

Judicial Activism and Institutional Legitimacy of Supreme Court of Pakistan (2006-2014)

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Abstract

This article attempts to inquire the instruments and approach adopted by the Supreme Court of Pakistan to cultivate institutional legitimacy during the process known as judicial activism from 2006 to 2014. Whereas judicial activism in Pakistan has already been empirically touched upon by legal scholars and intelligentsia, the current research is about the accomplishments achieved by the apex court through the process of judicial activism. It is argued that judges of the Supreme Court of Pakistan decided various cases strategically and through strategic decision making cultivated institutional legitimacy. Main problem targeted by this work is judicial activism as focal point of discourse on the apex court in Pakistan and its position as instrument of measurement for judicial activism. For this purpose, this article contributes to concepts of judicial activism and strategic decision-making and reflects, theoretically on institutional legitimacy. Moreover, institutional legitimacy of the Supreme Court of Pakistan has been posited in discourse on role of courts in political development of countries in global south and global north.

Keywords: Supreme Court of Pakistan, Strategic decision making, judicial activism, institutional legitimacy.

Introduction

There are two motivating questions behind conduction of this research. The first motivating question is the latest findings of comparative inquiries on law and court which point out increase in power and influence of judicial institutions world wide. One major observation of scholars of comparative politics is that global increase in judicial power is leading us towards juristocracy making us to live in an era of judicial power (Tate and Vallinder, 1995; Hirschl, 2004; Malleson and Russell, 2006). One clear implication of such expansion in judicial power is to underline the legitimacy concerns linked with the way in which judicial power is exercised since courts' determination of questions of highly political nature is questionable and warrants inquiry (Hirschl, 2008: 99). This research will probe that how courts secure and hold their legitimacy against the backdrop of their increasing politicization. Reasons and ways of acquisition and retention of legitimacy by institutions is a probing question for the inquirers who attempt to

unearth the underlying reasons of increasing judicial power and influence (Gibson et al 2003:556).

While this question warrants inclusively diverse answer in context of courts everywhere but it has specific link with Supreme Court of Pakistan. Judicial activism slowly began in Pakistan in 2005, when Supreme Court of Pakistan had begun hearing Pakistan Steel Mills case. It accrued major significance to the apex court in overall political debate. Slow start of judicial activism had major impact on the body politic of Pakistan. Deposition of Chief Justice Ifthikhar Mohammad Chaudhry by General (rtd) Pervez Musharraf and his restoration catalyzed such activism on the part of overall judiciary, so much so that many experts termed that as judicialization of the politics. The other ostensible judicialization of Pakistani politics was evident by overall increase in judicial power through media-driven popularity, the courts as the final deciders of political issues and inter-party wrangling (e.g. Report of recent Judicial Commission on electoral malpractices in the general elections 2013 in Pakistan) and independence of judiciary as prior most popular slogan of political parties to muster support among masses.

There is no denial that after Lawyer movements in 2007, supreme judiciary became the center of overall all political process in Pakistan which made it a significant actor on the national scene. Nevertheless, the higher judiciary succeeded to protect and preserve its institutional legitimacy. Media reports and other independent sources show that supreme judiciary of Pakistan enjoy popular support and trust of citizens, while majority of Pakistani perceive the apex court as the valid and people-friendly institution whose words ought to prevail when conflict between legislation and fundamental rights take place.

It is intriguing to observe that the Supreme Court of Pakistan has maintained its legitimacy in the wake of its activism. The reasons for highlighting such observation as intriguing are the emergence of supreme judiciary as policy making institution, criticism of judiciary's encroachment on the domains of other institutions, judicialization of Pakistani politics and politicization of courts since the start of the process of judicial activism. As Hirschl (2004: 73-4) finds the encroachment of judicial power on political domain through constitutionalization of fundamental rights and individual freedom has seriously eroded the perception of supreme judiciary as neutral and apolitical arbiters and deciders. Yet having found that, like all other liberal democracies elected representatives of people not the appointed judges face legitimacy crises (Russell, 1994b: 172). It seems that judges of supreme judiciary are successful in holding the trust and confidence of the people as they have attained more power and have emerged as prominent political actors.

