

Hack work, not scholarship: the decay of American liberalism

The Lesser Evil: Political Ethics in the Age of Terror by Michael Ignatieff, Edinburgh University Press 2004

Richard Hoffman
24 May 2005

The Lesser Evil: Political Ethics in the Age of Terror by Michael Ignatieff was received with great fanfare in liberal circles when published last year. It purports to canvass important political and legal issues arising out of the new “age of terror”. In reality, Ignatieff’s book is a shoddy piece of hack work that expresses, more than anything, the sharp shift to the right in what once constituted liberalism in the United States.

Its most significant features are the repudiation of fundamental legal and constitutional principles, which Ignatieff would have once upheld, and a defence of, and justification for, the Bush administration’s ongoing assault on basic democratic rights.

Ignatieff, a Canadian whose father was a Russian émigré, studied history at the University of Toronto and received a PhD from Harvard University. He has taught at many of the major universities in the United States and the UK, written numerous books and received many literary prizes. In 1987 *The Russian Album* was published, a memoir of his family’s experience in nineteenth century Russia and subsequent exile to Europe and Canada. Ignatieff was a great admirer of Isaiah Berlin and wrote an acclaimed biography of the liberal intellectual, published in 1998. In recent times he has written extensively on human rights issues. He is presently the Carr Professor and director of the Carr Center for Human Rights Policy at Harvard University and is widely regarded as a liberal writer and intellectual.

A false premise

Ignatieff commences the book by posing the following bogus question: “What lesser evils may a society commit when it believes it faces the greater evil of its own destruction?”

The question is raised, ostensibly, as a response to the terror attacks of September 11. Ignatieff’s answer is that while the United States is a liberal democracy, in an emergency that imperils the life of the nation it is appropriate and necessary to curtail and abridge constitutional rights. In this way, he argues, majority interests are protected. To ensure that such curtailment of individual civil rights does not become a greater evil, there should be “adversarial justification” of such measures. That is, the abrogation of legal rights should be permitted, subject to challenge after the event.

Ignatieff’s argument starts with an utterly false premise, namely, that the United States faces destruction at the hands of terrorism. This is the view propagated by the Bush regime and its allies in the press, but it is without factual foundation. Ignatieff accepts the premise without the slightest critical analysis of the true magnitude of the terrorist threat.

He writes: “Necessity may require us to take actions in defence of democracy which will stray from democracy’s own foundational commitments to dignity ... a lesser evil position holds that in a terrorist

emergency neither rights nor necessity should trump ... a democracy is committed to both the security of the majority and the rights of the individual.” He concludes: “[A] constitution is not a suicide pact; rights cannot so limit the exercise of authority as to make decisive action impossible...”

It is typical of the character of the entire book that Ignatieff does not examine or evaluate the contention that the US government is committed to the security of the majority. Rather, he simply accepts the administration’s stated good intentions.

He says: “In emergencies, we have no alternative but to trust our leaders to act quickly, when our lives may be in danger ... in a terrorist emergency, we disagree, first of all, about the facts; chiefly, what type and degree of risk the threat of terrorism actually presents. Public safety requires extrapolations about future threats on the basis of disputable facts about present ones.”

This is humbug and sophistry, not scholarship. It is precisely when the state claims emergency powers that its arguments must be subjected to the closest scrutiny. It is then that the very principle of legal and constitutional protections of liberty against arbitrary executive power assumes critical importance.

A great deal of information has come to light indicating that the US government and its security agencies knew in advance that major terrorist attacks were planned around September 11, yet took no action to protect ordinary people. Moreover, nobody is in a better position than the US government to know about the politics and activities of Al Qaeda, since the US sponsored and promoted bin Laden and the Afghanistan mujahideen in the 1980s.

Terrorism does not threaten the destruction of American society. In the United Kingdom, a challenge, litigated in the House of Lords, was recently mounted to anti-terrorist legislation. In that case, *A (FC) and others (FC) (Appellants) v. Secretary of State for the Home Department (Respondent)*, the British government argued that the terrorist threat endangered the life of the British nation.

The House of Lords, after examining the factual basis for the government’s argument, rejected it. Lord Hoffman noted that the legislation “calls into question the very existence of an ancient liberty of which this country has until now been very proud: freedom from arbitrary arrest and detention”. “I do not underestimate the ability of fanatical groups of terrorists to kill and destroy,” he continued, “but they do not threaten the life of the nation. Whether we would survive Hitler hung in the balance, but there is no doubt that we shall survive Al Qaeda.”

Just how much the Bush administration knew about the September 11 attacks is still to be determined. What is beyond doubt, however, is that it

has exploited them as a pretext to proclaim the so-called war on terror and implement radical changes in the legal-constitutional framework. This shift was necessitated not by Al Qaeda, but by the development of staggering social inequality in the US and the deepening crisis of its debt-ridden economy. The American ruling elite seeks to reverse its fortunes by repression at home and militarism abroad. Just as the “war on terror” is indefinite, so Bush’s “anti-terror” measures are intended to be permanent. The alleged terrorist threat is a stratagem no less cynical than the 1933 Reichstag fire, which was used by the Nazis to suspend the Weimar Constitution in the name of a national security emergency.

