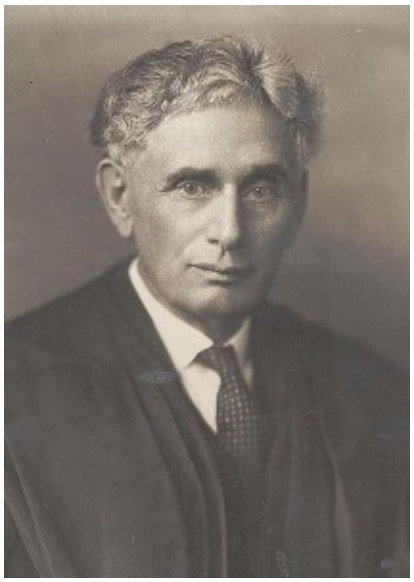
# IN CONSTITUTIONAL SHOWDOWN, PAKISTAN SUPREME COURT CITES QUAINT *OLMSTEAD V. US* ON RULE OF LAW



Pakistan's Supreme Court today cited Louis Brandeis' eloquent dissent in Olmstead v. United States

The precarious hold that Pakistan's civilian government has on power took another severe blow today, as the Supreme Court handed down a decision (pdf) which threatens to find Prime Minister Yousuf Reza Gilani unfit to hold office. At issue is the failure of Pakistan's executive branch to implement a number of corruption probes ordered by the Supreme Court when it overturned the 2007 National Reconciliation Ordinance in 2009. The NRO had provided amnesty to a number of political figures and parties in paving the way for a US-brokered planned transition from a Musharraf government to a likely Bhutto government. President Asif Ali Zardari's government has steadfastly refused to implement the probes, citing immunity. Ironically, the Supreme Court

cited the 1928 case *Olmstead v. United States,* in which the US Supreme Court upheld the use of illegal wiretaps in the prosecution of a bootlegger. The passage cited by Pakistan's Supreme Court is from Justice Brandeis' dissent and is an elegant call to observe the rule of law. Although *Olmstead v. United States* eventually was overturned, it is particularly ironic that Pakistan's Supreme Court would cite this case in responding to executive branch claims of immunity at a time when the US is once again litigating the extent of executive branch and corporate immunity in a new era of illegal government wiretaps.

In documenting the crisis, Dawn quotes Supreme Court Justice Asif Saeed Khosa:

> Tuesday, Supreme Court's Justice Asif Saeed Khosa remarked that despite clear court orders, the government and the NAB [National Accountability Board] were not serious about implementing court orders, DawnNews reported.
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> Justice Khosa said that the apex court was giving a last chance to the government to implement its verdict on the National Reconciliation Ordinance by Jan 16.
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> He said in case of non-implementation, the court would be forced to take certain steps which would not be "pleasant".

Khosa goes on to complain that the government has had over two years to respond to the overturning of the NRO, but refuses to act:

> He moreover referred to President Asif Ali Zardari and said that the president had, "in an interview, refused to accept the court's orders".
>
> The prime minister and the law minister also publicly refused to accept the apex court's orders, Justice Khosa said,

> adding that the president and the prime minister preferred loyalty to party over loyalty to state.

It is in response to this failure to act that the written decision cites Justice Brandeis' dissent in *Olmstead v. United States*:

> In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

Gosh, Brandeis had such a quaint view on the need for the government to adhere to the rule of law. If only that attitude were more prevalent today. Sadly, both the executive and legislative branches of today's US government seem to view such an attitude as outdated.

More details on the crisis come from AP:

> The conflict with the court has been brewing since 2009, when judges struck down an amnesty protecting President Asif Ali Zardari and hundreds of other politicians from prosecution on graft and other charges, and ordered cases against them reopened. The government has resisted doing this, arguing that the president has immunity from prosecution.
>
> Some independent commentators say the Supreme Court, which in the past has frequently been dragged into political disputes and on three occasions sanctioned military coups, is hostile to the current administration and is working with the army to oust it by

> “constitutional means.”
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> A five-judge panel accused the government of “willful disobedience” and said “the buck stops” at the office of Prime Minister Yousuf Reza Gilani, who it said was “dishonest.” The ruling warned that the court could declare him unfit to hold office and dismiss him if he does not implement its earlier verdicts.
> It ordered the attorney general to appear before the court next week to explain the government’s foot dragging.

With only one week to respond to the Supreme Court, it appears that the Zardari government is now backed into a corner, especially with constitutional issues also looming over the memogate controversy. If the analysts cited by AP are correct that the court is now siding with the military, they have now set the stage to begin dismantling the government as early as next week.