
NOTES

THE PAKISTANI LAWYERS' MOVEMENT AND THE POPULAR CURRENCY OF JUDICIAL POWER

"I support the lawyers," said the Pakistani farmer on the train from Lahore, "because if Musharraf can do whatever he wants to this man, the Chief Justice of Pakistan, then none of us is safe."¹ It was the summer of 2008, and for several months Pakistani lawyers had been leading protests seeking the restoration to office of sixty-plus superior court judges,² including Chief Justice Iftikhar Mohammad Chaudhry, who had been suspended by President Pervez Musharraf.³ The farmer's response to questions about his thoughts on the protests was typical of Pakistanis at the time in its clear-headed articulation of the symbolic importance of the lawyers' struggle and in its implicit understanding of the central function of an independent judiciary. Indeed, the Chief Justice was the closest to a personal embodiment of "the law" that one could find in Pakistan. If even he served at the pleasure of a dictator — so the story went — the capacity of the law to constrain this dictator and protect ordinary Pakistanis was perilously weak.

In March 2007, Chaudhry refused the urging of five generals to resign and was removed by Musharraf. Two years later, with Musharraf in exile and a civilian government in power, nationwide protests returned Chaudhry to his position atop the nation's highest court.⁴ After twenty-four months of struggle, the lawyers' movement thus ended with an improbable victory. Moreover, in a nation where the courts historically have followed the dictates of the military and allowed for the repeated subversion of the country's constitutions,⁵ the restoration

¹ Interview with Pakistani farmer, on train from Lahore, Pak. (July 4, 2008) (translation from Urdu by Abdullah Freed Khan). The author traveled to Pakistan in the summer of 2008 on a Harvard Law School Chayes Fellowship to work with the Human Rights Commission of Pakistan in Lahore. All interviews cited in this Note were conducted by the author and are on file with the Harvard Law School Library.

² The superior courts in Pakistan include the Supreme Court, the Federal Shariat Court, and the provincial high courts.

³ See Muhammad Ahmad Noorani, *Majority of Judges Refuse To Take Oath Under New PCO*, NEWS INT'L (Pak.), Nov. 4, 2007, http://www.thenews.com.pk/top_story_detail.asp?id=10976.

⁴ See Jane Perlez, *Pakistan Leader Forced To Bow to Opposition*, N.Y. TIMES, Mar. 16, 2009, at A1.

⁵ See, e.g., *Zafar Ali Shah v. Musharraf*, PLD 2000 S.C. 869 (Pak.), available at <http://www.scribd.com/doc/12730582/Zafar-Ali-Shah-Case>; *Begum Nusrat Bhutto v. Chief of Army Staff*, PLD 1977 S.C. 657 (Pak.); *Pakistan v. Dosso*, PLD 1958 S.C. 533 (Pak.); *Pakistan v. Tamizuddin Khan*, PLD 1955 F.C. 240 (Pak.). *But see* *Jilani v. Punjab*, PLD 1972 S.C. 139 (Pak.). For background on these and other foundational cases in Pakistani constitutional law, see generally HAMID KHAN, *CONSTITUTIONAL AND POLITICAL HISTORY OF PAKISTAN* (2001); and

of the Chief Justice was a compelling sign of judicial empowerment. The sixty-odd judges who had stood with Chaudhry and refused to sanction Musharraf's extraconstitutional acts had all been returned to their posts,⁶ while those judges whom Musharraf had appointed to replace them would soon be removed.⁷ The success of the movement offered a stern warning to those who would challenge the independence of Pakistan's judiciary. History proved that Musharraf could not, in fact, "do whatever he want[ed]." An outspoken Chief Justice, a rebellious cohort of judges, thousands of lawyer-activists, dozens of resurgent civil society groups, opportunistic political parties, a sympathetic media, and hundreds of thousands of ordinary Pakistani protesters enforced a version of judicial supremacy against "the dictator."

The sights and sounds of the lawyers' protests represent forms of social action unique in the history of judicial politics: suit-clad lawyers, marching en masse, at the center of often bloody street protests; a deposed Chief Justice on a cross-country speaking tour, thronged by citizens tossing rose petals and singing songs of praise in his direction. Indeed, the statement at the beginning of this Note, in which a farmer identified his own safety with that of a Chief Justice, exposes a tantalizing potentiality: by taking the cause of judicial independence to the streets, the lawyers' movement seems to have collapsed the traditional distinctions between court and public that have so animated the academic discourse on judicial power.

This Note explores how and why this popular mobilization on behalf of judicial power occurred and its broader effects in Pakistan. In doing so, the Note throws into question some of the central assumptions of much of the literature on judicial independence and the rule of law. Specifically, whereas much of this literature observes that judicial power often emerges from a top-down process dictated by the rational self-interest of political elites, the history of the lawyers' movement in Pakistan provides at least some evidence that judicial power has a popular currency and an ability to open up new forms of political engagement and new arenas of political power.

The Note is organized as follows: Part I summarizes some of the extant literature on the roots of judicial power generally, while Part II

PAULA R. NEWBERG, *JUDGING THE STATE* (1995). For background on systemic and persistent problems within the Pakistani judiciary, see INT'L CRISIS GROUP, *BUILDING JUDICIAL INDEPENDENCE IN PAKISTAN* (2004); and INT'L CRISIS GROUP, *REFORMING THE JUDICIARY IN PAKISTAN* (2008).

⁶ *Pakistan Reinstates Sacked Judge*, BBC NEWS, Mar. 16, 2009, <http://news.bbc.co.uk/2/hi/7945294.stm>.

⁷ On July 31, 2009, the Supreme Court ruled Musharraf's imposition of a state of emergency to have been unconstitutional and his appointment of more than one hundred judges under a Provisional Constitutional Order (PCO) to be void. Salman Masood, *Musharraf Decree in '07 Was Illegal, Court Rules*, N.Y. TIMES, Aug. 1, 2009, at A6.

offers a brief history of the lawyers' movement. Part III argues that the movement has encouraged a nascent shift in Pakistani political culture that cannot be wholly explained by those theories of judicial review that focus exclusively on the interests of elites. Part IV concludes. Throughout the Note, conclusions are based on first-person observations of events in Pakistan during the summer of 2008; interviews with lawyers, judges, politicians, and civil society activists during this same period; and a review of reporting on the lawyers' movement from early 2007 through 2009.

I. SCHOLARSHIP ON THE RULE OF LAW AND JUDICIAL POWER

Legal scholars and social scientists have long been puzzled by the existence of independent courts. Why do legislative and executive officials with control over “the purse” and “the sword” choose to respect the independence of judges and enforce judicial opinions when doing so limits their capacity to pursue their policy platforms of choice? In answering this question, many scholars have focused on how ceding interpretive authority to judges serves the interests of rational, self-interested elites, for example, by making legislative deals with interest groups more durable and hence more valuable,⁸ by allowing elites to exclude “progressive” policy options from the vagaries of majoritarian politics,⁹ or by allowing political leaders to overcome obstructions in a policymaking environment characterized by fractured coalitions and multiple veto points.¹⁰ Other theories have focused on how political leaders delegate certain governance tasks to judges because performing such tasks themselves would be either politically disadvantageous¹¹ or excessively resource-intensive.¹² Still another body of literature focus-

⁸ See William M. Landes & Richard A. Posner, *The Independent Judiciary in an Interest-Group Perspective*, 18 J.L. & ECON. 875, 877–79 (1975).

⁹ See generally RAN HIRSCHL, *TOWARDS JURISTOCRACY* (2004).

¹⁰ See Keith E. Whittington, “Interpose Your Friendly Hand”: *Political Supports for the Exercise of Judicial Review by the United States Supreme Court*, 99 AM. POL. SCI. REV. 583, 593–94 (2005); cf. KEITH E. WHITTINGTON, *POLITICAL FOUNDATIONS OF JUDICIAL SUPREMACY* (2007).

¹¹ See Stephen Holmes, *Lineages of the Rule of Law*, in *DEMOCRACY AND THE RULE OF LAW* 19, 25 (José María Maravall & Adam Przeworski eds., 2003); Eli M. Salzberger, *A Positive Analysis of the Doctrine of Separation of Powers, or: Why Do We Have an Independent Judiciary?*, 13 INT'L REV. L. & ECON. 349, 358–69 (1993).

