

# The Supreme Court and the Counter-Revolution of July 1, 2024

Tom Mackaman  
4 July 2024

The Supreme Court's decision in *Trump v. United States* is the most far-reaching and reactionary decision in the history of the upper court. It will go down in history as the Counter-Revolution of July 1, 2024.

Unlimited power has been given to the president to violate the Constitution and break any law whenever he decides to. As Justice Sonia Sotomayor concluded in her dissent, the presidential activities now immune from prosecution could include instances when the president orders the military "to assassinate a political rival," launches "a military coup to hold onto power," and accepts "a bribe in exchange for a pardon."

In a separate dissent, Justice Ketanji Brown Jackson underlined that crimes up to and including murder may fall within the realm of "official duty." The question before the Court, she wrote, was not whether the President could fire the Attorney General, but whether "the President has the option to remove the Attorney General by, say, poisoning him to death."

The president can now order the Secret Service, Federal Bureau of Investigation, or military personnel to slaughter political enemies by the hundreds, as Adolf Hitler did on the Night of the Long Knives in June 1934, and he will not be held legally accountable.

Issued days before the Independence Day holiday, two years shy of the 250th anniversary of the birth of the Republic, the decision guts the American constitutional framework, including core republican principles such as the separation of powers, the rule of law, and popular sovereignty. *Trump v. United States* legitimizes, *de facto* and *de jure*, an uncontrolled presidential dictatorship. It explicitly raises the chief executive above the reach of the law whenever he or she claims to be acting in an official capacity.

Much of the media attempt to console themselves and chloroform the people by claiming that the Supreme Court decision leaves open the possibility that the "personal" crimes of the president may not be immune. But what is personal and what is official, the ruling makes clear, will be left to the discretion of the president. At most, presidential crimes might be reviewed after the fact by courts handicapped by the new decision, although the review could be preempted by the president by ordering the assassination of the judges assigned to undertake the review. Already Donald Trump has sought, and been awarded, a reprieve from his conviction in New York for "hush money" election tampering arising from allegations of a personal affair.

The decision, in any case, goes far beyond Trump. The awesome powers arrogated by the Court are invested not in an individual but in an office. Regardless of who the president is, the occupant of the White House will have at his or her disposal dictatorial powers. Such power is clearly immanent in the Court's decision. The "official action" in question, after all, was Trump's secretive organization of a *coup d'état* on January 6, 2021, to overturn the results of his election defeat, and thereby to suspend the Constitution.

If a fascist insurrection falls within the official duties of the presidency,

then there is nothing that does not.

The Supreme Court has issued its verdict. It "finds" that the American President is above the law. A permanent state of dictatorial rule surrounds the occupant of the White House, akin to the authority the fascist states of the last century concentrated in Mussolini and Hitler. Acting within "official duties," there is nothing the president cannot do.

But the working class has not yet delivered its verdict.

Today, workers in their tens of millions will celebrate the Fourth of July. It may not be commonly known, however, that the holiday marks the ratification of the revolutionary manifesto *The Declaration of Independence* on July 4, 1776, and not the severing of ties with Great Britain, which took place through the Lee Resolution on July 2, 1776. It is crucial that workers and youth familiarize themselves with the Declaration, which has much to say about the threat of dictatorship now posed by the Supreme Court.

Drafted in Philadelphia by a committee that included Thomas Jefferson, the principal author, and Benjamin Franklin and John Adams, the document begins by stating that "a decent respect to the opinions of mankind" requires an explanation be submitted "to a candid world" for the causes of the revolution, which had been underway for a year. What follows may well be the most revolutionary statement in world history—in all of its vast and explosive implications as potent today as it was in 1776: "*We hold these truths to be self-evident, that all men are created equal.*"

Jefferson then lays out the axioms of what has come to be known as "the American theory" or "republican theory" of government. States do not "grant" people rights. People are born with "unalienable rights"—rights that *precede* the existence of governments. Governments derive their "powers from the consent of the governed"—and not an iota more. Indeed, states may justly exist insofar as they uphold these rights; this is why "they are instituted among Men."

From there, the Declaration asserts the right to revolution "whenever any Form of Government becomes destructive of these ends." In what could be read as a warning to today's Supreme Court and other citadels of conspiratorial power, Jefferson tells us that the right to revolution is reached "when a long train of abuses and usurpations... evinces a design" to put the people "under absolute Despotism." At such a moment, it becomes not only the right of the people, but their "duty" "to throw off such Government."

