

Lost Human Rights: Human Rights' Day Has Not Yet Dawned

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“I think there is a proliferation of rights. I am often surprised by the virtual nobility that seems to be accorded those with grievances. . . . I have to admit that I am one of those people that still thinks a dishwasher is a miracle.” -Supreme Court Justice Clarence Thomas

I. RIGHTS WE'VE HAD

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I. RIGHTS WE'VE HAD

According to the Declaration of Independence, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

The men who put their signatures to those words sought to endow each other with those rights, and those rights can be gained or lost. And since that day, people around the world have imagined, created, and struggled for a great many additional rights as well.

Our Constitution came very early in the history of the formal establishment of individual rights. It helped to inspire many other nations to develop the idea further, and to inspire international agreements. Our original Bill of Rights is no longer cutting edge, and yet it does a remarkably good job of providing many basic protections. The most glaring problem with it is not dated concepts or ambiguous wording, but our failure to enforce it. We have to make enforcement happen through Congress and the courts, or there will be no point in making improvements. To restore and expand our rights, there are three basic steps we should take. The first is to enforce the rights already protected by the Constitution. The second is to ratify and enforce international agreements (some of which the United States has already ratified) providing additional rights. The third is to amend our Constitution to include a second Bill of Rights.

So, first things first: how are we doing on enforcing the rights that we are already supposed to have? Here are the basic rights provided by the US Constitution and its amendments, and a quick summary of the shape they're in today:

Article I, Section 9, habeas corpus: The right not to be kidnapped and detained without charge or trial has been eroded in the United States, its territories, and secret prisons.

The Supreme Court has admirably insisted on the right, while Congress has been willing to

toss it to the wind. Not a single individual has been held accountable for having violated it, and the violations have not ended. In 2001 and 2002, US Justice Department lawyers put down in “legal” opinions that the right to habeas corpus could be tossed aside. In 2007 Attorney General Alberto Gonzales testified before Congress that the right to habeas corpus that appears in the Constitution doesn’t really exist. In 2009, the new Obama administration claimed the continued power to render and detain without charge.

Article I, Section 10, the right against ex post facto laws:

It is clearly unconstitutional to criminalize something that has already been done and then punish a crime that was not a crime when it happened. But what about taking actions that were crimes when they happened and immunizing the violators? This looks like Congress taking over the president’s pardon power. If the ban on ex post facto laws is understood to include laws that grant retroactive immunity from prosecution, then Congress has been busy violating it by passing laws like the Military Commissions Act or the FISA Amendments Act, laws that claim to give immunity to past violators of crimes. We should consider whether to amend the Constitution to clarify that point.

First Amendment, freedom of religion, speech, press, and assembly, and the right to petition for redress of grievances:

President Bush punched quite a few holes in the wall of separation between church and state. He used agencies including the United States Department of Justice (DOJ), the Food and Drug Administration (FDA), the Park Service, the Department of Defense (DOD), the National Institutes of Health (NIH), the National Aeronautics and Space Administration (NASA), the Department of Education (DOE), the Department of Health and Human Services, and the Office of the Surgeon General to promote the establishment of a religion.

Freedom of the press has been severely curtailed by the establishment of a system that bars entry to ownership of effective media outlets to all but the very wealthiest. Pundits in the existing media outlets are often directly paid and told what to say by the Pentagon or the White House. Media outlets in occupied nations like Iraq are paid to publish false stories. Reporters on wars are “embedded” with the military, denied access, and banned from publishing important information and images. Independent reporters were preemptively detained but not charged with any crimes during the 2008 Republican National Convention. Freedom of speech and assembly have been radically curtailed to the point where we now have “free speech zones” consisting of walled-in cages outside and at a distance removed from political events. These freedoms are also absent in the workplace, where unionization is effectively blocked, and in “private” gathering places like shopping malls. While you can appeal to your government for a redress of grievances, you’d better do so by mail. People attempting to do so in person are usually prevented by security guards. A Justice Department memo on October 23, 2001, claimed the president could suspend First Amendment rights.

Second Amendment, the right to bear arms:

The Second Amendment was written to protect the Southern states’ right to use armed militias to enforce slavery. We no longer have slavery, but we do have the National Guard, which is supposed to be under the control of state governors. We need to correct the current situation in which the US president controls the National Guard and sends its members to fight foreign wars for empire. If we read the Second Amendment as providing

an individual right to bear arms, it is important to notice that it makes no distinction between the right to bear arms to violently protect oneself and the right to bear arms to easily slaughter masses of people, or the fact that some types of arms are much better suited to the latter than the former. Clearly, this is one right that needs to be limited by legislation or amendment to the extent that it conflicts with that “self-evident” right to “life.”

