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## **THE FOUR FREEDOMS: GOOD NEIGHBORS MAKE GOOD LAW AND GOOD POLICY IN A TIME OF INSECURITY**

*Mark R. Shulman\**

### INTRODUCTION

When Franklin D. Roosevelt articulated the Four Freedoms in January 1941, he was promulgating a vision for a postwar world system of states that promotes respect for human dignity as a means to ensure security. President Roosevelt called for policies that would make the world more secure by promoting freedom of expression, freedom of religion, freedom from want, and freedom from fear. This essay examines FDR's intentions and the subsequent history of the Four Freedoms in order to reveal how the Four Freedoms offer a principled and flexible paradigm for addressing the challenges and opportunities in an era characterized by a rapidly changing and significant range of security challenges. They are more accurate, descriptive, and evocative of the current situation than is an ill-defined and alienating "Global War on Terror." In place of an unending and unbounded war, they offer a paradigm of enduring values that would inform more humane policies and permit more rational decision making. The Four Freedoms point the way to a grand strategy or national policy promoting security, prosperity, and justice.

This essay employs an interdisciplinary methodology, relying on the tools of history and security studies, as well as a form of constitutional interpretation that owes much to Justice Stephen Breyer's concept of

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A remark during a presentation by Harold Hongju Koh at the 2006 annual meeting of the American Association of Law Schools provided the initial inspiration for this essay. The author is most grateful for Dean Koh's ongoing leadership in the fields of human rights and national security law. In a closing of the circle, this essay won the 2009 Association of American Law Schools, Section of National Security Law, writing competition and will be presented at the annual meeting in January 2009.

“active liberty.”<sup>1</sup> This essay explores the ways that the Four Freedoms were intended to address the dire circumstances of the Second World War. It analyzes the historical context of the 1940s in which the Four Freedoms first emerged, how they formed the basis of the International Bill of Human Rights, and how they evolved over the decades that followed. This essay argues that, restored to their proper place at the center of U.S. policy, the Four Freedoms promise a more principled and more effective grand strategy than the “Global War on Terrorism.” Part I introduces the argument that the Four Freedoms remain both solid law and wise policy. Part II describes the historical origins of the Four Freedoms. Roosevelt proposed them as a package based on his faith in the merits of American civil rights and his experience facing widespread want and fear. Part III examines the ways in which definitions of the Four Freedoms—particularly the freedom from fear—drifted during the Cold War Era, plucked apart by those seeking to promote one or another freedom, ignoring FDR’s original formulation of the Four Freedoms as a package. Part IV further develops the proposition that the Four Freedoms present a compelling paradigm for peace and security today. The essay concludes by returning to the Anglo-American security partnership which forged the Four Freedoms in 1941 and calls for a recommitment to the vision of a peaceful world articulated by FDR and embraced by Winston Churchill, among others. When the Four Freedoms are treated as a package, they offer not only inspiration but also a well-balanced framework for formulating effective policies, addressing such issues as sustainable development, trade, and inequality, as well as dealing with the threats posed by radical jihad.

#### I. THE FOUR FREEDOMS AS GOOD LAW AND GOOD POLICY

Taken together and read generously, the Four Freedoms constitute sound policy for ensuring security and prosperity for the people of the United States and around the world. They reflect existing law, born in the United States, tempered by the fire of World War II, and coming of age with the adoption of the International Bill of Human Rights.<sup>2</sup> If implemented thoughtfully and consistently today, they could advance security by reducing the threats posed by terrorist organizations and presenting new opportunities for the spread of liberty and prosperity.

President Roosevelt originally presented the Four Freedoms as a bundle, enumerating them one by one. “The first is freedom of speech and expression everywhere in the world. The second is freedom of every

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1. STEPHEN BREYER, *ACTIVE LIBERTY: INTERPRETING OUR DEMOCRATIC CONSTITUTION* (2005).

2. For more on the International Bill of Human Rights, see OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS, FACT SHEET NO. 2 (REV. 1), *THE INTERNATIONAL BILL OF HUMAN RIGHTS* (1996), available at <http://www.unhchr.ch/html/menu6/2/fs2.htm> (“The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.”).

person to worship God in his own way, everywhere in the world.”<sup>3</sup> Clearly, FDR adopted these first two freedoms from the U.S. Constitution’s First Amendment. For the third, he drew on his own New Deal programs and signaled the need for international cooperation in order to achieve their objectives globally. “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.”<sup>4</sup> Finally, and most famously, Roosevelt addressed what he viewed as the circumstances necessitating his new policy and how to avoid the tragic destructiveness of war in the future. “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.”<sup>5</sup>

Over the next few years, the Four Freedoms were incorporated part and parcel into the foundational documents of modern international law. As such, they offer a broadly legitimate framework for policy formation and decision making. FDR first enunciated them in January 1941. They were subsumed by the Atlantic Charter and then by the January 1942 Declaration by the United Nations. The 1945 U.N. Charter included them as basic principles.<sup>6</sup> The 1948 Universal Declaration of Human Rights incorporated them as inherent to human dignity and inalienable.<sup>7</sup> And numerous international conventions have sought to promote them ever since.<sup>8</sup> As such, the Four Freedoms represent basic international law.

## II. THE HISTORICAL ORIGINS OF THE FOUR FREEDOMS

[T]he only thing we have to fear is fear itself—nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance.<sup>9</sup>

In January 1941, the hyperaggressive and highly successful Axis war machine threatened freedom everywhere. The fall of France in the summer of 1940 clearly evinced an expanding geopolitical crisis that could no longer be ignored. By that point, the Axis powers of Nazi Germany, Fascist Italy, and Imperial Japan had conquered or otherwise come to dominate significant portions of Europe and Asia, including Austria, Czechoslovakia, the Benelux countries, Greece, Norway, Yugoslavia, Korea, much of China,

3. President Franklin D. Roosevelt, Message to Congress (Jan. 6, 1941), in 87 CONG. REC. 44, 46 (1941).

4. *Id.*

5. *Id.* at 47.

6. U.N. Charter pmbl.

7. Universal Declaration of Human Rights, G.A. Res. 217A (III), at 71, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 10, 1948).

8. See, e.g., *infra* note 76 and accompanying text.

9. President Franklin D. Roosevelt, First Inaugural Address (Mar. 4, 1933), in *Text of the Inaugural Address; President for Vigorous Action*, N.Y. TIMES, Mar. 5, 1933, at 1.

and Southeast Asia. By late 1940, America's entry into the war seemed inevitable to many, including possibly to President Roosevelt. That November, however, he was re-elected for an unprecedented third term, campaigning on a promise that "[y]our boys are not going to be sent into any foreign wars."<sup>10</sup> In the fall of 1940, FDR may not have believed his own campaign promise, but making it appears to have been necessary for his re-election. In retrospect, FDR's apparent deceit seems both obvious and excusable. Facing isolationist sentiment at home and a fast-spreading war that threatened to engulf the United States, he had no easy choices. Speaking for the only major European power holding out against the Axis, British Prime Minister Winston Churchill had convinced FDR of the need to support England in its hour of need. The Battle of Britain was taking a terrible toll. Churchill warned FDR that, without cash and supplies, Britain would also succumb to the Axis juggernaut. Roosevelt understood that Britain with its mighty Royal Navy presented the only meaningful bulwark against this catastrophe. Yet most Americans opposed any policy that might lead their country into war. As one contemporary historian bitterly noted of this isolationist impulse,

[t]he country was not ready to make or meet an enemy. Most Americans were still spending their days slackly, insulated from calls upon their energies, fortunes, or lives. Until they were brought to the cold hard drill ground only a foolish diplomacy would have hastened a crisis. But only a negligent diplomacy would have failed to get ready for one, if the United States intended to hold fast to the course it was on.<sup>11</sup>

FDR walked a fine line between the isolationist views held by many Americans and the need to prevent an irreversible disaster.

Hoping to avoid a greater calamity, FDR offered to lend or lease war material to the British. To minimize the impression that he was taking the country to war through the back door (a charge that President Woodrow Wilson faced often between 1914 and 1917), Roosevelt couched the program in a soothing metaphor. In his typically evasive way, FDR likened the deal to lending a garden hose to a neighbor whose house was on fire. Suppressing the fire would end the threat of its spread, and then the neighbor would return the hose.<sup>12</sup> During the winter of 1940–1941,

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10. President Franklin D. Roosevelt, Campaign Address at Boston, Massachusetts: We Are Going Full Speed Ahead! (Oct. 30, 1940), in *THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT* 517 (Samuel I. Rosenman ed., 1941).

