legitimacy. The system is corrupt and can be influenced by bribes by war criminals and human rights abusers that are in charge of the judicial system.⁶³

During the first few years of the interim government, the judiciary system functioned very poorly. The shortcomings of judges and lawyers, the centralized system of government, and the absence of legal institutions contributed to their performance.

⁶³ AIHRC, "A Call for Justice," 34.

Because the Bonn Agreement validated a wide range of past laws, there was confusion as to what the laws were and which laws were applicable.

Schooling and training for lawyers and judges by universities and institutions were non-existent. The court houses lacked the basic requirements such as court rooms, office equipment, and electricity and the treatment of detainees violated the very basic internationally accepted laws.⁶⁴ Detainees in a number of regions of Afghanistan informed Amnesty International that judges and prosecutors requested money to release them.⁶⁵

As stated in “A Call for Justice” report, the majority of the Afghan people render these realities to the lack of trust and functionality of their legal system. Additionally, the insufficient capacity of the formal legal system prohibits the access to justice for the majority of Afghans. This lack of access independent from other shortcomings of the system increases the distrust of the people because Afghans do not rely on their judicial system institution to bring justice to their lives.

C. Disconnect of Informal and the Formal Legal System

Afghanistan is a poor and pre-modern country where justice was employed informally at the local level in the last few centuries.⁶⁶ In villages and small cities the networks of religious and elderly tribal leaders were responsible to solve the problems and conflicts among the Afghans. They used the customary laws and religious reforms

⁶⁴ Amnesty International, “Afghanistan: Re-establishing,” 39.

⁶⁵ Ibid.

⁶⁶ *The Columbia Electronic Encyclopedia*, 6th ed., s.v. “Justice.”

that were accepted in that small society. There was no institution monitoring and overseeing these informal systems. Their scope of responsibility and authority was not defined and they operated on a voluntarily basis with the parties involved. There are even some reports that demonstrate that even involuntarily and criminal conflicts were brought to their judgments as well.

Unfortunately to this day, the majority of people trust this informal system over the formal justice system of Afghanistan. The government of Afghanistan has no systematic way to use this resource to its benefit and some of the rulings of the local informal systems have violated basic human rights and Afghanistan's laws. This disconnection between formal and informal systems not only prevent the society from benefiting from all its resources but also creates a form of unaccountability which is very damaging to the establishment of the rule of law in Afghanistan. This disconnection undermines the government of Afghanistan's efforts for establishing accountability and unity in their legal system. A good example is if the formal system of justice puts into effect a law protecting the rights of women. The law would be void due to the local informal system that abides by its own religious and cultural beliefs and norms.

D. The Gap between the Culture and New Modern Legal Standards

The Taliban ruled Afghanistan by the most extremist Islamic laws from September 1996 onward. This period contributed to fundamentalism and strengthened the hardliner values in Afghanistan. In addition, Afghanistan never experienced nor was introduced to the modern legal standards. Education, especially higher education, was

not available for the last decade categorizing Afghanistan among the least developed countries in the world.

In 2001, the Bonn Agreement mandated the government of Afghanistan to comply with internationally accepted standards of human rights.⁶⁷ The formation of the independent human rights commission in Afghanistan was another step to implement the modern legal standards in a pre-modern society. The Afghan government and other contributing countries were under great scrutiny to implement human rights, especially women's rights in a national level and guarantee women's participation in the new government. But these laws offended the traditional people (majority) of Afghans due to the conflict between religious and traditional norms with these new standards. Introduction of these new norms to Afghans was not supported by educational programs, culture building, and social acceptance. These laws, which have a cultural impact, were adopted as a reaction to the past abuses and their roots were not progressively stemmed in society. These well accepted principles in the international society have been imposed in Afghan society without any consideration of the possible cultural conflict and without any study and preparation.

Women's rights laws are in great conflict with tradition and culture in Afghanistan.⁶⁸ The laws that provide equality and freedom to women are not legitimate in the eyes of many and therefore they do not abide by it and in turn see the rule of law as

⁶⁷ UNSC, "Agreement on Provisional Arrangements in Afghanistan," 6.

