

The “War on Terror” Is Over – Now What? Restoring the Four Freedoms as a Foundation for Peace and Security

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As for our common defense, we reject as false the choice between our safety and our ideals. Our founding fathers, faced with perils that we can scarcely imagine, drafted a charter to assure the rule of law and the rights of man, a charter expanded by the blood of generations. Those ideals still light the world, and we will not give them up for expedience’s sake. And so, to all other peoples and governments who are watching today, from the grandest capitals to the small village where my father was born: know that America is a friend of each nation and every man, woman and child who seeks a future of peace and dignity, and we are ready to lead once more.

– Barack H. Obama
Inaugural Address, Jan. 20, 2009¹

The so-called “war on terror” has ended.² By the end of his first week in office, President Barack H. Obama had begun the process of dismantling some of the most notorious “wartime” measures.³ A few weeks before, recently reappointed Secretary of Defense Robert M. Gates had clearly forsaken the contentious label in a post-election essay on U.S. strategy in *Foreign Affairs*.⁴ Gates noted this historic shift in an almost offhanded

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1. President Barack Hussein Obama, Inaugural Address (Jan. 20, 2009), available at <http://www.whitehouse.gov/blog/inaugural-address/>.

2. See Dana Priest, *Bush’s ‘War’ on Terror Comes to a Sudden End*, *WASH. POST*, Jan. 23, 2009; see also Jay Solomon, *U.S. Drops ‘War on Terror’ Phrase, Clinton Says*, *WALL. ST. J.*, Mar. 31, 2009.

3. See Exec. Order No. 13,492, 74 Fed. Reg. 4897 (Jan. 22, 2009) (Review And Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities), available at http://www.whitehouse.gov/the_press_office/closureof GuantanamoDetentionFacilities/; Exec. Order No. 13,493, 74 Fed. Reg. 4901 (Jan. 22, 2009) (Review of Detention Policy Options), available at http://www.whitehouse.gov/the_press_office/ReviewofDetentionPolicyOptions/; Exec. Order No. 13,491, 74 Fed. Reg. 4893 (Jan. 22, 2009) (Ensuring Lawful Interrogations), available at http://www.whitehouse.gov/the_press_office/EnsuringLawfulInterrogations/.

4. Robert M. Gates, *A Balanced Strategy: Reprogramming the Pentagon for a New Age*, *FOREIGN AFF.*, Jan./Feb. 2009, at 28, 29. Other observers have been pointing to the inaptness of the term “war on terror” for years. For an early and notable example, see *It Is Meaningless and Dangerous To Declare War Against Terrorism*, *INDEPENDENT*, Sept. 17, 2001, available at <http://www.independent.co.uk/opinion/leading-articles/it-is-meaningless-and-dangerous-to-declare-war-against-terrorism-669538.html>. See also Mark R. Shulman,

way: “What is dubbed the war on terror is, in grim reality, a prolonged, worldwide irregular campaign – a struggle between the forces of violent extremism and those of moderation.”⁵ At the same time, the Obama administration is taking care to reconfirm its commitment to defending the United States and its interests against the threat of radical Islamists, among others. However, because it is hard to replace something with nothing,⁶ this article argues that the President should go further and offer a positive formulation – based on good law as well as sound policy – of how he will lead us to a “future of peace and dignity.” He should restore Franklin D. Roosevelt’s Four Freedoms to a central place in the nation’s grand strategy.

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In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

The first is freedom of speech and expression – everywhere in the world.

The second is freedom of every person to worship God in his own way – everywhere in the world.

The third is freedom from want – which, translated into universal terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants – everywhere in the world.

The fourth is freedom from fear – which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor – anywhere in the world.

That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb.

– *Franklin D. Roosevelt*
*Annual Message to Congress, Jan. 6, 1941*⁷

J'accuse for the Bush Administration, 3 N.Y.U. REV. L. & SEC. 39, 40 (2004) (favorably reviewing Richard A. Clarke’s *Against All Enemies* but faulting its embrace of a “war on terror”); 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.”).

5. Gates, *supra* note 4, at 29.

6. IAN SHAPIRO, CONTAINMENT: REBUILDING A STRATEGY AGAINST GLOBAL TERROR 4 (2007) (political scientist proposing a strategy of containment because the United States faces real threats that are not subsumable into a war and that “you can’t beat something with nothing”).

7. President Franklin D. Roosevelt, Annual Message to Congress (Jan. 6, 1941), *in*

When President Roosevelt articulated the Four Freedoms in January 1941, he was promulgating a vision for a postwar world system of states dedicated to the promotion of respect for human dignity as a means to ensure security. Roosevelt called for policies that would make the world more secure by promoting freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want, and a freedom from fear. This article 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 threats and opportunities of an era characterized by a rapidly changing and formidable range of security challenges. It argues that the Four Freedoms offer a more apt decision-making framework than did the ill-defined and alienating framework of a "war on terror." In place of an unending and unbounded war, they focus on the enduring values that would inform more humane policies and facilitate more rational decisionmaking. The Four Freedoms point the way to a grand strategy or national policy that promotes long-term security, prosperity, and justice.

This article employs an interdisciplinary methodology, relying on the tools of history, political science, and strategic studies, as well as a form of constitutional interpretation that owes much to Justice Stephen Breyer's concept of "active liberty."⁸ This article explores the ways that the Four Freedoms were framed to address the dire circumstances of World War II. It analyzes the historical context of the 1940s, during 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. The history explains how the values they embody were quickly embraced around the world and then misplaced during the Cold War. When the Four Freedoms framed the American mission, the nation basked in unparalleled good will and wielded tremendous smart power. As security policy strayed from the principles they embodied, the nation's ability to inspire and lead also diminished. Restored to their proper place, the Four Freedoms promise a more effective grand strategy than a "war on terror" – one that relies more on demonstrating inspired leadership than on fighting and winning wars.

Part I introduces the argument that the Four Freedoms reflect fundamental legal norms and offer a framework on which to develop a wise policy to promote meaningful and enduring peace and security. Part II describes the historical origins of the Four Freedoms. Roosevelt developed them as an articulation of American values and objectives specifically to lead the nation to defeat an unprecedented threat. He based them on his faith in American civil rights and his experience facing down widespread want and fear. The Four Freedoms were almost immediately incorporated

87 CONG. REC. 44, 46 (1941), available at <http://www.fdrlibrary.marist.edu/4free.html>.

8. See STEPHEN BREYER, ACTIVE LIBERTY: INTERPRETING OUR DEMOCRATIC CONSTITUTION (2005).

into the Atlantic Charter as a mission statement for the Allies. After the war, the Four Freedoms were also incorporated into the Universal Declaration of Human Rights and other basic components of international law. Part III examines the ways in which the 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, people who ignored FDR’s original formulation of the Four Freedoms as a coherent strategy. This conceptual drift enabled the presidential administration of George W. Bush to prioritize the freedom from fear at the expense of other important values. This distortion promoted a dangerous grand strategy that emphasized fighting wars and thus precipitated resentment and instability around the world rather than the empathy, support, and peaceful relations that would have bolstered American security. Part IV further develops the proposition that the Four Freedoms present a compelling paradigm for peace and security today. Strategic adjustment is most effective when guided by a clear and compelling statement of objectives. The prospect of restoring the Four Freedoms to a central place in U.S. grand strategy offers such an opportunity. The article concludes by returning to the Anglo-American security partnership that 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 to rationally address issues such as the global economic crisis, climate change, and widespread poverty, as well as the threats posed by radical jihad.

I. THE FOUR FREEDOMS AS BASIC LAW AND WISE POLICY

Taken together and read generously, the Four Freedoms articulate sound policy for promoting long-term security and prosperity for the people of the United States and around the world. They were forged in the United States, tempered by the fire of World War II, and honed by the adoption of the International Bill of Human Rights.⁹ If restored to a central place in U.S. grand strategy and implemented thoughtfully today, they should advance security interests by reducing the threats posed by violent extremists 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

9. 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.”).

expression – everywhere in the world. The second is freedom of every person to worship God in his own way – everywhere in the world.”¹⁰ Clearly, FDR borrowed these first two freedoms from the 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.”¹¹ Finally, and most famously, Roosevelt addressed what he viewed as the particular 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.”¹²

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 decisionmaking. As the historical section below will describe, FDR first enunciated the Four Freedoms in January 1941. A few months later, they were subsumed by the Atlantic Charter that cemented the Anglo-American alliance. The 1945 Charter of the United Nations included them as basic principles.¹³ The 1948 Universal Declaration of Human Rights incorporated them as inherent to human dignity and thus inalienable.¹⁴ The International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights embrace them.¹⁵ Clearly, the Four Freedoms express

10. President Roosevelt, Annual Message to Congress, *supra* note 7.

11. *Id.*

12. *Id.* at 47.