The Declaration was the culmination of a protracted development in human thought whose origins trace to the Enlightenment and its challenges to the divinely sanctioned feudal order. But no one could have expected in 1763, amidst the jubilation at Great Britain's triumph over France in the Seven Years' War, that little more than a decade later a revolution based on the principle of human equality would rend the Empire.

What had changed? It was "the long train of abuses" that the Declaration described that readied popular consciousness for revolution. "The Revolution," John Adams later wrote to Jefferson, "was in the

Minds of the People, and this was effected, from 1760 to 1775, in the course of fifteen Years before a drop of blood was drawn at Lexington."

The last obstacle in cutting the path to "the minds of the people" was removed with Tom Paine's *Common Sense*, issued in January 1776. Until that stage of the Imperial Crisis, the colonists fought out the ideological component of the struggle with England over the question of representation *within* the Empire. They had, by 1775, arrived at the conclusion that a rupture with Parliament was necessary. But they were not yet ready to break with the King. Many imagined a "devolved" American realm with a separate parliament, but with the King as head of state, an idea that anticipated the reactionary Commonwealth theory of Empire later foisted upon the South Asians, Canadians and Australians.

Paine trained his fire on the King and royal authority in general. An English immigrant, a worker and a radical deist—"a corsetmaker by trade, a journalist by profession, and a propagandist by inclination"—Paine had arrived in Philadelphia in 1774 with the help of Franklin. After little more than a year he had produced *Common Sense*. Allaying fears of a government without a monarch, Paine indicted the idea of a king above the law, in words that could be equally leveled against today's Supreme Court:

But where, say some, is the King of America? I'll tell you, friend, he reigns above, and doth not make havoc of mankind like the Royal Brute of Great Britain... [L]et a crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that *in America the law is king*.

*Common Sense* hit with meteoric force, saturating the population with revolutionary ideas. It is estimated that 100,000 copies were sold in the first two months, and 500,000 by the end of 1776. An equivalent manifesto in the US today would need to be distributed to the tune of 60 million copies—perfectly realizable given the great technological advances in the profusion of the written word since Paine's time. *Common Sense* prepared the way for the Declaration, which was distributed even more widely and was read aloud to the Continental Army and state militias to volleys of celebratory gun fire throughout July, 1776.

Behind the Declaration's revolutionary principles the War for Independence was waged and ultimately won in 1783—and at a very high cost. As a share of the population, more Americans died in this war than in all others but the Second American Revolution, the Civil War. But the question of *how* the Americans would govern themselves remained.

Pervading thought held that in every existing government there must be an ultimate and indivisible repository of sovereignty. The monarchical system that had ruled Europe for a millennium found this ultimate sovereign in the King, whether that was the "King-in-Parliament" system of Britain, or the absolutist monarchies of France, Austria, Spain and Russia. Moreover, even in republican theory it was held that, because of the indivisibility of sovereignty, republics had to be small, such as those of Holland and the Italian city-states.

The British Tories homed in on this weakness of the American argument. They derisively challenged the former colonials: In which of the thirteen new states will sovereignty reside? Who, in each, will be sovereign? The Americans, after much struggle, delivered their answer in the opening phrase of the Constitution: "*We the people...*" The "people" were sovereign, not the president, not the courts, not the elected representatives, not even the Constitution—for, as Lincoln later pointed out, the Constitution itself was predicated and formed by "the people," acting on the Declaration of Independence.

In its time, this was a revolutionary doctrine.

Of course, the immense overgrowth of ideology of the first bourgeois

democratic revolutions cloaked class motives such that they were obscure even to participants. The propertied classes imagined they spoke for "the people" in drafting the Constitution of 1787.

In 1789, their French equivalents spoke for "the nation." Everywhere the bourgeois republican ideology declared equality, fraternity, and the rights of man. Yet the revolutions invariably substituted new forms of class domination for old. Marx and Engels developed scientific socialism through the most searching analysis and withering criticism—economic, historical and political—of this new capitalist order, revealing the explosive contradiction between its declarations of equality and the actual existence of brutal exploitation, including chattel slavery, which led to the Second American Revolution, the Civil War.

Though the Constitution concealed class domination—or, better said, precisely because it did—it proved an effective framework for bourgeois democracy. It is a remarkable fact that even in the depths of the Civil War—in which some 750,000 American died—Lincoln scrupulously sought to uphold the Constitution. This is why, for example, he did not simply "order" the freeing of the slaves, invoking instead special powers as commander-in-chief of the Army in war to issue the Emancipation Proclamation on January 1, 1863, a decision that continues to befuddle racialist theories of history.

