

Taking Exception to Norm: The Caretaker Governments in Bangladesh**Riaz Partha Khan**

BRAC University

(Forthcoming in *Constellations*)

But that events should happen in a republic which have to be dealt with by extraordinary measures, is not desirable; for though the extraordinary measures may be good at the time, the precedent thus established is bad, since it sanctions the usage of dispensing with constitutional methods for a good purpose, and thereby makes it possible, on some plausible pretext, to dispense with them for a bad purpose.

– Niccolò Machiavelli (2003, p. 195)

I. INTRODUCTION¹

The crises of democracy in the new millennium shed critical light on the prevailing approaches to democratization. In recent years, the triumphalist liberalism of late twentieth century has given way to “a large number of attempted democratizations stalling, reversing, or failing to consolidate” around the world (Hobson, 2012, p. 441). New classifications such as “hybrid regime,” “delegative democracy,” “competitive authoritarianism,” and “illiberal democracy” have proliferated to explain the challenges facing new democracies. The constraints of democratization accentuate the need to look beyond the electoral and cultural models of liberal democracy that dominate academic and policymaking approaches to “democracy promotion.” Recent studies point to the different ways in which liberalism and democracy have combined in the past, and call for the inclusion of different conceptions of popular, participatory, social, radical, and deliberative democracy, as well as those of dictatorship, in considering the ideals and trials of democratic consolidation (Kurki, 2010; Hobson, 2012; Landemore, 2017).

In Bangladesh, a series of unelected regimes endowed with extraordinary powers to conduct elections reveal the recurrent crises and challenges that have plagued the political system since the restoration of democracy in 1991.² On the other hand, the diverse origins of the “caretaker governments” in popular movements, party politics, regime changes, constitutional amendments, civil society, and states of emergency provide useful references to the manifold sites and agencies that inform the prospects of democracy. This essay provides a historical and

conceptual account of the significant but questionable role of the caretaker phenomena in ensuring the continuity of democratically-elected governments in Bangladesh over the course of two decades. The aim is to decipher the benefits and limitations of the disparate regimes grouped under the nomenclature in order to trace their singular and cumulative effects on democratic politics. The main thesis suggests that despite the uneven legacy of their uses and disadvantages, the overall caretaker experience reveal a constellation of political practices and actions that retain an essential (but circumscribed) affinity to ideas of democracy. As a collection of discrete events, the regimes appear contradictory and paradoxical. While their usefulness as a means of restoring democracy at times of crises are well-documented, the demise of the constitutional version exposed the limitations of devising new electoral rules when politicians are predisposed to disregard existing ones. The repeated use of unelected regimes to conduct elections also revealed the unanticipated dangers (of emergency rule) arising from the adoption of an ad hoc measure as a constitutional law. As a norm, the caretaker technique succumbed to the limits of democratization and, as an exception, it revealed the Janus-face of emergency powers. *In the final analysis, the normalization of an exceptional measure gave rise to the paradox in which the norm itself brought forth an (other) exception.*

While the caretaker regimes belie any linear or modular path of political development, they disclose historical tendencies and critical relationships with respect to (a) each other, (b) extant political conditions and agents, and (c) concepts and practices of democracy. Drawing on a range of political theories, the concepts of *caretaker republic*, *caretaker norm*, and *caretaker exception* are developed in order to trace the distinct forms to specific moments, practices, and sites of politics, democratic and otherwise. The concepts allude to the different manifestations of the caretaker phenomena, respectively, as a republican innovation set in a popular uprising, as a legal rule and political norm of election administration, and as an autocratic regime under quasi-military authority. Taken together, the general thesis points to the complex relationship of the caretaker phenomena to the prospects and challenges of sustainable democracy in Bangladesh. In all but one instance, the transition regimes conducted credible elections that ensured the

unprecedented continuity of elected governments for nearly two decades. The regimes also encapsulated the decisive role of popular movements, public opinion and actions, bipartisan politics, and “non-partisan” republicanism in ensuring the continuity of democratically-elected governments. On the other hand, their periodic recurrence revealed the endemic constraints of democratic consolidation posed by the prevalence of bitter partisanship, one-sided parliaments, street politics, and military intervention. As allegories of political action, the regimes comprise a cluster of experiences that singularly and repeatedly referred to the promise and challenge of sustaining democracy amid recurrent crises of democratization.

II. METHODOLOGICAL APPROACH

As the name suggests, the caretaker government is a custodian of the state during periods of political transition. It is a matter of convention in many democracies but also appears elsewhere to restore peace, order, or democracy at times of war, civil strife, or fall of government. In parliamentary democracies, for example, the incumbent government takes on the mantle of caretaker authority during elections. Mandated by convention or law, the practice is designed to mitigate against undue advantages of incumbency in elections, and ensure orderly transfer of power. In other instances, the caretaker option has been used as a transition mechanism in times of political crises in numerous countries such as Iraq, Israel, Italy, Malaysia, Pakistan, Kosovo, and others (Ahmed, 2004; Tiernan, 2011). In Bangladesh, the caretaker technique has been adopted during the transition to democracy, amid crises of democratization, and as conduit for emergency rule. From a legal-political perspective, the *five* regimes are heuristically assembled under two broad headings. The category of *Emergency Caretaker Government (ECG)* includes the first caretaker government (CTG-I) conceived following a state of emergency in late 1990, and the fifth edition (CTG-V) installed at the onset of another emergency in early 2007. Both appeared as exceptional regimes during periods of acute crises, but conducted successful elections in radically different ways. Interspersed between them are three editions of *Constitutional Caretaker Government (CCG)* that were formed, according to a new law, every

five years (1996, 2001, 2006) to conduct parliamentary elections. While CTG-II and -III were credited with successful elections, the failure of CTG-IV triggered the demise of the caretaker law itself.

Table 1

Types of Caretaker Governments in Bangladesh, 1990-2008

CTG	Term	Type	Preceded by	Succeeded by
CTG-I	Dec, 1990 – Feb, 1991	ECG	Dictatorship	5 th Parliament (BNP)
CTG-II	Mar, 1996 – Jun, 1996	CCG	6 th Parliament	7 th Parliament (AL)
CTG-III	Jul, 2001 – Oct, 2001	CCG	7 th Parliament	8 th Parliament (BNP)
CTG-IV	Oct, 2006 – Jan, 2007	CCG	8 th Parliament	CTG-V
CTG-V	Jan, 2007 – Dec, 2008	ECG	CTG-IV	9 th Parliament (AL)

The achievements of the first three regimes generated great enthusiasm for the caretaker mechanism as a “global role model for free and fair elections” in new democracies (Sobhan, 2007). The first edition was hailed for overseeing the peaceful transition from dictatorship to democracy, while the next two constitutional versions were commended for conducting credible polls that ensured the continuity of elected governments. Yet, the conflation of the early regimes in a modular form obscures critical differences in their political circumstances and legal status. CTG-I was viewed as an ad hoc measure prompted by a “doctrine of necessity” during the movement to restore democracy, whereas CTG-II and -III were formed according to a new law enacted in democratic ‘peacetime’ due to the inability of political parties to conduct legitimate elections. CTG-I was the outcome of a rare bipartisan consensus, but CTG-II and -III were plagued by partisan intrigue and political conflict. CTG-II was created by a constitutional amendment, while CTG-III was the only regime formed without changing the electoral rules.