13. U.N. Charter pmbl.

14. Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 (Dec. 10, 1948). For an exemplary discussion of the extent to which the Universal Declaration represents a set of legal obligations, see Hurst Hannum, *The Status of the Universal Declaration of Human Rights in National and International Law*, 25 GA. J. INT’L & COMP. L. 287 (1996); RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §701, n.6 (1987) (“The binding character of the Universal Declaration of Human Rights continues to be debated . . . but the Declaration has become the accepted general articulation of recognized rights.”).

15. *See, e.g., infra* note 86 and accompanying text. The International Covenant on Civil and Political Rights recognizes that “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social, and cultural rights.” 999 U.N.T.S. 171 (opened for signature Dec. 19, 1966) (entered into force Mar. 23, 1976) (emphasis added). Likewise, the International Covenant on Economic, Social and Cultural Rights recognizes that “the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social, and cultural rights, as well as his civil and political rights.” 993 U.N.T.S. 3 (opened for signature Dec. 19, 1966) (entered into force

fundamental norms of international law. Because these norms are so succinctly articulated, so universally admired, and so thoroughly internalized in legal cultures around the world, they constitute a valuable tool for promoting peace and security. They offer the hope of an enduring peace based on the rule of law.

II. THE ORIGINS OF THE FOUR FREEDOMS AMIDST GLOBAL CRISIS

“[T]he only thing we have to fear is fear itself – nameless, unreasoning, unjustified terror which paralyzes needed efforts to convert retreat into advance.”¹⁶

By January 1941, the lawless, hyperaggressive, and highly successful Axis war machine threatened freedom everywhere. The fall of the French Republic in the summer of 1940 clearly demonstrated to American authorities that the expanding geopolitical crisis could no longer be ignored. At 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, and Southeast Asia. America’s ultimate entry into the war seemed inevitable to many, including most likely to President Roosevelt. That November, however, he was reelected for an unprecedented third term, campaigning on a promise that “[y]our boys are not going to be sent into any foreign wars.”¹⁷ In the fall of 1940, FDR probably did not believe his own campaign rhetoric, but making the pronouncement appears to have been necessary for his reelection. In retrospect, the dubious sincerity of FDR’s promise seems both obvious and excusable. Facing isolationist sentiment at home and a fast-spreading war, he had no easy choices. Speaking for the only major European power holding out against the Axis, Prime Minister Winston Churchill and King George VI had convinced FDR of the need to support Great Britain in its hour of need. Churchill warned FDR that, without cash and supplies, Britain would also succumb to the Axis juggernaut, leaving the U.S. as the only major remaining free power. Roosevelt understood that the plucky Royal Air Force and mighty Royal Navy presented the only meaningful

Jan. 3, 1976).

16. 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.

17. President Franklin D. Roosevelt, Campaign Address at Boston, Massachusetts: We Are Going Full Speed Ahead! (Oct. 30, 1940), in 10 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 517 (Samuel I. Rosenman ed., 1950). Questions about Roosevelt’s views on the inevitability of America’s entry into the war have been the subject of inexhaustible debates. See generally ROBERT A. DIVINE, THE RELUCTANT BELLIGERENT: AMERICAN ENTRY INTO WORLD WAR II (1965). For a summary of these debates, see CHRISTOPHER ANDREW, *Franklin D. Roosevelt: The Path to Pearl Harbor*, in FOR THE PRESIDENT’S EYES ONLY: SECRET INTELLIGENCE AND THE AMERICAN PRESIDENCY FROM WASHINGTON TO BUSH (1996).

bulwarks against this catastrophe.¹⁸ Yet, most Americans continued to oppose any policy that might lead their country into war. As one contemporary historian bitterly observed 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.¹⁹

FDR demonstrated extraordinary leadership by paying respect to the widely held isolationist views while doing everything possible to prevent an irreversible disaster.

To avoid this calamity, FDR planned to offer to lend or lease war materiel to the British, but first he needed the support of Congress and the American people. A few months before and without authorization from Congress, Roosevelt had traded fifty old flush-deck naval destroyers for leases on British territorial possessions in the Western Hemisphere. FDR chose the occasion of his January 6, 1941, Annual Address to Congress to launch his new plan. In order to meet growing congressional concerns about being shut out of the process and 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 his new initiative in a soothing metaphor. FDR likened the program 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 simply return the hose.²⁰ This “Lend-Lease,” FDR claimed, would reduce the likelihood that America’s home would be engulfed in the flames of war.²¹ At the same time, he explained the nation’s common cause

18. See DIVINE, *supra* note 17, at 92-96.

19. HERBERT FEIS, *THE ROAD TO PEARL HARBOR: THE COMING OF WAR BETWEEN THE UNITED STATES AND JAPAN* 124-125 (1950).

20. The literature on Lend-Lease is vast. For accessible and reliable overviews, see DIVINE, *supra* note 17, at 92; ROBERT A. DIVINE, *ROOSEVELT AND WORLD WAR II*, at 29 (1969); PATRICK J. MANEY, *THE ROOSEVELT PRESENCE: THE LIFE AND LEGACY OF FDR* 126 (1998). As for FDR’s obfuscation, note 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 24-29.

21. 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

with Britain and her free allies. FDR also used the address to Congress to articulate a vision detailing the Four Freedoms and portraying a world in which the United States could find a common cause not only with states such as Great Britain but also with individuals around the world regardless of nationality.²² FDR framed the Four Freedoms in a memorable appeal to principles and practicality:

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. . . . That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb.

According to FDR's special counsel, the President dictated these now famous words spontaneously a few days before, while 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, the words he dictated on New Year's Day 1941 were by all accounts both improvised and revised only slightly before delivering them to Congress and the nation five days later.²³ The brilliant spontaneity of the Four Freedoms may add to their allure as a statement of vision. But Roosevelt clearly meant for them to be construed as establishing a coherent and binding agenda. He started the dictation session by calling to his secretary, "Dorothy, take a law."²⁴ In an era before the government had established a formal interagency process for drafting and declaring a national security strategy, FDR's "law" was all that was required.²⁵

At first glance, the Four Freedoms may appear to present an unusual list of claims. The list contains two sets of civil or political rights (expression and religion), one bundle of indeterminate economic rights (want), and the

(2001).

22. President Roosevelt, Annual Message to Congress, *supra* note 7.

23. See SAMUEL I. ROSENMAN, WORKING WITH ROOSEVELT 262-263 (1952); Andrew S. Effron, *Military Justice: The Continuing Importance of Historical Perspective*, ARMY LAW., June 2000, at 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).

24. ROSENMAN, *supra* note 23, at 263.

25. For a comparison to the post-war national security decisionmaking process, see Colin S. Gray, *Strategy in the Nuclear Age: The United States, 1945-1991*, in THE MAKING OF STRATEGY: RULERS, STATES, AND WAR 579 (Williamson Murray et al. eds., 1994) (surveying fourteen broad official strategy reviews from NSC 20/4 of Nov. 23, 1948 to the G.H.W. Bush administration national security review of 1989 and finding that they often repackaged old orthodoxy under the guise of new strategic thought); David Alan Rosenberg, *Nuclear War Planning*, in THE LAWS OF WAR: CONSTRAINTS ON WARFARE IN THE WESTERN WORLD 160-190 (Michael Howard, George J. Andreopoulos & Mark R. Shulman eds., 1994) (describing the roles of Congress, the Presidents, and the military and the process of defining and redefining nuclear strategy and finding awkward, unwieldy, and dangerous strategies).

previously unarticulated freedom from fear, which appears to provide a shorthand description of “peace on earth.” Viewed in this way, the list includes two items derived directly from the U.S. Constitution, a third aspiring to globalize the New Deal economic agenda, and a fourth intending to restore Woodrow Wilson’s shattered vision for world peace.

