

Rule Of Force Vs. Rule Of Law In Pakistan

By Zia Mian and A.H. Nayyar

In a desperate bid to stay in power, General Pervez Musharraf staged a coup against the rule of law in Pakistan in November this year. His declaration of martial law, suspension of the constitution and basic rights was aimed at overthrowing Pakistan's Supreme Court.

Faced with choice of being president and being bound by the constitution or chief of the army and ruling by diktat, Musharraf chose khaki and force. His coup announcement is titled "Proclamation of Emergency declared by Chief of the Army Staff General Pervez Musharraf" and ends "I hereby order and proclaim that the Constitution of the Islamic Republic of Pakistan shall remain in abeyance."

Musharraf's proclamation is a litany of complaints about the courts. The Supreme Court was the only branch of government Musharraf and the army did not control. In the eight years since his October 1999 seizure of power, Musharraf has rigged parliamentary elections to give himself a majority, hand-picked his prime minister, and replaced many senior generals. His control, and through him that of the army leadership, over government and the state was nearly complete. But none of this was enough to give him either the unchecked power or the legitimacy that he wanted.

Supreme Court

Musharraf complained in particular that Pakistan's courts, and especially the Supreme Court, were subverting the administration. His proclamation claims that the Court's "constant interference in executive functions, including but not limited to the control of terrorist activity, economic policy, price controls, downsizing of corporations and urban planning, has weakened the writ of the government." It laments "the humiliating treatment meted to government officials by some members of the judiciary on a routine basis during court proceedings."

A particular concern was the Supreme Court taking up the cases of the hundreds of people picked up in recent years by law enforcement agencies without warrants and held in custody, without charge or trial. The demands for due process and habeas corpus proved fruitless as officials simply lied to the courts about the people they were holding.

The Human Rights Commission of Pakistan was finally able to convince the Supreme Court to act. The Court began to summon senior officials and demanded the government produce the detained people in court. It threatened senior law enforcement officials with contempt of court and jail if they did not comply and was considering calling the chiefs of the armed forces to answer to the court. The system cracked and the disappeared started appearing.

Iftikhar Chaudhry, the chief justice of Pakistan's Supreme Court, emerged as a key figure in confronting the arbitrary exercise of power

by the government. General Musharraf responded earlier this year by firing him, triggering a national movement led by lawyers for the justice's restoration. It attracted a lot of public support, reflecting the widespread disenchantment with the eight years of Musharraf's rule. Across the country, large crowds lined the roads and assembled to see and hear the chief justice. The other judges of the Supreme Court declared that the chief justice must be reinstated and Musharraf had to back down.

The Court has returned to the cases of illegal detention. It also sentenced seven senior officials to suspended jail terms for manhandling the chief justice during the campaign for his reinstatement.

Islamic Militancy

General Musharraf has also claimed that the courts are hampering his efforts to stem the Islamic militancy in the tribal areas, the creeping talibanization of Pakistan's northwestern province, and the suicide bombing that have erupted across major cities over the past few years. But the Courts have only insisted on the rule of law. Musharraf's failure to effectively counter the militancy springs from more other causes.

The most important problem has been the military regime itself and its policies towards the Islamic political parties and militants. In need of some kind of political cover after seizing power in 1999, Musharraf and his generals cobbled together an alliance of opportunistic politicians, defectors from other parties and the Islamist political parties. This

included the most radical and violent militant groups, which the army, led by Musharraf, had organized and used in the war against India in the Kargil region of Kashmir in the spring of 1999. This military-mullah alliance in Pakistan stretches back over 30 years, and was central in the U.S.-backed jihad against the Soviet Union in Afghanistan of the 1980s and the Kashmir insurgency of the 1990s.

When not offering direct support, the Musharraf regime has preferred neglect and appeasement of Islamist political parties and militants. Islamic laws are allowed to stay on the books. Militant groups are grudgingly banned in public and privately allowed to operate. Whether in the tribal areas of Waziristan or the militant take-over of the Red Mosque in the heart of Islamabad, Musharraf and his generals preferred to ignore it, and then make concessions to the militants in the vain hope that the problem would go away.

Second Coup

The government has responded to the militancy only when domestic and international demands to do something became overwhelming. But instead of a legal, politically measured, and thought-out response that is part of a long-term policy to counter the militancy, Musharraf and his generals have responded time and again with a spasm. They unleash a dramatic show of force including artillery, helicopter gunships and air strikes, which inevitably result in large numbers of civilian deaths and injuries, inflame public opinion, and stoke the militancy.

At the heart of Musharraf's second coup, and what has determined its timing and character, is not an activist court, illegal detentions or the militancy. The Court had begun to hear challenges to Musharraf's role as both chief of army Staff and president of the republic. Pakistan's constitution explicitly forbids holding both positions. A showdown was imminent. It has been claimed that a Supreme Court judge told the government that the court was set to rule against Musharraf.

