

A Knee on Our Throats

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For two months now, most of America has endured a government-imposed lockdown. I hate to use that word — lockdown — as it connotes locking prisoners into their cells during prison disturbances. But it is the word that the government itself uses when referring to its orders of confinement.

Today, we are the government's prisoners. Wear your mask. Stay at home. Don't go to work. Don't open your business. Don't go to church. And, for heaven's sake, don't gather in any group larger than 25 — unless it is to speak words of which the government approves.

Here is the backstory.

When the United States was founded, the folks who framed the new government shared many political and philosophical views. Some of those views were reprehensible, unnatural and contrary to the others — most notably that the new Constitution would permit the states to enforce a system of human slavery.

That colossal error brought us 75 more years of human degradation, a horrific war, the military occupation of the southern states, Jim Crow, lynching, the advent of the KKK, official segregation and the denigration of blacks by much of the government even today.

When the pre-Civil War Supreme Court was asked to rule on whether a slave who made it to the north could sue his former captors for permanent freedom, the Court ruled that blacks were not persons, as contemplated by the Constitution, and thus did not enjoy the rights of persons that the Constitution protects.

The Dred Scott decision not only triggered the Civil War but also the abuse of blacks, which has followed to this day.

The public torture and murder of George Floyd — a 46-year-old black man — by white Minneapolis cops has crystallized the public awareness of our collective history of looking the other way when these horrors have happened.

The same framers who were willing to compromise on slavery were unwilling to compromise on other issues. Among them were that the purpose of government is to protect rights and that no government is moral or lawful absent the consent of the governed. The latter requires that we have not only consented to the existence of the government but also to the powers that we have given it.

This theory — embraced by Thomas Jefferson in the Declaration of Independence and by

James Madison in the Constitution — mandates that human beings are born free, that we have natural rights integral to our humanity, that we are free to surrender a small part of those rights to a government, that the purpose of the government is to protect the rights we have not surrendered, that the government (today) must be colorblind and that the government only has the powers that we have surrendered to it.

Stated differently, if we, as free people, did not consent to giving certain powers to the government — like the powers state governors have exercised to lock us down or the police exercised to murder Floyd — the government, quite simply, lacks those powers and should be removed from office by an angry citizenry when it tries to exercise them.

The stated purpose of the lockdown is to shield us from infection. But this raises very serious questions about our relationship to government. We never authorized the government to shield us from infection. We never authorized it to lock us down. We never authorized the police to enforce anything other than legislatively enacted statutes. We never authorized the police to murder confined prisoners.

Here in New Jersey, the police are handing out summonses that look like parking tickets. In the place where they are supposed to write the statute that the recipient has allegedly violated, they have written “Violation of Governor’s Executive Order...” This is madness. Crimes consist only of behavior properly condemned in writing by a popularly elected representative body. It is not a crime to refuse to comply with the paternalistic wishes of one person.

If the governor of New Jersey can haul you into court for violating his executive orders, can he be hauled into court for violating our basic liberties — which are guaranteed by the Bill of Rights he swore to protect?

When the Black Lives Matter movement manifested its disgust with government failures to restrain the police, huge gatherings of people defied lockdown orders of governors. Most were peaceful. Most were the quintessential exercise of the freedom to travel, to assemble and to tell the government what you think of it.

To paraphrase the poet William Makepeace Thackeray, folks were shaking their fists in the tyrant’s face. A small number of people got arrested for violence, but no one got arrested for violating a gubernatorial lockdown order.

When New Jersey Gov. Phil Murphy was asked why he violated his lockdown orders by personally marching in one of those large peaceful assemblies while his police were issuing summonses for participation in other assemblies, he observed that racism is more troubling than closed nail salons. Good for him.

But he cannot use the power of government to support assembly, travel and speech with which he agrees and punish that with which he disagrees. That’s why we have a Constitution.

What a gross misunderstanding of the American ethos he has. He will bar your work. He will permit you to shop for a car but not for a book. You can walk with your family down an aisle at Walmart but not up to an altar to receive Holy Communion.

George Floyd died because the government itself put a knee on his throat. In New Jersey, the governor — without the consent of the governed and thus without any lawful authority

— has his knee on the state's throat, choking the air and lifeblood out of those yearning to be free.

How much longer will free people accept this?

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