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**The Crisis in the Rule of Law in the
Contemporary American Context**

A Report

Abstract

The article is a critical examination of the crisis in the rule of law in the context of contemporary politics in the USA. It sorts out some examples of American national and foreign policy regarding the so called 'cult of democracy'. The article is divided in two parts. The first part consists of the report, which concerns, respectively, official US government relationships to international law; the power of the Presidency; and the role of the Supreme Court. The second part examines some philosophical implications of American policy, concerning the questions of democracy and the rule of law.

Key words

Rule of law, cult of 'democracy', American policy, crisis, philosophical implications

Note: This article was prepared in mid-2007, when the Bush Administration was still firmly in power. Many things began to change with the election of Barack Obama in late 2008 and his inauguration as President in January 2009. I hope that the changes, in the very areas with which this article is concerned, will be considerable, especially in light of Obama's professional experience as a Constitutional lawyer; we shall see. In any case, what was happening in 2007, and can happen again in the future, needs to be remembered, not forgotten or discounted as mere aberration; and so I see no reason to alter what I wrote then, as long as readers do not lose sight of the historical context.

Famously, the United States of America, the country of which I am a citizen, has been considered a model democracy – perhaps, for many Europeans especially, *the* model democracy at certain points in history. Although, with a few exceptions, most of those who wrote about it did not pretend that this democracy was flawless – take Tocqueville in the 19th century and Gunnar Myrdal in the 20th as good examples – there was a strong popular current, particularly in Europe, that wildly idealized various aspects of America, not only its riches but also, often enough, its democratic institutions. This was, it should never be forgotten, a country in which slavery was still sanctioned and practiced less than 150 years ago, and in which there was long-term genocide on a grand scale directed against the indigenous population; but it was also a country with very strong populist and anti-monarchical values, and in these respects it constituted a great contrast, during its first century or so of independent existence, with most of Europe and Asia.

In tandem with the cult of democracy, meaning popular rule of some sort, there have existed in the United States two other tendencies, related to but not necessarily always completely congruent with it, namely, respect for the rule of law and the legal, Constitutional protection of human rights. Abraham Lincoln famously said, “Let reverence for the law be the political religion of the nation” – even though, as President during the bloody and brutal Civil War, he felt compelled to curtail certain rights by, for example, temporarily suspending the so-called writ of *habeas corpus*, which is designed to guarantee fair judicial procedure in the case of a person accused of a crime. It is not merely a conceptual point, but also an empirical fact, that democracy conceived as the popular will of a majority may and sometimes does come into sharp conflict with those aspects of the rule of law that are concerned with guaranteeing the rights of individuals – rights to, among many other things, a fair trial; in other words, majorities are all too often eager to abrogate the rights of those minorities that they dislike. Political philosophers and philosophers of law are of course well aware of this potential, and often actual, conflict. And so the rule of law and human rights must always be invoked along with democracy in assessing the worth of any regime that is proposed as a political model.

Most politically informed citizens throughout the world – a category from which, I am sorry to say, an astonishingly high percentage of Americans is excluded – are aware that the historical image of the United States as I have depicted it has recently been severely tarnished, as measured by opinion polls in most, though not quite all, other countries. What lies behind this devolution of the American image in world public opinion? Anyone with the slightest awareness of world affairs will immediately point to the terrible fiasco that the invasion and occupation of Iraq has been. It was carried out in a climate of deliberate deception on a grand scale by the American President and other members of the Executive Branch of the government; with an arrogance and brutality that will go down in the electronic archives of history (in that future time when, if the human race survives extinction by nuclear or environmental catastrophe, history *books* will have become obsolete) as exceptionally shocking and devoid of humanity; and undertaken for vague purposes, the formulation of which was and still is constantly shifting, but that certainly included, at the very least, the appropriation of a large share of Iraq’s oil resources by American petroleum interests. It is my strong belief that no serious and informed person of good faith can honestly take exception to the truth of what I have just said, even though some will no doubt think that I have expressed it too harshly. Many of these same individuals are no doubt inclined to think that the Iraq misadventure was merely an aberration – a spectacular aberration, to be sure, but not symptomatic of a deeper, metastatic cancer within the American political structure. I wish that they were right, and everything that I write in this area has as its secondary aim to promote a radical self-correction in the evolution of the American political system that will make the Iraq invasion and many related phenomena that I intend to discuss here appear, in the future, to have indeed been just a long, terrible aberration. But my principal goal, as a philosopher, is to get to the truth of these matters as they are related to the larger issues of democracy, the rule of law, and human rights. In order to do this, I will have to enter into considerable detail both concerning certain actual developments over the past several years that affect the American Constitutional structure and certain complexities of that structure. That is why I have sub-titled this paper “A Report”. What I then wish to do in my brief Part 2 is to relate these developments to a much larger theme which might be called the crisis of liberal democracy itself, at least in its historically paradig-