Musharraf ended this threat by removing the chief justice and most of the rest of the Supreme Court. Before they were bundled out of the Supreme Court building, seven of the justices, including the chief justice, issued an order declaring Musharraf's proclamation of emergency to be unconstitutional and called on government officials and the armed forces to refuse to obey it. In a message to the country's lawyers, the chief justice called for opposition.

The target of the coup is also obvious from the list of those who have been the first to be detained in the police raids: leaders of the Human Rights Commission of Pakistan, prominent lawyers, and pro-democracy activists. The goal is clearly to prevent a movement for democracy and rule of law that could confront General Musharraf and the larger structure of army rule in Pakistan.

Sharif and Bhutto

Protests have started across the country, led by lawyers and civil society groups. They have been met with tear gas and brute force. Thousands are reported to have been arrested. It is likely to be a determined campaign, building on the experience of the mobilization earlier this year. But Pakistan's civil society, while heroic, is fragile. It

is poorly equipped for a long and difficult struggle against a military regime. Central to any prospect of success will be Pakistan's major political parties, Benazir Bhutto's Pakistan Peoples Party and Nawaz Sharif's Pakistan Muslim League.

But both the Peoples Party and the Muslim League are led from the top-down. They are populist vehicles for their leaders, both of whom are former prime ministers, rather than well-rooted democratic political parties with resilient local structures. Further, the leaders of both parties are deeply compromised. With U.S. and British support, Bhutto recently made a deal with General Musharraf to drop all corruption charges against her and enable her return from exile to join a Musharraf-led government. She has summoned her party activists to the barricades, but she may be willing to negotiate terms with the General on power sharing.

Sharif was overthrown by Musharraf in his 1999 coup and agreed to go into exile in Saudi Arabia. His party will willingly join the fray but many in his party abandoned ship to join the rag-tag group of politicians assembled by General Musharraf as a fig leaf for his rule. Sharif also tried to return from exile but was bundled into a plane and sent back, despite a clear Supreme Court ruling that Sharif had the right to return to Pakistan. There were no major protests.

With the government at odds with the people, the police being tasked to crush pro-democracy activists, and chaos in the streets, the Islamic militants may try and take advantage of the unrest. They have already spread their influence far beyond the tribal and border areas and now control three major towns in the Swat valley, a few hours

drive from Islamabad. Government forces simply surrendered and handed over their weapons. Pakistani flags have been replaced by jihadi banners on public buildings. Across the country, there have been attacks on soldiers and police. The bombing that killed over 100 people in a Karachi rally welcoming Bhutto may be a sign of things to come.

Where's Washington?

Washington was alerted to the coup in advance. Admiral William Fallon, the head of U.S. forces in the Middle East met General Musharraf in Islamabad the day before the coup and is reported to have warned Musharraf about declaring an emergency. According to the *New York Times*, administration officials said "General Musharraf had been offering private assurances that any emergency declaration would be short-lived."

The Bush administration's response has been predictable thus far. General Musharraf's aides told the *Times* that in the crucial first few days after the coup there had been no phone calls from President George W. Bush or other leading U.S. officials demanding an immediate end to the martial law. The newspaper quotes Pakistan's minister of state for information as saying the United States "would rather have a stable Pakistan—albeit with some restrictive norms—than have more democracy." In short, Islamabad expected, rightly it turns out, that Washington would wring its hands, offer platitudes about restoring democracy, perhaps a token slap on the wrist, and keep on supporting General Musharraf. When President Bush did call, he told General Musharraf that "you ought to have elections soon."

Washington has invested heavily in General Musharraf and will not want to write this off. Since September 11, 2001, the United States has given enormous political and diplomatic support and over \$10 billion to Pakistan to buy General Musharraf's support for its "war on terror." It is a doomed policy.

The United States has supported all of Pakistan military dictators, politically and with guns and money, starting as long ago as 1958. In the 50 years since then, it has failed to learn that supporting Pakistan's generals and the army they command does little for Pakistan's people. Under American tutelage, the army has grown in size and developed a fierce appetite for high-tech expensive weapons, which now include nuclear weapons and ballistic missiles, and a habit of seizing power while people continue to struggle with grinding poverty and failing institutions. It is no wonder that the United States is deeply unpopular in Pakistan. A 2007 poll found that only 15% of Pakistanis had a favorable attitude towards the United States. This hostility toward the United States will only worsen as Pakistanis see the United States set aside democracy and the rule of law in favor of a general and his army.

To get out of this crisis, the international community must demand that General Musharraf immediately end his emergency, restore the constitution and Supreme Court, and fulfill his commitment to step down as chief of army staff. Having lost what little trust was vested in him by the country, Musharraf should also stand down as president. An interim administration could hold elections and let Pakistanis choose lawful leaders.

No one expects elections and a shift to civilian rule to be a panacea. And though Pakistanis have had bitter experiences with democracy, they still prefer it to the army. Elections can mark the start of the long and difficult task of building democratic institutions and creating a system of accountability and trust between government and people, state and society. This can bring Pakistanis some hope for the future, and foster confidence that democracy and the rule of law can deliver the justice that has so long been denied to them.

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