The Four Freedoms might alternatively be viewed as two pairs of freedoms. The civil and political rights of expression and religion flowed from the values of the Enlightenment via the First Amendment to the U.S. Constitution. The second pair may be viewed as products of FDR’s experience in office, dealing mostly with the alleviation of discontent by reducing people’s want and fear. Louis Henkin, an enthusiastic supporter of Roosevelt’s vision, 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.”²⁶ The same can be said of the freedom from fear: wrapped as it was – and perhaps disguised – in a notion of arms control. “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.”²⁷

Indeed, the Four Freedoms could be viewed as a list or as two pairs. But to do them justice and use them most effectively, the Four Freedoms should be construed as a package and as animated by the spirit of a rule of law constructed upon respect for human dignity. The Four Freedoms are most meaningful and useful when read altogether. As a parcel of human rights and responsibilities, they yield a comprehensive policy for meaningful and enduring security. 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.”²⁸ The Four Freedoms must be read collectively in order to ascertain the full meaning of FDR’s wise prescription for security. Part III of this article explores more fully how to read and employ them.

Another important innovation that merits highlighting is that FDR’s vision of the Four Freedoms 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 from his trusted advisor Harry Hopkins about whether it was

26. LOUIS HENKIN, *THE AGE OF RIGHTS* 18 (1990); see Mary Ann Glendon, *The Rule of Law in the Universal Declaration of Human Rights*, 2 NW. U. J. INT’L HUM. RTS. 5, 43 (2004) (“One basic assumption . . . was that poverty and discrimination often set the stage for atrocities and armed conflict. That is why Franklin Roosevelt included the ‘freedom from want’ among his Four Freedoms.”).

27. President Roosevelt, Annual Message to Congress, *supra* note 7.

28. *Id.*

America's obligation to ensure the Four Freedoms for people of the East Indies, Roosevelt responded, "I'm afraid they'll have to be some day, Harry. The world is getting so small that even the people in Java are getting to be our neighbors now. . . ." ²⁹ FDR was articulating a globalized claim of human rights, and people recognized it as such. 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."³⁰ The audacity of this vision alone would have caused a stir, both in an isolationist U.S. Congress that had passed successive Neutrality Acts,³¹ and around a world ordered first and foremost by a robust interpretation of state sovereignty.

FDR's January 1941 address to Congress – announcing the Four Freedoms together with the Lend-Lease Act – 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 hand, some claimed that the President was dragging the country into the wrong war with the wrong enemy. Uninspired and attempting to thwart Lend-Lease, leaders of the isolationist America First Committee continued to call for some sort of accommodation with the Axis rather than embarking on a mission to make the world safe for democracy.³²

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, illuminating some of its appeal and its ambiguity.³³ A long-time supporter of FDR's New Deal, Hutchins embraced the vision but questioned the timing. He 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. "With the President's desire to see freedom of speech,

29. ROSENMANN, *supra* note 23, at 264. Established in the wake of World War I, the League of Nations had pretensions to this brand of universalism, but in actuality the League did not accomplish much to break up the colonial order that denied political rights to a majority of people around the world.

30. TOWNSHEND HOOPEES & 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)).

31. 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).

32. See 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); DIVINE, *supra* note 17, at 110.

33. 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 the following year to serve as its president. 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* 314-318 (2004).

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.”³⁴ 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.’”³⁵ 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.³⁶ 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.”³⁷ Pursuit of the Four Freedoms led the way to freedom; war did not. 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 successfully with the importance of 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. And as long as the fourth freedom remained undefined, the Four Freedoms would too.

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 threatening 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.³⁸ Their discussions focused on Anglo-American cooperation in the military, diplomatic, and financial arenas. Talks were driven by the shared recognition of the critical importance of meeting Britain’s materiel needs. They were constrained by the still potent domestic political opposition facing President Roosevelt.

Toward the end of this critical summit meeting, Roosevelt proposed issuing a statement on their Anglo-American vision for war and peace aims.³⁹ FDR sought to provide moral clarity that would distinguish their

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

35. *Id.* at 438.

36. *Id.* at 440.

37. *Id.* at 441.

38. DIVINE, *supra* note 17, at 137-141.

39. Borgwardt, *supra* note 32, at 519.

shared values from those of the Axis Powers.⁴⁰ Seizing on the opportunity to cement the relationship, the British delegation quickly responded with a five-point proposal drafted by the Permanent Under Secretary for Foreign Affairs, Sir Alexander Cadogan.⁴¹ Apparently, Cadogan had brought on board his copy of the Four Freedoms speech, the principles of which he reflected in the draft Charter. Three of Cadogan's points were easily adopted: pledging nonaggression, promising self-determination, and respecting forms of self-government that promoted the freedom of speech.⁴² Cadogan's other two points proved more contentious and were amended considerably before FDR signed on to them.⁴³ One proposed to support a vaguely liberal economic policy – a kind of freedom from want. The other proposed to ensure world peace through the formation of a new organization dedicated to promoting international peace and security – that is, promoting the freedom from fear.⁴⁴ 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,” 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.”⁴⁵ Consistent with the intentions of the Four Freedoms generally, these economic and social arrangements were all drafted to bolster the security objectives.

In light of the circumstances leading to the drafting of the Atlantic Charter, its embrace of the Four Freedoms and emphasis on security is not surprising. 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*.”⁴⁶ 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 World War I.

40. *Id.* at 504.

41. *Id.* at 519-20; see HOOPES & BRINKLEY, *supra* note 30, at 36.

42. DIVINE, *supra* note 17, at 134.

43. For detailed analysis of the drafting process, see Borgwardt, *supra* note 32, at 519-527.

44. DIVINE, *supra* note 17, at 134.

45. 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, *supra* note 17, at 314, 315.

46. *Id.* (emphasis added).

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.⁴⁷

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 Atlantic 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 somewhat different version of the Four Freedoms from that which FDR had presented to Congress just seven months before.⁴⁸ The Charter both spliced the freedom from fear together with the freedom from want and appended it to issues of international conflict. Doing so muddied the clear message that the "freedom from fear" language had originally conveyed – that widespread possession of weapons gives rise to fears. It redefined the freedom from fear, now with a dual nature. On the 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 as such should be alleviated as a way to preempt conflict. This facet appears to reflect FDR's New Deal programs, which arguably saved the republic with bold platforms of emergency relief payments, government-supported jobs, and the comforting voice of a fireside chat. This agenda expressed the aspect of FDR's political theory that he had memorably explained with great effect in his first inaugural address, "the only thing we have to fear is fear itself."⁴⁹

47. *Id.* Townshend Hoopes and Douglas Brinkley explain that the U.N. Charter limited the agenda of disarmament to aggressors and potential aggressors in order to avoid unnecessarily riling "extreme internationalists." HOOPES & BRINKLEY, *supra* note 30, at 39-40.

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

49. Roosevelt, First Inaugural Address, *supra* note 16.

On the other hand, the Atlantic 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 World War I to ensure freedom of the seas. During that war, the objective morphed into a more ambitious program to create a League of Nations that would not only ensure unfettered shipping but also secure worldwide peace through a form of global governance. 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."⁵⁰ 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. Americans generally admired the Charter – albeit at an abstract level.⁵¹ 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.⁵² 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.⁵³ But even they did not condemn it.⁵⁴

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 Atlantic Charter offered a progressive vision that no one was bound to implement, so it was widely applauded. Thus, it provided an important gloss on the Four Freedoms over the critical years that followed.

After the United States entered the war, notions about the Four Freedoms continued to develop as they entered the free world's vernacular discourse. The quintessentially American illustrator Norman Rockwell

50. 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).

51. Borgwardt, *supra* note 32, at 530 (citing two contemporary polls). *But see* JOHN MORTON BLUM, V WAS FOR VICTORY: POLITICS AND CULTURE DURING WORLD WAR II 20 (1976) (“[Polls] 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 . . .”).