Third Amendment, the right not to have soldiers quartered in your house:

This is perhaps the only right we have that has not been threatened or eroded in any way in recent years. But, of course, that’s because — counter to everything the framers of the Constitution intended — we are all paying significant portions of our income to the government in order to provide soldiers with their own homes on thousands of permanent military bases maintained in times of war and peace.

Fourth Amendment, the right against unreasonable searches and seizures without warrant, probable cause, and specificity:

That same memo that brushed aside the First Amendment, mentioned above, also claimed the president could toss out the Fourth Amendment. Our Fourth Amendment has been erased by legislation amending FISA, and should instead be protected by the repeal of FISA and the passage of new legislation. Rather than permitting the government to sidestep a rubber stamp court that routinely and even retroactively approves violations of the Fourth Amendment, such a procedure should be replaced by one that does not violate our rights. The Fourth Amendment requires a warrant describing specifically what is to be searched, and requires that the warrant be based on probable cause. FISA permits, and always permitted, retroactive warrants based on the flimsiest of evidence.

Fifth Amendment, the right to grand jury, due process, and just compensation for property taken, and protection against double jeopardy and self-incrimination; Sixth Amendment the right to a speedy and public trial by an impartial local jury, to be informed of the charges against you, to confront witnesses against you, to compel witnesses in your favor to appear, and to have the assistance of counsel; and Seventh Amendment, the right to trial by jury:

These rights have been eroded by Bush and Cheney, and that erosion cemented by Obama, so that they now apply in some cases but not others. If the president calls you an “enemy combatant” you lose these rights. In June of 2002, Assistant Attorney General Jay Bybee and Deputy Assistant Attorney General John Yoo wrote a pair of secret memos denying an American citizen named Jose Padilla these rights on the grounds that he was guilty of various offenses. But the memos themselves served as his trial as well as his sentence; Padilla had never been charged with the crimes, much less found guilty. In 2009, the new Justice Department under Eric Holder sought to dismiss a case that Padilla brought against Yoo alleging that his memos had led to Padilla’s detention and torture. Our due process rights must be restored to their intended state and then expanded to include protections unavailable in the eighteenth century, including the videotaping of all interrogations and confessions.

Eighth Amendment, the right against excessive bail or fines or cruel and unusual punishment:

The cruelest punishments imaginable have been employed in violation of the Eighth

Amendment, with the disgusting defense sometimes offered that “interrogation techniques” are not punishment at all. While torture and any degrading treatment are banned by numerous treaties and statutes, the Constitution would be improved by the clarification of the ban provided here.

Thirteenth Amendment, the right against slavery except as punishment for crime:

Slavery is alive and well in US territories like the Marianas Islands and for immigrants held by force and compelled to work without compensation on farms in the United States; slavery should be banned even as a punishment for crime, and that ban should be enforced.

Fifteenth Amendment, the right to vote cannot be denied or abridged because of race:

Names are removed from registration rolls on the basis of race, and provisional ballots are rejected on the basis of race. If provisional ballots from African-Americans in Florida in 2000 had been rejected merely at the same rate as those for whites, President Al Gore’s victory margin would have been substantial.

Sixteenth Amendment, the right to vote cannot be denied or abridged because of sex:

This right cannot be protected for women any better than it can be for men. We do not have an individual right to vote, but only a guarantee that nobody be denied that right because of their race or sex. We require that everyone register, and then sometimes dump their names off the rolls. We hold elections on a weekday, when many people have to work. We provide insufficient staff at polling places, so voting can take many hours out of someone’s day. We insert the electoral college between the voters and the president. And we insert private corporations between the voters and the counting of the votes. We should create the right to directly elect the president and the right to have our votes publicly and verifiably counted on paper ballots at each polling place.

Twenty-Fourth Amendment, the right to vote without paying a poll tax:

We no longer have poll taxes, but we have registration procedures, long lines, elections on a work day, voting rights denied as punishment for a crime, and a system so prone to errors that many voters are disenfranchised. Hollywood actor Tim Robbins had to spend a full day traveling around his city appealing to judges before he could get a glitch corrected and be able to vote in 2008; most people are not rich, white, famous movie actors with a full day to spare.

Twenty-Sixth Amendment, the right to vote beginning at age eighteen:

This right cannot be protected for young people any better than for old. We should have universal registration when people reach eighteen. If we can register everyone for the military draft, why can’t we register everyone to vote?

There you have it. We’ve got rights, but they are threatened. They need restoration and enforcement. They also need expansion and updates. But that’s not the half of it. There’s also the matter of rights we ought to have that were never imagined by the creators of our Bill of Rights.

II. RIGHTS WE NEED

In places where we are not already protected, or where we have been shown to be vulnerable over the last eight years or before, legislation and amendments can be used to expand our existing rights and establish entirely new ones. All of our rights, new and old, should be properly protected by placing violations of them in the criminal code.

