

A letter from Professor Geoffrey R. Stone, liberal advocate of a police state

Tom Carter
8 July 2013

We invited Professor Geoffrey R. Stone to respond to the article, “Liberal advocates of a police state turn savagely against Edward Snowden,” by David North and Eric London, posted on the *World Socialist Web Site* on June 14. In the article, the authors condemned those erstwhile liberal commentators who had jumped on the reactionary campaign to label NSA whistleblower Edward Snowden as a “traitor” and a “criminal.” Specifically, North and London observed that Professor Stone’s recent anti-Snowden article in the *Huffington Post* “advances arguments in support of authoritarian rule that totally contradict positions” he previously advanced.

Professor Stone responded by email to Eric London on June 19. His letter, in its entirety, reads as follows:

“Thanks for sharing. What you seem not to understand is that situations are different and not everything is or should be on one side of the line or the other. Everything I’ve said about Snowden is perfectly consistent with everything I’ve ever said on this subject. Although I think we need a healthy distrust of our public officials, I also oppose the arrogance of a single, unelected individual who takes it upon himself, with no lawful authority or justification, to disclose properly classified information to persons unauthorized to receive it just because HE thinks the information shouldn’t be classified. The plain and simple fact is that Snowden betrayed the rule of law and the trust of the American people when he decided, without any legal authority, to disregard the judgments of the executive branch, the Congress and the judiciary in a way that put the security of the nation at risk. Even if what he did has beneficial consequences, he had no legal or moral right to do it. He is a criminal.”

The WSWWS takes the opportunity presented by Professor Stone’s response to reply to his letter and explain its significance. From the first line to the last, Professor Stone’s letter confirms the WSWWS’s frequent warning that the entire political establishment—including its “liberal” sections—is openly hostile to the democratic principles articulated in the Declaration of Independence and guaranteed in the Bill of Rights and in the later Civil War amendments. Professor Stone speaks for a significant section of academic intellectuals who are repudiating their previous commitment to democratic rights and advancing positions that would legitimize the establishment of a military-police dictatorship in the United States.

Let us proceed to an examination of Stone’s condemnation of Edward Snowden.

1. The Rule of Law

Despite being written by an American law professor, Professor Stone’s letter consists of conceptions that are utterly alien to the democratic legal tradition of the United States.

Reiterating his previous statements, Professor Stone announces that it is contrary to the “rule of law” for a “single, unelected individual” to take it upon himself “to disclose properly classified information to persons unauthorized to receive it.” In the context of Snowden’s revelations, this formulation inverts the “rule of law,” turning it upside down and

transforming it into its opposite. For Professor Stone, the “rule of law” becomes the duty of unquestioning obedience to superiors.

This is not what the “rule of law” means. As Thomas Paine wrote in his revolutionary pamphlet *Common Sense* (1776), “in America, the law is king. For as in absolute governments the King is law, so in free countries the law ought to be king; and there ought to be no other.”

The “rule of law” means that the acts of every person, up to and including the highest public official, are beneath the law. The Constitution provides that even the “President, Vice President, and all civil officers of the United States” may be impeached for violating the law. This is the essence of the phrase, “a government of laws not of men.” In other words, the “rule of law” means that public officials who engage in illegal conduct run the risk of having their behavior exposed, their orders disregarded, and their official powers terminated.

If a citizen is ordered by a public official to participate in illegal conduct, then the “rule of law” does not mean that citizen should obey the order without question. On the contrary, the “rule of law” means that going along with the illegal conduct of one’s superiors, even when ordered to do so, may itself be illegal.

In American history, this principle found perhaps its fullest expression in the arguments of Supreme Court Justice Robert H. Jackson at the Nuremberg trials of Nazi war criminals, which took place from November 1945 to October 1946. The Nazi defendants famously asserted that they were merely “following orders,” and that they did not have any legal or moral right to question the orders they were given or to refuse to carry them out. Rejecting these arguments with contempt, Justice Jackson declared that modern civilization “cannot tolerate so vast an area of legal irresponsibility.”

