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The Myth of Laissez-Faire

> We know now that Government by organized money is just as dangerous as Government by organized mob. Never before in all our history have these forces been so united against one candidate as they stand today. They are unanimous in their hate for me—and I welcome their hatred. I should like to have it said of my first Administration that in it the forces of selfishness and of lust for power met their match. I should like to have it said of my second Administration that in it these forces met their master.—Franklin Delano Roosevelt

IN THE SUMMER OF 1932, with the nation mired in the Depression, Franklin Delano Roosevelt was nominated for the presidency by the Democratic convention in Chicago. He began by violating an established tradition. Throughout the nation's history, it had been the practice of presidential nominees to stay away from the convention and accept the nomination only after formal notification, several weeks after the event itself. Roosevelt departed from precedent and flew from New York to Chicago to address the delegates in person. He began by urging that his action should be symbolic. "Let it be from now on the task of our party to break foolish traditions."

Roosevelt's speech electrified the convention. His declared goal was to "drive out" the "specter of insecurity from our midst." What, he asked, do Americans "want more than anything else?" His answer was simple: "work, with all the moral and spiritual values that go with it; and with work, a reasonable measure of security. . . . Work and security—these are more than words." He complained of leaders who maintained that "economic laws—sacred, inviolable, unchangeable—cause panics which no one could prevent. . . . We must lay hold of the fact that economic laws are not made by nature. They are made by human beings." Roosevelt ended with the promise that millions of hopeful Americans "cannot and shall not hope in vain. I pledge you, I pledge myself, to a new deal for the American people."

The term "new deal" was not intended to signal anything especially important. Sam Rosenman, the adviser who penned those words, said, "I had not the slightest idea" that the phrase "would take hold the way it did, nor did the Governor when he read and revised what I had written. In fact, he attached no importance to the two monosyllables." But to the surprise of all, including Roosevelt himself, those monosyllables came to capture much of his presidency, which indeed involved a kind of reshuffling of the social cards. Writing six years later about the origin of the phrase, Roosevelt engaged in a bit of revisionist history:

The word "Deal" implied that the government itself was going to use affirmative action to bring about its avowed objectives rather than stand by and hope that general economic laws alone would attain them. The word "New" implied that a new order of things designed to benefit the great mass of our farmers, workers and business men would replace the old order of special privilege in a Nation which was completely and thoroughly disgusted with the existing dispensation.

The second bill of rights was a direct outgrowth of these ideas. To understand them, and to see how Roosevelt and his New Deal altered the American understanding of rights, we must focus on two developments. The first is conceptual and involves a major reassessment of what really happens in a free market economy. The conceptual development amounted to an attack on the whole idea of laissez-faire—a suggestion that government and coercion are not opposed to human liberty but in fact are necessary to it. The second development is practical, involving the Great Depression and the nation's reaction to it. The two developments are closely linked. Standing by itself, a set of conceptual claims is most unlikely to move a nation. But the Great Depression helped drive the conceptual lesson home. The new understanding of rights was a product of a new understanding of wrongs.

In a nutshell, the New Deal helped vindicate a simple idea: No one really opposes government intervention. Even the people who most loudly denounce government interference depend on it every day. Their own rights do not come from minimizing government but are a product of government. The simplest problem with laissez-faire is not that it is unjust or harmful to poor people, but that it is a hopelessly inadequate description of any system of liberty, including free markets. Markets and wealth depend on government.

The misunderstanding is not innocuous. It blinds people to the omnipresence of government help for those who are well-off and makes it appear that those who are suffering and complaining about it are looking for handouts. The New Deal vindicated these basic claims about our dependence on government, and the second bill of rights grew out of them. Unfortunately, under an onslaught of confused rhetoric about government as a "necessary evil," we have lost sight of these claims today. Proposing a sensible system of federal tax credits to promote health insurance coverage, President George W. Bush found it necessary to offer the senseless suggestion that what he was proposing was "not a government program." Doris Kearns Goodwin writes sensitively and acutely about Roosevelt, but she entirely misses the point when she says of the second bill: "Nor had he ever been so explicit in linking together the negative liberty from government achieved in the old Bill of Rights to the positive liberty through government to be achieved in the new Bill of Rights." This opposition between "liberty from government" and "liberty through government" misconceives what Roosevelt's presidency was all about.