⁶⁸ Center for Policy, "Bridging Modernity," 46.

the rule of evil. When breaking a law is more legitimate than obeying the law, the justice system and the rule of law are in great danger.

VI. Conclusion

Afghanistan is situated in a very strategic front in the fight against terrorism and Islamic fundamentalism. In this chapter we demonstrated how the projects of establishing the rule of law and judiciary reform are facing great challenges and obstacles. Our objective is to understand the Afghan realities and some unrealistic objectives put forward during the earlier nation building projects. By focusing on past projects we are able to avoid repeat mistakes and provide a better framework for comparable situations in the future. The position is best described by Erik Jenson, a lecturer at Stanford University. “The development of the rule of law is a historical process. It takes time; there are fits and starts. The problem is when you are at Afghanistan's level of development, it will go through years and years of fits and starts...and as society goes through these episodes, it will need a new cadre of leaders to lead to positive episodes.”⁶⁹

Authoritarian regimes like the Taliban have strong structural reasons to abridge and avoid true rule-of-law development. They may like to use religious law as an instrument of state control. But cardinal features of the rule of law such as establishing a truly independent judiciary, subordinating government officials to the law, treating all citizens in accordance with basic principles of legal fairness, and respecting political and civil rights threaten the power and hold of authoritarian regimes if implemented and

⁶⁹ Marwa Farag, “Shaping the Rule of Law,” *The Stanford Daily* (March 2011), <http://www.law.stanford.edu/news/details/4423/Shaping%20Rule%20Of%20Law/> (accessed March 20, 2011).

sustained. As a result, extremist groups like the Taliban resist and undermine reforms that would take their country closer to such practices.

The rule of law is by no means easy or automatic for democracies. Fledgling democratic governments certainly struggle with rule-of law development. Democratic governments may focus only on short-term survival rather than longer-term institutional reform. Creating alternative centers of power, treating citizens evenhandedly, and respecting rights are all essential not just to building the rule of law but also to deepening democracy in Afghanistan.

CONCLUSION

The conclusion brings together the insights provided in different chapters and identifies the most important themes to be considered in the analysis of the processes of modernization, secularization and democratization in Afghanistan. These broad themes and lessons drawn from research provided and case studies, in turn, suggest possible remedies and lines of action both for Afghanistan, and for key external actors, notably the great powers and international institutions- most likely to help advance Afghanistan to becoming a secular democracy. It also draws attention to those actions that could create future problems in achieving these goals and therefore should be avoided.

Tensions between democracy and liberty have deep historical roots and are presently visible around the world. The rise of what Fareed Zakaria calls “illiberal democracy” is an important product of these tensions and can be seen in Afghanistan today.¹ “It appears that many countries are adopting a form of government that mixes a substantial degree of democracy with a good deal of illiberalism –restriction of individual liberties.”² What is needed is not a make shift form of democracy that restricts certain individual liberties. What is required is a combination of constitutional, administrative,

¹ Fareed Zakaria, “The Rise of Illiberal Democracy,” *Foreign Affairs* 76, no. 6 (November-December 1997): 22-43.

² Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W.W. Norton, 2003), 24.

educational, economic and social transformations which will strengthen society and make it capable of bearing the weight of a growing modern nation state.³

Ahmad Shawqi al-Fanjari, an Egyptian writer, compiled a list of democratic rights and liberties found in the major writings of earlier Muslims and concluded that “what is called freedom in Europe is exactly what is defined in our religions as justice (*‘adl*), right (*haqq*), consultation (*shura*), and equality (*musawat*) ... This is because the rule of freedom and democracy consists of imparting justice and right to the people, and the nation’s participation in determining its destiny.⁴

Contemporary Muslim thinkers like Fanjari and Madjid continue this line of analysis, leading to the conclusion that “Islamic doctrine, as embedded in the text and traditions, is conducive to democratic thought in many compelling ways,” and the “greatest periods of Islamic rule have been precisely those in which Islam’s structural and intellectual developments were the most democratic.”⁵

If Afghanistan can deliver increased rule of law, better regulatory frameworks, educational reforms and merit-based recruitment to the bureaucracy, they could precipitate the investment and economic growth needed to expand the middle class, civil

³ Charles Issawi, “Economic and Social Foundations of Democracy in the Middle East,” *International Affairs* 32, no. 1 (1956): 27-42.