11. HERBERT FEIS, *THE ROAD TO PEARL HARBOR: THE COMING OF WAR BETWEEN THE UNITED STATES AND JAPAN* 124–25 (1950).

12. The literature on Lend-Lease is vast. For accessible and reliable overviews, see ROBERT A. DIVINE, *THE RELUCTANT BELLIGERENT: AMERICAN ENTRY INTO WORLD WAR II* 92 (1965) [hereinafter *DIVINE, THE RELUCTANT BELLIGERENT*]; ROBERT A. DIVINE, *ROOSEVELT AND WORLD WAR II* 29 (1969) [hereinafter *DIVINE, ROOSEVELT AND WORLD WAR II*]; PATRICK J. MANEY, *THE ROOSEVELT PRESENCE: THE LIFE AND LEGACY OF FDR* 126 (1998). As for FDR's obfuscation, note Robert Divine's interpretation: "In 1939, Roosevelt evidently decided that candor was still too risky, and thus he chose to pursue devious tactics in aligning the United States indirectly on the side of England and France." *DIVINE, ROOSEVELT AND WORLD WAR II*, *supra*, at 29.

Roosevelt's new appeal to the American people took shape in two tacks, addressing the material and the moral. This "Lend-Lease," FDR claimed, would reduce the likelihood that the United States would be engulfed itself in the flames of war.<sup>13</sup> And, at the same time, he articulated America's common cause with Britain and her free allies. In his January 6, 1941 annual address to Congress (now called the State of the Union Address), FDR articulated a vision detailing the Four Freedoms and suggesting a world in which the United States could find common cause not only with states such as Great Britain but also with individuals around the world regardless of nationality.

According to FDR's special counsel, the President first dictated these now famous words spontaneously a few days before, when reviewing the draft text of his address to Congress. FDR may also have previously mentioned some version of them offhandedly at a July 1940 press conference. However, his dictation on New Year's Day 1941 was by all accounts both spontaneous and revised only slightly before delivering them to Congress and the nation five days later.<sup>14</sup> The very spontaneity of the Four Freedoms may add to their appeal as a statement of "vision." And he clearly meant them as a coherent and binding obligation. He started his now famous dictation session by calling to his secretary, "Dorothy, take a law."<sup>15</sup>

At first glance, the Four Freedoms may appear to present an odd list, containing two sets of civil or political rights (expression and religion), one bundle of indeterminate economic rights (want), and the previously unarticulated freedom from fear, which appears to provide a shorthand description of "peace on earth." As such, the list included two items derived explicitly from the U.S. Constitution, a third that globalized the economic programs of the New Deal, and a fourth, which picked up on Woodrow Wilson's shattered vision for world peace.

The Four Freedoms could also be viewed as two pairs of freedoms. The civil and political rights of expression and belief flowed from the First Amendment. The second pair may be viewed as ingredients in FDR's new recipe for peace on earth, through the alleviation of the material sources of discontent—want—and the means by which the discontented seek to correct what are perceived as distributional wrongs through violence or

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13. An Act to Promote the Defense of the United States, ch. 11, Pub. L. No. 77-11, 55 Stat. 31 (1941) (commonly known as the "Lend-Lease Act"). While Roosevelt argued that Lend-Lease might allow the United States to avoid entry into the war, he knew better. Secretary of War Henry Stimson encouraged him to be more direct on this point. HENRY L. STIMSON & McGEORGE BUNDY, *ON ACTIVE SERVICE IN PEACE AND WAR* 368 (1948); *see also* JOSEPH E. PERSICO, *ROOSEVELT'S SECRET WAR: FDR AND WORLD WAR II ESPIONAGE* 83 (2001).

14. *See* SAMUEL I. ROSENMAN, *WORKING WITH ROOSEVELT* 262–63 (1952); Hon. Andrew S. Effron, *Military Justice: The Continuing Importance of Historical Perspective*, *ARMY LAW.*, June 2000, at 1, 1–2; *see also* MARCUS RASKIN & ROBERT SPERO, *THE FOUR FREEDOMS UNDER SIEGE: THE CLEAR AND PRESENT DANGER FROM OUR NATIONAL SECURITY STATE* xvii–xviii (2006).

15. ROSENMAN, *supra* note 14, at 263.

aggression. An enthusiastic supporter of Roosevelt's vision, Professor Louis Henkin acknowledged the novelty of FDR's pairing. "In his Four Freedoms message, Franklin Roosevelt articulated the new conception, wrapped—perhaps disguised—in the language of freedom, when he added freedom from want to the eighteenth-century liberties."<sup>16</sup> I would note the same of adding a freedom from fear: FDR wrapped a notion of arms control—perhaps disguised—in the language of freedom too. In sum, however, reading the Four Freedoms as a list or in pairs renders the wrong message about what they were intended to achieve. Did they seek to promote various good ends for their own sake? Only when read together, it is clear that they offer a comprehensive security policy. Hence, FDR's introduction to the Four Freedoms: "In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms."<sup>17</sup> The Four Freedoms must, therefore, be read collectively in order to ascertain the full meaning of FDR's wise prescription for security.

In another important innovation, FDR's Four Freedoms vision was explicitly universal in each of the elements and in its overall ambition. He referred to the Freedoms as applicable anywhere and everywhere in the world. In response to a question about whether the people of the East Indies were a concern of America, Roosevelt told a trusted adviser, "I'm afraid they'll have to be some day, Harry [Hopkins]. The world is getting so small that even the people in Java are getting to be our neighbors now . . . ."<sup>18</sup> In short, he articulated the globalized claim of human rights. William Allen White, the so-called Sage of Emporia and unofficial spokesman for Middle America, exclaimed that FDR had granted "a new Magna Carta of democracy."<sup>19</sup> The audacity of this vision alone would have caused a stir, both in an isolationist U.S. Congress that had passed successive Neutrality Acts,<sup>20</sup> and around a world dominated by a paradigm of a strong sense of individual state sovereignty. As FDR might have anticipated, the January 1941 address to Congress—announcing the Four Freedoms together with the Lend-Lease agenda—received a wide range of responses. Some Americans thought that Roosevelt had not gone far enough to meet the Fascist threat. Some interventionists insisted that the United States join the besieged Allies immediately. On the other side, some claimed that the President was dragging the country into the wrong war

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16. LOUIS HENKIN, *THE AGE OF RIGHTS* 18 (1990).

17. Roosevelt, Message to Congress, *supra* note 3, at 46.

18. ROSENMAN, *supra* note 14, at 264. The old League of Nations established in the wake of World War I had pretenses of universalism, but in reality it did not accomplish much to break up the colonial order that denied political rights to a majority of people around the world.

19. TOWNSHEND HOOPES & DOUGLAS BRINKLEY, *FDR AND THE CREATION OF THE U.N.* 27 (1997) (citing William vanden Heuvel, *The Four Freedoms*, in STUART MURRAY & JOHN MCCABE, *NORMAN ROCKWELL'S FOUR FREEDOMS: IMAGES THAT INSPIRE A NATION* 108 (1993)).

20. For more on isolationism and the Neutrality Acts, see DAVID M. KENNEDY, *FREEDOM FROM FEAR: THE AMERICAN PEOPLE IN DEPRESSION AND WAR, 1929–1945*, at 394 (1999).

with the wrong enemy. Leaders of the isolationist America First Movement continued to call for some sort of accommodation with the Axis.<sup>21</sup>

Robert M. Hutchins, a progressive law professor and president of the University of Chicago, raised one of the more interesting critiques of the Four Freedoms speech that illuminates some of its strengths and weaknesses.<sup>22</sup> A long-time supporter of FDR's New Deal, Professor Hutchins objected to Lend-Lease on the grounds that it would bring the United States into the right war but that it would do so prematurely. Hutchins embraced the vision but questioned the timing: "With the President's desire to see freedom of speech, freedom of worship, freedom from want, and freedom from fear flourish everywhere we must all agree. Millions of Americans have supported the President because they felt that he wanted to achieve these Four Freedoms for America."<sup>23</sup> However, Hutchins advocated securing those freedoms for Americans before taking on the Axis. "We have want and fear today. We shall have want and fear 'when the present needs of our defense are past.'"<sup>24</sup> Assuming (incorrectly, as it turned out) that British resistance would collapse, Hutchins advocated strengthening the American moral position and husbanding its resources before entering the inevitable war with Germany. Moreover, Hutchins predicted that the drive to win such a war would throw the cause of U.S. freedoms back a generation or even a hundred years.<sup>25</sup> Finally, Hutchins claimed that the "path to war is a false path to freedom. A new moral order for America is the true path to freedom."<sup>26</sup> At each point of his argument, however, Hutchins focused on the civil freedoms (expression and religion) or on the want that pervaded American society. And when referring to the Four Freedoms collectively, he appears to have valued them as a means to "freedom" not to security. Doing so, Hutchins was unable to grapple meaningfully with the fourth freedom. Apparently, even the most astute of observers did not know what to make of the freedom from fear when it was first revealed. Over the following months, that definitional ambiguity would be filled in.

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21. Elizabeth Borgwardt, *When You State a Moral Principle, You Are Stuck with It: The 1941 Atlantic Charter as a Human Rights Instrument*, 46 VA. J. INT'L L. 501, 521 (2006).

