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Pakistan's Black Revolution

by Anne-Marie Slaughter

SHANGHAI -- Immediately after taking office last month, Pakistani Prime Minister Yousuf Raza Gilani ordered the release of the 60 judges who had been detained by President Pervez Musharraf since November. This is a triumph for the rule of law in Pakistan, and above all a triumph for the brave Pakistani lawyers who took to the streets to protest Musharraf's imposition of a state of emergency last autumn.

The lawyers marched, sang, danced, and exchanged their briefcases for signs and, occasionally, eggs and stones. As one Pakistani blogger wrote, "They danced in black coats and they danced in black ties. Their black coats their Kalashnikovs and their black ties their bullets." In a world of color revolutions, Pakistan's was clothed in the sober hues of the law.

Last November, Musharraf effectively declared war on both the bar and the judiciary, dismissing all judges who refused to recognize his declaration of a state of emergency, purportedly aimed at protecting the nation from terrorists. The seven-member Supreme Court, headed by Chief Justice Iftikar Mohammad Chaudhry, countered by issuing an order barring the government from proclaiming emergency rule.

Musharraf dissolved the Supreme Court and the four High Courts, put Chaudhry and his entire family under house arrest, sealed the Supreme Court premises under army guard, and proceeded to arrest and detain all judges who refused to swear allegiance to the Provisional Constitutional Order upholding the state of emergency. The result was the detention of most of the senior judiciary, as well as bar association presidents across the country and all leading lawyers and human rights activists seeking to defend judicial independence.

In the ensuing protests, lawyers were routinely beaten, gassed, brutalized, and humiliated. They stood with and for their judges, making it virtually impossible for judges willing to take Musharraf's oath of allegiance to operate. The lawyer's movement, it seems, drove a historic wedge between the judiciary and the executive.

Yet in Pakistan, the United States, and other countries where lawyers have helped to lead fights for human rights and the rule of law, lofty ideals cloak an equally important set of interests. The Pakistani lawyers were safeguarding their livelihoods as much as their principles. Lawyers cannot practice without judges to hear their cases. And clients will not bring those cases unless they believe that the judges are independent enough to decide cases on the merits, rather than on the basis of bribes or political considerations.

These interests also help explain why Kenya's lawyers were at the forefront of protests against the corruption of President Daniel Arap Moi's regime in the early 1990's, but much less visible in the eruption of tribal violence this past year. Corruption corrodes the possibility of making a living through the law, which becomes a preserve of the rich. By contrast, in crises fueled by ethnic conflict, lawyers' interests are not so clear.

Noting the convergence between ideals and interests does not in any way demean the Pakistani lawyers' courage and the importance of their protests. America's founders, for instance, fully understood that the two must go hand in hand. Their design for constitutional democracy ensured, in James Madison's words, that ambition would counter ambition and "the interests of the man" would be "connected to the constitutional rights of the place."

The best foundation for the rule of law is to build an island of legality wherever it is most needed to advance legitimate government goals – to stop corruption, to protect the environment, to clean up the financial system, or to enforce contracts with foreign investors. Within these limited areas, independent judges and the lawyers who can argue before them have a home.

As these islands begin to form an archipelago, a legal class emerges, supported by the clients who need them. And on the day that a judge finally crosses a political line, speaking constitutional truth to usurped power, the government's refusal to comply threatens the interests and ideals of an articulate and motivated segment of society.

The coming weeks will reveal whether Pakistan's new government has the courage and integrity not only to release the fired judges, but to restore them to the bench and perhaps to face their scrutiny down the road. If it does, Pakistan's lawyers will be able to return to the courtrooms, and Pakistani citizens will have another chance to make democracy work. If they succeed, perhaps they should add a black border around the proud Islamic green of their flag – the black not of mourning, but of justice.

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