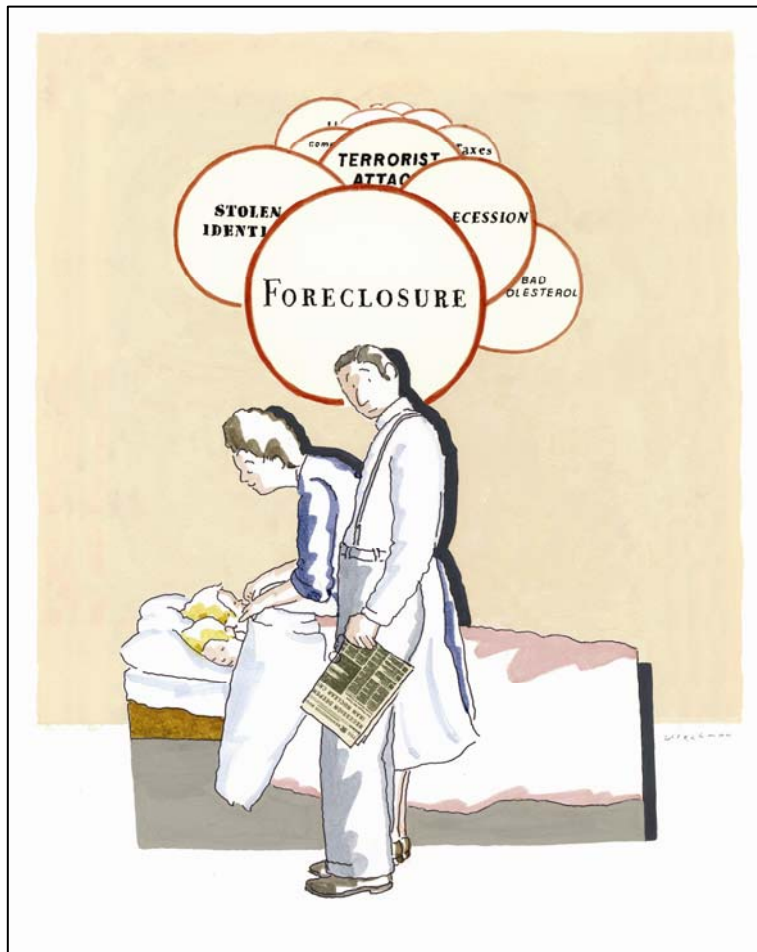
52. Borgwardt, *supra* note 32, at 532.

53. *See id.* at 526-530.

54. *Id.*

produced a series of posters translating the Four Freedoms into compelling graphic images. In the fall of 1943, the posters graced the covers of four issues of the widely distributed *Saturday Evening Post*.⁵⁵ Over the next few years, some 1.2 million people lined up to view Rockwell's original posters as they toured the country. Ticket sales for the tour raised \$130 million dollars in war bonds.⁵⁶

Poster by R.O. Blechman, designed for The Wolfsonian-Florida International University's exhibition, *Thoughts on Democracy: Reinterpreting Norman Rockwell's Four Freedoms Posters*, reprinted with permission and courtesy of the artist and museum.



55. See Richard D. Parker, *Homeland: An Essay on Patriotism*, 25 HARV. J.L. & PUB. POL'Y 407, 423 (2002). It is difficult to imagine Rockwell choosing instead to illustrate the Atlantic Charter, with its more "realist" language.

56. Effron, *supra* note 23, at 2.

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.⁵⁷

The sympathetic 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 it guarantees against fear of measles, graying hair or the consequences of laziness or incompetence.⁵⁸

Thus the influential *Post* editors explained the Four Freedoms as "pretty well what men have always hoped for – political liberty, a better standard of living and an end to war."⁵⁹ 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 all 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.

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

58. *Id.*

59. *Id.*

It is difficult for the historian to accurately assess the universality of the acceptance of the Four Freedoms 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 the “United Nations” (the Allies).⁶⁰ Even as the Charter and Declaration reflected their principles, 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. The Librarian of Congress and poet Archibald MacLeish, acting in his capacity as part-time director of the government’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.”⁶¹

Elsewhere in the ever-smaller free world, political leaders also seized on the motivational value of the Four Freedoms. During the grim month of July 1942, as the war came to Australia, Prime Minister Sir Robert Menzies devoted several radio addresses to the theme:

President Roosevelt, in discussing the things at stake in this war, made use of an expression – The Four Freedoms – which has now found currency in most of our mouths. The four freedoms to which he referred were: freedom of speech and expression, freedom of worship, freedom from want, freedom from fear. One has only to state them to get a response from the listener. Every one of us will at once say, “Ah yes, I believe in those freedoms. The President is right.” That the President is right I have no doubt myself; but that we either fully understand or believe in these freedoms is open to some question. I propose therefore, in this and my next few broadcasts, to take each of these four freedoms and in turn,

60. See Borgwardt, *supra* note 32, at 533, for a historical discussion of these documents and the human rights concepts during the war. See generally HOOPES & BRINKLEY, *supra* note 30. Interestingly, Secretary of War Henry L. Stimson’s memoir (written in the third person with McGeorge Bundy) confuses the chronology while embracing articulation of the mission statement. Writing shortly after the war, Stimson concluded: “Some critics of American policy have judged it astonishingly naïve in this single-minded concentration on victory. Stimson could not agree. The general objectives of American policy had been clearly and eloquently stated by Mr. Roosevelt first in the Atlantic Charter and later (sic) in his assertion of the Four Freedoms.” HENRY L. STIMSON & MCGEORGE BUNDY, ON ACTIVE SERVICE IN PEACE AND WAR 565 (1947).

61. BLUM, *supra* note 51, at 29 (quoting Letter from Archibald MacLeish to President Franklin D. Roosevelt (May 16, 1942)). For more on the Office of Facts and Figures, see CLAYTON R. KOPPES & GREGORY D. BLACK, HOLLYWOOD GOES TO WAR: HOW POLITICS, PROFITS AND PROPAGANDA SHAPED WORLD WAR II MOVIES 55-56 (1990) (noting that the Office of Facts and Figures had both objective research and propaganda functions).

endeavour to get at its meaning and significance, and work out what it involves in our own living and thinking.⁶²

Menzies set out in the following weeks to define the Four Freedoms for the Australian people, primarily by promoting sacrifices to win the war and then an additional sacrifice of some sovereignty in order to ensure lasting peace.⁶³ Likewise, New Zealand's prime minister seized on the Four Freedoms to applaud the Allies' sacrifices and illuminate the Allies' common ground. 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.⁶⁴

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. While admired by all those who cited them, they offered variously peace, security, international cooperation, and greater opportunities.

Roosevelt himself sought to clarify the ultimate objective of the Four Freedoms in his January 1944 annual address to Congress.⁶⁵ Historians and humanitarians have paid inadequate attention to this remarkable speech. Cass Sunstein ruefully observes that FDR's message had been lost to history despite its ambitious and apt proposal of a "Second Bill of Rights."⁶⁶ In it, FDR, now 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.'"⁶⁷ Echoing his January 1941 formulation, FDR combined "physical security[,] which provides safety from attacks by aggressors," with "economic security, social security, [and] moral security."⁶⁸ As Sunstein notes, Roosevelt now insisted that "essential to peace is a decent standard of living for all

62. Sir Robert Menzies, Weekly Radio Address, cited at <http://webdiary.com.au/cms/?q=node/930>. The texts of these radio essays are available at <http://www.menziesvirtualmuseum.org.au/transcripts/ForgottenPeople/ForgottenCont.html>.

63. *Id.* at July 17, 1942.

64. Borgwardt, *supra* note 32, at 553.

65. President Franklin D. Roosevelt, State of the Union Address (Jan. 11, 1944), in 12 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).

66. 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).

67. *Id.* (quoting Roosevelt, State of the Union Address, *supra* note 65, at 33).

