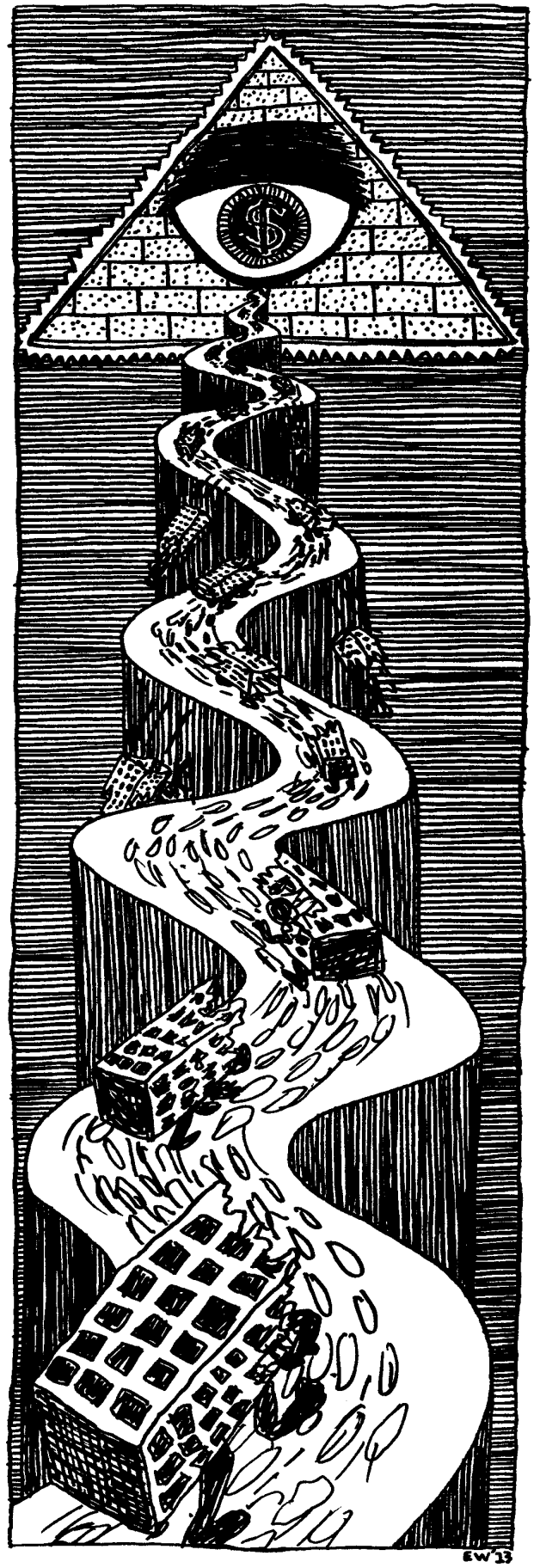
Expand Civil Rights Laws to Include Social Class

By Chris Pepus



America is dying of inequality. The Center for Economic and Policy Research reports that "the income share of just the top one-half of the top 1 percent grew from 5.39 percent of the nation's income in 1979 to 13.37 percent in 2010." CEPR found that "the share of the bottom 90 [percent] fell from 67.65 percent to 53.74 percent," during the same period. The Great Recession spawned by the financial crash has officially ended, but upward redistribution of wealth is still the order of the day. Stock prices are reaching new highs, amid crushing poverty, joblessness, and debt. The social divide will only get worse unless government ends right-wing austerity policies, which make everyone but the rich pay for the crisis caused by the rich.

We will not reverse the decline and fall of the American people until the people understand how the wealthy exploit them every day. Many activists, journalists, scholars, and filmmakers are working to show Americans in vivid terms just how they are being cheated. But the propaganda efforts of corporate media have been very successful, particularly in convincing the public that "freedom" means unregulated corporate power. Also, economic relationships can seem impersonal, causing many Americans to believe that inequality is beyond human control.