⁴ Ahmad Shawqi al-Fanjari, *Al-Hurriyat al Siyasiyyah fi al-Islam* (1973), as quoted in Hamid Enayat, *Modern Islamic Political Thought* (Austin: University of Texas Press, 1982): 131.

⁵ Ahrar Ahmad, “Islam and Democracy: Text, Tradition, and History,” *American Journal of Islamic Social Sciences* 20, no. 1 (Winter 2003): 35-36.

society and independent bourgeoisie, while increasing regime legitimacy and dampening Islamic radicalism.⁶

The lack of progress for political rights and civil liberties in much of the Islamic world should not suggest that the Islamic world is incapable of rapid momentum toward democratic change. Overall the literature on democracy, democratization and democratic consolidation provides us with only very few insights as to why Turkey and Indonesia made such democratic transitions and have meanwhile made very significant progress towards democratic consolidation, as we have shown in chapter two.

Modernization theorists for democracy, for example, posit that the likelihood of a country being or becoming a democracy is closely related to its level of socio-economic development.⁷ However, Indonesia with a per capita purchasing power parity-adjusted annual income in 1998 of \$2790, making it 141st in the world ranking of richest countries, would have not been very high up on most modernization theorists' lists of countries on the verge of making a democratic transition. It also did not have a large middle or industrial working class, which other scholars have identified as key variables for the emergence of democracy.⁸

⁶Raymond Hinnebusch, "Authoritarian Persistence, Democratization Theory and the Middle East: An Overview and Critique," in *Democratization in the Muslim World: Changing Patterns of Power and Authority*, ed. Francesco Cavatorta and Frédéric Volpi (New York: Routledge, 2007), 29-30.

⁷ Douglas Webber, "A Consolidated Patrimonial Democracy? Democratization in Post-Suharto Indonesia," in *Democratization in the Muslim World: Changing Patterns of Power and Authority*, ed. Francesco Cavatorta and Frédéric Volpi (New York: Routledge, 2007), 40.

⁸ Barrington Moore Jr, *The Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World* (Boston: Beacon Press, 1966), 418 and Dietrich Rueschemeyer, Evelyn Huber Stephens and John D. Stephens, *Capitalist Development and Democracy* (Chicago: University of Chicago Press, 1992), 8, 76-77.

During the last 10 years the political landscape of Indonesia, the world's most populous Muslim country, has been transformed almost beyond recognition. In April 1998 Indonesia still had a highly centralized authoritarian regime in which there was no effective separation of powers and power in the dominant executive branch was concentrated in the hands of a single person who had held the office of president for the preceding thirty-two years. Political freedoms were extremely limited, elections and the few political parties permitted to compete for popular support in them were strictly controlled, and the military had extensive discretionary powers to intervene in political and other areas of Indonesian life.⁹

As a relatively poor country with small middle and industrial working class, a high level of ethnic, linguistic and cultural diversity, and overwhelmingly Muslim population, located in a neighborhood that is certainly not especially hospitable to democratization, Indonesia constitutes a case of 'democracy without prerequisites'.¹⁰ As the former Malaysian Deputy Prime Minister, Anwar Ibrahim, concluded, Indonesia "can offer a shining example of successful democratization to other majority Muslim countries."¹¹

Elements of Islamic culture are both congenial and uncongenial to democracy, and that the problem with democratization may in fact lie with the concept and its method

⁹ Webber, "A Consolidated Patrimonial Democracy?," 34.