This enquiry of ways adopted by the supreme judiciary to project its legitimacy attains importance in the light of observations that ‘constitution as living tree’ or living constitution has become the commonly practiced method for constitutional interpretation across the globe (Hirschl, 2010: 79). Under this method constitutional evolves and adapts itself to the requirements and exigencies of the time in flexible and progressive manner. In Pakistan, for example, this concept of living constitution has been followed in number of cases by supreme judiciary. For example in Pakistan, this idea of living constitutionalism can be witnessed in verdicts given in *Arshad Mahmood v. Government of Punjab* PLD 2005 SC 193. It was observed that constitution is a living document and approach of the apex court towards its interpretation should be flexible, dynamic and evolving in accordance with the aspirations and yearnings of the common people. Similarly, in *Mushtaq Ahmed Mohal v. Hon’ble Lahore High Court* 1997 SCMR 1043 it had been laid down that articles pertaining to fundamental rights should be understood and interpreted liberally to cover up the essentials of modern times.

The approach of living-tree constitutionalism has invited criticism to the supreme judiciary of Pakistan that following such an approach personal desires of judges can underpin the interpretation of constitution. Such criticism increases the legitimacy concerns about the power of judicial review available to the apex court for liberal interpretation. If the text of constitution or the intentions of constitution-makers is not the particular context in which constitutional interpretation takes place then what is to state that none else that discretion of judges explains the ultimate nature of constitutional evolution? Globally practiced living-tree constitutionalism can be explained that the doctrine lends itself more easily than most other interpretive approaches to an injection of the personal values of those who interpret the constitution” (Hirschl 2010: 79). This doctrine has been found as having converted into exclusive repository of judicial discretion in case of the Supreme Court of Pakistan by the critics.

In given scenario of judicial activism in Pakistan it is necessary to look into the degree, character and path of Supreme Court of Pakistan’s policy-making capacity. The curiosity to know the answer of this question stems from the contradictory literature. For some the judicial supremacy of the Apex court is determinant of constitutional supremacy or at least their way of projection of judicial independence leads the readers towards synonymous nature of the two. Supreme Court of Pakistan has ensured good governance and institutionalized the politics.

To the contrary other analysts have carefully scrutinized the policy-making approach of the apex court. They viewed such approach as meaningless for the major change in overall power structure of Pakistan. Activism on the part

of the supreme judiciary didn't shift the class pattern of the society. Rather, it became the part and parcel of already existing military-bureaucratic oligarchy. Similarly, followers of dialogue-theory believe that policy-making capacity of the supreme judiciary is countered by the legislative and executive function of other institutions of the state. Other institutions such as executive reverse or mould the verdicts of apex court in a favorable way.

There is also disagreement on findings about ideological character of Supreme Court of Pakistan. The apex court, relying on basic structure doctrine, protected the Islamic character of the legal system. For example, the apex court while delivering the verdict on constitutional petitions which had challenged 18th amendment and 21st amendment delved into this discussion and stated "Therefore, the Parliament cannot replace Islam with secularism nor can it replace the Federation with a confederation. This is what the Muslims of the subcontinent aspired and endeavored for. This is in essence the *raison d'être* for the establishment of the separate homeland." (http://www.supremecourt.gov.pk/web/user_files/File/Const.P.12of2010.pdf) Lau (2006) explains in detail, the usage of Islamic principles and norms in judicial reasoning and discourse by the Pakistani courts. There are others who disagree with such ideological protection by taking upon policy-making capacity at the expense of evolving and dynamic aspirations of people. Reifying the religious character of state in the constitution by the supreme judiciary reinforce the discrimination among common citizens (Ashraf, 2015; <http://www.dawn.com/news/1182981>) There are others who view the Supreme Court of Pakistan as an unqualified body for debates on ideological character of the state (Lakho, 2015; <http://www.dawn.com/news/1182981>). Mehdi (2013) observed inconsistency and instability in adjudication of Islamic laws by the Pakistani judiciary in particular and legal fraternity in general.

