

The Supreme Court, the New Deal and the Class Struggle

By JOHN WEST

The recent decision of the Supreme Court, invalidating the AAA, when taken against the background of the Schechter Case decision last Spring and the probability of further decisions against the New Deal in the near future, brings into sharp focus many basic problems concerning the meaning and nature of the complex institutional structure of the American state. It is wholly impossible to understand these problems except in the illumination of Marxian theory. Any other approach condemns us to wander in the fog and mists of legal "fictions"—as the English political philosopher, Jeremy Bentham, so accurately called them—and to spend our time, like Don Quixote, arguing about dreams and fighting against windmills.

The need for the light of uncompromising Marxian theory could not be more urgently shown than by a study of the press of the Communist Party and the Socialist Party during the week following the AAA decision. The first editorial of the Daily Worker demanded to know whether Americans were going to continue to allow nine old men to overthrow "the decisions of the people's representatives." During succeeding issues, the Daily Worker has carried to ever-increasing heights its campaign against the "autocratic oligarchy" of the Supreme Court. "The King of England," the editor says in bold-faced type, "cannot nullify acts of Parliament, but the Supreme Court can invalidate acts of Congress. It is not only a monarch, but an UNLIMITED monarch to boot." And "the astonishing part of it"—and the indignation of the Daily Worker is here exceeded only by its surprise—"is that this power . . . is absolutely UNCONSTITUTIONAL." The Daily Worker should really retain the American Liberty League to bring suit against this outrage: it too is a stalwart defender of the Constitution.

Daily Worker Finds the Issue

The big issue before the American people, then, according to the Daily Worker, is given in a front page box: "Unite for action to demand that Congress and the President: 1. Repeal the right of the Supreme Court to declare laws unconstitutional. 2. Impeach judges who usurp the democratic rights of the people. 3. Amend the Constitution to prohibit the Supreme Court from declaring laws unconstitutional."

We are reminded that, in France, the Communist party not dissimilarly demands that Laval and the Chamber of Deputies disarm the Fascist Leagues and oust the Fascist officers from the army. And the C. P. of France is similarly "astounded" that the "representatives of the people" continue to allow such subversive activities against the Republic.

The Socialist Call, if in less gross form, takes what is essentially the same point of view. Norman Thomas writes: "Now six old men on the Supreme Court of the U. S. against 3 of their colleagues hand down a decision which practically destroys the constructive program which has been set up. . . . You have a complete picture of judicial oligarchy. . . . I join with my comrades in demanding immediate and drastic action to end this judicial oligarchy. . . . Real change depends upon an end of this judicial oligarchy, this government by the dead hand of a Constitution, which is given living power by the particular political and economic doctrines of the old men on the Supreme Court bench. . . . It becomes the most important single immediate task of the Party and the entire labor movement to push the Workers Rights Amendment."

Better in N. Y. Post

Such analyses and such proposals have, of course, nothing in common with Marxism. They are reformist, not Marxist, in character. This is sufficiently indicated by the fact that the liberal New York Evening Post, the shrill New Deal defender, has taken exactly this same approach to the Supreme Court in its editorials following the AAA decision, except that its words have been more challenging and more vigorously written; and it has proposed the same reform measures.

What, then, is wrong with this approach? Where does it differ from Marxism?

What is wrong with it is that, instead of clarifying, it obscures and glosses over the fundamental class issues which are the source and root of historical development, and, instead of exposing, it veils and softens the role of the state.

Marxism and the State

Marxism is primarily distinguished by analyzing every social and political problem from a class point of view. In contemporary imperialist society, this means that Marxism always explains and interprets events only in the light of the fundamental conflict whose course determines the direction of historical development: the conflict between the bourgeoisie and the proletariat. In terms of this conflict, Marxism interprets the role of the state as the political executive of the bourgeoisie, whose

historical function is to maintain the social power of the bourgeoisie and to uphold the system of property relations upon which that social power is based.

The state, however, is not an "abstraction." It is actualized in a whole involved maze of concrete historical forms. In the United States these include the Federal Executive (the President and his subordinates and administrative departments), the Federal legislative (Congress and the departments and commissions it creates), the Federal judiciary (from the Supreme Court down), the Federal army, navy, prisons; together with all the branches (executive, legislative, judicial, military, police) of the state, county, and municipal governments. These are all in a great variety of ways, part of the state apparatus. Their central and primary historical function is to assure the maintenance of capitalist property relations; that is, to uphold the class rule of the bourgeoisie.

