

FDR's Unfinished "Second Bill of Rights" – and Why We Need it Now

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Dec. 13, 2006 -- Franklin Delano Roosevelt first began speaking about our country's need for economic and social rights to compliment the political rights granted to us in our original Bill of Rights during his first campaign for President, in 1932. Though his whole twelve year Presidency and four presidential campaigns centered largely on advocating for and implementing those rights, it wasn't until his January 11th, 1944, State of the Union address to Congress that he fully enumerated his conception of those rights in what he referred to as a "Second Bill of Rights". The elements of that conception fall into two major categories – opportunity and security. Here is a partial introduction to and list of FDR's Second Bill of Rights, as enumerated in his [1944 State of the Union address](#):

We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. Necessitous men are not free men. People who are hungry and out of a job are the stuff of which dictatorships are made.

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. Among these are:

Opportunity

- The right to a useful and remunerative job...
- The right to a good education.
- The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies...

Security

- The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment.
- The right to adequate medical care and the opportunity to achieve and enjoy good health.
- The right of every family to a decent home.
- The right to earn enough to provide adequate food and clothing and recreation.

Unfortunately, as discussed by [Cass R. Sunstein, Professor of Jurisprudence at Chicago School of Law](#), in his book, "The Second Bill of Rights – FDR's Unfinished Revolution and Why We Need it More Than Ever", FDR's Second Bill of Rights has to this day only been partially implemented in the United States. Sunstein discusses in his book the history of the Second Bill of Rights (pre-FDR, FDR, and post-FDR), why he believes that it has not yet been fully implemented in the United States (despite the fact that many other countries have implemented it to a much greater degree), and why we need it:

Attitudes of our Founding Fathers towards economic and social rights

Though economic and social rights were included neither in our original Constitution nor in subsequent amendments to our Constitution, Sunstein points out that our Founding Fathers nevertheless considered the importance of these rights to a democracy. For example, [James Madison recommended the following as being important to the preservation of democracy](#):

... By withholding unnecessary opportunities from a few, to increase the inequality of property, by an immoderate, and especially an unmerited accumulation of riches; by the silent operation of laws, which, without violating the laws of property, reduce extreme

wealth to a state of mediocrity, and raise indigence toward a state of comfort.

And Thomas Jefferson saw the situation in similar terms (<http://teachingamericanhistory.org/library/index.asp?document=967>):

The consequences of this enormous inequality producing so much misery to the bulk of mankind, legislatures cannot invest too many devices for subdividing property... 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. Whenever there is in any country, uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock for man to labor and live on.

FDR and the Second Bill of Rights

Nonetheless, the concept of economic and social rights did not gain much traction in the United States until the election of a President (FDR) who fervently believed in them coincided with circumstances (The Great Depression) that made their need glaringly apparent to a large proportion of American citizens.

Sunstein points out that new "rights" need not take the form of amendments to our Constitution. They also occur through reinterpretation of our Constitution by our courts or when a general consensus develops among large majorities of our citizens as to what constitutes a "right". Roosevelt's preferred method for establishing a Second Bill of Rights was the latter, and he accomplished this through more than twelve years of advocating for these rights and putting them into practice through executive orders and pushing Congress to enact legislation.

Some of the most concrete results of FDR's efforts were [the Social Security Act of 1935](#), [the creation of several agencies that produced greatly needed jobs](#), [labor protection laws that created the right for workers to organize into unions and a federal minimum wage](#), antitrust policies, [the GI bill of rights](#), and [to help pay for some of those programs, record tax rates on wealthy corporations and individuals](#). But perhaps more important than these concrete accomplishments, by the end of FDR's Presidency large segments of the American population accepted many aspects of his Second Bill of Rights as legitimate rights – for example, the right to a good education.

International acceptance of economic and social rights

Following FDR's death in 1945, his wife, Eleanor, led the effort towards international acceptance of numerous elements of [FDR's Second Bill of Rights](#), incorporated into the [Universal Declaration of Human Rights](#), which was adopted by the United Nations in 1948. These rights were then expanded further by [The International Covenant on Economic, Social, and Cultural Rights](#), which was ratified by 142 nations as of 2003. Paradoxically, the United States, where the Second Bill of Rights originated, has not yet signed that Covenant.

