

Pakistan Lawyers' Movement and Democratization: A Deliberative Perspective

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Abstract: This paper explores the role of deliberation in the democratization of Pakistan. It analyzes the case of the Pakistan Lawyers' Movement during the military dictatorship (2007-2009) and how it paved the way to the process of democratization in the country. Although the democratization of societies at large has always been at the core of deliberative theory, comparative studies of democratization have completely missed the deliberative aspect, which makes the transition to democracy possible. Through Dryzek's concept of deliberative capacity, this paper investigates the role of Pakistan Lawyers' Movement in building this capacity across different locations in the political system. This paper attempts to interpret the Pakistan Lawyers' Movement through the lens of deliberative theory. This Movement throws new light on the normative aspects of deliberative theory and also helps us to understand the nature of deliberation in an authoritarian non-Western context. The case of the Pakistan Lawyers' Movement provokes reflection on the normative principles of deliberative democracy, helps us to understand the nature of deliberation in an authoritarian context, and extends current scholarship on the comparative studies of democratization.

Key words: Deliberative Theory, Pakistan Lawyers' Movement, Democratization.

This paper focuses on the process of democratization in a non-Western and authoritarian context of Pakistan. In the initial studies of the 1970s and 1980s, democratization was understood as "simply a transformation of the political system from non-democracy towards accountable and representative government" (Grugel 2002, 3). Moreover, these studies relied on a process-oriented approach in order to explain the mechanisms and conditions that make democratization possible in the political system. They also distinguished between transition and consolidation. The transition marks the beginning of a democratic process in which political activities are fluid, and democracy is not fully assured, whereas consolidation is the success of democratic politics in which democracy becomes "the only game in town" (Linz and Stepan 1996, 5). The process-oriented approach does not clearly convey the meaning of 'democratization'. Indeed, the literature on democratization suggests that there is no consensus on its definition, and it is, like democracy, an essentially contested concept (Grugel 2002, 4). Many political scientists construe democratization as a continuum from the lowest level to the highest level. They determine the quality of democratization by positioning the regime on different points on the continuum. According to its minimal concept, democratization is understood as the regular holding of 'free and fair elections.' Normatively, until the end of the 20th century, political theorists assumed democracy in terms of liberal democratic order in the comparative studies on democratization. The deliberative aspect in the process of democratization provides a new perspective to understand the transition to a democratic form of government.

In what follows, I will first discuss the gap in the literature on democratization studies, which mainly focuses on free and fair elections, structural preconditions, and the role of elites. The mainstream research on democratization ignores the role of both deliberation and social movements in authoritarian contexts, which I argue merits academic attention. The role of social movements and deliberative practices in authoritarian regimes is an important aspect in order to understand the process of democratization in the Pakistani non-democratic context. This article is divided into three sections. In section one, I discuss how the main theories of democratization ignore the role of deliberative practices in their approach. Section two introduces the case of Pakistan Lawyers' movement. Section three analyzes the Movement in the context of recent developments in deliberative theory. Specifically, I discuss the importance of the systemic approach to understanding the process of democratization in Pakistan. The Pakistani context presents a case study to understand the reach and application of deliberative theory in a non-Western context.

I. THE NEGLECT OF DELIBERATION IN DEMOCRATIZATION AND SOCIAL MOVEMENTS STUDIES

The political upheavals responsible for the collapse of authoritarian rule in Pakistan are important in order to explain the democratic transition of the country. The transition in Pakistan from authoritarian rule to democratic government can be understood from both 'top-down' and 'bottom-up' perspectives. For Flynn and Curtao, transition is a dynamic phenomenon and does not merely entail change "from one form of government to another" because it also includes "broader social processes and trajectories" (O'Flynn and Curato 2015, 299). Democracy understood in deliberative terms focuses on the 'deliberative capacity' of the regime under the process of transition. This approach is different from the dominant approaches, which mainly focus on 'free election' and 'structural pre-conditions' as the only criteria for transition. As Elklit and Reynolds argue that "at the heart of democratization attempts lie competitive elections, which are often held during times of societal stress and under imperfect logistical conditions characterized by administrative unreadiness" (Elklit and Reynolds 2002, 86). They believe that the democratization process in the developing world can be strengthened by the proper administration of the elections. Comparative scholars like Adam Przeworski also believe that 'contested elections' is the only requirement for the transition from authoritarian rule to democratic one: "a regime in which governmental offices are filled as a consequence of contested elections. Only if the opposition is allowed to compete, win and assume office is a regime democratic." (Przeworski et al. 1996, 50). This is not to deny the importance of election in a democratic process but rather that deliberation is a more telling measure for the understanding of transition in Pakistan. In certain respects, deliberation is an

essential element to determine the democratic quality of the regime, and contested elections cannot produce democratic results in the absence of deliberation.