Within a half-century of Lincoln's assassination, the office of the presidency had begun to assume its modern, imperial form. Presidents from William McKinley down orchestrated the expansion of an American Empire that negated "consent of the governed" for peoples all over the world. In the United States, they deployed the military to break strikes and fanned out police spies to hound radical opponents.

The forerunner of the FBI, a domestic police force under the president whose founding purpose was to pursue socialists and militant workers, was created in 1908. In 1947, President Harry Truman founded the CIA and tasked it with subverting revolution all over the world. By the 1960s, President Johnson could say that with the CIA his predecessor, President Kennedy, had been running "a damn murder Inc." from the White House. The American President now sat atop a sprawling repressive apparatus, prompting President Eisenhower to warn in his farewell address of 1961, that

the conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence—economic, political, even spiritual—is felt in every city, every State house, every office of the Federal government. We recognize the imperative need for this development. Yet we must not fail to comprehend its grave implications.

The half-century decline of American capitalism that began in the 1970s and that brings us to the present has been dominated by the malignant growth of social inequality, which is increasingly incompatible with democratic forms of rule. The presidency, in this time, came to play two inextricably fused roles. First, as the cockpit of global imperialist counterrevolution. And second, as the seat of conspiracy against the rights of the people. During this time "the imperial presidency" has operated ever more openly and ruthlessly.

President Reagan faced no punishment for the Iran-Contra scandal, in which a secret funding operation of Central American death squads was run out of the White House in contravention of a Congressional law. President George W. Bush invoked the "theory of the unitary executive" to wage the so-called War on Terror, which, his administration claimed, permitted it to organize the forced disappearance of suspects in an international gulag of torture prisons, including at Abu Ghraib in Iraq and Guantanamo Bay in Cuba. President Obama asserted in 2010 the chief

executive's prerogative to carry out assassinations of citizens he declares to be enemy combatants (a precedent cited favorably by Amy Coney Barrett in her concurring opinion in *Trump*.) President Trump, in 2020, openly boasted of ordering the assassination of an American protester, Michael Reinoehl, in Washington state.

Again and again the courts have acquiesced to the aggrandizement of the power of the presidency. But never before Monday's ruling has such a brazen assault on the Constitution been mounted by the very "august body" supposedly tasked with upholding it.

A Rubicon has been crossed. Under conditions in which an oligarchy of 1,000 billionaires controls the vast bulk of society's wealth, the Supreme Court now rules, in effect, that a presidential dictatorship is necessary to carry out the policies of the American ruling class: war and social counter-revolution.

The American Constitution is the oldest written constitution in the world; the American republic the oldest continuously existing republic in the world. It is a development of immense revolutionary implications that the American ruling class takes a wrecking ball to the edifice from which it has governed for nearly 250 years.

Yet, as fundamental for class rule as the founding documents of the United States have been—the Declaration of Independence, celebrated today, as well as the Constitution and the Bill of Rights—it will prove still more important that they have contributed to a deep-seated democratic-mindedness in the American working class. The defense of basic democratic rights, inextricably bound up with the struggle against imperialist war, now falls to the working class. Only the working class has both the interest and the means to defend democracy.

The British parliamentarian Edmund Burke said of the Americans in 1775 that they "snuff the approach of tyranny in every tainted breeze." Today, tyranny arrives not in breezes, but in gale force winds. After 250 years, American workers must rediscover their revolutionary traditions.

The republican system in the United States was the progressive and revolutionary response to the centuries of dynastic civil war and religious conflict that accompanied the rise of the modern world in Europe. It was made possible by the extraordinary social and technological developments accompanying the rise of capitalism, which dissolved and melted "into air" the social forms of the medieval world.

Today, the world is witnessing the most rapid and explosive technological change in all of human history, which creates the conditions for the elimination of all the problems that have plagued mankind since the dawn of history: social inequality, class oppression, war, poverty, disease, and all other forms of social barbarism. Capitalism is responding to these progressive and revolutionary social trends by "vomiting up the undigested barbarism" of the ages: It asserts war, dictatorship, and mass death to be its highest principles.

It is the task of the working class to free the fundamentally progressive and revolutionary changes in the structure of society from the shackles put upon them by capitalist barbarism. This Fourth of July, it is clearer than ever that the workers are the true inheritors of the American Revolution, and that their task is the reassertion of the Declaration that "all men are created equal" through the socialist revolution.



To contact the WSWS and the  
Socialist Equality Party visit:

**wsws.org/contact**