¹⁰ M. Steven Fish, "Mongolia: Democracy without Prerequisites," *Journal of Democracy* 9, no. 3 (1998): 127-141.

¹¹ As quoted in "Greater Democracy Key to success for Asia, says Anwar," *Straits Times* (April 8, 2005), <http://newspapers.nl.sg/Digitised/Issue/straitstimes20050408.aspx> (accessed March 17, 2011).

of application in the Muslim world, which is largely ignored.¹² Turkey is a great example of how the concept of secular democracy was gradually and strategically immersed in Turkish society. As one Turkish scholar contends, “democracy is an appropriate system for Islam because it both expresses the special worth of human beings...and at the same time deprives the state of any pretence of divinity by locating ultimate authority in the hands of the people rather than the ulema.”¹³

As demonstrated in Turkey, society’s value system or culture must “change from a prescriptive type to a principal mode” for economic, political and social change to occur.¹⁴ What distinguished prescriptive and principal societies were their belief systems. In a principal state the religious system would not attempt a detailed regulation of all aspects of economic, political and social life. Religion would not disappear from the culture of a society, but its function would alter, therefore redefining secularism in terms of confining the religion within the government but not removing it altogether. “In modern society there is a differentiation between the levels of religion and social ideology which makes possible greater flexibility at both levels.”¹⁵

¹² Nazih Ayubi, “Islam and Democracy,” in *Democratization*, ed. David Potter (Cambridge: Polity/Open University Press, 1997), 362.

¹³ Khaled Abou el Fadl, *Islam and the Challenge of Democracy* (Princeton, NJ: Princeton University Press, 2004), 36.

¹⁴ Robert N. Bellah, “Religious Aspects of Modernization in Turkey and Japan,” *The American Journal of Sociology* 64, no. 1 (1958), <http://ibs.colorado.edu/~kuhnr/socy2091/reserves/religious-modernization.pdf> (accessed March 24, 2011), 2.

¹⁵ Denkwart A. Rustow, “The Politics of the Near East,” in *The Politics of Developing Areas*, ed. Gabriel Almond and James Coleman (Princeton: Princeton University Press, 1960), 453.

Turkey also does not define modernity as “western’, but instead sees modernity as a form “which is shaped by the broad cultural traditions of the humans involved.¹⁶ That is the same path that most Islamic countries moving towards modernity should take, however with caution. The model that these countries used was of developing their own definitions of modernity, ones that value the role of reason and are pluralist, but also religion in moving towards modernization without “westernization.”

I. Analysis and Recommendations on Education

Afghanistan has a long history of social unrest and ethnic conflict, and the manipulation of the education system by internal and external powers for political purposes has been one of the major contributors to these divisions as we have seen through chapter one. As Afghanistan attempts to build peace, sustain democracy and maintain co-existence after more than thirty years of violence, there continues to be limited attention given to one of the main contributors to the social advancement, education. Social stratification can take place through educational achievement and the emergence of a middle class which in turn will provide “a durable basis for democratic transition.”¹⁷

Rebuilding a previously failed Afghanistan with no tradition of strong central authority, and armed rivalry by the Taliban is a far greater task than the loose and imprecise language of the Bonn Accords, the subsequent UNAMA political mission, that

¹⁶ John O. Voll, “The Mistaken Identification of ‘The West’ with ‘Modernity,’” *American Journal of Islamic Social Science* 13, no. 1 (Spring 1996): 1-6.

¹⁷ Francis Fukuyama, “Confucianism and Democracy,” *Journal of Democracy* 6, no. 2 (April 1995): 20-33.

the coalition forces were prepared for. A systematic examination of the education system in Afghanistan, with particular attention paid to the Northern provinces where Deobandis *madrassas* continue to flourish due to lack of alternatives and popularity is an immense, but essential task in ensuring the vitality of a democratic Afghan state and prevention of extremist re-entrenchment. A realistic assessment of educational alternatives and strategies that can diminish the spread of fundamentalist *madrassas* without raising the specter of reactionary revolt is crucial to the maintenance of a secure Afghanistan.

