

Trump putsch was outcome of two-decade attack on constitutional rule and legality

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The January 6 putsch by former President Donald Trump and his allies in the Republican Party, the national security apparatus and the military to overthrow constitutional rule in the United States marks a turning point in the legal and constitutional history of the United States.

The putsch, which has been comprehensively reported and analyzed by the WSWs, was the culmination of a two-decade assault on democratic rights and constitutional rule by successive Republican and Democratic administrations.

The involvement of the military indicates that bourgeois democracy in the United States is in a state of near collapse, and that the threat of dictatorship is a real danger, unless the working class intervenes to take state power and establish a socialist government.

These events have destroyed once and for all any pretensions of American exceptionalism. Bourgeois democracy in the US, resting upon constitutionality, including the upholding of established norms and conventions of governance, is not exempt from the laws of capitalist historical development. This article reviews the degeneration of bourgeois democracy in the sphere of law and constitutionalism over the last twenty years, culminating in these extraordinary developments.

20 years of attacks on democratic rights and constitutionalism

The putsch has its roots in the decline of American capitalism; the hollowing-out of the productive economy, the pressure of international rivalry, the staggering and brutal levels of social inequality, and the resultant bipartisan attack on constitutional government in the interests of big business and finance capital. As US Supreme Court Justice Louis Brandeis once said: *"We can have democracy in this country or we can have vast concentrations of wealth in the hands of a few, but we cannot have both."*

Over the last 20 years, in a process that has been analyzed throughout the period by the WSWs, the American ruling class and its political allies and privileged supporters have prosecuted and enabled a counter-revolution against the democratic and constitutional achievements of the American people established over centuries. The attack on democratic rights and constitutional rule, under whatever pretext it was pursued, whether it be "The War on Crime," or "The War on Terror," was in fact pursued in order to establish a mode of rule to contain the social upheavals which would necessarily arise from economic policies which concentrated gargantuan levels of wealth in the hands of a tiny minority of the population.

Not since the time of the Roman emperors or the absolute monarchies has mankind experienced such levels of social inequality as now exist in the United States of America.

Over the last 20 years Republican and Democratic administrations

deliberately and consciously set out to break down the constitutional-legal framework to accommodate this social and economic reality. Donald Trump and "Trumpism" emerged in this political-constitutional context, and found its ultimate expression in the putsch of January 2021.

An illegal foreign policy emerges

In an attempt to establish global hegemony following the collapse of the Soviet Union, the United States ruling class embarked upon a program of militarism and conquest. In 1992 the US Defence Department released a "Defence Planning Guidance" document, which stated:

Our first objective is to prevent the re-emergence of a new rival. This requires that we endeavor to prevent any hostile power from dominating a region whose resources would, under consolidated control, be sufficient to generate global power. These regions include Western Europe, East Asia, the territory of the former Soviet Union and South West Asia.

This doctrine of global domination was supplemented a decade later in the "National Security Strategy of the United States" of 2002, which declared that America had a fundamental right to denounce and invade other nations in breach of their internationally recognized legal rights of sovereignty. It amounted to a pronouncement of unabashed illegality as official US foreign policy. The legal doctrines advanced thereunder, including "preventive war," "pre-emptive self-defence" and "humanitarian intervention," were all criminal under the Nuremberg principles. The ban on international aggression was rejected in favour of a new code of "legalized" conquest. It is not possible to overestimate the impact on the vitality of constitutionalism from the ruling class's militaristic foreign policy: *Inter arma silent leges* — "In times of war the law falls mute."

In 2001 and 2003 the United States illegally invaded Afghanistan and Iraq in pursuit of its geo-strategic objectives and in particular the domination of the Caspian Basin and the Eurasian landmass. Under the pretexts of the "War on Terror" and the existence of weapons of mass destruction, the United States set out to conquer and colonize countries with a combined population of 80 million people. It is inconceivable that a ruling class capable of such criminal, bloody and inhumane policies and conduct abroad could have any interest in defending constitutional rule and democratic rights at home.

The bipartisan destruction of democratic rights

America's drive for global hegemony ushered in a two-decade attack by the ruling class and its enablers on constitutional rule, legality and democratic rights. The Republican Party and the Democratic Party, both parties of big business, finance and the military, have been equally complicit in the destruction of democratic norms and legality, in a process which created a legal-constitutional climate for Trump's putsch as part of a final assault on constitutional rule.