With respect to social movements, there are two issues which I will discuss here. First, the role of deliberation is ignored in social movement studies, and second, the role of social movements is also being neglected in democratization studies. As Nancy Bermeo argues: democratization literature mainly focuses on the elites rather than social movements (Porta 2013, 126). A few thinkers, for example, Charles Tilly, have emphasized the “broad correspondence between democratization and social movements” (Tilly 2004, 131). There is a need to address the impact of social movements on the process of democratization. The literature on democratization mostly deals with socio-economic conditions, institutional structure, and elite behavior and neglects the role of deliberation and social movements. In the same vein, the literature on social movements, until recently, mainly focuses on established democracies where conditions for social mobilization are conducive and tends to neglect the impact of social movements on the process of democratization in authoritarian regimes¹. As Donatella Della Porta puts it: “even in established democracies, the relations between movements and democracy have mainly been looked at in terms of institutional opportunities for protest, rather than of the attitudes towards and practices of democracy by activists and their organizations” (2013, 132). However, some scholars working on the global justice movement have also emphasized the convergence between social movements and democratization². In the last decade, there have been a few studies about social movements in authoritarian contexts.³ However, within the classical formulation of mainstream theories of democratization, a very limited role is being assigned to social movements and protests. Protests have been understood as antithetical to the ideal of deliberative politics. Conventionally, scholars argue that since protests are adversarial in nature, they hinder the prospects of deliberative democracy. Some political theorists, for example, Chantal Mouffe, associate protests with the agonistic view of democracy (Mouffe 1999). However, the global justice movements provide a pioneering work on this neglected issue of deliberative aspects of social movements⁴. In my analysis of the Pakistan Lawyers’ movement, I extend this scholarship by utilizing Dryzek’s concept of deliberative capacity.

1] After the Arab Spring, there are few studies on social movements in authoritarian contexts, which attempt to explain the role of social movements in the process of democratization. For example, see Porta 2013, 124-49. Estlund et. al 2016.

2] For example, see Porta.2005a ; Haug and Teune 2008 and Porta and Rucht 2013.

3] For social movements in the Middle Eastern context, see Gunning 2007; Hafez 2003 and Wiktorowicz 2004. And, for the Asian and former Soviet Union contexts, see Boudreau 2004 and Beissinger 2002 respectively.

4] For details, see Porta 2005a; 2005b; and Haug and Teune 2008.

II. THE CASE OF PAKISTAN LAWYERS' MOVEMENT

The role of the judiciary in the democratization process has remained problematic throughout the political history of Pakistan. Historically, the courts have always provided judicial cover and legitimized the military rule in Pakistan. The Lawyers' Movement gave an opportunity to the Supreme Court of Pakistan to assert its deliberative capacity. Not only did the movement mobilize the judicial system, but it also paved the way for the Supreme Court to contribute to the democratization process in Pakistan. Although some scholars recognize the role of courts and lawyers in the democratization process in authoritarian contexts, these studies just focus on the institutional conditions which lead to the democratization process. I argue that courts and lawyers cannot play a pro-democracy role if they merely struggle within formal institutional structures. They need support from the informal public sphere in order to develop and assert their deliberative capacity, which is essential to the process of democratization. The Lawyers' movement was not merely confined to lawyers as it also included various civil society actors such as political parties, students, religious groups, women rights activists, and citizen groups. I argue that the success of the Lawyers' movement can only be understood if we also recognize the role of these other civil society actors. Civil society actors broadened the scope of the movement by situating its agenda within the larger informal public sphere. The existing scholarship on the Lawyers' movement ignores the role of this movement in the process of democratization and merely limits itself to the restoration of judiciary.

The Lawyers' movement started when General Pervez Musharraf, the Army Chief, suspended Chief Justice Iftikhar Muhammad Chaudhry on charges of misconduct. During Chaudhry's tenure, the Supreme Court began to assert its independence and created problems for General Musharraf's military rule. The Supreme Court's expansion of judicial power by means of 'public interest litigation' involved the Court's original jurisdiction, *suo motu* powers, under Article 184(3) of the Constitution of Pakistan. According to Article 184(3), the Supreme Court may assume original jurisdiction of any matter of public importance relating to the enforcement of Fundamental Rights enshrined in the Constitution⁵. The practice of 'public interest litigation' was not new in Pakistan but the way it was executed during the tenure of Chaudhry began to expose the unconstitutional acts of Musharraf, thereby threatening the military rule. After the forced dismissal of Chaudhry Iftikhar, the public reaction was negative, and the lawyers began to mobilize and protest against the illegal and unconstitutional dismissal of the Chief Justice. After two years of struggle, the Lawyers' movement succeeded, which rendered the judiciary an independent institution with power to implement rule of law in the country. Due to this movement, all sacked judges were restored to their previous positions.