Madrassas serve a critical role in the community and it is necessary to emphasize that the percentage which espouse a radical ideology are small. It is vital that policy makers not leap to conclusions about the connection of all *madrassas* to radical extremism. Such a connection would not only be false, but lead to detrimental tactics against *madrassas* which would likely alienate the very communities and individuals which are fundamental to the maintenance of a moderate system of education. The lessons of educational decline and radicalism in Afghanistan's turbulent history, in particular the rise of *madrassas* can transform the future direction of education for Afghanistan by promoting state stability, democracy, and deflating the rise of such extreme fundamentalism.

More than four million children returned to school in the first two years of 'peace' in Afghanistan after the Taliban regime was overthrown. Hundreds of millions of dollars were spent by the United Nations and other international donors on ensuring the physical provision of schools for children. However in 2005, three years into "the new era for Afghanistan," teachers continue to teach ethnic hatred and intolerance. The textbooks

continue to be highly politicized, promoting social divisions and violence, seemingly unnoticed by the international community, whose expensive investments fuel rather than restrain this problem.

A new curriculum for Afghanistan together with upgraded teacher capacities is the most pertinent factors to ensure that peace and democracy is established and maintained in the country. This will also ensure that the new generation of Afghans learn a sense of social responsibility and national pride, incorporating ideas of unity, democracy, civil liberties, and diversity.

Decentralization has become a common feature of educational reform proposals in many countries. Once a national curriculum and teacher capacities are established the Afghan government can turn to decentralizing education. This can take the form of a transfer of powers from a central ministry to regional or local authorities for matters such as education, planning and the allocation of resources. Further decentralization of school management, finance, advisory and inspection systems can be a means of democratizing and improving the quality of education by increasing participation, ownership and accountability.

However, in situations of conflict, the benefits of decentralization of education may also carry risks. For example, decentralization of education is susceptible to partisan decision-making influenced by local politics and carries the potential for dominant groups to force their views. In certain contexts decentralization may also exacerbate the exclusion of women from consultation, decision-making and participation.

As Alexander Evans suggested in a January 2006 article for *Foreign Affairs*, the example of India may prove a more useful one for the fledgling post-Taliban Afghan state. India with a Muslim population of over 138 million and a tradition of minority rights has had to confront the specter of growing extremism in some regions. While traditionally religious minorities under the Indian Constitution have had the right to establish and administer schools, the Indian government has used laws established to prevent incitement to violence to shut down or otherwise intercede in a *madrassa* which is viewed as advocating violent extremism.¹⁸

One of the initiatives undertaken in India to mitigate the potential for extremism in *madrassas* was that the government paid for English, math, and science teachers in private *madrassas* if the *madrassa* applied to the program. This plan has double benefits; it reduces the risk of backlash among the *madrassas* to the state as it is a voluntary program, and it benefits the *madrassa* as it will receive a fully funded qualified teacher. In 2001, 3,500 out of 6,000 *madrassas* in the Indian state of Madhya Pradesh received funds for teachers, reaching some 175,000 students.¹⁹ This incentive based approach towards moderating extremist *Madrassas* might be a good fit in Afghanistan, where history shows that overt government interference in the provincial schools is seen as an overreach of governmental authority and has sparked political violence in the past.

The imposition of secular education in Afghanistan in the twentieth century has acted as both a precipitant and precursor to political violence. During the Soviet invasion,

¹⁸ Alexander Evans, "Understanding *Madrassas*," *Foreign Affairs* (January/February 2006): 3.

¹⁹ *Ibid.*

the education system was viewed as dominated by the communists, a socialist institution and strategy to undermine Islam. This formulation led to a militant reactionary response and an increase in the support of more extremist schools, namely Deobandis madrassas, both within Afghanistan, and in the border regions of Pakistan where millions of Afghan refugees had fled. The use of *madrassas* as a strategic tool to recruit Mujahidin, and their role in the formation of the Taliban demonstrates the importance of education as a strategy in war, and its necessary consideration in peace-building, democracy, governance, and reconstruction.

