

In the News

Pakistan and the Rule of Law

Questions for Classroom Discussion

Background

On Saturday, November 3, President Pervez Musharraf of Pakistan declared a state of emergency. The [declaration](#) suspended the constitution. President Musharraf also postponed parliamentary elections that had been scheduled for January 2008, and replaced the Chief Justice of the Pakistan Supreme Court, who was subsequently placed under house arrest. Protests against President Musharraf's actions have been led by lawyers. As of Wednesday, November 7, an estimated 700 lawyers had been arrested by government forces.

Questions for Discussion

I. An Independent Judiciary

President Musharraf's declaration states that his government "is committed to the independence of the judiciary and the rule of law," but that "some judges by overstepping the limits of judicial authority have taken over the executive and legislative functions."

- One role of an independent judiciary is to provide a check on the powers of the legislative and executive branches, as defined by a nation's constitution. When the judiciary tells an executive or legislature that, under the constitution, they cannot take certain actions, does this constitute a "taking over" of the executive or legislative functions? Why or why not?
- If a nation's supreme court tells its executive or legislature that, under the constitution, they are prohibited from taking a certain action, what options—short of disbanding the court—are available to the executive or legislature if they disagree with the court's decision?
- The United States Constitution provides that federal judges "shall hold their offices during good behavior." Judges accused of misbehavior can be removed only if they are impeached by the House of Representatives and convicted by the Senate. Why are protections such as these important for an independent judiciary? What do you think would constitute "misbehavior" by a judge?

II. The Legal Profession

- What is the role of lawyers in our society? To what extent does protection of citizens' legal and constitutional rights depend upon the legal profession?
- Imagine that a decision by our President was met with massive demonstrations by members of the legal profession. Would you think it was significant that lawyers were leading the protests? Why or why not? How might demonstrations by lawyers influence your opinion of the decision that the lawyers are protesting?

III. Constitutional Protections

Imagine that the President of the United States appeared on national television to announce that, because of a severe national security threat, he was declaring a state of national emergency. The President assured the nation that most provisions of the Constitution would remain in operation,

but limited provisions would be suspended until the threat abated. The suspended provisions include:

1. Article I, Section 9, Clause 2. This provides that the privilege of the writ of habeas corpus shall not be suspended except in times of rebellion or invasion, when the public safety requires suspension of the writ. [Note: A person who believes that he or she is being illegally imprisoned by the government can petition a court for a writ of habeas corpus. If the court finds that the person has been illegally imprisoned, it can order that the government free the person.]
2. Article III, Section 1. Suspension of this provision is limited to the following language: “The judges, both of the supreme and inferior courts, shall hold their offices during good behavior.”
3. Article III, Section 2, Clause 3. This clause provides that “the trial of all crimes. . .shall be by jury.”
4. Amendment I. Language protecting the establishment of religion and free exercise thereof is preserved. Language protecting freedom of speech, freedom of the press, the right of the people peaceably to assemble, and to petition the government for a redress of grievances is suspended.
5. Amendment IV, protecting the people against unreasonable searches and seizures and providing that warrants can only be issued with probable cause.
6. Amendment V, defining rights in criminal cases.
7. Amendment VI, defining rights to a fair trial.

Divide your class into small groups. Assign one of the suspended clauses to each of the groups and ask them to discuss what the possible effects of that suspension would be. Ask the small groups to report their thoughts back to the group as a whole. As a class, discuss the significance of each of these clauses. Are some of these protections more important than others? Would the class be willing to have any of these clauses suspended in the face of a national emergency? Why or why not?

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