In the true narrative of recent constitutional history, the stolen election of 2000, ultimately sanctioned by the US Supreme Court, leads through a history of increasing illegality in the life of the political establishment. There are two main socio-political components driving the assault on constitutionalism. On the one hand, the increasing far right, nationalistic and fascistic trajectory of the bulk of Republican Party. On the other, and equally importantly, the role played by the reactionary Wall Street- and CIA-backed, identity politics-ridden Democratic Party. The role of the Democratic Party is primarily the product of the class character of a privileged, wealthy upper middle class who, increasingly enriched by bulging stock portfolios and huge salaries, has been central and instrumental in the destruction of democratic rights, constitutionalism and the creation of an authoritarian state.

The theft of the US election by the Republican Party in Florida in 2000 disclosed the growing fascistic character of the GOP. Far-right elements within the Republican Party had been exercising growing influence over it in the course of the 1980s and the 1990s. Increasingly, its most influential and aggressive representatives were being drawn from the South. Greatly concerned about its prospects in elections, given changing demographics and class relations in the United States, the Republican Party was prepared to resort to criminal methods to destroy the right of the working class to vote.

At the same time, the Democratic Party showed that it was not prepared to fight on a principled basis to defend the democratic rights of the American people, for fear of unleashing a social upheaval which it could not control. The stolen election of 2000 set the pattern for the next two decades. Equally important in the destruction of constitutional rule was the increasingly rightward trajectory of the Supreme Court, indicating that it too was bound up with the general degeneration of bourgeois democracy. Decision after decision of the Supreme Court revealed that it was a staunch defender of the State and corporate interests against the democratic rights of the people.

The "War on Terror" and the attack on *habeas corpus*

The war on terror became the pretext and foundational pillar for the twin projects of military conquest abroad and the destruction of constitutional rule at home.

Within days of September 11, 2001, 762 immigrants were arrested by the FBI under orders of John Ashcroft, G.W. Bush's far-right Attorney General. They were detained incommunicado, refused access to lawyers, interrogated in frightening conditions, and held for weeks and months. None was ever charged. The never-to-end onslaught on civil liberties had commenced. The attack on *habeas corpus* was, following the attack on the right to vote in 2000, a major focal point in the destruction of constitutionalism. This right against arbitrary detention marks off a fundamental legal distinction between medievalism and bourgeois democracy or between bourgeois democracy and authoritarian dictatorship.

On November 13, 2001, Ashcroft proposed an executive order to set up military tribunals for US citizens in areas within the United States where civilian courts were in normal operation and to suspend the writ of *habeas corpus* entirely. Had the order been implemented, arbitrary detention would have been established within the United States itself.

The arbitrary detention of prisoners at Guantanamo Bay and the denial of due process marked an historical assault on bourgeois-democratic norms of rule. Not since Magna Carta had the government of an English-speaking nation so openly and on such a comprehensive scale assailed the right of *Habeas Corpus* and the rule of law. The WSWS recognised the momentous historic significance of what was taking place. In January 2004 we wrote:

The trajectory of the Bush administration is clear. It wishes to institute a repressive authoritarian apparatus of rule in the United States. In that process it is abandoning even notional adherence to legal and constitutional norms. Indeed, there is a kind of glee detectable in numerous members of the Bush administration in their reckless assault on democratic principles and practices. The US regime looks increasingly like a junta ruling through extra-constitutional and "emergency" powers.

But whilst the administration and its allies in the press promote the propaganda campaign about "the war on terror," the real reason for the establishment of authoritarian rule becomes clearer each day. The vast inequality that has become the central feature of social and political life in the US is the real driving force propelling the most rapacious and aggressive elements within the ruling class to establish forms of rule to deal with the social revolt that they sense approaching.

Creating a police state

Along with indefinite arbitrary detention, torture became official government policy. Fascistic lawyers in the Justice Department under the direction of White House Counsel Alberto Gonzales, including John Woo (now a law professor at Berkeley) and Jay Bybee (now a senior judge on the Ninth Circuit Court of Appeals) developed legal doctrines drawn directly from the authoritarian jurisprudence of Nazi Germany. The now well documented brutal and sadistic detention and torture of detainees in Iraq, Afghanistan and Guantanamo Bay displayed the same contempt for legality and humanity which German forces displayed in their occupation of conquered territories in WWII. On January 25, 2002, Gonzales provided a memo to G.W. Bush urging him to disregard the "obsolete" and "quaint" provisions of the Geneva Conventions.

The PATRIOT Act, enacted by Congress with overwhelming bipartisan support, destroyed civil liberties and the right to privacy and created the legal foundation for a police and surveillance state which continues to this day. As was consciously intended by its architects, it was not directed primarily at terrorism, but rather at "taking the handcuffs off the police," and destroying the democratic rights protected by the Fourth Amendment against unreasonable searches and seizures and protecting privacy.

