

The US Supreme Court and religion

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The US Supreme Court last week handed down two decisions upholding the “religious liberty” of corporations and other institutions. These rulings, deeply reactionary on multiple levels, signal a more aggressive repudiation of the country’s democratic and secular traditions.

On June 30, in a case entitled *Burwell v. Hobby Lobby*, the Supreme Court decided that the Affordable Care Act (also known as Obamacare) violated the “religious liberty” of Hobby Lobby, a “Christian corporation,” because under the law the company’s female employees would receive insurance coverage for birth control. A few days later, the Supreme Court in *Wheaton College v. Burwell* held that being required to fill out a one-page government form violated the “religious liberty” of the Christian college, which should be able to opt out of the health care law’s contraception mandate simply by sending a letter.

The two decisions, taken together, are a direct assault on the Establishment Clause, which appears at the very beginning of the First Amendment to the US Constitution, and is consequently the very first democratic principle laid down in the Bill of Rights—the first ten constitutional amendments, collectively ratified in 1791.

The First Amendment begins: “Congress shall make no law respecting an establishment of religion.” As Thomas Jefferson famously wrote, the purpose of the Establishment Clause was to build “a wall of separation between Church and State.”

This clear and far-sighted clause, profoundly radical in its time, reflects the best traditions of the Enlightenment, the intellectual movement that articulated the democratic outlook of the bourgeoisie when it was a young and revolutionary class in struggle against the old feudal aristocracy. By unequivocally laying down a secular foundation for the new republic, the American revolutionaries were responding to centuries of religious wars that had plagued Europe.

They were seeking to encourage free thought at the expense of ignorance and superstition and to bury forever the doctrine of the “divine right of kings.” They sought to found the republic not upon race, ethnicity, language or religion but upon common ideas: equality, democracy, tolerance and secularism.

It took a bloody, four-year Civil War (1861-1865)—a Second American Revolution—to defend these principles and extend their reach by defeating the Southern plantation aristocracy and abolishing slavery. The democratic concepts laid down in the Declaration of Independence and the Bill of Rights have provided the ideological glue—despite gaping discrepancies between theory and practice—that has held the United States together ever since.

As recently as 1960, John F. Kennedy, during the campaign that resulted in his becoming the first Catholic president, famously appealed to these conceptions: “I believe in an America where the separation of church and state is absolute,” he declared.

The Supreme Court’s recent decisions essentially elevate religion over established constitutional principles, allowing the private religious views of an employer to trump the rights of the employer’s workforce. Having thus despoiled one of the basic principles on which the United States was founded, what does the ruling class have to replace it with? On this path lies the fracturing of the country and the growth of sectarian conflict.

In the week since the *Hobby Lobby* decision, corporations are lining up to unleash a torrent of new lawsuits demanding to opt out of laws on the basis of private religious beliefs. There is no limit to the precedent set by the Supreme Court’s decisions. If the provision of contraception to women violates the “religious liberty” of Hobby Lobby, then what about the “religious liberty” of Scientologists who object to any form of psychiatric treatment, or those Christian fundamentalists who object to all medical care

whatsoever?

The *Hobby Lobby* and *Wheaton College* decisions herald the return of even more sinister “rights” of employers. After all, it was once the case that proprietors claimed the “right” to exclude Jews, or the “right” to refuse to serve blacks, or the “right” to refuse to hire or promote women. “It is my private property,” the proprietor would say, “I have the right to do what I want with it.” By upholding the employer’s supposed “right” to deny health care to women, the Supreme Court invites an attack on every democratic reform that was achieved over the past century.

With *Hobby Lobby*, the Supreme Court managed, in one decision, to combine a blow to the principle of separation of church and state with an expansion of the doctrine of “corporate constitutional rights” and an attack on women’s right to privacy. The notion that a corporation is entitled to “religious liberty” is absurd on its face. While the Supreme Court discovers new “rights” in the Constitution for corporations and employers, the actual rights that the Bill of Rights sought to confer on the population are trampled on a daily basis: the Obama administration issues and carries out death warrants on US citizens, militarized police forces roam the streets shooting to kill, and a massive spying apparatus logs every private detail.

As in many recent Supreme Court decisions, the justices started out with the desired conclusion and worked backwards with no genuine regard for the law or legal precedent. The decisions reflect the contempt for legality that permeates everything the ruling class does. While long periods of incarceration are prescribed for the most minor offenses in America, the political establishment and the financial oligarchy themselves operate with utter lawlessness. International law, domestic law, the Constitution, the Bill of Rights, banking and securities regulations, environmental regulations, health and safety laws, state constitutions—the law is simply ignored when it conflicts with what they are doing.

Immediate responsibility for the rulings does not rest exclusively with the Supreme Court’s right-wing majority. It was, in fact, the Obama administration—not the Supreme Court—that first granted religiously affiliated non-profit corporations the ability to opt out of the contraceptive mandate in the health care law. These cowardly concessions were compounded by the

administration’s refusal to raise the Establishment Clause in defense of the mandate. The right-wing majority simply seized upon what the Obama administration deferentially handed them on a silver platter.

The American ruling class is breaking from any connection to its democratic and (in the more distant past) revolutionary traditions. Everywhere, social and democratic gains are under ferocious attack. This process cannot be understood outside of an examination of the massive growth of social inequality and the crisis of the capitalist system that is producing it.

Over the recent period, the overwhelming majority of the world’s population has seen its living standards stagnate and decline. Meanwhile, through various methods—many of them purely criminal—a tiny collection of financial aristocrats has vastly increased its wealth and influence. These same aristocrats turn to one another and say, “The pitchforks are coming.” Fear of the population—and of a popular movement against capitalism and inequality—explains the buildup of the machinery of repression, the militarization of the police, the massive domestic spying apparatus, and the collapse of democracy and the rule of law.

“The bourgeoisie has shamefully betrayed all the traditions of its historical youth,” Trotsky wrote, “and its present hirelings dishonor the graves of its ancestors and scoff at the ashes of its ideals.” The principles associated with the democratic revolutions of an earlier period can be carried forward today only as part of a struggle led by the working class and based on the higher principle of the unification of the world’s oppressed in the fight for socialism.

Tom Carter

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