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A court decision that reflects what type of country the U.S. is

Even when government officials purposely subject an innocent person to brutal torture, they enjoy full immunity.

By Glenn Greenwald

Salon, November 4, 2009

It's not often that an appellate court decision reflects so vividly what a country has become, but such is the case with [yesterday's ruling by the Second Circuit Court of Appeals in Arar v. Ashcroft](#) (.pdf). Maher Arar is both a Canadian and Syrian citizen of Syrian descent. A telecommunications engineer and graduate of Montreal's McGill University, he has lived in Canada since he's 17 years old. In 2002, he was returning home to Canada from vacation when, on a stopover at JFK Airport, he was (a) detained by U.S. officials, (b) accused of being a Terrorist, (c) held for two weeks *incommunicado* and without access to counsel while he was abusively interrogated, and then (d) was "rendered" -- despite his pleas that he would be tortured -- to Syria, to be interrogated and tortured. He remained in Syria for the next 10 months under the most brutal and inhumane conditions imaginable, where he was repeatedly tortured. Everyone acknowledges that Arar was never involved with Terrorism and was guilty of nothing. I've appended to the end of this post the graphic description from a dissenting judge of what was done to Arar while in American custody and then in Syria.

In January, 2007, the Canadian Prime Minister [publicly apologized to Arar](#) for the role Canada played in these events, and the Canadian government paid him \$9 million in compensation. That was preceded by a full investigation by Canadian authorities and the **public disclosure** of a detailed report [which concluded](#) "categorically that there is no evidence to indicate that Mr. Arar has committed any offense or that his activities constituted a threat to the security of Canada." By stark and very revealing contrast, the U.S. Government has never admitted any wrongdoing or even spoken publicly about what it did; to the contrary, it repeatedly insisted that courts were barred from examining the conduct of government officials because what we did to Arar involves "state secrets" and because courts should not interfere in the actions of the Executive where national security is involved. What does that behavioral disparity between the two nations say about how "democratic," "accountable," and "open" the United States is?

Yesterday, the Second Circuit -- by a vote of 7-4 -- agreed with the government and dismissed Arar's case in its entirety. It held that even if the government violated Arar's Constitutional rights as well as statutes banning participation in torture, he still has no right to sue for what was done to him.

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Why? Because "providing a damages remedy against senior officials who implement an extraordinary rendition policy would enmesh the courts ineluctably in an assessment of the validity of the rationale of that policy and its implementation in this particular case, matters that directly affect significant diplomatic and national security concerns" (p. 39). In other words, government officials are free to do anything they want in the national security context -- even violate the law and purposely cause someone to be tortured -- and courts should honor and defer to their actions by refusing to scrutinize them.

Reflecting the type of people who fill our judiciary, the judges in the majority also invented the most morally depraved bureaucratic requirements for Arar to proceed with his case and then claimed he had failed to meet them. Arar did not, for instance, have the names of the individuals who detained and abused him at JFK, which the majority said he must have. As Judge Sack in dissent said of that requirement: it "means government miscreants may avoid [] liability altogether through the **simple expedient of wearing hoods while inflicting injury**" (p. 27; emphasis added).

The commentary about this case [from Harper's Scott Horton](#) perfectly captures the depravity of what our Government has done -- and continues to do -- to Arar. His analysis should be read in its entirety, and he concludes with this:

When the history of the Second Circuit is written, the Arar decision will have a prominent place. It offers all the historical foresight of Dred Scott, in which the Court rallied to the cause of slavery, and all the commitment to constitutional principle of the Slaughter-House Cases, in which the Fourteenth Amendment was eviscerated. The Court that once affirmed that those who torture are the "enemies of all mankind" now tells us that U.S. government officials can torture without worry, because the security of our state might some day depend upon it.

I want to add one principal point to all of this. This is precisely how the character of a country becomes fundamentally degraded when it becomes a state in permanent war. So continuous are the inhumane and brutal acts of government leaders that the citizens completely lose the capacity for moral outrage and horror. The permanent claims of existential threats from an endless array of enemies means that secrecy is paramount, accountability is deemed a luxury, and National Security trumps every other consideration -- even including basic liberties and the rule of law. Worst of all, the President takes on the attributes of a protector-deity who can and must never be questioned lest we prevent him from keeping us safe.