68. *Id.*

individual men and women and children in all Nations. Freedom from fear is eternally linked with freedom from want.”⁶⁹ In this formulation, FDR had clearly subsumed the Four Freedoms 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 aggression. At the same time, Roosevelt abandoned the reference to demilitarization as the only way to achieve this security. Indeed, the quest for disarmament may have been doomed from the start. Back in January 1941 FDR paired his initial proposal for the Four Freedoms with the Lend-Lease program – the largest arms transfer in history.⁷⁰ 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 own policy for Latin America.⁷¹ 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 Universities Committee on Post-War International Problems.⁷² Not surprisingly, the Universities Committee viewed civil rights as the “most important to guarantee internationally, supposing that such a guarantee proves feasible.”⁷³ Professor Baylis summarized the Universities Committee’s work: “By all odds the most frequently emphasized ones are freedom of expression and freedom of religion.”⁷⁴ 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

69. *Id.* (quoting Roosevelt, State of the Union Address, *supra* note 65, at 34).

70. President Roosevelt, Annual Message to Congress, *supra* note 7.

71. Extensive literature exists on the Good Neighbor policy. *See, e.g.*, ROBERT H. FERRELL, *AMERICAN DIPLOMACY: A HISTORY 1765-1966* (3d ed. 1975) (offering a generally sympathetic but candid appraisal); Roosevelt, First Inaugural Address, *supra* note 16.

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

73. *Id.* at 248.

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

without discrimination based on race, color, or religion.”⁷⁵ Then followed the set of rights related to the exercise of voting.⁷⁶ 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.”⁷⁷ 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 [i.e. the United Nations]; 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.⁷⁸

Through this and other efforts throughout the war, scholars and statesmen acknowledged the Four Freedoms as offering a sound basis for security in the postwar world. And 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 political, legal, and military contests. The freedom from want encapsulated FDR’s practical programs to combat unemployment, homelessness, and hunger that characterized America’s grim 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

75. *Id.*

76. *Id.* at 249.

77. *Id.*

78. *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”).

and by these freedoms.⁷⁹ 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.⁸⁰ The other leading powers either were on the losing side (Germany, Japan, and Italy) or incapacitated by the war (France and China, both of which would nonetheless soon claim permanent seats on the U.N. Security Council). 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.

World War II 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. The months after Roosevelt's death in April 1945 brought in quick succession the liberation of the Nazi death camps, the establishment of the United Nations, the explosion of atom bombs over Hiroshima and Nagasaki, and the chartering of the international military tribunals at Nuremberg and Tokyo – each leaving an indelible mark on the world's views about postwar security.

Respect for a small body of fundamental rights coalesced in international law. Most notably, the right to be free from genocide emerged, articulated with commendable clarity even if unevenly respected.⁸¹ Some rights – such as the freedom of expression – enjoyed a relatively smooth ride. That is not to say that this freedom was consistently honored during the war. Indeed most states – perhaps all – trammled on it. At the end of the war, however, the freedom of expression did reemerge in a recognizable form and strengthened by the widespread recognition of the evils of political repression. People increasingly understood that it was not only an individual freedom but also that it was indispensable for improving the efforts of governments. Other rights emerged from the war nominally intact but somewhat altered. The young freedom from fear was one such right.

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

80. MANEY, *supra* note 20, at 165.

81. *See* 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 WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW* (2000); SAMANTHA POWER, "A PROBLEM FROM HELL": AMERICA AND THE AGE OF GENOCIDE (2002).

During the summer of 1945, the drafters of the U.N. Charter set out 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 of life in larger freedom.”⁸² Because of their geopolitical significance (that is to say, their size and 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.⁸³ The Permanent Five succeeded the Four Policemen, although their respective and collective roles remained subject to constant renegotiation.⁸⁴ The U.N. Charter carried the Four Freedoms forward. 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.⁸⁵

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 in Chapter X, which establishes the Economic and Social Council.⁸⁶

82. U.N. Charter pmbi.

83. *See generally* KENNEDY, *supra* note 48, at 3-47.

84. 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).

85. U.N. Charter art. 55.

86. The Universal Declaration of Human Rights gives additional substance to these rights. *See* Universal Declaration of Human Rights, *supra* note 14. 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 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 art. 12.1, *opened for signature* Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan 3, 1976).

The most widely debated sections of the U.N. Charter address the freedom from fear and the new organization's dedication to promoting security. Chapter I describes the purposes and principles:

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.⁸⁷

This text implies that fear is generated by threats to peace and acts of aggression. Following this logic, lawyers have worked assiduously to better define the crime of aggression.⁸⁸

The emerging emphasis on aggression differs 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 believe they must to preserve their security – up to the point at which the Security Council determines “the existence of any threat to the peace, breach of the peace, or act of aggression.”⁸⁹ 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, but it would have done so by materially interfering in the states parties' domestic affairs. Instead, the Charter merely seeks to deter the use of force and apply it only when necessary and only when 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 (or at least those who act without the aegis of a permanent member). Actions taken pursuant to Chapter VII of the Charter do nothing to reduce the means or to deescalate the militarization of international relations or to

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

88. See London Charter of the International Military Tribunal, Aug. 8, 1945, 59 Stat., 1544, 82 U.N.T.S. 279; Moscow Declaration, *supra* note 78; TELFORD TAYLOR, FINAL REPORT TO THE SECRETARY OF THE ARMY ON THE NUREMBERG WAR CRIMES TRIALS UNDER CONTROL COUNCIL LAW NO. 10 (1949); Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90; International Criminal Court: Special Working Group on the Crime of Aggression, <http://www.wold.icc-cpi.int/asp/aspaggression.html> (last visited Oct. 12, 2008).

89. U.N. Charter art. 39.

construe states' freedom to do what they will within their own borders. Instead, Chapter VII seeks to thwart overt acts of aggression. 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 stabilize the stalemated struggles of Great Power proxies,⁹⁰ providing few incentives or means to facilitate demilitarization or the deescalation 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 efforts to disarm did not.

Following World War II, the U.N. General Assembly 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 people⁹¹

With this declaration, the Four Freedoms became part and parcel of a basic text of international law. And while its incorporation into the Universal Declaration did not *per se* create binding legal obligations,⁹² its characteristic as basic law does offer an opportunity to cultivate a security strategy based on universally acknowledged norms. And such a strategy need not belong merely to one country; instead it invites global support.

Subsequent multinational conventions illustrate the universality that has enabled the Four Freedoms to survive in a dramatically changed world. As just one example, 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.”⁹³ In this idealistic convention, however, security was not the stated objective; the ideal of free men was. So while the ultimate purpose may be somewhat contingent, the widespread appeal of the Four Freedoms remains strong.

90. For a concise history of the development of the U.N. peacekeeping and war-making powers, see KENNEDY, *supra* note 48, at 77-112.

91. Universal Declaration of Human Rights, *supra* note 14, pmbl (emphasis added).

92. See Glendon, *supra* note 26; Hannum, *supra* note 14, at 290, 320.

93. 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.

III. THE FOUR FREEDOMS ENDURE THE COLD WAR

Even shorn of its disarmament agenda, the freedom from fear in particular remained a powerful if indeterminate concept from the mid-1940s until the early 1990s. Louis Henkin optimistically labeled this epoch the “Age of Rights.”⁹⁴ 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 criminal convictions for crimes against humanity obtained at Nuremberg.⁹⁵ The era ended in around 1991 when the geopolitical realities changed dramatically with the dissolution of the Warsaw Pact and the onset of the Gulf War. 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 redefinition 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. A few examples from English language books illustrate this point. First Amendment lawyer Morris Ernst published *The First Freedom* in 1946.⁹⁶ He captioned the first chapter of his book “Freedom from Fear,” he meant that governments should embrace, not fear, diverse speech, and thereby free themselves from their own fears that other views would prove harmful. The book focuses entirely on the defense and promotion of free expression as essential for identifying social ills and refining solutions to them (*i.e.*, the marketplace of ideas). Likewise, New York State’s esteemed Superintendent of Insurance Louis Pink wrote his own book titled *Freedom from Fear*, a work more suited to the freedom from want, being a study of insurance and social security.⁹⁷ Several years later, a British historian named O.A. Sherrard published a history of slavery through 1833, titled *Freedom from Fear: The*

94. HENKIN, *supra* note 26, at ix. 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. See 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.

95. HENKIN, *supra* note 26, at 1. 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 79, at 9.

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

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

Slave and his Emancipation.⁹⁸ 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. The *Almanac* was ostensibly a collection of essays on natural history, but Leopold took frequent opportunities to reveal human nature as well. In two instances, Leopold referred to the freedom from fear to decry the loss of the wilderness and man's close relationship to nature.⁹⁹ 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.¹⁰⁰ The question for proponents of human rights is often whether humanity would rise above this harsh rule of nature. Leopold was skeptical.

