

Senate approves anti-democratic rules

Impeachment trial procedure violates due process

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There comes the time in any major political struggle when a correspondence begins to emerge between the goals of those waging the struggle and the means which they employ to achieve their ends. The right-wing campaign to depose the Clinton administration is a political coup d'etat, cloaked in quasi-constitutional garb, whose goal is to impose new forms of rule on the American people. The character of these new forms of rule can now be glimpsed in the anti-democratic methods used by the Senate Republican majority in the trial of the President.

The congressional Republicans have adopted a procedure which rides roughshod over the Constitution, disregards essential principles of due process and sets extraordinary precedents for the wholesale violation of the democratic rights of the American people. If the right-wing enemies of the White House can organize such an assault on the President of the United States, they can do it to anyone.

The central trick of the Republicans is a classic Catch 22. They evaded the constitutional requirement for impeachment--the commission of "high crimes and misdemeanors" against the state -- claiming that the charges against Clinton should be handled no differently than any other criminal case. They claimed to be upholding "the rule of law," arguing that Clinton should be treated the same as any other defendant -- although the result of impeachment and conviction would be, not the punishment of an individual, but the overturning of two presidential elections.

But now that Clinton is on trial before the Senate on charges of perjury and obstruction of justice, the Republicans claim that it is not necessary to accord Clinton the due process rights to which any ordinary defendant would be entitled, on the grounds that this is a political and not a juridical process!

The result is that the Republicans have denied Clinton both the rights which the Constitution provides a chief executive facing impeachment in a political trial and the rights which the 14th Amendment guarantees to any ordinary defendant

in a criminal case. The rules adopted January 28 by the Senate, in a straight party-line vote, are fit only for a Star Chamber proceeding.

- There is no presumption of innocence and no standard of proof "beyond a reasonable doubt," as would be required in any criminal case. Many Republican Senators--and some Democrats--had publicly declared Clinton guilty long before his impeachment. The standard of proof is arbitrary: whatever it takes to convince a Senator to vote to convict. The judicial decisions are taken, not in an open courtroom where the public can observe, but in closed-door debates.

- The charges against Clinton remain ill defined and vague. Any criminal perjury indictment, for instance, would have to spell out the exact words held to be perjurious. The article of impeachment adopted by the House does not do this, instead alleging perjury in general, and allowing Senate "jurors" to select one or another statement as they please.

- Clinton's attorneys have not been given access to the same evidence as the prosecution. More than 50,000 pages of documents in the hands of the House prosecutors have been withheld from White House lawyers. Withholding even one such document would be grounds for sanctions against the prosecution in an ordinary criminal trial, and such a wholesale withholding of evidence would be grounds for immediate dismissal.

- One of the most important preliminaries to a criminal trial is the discovery procedure, under which defense attorneys are accorded subpoena powers, giving them the right to compel witnesses to testify and to order the production of documents deemed necessary for their case. As attorney David Kendall pointed out last week in

arguments to the Senate, no such powers have been accorded to Clinton's lawyers at any stage in the year-long Lewinsky affair.

- The selection of defense witnesses is arbitrarily limited. Under the procedure adopted Thursday by the Senate, White House lawyers will have 24 hours after the deposition testimony of Monica Lewinsky, Sidney Blumenthal and Vernon Jordan is completed to decide which additional witnesses to call. Each of these witnesses must be approved by a majority vote of the Senate. In an ordinary trial, the defense would have a virtually unlimited right to call witnesses and pursue alternative theories. In Clinton's trial, if his lawyers wish to call witnesses who could testify about the right-wing conspiracy to entrap the president--figures such as Linda Tripp, Paula Jones's attorneys, Independent Counsel Kenneth Starr, etc.--they can only do so with the permission of the Republican majority.

- In an ordinary criminal trial, the defendant has an absolute right to refuse to testify. Clinton was already compelled to testify against himself once, in violation of his Fifth Amendment rights, when he was called before the grand jury last August. In December he answered an additional 81 questions posed by the House Judiciary Committee Republicans. Now Senate Republicans have drafted an additional ten questions--many of them openly hostile and argumentative--and House prosecutors have called on the Senate to compel Clinton to testify in person.

Last Wednesday's vote on the resolution to dismiss the charges against Clinton, offered by the senior Senate Democrat Robert Byrd, should have marked the end of the impeachment trial as a political process. The 44 votes for dismissal of the charges were far more than the 34 necessary to prevent Clinton's conviction and removal from office.

Undeterred by the vote, however, the Republican prosecutors have pressed forward with demands that would only be appropriate for a criminal trial--the calling of witnesses, deposition testimony, and further arguments--in a last-ditch effort to keep the impeachment case going even though its political outcome has presumably been determined.

This has been accompanied by the proposal, endorsed by numerous Senate Republicans, that the Senate adopt a two-stage procedure, first passing a "finding of facts" by a simple majority vote, which would declare Clinton guilty of perjury and obstruction of justice, then taking a second vote on his conviction and removal from office, which would require a two-thirds majority.

The procedure is blatantly unconstitutional, as even several Republican Senators have suggested. Only a month ago, after the House impeachment vote, Senate Republicans denounced suggestions that they draft a censure resolution, claiming that the Senate could not censure because there is no specific provision for it in the Constitution. Now they are preparing to ride roughshod over the clear constitutional requirement of a two-thirds vote to remove a sitting president, inventing a new "fact-finding" process whose purpose is to intensify the pressure on Clinton to resign.

The planned "fact-finding" is utterly undemocratic. In any judicial proceeding, the charges brought by prosecutors are not "facts," but mere allegations. It is not enough, as first Kenneth Starr and then the House managers did, to amass thousands of pages of testimony. In order to be considered factual, this testimony must first pass the rigorous test of cross-examination and verification. The most salient fact of the case against Clinton is that not one of the dozens of witnesses has ever been cross-examined by a defense attorney. Not a single piece of evidence has been corroborated in an adversarial proceeding.

Much of the material introduced by the House prosecutors would have been rejected as hearsay, speculation or unproven hypothesis in any trial with an independent presiding judge. But in the Senate trial, the Republican majority acts as both judge and jury, deciding what evidence it will hear and, as will be seen shortly, what evidence it will not hear.

The Senate trial of Clinton has degenerated into a farcical affront to democratic principles. The flagrant violations of constitutional principles demonstrates the aim of the campaign against the White House: to overturn the results of elections through conspiratorial means, to install a new, radically right-wing regime whose policies could never be imposed by democratic methods, and to attack the democratic rights of the American people as a whole.

An onslaught of such scope and historic significance has been carried to the brink of success, aided and abetted by a servile mass media, and with little or no opposition from the Democratic Party and those organizations which purport to defend civil liberties and due process. This in itself should sound the alarm among working people and underscore the necessity for the working class to mount an independent political struggle in defense of basic democratic rights.



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