¹² See, e.g., Mathew D. McCubbins & Thomas Schwartz, *Congressional Oversight Overlooked: Police Patrols Versus Fire Alarms*, 28 AM. J. POL. SCI. 165 (1984) (arguing that it is cheaper for legislators to keep bureaucrats in line by allowing constituents to sue them than by engaging in direct monitoring); see also Holmes, *supra* note 11, at 27–28 (arguing that courts perform those duties that engender resentment without also generating gratitude, and which are thus unhelpful to political leaders); James R. Rogers, *Information and Judicial Review: A Signaling Game of Legislative-Judicial Interaction*, 45 AM. J. POL. SCI. 84 (2001) (arguing that legislators can gain informational benefits by allowing judges to review the impact of policies in specific cases).

es on how judicial independence might emerge from the complex interplay of multiple, self-interested actors engaged in an ongoing struggle for political power. Scholars have found that, under certain conditions, a political actor who has won the struggle for power may choose to respect the independence of judges even if doing so limits his ability to implement his preferred policies, because judicial independence also reduces the downside risks of losing power in the future.¹³

What these models share is a presumption that judicial review emerges because it serves the interests of elites. In many such models, “the people themselves”¹⁴ appear as mere bystanders: they have little apparent stake in or influence on politicians’ iterative struggle for power, they stand idly by as interest groups buy and sell their votes, and they fail to wise up to elites’ efforts to undermine progressive politics or escape electoral accountability. To be fair, some theories grant “the people” more autonomy than do others and recognize that elites typically seek legitimation in the eyes of the public.¹⁵ Overall, however, this literature pays relatively little attention to the wishes, desires, and actions of ordinary citizens. In addition, when a theory *does* acknowledge that “the people” might at times exhibit some degree of interpretive authority over the meaning of their constitution, this authority comes at the expense of, rather than as a complement to, the power of judges and lawyers.¹⁶ And when a theory draws a connection between court decisions, democratic discourse, and social movements, never are lawyers and judges themselves at the axis of collective protest that explicitly seeks judicial power.¹⁷

There is another, smaller genre of literature on judicial independence that focuses not on elite interests, but on the popular currency of judicial power. This literature recognizes that judicial independence often serves certain ends crucial to the public interest and that courts

¹³ Scholars differ on the precise conditions that allow for judicial independence to become a stable equilibrium. See, e.g., J. MARK RAMSEYER & ERIC B. RASMUSEN, MEASURING JUDICIAL INDEPENDENCE 141 (2003) (concluding that U.S. political parties do not expect to be in power for an extended period and consequently reduce the risk of losing elections by “insulat[ing] . . . judges from election pressures”); Matthew C. Stephenson, “When the Devil Turns . . .”: The Political Foundations of Independent Judicial Review, 32 J. LEGAL STUD. 59, 84–85 (2003) (arguing that judicial review serves an “insurance function for competitors” in states with “stable political competition,” *id.* at 85).

¹⁴ This term is borrowed from LARRY D. KRAMER, THE PEOPLE THEMSELVES (2004).

¹⁵ For example, the electoral platforms of opposing parties in Ramseyer and Rasmusen’s and Stephenson’s models emerge from electoral markets, which necessarily reflect public preferences. See RAMSEYER & RASMUSEN, *supra* note 13, at ix; Stephenson, *supra* note 13, at 72–73, 85–86.

¹⁶ See KRAMER, *supra* note 14, at 168–69 (arguing that the expanded role of the U.S. Supreme Court in interpreting the U.S. Constitution corresponded with a decrease in the role of “the people out-of-doors,” *id.* at 169, in doing the same).

¹⁷ See, e.g., Robert Post & Reva Siegel, *Roe Rage: Democratic Constitutionalism and Backlash*, 42 HARV. C.R.-C.L. L. REV. 373, 375 (2007) (implying a distinction between the “most passionately held commitments” of social movements and the “constitutional tradition”).

can gain power by facilitating collective action against governments that act in excess of their delegated authority. Professor David Law is one of the more ardent proponents of this theory.¹⁸ Law begins with a simple observation: In a government based on the premise of popular sovereignty, the people delegate certain powers to their government, including a monopoly on the legitimate use of force. But as with any delegation of authority, the interests of the principal (the people) diverge from those of the agent (the government).¹⁹ In attempting to ensure that the government acts in the public interest, the people possess inadequate information on what the government is actually doing, and if the government betrays the public interest, the people can effectively constrain it only if they coordinate a collective response.²⁰

Judicial review by independent courts is one means by which the people can overcome these information and coordination problems.²¹ Through judicial review of legislative and executive action, combined with the diligent reporting of court decisions by an independent media,²² courts provide crucial information to the people about when their government has abridged the terms of its constitutional delegation. And by coordinating a shared understanding of governmental transgressions and shared expectations of collective action, courts can force the government to comply with a particular reading of the constitution, increasing their own institutional power in the process.²³ Further, because the people recognize that “would-be tyrants” have an incentive to undermine courts’ ability to serve these functions, the people will construe attacks on the courts as “a warning sign of potential usurpation.”²⁴ In short, the other branches will agree to judicial

¹⁸ See David S. Law, *A Theory of Judicial Power and Judicial Review*, 97 GEO. L.J. 723 (2009).

¹⁹ *Id.* at 730–31.

²⁰ *Id.* at 731.

²¹ It is not the only means, however. According to Professor Noah Feldman, the pre-colonial Islamic state was characterized by an empowered scholarly class with authority to review executive action for compliance with Islamic law. The executive was perceived as beholden to divine law as interpreted by these Islamic scholars, giving rise to a kind of rule of law. See NOAH FELDMAN, *THE FALL AND RISE OF THE ISLAMIC STATE* 17–55 (2008). Feldman contends that the decrease in the authority of the scholars engendered by secular democratic and constitutional reforms in the Islamic world has not resulted in the empowerment of any new political class capable of restraining the executive, *see id.* at 57–102; hence the widespread and growing popularity of *shari'a*, *see id.* at 103–51.

²² See Law, *supra* note 18, at 751–53.

²³ See *id.* at 731–32; *cf. id.* at 742 (“In order to rebel at a certain point, not only must I have reason to rebel at that point, but I must also know that you have reason to rebel at the same point, and that you know that I know that you have reason to rebel at that point, and so on.”).

²⁴ *Id.* at 734. Moreover, because judicial review restrains governmental excesses, the people may rationally support it even if courts periodically reach results contrary to the wishes of the majority. *Id.*; *see also* Gregory A. Caldeira & James L. Gibson, *The Etiology of Public Support for*

review because the people, recognizing judicial review as necessary to enforce their agency relationship with the other branches, will demand it and will mobilize in opposition if the other branches do not permit it. Judicial review becomes not a tool for preserving elite hegemony, but rather a means for the public at large to address the principal-agent dilemma inherent in democratic governance.²⁵

Having contrasted two general strands of scholarship on judicial power — one in which independent courts emerge from the strategic machinations of political and economic elites, another in which the people's desire for a governmental branch to act as a watchdog over the other branches spurs politicians to cede power to the courts — this Note offers the Pakistani lawyers' movement as a test case. Since the movement emerged three years ago, the ability of the Pakistani judiciary to enforce executive compliance with its reading of the constitution has increased enormously.²⁶ Over the same period, the Pakistani judiciary and constitution have been the subject of unprecedented public debate and protest.²⁷ The explanations for why and how such changes occurred offer some lessons on the roots of judicial power.

II. A BRIEF HISTORY OF THE LAWYERS' MOVEMENT

The lawyers' movement unfolded in two phases. First, the Pakistan Supreme Court asserted its independence and gained credibility in the eyes of the Pakistani public while lawyers began to protest in the streets. Second, a broader coalition of lawyers, political parties, and other groups responded to executive overreaching through large-scale, nationwide protests, and spurred changes in the Pakistani political system writ large. This Part addresses each of these phases in turn and then discusses the singularly important role of the media in facilitating protest over the course of the movement in its entirety.

the Supreme Court, 36 AM. J. POL. SCI. 635 (1992); James L. Gibson, Gregory A. Caldeira & Vanessa A. Baird, *On the Legitimacy of National High Courts*, 92 AM. POL. SCI. REV. 343 (1998).

