

The Rule of Law Has Been Lost

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What is the greatest human achievement? Many would answer in terms of some architectural or engineering feat: The Great Pyramids, skyscrapers, a bridge span, or sending men to the moon. Others might say the subduing of some deadly disease or Einstein's theory of relativity.

The greatest human achievement is the subordination of government to law. This was an English achievement that required eight centuries of struggle, beginning in the ninth century when King Alfred the Great codified the common law, moving forward with the Magna Carta in the thirteenth century and culminating with the Glorious Revolution in the late seventeenth century.

The success of this long struggle made law a shield of the people. As an English colony, America inherited this unique achievement that made English-speaking peoples the most free in the world.

In the first decade of the twenty-first century, this achievement was lost in the United States and, perhaps, in England as well.

As Lawrence Stratton and I show in our book, "The Tyranny of Good Intentions" (2000), the protective features of law in the U.S. were eroded in the twentieth century by prosecutorial abuse and by setting aside law in order to better pursue criminals. By the time of our second edition (2008), law as a shield of the people no longer existed. Respect for the Constitution and rule of law had given way to executive branch claims that during time of war government is not constrained by law or Constitution.

Government lawyers told President Bush that he did not have to obey the Foreign Intelligence Surveillance Act, which prohibits the government from spying on citizens without a warrant, thus destroying the right to privacy. The U.S. Department of Justice ruled that the President did not have to obey U.S. law prohibiting torture or the Geneva Conventions. Habeas corpus protection, a Constitutional right, was stripped from U.S. citizens. Medieval dungeons, torture, and the windowless cells of Stalin's Lubyanka Prison reappeared under American government auspices.

The American people's elected representatives in Congress endorsed the executive branch's overthrow of the Constitution and the Bill of Rights. Law schools and bar associations were essentially silent in the face of this overthrow of mankind's greatest achievement. Some parts of the federal judiciary voted with the executive branch; other parts made a feeble resistance. Today in the name of "the war on terror," the executive branch does whatever it wants. There is no accountability.

The First Amendment has been abridged and may soon be criminalized. Protests against, and criticisms of, the U.S. government's illegal invasions of Muslim countries and war crimes against civilian populations have been construed by executive branch officials as "giving aid and comfort to the enemy." As American citizens have been imprisoned for giving aid to Muslim charities that the executive branch has decreed, without proof in a court of law, to be under the control of "terrorists," any form of opposition to the government's wars and criminal actions can also be construed as aiding terrorists and be cause for arrest and indefinite detention.

One Obama appointee, Harvard law professor Cass Sunstein, advocates that the U.S. government create a cadre of covert agents to infiltrate anti-war groups and groups opposed to U.S. government policies in order to provoke them into actions or statements for which they can be discredited and even arrested.

Sunstein defines those who criticize the government's increasingly lawless behavior as "extremists," which, to the general public, sounds much like "terrorists." In essence, Sunstein wants to generalize the F.B.I.'s practice of infiltrating dissidents and organizing them around a "terrorist plot" in order to arrest them.

That this proposal comes from a Harvard Law School professor demonstrates the collapse of respect for law among American law professors themselves, ranging from John Yoo at Berkeley, the advocate of torture, to Sunstein at Harvard, a totalitarian who advocates war on the First Amendment.

The U.S. Department of State has taken up Sunstein's idea. Last month Eva Golinger reported in the Swiss newspaper, *Zeit-Fragen*, that the State Department plans to organize youth in "Twitter Revolutions" to destabilize countries and bring about regime change in order to achieve more American puppet states, such as the ones in Egypt, Jordan, Japan, South Korea, Taiwan, Canada, Mexico, Columbia, Ukraine, Georgia, the Baltic states, Britain and Western and Eastern Europe.

The First Amendment is being closed down. Its place is being taken by propaganda in behalf of whatever government does. As Stratton and I wrote in the second edition of our book documenting the destruction of law in the United States:

"Never in its history have the American people faced such danger to their constitutional protections as they face today from those in the government who hold the reins of power and from elements of the legal profession and the federal judiciary that support 'energy in the executive.' An assertive executive backed by an aggressive U.S. Department of Justice (sic) and unobstructed by a supine Congress and an intimidated corporate media has demonstrated an ability to ignore statutory law and public opinion. The precedents that have been set during the opening years of the twenty-first century bode ill for the future of American liberty."

Similar assaults on the rule of law can be observed in England. However, the British have not completely given up on government accountability. The Chilcot Inquiry is looking into how Britain was deceived into participating in the illegal U.S. invasion of Iraq. President Obama, of course, has blocked any inquiry into how the U.S. was deceived into attacking Iraq in violation of law.

Much damning information has come out about Blair's deception of the British government and people. Sir David Manning, foreign policy advisor to Blair, told the Chilcot Inquiry that Blair had promised Bush support for the invasion almost a year in advance. Blair had told his country that it was a last minute call based on proof of Iraq's possession of weapons of mass destruction.

Sir William Patey told the inquiry that President Bush began talking about invading Iraq six or seven months prior to September 11, 2001. A devastating official memo has come to light from Lord Goldsmith, Prime Minister Blair's top law official, advising Blair that an invasion of Iraq would be in breach of international law.

Now a secret and personal letter to Prime Minister Blair from his Foreign Secretary, Jack Straw, has surfaced. In the letter, the Foreign Secretary warned the Prime Minister that his case for military invasion of Iraq was of dubious legality and was likely as false as the argument that removing Saddam Hussein would bring Iraqis a better life.

Blair himself must now testify. He has the reputation, whether deserved or not, as one of the slickest liars in the world. But some accountability seems to be heading his way. The Sunday Times (London) reported on Jan. 17 that the latest poll indicates that 52 percent of the British people believe that Blair deliberately misled his country in order to take Britain to war for the Americans. About one quarter of the British people think Blair should be put on trial as a war criminal.

Unlike the U.S., where government takes care to keep itself unaccountable to law, Britain is a member of the International Criminal Court, so Blair does stand some risk of being held accountable for the war crimes of President George W. Bush's regime and the U.S. Congress.

In contrast, insouciant Americans are content for their government to behave illegally. A majority supports torture despite its illegality, and a McClatchy-Ipsos poll found that 51 percent of Americans agree that "it is necessary to give up some civil liberties in order to make the country safe from terrorism."

As our Founding Fathers warned, fools who give up liberty for security will have neither.

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