The ready acceptance of the early regimes is in contrast to the controversies surrounding the status of the last two editions as bona fide caretaker governments. Kamal Hussain averred that the fourth edition was “not a legal caretaker government. It had failed to meet constitutional standards of non-partisanship and had to be reconstituted” (cited in International Crisis Group, 2008, p. 10). Yet, CTG-IV was treated as a caretaker government by the media, public, and foreign governments throughout its brief tenure (Liton, 2006; Chowdhury, 2015). Even the opposition parties adopted a wait-and-see approach rather than rejecting it outright as a caretaker regime (*The Daily Star*, October 30, 2006). Likewise, the status of the fifth edition was directly challenged in the courts during and after its tenure, but the conduct of successful elections led to wider acceptance of its caretaker assignation (*The Daily Star*, January 7, 2008; Hoque, 2015, p. 274). This paper argues that several, if not all, caretaker regimes were surrounded by crises and controversy, and thus exhibited singular and, at times, extreme features relative to each other and the political system. Nor were the last two regimes the only ones with questionable relationship to constitutional and democratic institutions. Instead of rejecting them outright from a so-called “established model,” the abject failure of CTG-IV, and arbitrary rule under CTG-V, are examined as notable deviations in the constitutional and emergency typologies, respectively.

The steady accretion of five transition regimes distinguished by diverse origins, forms, and legal standing accentuate the problem of representation of the caretaker experience as a whole. Any historical account is tasked with identifying the specificities of each occurrence by means of conceptual distinctions that shed light on the ideas encapsulated in the overall phenomena. The individual cases reveal the extreme and singular manifestations of the caretaker phenomena originating in emergencies and elections, functioning as exceptional measure and legal norm, exercising limited and unlimited powers, ruling for brief and extended periods, and evincing the potential for transition to democracy and otherwise. Mirroring these differences are the numerous contravention, ratification, amendment, and suspension of the constitution that accompanied the interim regimes. Given the extreme variations, this paper turns to Walter Benjamin’s critical methodology to trace the singular and recurrent elements of the caretaker phenomena.

Walter Benjamin's epistemological critique takes up the "question of representation" in his materialist conception of the discontinuous structures of experience and knowledge. As Adorno (2006, p.91) adds, "awareness of discontinuity goes hand in hand with the growing doubts about the possibility of understanding history as the unified unfolding of the idea," around which facts "simply disperse in the course of time." In Benjamin's view, phenomena "do not, however, enter the realm of ideas whole, in their crude empirical state," nor are ideas "among the given elements in the world of phenomena" (1998, pp. 33, 35). "[B]lasted out of the continuum of history," phenomena are subdivided into basic elements clustered together in configurations that participate in the representation of ideas (1968, p. 261). Benjamin traces the basic elements to the discrete, disparate, or disruptive fragments of phenomena that are "most clearly evident at the extremes." He depicts ideas as "timeless constellations" that represent the contexts in which the "unique and extreme" elements of phenomena stand alongside each other like stars in a constellation (1998, pp. 34-35).

Since phenomena are not incorporated in ideas, nor do ideas simply represent themselves, Benjamin (1998, p. 34) explicates the "mediating role" of conceptual distinctions that are critical to both the recovery of phenomena and the representation of ideas. Defined in scope and content by the objects of empirical reality they comprehend, the set of concepts that facilitate the "salvation" of phenomena effectively group together the fragments of experience by their similarities and differences as "constituent elements" in the constellation of ideas. At the same time, concepts carry out "the task of representation" by actualizing the idea in the concrete elements of such a configuration, thereby revealing ideas as objective interpretation of manifest phenomena. As a second step, this paper develops adequate concepts drawn from political theories of popular movements, republicanism, deliberation, elections, and dictatorship in order to trace the forms of caretaker regimes as, alternatively, (a) popular-republican innovation, (b) legal-political norm, and (c) states of emergency-exception. The concepts of caretaker republic, caretaker norm, and caretaker exception are utilized to evaluate the benefits, limits, and dangers of the caretaker technique by linking the unevenness of the regimes to moments and practices of

democratic politics. As a final step, the thesis posits the interim regimes as allegories of diverse actions and sites of politics that singularly and repeatedly allude to familiar ideas of democracy. The caretaker phenomena serve as invaluable references to the ways in which a range of political practices are brought together to reveal the agencies and exigencies of democracy that continue to inhere amid weak legal and political institutions.

III. (PEOPLE'S) CARETAKER REPUBLIC

The significance of the first caretaker government (CTG-I) stems from its iconic role in restoring democracy, the extraordinary circumstances of its origin, and the novelty of its form. The interim regime was the culmination of a popular movement to oust an entrenched dictator, and the outcome of a rare bipartisan consensus leading to a dynamic political innovation. Its appearance was linked to a 'new beginning' for democracy, and its form expressed a republican ethos of non-partisanship that became the benchmark of election administration. Hence, the allusion to the "people's caretaker republic" attends to the critical role of collective movement, political unity, and public action in hastening the demise of an autocracy, voicing demands for self-government, and impelling a novel formula of "disinterested impartiality" that briefly overcame the otherwise debilitating partisanship of political groupings.

A. The Origin of Caretaker Government (CTG-I)

The initial demands for a caretaker regime arose during the tumultuous period of mass mobilization and political action that ended the dictatorship of General Hossein Muhammad Ershad (Hakim, 1993; Ahmed, 1994; Ahmed, 1998). Spurred by relentless pressure from the All-Party Students Union (APSU), the opposition political parties issued a joint declaration on November 19, 1990 for the creation of a neutral authority to "restore the credibility of the electoral system [and] hand over power to a "sovereign parliament" elected through free and fair elections" (Hakim, 1993, p. 32-3). Ershad declared a state of emergency but, faced with cohesive opposition and large demonstrations, resigned on 6 December 1990. He was replaced by Chief Justice Shahabuddin Ahmed, appointed moments earlier as Vice President. Assuming the post of

Acting President, Justice Shahabuddin formed a council of advisors to oversee parliamentary elections within ninety days and serve as executive authority in the interim.

While the transition regime was deemed “extra-constitutional in nature,” jurists agreed that “the doctrine of necessity prevailed over fine constitutional niceties” (Khan, 2018, p. 121; Ahmed, 1998, p. 13). Comprised of bureaucrats and professionals, the regime took charge of state administration, restored public order, and reconstituted the Election Commission with wide jurisdiction to administer new polls. The parliamentary elections were held on February 27, 1991 in an “atmosphere of unprecedented peace” (Hakim, 1993, p. 53). The Bangladesh Nationalist Party (BNP) won the most seats and formed the first democratically elected government in nearly two decades. Despite objections from the losing side, the general public and election observers deemed the polls as “free, fair and impartial.” On August 6, 1991, the newly-elected Fifth Parliament unanimously passed the Constitution (Eleventh Amendment) Act to ratify the actions of CTG-I and enable the return of the chief adviser to his judicial post. The unanimous passage of the Constitution (Twelfth Amendment) Act on the same day restored the parliamentary system of government.