The Bush administration’s measures include:

- * The Patriot Act and the Homeland Security Act, which permit arbitrary search, arrest, detention and interrogation, bugging, the ransacking of databases, the accessing of private records, monitoring and a panoply of other vast powers.

- * Large scale sweeps of the population based upon racial profiling.

- * The denial of habeas corpus and the illegal detention of US and non-US citizens.

- * The creation of non-legal categories, such as “enemy combatant” in order to deny an individual constitutional rights and due process.

- * The government sponsored use of torture such as carried out at Abu Ghraib and Guantánamo Bay.

- * The rejection of international law norms, including the disavowal of the Geneva Conventions as binding on the United States.

The Bush administration is seeking to destroy, not defend, the constitutional system. Taken as a whole, the measures listed above form the embryo of a fascist dictatorship in America. The Bush regime, with the willing assistance of the media, has manufactured the extent of the terrorist threat to manipulate the fears of the American population in order to impose far-reaching attacks on fundamental democratic and constitutional rights.

A reactionary conception of constitutional rights

Ignatieff propounds a conception of constitutional rights that stands on its head the historical and broadly accepted understanding of civil rights under the US constitution. The book contends that civil rights may be subjected to curtailment by the state so that “the constitutional order” of liberal democracy may be defended.

Ignatieff says, in support of his reformulation of constitutional principles:

“Civil liberty means the liberty of a citizen, not the abstract liberty of an individual in a state of nature. Such freedom therefore, must depend on the survival of government and must be subordinate to its preservation”.

In the preface Ignatieff writes:

“Rights do not set impassable barriers to Government action”.

And elsewhere:

“Suspending rights is a lesser evil solution, but it compromises the status of human rights as a set of unchanging benchmarks. Once you admit that human rights can be suspended in times of emergency you are accepting that human rights are not a system of indivisible absolutes.”

This view is at odds with the entire intellectual history of Anglo-American constitutional law. Ignatieff’s conceptions in fact resemble the ideas of Germanic law, of ‘Staatsrecht’, under which the state and its preservation take precedence over the individual, rather than the English and American doctrine under which the rights of the individual hold primacy over the state.

Quite contrary to Ignatieff’s new conception of constitutional rights, in the English-speaking world the pre-eminence of the individual is a fundamental constraint on the actions of the state. Abridgements of liberties can never be justified, even in times of social turmoil. Historically, what informed modern democratic conceptions of rights was the idea of “natural law” which did not depend on any political relationship between the individual and the state. Rights in this tradition

are not granted by the state or civil society, but exist because people are considered to be free as creatures of nature. They are rights inherent to man.

In his work *The Creation of the American Republic 1776-1787*, Gordon S. Wood summarised this political thought behind the American constitution:

“The minimal amount of power a man deserves, because he was a man, the Whigs defined as liberty—‘the power’, as Thomas Gordon put it ‘which every man has over his own actions, and his right to enjoy the fruit of his labour, art and industry.’ This was personal liberty, it was individual, it was what gave a man control of his own destiny. It was the inherent right man had to his life and his property ... its instruments and remedies were all those natural rights that were not the grants of princes or parliaments but original rights ... protected in England by the common law and recognised by the bills and charters extracted from the rulers. Government itself was formed so that every member of society may be protected and secured in the peaceable quiet possession and enjoyment of all those liberties and privileges which the deity has bestowed upon him. The end of Government, in sum, was the preservation of liberty” (Gordon S. Wood, *The Creation of the American Republic 1776 -1787*, New York 1969, quoting Thomas Gordon, Richard Price, John Adams and Samuel West).

The early United States democracy was based on a small farmer, trader and craft economy comprised of roughly four million people. There was a generalised equality of economic circumstances, apart, of course, from slavery. A substantial degree of social equality was considered by many Whig thinkers to be essential to an effective democracy. As Wood notes:

“The greatest diffusion of personal power or liberty was for the Whigs the ideal society. Hence most Whigs believed nothing as effectually prevented the abuse of power in a society ‘as an equality in the state’” (quoted from the *Pennsylvania Packet*, Philadelphia, 1774).

Looking across the Atlantic to Great Britain, America’s revolutionaries were appalled at how corrupt and oppressive government had become. They believed Britain had abandoned the first principles of its constitution. Their attitude towards the state was one of distrust, and they were determined to entrench individual liberty against possible future encroachments of governmental power. They observed that the state had an organic tendency to grow more powerful and suppressive of rights. As Josiah Quincy remarked in 1775, “it is much easier to restrain liberty from running into licentiousness than power from swelling into tyranny and oppression.”