LEGAL REALISM AND REAL LAW

Roosevelt's attack on the idea of laissez-faire had a long legacy. Jeremy Bentham, the father of utilitarianism, was a great believer in private property. But he also said that "there is no natural property" because "property is entirely the creature of law." Above all, property creates expectations, and firm expectations "can only be the work of law." Thus "it is from the law alone that I can enclose a field and give myself to its cultivation, in the distant hope of the harvest." In Bentham's account, "property and law are born and must die together. Before the laws there was no property; take away the laws, all property ceases."

This basic claim was an important strain of *legal realism,* the most influential movement in early-twentieth-century American law. The realists, most notably law professors Robert Hale and Morris Cohen, insisted that markets and property depend on legal rules. What people have is not a reflection of nature or custom, and voluntary choices are only a part of the picture. Government choices are crucial. This is so always, and simply as a matter of fact. Ownership

rights are legal creations. In the New Deal, the realists were vindicated. Many of the legal realists found prominent positions in the Roosevelt administration.

For the realists, the most serious problem with laissez-faire was that the basic idea was simply a myth, a tangle of confusion. As Hale wrote, "The dependence of present economic conditions, in part at least, on the government's past policy concerning the distribution of the public domain, must be obvious. Laissez-faire is a utopian dream which never has been and never can be realized." Supreme Court Justice Oliver Wendell Holmes Jr., in some ways the first legal realist, wrote in a profound, haiku-like aphorism: "Property, a creation of law, does not arise from value, although exchangeable—a matter of fact." Holmes proclaimed that property and value are a product of legal rules, not of purely private interactions and still less of nature. Economic value does not *predate* law; it is *created* by law. All of this, wrote Holmes, was simply "a matter of fact."

The realists urged that government and law are omnipresent—that if some people have a lot and others a little, law and legal coercion are a large part of the reason. Of course many people work hard and many others do not. But the distribution of wealth is not simply a product of hard work; it depends on a coercive network of legal rights and obligations. The realists complained that we ignore the extent to which we have what we have and do what we do because of the law. They contended that people tend to see as "voluntary" and "free" interactions that are shot through with public force. In their view, the laws of property, contract, and tort are social creations that allocate certain rights to some people and deny them to others. These forms of law represent large-scale government "interventions" into the economy. They are coercive to the extent that they prohibit people from engaging in desired activities. If homeless people lack a place to live, it is not because of God's will or nature. It is because the rules of property are invoked and enforced to evict them, if necessary by force. If employees have to work long hours and make little money, it is because of the prevailing rules of property and contract. The realists believed that private property is fine, even good, but they denied that the rules of property could be identified with liberty. Sometimes those rules disserve liberty.

Robert Hale set forth these ideas with particular clarity. Hale wrote against the background of the political struggle over government efforts to set minimum wages and regulate prices, a struggle he believed was being waged on false premises. His special target was the view that governmental restrictions on market prices should be seen as illegitimate regulatory interference in the private sphere. This, said Hale, was an exceedingly confused way to describe the problem. Regulatory interference was already there. Hale wrote that a careful look would "demonstrate that the systems advocated by professed upholders of laissez-faire are in reality permeated with coercive restrictions of individual freedom and with restrictions, moreover, out of conformity with any formula of 'equal opportunity' or 'preserving the equal rights of others.' Some sort of coercive restriction of individuals, it is believed, is absolutely unavoidable."

Consider the situation of someone who wants to eat but lacks funds. Hale acknowledged, with apparent bemusement, that "there is no law against eating in the abstract," but stressed that "there is a law which forbids him to eat any of the food which actually exists in the community—and that law is the law of property." No law requires property holders to give away their property for nothing. Here "it is the law that coerces" a person without resources "into wage-work under penalty of starvation—unless he can produce food. Can he?" Of course no law prevents the production of food. But in every advanced nation, the law does indeed ban people from cultivating land unless they own it. "This again is the law of property," and the owner is not

likely to allow cultivation unless he can be paid to do so. For those who need to eat and lack money, "that way of escape from the law-made dilemma of starvation or obedience" to the demands of owners "is closed."