Furthermore, the commitment to economic and social rights throughout the world is manifested by their inclusion in the constitutions of numerous countries. And the [European Social Charter](#), signed by 24 European countries, establishes such rights as the right to work for fair remuneration, health care and social security.

Why does the United States lag so far behind other nations in establishing economic and social rights for its citizens?

Sunstein considers several answers to this crucial question, and dismisses them as incomplete explanations. Incomplete explanations include: The United States created its constitution at a time long before economic and social rights were recognized; the United States has a cultural aversion to economic and social rights; and, the constitution of the United States is enforced through its courts, which would find it very difficult to enforce economic rights. Sunstein points out that the date of origin of our constitution has limited relevance to rights that we recognize today, since rights can and do evolve over time. He notes that, though economic rights may be difficult to enforce, that doesn't disqualify them from being recognized as rights. And most important, he notes that the U.S. Supreme Court was well on its way to recognizing a large number of economic and social rights until Richard Nixon's election in 1968, with his subsequent appointment of four conservative Supreme Court justices, who sharply reversed that trend.

U.S. Supreme Court decisions that pointed towards implementation of a Second Bill of Rights included: the right to defense counsel in criminal cases ([Gideon v. Wainwright, 1963](#)); the [abolishment of poll taxes for voting in 1964 and 1966](#); the striking down of a California law that required a one year waiting period for new arrivals attempting to obtain welfare benefits ([Shapiro v. Thompson](#)); the striking down of an Arizona law requiring a one year's residence in a county prior to being eligible for receiving free non-emergency medical care ([Memorial Hospital v. Maricopa County](#)); and, a finding that [welfare recipients could not be removed from welfare rolls without a hearing](#).

Though Nixon's Burger Court did not reverse most of the above mentioned decisions, it nevertheless made several decisions which indicated a sharp change in direction, culminating in [San Antonio School district v. Rodriguez in 1973](#). That decision allowed to stand a Texas policy which allocated substantially more money to wealthy than to poor school districts. And according to Sunstein, that decision "was the death knell for the idea that the Constitution protects social and economic rights". Thus, his conclusion is that Richard Nixon's very close election victory in 1968 is the main reason why the U.S. lags so far behind other countries in recognizing economic and social rights, and if less than one additional percent of the U.S. electorate in 1968 had voted for Hubert Humphrey instead of Nixon, our Constitution today would be much further along than it is towards recognizing those rights.

I have one important disagreement with Sunstein on that score. 1968 was 38 years ago, and with the recent death of William Rehnquist, no Nixon appointees remain on our Supreme Court. Furthermore, twelve years of Reagan/Bush presidencies, followed eight years later by six years of George W. Bush have also substantially impeded acceptance in the United States of FDR's goals for a Second Bill of Rights – and not just because of their Supreme Court appointees. Since Reagan's election in 1980, our country has acquired several severely anti-democratic tendencies, including [the increasingly obscene role of money in our elections](#), [a corporate national news media with little sense of responsibility to the American citizenry](#), [an obscenely widening wealth gap](#), and [a great capacity for election fraud via electronic voting machines that count our votes in secret](#) ().

One good example is Bill Clinton's attempt to enact universal health insurance in our country. Sunstein says that the rejection of Clinton's health care plan indicated that Americans are not yet ready to consider health care as a "right". But that conclusion fails to take into account the vast amounts of special interest money arraigned against the Clinton health care plan. Most important, a barrage of false and misleading messages led Americans to believe, incorrectly, many bad things about the plan, most importantly that it would abolish the right of Americans to choose their own physician.

Sunstein's larger point is that the United States could have accepted FDR's Second Bill of Rights by now. Whereas I agree with him on that point, I also think that it would have required more than Hubert Humphrey's election in 1968. It also would have required that somehow the so-called "Reagan revolution" would have been prevented.

Why should we have a Second Bill of Rights?

There are three reasons why we need FDR's Second Bill of Rights – which may be subsumed under the following headings: Maintenance and furtherance of democracy; humanity; and, fairness.