Fortunately, the civil rights movement created a framework for understanding the problems we face, as well as a means of addressing them. Americans may not yet fully grasp the workings of economic exploitation. But, thanks to decades of civil rights struggles, nearly everyone is familiar with the concepts of prejudice and discrimination. And that is the essence of our economically divided society: prejudice and discrimination against those who are not wealthy or of high social status. Civil rights laws have proven effective against unequal treatment based on race, sex, religion, and national origin. We must expand those laws to prohibit unequal treatment based on social class.

Concepts of class are so backward in America that we lack even a proper term to describe class prejudice. Words like racist and sexist are commonplace, but what do you call a rich person who hates working-class people or even middle-class ones? The usual term is snob, which suggests an annoying but harmless character who frets about the placement of salad forks at a table setting. An alternative, classist, is too similar to other words, especially when spoken. The term I use is class bigot, and I find myself using it a lot. Likewise, when police or other authorities target people based on race, religion, or gender, we call that racial, religious, or gender profiling. Hardly anyone talks about *social* profiling, but it happens all the time.

Can civil rights law transform our class-ridden society? To answer that, we'll need to review some history. The Fourteenth Amendment to the U.S. Constitution (ratified in 1868) mandates that "No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Along with the Fifteenth Amendment, which protects voting rights, the Fourteenth was meant to guarantee equal status for black citizens in the aftermath of the Civil War.

However, racists disregarded those guarantees, especially in the former Confederate states. It was not until the 1950s and '60s that the federal government intervened decisively to enforce the Constitution. Citing the "equal protection" clause of the Fourteenth Amendment, the U.S. Supreme Court banned segregated public schools in its 1954 *Brown v. Board of Education* ruling. President Lyndon Johnson and the U.S. Congress added new weapons to the fight against injustice: the Civil Rights Act of 1964 and the Voting Rights Act of 1965. The result was remarkable, if incomplete, progress toward an integrated America.

The Civil Rights Act remains the basis for a wide range of legal protections. Title IV of the Act forbids educational discrimination based on "race, color, religion, or national origin." Title VII deals with employment and includes provisions against unequal treatment due to sex, in addition to the categories mentioned in Title IV. Title VI applies the Act's regulations to government agencies that receive federal funds.

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Congress has expanded the scope of this legislation since the 1960s. For instance, the Education Amendments of 1972 prohibit sex bias in education, closing a loophole in the 1964 Act. To enforce these statutes, the U.S. Department of Justice maintains a Civil Rights Division and there is also a Commission on Civil Rights. Private citizens can sue in federal court when they believe their lawful rights have been violated. But discrimination based on social class is the defining evil of the age and it is currently beyond the reach of our legal system.

Admittedly, class is a less obvious identity than race or sex, but identities rooted in religion or national origin are not always obvious and those are covered by civil rights legislation. And, admittedly, not all provisions of civil rights law could apply to class. For instance, it is illegal to make decisions on loan or rental applications based on race. Obviously, it is not feasible to institute a blanket ban on discrimination by class in such cases, because that would prevent lenders and property owners from checking applicants' incomes or credit histories.

The key distinction here is between interactions that are determined by a person's financial standing (such as purchasing, borrowing, and leasing) and those that are not or should not be (such as law enforcement, public safety, education, and employment). In the latter category of interactions, it is wrong to discriminate against citizens merely because they possess less wealth or occupy a lower social status. But, all too often, that is exactly what occurs. Let's look at some examples of class bigotry in action and consider whether improved civil rights legislation could help.

In a recent article for the *Guardian*, Sadhbh Walshe showed that U.S. courts are rife with class bias. She cited studies of non-felony criminal cases, which demonstrated that courts treat defendants more harshly if they are unable to pay bail. When defendants are locked up pending trial, prosecutors have the upper hand and are likely to offer more punitive plea bargains.

When a legal-aid organization in New York City started posting bail for impoverished misdemeanor defendants, the situation changed dramatically. "Over half of their clients' cases were thrown out by the prosecution, and not a single one of the remaining clients took a disposition that involved any jail time," Walshe wrote. "That small amount of bail money posted on their behalf was, literally, the price of their liberty." A 2010 study showed that 87 percent of non-felony defendants in NYC who were assigned bail of $1,000 or less were unable to pay it. It is no exaggeration to say that, in such cases, courts are deciding guilt and punishment based on social class.