With this argument, Hale did not mean to argue that property rights should be abolished; he was hardly a socialist. Nor did Hale mean to argue that in a free market system, many people lack ways of avoiding starvation. His goal was to draw attention to the pervasive effects of law and public coercion in structuring economic relationships. More generally, Hale claimed, "laissez faire is not such, but really governmental indifference to [the] effects of artificial coercive restraints, partly grounded on government itself." Thus "the distribution of wealth at any given time is not exclusively the result of individual efforts under a system of government neutrality." Constraints on the freedom of nonowners were an omnipresent result of property law. What would it mean to say, as many people did in the early twentieth century (and as many do now), that "a free American has the right to labor without any other's leave"? Hale answered that if taken seriously, this claim would "insist on a doctrine which involves the dangerously radical consequence of the abolition of private ownership of productive equipment, or else the equally dangerous doctrine that everyone should be guaranteed the ownership of some such equipment." In a free market, people do not really have the right to work "without any other's leave." Because of property rights, people can work only with the "leave" of others.

What, concretely, does it mean to own a manufacturing plant? Hale answered that under the law, ownership entails "a privilege to operate the plant, plus a privilege not to operate it, plus a right to keep others from operating, plus a power to acquire all the rights of ownership in the products." But this was not Hale's central point. Above all, he meant to emphasize that this "power is a power to release a pressure which the law of property exerts on the liberty of others. If the pressure is great, the owner may be able to compel the others to pay him a big price for their release; if the pressure is slight, he can collect but a small income from his ownership. *In either case, he is paid for releasing a pressure exerted by the government—the law. The law has delegated to him a discretionary power over the rights and duties of others"* (emphasis added).

In a remarkable step, Hale argued that property rights were in effect a delegation of public power—to private people by government. In so arguing, Hale did not argue against property rights. Instead he sought to draw attention to the fact that property owners are, in effect, given a set of powers by law. If you have property, you have "sovereignty," a kind of official power, vindicated by government, over that property. In these circumstances, Hale found it almost comical that some people complained that government should never restrict property rights. In his view, a limitation on the delegation of power—in the form, for example, of a curtailment of "the incomes of property owners"—is "in substance curtailing the salaries of public officials or pensioners." Or consider these startlingly unambiguous words, from an unsigned student essay written in 1935: "Justification for this purported refusal to supervise the ethics of the market place is sought in doctrines of laissez-faire. . . . In general, *the freedom from regulation postulated by laissez faire adherents is demonstrably nonexistent and virtually inconceivable. Bargaining power exists only because of government protection of the property rights bargained,* and is properly subject to government control."

The same point lies behind the following suggestion: "Those who denounce state intervention are the ones who most frequently and successfully invoke it. The cry of laissez faire mainly goes up from the ones who, if really let alone,' would instantly lose their wealth-absorbing power."

In making these claims, the legal realists did not deny the possibility that some rights are, in a sense, natural or even God-given. Nothing in their arguments should be seen as taking a stand on that question. They were not urging that as a matter of fundamental principle, rights come from government. They were arguing instead that in actual life, people are able to have rights, and enjoy them, only if law and government are present. We can speak as confidently as we like of natural or God-given rights, but without public protection of private property, people's holdings are inevitably at great risk. Whatever the source of rights in principle, legal protection is indispensable to make rights real in the world. Those who complain of "government," arguing that they want merely to fend for themselves, ignore this point at their (literal) peril.

