

COMMENTARY

# Jefferson, Walton and Sager: Think like a Pakistani lawyer

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We write in solidarity with the lawyers of Pakistan, who have taken to the streets in peaceful protest over the shredding of the rule of law in their country. At first, it was startling to see these colleagues of ours — dressed in black and halfway across the globe — on the streets as besieged protestors rather than in the courtrooms, offices and classrooms that are their and our more natural habitats.

But, upon reflection, their brave action makes perfect sense. They are custodians of a constitution that has been shelved and intimates of a constitutional judiciary that has been purged. Who more than they would feel obliged to sound the alarm and do everything within their power to restore legitimacy? Pakistani President Pervez Musharraf made war on the constitution because it stood in his way and, in turn, made war on the judiciary when it rose to the defense of the constitution. Now, the lawyers in Pakistan have risen to the defense of their judiciary, the constitution and, ultimately, the rule of law itself. They recognize that the most immediate emergency facing Pakistan may well be Musharaff's imposition of emergency rule and his suspension of constitutional order.

To be sure, the age of terrorism may occasionally require extraordinary measures. But the wholesale destruction of constitutional government is a price too precious to pay for it purchases despotism at liberty's expense.

We see all of this and feel a kinship with the lawyers of Pakistan. But it is difficult to stop just there; it is difficult to avoid reflecting upon our own responsibilities as lawyers in our own backyard.

Here in the United States, happily, we have largely been able to take the rule of law for granted. The Constitution has endured for more than two centuries, despite some harrowing moments. For example, one of the first cases the Supreme Court decided — *Chisholm v. Georgia* — was deeply controversial, provoked an amendment to the Constitution, and put the stature of the court in grave jeopardy.

However, the Supreme Court and the system of law it superintends has remained a strong and powerful force in our public life. Genuine threats to the health of the rule of law do exist, however. Not-so-veiled threats to,

and attacks upon, members of the judiciary, the freezing of judicial salaries at punitive levels, attempts to radically restrict access to the federal judiciary bespeak a willingness by some to weaken the independent judiciary upon which the rule of law and the values of our Constitution depend.


We are much better off than our Pakistani colleagues. Our Constitution holds, and the rule of law prevails. But it would be foolish to take these blessings of our place and time for granted.

And though we applaud the bravery of the lawyers of Pakistan, we should take the occasion of their tribulations to remember our own responsibilities as trustees of the legal order upon which our democratic freedoms depend.

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