5] See also, ICJ report, "Authority without accountability: The search for justice in Pakistan" at page 32.

III. POLITICAL DELIBERATION AND PAKISTAN LAWYERS' MOVEMENT

In this section, I interpret the Pakistan Lawyers' movement by using deliberative theory. Specifically, I will use the systemic strand of deliberative theory to understand deliberative practices and mechanisms in the Pakistani context. The Systemic Approach to deliberative theory is a macro-level analysis of deliberative practices. However, it is not just confined to macro locations of deliberative mechanisms, and it attempts to assess the whole 'political system'. In this way, one can combine micro, mezzo, and macro levels to understand the deliberative quality and potential of a political system. In the case of the Lawyers' movement, all three locations (micro, mezzo, and macro) are important. I also believe a more holistic approach towards deliberation, which is an essential aspect of the systemic strand, should combine these three venues of deliberation. There are many advantages of using the systemic approach to understand this case:

1. The systemic approach does not consider protests and social movements as antithetical to the deliberative model of democracy.⁶ Pakistan Lawyers' movement involves both protests and disruptive politics. Therefore, systemic approach is preferred for its interpretation.
2. The comparative studies of democratization, which have ignored until recently the importance of deliberation, can benefit more from the systemic approach. Democratization understood in terms of broader social processes and trajectories (O'Flynn & Curato 2015) is a multilayered, complex phenomenon, and it requires critical analysis of the regime under consideration. Pakistan Lawyers' movement was instrumental in bringing about democracy in the country. The role of this movement in the process of democratization was an essential aspect of its success.
3. The systemic approach is not confined to liberal democracies in the West. It is also helpful in determining deliberative mechanisms in various historical contexts, such as non-Western, authoritarian, transnational, and global contexts. Pakistan Lawyers' movement arose in the authoritarian context. After two years it successfully ousted authoritarian rule and brought democracy back to the country: after ten years of military rule.
4. The systemic approach also recognizes the importance of culture and religion in shaping deliberative practices. For its broader success, Pakistan Lawyers' movement used all types of narrative like Martyred, Motherhood (for patriotic love), and Duty. The Islamic political party (Jamaat-e-Islami Pakistan) also joined this movement for the cause of democratization and the rule of law in the country. Pakistan Lawyers' movement relied upon all possible venues (civil society, academia, political parties, media, and international actors) to increase its strength and momentum for the success.

⁶ There are many studies on social movements and disruptive politics in the nexus of systemic approach. For example, see Owen and Smith 2015.

The democratization of societies at large has always been at the core of deliberative theory. From the outset, the concept of deliberation has been employed for the “democratic deepening” (Curato and Steiner 2018). It attempts to rehabilitate the political project of democracy by reinvigorating normative concepts, such as legitimacy, participation, equality, mutual respect, and the common good. Its basic goal is to empower citizens to achieve legitimacy in collective outcomes. The prospects of deliberative democracy, however, are not confined to already developed democracies. The deliberative model can also help us to critically evaluate fragile political contexts, such as authoritarian, hybrid, and non-democratic regimes. In this section, I attempt to analyze the process of democratization in Pakistani authoritarian context, specifically the role of Pakistan lawyers’ movement in the democratization process. In order to do so, I interpret Pakistan lawyers’ movement through the lens of deliberative theory.

3.1. Democratization and Pakistan Lawyers’ Movement

The deliberative turn in the theory of democracy also helps us to understand democratic potential in authoritarian contexts. That is to say, deliberation in terms of deliberative capacity may exist in non-democratic settings. The study of democratic transitions is one of the important aspects of current academic discourse on politics. The social and political upheavals that delegitimize authoritarian regimes need to be explained in order to understand democratic transitions. The conditions which pave the way for democratic transitions are also significant in comparative studies of the process of democratization. The process of democratization can also be understood in terms of deliberative capacity-building in a political system. As Dryzek states:

Deliberative capacity proves to be an important determinant of democratic transition and consolidation, such that the concept has substantial analytical and evaluative purchase. The ambit claim is that all democratization studies need to be recalled and reframed in a deliberative light, but even if this claim is resisted by traditional democratization scholars, the deliberative aspect merits attention. Countries such as China that resist democracy conceptualized in terms of competitive elections, constitutions, and human rights recognized by the state might nonetheless prove susceptible to a deliberative path of democratization. (2010, 16)