The historic dynamics of secular and religious education in Afghanistan in the past fifteen years suggests that the path towards the mitigation of extremist and the support of moderate institutions of education is not through a direct and immediate confrontation. This instantaneous change for reform will be seen as an attack upon traditional Islam. Change should be brought through gradual and positive reforms with clear communication of the intentions of what these changes will provide.

There are short, medium and long term implications of working out a more strategic, systemic approach to the provision of education in conflict situations. The greatest challenge is to develop better understanding and awareness of the links between education and conflict as an integral and routine part of policy, planning and practice amongst those working within all levels of the education and development sector. The daunting and often indirect nature of education's role in security, civil society, democracy, and governance should not be overlooked in the development process.

The requirements and outcome of development prioritizes education and improved literacy rates. As the case of Afghanistan demonstrates, time and time again the lack of attention to education, and the support and sustenance they can give to democratic reform needs to be a priority. Education is a pillar for sustainable security, secular democracy, and promotion of peace and tolerance. It is an area of research which necessitates further sustained attention and active analysis.

II. Recommendations on the Rule of Law

It is fair to say, Democracy is ultimately a question of balance of power between state and society, which results when a state's powers are held in check by procedures and institutional mechanisms grounded in and supported by society. In Afghanistan, leaders remain economically and institutionally powerful relative to society, and social actors find it hard to place demands on the state. Unless and until this uneven balance of power changes, the prospects for democratic transition in Afghanistan remain a difficult path but not an unattainable one.

Afghanistan's realities are so bold in contrast to what the US had projected during the early stages of the war. The projects of establishing the rule of law and judiciary reform are facing great challenges and obstacles. Understanding the Afghan realities and unrealistic objectives is the best way to avoid the past mistakes and also provides a better framework for similar situations in the future. The following recommendations are limited to the scope of this paper and the problems that are identified in chapter four.

A. High Priority for the Rule of Law and Judiciary Branch

In creating a legitimacy in a newly democratized government, establishing the rule of law and judiciary system is as important as other institutions if not more important. The basic requirement of a pre-modern society like Afghanistan to maintain and sustain a democracy is security, the rule of law, and civil society.

Rule-of-law development would facilitate economic transitions to the market model by helping achieve legal and institutional predictability and efficiency in a variety of areas crucial to the operation of a market economy.²⁰ It would also help bolster fledgling democratic experiments by strengthening new constitutions, electoral systems, and political and civil rights.

Moreover, progress on the rule of law would help alleviate two serious problems; corruption and ordinary crime, whose growing severity in Afghanistan appear to be the major negative side effects of the many attempted economic and political transitions.

It is also important to establish a functioning judicial system. Independent judiciary is the heart of any democracy and it should be the aim of any nation pursuing democracy to establish a form of legitimacy.

There should be a great emphasis on the rule of law by authorities and donor nations, like the UN, to plan, fund, and monitor the implementation of the rule of law. In the case of Afghanistan, the rule of law needs more attention and priority in terms of funding programs for sustainability. It is true that elections are great tools to legitimize a

²⁰ Thomas Carothers, "Rule of Law Temptations," Carnegie Endowment for International Peace, <http://www.carnegieendowment.org/publications/index.cfm?fa=view&id=23022> (accessed March 20, 2011), 6.

government. It is also true that when there is an election in a post conflict society then it is easy for those who are promoting democracy to claim progress and victory. But in countries like Afghanistan, creating law, order, fairness, and the maintaining the culture of the rule of law need more than elections and promotion for democracy, it needs implementation.

B. Creating Legitimacy and Respect

It is very important for a new government to gain legitimacy and respect among its people. For post-conflict societies, the government has to be careful in its initial steps. Justice is something that a nation demands the most after conflict and civil war. Once a country loses its trust in its government, regaining it will not come with ease. Therefore, it is very critical to take steps wisely and with caution.

