

# The BLACK C O M M E N T A T O R

An independent weekly internet magazine  
dedicated to the movement for economic justice,  
social justice and peace - Providing commentary,  
analysis and investigations on issues affecting  
African Americans and the African world.

[www.BlackCommentator.com](http://www.BlackCommentator.com)

[Contents of Issue](#)

[Click here](#)

**September 24 , 2009 - Issue 343**

[Home](#)

## **You Have Only the Right to Remain Silent Let's Try Democracy By David Swanson BlackCommentator.com Columnist**

Click on the back button of your browser to return to non printer friendly page of this article

[Click here](#) to get helpful hints for viewing and printing this printer friendly plain text page

*We welcome David Swanson as a BC columnist. We have publishing his writings a number of times in the past and look forward to what he will be writing in the future.*

*This first column by Mr. Swanson is the first of three excerpts from [Daybreak: Undoing the Imperial Presidency and Forming a More Perfect Union](#) (Seven Stories Press) by David Swanson published here by the kind permission of the publisher.*

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:**

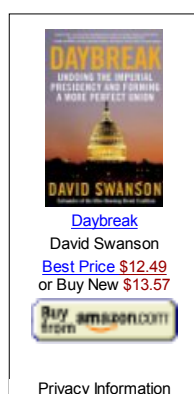
That same memo that brushed aside the First Amendment, mentioned above, also claimed the president could toss out the Fourth Amendment. Our Fourth Amendment has been erased by legislation amending FISA, and should instead be protected by the repeal of FISA and the passage of new legislation. Rather than 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 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.

**BlackCommentator.com** Guest Commentator, David Swanson, is co-founder of the [AfterDowningStreet.org](http://AfterDowningStreet.org) coalition and a board member of [Progressive Democrats of America](http://Progressive Democrats of America). He is the author of: [\*\*Daybreak: Undoing the Imperial Presidency and Forming a More Perfect Union\*\*](#) (Seven Stories Press). His website is [www.davidswanson.org](http://www.davidswanson.org). Click [here](#) to contact Mr. Swanson.



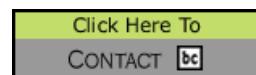
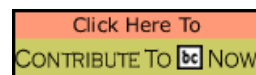
Let your voice be heard  
The call is free



[Click Here](#)



[Home](#)



Your comments are always welcome.

**e-Mail re-print notice**

If you send us an e-Mail message we may publish all or part of it, unless you tell us it is not for publication. You may also request that we withhold your name.

Thank you very much for your readership.

Website Design and Hosting provided by



Copyright © 2002-2009  
[www.BlackCommentator.com](http://www.BlackCommentator.com)  
All Rights Reserved