The above passage indicates the potential of the concept of deliberative capacity to understand the process of democratization in the non-Western context. Dryzek introduces the concept of deliberative capacity in extending the Habermasian critical theory tradition of deliberative democracy. Specifically, it is an extension of the two most important concepts of critical theory, namely, the public sphere and discursive democracy. According to John Dryzek:

Deliberative capacity may be defined as the extent to which a political system possesses structures to host deliberation that is authentic, inclusive, and consequential. (2009, 1382)

In Dryzek's account, there is no institutional requirement for this capacity to exist in the political system. And a wide variety of political systems (liberal, electoral, authoritarian) can be explained through this perspective of deliberative capacity. Deliberative capacity points out at the capability of a particular political system to be deliberative and democratic. It is instrumental in democratic transition because it can be applied to any political setting. Furthermore, the three elements in the concept of deliberative capacity are:

1. **Authenticity:** It means the act of deliberation induces reflection in a noncoercive fashion. It also connects individual claims with general principles and brings about reciprocity in the political process.
2. **Inclusiveness:** It makes political systems inclusive by accommodating various interests and discourses that are politically significant in the system. The inclusion of different points of view is an important aspect that makes deliberative democracy a viable political project.
3. **Consequential:** It means the process of deliberation should directly or indirectly influence the collective outcomes (collective decisions).

For Dryzek, these three elements combined together help us in determining the deliberativeness of a political system: "a polity with a high degree of authentic, inclusive, and consequential deliberation will have an effective deliberative system" (2009, 1382). The process of democratization can be understood in terms of deliberative capacity-building. According to Dryzek, the deliberative system is made up of the following elements:

1. **Public Space:** It hosts a wide variety of communicative practices. It consists of various actors such as media, political activists, social movements, and ordinary citizens.
2. **Empowered Space:** Institutions that can produce collective decisions. In this space, deliberation takes place among actors who make a collective decision within the institution possible. Legislatures, constitutional courts, policy-making bodies are some of the examples of empowered space.
3. **Transmission:** It is a process in which public space influences the empowered space. Different deliberative practices in the public space need to be connected with the empowered space. There are various types of mechanisms that can transmit deliberation from the public space to the empowered one. Most notably, political/social campaigns, social movements, and the use of rhetoric and new ideas for social causes are important ways to influence deliberation in the empowered space. Transmission can take various forms like "advocacy, or criticism, or questioning, or support, or some combination of all four" (Dryzek 2010, 11).
4. **Accountability:** It is a process in which empowered space provides answers to the public space. It helps to secure the legitimacy of collective decisions. Election campaigns can be one of the examples of this process. It may also involve simple justifications for collective outcomes.

5. Meta-deliberation: It is deliberation about the deliberative system itself. Meta-deliberation is a kind of deliberative capacity in which deliberative system can examine itself.

6. Decisiveness: The degree to which [the first] five elements (in combination) influence collective outcomes. Decisiveness shows to what extent “five elements together determine the content of collective decisions” (Dryzek 2010, 11).

The concept of deliberative capacity is distributed among all the six elements of the deliberative system. Specifically, a system is said to have deliberative capacity if:

1. It demonstrates authentic deliberation in the public space, empowered space, transmission, accountability, and meta-deliberation.
2. It demonstrates inclusiveness in public space and empowered space.
3. It shows decisiveness in terms of the whole political system – the collective outcomes produced during the process of deliberation.

Depending on the context, in real-world politics, a deliberative system may fall short on certain elements. These six elements, however, provide a theoretical framework to analyze the distribution of deliberative capacity in any political setting. This way, we can evaluate deliberative systems in real-world politics. It is precisely in this evaluative context⁷ that “deliberative capacity-building provides the basis for a comprehensive approach to the study of democratization” (Dryzek 2009, 1387; 2010, 138-40). The process of democratization can be more rigorous if the six elements are present in the political system. Their presence is not tied to any institutional specifications, and they can be developed during the process of democratization itself, as the Pakistani case demonstrates. The shortcomings of deliberation in one location can be compensated through the presence of higher deliberation in other locations. That is to say; one should pay attention to the whole political system to understand the deliberative practices, which lead to the democratization of a regime.

3.2. The Emergence of Deliberative Capacity under Authoritarian Rule

The authoritarian regime of Musharraf, in which Pakistan Lawyers' movement arose, was the third military coup. Unlike previous military coups, Musharraf's takeover faced great challenges, not merely from the superior judiciary but also from the various social segments in the informal public sphere. These challenges were surprising for academic scholars because the legal community, specifically superior judiciary, have always legitimized military dictatorships in Pakistan. In this section, I discuss the emergence of deliberative capacity under Musharraf's autocratic rule. I will argue how the emergence of deliberative capacity paved the way for the process of democratization in Pakistan. The success of Pakistan Lawyers' movement should be understood in relation to the concept of deliberative capacity.