To gain trust and legitimacy the government of Afghanistan should take the following actions; (1) only appoint qualified personnel in the judicial system, such as Supreme Court judges, attorney general, ministry of justice and other capacities available in the judicial system. (2) Fight corruption by adopting a strong anti-corruption mechanism and by providing adequate salaries for those involved in judicial branch to limit the corruption of judges and prosecutors. (3) Despite the political burdens, well known criminals and human right violators should be brought to justice. They should be prosecuted to demonstrate that the system is working. Some security measures should be adopted to prevent conflicts which may rise after these prosecutions. (4) For those who have been convicted during the Taliban regime and were to be executed, should be given another trial and their case should be reviewed. (5) International standards in treating

prisoner should be adopted, especially the concept of Procedural Due Process. (6) The judicial system should demonstrate its capacity and fairness by prosecuting criminal officials and powerful war lords.

It is well predictable that the implementation of these elements may not be feasible due to the political compromises, or insufficient resources.

C. Use of Informal Justice and ADR Methods

The informal justice systems are very common in pre-modern societies or in countries which lacked a functioning judicial system for a long time. When there is a wide network of informal mechanisms for conflict resolution and prosecution of criminals, for a country establishing a rule of law, the fastest ways to expand the new formal system is to merge the informal system to the formal system. This merge has two benefits, first, it increases the scope of the access to justice without investing a lot in creating the infrastructure, and secondly it prevents the society from abuses that may be imposed by the informal judicial systems.

A research conducted for the Human Development Report indicates that judges in Afghanistan lack the proper legal education, about half of the judges have education unrelated to law and did not finish their judicial training.²¹ In addition, judges have limited access to basic resources like statutes, legal textbooks, and access to decisions of

²¹ Center for Policy and Human Development, “Bridging Modernity and Tradition: Rule of Law and the Search for Justice,” *Afghanistan Human Development Report* (2007), <http://hdr.undp.org/en/reports/nationalreports/asiathepacific/afghanistan/name.3408.en.html> (accessed March 21, 2011), 42.

the Afghan Supreme Court.²² In recent surveys, only 20 percent of Afghans say they would turn to the formal system to resolve their problems.²³

In Afghanistan, for decades if not centuries, the informal justice system helped people to resolve their disputes. In rural areas, villages and small cities there are religious leaders or trusted people who are working in this capacity. There are reports that sometimes these informal systems ruled in severe violation in human rights, especially women rights.

The alternative dispute resolution methods like mediation are very effective and these methods are inexpensive to be used in conflict resolution. Training for the mediators is cheaper than judges or lawyers, thus it requires less resources and time. The informality of the process may attract more unsophisticated and less educated people to use this method more comfortably, which subsequently will increase the access to justice among Afghan people.

As a gradual step towards secular democracy, informal systems should be accepted by the formal system. The decisions of the informal system should be binding and enforceable. The decision should be appealable to the court system. The local mechanism should be limited to family disputes, property disputes, and misdemeanor crimes. The authority of the ruling of these informal systems should be limited to drafting settlement agreements, damage recovery, family matters, and they should have no

²² “36 percent of judges have no access to statutes, 54 percent have no access to legal textbooks, and 82 percent have no access to decisions of the Afghan Supreme Court.” See Afghanistan Human Development Report 2007, 71.

²³ "A Survey of the Afghan People," Asia Foundation, 2006.

authority for conducting criminal punishment.²⁴ The ruling should be documented, and the judicial system in cooperation with legislation should provide a compensation mechanism for local mediators.²⁵

In addition, the judiciary system should train and educate mediators. These mediators should be knowledgeable about customary laws and principles of the civil and criminal law of Afghanistan. There should be an incentive to hire women in this capacity, because they can listen to the female population that may not talk to male mediators about mental, emotional or physical abuse.

Creating a compensation package will increase the oversight of the judiciary system over these customary systems. Existence of a compensation package provides opportunities for the government to intervene and influence the operation of the informal system which otherwise would be completely independent from the government policies. Judiciary then can conduct training and educational programs about human rights, policies, and other principles that are in interest of the system.