matic American form. In doing this, I would like at least to raise the question as to whether one of my favorite sentences from Aristotle, a pun, “εν ή αρχη γαρ γινεται τα άμαρτημα” – the error was generated in the beginning, or, alternatively, in the form of regime – may not be applicable to that supposed model itself, the American Constitution of 1789.

I. The Report

The first and longer part of this paper, the report proper, will be divided into three sections, which together, even though each of them will be very broad, will not be adequate to convey the full scope of the attacks on what had previously been assumed to be practices in accordance with the rule of law in the United States: (1) the relationship to international law; (2) the powers of the Presidency; (3) the role of the Supreme Court.

1. *The Relationship to International Law*

The first word that comes to everyone’s lips in this regard is Guantánamo. Let me just recall what the function of that camp for hundreds of prisoners, almost all of them from the Middle East or at least captured *in* the Middle East, has been. Its existence has allowed the United States government – meaning the Department of Defense and the Central Intelligence Agency combined, both ultimately under the control of the President – to detain these prisoners indefinitely, in most cases without specific charges having been brought against them. (In a couple of recent cases there has been some semblance of a trial in a military court, but in a special military court that does not follow even the strict, severe rules of military justice, which at least purport to treat the accused with *some* elements of fairness, such as permitting him to see all the evidence against him and to confront his accusers. Quite recently some high-ranking officers in the U.S. military justice system, known as the J.A.G. or Judge Advocate General, have denounced these procedures as not being legitimate within the rules of that system itself.) The Bush Administration gave the Guantánamo prisoners a special, newly-coined label, “enemy combatants”, and by virtue of that label proceeded to exclude them from the protections accorded to prisoners both under ordinary criminal law, because they had been combatants, and of military law, because they had not been soldiers in the strict sense. Moreover, in order to assure their being exempt from any laws that might, by some court or other, be deemed applicable to all human beings living within the territory of the United States, they have been confined in a camp which, while it is completely under American control under a very long-term lease agreement made decades ago, is technically (as well as geographically, of course) part of the territory of Cuba – a country toward which the United States government has been very hostile for over 35 years, but the existence of which has proved useful under these circumstances. It is no wonder, then, that my former student and friend David Luban, a professor at Georgetown University Law School, has written an article about this situation to which he has given the title “The War on Terrorism and the End of Human Rights” [*Philosophy & Public Policy Quarterly* 22, 3 (summer 2002)]. It would be difficult to conjure up, in one’s imagination, a more astonishing combination of cynicism, contempt for what the writers of the American *Declaration of Independence* called “the opinion of mankind”, disdain for international law – as we know, the person who was one of the strongest original advocates of this policy, who has since become the Attorney General of the

United States, Alberto Gonzáles, said that the Geneva Convention rules had become “quaint” and antiquated – and, at the same time, a legalistic attention to exact wording designed to make the claim that no rules of international law were actually being violated. Not being protected by any rules assuring their rights, the Guantánamo prisoners have been placed in the very situation of *homines sacri* described by Giorgio Agámben, subject to deprivations and tortures at the pleasure of their captors – and that is just the situation that the Bush Administration desired.