B. Popular Movements and Spontaneous Beginnings

Difficult to predict or foresee, political movements and contentious politics that challenge authoritarian regimes and usher in popular rule are a notable dimension of modern democracy that recall its revolutionary traditions (Arendt, 2006; Balibar, 2015). Some critics discount the impact of mass mobilization in democratic transitions on account of their volatility, escalating demands, divisiveness, and potential for radicalization (Huntington, 1993; O’Donnell & Schmitter, 1986). Others, however, highlight the incidence of popular movements in not only spearheading the transition to democratic rule, but also creating political leadership, engaged public, democratic organizations, and new forms of participation that enhance the durability of young democracies (Minier, 2001; Kadivar, 2018). The references to popular insurgencies, “contentious collective action,” or “revolutions” in political theory further highlight the import of political movements and contentious actions in democratic thought and practice (Tilly, 2003; Arendt, 2006; Levitsky &

Way, 2013; Wolin, 2018). In this view, democracy is seen not just as a form of rule, but conceived “aconstitutionally” as “a project concerned with the potentialities of ordinary citizens” (Wolin, 2018, p. 100), “a tendency... for power to devolve into the hands of multitude” (Balibar, 2015, p. 3), or a “rupture” occasioned by the actions of “those who have no-part” (Ranciere, 2001, Th. 5). For Wolin (2018, p. 111), the tension between forms of rule and contestations of citizens captures the unstable or anarchic element of democracy as “a rebellious moment that may assume revolutionary ... proportions.” In her influential account, Hannah Arendt (2006) depicts the revolution as the new beginning of political freedom arising from deliberation and action in public spaces and aimed at forming a republic.

Rather than a mere prelude to democratization, the origin of CTG-I marked the decisive conjunction of a popular movement, public action, political unity, and constitutional innovation as constitutive moments in restoring democracy. Political action, according to Arendt, retain an element of “startling unexpectedness” that can not only trigger the *liberation* from oppression but also initiate the beginnings of political *freedom*, defined as “a new, or rather rediscovered form of government; the constitution of a republic” (2006, p. 23). Recalling the legacy and organizational forms of past campaigns during the Language Movement of 1952 and the pro-democracy movement in 1968-69, the popular movement that erupted in late 1990 was likewise shaped by the convergence of democratic tendencies and forces that challenged authoritarian rule (Umar, 2000; Hussain, 2006). The events of 1990 marked the spontaneous beginning of a political movement that precipitated the liberation of the people from an entrenched dictatorship. Against all statistical odds, the movement burst forth unexpectedly, and overcame not only the repressive apparatus of the old regime but also divisions among the opposition. Despite more or less constant antipathy to the Ershad regime, the rivalries and opportunism of opposition parties ensured the general’s staying power for nearly a decade. As late as October 1990, “Ershad felt unperturbed [and] still confident that the opposition would fizzle out in due course” (Ahmed 1998: 8). And yet, spearheaded by the student alliance, the rapid confluence of

political unity, public support, and mass demonstrations hastened the regime's demise in less than a month.

The popular movement also encapsulated the "politics of freedom" that led to the return of democratic government as the direct outcome of political action. "The *raison d'être* of politics is freedom," Arendt writes, "and its field of experience is action" (1961, p. 146). Central to the conjunction of politics and freedom are the experiences of acting in concert with others in public settings. In Arendt's conception of action, individual striving for excellence and virtuosity by means of "words and deed" in company of others is equated with the public capacity of "speech and action" to "begin" or set in motion the conditions for self-rule (1958, p. 177). Hasanuzzaman (1998, p. 134) writes, "People were infected with a cry to oust the autocratic Ershad government and establish democracy." The events were marked by the proliferation of public spaces of speeches and actions where individual and groups came together to engage each other in spontaneous politics of self-government. Ershad's declaration of emergency in November 1990 fueled more demonstrations as "thousands of people came out in the streets to defy curfew orders and shouted slogans demanding the general's resignation" (Hakim, 1993, p. 33). By early December, politicians, professionals, workers, cultural groups, and people from all walks of life joined the student-led movement. Ahmed (1998, p. 11) recounts the heady days of restoring democracy:

"Professional groups, doctors, lawyers, journalists, teachers, the workers, and various socio-cultural groups under the banner of Sammilita Samskritik Jote and similarly various women organizations united under Oikabadaya Nari Samaj joined hands with the powerful All Party Students Unity to launch the final blow to General Ershad. In that final blow, the government employees and other sections of the society freely joined the movement."³

C. The Virtuous Dictator

The references to ancient Roman republicanism in political theory extend to a keen appreciation of the temporary executor of special powers during times of turmoil (Machiavelli, 2003; Rousseau, 1997; Schmitt, 2014). While details of its origin remain shrouded in myth, the office of dictator is traced to the frequency of external and civil wars that plagued the early

Republic, on the one hand, and the complex division of authority that allegedly incapacitated government during such crises, on the other. Over time, the republic incorporated provisions for the senate to direct consuls to appoint a dictator with “unified” executive authority to lead during periods of extreme crisis. A constitutional process vested a private person with the imperium of “sacred and absolute powers” that transcended the normal constraints imposed on magistrates. The dictator was empowered to adjourn constitutional procedures, marshal the army, and suspend the rights of citizens in order to resolve external or internal threats to the republic. The terms of office and decrees, however, were limited to six months, after which the status quo ante bellum was restored, and many a dictator abdicated sooner following the completion of stipulated tasks (Lintott, 1999).

In its composition and policies, CTG-I resembled a “republican” formula of commissioned authority created for the execution of specific tasks by an impartial agency within a specified period of time. Justice Shahabuddin was selected on account of his reputation of neutrality and detachment from party politics, and the regime was celebrated for its impartiality, consultative approach, and provisional powers. Given the widespread mistrust of election authorities, and bitter rivalries among political parties, the “neutral” credentials of the acting president emerged as the principal “virtue” of caretaker authority that assuaged the fears of voters and ensured the participation of all parties in the election. “The factor that contributed to the fairness and impartiality of the fifth parliamentary elections,” Hakim (1993, p. 102) notes, “was the non-partisan character of the caretaker government.” The Acting President’s disinterestedness in holding political office also ensured the prompt dismissal of the interim regime following the completion of its tasks. As Justice Shahabuddin assured the public, “neither myself nor my advisors have any stake in the coming elections excepting that it should be above any question” (cited in Ahmed, 1998, 34). Much like Cincinnatus, he was called away from his vocation to defend republican institutions and, with no motive other than the “virtue” of neutrality and fairness, he left office after discharging his obligations.

IV. THE RISE AND FALL OF CARETAKER NORM

The recourse to extraordinary measures for the safeguard of political institutions is not unprecedented in old and new democracies. The novelty of the caretaker career in Bangladesh, however, stemmed from subsequent efforts to legislate the provisional measure as a regular and binding rule of the electoral process. The concept of “caretaker norm” addresses the formal procedures of legislating the new caretaker law in parliament, as well as the normative force of the interim solution arising from popular agitation outside parliament. In turn, the “rise and fall” of the caretaker norm revealed its uncertain legality and legitimacy, vulnerability to extreme partisanship, and unanticipated scope for emergency rule.

A. The Origin of Constitutional Caretaker Governments

While several caretaker bills were submitted in parliament after 1991, the demands for the transition authority as a “permanent arrangement” did not gain impetus until after 1994 (see Ahmed, 2004; Ahmed, 2008; Khan, 2018). Unimpressed by the government’s maladroit handling of by-elections, the opposition resigned en masse from parliament in December 1994, and launched a campaign of street agitations throughout the next year to press demands for general elections under a non-partisan authority. Despite intense negotiations by civil society groups, the BNP government dismissed the opposition demands as a breach of constitutional rules, and held elections on February 15, 1996 (Ahmed, 2008). Boycotted by opposition parties, ignored by voters, and marred by violence and arrests, the polls returned BNP with overwhelming majority in parliament. The elections were condemned by local and foreign observers, and all opposition parties called for dissolution of the “illegitimate legislature” (Khan, 2018, p. 130). As protests raged throughout the country, the government introduced a Caretaker Bill during the only session of the Sixth Parliament.