²⁵ See Law, *supra* note 18, at 744 ("A ruling by the [Supreme Court] that the [executive] has turned against the people . . . leads people to believe that resistance . . . is not only necessary, but also likely to occur."). Although Law addresses his theory to questions of judicial review, the theory's concepts apply more broadly to questions of judicial independence and the separation of powers. Just as Law's theory offers an explanation for why politicians might be compelled to recognize courts' power to overturn legislation they deem unconstitutional, the theory also explains why politicians might be compelled to respect the separation of powers when there is a challenge to judicial independence. Likewise, although Law addresses his theory to the principal-agent dilemma in democratic governance, his theory also applies to autocratic states like Pakistan where a constitution lays out terms of a democratic delegation that are not observed in practice. See *id.* at 790–91 (applying his theory to events in Pakistan).

²⁶ See *infra* pp. 1716, 1723.

²⁷ For excellent journalistic accounts of the movement and its aftermath, see James Traub, *Can Pakistan Be Governed?*, N.Y. TIMES MAG., Apr. 5, 2009, at 26; James Traub, *The Lawyers' Crusade (Continued)*, N.Y. TIMES MAG., June 1, 2008, at 46.

A. *The Removal of the Chief Justice*

When Iftikhar Muhammad Chaudhry became Chief Justice of the Pakistan Supreme Court in 2005, few expected him to spark a mass social movement. Chaudhry had taken an oath of office under Musharraf's Provisional Constitutional Order (PCO) in 2000,²⁸ and many lawyers considered him a tool of the establishment.²⁹ Moreover, the Supreme Court had garnered little public trust over the years: when it had been called on to rule on the constitutionality of military takeovers at critical moments in Pakistani history, it had typically upheld military rule.³⁰ When Chaudhry became Chief Justice in May 2005, then, there was little expectation he would lead the Court to assert its independence and attempt to end military rule.

After Musharraf appointed him, however, Chaudhry quickly instituted changes at the Court. He began a concerted effort to improve the Court's efficiency and reduce its case backlog.³¹ From 2005 to 2007, Chaudhry greatly expanded the amount of so-called "public interest litigation" before the Court — petitions and *suo moto* actions that the Court hears in order to "check the abuse of power or misuse of authority or arbitrary or mala fide acts and decisions of the authorities"³² — including large-scale investigations in politically contentious cases. For example, when Musharraf privatized Pakistan Steel Mills in April 2006, selling it at a price allegedly well below market value amidst allegations of corruption, the Court annulled the sale.³³ And from 2006 to 2007, the Court required representatives from Pakistan's intelligence agencies to appear before it and account for certain missing persons that the government had allegedly detained in connection with the "war on terror."³⁴ Overall, the Court received prominent and

²⁸ Chaudhry has admitted that it "was wrong" to take this oath. Interview with Iftikhar Muhammad Chaudhry, Chief Justice, Supreme Court of Pak., in Islamabad, Pak. (July 11, 2008).

²⁹ See, e.g., Interview with Hamid Khan, former President, Pak. Supreme Court Bar Ass'n, in Lahore, Pak. (June 2008) ("[Chaudhry] was no hero of ours, because he always had been making compromises. And I did not like the way that he had been running his court, and I told him that. . . . But anyway, he proved to be a man. He surprised me.").

³⁰ See sources cited *supra* note 5.

³¹ SUPREME COURT OF PAK., SUPREME COURT REPORT GOLDEN JUBILEE EDITION 2006, at 5–8 (2006), available at <http://www.supremecourt.gov.pk/web/page.asp?id=243>. The Supreme Court managed to dispose of almost 30,000 cases in 2005, up from around 10,000 in 2004. See *id.* at 60.

³² *Id.* at 6–7.

³³ See Shoaib A. Ghias, *Miscarriage of Chief Justice: Lawyers, Media, and the Struggle for Judicial Independence in Pakistan*, LAW & SOC. INQUIRY (forthcoming 2010) (manuscript at 16, on file with the Harvard Law School Library) (citing *Watan Party v. Pakistan*, PLD 2006 S.C. 697 (Pak.)).

³⁴ See *id.* (manuscript at 17–18). Similarly, after a devastating earthquake hit Pakistan in October 2005, the Court heard cases related to construction safety and urban planning regulations,

generally favorable coverage by the Pakistani media during this period,³⁵ and its support among the public increased substantially.³⁶

Frustrated at his inability to control proceedings before the Court, Musharraf summoned the Chief Justice to the Pakistan Army House on March 9, 2007, to pressure him to resign over allegations of misconduct.³⁷ Chaudhry refused, and Musharraf referred the allegations to the Supreme Judicial Council (SJC), Pakistan's highest judicial disciplinary body.³⁸ Musharraf proceeded to suspend the Chief Justice and place him under house arrest.³⁹

The public reaction to the suspension of the Chief Justice was decidedly negative,⁴⁰ and lawyers' protests began almost immediately thereafter.⁴¹ In Pakistan, where the military has dominated politics for sixty years and where generals demand a high degree of deference from legislative and judicial officials, the Chief Justice's refusal to resign represented a shockingly radical break from political and social norms and an extreme assertion of judicial independence. As one civil society activist put it, "We Pakistanis are not used to people taking stands."⁴² Within days, Chaudhry was transformed from a little-regarded jurist⁴³ into a folk hero.⁴⁴ "[Chaudhry] became a symbol of the common man's protest against the elites in this country," explained Hamid Khan, a legal historian and leader of the movement.⁴⁵ One of

see id. (manuscript at 13–15), and when deregulation led to oil and sugar price shocks from 2005 to 2006, the Court heard cases challenging price hikes, *see id.* (manuscript at 15–16).

³⁵ *See id.* (manuscript at 23–25) (arguing that the media embraced the Chaudhry Court as "the people's court," *id.* (manuscript at 24)). Shoaib Ghias argues that the Court's actions during this period were motivated by a populist impulse to serve constituencies left behind by economic liberalization and that aggressive Court action, combined with favorable media coverage and governmental compliance, encouraged a "[c]ycle of [j]udicial [e]mpowerment," *id.* (manuscript at 25). *Id.* (manuscript at 25–27).

³⁶ *See* INT'L REPUBLICAN INST., IRI INDEX I: APPROVAL RATINGS 6 (2007), available at <http://www.iri.org/news-events-press-center/news/iri-releases-survey-pakistan-public-opinion-3> (reporting a sizable increase in Pakistanis' approval of the courts from June to September 2006).

³⁷ *See* Chaudhry v. President of Pakistan, Const. Pet. 21 of 2007, at 10–13 (Pak. 2009), available at http://www.supremecourt.gov.pk/web/user_files/File/ConstitutionPetitionNo21OF2007.pdf; *Pakistan's Top Judge Is Suspended*, BBC NEWS, Mar. 9, 2007, http://news.bbc.co.uk/2/hi/south_asia/6434271.stm.

³⁸ *See* Ghias, *supra* note 33 (manuscript at 27–28).

³⁹ *Id.* (manuscript at 19); Chaudhry, Const. Pet. 21 of 2007, at 13–16.

⁴⁰ *See* INT'L REPUBLICAN INST., IRI INDEX I: ISSUES & RATINGS — PAKISTAN PUBLIC OPINION SURVEY — JUNE 13–JULY 3, 2007, at 8, 23 (2007), available at <http://www.iri.org/explore-our-resources/public-opinion-research/public-opinion-polls>.

⁴¹ *See* MUNEER A. MALIK, THE PAKISTAN LAWYERS' MOVEMENT 49 (2008).

⁴² Interview with Hamid Zaman, in Lahore, Pak. (Aug. 19, 2008).

⁴³ *See, e.g.,* MALIK, *supra* note 41, at 42; Interview with Imran Akram, Assoc. Professor, Univ. of the Punjab Sch. of Law, in Lahore, Pak. (June 20, 2008) ("Prior to his standing against Musharraf, all these bar leaders were criticizing the Chief Justice.").

