

President-elect Trump on flag-burning: The crisis of American democracy

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On January 20, Donald Trump is due to take the oath of office for president of the United States and will affirm, in language spelled out in Article II of the Constitution, that he “will to the best of my ability, preserve, protect and defend the Constitution of the United States.”

Just over seven weeks before this is to occur, Trump issued a 136-character statement on Twitter making clear that he will do nothing of the sort. “Nobody should be allowed,” he wrote, “to burn the American flag—if they do, there must be consequences—perhaps loss of citizenship or a year in jail!”

The constitutionality of flag-burning is not a new issue. The attempt to prohibit this long-established method of protesting the actions of the government has been extensively litigated, with the Supreme Court deciding conclusively, in 1989 and again in 1990, that it is a form of speech protected by the First Amendment.

The assertion that an appropriate punishment for the burning of the flag is the revocation of US citizenship displays, if anything, an even greater contempt for Constitutional rights. The Fourteenth Amendment, ratified in 1868, declares that all persons “born or naturalized in the United States” are citizens. While it applied to freed slaves, the amendment had universal significance: neither the federal government nor the states have the right to restrict or abrogate citizenship or any rights conferred by this status.

In 1958, the Supreme Court ruled, in a decision written by Chief Justice Earl Warren, that denationalization violated the Eighth Amendment’s prohibition of cruel and unusual punishment. “There may be involved no physical mistreatment, no primitive torture,” Warren wrote. “There is, instead, the total destruction of the individual’s status in organized

society. It is a form of punishment more primitive than torture, for it destroys for the individual the political existence that was centuries in development.”

The proposal that punishment for a crime—or, in this case, the exercise of free speech—should be the removal of citizenship is, in effect, a proposal to eliminate all constitutional protections. It is a statement of arbitrary executive power. It is also in line with the raft of anti-democratic proposals coming from Trump: the resumption of torture, a national registry for Muslims, the removal of all constraints on domestic spying and other measures.

Trump’s tweet on flag-burning has been criticized by sections of the Democratic Party and its media spokesmen for its undisguised disregard for constitutional principles. There is a certain amount of tut-tutting, while ignoring the fundamental issue: That a man who is about to become president can make such a statement speaks not only to the authoritarian disposition of the individual, but to the far-reaching decay of bourgeois democracy in the United States.

The *New York Times*, in its editorial on Wednesday, wrote that when Trump pledges to defend the Constitution, “we the people will have good reason to doubt he knows what he’s talking about.” Of Trump, they write, “He tweets, he posts, he incites. He trolls. He commands a global platform and will soon be America’s commander in chief. But it has to be said, and said again: This is not normal. It demeans the presidency.”

There is something new and dangerous in a Trump presidency, but to present him as an aberrant intruder in the pristine garden of American democracy is a political fiction. Trump’s attitude toward democratic rights is a continuation and extension of an authoritarian tendency in the American ruling class that

has developed over several decades, supported by both Democrats and Republicans.

On the particular question of flag-burning, 14 out of 44 Senate Democrats supported a Republican-backed proposal in 2006 to amend the Constitution to allow Congress to “ban desecration of the American flag”—that is, to give it the power to pass a law that conflicts with the First Amendment. The proposal failed to achieve the required two-thirds super-majority in the Senate by one vote.

Then-Senator Hillary Clinton opposed the amendment but co-sponsored a law (that never came to a vote) to criminalize the burning of the flag if it were done to “incite or produce imminent violence or a breach of the peace” or “intentionally threaten or intimidate any person or group of persons”—language broad enough to encompass anything. The sentence she and other Democrats proposed for this act was: a year in jail. If the flag belonged to the US government, flag-burning under any circumstances would be punishable by up to two years in prison.

For the past fifteen years, the “war on terror” has been used, by both the Bush and Obama administrations, to systematically and deliberately undermine, abolish and repudiate every significant democratic right.

It was the constitutional law professor Obama, who established the principle that the president of the United States has the authority to assassinate, without due process, any American citizen that he determines to be a “terrorist” and threat to national security, a power that Attorney General Eric Holder declared applies on US soil. His administration has used this power to kill at least three US citizens, along with thousands of other individuals incinerated by drone bombs around the world.

Obama has preserved, and in some ways expanded, illegal spying by the National Security Agency. He has persecuted journalists and whistleblowers who have exposed government crimes, including Edward Snowden, who remains exiled in Russia; Julian Assange, who is trapped in the Ecuadorian embassy in London; and Chelsea Manning, who has attempted suicide on more than one occasion as she serves a brutal 35-year sentence in a maximum security prison in Fort Leavenworth, Kansas.

On virtually every occasion, Obama has invoked

executive privilege and the “state secrets” doctrine to block efforts to use the courts to hold Bush administration torturers accountable, or challenge such unconstitutional practices as illegal domestic surveillance, indefinite detention without due process, drone assassination, rendition and military tribunals.

With a Trump-led government, a regime of a new type will take power in the United States, in which military-police violence and authoritarian methods of rule will more openly predominate. As Obama wishes Trump every success, and Democrats pledge to work with the incoming administration, Trump is packing his cabinet with individuals who have as much contempt for democratic rights as he does.

Yet this government arises out of and expresses social contradictions in American society that are exploding the circuit-breakers of bourgeois democracy. It is the response of the American ruling class to the extreme growth of social inequality. If the ruling class is prepared to jail people for burning the flag, what will it do about mass protests against war, police violence and the destruction of health care?

The defense of democratic rights cannot be entrusted to any section of the ruling class or its political representatives. It depends entirely upon the development of an independent movement of the working class, in opposition to the political establishment and the capitalist system that it defends.



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