Enacted on March 26, 1996, the Constitution (Thirteenth Amendment) Act adopted the ad hoc features of CTG-I, including its rules of selection, function, and duration, as the legal basis of general elections in Bangladesh. According to the new law, the president was required to appoint a ten-member caretaker government, led by a chief adviser, within fifteen days after

parliament was dissolved. The law provided for selection of the chief adviser from a staggered list of 'non-partisan' candidates that included, in descending order of priority, retired chief justices and judges of the Supreme Court Appellate Division, eminent citizens of the country and, as a last resort, the president. The chief adviser would select the other advisers although the president retained some discretion in their appointment (Ahmed 2004: 47-48). As interim authority, the cabinet of advisers was accorded full administrative powers to conduct state affairs and hold elections within ninety days. The president, however, retained control of the Ministry of Defense as well as the unilateral authority to declare emergency.

Second Caretaker Government (March 1996 – June 1996)

Following the passage of the caretaker law, the BNP government resigned on March 31, 1996, and a caretaker government (CTG-II) was formed with retired CJ Muhammad Habibur Rahman as chief adviser (see Ahmed, 2004; Chowdhury, 2015; Khan, 2018). The regime moved swiftly to establish the procedures for elections within ninety days. The Election Commission was reconstituted along the lines of 1991 to establish order and administer polls. In the ensuing elections held on June 12, 1996 with record voter turnout, the Awami League (AL) alliance emerged with a majority in parliament. The losing side condemned the results as biased and rigged, and accused CTG-II of colluding with its rivals. Once in opposition, the BNP alliance proclaimed its intentions to boycott parliament and pursue confrontational politics in the streets.

Third Caretaker Government (July – October 2001)

Five years later, the parliament was dissolved following the end of the AL government's term in office, and retired CJ Latifur Rahman was appointed as chief adviser of the caretaker government (see Rahman, 2002; Ahmed, 2004; Khan, 2018)). While not devoid of controversies, the formation of CTG-III marked the first time since independence that the polls were conducted according to the rules of previous election. Despite violent campaigns that claimed well over a hundred lives, CTG-III managed to adhere to the ninety-day timetable, and elections were held amid heavy security presence on October 1, 2001. Once again, the electorate

returned the opposition party (BNP) with a majority in parliament. The AL alliance disputed the results and, alleging conspiracies between BNP and CTG-III, vowed to boycott parliamentary sessions and conduct nonstop protests against the government.

Fourth Caretaker Government (October 2006 – January 2007)

The controversies surrounding the formation of the next caretaker regime introduced new rounds of partisan intrigue and street politics that led to the unravelling of the caretaker law itself (see Haque, 2008; Alamgir, 2009). First, the AL-led opposition rejected the nomination of retired justice K. M. Hasan as chief adviser on account of his past affiliations with BNP. Decrying government manipulation of judicial appointments, the opposition called for changes in the caretaker law. Although Justice Hasan eventually declined the nomination, the parliament was dissolved on October 30, 2006, and President Iajuddin Ahmed became chief adviser of a new caretaker government (CTG-IV). Although included in the selection criteria of the Thirteenth Amendment, the concurrent role of the president as chief adviser of CTG-IV was widely decried as a violation of its non-partisan spirit. In his role as chief adviser, the president vowed to hold elections in ninety days despite opposition threats of boycott and violence. In his capacity as president, the chief adviser deployed the army and police to repress opposition protests. Finally, admitting failure to ensure elections with the participation of all parties, the president declared a state of emergency on January 11, 2007, and resigned from his post of chief adviser. Yet another caretaker government was formed on the following day with strong military backing.

B. Deliberation and New Democracies

In deliberative models of democracy, the legitimacy of laws and statutes rest not just in the formal rationality of legislative procedures, but also stem from the moral-practical rationality “that reside in the statutes produced through parliamentary deliberation and public criticism” (McCormick 2004: xxv). Deliberation refers to the reasoned exchange of views among free and equal associates on matters of common or general interest as the basis of collective decision making and exercise of public power. Bemoaning the Weimar experience, for example, Max Weber professed that the caliber of a parliament depends on “*whether great problems* are not

only discussed but are *conclusively decided* there” (1994, p. 145). In his view, deliberation and publicity enhance the expertise of politicians and make for an educated electorate, while their deficiency reduces the legislature to a powerless “rubber-stamp assembly.” In idealized versions, deliberative democracy alludes to the norms and procedures by means of which discussion and exchange of views provide the grounds for the practical rationality and political legitimacy of competitive elections, legislation of laws, and public opinion formation. For Manin (1987), the legitimacy of elections stem from deliberation of voters about the alternatives presented by rival candidates and parties, and not merely from the final outcome. Benhabib (1996) argues that the justification of majority rule stem from the procedures of adjudicating between competing views, including those of minority parties. The role of opposition in parliament “incorporate this rule of deliberative rationality that majoritarian decisions are temporarily agreed-upon outcomes” (p. 72). For Habermas (1994, p. 9), the “discursive rationalization” of laws and statutes of the legal-legislative state stem from the procedures and “communicative power” of democratic opinion formation.

With rare exceptions, the significance of deliberative norms and procedures in sustaining nascent democracies is generally overlooked in electoral models of democracy. In theories of deliberation, the omissions typically arise from assumptions about the allegedly modern or ‘western’ precepts of deliberative rationality and from privileged speech forms. (Dryzek, 2014; Young, 1996). Even in “complex modern democratic societies,” as Benhabib (1996, pp. 70, 67) notes, the procedural specifications of ideal discursive forms are “not automatically transferable to macro-institutional levels.” These challenges can be aggravated in new democracies with histories of colonial and autocratic rule. Nevertheless, as Benhabib (1996, p. 70) suggests, the attention to deliberation provide guidelines for assessing the democratic content of legislative procedures and outcomes, such as committee formation and membership, agenda setting, rules of debate, and competition of views. In the context of Bangladesh, where a long legacy of military rule reduced parliaments to rubber-stamp bodies, the insights of deliberative democracy are instructive in revealing the challenges to the consolidation of representative government.

C. Legality and Legitimacy of the Caretaker Law

The hasty legislation of the Thirteenth Amendment by an “illegitimate legislature” was juxtaposed by public enthusiasm for a renewed caretaker arrangement. In other words, the formal legitimacy of the new law stemmed from its legislative origins in parliament, while its substantive justifications arose from popular agitation outside parliament. The overwhelming legislative control of the ruling party after the farcical elections of February 1996 enabled it to adhere to the otherwise demanding requirements of formally amending the Constitution with requisite votes. As Ahmed (2008) notes, the “one-sided election” resulting in the domination of a single party eased the passage of the bill according to parliamentary rules: “For an amendment of the Constitution the general elections which gave almost a full Parliament to BNP was no doubt necessary” (p. 116). The Bill was hastily rushed through the Sixth Parliament in its only session, without participation of opposition parties, minimal deliberation in committees, and solitary objections from independent members (Ahmed, 2004, p. 34).