The legislation was drafted by a team of lawyers at the Justice Department, led by Ashcroft, through a process of pulling out old far-right wish lists for a new authoritarian state, and assembled in an omnibus legislative request. In a memorandum written by Ashcroft to Justice Department officials and the FBI in March 2002, he expressly informed them that the surveillance powers under the act could be primarily used for a law enforcement purpose not directly connected to terrorism.

Various sections of the PATRIOT Act were clearly drafted to circumvent the regular Fourth Amendment application to standard criminal law enforcement.

There was no attempt by the administration to conceal this vast abridgment of democratic rights. In late 2003, following media reports on the use of the PATRIOT Act in normal policing, a spokesman for the Justice Department working under Ashcroft said loud and clear, "There are many provisions in the PATRIOT Act that can be used in the general criminal law." The far-right dream of freeing the police from the Bill of Rights had become reality. This was 12 years before Trump arrived on the political scene as a candidate for the Republican nomination for president.

The PATRIOT Act and related legislation, including the Homeland Security Act, were one step short of open rule by the police commissioners and the generals. These political and legal enactments of the ruling class:

- (i) Authorised arbitrary search, seizure, arrest and detention.
- (ii) Permitted vast surveillance of the population's phone, internet, library usage and financial transactions.
- (iii) Gave sweeping powers to the police and security agencies
- (iv) Endeavored to as far as possible exclude legal representation to people arrested and detained.

These authoritarian enactments created the framework for a national security state completely detached from the democratic rule-of-law traditions of American constitutionalism. Almost all legal efforts to overturn the legislation on constitutional grounds were rebuffed by the courts or, in instances of judicial findings of unconstitutionality, the Congress passed supplemental legislation in order to maintain the essential oppressive framework. The PATRIOT Act was upheld by the Obama administration with minor amendments which did not alter its police-state character, and in 2015 the administration renamed this vast abridgment of rights the USA Freedom Act. The Act was extended again in May 2020.

"National Security liberalism" under Obama

The onslaught against constitutionalism and legality initiated by George W. Bush was continued and deepened by his Democratic successor. Obama upheld the primacy of national security, and broadened and deepened the drive to authoritarian rule. Significant developments in this regard during the 2009-2017 administration included:

- (i) The continuation of the war in Afghanistan and the detention of prisoners in Guantanamo Bay (the limited due process which the administration was prepared to afford prisoners at Guantanamo was so abridged that even many military lawyers refused to take part in the drumhead procedures which were enacted).
- (ii) The administration did not pursue any serious criminal investigations of the illegal detention and torture which occurred under the Bush administration. The national security establishment was highly protected. No action was taken against Director of National Intelligence James Clapper for lying under oath to Congress about the NSA "metadata" program.
- (iii) Without congressional authorization under the 1973 War Powers Resolution, and in violation of international law, the

administration undertook the bombing of Libya and the overthrow of its government. In Obama's legal view the president could launch a *little war*. (He declared that a thousand missile strikes and assistance to anti-government forces were not acts of war)

(iv) Obama escalated the attack on immigrants, deporting more than 2.5 million people, a record for any American administration and more than the sum of all other Presidents of the 20th century combined.

(v) The Democratic Party deepened its connections and relations with the national security and military establishments. Ever larger numbers of its electoral candidates were drawn from national security agencies, the CIA and the military. Nobody could rationally suggest that these institutions are great incubators for democratic and enlightened policy.

(vi) The Democratic administration continued and extended Bush's effort to establish more executive-style rule. This political-legal culture, a form of right-wing "national security liberalism," was supported and applauded by the upper middle class and elites behind the Democratic Party.

Even within supposedly "left" elements in and around the Democratic party, there was not a single voice in opposition to these authoritarian developments. The politics of the pseudo-left in the orbit of the Democratic Party clearly represented no obstacle to the militarist and authoritarian trajectory of the administration. In his Nobel Peace Prize speech in Oslo in 2009, Obama trumpeted the Pentagon's new doctrines of aggressive war, rejected the ideas of Nuremberg and applauded the abandonment of legality in international relations.

Obama's Attorney General Eric Holder embraced legal doctrines derived from the "*Staats Recht*" conceptions of executive rule developed by authoritarian rulers in Germany, particularly the Nazis. After Obama ordered the drone killing of Anwar al-Awlaki, a US citizen and alleged Al Qaeda operative, Holder defended the killing on the extraordinary and unprecedented ground that due process and judicial process were not the same. He argued the US president did not need authority from a federal court to kill an American citizen who was alleged—but not proven in any legal process—to be working with Al Qaeda.

