

## **The US Supreme Court and the US Constitution**

President Barack Obama made his first appointment to the US Supreme Court several weeks ago. Under the US Constitution, this appointment had to then be confirmed by the US Senate, which held hearings last week. The appointee was Sonia Sotomayor, and much was made of the fact that she is the first Latina woman appointed to this position.

### **“Separation of Powers”**

The entire process of appointment and confirmation to this powerful position is significant. A long-held tenet of capitalist democracy is the “separation of the powers” of the different branches of the government, and this was written into the US Constitution. The reason for it can be seen in the comment of the first president of the United States, George Washington, who said “the tumultuous populace of the large cities (i.e. the working class) are ever to be dreaded.” James Madison, a driving force behind the writing of the US Constitution, explained the problem as being “to secure the public good and private (property) rights... and at the same time preserve the spirit and the form of popular government.” In other words, how can a government be founded that will have enough democratic trappings to be acceptable to the masses, but still be structured in such a way as to guarantee the interests of the property owners?

It was thus that the three different branches of the government – executive (president), legislative, and judicial – were established. If the dreaded masses ever got their hands on one of these branches, say the presidency, the other branches could hold it in check. Since US Supreme Court judges are in office for life, extra care has to be taken in selecting them. Thus it is that the president appoints them, but the Senate has veto power over the appointment.

(It should be noted that in Venezuela, as President Chavez tries to push through radical steps such as nationalizing certain industries, the court has been used to try to stop this. Chavez has responded by “packing” the court – appointing extra judges who are sympathetic to his radical politics. This is one means of partially overcoming the limitations of capitalist democracy.)

### **Sotomayor**

Who is this Sonia Sotomayor – this “wise Latina woman” as she implicitly described her own self? To start with, as the Wall St. Journal reported, the “business community” has no problems with her appointment. As with almost all top judges nowadays, she is a former prosecutor. This is significant, especially in a time of increasingly repressive laws and decreased rights of those being prosecuted by the government. One case shows her bias:

When she was sitting on a lower court as a judge, the case of Jeffrey Deskovic came before her. Deskovic had been convicted of rape at 16 years of age. The conviction was based on a confession forced out of him by the police. Years after his conviction, DNA testing was developed, and through this he was shown to be not-guilty. He appealed his case and it came before Sotomayor. Due to faulty instructions by a court clerk, his papers

were filed four days late. Sotomayor threw out the appeal based on this petty detail. Eventually, he won his appeal and was freed, but he had to rot in prison for four additional years, due to Sotomayor's vindictive ruling. Deskovic asked to appear at the hearings for Sotomayor, but none of the Senators wanted this side of her to be exposed.

### **“Fidelity to the Law”**

Instead, what dominated the hearings were her repeated statements that “I have one judicial philosophy, and that is that I’m ruled by the fidelity to the law.”

But what is “the law”? The framers of the US Constitution have made it perfectly clear that it is in the last analysis a power meant to protect the property and the profits of the capitalist class (and of the slave owners at the time of the writing of the Constitution). Not only that, but contrary to everything that was said at those hearings, both the various laws as well as the Constitution itself are interpreted based on the balance of class forces of the time. Or, as Karl Marx put it, the law is the expression of established fact. When the US working class was a small and unorganized force, the law established that any attempt of workers to organize and strike to force the employers to pay higher wages was an illegal restraint on trade. Then, when the working class became larger and more powerful, and when it was no longer possible to outlaw such activities, the law changed. In the same way, interpretations of the US Constitution change as the material conditions change.

When judges enter the court, wearing their long black robe, their entire presence is meant to convey the impression that they are a force above society, a force that dispenses “justice” in an even-handed manner, without considering the economic interests – the *class* interests of any of the parties. The main function of the confirmation hearings for Sotomayor was to further this lie.

For the working class to rule society, it will have to do so through a government that serves all functions at the same time. This is so because the working class is much larger and more dispersed than is the capitalist class, and as a result its will is more easily diverted. By combining the planning of the economy with the establishment of new laws as well as their enforcement, the working class will be able to run society in its interests, rather than those of a tiny, rich and privileged minority.