

INTRODUCTORY NOTE: A PERSPECTIVE ON PAKISTAN'S CHIEF JUSTICE, JUDICIAL INDEPENDENCE, AND THE RULE OF LAW

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On May 10, 2008, at our law school's graduation ceremony, Nova Southeastern University conferred an honorary Doctor of Laws degree on the Chief Justice of the Supreme Court of Pakistan, Iftikhar Muhammad Chaudhary. Dr. Tariq Hassan, a distinguished Pakistani attorney and former high government official, formally accepted this honor on the Chief Justice's behalf. His statement of acceptance, delivered in a clear, firm voice with dignity and passion, was received with appreciation and enthusiasm by the assembled graduates, their families and guests, University officials, and law school faculty members. Dr. Hassan's fine statement, which follows, speaks for itself.

As the reader will note, Dr. Hassan suggested that the charge of "judicial activism" that had been made against Chief Justice Chaudhary by his opponents was misguided and misplaced. The Chief Justice's "crime" was, in fact, a steadfast fidelity to judicial independence, existing law, individual rights, and the rule of law— notions that are cherished and substantially adhered to in the United States and in democratic nations across the globe. Dr. Hassan declared that Chief Justice Chaudhary's so-called activism amounts to a willingness to create and enforce legal rights for ordinary citizens, a sharp contrast with a reactionary brand judicial activism that interprets constitutions, statutes, and judicial precedents to take away those same rights.

In this introductory note, I will attempt to put Dr. Hassan's thoughtful and eloquent statement into perspective. I will provide some factual background on the bitter controversy that led to the Chief Justice's removal from office, the political turmoil within Pakistan that followed, and the continuing state of uncertainty that exists (at this writing) with respect to Chief Justice Chaudhary's judicial status.¹ I will also take note of the parallels that exist

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1. The primary source of this background information is a series of articles that have appeared in *The Jurist*, a legal news and research website prepared at the University of Pittsburgh, School of Law. The *Jurist* has provided extensive coverage of events in Pakistan which relate to that country's movement for judicial independence.

between the Chief Justice's brave struggle for an independent judiciary and the courageous efforts of our own Nation's founding fathers to overcome tyranny and establish a regime of "laws and not men."

As Dr. Hassan's statement sets forth, the tensions between Chief Justice Chaudhary and the Government of Pakistan, led by Pakistani President Pervez Musharraf, had its roots in a series of decisions handed down by the Chief Justice during the early years of his tenure on Pakistan's highest court. In the face of strong resistance from executive branch officials who feared negative international publicity, Chaudhary re-opened the case of a woman who had been gang raped in a Pakistani village and whose rapists had been acquitted initially by the High Court. The Chief Justice also struck down the unlawful privatization of a large steel manufacturing complex, halted the progress of an environmentally damaging land development project, and enjoined the commercial use of lands that had been reserved for public parks. These legal decisions defied and angered powerful governmental officials.

However, the action by the Chief Justice and his colleagues that most appears to have led the Pakistani government to take drastic, unlawful measures against them, was a forthcoming decision of the Supreme Court of Pakistan that was about to declare General Pervez Musharraf ineligible to stand for a third term as the President of Pakistan unless he resigned his post as the chief of the country's military. Under Chaudhary's leadership, the Chief Justices also appeared willing to interfere with forthcoming attempts by the Musharraf regime to rig Pakistan's presidential elections, a stance that the Musharraf regime deemed intolerable.

On March 9, 2007, Chief Justice Chaudhary was suspended from office on trumped up charges of judicial misconduct. Within a week, prominent members of Pakistan's bar judiciary and judiciary began a series of sustained protests that included resignations of judges and deputy attorneys general, lawyer boycotts of the courts, and non-violent street demonstrations by attorneys in several Pakistani cities that were met with mass arrests and resulted in injuries and deaths from police brutality. Forty-one persons were killed in one rally alone in Karachi in May 2007. After attorneys representing the Chief Justice received anonymous telephone threats, their telephones were tapped and bullets were fired at their homes in a governmental effort to intimidate them. Moreover, a deputy registrar of the Pakistani Supreme Court, who was prepared to testify on Chief Justice Chaudhary's behalf at a hearing before Pakistan's Supreme Judicial Council, was assassinated at his home in Islamabad.