And so the situation still remains, despite a recent pronouncement officially prohibiting the torture of prisoners, or at least purporting to do so. This long-awaited pronouncement, published on a Friday afternoon in mid-July when it was known that there would be minimal attention from the media, did not specify, at least in its non-secret portions, just what “torture” was understood to mean; the interpretation of its meaning was still to be left up to the government. In particular, spokesmen for the government explicitly refused to say whether the dreaded technique of “waterboarding”, by which the prisoner is made to feel that he is drowning, would henceforth be prohibited or would still be permitted. Thus the current American Administration, under the guise of fighting alleged “terrorists”, whom it implicitly presumes to be in some sense sub-human (even though these individuals have not been formally found guilty of any crimes, and some of them may well not be guilty of any crimes at all), has taken the position that it can continue to flaunt basic human rights standards guaranteed by international law. Moreover, if we look to the future, it should be noted that none of the nine officially declared Republican Party candidates, as of early August 2007, for the next President of the United States – three of whom, by the way, reject Darwinian evolution and believe in an absolutely literal acceptance of the Biblical account of the creation of the world – was willing to disagree with this policy of the present Administration. This is not a pretty picture.

I have focused thus far on the issue of human rights, and especially the rights of prisoners; but there is a more general attitude of contempt for international law, both its letter and its spirit, that pervades the present United States government. Of course, it is a *selective* contempt: if this government believes that some elements of international law will work to its perceived advantage, it will endorse those elements. But the notorious decision of the Reagan Administration not to accept the finding of the International Court in The Hague to the effect that it had seriously violated international law by mining the harbor of Managua, an action that it took because it did not like the government that was then in place in Nicaragua, foreshadowed many recent instances in which the United States government has insisted in the clearest terms that it is bound only by those parts of international law that it chooses to accept, and that it does not consider itself to be bound absolutely even by the principle *pacta sunt servanda*. These instances include its refusal to sign treaties on global warming, on the establishment of an international criminal court, and on the prohibition of land mines, as well as the repudiation of the nuclear weapons treaty that Reagan himself had helped bring about. Nor should the world forget, as I fear it already has in large measure, the utterly disgraceful behavior of the Bush Administration *vis-à-vis* the world community as it sought prior approval from the United Nations Security Council to attack Iraq in 2003, combining threats to delegations from smaller United Nations countries with wiretapping their conversations and deliberate lying to everyone on a grand scale. It is clear that the attitude of contempt of which I have spoken is directed not only at the “quaint” structures of international law but at the

international community itself. Please do not forget that it is official American policy, included in this government's written and published strategic plan, that it reserves the right to attack any country it pleases, at any time, on the basis even of a perceived possible future threat from that country.

2. *The Powers of the Presidency*

There is a principle, or more correctly a slogan, called “executive privilege” that has been invoked by American Presidents with ever-increasing frequency over the past half-century in order to conceal their activities and the activities of their staffs both from the Congress and, *eo ipso*, from the people. This claim of executive privilege, which is to be found nowhere in the United States Constitution itself, has been made with great frequency by the present Administration, which has gone so far as to claim that even past members of the Presidential staff who are no longer part of it must still refuse to answer questions in formal Congressional inquiries if so ordered by the President. The current Vice-President, Mr. Cheney, a very strong proponent of secrecy, has claimed not only that all of his conversations in the office of Vice-President are privileged, but indeed that he has special additional privileges stemming from the fact that it is his Constitutionally-mandated obligation to preside over meetings of the Senate, thus making him at once a part of two of the three branches of government. This has led to some humorous comments about his pretending to be in fact a fourth branch all by himself. But there is nothing humorous about the general trend, which has been unequivocally in the direction of what is commonly called an “imperial Presidency”, a trend that had been thought to have been reversed to some extent after the disgrace and fall of President Nixon, but that has now become, in many respects, stronger than ever before. There are certain ways in which this trend has moved beyond mere individual instances of over-reaching, which could be considered merely interesting and troubling *faits divers*, of great current interest but not necessarily philosophically significant, to a level at which it raises the most profound questions about the nature of government, law, rights, and power. Bush, in his typically simplistic way, has enunciated his own self-image, as President, very clearly: “I am the decider.” He further asserted that his victory in the election of 2004 gave him an additional mandate to continue to govern in this highly authoritarian way – gave him more political “capital”, as he put it – an assertion that was somewhat diminished by his party's defeat in 2006; but his belief in himself as “decider” – a very uncommon English word, by the way – has much deeper roots than contingent facts such as these. It stems in part from his religious convictions, which I do not have the time to explore in this paper, and in part from a certain quite bizarre understanding, at least in terms of past tradition, of what it means (a) to sign a bill into law and (b) to be Commander-in-Chief of the Armed Forces.

