

Kagan Must Be Blocked

At Elena Kagan's confirmation hearing, Senator Tom Coburn (R-OK) asked her if she believes "what the Declaration of Independence says, that we have certain inalienable and God-given rights that aren't given in the Constitution, that are ours, ours alone, and that the government doesn't give those to us." Kagan responds, "I don't have a view of what are natural rights, independent of the Constitution." With that stunning statement, it becomes impossible for anyone to expect that Kagan can function properly as a Supreme Court Justice.

James Madison, the primary author of the U.S. Constitution, warned, "Do not separate text from historical background. If you do, you will have perverted and subverted the Constitution, which can only end in a distorted, bastardized form of illegitimate government." That is, do not just read the words of the U.S. Constitution; understand the context in which they were written.

Just days before his death on the 50th anniversary of the signing of the Declaration of Independence, Thomas Jefferson wrote, in what would be his final letter, "...the mass of mankind has not been born with saddles on their backs nor a favored few booted and spurred, ready to ride them legitimately by the grace of God. These are grounds of hope for others. For ourselves, let the annual return of this day forever refresh our recollections of these rights, and an undiminished devotion to them."

No true and loyal American could want on the Supreme Court a person whose values are not based on the words of Jefferson's Declaration of Independence: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." When Kagan states, "I don't have a view of natural rights, independent of the Constitution," she is arguing that Americans do *not* have rights solely by the nature of their existence, as Jefferson eloquently stated in the Declaration of Independence. Rather, in Kagan's view, individuals have rights only so long as the federal government is generous enough to continue to permit them. But what a government has the power to grant, the government has the power to take away.

Kagan holds "no view of natural rights" independent of the Constitution. Kagan therefore has "no view" of these related words from the Declaration of Independence, which are also independent of the Constitution:

"That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."

"That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government..."

“Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes.”

“But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government.”

Kagan has “no view” of those words. She apparently does not wish to be “restricted” by the values and concepts expressed in the Declaration of Independence. Further, as she has demonstrated by her past words and actions, she views the U.S Constitution as nothing more than a legal contract that attorneys can dissect, dismember, attack, misinterpret, subjugate, and abrogate—as they see fit.

Kagan fails to recognize that the *Constitution itself* conflicts with her argument that she has no need for “a view of ...natural rights, *independent of* the Constitution.” The Ninth Amendment reads, “The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” The Founding Fathers, through Thomas Jefferson, declared the God-given, natural right to life, liberty, and the pursuit of happiness. Kagan cannot ignore those rights, because the Ninth Amendment expressly requires that they not be “denied or disparaged.” (And she certainly cannot argue that James Madison, in writing the Constitution, was unaware of the rights defined in the Declaration of Independence.)

But while Kagan has “no view of natural rights, independent of the Constitution,” she also stated in the hearings that she would not hesitate to rely on international law to guide her in her decisions. Kagan will not allow her opinions to be influenced by that pesky Declaration of Independence—of which she “has no view”—but if the laws of European nations do not allow capital punishment then, well, she would eagerly consider *those* documents in making her decision should a capital case come before the Court. Kagan thus values the judgment of European socialists more than the words of Thomas Jefferson—which is *precisely* why Obama nominated her.

Some Senators likely view the Kagan nomination as part of a continuing political game, in which they “go along to get along” and will vote for Obama’s nominee in exchange for a promise for future support of some pork barrel project that will make them more popular with their constituents. Such actions make them more reprehensible than Kagan. As a private citizen she at least has a right to hold ill-informed, un-American, and dangerous views. But as elected representatives of the citizens of the United States, all Senators have taken an oath to “...support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter: So help me God.” To place Kagan on the Supreme Court is to place the rights of all Americans at risk. I am not hesitant to state it: *Kagan is a domestic enemy of the United States.*

If ever there was a Supreme Court nominee who should be rejected, Kagan is that person. There is no acceptable reason for the Republicans *not* to block her nomination with a filibuster. If they do so, they will, of course, be called obstructionist by Obama. They will, of course, be pilloried by the leftist media. They will, of course, be criticized for “thwarting the will of the people” by not giving Obama everything he wants. (It is hardly worth mentioning the ferocity with which Democrats oppose the conservative nominees of Republican presidents. If the Democrats can oppose a legal giant like Robert Bork simply because he *would* follow the Constitution, Republicans should certainly be free to oppose a leftist ideologue like Kagan who would *not* follow the Constitution.)

But the politics of the moment matter little. What matters is defending the rights of every U.S. citizen. With a steady stream of 5–4 Supreme Court rulings that should have been 9–0 decisions, this is *not* the time for any knees to buckle. If Kagan’s nomination is approved by the U.S. Senate, she will use that opportunity to subvert the U.S. Constitution—which Obama has called a “flawed document”—for the purpose of promoting leftist ideology and socialist goals. *That cannot be allowed to happen.* The voters should take note of those Senators who vote in favor of Kagan’s nomination and hold them accountable at the ballot box—while they still have access to one.

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July 3, 2010