Despite its questionable parliamentary origins, the popular demands for a caretaker authority, spearheaded by opposition parties and increasingly supported by the public, accorded a measure of legitimacy to the law. Aware that a constitutional amendment to formalize the caretaker arrangement would not succeed in parliament without support of the majority party, the opposition decided to boycott the legislative sessions until the government initiated such a bill. Having resigned en masse from parliament, they waged a relentless campaign of protests and demonstrations, marked by frequent strikes and prolonged *hartal* (lockdowns), violent clashes among rival parties, and mass arrests. As Ahmed (2008, p.7) notes, “it is not only unprecedented that a ruling party has been ordered to bring about a constitutional amendment but also it is not a healthy democratic precedent. A constitution is not altered just because some of the provisions are not liked.” The sentiment was echoed in the media:

“The very idea that a group of politicians will band together, challenge the structure of running the country (in this case the elections) and then have it ratified at a future date, makes a farce of the Constitution, the process of framing and amending it and also of the people’s will that gives shape to the Constitution in the first place.” (cited in Ahmed, 2004, p. 28).

Despite initial disillusionment with opposition tactics, the anti-government movement gained rapid momentum in the wake of the February 1996 elections, as public opinion rallied against the fraudulent polls and in favor of an amendment to formalize the caretaker role. Finally, with the government's resignation, it appeared that the popular support for a 'neutral and non-partisan' transitional authority accorded substantive legitimacy to the caretaker law passed by an otherwise illegitimate parliament. It came to be widely viewed as the politically and morally right decision that marked a remarkable coincidence of law and will of the people. The predilection for caretaker arrangements thus evolved into a moral-practical standard of what has to be done, and ought to be done, precisely when the constitutional rules of the electoral process are regularly transgressed. The success of the next two regimes in conducting credible elections seemed to transform the law into a positive and normative technique of elections in the context of debilitating partisanship.

D. Caretaker Authority and Deepening Democracy

Despite earlier instances of elections and legislatures dating back to the last years of British rule, the CTG-administered polls marked the first sustained tradition of legitimate elections in Bangladesh. "All pre-1991 elections in Bangladesh," Hakim (1993, p. 3) bluntly notes, "were more or less, rigged." Ahmed (2004, p. 2) concurs that "elections held before 1991 were mostly intended to serve purposes unrelated to the strengthening of democratic institutions." By 1990, the loss of faith in the incumbent government's ability to administer "free and fair" elections generated broad support for a "neutral" authority to administer elections (Ahmed, 1998, p. 6). The institutional changes wrought by autocratic rulers also reduced the legislature to "impotent speech-making assemblies." As Hakim (1993, p. 45) notes, the "first four parliaments were merely rubber-stamp bodies ... Both under parliamentary and presidential systems, the parliament was made subservient to the whims of omnipotent rulers."

The passage of the Twelfth Amendment Act in 1991 paved the way for the restoration of a "sovereign parliament" with the majority party leading the government and minority parties in

the opposition. Yet, political developments in and out of parliament impeded the consolidation of deliberative norms and practices in the legislative body. The prime minister was required to retain “support of the majority of the members of Parliament” in order to form a government, and the cabinet was “collectively responsible to Parliament.” On the other hand, the amendment granted wide executive powers, and control over its members and agenda in parliament, to the ruling party. Until the revival of Article 70 of the original Constitution in 2011 that, once again, prohibited “floor-crossing” solely with respect to voting against the party, the post-restoration constitution retained provisions that restricted members of parliament from voting, abstaining, or resigning against the directives of their party leadership. The stringent rules against floor crossing and group formation ensured party control over members of parliament, and curtailed their autonomy during legislative deliberation and voting (Choudhury 1994: 85-9). The majority party’s domination of committees effectively neutralized the parliament’s powers to check or dismiss the government, and enabled the latter to govern by executive ordinances. Already in the early years of restored parliament, Choudhury (1994, p. 91) concluded that the “position of the prime minister in Bangladesh today is almost as strong as it was ... under the ‘military president’.”

On the other side, the opposition habitually resumed confrontational politics soon after elections, marked by parliamentary walkouts, boycotts, and violent street protests to force the resignation of elected governments. As noted, the mass departure of opposition parties from the Fifth Parliament in 1994 was followed by nonstop demonstrations to press demands for a caretaker amendment. In a “tit-for-tat” strategy, the BNP opposition in the Seventh Parliament began agitating for the government’s resignation and early elections over two years prior to the end of term. The cycle of parliamentary boycott and street politics continued during the Eighth and Ninth Parliament under alternating rule of the two major parties. Writing in 1994, Ahmed (2008, Prologue) lamented that the parliamentary norms of “robust debate and honest dialogue” were being eroded by “the culture of brute force and internecine street agitations.” The admixture of “election engineering” and “tactics of boycotting the legislature” gave rise to the

“concept of a caretaker government [as] a mechanism for extrication from this quagmire.” He also predicted the likelihood of the caretaker regime itself “facing a short shrift in that effort.”

With the institutionalization of caretaker rule, the interim formula itself became a focal point of partisan strategies and disputes at election time. While CTG-II and CTG-III managed to administer timely elections, the controversies surrounding both regimes before and after elections underscored their vulnerability to political intrigues. Throughout the constitutional caretaker career, the election campaigns were dominated by renewed rounds of “caretaker politics” to advance partisan prospects in elections. In alternating sequence, the two major parties centered their political campaigns on agitating for new caretaker measures when in opposition, and dismissing or manipulating the caretaker option when in power. Finally, the chaotic origin and ending of CTG-IV exposed the ease with which an incumbent government could hijack the selection criteria of the caretaker law. The adoption of the caretaker technique as an electoral norm thus accentuated the contradictory logic of political parties adopting a new set of rules precisely due to their inability to abide by the existing (constitutional) rules of conducting elections. As Ahmed (2004, p. 115) notes, “the main threat to consolidation stems from the unwillingness of the main political parties to abide the ‘rules of the game’.” The subversion of the selection criteria in CTG-IV revealed that the mere formality of law could not ensure that politicians would obey the new rules for endogenous reasons, such as voter sanction or political cost of upheavals. As Przeworski (2006) argues, when politicians place higher premium on monopolizing power over the relative benefits of alternation in office, constitutional rules remain “exogenous” to calculations of whether or not to “play by the rules” even after agreeing to them.

V. CARETAKER (STATE OF) EXCEPTION

The Emergency Caretaker Governments naturally exemplified different forms of extra-constitutional authority. Unlike CTG-I, the arrogation of vast powers by CTG-V revealed the divergent possibilities that can arise in an emergency. The origin and powers of CTG-V thus

constituted an unforeseen alternative to the ‘commissarial’ form pioneered by CTG-I and later adopted into law. By contrast, the powers of CTG-V were more in line with the ineffectual forms of authoritarian rule favored by fascist thinkers. The concept of “caretaker exception” deploys Carl Schmitt’s theory of dictatorship to highlight the differences between the two types of emergency governments, and trace the emergence of an autocratic regime under the guise of caretaker government.