Some political economists with their leftist orientations have found the activism of apex court as new actor in already existing military-bureaucratic oligarchy. They developed and linked the thesis of Hamza Alavi to the current activism of supreme judiciary and argued that ongoing judicial activism in Pakistan has given rise to new military-bureaucratic-judicial oligarchy with judiciary as the new entrant (Sajjad, 2013). But such observations have been made in short form and can be found in tidbits of newspapers. Therefore, such contention requires further scrutinized elaboration.

Given the above divergent and confronting observations one might not be unjustified in conduction of an inquiry for it emerges that Supreme Court of Pakistan lends itself towards favoring any contention. Observations that Supreme Court of Pakistan protect the ideological character of the state and legal system are

confronted with the observations that the apex court gives relief to the dispossessed class of society through liberal interpretation. Findings that the supreme judiciary has adopted the approach of open-ended policy making discretion and hence has made constitutional supremacy synonymous to judicial supremacy are countered by the findings that the apex court till date remained submissive towards other branches of the government such as executive and army (Beatty, 1997: 494). For a researcher in the field of social science it becomes inquisitive to dig out the links between concluded findings and to reflect new light on the policy making influence of the Supreme Court of Pakistan through incorporation of heterogeneous methodologies.

It is pertinent to know the answers of above questions and arguments to fill the gaps by first constructing and then evaluating a novel theory of how supreme judiciary in Pakistan acquire and sustain the legitimacy of the apex court as an institution-a theory of strategic cultivation. This theory is vast in its scope and application to the higher tiers of judicial systems everywhere but its applicability to the supreme judiciary of Pakistan will particularly be tested and evaluated in this research. This theory will give an insight of how courts of Pakistan in general and higher judiciary in particular achieve and sustain legitimacy, unfolds the compatibility between the concepts of living-tree constitutionalism or living constitution and espousal of legitimacy of judicial review, and make new reflections on the degree of policy-making influence enjoyed by Supreme Court of Pakistan.

Methodology

Qualitative methodology has been used for this inquiry. Textual analysis is the research tool and approach adopted for the research is historical institutional interpretative. Through these methods, methodology and approach institutional legitimacy cultivated by Supreme Court of Pakistan through strategic decision making is investigated. It is significant in terms of alternative research on the topic in question and given the current limited focus on names and numbers of cases decided by the apex court of Pakistan.

Positioning the institutional legitimacy in current discourse

A range of models of separation of powers stresses on the strategic behavior of judges of supreme judiciary by pinpointing specifically the encounter between courts and other institutions (Marks, 1989; Ferejohn and Weingast, 1992; Ferejohn et al, 2007; Helmke, 2005). The key argument of this literature is that the reason behind strategic behavior of judges is their intentions to avoid confrontation with other institutions without compromising on authority and

influence of judiciary as an institution. Their strategy is to ensure the ultimate implementation of the decision and maintenance of institutional integrity.

One part of this literature emphasizes on public support and popularity of courts as basic source of power and influence of courts in their dealings with other institutions (Stephenson 2004; Vanberg, 2005; Staton, 2010; Carruba, 2009). There is variety of reasons for more public support to courts in comparison with other institutions. One reason could be public demand for and interest in rule of law (Weingast, 1997). Second reason behind public support to courts could be the public's belief that courts can mark and shape public policy parameters better than how other institutions do (Stephenson, 2004). Other reasons may include the public's interest in establishment of functional, responsive and deliverable regimes because continuous competition between courts and other institutions on public support will create more and more favorable alternatives for general public (Carruba, 2009)