Nuremberg Principle IV reads, “The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility. . . provided a moral choice was in fact possible to him.”

Professor Stone’s phrases such as “no lawful authority” and “properly classified information” simply beg the question. Can a criminal conspiracy to violate the fundamental rights of hundreds of millions of innocent people be “properly” classified, or “lawfully” kept secret?

Professor Stone’s letter does not actually address the substance of Snowden’s revelations. Nor could it. Edward Snowden brought to light what is perhaps the most spectacular breakdown of the “rule of law” in American history. The pervasive illegal spying on Americans revealed by Snowden makes the criminal conduct of figures such as Richard Nixon seem petty and trivial by comparison.

If all the criminals in the Obama administration who deserved to be actually were impeached, the White House, the West Wing, and the rest of the Washington executive office buildings would resemble a ghost town.

Figures such as Professor Stone who are invoking the “rule of law” in their condemnations of Snowden have nothing to say about the “rule of law” in relation to the gigantic, unprecedented criminal spying operation Snowden revealed. The words Justice Jackson used to describe the

hypocritical posturing of the Nuremberg defendants applies in full force to Snowden's persecutors. These men, Jackson declared, "are surprised that there is any such thing as law. These defendants did not rely on any law at all. Their program ignored and defied all law... International Law, natural law, German law, any law at all, was to these men simply a propaganda device to be invoked when it helped and to be ignored when it would condemn what they wanted to do."

2. The Pentagon Papers and "national security"

Professor Stone announces, as though it was an established fact, that Snowden's revelations "put the security of the nation at risk." This argument, which is also made in relation to Bradley Manning and Julian Assange, is false and misleading.

Similar arguments were made in the case of the Pentagon Papers, famously leaked by Daniel Ellsberg and published on the front page of the *New York Times* in 1971. The Pentagon Papers consist of 47 volumes cataloguing the dirty and bloody history of US involvement in Vietnam from 1945 to 1967. The papers revealed systematic deceit and lying by successive American administrations, from which the trust of the American population for the government has never fully recovered.

Seeking to prevent publication of the Pentagon Papers, the government sued the *New York Times*. Government lawyers argued that "national security" required the papers to remain secret. The argument was even made that, as a direct and foreseeable result of publication, thousands of American soldiers overseas would be killed.

In its defense of the publication of the Pentagon Papers, the *New York Times* insisted that it was not sufficient for the government to invoke a general and abstract connection between publication and a subsequent event injurious to security. It had to demonstrate a clear, unambiguous, and virtually immediate threat to the lives of citizens or soldiers. In other words, the causal connection between the exposure of government secrets and a specific bad event had to be irrefutably direct.

The Nixon administration's argument was rejected by the Supreme Court in the case of *New York Times Co. v. United States* (1971). It is worth quoting at some length from the concurring opinion by Justice Hugo L. Black:

"The word 'security' is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment. The guarding of military and diplomatic secrets at the expense of informed representative government provides no real security for our Republic. The Framers of the First Amendment, fully aware of both the need to defend a new nation and the abuses of the English and Colonial governments, sought to give this new society strength and security by providing that freedom of speech, press, religion, and assembly should not be abridged. This thought was eloquently expressed in 1937 by Mr. Chief Justice Hughes... when the Court held a man could not be punished for attending a meeting run by Communists.

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

Justice Black and Professor Stone are both titled as experts in US law, but that is where the similarities end. Justice's Black's writing is recognizable as the language of bourgeois democracy. Professor Stone writes in the language of a police state: "authority," "security," "betrayal," the "judgments of the executive."

In the final analysis, the only "security" put at risk by Snowden's disclosures is that which shields government officials from the public exposure of their criminal and unconstitutional practices.