It is only from an understanding of this basic function that a correct analysis can be made of the various actions and activities of the different subdivisions of the state apparatus.

The Reformist Approach

The approach of the Daily Worker and the Socialist Call, however, instead of proceeding from this basic analysis of the class struggle and the class role of the state, and thence going on to a detailed analysis of the particular acts in question (here the AAA decision), does just the opposite. They take the conflict between two subdivisions of the state apparatus (the Supreme Court on the one side, Roosevelt and Congress on the other) as primary; and consequently they totally obscure the basic class role which these two subdivisions share in common, and thus also obscure the fundamental class conflict of modern society.

In terms of their approach, the

Supreme Court Integral Part of the Capitalist State

Supreme Court is the representative of "Wall Street," of the "financial oligarchy," the "Tories." Congress, in conflict with the Supreme Court, is "the people's representative" (this is the Daily Worker's own phrase). We are, then, called on to support Congress against the Supreme Court, in order to make our will felt and to secure our "rights."

Denial of the Class Struggle

What follows? What follows is the denial of the revolutionary class struggle for workers' power, which is and must be the struggle not to win "control" over the existing state machinery, but a struggle against the existing state, a struggle to smash the present state—which is the instrument of bourgeois rule—and to erect in its place the revolutionary workers' state. What follows is social-democratic parliamentarism, gradualism, Kautskyism, all over again. In this manner does history take its revenge on the corruption of theory. The approach of the Communist Party and the Socialist Party to this problem—which is naturally not an isolated example—is part of the propagation of an anti-revolutionary ideology. In the case of the Communist Party it must be understood as one item in the preparation for the possibility of supporting Roosevelt in November—a possibility which will be realized if the Far Eastern crisis sufficiently deepens. Indeed, the current analyses and phrases of the C. P. can hardly be distinguished from those of the President.

Now Marxists do not believe that Congress is "the people's representative." They believe that Congress, like the Supreme Court, is part of the apparatus of bourgeois

state rule. They do not deny that genuine and bitter conflict can arise between Congress and the Supreme Court, or between any other subdivisions of the state apparatus, nor do they deny the necessity for interpreting and analyzing these conflicts, and attempting to use them where possible to the workers. But such conflicts, they point out, are never struggles between representatives of the working class or of "the people" on the one side, and representatives of the bourgeoisie on the other. There are always conflicts between different sections or groups within the bourgeoisie, sections which on the given issue have opposing needs and opposing ideas of how best to advance the basic bourgeois interests. In all cases, therefore, such conflicts are subordinate to the underlying class conflict, which cannot express itself directly within the bourgeois state apparatus.

How the "Founders" Reasoned

It was in this way that the "founders of our country," who reasoned more clearly about these matters than our present Stalinists, reformists and centrists, understood the complicated governmental forms which they established under the Constitution—that magically powerful document which they designed to legalize the power of property. The intricate "checks and balances" between the three branches of the Federal government and between the Federal government and the States, with the probability of frequent conflict which these contained, were meant by them not at all to "guarantee" democracy, but to make sure that what democracy there was would not get out of bounds. "Every institution," wrote

Hamilton, "calculated to restrain the excess of law-making and to keep things in the same state in which they happen to be at any given period was more likely to do good than harm."

Nor have the masters of American destiny ever been too much disturbed over legal fictions. They have understood that the central question is the question of class power, not institutional form, and they have consistently approached the Constitution, the Supreme Court, and the other branches of government in the light of that understanding. During the administrations of Washington and John Adams, for example, the Supreme Court played a minor role. The question of its "right" to invalidate acts of Congress or of States as unconstitutional, left ambiguous in the Constitution itself, was not openly raised. The Federalist party, representing the commercial, banking and industrial interests—that is, the progressive class at that historical stage—held control over the executive and legislative branches, and could keep the courts in the background.

The Jeffersonian Reaction

But the Jeffersonian reaction, swept on by the agrarian and planting interests, ousted the Federalists from the Presidency and Congress. The Federalists, consequently, defeated on one front, kept their grip on the Judiciary, and used the Supreme Court to continue the advance of their basic program. Through their Chief Justice, Marshall, they immediately proclaimed the power of the Supreme Court to pass on the constitutionality of laws (the case of Marbury vs. Madison). In a long series of bril-

liant decisions, Marshall maintained their position. But, it should be noted, the Federalists used the Supreme Court not to restrict the power of the Federal government, but to extend it, to enlarge its sphere of operation, and to establish its clear sovereignty over the States. The aims of the bourgeoisie could not be served without a strong national government.