22. A fascinating character, Robert M. Hutchins had previously served as Secretary of Yale University while attending its law school. Upon graduation, he joined the faculty, rising to the rank of professor and dean in 1928 at the age of 29. His tenure proved contentious, so he moved to the University of Chicago to serve as its president the following year. Hutchins was a dedicated "champion of academic freedom." GEOFFREY R. STONE, *PERILOUS TIMES: FREE SPEECH IN WARTIME FROM THE SEDITION ACT OF 1798 TO THE WAR ON TERRORISM* 314-18 (2004). Curiously, Geoffrey R. Stone's otherwise exemplary 700-page history fails to discuss the export of free speech from the United States, treating free speech as an isolated U.S.-only phenomenon.

23. Robert M. Hutchins, *America and the War*, 10 J. NEGRO EDUC. 435, 436 (1941) (based on a text delivered on January 23, 1941).

24. *Id.* at 438.

25. *Id.* at 440.

26. *Id.* at 441.

As Lend-Lease started to flow to the United Kingdom, FDR and Churchill strove to implement the tacit understanding that the President would try to do even more to help extinguish the fire in the Prime Minister's house. In August 1941, the two principal leaders of the free world convened secretly on warships in Placentia Bay off Newfoundland for a meeting that subsequently came to be known as the Atlantic Conference.<sup>27</sup> Their discussions focused on Anglo-American cooperation in the military, diplomatic, and financial arenas. Talks were driven mostly by a shared wish to meet Britain's material needs and constrained by the domestic political opposition facing President Roosevelt. Toward the end of the conference, Roosevelt proposed issuing a joint statement on their vision for a postwar world. To solidify the partnership, FDR sought to provide moral clarity to distinguish their shared values from those of the Axis Powers.<sup>28</sup> Seizing on the opportunity to draft an Atlantic Charter as a way to cement the relationship, the British delegation quickly responded with a five-point proposal drafted by Permanent Under Secretary for Foreign Affairs Sir Alexander Cadogan.<sup>29</sup> Apparently, Sir Alexander had brought along his copy of the Four Freedoms speech. Three of his points proved easily adopted: pledging nonaggression, promising self-determination, and respecting forms of self-government that respect the freedom of speech.<sup>30</sup> Cadogan's other two points proved more contentious and were amended considerably before FDR signed on to them.<sup>31</sup> One of these had proposed to support a vaguely liberal economic policy. The other proposed to ensure world peace through the formation of a new organization dedicated to promoting and ensuring international peace and security.<sup>32</sup> FDR and Under Secretary of State Sumner Welles revised the economic policy point to articulate a more explicit commitment to support, "with due respect for existing obligations," of the easing of restrictions on trade, and access to raw materials on equal terms: "collaboration between all nations in the economic field with the object of securing, for all, improved labor standards, economic advancement, and social security."<sup>33</sup> But these economic and social arrangements were intended to bolster the security objectives.

In light of the circumstances leading to the drafting of the Atlantic Charter, its adoption of the Four Freedoms and emphasis on security is

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27. DIVINE, *THE RELUCTANT BELLIGERENT*, *supra* note 12, at 137–41.

28. Borgwardt, *supra* note 21, at 504. Eminent political scientist Ian Shapiro recently reminded us of the importance of stating a principle when facing international threats, noting, "in politics it is hard to beat something with nothing." IAN SHAPIRO, *CONTAINMENT: REBUILDING A STRATEGY AGAINST GLOBAL TERROR* ix (2007).

29. Borgwardt, *supra* note 21, at 519–20; see HOOPES & BRINKLEY, *supra* note 19, at 36.

30. DIVINE, *THE RELUCTANT BELLIGERENT*, *supra* note 12, at 134.

31. For detailed analysis of the drafting process, see Borgwardt, *supra* note 21, at 519–27.

32. DIVINE, *THE RELUCTANT BELLIGERENT*, *supra* note 12, at 134.

33. The Atlantic Charter, Official Statement on Meeting Between the President and Prime Minister Churchill (Aug. 14, 1941), in 10 *THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT* 314, 315 (Samuel I. Rosenman ed., 1941).

unsurprising. In the Charter's famous sixth point, FDR and Churchill proclaimed, "they hope to see established a peace which will afford to all Nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want."<sup>34</sup> Notably, this point paired FDR's freedom from fear with the freedom from want. The Charter's seventh point addressed freedom of the seas to prevent the kind of dispute that had brought the United States into the First World War. The final point picked up and expanded on the original articulation of the freedom from fear:

Eighth, they believe that all of the Nations of the world, for realistic as well as spiritual reasons, must come to the abandonment of the use of force. Since no future peace can be maintained if land, sea, or air armaments continue to be employed by Nations which threaten, or may threaten, aggression outside of their frontiers, they believe, pending the establishment of a wider and permanent system of general security, that the disarmament of such Nations is essential. They will likewise aid and encourage all other practicable measures which will lighten for peace-loving peoples the crushing burden of armaments.<sup>35</sup>

With this point, the Atlantic Charter split FDR's original notion of a freedom from fear into two parts and then combined one of them with the third freedom, the freedom from want. Doing so, it divided the freedom from fear into an economic security strand and a peaceable disarmament/coexistence strand. The Charter also combined the economic portion with the freedom from want as if to explain or justify the aspiration for material well-being.

The Atlantic Charter of August 1941 presented a version of the Four Freedoms that differed from that which FDR had articulated in his January address to Congress.<sup>36</sup> The Charter both spliced the freedom from fear together with the freedom from want and appended it to issues of international conflict. Doing so muddled the clear message that the freedom from fear had originally conveyed—that widespread possession of weapons gives rise to fears. It redefined the freedom from fear, now with a dual nature. On one hand, the Charter paired the freedom from fear with the freedom from want, implying a belief that want and fear together were the principal source of instability, and that they should be relieved as a way to preempt conflict. This facet appears to reflect FDR's résumé as Dr. New Deal, whose therapy had saved the republic with a prescription cocktail that combined emergency relief payments, paying jobs, and the comforting

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34. *Id.*

35. *Id.* Townshend Hoopes and Douglas Brinkley explain that the Charter limited the agenda of disarmament to aggressors and potential aggressors in order to avoid unnecessarily riling "extreme internationalists." HOOPES & BRINKLEY, *supra* note 19, at 39–40.

36. The distinguished historian of war and peace, Paul Kennedy, attributes differences between the Atlantic Charter and the Four Freedoms to intentional vagueness. PAUL KENNEDY, *THE PARLIAMENT OF MAN: THE PAST, PRESENT AND FUTURE OF THE UNITED NATIONS* 25 (2006).

voice of a fireside chat. This strand expressed the side of FDR that had famously proclaimed in his first inaugural address, “the only thing we have to fear is fear itself.”<sup>37</sup> On the other hand, the Charter’s formulation of the freedom from fear paired it with two traditional mechanisms for improving security (restoring a strong norm favoring freedom of navigation and establishing a new organization dedicated to ensuring international security). America initially entered the First World War to ensure freedom of the seas. During the war, the objective grew more ambitious as President Woodrow Wilson sought to create a League of Nations that would not only ensure unfettered shipping but also secure peace. The Atlantic Charter’s formulation, therefore, reflects FDR’s experience as Assistant Secretary of the Navy Department in President Wilson’s cabinet during the earlier war. This was the Roosevelt who had endorsed Wilson’s ill-fated Fourteen Points, including the “[a]bsolute freedom of navigation upon the seas . . . alike in peace and in war, [and] . . . [a]dequate guarantees . . . that national armaments [would be] reduce[d] to the lowest point consistent with domestic safety.”<sup>38</sup> In this age of insecurity, FDR’s analysis of its causes was evolving. With his emphasis on freedom of the seas, he echoed Wilson.

Like any good mission statement, the Atlantic Charter inspired many and offended few. It seems that everyone found something to like in it. Americans generally admired the Charter—albeit at an abstract level.<sup>39</sup> Anticolonialists around the world, such as the young Nelson Mandela struggling to liberate his native South Africa from the colonial domination of the Afrikaners, embraced its support for self-determination.<sup>40</sup> Those who were least impressed with the Atlantic Charter labeled it an underwhelming example of hortatory prose because FDR had not also pledged U.S. entry into the war. But even they did not condemn it.<sup>41</sup> The Japanese attack on Pearl Harbor less than four months later resolved the questions of if, how, and when the United States would join the war. But in the meantime, the Charter offered a progressive vision but did not bind anyone to implementing it, so it was widely applauded. Thus, it provided an important gloss on the Four Freedoms over the critical years that followed.

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37. Roosevelt, First Inaugural Address, *supra* note 9.

38. President Woodrow Wilson, The Fourteen Points (Jan. 8, 1918), *available at* <http://www.yale.edu/lawweb/avalon/wilson14.htm>; *see also* ENCYCLOPEDIA OF AMERICAN HISTORY 346 (Jeffrey B. Morris & Richard B. Morris eds., 7th ed. 1996).