1 *Maintenance and furtherance of democracy*

As FDR said many times, "Necessitous men are not free men". Nor are they capable of participating in a democracy. Illiterate or otherwise uneducated people have very limited capacity to make political decisions ([which undoubtedly largely explains the inverse correlation between education and voting for George W. Bush](#)). A person who is unsure if and when she will receive her next paycheck has little time to engage in political activities. And what is the meaning of democracy when our elected officials are more concerned about pleasing one wealthy constituent than a hundred poor constituents, simply because of the potential for campaign donations from the former?

2 *Humanity*

Today, 46 million Americans are without health insurance, which results in [thousands of premature deaths every year, including thousands of infants](#); at least 8 million Americans who want jobs are unemployed; 12% of Americans household lack adequate food; [approximately 3 million Americans are homeless in any given year](#); and 37 million Americans are in poverty, while [the poverty rate continues to rise under George W. Bush's administration](#).

Sunstein describes what was perhaps the main stimulus for FDR's great desire for and pursuit of a Second Bill of Rights:

To Roosevelt, human distress could no longer be taken as an inevitable by-product of life, society, or "nature"; it was an artifact of social policies and choices. Much human misery is preventable. The only question is whether a government is determined to prevent it.... Foremost was the idea that poverty is preventable, that poverty is destructive, wasteful, demoralizing, and that poverty is morally unacceptable in a Christian and democratic society.

3 *Fairness*

The issue of fairness is perhaps the most important issue that we liberals and moderates need to be able to argue to opponents of economic and social rights. Many Americans are against the establishment of these rights because they believe that they will entail "taking" wealth from those who have it in order to give it to those who need it. Thus they see these "rights" as involving a sort of theft by government.

In the first place, FDR's emphasis in advocating his Second Bill of Rights was on opportunity. Without an education, one cannot reasonably hope to successfully compete in our society. In the presence of monopolies, small businesspersons and farmers cannot reasonably hope to compete to earn a decent living. And who could argue that it is fair to deny a person an opportunity to work for pay? With regard to "rights" to health care, housing, clothing, etc., FDR considered those rights to apply only as a last resort, to those who are unable to work and earn enough money to pay for those things, not to those who are able to work but who choose not to.

Secondly, those who say "it is unfair to disproportionately tax the wealthy because it's their money" need to understand some fundamental issues. Wealthy people are wealthy largely or mostly because of government actions, including: protection of "private property"; maintenance of contract laws through government legal systems, etc; government charters to operate as corporations; use of government infrastructure; government subsidies to corporations; and many others. The point is not to say that the wealthy do not "earn" their wealth. Perhaps some of them do, and perhaps some of them don't. But the point is that their wealth is accumulated and maintained only with the active assistance of government. And for that reason, when government sees the need to tax that wealth in order to carry out critical government functions, it cannot be automatically assumed that those actions are not fair. Indeed, it is frequently those who benefit the most from government actions who bitterly complain when government intervenes to help other people.

The average CEO today "earns" 431 times the annual salary as the average worker who works for those CEOs. Is that because CEOs, such as "Kenny Boy" Lay, produce 431 times as much value as the average worker, and free market principles operate to ensure that they are fairly compensated for what they produce? Or, is it because they have been given the power to determine their own salaries and compensation? If you believe the former, I think you're living in some sort of fantasy land.

Monopolies ensure that rich and powerful corporations become ever more rich and powerful, at the expense of everyone else, including workers and consumers. Under our current system, millions of dollars in campaign "donations" allow those corporations to establish those monopolies, to receive millions in subsidies from our government, to destroy our environment without having to pay for it ("deregulation"), and to avoid costly civil suits ("tort reform").

And those who receive billions of dollars in inheritance without having to lift a finger whine about having to pay a so-called "death tax" on that money, while millions of children who are born into poverty have no opportunity to receive needed health care or a decent education.

Sunstein (who is obviously a moderate, and who strongly believes in our capitalistic free enterprise system) sums up our current situation on the last page of his book:

In a society that purports to prize opportunity for all, too many citizens lack a minimally fair chance. In the past decades, we have disregarded some of our deepest ideals, with roots not merely in the new Deal but in the Civil War and the founding period itself. The second bill of rights is largely unknown.... The second bill of rights should be reclaimed in its nation of origin.