But deaths on the Supreme Court bench and the Jacksonian movement altered the relationship of forces. By 1857 the Democrats, now openly and almost exclusively the party of the slave-holders, were in control of the Supreme Court, with Taney at its head. So, in the Dred Scott decision, the Supreme Court reversed the tradition of Marshall, and declared for "states' rights" against the Federal government. In actuality, of course, the decision was not for the legal fiction, "states' rights," but for the slave-holders: by its terms, the Court declared that Congress had no power to legislate concerning slavery. The Phillistines of those days thought that then the battle was over, and that the Northern industrialists had lost. Or, at most, they inveighed against the autocratic usurpation by the Supreme Court.

Judiciary and Class War

But the bourgeoisie was not going to let legal fictions block its historic road. Organized, in temporary alliance with the free Western farmers, into the new Republican party, it accepted the challenge: and fought out the issue of control of the state not in the judicial chambers, but on the field of battle. Neither the acts of Congress nor the decisions of the Court, but the Northern armies decided the basic class question—the question of which class, the bourgeoisie or the plantation owners, was to hold power. And this is the manner in which every class which means historic business settles the basic question.

The struggle which the working class faces at the present time, the struggle for power and for the overthrow of the bourgeoisie and its state, is not expressed in any direct way in the conflict between the New Deal (upheld by the President and Congress) and the Supreme Court. The struggle of the working class, in its political aspect, is a struggle against every branch and division of the state.

The conflict between the Supreme Court and Congress represents in part a conflict between different sections of the bourgeoisie, in part a bureaucratic contest for control of the immense and highly lucrative governmental apparatus. The AAA decision is perhaps chiefly important for re-emphasizing the fact that the New Deal was merely a series of temporary devices to tide capitalism over a dangerous spot; and that, with profits now mounting, it has outlived its usefulness. The Supreme Court, by a reasonable division of labor, is given the job of undertaker. For Roosevelt, the New Deal remains now as pure demagoguery—as a series of agitation phrases wholly divorced from social reality, with the help of which he hopes to retain enough of middle-class and labor sentiment to enable him to secure re-election.

Playing Reaction's Game

To build up and emphasize, as the Communist party and the Socialist party are doing, a large scale campaign to curb the Supreme Court plays into the hands of reaction. It is not that the demand to curb the court is in itself wrong. Indeed, it would be on the whole a

gain if it were accomplished. The Court is an additional barrier against even partial immediate demands of the masses—as the Schechter and AAA decisions in their "restrictive" interpretations of the "interstate commerce" and "general welfare" clauses, interpretations which can be applied directly against any social security or public works acts—serve to bring out.

Nevertheless, such a parliamentary demand as the curbing of the Supreme Court should have only a minor and secondary place in the agitation and practical program of a revolutionary working-class party. Otherwise it serves to disorient and deceive the masses, and to turn them aside from more important tasks. It is the business of the revolutionary party not to foster but to smash parliamentary illusions; not to suggest the possibility of reforming the bourgeois state, but to make clear, in the living experience of the masses, the necessity for destroying that state and of setting up in its place a new state, the workers' state. The prime reason why a revolutionary party enters into parliamentary campaigns is to bring its own full revolutionary program openly before the masses. Its parliamentary representatives sit not to win "victories" for the workers in Congress or the Courts—which, even on the smallest scale, is increasingly illusory in the decline of capitalism—but to expose the inner workings of the bourgeois state machinery before the eyes of the masses. Revolutionists utilize bourgeois parliamentarism as one means for destroying bourgeois parliamentarism.

Parliamentary Activity Supplementary

Parliamentary activity of all kinds must remain only supplementary to the basic work of promoting and strengthening the basic organizations of the masses. The poor farmers must look first not to Congress and the Supreme Court but to their unions, cooperatives, leagues, and demonstrations, for benefits and relief. The workers will have the "right" to organize when they take that right through the independent strength of their trade unions, and cease expecting it to be handed down from on high by "favorable decisions." The one effective "curb" of the Supreme Court is, precisely—the organized strength of the masses.