In May and June 2007, the Supreme Court of Pakistan suspended the disciplinary charges then pending against the Chief Justice and took sole jurisdiction of the case against him. On July 20, 2007, after considering the matter on the merits, the Supreme Court dismissed all charges of misconduct

against Chaudhary and formally reinstated him as Chief Justice. Sadly, however, this apparent victory for judicial independence in Pakistan proved short-lived.

On November 3, 2007, President Musharraf took the highly extraordinary step of declaring emergency rule, suspending Pakistan's constitution, and dismissing Iftikhar Muhammad Chaudhary as the Chief Justice of his country's highest court. All other Supreme Court Justices were dismissed as well. Musharraf personally administered the oath of office to a replacement "Chief Justice," Abdul Hameed Dogar, and new "Justices" were appointed to replace the Justices who were deposed. Declaring that the country's courts had increasingly interfered with the prerogatives of the executive branch, the president issued a "Provisional Constitution Order" which required all Pakistani judges to take a new oath of office and to refrain from making "any order against the President or Prime Minister or any person exercising powers or jurisdiction under this authority." The Supreme Court building was surrounded by security forces, the legitimate Justices were forcibly removed, and Chief Justice Chaudhary and his colleagues were placed under house arrest in their residences.

Defying the government's crackdown, the Chief Justice courageously spoke by telephone with a group of attorneys, urging them to "stand up for the constitution" and for the rule of law. More than sixty Pakistani superior court judges refused to take a new oath of office and were forcibly "retired" from their posts, and organized protests by Pakistani attorneys, under the leadership of that country's bar associations, began anew. This time, however, those protests found strong support well beyond Pakistan's borders. Jurists and attorneys from such diverse nations as Brazil, the United Kingdom, Malaysia, the United States, and elsewhere issued strong statements condemning the actions of the Musharraf regime and demanded the reinstatement of an independent judiciary in Pakistan.

In February 2008, after a period of turmoil in which former Prime Minister Benazir Bhutto returned to Pakistan and was assassinated, an election was held in which the country's two largest political parties won approximately sixty percent of the seats in Pakistan's National Assembly and formed a coalition government. The new government agreed to restore an independent judiciary by "radically altering the mode of appointments of judges" and by providing "financial and administrative independence" to the judicial branch. Chief Justice Chaudhary and his colleagues were released from house arrest in March 2008 and (after extensive talks) the coalition government appeared to reach an agreement on reinstating the deposed jurists to office.

Regrettably, however, as of this writing (in October 2008) those promising developments have not resulted in the restoration of judicial independence in

Pakistan. Negotiations with regard to the judicial issue between the two ruling political parties became stalemated. The Pakistani Muslim League-Nawaz, a party led by former Prime Minister Nawaz Sharif, withdrew from the government in August of 2008, and Pakistan's Supreme Court Bar Association instituted a new round of protests over the government's continuing failure to reinstate the independent rule of law. Chief Justice Chaudhary has still not been returned to office and many judges and justices unlawfully appointed by Musharraf remain in their posts. Pakistan's judicial crisis, thus, continues at the time.

Dr. Tariq Hassan's speech at our law school's last graduation puts the ongoing efforts of Pakistan's courageous judiciary and bar (vigorously led by Chief Justice Chaudhary) in proper focus. In fact, by supporting their struggle for an independent judiciary, lawyers, jurists, and law students around the world are intrinsically reaffirming our own commitment to an institution on which human freedom and rights ultimately depend—an independent judicial branch bound by established principles of law. That fervent commitment on our part must, and will, continue. For us Americans it reflects a rededication to the vision of our own Nation's founding fathers, who established judicial independence when the Constitution of the United States was framed and ratified more than two centuries ago. In continuing to honor our own founders' wisdom and commitment, as well as the remarkable bravery of Chief Justice Chaudhary and his embattled fellow jurists and attorneys in Pakistan, we join in Dr. Hassan's prayer that the Chief Justice and his brother judges be restored, promptly and fully, to their rightful offices. Democracy, liberty, and justice require no less.

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