

## The Service State

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President Roosevelt, the record shows, demonstrated long before 1940 that he had scant interest in the doctrines of federalism. And there can be no doubt that the centralization brought by the war permitted him greatly to advance the cause of a unitary American state. More and more, as the fighting progressed towards a victorious conclusion, this objective was publicly revealed. In spite of his defeat on the bill for reorganization of the judiciary, mere tenure of office soon enabled the President to appoint a Court of his choosing. During the war period he had nothing to fear from Congress. The now enormous executive branch of government, stiffened by many patriotic businessmen with administrative know-how, began to shake down into a competent managerial regime. Most people thought of this centralized power as a temporary evil, to be ended with the ending of the war. That was by no means the President's idea.

The first indisputable evidence of New Deal intent to

undermine the federal system actually came eleven months before Pearl Harbor. In his "fireside chat" of December 29, 1940, the President had told the American people that although "we must be the great arsenal of democracy," nevertheless "you can . . . nail any talk about sending armies to Europe as deliberate untruth." This assurance was immediately followed, on January 6, 1941, by the annual "State of the Union" Message, in which Mr. Roosevelt outlined what he called the "four essential human freedoms."

These four freedoms, he said, provide "a definite basis for a kind of world attainable in our own time and generation." And, at least so far as the United States was concerned, these freedoms were going to be compulsory. "Freedom," said the President, "means the supremacy of human rights." "A free nation has the right to expect full cooperation from all groups." "We must especially beware of that small group of selfish men who would clip the wings of the American eagle in order to feather their own nests." And "the best way of dealing with the few slackers or trouble makers in our midst is, first, to shame them by patriotic example, and, if that fails, to use the sovereignty of government to save government."

There is no injustice to Mr. Roosevelt's thought in thus taking exact quotations from this historic Message out of their somewhat rambling context. It was said of President Van Buren that he "rowed towards every objective with muffled oars." The same was equally true of F.D.R. He was far too able an orator to present his thought in an

orderly but plodding progression. This does not mean, however, that President Roosevelt was lacking in a systematic and intelligent political philosophy. He stands out imposingly from the massive ranks of the disciples of Rousseau.

As was the case with Robespierre, so also this modern advocate of the *volunté générale* preferred quick action to consistent thought, and the easily spoken to the painfully written word. This justifies us in cutting through the maze of his oratorical by-play, concerned only with the incidental, in order to focus the major objective that he had in mind. That goal was unquestionably totalitarian democracy, which has long been a part, though never long the dominant part, of the American political tradition. It is certainly not a hostile criticism of Mr. Roosevelt, but rather a tribute to his dynamic courage, to say that he fought so valiantly and successfully for socialism in spite of the general American prejudice against it, and in spite of the formidable constitutional obstacles to its attainment.

The "Four Freedoms" speech is an excellent illustration of the subtle manner in which—with the aid of war psychology—this great American President waged his uphill fight. The inharmonious quartette was billed as "Freedom of Speech"; "Freedom of Worship"; "Freedom from Want"; "Freedom from Fear." As indicated by the necessarily different propositions—"of" and "from"—the first two are of a wholly different nature from the second pair. But few, if any, political scientists have ever closely examined the monstrosity produced by this clever amalgamation of contradictory concepts.

The first two “freedoms”—of speech and of worship—are of course written into our Constitution, in the first article of the Bill of Rights. But there they are set forth as natural rights on which the government of the United States shall never commit trespass: “Congress shall make no law respecting” them. In Mr. Roosevelt’s presentation, however, it became the province of government to *provide* rather than to *respect* these rights—“everywhere in the world.”