The real business of the revolutionary party is the organization of the working class and its allies for the conquest of power. Every immediate demand, every particular campaign, is correct, is justified, only so far as, in its historical implications, it aids in this central task; and is on every occasion to be condemned insofar as it turns the class aside from the road to power.

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PLOWING UNDER THE AAA

(Continued from Page 1)

William Z. Foster and Earl Browder. It was headed: "Sweep Away the Autocratic Power of the Supreme Court."

This manifesto has created a furore among those few Stalinists who retain remnants of Marx and Lenin's teachings and still recall the Stalinist arguments of yesterday. Well it might! Such a wholesale burial of its professed principles by a working class party without so much as a funeral oration, such an open dumping overboard of all its traditions has never before been seen in the political history of the labor movement. In this declaration, the American Communist party completely breaks with its past and goes over without concealment or equivocation to the worm-eaten platform of liberal reformism.

This is indicated at the very beginning of the manifesto, which acknowledges that "the Communist party criticized the AAA because of its produce destruction program, because it helped to raise the cost of living, because it helped mainly the rich." This is by no means the whole reactionary essence of the AAA but it will do so far as it goes. What follows? Does the C. P. still condemn the AAA and the Roosevelt administration that put it through? Quite the contrary.

They concentrate their attack, not upon the AAA and its authors, but upon the Supreme Court which killed it. What reasons do they give for thus reversing their position? Listen, O ye faithful! "The Communist party now fights the Supreme Court decision because it deprives the farmers of the little aid they received from the AAA, because the Supreme Court decision outlaws any attempt on the part of the people to fight Wall Street, because this decision would still further help the rich at the expense of the poor."

What is the substance of such arguments? First, the rich farmers, together with the banks, insurance companies, and corporations are now deprived of their subsidies from the AAA, paid for with the blood of the masses. They must, therefore, be continued. Second, the enemy of the working class is not capitalism and all its institutions, but only the Wall Street financiers and their judicial stronghold. Third, although the AAA is one of the most cunning and efficient instruments of destruction and extortion devised by the Democratic agents of the ruling class, it must be defended because the ultra-reactionary Liberty Leaguers who oppose it may invent a worse one. This is "the policy of the lesser evil" with a vengeance. On this ground every action of the Roosevelt regime can be justified—and probably soon will be, if we read the signs aright.

Once the first step is taken, the

descent to the Avernus of utter opportunism is easy. Having become the supporters of the Roosevelt farm program against the ultra-reactionaries, the Stalinists go further. They call upon Roosevelt himself to make good his speeches, and, as father of the AAA, to protect his offspring against "the autocracy of the Supreme Court" and to take up the struggle against "entrenched greed." "Mr. President," they shout, "repeal the Ruling."

What is the most elementary principle of Marxism? The state is the executive committee of the ruling class. The head of the state acts as chairman of that committee. To ask or to expect that any officer of the bourgeois state will carry on a real struggle against his masters and their institutions is to put one's faith in miracles. This is the simplest A.B.C. of revolutionary doctrine. And the Stalinists today flout it without a word of explanation or apology. Could betrayal be more absolute?

Anyone who knows anything about the history of American politics is aware that the tripartite division of the governmental apparatus into the parliamentary, presidential, and judicial arms was expressly designed by the ruling classes to strangle the expression of the popular will

Rewriting American History

Every one of the examples they cite are false and misleading. "Lincoln did not recognize the Dred Scott decision." The truth is that he criticized it before becoming President and obeyed it until the Civil War broke out. "He led the people into the Civil War to wipe out slavery." What an idealization and falsification of history. Lincoln led the people into the Civil War to wipe out the power of the slaveholders and conquer power for the bourgeoisie—and was finally, after much hesitation, forced to emancipate the slaves to accomplish these ends. "President Jackson, the great Democrat," they continue in the vein of a speech by Postmaster Farley, "refused to recognize Supreme Court decisions." Jackson was a slaveholder and a servant of slaveholders, just as Roosevelt is a political servant of the wage slave-holders of capitalism. He did ignore a Supreme Court decision—when the court attempted to protect the lands of the Cherokee Indians against their seizure by the Georgia slaveholders! "President Grant increased the membership of the court to change a Supreme Court decision."—He did so to valorize the paper money issued during the Civil War and held by the financial aristocracy!