(a) Although, as is the case for many of the other developments that I am cataloguing in this report, there have been some historical precedents for what the current President does when he signs bills into law, the practice to which I about to refer has become much more extensive and commonplace during his reign. The practice in question is to have the President attach, along with his signature, an explanation of just how he plans to *interpret* the law that he is signing. These interpretations have sometimes been significantly at odds with what the majority of Congress who voted for it intended. It is highly paradoxical for one who pretends to take a real-

ist, objectivist view of truth and to have the greatest admiration – a point to which I shall return later – for those members of the Supreme Court who are known as “literalists”, treating the text of the Constitution as if it were like Sacred Scripture (by contrast with postmodernist skeptics with regard to the supposed objectivity of texts), to place so much emphasis on his alleged right to interpret the laws as he pleases. This helps to explain why Bush never vetoed a bill during his first six years in office, when in any case his own party was in command of Congress and disagreements between the majority in the latter and the President were relatively few, but more importantly it resurrects deep doubts, which have always lurked beneath the surface throughout the history of governments of this kind, about the ultimate viability of the so-called “separation of powers”. According to this doctrine, so long accepted by most political thinkers, the fundamental function of the Executive Branch is by definition to execute the laws legislated by the Legislative Branch. But suppose that the Chief Executive, rather than just crudely proclaiming that he will not execute certain laws that he dislikes, announces that he will execute them, but only according to his own interpretation, an interpretation that may be radically at odds with what the majority of legislators intended? Bush’s principal legal advisors have consistently told him that he has the right to exercise such a prerogative, which seems to many – including quite a number of conservative thinkers – to be clearly subversive of fundamental principles of the American type of democratic government.

- (b) Equally, or perhaps even more, troubling to me and to many other political and legal philosophers is the advice that Bush has eagerly followed with respect to his supposed powers as Commander-in-Chief of the military. It is in fact stipulated in the American Constitution – as usual, with little or no clarification of meaning – that this is to be one of the functions of the President. Past Presidents have on occasion taken this to give them extraordinary powers in wartime; it was in this context that Lincoln suspended the right of *habeas corpus* for Southern rebels, as I mentioned earlier, and Franklin Roosevelt used these supposed special powers to justify his now-infamous and much-regretted executive order that Americans of Japanese descent, particularly those living in states on the Pacific Coast, should be evicted from their homes and confined to camps. The special innovation introduced by Bush – who has succeeded, by the way, in getting Congress to pass a law abrogating the right to *habeas corpus* for certain classes of individuals suspected of terrorist activity, with the Executive Branch being given the authority to determine who falls under that category – is his assumption that he will hold his supposed special powers as Commander-in-Chief for the duration of the so-called “War on Terror,” which is asserted to be open-ended and unlikely to be terminated at any time in the near future, or perhaps ever. He has utilized these powers not only to authorize torture and indefinite imprisonment without trial of the famous “enemy combatants,” including even a couple of American citizens to whom he gave that designation without allowing the possibility of appeal, but also to authorize the interception of electronic and telephonic communications without obtaining any prior permission from the courts. He originally ordered the drastic expansion of such “eavesdropping” practices, as they are called, secretly, but it later became a matter of public knowledge. He then, in fact quite recently, managed to persuade the leaders of Congress, including many members of the opposition Democratic Party, to endorse a continuation of these practices for at least the next several months.

