

Our Toxic Bill of Rights

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Franklin D. Roosevelt's famous "Four Freedoms" and "Second Bill of Rights" are steeped in the empirical realism of Original Institutional Economics (OIE). FDR's intent was to supplant elements of the self-destructive illogic of capitalism with instrumentalist policies strongly reflective of OIE. Influenced during his first administration by Rexford Tugwell and other institutionalists, FDR's proposed remedies for a structurally malfunctioning economy continued to exhibit enduring OIE influences throughout his four terms in office, culminating with the Four Freedoms (1941) and the Second Bill of Rights (1944).

Alarming shifts in the political economy landscape of contemporary America suggest the need for an ongoing examination of the role of countervailing power in reversing the terrifying trend toward authoritarianism. Alternative institutionalist models (sharing economy and worker cooperatives) clearly represent democratized and cultural-evolutionary expressions of countervailing power - positive steps embodying the OIE social value principle. But these models assume intelligent socially-minded agents of good faith.

How do "we the people" bridge the enlightenment gap between progressive consciousness on the one hand and cultish enslavement on the other to various and sundry toxic enabling myths? Rugged, boorish individualism and negative, faddish personal freedoms saturate American culture paradoxically propping up past-binding institutions of corporate hegemony which undercut substantive positive freedoms and democracy. The time is nigh for renewed calls for a Second Bill of Rights. This paper explores Tugwell's thoughts on basic rights (a total of 16) and responsibilities (a total of 13) of citizens/businessmen and their influence on Roosevelt and reciprocal influences of Roosevelt on Tugwell as part and parcel of the OIE legacy. Both articulated a set of basic rights which show a remarkable degree of similarity and affinity with the OIE tradition. Whereas Tugwell advanced a distinct set of basic civic responsibilities, in FDR's case, a spirit of responsibility was strongly implied by his Second Bill of

Rights. In sum, Tugwell infused FDR's thinking with OIE influences while FDR, through his political acumen and vision, inspired key aspects of Tugwell's new American constitution.

This paper will demonstrate that Tugwell's and FDR's economic philosophies and policies comport well with key elements of the OIE social provisioning concept. This is most evident in Tugwell's Constitution of the Newstates of America (as explicated in *The Emerging Constitution*, 1974). This work represents the crowning intellectual achievement of his notable intellectual life and public service, the distillation and culmination of his life's work and a tour de force of his mature OIE mindset. Tugwell's Newstates Constitution clearly embodies several key elements of the OIE social provisioning concept: 1) the Veblenian dichotomy; 2) the Fosterian dichotomy; 3) Dewey's democratic principle; 4) Tool's social value principle; and 5) egalitarianism. These features are strongly represented in FDR's Four Freedoms and Second Bill of Rights as well, arguably the most trenchant and momentous expressions of FDR's idealism, humanity, and pragmatism.

Key Features of OIE Social Provisioning

Veblen's dichotomy was the departure point for Tugwell's insistence upon the necessity of constitutional revision: institutional change was necessary due to advancing technology and the appearance of various "social emergents" - the corporation being one of the more enduring and enigmatic of these. In Tugwell's view, there was clearly a chasm between what modern technology and industry could do for humankind and what the captains of industry would allow them to do (Tugwell, 1941, p. 26). By modifying the legal framework upon which corporate capitalism functioned, these "industrial potentials" could be cultivated and focused upon the needs of a genuine public interest. FDR certainly recognized that modern production technology had ushered in a glorious new era of the surplus economy. His calls for the equitable production and sharing of the fruits of the surplus economy are quite evident in both his Four Freedoms and the Second Bill of Rights (see appendix for these two

texts). His broad-based call for “freedom from want” from the Four Freedoms as well as the entirety of the Second Bill of Rights strongly reflect the sharing and caring aspect of the OIE social provisioning process.