⁴⁴ *Cf.* SIDNEY TARROW, POWER IN MOVEMENT 101 (1994) (describing the quintessential "hero's act" as a challenge with unpredictable limits and unknown costs).

⁴⁵ Interview with Hamid Khan, *supra* note 29.

Chaudhry's colleagues on the Supreme Court, Justice Ramday, put it similarly: "People became mesmerized, as if they'd always been longing for some such gesture for our entire sixty years. The moment it came, people jumped out of their seats."⁴⁶

Along with the Chief Justice's refusal were the scenes that accompanied it — or, more specifically, the portrayal of those scenes by the media. One particular image captured the public imagination: that of the police grabbing Chaudhry and dragging him by the hair into a police vehicle on the morning of his first appearance before the SJC. The events were broadcast live via Pakistan's electronic media outlets, and newspapers published an iconic photograph of the scene.⁴⁷ For Pakistanis accustomed to corrupt and arbitrary police practices, these images had a particular resonance. Such use of force against the country's Chief Justice seemed to reflect a degradation of "the law" itself. "That photograph did it for a lot of people, and it did it for me," explained Ghazala Minallah, a civil society activist in Islamabad.⁴⁸ "That just launched us into protest mode."⁴⁹

As his case continued before the SJC, Chaudhry began a concerted effort to bring his call for judicial independence to the Pakistani people. He assembled a defense team that included some of Pakistan's most well-regarded attorneys,⁵⁰ and embarked on a cross-country tour speaking before local bar associations. In his speeches, Chaudhry discussed the benefits of judicial independence and the rule of law.⁵¹ Chaudhry's motorcade soon attracted large crowds, and inspired often-bloody governmental efforts at intimidation and repression.⁵²

The lawyers eventually began branching out and accepting the support of other civil society groups. For example, lawyers in Lahore started meeting every week at the Lahore High Court with representa-

⁴⁶ Interview with Khalil-ur-Rehman Ramday, Assoc. Justice, Supreme Court of Pak., in Islamabad, Pak. (July 24, 2008).

⁴⁷ The image is available online at All Things Pakistan, *ATP Poll Results: Chief Justice Chaudhry Iftikhar's Removal* (Mar. 16, 2007), <http://pakistaniat.com/2007/03/16/pakistan-atp-poll-sjc-chaudhry-iftikhar-musharraf-public-opinion-chief-justice-supreme-court/comment-page-3/>.

⁴⁸ Interview with Ghazala Minallah, in Islamabad, Pak. (July 10, 2008).

⁴⁹ *Id.*

⁵⁰ This so-called "dream team" of attorneys included Aitzaz Ahsan, Hamid Khan, Ali Ahmed Kurd, Muneer Malik, and Tariq Mehmood. See MALIK, *supra* note 41, at 58–60.

⁵¹ See, e.g., *id.* at 73–79; Salman Masood, *Ousted Judge in Pakistan Urges Musharraf To "Respect" Judiciary*, N.Y. TIMES, Mar. 29, 2007, at A8.

⁵² It took the Chief Justice more than twenty hours to travel from Islamabad to Lahore, a trip that usually takes only four hours, because the crowds lining the streets were so thick. See Salman Masood, *Throngs Attend Speech by Pakistan's Suspended Justice*, N.Y. TIMES, May 7, 2007, at A3. For a first-hand account of this speaking tour, see MALIK, *supra* note 41, at 80–125. When the Chief Justice went to Karachi amidst threats of violence in May 2007, Musharraf refused to provide additional security, and armed groups killed thirty-four people. See HUMAN RIGHTS COMM'N OF PAK., CARNAGE IN KARACHI 31–38 (2007), <http://www.hrcp-web.org/Publications/carnage%20in%20karachi%20-%20complete.pdf>.

tives from professional trade organizations, labor unions, and representatives from political parties a few weeks after March 9, 2007, to plan protest activities.⁵³ Zia Ullah Khan, one of the attorneys who organized the meetings, recalled the eagerness of such groups to participate: “I called them; they said, ‘Why didn’t you call us sooner?’”⁵⁴ Before long, groups of doctors, engineers, professors, religious scholars, traders, and political party workers were showing up in force to support the lawyers at their weekly rallies.⁵⁵ In addition, urban professional and student groups formed organically as activists sought each other out and began to organize.⁵⁶ For example, Ghazala Minallah explained how a protest group known simply as “Civil Society” grew out of a letter to a newspaper editor she sent shortly after the sacking of the Chief Justice:

I wrote a letter to one of the newspapers very early on. In response to that letter I got quite a few emails. . . . [T]his dentist in Islamabad . . . gave me a phone call . . . [a]nd he said, “Okay great that you wrote this letter. . . . Are we just going to sit at home and watch what happens next on the news?” . . . We mutually agreed that we’d send out SMS messages to all our contacts, and tell them to forward it to everyone else, saying, “Let’s meet in front of the Supreme Court at a fixed time.” That was the beginning. It was amazing the turnout on that first day.⁵⁷

During these early months of the lawyers’ movement, then, Chaudhry convinced many Pakistanis that at least one prominent jurist was willing, if not yet able, to serve as a watchdog against governmental abuses. When the Supreme Court quashed the reference against Chaudhry and reinstated him as Chief Justice on July 20, 2007,⁵⁸ the legal community, and much of the public, rejoiced.⁵⁹

B. *Emergency and Its Aftermath*

If Chaudhry’s stand against Musharraf endeared him to many Pakistanis yearning for some “gesture” by a public official willing to chal-

⁵³ See Interview with Zia Ullah Khan, Advocate, in Lahore, Pak. (June 18, 2008).

⁵⁴ *Id.*

⁵⁵ See *id.*

⁵⁶ See Interview with Hamid Zaman, *supra* note 42.

⁵⁷ Interview with Ghazala Minallah, *supra* note 48.

⁵⁸ Short Order, Chaudhry v. President of Pakistan, Const. Pet. 21 of 2007 (Pak. July 20, 2007), available at http://www.pakistani.org/pakistan/constitution/events/cjp_ref_2007/sc_ref_order.html.

⁵⁹ See Somini Sengupta, *Musharraf Loses Fight over Judge*, N.Y. TIMES, July 21, 2007, at A1 (“No sooner had the verdict been read out late Friday afternoon and the 13-member bench filed out, than Courtroom No. 1, packed full, exploded into revelry.”); cf. INT’L REPUBLICAN INST., IRI INDEX: PAKISTAN PUBLIC OPINION SURVEY — JUNE 1–15, 2008, at 34 (2008), available at <http://www.iri.org/sites/default/files/2008%20July%2017%20Survey%20of%20Pakistan%20Public%20Opinion,%20June%201-15,%202008.pdf> (reporting that public approval of the courts rose from fifty-one percent in March 2007 to seventy-seven percent in September 2007, following the restoration of the Chief Justice).

lunge the military establishment, Musharraf's efforts to reestablish control over the judiciary only further pushed the public to support judicial independence. In November 2007, the Pakistani Supreme Court was on the verge of ruling on the validity of Musharraf's reelection as President when Musharraf suspended the constitution and declared emergency rule.⁶⁰ More than sixty superior court judges — equivalent to a majority of judges on the U.S. Supreme Court and the federal circuit courts — either refused to take an oath to Musharraf's PCO or were forcibly removed from office and placed under house arrest.⁶¹ Television news stations were taken off the air,⁶² public gatherings were banned,⁶³ and thousands of lawyers and activists were beaten and arrested, including most of the leadership of the lawyers' movement.⁶⁴ Students and other activists protested in defiance of military rule and faced brutal police crackdowns.⁶⁵

After the imposition of emergency rule, the lawyers began to cooperate more directly with opposition parties.⁶⁶ Protests became much larger and more diverse as a result.⁶⁷ In addition, new protest groups emerged and came to include not only secular urban elites, but also some poorer and more religious Pakistanis. According to Minallah, "It was a very interesting mixture. It was from every class. . . . Even people from the religious political parties . . . would be [protesting] with us outside the Supreme Court."⁶⁸

Musharraf ended emergency rule in December 2007 under intense international pressure,⁶⁹ and continued protests forced him to resign as

⁶⁰ Interview with Justice Ramday, *supra* note 46. The lawyers had put forward their own presidential candidate to challenge Musharraf's eligibility. See MALIK, *supra* note 41, at 196–231.

