



Constitutional Law and Restraint on Taxation

Dr. Khalil Ahmad
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Introduction

Below are four good articles from Dr. Khalil Ahmad, a friend from Pakistan. Khalil is the founder/head of the Alternate Solutions Institute, Pakistan's first free market think tank, based in Lahore. I have met Khalil a few times since 2004. The man is physically small but intellectually, he can be a monster in terms of defending individual liberty and the principles of free market and the rule of law.

The four articles in this compilation are:

- (1) "Let us kill each other", April 09, it is about hatred and intolerance that some people hold, and the need to restrain such dangerous attitudes.
- (2) "War against virtue", May 09, it is about the coercion imposed by the Taliban on some parts of Pakistan.
- (3) "Prerequisites of constitutional rule in Pakistan", June 09, is about the fight to assert Judicial independence. And finally,
- (4) "The battle has already begun", July 09, is about the protection of the public by the Supreme Court against the onslaught of additional taxation and regulation by the Executive branch in Pakistan.

I'm the one who made the title, "Constitutional law and restraint on taxation", not Khalil. I derived that title from his articles no. 3 and 4.

Bienvenido "Nonoy" Oplas, Jr.
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(1) Let Us Kill Each Other!

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By Dr. Khalil Ahmad

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For us living together requires neither love nor mercy, but rules of conduct; everything be it ideology, faith, or any system of thought, comes after that. Anything short of it is at the same time inhuman and anti-human, and is like putting death before life.

“Hey, Mr., you are different. Your skin color is different. You wear clothes different from mine. Sometimes you use shorts or just rags. You eat things different from mine. You play different games. You sing and dance. You make and watch movies. You have places of obscenity which you call freedom and enjoyment. You call them art, fashion, and what not.

Your women live like you. They behave like you. They wear dress like yours. They go out like you. They do everything like you do. They sing and dance like you. They sing and dance in public like you do. You treat them like your equals.

You have installed a society and system which is different from mine. You hold elections and make a representative government which is different from mine. You have evolved representative institutions different from mine. You have a system of political parties which I don't approve of. The world you live I don't like at all. Why are you different?

You or most of you abandoned your beliefs. You adopted the religion of freedom instead. You give religious freedom to all and sundry. You make them or let everybody believe as they wish. Practice their faith as they wish. To me it's just non-sense.

You have evolved philosophy and seek truth. You have developed innumerable sciences and a lot of knowledge, technology. You call it freedom of thought and expression. You believe in freedom and free society. You live in freedom and live for freedom. I don't approve of it.

You are completely different from me. I can't bear it. Listen! Be like me. Or I will make you to be like me. And, mind it, I will kill you if you don't do that. Be like me or I will kill you.”

Our world is populous with different individuals, communities, and people. No one is similar to the other. We have as many differences amongst us as many men and women there are on the face of our earth planet. Thus if anyone sets out on a journey of unifying them all - different individuals and their different individualities and their individual differences - into the image of his own liking,

no doubt every one of us in that case will be constantly at war with each one of us. A killing spree will follow.

Until and unless we learn to live in peace with different people, their different individualities, their individual differences, their different beliefs, and their different systems of thought, there will be no end to it. That is what human civilization is all about. We have laws and rule of law and protection of fundamental human rights to honor each one's life and his freedom and to remain within the limits of our own life and freedom. That is what human existence is all about.

Under the present circumstances where the perpetrators of terror have unleashed a most brutal war the hidden agenda of which is ultimately their own political supremacy, we have two options clearly open to every one of us: kill each other, or live in peace with each other.

We know every war ends at total or partial annihilation of enemies, or most often at a truce. However modern wars could never accomplish what ancient wars did though in very few cases only: total killing of enemies. Thus modern civilization tried to transform the old war into strictly an instrument of policy and succeeded in confining its scope also, and it tried to rewrite the old truce into a permanent settlement. That is, agreeing on the minimum conditions for a policy of peaceful co-existence for all human beings regardless of the differences of caste and creed, so to say.