1. The Right to Vote

Proposing a right to vote only surprises people who believe we already have it. Perhaps the most important as well as the least controversial right that we could create is one that Congressman Jesse Jackson Jr. has long advocated for: the individual national right to vote (allowing the creation of national uniform standards for elections). I would add as well the right to directly elect the president, vice president, and all other elected officials, and to have one's vote publicly and locally counted in a manner that can be repeated and verified if questioned (effectively requiring hand-counted paper ballots), and the right to paid time off work to vote on election day, which would be made a national holiday or scheduled on a weekend. I would also propose establishing and enforcing serious criminal penalties for election fraud.

I think we should consider as well a less orthodox proposal, namely the right to be a candidate for elected office. Even if we all had the full and verifiable and unencumbered right to vote, our democracy would remain a weak one as long as only the extremely wealthy and those willing to take payments from the wealthy are able to credibly compete for elected office. We should have a right to know that the candidates in our elections are not corrupted by bribes (including the currently legal bribes we euphemistically call "contributions"), and the right to ourselves be candidates in more than a nominal sense unless prevented by something other than our wealth and income.

2. Right to Expanded Magna Carta Protections

We need to establish strict protection from arbitrary arrest, detention, exile, or enforced disappearance, and from all forms of slavery and forced labor, with criminal penalties for violators and compensation for victims. We need to strengthen our right against unreasonable search and seizure in this electronic age, amending the Constitution and/or replacing FISA with legislation that effectively protects us, creates criminal penalties for violators, and compensates victims. We should place in the Constitution new language to strictly ban all torture, all cruel, inhuman, or degrading treatment or punishment, rendition, medical or scientific experimentation on humans without their consent, and state executions. We should create criminal penalties for violators and compensation for victims.

We need to strengthen or create some additional rights for those who find themselves within our criminal justice system, including the right to presumption of innocence until proven guilty of a crime, the right to be told the charges against you at the time of your arrest, the right not to be detained without being arrested and charged, the right to obtain and to use in court a videotape of any relevant interrogations or confessions, the right of the accused to be detained separately from those already convicted, the right of juveniles to be detained separately from adults, the right not to be imprisoned for inability to fulfill a contract, the right to a penal system aimed at reformation and social rehabilitation, and the right to compensation for false conviction and punishment. The United States currently locks up a greater percentage of its citizens than any other nation, a heavy-handed and backward approach to social problems that mirrors our approach to foreign policy. Protecting innocents from the imprisonment onslaught and redirecting imprisonment to include

rehabilitation, education, and preparation for civic participation are essential to undoing this damage.

I refer to all of the above as Magna Carta protections because I see them as part of that living tradition. Peter Linebaugh's recent book, *The "Magna Carta Manifesto,"* documents the meaning of the Magna Carta down through the centuries, prominent in that meaning being the tradition established by the Magna Carta that no man would be above the law, that no man would sit in judgment of himself, that no one would be tried or imprisoned without due process including judgment by a jury of peers. The Great Charter of Liberties was originally produced together with the Charter of the Forest, and these two documents were paired together for centuries before one of them was forgotten and the other was reinterpreted as the sacred text of private property, capitalism, God, and empire. The Charter of the Forest protects the rights of commoners to "commoning." That's a verb that encompasses the rights to use and maintain forests and wild places, to allow livestock to forage, and to gather wood, berries, mushrooms, and water. Linebaugh tells a global story of the loss of commons, of the enclosing of public spaces, of the creation of poverty and criminality, and of the Magna Carta as a manifesto against privatization. It strikes me as important right now that we recognize the power that the rule of law has had for good and its intimate ties to social as well as formal justice. Does Eric Holder — do the rest of us — want to oversee the demise of this tradition or its expansion and enhancement?

3. Equal Rights for All

We need, at long last, to place in our Constitution comprehensive equal rights for women, including the right to equal pay for equal work. We need comprehensive rights for all children, including the right to have their interests given primary consideration in public actions that concern them, and a ban on harmful child labor. We need a right to special care and assistance for mothers, fathers, and children, including paid maternal and family leave. We need these things much more than we need to hear anyone screaming about "family values"! And we need the Constitution to establish a right against any unfair discrimination on the basis of race, color, gender, sexual identity, language, religion or lack thereof, political or other opinion, national or social origin, property, birth, citizenship, or other status, including that of a migrant worker.

4. Environmental Rights

Our history is one of slowly expanding the group of people entitled to civil rights, breaking down barriers of wealth, race, sex, and age. But what about species? Although we've criminalized cruelty to animals in some cases, we've never dared to scandalize the philosophers by giving rights to nonhumans. I'm not proposing that we include dogs and pigs and insects in our Constitution as individuals. I don't think they have much more place there than do corporations, which have falsely claimed constitutional rights. But we might want to consider giving our environment as a whole a right to survive.