Somewhat more optimistically, a generation later and half a world away, Burmese human rights and democracy 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.¹⁰¹ 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.¹⁰²

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. In Suu Kyi's vision, freedom from fear requires liberating oneself from feeling fear: changing one's own attitude, rather than

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

99. 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.* No fan of the universal dominion of man over nature, even if man brought the freedom from fear, Leopold continued: "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 148-149.

100. Aldo Leopold, *January Thaw*, in *A SAND COUNTY ALMANAC AND SKETCHES HERE AND THERE* 3, 4 (1949).

101. 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.

102. *Id.* at 183.

attempting to change the threatening behavior of others. While brave and laudable, this is not the freedom from fear that FDR had described.

None of these books addresses 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. In fact, as Mary Ann Glendon notes, 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 its arch rival, 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 Four Freedoms and the Universal Declaration have become almost universally regarded “as a kind of menu of rights from which one can pick and choose according to taste.”¹⁰³ Given the prevailing method of interpreting constitutions as a series of freestanding rules, perhaps treating them like a menu is an inevitable mistake. Lawyers and courts typically interpret the specific provision that appears most relevant for deciding the issue before them.¹⁰⁴ However, FDR did not intend any one freedom to trump the others. As Rene Cassin explained, they may be considered a step leading to the entrance of a classical temple of rights.¹⁰⁵ All other rights are columns resting on this step. If viewed this way, they offer strong support for a principled international order.

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

*On this day, we gather because we have chosen hope over fear, unity of purpose over conflict and discord.*¹⁰⁶

By restoring the Four Freedoms to a central place in its grand strategy, the United States can privilege hope over fear and unity of purpose over conflict and discord – at home and around the world. History shows that states adjust their grand strategies for many reasons and that the success of

103. GLENDON, *supra* note 79, at xviii. Likewise, in the wake of 9/11 many leaders around the world re-focused their attention on the freedom from fear. For example, distinguished Canadian lawyer and Member of Parliament Irwin Cotler defined human security as “freedom from fear – freedom from these pervasive terrorism threats to people’s fundamental rights, safety, or lives.” Irwin Cotler, *Terrorism, Security and Rights: The Dilemma of Democracies*, 14 NAT’L J. CONST. L. 13, 15 (2002) (rejecting the notion that new national security legislation is trading liberty for security when it is actually securing the freedom from fear).

104. *See generally* BREYER, *supra* note 8 (arguing that provisions of the U.S. Constitution should be interpreted in light of – and to promote – its democratic objectives).

105. Glendon, *supra* note 26 (citing RENÉ CASSIN: FANTASSIN DES DROITS DE L’HOMME 317 (1979)).

106. President Obama, *supra* note 1.

these efforts depends in great part on the way they redefine themselves and their objectives. The most obvious catalyst for a significant change in strategy is a catastrophic military defeat. Under such circumstances, a state (such as France in 1940) can collapse and subject itself to dictated terms – or regroup and continue the fight (such as the Soviet Union the following summer). Sometimes states adjust their strategy to accommodate the appearance of a significant new rival (Britain reacting to the rise of Imperial Germany in the early twentieth century) or a new weapon (the 1950s development of nuclear weapons and delivery systems that created a situation of mutually assured destruction). In general, however, absent this sort of defining event, strategic adjustment is most successful when organized around an idea or ideology that captivates the nation and is embraced by institutions of state security.¹⁰⁷

Wolfgang Friedmann correctly observed that “each generation has to draw afresh for itself a picture of the kind of world in which it lives, and to seek to define the goals which it is striving to reach.”¹⁰⁸ If recognized as reflective of American values and appropriate for meeting the threats and opportunities facing the nation today, the Four Freedoms draw such a picture and frame those goals. And if embraced by President Obama and the national security apparatus, they can serve as a wise guide for strategic adjustment at this critical moment. Under the President’s orders, they can be written into the new national security strategy and the various institutional mandates that it dictates. As the previous section showed, this process began during the desperate years of World War II and stalled shortly thereafter. It should be resumed today in order to bolster the law and order enterprise that enables civilization to squeeze out opportunities for extremists to construct far-flung networks and perpetrate their ugly crimes.

Restoring the Four Freedoms to the centerpiece of grand strategy would advance the “transnational legal process” hailed by some as a powerful force for ensuring security.¹⁰⁹ It would do so by constraining U.S. behavior

107. See Mark Shulman, *Institutionalizing A Political Idea: Navalism and the Emergence of American Sea Power*, in THE POLITICS OF STRATEGIC ADJUSTMENT: IDEAS, INSTITUTIONS, AND INTERESTS 79 (Peter Trubowitz, Emily O. Goldman & Edward Rhodes eds., 1999); MARK RUSSELL SHULMAN, NAVALISM AND THE EMERGENCE OF AMERICAN SEA POWER, 1882-1893 (1995).

108. Wolfgang Friedmann, *General Course in Public International Law*, in 127 RECUEIL DES COURS 39, 229 (1969) (Fr.), cited by Antônio Augusto Cançado Trindade, *The Human Person and International Justice*, 47 COLUM. J. TRANSNAT’L L. 16, 18 (2008).

109. For more on this Transnational Legal Process, see Harold Hongju Koh, *Filártiga v. Peña-Irala: Judicial Internalization into Domestic Law of the Customary International Law Norm Against Torture*, in INTERNATIONAL LAW STORIES 45 (John E. Noyes, Laura A. Dickinson & Mark W. Janis eds., 2007) (citing Harold Hongju Koh, *The 1994 Roscoe Pound Lecture: Transnational Legal Process*, 75 NEB. L. REV. 181 (1996)). See also Catherine Powell, *The Role of Transnational Norm Entrepreneurs in the U.S. “War on Terrorism,”* 5 THEORETICAL INQUIRIES L. 47, 77 (theorizing about dialogic approaches to human rights norms, an iterative process whereby greater adherence to these norms lead to further expansion of their recognition).

to conform to the Four Freedoms, by building stronger norms to promote meaningful, just, and enduring security, and by changing people's minds about what actually constitutes meaningful security. In short, it would help people realize that the nation's wellbeing is best ensured by the maintenance of a rule of law system at the center of which is a respect for human dignity, rather than by a myopic pursuit of military victories.

Because they embody universal legal norms, the Four Freedoms provide a more useful framework for U.S. policy than the inopportune term "war on terror." The Four Freedoms present a more descriptive, evocative and appropriate paradigm for national security decision making than did the concept that had until recently characterized U.S. policy since September 11. For purposes of this argument, the various terms used or proposed by the administration of George W. Bush at different times are treated collectively, including not only "war on terror" but also the "global war on terrorism," "long war," "global war on islamic extremism," and other related terms. At their center, each of these phrases contains the notion of a war.¹¹⁰ 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 implicates untenable 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 the deck of a battleship.¹¹¹ The jihadist threat existed and killed people for many years before September 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 not end. On the other hand, because it invests mostly in developing human capital rather than destroying it, the nation can afford a campaign to promote the enduring values encompassed within the Four Freedoms. As many scholars have noted over the years, "Better protection of human rights around the world

110. See e.g., U.S. DEP'T OF STATE, OFFICE OF THE COORDINATOR FOR COUNTER-TERRORISM, COUNTRY REPORTS ON TERRORISM 2006, ch. 5 (2007), <http://www.state.gov/s/ct/rls/crt/2006/82728.htm>; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, DEP'T OF STATE AND OTHER INT'L PROGRAMS, BUDGET DOCUMENTS (2009), available at <http://www.whitehouse.gov/omb/budget/fy2009/state.html>; U.S. DEP'T OF STATE & U.S. AGENCY FOR INT'L DEVELOPMENT, TRANSFORMATIONAL DIPLOMACY, JOINT STRATEGIC PLAN FISCAL YEAR 2007-2012, at 18, 51 (2007), available at <http://www.state.gov/documents/organization/82819.pdf>; Michael Hayden, Director, Central Intelligence Agency, Atlantic Council (Nov. 13, 2008), <https://www.cia.gov/news-information/speeches-testimony/speeches-testimony-archive-2008/directors-remarks-at-the-atlantic-council.html>.

