US Congress legalizes torture and indefinite detention

WSWS Editorial Board
29 September 2006

The legislation adopted by the House of Representatives Wednesday and the Senate Thursday, legalizing the Bush administration's policy of torture and indefinite detention without trial, as well as kangaroo-court procedures for Guantánamo detainees, marks a watershed for the United States.

For the first time in American history, Congress and the White House have agreed to set aside the provisions of the Constitution and the Bill of Rights and formally adopt methods traditionally identified with police states.

This bill is the outcome of a protracted process of decay of American democracy, which has accompanied the immense growth in social inequality and reached a turning point in the stolen election of 2000. In early December of 2000, on the eve of the US Supreme Court ruling that halted the counting of votes in Florida and awarded the presidency to George W. Bush, who had lost the popular vote nationally to his Democratic opponent Al Gore, David North, the national secretary of the Socialist Equality Party of the US and chairman of the international editorial board of the *World Socialist Web Site*, in a report on the US election crisis said:

"What the decision of this court will reveal is how far the American ruling class is prepared to go in breaking with traditional bourgeois-democratic and constitutional norms. Is it prepared to sanction ballot fraud and the suppression of votes and install in the White House a candidate who has attained that office through blatantly illegal and anti-democratic methods?

"A substantial section of the bourgeoisie, and perhaps even a majority of the US Supreme Court, is prepared to do just that. There has been a dramatic erosion of support within the ruling elites for the traditional forms of bourgeois democracy in the United States."

The Supreme Court ruling and the refusal of the Democratic Party to oppose it demonstrated that there remained no significant constituency within the American ruling elite for the defense of democratic rights.

The battery of police state measures enacted by the Bush administration, without any serious opposition from within the political establishment, has confirmed this analysis.

The Military Commission Act of 2006 will do far more than set down the procedures to be used to rubber-stamp the incarceration of prisoners at Guantánamo Bay and other US-run detention camps throughout the world. It attacks the rights of all American citizens as well as all legal residents and other immigrants, who will now be subject to the threat of arrest and imprisonment for life, on the order of the president alone, without judicial review.

The legislation now goes back to the House of Representatives for a final vote Friday, to reconcile minor language differences between the two versions. President Bush is expected to receive the bill for signing by the weekend.

Under the terms of this law, the president may designate any person as an "unlawful enemy combatant," to be rounded up by intelligence agents and jailed indefinitely without legal recourse. The law defines an "unlawful enemy combatant" as "an individual engaged in hostilities against the United States" who is not a regular member of an opposing army.

Given the Bush administration's elastic view as to what constitutes "hostilities," this definition has the potential to erase any legal distinction between an actual Al Qaeda terrorist, an Arab immigrant who makes a charitable donation to Lebanese relief, and an American college student who clashes with police during a protest demonstration against the Iraq war.

The legislation passed the House Wednesday with the support of 34 Democrats, who joined 219 Republicans in the lopsided vote of 253-168. The Senate adopted the bill the next day, by an even wider 65-34 margin, with 12 Democrats joining a near-unanimous Republican bloc.

Before voting on the overall bill, senators defeated four amendments: to restore habeas corpus rights for prisoners, defeated 51-48; to increase congressional oversight of the CIA torture program, which lost 53-46; to impose a five-year limit on the military commissions, which lost 52-47; and to ban specific, named torture techniques, which lost by a similar margin.

The sweeping legislation meets all the desires of the Bush administration except for an explicit repeal of the Geneva Convention. The White House agreed to slightly weaker language that gives the president the power to "interpret" the Geneva Convention to permit lesser forms of torture.

Its major provisions include:

* Authorizing the president to establish military commissions to prosecute detainees taken into US custody, either overseas or within the United States.

* Giving the military commissions power to determine punishment, up to and including death.

* Rules of evidence that permit hearsay evidence and testimony coerced from witnesses.

* Permitting the use of testimony obtained by "cruel, inhuman or degrading treatment" if the torture took place before December 30, 2005, when it was banned by Congress.

* Allowing prosecutors to withhold from defendants evidence given to the tribunal, if it involves classified information, and substitute unclassified summaries.

* Stripping US courts of jurisdiction over detainees, and stripping detainees of their right to seek a writ of habeas corpus.

Violations of the Constitution

Many of the provisions of this legislation are flagrant violations of the

© World Socialist Web Site

US Constitution. This was acknowledged by Republican Senator Arlen Specter, chairman of the Judiciary Committee, who nonetheless voted for the bill after his amendment to restore habeas corpus rights was defeated.

Specter said in the debate that in denying habeas corpus rights for suspects detained in the "war on terror," the bill "would take our civilized society back some 900 years" to the time before the adoption of the Magna Carta—the first elaboration of democratic principles under English law.