The second pair of “freedoms,” cited without any distinction from the first pair, are not by any possible stretch of the imagination definable as natural rights. No priest, no prophet, no spiritual, ethical or moral leader of any era or any creed, has ever had the temerity to assert that men have a natural right to freedom from want or from fear. On the contrary, nearly all religions have sedulously inculcated a healthy fear of God, and Christianity in particular teaches the definite danger in placing material satisfactions ahead of the fulfillment of spiritual wants. Therefore, as Lenin argued, it is necessary first to weaken faith in God in order later to establish faith in government as the authentic source of freedom.<sup>1</sup>

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<sup>1</sup> In his *Collected Works* (1923 edn.) Vol. XVII, pp. 321–2, used as a text by all communist theoreticians, Lenin asks: “Is there such a thing as Communist morality?” Replying in the affirmative he inquires: “In what sense do we [communists] repudiate ethics and morality?” His answer: “In the sense that they were preached by the bourgeoisie who declared that ethics were God’s commandments. We, of course, say that we do not believe in God, and that we know perfectly well that the clergy . . . spoke in the name of God in order to pursue their own exploiters’ interests. . . . We say: Morality is that which serves to destroy the old exploiting society and to unite all the toilers around the proletariat, which is creating a new Communist society.”

Moreover, though this does not bother the communists, there is an obvious tendency which makes freedom from want and freedom from fear mutually contradictory, as soon as they are regarded as dominant governmental responsibilities. As Robespierre soon discovered, dissenters must be terrorized if egalitarianism is to be enforced. Evidences of this are not lacking in the United States today. One illustration can be found in the enforced collection of social security taxes, designed to provide the elderly with "freedom from want."

The sect of the Amish, excellent farmers and peaceful citizens, are forbidden by their old-fashioned religion to accept money they have not earned. So, when democratically blanketed into the social security program, many of these Amish simply failed to pay the tax involved, quite in the tradition of 1776. The riposte of Washington (not George) has been to seize the livestock of these trouble makers and sell it at public auction. One of these outrages, in Wayne County, Ohio, was graphically reported under the heading "Twilight for the Dissenter" by Walter Leckrone, editor of the Indianapolis *Times* in its issue of November 2, 1958. An excerpt is very much to the point:

As the sale began, a young Oberlin College student turned up wearing on his back a crudely hand-lettered sign that read, "If Government can take these horses today it could take yours tomorrow—Don't Bid!"

He had hardly walked a dozen steps before two burly sheriff's deputies grabbed him and hustled him off to their car. The Gestapo couldn't have done it more efficiently. The sale went on.

But the deputy sheriffs were only doing their duty. The

real blame rests with those who fail to see that political government cannot assure freedom of any kind, to anybody, without regimentation of those who would prefer to fend for themselves. It was to emphasize the importance of these individual immunities that the Bill of Rights was immediately added to the original Constitution and that the powers reserved to the States were intended to include, in Madison's words, "all the objects which, in the ordinary course of affairs, concern the lives, liberties and properties of the people." Under the original theory of American government it would have been flagrantly unconstitutional to force "freedom from want" on the Amish farmers by the extraordinary device of seizing the farm horses essential to their independent way of life. But the Fourteenth and Sixteenth Amendments have brought great changes.

Still greater changes are foreshadowed by the theory that it is the role of centralized government actually to provide freedom, for all but "trouble makers." The implications of this we shall examine later, but at this stage it is appropriate to ask whether freedom *from* something is really freedom? The word originally denoted a positive condition. To be free was to be at liberty *for* a self-decided course of action. Freedom *from* implies paternal protection, rather than individual choice, making the condition negative and reversing its traditional meaning. *Security* from want and *security* from fear were more accurately the last two desiderata of Mr. Roosevelt's "Four Freedoms." But it was supremely adroit to equate "freedom" with "security" because any government must have some

responsibility to its citizens in the latter field though, under our Federal Constitution, as President Roosevelt himself had emphasized in 1933, the responsibility is much more clearly local than national. So, merely by calling security "freedom" there was an assertion of the "right" of centralized government to play the role traditionally assigned to God.