The rights protected by the constitution are inalienable and inviolable. An individual is entitled to be left in peace. The notion that he or she can be arrested, imprisoned, interrogated and that such steps can be simply tested later by a court or legislature is preposterous. Nowhere in the history of Anglo-American constitutional theory will Ignatieff find support for it. Furthermore, nowhere in the book does Ignatieff make the case that, in respect of the alleged terrorist threat, state power beyond the mechanisms of the criminal law (which are very broad) are, in fact, required.

Ignatieff’s uncritical view of the capitalist state and his denial of the primacy of individual rights over the state lead him to say to the American people: The nation is in peril, you must trust your leaders in times of crisis and peril. You should be prepared to have your civil rights curtailed in the interests of the majority. The preservation of the constitutional order requires this. But there is no need to be afraid; you can test infringements of your rights in the courts.

This very proposition was condemned by the Supreme Court in *Ex parte Miligan* in 1866. The court said: “Our Constitution foresaw that troublous times would arise, when rulers and people would become restive under restraint and seek by sharp and decisive measures to accomplish ends deemed just and proper; and that the principles of constitutional liberty

would be in peril, unless established by irrevocable law....

“This nation ... has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the constitution...wicked men, ambitious of power, with hatred of liberty and contempt of law, may fill the place once occupied by Washington and Lincoln, and if this right [to suspend provisions of the constitution during the great exigencies of government] is conceded, and the calamities of war again befall us, the damages to human liberty are too frightful to contemplate”.

At one point, Ignatieff, in justifying the “lesser evil” of infringements of civil liberties in defence of “the constitutional order,” descends to sheer medievalism. He writes:

“But why should democracies have anything to do with evil? Why expose their servants to such moral hazard? Why not stay safely on the side of pure legality. The answer is that we are faced with evil people, and stopping them may require us to reply in kind....”

“It is tempting to suppose that moral life can avoid this slope by avoiding evil means altogether. But no such angelic option may exist. Either we fight evil with evil or we succumb....”

If one is prepared to descend to medievalism, then one is in the realm of the torture chamber. Ignatieff’s perspective leads directly to the terrors of Abu Ghraib prison, Guantánamo Bay, Fallujah and other less well-known atrocities committed in the “war on terror”.

In considering Ignatieff’s invocation of “evil” as the justification for abandoning ancient legal principles protecting liberty, one is reminded of the great exchange between Sir Thomas More and his son-in-law Roper in the play *A Man For All Seasons*:

More: (rejecting the demand that he arrest an alleged spy)

“and go he should if he were the devil himself until he broke the law.”

Roper: “You would give the devil benefit of law?”

More: “Yes, what would you do? Cut a great road through the law to get after the devil.”

Roper: “Yes, I would cut down every law in England to get to the devil”.

More: “Oh, and when the last law was down—and the devil turned on you where would you hide Roper—the laws all being flat. This country is planted thick with laws from coast to coast—man’s laws not god’s laws—and if you cut them down....do you really think you could stand upright in the winds that would blow then. Yes I would give the devil himself benefit of law for my own safety’s sake.”

The crisis of liberalism

Liberalism emerged in the progressive phase of capitalism—when the bourgeoisie was still a rising class, propounding the great ideas of human emancipation against the old feudal order. These ideas were expressed in the declarations of universal rights such as the Declaration of Independence by the American revolutionaries and the Declaration of the Rights of Man by the French. But there was always a tension between the rights of man and the rights of property.

While ever economic life remained dominated by small property holders, this contradiction remained concealed. But with the growth of large scale American industry at the end of the nineteenth century, it began to rise to the surface.

At the time of the drafting of the constitution, in the early 1780s, Jefferson had expressed a fear that economic expansion and concentration would undermine the democratic basis of the United States. In the 1930s, following the great concentration of wealth that took place in the 1920s, Justice Brandeis of the US Supreme Court said, “we can either have a democracy in this country or we can have great wealth concentrated in the hands of a few, but we can’t have both.”

To some extent the economic boom that followed World War II—when it appeared that “a rising tide lifted all boats”—served to cover over the implications of this basic contradiction. But with the transformation of the

US into the world’s largest debtor, along with the growth of unprecedented levels of social inequality, it has erupted more violently than ever before. These processes have brought the essential contradictions within liberalism to the forefront of political life. They are refracted through changes in the thought, ideas and, indeed, emotions of the liberal elite. Defence of property and the state now takes precedence in their minds over adherence to constitutional principles. This is why liberal intellectuals, such as Ignatieff, can so openly repudiate the legal and democratic precepts they once claimed to defend and advance instead conceptions of “Staatsrecht”.

The extent of the decay of theoretical thought embodied in *The Lesser Evil* is, in the final analysis, a measure of the disintegration of the social order that Ignatieff has set out to defend.



To contact the WSWWS and the Socialist Equality Party visit:

wsws.org/contact