The **Fosterian dichotomy** - the idea that all structures and functions within an institutional matrix are subject to constant revision, is strikingly evident in the Newstates Constitution in several ways. First, in keeping with the OIE emphasis on flexibility and experimentation, Tugwell was deliberately vague in supplying the intricate details of planning because he wanted to keep the process flexible and avoid the strictures of blueprinting. His clear intent was to institute Dewey’s purposeful and problem-directed nature of social inquiry and to develop an open-ended adaptive instrumental planning process to this task. Second, he wisely circumvented the pitfalls of the political cycle by lengthening the terms of the President and other key functionaries; the sequestering effect that followed would then allow decision-makers to preserve or amend policies as needed without fear of electoral retribution. Third, Tugwell’s recommendation that citizens reevaluate the Newstates Constitution after twenty-five years is further evidence of his instrumentalist attitude toward discretionary institutional change. And, finally, the advisory and coordinative character of his planning institutions is again indicative of his forceful rejection of blueprinting and regimentation (Bush, 1983, pp. 35-39). Similarly, FDR was famous for his adaptive experimentalist mindset which is clearly on display in his administration’s trial-and-error approach to public policy. This phenomenon is perhaps most strident in the sharp contrast between the progressive first (OIE collectivism) and regressive second (Brandeisian trust-busting) New Deals. During the first New Deal, FDR assigned Tugwell the daunting task of overseeing the Resettlement Administration or RA. The RA essentially became a “repository for a multitude of New Deal programs”. Its objectives at times were so far-flung that one critical newspaper editorial quipped that the order creating the RA might have better read, “To rearrange the earth and the people thereof and devote surplus time and money, if any, to a rehabilitation of the Solar System” (Conkin, 1959, p. 153).

Dewey's democratic principle is also foundational to the Newstates Constitution since Tugwell's framework preserves and expands upon the democratic process of the Constitution of 1787 (Tugwell, 1970, p. 29; 1976, pp. 1-11). This is evident in Tugwell's justification for an electoral branch and in his articulation of a Bill of Responsibilities, along with a Bill of Rights (see appendix for Article 1 of the Newstates Constitution which includes the preamble, bill of rights, and a bill of responsibilities). And, in the preamble to the Newstates Constitution, Dewey's foundational influence on Tugwell's thought is obvious:

So that we may join in common endeavors, welcome the future in good order, and create an adequate and self-repairing government - - we, the people, do establish the Newstates of America, herein provided to be ours, and do ordain this Constitution whose supreme law it shall be until the time prescribed for it shall have run (Tugwell, 1974, p. 595).

The term "self-repairing" is a direct reference to Dewey's double dictum: society should 1) be self-repairing and 2) be a function of education. Both Dewey and Tugwell believed that pluralistic political and social institutions possessed a fluidity and openness that facilitated the use of the method of intelligence in resolving problematic situations (Tilman, 1987, p. 1388). Dewey's "method of intelligence" centered on making tentative and intermediate situations into determinate ones; hence, his version of the method of science focused on social control through democratic institutions (Dewey, 1938, pp. 104-05). Consequently, the OIE belief in an ongoing adaptive and instrumental process of institutional adjustment is firmly ensconced within the Newstates Constitution. This is a feature Tugwell deliberately embedded within the document to ensure its continuing relevance to the technological life-process. He intended to augment the traditional tripartite form of government with three *additional* branches to, in effect, achieve the Ayresian goals of OIE democratic planning: freedom, security, abundance, excellence, and equality (Ayres, 1961, pp. 171-247). These very same values are eloquently encapsulated within the Four Freedoms and Second Bill of Rights. Freedom, security, and equality are clearly the aims of the first, second, and fourth freedoms while abundance is the overarching theme and

spirit of the Second Bill of Rights. Excellence is derived from adeptly channeling the technological imperative toward social uplift and the benefit of all humanity.

Tool's social value principle: A direction is forward if it promotes "the continuity of human life and the noninvidious re-creation of community through the instrumental use of knowledge" (Tool, 1979, p. 293). To OIE instrumentalists like Tugwell, value is to be understood as continuous with the whole experience. Value "is the consummatory phase of a situation which is initially problematic" (Gouinlock, 1972, p. 125). It is the interaction of human intellect with experiential problems that produces value judgments. "Value" is thus understood to be the criterion of an ongoing, cultural, trial-and-error process of "valuing". As Hickerson observed: "This is the essence of culture, cultural change, and the cultural origins of value. This is . . . a fair description of what Tool has in mind when he speaks of the "noninvidious re-creation of community" (Hickerson, 1987, p. 1132).