Now, although Bush constantly asserts, as I have said, that there will be no end, at least no near end, to his War on Terror, he has until now refrained from asserting that he has a right to remain in office indefinitely. Hence, it is virtually certain that someone else will assume the American Presidency in January 2009. But it will be very tempting for his successors, as I am not the first person to point out, to try to hold onto or even further enlarge the vastly enhanced powers that he has claimed, through practices that bear all the characteristics of a police state. Some of these powers, I need hardly point out here, are frighteningly similar to practices that were universally condemned in the United States when they were associated with Communist regimes. To be clear, let me repeat that Bush is not the very first President to attempt to exercise powers far beyond what the American Constitution seems on the surface to give him, but his case, because of the sheer scope of the changes that he has made, may well be one of quantity turning into quality. Thus, the World Trade Center attack may turn out to have been a remarkable success, historically speaking, for its perpetrators not just in terms of the physical destruction that it caused, but also in terms of the much deeper and more serious destruction of the American legal fabric that it has made possible.

3. The Role of the Supreme Court

Under the American Constitution, members of the Supreme Court are appointed by the President with the so-called “advice and consent” of two-thirds of the Senate. The number of members, called Justices, is nine; this is not stipulated in the Constitution, but it is so deeply engrained by tradition that Franklin Roosevelt faced one of the worst crises of his Presidency when he threatened to enlarge its membership by appointing new members more favorable to his views; the opposition to this threat was so great that he had to retreat from this. Moreover, the fact that the Supreme Court plays such a significant role in determining national policy, by virtue of its power to determine whether certain laws are or are not “constitutional”, is also not explicitly stipulated in the Constitution itself: the Court gradually assumed this power, originally by a kind of inference from the relatively brief section dealing with the Supreme Court in the Constitution, and came to exercise it with increasing frequency over the years. The most startling recent use of power by this Court occurred, of course, in its decision to award Bush the Presidency in 2000. It was an extremely confused and confusing situation, but Bush’s Democratic opponent Gore averted a grave crisis by ultimately not challenging the decision to submit the matter to that Court before all possible recounting of votes could take place. I suggest that, in retrospect, he thus precipitated an even graver and longer-lasting crisis for the future by conceding the Presidency in this way. The Court’s decision in that case, as in so many cases in recent years, was by a vote of 5–4. The Justices are supposed to be above politics, and to adhere strictly to legal principles as they understand them, but in fact of course politics has become dominant in all the most prominent cases, with the few unanimous or nearly unanimous votes coming generally in cases involving only legal technicalities. One of the Justices who, as a committed Republican, voted for Bush in the decision about the election, but who occasionally took more liberal stances especially on issues of women’s and other rights, Sandra Day O’Connor, has now retired and been replaced by a much more conservative Justice, so that political conservatives now dominate the Court more completely than ever, although there is one Justice, Kennedy, who tends to take a more liberal position on certain issues than his fellow conservatives

– to such a point that, during the most recent session of the Court, he voted with the majority on every one of its numerous 5–4 decisions. (This is virtually unprecedented, it should be added.)

Without entering into too many further details, let me simply sketch a few of the principal characteristics of what I am calling, in keeping with the common way of speaking in the United States, the “conservative” point of view on the Court. It tends to be highly skeptical, above all, of rights claims by individuals, and highly protective of property rights claims particularly by corporations. It tends to think that the controversial decision of a few decades ago that upheld a woman’s right to obtain an abortion was a mistake, and only a certain lingering respect for the principle of *stare decisis*, that is, giving the highest respect for prior decisions by the Court and being willing to overturn these decisions only in extremely rare cases, has preserved that right up to now. And the conservative point of view generally tends to uphold the claims of the Executive branch, the President, concerning matters of foreign policy and especially anything labelled a matter of national security. The most conservative of the conservatives, Justices Scalia and Thomas, whom I have already mentioned, also tend to take what is called an “originalist” point of view, insisting that whenever possible the original text of the Constitution, taken in its most obvious meaning, must be given absolute respect and priority, and trying to exclude as far as possible from their decisions any principles or theories not found in that text and hence introduced from outside, as it were. The accusation that used to be made by conservatives against the more liberal Justices who dominated the Court for some years was that they were “judicial activists”; the conservatives, by contrast, claimed simply to be objectively interpreting Constitutional law and not to be playing the role of legislator as the liberals had supposedly done. But we are now confronted with the supreme irony that the conservatives, in cutting back in so many ways on individual rights – the rights of women, the rights of workers, the rights of prisoners, and so on – are the ones who have themselves taken on the role of “judicial activists”, a label that has begun frequently to be applied to **them** over the past year!