⁶¹ See Noorani, *supra* note 3.

⁶² See HUMAN RIGHTS COMM'N OF PAK., STATE OF HUMAN RIGHTS IN 2007, at 104–05 (2008) [hereinafter HRCP 2007 REPORT].

⁶³ See *id.* at 114–18.

⁶⁴ See *id.* at 45–46, 74–76, 89–90. One movement leader, Muneer Malik, almost died in jail because he was denied medical attention. See MALIK, *supra* note 41, at 240–50.

⁶⁵ See HRCP 2007 REPORT, *supra* note 62, at 45–46, 74–76, 89–90, 114–16.

⁶⁶ See Interview with Qazi Hussein Ahmed, former President of Jamaat-e-Islami and leader of the Muttahidah Majlis-e-'Amal (MMA), in Lahore, Pak. (July 26, 2008).

⁶⁷ Author's observation of protest activities (May–Aug., 2008).

⁶⁸ Interview with Ghazala Minallah, *supra* note 48. The lawyers' decision to cooperate with political parties was not without controversy. See, e.g., Interview with Attorney at the Lahore High Court, in Lahore, Pak. (June 5, 2008) ("These parties are prostitutes, trying to hijack, politicize, and derail our movement."). But Islamist parties were among the lawyers' earliest and most strident supporters. See MALIK, *supra* note 41, at 140; Interview with Qazi Hussein Ahmed, *supra* note 66. In his interview with the author, MMA leader Qazi Hussein Ahmed offered a passionate defense of judicial independence. *Id.* ("No country in the world can be safe and secure without the judiciary. . . . If the balance [among provinces and among governmental branches] is distorted by intervention of the army, there will be chaos in the country, and this can't be controlled by the use of force."); cf. FELDMAN, *supra* note 21 (discussing the historical role of Islamic scholars in restraining the Executive).

⁶⁹ Griff Witte, *Musharraf Ends 6-Week Emergency Rule*, WASH. POST, Dec. 16, 2007, at A28.

President in August 2008.⁷⁰ However, the new President, Asif Zardari, delayed reinstating the judges, perhaps out of fear that Chaudhry would declare unconstitutional the National Reconciliation Ordinance (NRO), an executive order issued by Musharraf in 2007 that gave Zardari and others immunity from corruption charges. Zardari lost much of his popularity very soon after taking office, in part because of his failure to reinstate Chaudhry, but also because of declining economic performance, rising food prices, nationwide fuel shortages, and ongoing violence in Pakistan's Northwest Frontier Province.⁷¹ Nevertheless, although some lawyers' protests continued through the fall and winter of 2008, the movement appeared to lose its momentum.⁷² Protests began to swell once again only after Zardari attempted to sideline opposition leader Nawaz Sharif — Zardari's main political rival and a strong supporter of the lawyers — by declaring federal rule in Sharif's home-province of Punjab. Shortly thereafter, the (unreconstituted) Supreme Court issued a ruling declaring Sharif and his brother, Shahbaz Sharif, ineligible to run for office. In response, the lawyers planned a massive protest in cooperation with Sharif and a number of opposition parties, promising to stage a sit-in in the capital until Chaudhry was restored.⁷³

With the Pakistani government seemingly on the verge of collapse, a last-minute flurry of negotiations led Zardari, at long last, to reinstate the last of the deposed judges, including Chaudhry, on March 16, 2009.⁷⁴ In the months after Chaudhry returned to the bench, the Court proceeded to remove all of the judges Musharraf appointed during the emergency,⁷⁵ to reverse the ruling against Nawaz and Shahbaz Sharif,⁷⁶ and to declare the NRO unconstitutional.⁷⁷

C. *The Role of the Media*

Throughout the lawyers' movement, the media played a critical role in educating the public about events at the Supreme Court and fa-

⁷⁰ Saeed Shah, *Musharraf Quits as Pakistan President*, GUARDIAN, Aug. 19, 2008, at 1.

⁷¹ See INT'L REPUBLICAN INST., IRI INDEX: PAKISTAN PUBLIC OPINION SURVEY — OCTOBER 15–30, 2008, at 34 (2008), available at <http://www.iri.org/sites/default/files/2008%20December%2018%20Survey%20of%20Pakistan%20Public%20Opinion,%20October%2015-30,%202008.pdf>.

⁷² See, e.g., Ghazi Salahuddin, *Is the Lawyers' Movement Dead?*, NEWS INT'L (Pak.), Oct. 26, 2008, http://www.thenews.com.pk/daily_detail.asp?id=143164.

⁷³ See Perlez, *supra* note 4.

⁷⁴ See *id.*

⁷⁵ See Masood, *supra* note 7.

⁷⁶ Griff Witte, *Popular Former Prime Minister Is Back in Pakistani Politics*, WASH. POST, May 27, 2009, at A9.

⁷⁷ *Hassan v. Pakistan*, Const. Pets. 76–80 of 2007 & 59 of 2009, Civ. Appeal 1094 of 2009, HRC 14328-P–14331-P & 15082-P of 2009 (Dec. 16, 2009), available at http://www.supremecourt.gov.pk/web/user_files/File/NRO_Judgment.pdf.

ilitating collective action on the streets. Whereas a decade before the start of the movement Pakistan had only two major news stations, both of which were state-owned, by 2007 roughly one-third of all Pakistanis had access to private news channels, and the country was host to a vibrant and competitive private electronic media sector.⁷⁸ From 2007 to 2009, private channels flashed news updates within minutes of important events or protests, allowing Pakistanis to stay abreast of the judicial crisis in real time.⁷⁹ Predictably, media coverage of the judicial crisis caused the media to become a target of state repression.⁸⁰

The lawyers' movement also benefited from new forms of media technology that proved resistant to governmental crackdowns. When Musharraf shut down TV channels during the emergency, the demand for independent media simply spilled over into new technological arenas. Activists began to substitute newer forms of media for TV, posting videos, pictures, and stories of protests and police crackdowns to YouTube, Flickr, homemade blogs, and other websites, and communicating details and descriptions via cell phone text messages.⁸¹ Pakistani legal scholar Osama Siddique, for one, saw the emergence and use of new media technology as the crucial difference between protests in earlier decades and the lawyers' movement:

In the '80s, under [General] Zia, . . . if you took out a demonstration in Lahore and you all got arrested, people wouldn't find out in [Rawalp]indi until three days later. There was only one national television channel, and there was no mobile communication. This time around, . . . all we needed to do was make a video through someone's cell phone and send it off to the *New York Times*. . . . Even the most efficient military regime cannot

⁷⁸ HUMA YUSUF, CTR. FOR FUTURE CIVIC MEDIA, OLD AND NEW MEDIA: CONVERGING DURING THE PAKISTAN EMERGENCY (MARCH 2007–FEBRUARY 2008) 7 (2009), <http://civic.mit.edu/sites/civic.mit.edu/files/Old%20and%20New%20Media%20Pakistan%20Emergency.pdf>.

⁷⁹ See Interview with Shafiq Ahmad Kamboh, Lecturer, Inst. of Commc'ns Studies, Punjab Univ., in Lahore, Pak. (June 17, 2008).

⁸⁰ See HRCP 2007 REPORT, *supra* note 62, at 102–13. Musharraf shut down major news stations during the emergency and even successfully pressured the government of Dubai to stop Geo TV's overseas broadcasts. See Muhammad Saleh Zaafir, *Musharraf Shuts Down Geo TV*, NEWS INT'L (Pak.), Nov. 17, 2007, http://www.thenews.com.pk/top_story_detail.asp?Id=111196.