Hickerson's point is precisely the spirit in which Tugwell formulated his Newstates Constitution. From this OIE perspective, problems are resolved to the extent that invidiously and ceremonially warranted prescriptive, or proscriptive, facets of institutions are abandoned (the traditional notion of the separation of powers), and instrumentally warranted structural changes are introduced (a highly coordinative six-branch system of government). Such transformations are deeply imbedded in society's cultural milieu.

Tool's social value principle is evident in the Four Freedoms and the Second Bill of Rights. The tone and tenor of both is unmistakably that of the OIE social provisioning process, drawing attention away from pecuniary pursuits and individual competition toward notions of sustenance, cooperation, and support. As the fourth right in the Second Bill of Rights reveals, "unfair competition and domination by monopolies at home and abroad" is anathema to the OIE social provisioning framework. Similarly, FDR's "freedom from want" calls for "economic understandings which will secure to every nation a healthy

peacetime life for its inhabitants” which speaks to Tool’s culturally transformative “noninvidious re-creation of community”.

Egalitarianism is another value foundation of OIE social provisioning that is operationalized in the Newstates Constitution. As Ayres observed: “One of the most important discoveries of modern times is the discovery that mass production requires a mass market, and that the adequacy of the market depends on the ability of the masses to buy the products of mass production . . .”(Ayres, 1961, p. 293). Or, as Tugwell noted, “planning for production means planning for consumption too”, and planning must encompass the economic, political, and social aspirations of all of society (Tugwell, 1932, p. 89). In other words, equalitarian access to goods and services is predicated upon a foundation of economic and political empowerment. Furthermore, Stanfield observed that the direct interventionist approach of OIE social provisioning must be integral to a “comprehensive social democratic program”, or “radical democracy” that would include, among other measures, the following: 1) full-employment aggregate demand policies; 2) “solidaristic incomes and collective bargaining policies, including a direct assault upon inequality of wealth and income distribution through progressive taxation, affirmative action, and industrial democracy;” 3) “active labor market policies to facilitate retraining and relocation;” and 4) “policies to create a culture free of commodity-fetishistic corporate hegemony . . . that would mandate participation and self-development in an atmosphere of co-equal human solidarity” (Stanfield, 1991, pp. 776-77). As Stanfield pointed out, these proposals are much more than merely protective or alleviative; they are the *essential* egalitarian steps necessary to resolve the “liberal impasse” and to expunge the repressive character of late capitalism as manifested in the “dichotomized state” (Stanfield, 1991, p. 777). Stanfield’s OIE radical democracy measures compellingly flesh out the necessarily skeletal nature of FDR’s Second Bill of Rights. Rights ranging from job access and security, to affordable education, to old age security clearly resonate with these OIE egalitarian policy measures.

These measures are completely compatible with Tugwell’s comprehensive vision of social

provisioning. Stanfield described the dichotomized state in the following manner: “The state’s role of securing the reproduction of capitalist social relations exists in fundamental tension with its effort to facilitate collective action to improve the adjustment of instituted power and status to the fuller unfolding means and purposes of generic humanity” (Stanfield, 1991, p. 778). This concept is integral to Tugwell’s analytical framework as evidenced by his life-long involvement with the numerous policies and programs of the “liberal state form”. And, as a government functionary and policy-maker, he experienced firsthand the struggles and frustrations of the “liberal impasse” in all phases of his public service career. To OIE thinkers, egalitarianism is a direct outgrowth of instrumentalism and Tool’s potent expression of the aforementioned instrumental value criterion. In Tugwell’s view, the consummate expert at navigating the pitfalls and frustrations of the liberal impasse was none other than Franklin D. Roosevelt, 32nd President of the United States.