This is exactly why I find so objectionable and dangerous the ongoing embrace by the Obama administration of these same secrecy and immunity weapons. Obama had nothing to do with the *Arar* case -- all the conduct, and even the legal briefing, occurred before he was President -- but he has taken numerous steps to further institutionalize the core injustice here, [including in cases that are quite similar to Arar](#): namely, that the Executive can use secrecy and national security claims to shield himself from the rule of law, even when he's accused of torture and war crimes. That's exactly what happened here, yet again. As Judge Parker wrote in dissent ([click image to enlarge](#))

Where appropriate, deference to the coordinate branches is an essential element of our work. But there is, in my view, an enormous difference between being deferential and being supine in the face of governmental misconduct. The former is often necessary, the latter never is. At the end of the day, it is not the role of the judiciary to serve as a help-mate to the executive branch, and it is not its role to avoid difficult

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decisions for fear of complicating life for federal officials. Always mindful of the fact that in times of national stress and turmoil the rule of law is everything, our role is to defend the Constitution. We do this by affording redress when government officials violate the law, even when national security is invoked as the justification. See U.S. Const., Art. I, § 9, cl. 2; *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

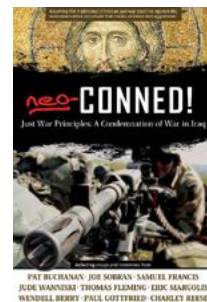
Identically, Judge Calabresi -- one of the most respected and non-ideological appellate judges in the country -- accused the majority of "**utter subservience to the executive branch.**" Surely that's true, but it isn't only the *Arar* majority that is guilty of that. It is the nation as a whole -- drowning in infinite claims of "state secrets" and executive immunity and war necessity and the imperatives of "looking forward" -- that has meekly acquiesced to the pernicious idea that the President in an allegedly national security context must never have his actions disclosed, let alone judicially scrutinized and held accountable, no matter how criminal, brutal and inhumane those actions are.

Here's Judge's Sack's description of what was done to Arar in Syria, which accords perfectly with what the Canadian investigation found -- this is what our Government (both the executive and judicial branches) has continuously insisted it can purposely cause to happen without any accountability or even transparency (pp. 13-15):

B. Arar's Detention in Syria

During his ten-month period of detention in Syria, Arar alleges, he was placed in a "grave" cell measuring six feet long, seven feet high, and three feet wide. The cell was located within the Palestine Branch of the Syrian Military Intelligence ("Palestine Branch"). The cell was damp and cold, contained very little light, and was infested with rats, which would enter the cell through a small aperture in the ceiling. Cats would urinate on Arar through the aperture, and sanitary facilities were nonexistent. Arar was allowed to bathe himself in cold water once per week. He was prohibited from exercising and was provided barely edible food. Arar lost forty pounds during his ten-month period of detention in Syria. (*Id.*)

During his first twelve days in Syrian detention, Arar was interrogated for eighteen hours per day and was physically and psychologically tortured. He was beaten on his palms, hips, and lower back with a two-inch-thick electric cable. His captors also used their fists to beat him on his stomach, his face, and the back of his neck. He was subjected to excruciating pain and pleaded with his captors to stop, but they would not. He was placed in a room where he could hear the screams of other detainees being tortured and was told that he, too, would be placed in a spine-breaking "chair," hung upside down in a "tire" for beatings, and subjected to electric shocks. To lessen his exposure to the torture, Arar falsely confessed, among other



"Neoconned" and "Neoconned Again", two new collections of essays



America's "War on Terrorism", book by Michel Chossudovsky

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things, to having trained with terrorists in Afghanistan, even though he had never been to Afghanistan and had never been involved in terrorist activity. (Id. at 255.)

Arar alleges that his interrogation in Syria was coordinated and planned by U.S. officials, who sent the Syrians a dossier containing specific questions. As support for this allegation, Arar notes that the interrogations in the United States and Syria contained identical questions, including a specific question about his relationship with a particular individual wanted for terrorism. In return, Arar alleges, the Syrian officials supplied U.S. officials with all information extracted from Arar; Arar cites a statement by one Syrian official who has publicly stated that the Syrian government shared information with the United States that it extracted from him. See Compl. Ex. E (January 21, 2004 transcript of CBS's Sixty Minutes II: "His Year In Hell"). (Id.)