On another plane, a little while back we were in the process of reaching a universal agreement as to the realization, recognition, security and protection of fundamental inalienable rights and freedoms to all the individuals living on this earth. The terror war has negatively impacted on its progress. It needs to be conscious of that to make this world mutually livable. Life is a mutual social phenomenon, we need to appreciate that.

Along with it, we need to appreciate that as Nature and God made every people and individuals different and as all the people and individuals too want to be and remain different, let them be all different. That's the beauty of life! Whoever is after destroying it is enemy of both life and its beauty! Let us not kill each other! Rather, let us enhance this beauty by not denying freedom to all!

(2) War Against Virtue

02 May 2009

By Dr. Khalil Ahmad

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All coercion is part of the war against virtue unless morally and legally justified.

Our share of the terrorists or Taliban has perfected what we have been suffering in our country at smaller or somewhat larger scales for the last six decades: the moral policing. Sometimes it was individuals or well-knit groups, and sometimes it were governments that resorted to moral policing. However, now in the shape of Taliban, the moral policing has reached its climax, i.e. it has become top most duty of the Taliban type state. The use of force has found its ultimate end. The annihilation of every trace of freedom has been attained. As a result, every semblance of virtue has been destroyed. In sum, with the advent of Taliban rule in parts of the NWFP, the baby has been thrown out with the bathwater.

From the most private details of one's life to his public behavior, every thing has been taken over by the Taliban state to make it happen via its use of brute force. The men who wield this power of the state have no legitimate claim to it, since no moral or political theory justifies it but the naked force. It is on the part of the Taliban that they have assumed this power by virtue of their gun-holding. It is on the part of an already existing state that its authority has been ceded to Taliban on the pretext of peace. One thing is common in both states: they have forsaken the individual and his rights. In effect, they have deprived him of his natural right to freely choose his destiny.

It's just for argument's sake that under any system of justice statements of confession made under duress are outrightly set aside as unacceptable for the simple reason that they do not issue from a free agent and thus are unworthy of any use in fixing responsibility for one's alleged acts. Likewise, what one does under oppression, whatever name we give to it, can NEVER be considered virtue. It's all because virtue grows and flourishes in an environment where freedom is abundantly present in the air.

Conversely in an environment of un-freedom what freely prosper are lie, malice and hypocrisy. That is what we have our whole society from top to bottom infected with incurably. No realm of life be it public or private, political or economic, social or spiritual, religious or secular, learning or teaching, or any other, is immune from it. In such a society the gravity of the crisis manifests itself in a concept of virtue bereft of all meaning of virtue. The only purpose left for virtue to be adopted as a way of life is its usefulness in earning social recognition of one's virtuosity. It loses its worth as a means to civilize, moralize and humanize one's self. It metamorphoses us into a conscienceless being. It's all vice that enwraps itself in the guise of virtue. Virtue acquires the

status of one of the ploys of vice itself. Morality is taken hostage by ideology/faith.

The most distinguishing feature of this local war of ours against virtue is its flagrant self-contradiction: it claims to establish a state of virtue whereas instead of letting virtue grow naturally freely it is trying to impose/enforce virtue politically and administratively, and of course militarily also. This should bring the process of our moral fall to a finish.

This is not without precedent. Only that now it is programmed to reach its logical conclusion. Since day one we have had political groups, parties, institutions, and what not which in the name of moral policing were up to achieving this Taliban state like arrangement. In addition to that, we have had both civil and military governments which aimed at setting up such a moral police state. It is out of question here what their intent was. What came to happen as a result is what is important. It is what we have before us right now.

It may be the last war against virtue in Pakistan if we allow our last embankment to be swept away by this hilly torrent. This embankment is our constitution. It seems the enemy has crossed over all the ditches we have dug for our safety. It has run over all the forts and fortresses we have built to protect us. It has penetrated inside us. It has found allies from amongst us. And now it is up to take head-on to our last stronghold, our constitution.