FDR’s “freedom from fear”, calling for global disarmament, clearly influenced Tugwell’s thinking in this regard. The atomic destruction of Hiroshima and Nagasaki imparted a sense of urgency and desperation to Tugwell’s work unlike any other event of the twentieth century. The dropping of the atomic bombs represented to Tugwell the almost complete failure of humanity’s ability to tap the technological imperative and to harness its forces beneficially. Henceforth, he would devote much of his energy to issues such as constitutional reform and national economic planning in a valiant effort to place the technological imperative back on track. Moreover, Tugwell’s deep concern for the survival of humankind prompted him to join the *Committee to Frame a World Constitution* in 1945. In 1948, the committee published its “Preliminary Draft of a World Constitution” calling for the establishment of a federated world government consisting of twelve branches, including a planning agency, whose purpose was to estimate the needs of the world and to bring world society into accord with its full development potential (Tugwell, 1955, pp. 329-45).

Constitutive Commitments and OIE Social Provisioning

How do “we the people” begin to move beyond the liberal impasse and institute substantive change guided by Stanfield’s radical democracy measures, FDR’s Four Freedoms and Second Bill of Rights, and Tugwell’s Article 1 rights and responsibilities? Given the current bitterly divisive political climate, one might conclude this to be a quixotic endeavor – a lost cause. But a superficial reflection of history reveals that the darkest times generally yield the strongest advances toward progressive change. Social Security, Medicaid and Medicare, the Equal Pay Act, the Civil Rights Act, the Voting Rights Act, the Lilly Ledbetter Fair Pay Act, and the Affordable Care Act – to mention only a few – are testaments of this fact. Two key interrelated elements are necessary in establishing progressive change as part of the generally accepted institutional landscape: phenomenal leadership and the ability of said leadership to convert progressive change into substantive OIE ***constitutive commitments***. Importantly, in seeking to establish his Second Bill of Rights, FDR never spoke of constitutional amendment. He was however a fervent believer in the concept of *constitutive commitments*, a term denoting certain rights not explicitly set forth in the Constitution yet broadly accepted as such. Several examples of these, as reflected by consistent favorable polling, are the right to travel from one state to another, the right to be free from gender discrimination, adequate housing, a reasonable amount of leisure time, adequate provision for retirement years, an adequate standard of living, and adequate medical care (Sunstein, 2004, p. 63). In recent years the Affordable Care Act has assumed the character of a constitutive commitment. Numerous Republican efforts to overturn the law, even as they controlled the executive and legislative branches of government, failed due to the overwhelming popularity of the program with the public.

Tugwell noted that the most subtle of the political arts is the uncanny ability to know “what people wanted, people in great numbers, a majority, even if they did not themselves yet know it. What was latent in the public mind was the most important thing of all for a politician to divine (Tugwell, 1957, p. 152). FDR, in Tugwell’s view, was amazingly gifted in this regard as evidenced by his four terms in office. Tugwell reminds us too that measures adopted by FDR were not superficial improvisations, as many

critics suggested, particularly during the early years of the first New Deal. On the contrary, FDR was guided by his academician Brains Trust, specifically by Adolph Berle's and Gardiner Means's *The Modern Corporation and Private Property* and Tugwell's *Industrial Discipline and the Governmental Arts* (Tugwell, 1977, p. 9). Corrective actions were based on reasoned instrumentalist measures aimed at countervailing the self-destructive illogic of the capitalist order. As FDR famously said, "Take a method and try it. If it fails admit it frankly and try another. But above all, try something" (Fraser and Gerstle, 1989, p. 335). His method was deliberately and self-consciously experimental.

Appendix

FDR's Four 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 world 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 world-wide 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.

FDR's Second Bill of 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 product 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 and 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;

Rexford Tugwell's Constitution for the Newstates of America, Article 1: Rights and Responsibilities

PREAMBLE

So that we may join in common endeavors, welcome the future in good order, and create an adequate and self-repairing government - we, the people, do establish the Newstates of America, herein provided to be ours, and do ordain this Constitution whose supreme law it shall be until the time prescribed for it shall have run.

ARTICLE I

Rights and Responsibilities

A. Rights

SECTION 1. Freedom of expression, of communication, of movement, of assembly, or of petition shall not be abridged except in declared emergency.

SECTION 2. Access to information possessed by governmental agencies shall not be denied except in the interest of national security; but communications among officials necessary to decision-making shall be privileged.

SECTION 3. Public communicators may decline to reveal sources of information, but shall be responsible for hurtful disclosures.