A. The Origin of the Caretaker State (CTG V)

With the return of the military to the political arena, CTG-V was installed under the figurehead of an obscure banker on January 12, 2007 (see Haque, 2008; Alamgir, 2009; Chowdhury, 2015; Khan, 2018;). While distinguished from an outright coup, the presence of security personnel in the streets and government underscored the army’s prominent role in dictating the composition and powers of CTG-V. Buoyed by public desire for political reforms, and backed by extreme force, the regime embarked on an ambitious agenda of institutional changes to tackle the corruption and criminalization of politics and administration. Armed with new Emergency Power Rules decreed on January 27, 2007, CTG-V banned political activities and launched a campaign of arrest and detention of politicians and businessmen, including leaders of major parties. During the honeymoon phase, the regime announced measures to prepare new voter lists and identification cards, and proposed ambitious plans to introduce reforms in judiciary, public administration, and other public institutions. It also sought to compel political parties to undertake internal reforms, including an ill-conceived plan (“Minus-Two Formula”) to exclude the top leaderships of AL and BNP from participation in future elections. Projecting an extended timetable of reforms, the chief adviser postponed elections by two years.

The next phase was dominated by growing public unease about the prolonged state of emergency, lack of substantive reforms, allegations of human rights violations and corruption, and controversial economic and social policies (International Crisis Group, 2008; Alamgir, 2009). The final phase marked the regime’s full capitulation to the incarcerated politicians. In an effort to convince the political parties to participate in elections, CTG-V backtracked on its anti-

corruption drive and released large numbers of politicians, including the leaders of AL and BNP, from prison. Finally, CTG-V held elections on December 29, 2008 with the participation of all parties. Amid record voter turnout, AL returned to power with a large majority in parliament while BNP suffered a severe defeat.

B. The State of Exception

Generally associated with dictatorships, the expansion of executive powers during an emergency is not unprecedented in constitutional democracies. The role of emergency powers, however, introduce legal and political tensions that appear at odds with the norms and workings of democratic institutions. The suspension of legal-legislative procedures and/or civil liberties implied by the expansion of executive authority raise uncertainties about the potential abuse of powers and erosion of the rule of law. From a constitutional perspective, therefore, many legal theorists deny any juristic form to the political *fact* of an emergency, while “dualists” seek to delimit such powers within a legal framework (Ferejohn and Pasquino, 2004; Agamben, 2005). By contrast, the Nazi jurist Carl Schmitt equated emergency powers with a distinctive form of “sovereign dictatorship” characteristic of modern states. His unsettling efforts to portray the political *exception* as a decisive feature of the legal-political order marked a contentious departure from the liberal tendency to interrogate the constitutional legitimacy of emergency powers in terms of legal restraints, delineated functions, and limited durations.

An early admirer of the Roman *commissary dictatorship* as “a constitutional instrument of the Republic,” Schmitt posits the modern concept of *sovereign dictatorship* as an altogether different type of dictatorship, sovereignty, and relationship to the constitution (2014, p. 4). Drawing on secular renditions of theological (and monarchical) categories of personified authority and collective obedience, Schmitt identifies the political sovereign with unlimited powers that can be traced to the “democratic” acclaim of fighting collectivities forged in the existential crises of an exception. In *Political Theology*, the exception is depicted as a “case of extreme peril, a danger to the state, or the like” that is neither anticipated nor codified in the constitution, and yet stands alongside the norm in the legal order and remains central to the

question of sovereignty (Schmitt, 2005, p. 6). The radical indeterminacy and unanticipated contingencies of an extreme emergency further defines the *exception* as “principally unlimited authority, which means the suspension of the entire existing order” (p. 12). Schmitt claims that the provision of emergency powers in the Weimar Constitution, for example, merely demarcated the procedures for invoking an emergency but not the extent of emergency powers. According to him, “Article 48 grants unlimited power” (p. 11). In the absence of constitutional restraints, political sovereignty is identified as precisely the authority that decrees the exception and the means to eliminate it: “The sovereign is he who decides on the exception” (p. 5).

Walter Benjamin’s study of baroque literature offers an incisive critique of Schmitt’s decisionism. Noting a remarkable coincidence in the “dramaturgical regalia” and “political anthropology and typology” of German tragic drama, Benjamin traces the appearance of the sovereign as “representative of history” to “certain constitutional notions” that emerged from a new concept of sovereignty in the seventeenth century (1998, p. 65). While the baroque era exhibited a “lively awareness of the significance of the state of emergency,” he distinguishes it from the modern state in several respects (p. 66). Benjamin first notes that the elevation of the “special case in which dictatorial powers unfolded” to a general concept of the state “positively demands the completion of the image of the sovereign, as tyrant” in the juridical debates and literary portraits of that age (p. 69). He then contrasts Schmitt’s “sovereign decision” with a characteristic loss of faculty during the emergency. The tyrant’s indecisiveness marks a rupture between the sovereign accumulation of power and creaturely resolve: “The prince, who is responsible for making the decision to proclaim the state of emergency, reveals, at the first opportunity, that he is incapable of making a decision” (p. 71). Further, the “ideal of complete stabilization, an ecclesiastical and political restoration” that animates theological and juridical doctrines of sovereignty is absent from the baroque conception of history. Haunted by the idea of “catastrophe” in an era bereft of any eschatology of redemption, the baroque idea of ruling is distinct from its modern counterpart: “Whereas the modern concept of sovereignty amounts to a supreme executive power on the part of the prince, the baroque concept emerges from a

discussion of the state of emergency, and makes it the most important function of the prince to *avert this*” (p. 66, italics added).

C. The Constitutional Path to Emergency Rule

The collapse of CTG-IV in a state of emergency sheds light on the ambiguous status of emergency powers in the constitution, particularly following the return of democracy and subsequent passage of the caretaker law. In its original form, the Constitution of Bangladesh of 1972 was devoid of any emergency article that abridged the fundamental rights of citizens and the protection of courts. The absence of emergency powers, preventive detention, or security acts marked the “strong opposition to such restrictive provisions, or ‘black laws,’ in a free democratic constitution” (Chowdhury 1994, p. 34). However, the framers’ intent to safeguard the rights of citizens and rule of law against arbitrary state powers were steadily eroded with the turn from parliamentary democracy to presidential rule and, subsequently, martial law regimes. For much of the first two decades, a succession of authoritarian rulers relied on constitutional amendments and martial law ordinances to expand executive authority, insert emergency articles in the constitution, eliminate legislative and judicial oversight, and decree special powers.

With the return of parliamentary government in 1991, the declaration of emergency by the president would once again “require for its validity the prior counter signature of the Prime Minister,” except in circumstances when the parliament was dissolved (Ministry of Law). In 1996, however, the Thirteenth Amendment Act gave the president unilateral powers to declare an emergency during the caretaker interim when parliament stood dissolved. “The counter-signature,” as noted in the media, “is not required when the caretaker government operates” (Liton, 2007). Ten years later, the caretaker crisis precipitated by President Iajuddin ended with his unilateral declaration of emergency, and gave way to an autocratic regime not circumscribed by the caretaker norm but operating under the same *nom de guerre*.

C. The Caretaker State of Exception

The swift accretion of vast powers by CTG-V also revealed the unforeseen capacity of the regime to transform the emergency into a prolonged state of exception, and accentuated the

problematic relationship of emergency powers to the constitution. The shift was evident in the Emergency Power Rules 2007 that drastically expanded the powers of security forces to restrict individual rights and suspend judicial oversight, ban political activities, censor the media, and conduct arbitrary arrests and detention of citizens in the name of fighting crime and corruption. Despite an array of emergency powers in the constitution, CTG-V's recourse to a new set of state powers starkly demonstrated that the regime derived its authority not from the constitution, but from its indefinite deferral. As Agamben (2005, pp. 3-4) puts it, the state of exception amounts to a "pure de facto rule" in which the decrees do not constitute a "special kind of law," but rather "a suspension of the juridical order itself."