Of course we could simply give humans a right to a clean, safe and sustainable environment, and I think we probably should. But that's not the only possible solution. In September 2008, Ecuador created a new Constitution by a two-thirds public vote that included some changes that we might want to avoid (such as aggrandized executive power) and others we might want to consider, such as the recognition of legally enforceable rights of nature or ecosystem. The new Constitution provides nature the "right to exist, persist,

maintain and regenerate its vital cycles, structure, functions and its processes in evolution” and mandates that the government take “precaution and restriction measures in all the activities that can lead to the extinction of species, the destruction of the ecosystems or the permanent alteration of the natural cycles.” Of course, an American document couldn’t mention evolution until Americans were properly educated, but the rest of the language here might be useful. While an ecosystem can’t sue on its own behalf over violation of its rights, people can do so for it.

5. Right to Education, Housing, and Health Care

To help give every child a chance and to foster young talent and innovation, America should guarantee the right to public education of equal high quality from preschool through college. We should have a right to decent, safe, sanitary and affordable housing. We should have a right to health care of equal high quality. These are things that ought not to be privileges for the wealthy but things to which we all have adequate access, in other words: rights.

6. Worker Rights

We also need basic rights related to work and income established at the level of our Constitution. These should include the right to form and join a labor union and the right to strike, the right to employment (not to be confused with antilabor laws that go by the misleading name “right to work”), and the right to a living wage — that is to say, just and favorable remuneration for work ensuring for the worker and their family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. We should have the right to a reasonable limitation of working hours and to periodic paid holidays. Not all of this will be acceptable to the US Chamber of Commerce, but most of it will make sense to most Americans.

7. Right to Basic Welfare

I would like to offer two additional proposals that might be somewhat controversial, one ensuring the basic welfare (food and shelter) of each individual whether or not employed and working, the other ensuring some limitation on the division of society into an overclass of superwealthy families and everyone else.

The basic income guarantee, or BIG as it’s known to the activists and academics who make up the US Basic Income Guarantee Network, is a government-ensured guarantee that no one’s income will fall below the level necessary to meet their most basic needs for any reason, even if they are not working and earning the living wage that I (but not all supporters of a BIG) would also mandate.

How would a basic income guarantee work? Each month, every adult would receive a check from the government for the exact same amount. These checks, notes the Citizen Policies Institute, would be “large enough to meet basic costs of food and shelter . . . but not so large as to undermine incentives to work, earn, save, and invest.” Some checks would be wasted on awesomely affluent Americans who have absolutely no financial worries. But there would be no need for a bureaucracy to determine who should receive the checks, and no stigma would attach to receiving them. That some small percentage of people would not work cannot be considered a fatal flaw in the BIG idea, not in a country where we already have a significant percentage of people not working, including those unable to work, those with no need to work and no desire to, those searching for work, those who have given up

on searching for work, those who have calculated that they would spend more on childcare than they would earn if they took a job, those who are behind bars as a result of crimes that tend to increase with unemployment and poverty, and those working part-time who want full-time jobs. There are also many working full-time or more who would prefer to work part-time and train for other work if they could afford to. Surely anyone's displeasure with people receiving a basic income without working should not outweigh their displeasure with the current state of affairs in which tens of millions of Americans, including children, live in poverty. The Paulson's Plunder "bailouts" gave away, to some very wealthy people, far more money than would be required for a BIG, so perhaps it's best to think of a BIG as a real bailout for everyone, one that would actually stimulate the economy.

The past thirty years have seen tremendous growth in the United States in productivity and wealth, and yet we don't all seem very appreciative. In fact, as Yale political scientist Robert Lane has documented, surveys have found Americans' assessment of their level of happiness declining significantly. The United States contains 4.5 percent of the world's population and spends 42 percent of the world's health care expenses, and yet Americans are less healthy than the residents of nearly every other wealthy nation and a few poor ones as well, as documented by Dr. Stephen Bezruchka of the University of Washington. What's going on? We spend more on criminal justice and have more crime. How can that be? We're richer and have more poverty. Why is that?

Labor journalist Sam Pizzigati thinks he has a solution to these riddles. In his book, "Greed and Good," Pizzigati focuses on the extreme increase in inequality that the United States has seen over the past generation. The Federal Reserve Board has documented gains by America's wealthiest 1 percent of more than \$2 trillion more than everyone in America's bottom 90 percent combined. We are now the most unequal wealthy nation on earth, and have reversed the relationship we had to Europe when the founders of this country rejected aristocracy. Today Europeans come to the United States to marvel at the excesses of wealth beside shameful poverty. Perhaps it's time for a right to some minimal level of equality.