This legal perspective echoed that of Carl Schmitt, the chief jurist of the Third Reich, who in defence of extra-judicial killings ordered by Hitler propounded essentially the same view as Holder, that in times of "emergency" and "crisis" the judicial and executive power are one and the same. Schmitt declared: "The Führer protects the Law from the worst abuse if he, at the moment of danger, by virtue of his leadership as the Supreme Judge, immediately creates justice. The real leader is always Judge too. Those who seek to separate judgeship and leadership seek to unravel the State with the help of the judiciary" (published in *Deutscher Juristische Zeitung* August 1934). The proposition that the government can kill US citizens anywhere in the world on the basis of legal standards and evidence never submitted to a court could not prove more clearly that "liberalism" was morphing into fascism.

The Obama administration's attack on freedom of speech

The Obama administration launched a frontal assault on freedom of speech, protected by the First Amendment. The administration aggressively attacked leakers and whistleblowers, utilising the Espionage Act of 1917 for that purpose in eight prosecutions, more than all previous

administrations combined. Chelsea Manning was prosecuted and sent to prison for leaking information regarding US war crimes. Edward Snowden was indicted under the Espionage Act for exposing the illegal surveillance of the population in the National Security Agency's metadata collection programme. There was the original indictment on one criminal charge against Julian Assange, which the administration did not proceed with. A former CIA officer, John Kiriakou, was sentenced to 30 months' imprisonment for blowing the whistle on the CIA's torture programme, including waterboarding, under G.W. Bush.

Kiriakou accurately summarised the authoritarian nature of the Obama administration's attacks in the following way: "President Obama has been unprecedented in his use of the Espionage Act to prosecute those whose whistleblowing he wants to curtail. The purpose of an Espionage Act prosecution, however, is not to punish a person for spying for the enemy, selling secrets for personal gain, or trying to undermine our way of life. It is to ruin the whistleblower personally, professionally and financially. It is meant to send a message to anybody else considering speaking truth to power: challenge us and we will destroy you." As previously noted, the actual torturers went unpunished by the administration.

In May 2013 the Administration's Justice Department seized the phone records of 20 Associated Press journalists, in a crackdown on leakers. The Administration's contempt for due process and legality was extraordinary, sending chills through the journalism profession. No Notices of Subpoena were served in order to afford the opportunity of judicial review. Fifty news organisations and the Committee for Freedom of the Press submitted a letter of protest to Attorney General Holder in the following terms: "None of us can remember an instance where such an overreaching dragnet for newsgathering materials was deployed by the Department of Justice, particularly without notice to the affected reporters, or an opportunity to seek judicial review. The scope of this action calls into question the very integrity of the Department of Justice policies toward the press and its ability to balance, on its own, its police powers against the First Amendment rights of the news media and the public's interest in reporting on all manner of conduct, including matters touching on national security which lie at the heart of this case."

Holder and Obama were not moved. Their view on free speech was at one with their jurisprudence on executive power and due process, and with the same objective: the creation of a national security state which would brook no opposition and accept no legal constraints.

The administration escalated its attacks on whistleblowers and the First Amendment. During the last phase of the administration's time in office, lawyers in the Justice Department were already working on developing legal theories to deploy the Espionage Act against journalists as well as whistleblowers and to thereby criminalize the publication of the truth. There is no evidence that Joe Biden, as vice president in Obama's administration, raised any objection to the administration's aggressive assault on free speech.

In conformity with its jealous protection of the national security apparatus, while lower-level government whistleblowers and leakers were aggressively pursued, prosecuted and harshly punished under the Espionage Act, high-ranking officers were not. General David Petraeus, the former head of the CIA and a "celebrated" general who led the "surge" in Iraq, did not receive a jail sentence for leaking military and intelligence information to his mistress and biographer. Former CIA director Leon Panetta also disclosed classified 'top secret' information about the killing of Osama bin Laden to Hollywood without repercussion. The authoritarian, arbitrary and cynical character of the administration's attack on whistleblowers revealed in the starkest terms the administration's contempt for legality and the principled exercise of governmental power.

Over the last several decades large sections of the privileged upper middle class, which form a major social prop of the Democratic party,

have abandoned any adherence to liberal democratic principles. On the contrary, they have become deeply steeped in a reactionary conception of the State, the rule of law and the role of government. They have no abiding commitment to democratic rights, constitutionalism and the ideals of the liberal Enlightenment which enlivened and motivated the country's founders. Far from opposing the trajectory of the political establishment further and further to the right, they have either actively engaged in it, supported it, or enabled it with complacency and cynicism.

Identity politics, one of the chief mechanisms through which the Democratic party musters a privileged base of support, has been one of the primary enablers of the destruction of democratic rights and the creation of social and political conditions which have facilitated the emergence of fascism in America.

