

**The  
BLACK  
C o M M e n t a t o r**  
Commentary, analysis and investigations  
on issues affecting African Americans  
[www.blackcommentator.com](http://www.blackcommentator.com)

**May 21, 2009 - Issue 325**

[Contents of Issue](#)

[Click here](#)

[Home](#)

**When the Law is the Crime Being Committed  
Color of Law**

**By David A. Love, JD**

**BlackCommentator.com Editorial Board**

Click on the back button of your browser to return to non printer friendly page of this article

[Click here](#) to get helpful hints for viewing and printing this printer friendly plain text page

When a person commits a crime, everyone has an answer as to what punishment should or should not be meted out. But what do you do when a law is a crime unto itself, and society is committing the crime?

I asked myself that question when I recently saw the film [The Lemon Tree](#). A fictional account based on real-life stories, it centers around Salma Zidane, Palestinian woman who owns a lemon grove on the West Bank-Israel border. Zidane's neighbor, the new Israeli defense minister, builds an upscale home near the lemon trees and the secret service declares the grove a security threat. The military erects a watchtower, and bars her from entering her lemon grove and tending to it. As the minister and his family take some of the lemons for their own use, Zidane is met with physical force, at gunpoint, when she climbs the wire fence in an attempt to enter her own grove. The minister orders the trees uprooted pursuant to military law, and Zidane, who rejects the government's offer to compensate her, fights the decision all the way up to the Israeli high court.

*The Lemon Tree* makes a statement about the dysfunctional state of affairs in the Mideast, and a struggle of people who are fighting for their rights. Central to the film, in my view, is the law which allowed for the destruction and confiscation of Palestinian property on the grounds of "military necessity" (translated: Palestinian terrorist threat).

People do not think much about laws, and they question not how and why they are promulgated. In a previous commentary, I argued that [a law is that which is bought and paid for](#). I would like to add to that definition with a secondary definition: a law endorses and legitimizes the oppressive tendencies of a given society. In order to justify an injustice, simply write it into law and legalize it. Rubber stamp it. You don't have to justify the abhorrent practice on its merits, you simply back into it. It is now the law, so it is lawful. And the nation's legal apparatus will bring force to bear and uphold the law.

A law can also reveal a narrative, a story that a given society wants to tell about itself, its values, and the way it deals with certain conduct. So in *The Lemon Tree*, the law that Salma Zidane challenges provides us with a story about Israeli-Palestinian relations: In Israel, Palestinians are second-class citizens - better yet, non-citizens - who have no rights, including the right to own land in a country that is not their own, even though this is the only home they have known. They are bad people and considered dangerous, whether men, women or children, and should be viewed as potential if not actual terrorists. That is why they are subjected to a regime of ID cards, unreasonable checkpoints and curfews. These security precautions must be taken, the argument goes, to protect Israeli families and their homes from these terrorists (Palestinians).

In the United States, we have seen recent examples of unjust laws. A nation that has all but forsaken the notion of rehabilitation in its criminal justice system, America chooses to punish people - whether through incarceration, fine, sanction, etc. - not only for the crime for which they are convicted. Rather, there are laws that add collateral punishment to a prison sentence by denying a convicted felon access to student loans for college, or by barring that person employment and licensure in many professions, access to public assistance and public housing. Yet, that person is likely expected to find employment in order to pay restitution, as a term of his or her probation or parole. As a result, people with a criminal record are unable to provide for their families and become productive members of society. Such laws articulate the narrative of a country that has decided to write off certain members of society, to banish them from participation in daily life, and pronounce them dead in a civil sense.

Another example is the Bush administration's endorsement of torture of terror suspects. The Bush cronies started with the blatantly false assumption that torture is acceptable - although domestic and international law clearly says the practice is illegal. Hack lawyers working for former President Bush and former Vice President Cheney provided the legal cover by engaging in professional misconduct - writing memos with faulty legal reasoning declaring that torture is legal. They essentially backed into the legalization of torture by declaring torture is legal because the memos say it is legal.

Wherever you find unjust laws and a legal system that serves as the commission of a crime on society, you will find lawyers and judges as willing participants in the injustice. In the Jim Crow South and apartheid South Africa, not only were racism, racial discrimination and oppression accepted, they were the law. And there were legal tacticians who were willing and able to prop up those systems of injustice. Segregation, disenfranchisement, miscegenation laws, curfews, capital punishment and prison farms were part of a legal framework to kill Black aspirations of empowerment and self-determination.

In a similar vein, the Nuremberg laws devised by Nazi Germany sanctioned the oppression and ultimately the annihilation of European Jews, with the enforcement of these laws by sham kangaroo courts. The Nazi legal regime received their cues from the American South, with racial integrity laws that defined a Jew in ways that echoed the "one-drop rule" for Blacks under Jim Crow. The discriminatory laws disenfranchised Jews; kept them segregated and contained in ghettos; stripped them of their German citizenship; prohibited them from engaging in a profession or working in a government job; barred Jews from intermarrying and having sexual relations with Germans; excluded them from receiving social welfare and attending public schools and universities, and prohibited them from holding driver's licenses. Jews were banned from resorts, beaches and swimming pools, barred from sleeping and dining cars on

trains, and made to register for forced labor. And they were forbidden to walk in certain places at certain times of the day. All of these measures were passed under German law, under penalty of hard labor (like Jim Crow), for the sake of maintaining the purity of German blood. Nazi law defined children as "persons who are not Jews." Being Jewish, in essence, became illegal.

Dr. Martin Luther King had much to say about unjust laws. In his April 16, 1963 *Letter from Birmingham Jail*, he said that unjust laws are made to be broken:

You express a great deal of anxiety over our willingness to break laws. This is certainly a legitimate concern. Since we so diligently urge people to obey the Supreme Court's decision of 1954 outlawing segregation in the public schools, at first glance it may seem rather paradoxical for us consciously to break laws. One may ask: 'How can you advocate breaking some laws and obeying others?' The answer lies in the fact that there are two types of laws: just and unjust.... One has not only a legal but a moral responsibility to obey just laws. Conversely, one has a moral responsibility to disobey unjust laws. I would agree with St. Augustine that 'an unjust law is no law at all'.... An unjust law is a code that a numerical or power majority group compels a minority group to obey but does not make binding on itself. This is difference made legal. By the same token, a just law is a code that a majority compels a minority to follow and that it is willing to follow itself. This is sameness made legal.

In our daily lives, wherever we may find ourselves in the world, we must fight the temptation to endorse unjust laws. We should resist participating in the oppression of others through the use of the law. After all, when you have blood on your hands, it is very hard to wipe them clean.


[Click here to comment on any article  
in this issue or see what others are saying in the](#)  
**The BlackCommentator Readers' Corner Blog**


**BlackCommentator.com** Editorial Board member David A. Love, JD is a journalist and human rights advocate based in Philadelphia, and a contributor to the [The Progressive Media Project](#), [McClatchy-Tribune News Service](#), [In These Times](#) and [Philadelphia Independent Media Center](#). He blogs at [davidalove.com](#), [NewsOne](#), [Daily Kos](#), and [Open Salon](#). [Click here](#) to contact Mr. Love.

[Contents of Issue](#)

[Click here](#)

[Home](#)

Click Here To  
CONTRIBUTE TO  NOW

Click Here To  
CONTACT 

Your comments are always welcome.

**e-Mail re-print notice**

If you send us an e-Mail message we may publish all or part of it, unless you tell us it is not for publication. You may also request that we withhold your name.

Thank you very much for your readership.

Website Design and Hosting provided by



Copyright © 2002-2009  
www.BlackCommentator.com  
All Rights Reserved