Many of us would like to lift up those at the bottom. Few of us want to bring down those at the top. Pizzigati argues that you cannot do one without the other, because the super-wealthy will always have the political power to avoid contributing to bringing the bottom up. This will leave it to the middle class to assist those less fortunate, even as their own situations are slipping and their concept of success—based on the lifestyles of the CEO-barons—is being driven further out of reach. The middle class won't want to do this, and instead will support policies that benefit the super-wealthy.

But the existence of the super-wealthy, Pizzigati argues, has a long list of negative impacts on all of our lives. Get rid of vast concentrations of wealth, and all sorts of things happen, including lower murder rates, lower blood pressure, and lower housing prices. Research suggests that when people see their situations improving over time, and when they see their situations as acceptable by the standard of those around them, they tend to be happy. The United States had this in the 1950s and 1960s, a period when working families prospered and income over \$200,000 was taxed at roughly 90 percent.

Developed societies with the healthiest and longest living people, extensive research shows, are not those with the highest average wealth, but those with the greatest equality of wealth. Explanations for this fact vary from consideration of the levels of stress caused by economic insecurity to the focusing of health care on plastic surgery and other luxuries at the expense of treatment of actual illnesses. Research also shows that a country's murder

rate varies with its inequality, not its overall wealth or its criminal justice spending.

Pizzigati proposes a new system of income tax that would lower taxes on 99 percent of Americans and allow the wealthiest 1 percent to lower their taxes by lobbying to raise the minimum wage. This system would ensure a living wage and a maximum wage as well. If your household brought in less than the income of two full-time minimum wage workers, you would pay no income tax. Above that level you would pay 1 percent. Above twice the minimum wage you would pay 2 percent. And so on up to 10 percent. Any income above ten times the minimum would be taxed at 100 percent. If those with high incomes wanted less of it taxed, all they would need to do would be to lobby Congress to raise the minimum wage.

This would mean significantly lower taxes on 99 percent of us. It would also mean an economy focused on products for a once-again expanding middle class, rather than our new aristocracy. The maximum wage proposal will almost certainly be attacked as being supposedly motivated by a desire to punish successful people (as if restricting someone to ten times the minimum wage is punishment, but the minimum wage itself is not). However, I favor a maximum wage for the simple reason that a democratic republic cannot survive with an aristocracy. My thought here is also a very American way of thinking and by no means new, but I'm afraid it is not nearly as widespread as is support for revenge and belief that revenge is everywhere.

8. Right to Be a Conscientious Objector

Here's another proposal that's sure to be controversial: we should create the right not to be made a participant in a war of aggression, as a soldier, contractor, or taxpayer. After all, wars of aggression are already illegal, so there ought not to be anything dangerous in giving individuals the right to obey the law. We should also update the Third Amendment to give us the right to live in towns and cities free from any public presence of military force. In fact, we should create the right to live in a nation either not armed for aggressive war or actively working toward disarmament and actively working toward global disarmament.

9. Freedom of the Press, and Freedom from War Lies

We should expand the First Amendment to require meaningful freedom of the press. We might consider one strictly limited restriction on our First Amendment rights. This would involve the establishment of a right to protection from war propaganda, including any false, misleading, or fraudulent information intended to create support for war, with criminal penalties for violators. We should never underestimate the danger of restricting free speech or of opening up the possibility of further restricting free speech, but the clear fact is that war is much more destructive than any other human activity (with the possible exception of long term environmental destruction). It is already forbidden to falsely scream "Fire!" in a crowded building, so it might make sense to forbid effectively drenching crowded buildings in lighter fluid. I would, however, expand the right to free speech to include the right to be a whistleblower and expose violations of the law by superiors, in public or private work places, without negative consequences.

10. Right to Know Your Rights

Finally, I think that we need enshrined in explicit terms in our Constitution, as well as perhaps elaborated in a book called "Self-Government for Dummies," the right to know what

the laws are, and to have the laws applied equally to everyone.

III. CHANGES WE CAN MAKE

Fortunately, we do not have to start from scratch in constructing new human rights. Much work has already been done, some of it by that 95.5 percent of humans who are not Americans. Many of the rights proposed above I have taken word for word, or nearly word for word, from existing international treaties. Where we think it makes sense, we can ratify and enforce international treaties that establish rights for all human beings. Shouldn't Americans have, at a minimum, the rights that others around the world have or strive for? Shouldn't we provide those rights to foreigners visiting our country and expect those rights to be maintained for our citizens traveling abroad? Shouldn't we abide by those treaties that we have already signed, and join other nations in developing these rights, rather than standing in the way? Isn't there something fundamentally wrong with what we did to the people of New Orleans in 2005 and subsequent years that requires a reworking of the system that permitted it?

