

The Boston lockdown and the Bill of Rights

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With the implementation of a state of military siege against the population of Boston last week, the American ruling class has crossed a historical, legal and political Rubicon. The die is cast and the sun is setting on the democratic forms of rule that have existed in the United States for the past two centuries.

What history will remember as most significant about the events in Boston will not be the bombing near the marathon's finish line or the perpetrators or their motives. What will be remembered instead will be the unprecedented military lockdown of an entire major American city, with military vehicles in the streets and heavily armed soldiers going house to house—tromping through living rooms, bedrooms and kitchens, staring down their assault rifles at terrified, barefoot families in their pajamas.

The Bill of Rights, ratified in 1791 in the wake of the American Revolution, has provided the basic framework for bourgeois democracy as it has developed in the United States over the past 200 years. A simple comparison of the words of the Bill of Rights with the recent events in Boston—the cradle of the American Revolution—underscores the advanced stage of the historical process that is shattering centuries-old democratic forms of rule.

The fourth of the ten amendments that constitute the Bill of Rights reads as follows: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

The Fourth Amendment prohibits the entry of homes without a warrant, and further instructs that warrants shall be issued only upon a showing of “probable cause” to believe that criminal activity is involved.

The requirement that warrants be specific and “particularly” describe the contemplated search or seizure reflects the American revolutionaries’ resentment towards the practice of the colonial authorities of issuing “general warrants,” or blank checks for the arbitrary invasion of homes, arrest of their inhabitants, and confiscation of their

property. In other words, the Fourth Amendment requires that to obtain a warrant to search a house, specific criminal activity has to be connected with that specific house.

The Fourth Amendment echoes the 1776 Virginia Declaration of Rights, which explicitly forbade the use of general warrants: “That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive and ought not to be granted.”

The Fourth Amendment warrant requirement, Supreme Court Justice Robert Jackson famously declared in 1948, ranks among the “fundamental distinctions between our form of government, where officers are under the law, and the police-state where they are the law.”

It goes without saying that the military-police “house-to-house” searches in Boston last week were not conducted pursuant to any warrant at all, general or otherwise.

Two justifications for the warrantless house-to-house searches have been offered in the media. The first is that the house-to-house searches were “consensual,” such that no warrant was required. In other words, according to this theory, when families were confronted with dozens of heavily-armed commandos banging on their doors in the middle of the night, they were entirely free to say, “No, you can’t come in.”

The second justification offered in the media is that the house-to-house searches were justified by “exigent circumstances.” This doctrine is yet another example of a recent judge-made exception that threatens to swallow the rule.

The “exigent circumstances” exception originally allowed for the warrantless entry of houses in true emergencies—to put out fires, provide medical attention, or rescue occupants from harm’s way. Over the past three decades, and in particular under doctrines advanced by the Bush and Obama administrations in the course of the “war on terror,” this exception—which has no basis in the text of the Fourth Amendment—has been massively expanded.

The “exigent circumstances” exception more and more

resembles the “state of exception” doctrine propounded by Nazi jurist Carl Schmitt, pursuant to which a “national emergency” may override all existing democratic legal protections.

The Fourth Amendment was not the only amendment in the Bill of Rights trampled in the course of the Boston lockdown.

The Fifth Amendment provides that a person shall not be “compelled in any criminal case to be a witness against himself.” In other words, a person cannot be bullied into making a confession or otherwise incriminating himself. This is known as “the right to remain silent.” The Sixth Amendment provides that a person has a right to an attorney. The Obama administration flatly announced that both of these would not be respected in the case of alleged bomber Dzhokhar Tsarnaev so that he could be “extensively” interrogated. (See “Obama administration denies Miranda rights to marathon bombing suspect”)

Among other rights, the First Amendment to the Bill of Rights guarantees “the right of the people peaceably to assemble.” The Fifth Amendment also provides that a person cannot be deprived of “liberty... without due process of law.”

These rights were nowhere to be seen when Massachusetts Governor Deval Patrick ordered nearly one million people to “shelter in place.” Businesses, schools and courthouses were shut down. Public transportation was halted, and roads were closed in and out of Watertown.

The Third Amendment prohibits the quartering of troops in homes, further evidencing the hostility of the American revolutionaries towards arbitrary military intrusions into homes. According to ancient doctrines inherited from English law, it has always been a maxim of American law that “a man’s home is his castle,” such that a citizen is entitled to use force—even lethal force—to resist unlawful or warrantless attempts to enter.

Contrast these historic doctrines, once considered fundamental to the American form of government, with the images that surfaced from Boston last week. SWAT teams with assault rifles and covered in high-tech military equipment storm from armored cars into homes and hold families at gunpoint. There is not even the pretense of legality.

An ABC news correspondent covering the house-to-house searches was forced onto the ground and searched. “I was walking with my camera trying to get a better sense of where the SWAT teams were all congregating when all of a sudden, three officers... with their guns drawn, forced me to the ground and told me that they were suspicious of my backpack and thought I might be the suspect,” Megan Chuchmach explained. “Time stood still.”

While the Bill of Rights has not been abrogated formally, it is in many respects no longer in effect. It survives as a “Bill of Suggestions,” to be honored when the ruling establishment approves of its invocation. When the Obama administration announced that, after denying bombing suspect Dzhokhar Tsarnaev his Miranda rights, ordinary criminal procedure would be followed in the prosecution going forward, it was presented as the government’s option whether or not to do so. The government, we are led to assume, could have decided instead try him before a military commission, or to lock him up without a trial at all as an “enemy combatant.”

The abrogation in practice of the Bill of Rights is driven first and foremost by the crisis of the world capitalist system and the historic levels of social inequality it has generated. Democracy cannot long endure in a society in which the great mass of the population struggles to stay afloat, and a tiny number of billionaires gorge themselves on greater and greater portions of society’s wealth.

The ruling class, beset with fears of social upheavals arising from the further disintegration of the US and world economy, turns to methods of mass repression to preserve its power and wealth.

Discussing the Boston lockdown at a press conference on Monday, New York Mayor Michael Bloomberg quipped: “[W]e live in a complex world where you’re going to have a level of security greater than you did back in the olden days, if you will. And our laws and our interpretation of the Constitution I think have to change.”

With these clumsy and condescending words, Bloomberg, worth \$27 billion, gave expression to the real attitudes that predominate within the narrow and ultra-rich aristocracy that rules America. Democracy was fine “back in the olden days,” but going forward this will need to change.



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