39. Borgwardt, *supra* note 21, at 530 (citing two contemporary polls). *But see* JOHN MORTON BLUM, V WAS FOR VICTORY: POLITICS AND CULTURE DURING WORLD WAR II 20 (1976) (citing polls that “revealed that motivations for buying bonds did not much derive from enthusiasm for the New Deal or the Four Freedoms, or even from a sense of national peril. Americans bought bonds for less lofty reasons, primarily to help a member of the family in the armed services . . .”).

40. Borgwardt, *supra* note 21, at 532.

41. *See id.* at 526–30.

As the United States entered the war, however, notions about the Four Freedoms continued to develop individually and collectively. The popular illustrator Norman Rockwell produced a series of posters translating the Four Freedoms into compelling visual images. In the fall of 1943, they graced the covers of four issues of the widely distributed *Saturday Evening Post*.<sup>42</sup> Over the next few years, 1.2 million people lined up to view Rockwell's original works as they toured the country. Ticket sales for the tour raised \$130 million dollars in war bonds.<sup>43</sup> Despite this enthusiastic reception, the editors of the *Saturday Evening Post* noted that the response to the freedoms they represented varied greatly. One editorial explained,

For millions of people throughout the world the Four Freedoms have come to represent something which gives meaning and importance to the sacrifices which the human race is now making, but these freedoms are by no means universally accepted as worthy aims for nations at war. Indeed, a not inconsiderable number of people regard the Four Freedoms as actually evil, an effort to deceive people into imagining that they will never again have to take thought for the morrow, since government will provide everything for them.<sup>44</sup>

The supportive editors of the *Saturday Evening Post* dismissed these concerns. People should interpret the Four Freedoms more charitably. FDR was not, they argued, obliging the United States to fight wars anywhere on earth to support each individual's freedoms of speech and religion. Nor was he promising to create a global welfare state; the freedom from want was an aspiration, not a panacea. Finally,

As to the Freedom from Fear, it seems to us to contain no meaning more revolutionary than that suggested by Norman Rockwell's touching artistic interpretation, in the picture of parents regarding the untroubled sleep of their children. Mr. Roosevelt expressed Freedom from Fear as translatable into "a world-wide reduction of armaments to such a point . . . that no nation will be in a position to commit an act of physical aggression against any neighbor." Nothing about guarantees against fear of measles, graying hair or the consequences of laziness or incompetence.<sup>45</sup>

Thus the influential *Post* editors explained the Four Freedoms as "pretty well what men have always hoped for—political liberty, a better standard of

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42. See Richard D. Parker, *Homeland: An Essay on Patriotism*, 25 HARV. J.L. & PUB. POL'Y 407, 423 (2002).

43. Effron, *supra* note 14, at 2. In a timely coincidence, the Wolfsonian Museum in Miami is currently hosting a thought-provoking exhibit of posters offering innovative reinterpretations of the Norman Rockwell posters and focusing mostly on their application to today's circumstances. See Press Release, The Wolfsonian-FIU Honors Seventy-Fifth Anniversary of the New Deal in 'A Bittersweet Decade: The New Deal in America, 1933–43' (Mar. 27, 2008), available at [http://www.wolfsonian.org/pdf/New%20Deal%20\\_Final.pdf](http://www.wolfsonian.org/pdf/New%20Deal%20_Final.pdf).

44. Editorial, *The Four Freedoms Are an Ideal*, SATURDAY EVENING POST, Sept. 25, 1943, at 112.

45. *Id.*

living and an end to war.”<sup>46</sup> While the editors did clarify the meaning of the civil freedoms and reassured readers that the freedom from want did not imply a welfare state, they left the freedom from fear with two connotations, not entirely without tension. Did this freedom mean that parents would no longer have to worry about their children or that demilitarization would remove the scourge of warfare? Would it mean the end of meaningful threats or just the end of a fear of military invasions? The war’s outcome no doubt would answer some of these critical questions.

It is difficult for the historian to accurately assess the universality of acceptance of the Four Freedoms themselves during the war. It does appear reasonable to conclude that the Four Freedoms as a stand-alone mission statement were subsumed by the Atlantic Charter and then by the January 1942 Declaration by United Nations.<sup>47</sup> Even as the Charter and Declaration enacted their language into the basic texts of international law, many people continued to cite the original Four Freedoms to encapsulate the Allies’ common purpose. While the content of the Four Freedoms was adopted into the legal texts, it continued to be best expressed by the language of the original formulation of the Four Freedoms. Archibald MacLeish, then head of FDR’s Office of Facts and Figures, polled the American people to find out what they thought about the Four Freedoms. MacLeish reported to the President “[t]he Four Freedoms . . . have a powerful and genuine appeal to seven persons in ten.”<sup>48</sup> Elsewhere, New Zealand’s Prime Minister seized on the Four Freedoms to applaud the Allies’ sacrifices. Addressing the Canadian Parliament in 1944, Peter Fraser observed,

Your boys, boys of New Zealand, South Africa, India, the United States and all the united nations have given their lives that the Four Freedoms—freedom of speech, freedom of religion, freedom from fear and freedom from want—may be established and the masses of the people given greater opportunities than ever before.<sup>49</sup>

Fraser emphasized the opportunities that would become available in a postwar world. In sum, the meaning of the Four Freedoms continued to evolve throughout the course of the war.

Roosevelt himself sought to clarify the ultimate objective of the Four Freedoms in his January 1944 annual address to Congress.<sup>50</sup> Historians and humanitarians have paid inadequate attention to this remarkable speech. Cass Sunstein ruefully observes that FDR’s message had been lost to

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46. *Id.*

47. See Borgwardt, *supra* note 21, at 533, for an historical discussion of these documents and the human rights concepts during the war. See generally HOOPES & BRINKLEY, *supra* note 19.

48. BLUM, *supra* note 39, at 29 (quoting Letter from Archibald MacLeish to President Franklin D. Roosevelt (May 16, 1942)).

49. Borgwardt, *supra* note 21, at 553.

50. President Franklin D. Roosevelt, State of the Union Address (Jan. 11, 1944), in XII THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 32–42 (Samuel I. Rosenman ed., 1950); see also CASS SUNSTEIN, THE SECOND BILL OF RIGHTS: FDR’S UNFINISHED REVOLUTION AND WHY WE NEED IT MORE THAN EVER 4, 234 (2004).

history despite its ambitious and apt proposal of a “Second Bill of Rights.”<sup>51</sup> In it, FDR, optimistic about a favorable outcome of the war even after suffering two horrible years, iterated his view of “‘the one supreme objective for the future’ . . . ‘in one word: Security.’”<sup>52</sup> Echoing his January 1941 formulation, FDR combined “‘physical security[,] which provides safety from attacks by aggressors,’” with “‘economic security, social security, [and] moral security.’”<sup>53</sup> As Professor Sunstein notes, Roosevelt now 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.’”<sup>54</sup> In this formulation, FDR’s Freedoms are subsumed into one objective—security—as they had been in January 1941, but he chose to emphasize different elements. This first element (in contrast to the fourth freedom) addressed assaults by aggressors. At the same time, Roosevelt abandoned the reference to demilitarization as the only way to achieve this security. The impulse to disarm may have been doomed from the start. Back in January 1941, when FDR had initially proposed the Four Freedoms, he did so in the speech proposing the lending or leasing to the British of vast quantities of armaments and other war material.<sup>55</sup> This was an inauspicious moment to propose worldwide disarmament. So in January of 1944, FDR took the opportunity to recast the freedom from fear in a more practicable direction. The new iteration resembled less a utopian notion of disarmament and more the practical, mostly hands-off, “good neighbor policy” that characterized his relations with Latin America.<sup>56</sup> The ultimate objective of security remained the same, but the idealistic and ill-timed notion of disarmament gave way to the sense of community.

While FDR’s thoughts on the meaning of the Four Freedoms evolved between January 1941 and 1944, his administration had supported scholarly research into the notion of fundamental freedoms. During the war, interdisciplinary teams of academics at forty-six U.S. colleges and universities addressed the problem of developing an international bill of rights that a new international organization would in turn defend. This diverse group of academics laid the groundwork for what would soon become the United Nations Charter and the Universal Declaration of Human Rights. Charles A. Baylis, then an associate professor of philosophy at Brown University, published the synthesis document of the

51. See Cass R. Sunstein & Randy E. Barnett, *Constitutive Commitments and Roosevelt’s Second Bill of Rights: A Dialogue*, 53 DRAKE L. REV. 205, 206 (2005).

52. *Id.* (quoting Roosevelt, State of the Union Address, *supra* note 50, at 33).

53. *Id.* (quoting Roosevelt, State of the Union Address, *supra* note 50, at 33).

54. *Id.* (quoting Roosevelt, State of the Union Address, *supra* note 50, at 34).

55. Roosevelt, Message to Congress, *supra* note 3.

56. Extensive literature exists on the Good Neighbor policy. See, e.g., ROBERT H. FERRELL, *AMERICAN DIPLOMACY: A HISTORY* 765–66 (3d ed. 1975) (offering a generally sympathetic but frank appraisal); Roosevelt, First Inaugural Address, *supra* note 9.