111. Even in wars traditionally thought to have clearly defined start and stop dates, the limits can be contentious. See Stephen I. Vladeck, *Ludecke's Lengthening Shadow: The Disturbing Prospect of War Without End*, 2 J. NAT'L SECURITY L & POL'Y 53 (2006).

would make the United States safer and more secure.”¹¹² This is not to suggest that military operations have no place in dealing with al Qaeda, but it does require that all such operations shall be undertaken in accordance with the demands of human rights law and humanitarian law. Security will not come through a suspension of the ordinary rule of law, a set of constraints designed specifically to provide order and security. Rather, the rule of law is generally the most effective means of promoting security.

The notion of a global war implicates a suspension of the ordinary rule of law and an activation of the laws of war – everywhere or possibly nowhere. This specialized body of law is poorly suited to regulating relations between strong states and militant 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.¹¹³ 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.”¹¹⁴ As a result, labeling the current situation a “war” puts the United States and its allies under obligations to comply with the laws of war even where they may or may not be relevant. Certainly, in portions of Afghanistan and Iraq the conditions of war continue to exist.¹¹⁵ Where combat falls under the mandate of international humanitarian law, that body of principles should be applied, as in the operations against the Taliban’s armed forces in southern or eastern Afghanistan. However, the concept of warfare generally fails to explain operations in such contested venues as Baidoa,

112. William W. Burke-White, *Human Rights and National Security: The Strategic Correlation*, 17 HARV. HUM. RTS. J. 249 (2004); accord, Eminent Jurists Panel on Terrorism, Counterterrorism and Human Rights, *Assessing Damage, Urging Action*, 24 (2009). (“[I]nternational human rights law was elaborated precisely to guarantee people’s safety.”); *id.* at 47 (“A military response to terrorism may seem to offer a short-term solution, but often creates long-term problems: a security perspective alone can become so dominant that other approaches are neglected, and human rights and the rule of law are undermined.”). See also Civil Liberties and National Security, A conversation with Harold Koh, Norman Dorsen, and John Deutch, Moderated by Carl Kaysen (American Academy of Arts and Sciences) (Feb. 4, 2002), available at http://209.85.173.132/search?q=cache:Ee4Mibr4RPoJ:www.amacad.org/events/civil_liberties.pdf+Civil+Liberties+and+National+Security,+A+conversation+with+Harold+Koh,+Norman+Dorsen&cd=1&hl=en&ct=clnk&gl=us (“If the globalization of freedom is going to triumph over the globalization of terror, in the long run, we – as a nation conceived in liberty and dedicated to certain inalienable rights, including liberty and justice for all – must respond not just with power alone, but with power coupled with principle.”).

113. See George J. Andreopoulos, *The Age of National Liberation Movements*, in THE LAWS OF WAR, *supra* note 25, at 191-213; Michael Howard, *Constraints on Warfare*, in THE LAWS OF WAR, *supra* note 25, at 1-11.

114. Geoffrey Parker, *Early Modern Europe*, in THE LAWS OF WAR, *supra* note 114, at 57.

115. *Accord* Maqelah v. Gates, 604 F. Supp. 2d 205, 216 (D.D.C. 2009). *Id.* at 216, n.6 (applying the rule of *Boumediene v. Bush*, 128 S. Ct. 2229, 2259 (2008) to cover non-Afghan detainees at the U.S.-controlled Bagram Airfield while signaling “deference to the Executive’s conduct of the war in Afghanistan.”).

O'Hare International Airport, or cyberspace. 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 constitutional restraints apply, and "access to an independent judiciary is absolutely essential."¹¹⁶ Fortunately, the Four Freedoms can sensibly be applied everywhere.

Finally, labeling the situation a war almost inevitably implicates the use of armed forces – with ensuing risks and costs. As brave and capable as members of America's professional armed forces are, they are inherently incapable of addressing the full range of threats we face. 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.¹¹⁷ But they are not capable of discriminating adequately between financial transactions and communications of terrorists and those of civilians. So using armed forces to interdict these interactions raises the costs of collateral damage to intolerably high levels.¹¹⁸ 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 principally with the machinery of war. Moreover and ironically, by deploying military resources, we reify the threat, giving it an undeserved quantum of legitimacy. The Bush administration's "war on terror" bolstered the jihadists by honoring their anarchic campaign as a war. The United States contributed significantly to their recruitment efforts when it unnecessarily exposed fine soldiers and marines to their suicide bombers. Similarly, incidents of torture and other cruel, inhumane and degrading treatment foster support or at least sympathy for the nation's enemies.¹¹⁹

116. *Assessing Damage, Urging Action*, *supra* note 112, at 43, 51 ("No such black hole exists either in international human rights or humanitarian law."); *Boumediene*, 128 S. Ct. at 2259 ("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 Constitution.'" (quoting *Murphy v. Ramsey*, 114 U.S. 15, 44 (1885))).

117. See Mark R. Shulman, Note, *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).

118. 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).

119. See S. ARMED SERVICES COMM., *INQUIRY INTO THE TREATMENT OF DETAINEES IN U.S. CUSTODY 2* (Dec. 11, 2008) ("[T]here are serving U.S. flag-rank officers who maintain that the first and second identifiable causes of U.S. combat deaths in Iraq – as judged by their effectiveness in recruiting insurgent fighters into combat – are, respectively the symbols of Abu Ghraib and Guantanamo," (citing Former Navy General Counsel Alberto

The state-centeredness of a war paradigm likewise gives al Qaeda a higher profile and more opportunities to cultivate recruits and develop partners.

Now that the Obama administration has dropped the characterization of “war,” this article proposes adopting a grand strategy defined by effort to promote and protect the values articulated in the Four Freedoms. Dropping the concept of a “war on terror” enables the Obama administration to avoid or extract the nation from many of the traps into which the previous Administration had stepped. For just as wise and successful leaders avoid unnecessary wars, they should do what they can to avoid clashes of civilizations. The United States can now avoid unnecessarily putting neutrals in a tight position. 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 compels such comparisons. A grand strategy based on the pursuit of meaningful values, on the other hand, invites all people to strive to be their best selves. The experience of the past eight years shows that in a “war on terror,” the freedom from fear tends to trump other concerns. This leads to a situation in which a President declares “[y]ou are either with us or you are against us in the fight against terror.”¹²⁰ Once that Manichean division is made, other countries are either good or bad, and other freedoms give way. Viewed in this light, America’s right to be free of fear claims to trump the rights of particular individuals to freedom of expression or religion or freedom from want or fear.¹²¹

More generally, the United States should strive purposefully to avoid triggering a clash between the pluralistic “West” and “Islam.” But by declaring “wars,” the late Samuel Huntington’s “clash of civilizations” could become a self-fulfilling prophecy. Indeed, one learned observer claims that this was Huntington’s intention and that senior members of the Bush administration embraced that mission.¹²² To extricate itself from this

Mora’s testimony). Redacted Executive Summary, *available at* <http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf>.

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

121. See Jeremy Waldron, *Safety and Security*, 85 NEB. L. REV. 454, 454, 482-85 (2006) (noting unequal and unfair distribution of security benefits of a simplistic trade off of liberty for security).

122. The late Samuel P. Huntington introduced this concept in a widely read article, *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). Likening him to Islamic radicals, Stephen Holmes accuses Huntington of having intended the “clash of civilizations” to become self-fulfilling. Holmes argues “By painting their respective enemies as more unified and aggressive than they actually are, both Huntington and Islamic radicals hope to boost solidarity and awaken warlike passions on their own side.” STEPHEN HOLMES, *THE MATADOR’S CAPE: AMERICA’S RECKLESS RESPONSE TO TERROR* 131-132 (2007)). Professor Holmes goes on to say that Huntington succeeded in the wake of 9/11, observing that Vice President Richard Cheney’s speeches “after the terror attacks conveyed almost a sense of relief that here finally was a global enemy on the scale of communism.” *Id.* at 154 (citing report by George Packer).