The realists' claims on this count were extremely prominent in America between 1910 and 1940. They can even be found in the work of socialism's greatest critic, Nobel Prize winner E A. Hayek, a firm believer in free markets. In his most famous work, Hayek reminded his readers that the functioning of competition "depends, above all, on the existence of an appropriate legal system, a legal system designed both to preserve competition and to make it operate as beneficially as possible." He argued that it "is by no means sufficient that the law should recognize the principle of private property and freedom of contract; much depends on the precise definition of the right of property as applied to different things." Echoing the claim of the legal realists, Hayek wrote that "in no system that could be rationally defended would the state just do nothing. An effective competitive system needs an intelligently designed and continuously adjusted legal framework as much as any other." The real battle was not between those who favor "government intervention" and those who reject it. The question was how the legal framework should be "intelligently designed and continuously adjusted." Opposition to government intervention is a smoke screen concealing that question.

Do these points illuminate current problems? Consider the analysis of famines and poverty by economist and Nobel Prize recipient Amartya Sen. He emphasizes that hunger is not a simple product of the unavailability of food. On the contrary, people are hungry if they lack "entitlements" that enable them to eat. Sen urges that an understanding of this point "has the effect of emphasizing legal rights. Other relevant factors, for example market forces, can be seen as operating through a system of legal relations (ownership rights, contractual obligations, legal exchanges, etc.)." Thus Sen's striking claim: "The law stands between food availability and food entitlement. Starvation deaths can reflect legality with a vengeance." In stressing that "law" is what makes the difference between the availability of food and an entitlement to it, and that starvation reflects "legality with a vengeance," Sen is reiterating the realists' most important claim.

ROOSEVELT' S REALISM

The attack on laissez-faire ultimately made its way into the White House. Roosevelt made the point indirectly in his illuminating 1934 critique of the idea of "the self-supporting man." He stressed that "without the help of thousands of others, any one of us would die, naked and starved. Consider the bread upon our table, the clothes upon our backs, the luxuries that make life pleasant; how many men worked in sunlit fields, in dark mines, in the fierce heat of molten metal, and among the looms and wheels of countless factories, in order to create them for our use and enjoyment." Still, this reminder of human interdependence did not refer to law and government. That point was made explicit in Roosevelt's early complaint, in accepting the Democratic nomination, that some leaders refer to "economic laws—sacred, inviolable, unchangeable," and his pragmatic response that "while they prate of economic laws, men and

women are starving." Hence his plea that we "must lay hold of the fact that economic laws are not made by nature. They are made by human beings." When people starve, it is a result of social choices, not anything sacred or inevitable.

Or consider Roosevelt's Commonwealth Club address in 1932. He emphasized the view, which he attributed to Thomas Jefferson, "that the exercise of . . . property rights might so interfere with the rights of the individual that the government, without whose assistance the property rights could not exist, must intervene, not to destroy individualism but to protect it." The key point here is that without government's assistance, property rights could not exist. When those governmentally conferred rights turn out to "interfere with the rights of the individual," governmental intervention is necessary to protect individualism itself. The legal realists could not have said it better.

Consider as well Roosevelt's emphasis on "this man-made world of ours" in advocating social security legislation. He is arguing that poverty is a by-product of a humanly created system, not a natural fact. "I decline to accept present conditions as inevitable or beyond control." The same position was codified in the preamble to the most important piece of New Deal labor legislation, the Norris-LaGuardia Act: "Whereas under prevailing economic conditions, *developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association,* the individual worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment" (emphasis added).

To the extent that property rights played a role in market arrangements—as they inevitably did—those arrangements were creatures of law, including most notably property law, which gave some people a right to exclude others from "their" land and resources. Market wages and hours were a result of legal rules conferring rights of ownership. Considered in this light, minimum wage legislation, which Roosevelt strongly supported, should not be seen as superimposing regulation on a realm of purely voluntary interactions. On the contrary, such legislation merely substituted one form of regulation for another. In this sense the notion of laissez-faire stands revealed as myth. A system of free markets rests on a set of legal rules establishing who can do what, and enforcing those principles through the courts.

The New Dealers thought this was a simple descriptive point—as Holmes put it, "a matter of fact." To say that government intervention is pervasive and that no one is against it is not to say that any particular form of intervention is good or bad. Along with the legal realists, Roosevelt believed that the real questions were the pragmatic ones: What form of intervention best promotes human interests? What form of regulation makes human lives better? If a new regulatory system is superimposed on another, we should evaluate the new system for its effectiveness in diminishing or increasing human liberty. A system of private property is good for individuals and for societies, and the fact that it is created by law does not suggest otherwise.

