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How Do We Claim What Is Ours Let's Try Democracy By David Swanson

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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 in the previous chapter 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 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 seventy-three 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 in the previous chapter, 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, as discussed in the first sections of this book.

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. While I expressed reluctance above about amending the Constitution only to ban signing statements, a 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 antilabor 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, 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.

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