A major influence on the establishment of international rights was the work of President Franklin Delano Roosevelt and his wife Eleanor Roosevelt, who served as delegate to the UN General Assembly and chair of the committee that drafted the Universal Declaration of Human Rights. In his annual address to Congress in 1941, President Roosevelt said,

“In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression — everywhere in the world. The second is freedom of every person to worship God in his own way — everywhere in the world. The third is freedom from want — which, translated into universal terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants — everywhere in the world. The fourth is freedom from fear — which, translated into world terms, means a worldwide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor — anywhere in the world. That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb.”

That kind of world has still not been attained, but it is still attainable. Progress has been made here at home, although we've also taken significant steps backward. The same is true abroad. International rights and restrictions have developed over the decades, inspired by documents like the US Constitution and the Universal Declaration of Human Rights (UDHR). These new ideas have been incorporated into treaties to which the United States is, in some cases, already a party, treaties like the Geneva Conventions and the UDHR. According to the US Constitution, those treaties and every other treaty to which the United States is a party are the law of the land:

“. . . This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

In looking for ways to expand our Bill of Rights, we can turn to the International Bill of

Rights, which consists of three major treaties:

1. The Universal Declaration of Human Rights (UDHR), which the United States voted in favor of when it was unanimously passed by the United Nations in 1948
2. The International Covenant on Economic, Social and Cultural Rights (ICESCR), which went into effect in 1976 and has been ratified by 159 nations but not the United States; and
3. The International Covenant on Civil and Political Rights (ICCPR), which went into effect in 1976 and has been ratified by 162 nations including the United States, although the US ratification included major exceptions and qualifications that rendered it toothless. There are also two additions to the International Covenant on Civil and Political Rights called optional protocols. The first has been ratified by 111 nations, but not the United States, the second by sixty-six nations but not the United States.

These three documents establish the sorts of rights we have been discussing, with the ICCPR focused more on legal and political rights, such as the due process rights that were found in the center of our US Bill of Rights at least prior to Bush-Cheney, and the ICESCR focused more on social rights such as health, education, and basic well-being. If the UDHR addresses life, and the ICCPR liberty, the ICESCR takes up the pursuit of happiness (or, if you prefer, the freedoms from want and fear). But the USA is being left behind. I encourage you to read these and many other treaties at <http://www2.ohchr.org/english/law/index.htm>

We might begin to correct our deficiencies by considering the possibility of ratifying the second of these treaties and removing the exceptions to our ratification of the third, as well as ratifying the two optional protocols. Then we could legislate and enforce strict compliance with the entire package. There are seven additional major treaties aimed at protecting human rights:

1. The International Convention on the Elimination of All Forms of Racial Discrimination, which has been ratified by 173 nations, including the United States; however, the US ratification includes major exceptions.
2. The Convention on the Elimination of All Forms of Discrimination against Women, which is accompanied by an optional protocol. The United States is the only wealthy nation that has not ratified.
3. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which is accompanied by an optional protocol. The United States has ratified the convention, but not the protocol, which creates enforcement.
4. The Convention on the Rights of the Child, which is accompanied by two optional protocols, one related to armed conflict, the other to slavery, prostitution, and pornography. The United States and Somalia are the only two nations that have not ratified this convention.
5. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. No wealthy countries have ratified this convention, only poor ones.
6. The International Convention for the Protection of All Persons from Enforced Disappearance. This is a new treaty, not yet in force. Thus far 73 countries have signed, and

four have ratified. The United States has done neither.

7. The Convention on the Rights of Persons with Disabilities, which is accompanied by an optional protocol. The United States is the only wealthy nation that has not ratified.

As you can see, of the above, the US has only ratified the International Convention on the Elimination of Racial Discrimination, which included major exceptions, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, but only the convention, not the protocol. And, despite having signed the Convention Against Torture, we are violating it by failing to prosecute all acts of complicity in torture.

These treaties, combined with those above, would provide the United States, if enforced, with the vast majority of the rights I discussed above, and would do so in a way that united us with the rest of the world. We should abandon our rogue state status and join with the world community. In fact, we should lead the way by fully ratifying and aggressively legislating and enforcing all of these treaties. The United States would be obliged by the above treaties to accord equal rights to non-Americans, to work with other nations to eliminate world hunger, to report to the United Nations on its progress in providing all of the rights created by the treaties, and to take active steps in many areas, including by working to end racial discrimination, ensuring that the mass media disseminates material of social and cultural benefit to children, and ensuring access and lack of discrimination for people with disabilities.

There are other treaties that we should join and abide by, as well. The General Assembly resolution on “Permanent sovereignty over natural resources” and the “International Convention against the Recruitment, Use, Financing and Training of Mercenaries” both do what it sounds like they do, with obvious consequences for US behavior in Iraq and elsewhere. The same goes for the “Principles of Medical Ethics Relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.” I’ve mentioned in a previous chapter the Rome Statute of the International Criminal Court, which Clinton signed and Bush unsigned. It should be signed, ratified, and enforced. So should the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, and the Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes Against Humanity.