It's time we realize the importance and significance of the constitution. It's like life to us, our people, nation and our country. We are in one word this constitution. Pakistan has no other meaning. If this meaning is lost to the Taliban brand of virtue, Pakistan will lose its meaning. The losing of the constitution is tantamount to losing the security of the fundamental rights to every citizen. The losing of the security of the fundamental rights means losing the freedoms of every citizen to live in accordance with his conscience. That in turn amounts to the losing of all possibility of virtue in our society. Let us save virtue! Let us save the constitution of Pakistan!

(3) Pre-requisites Of Constitutional Rule In Pakistan

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By Dr. Khalil Ahmad

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(1) Any person who abrogates or attempts or conspires to abrogate, subverts or attempts or conspires to subvert the Constitution by use of force or show of force or by other unconstitutional means shall be guilty of high treason. (2) Any person aiding or abetting the acts mentioned in clause (1) shall likewise be guilty of high treason.

[The Constitution of Pakistan]

It was as bad as it could be that for the first 25 years Pakistan struggled hard to have a constitution and failed repeatedly. But it's worse than that that despite having a constitution it remains constitutionally orphaned. No need to go into the details of the recent history of 35 years of military and civil regimes, since it's all clear by itself how the governments of the people, Islamist Generals, and then young politicians, Benazir Bhutto and Nawaz Sharif, on this or that pretext manipulated the constitution to fulfill their personal, ideological, sectarian, party and elitist agendas.

However, it is heartening that we have that constitution still intact and living in our midst. In spite of many an attack and all new devices to render it meaningless, it still keeps us together and woven and believing in it. After General Musharraf's most dangerous attempt of November 3 (2007), to transform it into a jelly-constitution, the most devastating attack came from the so-called peacenik Taliban, Tehreek-e-Nifaz-e-Shariat-e-Muhammadi. That seems to have been repulsed.

Another fortune we came to win by sheer 'hard-work', is our non-dependent judiciary. This March 16, it was just like saving the prey from the jaws of the beast when the Pakistan Peoples Party had to restore the deposed judges. It needs to be kept as the dearest gain by the people in addition to the constitution. Both of these entities, the constitution and non-dependent judiciary are inseparably and in the present context symbolically related. It was for the sanctity of the constitution that lawyers and civil society waged the struggle for the restoration of the deposed judges and especially the Chief Justice Iftikhar Muhammad Chaudhry. Their restoration meant and stood for the restoration of the constitution.

Now that we have the custodian of the constitution finally free from the shackles of the executive, legislature and Pakistan Army, we are in the right in expecting the blessings of constitutional rule for the people of Pakistan. However, it is incumbent that pre-requisites of such rule be urgently fulfilled. As mentioned above, two of the pre-requisites are already in place, others are still in the air and need to be solidified and implemented as early as possible.

One such pre-requisite, and probably an indispensable one, is that a virtual constitutional rule be provided for in Pakistan since the date the 1973 constitution came in force. This must be done strictly in accordance with the provisions of the constitution both in letter and spirit and without any let it go. Though the parliament is duty bound to set out on such a journey into the last 35 years' unconstitutionality, but as it is the "parliamentary system" itself that is gnawing everything constitutional in Pakistan, we cannot hope for a single step into this direction from the present parliament. It is in such a vacuum that the argument in support of judicial activism finds itself duly entrenched. The last two years' events have amply shown that it is the judiciary that can take up the cause of the people who had been abandoned by all those who had/have anything to do with the state and governments in Pakistan.

This virtual constitutional rule should begin from the time of Pakistan Peoples Party's government and reach General Musharraf's regime and his present civilian prototypes via General Zia-ul-Haq's rule and the visiting civilian governments of Benazir Bhutto and Nawaz Sharif. This virtual constitutional rule needs to be as merciless as the trial and execution of Zulfiar Ali Bhutto was and as the throwing off and trial of Nawaz Sharif was.

As the constitution is always a living document and ours has in the form of high treason article its own mechanism to protect itself, what is needed is just a push that will set the process of virtual constitutional rule rolling. It will take care of everything else. Sure, it should settle all the scores with all those who tried to play and played with the provisions of the constitution in any manner as the main culprits or as its abettors.