There would be no justification for taking the Four Freedoms speech so seriously, if the Presidential Message of January 6, 1941, had been a mere flash in the pan. But throughout the war Mr. Roosevelt kept referring to the Four Freedoms and, as victory began to be assured, in his Message to Congress of January 11, 1944, the President proposed an "Economic Bill of Rights" squarely based on the earlier theorizing. Under this "second Bill of Rights," said the President, "a new basis of security and prosperity can be established for all." He then named eight of these "rights," making clear that this was an incomplete list, as follows:

- 1) The right to a useful and remunerative job in the industries or shops or farms or mines of the nation.
- 2) The right to earn enough to provide adequate food and clothing and recreation.
- 3) The right of every farmer to raise and sell his products at a return which will give him and his family a decent living.
- 4) The right of every business man, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad.
- 5) The right of every family to a decent home.
- 6) The right to adequate medical care and the opportunity to achieve and enjoy good health.

- 7) The right to adequate protection from the economic fears of old age, sickness, accident and unemployment.
- 8) The right to a good education.

“All of these rights,” continued the President, “spell security. And after this war is won we must be prepared to move forward, in the implementation of these rights, to new goals of human happiness and well-being.” Mr. Roosevelt then asserted that “it is definitely the responsibility of Congress” to legislate “this economic Bill of Rights” and concluded:

Our fighting men abroad—and their families at home—expect such a program and have the right to insist upon it. It is to their demands that this government should pay heed, rather than to the whining demands of selfish pressure groups, who seek to feather their nests while young Americans are dying.

Throughout 1944, despite his rapidly developing mental incapacity, Franklin Delano Roosevelt continued to emphasize his “Economic Bill of Rights,” and to endeavor to bind the Democratic Party to its realization. In the Presidential campaign of 1944, running for his fourth term, he several times repeated the eight points quoted and in his Chicago campaign address, October 28, 1944, he added federal crop insurance to them. “I know,” he then asserted, that the American people “agree with those objectives—that they demand them—that they are determined to get them—and that they are going to get them.”

Much water has flowed down the Potomac since the “Economic Bill of Rights” was drafted on its banks. None



can determine the extent to which it has been implemented because none can define such iridescent generalities as “adequate recreation,” “decent living” or “good education.” All these phrases have different meanings for different people, and what little definable meaning they have is constantly changing. What seemed decent living to Abraham Lincoln—without TV, without a car or telephone, without even any comics in the newspapers—would seem horrible to many Americans today. Conversely, what seems a good education to some modern pedagogues would certainly not have been so regarded by Woodrow Wilson.

But in the case of the asserted “right to a useful and remunerative job,” attainment is measurable. In the first Truman Administration an effort to make centralized government responsible in the matter was made by the introduction of a “full employment” bill. This proposed to step up “federal investment and expenditure” whenever free enterprise fails to maintain “the level required to assure a full employment volume of production.” This unper-spicious proposal was greatly modified in the eventual “Employment Act of 1946” which nevertheless, though with many qualifying clauses, does declare that “the continuing policy and responsibility of the Federal Government” is “to promote maximum employment, production and purchasing power.” It was this legislation which created the Council of Economic Advisers to the President, and also the Joint Congressional Committee on the Eco-

conomic Report (now Joint Economic Committee) of seven members each from Senate and House.<sup>2</sup>

The philosophy behind the Employment Act of 1946 has often encouraged Congress to appropriate more for defense spending than the military departments themselves have recommended. But the unemployment relief statistics show that it has done little to secure that "full employment" which is an attainable policy only in a completely socialized state. Nor is there any very convincing evidence that Americans are willing to pay this price in order to establish "the right to a useful and remunerative job." Indeed, there is little evidence to suggest that there was ever any strong popular demand for any part of Mr. Roosevelt's "Economic Bill of Rights." The "demand" which this President visualized did not well up from below, but was sedulously and artificially stimulated from above.

During the depression there was certainly widespread anxiety and distress. The great majority of people welcomed the relief measures of the early New Deal. No President has ever received a stronger popular endorsement than did Franklin D. Roosevelt when he ran for his second term. But this does not mean that farmers were

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<sup>2</sup> For antecedents of the Employment Act of 1946, see Edwin G. Nourse, *Economics in the Public Service*, Harcourt, Brace & Co. (New York 1953) Chs. 4-6. Dr. Nourse was the first chairman of the Council of Economic Advisers. This Act of 1946 is also well summarized by Lewis A. Kimmel, *Federal Budget and Fiscal Policy, 1789-1958*, The Brookings Institution (Washington 1959) pp. 237-40.

demanding permanent price supports, that organized labor expected guaranteed employment or that people in general were insisting on government housing, socialized medicine, and so forth. There is much more evidence to indicate that the demand for governmental subsidies developed *after* the "right" to them had been proclaimed. That did not happen until the war had centralized power to the extent that made permanent "federal" subsidization seem practical. Naturally, the general will to receive regular bonus checks from Washington acquired reality, once people had been assured by the highest authority that this was no more than their democratic right.