The distinction between commissioned and sovereign authority also appears here as a tension between the regime's limited mandate and its ambitious plans. The success of CTG-V in restoring law and order, and administering a successful election, underscored its provisional role. At the beginning of emergency rule, the army chief depicted the military's role as "assisting the caretaker to put the country on the right track through the concerted efforts of all." General Moeen assured the public that "army has no intention to take over. We are not even running the government" (*The Daily Star*, February 9, 2007). On the other hand, the regime maintained that the reform of politics and administration was necessary for establishing sustainable democratic institutions. A year later, his remarks about revising the constitution and abandoning "Westminster-style" party politics in favor of "our own brand of democracy" heightened public anxiety about the direction of emergency rule and future of democracy (*The Daily Star*, February 21, 2008).

In the final analysis, any evaluation of CTG-V must account for its indecisiveness and failure in carrying out the lawless program of reforming democracy. The ineffectual career of the regime exposed the limits of its autocratic measures, highlighted by the total collapse of the much-heralded plans to restructure political institutions by arbitrary means. In addition to the release of politicians and reneging on reforms, the regime's tenure was marked by bouts of indecision and policy reversals. The harsh measures of security forces, including arbitrary

arrests, charges of human rights violations, and clashes with university students and teachers, raised apprehensions about the future of democracy, and led to the rapid alienation of the public from the regime. At the same time, the prevarications of the regime were in display during its vacillating responses to the rapid inflation of food prices, perceived leniency toward religious parties, and apathetic response to religious violence (International Crisis Group, 2008). In the final analysis, the saga of CTG-V linked the transition mechanism not just to the commissarial model but also to a state of exception in which the constitution and the rights of citizens were dismissed with impunity.

VI. CONCLUSION: THE END OF CARETAKER GOVERNMENT

Despite the pitfalls as norm and exception, the overall caretaker phenomena retain an essential but circumscribed affinity to the expansive idea of democracy that it encapsulates. From the perspective of voting-centric models, the caretaker regimes enjoyed regular success as a useful electoral technique amid the regular breakdown of the political process, but had little impact on the durability of democratic institutions, including election administration, beyond the transition period. With one exception, the regimes served as effective means to shore up democratic governments despite the recurrent crises of political transition. By compelling the parties to compete on equal footing, the principle of “non-partisan” transition regimes generated unprecedented levels of confidence in election administration, ensured the participation of all parties and voters, and affirmed the integrity of the polls. The interim formula also served as an effective bulwark against the turn to outright dictatorship despite the frequent breakdown of law and order attending the political crises.

On the other hand, the effects of the caretaker phenomena on democratic institutions beyond political transition were limited and, at times, adverse. The exogeneity of the caretaker law in the parliamentary system produced ambiguous effects on the electoral and legislative processes, not to mention its deleterious impact on party politics and political campaigns. The regularity of caretaker-administered elections engendered partisan strategies in which the status

of the caretaker government itself emerged as the main prize of inter-party competition. The frequent recourse to the interim regimes, punctuated by their volatile origins, shifted the locus of political contestations *outside* the confines of one-sided parliaments, and adversely impacted the consolidation of representative and deliberative institutions. The attendant brand of “caretaker politics” led to the eclipse of parliaments controlled by the ruling party, on the one hand, and abandoned by the opposition waging politics in the streets, on the other. In the final analysis, the achievements of the individual regimes remained momentary and episodic, with little scope for refinement of the caretaker technique or sustained reform of election administration.

At a first glance, caretaker-led democracy appeared to be “stuck” in transition, existing in a “political gray zone” that is “neither dictatorial nor democratic” (Carothers, 2002, p. 9). Known as ‘hybrid regimes,’ such political systems display the formal features of democracy but marked by strong executive powers, disregard for law and democratic “rules of the game,” and limited political liberties. This view of a static political system in which there is no meaningful political change, and no other democratizing tendencies and forces, however, conveys a partial account of the caretaker experience. Such an approach cannot explain, for example, the conditions that made the sustained run of democratically-elected governments possible over a period of twenty years, nor the recurrence of the caretaker regimes to oversee the electoral process. Nor does the notion of a “gray zone” shed much light on the diverse agents and sites of political contestations that gave rise to the singular regimes that administered the elections. The institutional models generally offer one-sided views of democracy that fail to capture the dynamics of change brought about by political movements, politicians and parties, professional and cultural groups, workers, students, and ordinary people during the span of the caretaker experience.

If the caretaker experiences accentuate the weaknesses of representative and legislative institutions, they also counter the view that democratizing tendencies and forces are otherwise lacking, absent, or merely stuck in an empty space between different forms of government. The legacy of three significant political movements that dramatically altered the political contours and forms of government in a span of four decades attest to their episodic and yet lasting impact

on democracy in Bangladesh. As in the past, the democracy movement that enshrined the principal of impartiality in late 1990 emerged from the remarkable conjunction of collective action, mass mobilization, and political unity. The democratic contestations of political rule accentuated the periodic efforts of political movements, civic and cultural groups, and ordinary people acting and deliberating in public spaces and media to institute restraints on authoritarian governments and weak institutions. The proliferation of media activities, civil society initiatives, and public opinion formation surrounding the caretaker interludes also point to the “communicative power” of democratic opinion formation that sought to shape the political discourse and support for the non-partisan formula during the caretaker interludes. The careers of later caretaker editions were likewise marked by repeated public and civil society interjections during, for example, the passage of the Thirteenth Amendment in 1996, periodic selection of chief advisers, and the onset of emergency rule in 2007. Despite emergency rule, the caretaker moniker even ensured the eventual deference of a quasi-military regime to the public insistence on elections.

In its entirety, the caretaker phenomena offer an expansive view of democracy that encapsulates the tense interplay between weak democratic institutions and authoritarian rule, on the one hand, and contentious political challenges arising in public and extra-institutional sites, on the other. The political movements and public interventions were not merely instrumental in ensuring the continuity of democratic elections. In hindsight, the democratic contestations that comprise the caretaker phenomena represent a central element of democracy alongside the “democratizing governments” they confront (Medearis, 2015, p. 3). This dialectic of democracy, in which forms of rule and contestation condition each other, is reflected in the “ebb and flow” of the caretaker regimes as a continual process of “becoming and disappearance” of democracy amid the crises of democratization. The caretaker governments were charged with restoring democracy, but their frequent appearance in different circumstances and forms marked the process of restoration as “something imperfect and incomplete” (Benjamin, 1998, p. 45).

The caretaker law enshrined in the Thirteenth Amendment came full circle with its repeal under the Constitution (Fifteenth Amendment) Act of June 30, 2011. In a replay of events from February 1996, but with partisan roles reversed, the AL government conducted general elections on January 5, 2014 without a caretaker government. The BNP and its allies in opposition refused to participate in the elections, and launched a violent campaign to press their demands for elections under a caretaker government. The inability of the government to ensure the participation of all parties not only cast doubts on the credibility of the 2014 elections, but also left open the question of the future of caretaker government. Yet, the findings of this paper suggest that the Fifteenth Amendment merely abolished a flawed norm, but without necessarily removing the scope for the future use of *caretaker idea* with new forms and ends. Freed from the twin dangers of partisan manipulation and arbitrary authority introduced by the Thirteenth Amendment, the impetus for caretaker formula is (once again) potentially restored to the public realm and to its aspirations of (substantive) democracy. It is a matter of conjecture whether yet another novel caretaker experience can originate in popular movements and public actions, elicit the support of political parties, incorporate representative features, and initiate lasting reforms towards sustainable democracy.