In order to prove that it is the true custodian of the constitution of Pakistan, the non-dependent judiciary has both moral and constitutional obligation to put the sanctity of the constitution on top of its agenda leaving everything aside and abandoning everything behind that calls for caution and expediency. It is time to do the job.

Also, another pre-requisite demands that all the constitutionally created institutions, offices and agencies be put in their due places. They must be tried, punished, checked, forewarned, reminded and made to work within their legal and constitutional limits. Zero toleration must be shown to any deviation from the dictates of the constitution. Don't we need now after more than 60 years of military and civilian dictatorships finally a dictatorship of the constitution?

The time is ripe for such a virtual journey that will straighten not only the things past but the things for our future also. At this critical moment, when the Pakistani elites are caught in a trap of their own misdoings, and are clearing the mess created by their own dirty politics, we should keep our eyes on a vision for the longer term. We should not be distracted by their focus on the sequel of their policies such as helping the millions of persons displaced from their homes and hometowns. That is all misleading. In addition to helping the IDPs, the virtual constitutional rule must focus on finding the causes of this mayhem: who caused this and how. Those responsible must be brought to book and punished accordingly.

If the courts, lawyers, civil society and awakened people do not help this virtual constitutional rule set roll, nothing will ever be gained and no lessons will ever be learned. The gravest misdoings of the elites of Pakistan will go unpunished and culprits will keep on ruling the people scot-free as has been happening throughout the last six decades. This fate must be changed once and for all. Be it clear that the moral force and the resolve of the people that helped restore the deposed judges are still alive. Another daring act like that of March 9 (2007) is the need of the hour.

(4) The Battle Has Already Begun!

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By Dr. Khalil Ahmad

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Pity on us who live in a country where state and government and its institutions are nothing but instruments in the hands of an alliance of elite classes composed of top military brass, civil bureaucracy, politicians of all hues - religious or non-religious, leadership of political parties, big business houses, big landlords, electronic and print media bosses and big journalists, to amass wealth and enjoy luxury at the expense of hapless people, there we the ordinary citizens can only suffer under the most miserable conditions.

The present state of electricity-lessness and its non-availability for long hours regardless of the time of day and night, provides us with just one look into the lives of us, the Les Miserables of this land. Everyone can imagine that electric power is such a necessity without which daily and routine life turns into living in a desert with no shelter from the blazing sun overhead and the hot sands underneath.

Out of a plethora of other such evidences some are so common that they cannot escape our sight such as ordinary citizens' protests against the high-handedness of police, forlorn people endlessly waiting for the public transport on the roads, and ordinary consumers wrangling over the prices of those items which somehow have a connection with government and its representatives, such as flour, and more than every other item the petroleum products.

To these must be added the scourge of terrorism and plight of the IDPs. And sure, though the present non-dependent courts have taken the first step towards the improvement of dismal state of the system of justice, crowds of the wretched who gather daily in the courts from lower to the highest looking for justice to be dispensed to them must find a mention here.

Under the circumstances, and as has been proved time and time again, and as is happening now and here under an elected peoples' government, who cares for the lot of the ordinary citizens!

Military? Never! It is they who repeatedly undermined constitutional rule and fundamental rights, and destroyed the value system by promoting and strengthening the formation of power pockets throughout Pakistan.

Civil bureaucracy, then? Just out of question! Politicians keep changing seats as their government's tenure concludes or abruptly wrapped up and new elections are held, but the bureaucracy is the eternal parasite. They have a naked hunger for wealth, perks and privileges and luxury. They are the people who evolve a relationship of complicity with every "invader." The least they

could do is to strictly implement the rules and laws but they did not. And remember a group of top retired bureaucrats who submitted an appeal to a former Chief Minister of Punjab to dole out money to them since after retirement they were not able to live the erstwhile privileged life!

What about the politicians? Actually and indeed, it should be them who would care for the ordinary citizens. It is their oath, profession, and expressed wish to safeguard and work for the interests of the people. Leave the past experiences aside, leave the politicians' complicit relationship with the military dictatorships aside, and leave aside the denomination of religious with politicians – they are the worst ideological specie engrossed in their own petty materialities.

