

Laurence Tribe's paean to Rehnquist: a liberal pays tribute to reaction

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Of the many hymns sung in praise of Chief Justice William H. Rehnquist since his September 3 death, none was more obsequious than that penned by Harvard law professor Laurence H. Tribe for the *New York Times*.

While perhaps not particularly well known among the general public, Tribe is considered within the United States legal community to be the leading voice of liberalism on issues of constitutional law. Closely tied to the Democratic Party, Tribe has argued before the Supreme Court more than 30 times, generally in defense of democratic rights, and has authored more than 100 articles and books, including the most popular textbook on constitutional law.

One might expect a respected authority of Tribe's background and persuasion to recognize that Rehnquist's not entirely unexpected demise presents the opportunity to educate the public on the erosion of civil liberties. Tribe could confidently place Rehnquist's vote on virtually every decision squarely in the camp hostile to basic democratic rights and the working class, and explain the importance of defending and expanding constitutional protections.

Instead, in a piece entitled "Gentleman of the Court," Tribe wrote of Rehnquist: "it is not too soon to reflect on why so many who served with him as colleagues, worked for him as law clerks or appeared before him as advocates are already prepared to render a verdict of greatness and to tell the world how deeply his passing is mourned."

A "verdict of greatness"? Rehnquist was an unmitigated scoundrel, a dyed-in-the-wool reactionary who began his career as a Supreme Court clerk urging that the justices affirm Jim Crow segregation in the public schools, only two years before the high court belatedly rendered its condemnation in *Brown v. Board*

of Education—and ended it as the chief justice stewarding the most right-wing court since the "Four Horsemen," the entrenched opponents of the New Deal, lost control in 1937. In between, Rehnquist squelched ballots of black and Hispanic citizens on behalf of Barry Goldwater and the Arizona Republican machine, approved plans to imprison Vietnam-era dissidents as a Nixon administration lawyer, and wrote a string of opinions as an associate justice urging the abolition of virtually every legal and social advance in the United States since World War II.

What is the source of Tribe's adulation for the late chief justice? He cites a dinner with Rehnquist at which Tribe and his wife were "charmed by his disarming informality and candor," which left them "with fond feelings toward a man whose warmth and humor within the court were not always evident to strangers."

This is the decayed corpse of American liberalism on full display. Washington dinners among the elites, the people who really "count," those with personal "charm" and political power, these are the things that matter. Principles and the effect of legal decisions on ordinary people do not amount for nearly so much.

Tribe, whose own ego and self-aggrandizement know no bounds, paid Rehnquist what he no doubt considers the ultimate compliment, calling him "a brilliant colleague"—in other words, his own equal.

Tribe brazenly distorts the historical record to make the late chief justice palatable. He claimed that "Rehnquist was unlike both puritanical conservatives like Warren E. Burger and movement conservatives like Antonin Scalia" because "his questions in the two gay rights cases I argued in the mid-1980's" did not "have the 'I'm shocked' tenor." In reality, Rehnquist was a blatant homophobe. Not only did he vote against gay rights in both of those cases, he dissented with

Scalia and Clarence Thomas in *Romer v. Evans* (1996), which held unconstitutional a Colorado law expressly sanctioning discrimination against gays and lesbians, as well as in *Lawrence v. Texas* (2003), the decision finally invalidating laws criminalizing private, consensual homosexual conduct. Writing the opinion for a five-justice majority in *Boy Scouts v. Dale* (2000), Rehnquist struck down a state law prohibiting discrimination against gay scoutmasters, claiming a contrary ruling would mean “that the Boy Scouts accepts homosexual conduct as a legitimate form of behavior.”

Tribe, like liberalism generally, inhabits a fantasy world where ongoing right-wing operations to dismantle the Constitution and give the executive branch police-state powers pose no real threat. Accordingly, he assures us that “Chief Justice Rehnquist’s goal of weakening the checks on presidential power happily met decisive opposition within the court.” In fact, in 2004, the Rehnquist court upheld Bush’s right to designate people as “enemy combatants” and imprison them indefinitely without the protections of US criminal law or international treaties such as the Geneva Conventions on Prisoners of War. (See: “The meaning of the US Supreme Court rulings on ‘enemy combatants’”)

On subjects perhaps less important to Tribe than Rehnquist’s “charming” dinner manners and conversation, Tribe concedes, “No pleasure in argument could overcome my sadness at the Supreme Court’s performance in the 2000 election, or my disappointment at how far the chief justice succeeded in his goals of lowering the wall of separation between church and state, shrinking Congress’s power and reducing the protections accorded the mostly poor people of color who are suspected or accused of crime.”

How pathetic. It makes Tribe “sad” that Rehnquist led the Supreme Court’s hijacking of the 2000 presidential election and “disappoints” him to see the separation of church and state—the foundation of US constitutional democracy—reduced to rubble. “Shrinking Congress’s power” to in any way mitigate the exploitation of the working class or the spoliation of the environment does not prevent Tribe from concluding his piece: “I will always remember [Rehnquist] with profound gratitude and admiration.”

Tribe’s prostration parallels that of the Democratic Party leadership. Representing Al Gore during the first Supreme Court argument in the 2000 election controversy, all Tribe could manage in response to insinuations by Rehnquist and Scalia that US citizens have no right to vote for presidential electors was, “The disenfranchising of the people, which is what this is all about—disenfranchising people isn’t very nice.” (See: “US Supreme Court hearing highlights state conspiracy against democratic rights”)

Tribe’s current praise for Rehnquist is of a piece with his own rightward trajectory—and that of US liberalism generally. Tribe gave lukewarm support to the impeachment efforts against Bill Clinton, and condemned his efforts to retrieve Elian Gonzalez and return the young boy to his Cuban father. In 2004, Tribe had a different view about how “nice” it is to disenfranchise voters, unsuccessfully arguing to the Florida Supreme Court on behalf of the Democratic Party that Ralph Nader should be barred from the presidential ballot as a candidate of the Reform Party. (See: “Florida court rejects Democratic Party suit to keep Nader off the ballot”)

Tribe’s cowardly effort to paint a pleasing portrait of a vicious hatchet man for the ruling elite underscores the unbridgeable gulf that exists between the liberal establishment of the Democratic Party and the interests of the working class, which are fought for by the Socialist Equality Party and the *World Socialist Web Site*.



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