The #MeToo movement has been at the forefront of efforts to destroy due process and the presumption of innocence, goals it has in common with the far right's effort to destroy the Bill of Rights to further the creation of an authoritarian police state.

The only way to combat the rise of authoritarianism is through the class struggle to defend democratic rights. But the privileged layers who promote identity politics reject class and subject the working class to derision and hostility.

Trump's attack on the normative framework of presidential power

Trump's ascent, and his ferocious attack on legality, which began immediately and did not cease throughout his term, represented an accelerated continuation of the assault on constitutional rule. Trump did not arrive in a flourishing and healthy democracy, but one already barely alive from two decades of counter-revolutionary blows and bloody wars. America's ruling class was already well advanced in the establishment of authoritarian rule and the destruction of democratic rights. The previous four administrations since 2000 had already done most of the heavy lifting in the disassembling of the Constitutional framework of government. The personalist dictatorial element which Trump brought was distinct, seeking to exert his will over the entire parliamentary process, but it was largely accommodated. The Republican party was solidly behind him and the Democratic Party's opposition was half-baked, cynical and tactical.

Immediately seeking to drive forward the nationalist anti-immigration agenda of the new administration, one of Trump's very first illegal acts was to seek to punish state and local governments, known as "sanctuary cities," which refused to assist the federal government in enforcing its brutal immigration laws. The administration withdrew federal grants and also sought to claw back grants already paid. These orders were unconstitutional. In *Printz v United States* (1997) The Supreme Court had declared that the Federal Government could not commandeer state governments to enforce federal laws, finding this would violate the Tenth Amendment to the Constitution. The *Printz* case was in some respects a reactionary decision, blocking the attempt of the federal government to enforce gun controls. However, contradictorily, the decision, and the Tenth Amendment, also operate to restrain the federal government from commandeering state governments to enforce reactionary and oppressive executive actions, such as Trump's immigration "round-up" orders. These early efforts to illegally enforce executive power by orders and decrees to advance personalist-authoritarian rule became the pattern for the duration of the administration.

In order to understand the specific character of the Trump attack on constitutionalism it is necessary to consider the role of "norms" in the framework of constitutional rule. When it is said that Trump pursued a "personalist" presidency, what is actually referred to is Trump's rejection

of the “conventions” and “norms” which historically restrain the exercise of arbitrary presidential power, alongside the written constitutional provisions concerning presidential power (Article II of the Constitution) and judicial decisions of the courts. These norms are sometimes described as the “soft guardrails” of constitutional government. Great Britain does not have a unified written constitution, and relies on longstanding norms, conventions, customs and traditions in its system of bourgeois democracy. These are sometimes referred to in the British system as “constitutional conventions.”

The character of the presidency in the liberal tradition of US constitutional rule is fundamentally conditioned by norms and conventions, and they form the “normative framework” of the exercise of Presidential power as an institutional (as opposed to arbitrary personal) element in the American system of democratic governance. Respect for the norms and conventions of the Office of the President is fundamental to constitutional rule.

Trump had absolutely no respect for the constraining norms of the Office of President. Fascistic and authoritarian in his personality, Trump simply ignored these democratic restraints on his power. In this particular Rule of Law aspect, Trump manifestly and significantly deepened the attack on constitutional rule and legality in the US.

When one speaks of the “abnormality” of the Trump presidency, one refers to the lack of norm-based institutional rule. The list of Trump’s attacks on the normative exercise of power is very extensive: his presidency was a veritable norm-wrecking operation. In the historical context of the ongoing degeneration of constitutional rule and democratic rights in the US over the last twenty years, some of the most significant of those attacks include the following:

(i) Politicizing the military

Constitutional convention proscribes involving the military in politics. The norm originates in the Founding Fathers’ democratic concern to ensure the constitutional order was not threatened by the presence of a standing army. From the beginning, Trump sought to bring the military into his presidency and political life generally. On his inauguration, without precedent, Trump initially arrayed military officers behind him whilst he made his ultranationalist speech. Presidential events and ceremonies frequently had the military present. The illegal executive order barring entry to citizens from seven Muslim countries was signed in the Pentagon room dedicated to war heroes. When Trump was visiting troops in Iraq, his campaign soundtrack was played over loudspeakers.

Just prior to the 2018 midterm elections, Trump, without reference to Congress and based on claims of “national emergency,” deployed troops to the southern border. Trump deliberately sought to project an image of military-political rulership. He brought ex-generals into his cabinet. The involvement of the military in Trump’s coup attempts will be considered later in this essay. Trump’s deploying of the military in political life is of major significance in the destruction of the normative framework—marking a major milestone in the degeneration of bourgeois democracy.