Vanberg (2005) notes that public support for the courts is a sanctioning force which compels other institutions to implement the verdicts of the courts and hence in this regard public support becomes significant for the adjudication of cases. Other institutions including the representative elected one in order to avoid losing the popularity compete with each other to promote the independence of judiciary. Context of Vanberg's observation was German judicial system but it is applicable to Pakistan as well with reference to judiciary as central actor in the politics from 2008 onwards. He further contends that it is necessary for public enforcement mechanism to come in play for judiciary to deliver verdicts which can muster support and project popular beneficence among common citizens (2005:21). These findings have been generalized to context of Mexico where it was suggested that courts can be selective in deliverance of verdicts after taking popular sentiments into account and later on can be made visible to public. Such selective activism can be used to secure implementation of their rulings (Staton, 2010).

Bollen (1993); Munck and Verkuilen (2002); Knack (2006) propounds that overall political environment and courts of the country both operate on each other. Media's hype regarding the judicial verdicts, slogan of judicial independence as votes-garnering instrument to achieve popularity and the unpredictable response of other institution make the overall environment to shape the ultimate verdicts of courts. This applies to the case of Pakistan where at one stage of history this perception of judicial coup was well spread that the Supreme Court of Pakistan may direct Pakistan Army to implement its decision by invoking interpretively article 190 of the constitution of Pakistan. On the other side judicial verdicts also operate on overall environment as it becomes part and parcel of

political campaign and popularity.

Andrews and Montinola (2004); (Barro 1997, 2000); Joireman (2001, 2004); Rigobon and Rodrick (2005) have further developed the contention of weingast (1997) that the desire to have rule of law and order in the society accrues public support behind the apex court which integrate both attitudinal preferences with strategic decision making for the cultivation of institutional legitimacy.

Attitudinal approach to Canadian and American Supreme Court is more applicable than strategic approach (Heard 1991; Otsberg and Wetstein 2007; Songer and Johnson 2007). Strategic approach applies to handful of cases adjudicated by Canadian Supreme Court (Manfredi, 2002; Flanagan, 2002; Knopff et al., 2009). But case of Supreme Court of Pakistan becomes unique in this regard where both approaches are intermittently applicable. Both approaches merge together in case of Pakistani supreme judiciary because attitudinal approach drives the judicial activism but at the same time such activism by the Supreme Court of Pakistan is strategic as well because it is motivated by popular support, media extraordinary projection and institutional essentials. For example, in Pakistan the Supreme Court disqualified the Prime Minister of Pakistan from holding the office. Peshawar High Court in Pakistan declared drone attacks on terrorists' illegal and violation of public international law. It directed the government of Pakistan and Pakistan Army to target them and even prescribed a military strategy on how to take them down. It is noteworthy that the latter decision had not been implemented but was hailed and appreciated in media and general public as the step of departure from past where judiciary avoided delivering such bold verdicts. Alarie and Green (2007; 2008; 2009a; 2009b) further elaborate this link between Supreme Court and attitudinal policy inclinations with different findings in the context of America. They found that markers of attitudinal policy approach are projection of professional and personal profiles of judges during their appointments and the political party to which judges-appointing regime is associated and these markers are loosely correlated to voting at the bench. This observation is not applicable to the case of Pakistan as the procedure of the appointment of judges is different with exception of media's role in projection of the higher judiciary. Appointment procedure after 19th amendment has become autonomous and has almost become the monopolized domain of judges. This point gives fillip to earlier observation that boundaries between attitudinal approach and strategic approach blur in case of Supreme Court of Pakistan with both attitude and strategy of judges as well revolving around popular motivations since the beginning of judicial activism in Pakistan.

