

Lawless

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President George W. Bush acknowledges that he authorized the waterboarding of Khalid Sheik Mohammed, the 9/11 planner. "Damn right!" was his response when officials approached him for the permission. Vice President Richard Cheney described himself as "a big supporter of waterboarding," in a TV interview earlier this year.

Both men know they are confessing to crimes against US law.

The US is a signatory to international agreements that have the force of law in our country, and clearly rule out torture.

No one seriously disputes the fact that waterboarding is torture, that it has been used as torture for many centuries in many places, and that President Barack Obama and Attorney General Eric Holder have confirmed this.

In America, we honor the principle that a person is innocent until proven guilty, which means in practice that the law is no stronger, and no more just, than the institutions charged with enforcing it. Obama and Holder have not indicted Bush and Cheney for their crimes, and they will not do so.

When it comes to torture, America is a nation of men, not of laws. We have placed the torturers, and those who authorized their conduct, above the law. The criminal justice system is paralyzed for lack of public support.

You might say this is a special case, with little relevance to the lives of ordinary Americans.

It's true that police departments sometimes torture people they've arrested, and do so with impunity. It's also true that certain prison systems rely for internal discipline on the abuse dealt out by prison gangs to keep prisoners in line.

Still, ordinary Americans rarely get arrested or imprisoned, unless they happen not to be Anglo and middle-class.

But lawlessness has now imposed a cost on middle-class and Anglo families too, not in the form of getting beaten up or waterboarded, but that of seeing financial well-being devastated by the economic meltdown.

Some six million American homes have been foreclosed, with another ten million in the offing. This has drastically reduced the value of homes nationwide. The unemployment rate has ill effects beyond the 9.6% of Americans nationwide who have no jobs, fearful as that is. Massive unemployment and foreclosures pose the threat of a long-standing economic stagnation, bringing on a deflationary cycle that would precipitate another asset-shattering collapse.

Ben Bernanke's recent decision to have the Federal Reserve purchase \$600 billion in government bonds will depress the yield on those bonds generally, which will do severe harm to investors that are shy of the stock market and want to find assets without market risk. But the decision was taken, in the face of this and other injuries, in order to forestall deflation.

So what's this to do with lawlessness?

The answer is that the economic mania of 2003-2007, the boom that led to the bust, was accelerated by activities that have every appearance of crime.

The three leading rating agencies --- Standard and Poor, Moody, Fitch --- gave top ratings to financial instruments that they knew did not merit such ratings.

Securities called “Collateralized Debt Obligations” were concocted by bundling mortgages that called “subprime,” meaning “high risk.” Such CDO's accordingly carried a high risk.

But the rating agencies --- mindful that their fees were paid by the investment banks that created the CDO's --- marked them at AAA. AAA is the lowest level of risk, the same posed by a Treasury bond backed by the full faith and credit of the United States government. Uncounted investors relied upon these ratings in making the decision to purchase CDO's.

Suppose you buy a car from a dealership, accepting the word of the dealer that it's in good shape. Then the car breaks down because of flaws that the dealer knew about when he sold you the car. Your reliance on the misleading word of the dealer is called “detrimental reliance,” and the dealer is guilty of a crime, called fraud.

Have the three rating agencies --- Standard and Poor, Moody, Fitch --- been charged with fraud?

They have not.

When tasked with their conduct in hearings before Congress, they claimed they were only expressing their “opinion,” and were protected by the First Amendment in doing so.

As though the car dealer took refuge in the First Amendment for lying to you about that car.

Then there are the institutions that created and sold the CDO's, for example the megabank Goldman Sachs.

It is now known that Goldman Sachs understood that CDO's backed by subprime mortgages were destined to lose value. As they were selling these doomed CDO's, without disclosing their poor quality to the purchasers, they simultaneously bet against them in the financial markets.

Goldman Sachs made huge profits as the purchasers of their CDO's were injured.

It's fraud --- detrimental reliance --- all over again. In this case, the issue was adjudicated, and the court reached a stunning conclusion. It held that the purchasers should have known the risks irrespective of Goldman's representations.

Perhaps a new case will be brought, with a different result. But for now, Goldman Sachs can proceed with further double-dealing without fear of the law.

The select company of those who are immune to the law now includes the rating agencies and Goldman Sachs, along with Bush, Cheney and the torturers.

Being more powerful than American law is a nifty set-up, right along with being too big to fail.