(ii) Attacking the independence of the judiciary

Constitutional-democratic theory treats the Office of the President and the judiciary as co-equal elements in the system of government. Constitutional norms and conventions dictate mutual respect and independence between these two separate “Powers.” Trump attacked and berated judges frequently throughout his term, often with insults and invective, challenging their independence and ability. The attacks were historically unprecedented. In a speech in 2019, US District Court Judge Paul L. Friedman, commenting on Trump’s attacks on the judiciary, said: “We are witnessing a chief executive who criticizes virtually every judicial decision that doesn’t go his way and denigrates judges who rule against him, sometimes in very personal terms. He seems to view the courts and the justice system as obstacles to be attacked and undermined,

not as a co-equal branch to be respected. This is not normal.”

The doctrine of the “Separation of Powers,” and the independence of the judiciary which is fundamental to it, lie at the core of liberal-bourgeois democratic government.

Trump’s attack on the judiciary represented a deepening of the authoritarian drive against Constitutional rule in the US. One of the hallmarks of the Nazi regime was its vicious attacks on judges who would not submit to the will of the Führer, which was often described as the will of the people.

(iii) Abuse of the power of appointment

The Constitution’s Appointments clause gives the president power to appoint federal officers, with the Senate’s consent. There are often delays in the confirmation process, and accordingly Congress enacted the Federal Vacancies Reform Act (FVRA) to permit the president to appoint “acting” officers, who are officials already holding certain positions within the government, to serve in an office for a maximum of 210 days after it becomes vacant. To keep an officer in an “acting” position past the statutory limit violates the Appointments clause.

Furthering his efforts to establish a personalist authoritarian presidency, Trump flouted the constitutional appointments process to install loyalists as acting heads of departments who had not received Senate confirmation. For much of his term he had nearly as many acting cabinet secretaries as confirmed ones. In August 2020 the Government Accountability Office found that the acting secretary and acting deputy secretary in the Department of Homeland Security, Chad Wolf and Ken Cuccinelli, were in their positions unlawfully. In September 2020 US District Judge Brian Morris ordered the removal of William Perry Pendley, who had been unlawfully serving as acting head of the Bureau of Land Management. In efforts to avoid the illegality of acting appointments Trump would make up new job titles to keep loyalists in the Cabinet and avoid Senate scrutiny. In his scathing judgment Morris wrote: “The President cannot shelter unconstitutional ‘temporary’ appointments for the duration of his presidency through a matryoshka doll of delegated authorities.”

(iv) Dismantling oversight protections

One of the legal enactments following Watergate was the creation in 1978 of the offices of inspectors general across government to protect against fraud and abuses of power.

Trump fired five inspectors general whose official function was “watchdog” in the Intelligence Service, and the departments of Defence, Health and Human Services, Transportation, and State. In some instances, the sacking was retaliatory for steps taken that displeased Trump or his allies. Perhaps the most significant was the dismissal of Christi Grimm, the Acting Inspector General for Health and Human Services, following her report regarding severe shortages of coronavirus testing kits and protective equipment, including masks.

(v) Interfering in Department of Justice investigations

A well-established norm governing the presidency is the norm of not seeking to influence traditional law enforcement functions in favour of associates, friends or political cronies, or against political or personal enemies. Trump departed completely from this norm. Putting aside issues regarding the possible partisan motivation of any Department of Justice investigation, Trump openly attacked prosecutors’ cases against him or his allies, and pressured officials to drop or pursue investigations in his political and personal interest. This approach to Department of Justice Investigations again revealed Trump’s utterly personalist and authoritarian conception of his power as president.

(vi) Abuse of the power to issue pardons

The Presidential power to pardon under Article II Section 2 of the Constitution is intended to be exercised prudently and judiciously. Normally requests for executive clemency are dealt with by the Office of the Pardon Attorney of the Justice Department. The power has frequently been abused by presidents. George H.W. Bush pardoned Iran-Contra

criminals who had committed their crimes in the administration in which he had been vice president.

Consistent with other norm-breaking conduct, Trump abused the power exponentially, issuing 237 pardons and commutations during his term, the vast majority on the basis of personal, political and self-serving reasons and objectives. Thousands of genuine pleas for clemency were treated with contempt in the process. Trump granted less clemency than any modern president. So “personalist” was Trump’s view of his powers that he considered, in public musings, pardoning himself.

