



# Sunstein on FDR's Second Bill of Rights

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Are social and economic rights foreign to American traditions? Are they inconsistent with our laissez-faire freedom-loving culture? Consider a defining moment in our nation's history, when national security was also threatened and when an American president argued that freedom itself required social and economic rights. In our own day, we should be paying close attention to his arguments.

On January 11, 1944, the United States was involved in its longest conflict since the Civil War. The war effort was going well. At noon, America's optimistic, aging, wheelchair-bound president, Franklin Delano Roosevelt, sent the text of his State of the Union address to Congress. Ill with a cold, Roosevelt did not make the customary trip to Capitol Hill to appear in person. Instead, he spoke to the nation via radio -- the first and only time a State of the Union address was also a "fireside chat."

Roosevelt began by emphasizing that "the one supreme objective for the future" -- for all nations -- was captured "in one word: security." He argued that the term "means not only physical security which provides safety from attacks by aggressors" but includes as well "economic security, social security, moral security." Roosevelt insisted that "essential to peace is a decent standard of living for all individual men and women and children in all nations. Freedom from fear is eternally linked with freedom from want."

Roosevelt said that the nation "cannot be content, no matter how high that general standard of living may be, if some fraction of our people -- whether it be one-third or one-fifth or one-tenth -- is ill-fed, ill-clothed, ill-housed, and insecure." Roosevelt looked back, and not entirely approvingly, to the framing of the Constitution. At its inception, the nation had grown "under the protection of certain inalienable political rights -- among them the right of free speech, free press, free worship, trial by jury, freedom from unreasonable searches and seizures."

But, he added, over time, "we have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence." As Roosevelt saw it, "necessitous men are not free men," not least because those who are hungry and jobless "are the stuff out of which dictatorships are made." He echoed the words of the Declaration of Independence, urging a kind of Declaration of Interdependence: "In our day these economic truths have become accepted as self-evident. We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all -- regardless of station, race, or creed."

Then he listed the relevant rights:

"The right to a useful and remunerative job in the industries or shops or farms or mines of the Nation;

The right to earn enough to provide adequate food and clothing and recreation;

The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;

The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;

The right of every family to a decent home;

The right to adequate medical care and the opportunity to achieve and enjoy good health;

The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;

The right to a good education."

"After this war is won," Roosevelt said, "we must be prepared to move forward, in the implementation of these rights." And there was a close connection between this implementation and the coming international order. "America's own rightful place in the world," he said, "depends in large part upon how fully these and similar rights have been carried into practice for our citizens. For unless there is security here at home there cannot be lasting peace in the world."

Roosevelt did not argue that the Constitution should be amended to include the "Second Bill of Rights." But he did believe that social and economic rights ought to be seen as a defining part of our political culture, closely akin to the Declaration of Independence -- a place to look for our deepest

commitments. On this count, Roosevelt's plea can claim strong roots in American history. James Madison, the most influential member of the founding generation, explicitly supported "laws, which, without violating the rights of property, reduce extreme wealth to a state of mediocrity, and raise extreme indigence toward a state of comfort."

Thomas Jefferson spoke in similar terms, saying: "I am conscious that an equal division of property is impracticable. But the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislatures cannot invest too many devices for subdividing property, only taking care to let their subdivisions go hand in hand with the natural affections of the human mind . . . . Another means of silently lessening the inequality of property is to exempt all from taxation below a certain point, and to tax the higher portions of property in geometrical progression as they rise."

Roosevelt's speech has had a large international influence; the Second Bill of Rights should be seen as a leading American export. The Universal Declaration of Human Rights, written in the shadow of FDR and accepted by the UN General Assembly in 1948, explicitly includes social and economic guarantees. The United States enthusiastically supported the declaration (but has been exceptionally unusual in refusing to ratify the International Covenant on Economic, Social, and Cultural Rights, which would help to enforce social and economic guarantees). Many constitutions include social and economic guarantees in a way that can be traced directly to Roosevelt's speech.

But put history and international practice to one side. Was Roosevelt right to suggest that America should accept a Second Bill of Rights as part of its defining aspirations? I believe that he was. The Second Bill is designed to protect two of the most fundamental of human interests: basic opportunity and minimal security.

## **BASIC OPPORTUNITY**

In principle, Americans on both left and right are committed to "equal opportunity." But a moment's reflection should be enough to show that in a free society, equal opportunity is elusive. Because some people have more wealth than others, some children will have more and better opportunities. Those who think they are committed to "equal opportunity" are thus actually in favor of "decent opportunity," a more modest and practical aspiration. Achieving decent opportunities for all was one of Roosevelt's central commitments.

The right to good education is the most obvious example. By elevating a good education to the status of a right, Roosevelt meant to emphasize several points: that in many domains, education is indispensable to decent prospects in life; that it is a basic safeguard of individual security; that those who are well-educated are less likely to fall, and, if they do, are more likely to be able to pick themselves up; and that education is necessary for citizenship itself. It is noteworthy that of all the rights listed in FDR's Second Bill, the right to education is by far the most frequently included in the constitutions of the states. Forty-nine of the 50 give it some constitutional recognition (Iowa is the only holdout).

Against the backdrop of the Great Depression, Roosevelt was also asserting the right to a "useful and remunerative job," not through government employment but through a flourishing economy that is constantly creating more positions. But he also believed that if the private sector failed to provide enough jobs, government should provide opportunities; and he saw those opportunities as rights, not privileges.

Other rights in the Second Bill that concern opportunity include "the right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad."

Roosevelt was emphasizing that for real opportunity to exist, government must prevent monopolies; because they squelch competition, they deprive people of a fair chance to obtain employment and wealth.