Even if we were to ratify and enforce all of the above treaties, or most of them, and others like them, and new ones that we might originate, we would also need to place enforcement measures in our national code of law, and there would be an advantage to incorporating key rights and freedoms into the US Constitution, including some that are not established by the treaties above. Some of the changes we need can only be made by amending the Constitution. Constitutional amendments should not replace treaties, but can reinforce them. Our Constitution was designed to be amended. Article V reads:

“The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof , as the one or the other Mode of Ratification may be proposed by the Congress . . .”

Our original Constitution was not only written over two centuries ago, but it was written with the influence of a very antidemocratic spirit. We have amended the Constitution to include new groups of people within the umbrella of “we the people,” and to make other improvements, but we have not amended the Constitution in the dramatic ways in which its authors certainly expected we would need to. We’re dragging around with us a radically outdated structure of government. And, yes, even today we fail to live up to some of its better ideas, but that is in part because of the limitations imposed on us by some of its worse ones. At this point of crisis, in the midst of economic and political turmoil, we are in need of serious change. I think we should seriously consider working to move two-thirds of the states, through their legislatures or through state conventions, to call a new constitutional convention as one of several approaches to reforming our government. It’s about time we made the first use of a tool that has been sitting there gathering dust in Article V for over two centuries!

In fact, a group called Friends of the Article V Convention has documented at least 754 applications already filed with Congress by the states (at least one from each of the fifty states) calling for a convention. But only four states have taken this action since the year 2000. Some combination of the following may be required to make a convention actually happen: new applications must be grouped within a short period of time from two-thirds of the fifty states, public pressure must be placed on Congress, or lawsuits must be brought against Congress by the states. The states’ applications need not be identical in language or raise the same topics or propose the same amendments. But our goal should be to propose and pass at the convention a group of amendments that accomplishes comprehensive reform.

By proposing a coherent set of amendments, we can develop our vision of a better nation, facilitating the work that will win partial victories short of creating a constitutional convention — and perhaps victories at the state level as well. In order to work for a new national convention, we need not all agree on every goal, only on the need for major reform. From any individual’s point of view, of course, opening up the Constitution to major changes will present the risk of making it worse. But if the convention itself is designed to include some of the reforms (public financing, public broadcasting, etc.) that we hope it will impose on the Constitution, the risk may pay off. States could put the question of supporting a convention to a public vote or create requirements that must be met for citizens to force such an initiative to a vote.

A more deliberative procedure might be tried as well. In 2004 and 2005, British Columbia, Canada, made use of a tool called a citizen assembly. The government randomly selected 160 people: eighty women and eighty men representing each electoral district and native peoples. The assembly was assigned to review a single major issue, in this case the province’s system of representative government. It heard from experts and held public hearings all over the province. It recommended policy changes that included shifting to a multi-seat proportional representation system. In 2005, 58 percent of the public voted for the proposal, but 60 percent was required for passage. However, the reform idea had gained momentum and appeared likely to eventually pass. The citizen assembly idea has now taken hold in Ontario, Quebec, and New Brunswick as well. In 2007, a citizen assembly in Ontario recommended changing the province’s electoral system to allow for proportional representation, but the proposal was defeated in a public referendum.

A similar idea is “deliberative polling” as proposed by James Fishkin. A representative random sample of citizens are brought together in small groups to discuss their concerns.

They are provided with factual information related to their concerns, and the groups are assembled for a three-day process of deliberation, during which they can consult with experts and policy makers. The more democratic the process is through which we create a constitutional convention, the more democratic will the outcome be.

Many of the changes that most need to be made at the constitutional level could quite easily garner overwhelming popular support. These would begin with an appropriate second bill of rights. They would also include restrictions on abuses of power.

Under a new and improved Constitution, the people should have the right to know the laws of the land and to have the laws applied equally to everyone. Any major revision of the Constitution should certainly establish that the president has no right to use signing statements or any other documents to encourage the violation of laws as passed by Congress and signed into law and no right to spend public (or private) funds on any activity authorized only by a signing statement, and that the Supreme Court has the exclusive power to rule on the constitutionality of laws.

The president and his or her subordinates should also be forbidden to create laws by (even if publicly) signing any document, be it an executive order, a memo, a determination, a finding, a directive, a proclamation, or any of the dozens of other labels applied to decrees from on high. Congress should give the president explicit and limited rule-making powers. All rules should be publicly available. And Congress should be understood to have the power to overrule them.