Trump pardons or commutations included former sheriff Joe Arpaio of Arizona, a hard-line anti-immigrant Trump supporter; far-right commentator Dinesh D’Souza, convicted of illegal donations to Republican Senate candidate for New York in 2012, Wendy Long; former Illinois governor Rod Blagojevich; junk-bond king Michael Milken; disgraced New York police commissioner Bernard Kerik; and former media mogul Conrad Black, who wrote a book effusively praising Trump. Trump was the first president in modern times to pardon people convicted of murder, in the cases of two soldiers sentenced for war crimes. The pardon of the soldiers was against the advice of top Military and Defense Department officials and US Military lawyers.

Trump commuted the sentence of friend and political ally Roger Stone, who was convicted of lying about hacked Democratic emails during the 2016 campaign. In relation to Stone’s pardon Republican Mitt Romney stated: “Unprecedented, historic corruption: an American president commutes the sentence of a person convicted by a jury of lying to shield that very president.”

Apart from Stone, Trump granted clemency to four other former campaign staff members and political advisers: Paul Manafort, Michael Flynn, Stephen Bannon and George Papadopolous. He granted pardons to seven Republican congressmen convicted of serious crimes, mostly financial corruption. Many wealthy individuals paid large sums to former Trump advisers to lobby for pardons, circumventing the normal review process undertaken by the Office of the Pardon Attorney.

(vii) The illegal bombing of Syria and the murder of General Qassem Soleimani

Following President Obama’s new “Libyan doctrine” of the Executive’s power to wage a “little war” without congressional approval, Trump also trampled on the separation of powers doctrine and ordered air strikes against Syria without congressional approval. The illegal acts (under the Constitution and international law) were carried out in 2017 and 2018.

The Executive’s extra-legal power to kill, which the Obama administration had promoted with fascistic legal doctrines, was taken into new territory by Trump. Capitalizing on the targeted-killing machinery which the three previous administrations had perfected, Trump ordered the assassination of Iranian General Qassem Soleimani. This was the first time an American president ordered the assassination of a high-ranking government official of a country with which the US was not at war. Trump appears not to have considered, as any head of state in the world would, that assassinating a top official of another country with a drone missile would be regarded in international law as a declaration of war. Alternatively, and quite possibly, he did not care.

The foregoing list of Trump’s reckless assault on the normative framework of constitutional rule is far from exhaustive, but it is considered by the author to include the most significant acts in the context of the ongoing degeneration of bourgeois democracy in the field of law and constitutionalism. Other egregious norm-breaching actions included profiting from Office; failure to disclose tax returns; publicizing the list of potential picks for the Supreme Court; lying to the public; abusing, insulting and defaming political opponents; making racist appeals and attacks; and disparaging, ridiculing and rejecting scientific and medical expert opinion, leading to the deaths of hundreds of thousands in a

pandemic. Unquestionably, all of these unlawful actions contribute very profoundly to the destruction of the legal-constitutional culture and ethos of the Republic.

The prosecution of Julian Assange: Deepening the attack on free speech

The Trump administration advanced the onslaught on the First Amendment’s protection of free speech. The Justice Department took the use of the Espionage Act a step further, seeking to destroy the constitutional right to publish national security information. Julian Assange was indicted under the Espionage Act for publishing information regarding the commission of war crimes by US forces in Iraq, as well as other illegal government conduct.

The national security juridical perspective underlying the prosecution was succinctly set out in paragraph 29 of the indictment, which pleaded that Assange, Manning and others shared the objective of furthering the mission of WikiLeaks “as an intelligence agency of the people subverting lawful measures imposed by the United States government to safeguard and secure classified information in order to disclose that information to the public.”

The Department of Justice legal pleading echoed the statements of Mike Pompeo who, as CIA chief in 2017, denounced WikiLeaks as a “non-state hostile intelligence service.” These perspectives crystallised into the counter-revolutionary conception that the public has no right to be made aware of the activities of the government.

Trump’s coup attempts for dictatorial rule

Trump’s first coup attempt occurred in June 2020 when he sought to invoke the Insurrection Act against nationwide protests against the murder of George Floyd. Trump wanted to crush the protesters with the Army and establish a personalist dictatorship resting on the military. The charge that the protests were directed at the overthrow of the government was a complete provocation.

At that time General Mark Milley, the chairman of the Joint Chiefs of Staff, was not prepared to send in the troops. Milley’s opposition was based on tactical considerations; he was concerned that it could deepen the crisis and potentially endanger the state. Milley had studied politics at Princeton University and his graduation Thesis in 1980 was titled; “A Critical Analysis of Revolutionary Guerrilla Organisation in Theory and Practice.”

