



Written by [Jack Kenny](#) on September 29, 2010

Tyranny Triumphant

America is sliding into tyranny, and few Americans seem to recognize it. Before you dismiss this as alarmist propaganda, consider the following:

A September 8 ruling of the U.S. Court of Appeals for the Ninth Circuit, often described as the nation's most liberal, offers another example of a tortured balancing act. The court ruled that private persons may not sue over the government practice of rendition and torture of terrorist suspects because the defense would require the government to compromise state secrets. This extension of the state secrets privilege, argued by the George W. Bush administration and again by the Department of Justice under President Barack Obama, was used to cover even a subsidiary of Boeing, the giant aircraft manufacturer, that allegedly transported the suspects overseas for interrogation. Now even Boeing apparently enjoys the privilege of sovereign immunity.



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Writing for the majority in the court's 6-5 decision, Judge Raymond C. Fisher described the case as a painful conflict between human rights and national security. But the court's majority assigned all the pain to human rights and gave all the security to those in both the government and private sector who plan and carry out the transfer of prisoners in U.S. custody to overseas jurisdictions, where interrogations are carried out in a fashion that is, to say the least, pre-Miranda.

The plaintiffs were five prisoners who claimed they were tortured during their detention, a charge that the United States, so far, does not need to refute. That could change if the U.S. Supreme Court accepts an appeal from the American Civil Liberties Union, which brought the suit for the plaintiffs. The court declined to hear a similar appeal in 2007 and, according to the *New York Times*, the high court has not taken on the limits of the state secrecy privilege in 50 years.

For most Americans the issue will, perhaps, be of minor concern. When people are out of work or fearful of losing their jobs, what happens to people overseas is, in a manner of speaking, foreign to them. But Ronald Reagan was fond of saying that elections are not merely about who gets what, but about who we are as a people. And if we stop to look now at who we are as a people, we might not recognize the face in the mirror.

No Wonder Why



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For we are to blame. Even though the judges may have erred in deciding the case against the plaintiffs and ranking human rights below the state secrets privilege, they did not create the policy of extraordinary rendition. They did not decide that sending people to secret prisons run by our Central Intelligence Agency was essential for the defense of America. They may have permitted, but did not invent policies that more resemble those of the Soviet Union than the principles enshrined in our Declaration of Independence or the Constitution of the United States. No, our executive branch did that and the council of cravens known as the Congress of the United States lets the executive get away with it. And We the People let the Congress get away with that. What Congressman has lost his seat for not opposing extraordinary rendition?

At the end of the 19th century, William Graham Sumner published an essay called *The Conquest of the United States by Spain, 1898*. Now at first glance you might think he got it backwards. The good old USA won that splendid little war. But no, he meant we lost by winning. Subtraction by addition. We came to resemble the nation we conquered, becoming more imperialistic and authoritarian and less liberty loving in the process. His essay is not widely read these days and was no doubt denounced at the time as unpatriotic. But it has proven to be prophetic. And I wonder today if we are not coming to resemble more and more the Soviet Union, the evil empire we thought we had vanquished.

Even the momentous issue of war or peace is no longer decided by our representatives in Congress, as the Constitution requires, but by a few people in and around the Politburo I mean the White House. This was never more clear than when the United States was on the verge of the first Gulf War, Operation Desert Storm, in January of 1991, when the Congress was debating a resolution authorizing the President to decide what Congress refused to decide whether the United States should go to war to liberate Kuwait.

During the House debate, Rep. Barney Frank (D-Mass.) noted that those arguing in favor of the war would often invoke the duty to support American policy. What are we, asked Frank, the Canadian consulate? In the Senate, Warren Rudman, Republican of New Hampshire, covered himself with ignominy by arguing that it was a matter for the President to decide. Its not a decision for a committee, said the states senior Senator, who was apparently oblivious to the constitutional requirement that a committee called Congress, not the President, must declare war.

Also, the Founders, who did not contemplate a standing army, assigned to Congress the duty to raise and support Armies and To provide for organizing, arming and disciplining the Militia, and for governing such Part of them shall be employed in the Service of the United States, so how did it become the exclusive role of the executive branch to determine how people captured by our armed forces or even our domestic police forces shall be treated whether or not they shall be subjected to enhanced interrogation techniques and in what country and under what government such interrogation shall be carried out? What is the position of the Congress on that? What, come to think of it, is the position of the Congress on anything?

Well, it seems, the position of Congress is always the same: supine.

Obviously, were to blame in this as well. Most Americans can hardly believe their government would be engaged in torture, so they assume that it is not even true that it is an exaggeration of bleeding heart liberals who are worried about prisoners enjoying the good life at Club Gitmo, as Rush Limbaugh and others like to call the U.S. detention facility at Guantanamo Bay, Cuba as though any of them would care to spend as much as a day there. And the stories of prolonged confinement in underground cells or cages, the stories of laceration and hot burning liquids poured into open wounds, electric shock,



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waterboarding, etc., go virtually unreported in our hometown newspapers.

You can read about such methods of enhanced interrogation, if you have the stomach for it, occasionally in the pages of the *New York Times* or the *Washington Post*. You may also read occasionally of legal arguments about the status of prisoners taken and confined as enemy combatants, who are suspects not entitled, according to the current as well as the previous administration, to hearing the charges against them, since the government need not file any formal charges to detain them indefinitely. No charges, no trial, no lawyers required, thank you. Welcome to the former United States of America, now the *Brave New World* where the Bill of Rights has gone down a black hole, there to keep the Magna Carta company. Our government now assumes the right even to target Americans overseas for assassination if they are suspected of engaging in or supporting terrorist activities. No due process problem there.