These people, who now vie with the Liberty League and Hearst in posing as defenders of the Constitution, echo the old cry of the petty-bourgeois liberals: "The Constitution does not give the Supreme Court the right to declare laws passed by Congress unconstitutional." But this cry has no historical foundation. Although the powers

and to safeguard the property and privileges of the rulers of the Republic. The executive and the judicial branches, as checks upon the larger and more representative Congress (capitalist control over which is somewhat more difficult), divide the labor of carrying out the orders of the ruling class. The Supreme Court's power to declare laws unconstitutional is simply a modification and magnification of the President's veto power. However loudly they bellowed, no President and no bourgeois politician has ever dared to fight anything but sham battles with the Supreme Court, the principal legal pillar of the existing order and the Holy of Holies of American bourgeois democracy.

But, having called upon to lead the masses in a crusade for "the restoration of popular government," the Stalinists find it necessary to prove that previous presidents have successfully fought the autocracy of the Supreme Court and that popular government once existed in the United States. They proceed to rewrite American history as follows: "The history of our country shows that Presidents who really meant to fight autocracy (1) repudiated reactionary decisions of the supreme autocrats of the country,"

of the Supreme Court are only vaguely defined, judicial supremacy is in no respect precluded, and the records of the Constitutional Convention, as Charles A. Beard has proven, show the court was to have such power. The Supreme Court has exercised this right without restriction since the days of John Marshall, and will continue to exercise it so long as bourgeois democracy survives in this country. These pitiful wretches complain: "The Supreme Court has usurped its powers." But the Supreme Court is not alone in that. So has the President, and, even more, so has the entire power of the state been usurped by the capitalist class from the masses of the people. The Supreme Court is one of their agencies of domination; the Presidency is another. Revolutionists will get rid of these usurpers by overthrowing them altogether.

But how do these people propose to uproot the reactionary power of the Supreme Court? By constitutional amendment, no less. A noble enterprise, indeed! Let us pull out the teeth of the capitalist tiger with a pair of sugar-tongs.

If Roosevelt won't turn the trick (and it is apparent that they either half-hope he will, or at least wish their duped following to believe he could do so) then a Farmer-Labor government will. The Farmer-Labor government will presumably abolish all the evils of capitalism, if not capitalism itself. Among the other things it would do, according to this manifesto, is to "use the army and National Guard to protect the workers against the violent strike-breaking activities of the scabs and

thugs of the manufacturers; and not to shoot down workers striking for a living wage." In Minneapolis there is a Farmer-Labor mayor named Latimer. Recently his police killed two strikers at the Strut-west plant and wounded over 20 more. But the Stalinists forget this little experience along with the whole history of the strike-breaking role of reformist governments.

The Stalinist manifesto concludes with the following appeal. "All progressive, liberal, and radical forces in the country must unite in a common front against the common enemy—Wall Street." Here the erasing of all class lines is as plain as the nose on one's face. The main enemy is no longer capitalism, but its incarnation, the devil of Wall Street. Throughout the whole manifesto there is not the least hint that there exists an economic system of slavery called capitalism that is responsible for the evils under which we suffer. Nothing there that has not been said, and said better, in the past century by hundreds of liberal and petty-bourgeois politicians!

One stands aghast before this spectacle of complete capitulation to the most vulgar petty bourgeois reformism. Every trace of class consciousness has been expunged from this Stalinist document. Not a phrase that any infuriated petty bourgeois could not subscribe to with both hands, and that will not be uttered time and again by political demagogues of the Democratic party. The Stalinists are not inconsistent in demanding that Roosevelt lead them in a struggle against the reactionaries. Nor will it be inconsistent with their present policy if they support Roosevelt in the coming elections. For the position represented in this official document alone is indistinguishable from that of the left wing of the Democratic party, which is still, we hope they will admit, a capitalist party.

What do those honest workers and revolutionists who still remain in the ranks of the Stalinist party think of such a line? Surely there are still some among them who are class-conscious enough to recognize this surrender of the first principles of Marxism and draw a few conclusions from it.

The leaders of the party who have issued this document, and who slavishly repeat today the threadbare phrases of petty bourgeois radicalism, condemning the Supreme Court for its usurpation of power, are themselves the greatest of usurpers. They have usurped the title of Communists, the name of revolutionist, the traditions of Marx and Lenin. Workers, learn to distrust such charlatans, who masquerade in the borrowed costumes of Communism. They are your greatest enemies. They cannot and will not defend your interests. They will inevitably betray you as lightly as they have here betrayed the principles of Communism.

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