The bail issue is a question of court procedure and therefore violates the principle of "equal protection of the laws" at its most fundamental. But when judges and prosecutors use non-felony defendants' poverty as a means of extracting a guilty plea or imposing a harsher sentence, there is currently no recourse. That is because, unlike race or gender, class is not a category that triggers legal protections. We should amend the law to fix that.

Class bigotry poisons justice by other means as well. There is no better illustration of that than the contrast between law enforcement's harsh measures against ordinary citizens, such as peaceful protesters, and its refusal to take action against Wall Street criminals. The country is still suffering from the effects of the financial crisis, which was caused by fraud. Banks issued home loans at inflated prices, often knowing that the borrowers would not be able to keep up payments. Then the banks created worthless securities out of those loans and sold them to unsuspecting customers around the world.

In fact, the banksters-in-chief at Goldman Sachs were so sure that the price of their securities would collapse that they bought insurance on them even after they sold them. When the inevitable crash came, no one at Goldman Sachs was punished. Instead, the company received taxpayer-funded bailouts, both directly and from another bailed-out firm, American International Group (AIG), which had insured those fake securities. "At least $13 billion of the taxpayer money given to AIG in the bailout ultimately went to Goldman," financial journalist Matt Taibbi reported.

Many other financial institutions, including foreign ones, benefitted from bailouts in the form of direct government payments, special credit arrangements, or guarantees. A 2011 report by the government's General Accounting Office put the price of the Federal Reserve Board's corporate welfare to leading banks at $16 trillion. (America's Gross Domestic Product, the value of all goods and services in the country, stands at about $15.7 trillion.)

The people were not so fortunate: the economic disaster resulting from Wall Street's scams inflicts new casualties every day. Since the taxpayers saved the banks and their stockholders, punishing the banksters who caused the crisis is literally the least the government can do. Taibbi sums up the matter with this question: "We couldn't find a single person on Wall Street to do even a day in jail for losing 40% of the world's wealth in a criminal fraud scheme?"

The crimes didn't stop after the bailouts. Wall Street made a fortune off toxic mortgages, so the next step was to profit from the houses themselves by repossessing and reselling them. There was only one problem: the banks had cut up the mortgages and spread the pieces across different securities. That tactic helped the scam

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artists cover their tracks, but made it practically impossible to establish ownership of any individual mortgage. Wall Street bosses came up with a solution to that problem: perjury. They presented fake mortgage documents in court. William Black, a former federal regulator, told *Democracy Now!* that "what [the bankers] were doing was lying systematically to the tune, typically, of the large places, of 10,000 times a month." They were "committing felonies that would lead to people being made homeless in America."

Not satisfied with that, the banks also repossessed homes of buyers who were legally entitled to refinance. In some cases, they seized the houses of people who were not behind on their payments or who were military personnel on combat duty, and therefore supposed to be protected from foreclosure. The list of banks involved in illegal dispossession includes Bank of America, Citibank, Wells Fargo, and J.P. Morgan Chase.

The Obama administration and officials in 49 states took up the issue, reaching a settlement with the banks in 2012. Most victims of illegal foreclosure—about 80 percent—will receive compensation of $300 to $1,000. No, that is not a misprint. The settlement grants immunity to the banks, so the only choice given to those who lost their homes unjustly is take it or leave it.

If the Ku Klux Klan threw African Americans out of their homes, not only would the Klansmen go to jail for it, but they would be forced to return the stolen houses. If the government cut a deal with the KKK granting immunity to the group's members and allowing them to pay practically nothing, the evicted residents could sue the government for racially discriminatory law enforcement. They could also obtain a court injunction preventing the corrupt bargain between politicians and Klansmen from going into effect.

Victims of the real-life illegal dispossession case should have the right to sue. Government officials acted with gross bias toward the too-big-to-fail banks and their too-rich-to-lose stockholders. The main difference between the hypothetical Klan example above and the actual banker home-theft case is that the bankers' thugs don't wear sheets. Let's expand civil rights law and create a remedy for wholesale property theft by the wealthy, one that applies even when political figures and prosecutors are too cozy with the social elite to care.