Rationalizing the Reasons

Senator Russ Feingold (D-Wis.) was the lone Senator to vote against the PATRIOT Act, that mischievously named piece of unconstitutional legislation that allows the government access to records of, among other things, the books you buy and borrow from the library. When told by his critics that his thinking is pre-9/11, Feingold replied that their thinking is pre-1776. Yes, it seems many of our intellectuals would seem to prefer that we were still a colony of Great Britain. A lawyer friend insists that waterboarding is not torture, even though the United States in World War II subjected some of our own soldiers to court-martial for employing that forbidden technique. He reads widely, the gentleman does, so he has learned of a decision by a court of the European Union, which found that the waterboarding of Irish prisoners by the English was not torture. Its unpleasant, but its not torture, my friend tells me. Unpleasant? How bloody English of him.

The gentleman is also a conservative of the neo-nihilist Cheney-Rumsfeld stuff happens variety and becomes predictably irate when the U.S. Supreme Court reaches across the pond to find a decision by a foreign court that seemingly buttresses the U.S. Supreme Courts own finding. Yet he has no problem finding an international court opinion to support his contention that waterboarding is not torture, and uses that to trump the legal precedent of the United States government and its armed forces. The same gentleman was also predictably indignant when President Bill Clinton got caught in perjury and adultery. Yet, to update an old Republican argument, nobody drowned, was tortured, or lost their liberty in Monicagate.

To repeat: America is sliding toward tyranny and few Americans recognize it. Sometimes tyranny is advanced in the name of expanding our liberties, as when the U.S. or a state Supreme Court discovers a right in the Constitution that has been there all along, you see, but simply never before had been found. Thus, the Supreme Judicial Court of Massachusetts found somewhere in that states 1781 Constitution the right of homosexuals and lesbians to have their same-sex cohabitations blessed by the state as marriage. John Adams would have been amazed, but the states legislature dutifully obeyed the court and made the necessary change to the Bay States ancient marriage laws. Worse was the U.S. Supreme Court decision in *Roe v. Wade* that denies every state the ability to legislate a defense of the life of pre-natal infants, or fetuses, formerly known as babies. Thus, we are supposed to regard the slaughter of some 50 million babies as, at worst, the Constitutions collateral damage.

In New Hampshire, which used to provide a refreshing contrast to the peoples republic of Massachusetts, the states lawmakers have demonstrated time and again that the majority is pro-choice. So the real meaning of the state motto, Live Free or Die is that life-terminating women and their abortionists get to live free, while pre-born babies get to die. They call that freedom-loving in the



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Granite State. It is an upside down world as George Orwell described Big Brothers empire in *1984*: War is Peace. Ignorance is Strength. Freedom is Slavery

You can sell almost any form of tyranny to the American public as long as you wrap a flag around it, sing Yankee Doodle and God Bless America, and call it patriotism. And the bean counters in government, the certified public accountants and those other CPAs, the certainly pusillanimous Americans, and both John and Jane Q. Public can all be counted on to not recognize or raise the alarm about it.

And where, pray tell, are the friends of liberty among the members of the ruling class? I can think of only two members of Congress who spoke up against the government kidnapping of Elian Gonzalez, the Cuban refugee who was rescued at high sea by the same Miami fisherman who sheltered the frightened child in his arms before he was snatched away by Attorney General Janet Reno's goon squad. One was then Sen. Bob Graham, a Florida Democrat, who protested that he had been assured by the White House that no such seizure would be undertaken until the legal appeals on behalf of the boy and his Miami relatives had been exhausted. The other was Bob Smith, a Republican and at the time the senior Senator from New Hampshire. As a longtime New Hampshire resident, I know how much ridicule and scorn was heaped on Smith for his efforts. Ridicule and scorn are the rewards the Sneering Class saves for those Americans who speak up for and act in genuine patriotism. If we didn't recognize tyranny during the government siege at Waco or in the Gestapo-style dynamic entry of the Gonzalez home in Miami to capture and kidnap a six-year-old at gunpoint by a government thug in riot gear, then we might well wonder what might awaken us.

Where was Florida Governor Jeb Bush? Where was Gov. George W. Bush of Texas? He was apparently too busy campaigning for his party's presidential nomination at the time to take a stand for either liberty or decency. Ditto John McCain, Sen. Bill Bradley, Vice President Al Gore, and others. And the same may be said about nearly every other member of the Congress of the United States.

A few members of Congress forced an investigation of the siege at Waco that resulted in the death of 76 people, including more than 20 children. The hearings were interesting and quite revealing. They reached the height of absurdity with Attorney General Reno, who told the House committee probing the atrocity that the tanks ramming the side of a wooden frame residence at the Branch Davidian compound in Waco were not armed with bullets or explosives. She saw the tanks essentially as rental vehicles, she told the committee. That was too much for committee co-Chairman Bill Zeliff, the usually placid Republican Congressman from New Hampshire.

Rental vehicles? he repeated. Tanks ramming the side of a house? Yes, the Attorney General said, that's essentially what they were.

Well, as Groucho Marx said, Who are you going to believe, me or your own eyes? The ramming by the tanks against the house was accompanied by a voice over the loudspeaker, announcing: This is not an assault! This is not an assault!

It is proper to take alarm at the first experiment on our liberties, wrote the father of the Constitution, James Madison, in *A Memorial and Remonstrance*. We are well beyond the first experiment in 21st-century America. We need to think and act on that prudent jealousy that Madison called the first duty of citizens and one of the noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the



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principle.

Perhaps liberty's last word was written not by James Madison, but by George Orwell. Perhaps we don't read or heed Orwell's warnings any more than we do Madisons. Orwell wrote what may be the epitaph of liberty in our time. He ended *1984* with the following observation about Winston Smith, Orwell's Everyman: He loved Big Brother.

1984 by George Orwell is available online at [ShopJBS.org](#).

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