NOTES

- ¹ I am grateful to the two anonymous reviewers for their generous feedback.
- ² Following the independence of Bangladesh in 1971, the Constitution of 1972 established a multi-party parliamentary democracy that was formally adopted after the first general election in March 1973. The Constitution (Fourth Amendment) Act of 1975 introduced a short-lived one-party presidential system, itself violently overtaken by successive military regimes that ruled the country until late 1990.
- ³ *Sammilita Samskritik Jote* (Combined Cultural Alliance) is a leading cultural forum in Bangladesh. *Oikabadaya Nari Samaj* (United Women's Society) was formed as a coalition of women's organization in late 1980s.

REFERENCES

- Adorno, T. (2006). *History and Freedom*. Polity Press.
- Agamben, G. (2005). *State of Exception*. University of Chicago Press.
- Ahmed, F. (1998). *The Caretakers: A First-Hand Account of the Interim Government of Bangladesh, 1990-91*. University Press Limited.
- Ahmed, N. (2004). *Non-Party Caretaker Government in Bangladesh: Experience and Prospect*. University Press Limited.
- Ahmed, S. I. (2008). *The Ishtiaq Papers*. University Press Limited.
- Alamgir, J. (2009). Bangladesh's Fresh Start. *Journal of Democracy*, 20(3), 41-55.
- Arendt, H. (1958). *The Human Condition*. The University of Chicago Press.
- Arendt, H. (1961). *Between Past and Future: Six Essays in Political Thought*. The Viking Press.
- Arendt, H. (2006). *On Revolution*. Penguin Classics.
- Benhabib, S. (1996). *Democracy and Difference: Contesting the Boundaries of the Political*. Princeton University Press.
- Benjamin, W. (1968). *Illuminations*. Schocken Books.
- Benjamin, W. (1998). *The Origin of German Tragic Drama*. Verso.
- Choudhury, D. (1994). *Constitutional Development in Bangladesh: Stresses and Strains*. Oxford University Press.
- Chowdhury, M. J. A. (2015). Elections in "Democratic" Bangladesh. In M. Tushnet & M. Khosla (Eds.), *Unstable Constitutionalism: Law and Politics in South Asia*, 192-229.
- Ferejohn, J. & P. Pasquino. (2004). The Law of Exception: A Typology of Emergency Powers. *I.CON*, 2(2), 210-239.
- Habermas, J. (1994). Three Models of Democracy. *Constellations*, 1(1), 1-10.
- Hakim, M. (1993). *Bangladesh Politics: The Shahabuddin Interregnum*. University Press Limited.
- Hasanuzzaman, M. (1998). *Role of Opposition in Bangladesh Politics*. University Press Limited.
- Haque, M. (2008). Emergency Power and Caretaker Government in Bangladesh. *Journal of the Australasian Law Teachers Association*, 9(1), 81-94.
- Hobson, C. (2012). Liberal democracy and beyond: extending the sequencing debate. *International Political Science Review*, 33(4), 441-454.
- Hoque, M. (2015). The Judicialization of Politics in Bangladesh: Pragmatism, Legitimacy, and Consequences. In M. Tushnet & M. Khosla (Eds.), *Unstable Constitutionalism: Law and Politics in South Asia*, 261-290.
- Huntington, S.P. (1993). *The Third Wave: Democratization in the Late Twentieth Century*. University of Oklahoma Press.
- Hussain, M. (2006). Bengali Nationalism and Anti-Ayub Movement: A Study of the Role of Students. *Journal of Pakistan Vision*, 7(2).
- International Crisis Group. (2008). Restoring Democracy in Bangladesh. *Asia Group*, 151.
- Kadivar, M. (2018). Mass Mobilization and the Durability of New Democracies. *American Sociological Review*, 83(2), 390-417.
- Khan, S. (2018). *The Politics and Law of Democratic Transition: Caretaker Government in Bangladesh*. Routledge.
- Kurki, M. (2010). Democracy and Conceptual Contestability: Reconsidering Conceptions of Democracy in Democracy. *International Studies Review*, 12(3), 363-386.
- Landmore, H. (2017). Deliberative Democracy as Open, Not (Just) Representative Democracy. *Daedalus*, 146(3), 51-63.
- Levitsky, S., & Way, L. (2013). The Durability of Revolutionary Regimes. *Journal of Democracy*, 24(3), 5-17.
- Lintott, A. (1999). *The Constitution of the Roman Republic*. Oxford University Press.
- Liton, S. (2006, October 30). President Sworn in as Chief of Caretaker Government. *The Daily Star*.
- Liton, S. (2007, January 7). Emergency Declared: Iajuddin quits as chief adviser. *The Daily Star*.

- Machiavelli, N. (2003). *The Discourses*. Penguin Classics.
- Manin, B. (1987). On Legitimacy and Political Deliberation. *Political Theory*, 15(3), 338-368.
- Medearis, J. (2015). *Why Democracy is Oppositional*. Harvard University Press.
- Minier, J. (2001). Is Democracy a Normal Good? Evidence from Democracy Movements. *Southern Economic Journal*, 67(4), 996-1009.
- Ministry of Law, Justice and Parliamentary Affairs. *The Constitution of the People's Republic of Bangladesh*. <http://bdlaws.minlaw.gov.bd/act-367.html>
- Przeworski, A. (2006). Self-Enforcing Democracy. In D. Witman D & B. Weingast (Eds.) *The Oxford Handbook of Political Economy*. Oxford University Press, 312-328.
- Rahman, L. (2002). *The Caretaker Days and My Story* (in Bengali). Mullick Brothers.
- Rousseau, J-J. (1997). *The Social Contract and other later political writings*. Cambridge University Press.
- Sass, J., & J. Dryzek. (2014). Deliberative Cultures. *Political Theory*, 42(1), 3-25.
- Schmitt, C. (2005). *Political Theology: Four Chapters on the Concept of Sovereignty*. University of Chicago Press.
- Schmitt, C. (2014). *Dictatorship*. Polity.
- Sobhan, R. The Twilight of Caretaker Governance. Forum, 2(1), *The Daily Star*, January 2007.
- Staff Correspondent. (2006, October 30). 14-Party to Watch Iajuddin: Neither Accepts Nor Rejects His Takeover. *The Daily Star*.
- Staff Correspondent. (2008, January 7). Govt continues to be called caretaker. *The Daily Star*.
- Tiernan, A. & Menzies, J. (2011). *Caretaker Convention in Australasia: Minding the Shop for Government*. ANU E Press.
- Tilly, C. (2003). *Contention and Democracy in Europe, 1650-2000*. Cambridge University Press.
- Umar, B. (2000). *Language Movement in East Bengal*. Jatiya Grontha Prakashan.
- UNB. (2007, February 9). Army has no intention to capture power. *The Daily Star*.
- UNB (2008, February 21). Bangladesh should have own brand of democracy. *The Daily Star*.
- Weber, M. (1994). *Political Writings*. Cambridge University Press.
- Wolin, S. (2018). *Fugitive Democracy and Other Essays*. Princeton University Press.
- Young, I. (1996). Communication and the Other: Beyond Deliberative Democracy. In S. Benhabib (Ed.) *Democracy and Difference*, 120-135.