



Gorsuch Condemns Attacks on Civil Liberties During the Pandemic

“Since March 2020, we may have experienced the greatest intrusions on civil liberties in the peacetime history of this country. Executive officials across the country issued emergency decrees on a breathtaking scale,” [wrote Neil Gorsuch](#), associate justice of the U.S. Supreme Court, in a fiery condemnation of the contraction of civil liberties during the recent Covid-19 pandemic.

The issue before the Court was whether Title 42, an emergency measure to curtail immigration during the pandemic, could be continued now that the emergency has been officially declared over. “As I explained ... I do not discount the States’ concerns about what is happening at the border, but the current border crisis is not a COVID crisis,” Gorsuch wrote.

He explained, “The Court took a serious misstep when it effectively allowed nonparties to this case to manipulate our docket to prolong an emergency designed for one crisis in order to address an entirely different one.”

What Gorsuch is saying, in effect, is that it is not right to do wrong to do right. In his wisdom-filled Farewell Address, President George Washington made a similar argument in opposition to not following the Constitution in order to do right. “If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed.”

Gorsuch is certainly correct that the hysteria over the Covid-19 pandemic led to public officials ignoring both federal and state laws, and federal and state constitutions, all in the name of fighting the virus. It allowed supporters of the Democrats to ignore election laws (both statutory and constitutional) in several states, which greatly helped their nominee, Joe Biden.

Civil liberties of all sorts took a serious hit during the pandemic. Gorsuch wrote, “Governors and local leaders imposed lockdown orders forcing people to remain in their homes. They shuttered businesses and schools public and private. They closed churches even as they allowed casinos and other favored businesses to carry on.”

Gorsuch added, “They threatened violators not just with civil penalties but with criminal sanctions too. They surveilled church parking lots, recorded license plates, and issued notices warning that attendance at even outdoor services satisfying all state social-distancing and hygiene requirements



AP Images
Neil Gorsuch



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could amount to criminal conduct.”

While Gorsuch did not mention it, the mayor of New York City even threatened a Jewish synagogue that he would shut them down *permanently* if they did not follow his dictates to halt services until he said they could resume them.

But it was not just state and local officials. “Federal executive officials entered the act too. Not just with emergency immigration decrees. They deployed a public-health agency to regulate landlord-tenant relations nationwide.” (Somehow the Centers for Disease Control and Prevention (CDC) usurped power to suspend evictions during the pandemic!)

And, “a workplace-safety agency” issued “a vaccination mandate for most working Americans. They threatened to fire noncompliant employees, and warned that [Armed Forces] service members who refused to vaccinate might face dishonorable discharge and confinement,” Gorsuch continued. “Along the way, it seems federal officials may have pressured social-media companies to suppress information about pandemic policies with which they disagreed.”

While some argued that social-media companies are “private,” and therefore they can censor all they want on their platforms, the truth is that if government officials can urge, or even threaten, these private businesses to censor, that in itself is a violation of the First Amendment.

Why did so many public officials violate civil liberties, often with public support? Gorsuch said it was because “Fear and the desire for safety are powerful forces. They can lead to a clamor for action — almost any action — as long as someone does something to address a perceived threat. A leader or an expert who claims he can fix everything, if only we do exactly as he says, can prove an irresistible force.”

Gorsuch lamented that it does not even take “a bayonet,” but “only a nudge, before we willingly abandon the nicety of requiring laws to be adopted by our legislative representatives and accept rule by decree. Along the way, we will accede to the loss of many cherished civil liberties — the right to worship freely, to debate public policy without censorship, to gather with friends and family, or simply to leave our homes.”

Gorsuch is clearly correct. Many years ago, someone asked me how the German people could so willingly give up their civil liberties to Adolf Hitler and his National Socialists (Nazis). Article 48 of the Weimar Constitution of Germany was invoked after the burning of the German Parliament building, the Reichstag, just a few days after Hitler became chancellor — the chief executive of the government. Article 48 allowed the government to declare a “temporary” emergency, giving Hitler dictatorial powers to combat what he said was the beginning of a communist revolution. To save themselves from a communist dictatorship, the people accepted a National Socialist Party dictatorship.

It is like the difference between being eaten by a lion or a shark.

Certainly, the Germans were wrong in 1933 to give Hitler those powers, and he eventually did use “the bayonet” during his regime — the infamous “Night of the Long Knives,” when he killed, in one night, hundreds of his political opponents.



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