3. What Professor Stone does not say

The WSWS article by North and London took issue with Professor Stone's emphatic declaration that there was "no reason on earth" that anyone in Snowden's position could ever disclose classified information to the public.

North and London wrote: "This is an astonishing declaration! 'No reason on earth...'? In other words, an employee of the state must keep his mouth shut and refrain from exposing criminal activity no matter how injurious it may be to the rights of the American people. 'No reason on earth'! What if a civil servant uncovers a secret memorandum authorizing the assassination of a citizen? Or plans for the mass incarceration of political dissidents?"

Professor Stone does not reply to these questions. The conclusion can be reasonably drawn that that Stone meant what he wrote: There is "no reason on earth" that justifies the exposure of classified information, even when the information exposes blatantly criminal activity.

4. "Elected" officials and the Führer principle

Professor Stone, in his initial comment on the *Huffington Post* as well as in his reply to the WSWS, goes out of his way to declare that Snowden is "unelected" and that he is disregarding the orders of "elected" officials, presumably such as Obama. This is a tendentious and deceitful argument. In effect, it endows an election with the character of a plebiscite—that is, an empty ritual which serves only to provide a pseudo-democratic veneer for dictatorial rule. Those who carried out the American Revolution never conceived of an election as a blank check for those who win office. Once elected, officials have no right to expect the obedience of the citizenry, let alone unquestioned submission to their will. They confront constitutional restraints on the exercise of their limited powers, and violations of the law expose them to impeachment and prosecution.

President Obama, for the record, won a tightly controlled, heavily manipulated, and closely scripted election in 2012. His campaign, as with his Republican opponent, was funded to the hilt with unprecedented contributions from corporate and financial backers, while third parties were systematically excluded from the ballot. As Snowden has pointed out, moreover, Obama's election victories were the result of lies.

According to the latest polls, a majority of Americans disapprove of this "elected" president's handling of issues affecting democratic rights. The NSA spying program, in particular, is profoundly unpopular. Despite being "unelected," Snowden enjoys a base of support far broader than Obama.

More importantly, there is a strong whiff of fascism in this emphasis on the powers of "elected" versus "unelected" individuals. According to fascist logic, the dictator is elected, therefore he represents the "will of the nation." Further, because the dictator represents the national will, he is above the law, and it is "undemocratic" to oppose him or to disobey his directives. In Germany this was known as the *Führerprinzip* ("the Führer principle"). Nazi propaganda minister Joseph Goebbels, in one infamous speech, declared: "The Führer is always right!"

According to the democratic legal tradition, the law applies in full force to both elected and unelected individuals without making any distinction among them. If a person is charged with a crime, it is no defense to say, "But I was elected!" If an elected person ignores the law, is it the duty of everyone who finds out about such illegal conduct to disclose it to the public. This, it is hoped, will facilitate the impeachment of the crook who was elected.

5. A few words about morality

It is one thing to argue, however flimsy the argument may be, that Snowden had no legal right to disclose the NSA's spying programs to the public. It is quite another to argue, as Professor Stone does in his letter, that Snowden had no *moral* right to do so. Since Professor Stone raises the issue of morality, we include a few words of our own on the subject.

Professor Stone does not comment on whether the Obama

administration has a “legal or moral right” to all of the information it is gathering about hundreds of millions of innocent people around the world, including innocent Americans. He does not comment on the morality of government agents snooping into intimate phone calls between lovers and spouses, private medical records, internet browsing activity, emails, text messages, and so forth.

We submit that from a moral standpoint, the NSA spying program revealed by Snowden is disturbing, depraved, and repulsive.

With respect to the actions of Snowden, on the other hand, there is a long tradition in American history of deliberately disobeying the law on the grounds that the law is wrong and disobedience is the morally right thing to do. A hundred examples come to mind: Henry David Thoreau and *Civil Disobedience*; the Fugitive Slave Act and the Underground Railroad; desecration and its dissenters; segregated train cars, buses, and schools.