## **MINIMAL SECURITY**

Opportunity, if it bears fruit, produces security. But some aspects of the Second Bill aim at security directly, by creating a floor below which human lives are not permitted to fall. In Roosevelt's words, "Government has a final responsibility for the well-being of its citizenship. If private co-operative endeavor fails to provide work for willing hands and relief for the unfortunate, those suffering hardship from no fault of their own have a right to call upon the Government for aid; and a government worthy of its name must make fitting response." Thus, certain aspects of the Second Bill protect freedom from desperate conditions -- a form of liberty, not equality.

Roosevelt sought a kind of national insurance program that would help people suffering from the inevitable accidents and catastrophes of life. Roosevelt, himself a victim of polio, believed that each of us is vulnerable to dangers that cannot be wholly prevented. Insofar as the Second Bill would ensure food, clothing, shelter, and health care for all, it would insure against the worst of those dangers.

Evidently Roosevelt came to believe that rights are instruments, or tools, designed to protect human interests. The more fundamental the interests, the more important the instruments. Nor is it unfamiliar or odd to think of rights in this way. Freedom of speech should be understood in these terms, as an effort to protect a wide range of human values. The Second Bill can be analyzed similarly. It identifies a range of fundamental human interests and promises to protect them.

## **OBJECTIONS**

Of course, social and economic guarantees are controversial. Consider the widespread view that democracies should respect "negative rights," or rights against government interference, but should not acknowledge "positive rights," or rights to government help. This view is tangled in a massive confusion, and for one simple reason: The so-called negative rights are rights to government help, too.

To see the problem, begin with the two foundations of a market economy: private property and freedom of contract. Neither of these can be guaranteed by laissez-faire, because both require government assistance. Private property depends on property rights, which do not exist without government and law. Roosevelt himself made the point as early as 1932, asserting "that the exercise of . . . property rights might so interfere with the rights of the individual that the government, without whose assistance the property rights could not exist, must intervene, not to destroy individualism but to protect it" (emphasis added).

In fact, the government is "implicated" in everything people own. If rich people have a great deal of wealth, it is because the government furnishes a system in which they are entitled to have and to keep that wealth. When a company owns a broadcasting station or a series of broadcasting stations, this is possible only because the government creates a right of ownership and is prepared to back up that right with the law. People work very hard for what they earn. But without government, people would face a free-for-all, a kind of test of strength. Who knows what would emerge from that test? The people who most loudly object to "government intervention" depend on it every day of every year; they have the most to lose if government really got "off their backs." Once these points are understood, it becomes impossible to oppose the Second Bill on the ground that rights are properly limited to protection "against" government. Even for those who reject the Second Bill, freedom requires government's presence, not absence.

Many people might acknowledge this point but object to social and economic rights on pragmatic grounds. They might fear that the Second Bill would destroy people's incentives and reward sloth. Perhaps the Second Bill would give citizens an unhealthy and even destructive sense of entitlement -- a belief that whatever they do, the state owes them the material preconditions for a decent life. But this was not Roosevelt's goal. He did not say that people should be given resources if they were able-bodied but refused to work. It was only when opportunity was not enough that Roosevelt argued for minimal guarantees as a matter of basic justice.

## **PROSPECTS**

The Second Bill of Rights was aimed at providing security in the face of a wide range of social risks -- and to see that security as a fundamental right, a condition of freedom. Can it be reclaimed today? I think so. American self-understandings are constantly being revised, with fresh attention to central aspects of our history. Consider the current effort to recover the legacy of Ronald Reagan. The celebration of Reagan, and the effort to place him in the pantheon of the greatest presidents, is much less about his smile than about his substance. Reagan's opposition to federal regulation, asserted in an idiom of self-help, reflect simple principles that resonate with one strain of the American experience.

Roosevelt's Second Bill of Rights should be able to do much better. In fact Roosevelt was Reagan's stylistic model; FDR had all of Reagan's humor and grace, without the Hollywood veneer. (The wheelchair-bound president liked to end meetings by saying, "I'm sorry, I have to run.") Better than any other speech or document, the Second Bill captures the extraordinary shift in the nature of government in the 20th century -- a shift that most of the country continues to support. Most Americans favor a right to education, a right to be free from monopoly, a right to social security; and in many polls, most Americans favor a right to a job and a right to health care. Equally

important, the national government is committed, if only in principle, to most of the rights that Roosevelt cataloged.

Of course, the commitment is ambivalent, in part because of the pervasiveness of misleading conservative homilies about the evils of government intervention. There is no Depression to activate rethinking of the Rooseveltian sort, and, thus far, the war on terrorism has failed to produce a new focus on human vulnerability in all its forms. But the general public is increasingly distressed by social insecurity, perhaps above all that of health care under laissez-faire auspices. John Kerry has often said that health care is "a right, not a privilege," a phrase that borrows directly from Roosevelt's Second Bill of Rights. A generalized right to decent health care can attract, and is attracting, widespread support. There is a growing concern that tens of millions of working people do not earn enough money to support their families. The Earned Income Tax credit, an innovation since Roosevelt's time, can be understood as protecting a basic right: decent earnings for honest work. Leaders who want to pursue this path lack the strong tailwind that Roosevelt enjoyed. But they do have economic and social circumstances that are making millions of ordinary Americans increasingly uneasy about laissez-faire.

In any case, America's principles and self-understandings help to determine our practices. For much too long, the far right has succeeded in defining the nation's principles, leading Americans and the world to see the United States through a distorted mirror -- one that disserves our own history. The sooner we eliminate the distortion, the better.

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