

State Terror

A brief guide for Americans



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Yesterday the president defied a Supreme Court ruling to return a man who was mistakenly sent to a gulag in another country, celebrated the suffering of this innocent person, and spoke of sending Americans to foreign concentration camps.

This is the beginning of an American policy of state terror, and it has to be identified as such to be stopped.

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So let's begin with language, because [language](#) is very important. When the state carries out criminal terror against its own people, it calls *them* the "criminals" or the "terrorists." During the 1930s, this was the normal practice. Looking back, we refer to Stalin's "Great Terror," but at the time it was the Stalinists who controlled the language. Today in Berlin stands an important museum called "Topography of Terror"; during the era it documents, it was the Jews and the chosen enemies of the regime who were called "terrorists." Yesterday in the White House, the Salvadoran president showed the way, referring to Kilmar Abrego Garcia as a "terrorist" without basis whatsoever. The Americans treated him as a criminal, even though

"criminals" and the "terrorists." The second part is deterring the press, or anyone else, from challenging the perversion by associating anyone who objects with crime and terror. This was the role Stephen Miller played when he said yesterday in the White House that reporters "want foreign terror in the country who kidnap women and children."

The control of language is necessary to undermine a legal or constitutional order. Our rule of law begins with notions such as the people and their rights. If politicians shift the framework to "criminals" and "terrorism," then they are shifting the purpose of the state.

In the United States, we are governed by a Constitution. Basic to the Constitution is habeas corpus, the notion that the government cannot seize your body without a legal justification for doing so. If that does not hold, nothing else does. If we have the law, then violence may not be committed against one person against another on the basis of namecalling or strong feelings. This applies to everyone, above all to the president, whose constitutional function is to enforce the laws.

Trump spoke of asking Attorney General Pam Bondi to find legal ways to abduct Americans and leave them in foreign concentration camps. But by "legal" what is meant are ways of *escaping* law, not applying it.

It is that anti-constitutional escapism that enables abuse. State terror involves not just the malignant development of state organs of oppression, such as masked men in black vans, but also the withdrawal of the state from its role as a guardian of law. What aspiring tyrants present as "strength," the ability to terrorize innocent people, rests on what might be seen as a more fundamental weakness, which is the withdrawal of the state from the principle of the rule of law. When we have law, we are all stronger; when we lack law, everyone is weaker except for the very few who can direct the coercive power of the state against the rest of us.

In the history of state terror, the escape from law into coercion takes three forms, all of which were on display, incipiently, in the White House yesterday: the leader principle; the state of exception; and the zone of statelessness.

The leader principle, or in German *Führerprinzip*, is the idea that a single individual directly represents the people, and that therefore all of his actions are by definition legal and proper. In discussions in the White House and thereafter, we see this notion being advanced. Trump's advisors claim that what he is doing is popular. The claim (as in legal filings) that the president is acting from a personal "mandate" from the people has the same problem. Asked on Fox News about the abduction of Americans and their transfer to foreign gulags, Attorney General Pam [Bondi](#) said that "these are Americans he is saying who have committed the most heinous crimes in our country." It comes down to what "he is saying," then he is a dictator and the U.S. is a dictatorship. Trump spoke of the need to deport people who "hate our country" or who are "stupid."



The second escape from law is the state of exception. In principle, the Soviet Union was governed by law. Before its greatest exercises of terror, however, the Soviet authorities declared for themselves states of exception. This meant that, on the territory of the Soviet Union itself, it was "legal" (in Bondi's and Trump's sense) to abduct people and send them to concentration camps: the authorities claimed that there was some sort of threat, and so protection could be withdrawn and procedures set aside. People could be abducted in black vans and executed or sent to a camp, "legally," in the sense that the law had been set aside. The notion of the state of exception, important to Soviet practice, was at the center of Nazi theory. As the leading Nazi thinker Carl Schmitt argued, the sovereign is the person who can make an exception. When we are living in normal times, then we think we should be governed by law. If politicians can use words to make us think that these are exceptional times, then we might accept their lawlessness.

A simple way to escape from law is to move people bodily into a physical state of exception in which the law (it is claimed) does not apply. Other methods take more time. It is possible to pass laws that deprive people of their rights in their own country. It is possible to carve out spaces on one's own territory where the law does not function. These spaces are concentration camps. In the end, authorities can choose, as in Nazi Germany, to physically remove their citizens into zones beyond their own countries in which they can simply declare that the law does not matter.

This exploitation of purported stateless zones was the main line of the history of the Holocaust. Under Hitler, the Germans did have concentration camps on their own territory, and they did reduce Jews to second-class citizenship; they did live under a permanent state of exception. But, in the main, the mass murder of German Jews was achieved by their abduction and forced removal to sites beyond prewar German territory where, German authorities claimed, there was no law.

A probing of this statelessness approach was on display yesterday, as Trump and his advisors claimed that Kilmar Abrego Garcia, a legal resident of the United States whom US authorities abducted by mistake and sent to a concentration camp in El Salvador, was now beyond the reach of American law. This is state terror: the state is presented as "strong" in its oppression of a person, but as weak in its ability to respect or enforce law. The idea that the United States can send you to places from which it cannot bring you back is the theoretical basis for a doctrine of statelessness. Call it the Rubio Doctrine in the words of the secretary of state, "the foreign policy of the United States is conducted by the President of the United States, not by a court." But what that implies is that people forcibly transported beyond the boundaries of the United States can be incarcerated or killed for no reason. That would be "foreign policy."

Will citizenship save people? Obviously it is better to be a citizen than not. Citizenship provides some protection, at least by comparison with its absence, or with statelessness. The problem, though, is that citizens can find themselves borne along with the rationales applied to non-citizens. If we accept that Trump exercises power because of the *Führerprinzip*, then we cannot stop him from saying that the people want to see the forcible rendition of "homegrown," of "really bad people, every bit as bad as the ones coming from overseas." If citizens accept that we are living in a state of exception, then they are also accepting that they too can be treated exceptionally. Perhaps worst of all, if citizens accept the notion of stateless zones, of law that only functions as a servant of power, they are inviting their own deportation to places from which we will never return.

If citizens endorse the idea that people named by authorities as "criminals" or "terrorists" have no right to due process, then they are accepting that they themselves have no right to due process. It is due process, and due process alone, that allows you to demonstrate that you are a citizen. Without it, the masked men in the black vans can simply claim that you are a foreign terrorist.

and disappear you.

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Horrible though all of this is, it is still state terror in outline, a test of how Americans will react. We can react by seeing all of this for what it is, and naming it by name: incipient state terror. We can react by associating ourselves with others are repressed before we are. Only in solidarity do we affirm law. We can remind the other branches of government that their functions are being taken over by the executive. Citizens cannot do this and they have to remind the rest of the government of its constitutional func

The president is claiming core congressional responsibilities when he asserts personal control of immigration policy, criminal law, and the funding of forcible renditions. Congress could very easily pass laws, if a few Republicans found the courage. The president is claiming core judicial functions when he defines himself as judge, jury, and, in the case for forcible renditions to El Salvador, de facto executioner. The phrase "contempt of court" took on a new life in the White House yesterday.

Even these most basic institutions, the ones defined by our Constitution, do not act on their own. To a very sad degree, Supreme Court justices and members of Congress are already complicit in this experiment in state terror. They might find their way back to an America in which their offices have meaning, but only with the help of we the people.

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