What is beyond question and above controversy in this matter is that the program enormously strengthened the power and prestige of the general government at the expense of the constituent States. Only the central government could assert an "Economic Bill of Rights" and only the central government could do anything to make these alleged rights real for all. Coupled with the centralization inevitably resulting from the war effort, this "Roosevelt revolution" turned the political thinking of the American people away from that of Jefferson and Madison, towards that of Rousseau and Marx. One may gauge the extent of the change by comparing the social science courses offered in our colleges today with those of 1931. Emphasis on the demands of the "general will" has increased enormously, while consideration of federal theory and structure has greatly diminished. As recently as 1956 those popular historians, Morison and Commager, were telling

undergraduate readers that "State rights are now an historical exhibit maintained by the Republican party."<sup>3</sup>

Obviously the trend back to Rousseau did not stop with Mr. Roosevelt's death, and is continuing independently of what party is in power. In farming, housing, health, education, road construction, old-age pensions and unemployment insurance, to mention only the more important services, centralized "aid," always with centralized control in the background, is now an established principle. It emphasizes the trees at the expense of the wood to make a detailed catalog of what is involved in the proliferation of nationalized service agencies. But one other development must be specifically noted as part of the transformation of our Federal Republic into a democratic Service State. Its starting point is also those very dubious "Four Freedoms," which President Roosevelt sought to see established "everywhere in the world."

An attempt to implement these, on the international level, is made by Chapters IX and X of the United Nations Charter.<sup>4</sup> The Charter is, of course, a treaty and was ratified as such by the United States Senate on July 28, 1945,

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<sup>3</sup> *The Growth of the American Republic*, Vol. I, p. 641. Professor Commager in particular has shown himself a strong advocate of highly centralized government. Yet, in February, 1959, he was sent by the Department of State to participate in a lecture series on "Federal Principles" in the newly established Federation of the West Indies (Dept. of State *Press Release*, Feb. 20, 1959, No. 132).

<sup>4</sup> The Roosevelt Administration was strongly influential in the drafting of these provisions. Cf. the Dept. of State's Publication 3580, *Post-War Foreign Policy Preparation, 1939-45*, U.S. Government Printing Office (Washington 1950) esp. Appendices 12-14, pp. 470-85.

with only two dissenting votes. Treaty provisions rank as “the supreme Law of the Land,” to quote the wording in Paragraph 2, Article VI of the Constitution. Therefore, prior to 1945, great care was taken to insure that treaties ratified by the United States did not run counter to basic constitutional provisions. This doubt as to consistency was a major reason for the refusal of the Senate to ratify the Treaty of Versailles, containing the Covenant of the League of Nations, after World War I.

Such doubts were not raised, at least not in effective form, when the Senate debated the U.N. Charter, although this went a good deal farther to infringe national sovereignty than did the old League Covenant. That contained nothing like Articles 55 and 56 of the Charter:

Article Fifty-five—With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall 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 international cultural and educational cooperation; and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Article Fifty-six—All members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.<sup>5</sup>

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<sup>5</sup> All these “rights” and “freedoms,” described in more detail, are “assured” by Articles 119–125 of the present Russian Constitution.

The above language is so fuzzy that for the most part it can be taken to mean almost anything. And nowhere in the Charter is there any attempt to define such highly generalized terms as “conditions of social progress,” “solutions of related problems” or “respect for fundamental freedoms.” What is certain is that in many of these matters, such as cultural and educational issues, our central government has only dubious constitutional prerogative in the domestic sphere. So its agreement to promote throughout the world what it lacks clear-cut authority to promote at home was startling, to say the least. And the pledge to take “separate action,” to achieve ends of very doubtful constitutionality, was bound to raise serious trouble, assuming that any significant number of Americans retain loyalty to the principles of their Federal Republic.