But in the face of the Great Depression, it seemed a kind of cruel joke to maintain that free markets were sufficient to ensure either liberty or prosperity. As Roosevelt pointed out, people in desperate conditions lack freedom. Fresh initiatives, responding to the problem of pervasive deprivation, seemed indispensable. The question was whether they would work, and this could not be answered by dogmas and abstractions. It was worse than unhelpful to respond to the critics by complaining about "government." As Hale wrote, "the next step is to . . . realize that the question of maintenance or the alteration of our institutions must be discussed on its

pragmatic merits, not dismissed on the ground that they are the inevitable outcome of free society." The legal realist Morris Cohen, writing just before the New Deal, put the point similarly: "The recognition of private property as a form of sovereignty is not itself an argument against it. . . . [I]t is necessary to apply to the law of property all those considerations of social ethics and enlightened public policy which ought to be brought to the discussion of any just form of government."

To Roosevelt, that evaluation would be unabashedly empirical and experimental. It would avoid theories and dogmas. It would look to see what sorts of programs actually worked in the world. Its character is reflected in an apparently offhand but revealing comment Roosevelt made during a press conference: "Obviously a farm bill is in the nature of an experiment. We all recognize that... if the darn thing doesn't work, we can say so quite frankly, but at least try it." In light of this pragmatic reassessment, it is possible to understand the New Dealers' belief that certain measures that reduced the wealth of rich people were not an intrusion on rights—and that other measures, increasing the opportunities and wealth of poor people, might be necessary to protect rights. Wealth did not come from nature or from the sky; it was made possible by legal arrangements. If new legal arrangements diminished the wealth of some, they were not objectionable for that reason. In Roosevelt's words, "The thing that matters in any industrial system is what it does actually to human beings . . . "

CONCEPTUAL CHANGE AND CONSTITUTIONAL CHANGE

Once the existing distribution of wealth and opportunities was seen as a product of social choices, and once policies were evaluated in terms of how they actually affected human beings, it became much harder to argue that rights should be defined as freedom from government intrusion or to insist on a strong distinction between "negative" and "positive" rights. Even the "negative" right to property requires government's presence. Of course social change is not driven solely or even mostly by conceptual claims. Experience makes all the difference, and the second bill of rights would not have been possible without the experience of the Depression. I will return to this point below, but for the moment let us simply notice that the arguments I have just traced had an impact not merely on politics but also on the Supreme Court.

When Roosevelt was elected, the Supreme Court had, for several decades, interpreted the Constitution to forbid many of the initiatives the New Dealers hoped to implement. An important set of decisions involved the idea of "freedom of contract." The Court ruled against minimum wage and maximum hour laws, saying that government could not "interfere" with voluntary interactions between employers and employees. In an especially striking decision in 1915, the Court ruled that governments could not forbid the "yellow dog contract," by which employers required employees to promise, as a condition of hiring, that they would not join a union. Efforts to forbid these agreements, the Court said, interfered with the rights of employers and employees to contract on whatever terms they chose.

In protecting freedom of contract, the Court emphasized the value of laissez-faire—the need to immunize contracting parties from government intrusion. The clearest statement of this position can be found in *Adkins v. Children's Hospital*, a 1923 decision invalidating minimum wage legislation for women and children. In his majority opinion, Justice George Sutherland wrote: "To the extent that the sum fixed [by the minimum wage statute] exceeds the fair value of the services rendered, it amounts to a compulsory exaction from the employer for the support of a partially indigent person, for whose condition there rests upon him no peculiar responsibility,

and therefore, in effect, arbitrarily shifts to his shoulders a burden which, if it belongs to anybody, belongs to society as a whole."