Attitudinal motivations constitute one category of political factors which may affect the decisions of judges during the proceedings of various cases and this

research will explore that how judges of Supreme Court of Pakistan demonstrate sensitivities and alertness to variety of political and external determinants. It will be explained that how judges of supreme judiciary in Pakistan are provided various incentives by cultivation of institutional legitimacy as prior goal of higher judiciary, to involve in a set of characterized behavior. Courts foresee the potential of legitimacy cultivation which require justices to deliver such verdict which avoid direct full fledged confrontation with other institutions, alertly sensitive to the opinion of general public, that do not overstretch the scope and domain of judicial activism to the extent of encroachments on the domains of other institutions. In short the central thesis of this research will be that justices of supreme judiciary, involved in strategic verdict delivering, in order to cultivate their institutional legitimacy, carefully draw such boundaries between judicial activism and judicial restraint in a particular political and institutional environment which can enhance the judicial power in diversified ways and in multiple areas.

Epstein and Knight (2000:642) observe different methods to carry out the strategic analysis. Three methods among these different methods are worth referring here. First method is to merge historical-interpretive research with logic of strategic approach. Second method is construction of concepts pertaining to judicial decision making through the lenses of strategic perspective. Third method is incorporation of microeconomic theories for reasoning through analogy. Fourth is conduction of formal equilibrium analysis. The proposed central thesis falls in the domain of second category: on the basis of strategic approach conception of judicial verdict delivering will be constructed.

Theoretical reflection on strategic decision making of the Supreme court of Pakistan

Institutionalism part of rational choice theory has been relied upon to develop the strategic theory. Institutionalism-rational-choice theory expounds that institutional structures, requirements and rules provide opportunities and disincentives for the involved actors who deal with such opportunities or challenges by behaving strategically in order to secure maximum favorable results (Hall and Taylor, 1996; Immergut, 1998). The benefit of subjecting judicial institution to this approach is delineated by Walter Murphy in his famously published *The Judicial Strategy* in 1964. During last couple of decades, this approach-under the well-known title of strategic approach- has attained distinguished attention among the readers of and researchers of judicial activism with such enthusiasm that has made them to find judicial politics as the current domain of strategic revolution (Epstein and Knight, 2000) In reality, this approach provides an alternative comparative and complementary route to the attitudinal-

school of thought on the scope of judicial decision making. Attitudinal school of thought attributes ideological orientations/inclinations of individuals justices to the ultimate verdicts of the courts(e.g. Segal and Spaeth, 2002). Confrontation of two approaches will widen the vision of observers and generalization of research.

Involvement of justices in strategic decision making engulfs higher tiers of judicial system into strategic decisions-making processes. Such espousal of strategic way of deciding the cases depend upon what courts and individual judges can gain or loose. Gains include the increase in influence and power of judiciary through popular support and trust. Losses include non-implementation of the verdicts or its foresighted modification through political jugglery or procrastination. Available literature highlights various incentive structures as markers of judicial decisions. To many, such incentives accrue central attention to courts in political spectrum and hence provide leverage of policy-making to courts. Many contends that judges of supreme judiciary act as single-minded aspirants of legal policy and hence decide cases strategically to realize and increase the probability of implementation of their policy preferences(Epstein and Walker, 1995; Epstein and Knight, 1998; Epstein et al, 2001; Epstein et al, 2004; Maltzman et al, 2000). On these scores strategic decision-making approach is complementary to attitudinal decision-making approach. Judges, in other way, are observed as driven by attitudinal priorities during the deliverance of verdict but since political environment doctored by the popular aspirations create sophisticated constrains for the judges so they amalgamate the attitudinal desires with strategy. Exclusive substantiation of attitudinal inclination can either invite the difference of other justices on the bench (Maltzman et al., 2000) or make the resultant verdict unpopular and can easily be impeded by other institutions through non-implementation or subsequent reversal through new legislation e.g. Epstein and Knight, 1998). Posner finds attitudinal and strategic approaches as compatible to each other because the former is theory of ends and the latter is theory of means (2008). Posner's finding further support the complementary nature of two approaches to each other.