⁸¹ See YUSUF, *supra* note 78, at 8–20. Student protesters, in particular, displayed impressive facility with new media technology. Students posted homemade videos of protests on YouTube and reached out to international media outlets such as ABC News with videos and first-person accounts of protest activities. See, e.g., Gretchen Peters, *Resisting Martial Law (Just Don't Tell Mom)*, ABC NEWS, Nov. 9, 2007, <http://abcnews.go.com/International/Story?id=3844733&page=1>; Samadkhurram, *Pakistani Bloggers on ABC*, YOUTUBE (Apr. 16, 2008), <http://www.youtube.com/watch?v=I2YpVZL-Rqk>.

catch everyone with a cell phone every day, especially when you can get a SIM card for 100 rupees and keep changing it!⁸²

In these ways, the successful exercise of judicial independence relied crucially on the strength and independence of the Pakistani media — in both its traditional and its nontraditional forms.

III. THE LAWYERS' MOVEMENT AS TEST CASE

The history of the lawyers' movement seems to offer support for both genres of scholarship on judicial power discussed in Part I. At first blush, David Law's theory of collective action—facilitating judicial review appears to have more to recommend it. Implicit in Law's theory is a requirement that the public believe that an independent judiciary will help solve the principal-agent dilemma of government. Without some basic level of public trust in the capacity of the Court to announce the terms of a constitutional delegation, the public will fail to rally behind Court opinions and against a "usurping government."⁸³ This dynamic appears to have been at play in Pakistan: the Court became capable of spurring collective action only after it had gained popular legitimacy, first through issuing independent rulings from 2005 to 2007 and then through reinstating Chaudhry in July 2007. Subsequently, when Musharraf attacked the judiciary, he not only signaled to the people that he was usurping his delegated authority, but also unwittingly encouraged a popular rebellion.⁸⁴ And in the end, the net result of this process of judicial legitimization and popular revolt was a significant expansion of judicial power.

Another important aspect of Law's thesis is the vital role of the media in augmenting courts' ability to hold government accountable. To Law, although a supreme court is needed to provide a single, coherent voice on the legitimacy of specific governmental acts, it relies on the media to translate opinions into a language that the public under-

⁸² Interview with Osama Siddique, Assoc. Professor of Law and Policy, Lahore Univ. of Mgmt. Scis., in Lahore, Pak. (June 2008). General Zia-ul-Haq was President of Pakistan from 1978 to 1988.

⁸³ Law, *supra* note 18, at 733; *accord id.* at 752–53 (“[P]eople are more likely to heed the message if they trust the messenger.” *Id.* at 753). Note that this requirement might apply only during the early stages of the emergence of an independent judiciary; a more established judiciary can rely on its ability to shape collective expectations of compliance, rather than on popular support for its constitutional interpretation, in order to enforce its rulings. *See id.* at 762–64 (discussing the U.S. Supreme Court's capacity to shape collective expectations of enforcement of *Bush v. Gore*, 531 U.S. 98 (2000)).

⁸⁴ *Cf.* INT'L REPUBLICAN INST., IRI INDEX: PAKISTAN PUBLIC OPINION SURVEY — NOVEMBER 19–28, 2007, at 6, 7, 9 (2007), available at <http://www.iri.org/sites/default/files/2007-12-12-pakistan-poll.pdf> (reporting that 70% of Pakistanis opposed imposition of the state of emergency, *id.* at 6; 77% opposed the house arrest of Supreme Court justices, *id.* at 7; and 62% supported street protests against the emergency, *id.* at 9).

stands.⁸⁵ Neither institution, then, is capable of shaping collective expectations of accountable governance — and of spurring a collective response to governmental transgressions — on its own. Events in Pakistan seem to support this thesis: the expansion of judicial power relied crucially on the capacity of the media to bring trustworthy information to the Pakistani public.

Despite the appeal of this bottom-up characterization of the expansion of judicial power in Pakistan, it is clearly incomplete. Beneath the idealistic sheen of the lawyers' protests, the strategic maneuverings of elites were a prime driver of the movement and a key determinant of its success. First and foremost, the lawyers themselves were from an elite profession, and from a certain perspective their protests could be understood as a narrow defense of the professional interests of the bar. More importantly, political leaders like Sharif benefitted enormously from their affiliation with the lawyers,⁸⁶ and there is significant reason to doubt many of these leaders' genuine commitment to judicial independence.⁸⁷ The fact that lawyers' protests did not regain momentum until Zardari attempted to sideline Sharif in 2009 is evidence that the success of the movement had less to do with the popular salience of the rule of law than it did with political opposition to Zardari.

But even this more complicated picture of the movement seems to miss many details. There is something about the rapid emergence of Chaudhry as a popular hero and the salience of the lawyers' struggle to Pakistanis of diverse backgrounds that the elitist models of judicial power struggle to explain.

A. *Bottom-Up Pressure for Judicial Independence*

Despite efforts among elites of all sorts to exploit, dominate, and appropriate the popular energy surrounding the lawyers, some aspects of the movement nevertheless remained outside of anyone's control. In a number of different institutional contexts, pressure from below forced or at least encouraged elites to ally themselves with the cause of judicial independence. An example given by Aitzaz Ahsan is instructive: Prior to the March 2009 protests, Ahsan met with Sharif to try to convince him to participate in the upcoming sit-in. When Sharif expressed doubts about the wisdom of a sit-in, Ahsan told him, "If either

⁸⁵ See Law, *supra* note 18, at 751–54 ("[T]he task of monitoring the government is not one that courts perform in isolation and without assistance." *Id.* at 751.).

⁸⁶ See INT'L REPUBLICAN INST., IRI INDEX: PAKISTAN PUBLIC OPINION SURVEY, JULY 15–AUGUST 7 2009, at 45 (2009), available at <http://www.iri.org/sites/default/files/2009%20October%2015%20Survey%20of%20Pakistan%20Public%20Opinion,%20July%2015-August%207,%202009.pdf> (tracking support for Pakistani political parties from September 2006 to July 2009).

⁸⁷ When Sharif was Prime Minister in 1997, for example, he had party loyalists storm the Supreme Court building during a contempt case against him. See KHAN, *supra* note 5, at 827–28.

one of us doesn't go through with this, our political careers are over."⁸⁸ In the end, Sharif endorsed the sit-in.⁸⁹

In addition, although well-educated elite bar leaders like Muneer Malik, Aitzaz Ahsan, and Ali Ahmed Kurd directed the overall movement strategy from above, much of the impetus for the lawyers' protests came from the youngest and often the poorest members of the profession. These so-called "common lawyers" tended to be more politically active than their elite counterparts. "Older lawyers are professionals who are very prone to compromises," explained I.A. Rehman, a Pakistani historian and human rights activist. "They're not made of the stuff of street fights. It's the younger lawyers who took the beatings. When a poor lawyer does this, people see it as heroism."⁹⁰ Thus, when spontaneous lawyers' protests erupted after Musharraf removed the Chief Justice, it was the young lawyers who led the charge.⁹¹ Moreover, because Pakistani bar associations elect new leaders every year,⁹² the lawyers' experiences of protest and repression resulted in an increasingly resistance-oriented bar leadership. Hamid Khan explained the situation as follows: "This year, all those people who were seen to be active in the movement were elected. All those who were seen to be inactive, or toeing the line, were badly defeated. So the commitment [to resistance] comes from the fact that [bar leaders] need to face the electorate."⁹³

The media, too, faced new incentives to side with the lawyers over "the establishment." Media restrictions and blackouts cost private news channels significant sums of money, but because the public wanted the media to stand alongside the Supreme Court as a check on governmental excess, it remained in many stations' long-term financial interest to continue providing credible, independent news coverage. Geo TV took a particularly principled stand on the lawyers' issue, refusing to tailor its coverage to Musharraf's dictates, and the station

⁸⁸ Interview with Aitzaz Ahsan, former President, Pak. Supreme Court Bar Ass'n, in Cambridge, Mass. (Oct. 26, 2009).

⁸⁹ See Perlez, *supra* note 4.

⁹⁰ Interview with I.A. Rehman, Director, Human Rights Comm'n of Pak., in Lahore, Pak. (July 29, 2008).

⁹¹ Interview with witness to March 13, 2007, protests at the Lahore High Court, in Lahore, Pak. (Aug. 15, 2008) (noting that, despite reluctance from leadership, "[t]he pressure from below was impossible to stop").