Just take into consideration the present elected government of Pakistan Peoples Party, an avowed party of the people. Where does this party stand vis-à-vis interests of the ordinary people? Have a look at its performance while it is in government this time only! To name a few bigger issues: judges' restoration, PCO Chief Justice, Abdul Hameed Dogar's retention and support, Benazir Bhutto's murder and its investigation/trial, General Musharraf's trial, undoing of General Musharraf's November 3 (2007) acts, undoing of Presidential powers such as 58-2B and 17th amendment, hoodwinking the Charter of Democracy, so on and so forth. And the latest feat of passing of the federal budget 2009-10 in a quick and quiet manner, and levying of arbitrary taxes such as the Carbon tax, and the recent increase in the prices of petroleum products. And now when these words were written the PPP Presidency through an ordinance has again increased these prices in retaliation to the Supreme Court's suspension of the Carbon tax.

As to the PML (N) and its politics, it is no more than a sleeping partner of the present PPP government this time. A quiet accomplice! Not clear what they are up to and why they are sitting passively in the power waiting room. What a trick of political acumen that they did not oppose the Carbon tax and increase in the prices of petroleum products in the Parliament, but whisked away to the Supreme Court against these!

As far as other elite members such as big business houses, big landlords, electronic and print media bosses and big journalists are concerned, they have their own axes to grind. Among other things they are born rent-seekers. Then, how could they betray their survival instinct?

Against this gloomy background, two years back the first ray of hope shined through when the Supreme Court's Chief Justice Iftikhar Muhammad Chaudhry defied the unwritten code of ethics of the elite classes of Pakistan. Not only the lawyers' community and civil society, but a considerable number of people came out on the roads to support his cause (the remaining majority of the people silently supported the same cause), which was really a cause of constitutionalism, rule of law and fundamental rights to be supreme in this land.

Now as that very much self-confident court imbued with a new spirit of judicial activism stands restored, in it the ordinary people see a real friend. All of its

judgments especially after its restoration on this March 16 speak volumes in support of the emergence of this new friend of the ordinary people of Pakistan. Of course this should not be taken to mean the making of a populist court, but a court that is the true custodian of the Constitution of Pakistan, that really cares for the rule of law and security of the fundamental rights to each and every citizen of Pakistan.

However, the elite classes cannot digest such a court. Although, they had to restore it under an unprecedented vigorous and persistent demand by the people, but they have no regard for such an independent custodian of the constitution and they are hell bent to fizzle it out. The most recent and the most sinister attempt has emerged once again from the same Presidency which tried its best to fail the restoration movement. While Supreme Court suspends the Carbon tax, the Presidency issues an ordinance to impose the petroleum development levy on the petroleum products. This amounts to sort of a declaration of war against the Supreme Court and the people as well.

Here the point that needs to be highlighted is that government's power to tax and regulate is not and should not be arbitrary and of the nature of extortion. However, practically and really it is more so in Pakistan. How can one on earth justify the levying of the tax on withdrawal of one's own money from banks which has already been taxed at so many levels?

Thus, it is time for the elite classes to realize that if the Supreme Court does not come to the rescue of the ordinary people and government continues squeezing the pockets of the people that may cause a rebellion like situation ultimately destroying the very fabric of the whole society.

In fact, as is clear from the Supreme Court's Judicial Commission's report, levying of taxes and surcharges on petroleum products has been an easy way of getting huge amounts of money for every government to meet their spendthrift habits. Also, as the present ordinance from the Presidency proves there is no end to it.

Sure, this must stop now. It is time to stop it. This arbitrary power of government to tax and regulate must be made subject to revision by the court. It is as simple as that that every tax and regulation should have a plausible justification. Now as by suspending the thug-like Carbon tax and by freezing the electricity tariff the Supreme Court has taken the first step in this direction, let us once again rally behind it. Let us push the elitist forces once again to retreat. Let us not lose a friend we have finally won and found in the form of this independent Supreme Court. Let us not leave it alone against another onslaught of the elite classes. You see the battle has already begun. We must win it too!