WSWS International Editorial Board meeting

Democratic rights and the attack on constitutionalism

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Published below is a report on democratic rights by Richard Hoffman to an expanded meeting of the World Socialist Web Site *International Editorial Board (IEB) held in Sydney from January 22 to 27, 2006. Hoffman is a WSWS correspondent.*

This conference has raised important issues concerning the attacks on democratic rights, directed to the question of whether capitalism as a social system is continuing in an upward direction or is in serious decline and confronting the emergence of a revolutionary situation.

I would like to contribute some general observations on the legal-historical aspects of these issues.

The current state of affairs in the United States concerning constitutional government and law is a profound expression of a social and political system in an advanced stage of disintegration. Indeed, it reflects the decay of liberal capitalism as a world historical system in a country which did once represent the apogee of democratic government, grounded in the most noble ideas of human culture and emancipation.

I think it worthwhile to remind ourselves, as we appraise the political culture and attitude of America's ruling elite today, of the ideas and political culture that guided the founders of the American Republic, for in these ideas is distilled the cultural and intellectual outlook of the most advanced elements of a social class in the ascent. Such a review reveals as much about their outlook as it does about the present leadership of the United States.

Lying on his deathbed in 1826, Thomas Jefferson, the third president of the United States, between 1801 and 1809, wrote his last letter, declining for reasons of poor health an invitation to attend the 50th Independence Day celebrations in Washington. He apologised for being unable to attend and continued:

"I should, indeed, with peculiar delight, have met and exchanged there congratulations personally with the small band, the remnant of that host of worthies, who joined with us on that day, in the bold and doubtful election we were to make for our country, between submission or the sword; and to have enjoyed with them the consolatory fact, that our fellow citizens, after half a century of experience and prosperity, continue to approve the choice we made.

"May it be to the world, what I believe it will be (to some parts sooner, to others later, but finally to all), the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves, and to assume the blessings and security of self-government.

"That form which we have substituted, restores the free right to the unbounded exercise of reason and freedom of opinion. All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favoured 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."

If anyone remains uncertain about why the socialist movement vigorously defends democratic rights, he or she would do well to go back and read again some of the writings of the Founding Fathers. The ideas they expressed, which found embodiment in the Constitution and the inalienable rights it proclaimed, have an enduring relevance, including in the socialist struggle to construct a human society. We defend these principles, and the ideas from which they emanate, as our own, without reservation, against America's present ruling elite.

The seventeenth century crisis and the origins of democratic government

It is possible to find parallels in the 1930s with the present economic context. But in terms of the current attack on the constitutional system by the Bush administration, I think to find an equal historical parallel in the English speaking world one is truly forced to go back to the time of the Stuarts in the seventeenth century, and their violent attempt to exert the prerogatives of the Crown, resulting in the English Revolution and the Civil War, which laid the foundations of bourgeois democracy.

The Bush administration is attempting to destroy these centuries-old democratic foundations and establish a form of dictatorial rule freed from the constraints of law.

In terms of democratic principles, what lay at the heart of the seventeenth century political conflict was, in the language used at the time, the issue of private or personal interests against the "Common Interest". Democratic constitutional theory developed out of the social struggle between the personal interests of the king and those aligned with the monarchy, against the broader social interests of the ascendant bourgeoisie. The bourgeoisie sought to place government on a wider social basis, through which it could pursue its interests and eliminate arbitrary personal rule. Its aims found expression in the political conception of a government of laws and not of men, formulated by the English political and legal theorist James Harrington in 1656.

It is important, particularly in the present constitutional context, to appreciate the relationship between social struggle and the development of ideas, including legal ideas. Ideas do not develop in a vacuum, but rather out of the clash of social interests, and they are deeply connected to the historical rise and fall of social classes.

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Permit me to quote from a scholarly work on the development of political theory during the seventeenth century crisis:

"During the years between the accession of James I and the outbreak of the English Civil War, in spite of the momentous issues at stake there was a poverty of ideas in both the Royal and Parliamentary camps. However, once the civil war broke out, political and constitutional thought was to flourish in England as never before and to furnish herself with a stock of ideas, many of which continue to be the currency of constitutional discussion today" (M.A. Judson, *The Crisis of the Constitution, an essay in Constitutional and Political Thought in England, 1603-1645*, New Brunswick, Rutgers University Press, 1949).

Liberal democracy as it emerged in its relatively finished form in the United States was the product of three great revolutions and accompanying civil wars: the English Revolution and Civil War, the American Revolution (1776-1781) and the American Civil War (1861-1865). The constitution itself was the product of six years of flourishing political and intellectual debate between 1781 and 1787, in which attention was frequently directed back to the English Revolution—particularly by the radical Whigs, who believed that government in Britain had been corrupted over the past century and who were determined to ensure that the peoples' rights would be secure and inalienable forever.

This system of government and rights, developed through a long and extraordinary struggle for liberty, is being stripped from the American people—and in other countries such as Australia and Britain—with barely a murmur in the political establishment. This is a startling expression of the general erosion of democratic consciousness within the population as a whole and in particular in the middle classes, which have historically formed the social basis of bourgeois democracy. Ultimately, this is the product of decades of social and cultural decay under the pressure of American capitalism and everything it stands for: exploitation, aggression, possessive individualism, misogyny and backwardness.

In his recent speech, to which David North and Patrick Martin have already referred, Albert Gore may perhaps have recognised the seriousness of what is happening, but he was not prepared to fight the disenfranchisement of the electorate in the 2000 elections. As we all know, the Democratic Party as a whole has joined with complete alacrity the destruction of the constitutional system. Indeed, just the other day Carl Levin, the senior Michigan Democratic senator, led the ratification of a bill initiated by the Bush administration, which outlawed access to the courts for Guantánamo detainees. This is now known at the Graham-Levin Act.