Government employees should have the right to expose violations of the law by superiors without negative consequences. The executive branch should be required to comply with oversight requests from Congress, a congressional committee, or the Supreme Court, and in order to claim any privilege from doing so should be required to present its case in closed session and abide by the decision of the Congress or the congressional committee or the courts. The vice president should be required to comply with all laws and rules applying to the legislative branch and to engage in no executive branch activity. The House, Senate, or any committee thereof should explicitly possess the power to hold noncompliant witnesses in contempt and to imprison them until the end of a two-year Congress in the case of the House or a House committee, or for a maximum of six years in the case of the Senate or a Senate committee. And so on. Another important goal in revisiting the Constitution would be to deny the rights it conveys to corporations, while extending humans' rights into the workplace and into privately owned spaces such as shopping malls. Corporations are not mentioned in the Constitution, but at this point it is probably going to take a Supreme Court decision or a constitutional amendment to strip them of rights that should belong to us.

There has been progress on this front. Localities around the country, including Humboldt County, California, have denied corporations personhood and forbidden them from, for example, giving money to political campaigns, or from dumping sewage sludge on farms. We should follow these examples as well as legislating at the federal level a repeal of falsely claimed corporate power. We should repeal the anti-labor Taft-Hartley Act, which limits the right to form unions and to strike, and pass the Employee Free Choice Act, which enforces the right to form a union. We should bust up all corporate monopolies. We should not allow any corporation to become so dominant that when it goes broke the government claims an obligation to bail it out with our children's money for our own good. And we should prevent our government from engaging in such bailouts, particularly without the approval of Congress as required by the Constitution. But our hands will still be tied as long as

corporations are considered constitutional persons.

On December 20, 1787, Thomas Jefferson wrote to James Madison, listing items he thought belonged in the Bill of Rights. He began with these: “freedom of religion, freedom of the press, protection against standing armies, restriction of monopolies, the eternal and unremitting force of the habeas corpus laws, and trials by jury in all matters of fact triable by the laws of the land . . .” Yes, restriction of monopolies. Jefferson thought that was centrally important, and I think he was right.

A great deal of useful information on the problem of corporate personhood is available from the Program on Corporations, Law and Democracy (POCLAD). One result of the legal fiction that a corporation is a person is that the rights of real live people vanish on private property, making it hard to talk politics where people do their shopping or to talk union where we work. My friend Mike Ferner, a member of POCLAD, complained (in an e-mail to me),

“I can’t walk up to a rail car sitting in a siding and try to measure the radiation coming from the decommissioned reactor vessel it’s carrying (a real incident a few years ago outside Toledo, Ohio) without getting arrested for trespass, but corporations can prohibit OSHA [the Occupational Safety and Health Administration] and other agencies from making inspections without a warrant. Citizens in Vermont can’t pass an initiative that requires dairy product packaging to state if rBGH has been used, because the dairy industry has ‘negative free speech’ rights, meaning they DON’T have to say something if they don’t want to; just as utility companies can prohibit consumer groups from including conservation messages in utility bill mailings, because the companies have ‘negative free speech’ rights. . . . Not to mention all the decisions local governments can’t make (keeping out big box stores, refusing to site or expand a toxic waste dump, keeping out certain industries, etc. etc.) because of running afoul of the Commerce Clause and subsequent SCOTUS interpretations.”

Congress recently stripped us of our Fourth Amendment rights when it “modernized” FISA. Maybe it can do the same for corporations. Maybe citizens can be given the positive right to include community messages in utility mailings. Until we can amend the Constitution, maybe we can strip corporations, piece by piece, of the rights they have usurped. And maybe we can restore the sort of death penalty that we can all agree on: the people’s right, through our elected representatives, to end a corporation’s charter.

One path to removing corporate personhood, without a constitutional convention, might be through the Supreme Court. In October 2008 (before the 2010 decision in “Citizens United”), Ralph Nader spoke with Supreme Court Justice Antonin Scalia about this question and reported on that conversation:

“I asked him how the application of the Bill of Rights and related constitutional protections to the artificial creations known as corporations can be squared with a constitutional interpretation theory of ‘originalism.’ Justice Scalia said he had not put much thought into unconstitutional corporate personhood, but if a case was brought before him on the topic, he would be happy to delve into it.

Unconstitutional corporate personhood is the central issue that prevents equal justice under the law and provides privileges and immunities to corporations completely outside of the framers’ frame of reference in that large hot room in Philadelphia during the summer of 1787. The \$700 billion blank check bailout of Wall Street is the latest manifestation of private corporate domination of our national government, a situation that Franklin Delano

Roosevelt foresaw as “fascism” in a message to Congress in 1938. Another major reason for a constitutional convention is the pressing need for changes to the basic structure of our government, our system of elections and representation, the design of the three branches, and the need to limit the corrupting influences of media, money, and parties. While we’ve grown accustomed to “spreading democracy” abroad with bombs, we need to consider nonviolent approaches to producing more democracy here at home.

David Swanson is the author of “Daybreak: Undoing the Imperial Presidency and Forming a More Perfect Union” <http://davidswanson.org/book> from which this is excerpted.

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