"What this entire controversy boils down to is whether Congress is going to legislate to deny a constitutional right which is explicit in the document of the Constitution itself and which has been applied to aliens by the Supreme Court of the United States," he said.

Article I, Section 9 of the US Constitution declares: "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." No one in the Bush administration or the congressional Republican leadership has suggested that the terrorist attacks of September 11, 2001 constituted such an invasion. They simply ignore the clear language of the Constitution.

The bill's other provisions also violate the Sixth Amendment of the Constitution, which spell out the requirements of a fair trial, based on the colonists' bitter experience with the injustices of the British Crown. The Amendment reads:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Prisoners in Guantánamo and other US concentration camps will face trial by a panel of military officers, can be denied the right to see the evidence or witnesses against them, and will have lawyers hamstrung by being under the direct surveillance of the military and working under the authority of the commander-in-chief.

From the standpoint of the Bush administration and the congressional Republican leadership, these gross constitutional violations are not a regrettable necessity but a positive good. They are whipping up public fear of terrorism not merely for short-term electoral purposes, but to lay the basis for a permanent shift to authoritarian forms of rule in the United States.

The role of the Democrats

The votes on four amendments Thursday allowed Senate Democrats to posture as defenders of civil liberties and constitutional freedoms. Judiciary Committee Chairman Patrick Leahy, for instance, denounced the elimination of habeas corpus protection for 12 million legal resident immigrants, as well as for immigrants without legal papers. The provision "makes a mockery of the Bush-Cheney lofty rhetoric about exporting freedom across the globe," he said, adding, "What hypocrisy!"

Senator Carl Levin of Michigan said, "The habeas corpus language in this bill is as legally abusive of rights guaranteed in the Constitution as the actions at Abu Ghraib, Guantánamo and secret prisons that were physically abusive of detainees."

But Leahy and Levin did not explain why they and other Democratic leaders refused to block a vote on the legislation through a filibuster, which requires only 40 votes to sustain. Senate Minority Leader Harry Reid reached an agreement Wednesday evening with Majority Leader Bill Frist to allow votes on the four amendments in return for the Democrats refraining from any filibuster—although the Democrats filibustered on much less weighty issues, such as the appointment of a number of federal appeals court judges.

In his Senate floor speech, Leahy declared, "We are about to put the darkest blot possible on the nation's conscience. This is so wrong. . . . It is unconstitutional. It is un-American." Apparently not so wrong, or so dark a blot, as to impel the Democrats to actually oppose the Bush administration one month before an election.

Instead, Democrat after Democrat facing close contests sided with the Bush administration. The 12 Democratic senators who voted for final passage of the bill included, besides such open right-wingers as Joseph Lieberman of Connecticut, liberals facing re-election contests such as Robert Menendez of New Jersey, Debbie Stabenow of Michigan and Bill Nelson of Florida.

The 34 House Democrats included a number of right-wing Southern Democrats, but also several members of the Congessional Black Caucus and two congressmen who are Democratic candidates for the US Senate in next month's election—Harold Ford of Tennessee and Sherrod Brown of Ohio.

Brown, a liberal, has sought to appeal to antiwar sentiment in Ohio, a state which has lost a disproportionate number of young men and women in Iraq, including two dozen from a single National Guard unit based in the Cleveland suburb of Brook Park. In an interview with *MSNBC.com*, Brown said that detainees "are not soldiers, not combatants representing a government, these are terrorists."

Of course, the ostensible purpose of a judicial proceeding is to determine, on the basis of evidence, whether the accused are actually guilty of the charges against them. Brown, like the Bush administration, assumes that all those seized by the CIA and the US military are guilty, and uses that presumption of guilt to justify star-chamber proceedings.

Brown rejected criticism of his complicity with the Bush administration, saying, "Some people just don't want me to agree with George Bush on anything."

The *New York Times* observed, in its editorial deploring in advance the passage of the bill, the year 2006 will go down in history for the passage of "a tyrannical law that will be ranked with the low points in American democracy, our generation's version of the Alien and Sedition Acts." But the newspaper did not attempt to give a serious explanation for this turn toward tyranny, or suggest a basis for fighting against it.

Nor could it, since the *Times*, along with the rest of the establishment media and both political parties of the American corporate elite, supports the so-called "war on terror," which is a political fig leaf for the use of militarism and war in pursuit of the global aims of US imperialism. A policy of military aggression and conquest abroad is ultimately incompatible with democracy at home.

The struggle against authoritarian methods of rule must be taken up by the working class, the only social force within American society that retains a deep attachment to the defense of democratic rights. The prerequisite for this struggle is a break with the two parties of the American ruling elite and the building of a mass socialist movement of the working class.

To contact the WSWS and the Socialist Equality Party visit:

wsws.org/contact

© World Socialist Web Site