As a general proposition, I would suggest that the outlawing of courts is not something that a ruling class confident of itself and its social position would feel any need to attempt. Unlike the English bourgeoisie in the seventeenth century, the American ruling class no longer embraces a system based on laws implemented by courts—it does not feel that such a system sufficiently enables it to pursue its interests unhindered.

Guantánamo Bay

Guantánamo Bay, in terms of what it represents in the exercise of executive power, is perhaps the most extraordinary development in English law in centuries. It is difficult to find any precedent for it.

The Magna Carta, which guaranteed habeas corpus, was extracted from King John almost 800 years ago in 1215 precisely to stop him from throwing a man in a dungeon and leaving him there to rot without a trial. Yet that is precisely what George W. Bush and his henchmen are doing—and proclaim openly, to the whole world, the right to do.

Of course, it is true that America has committed war crimes in the past. But the executive always denied knowledge of them. It has never previously renounced the Geneva Convention. On this point it is worth noting that the Geneva Convention has its roots in American soil. The original Convention principles were developed in relation to the treatment of prisoners of war following the American Civil War. This administration, however, shows no reservations in its lawlessness. One of the great tracts of English political thought written during the English Revolution was an essay by John Lilburne entitled *Funeralle of Lawe*, in which he attacked the arbitrary power and lawlessness of both Charles I's and Cromwell's parliaments.

One could write an excellent political essay with the same name about the death of the democratic constitutional system in the United States today.

All the fundamental principles of the constitutional system have been attacked by the Bush administration; habeas corpus, so significant in the seventeenth century conflict, has been denied. The powers of arrest, imprisonment, spying and torture, all of which were fundamental in the struggle with the monarchy, have been restored to the centre of executive power.

Bills of Attainder—where the king could make laws directed against an individual, or group, and which were abolished by the revolutionary parliament and prohibited by the US Constitution, are now back in use—for example in the Terri Schiavo case, where Congress passed laws in order to interfere directly in private litigation to block the rights of Terri Schiavo's husband and intimidate the judges. The spectacle of governmental thuggery and the shameless abjuring of constitutional principle involved in that episode were just breathtaking. Furthermore, the government action itself was motivated by religious fundamentalism and expressed the deep hostility in sections of the government to the secular foundations of the Constitution. Not since the establishment of the Republic has a government challenged the principle of separation of Church and State—and this with the total acquiescence of the Democratic Party. The same attack on Constitutional principles is involved in the law banning access to courts that is directed against specific detainees at Guantánamo, to which I referred.

These acts once again violate axiomatic principles of democratic government established for centuries. As it was put during the English Civil War:

"The common law of England which is right reason hates all partiality or faction in trials which would unavoidably be if the law makers should in any case be the law executioners ..."

The doctrine of the separation of powers has become virtually meaningless in the United States context, where the legislature has become a quiescent and corrupt body that exists almost exclusively as a conduit for private monied interests. The modern doctrine of separation of powers was developed during the English Civil War specifically against private wealth influencing the parliament to the detriment of the common interest. Lilburne said in 1648 in an essay entitled "A Defiance to Tyrants":

"Parliament shall not set up an interest of their owne, destructive of that common Interest and Freedoms whereof the poorest free man in England ought to be the possessor."

Lilburne represented the left wing of the bourgeoisie in the English Revolution, which was ultimately defeated, but his political works were extremely influential in the development of the doctrines of modern democratic government. (See W.B. Gwyn, *The Meaning of the Separation of Powers: An Analysis of the Doctrine from its Origin to the Adoption of the United States Constitution*, Tulane University, New Orleans, 1965.)

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Why has this situation of virtual lawlessness in government come about?

Fundamentally the reason for the collapse of American democracy—for the destruction of the constitutional system—is because of the ruthless domination of private interests in the political system of the United States.

This has taken place with spectacular speed over the last twenty years. A layer comprised of the financial and industrial oligarchy now holds complete sway over the processes of government in the United States. The social, cultural and moral character of this milieu is, not to put too fine a point on it, very ugly, and probably more appropriately the domain of novelists and playwrights, serious ones at least, rather than political analysts. But the political culture within it is vicious, crude and reactionary in the extreme.

As we have pointed out in a number of statements, and as has been developed more fully in David North's book *The Crisis of American Democracy*, there is no support of any real significance today in the political establishment for democratic rights.

The International Committee of the Fourth International was absolutely correct in its analysis of the stolen 2000 election: that a watershed in American political history occurred when the Bush administration attacked the people's right to vote in presidential elections and this was upheld in the Supreme Court. In the intervening five years there has been a ceaseless onslaught on every principle of constitutional government and democratic rights.

Democracy is incompatible with the degree of social inequality that has developed in the United States and with the character of its ruling elites. The disintegration of the democratic system and the resort to openly authoritarian rule are hallmarks of the collapse of the liberal capitalist system. These processes express not the strength of the system, but its demise, and therefore that it must be overthrown. A new and more advanced social and political system must be established on the basis of the common ownership of property, and, in that way, truly serve the "Common Interest" and not solely the interests of a privileged class.

Just as there emerged in the revolutionary struggle of the seventeenth century, there will emerge, through a process of conscious development in the revolutionary struggle for a socialist society, new legal-constitutional ideas and doctrines to equip mankind for a higher form of civilisation.

We need to increase the work we conduct in this area on the *World Socialist Web Site*, with the participation and collaboration of contributors around the world. Our task is to enrich and advance democratic conceptions and to educate our cadre and our readers in this decisive sphere of cultural endeavour and political struggle.

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