7] Dryzek's concepts of deliberative capacity and deliberative system provide a certain set of criteria for the evaluation of the democratic potential in any regime.

According to Dryzek, the transition to democratic rule is more likely to occur if deliberative capacity already exists in the old regime (2009, 1388). This article argues that the emergence of deliberative capacity in a political system is another important aspect, which helps us to understand the process of democratization in a more comprehensive manner. The authoritarian regime under Musharraf's rule functioned under certain concepts that helped the deliberative capacity to emerge. Pakistan Lawyers' movement played a double role in this context: first, it was instrumental in the development of deliberative capacity in the political system; second, it made the transition to democratic rule possible.

Before going into the details of this double role of the Lawyers' Movement, I first explain important concepts that distinguish Musharraf's autocratic rule from previous military takeovers. General Musharraf's policies created a context in which deliberative capacity was likely to emerge in the authoritarian context of Pakistan.

(i) Liberalization of the Authoritarian Regime: Unlike previous military coups, Musharraf's regime was celebrated by liberals, or what Akbar Zaidi calls "lifestyle liberals" (Zaidi 2008, 38-9). Due to the liberalization policies of Musharraf's regime, different social forces, such as lawyers, judiciary, civil society actors, and media acquired considerable autonomy that led to the emergence of deliberative capacity in which Pakistan Lawyers' movement was able to bring about democracy in the country. Indeed, during his rule, Musharraf tried to promote the project of "enlightened moderation" (2004) through various means, including media. After 9/11, Musharraf introduced the political-social project of modernization in Pakistan due to Western pressure, especially as a result of U.S. policy towards War on Terror. Moreover, he started granting civil liberties within the framework of authoritarian rule in order to liberalize the regime⁸. Pakistan's civil society was instrumental in promoting Musharraf's agenda of modernization (Zaidi 2008). Musharraf's liberalization project softened his image as a dictator among liberals in Pakistan and provided some legitimacy, perhaps perceived, to his regime. People also started to contrast his dictatorship with previous military takeovers. Specifically, they contrasted Musharraf's rule with General Zia-ul-Haq's Islamization policies. They thought Musharraf's regime was truly committed to modern liberal values, and he would rectify the political crisis very soon by giving space to democratic forces. Indeed, Musharraf promised that his rule was for a certain period of time and soon (December 2007) an election would be held. From the outset, Musharraf called his authoritarian rule as a form of democratic governance, which would lead to a full-fledged liberal style democracy in a few years. Such a stance was radically different from previous military dictatorships in Pakistan. Although, it helped Musharraf to legitimize his rule for a certain period of time, as soon as the superior judiciary began to assert its power, he unleashed his dictatorial power

8] Political liberalization is distinct from democratization. Authoritarian regimes can grant civil liberties in order to get legitimacy. For example, see O'Donnell et. al 1986.

to undermine this judicial activism. The project of 'enlightened moderation' was not only conceived to soften Pakistan's image in the international community but also to combat Islamic militancy at home. The path to enlightenment, modernization and liberalization created a space in Pakistan where it was difficult for authoritarian powers to theoretically resist values like democracy, the rule of law, and equality. It is precisely in this context that Pakistan's Supreme Court achieved considerable autonomy and started creating legal issues for the authoritarian rule. Rather than providing legitimacy to the military dictatorship, the Supreme Court started to challenge the legality of authoritarian rule. The doctrine of the separation of powers, which lies at the heart of modern democracies, ultimately began to appear in the political debates in Pakistan. This way, the liberalization of the regime under authoritarian rule helped the deliberative capacity to emerge, which I argue, provided the impetus for the success of Pakistan lawyers' movement.

(ii) Civil Society and the Public Sphere: In deliberative theory, the importance of the public sphere cannot be ignored in any context. From Habermasian philosophy to current debates on systemic approaches, the public sphere remains one of the main locations of deliberative practices. A vital civil society is considered an indispensable element for the constitution of the public sphere that hosts deliberative practices and transmits them to the formal state institutions such as legislatures and courts. In Habermas' two-track model of deliberation, the public sphere is an essential part of deliberative democracy (1996, 367). In the deliberative model of democracy, both civil society and the public sphere are instrumental in democratic government. In the same vein, other deliberative theorists, such as Dryzek, Mansbridge, Parkinson and Goodin, also believe in the significance of the public sphere in the deliberative model of democracy. Contrary to this trend, the case of civil society in the Pakistani context has been quite different from the developed liberal democracies in the West. As Akbar Zaidi writes:

The classic, overwhelmingly Western literature on civil society suggests that by virtue of being "against" the state (by which is often implicitly meant the state at its most autocratic and undemocratic) civil society must necessarily favor some form of democratic disposition. Such was not the case in Pakistan for most of Musharraf's reign, however, when what constitutes "civil society" by most definitions of the term laid aside aggressive support for democracy in favor of support for liberalism (or at least its image) in the person of the seemingly forward-looking General, with his dogs, his golf shirts, and his crisply efficient manner. For Pakistani civil society, whether Westernized or Islamized, the issue, in short, was not democracy versus non-democracy, but rather liberalism versus some variously interpreted set of Islamic symbols and values (Zaidi 2008, 39).

The public sphere, during the authoritarian rule of Musharraf, was not conducive to democracy. The main forces in the public sphere accepted the autocratic rule due to the regime's liberalization policies. During the authoritarian rule, the main discourse in the public sphere was not framed in terms of democracy vs. non-democracy. Rather, it was framed in terms of liberalism vs. Islamic fundamentalism. Pakistani civil society

supported the undemocratic regime because of its liberal tendencies. Since the concepts of civil society and the public sphere are historical concepts stemming from the Western political theory, therefore, they change their meaning in the non-Western contexts. Moreover, when it comes to Muslim countries, the situation becomes more complicated. Indigenous culture and Islamic beliefs influence the fundamental basis of civil society in the non-Western world in general and the Muslim world in particular. The concept of rational public sphere understood in the context of European Enlightenment is no longer helpful to understand the function of civil society and how it impacts the political project of democracy. Although, Muslim countries like Pakistan have embraced the project of modernization at various levels, for example, education, politics, the use of science and technology, still local narratives, religious affiliations, and indigenous beliefs lie at the heart of everyday life, which are constitutive (at least partially) of the civil society. In the philosophical literature, the concept of civil society is a contested notion, and the various meanings of civil society depend on the historical context⁹. However, there is a minimal concept of civil society, which one can point out in order to explain its role in contemporary social-political order. According to Zaidi, “Civil society is necessarily supposed to be outside, and perhaps preferably in opposition to, or in contradiction with, the state. In order to define civil society, it is a requirement that the organizations and actors of civil society not be controlled by the institutions or actors of the state. This ‘autonomous’ requirement is a necessary condition to distinguish civil society from the state [...] civil society must necessarily be a democratizing force” (Zaidi 2008, 14). With Musharraf’s authoritarian rule, the role of civil society turns out to be surprising for many political theorists. It also reveals the unsettled contradictory nature of civil society in Pakistani politics. The military coup of 1999, which created an autocratic regime in Pakistan, was legitimized and supported by civil society. Due to this undemocratic disposition of Pakistan’s civil society, it was not possible to contest autocratic rule in public discourse. Indeed, civil society changed (or manipulated) the public discourse through framing political issues in terms of liberalism vs. Islamic fundamentalism, rather than democracy vs. authoritarianism. Moreover, the deliberative practices in the Pakistani public sphere were supporting the authoritarian regime. Since the public discourse was not directed towards democratic ideals, empowered spaces like the Supreme Court had always consolidated military coups in the political history of Pakistan. The status of civil society as an autonomous institution has always been problematic in Pakistan. The persistence of authoritarian rule for more than three decades in Pakistan had ushered us in a condition where the discourse on democracy was almost absent in the public sphere. The depoliticization of the public sphere is one of the outcomes of this historical development of civil society, which has, for the most part, helped authoritarian rule to sustain in the country. In short, Musharraf’s autocratic regime survived because of the legitimacy it received from the undemocratic,

9] For the various meanings of the concept of civil society, see Kaviraj and Khilnani 2001 .

so-called liberal civil society and the depoliticized public sphere in which contestation of political discourses was not possible.

According to deliberative theorists, the public sphere is the most fundamental location that hosts deliberative practices, and it should be conducive rather than an impediment to the democratic process. The preceding events prior to lawyers' movement, which I call judicialization of politics during the authoritarian rule, initiated various discourses such as separation of powers and the rule of law in the public sphere. The suspension of Chief Justice questioned the legality of the autocratic rule and gave rise to public discourse concerning the powers of the military and its role in politics. There are broadly two phases of the lawyers' movement. In its first phase, the lawyers' movement was merely confined to lawyers, and its agenda was to restore the Chief Justice. From the outset, this movement was not for the restoration of democracy but for the protection of the legal community's own professional interests (Zaidi 2008, 41). After the restoration of Chief Justice in July 2007, the judicial activism of the Supreme Court did not merely start delegitimizing the military regime, but it also created support of the supremacy of law in the public realm. In the second phase, after the 'State of Emergency', the lawyers' movement gained real momentum.¹⁰ In its second phase, the movement became a broader social mobilization in which opposition political parties, media, journalists, students, and other civil society actors participated.