Universities Committee on Post-War International Problems.<sup>57</sup> Not surprisingly, the Universities Committee viewed the civil rights as the “most important to guarantee internationally, supposing that such a guarantee proves feasible.”<sup>58</sup> Professor Baylis summarized the Universities Committee’s work: “By all odds the most frequently emphasized ones are freedom of expression and freedom of religion.”<sup>59</sup> Following these civil rights in priority, Baylis placed the “next most popular rights [that] can be grouped loosely under the phrase ‘freedom from despotism.’ They are calculated to give all individuals the protection of due process of law without discrimination based on race, color, or religion.”<sup>60</sup> Then followed the set of rights related to the exercise of voting.<sup>61</sup> Only then did Baylis address the remaining of the Four Freedoms. He tacitly dismissed the hope of enforcing the freedom from want by ignoring it in favor of a detailed discussion of the freedom from fear.

Baylis divided the freedom from fear into two elements. “Two of the famous Four Freedoms proposed by President Roosevelt and emphasized in the Atlantic Charter—freedom from fear and freedom from want—are widely acclaimed but are recognized as rather general terms which cover a number of quite different matters.”<sup>62</sup> Baylis expanded on the second set:

One aspect of freedom from fear is freedom from fear of external aggression. This, which, if a right at all, is not an individual but a state right, is to be the primary aim of the international organization envisaged in the Moscow Declaration on General Security; it, more than any other right, is likely to be supported by adequate international guarantees. Equally implicit in freedom from fear is the freedom from fear of such internal despotism as described above. It too is urgently desired, but it seems unlikely that it will receive for some time the international support given to freedom from fear of aggression.<sup>63</sup>

Through this and parallel efforts throughout the war, scholars and statesmen acknowledged the Four Freedoms as offering the most sound basis for security in the postwar world. While scholars were heavily involved in formulating the security policies during the war, the process of establishing the United Nations organization based on the promotion of the Four Freedoms was anything but the product of ivory-tower philosophizing. The freedoms of expression and religion were forged through centuries of

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57. Charles A. Baylis, *Towards an International Bill of Rights*, 8 PUB. OPINION Q. 2, 244 (1944).

58. *Id.* at 248.

59. *Id.* (providing details on these rights).

60. *Id.*

61. *Id.* at 249.

62. *Id.*

63. *Id.*; see also Declaration of the Four Nations on General Security, Oct. 30, 1943, 9 DEP’T ST. BULL., Nov. 1943, at 311 [hereinafter Moscow Declaration] (recognizing “the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security”).

political, legal, and military contests. The freedom from want encapsulated FDR's practical programs to combat unemployment, homelessness, hunger, and the lack of hope that characterized America's experience during the Great Depression. Likewise, the freedom from fear articulated a realist's prescription for overcoming the deadly instability posed by a chaotic international order.

Allied leaders around the globe read or heard FDR's Four Freedoms speech. They strove for a world in which security and peace were linked to and by these freedoms.<sup>64</sup> During the course of the war, a consensus seemed to have developed that such a peace would be policed by the remaining great powers, the United States, Great Britain, and the Soviet Union.<sup>65</sup> The other leading powers either were on the wrong side (Germany, Japan, and Italy) or incapacitated by the war (France and China, which would nonetheless soon claim permanent seats on the U.N. Security Council). Had FDR intended it, he might have paired the Four Freedoms with the Four Policemen.<sup>66</sup> Despite their proximity in time and objectives, nothing has been found that explicitly links the roles of FDR's Four Freedoms to his Four Policemen. The fact that FDR's original formulation envisioned demilitarization seems to indicate that he hoped for a world order that transcended the more traditional international security scheme that sought to maintain a balance of great powers. Recognition that disarmament was not imminent and that great powers would remain immensely powerful only became explicit in the Charter of the United Nations—a document drafted shortly after FDR's death in April 1945.

The Second World War brought suffering on a previously unimaginable scale. Unprecedented horrors—on the desolate Eastern Front, in occupied and fragmented China, in desperate island hopping campaigns, and most notably in the Holocaust—catalyzed a newfound awareness of humankind's capacity for brutality that quickened an impulse to recognize and protect human rights. However, this body of basic law did not emerge fully formed. Rather it evolved over time in response to events, reporting, theories, political maneuvers, and even the pursuit of material gains. The months after Roosevelt's death brought in quick succession the liberation of the Nazi death camps, the establishment of the United Nations, the use of the atom bombs on Hiroshima and Nagasaki, and the international military tribunal in Nuremberg—each of which left an indelible mark on the world's views about postwar security. Respect for a small body of fundamental rights quickly coalesced in international law. Most notably, the right to be free from genocide emerged, articulated with commendable clarity even if

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64. MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 10 (2001).

65. MANEY, *supra* note 12, at 165.

66. For some background on the notion of the United States, the Soviet Union, the United Kingdom, and China as the Four Policemen, see JOHN LEWIS GADDIS, *THE LONG PEACE: INQUIRIES INTO THE HISTORY OF THE COLD WAR* 23–24 (1987).

unevenly respected.<sup>67</sup> Some rights—such as the freedom of expression—enjoyed a relatively smooth ride. That is not to say that this freedom was honored during the war. Indeed most states—perhaps all—trammelled on it. At the end of the war, however, the freedom of expression did emerge in a recognizable form. People increasingly understood that it was not only an individual freedom but also that it was indispensable for optimizing the work of governments. Other rights emerged from the war nominally intact but completely altered. The young freedom from fear was one such right. While the notion survived, it was completely changed by the experience of war.

During the summer of 1945, the drafters of the United Nations Charter intended to institutionalize the Four Freedoms by establishing an international organization to ensure peace and security and to promote economic and social advancement. Fifty-one nations negotiated, signed, and ratified the Charter intended to save humanity from “the scourge of war, . . . reaffirm faith in fundamental human rights, . . . establish conditions under which justice and respect for obligations can be maintained, and . . . promote social progress and better standards for life in larger freedom.”<sup>68</sup> Because of their geopolitical significance (that is to say, their power), the United States, the United Kingdom, the Soviet Union, China, and France were endowed with permanent seats and vetoes in the dominant Security Council.<sup>69</sup> The Permanent Five succeeded the Four Policemen, although their respective and collective roles remained subject to constant renegotiation. The U.N. Charter carried the Four Freedoms forward, once again changing their meaning through iteration. While the Charter contains little substantive law, Chapter IX does address the freedoms of expression and religion and the freedom from want. Under this chapter, Article 55 requires the United Nations to promote “(a) higher standards of living, full employment, and conditions of economic and social progress and development; (b) solutions of international economic, social, health, and related problems . . . and (c) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”<sup>70</sup> Sections (a) and (b) address the freedom from want while section (c) responds to the freedom of expression and religion. These issues are further addressed in the balance of Chapter IX and Chapter X that establish the Economic and Social Council.<sup>71</sup>

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67. Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277. For background, see SAMANTHA POWER, “A PROBLEM FROM HELL”: AMERICA AND THE AGE OF GENOCIDE (2002).

68. U.N. Charter pmbl.

69. See generally KENNEDY, *supra* note 36, at 3–47.

70. U.N. Charter art. 55.

71. The Universal Declaration of Human Rights gives additional substance to these rights. See Universal Declaration of Human Rights, *supra* note 7. Specifically, Article 18 recognizes a human right to freedom of thought, conscience, and religion. Articles 19, 20, and 21 detail and demand the freedoms of expression, including the right to hold opinions

The most widely debated sections of the U.N. Charter address the freedom from fear. These sections take as their model the version FDR articulated most clearly in the 1944 State of the Union Address. Chapter I describes the purposes and principles of the new organization:

To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace.<sup>72</sup>

This text implies that fear is generated by threats to peace and acts of aggression. Following this logic, the crime of aggression has increasingly become clarified through the new Charter and the Nuremberg process.<sup>73</sup>

The emergent emphasis on aggression differs significantly from the assumption underlying FDR's original formulation in the 1941 address to Congress that implied that fear is caused by the level of armament or at least is best addressed by reducing the size of arsenals. The 1941 address emphasized demilitarization as essential to reducing fear. In contrast, the U.N. Charter is premised on a strong notion of individual state sovereignty that accepts the long-standing norm that states may do whatever they wish to preserve their security—up until the point at which the Security Council determines “the existence of any threat to the peace, breach of the peace, or act of aggression.”<sup>74</sup> At this point, the Security Council, acting pursuant to authority granted in Chapter VII may authorize the use of force to restore the peace. Disarmament or demilitarization would have reduced or removed the means available for conducting aggressive war. Instead, the Charter merely seeks to deter the use of force and apply it only when necessary and no permanent member of the Security Council vetoes it. As noted above, disarmament may have been a nonstarter at this point in history, and thus it was not adopted into the basic texts of international law. Instead, the Charter targeted aggressors (who do not act under the aegis of a permanent member). Actions taken pursuant to Chapter VII of the Charter

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and impart them, to peaceably assemble and associate, and to take part in government. Articles 22, 23, and 25, among others, address the freedom from want. Drafters of the International Covenant on Economic, Social and Cultural Rights sought to expand on these rights and to make them more widely delivered, but success has been uneven at best. *See* International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3, 6 (entered into force Jan. 3, 1976).