From a Birmingham jail, where he was imprisoned for violating a lawful injunction, Martin Luther King, Jr. famously wrote, “one has a moral responsibility to disobey unjust laws.” Would Professor Stone call this the “arrogance of a single, unelected individual” who was acting “without any legal authority?”

If what Snowden did is not moral, then nothing is moral. If Snowden had no moral right to disclose the most far-reaching criminal conspiracy against the American public in history, then nobody ever has a moral right to disclose anything.

Professor Stone includes, in a concessive clause, the phrase, “I think we need a healthy distrust of our public officials.” However, the rest of Professor Stone’s letter, including his admonition that Snowden had “no legal or moral right” to disobey orders, reveals this “healthy distrust” to be an impotent, wispy, passive sort of distrust: a professed mental state that is never connected in any way with real, living activity. This certainly is not the vigilant distrust championed by the revolutionaries from whom the American legal system originated.

Conclusion

The revelation by Snowden that the US government is engaged in flagrant and unprecedented violations of fundamental democratic rights does not carry any weight in Professor Stone’s analysis. This underscores the extent to which Professor Stone and the social layer he represents has become detached from and even hostile to basic democratic principles and traditions.

The Declaration of Independence—the document from which Lincoln said all of his political thinking flowed—announces the principle that when a government becomes destructive of fundamental, “unalienable” rights, “it is the Right of the People to alter or to abolish it, and to institute new Government ...”

This principle is firmly rooted in the oldest traditions of the Enlightenment. John Locke wrote in 1690, “Whenever the legislators endeavor to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any further obedience.”

Among the basic rights set forth in the Bill of Rights is the Fourth Amendment “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” To anyone with an ounce of democratic consciousness, when Snowden discovered a massive government conspiracy to violate the Fourth Amendment, he was “absolved from any further obedience.” It was his legal and moral duty to disclose it to the world.

American democracy is breaking down under the weight of staggering levels of social inequality and a decade of bloody imperialist warfare. The capitalists and financial aristocrats who have profited from the crisis and plundered the economy look to a police state as a means of further entrenching their wealth and power.

No significant constituency remains anywhere in the political

establishment for democracy. Not a single figure within the establishment has stepped forward to defend Snowden. The debate is instead over whether Snowden should be imprisoned or whether he should be executed.

While he has no support in the political establishment, Snowden enjoys extremely broad support within the working class, including in the US and internationally. In contrast to the opportunism and pragmatism of the more privileged sections of the middle class, the working class is not so quick to trade away its hard-won rights. Workers instinctively recognize in Snowden a courageous man who has risked everything to tell the truth.

It is in the working class that democratic consciousness is deeply rooted. The struggle to defend and expand basic democratic protections thus requires an orientation to the proletariat. While figures such as Professor Stone line up to call for Snowden’s incarceration or liquidation, the Socialist Equality Party is mounting a campaign in his defense.

The *World Socialist Web Site* recently marked the anniversary of both the Declaration of Independence and the Battle of Gettysburg. “To halt and reverse the drive toward dictatorship,” we wrote, “a movement must be built in the working class, a movement that begins with the understanding that democracy is incompatible with capitalism, and that true freedom must be rooted in social equality. All that was progressive in the history of the United States can be carried forward only through a revolutionary struggle for socialism.”

We therefore conclude our response to Professor Stone with the words of Samuel Adams (1722-1803), revolutionary, philosopher, statesman, and possible organizer of the Boston Tea Party:

“If ye love wealth greater than liberty, the tranquility of servitude greater than the animating contest for freedom, go home from us in peace. We seek not your counsel, nor your arms. Crouch down and lick the hand that feeds you; may your chains set lightly upon you, and may posterity forget that you were our countrymen.”

* * *

The World Socialist Web Site and Socialist Equality Party are waging a campaign to defend Edward Snowden. For more information and to get involved, click here .



To contact the WSWWS and the
Socialist Equality Party visit:

wsws.org/contact