Thus the Court ruled that a minimum wage law interfered with voluntary agreements between employers and employees, creating a "compulsory exaction from the employer" by forcing him to support a poor person. But compare that to the Court's decision in 1937, *West Coast Hotel v. Parrish,* in which it upheld a minimum wage law for women—and in the process essentially ratified the New Deal. In one of the most important opinions in its entire history, the Court spoke in terms that could easily be found in a Roosevelt speech. The liberty protected by the Constitution, wrote Chief Justice Charles Evans Hughes for the majority, "is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people." Hughes suggested that liberty could even argue on behalf of that protection: "the proprietors lay down the rules and the laborers are practically constrained to obey them." The legislature could consider the fact that women's "bargaining power is relatively weak, and that they are the ready victims of those who would take advantage of their necessitous circumstances." The opinion complained of "the exploiting of workers at wages so low as to be insufficient to meet the bare cost of living, thus making their very helplessness the occasion of a most injurious competition."

In a remarkable passage, Hughes added a "compelling consideration which recent economic experience has brought into a strong light." This consideration had to do with the social effects of poverty. "The exploitation of a class of workers who are in an unequal position with respect to bargaining power and are thus relatively defenseless against the denial of a living wage . . . casts a direct burden for their support upon the community. What these workers lose in wages the taxpayers are called upon to pay. The bare cost of living must be met. We may take judicial notice of the unparalleled demands for relief which arose during the recent period of depression and still continue to an alarming extent despite the degree of economic recovery which has been achieved. . . . *The community is not bound to provide what is in effect a subsidy for unconscionable employers"* (emphasis added).

In the fifteen-year period between *Adkins* and *West Coast Hotel,* the constitutional universe changed. Before Roosevelt, a minimum wage law was an unacceptable interference with liberty, a constitutionally intolerable "subsidy" mandated by a coercive state from employers to employees. By 1937 a minimum wage law protected people from "exploitation" in a situation in which "their very helplessness" created competition among workers that drove wages down. In fact, by 1937 a minimum wage law could be seen as an effort to ensure that the community was not forced to subsidize "unconscionable employers." What is most striking here is the reversal of what is considered a subsidy. In 1923 a minimum wage law was seen as forcing employers to subsidize the community; fifteen years later, the absence of a minimum wage law was forcing the community to subsidize employers.

What accounts for this shift? The answer lies in an understanding of who is entitled to what. Without an opinion, on that question, we cannot decide whether a "subsidy" is involved at all. A thief does not "subsidize" his victim when he is required to return stolen property. In *West Coast Hotel,* workers have something like a right to a decent wage ("remunerative employment")—so that wages below that amount were effectively asking the community to pick up the tab for their living costs. Hence there was nothing sacred or natural or inevitable in the low wages that the market sometimes produced. The government was permitted to raise them to a decent minimum if it chose.

In the late 1930s and 1940s, the Court ceased to emphasize the voluntary nature of private agreements or to treat them as constitutionally sacrosanct. It emphasized that they were a product of legal rules—and that one or another policy was inevitably a choice, by law and government. The attack on laissez-faire helped produce a fundamental change in constitutional understandings.

DELIBERATIVE DEMOCRACY

In an important sense, Roosevelt and the New Deal deepened a central constitutional commitment, which involved the system of deliberative democracy. For the Constitution's original framers, it was exceedingly important to produce a political order that combined reflectiveness and reason giving with a degree of popular responsiveness. Public officials were accountable, to be sure, and could be removed by elections; the framers were democrats in that sense. But they feared majorities and wanted to prevent government from being moved by the "interest" or "passion" of private groups, even large ones. Under the constitutional system majorities were not permitted to rule simply because they were majorities. On the contrary, the Constitution created a kind of *republic of reasons—a* system of checks and balances that would increase the likelihood of reflective judgments. Alexander Hamilton spoke most clearly on the point, urging that the "differences of opinion, and the jarring of parties in [the legislative] department of the government . . . often promote deliberation and circumspection; and serve to check the excesses of the majority."