72. U.N. Charter art. 1, para. 1.

73. *See* Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90; London Charter of the International Military Tribunal, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279; Moscow Declaration. *supra* note 63; TELFORD TAYLOR, FINAL REPORT TO THE SECRETARY OF THE ARMY ON THE NUREMBERG WAR CRIMES TRIALS UNDER CONTROL COUNCIL LAW NO. 10 (1949); International Criminal Court: Special Working Group on the Crime of Aggression, <http://www.icc-cpi.int/asp/aspaggression.html> (last visited Oct. 12, 2008).

74. U.N. Charter art. 39.

do nothing to reduce the means or to de-escalate the militarization of international relations. Instead, Chapter VII seeks to constrain the employment of those means. Moreover, for forty-five years following the Charter's enactment, with only the exception of the Korean War, the U.N.'s authority under Chapter VII was used only to implement the stalemated struggles of Great Power proxies,<sup>75</sup> providing little encouragement or means to facilitate demilitarization or the de-escalation of arms races. While this may or may not have been wise, the fact remains that it is significantly different from the method implied in the Four Freedoms address. General demilitarization fell out of the Four Freedoms agenda sometime between early 1941 and the spring of 1945. So the Four Freedoms—and even the freedom from fear—survived World War II, but meaningful disarmament did not.

Later conventions illustrate the kind of definitional suppleness that has enabled the Four Freedoms to survive in a dramatically changed world. For instance, the American Convention on Human Rights signed in 1969 linked all Four Freedoms: “Reiterating that, in accordance with the Universal Declaration of Human Rights, the ideal of free men enjoying freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights.”<sup>76</sup> In this Kantian convention, security was not the objective; the ideal of free men was.

### III. THE FOUR FREEDOMS WEATHER THE COLD WAR

The Four Freedoms remained an important and contested concept during the Cold War. Most notably, the freedom from fear remained a powerful if indeterminate concept from the mid-1940s until the early 1990s, even when shorn of its disarmament agenda. Louis Henkin optimistically labeled this epoch the “Age of Rights.”<sup>77</sup> Professor Henkin noted that the stage was set at the end of the war with the adoption of the U.N. Charter and the Universal Declaration of Human Rights as well as with the charges at Nuremberg of crimes against humanity.<sup>78</sup> The era ended in approximately

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75. For a concise history of the development of the U.N. peacekeeping and war-making powers, see KENNEDY, *supra* note 36, at 77–112.

76. Organization of American States, American Convention on Human Rights, pmbl., Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

77. HENKIN, *supra* note 16, at ix (1990). Louis Henkin dates the start of this age at 1948, with the adoption of the Universal Declaration of Human Rights. Perhaps unsurprisingly, the categorization of this era as the Age of Rights does not reflect a consensus. For example, Northwestern University historian Richard W. Leopold's classic 850-page survey of U.S. foreign relations does not refer to the Four Freedoms or the Universal Declaration of Human Rights. RICHARD W. LEOPOLD, *THE GROWTH OF AMERICAN FOREIGN POLICY: A HISTORY* (1962). It would be interesting to do a complete survey of diplomatic history texts to see how (or if) they treat human rights in this era.

78. HENKIN, *supra* note 16, at 1 (1990). The Nuremberg Principles issued in August 1945 defined crimes against humanity to require a war nexus. This requirement left a significant gap in the law limiting the mistreatment of individuals or minorities outside of a war environment. For more historical context, see GLENDON, *supra* note 64, at 9.

1991 when the geopolitical realities changed so dramatically with the dissolution of the Warsaw Pact and then the advent of the Gulf War to liberate Kuwait fought under the authority of Chapter VII. Defining the Age of Rights by reference to two wars and the promulgation of international human rights is to acknowledge that conceptions of human rights are embedded in geopolitical reality. Violent conflicts framed the era, but Henkin hopefully labeled it by reference to rights and freedoms.

Among the Four Freedoms, the freedom from fear was most subject to redefining during the Age of Rights. Because of its ambiguity and its universal appeal, freedom from fear quickly became a catchall phrase with divergent and frequently inexplicit meanings. First Amendment lawyer Morris Ernst published a book entitled *The First Freedom* in 1946.<sup>79</sup> He captioned the first chapter "Freedom from Fear," by which he meant that governments should embrace, not fear, diverse speech, thereby freeing themselves from their own fears that other views would prove harmful. The book focuses entirely on the defense and promotion of free expression as the best cure for what ails a polity (i.e., the marketplace of ideas). Likewise, New York State's widely respected Superintendent of Insurance Louis Pink wrote his own book entitled *Freedom from Fear*, a work more suited to the freedom from want, being a study of insurance and social security.<sup>80</sup> Then British historian O. A. Sherrard published a history of slavery through 1833, entitled *Freedom from Fear: The Slave and his Emancipation*.<sup>81</sup> The popular naturalist Aldo Leopold referred to the freedom from fear several times in his widely read *A Sand County Almanac*, first published in 1949. In two instances, Leopold used it to decry the loss of the wilderness and man's direct relationship to nature.<sup>82</sup> In the other instances, Leopold illustrated the subjective nature of the freedom from fear. In nature, he noted, one individual's freedom from fear necessarily obstructed another's freedom from want. The field mouse's freedom from fear meant hunger for the rough-leg hawk.<sup>83</sup> The question for proponents of human rights, however, was whether humanity could rise above this harsh rule of nature. Leopold appeared skeptical.

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79. MORRIS L. ERNST, *THE FIRST FREEDOM* (1946).

80. LOUIS H. PINK, *FREEDOM FROM FEAR* (1944).

81. O. A. SHERRARD, *FREEDOM FROM FEAR: THE SLAVE AND HIS EMANCIPATION* (1961).

82. ALDO LEOPOLD, *Chihuahua and Sonora*, in *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* 137, 144 (1949) (comprised of some older works and some written specifically for the book). "By this time the Delta has probably been made safe for cows, and forever dull for adventuring hunters. Freedom from fear has arrived, but a glory has departed from the green lagoons." *Id.*

Man always kills the thing he loves, and so we the pioneers have killed our wilderness. Some say we had to. Be that as it may, I am glad I shall never be young without wild country to be young in. Of what avail are forty freedoms without a blank spot on the map?

*Id.* at 148-49. The author's copy of this book is from the forty-eighth printing of the 1968 paperback edition, testifying to the enduring and widespread popularity of this work.

83. ALDO LEOPOLD, *January Thaw*, in *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE*, *supra* note 82, at 3, 4.

Somewhat more optimistically, a generation later and a world away, Burmese human rights and prodemocracy activist Aung San Suu Kyi adopted the theme and title *Freedom from Fear* in her 1990 acceptance of the European Parliament's Sakharov Prize for Freedom of Thought.<sup>84</sup> Quite reasonably in light of her situation, Suu Kyi emphasized the importance of being free from fear of state oppression.

Among the basic freedoms to which men aspire that their lives might be full and uncramped, freedom from fear stands out as both a means and an end. A people who would build a nation in which strong, democratic institutions are firmly established as a guarantee against state-induced power must first learn to liberate their own minds from apathy and fear.<sup>85</sup>

In other words, those who would be free from oppression must first free themselves of fear. Once free from fear, they can remove the source of the oppression. Suu Kyi's vision of freedom from fear includes the notion that one liberates oneself from fear by becoming fearless, i.e., willing to accept unwelcome consequences for acting and not constraining the ability of others to impose those consequences. While philosophically and politically laudable, this is not the freedom from fear that FDR described.

None of these works addressed issues of international peace and security—let alone demilitarization. So while the Four Freedoms survived the Age of Rights, their content remained contested and subjective. Mary Ann Glendon notes that, during the late 1940s and 1950s, political pressures rended the package into incoherent pieces.

Its organic unity was, however, one of the first casualties of the cold war. The United States and the Soviet Union could not resist treating the Declaration as an arsenal of political weapons: each yanked its favorite provisions out of context and ignored the rest. What began as expediency hardened into habit, until the sense of an integrated body of principles was lost. Today the Declaration is almost universally regarded as a kind of menu of rights from which one can pick and choose according to taste.<sup>86</sup>

Perhaps treating the Declaration like a menu is an inevitable mistake, given the standard methods of interpreting constitutions and the Charter as a series of individual rules. Lawyers and courts typically interpret the specific provision that appears most relevant for deciding the issue before them.<sup>87</sup> As a result, and while the Four Freedoms remained a basic component of international law, governments since World War II have treated the Four Freedoms as a menu from which one could select the most expedient values. FDR did not intend any one freedom to trump the others.