We shall shortly consider the lingering vitality of the American political tradition, which so clearly runs counter to the unlimited duties accepted by the central government in these, and other, articles of the U.N. Charter. But it is not premature to point now to the counter-revolution which is obviously building up against the conception of the all-powerful, centralized Service State.

After adopting the Charter of the United Nations the logical sequel would have been a Constitutional Amendment abolishing the forty-eight States as partially sovereign entities. They no longer have any real excuse for being if all the functions so sweepingly adumbrated in Article 55 are the prerogative of the central government. Yet, the only Amendment actually adopted since 1945 is the one that limits a President to two terms, which cer-

tainly does nothing to forward centralized executive power. Other proposed amendments, definitely designed to re-establish the system of checks and balances, have received considerable popular support, especially the one sponsored by Senator Bricker to limit the scope of "treaty law."<sup>6</sup>

As we have gone through a revolution without amending the Constitution, so we could also accomplish a counter-revolution without amendment. The Supreme Court alone could do a great deal by adopting a policy of strict rather than loose interpretation. And Congress is in a position to force the hand of the Supreme Court in this matter. That is the significance of the Byrd-Smith bill, in which these two Virginia legislators seek to inform the Court that when Congress intends a federal law to invalidate all State laws in the same field it will say so, and otherwise the Court is not to presume such intention. In the legal profession the pressure is stronger. In August, 1958, the Conference of State Chief Justices adopted, by a vote of 36 to 8, a report asserting that "at times the Supreme Court manifests, or seems to manifest, an impatience with the slow workings of our federal system." This report questioned whether the United States still has "a government of laws and not of men." And it warned that "The value of our system of federalism and of local self-government in local matters . . . should be kept firmly

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<sup>6</sup> The Bricker Amendment is analyzed in my pamphlet *Treaty Law and the Constitution*, American Enterprise Ass'n (Washington 1953).

in mind.”<sup>7</sup> Further sharp criticism of the trend in Supreme Court decisions came from the February, 1959, meeting of the American Bar Association’s House of Delegates. There are many other indications of a growing movement towards the restoration of State sovereignty, a movement which tends to reverse the trend towards centralization, and thereby to hamper the progress of unbridled democratic theory.

This totalitarian concept of democracy originated with Rousseau. His theory of the social contract hinges on the mystical conception of a “general will,” which may be mistaken but can never be wrong. Such a will, of course, must be formulated into concrete terms by somebody, regardless of how extended and perfected the machinery of democratic elections. The legislature may do its conscientious best to reflect and interpret the general will, but still that will must be defined by the executive. There lies the tremendous danger. For the executive, though a mere finite man, is always under pressure, and is by democratic theory indeed compelled, to formulate the general will as he sees best.

Of one thing the executive may be sure: that the majority want more of the good things of life, and if they can get them without undue personal effort, so much the better.

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<sup>7</sup> The basis of this Report was “an expert survey of recent Supreme Court decisions” in the field of federal relationships. This survey is available in a *Special Supplement* to the *Law School Record* of the Univ. of Chicago, Vol. 8, No. 1, Autumn 1958.



So the executive naturally tends to promise material gain, contingent of course on his remaining in power. The impetus to personal rule is obvious. Inevitably the theory of the general will leads towards dictatorship.

Against these implications of the *social* contract the spirit, and for the most part the letter, of our *political* contract—the Constitution—stand four-square. It so divides and circumscribes the concept of the general will that its embodiment in a single person is extremely difficult. Franklin Delano Roosevelt, a man of highly unusual political ability and ambition, did under war conditions succeed in this embodiment—temporarily. We do not yet know the permanence of his work.

It could be that the Federal Republic is now undermined beyond hope of restoration. It could also be that the American people have had more than they want of totalitarian democracy and are turning against it as they earlier turned against Jacobinism. But the problem is more complicated now than in the days of Citizen Genêt.