It is significant to underline that strategic theory is compatible with any other result-oriented worldview of judicial motivations inclinations as well (Posner, 2008:30). Therefore it is not necessary that judges of supreme judiciary may involve in strategic decision-making only to foster their attitudinal motives but there can be other important factors as well to affect the approach followed by judges. Alter (2001) while expounding his theory of European legal integration underscored three objectives which work in tandem with institutional exigencies to affect and influence the decision of a judge of national high court.

Independence, influence and authority of judiciary are the three objectives which operate the decision making process. As courts work in a political environment so they function strategically with respect to other courts and political organizations (Alter, 2001:46). They do not deliver such verdicts which can receive unwelcoming response in the shape of non-implementation or subsequent reversal of decisions leading to erosion of judicial authority (Ibid).

Conceptualization of judicial activism and institutional legitimacy

It is imperative to conceptualize the terms institutional legitimacy and judicial activism as the former is objective of courts and the latter is instrumental in the process/approaches adopted for the achievement of objective. Verdicts of the apex court hold and instill institutional legitimacy when the general public regards such verdicts as favorable, justified and appropriate and worth supporting (Fallon, 2005: 1795). Current research finds multiple ways of conceptualization of judicial legitimacy. There are three distinguishing legitimacies (2005: 1794-1797). First is legal legitimacy which is based purely on judicial doctrines and strict adherence to legal principles regardless of public support for resultant verdicts of the court. Second is moral legitimacy which determines the justification of the verdict on moral grounds. Third is the institutional legitimacy which is not only different from the other two categories but will also be the focus of this inquiry.

Conceptualizing judicial activism is bit sophisticated as it has been defined diversely by experts. Generally, it has been explained as the product of undue influence of a judge's policy preferences rather than having origins in legal texts (Friedman, 2009:344-5; Hunter, 2003:531). This definition is problematic as it is highly subjective in nature and devoid of empirical analysis. It suggests an oversimplified notion that judicial activism of one judge is objective interpretation of another judge (Friedman 2009: 345). With particular reference to Pakistan, conceptualization of judicial activism can be delineated into three dimensions: Verdicts given through overstretched use of article 184(3) of Constitution of Pakistan, verdicts given in Public Interest Litigation and verdicts delivered in the cases involves human rights(). This work at this stage is limiting the definition of judicial activism as the activism in the formulation of policy which is akin to rigorous judicial behavior to implementation and execution of constitutional principles which appears to be happen when the court alters policy status quo by striking down or modification of the statutory laws, regulations and executive's actions in favor of constitutional limitations (Russell,1990:19). To the contrary, judicial policy restraint is the court's maintenance of policy status quo in its verdicts. It does not strike down the set of rules or legislation frequently. In

nutshell, the more courts revise the policy status quo through their verdicts the more activism occurs. This definition becomes significantly inclusive against the backdrop of fluidity of the concept, variety of definitions and for the understanding of judicial decision making (Garrett et al., 1998; Choudhry and Hunter, 2003).