SECTION 4. The privacy of individuals shall be respected; searches and seizures shall be made only on judicial warrant; persons shall be pursued or questioned only for the prevention of crime or the apprehension of suspected criminals, and only according to rules established under law.

SECTION 5. There shall be no discrimination because of race, creed, color, origin, or sex. The Court of Rights and Responsibilities may determine whether selection for various occupations has been discriminatory.

SECTION 6. All persons shall have equal protection of the laws, and in all electoral procedures the vote of every eligible citizen shall count equally with others.

SECTION 7. It shall be public policy to promote discussion of public issues and to encourage peaceful public gatherings for this purpose. Permission to hold such gatherings shall not be denied, nor shall they be interrupted, except in declared emergency or on a showing of imminent danger to public order and on judicial warrant.

SECTION 8. The practice of religion shall be privileged; but no religion shall be imposed by some on others, and none shall have public support.

SECTION 9. Any citizen may purchase, sell, lease, hold, convey, and inherit real and personal property, and shall benefit equally from all laws for security in such transactions.

SECTION 10. Those who cannot contribute to productivity shall be entitled to a share of the national product; but distribution shall be fair and the total may not exceed the amount for this purpose held in the National Sharing Fund.

SECTION 11. Education shall be provided at public expense for those who meet appropriate tests of eligibility.

SECTION 12. No person shall be deprived of life, liberty, or property without due process of law. No property shall be taken without compensation.

SECTION 13. Legislatures shall define crimes and conditions requiring restraint, but confinement shall not be for punishment; and, when possible, there shall be preparation for return to freedom.

SECTION 14. No person shall be placed twice in jeopardy for the same offense.

SECTION 15. Writs of habeas corpus shall not be suspended except in declared emergency.

SECTION 16. Accused persons shall be informed of charges against them, shall have a speedy trial, shall have reasonable bail, shall be allowed to confront witnesses or to call others, and shall not be compelled to testify against themselves; at the time of arrest they shall be informed of their right to be silent and to have counsel, provided, if necessary, at public expense; and courts shall consider the contention that prosecution may be under an invalid or unjust statute.

B. Responsibilities

SECTION 1. Each freedom of the citizen shall prescribe a corresponding responsibility not to diminish that of others: of speech, communication, assembly, and petition, to grant the same freedom to others; of religion, to respect that of others; of privacy, not to invade that of others; of the holding and disposal of property, the obligation to extend the same privilege to others.

SECTION 2. Individuals and enterprises holding themselves out to serve the public shall serve all equally and without intention to misrepresent, conforming to such standards as may improve health and welfare.

SECTION 3. Protection of the law shall be repaid by assistance in its enforcement; this shall include respect for the procedures of justice, apprehension of lawbreakers, and testimony at trial.

SECTION 4. Each citizen shall participate in the processes of democracy, assisting in the selection of officials and in the monitoring of their conduct in office.

SECTION 5. Each shall render such services to the nation as may be uniformly required by law, objection by reason of conscience being adjudicated as hereinafter provided; and none shall expect or may receive special privileges unless they be for a public purpose defined by law.

SECTION 6. Each shall pay whatever share of governmental costs is consistent with fairness to all.

SECTION 7. Each shall refuse awards or titles from other nations or their representatives except as they be authorized by law.

SECTION 8. There shall be a responsibility to avoid violence and to keep the peace; for this reason the bearing of arms or the possession of lethal weapons shall be confined to the police, members of the armed forces, and those licensed under law.

SECTION 9. Each shall assist in preserving the endowments of nature and enlarging the inheritance of future generations.

SECTION 10. Those granted the use of public lands, the air, or waters shall have a responsibility for using these resources so that, if irreplaceable, they are conserved and, if replaceable, they are put back as they were.

SECTION 11. Retired officers of the armed forces, of the senior civil service, and of the Senate shall regard their service as a permanent obligation and shall not engage in enterprise seeking profit from the government.

SECTION 12. The devising or controlling of devices for management or technology shall establish responsibility for resulting costs.

SECTION 13. All rights and responsibilities defined herein shall extend to such associations of citizens as may be authorized by law.

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