D. Gradual Implementation of Modern Legal Standards

Afghanistan is a pre-modern society which is unfamiliar with modern legal standards. Culturally there is huge gap between these modern norms and what Afghan people believe and practice. Afghanistan is an Islamic country, with great fundamentalist

²⁴ This is similar to the South African approach. In South Africa, each claim is brought up in the customary court and then formal court. (Speech by Justice Yvonne Mokgoro, Constitutional Court of South Africa, November 2007, University of Maryland School of Law.)

²⁵ Mediators in this term refers to those who are trusted by their community for judging their disputes, they can be clergy members, elders, or civil mediators.

elements that had become bolder during the Taliban regime²⁶. Islamic civil and criminal codes were in place and still are the legitimate law for some Afghan people. Afghanistan Human Development Report stated that, “many said that the rule of law could be strengthened only if ordinary people perceived it as consistent with Islam and their cultural traditions.”²⁷

In adapting human rights and other non-procedural²⁸ legal standards, the cultural conflicts and tension between these concepts and the tradition principles of the society should be put in consideration. In Afghanistan, legal and social concepts like secularism, individual freedom, right of religion, right of marriage, gay rights, and women rights have the most conflict with fundamental and hardliner Islamic values.²⁹ In adopting those human rights standards that have conflict with Islamic tradition, a gradual and progressive approach should be adopted.

The media and educational institutions have the responsibility to educate the people about these social concepts of individual rights and freedom. This method would reduce the tension among these values, and the implementation of these policies would be more acceptable for the both Afghan people and the government. Human rights are designed to protect individuals against government abuses, and if Afghan individuals

²⁶ William J. Durch, *Twenty-First Century Peace Operations* (Washington, D.C.: United States Institute of Peace and the Henry L. Stimson Center, 2006), 477-79.

²⁷ Afghanistan Human Development Report, “Bridging Modernity and Tradition,” 42.

²⁸ Non procedural legal standard excludes the aspects of due process which applies in procedural fairness.

²⁹ Ann Elizabeth Mayer, *Islam And Human Rights: Tradition And Politics* (New York: Westview Press, 2006), 33-35.

consider these rights and protection to be insults and abuses to their principles, then these standards lost their basic reasons of existence.

The government and foreign actors should gradually implement these standards, and have long term plans to reach to their final objectives. Additionally they have to accept the will of the people of Afghanistan to decide for their own, enforcing and adopting these standards in a social vacuum and isolation from the realities of society has no positive effect other than dividing the already divided country further.

Islamic countries' experiences in trying to merge these new norms with their conservative cultures should be studied. Organizations involved in promotion of human rights in the Islamic world should be consulted. For example, the Cairo Declaration of Human Right in Islam,³⁰ which is declared by the Organization of the Islamic Conference, may be used as an alternative or as a preliminary step before adaptation of the Universal Declaration of Human Right in Afghanistan. Afghanistan can learn from other countries like Turkey, and Indonesia in their struggle in implementing the universal human right laws.

If a political vision for democracy to root and flourish in Afghanistan is to be realized then the agenda for reconstruction would have been better served if significant capacity-building projects were undertaken to re-engage Afghans citizens with democracy building. This would be more valuable than permitting self-interested groups, such as clerical or tribal elements, to reinforce pre-existing and rigid notions of power as expressed by the Taliban. If the process of democratization in Afghanistan can become

³⁰ See, <http://www1.umn.edu/humanrts/instree/cairodeclaration.html>.

part of the locally driven reconstruction agenda through acculturation and education rather than direct export, then “faith in secular democracy” may become possible.³¹

³¹ Beverley Milton-Edwards, “Faith in Democracy: Islamization of the Iraqi Polity after Saddam Hussein,” in *Democratization in the Muslim World: Changing Patterns of Power and Authority*, ed. Francesco Cavatorta and Frédéric Volpi (New York: Routledge, 2007), 125.

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