Notwithstanding that both Milley and Defense Secretary Esper declared that they were not prepared to use military force, both offered advice regarding controlling the unrest. Milley advised that law enforcement forces should “dominate the battle space.” It was clear that although the chairman of the Joint Chiefs of Staff was not prepared to act on that occasion, he had no objection in principle to the use of military force when necessary to protect the capitalist state. During the protests, Trump marched with his entourage, trailed by Milley and Esper, to Lafayette Square.

Following the loss of the 2020 election to Biden, Trump began to plot the overthrow of the result and attempt a putsch to overthrow the newly-elected government. Trump had the backing of a substantial network of co-conspirators in the Republican Party and law enforcement agencies. At the centre of the plot Trump invoked the “Big Lie” technique with

declarations the Democratic Party had committed massive electoral fraud. This Big Lie technique was a method Hitler and the far right had employed in Germany to mobilise a fascist base. Hitler and the far right promoted the Big Lie of the “Stab in The Back” against the Social Democrats and Communists in Weimar Germany, claiming they had betrayed the war effort, leading to Germany’s defeat in World War I. Trump’s efforts included numerous phony legal cases alleging election fraud, which were a vehicle for galvanizing and mobilising supporters to make a violent attack on the Capitol.

It is now well established that elements in the military were involved in the Trump putsch. What is also clear is that there will not be a thoroughgoing investigation into the role played by the civilian and military leadership of the Defense Department and the Army National Guard. There can be no doubt from the evidence that has become available, however, that high-ranking officials and generals within the Defense Department and the Army supported the putsch. Acting Defence Secretary Christopher Miller, Army Secretary Ryan McCarthy, General Walter Piatt, General Charles Flynn (brother of Michael Flynn) and General Daniel Hokanson, Chief of the National Guard Bureau, were involved in the decisions not to deploy soldiers of the Guard in a timely manner to defeat the putsch.

In all the circumstances, and the fact that what was being planned was well known, there cannot be any innocent explanation for the military leadership’s inaction. Troops were finally deployed when it was clear that the putsch had failed in its objectives and the attackers had commenced to disperse, the operation having failed primarily due to the lack of discipline on the ground in carrying out the coup. A particularly revealing piece of evidence implicating the military was a conversation which took place on January 3 at the White House, at which time Trump asked Acting Defence Secretary Miller; “You’ve got enough guys and you’re all set for the 6th of January?” to which Miller responded; “Oh yes Mr. President. We’ve got a plan.” The events that took place on January 6 and the critical decision not to deploy forces to the Capitol overwhelmingly support the inference that the plan that Miller was referring to was an effort to facilitate or at least permit the coup, and suggest an even deeper collaboration between the military and the fascist rioters.

Conclusion

In the epoch of imperialism, the dynamics of class society give rise to similar general political phenomena in all advanced capitalist countries. The United States is no exception. Under the mounting pressures and contradictions of capitalist production in a global economy, United States bourgeois democracy has turned into its opposite. Confronting global competition, economic crises and unprecedented social inequality, the ruling elites, as in Germany, France and Italy in the 1920s and 1930s, are turning to authoritarian and fascist rule in an effort to resolve their crisis and defend the capitalist order.

When one looks across the current legal-constitutional landscape of the United States, one sees, figuratively speaking, debris, smoking ruins, rubble, flames and bombed-out structures, buildings and vehicles—all these depicting laws, statutes, norms, conventions, constitutions, rights, legal ideas and doctrines—representing the remnants of the framework of bourgeois democratic rule. This is not an exaggeration. There has been a blitzkrieg on constitutionalism for over 20 years.

The American working class must draw the lessons and take warning from these momentous political events. For two decades the ruling class and its political agents and enablers in the Republican and Democratic Parties have undertaken a veritable counter-revolution to overthrow their

rights and destroy constitutional rule. The legal framework of bourgeois democracy is in a state of advanced degeneration and collapse.

This has culminated in efforts by a fascist president to establish a personalist dictatorship. In this endeavor he had the support of a large section of the Republican Party, which has itself become fascist. Elements of the military supported the attempt to destroy constitutional rule, and took decisive steps to carry out the fascist plot. The American ruling class has crossed the Rubicon. The Democratic Party is supine and cowardly. As a principal defender of capitalist property relations, it will not, and cannot defend the rights of the working class. It will not fight to defend constitutional rule against fascist attacks. It prefers dictatorship to revolution.

The American working class is in great peril. Bourgeois democracy is in its death agony and dictatorial rule is an increasing danger. It is urgent that the working class develop a political strategy and build a revolutionary party with a plan of action to defend its democratic rights and overthrow the bankrupt, violent system of capitalist oppression, and to create a socialist society based on humanity, cooperation, economic rights and progress.



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