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84. Aung San Suu Kyi, *Freedom from Fear*, reprinted in FREEDOM FROM FEAR AND OTHER WRITINGS 3 (Michael Aris ed., 1991). *Freedom from Fear* was first released for publication in various newspapers and magazines to commemorate the awarding in absentia of this prestigious human rights prize.

85. *Id.* at 183.

86. GLENDON, *supra* note 64, at xviii.

87. *See generally* BREYER, *supra* note 1 (arguing that provisions of the U.S. Constitution should be interpreted in light of—and to promote—its democratic objectives).

They should be treated like legs of a table. If one were missing or even shorter than the others, the table would be unstable.

#### IV. THE FOUR FREEDOMS AS A PARADIGM FOR PEACE AND SECURITY

Following the war, the General Assembly of the new United Nations organization proclaimed the Universal Declaration of Human Rights, adopting the Four Freedoms as one piece in the preamble:

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy *freedom of speech and belief and freedom from fear and want* has been proclaimed as the highest aspiration of the common people . . . .<sup>88</sup>

With this declaration, the Four Freedoms became part and parcel of a basic text of international law.

The Four Freedoms remain good law and provide a more useful framework for U.S. policy than the unfortunate term “Global War on Terror.” The Four Freedoms present a more accurate, descriptive, and evocative paradigm than the concept of a “Global War on Terror” that has shaped U.S. policy since 9/11. For purposes of this argument, the various terms used or proposed by the Bush Administration at different times are treated collectively, including not only “Global War on Terror” but also “Global War on Terrorism,” “Long War,” “Global War on Islamic Extremism,” and other related terms. Each phrase contains a reference to a war.<sup>89</sup> Unfortunately, the notion of war brings misleading and unhelpful connotations of start and stop dates, a special paradigm of constraints on conduct (*jus in bello*), a bias toward military solutions, and a state-centeredness.

Labeling the current security situation as a war implies unreasonable assumptions about a start date and an unambiguous ending. Transnational terrorism has neither a Pearl Harbor moment nor the signing of an unconditional surrender on deck of a battleship. The jihadist threat existed and killed people for many years before 9/11. And even when al Qaeda’s leaders are dead, captured, or otherwise retired from the fray, the United States may not recognize the end of the threat they posed. Nor can the United States afford a war that may or may not end. On the other hand, humanity generally and the United States specifically can always afford a campaign to promote enduring values.

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88. Universal Declaration of Human Rights, *supra* note 7 (emphasis added).

89. Previous commentators have discussed the inaptness of the term and the concept of a “War on Terrorism.” See, e.g., PHILIP H. GORDON, WINNING THE RIGHT WAR: THE PATH TO SECURITY FOR AMERICA AND THE WORLD 4 (2007) (arguing that, formulated as a global war on terror, the fight against terrorism has been fundamentally flawed from the start); RICHARD N. HAASS, THE OPPORTUNITY: AMERICA’S MOMENT TO ALTER HISTORY’S COURSE 58 (2005) (“So if terrorism is not a war, how should we understand it? Perhaps as a disease.”).

Likewise, because the notion of a global war unnecessarily implicates the law of war—everywhere or possibly nowhere—it is poorly suited to regulating relations between strong states and militant Islamic fundamentalists. The Islamists' jihad does not have the state or legal mechanisms, defined geographical boundaries or battlefields, the uniforms, repeat transactions, or shared sense of chivalry necessary for sustaining the laws of war. Historically, this body of law has always been strained by wars of liberation, civil war, or other nontraditional modes of combat.<sup>90</sup> And it disintegrates (or more accurately fails to coalesce) when governments or armies fail to learn how to apply it because "[t]here [is] no time for reciprocity to develop."<sup>91</sup> So labeling the current situation a "war" puts the United States and its allies under obligations to comply with the laws of war where they may or may not be relevant. Certainly, in Afghanistan and Iraq there are conditions of war. Where combat falls under the mandate of international humanitarian law, it should be applied, as in the operations against the Taliban's armed forces in Helmand or the Sunni insurgents in Anbar prior to 2006. However, the concept of war fails to explain operations in such contested venues as Baidoa, Guantánamo, or O'Hare International Airport. So the laws of war are impractical in many of the places where U.S. interests are being contested. That does not leave a void of law. Municipal law, human rights law, and at least some elements of the Constitution apply.<sup>92</sup> And the Four Freedoms can sensibly be applied everywhere.

Finally, labeling the situation a war implicates the use of armed forces—with ensuing risks and costs. As brave and capable as the professional armed forces are, they are inherently incapable of addressing the full range of threats. Since the tragic war in Vietnam, western militaries have learned—or relearned—the art of unconventional warfare. These skills have enabled soldiers to function effectively in forests, villages, and in cities. New technology has even enabled modern armies to engage in combat in cyberspace.<sup>93</sup> But they are not capable of discriminating between financial transactions and communications of terrorists and those of civilians. So using armed forces to interdict these interactions raises the

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90. See George J. Andreopoulos, *The Age of National Liberation Movements*, in *THE LAWS OF WAR: CONSTRAINTS ON WARFARE IN THE WESTERN WORLD* 191–213 (Michael Howard, George J. Andreopoulos & Mark R. Shulman eds., 1994); Michael Howard, *Constraints of Warfare*, in *THE LAWS OF WAR*, *supra*, at 1–11.

91. Geoffrey Parker, *Early Modern Europe*, in *THE LAWS OF WAR*, *supra* note 90, at 57.

92. *Boumediene v. Bush*, 128 S. Ct. 2229, 2259 (2008) ("Our basic charter cannot be contracted away like this . . . . Even when the United States acts outside its borders, its powers are not 'absolute and unlimited' but are subject 'to such restrictions as are expressed in the [C]onstitution.'" (quoting *Murphy v. Ramsey*, 114 U.S. 15, 44 (1885))).

93. See Mark R. Shulman, *Discrimination in the Laws of Information Warfare*, 37 COLUM. J. TRANSNAT'L L. 939 (1999) (arguing for continuation of the laws of war to the then nascent activity of cyber-warfare).

costs of collateral damage to intolerably high levels.<sup>94</sup> And while they can adapt to tackle nontraditional, psychological, propagandistic, urban, financial threats, doing so will significantly degrade their war-fighting capacity. Armed forces are exceedingly expensive, and in such a sprawling, amorphous campaign, it is misguided or misleading to think that the United States can or should address challenges with the machinery of war alone. Deploying military resources reifies the threat. Current policy renders support to the terrorists by honoring their anarchic campaign as a war. The United States contributes significantly to their recruitment efforts when it unnecessarily exposes fine soldiers and marines to their suicide bombers. The state-centeredness of a war paradigm likewise gives al Qaeda a higher profile and more opportunities to cultivate recruits and develop partners.

In lieu of pursuing a war, this essay proposes conducting a campaign to promote and protect the values articulated in the Four Freedoms. Just as wise and successful leaders avoid unnecessary wars, they should avoid clashes of civilizations. German citizens who defected from the Nazi cause in the early 1940s were deemed traitors to their country, nation, folk, neighbors, or family. The United States should avoid putting its potential friends in such a tight position. More generally, it should strive purposefully to avoid triggering a clash between the pluralistic “West” and “Islam.”<sup>95</sup> But by declaring “wars,” a “clash of civilizations” could become a self-fulfilling prophecy. Instead of falling into this trap, the United States should protect and promote values that have received near universal acclaim and that are embodied in domestic and international law around the world. The Four Freedoms have just these qualities. Individually, they derive from a U.S.-framed consensus of enlightenment values. And they were quickly adopted as part and parcel of international law. Also, this campaign would enable the United States to focus on promoting basic human rights that will rebuild the goodwill that has enabled it to inspire good and to wield so much soft power over the years.

A declaration of war has historically brought psychosocial advantages to those who seek it. Perhaps a campaign to promote and defend Four Freedoms will prove insufficiently rousing. Perhaps the American people require the rhetoric of a war in order to muster sufficient resources to “win.” Some parents will quite reasonably balk at sending their sons and daughters to fight and die for worldwide freedoms. And indeed they should. For at least the near future, the United States cannot easily extricate itself from the actual wars in Afghanistan and Iraq. As a result, some brave Americans will be injured or die in these faraway lands. For better and for worse, these remain actual wars. Moreover, the pursuit of the Four Freedoms may even

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94. See ERIC LICHTBLAU, *BUSH’S LAW: THE REMAKING OF AMERICAN JUSTICE* (2008) (describing the resistance of Congress and the American people to defense programs that intercept electronic communications and information about financial transactions).

95. Samuel P. Huntington introduced this concept in *The Clash of Civilizations?*, FOREIGN AFF., Summer 1993, at 22, and expanded on it in *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* (1996).

lead to another war. In 1941, the Four Freedoms did not preclude or prevent war. However, they did provide a framework for making sensible foreign policy decisions, including whether a war is necessary. They provide an informed and humane structure that allows nations to order priorities and allocate resources. Presumably—but not inevitably—with this decision-making framework, fewer young people will die in wars of choice.