Speaking of which, in February, U.S. Senator Elizabeth Warren criticized government officials' eagerness to reach settlements with posh criminals rather than prosecuting them. At a hearing of the Senate Banking Committee, Warren asked a panel of federal regulators to tell her "about the last few times you've taken the biggest financial institutions on Wall Street all the way to a trial." None of the panelists could cite a single case. Warren pointed out the contradiction at the heart of American "justice." "There are district attorneys and U.S. attorneys who are out there every day squeezing ordinary citizens on sometimes very thin grounds and taking them to trial," she said. "I'm really concerned that too big to fail has become too big for trial."

Class bias is a matter of life and death. In its annual "Death on the Job" report, released in April, the AFL-CIO presented statistics on work-related deaths, including those from disease caused by exposure to dangerous materials at work. "Since 1970, only 84 cases have been prosecuted, with defendants serving a total of 89 months in jail," the report stated. "During this time there were more than 390,000 worker deaths." That amounts to one month of jail time per 4,382 workers killed.

Compare that to government officials' response to terror attacks. In that case, they are so aggressive that they don't think twice about violating civil liberties. There is a gross imbalance in the way American government responds to threats against its citizens' safety. When the issue is foreign-based terrorism, our gung-ho authorities refuse to stay within their constitutional limits. But when workers die needlessly on the job, the authorities do nothing. The politicians, prosecutors, and many of the regulators are more concerned about corporate profits than workers' lives. How long before al-Qaeda leaders figure out that if they want to kill Americans with impunity, they can forget about making bombs and just open unsafe factories in the U.S.? Restoring balance to law enforcement will prove a big job, but we can fight against death at the workplace by using amended civil rights law to hold corporate and government officials accountable in court.

Improved civil rights legislation would end many other destructive inequities. So-called "right to work" laws, which effectively prevent union organizing, would finally become illegal, simply because they are discriminatory. Stockholders and other business owners are allowed to form groups for collective bargaining: those groups are called corporations. Created by the state, corporations let business owners take advantage of a wide range of privileges, including tax breaks and the ability to walk away from certain debts. Permitting business owners to organize for their interests, while denying workers the same right, is the definition of unequal treatment.

If class becomes a category of civil rights law, it will allow us to combat social elitism in higher education. The percentage of working-class students at top universities is far below the level that would trigger widespread outrage if any other group were so systematically excluded. Many leading colleges openly admit that they grant enormous admissions preferences to "legacies," children of rich graduates. In 2009, two sociologists, T. J. Espenshade and A.W. Radford, published a book showing that leading colleges penalize working-class white applicants. The deafening media silence that has accompanied that revelation should end with a legal challenge.

When offering examples of how civil rights legislation could apply to class, I glossed over one problem for the sake of clarity. I depicted the courts acting to enforce the new law, rather than resisting it. Actually, civil rights laws are under fire and conservatives on the bench are doing much of the shooting. The U.S. Supreme Court is currently considering suits aimed at eliminating race-based affirmative action and key elements of the Voting Rights Act. Even if those efforts fail, the fact remains that racial segregation is on the rise again in America's schools and neighborhoods. We need to build a powerful coalition to defend existing anti-discrimination laws. Broadening the definition of civil rights to encompass social class would help that effort by giving more Americans—specifically, economically disadvantaged whites—a stake in this crucial legislation.

Corporate attacks on the lives of everyday Americans are successful because working-class people are often divided by race and sex. Under our unreformed class system, the quest for racial and gender diversity entails discriminating against working-class white men while continuing to privilege rich white men. Liberal college administrators may not acknowledge that, but the targets of their class bigotry are fully aware of it. Likewise, working-class women understand that "affirmative action for women" normally applies only to bourgeois women. Campaigns for equality should unite excluded groups instead of setting them against each other.

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This plan to include class within the scope of civil rights law belongs at the center of the progressive agenda. It offers a comprehensive solution to the problems of our unequal society. Just as important, it will strengthen and focus demands for change by prompting Americans to think systematically about the role of class in daily life.

ILLUSTRATIONS BY EVAN WOLFF