References

- Awan, M., & Raheem (2014). "Judicial Activism In Pakistan in Commercial and Constitutional Matters: Let Justice Be Done Though The Heavens Fall". *Journal Of International Criminal Justice Research*. Vol 1.(1).
- Alarie, B., & Green, A. J. (2009). Charter Decisions in the McLachlin Era: Consensus and Ideology at the Supreme Court of Canada. *Supreme Court Law Review (2d)*, 47, 475-511.
- Alarie, B., & Green, A. J. (2009). Policy preference change and appointments to the Supreme Court of Canada. *Osgoode Hall Law Journal*, 47(1), 1-46.
- Alarie, B., & Green, A. J. (2008). Should they all just get along? Judicial ideology, collegiality, and appointments to the Supreme Court of Canada, papers.ssrn.com.
- Alarie, B. R., & Green, A. (2007). The Reasonable Justice: An Empirical Analysis of Frank Iacobucci's Career on the Supreme Court of Canada. *University of Toronto Law Journal*, 195-226.
- Alter, Karen. 2001. *Establishing the Supremacy of European Law: The Makings of an International Rule of Law in Europe*. Oxford University Press
- Barro, R. J. (1996). *Determinants of economic growth: a cross-country empirical study* (No. w5698). National Bureau of Economic Research.
- Beatty, D. (1997). The Canadian Charter of Rights: Lessons and Laments. *The Modern Law Review*, 60(4), 481-498.
- Bollen, K. (1993). Liberal democracy: Validity and method factors in cross-national measures. *American Journal of Political Science*, 1207-1230.
- Carrubba, C. J. (2009). A model of the endogenous development of judicial institutions in federal and international systems. *The Journal of Politics*, 71(01), 55-69.
- Choundhry, S., & Hunter, C. E. (2003). Measuring Judicial Activism on the Supreme Court of Canada: A Comment on New found land (Treasury Board) v. NAPE. *McGill LJ*, 48, 525. HeinOnline
- Epstein, L., & Walker, T. G. (1995). The role of the Supreme Court in American society: playing the reconstruction game. *Contemplating courts*, 315-346.
- Epstein, L., & Knight, J. (1997). The new institutionalism, part II. *Law and Courts*, 7(2), 4-9.
- Epstein, L., & Knight, J. (1998). *The Choices Justices Make*. Washington, DC: Congressional Quarterly.
- Epstein, L., & Knight, J. (1999). Mapping out the strategic terrain: The informational role of amici curiae. *Supreme Court decision-making: New*

- institutionalist approaches*, 215, 225-28.
- Epstein, L., & Knight, J. (2000). Toward a strategic revolution in judicial politics: A look back, a look ahead. *Political Research Quarterly*, 53(3), 625-661.
- Epstein, L., Knight, J., & Shvetsova, O. (2001). The role of constitutional courts in the establishment and maintenance of democratic systems of government. *Law and Society Review*, 117-164.
- Miller, M. C. (2004). *Making policy, making law: An interbranch perspective*. Georgetown University Press.
- Fallon, R. H. (2005). "Legitimacy and the Constitution." *Harvard Law Review* 118: 1787-1853.
- Smith, D., & Friedman, S. H. (2014). "Let Justice Be Done Though the Heavens May Fall": The Zong in Amma Asante's Belle. *Journal of the American Academy of Psychiatry and the Law Online*, 42(4), 530-532.
- Strauss, D. A. (2005). Reply: legitimacy and obedience. *Harvard Law Review*, 118(6), 1854-1866.
- Ferejohn, J. A., & Weingast, B. R. (1992). A positive theory of statutory interpretation. *International Review of Law and Economics*, 12(2), 263-279.
- Ferejohn, J., Rosenbluth, F., & Shipan, C. (2009). Comparative judicial politics. In *The Oxford Handbook of Comparative Politics*.
- Flanagan, T. (2002). *Canada's Three Constitutions: Protecting, overturning, and reversing the status quo*. Montreal and Kingston, McGill-Queens University Press.
- Friedman, B. (2009). The Will of the People: How Public Opinion Has Influence the Supreme Court and Shaped the Meaning of the Constitution. *New York: Farrar, Straus and Giroux*, 2.
- Garrett, G., Kelemen, R. D., & Schulz, H. (1998). The European Court of Justice, national governments, and legal integration in the European Union. *International Organization*, 52(01), 149-176.
- Gibson, J. L., Caldeira, G. A., & Spence, L. K. (2003). The Supreme Court and the US presidential election of 2000: Wounds, self-inflicted or otherwise?. *British Journal of Political Science*, 33(04), 535-556.
- Heard, A. D. (1991). The Charter in the Supreme Court of Canada: The Importance of Which Judges Hear an Appeal. *Canadian Journal of Political Science*, 24(02), 289-307.
- Helmke, G. (2005). *Courts under constraints: judges, generals, and presidents in Argentina*. Cambridge University Press.
- Hirschl, R. (2004). *Towards Juristocracy: The Origins and Consequences of New*