Moreover, while a campaign for the Four Freedoms offers significant heuristic and moral advantages, it is too indeterminate to constitute a complete solution for the problem of what we do to replace the “Global War on Terror.” Each freedom is briefly stated and culturally contingent enough that defining it presents ample opportunities for disagreement, disingenuousness, and sincere conflicts of interest. President George W. Bush’s second inaugural address offers one notable example of the indeterminacy of the word “freedom.” Echoing FDR’s January 1941 address, Bush proclaimed, “The best hope for peace in our world is the expansion of freedom in all the world.”<sup>96</sup> At first blush, policies that led to aggressive war in Iraq, extraordinary renditions, and waterboarding, conflict with the expansion of freedom. Of course, defenders of such policies might argue that the pursuit of freedom requires tradeoffs, and they would have a point. Even the meaning of the most concrete and well-articulated of the freedoms—that of speech—leads to significant disagreements. For example, British freedom of expression is more limited by libel law than is American. A policy based on the expansion of freedom everywhere will inevitably lead to conflicts. The list of Four Freedoms—as items on a menu—will not provide meaningful guidance. They must be read collectively and with an eye toward finding interpretations that will lead to their general objective of security through the pursuit of freedoms of expression and belief and from want and fear.

Justice Breyer’s method of interpreting the Constitution is helpful here for illustrating a generous interpretation of the Four Freedoms. In *Active Liberty*, Breyer examines six constitutional doctrines (including free speech) in sequence, and each as they relate to the basic purpose of the Constitution’s essential nature as an instrument of a democracy.<sup>97</sup> By articulating the overall purpose of the Constitution, he provides a structure for facilitating analysis that works through some of the ambiguities, tensions, and conflicts in its text. For Breyer, this method leads to statutory and constitutional interpretations that are consistent with the people’s will.<sup>98</sup> The Four Freedoms should be read similarly. As noted above, the overall objective that Roosevelt articulated back in January 1941 was to achieve a world “which we seek to make secure . . . [and] founded upon

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96. President George W. Bush, Second Inaugural Address (Jan. 20, 2005).

97. BREYER, *supra* note 1. Mary Ann Glendon makes a similar point for interpreting the Universal Declaration. GLENDON, *supra* note 64, at xviii.

98. BREYER, *supra* note 1, at 115.

four essential human freedoms.”<sup>99</sup> Even read generously, the Four Freedoms cannot provide detailed policy prescriptions, but they do offer a concise statement of the values that a people promote and of the aspirations against which policies can be evaluated. It is unnecessary and misguided to compare the actions of the United States to those of the Taliban or al Qaeda. Unfortunately the logic of war dictates an unhelpful “us versus them” rhetoric that demands such comparisons. A campaign for values, on the other hand, invites all people to strive to be their best selves.

During a “war,” the freedom from fear tends to trump other concerns. This leads to a situation in which the President can declare “[y]ou are either with us or you are against us in the fight against terror.”<sup>100</sup> Once that decision is made, other countries are either good or bad, and other freedoms give way. America’s right to be free of fear trumps the rights of individuals to freedom of expression or religion or to be free from want or fear themselves. Allowing one of the Four Freedoms to drown out the others leads to instability. If all four are treasured and weighed together in crafting foreign policy, FDR implied, then the outcome may prove more enduring. The freedom of expression should ensure that women can attend school and participate in civil society in Afghanistan where they face Taliban oppression and in Pakistan where the state cannot or will not fund decent schools for women. The Four Freedoms may support efforts in those countries to invest in education that produces greater wealth and more stability. Respect for freedom of belief should ensure equal treatment for religious minorities in Baghdad where they are forced behind blast barriers and on the New Jersey Turnpike where they face racial profiling.<sup>101</sup> This would give more people a meaningful sense of belonging. Protectionist tariffs that drive up the price of food result in hunger and want in ways that starkly mirror the effects of warlords blocking the flow of emergency relief supplies. Freer markets for foodstuff should lead to less want. And so-called “alternative interrogation techniques” such as waterboarding are irreconcilable with the freedom from fear, much as are attacks on hotels, office towers, or transit systems. Neither can be tolerated; they violate the individual’s freedom from fear and society’s demands for common decency. For democracies to prevail and achieve FDR’s vision for security, they must fund schools, resist impulses to profile, reduce tariffs, and desist from using fear as a tool. But mostly, policy decisions should be made to account for all the freedoms and should do so as for individuals as well as for states.

If the United States shifts to a campaign to protect the Four Freedoms, what should be said about the “Global War on Terror”? Should the next

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99. Roosevelt, Message to Congress, *supra* note 3, at 46–47.

100. Press Release, Office of the White House Press Secretary, President Welcomes President Chirac to White House (Nov. 11, 2001), *available at* <http://www.whitehouse.gov/news/releases/2001/11/20011106-4.html>.

101. David Kocieniewski & Robert Hanley, *Racial Profiling Was the Routine, New Jersey Finds*, N.Y. TIMES, Nov. 28, 2000, at A1.

President declare victory—or admit that it was never really a war to begin with? This is all potentially quite embarrassing. Yes, it is, and it should be. War should be a last resort, and the United States blundered into this one without even sufficiently identifying the enemy. It was not the first time that the United States went to war precipitously (look for instance at the Quasi-War and the War of 1812); nor is it likely to be the last. Also, despite the rhetoric of war, the United States and other governments have been deploying nonmilitary means such as bilateral, multilateral, and international diplomacy, human and technical intelligence, public relations, antiracketeering (antimoney laundering regimes, extraditions, and criminal trials), counterproliferation regimes, scholarship, and even the occasional charm offensive. So the next President should say that the “Global War on Terror” is and has always been a mischaracterization. Then he can move on to reconstitute a coalition of states, nonstates, nongovernmental organizations, international organizations, and individuals around the world who do believe in the freedoms of religion and speech, and want a world free of want—and of fear.

#### CONCLUSION

The Four Freedoms sustain the hard-nosed realism of security. While there are compelling Kantian reasons for promoting them, Franklin Roosevelt understood that the Four Freedoms offer a practical prescription for international peace and security. The Four Freedoms recognize the impulses and needs of each person and seek to channel them toward mutual respect and cooperation or at least toleration. Acknowledging these fundamental needs encourages the formation of institutions designed to maximize the release of each individual’s creative energy. The fact that the U.S. domestic order respects the freedoms of expression and religion and sustains institutions that alleviate want and fear goes much further toward explaining America’s security—and its prosperity—than do the bounty of natural resources with which the land is blessed. And if this framework can enable a sprawling, heterogeneous, and fractious country such as the United States to thrive, then it has a chance of working around the world.

Former Prime Minister Tony Blair noted recently, “We will not win the battle against global extremism unless we win it at the level of values as much as that of force. We can win only by showing that our values are stronger, better, and more just than the alternative.”<sup>102</sup> Unfortunately, Blair continues to frame the issue as a “battle.” Values are not only tested in battles; they have often been destroyed in the process of fighting battles. That said, Blair’s basic message remains vivid and important: “This is not [a] clash between civilizations; it is a clash about civilization.”<sup>103</sup> Just as President Roosevelt worked with Prime Minister Churchill in 1941 to frame

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102. Tony Blair, *A Battle for Global Values*, FOREIGN AFF., Jan.–Feb. 2007, at 79, 79.

103. *Id.* at 82. Of course, many people have made this point without also committing their nation’s troops to an aggressive war.

the Atlantic Charter, the American President could have profited in 2001 from a more meaningful collaboration with his British counterpart. However, at the end of the day, neither President Bush nor Mr. Blair has articulated those particular values that define civilization. Happily, their predecessors did so when they incorporated the Four Freedoms into the Atlantic Charter. With the Universal Declaration of Human Rights and related documents, those same values were incorporated by the international community into the fundamental texts of international law. Today, those same Four Freedoms remain solid law and offer a meaningful framework for an effective security strategy.

The principal value this framework offers is as an integrated interpretative tool, much like Justice Breyer's notion of active liberty. The United States faces many grave threats to its long-term security and prosperity. These include the effects of climate change, degradation of the environment and the physical infrastructure, energy insecurity, organized crime, shifting global employment patterns that accelerate growth of wealth disparities and result in increased social instability, and yes, the prospect of terrorists using weapons of mass destruction. But declarations of war—against poverty, crime, drugs, or terror—do not offer practical solutions. By privileging a narrow interpretation of the freedom from fear, the language of war demands that all other policy objectives automatically assume lower priority. Waging wars also tends to occlude power in the executive who is charged by the Constitution with the principal responsibility for waging war. In sum, by declaring one of these wars, policy makers unhelpfully limit their own ability to make rational decisions about the allocation of resources. When compared with the pursuit of a “Global War on Terror,” the beauty of the Four Freedoms as a strategy is its facilitation of policies informed by objective intelligence, composed through rational decision making, and implemented strategically and enthusiastically by a united and popular nation.