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A Second Bill of Rights

Let's Try Democracy

By David Swanson

BlackCommentator.com Columnist

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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'll take up the issues of election fraud and voting rights at more length later in this book.

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. I'll take up below some of the policies that might be implemented to protect this right.

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 super-wealthy 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.¹⁰ 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.¹¹ 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.¹² In his recent 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.¹³ 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.¹⁴

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.¹⁵ 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, and I will discuss later some policies that might make that a reality. But I think 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.

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BlackCommentator.com Guest Commentator, David Swanson, is co-founder of the [AfterDowningStreet.org](#) coalition and a board member of [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. Click [here](#) to contact Mr. Swanson.



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