- Constitutionalism*. Cambridge, Mass: Harvard University Press
- Hirschl, R. (2009). *Towards juristocracy: the origins and consequences of the new constitutionalism*. Harvard University Press.
- Hirschl, R. (2008). The judicialization of mega-politics and the rise of political courts. *Annual Review of Political Science*, 11.
- Whittington, K. E., Kelemen, R. D., & Caldeira, G. A. (2010). *The Oxford handbook of law and politics* (Vol. 3). Oxford University Press on Demand.
- Knack, S. (2006). Measuring corruption in Eastern Europe and Central Asia: A critique of the cross-country indicators. *World Bank Policy Research Working Paper*, (3968).
- Kelly, J. B., & Manfredi, C. P. (Eds.). (2010). *Contested constitutionalism: reflections on the Canadian charter of rights and freedoms*. UBC Press.
- Quraishi, A., & Lau, M. (2006). The Role of Islam in the Legal System of Pakistan. Boston: Martinus Nijhoff Publishers
- Manfredi, C. P. (2002). Strategic Behaviour and the Canadian Charter of Rights and Freedoms. *The Myth of the Sacred: The Charter, the Courts, and the Politics of the Constitution in Canada*, 147-167.
- Marks, B. A. (1989). *A model of judicial influence on congressional policymaking: Grove City College v. Bell, 1984* (Doctoral dissertation, Washington University).
- Russell, P. H., & Malleson, K. (2006). *Appointing judges in an age of judicial power: Critical perspectives from around the world*. University of Toronto Press.
- Rubya, M. (1994). The Islamization of the law in Pakistan. Surrey: Curzon Press Ltd.
- Munck, G. L., & Verkuilen, J. (2002). Conceptualizing and measuring democracy Evaluating alternative indices. *Comparative political studies*, 35(1), 5-34.
- Ostberg, C. L., & Wetstein, M. E. (2011). *Attitudinal decision making in the Supreme Court of Canada*. UBC Press.
- Siddique, O. (2013). *Pakistan's experience with formal law: an alien justice*. Cambridge university press.
- Russell, P., Knopff, R., & Morton, F. L. (1989). *Federalism and the Charter: Leading Constitutional Decisions*. McGill-Queen's Press-MQUP.
- Russell, P. H. (1994). Canadian Constraints on Judicialization from without. *International Political Science Review*, 15(2), 165-175.
- Johnson, S. W., Songer, D. R., & Jilani, N. A. (2011). Judge gender, critical mass, and decision making in the appellate courts of Canada. *Journal of Women, Politics & Policy*, 32(3), 237-260.
- Segal, J. A., & Spaeth, H. J. (2002). *The Supreme Court and the attitudinal model revisited*. Cambridge University Press.

- Staton, J. K. (2010). *Judicial power and strategic communication in Mexico*. Cambridge University Press.
- Stephenson, M. C. (2004). Court of public opinion: Government accountability and judicial independence. *Journal of Law, Economics, and Organization*, 20(2), 379-399.
- Tate, C. N. (1995). *The global expansion of judicial power*. NYU Press.
- Vanberg, G. (2004). *The politics of constitutional review in Germany*. Cambridge University Press.
- Wasti, T. (2008). *The application of Islamic criminal law in Pakistan: Sharia in practice*. Brill.
- Weingast, B. R. (1997). The Political Foundations of Democracy and the Rule of the Law, *American Political Science Review* 91: 245-263. *PROOF OF PROPOSITION, 1*.
- http://www.supremecourt.gov.pk/web/user_files/File/Const.P.12of2010.pdf

The Daily Dawn (2015, May 20th) Constitution is open to change, seminar told
http://epaper.dawn.com/?DetailImage.php?StoryImage=06_12_2013_007_007 <http://www.dawn.com/news/1182981>

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