

Military tribunals and assassination

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In a speech Monday at Northwestern University Law School in Chicago, Attorney General Eric Holder painted a chilling picture of the future of the United States as envisioned by the Obama administration, in which military tribunals and extrajudicial assassinations are permanent, codified features of the American judicial landscape.

Holder's speech included a sweeping assertion of quasi-dictatorial presidential powers, including the power of the president to secretly sign death warrants for any person, including US citizens, without any form of judicial review. Holder also defended the power of the president to order the abduction and imprisonment of any person, anywhere in the world, and to try that person before a military tribunal.

The speech was a response to pressure for the administration to provide a legal rationale for the killing last fall of three US citizens by American drone missile strikes in Yemen. On September 30 of last year, the Obama administration assassinated US citizen and alleged Al Qaeda leader Anwar al-Awlaki in Yemen after placing him on a secret "kill list." (See: "The legal implications of the al-Awlaki assassination.") Other US citizens killed by US missile strikes include Samir Khan and Abdulrahman Al-Awlaki, the 16-year-old son of Anwar Al-Awlaki.

The political and media establishment responded to Holder's speech with complete indifference. Articles on the speech were relegated to the inside pages of the *New York Times*, *Wall Street Journal* and *Washington Post*, and none of the network evening news programs commented on it. No politician or public figure, Republican or Democrat, emerged to denounce the speech, and no reporters asked about it Tuesday at Obama's first press conference of the year.

This response confirms the absence of any commitment to core democratic rights within the American ruling class.

In his speech, Holder praised the Guantánamo Bay military tribunals, holding them up as a model. "I have faith in the framework and promise of our military commissions," he proclaimed.

On the subject of assassination, Holder declared that "our government has the clear authority to defend the United States with lethal force." He argued repeatedly that the president requires no "judicial approval" to exercise that power.

Arguing in favor of the constitutionality of assassination, Holder made a distinction between "due process" and "judicial process." "The Constitution guarantees due process, not judicial process," he said. This formulation is staggering in its implications.

The Bill of Rights—the first ten amendments to the US Constitution, all ratified in 1791—contains numerous guarantees of judicial process: the right to a speedy and public trial, the right to an impartial jury, the right to an attorney, the right to exclude evidence obtained through torture or other unlawful means, the right to confront one's accuser, and the right to be free from cruel and unusual punishment, among others.

The Fifth Amendment's guarantee of due process itself—"No person... shall be deprived of life, liberty, or property, without due process of law"—is a cornerstone of the American constitutional system as it has existed for centuries. On its face it clearly prohibits extrajudicial assassination.

Due process, which dates from the Magna Carta, is a right upon which other civil liberties depend. Holder's distinction between due process and judicial process is an attempt to formulate a pseudo-constitutional rationale for stripping the population of its democratic rights. The implication is that the state can seize people and hold them indefinitely without trial, or kill them, without violating the constitutional requirement of due process. The establishment of a police state, according to this doctrine, would be compatible with the

Constitution.

Holder's principal justification for all of this is the so-called "war on terror." "We are a nation at war," he declared. The United States is in an "hour of danger."

The "war on terror" is a phony war. It is a political, legal and propaganda device to justify a vast expansion of American militarism and a frontal assault on democratic rights. Never declared by Congress, it has no definite objective or end. It is a means of justifying a permanent siege on basic democratic rights in the name of "national security."

Holder's pseudo-legal arguments in favor of military tribunals and assassinations bear more than a passing similarity to Nazi jurisprudence. Under legal doctrines developed by Nazi jurist Carl Schmitt, whose ideas enjoy growing interest and influence in America's legal academia, national security and military urgency can justify a "state of exception," under which basic democratic rights can be abrogated, the rule of law suspended, and the executive branch granted exceptional powers.

In similar fashion, the "war on terror" has been used to justify an expanding assault on centuries-old democratic legal protections. The past decade has witnessed assassination, torture, rendition, detention without trial, military tribunals, monitoring and surveillance of the population, state secrets, warrantless and intrusive searches, the militarization of the police, attacks on free speech, crackdowns on anti-war groups, an expansion of the operations of intelligence agencies, attacks on immigrants, and a wholesale flouting of international law.

The assault on democratic rights that began in the aftermath of September 11, 2001 has continued through three congressional elections and two presidential elections, regardless of whether Democrats or Republicans were elected. This demonstrates that the collapse of American democracy is rooted in profound and objective historical and social processes.

It is fundamentally the outcome of the crisis of world capitalism, which is centered in the decay of American capitalism. The protracted decline of the global economic position of the United States is expressed internally in the decay of the industrial and social infrastructure, the growth of financial parasitism and social inequality, the decline in the living standards of the working class—all of which has been accelerated by

the systemic breakdown inaugurated by the Wall Street crash of September 2008.

The eruption of popular opposition around the world—from the revolutionary upsurge in Egypt to the strikes and protests in Greece and a host of other countries, to the mass protests last year in Wisconsin and the Occupy Wall Street movement—has convinced the US ruling class that it will not be able to carry through the impoverishment of the working class within the framework of its traditional forms of rule. It must move toward dictatorship and mass repression. The real target of the permanent military tribunals and the presidential death warrants defended by Holder is not Al Qaeda, but the American working class.

That these police-state measures are being expanded and institutionalized by the Obama administration and the Democratic Party underscores the fact that the defense of democratic rights requires a break with the two-party system and the building of an independent mass socialist movement of the working class.

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