⁹² Interview with Hamid Khan, *supra* note 29.

⁹³ *Id.* Even Aitzaz Ahsan struggled to maintain his position atop the movement in the wake of his decision to forego a sit-in during an important protest in 2008, when lawyers and activists began to question his revolutionary credentials. See, e.g., Posting of Samad Khurram to Teeth Maestro, <http://teeth.com.pk/blog/2008/09/19/aitzaz-explains-decisions> (Sept. 19, 2008).

paid particularly high costs as a result.⁹⁴ However, the CEO of Geo TV, Mir Ibrahim Rahman, reported that the station's approach nonetheless made good business sense. "[W]e were able to raise [our] rates afterwards because we had increased credibility. Accurately covering the lawyers in the face of repression became a long-term business strategy."⁹⁵ In this way, the actions of the Chief Justice and the lawyers "literally raised the cost of indifference"; to maintain its credibility, "The media had to tell the truth."⁹⁶

B. Some Effects of the Movement on Political Culture

There is a cyclical, self-fulfilling dynamic to the popular mobilization on behalf of judicial power in Pakistan that cannot be wholly explained by the elite-focused public choice models discussed above, and that could be a force for solidifying judicial review in the future. The movement has refashioned the terrain of Pakistani politics in ways that would seem to increase the willingness and ability of the Pakistani people to take advantage of the Courts' coordinating function. Indeed, the collision between legal profession, street politics, and the Chief Justice at the center of the lawyers' movement has reached deep into the psyche of the Pakistani body politic, helping to educate the general public, to shape the institutional and collective identities of lawyers, activists, and judges, and to alter the incentives of political parties.

1. *Public Education and Collective Identity-Formation.* — At the very least, the movement educated a large number of Pakistanis on the meaning of their constitution and the potential role of the courts and the legal profession in interpreting and defending it. For example, in the weeks following the declaration of emergency rule, television stations like Geo TV ran specials on the content and meaning of the constitution; bookstores sold out of copies of the constitution in major cities like Lahore.⁹⁷ Osama Siddique explained the popular reaction to the movement as follows:

No one likes lawyers all over the world[, but] a month [into the state of emergency,] ordinary citizens began offering [protesting lawyers] bottles of water, [and] shouting "Go Musharraf Go." So there was a public education going on. . . . [E]ven the average Joe would say, "You know, I think Musharraf really did something ridiculous. How can one person send away sixty judges?"⁹⁸

⁹⁴ Geo TV was taken off the air for longer than any other channel, causing it to lose "a ton of money in the short term, including twenty-five million dollars for a Pakistan-India cricket match." Interview with Mir Ibrahim Rahman, CEO, Geo TV, in Cambridge, Mass. (Nov. 23, 2009).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Interview with Osama Siddique, *supra* note 82.

In addition, participation in protest activities seems to have strengthened what social psychologists call protesters' "collective identity."⁹⁹ For example, many lawyers came to see themselves as participants in a narrative of lawyers' resistance to illegitimate state authority stretching all the way back to independence. Activists were quick to point out that Gandhi, Jinnah, Nehru, and Iqbal were all lawyers, and that lawyers had prominent roles in movements against Ayub Khan, Zulfikar Ali Bhutto, and Zia.¹⁰⁰ And for many students, organizing against military rule had a profound impact on their political awareness and sense of self. Sundas Hurrain, a student activist from Lahore, experienced a kind of personal awakening through acts of protest: "It was this great feeling It was us asserting our agency, and our humanity in a sense."¹⁰¹ For others, enduring threats, beatings, and arrests only solidified their determination to push for political change and increased their sense of solidarity with fellow protesters. Kamil Hamid, a student protester from Islamabad, described his experience of being arrested for the first time as follows:

It was cold in the cell. This was a really bad time, but it built this fire up in you, because when you were sitting together in this cell, you were all exchanging stories with each other about who we were. I remember telling them that I didn't regret doing this at all. It was amazing to see these people fight the way that they did, fight for their rights. . . . For so long, I had deemed people in this country . . . apathetic [and] uncaring. And now, suddenly I see people cheering on the streets, caring for something, and I was so proud. I realized that there was nowhere I would rather be. Now I know what it is that I need to do. I know that there are people out there who want change.¹⁰²

The movement had similar effects on the professional identities of many Pakistani judges. Protests on the streets inspired many deposed judges to continue resisting military rule — even when Musharraf offered the judges their jobs back and intelligence agencies pressured them to accept. Despite the hardships of house arrest and isolation, these judges felt that they could not abandon protesters who were praising their defiance and enduring beatings on their behalf.¹⁰³ For

⁹⁹ William A. Gamson, *The Social Psychology of Collective Action*, in *FRONTIERS IN SOCIAL MOVEMENT THEORY* 53, 55 (Aldon D. Morris & Carol McClurg Mueller eds., 1992). A collective identity emerges when individuals' "sense of who they are becomes engaged with a definition shared by coparticipants in some effort at social change." *Id.* Collective identity formation is an important precondition for effective collective action. See Benjamin I. Sachs, *Employment Law as Labor Law*, 29 *CARDOZO L. REV.* 2685, 2725 (2008).

¹⁰⁰ See, e.g., Interview with Azhar Siddique, in Lahore, Pak. (June 5, 2008); Interview with I.A. Rehman, *supra* note 90.

¹⁰¹ Interview with Sundas Hurrain, on highway from Lahore to Islamabad, Pak. (June 14, 2008).

¹⁰² Interview with Kamil Hamid, in Lahore, Pak. (July 2, 2008).

¹⁰³ See, e.g., Interview with Deposed Lahore High Court Judge, in Lahore, Pak. (July 3, 2008).

example, although Chaudhry argued that refusing to resign “was an easy decision” based on the dictates of his “conscience,” he said that, amidst the threats and long months of house arrest, “[The protesters] gave [him] the courage to continue on.”¹⁰⁴ Similarly, Justice Ramday, who authored the opinion striking down the reference against Chaudhry, argued that the movement had empowered him and his fellow Justices to rule according to the “true” dictates of the constitution. “[J]udges don’t operate in a vacuum,” he explained. Rather, events on the streets served to “strengthen[] their conscience” to rule according to the law.¹⁰⁵ In this context, the Chaudhry Court’s aggressive rulings since March 2009 should come as no surprise.

2. *A New Politics?* — Perhaps most importantly, there is some evidence that the movement has encouraged the emergence of a new issue-based democratic politics. Traditionally, Pakistani elections have hinged on feudal loyalties and political patronage: a designated representative of the local landholding elite secures the votes of rural Pakistanis through threats and bribes; the locals trust that he will protect them and funnel governmental resources in their direction.¹⁰⁶ Similarly, leadership of major political parties has been treated like a family inheritance.¹⁰⁷ Even though they compete in national and local elections, Pakistan’s parties are so internally corrupt and exclusive that Pakistanis routinely categorize them alongside the military establishment as a form of elite “vested interests.”¹⁰⁸

To many activists, the lawyers’ movement was unique in that it emerged independently of either the political parties or the military establishment. These activists saw it as the first Pakistani social movement that was truly about “issues.” Women’s rights activist Khawar Mumtaz made this argument:

[Earlier movements] were political party-led. This was very consciously trying to keep the political party aspect outside it. It was the lawyers’ movement, regardless of which party [the lawyers] belonged to. That’s

¹⁰⁴ Interview with Iftikhar Muhammad Chaudhry, *supra* note 28. This sentiment was echoed by nearly all of the deposed judges with whom the author spoke during the summer of 2008.

¹⁰⁵ Interview with Khalil-ur-Rehman Ramday, *supra* note 46.

¹⁰⁶ See, e.g., STEPHEN PHILIP COHEN, *THE IDEA OF PAKISTAN* 143 Box 4-1 (2004); William Dalrymple, *A New Deal in Pakistan*, N.Y. REV. BOOKS, Apr. 3, 2008, at 14; Nicholas Kristof, *Feudalism in Pakistan*, N.Y. TIMES, Aug. 1, 2009, <http://kristof.blogs.nytimes.com/2009/08/01/feudalism-in-pakistan>.