II. Philosophical Implications

Above all, I want to encourage my fellow philosophers and legal theorists to look very carefully at contemporary American reality before making the assumption, if anyone is tempted still to make it these days, that our political and legal system should be taken as a model for others seeking to strengthen the structure of rights either internationally or nationally. At the international level, the current American Administration has become famous for bullying other nations and trying to impose its ideology in the area of treaties, of humanitarian aid, and even of international cultural and scientific events. To take a relatively small but still telling example, in 2004 the United States became the only country whose government insists that it must exercise the right of passing on the credentials of any of its own citizens being considered for special appointments by UNESCO and certain other international organizations. At the national level, approximately 25% of the world’s prisoners are held in American jails. The United States is responsible for roughly the same percentage of serious forms of pollution, while at the same time a slightly smaller percentage than this of our own population, which constitutes only 5% of the world’s population, lacks any health insurance. Our system for

choosing the next President has become increasingly bizarre and embarrassing, and the amount of money that is needed to fund any electoral campaign beyond the very local level has become almost incalculably great. A very large portion of our news media is dominated by commentators holding conservative ideologies; the companies that own the large media naturally prefer it this way. Poll after poll shows that a majority of American citizens seems willing to let fundamental rights be at least partially suspended in the name of increased security. These are just a few of the most salient aspects of our contemporary reality.

I conclude with 2 questions: (1) To what extent are the evolution of the American Constitution and legal system to blame, at least in part, for this reality? And, as we look to the future, (2) To what extent does the fact that this whole structure, which as I pointed out at the beginning of this essay was once considered a model, is now in so much trouble point to a historical need to go beyond the ideals of liberal democracy itself?

(1) As far as the Constitution itself is concerned, we know that it was the product of many compromises. Many had wanted, especially with the person of George Washington in mind, to establish a limited monarchy; instead, a strong Presidency was created. In its original form the Constitution included no special provisions for individual rights; the Bill of Rights was then added, as the first ten amendments, as a political concession to ensure ratification of the Constitution by the required number of state legislatures. It was widely felt that the individual states had exercised too much sovereignty under the previous constitutional structure, the Articles of Confederation; but at the same time it would have been politically impossible completely to deprive the states of their claims to partial sovereignty, and therefore many rights were conceded to the states. And so on. The idea of having three separate branches of government with their respective functions and overlapping responsibilities, which of course came from philosophers such as Montesquieu and Locke, was supposed to be enhanced and refined in the American Constitutional structure by having each of them exercise some restraint over the others, the so-called system of checks and balances. And the comparative brevity and open-endedness, in some cases simple vagueness, of the document was deliberate.

Contrast this with the recently-proposed EU Constitution, ignominiously rejected by a majority of French voters a couple of years ago. It was very, very long, with clauses interspersed here and there that were certain to displease significant segments of voters – for example, a clause favoring free market economic structures that could not, if taken seriously, be endorsed by committed socialists. (By comparison, despite widespread opinion to the contrary, the U.S. Constitution contains no explicit endorsement of any particular economic system.) Far more power was left to the individual nations of the European Union, and there was to be no individual person with powers comparable to a President. Having looked at the EU document, which was sent to all French voters, I am convinced that its daunting length alone was enough to convince some that they should vote against it. But is the great brevity and indefiniteness of the American Constitution a virtue or a fault? Is there something about it that, from its inception, made possible the assertion of imperial powers by the President, especially at a time of perceived national emergency? Is there something about it that has encouraged the Supreme Court, especially when dominated by appointees of the President (or, as in the present case, of the President and his father, the former President), to acquiesce to the Execu-

tive Branch especially in matters of policy, while the role of the legislature itself has become increasingly passive and supine? (A good case in point is the power to declare war, which the Constitution assigns to the Congress, but which the Congress has not exercised in many decades, simply permitting successive Presidents to carry out aggressive military actions without any formal war declaration.) Finally, is there something about this Constitution itself that has reinforced the spirit of American exceptionalism, the idea that, as a *novus ordo seclorum* – a slogan that is to be found on the dollar bill – this country need not consider itself subject to the rules accepted, and increasingly accepted today, by the rest of the international community, except to the extent to which it chooses to do so?