The commitment to deliberative democracy emerges from one of the most illuminating debates in America's early years, raising the question whether the Bill of Rights should include a "right to instruct" representatives. That right was defended with the claim that citizens of a particular region ought to have the authority to bind their representatives about how to vote. This argument might appear reasonable as a way of improving the political accountability of representatives. And so it seemed to many at the time. I suspect that many people, in America and elsewhere, would favor the "right to instruct" today. Shouldn't representatives follow their constituents' wishes? But there is a problem with this view, especially in an era in which political interest was closely aligned with geography. A right to instruct eliminates deliberation within the national legislature. It is all too likely that the citizens of a particular region, influenced by one another's views, might end up with indefensible positions, very possibly resulting from its own insularity. In rejecting the right to instruct, Roger Sherman emphasized the importance of political deliberation:

> The words are calculated to mislead the people, by conveying an idea that they have a right to control the debates of the Legislature. This cannot be admitted to be just, because it would destroy the object of their meeting. I think, when the people have chosen a representative, it is his duty to meet others from the different parts of the Union, and consult, and agree with them on such acts as are for the general benefit of the whole community. If they were to be guided by instructions, there would be no use in deliberation.

Sherman's words reflect the founders' general enthusiasm for deliberation among people who are quite diverse and disagree on issues both large and small. Indeed, it was through deliberation among such people that "such acts as are for the general benefit of the whole community" would emerge. In this light we can better appreciate the framers' preference for a republican system, involving deliberation among elected officials, over a more populist system,

in which citizen desires would be less "filtered" through representatives. The framers hoped that their design would simultaneously protect against unjustified passions and ensure a large measure of diversity in government. In this way, they hoped to structure public discussion to ensure better decisions. This explains their enthusiasm for republican institutions.

The Constitution was of course written against the legacy of English monarchy. A little-noticed provision of the document reveals a great deal about its general goals: It forbids the government to grant "titles of nobility." In the framers' generation, preexisting notions of natural hierarchy came under siege, with a novel and revolutionary insistence that culture was, as the historian Gordon Wood put it, "truly man-made." For the American revolutionaries, the problem with the monarchical legacy consisted in its acceptance, as natural, of practices and injustices that were actually "man-made." American republicanism, in the Revolution and the founding period, consisted largely in the identification of this problem. The American founders believed that social practices should be evaluated by the light of reason. Thus the extraordinary start to the first of the Federalist papers, written by Hamilton:

> It has been frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force. If there be any truth in the remark, the crisis, at which we are arrived, may with propriety be regarded as the era in which that decision is to be made; and a wrong election of the part we shall act, may, in this view, deserve to be considered as the general misfortune of mankind.

Roosevelt and the New Dealers greatly deepened the commitment to deliberative democracy. They did this by insisting that no less than a monarchical system, the existing distributions of wealth and opportunities were man-made, and that economic facts were not dictated by nature. Roosevelt himself made the link quite clear. He stressed that the American Revolution was fought to ensure "freedom from the tyranny of political autocracy—from the eighteenth-century royalists who held special privileges from the crown" and attempted to "perpetuate their privilege" by denying political rights. But he claimed that in the twentieth century, a form of "economic tyranny" had been exposed, and thus for "too many of us life was no longer free; liberty no longer real." The New Deal attempted to end this form of tyranny.

"The royalists of the economic order have conceded that political freedom was the business of the government, but they have maintained that economic slavery was nobody's business." While accepting the right to vote, "they denied that the government could do anything to protect the citizen in his right to work and his right to live." Thus Roosevelt's new conception of rights was closely connected with his claim that the existing economic order was a product of human beings, not nature.

The New Dealers contended that respect for existing practices and current distributions must depend on the reasons that could be brought forward on their behalf. The process of deliberation through democratic organs would therefore include an assessment of whether the legal rules already in place served liberty, welfare, or democracy itself. In this way, the New Deal period carried forward and renewed one of the oldest themes in American history. Enormous changes followed from these understandings. In his earliest days on the campaign trail, Roosevelt spoke of "an economic declaration of rights, an economic constitutional order"—

a clear precursor of the second bill. To understand what happened here, it is necessary to explore the Great Depression and how Roosevelt dealt with it.