¹⁰⁷ The brothers Nawaz and Shahbaz Sharif lead the PML(N), for example, see *Pakistan Muslim League (Nawaz) — PML(N)*, <http://www.globalsecurity.org/military/world/pakistan/pml.htm> (last visited Mar. 27, 2010), and Benazir Bhutto reportedly bequeathed leadership of the PPP in her will to her son, Bilawal, with the intention that her widower, Zardari, lead the party until Bilawal comes of age, see Michael Hirsh, *A Family Affair?*, NEWSWEEK.COM, Dec. 29, 2007, <http://www.newsweek.com/id/82403>.

¹⁰⁸ See, e.g., Interview with Khawar Mumtaz, Senior Coordinator, Shirkat Gagh Women’s Res. Ctr., in Lahore, Pak. (July 17, 2008).

what differentiates it. . . . [I]t's not on behalf of a leader, it's not on behalf of a political party. . . . We've had a lot of movements, but this movement is autonomous in some sense; it's not aligned to anything.¹⁰⁹

Even as the lawyers sacrificed some of this independence by cooperating with the parties, many believed that by mobilizing contentious political activity around a specific issue rather than an individual political leader, the lawyers effectively showed the political parties the way toward a more genuine and responsive democratic politics. To Tariq Mahmood, for example, criticizing the lawyers for the political affiliations of their followers simply made no sense. "We gave a general invitation to everyone," he said. "[If] I've taken a stand [and] you've opted to support me, nobody should blame me!"¹¹⁰ In other words, if the parties supported the lawyers' stance because the people cared about these issues, and the parties wanted to reap the resulting electoral benefits, this was a sign not of cooptation but of an emerging political maturity within Pakistan's electoral market.

Many activists perceived this shift toward the politicization of the lawyers' movement, and of Pakistani society at large, as the movement's most important achievement. As one student activist reported:

For the first time in Pakistan, we've changed the agenda of the political parties. Nawaz Sharif's party, now all its manifesto is focused on the rule of law, on the restoration of the judges. This is our achievement. . . . Being nonpartisan, we've changed the direction of the political parties, we've forced on them what the people want. And we've achieved it very quickly. In just a few months, we've shown the political parties what to do.¹¹¹

Some activists even argued that the movement was the vanguard of a new kind of issue-based politics in Pakistan. Sundas Hurrain explained with pride the reasons that the members of her student group decided not to create a hierarchical leadership structure:

[W]e actually had no leader. That has been the trademark of this movement from the beginning. We are standing up against having leaders to begin with. What we're saying is that it's not about a leader. It's not about a person. One person can't come and save us, no matter how good he is. If Nawaz Sharif is corrupt, if Zardari's corrupt, if Benazir's corrupt? Yeah, they're one person. If we build processes and institutions, those one persons, they cannot affect as much. . . . [W]e don't need leaders . . . [a]nd we don't want leaders. What we want is processes that are above the leaders.¹¹²

Time will tell whether the lawyers' movement results in more accountability among Pakistani political parties over the long term. But

¹⁰⁹ *Id.*

¹¹⁰ Interview with Tariq Mahmood, Justice (retired), Balochistan High Court, in Islamabad, Pak. (July 25, 2008).

¹¹¹ Interview with Ahmed Saleemi, in Lahore, Pak. (July 3, 2008).

¹¹² Interview with Sundas Hurrain, *supra* note 101.

between 2007 and 2009 the record is clear: a mobilized citizenry forced nearly every major political party in Pakistan to endorse the ideas of judicial independence and the restoration of the judiciary from before the state of emergency. These parties eventually included even Zardari's Pakistan People's Party, which had every reason to fear a truly independent judiciary given the corruption charges against Zardari and the pending judicial review of the NRO. In short, the independent actions of judges, by encouraging and giving voice to a broad-based social movement, empowered newly organized social interests "on whose voluntary cooperation rulers [came] acutely [to] depend,"¹¹³ and to whose demands these rulers had no choice but to respond.

IV. CONCLUSION

The uniqueness of the events in Pakistan seems to dictate caution when using them as a test case for any theory of judicial power. Seven years of military rule, foreign intervention by the United States, and a corrupt party system dominated by patronage politics had left open a vacuum of popular legitimacy among governmental institutions that was just waiting to be filled by some courageous public servant. Moreover, the movement might appear as little more than the sum of its self-interested parts: a small group of professionals pursuing the narrow interests of their guild, supported by a coalition of political parties seeking to use the movement for partisan gain. But the sheer speed and scope of the transformation of the Court (and its defenders) in the minds of the public from little-respected tools of the establishment to champions of the rule of law point to something more universal. If a Punjabi farmer can see in a Chief Justice's legal struggles a parallel to his own, if the bookstores in a city the size of Lahore can sell all of their copies of the constitution, and if the electoral success of political parties and the market share of television networks can hinge on their attitudes toward judicial independence, then the notion of the Supreme Court as *merely* a tool of elites cannot be the entire story. In short, there is a popular currency to judicial power and the rule of law that, when activated, might prove capable of transforming political parties, the judiciary, and the people alike. Courts can gain institutional power not only by allying with established governmental interests, but also by allying with mass social movements and the media. Judicial power can result from courts speaking to the people, mobilizing the people to "rebel" against a renegade executive, and convincing the people that successful collective action is possible.¹¹⁴

¹¹³ Holmes, *supra* note 11, at 44.

¹¹⁴ Many observers fear that this new political culture will result not in accountability but in instability. In the face of a Taliban insurgency and a still-fragile democratically elected govern-

In the end, the most important effects of the movement might not be its immediate impact on the composition of the judicial and executive branches, but rather the changes it engendered in the collective identity of Pakistani lawyers, judges, journalists, students, urban professionals, and politicians, and its impact on the political awareness of ordinary Pakistanis. To Khawar Mumtaz, for example, the movement successfully “caused civic debate across the board. There is now fertile discourse and debate. This needs to be cherished.”¹¹⁵ For Ghazala Minallah, “The movement . . . has woken up a whole generation of Pakistanis who were put to sleep by Zia.”¹¹⁶ Aitzaz Ahsan concluded, “The broader aspect of the movement is the dream that has been placed in the eyes of people in the form of a transformed state.”¹¹⁷ And Muneer Malik argued, “The movement is to be judged on the qualitative changes in the mindset of Pakistanis that we have made. I venture to think that nobody can now bring a PCO. The common man now understands what the rule of law means.”¹¹⁸

These voices offer variations on a theme: the lawyers’ movement created a new political awareness among Pakistanis; it taught them to expect a collective response to certain forms of governmental misconduct, and to demand that their government comply with certain constitutional norms . . . *or else*. Speaking at a time when the success of the movement was still in doubt, Ghazala Minallah put it aptly:

[I]f you look at it from a historical point of view, whether [the judges] are restored or not doesn’t matter. It’s not a question of the judges getting their jobs back. It’s a question of the way that they stood, the stand that they took with the risks involved, living in a country where killing off people who stand in your way is a common thing. They took those risks with their family and their young children as well. They did it for their country. And as far as I’m concerned, the lawyers’ movement is already a success. . . . It has woken up a whole generation.¹¹⁹

ment, the Supreme Court’s ruling on the NRO has raised the specter of political chaos and a weakened executive. Cf. Editorial, *Pakistan: Supreme Court Chaos*, *GUARDIAN*, Dec. 18, 2009, at 40 (“[T]he jubilant lawyers should be wary of getting what they wish for. They could be preparing not just the ousting of the PPP from power, but the re-entry of the army into it.”).

¹¹⁵ Interview with Khawar Mumtaz, *supra* note 108.

¹¹⁶ Interview with Ghazala Minallah, *supra* note 48.

¹¹⁷ Aitzaz Ahsan, Panel Discussion on Pakistan’s Judiciary and Media, Harvard Kennedy School of Government (Oct. 26, 2009).

¹¹⁸ Telephone Interview with Muneer Malik (Aug. 2008).

¹¹⁹ Interview with Ghazala Minallah, *supra* note 48.