The lawyers' movement produced a kind of deliberative culture that was missing in the public sphere. The legal community also realized that the supremacy of law and the prospects of political liberalization of the regime would not be possible without the support from the public sphere. For this reason, they were compelled to expand the main agendas of the movement to get public support. In its second phase, the main agenda of the movement included:

- (a) Independence of judiciary
- (b) The rule of law
- (c) Restoration of democracy
- (d) Social justice (the phenomenon of 'public interest litigation' facilitated this narrative).

The Pakistan lawyers' movement politicized the public sphere that paved the way for the democratization process in the country. Through the lawyers' movement, civil society actors started to contest discourses on military dictatorship, democracy, the rule of law, separation of powers, etc. The emergence of deliberative capacity that led to the democratization process was not possible if the lawyers' movement was merely confined to the legal community with their professional, institutional interests. The motivation of civil society actors was different from that of lawyers. The mobilization of different civil society actors for the broader cause of democratization created an environment in which Musharraf was not able to sustain his authoritarian rule. Despite "huge diversity of ideological interests, including those of women activists, labor unions, students, Islamist

¹⁰] It is a kind of martial law by another name.

groups, professional associations including those of doctors, leftist groups, and others” (Shafqat 2017, 16-7), civil society was able to organize around a single agenda, that is, breakdown of authoritarian rule for the restoration of democracy. Indeed, the restoration of judiciary, for civil society actors, was a means to bring about democracy in the country. Leadership within the legal community also accepted that their success was not possible without support from other civil society actors, which created a public discourse about the political alternatives in Pakistan during the authoritarian rule.

The liberalization of the regime and politicization of the public sphere were both instrumental in the emergence of deliberative capacity in Pakistan. These events occurred due to the diverse policies (often contradictory) of Musharraf’s autocratic rule. The first event, liberalization of the regime, helped the authoritarian regime to get legitimacy, and the second event, politicization of the public sphere, created an environment in which military rule began to delegitimize itself. The emergence of deliberative capacity can be attributed to these two notions that appeared during the authoritarian rule of Musharraf. The success of Pakistan lawyers’ movement lied in its ability to initiate discourse upon autocratic rule, democracy, the supremacy of law, and separation of powers, although it was not possible without a pro-democracy civil society and the public sphere.

IV. CONCLUSION

Democratization understood in the context of deliberative capacity-building attempts to search the democratic potential in the political system. In order to locate democratic potential in the Pakistani authoritarian context, we need to understand the distribution of deliberative capacity in the system. Pakistan Lawyers’ movement was instrumental in connecting the six elements of the deliberative system (See section three of this article). Although the Lawyers’ movement originated in the institution of the judiciary, it became successful when it was carried out in the public sphere (Zaidi 2008; Shafqat 2017). In the political history of Pakistan, empowered spaces like courts have always legitimized autocratic rule. Moreover, before the Pakistan Lawyers’ movement, there were no effective social mobilizations for the politicization of the public space during both democratic and authoritarian rules. It is due to the persistence of authoritarian rule for more than three decades in the history of Pakistan that the military has successfully managed to keep empowered spaces and public space at a considerable distance. It is beyond the scope of this article to explain the history of democracy in Pakistan, which is, to a larger extent, also a history of the country’s military and its failures. The case of Pakistan Lawyers’ movement shows that if public space is conducive to various deliberative practices, then an empowered space like the Supreme Court can also assert its deliberative capacity. In deliberative theory, thinkers normally argue that the informal public sphere causes deliberation in empowered spaces such as courts and legislatures. The case of Pakistan Lawyers’ movement shows that the transmission from the empowered space to the public sphere is also possible, and the cause of deliberation is

not confined to one location. Specifically, the growing phenomenon of the judicialization of politics is quite helpful to understand the influence of courts on the public sphere. The Pakistani case suggests that in order to assert its deliberative capacity, the Supreme Court needs legitimation in the public sphere. Pakistan Lawyers' movement enabled empowered space to connect with the public space. This very connection between the two spaces produced deliberation in the overall political system, which paved the way for the democratization of the regime. This missing connection was one of the main causes of the persistence of authoritarian rule in Pakistan. Moreover, the emergence of deliberative capacity during the autocratic rule of Musharraf strengthened the deliberation of the overall political system. The success of Pakistan Lawyers' movement lies in its ability to distribute the newly emerged deliberative capacity in the whole political system. Despite the fact that this movement was not for the restoration of democracy but for the protection of legal community's professional interests, it made the transition to democracy possible because of the development of deliberative capacity in the overall political system. Lawyers' movement is an empirical case that helps us to understand the tradeoff between deliberative capacity in the public space and the empowered space.