(2) As we all know, the word “democracy” has many different meanings, and this is also true of the somewhat more restrictive term, “liberal democracy”. But the latter term came to be identified concretely with features common to the social, political, and economic systems of contemporary Western Europe and particularly the United States. Two of the prominent thinkers of the late Twentieth Century, both now unfortunately deceased, John Rawls and Richard Rorty, espoused what they called political liberalism and made just such an identification, coupled in both cases with a strong sense that the set of ideas and the practices associated with it in some sense constituted the political ideal for humanity. It **did** look very good by comparison with the great totalitarian regimes of the Twentieth Century. But the current regime of what Jürgen Habermas has called *Spätkapitalismus*, at once consumerist and militarist, *laissez faire* and yet highly authoritarian, to which we have been subjected recently especially in my own country, and because of my own country in the rest of the world as well, a regime that has grown out of liberal democracy and still pretends to be of that order, has led me to believe that we need new conceptual models no longer so dependent on the old liberal democratic theory to serve as a basis for a stronger rule of law and rights in this still-new century.

William L. McBride

**Kriza u vladavini zakona u
suvremenom američkom kontekstu**

Izvješće

Sažetak

Članak je kritičko preispitivanje krize u vladavini zakona u kontekstu suvremene politike u SAD. Tekst navodi neke primjere američke nacionalne i vanjske politike u svezi s tzv. ‘kultom demokracije’. Članak je podijeljen na dva dijela. Prvi se dio bavi izvješćem, koje se bavi, redom, službenim odnosima SAD prema međunarodnom zakonodavstvu; zatim prema moći institucije predsjedništva; te glede uloge Vrhovnoga Suda. Drugi dio ispituje neke filozofijske implikacije američke politike, a u svezi s pitanjima demokracije i vladavine zakona.

Ključne riječi

vladavina zakona, ‘kult demokracije’, američka politika, kriza, filozofijske implikacije

William L. McBride

**Die Krise in der Gesetzesherrschaft
im zeitgenössischen US-amerikanischen Kontext**

Ein Bericht

Zusammenfassung

Der Artikel hinterfragt kritisch die Krise in der Gesetzesherrschaft im Kontext der zeitgenössischen US-Politik. Es werden einige Beispiele der US-amerikanischen Innen- und Außenpolitik angeführt, die mit dem sog. ‚Demokratiekult‘ in Zusammenhang stehen. Der Text beschäftigt sich in seinem ersten Teil mit dem offiziellen Verhältnis der USA zur internationalen Gesetzgebung, des Weiteren mit der Institution des Präsidentenamtes und seiner Macht sowie mit der Rolle des Obersten Gerichtshofes der USA. Im zweiten Teil der Arbeit werden bestimmte philosophische Implikationen der amerikanischen Politik in Bezug auf Fragen der Demokratie und der Gesetzesherrschaft hinterfragt.

Schlüsselwörter

Gesetzesherrschaft, ‚Demokratiekult‘, amerikanische Politik, Krise, philosophische Implikationen

William L. McBride

**La crise du règne de la loi
dans le contexte américain contemporain**

Rapport

Résumé

L'article constitue un examen critique de la crise du règne de la loi dans le contexte politique actuel aux Etats-Unis. Le texte cite quelques exemples de la politique nationale et internationale américaine en rapport avec le « culte de la démocratie ». L'article se divise en deux parties. La première se penche sur, dans l'ordre : l'attitude officielle des Etats-Unis vis-à-vis de la législation internationale, ensuite vis-à-vis du pouvoir de l'institution de la présidence et enfin vis-à-vis du rôle de la Cour suprême. La seconde partie examine quelques conséquences philosophiques de la politique américaine, liées aux questions de la démocratie et du règne de la loi.

Mots-clés

règne de la loi, « culte de la démocratie », politique américaine, crise, implications philosophiques