Judge Sack's equally horrific description of exactly what the U.S. did to cause all of that to happen to Arar is [here](#).

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Comment by aurens - 05 Nov 2009 - 05:34 [USER NOT REGISTERED]

Canadian Prime Minister Stephen Harper bows to his USA masters.

Comment by john - 05 Nov 2009 - 06:02 [USER NOT REGISTERED]

Demon Liars who Support Target Killings of Innocent Children

<http://clerk.house.gov/evs/2009/roll838.xml>

Trial for death sentences to every last demon enemy TRAITOR listed. Understand: the Gaza slaughter of innocent Children at the UN school is fully documented by Israeli NAZIS funded by America. These monsters will murder innocent children for money.

THE ACTUAL DEVIL HIMSELF - ! SPEAKING ! LIKE FOR REAL MAN

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"Don't let the facts confuse you, believe in the Devil."

Bushite "I don't care."

UN: Israel broke six-month truce in Gaza

<http://atheonews.blogspot.com/2009/03/un-israel-broke-six-month-truce-in-gaza.html>

WAR CRIMINALS!

Again, understand, Israeli NAZIS murdered 239 Police Officers who were just trying to defend our families. The NAZIS also specifically targeted innocent women and children for mass murder as Satanic. THEY CONFESSED TO TARGETING CHRISTIAN CHILDREN - then stated it was pro-zionist Hamas' fault. Please, allow the godly men and women of Humanity to speak freely in America, as open speech dedicated to a freedom currently dying as enslaved at the hands of the neoconner corporate whores.

US wars in Iraq and Afghanistan are traitorous, un-American, and cowardly
<http://www.examiner.com/x-18425-LA-County-Nonpartisan-Examiner~y2009m9d16-US-war-s-in-Iraq-and-Afghanistan-are-traitorous-cowardly-and-unAmerican>

Bushite gruners are war criminal enemies of Freedom in America. They cowardly refuse to defend the innocent murder victims of 911, of Israeli, and us In Iraq and Afghanistan, while lawlessly stealing everything for evil intent as they die in tyranny. Ungodly as evil enemies of Life that murder innocent People for stolen money. Die bushite die.

Justice to the war criminals of indiscriminate warfare would better serve ourselves to halt for our safety. The bushmob did 911.

1. The ISI's General, Mahmoud Ahmad funded 911's Atta
2. We have video of iron flowing like water from the towers

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"U.S. admits it has no case against teen held at Guantanamo"

Then arrest, try, and execute the bushite gruners responsible for the torture and kidnapping, that does still, warrant death under American law ushered by Reagan. Then, hunt the "American" who believes these rights are not your own to defend to the death. Freedom for all.

Comment by ra - 05 Nov 2009 - 07:12 [USER NOT REGISTERED]

HARPER IS A CRYPTO MARRIED TO A JEW

B'NAI B'RITH AWARDS HIM MEDALS ON A REGULAR BASIS

HE IS A ZIONIST 'PLACEMAN'

ROTHSCHILD'S HAVE MAJOR HOLDINGS IN CANADA, COAST-TO-COAST, (EVEN THOUGH THEY ARE CAMOUFLAGED UNDER A MYRIAD OF NAMES)

Comment by wholetruth123 - 05 Nov 2009 - 20:07 [USER NOT REGISTERED]

Actually it shows how hollow this false god of liberal democracy is. Many people worship democracy and think if only we get real democracy their problems will be solved.

The us shows how quickly it abandons all its own precepts and laws and conventions and agreements.

And for all you worshippers of the democracy idol understand US is dropping its adherence to these laws not in the middle of the night but in the broad light of day. The US knows the democracy idol is fake. the democracy idol was handy in bashing the soviet Union and now it doesn't matter. In addition the media hype about the democracy idol is so strong the US believes that no matter what it does the stoned believers of the democracy idol will retain their love and attachment to it.



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