The case of Pakistan's lawyers' movement shows that deliberative capacity is instrumental in democratic transition. It can be applied to all kinds of political settings, such as liberal states, authoritarian regimes, and new and old democratic states. While looking for the democratic potential in authoritarian contexts, deliberative theorists ought to pay attention to deliberative capacity and the deliberative system.

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REFERENCES

- Beissinger, Mark R. 2002. *Nationalist Mobilization and the Collapse of the Soviet State*. Cambridge: Cambridge University Press.
- Boudreau, Vincent. 2004. *Resisting Dictatorship: Repression and Protest in Southeast Asia*. Cambridge: Cambridge University Press.
- Curato, Nicole, and Jürg Steiner. 2018. Deliberative Democracy and Comparative Democratization Studies. In *The Oxford Handbook of Deliberative Democracy*. s.l.: Oxford University Press.
- Dryzek, John S. 2009. Democratization as Deliberative Capacity Building. *Comparative Political Studies*, November, 42 (11), pp. 1379-1402.
- . 2010. *Foundations and Frontiers of Deliberative Governance*. Oxford: Oxford University Press.
- Elklit, Jørgen and Andrew Reynolds. 2002. The Impact of Election Administration on the Legitimacy of Emerging Democracies: A New Comparative Politics Research Agenda. *Commonwealth & Comparative Politics*, 40 (2), 86-119.
- Elstub, Steph, Selenand Ercan and Ricardo Fabrino Mendonça. 2016. The Fourth Generation of Deliberative Democracy. *Critical Policy Studies*, 10 (2), 139-51.
- Flynn, Ian, and Nicole Curato. 2015. Deliberative Democratization: A Framework for Systemic Analysis. *Policy Studies*, 36 (3): 298-313.

- Grugel, Jean, and Matthew Louis Bishop. 2002. *Democratization: A Critical Introduction*. s.l.: Palgrave.
- Gunning, Jeroen. 2007. *Hamas in Politics: Democracy, Religion, Violence*. New York: Columbia University Press.
- Haug, Christoph, and Simon Teune. 2008. Identifying Deliberation in Social Movement Assemblies: Challenges of Comparative Participant Observation. *Journal of Public Deliberation*, 4 (1): 1-35.
- Kaviraj, Sudipta, and Khilnani Sunil. (eds). 2001. *Civil Society: History and Possibilities*. s.l.: Cambridge University Press.
- Linz, Juanan, and Stepan Alfred. 1996. *Problems of Democratic Transition and Consolidation: South Europe, South America, and Post-Communist Europe*. Baltimore: Johns Hopkins University Press.
- Mouffe, Chantal. 1999. Deliberative Democracy or Agonistic Pluralism?. *Social Research*, vol. 66, 745–58.
- Musharraf, Pervez. 2004. *A Plea for Enlightened Moderation*. s.l.: Washington Post.
- O'Donnell, Guillermo, Philippe Schmitter, and Laurence Whitehead (eds.). 1986. *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies*. Baltimore: Johns Hopkins University Press.
- Owen, David, and Smith Graham. 2015. Survey Article: Deliberation, Democracy, and the Systemic Turn. *The Journal of Political Philosophy*. 23 (2): 213-34.
- Porta, Donatella della. 2005a. Deliberation in Movement: Why and How to Study Deliberative Democracy and Social Movements. *Acta Politica*, 40 (3): 336–50.
- . 2005b. Making the Polis: Social Forums and Democracy in the Global Justice Movement. *Mobilization: An International Quarterly*, 10 (1): 73-9. 2013. *Can Democracy Be Saved? Participation, Deliberation and Social Movements*. Cambridge: Polity Press.
- Przeworski, Adam, Mike Alvarez, Jose Antonio Cheibub, and Fernando Limongi. 1996. What Makes Democracies Endure?. *Journal of Democracy*, 7 (1): 39–55.
- Shafqat, Sahar. 2017. Civil Society and the Lawyers' Movement of Pakistan. *Law & Social Inquiry*. 43 (3): 889-914.
- Tilly, Charles. 2004. *Social Movements: 1768–2004*. s.l.: Paradigm.
- Zaidi, Akbar S. 2008. *The Political Economy of Military Rule in Pakistan: The Musharraf Regime*, s.l.: ISAS Working Paper (NUS). 2008. Pakistan After Musharraf: An Emerging civil society?. *Journal of Democracy*, 19 (4): 38-40.

