

EDITORIAL

THE DISSENTING OPINION.

By DANIEL DE LEON

“**B**OW to the sanctity of the Law!” “The highest Court of the land has spoken, bow to the Law!”—so runs the cry of the capitalist press as itself “humbly bows,” now that the Supreme Court of the United States has denied the application of Moyer, Haywood and Pettibone to be discharged upon habeas corpus. We suspect the “humility” of the bow that the Working Class are urged to emulate. We are not unacquainted with the sort of “reverence for the Law” that the capitalist is fired with when decisions do not suit his craw. It is the reverence of the pagan for the fetich that does not hearken to his importunities. The dissatisfied pagan cuffs and kicks his fetich: the dissatisfied capitalist flays the “Law,” impeaches the Judge, or seeks his removal in other ways, or packs the Court to suit himself. Us seems the capitalist press is “protesting too much.” On looking below the surface the cause is quickly ascertained. It is not simply a case of regulation hypocrisy prompting the present affectation of humility. The reason, anxiously suppressed, is that there is a DISSENTING OPINION which knocks spots out of the majority. “Law” being “holy,” and “holiness” being a matter of quality, not quantity, one “holiness” is as good as a dozen. Hence the extra “bows” with which the capitalist press seeks to draw attention away from and hush the voice of the dissenting Justice.

Indeed, the dissenting opinion of Justice McKenna knocks spots out of the opinion of his colleagues. The dissenting opinion is published in full elsewhere in this issue.¹ Every word thereof should be read carefully.

The gist of the opinion of the majority of the Court is that when a State holds a citizen in actual custody, it matters not how the custody was obtained, whether by

¹ [To be appended at a future date.—R.B.]

kidnapping or otherwise; and the point is backed up by decisions on cases where the prisoner was kidnapped by private individuals. The gist of the dissenting opinion is that “kidnapping is a crime, pure and simple,” which “all the officers of law are supposed to be on guard against,” and “may be invoked against”; that the cases cited are inapplicable; that the State might preserve jurisdiction over a prisoner brought within its jurisdiction by the criminal act of kidnapping, perpetrated by an individual, but that it is otherwise when the State itself is the offender, and the States of Idaho and Colorado being themselves the offenders in this case, they can not be upheld in their own wrongdoing. Drawing the comparison and contrast between individual and official kidnapping, Justice McKenna says: “No individual or individuals could have accomplished what the power of the two States accomplished; no individual or individuals could have commanded the means of success; could have made two arrests of prominent citizens by invading their homes; could have commanded the resources of jails, armed guards and special trains; could have successfully timed all acts to prevent inquiry and judicial interference.” Finally, the dissenting opinion proves that the right of the prisoners in this instance “is the right of personal liberty in its most complete sense,” and the vow is uttered that “it is to be hoped that our criminal jurisprudence will not need for its efficient administration the destruction of either the right or the means to enforce it.”

Vain hope! Capitalist Society is on the rocks. It has shattered Civic Rights through its economic despotism; along with such Rights the means to enforce them are dashed.

’Tis not THE LAW that spoke through the mouth of the majority of the Supreme Court; what spoke was FORCE.

’Tis not THE LAW that we must now bow to, what bends our bow is FORCE.

The majority of the Supreme Court of the United States has affixed its official seal to the fact that the Class Struggle between the Capitalist Class and the Working Class has reached the acute point where Society is de facto dissolved, and man is thrown back to the primitive stage where FORCE is the arbiter.

The majority of the Supreme Court of the United States has affixed its official seal to another vital fact—the torch of Progress has passed from the hand of the Capitalist to the hand of the Working Class: IT NOW LIES WITH THE WORKING

CLASS TO SAVE CIVILIZATION.

Transcribed and edited by Robert Bills for the official Web site of the Socialist Labor Party of America.
Uploaded June 2009

slpns@slp.org