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. As the Eminent Jurists Panel on Terrorism, Counterterrorism and Human Rights concluded, “Human Rights can no longer remain merely a rhetorical add-on to counter-terrorist thinking, but must become a central plank in the global response to terrorism.”¹²³ Embracing the Four Freedoms offers just this opportunity. Individually, they derive from a U.S.-framed consensus of enlightenment values, and they were quickly adopted as part and parcel of international law. They enable governments to draw on the entire range of security assets, including the nation’s diplomatic, military, intelligence, and economic apparatus, as well as on immense power yielded by the authentic and consistent application of the rule of law – including the criminal justice systems of the United States and countries around the world. Moreover, this campaign would enable the United States to focus on promoting basic human rights that will rebuild the goodwill that has enabled the country to inspire good and to wield so much influence over the years.

On the other hand, declarations of war have frequently brought psychosocial advantages to those who seek them, so abandoning the “war on terror” might undermine the nation’s will to pursue security objectives. Perhaps a campaign to promote and defend the Four Freedoms will prove insufficiently rousing. Perhaps the American people need the rhetoric of a war to muster sufficient resources to “win.” Some parents will quite reasonably balk at sending their sons and daughters to fight and die for the sake of protecting universal freedoms. But 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 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 decisionmaking framework, fewer young people will die in wars of choice. And parents will continue to accept these terrible sacrifices for the sake of liberty and security.

Even so, while a campaign for the Four Freedoms offers significant advantages, it is too indeterminate to constitute a completely satisfactory solution. Each freedom is briefly stated and culturally contingent enough that defining it presents ample opportunities for disagreement,

123. *Assessing Damage, Urging Action*, *supra* note 112 at 13.

disingenuousness, and sincere conflicts of interest. President George W. Bush's second inaugural address offers one notable example of the indeterminacy of a freedom agenda. 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."¹²⁴ At first blush, Bush's war of aggression against Iraq, the extraordinary renditions, and the water-boarding, all conflict with the expansion of freedom. Defenders of these policies might argue that the pursuit of freedom requires some trade-offs. That, of course, is precisely the problem with reading the Four Freedoms as items on a menu. Doing so invites choices and trade-offs. Instead, they must be read collectively and with an eye toward finding interpretations that will achieve the general objective of security through the pursuit of freedoms of expression and belief and from want and fear. Rather than framing security as a question of trade-offs, it could be described as a set of opportunities. Doing so may not completely end the trading off of values for security, but should result in fewer and more carefully calculated sacrifices.

Barack Obama has already made a serious effort to interpret the Four Freedoms. In his 2006 book, *The Audacity of Hope*, he described them and chose to emphasize the priority of the third and fourth freedoms. "Our own experience tells us that those last two freedoms – freedom from want and freedom from fear – are prerequisites for all others."¹²⁵ Happily, his more recent expressions treated them as one formula for U.S. foreign relations. In May 2008, he discussed the tumultuous history of inter-American relations.

What all of us strive for is freedom as FDR described it. Political freedom. Religious freedom. But also freedom from want, and freedom from fear. At our best, the United States has been a force for these four freedoms in the Americas. But if we're honest with ourselves, we'll acknowledge that at times we've failed to engage the people of the region with the respect owed to a partner.¹²⁶

Clearly, Obama understands the importance of the Four Freedoms as an expression of American – and shared – values. But the question remains open about how to apply those values.

Justice Stephen Breyer's method of interpreting the Constitution is helpful here for offering a useful model. In *Active Liberty*, Breyer examines six constitutional doctrines (including free speech) one after another and each as they relate to the basic purpose of the Constitution's

124. President George W. Bush, Second Inaugural Address (Jan. 20, 2005), available at <http://www.npr.org/templates/story/story.php?storyId=4460172>.

125. BARACK OBAMA, *THE AUDACITY OF HOPE: THOUGHTS ON RECLAIMING THE AMERICAN DREAM* 317 (2006).

126. *Remarks of Senator Barack Obama: Renewing U.S. Leadership in the Americas* (May 23, 2008), available at <http://i.usatoday.net/news/mmemmottpdf/obama-canf-5-23-2008.pdf>.

essential nature as an instrument of a democracy.¹²⁷ 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. This method, according to Breyer, leads to statutory and constitutional interpretations that are consistent with the people's will.¹²⁸

The Four Freedoms should be read similarly. The overall objective that Roosevelt articulated back in 1941 was to achieve a world "which we seek to make secure . . . [and] founded upon four essential human freedoms."¹²⁹ The Four Freedoms should be read to promote this objective. Even read generously, however, 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.

Allowing one of the Four Freedoms to overwhelm the others leads to iniquity and 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 – both in Baghdad, where they are forced behind blast barriers, and in the United States.¹³⁰

Moreover, support for policies that promote these universal values would give people around the world a meaningful sense of participating in a common enterprise of guiding decisionmakers to more enlightened policies. 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 foodstuffs should lead to less want.¹³¹ And torture and other so-called "alternative interrogation techniques" are irreconcilable with the freedom from fear, much as are attacks on hotels, office towers, or transit systems. Neither can be tolerated because they violate the individual's freedom from fear and society's

127. BREYER, *supra* note 8. Ambassador Glendon makes a similar point for interpreting the Universal Declaration. GLENDON, *supra* note 79, at xviii. In fact, the Vienna Convention requires a similarly good faith effort to interpret it in light of its object and purpose. Vienna Convention on the Law of Treaties, art. 31, 1155 U.N.T.S. 331, 8 I.L.M. 679, (entered into force Jan. 27, 1980).

128. BREYER, *supra* note 8, at 115.

129. President Roosevelt, Annual Message to Congress, *supra* note 7.

130. DAVID COLE, ENEMY ALIENS DOUBLE STANDARDS AND CONSTITUTIONAL FREEDOMS IN THE WAR ON TERRORISM 25-26 (2008).

131. See Raj Bhala, *Generosity and America's Trade Relations with Sub-Saharan Africa*, 18 PACE INT'L L. REV. 133 (2006) (arguing that generosity to the less fortunate should play a role in U.S. trade policy).

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 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 "war on terror"? Notwithstanding the rhetoric of war, even the Bush administration and other governments did deploy nonmilitary instruments, such as bilateral, multilateral, and international diplomacy, human and technical intelligence, public relations, antiracketeering (anti-money-laundering regimes, extraditions, and criminal trials), counter-proliferation regimes, scholarship, and even the occasional charm offensive. Likewise, President Obama's inaugural address characterized the situation as a war. "Our nation is at war, against a far-reaching network of violence and hatred."¹³² At least this characterization marks a shift to a more accurate characterization of the enemy as a network, not a tactic.¹³³ However, in his first few weeks in office, the President distanced himself from the concept of a "war on terror," and he has quickly moved to dismantle some of its most destructive and infamous elements. As weeks turn to months, he has abandoned the term "war on terror."¹³⁴ As the President continues to move further away from the concept of a war, he will be in a better position to reconstitute a coalition of states, non-state actors, 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

History shows that the Four Freedoms can sustain the hard-nosed realism of security. While there are compelling deontological reasons for promoting them, Roosevelt was not a philosopher. He understood that the Four Freedoms offer practical prescriptions for maintaining 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

132. President Obama, Inaugural Address, *supra* note 1. Attorney-General designate Eric Holder also characterized the situation as a "war" in his initial confirmation hearings, a response that earned a warm endorsement from Senator Lindsey Graham (R-SC). *Obama's AG pick earns praise, GOP support*, A.P., Jan. 16, 2009, available at <http://www.npr.org/templates/story/story.php?storyId=99380499>.

133. An insightful blog entry examines Great Britain's turn away from the concept of a "war on terror" because it was deemed misleading and unhelpful. Mike Nizza, *Britain Deserts War on Terror (the Phrase)*, THE LEDE FROM THE N.Y. TIMES, Apr. 16, 2007, available at <http://thelede.blogs.nytimes.com/2007/04/16/britain-deserts-war-on-terror-the-phrase/>.

134. See Priest, *supra* note 2.

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 British 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.”¹³⁵ Unfortunately, Blair framed 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.”¹³⁶

Just as President Roosevelt worked with Prime Minister Churchill in 1941 to frame 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 actually articulated those particular values that define civilization. Happily, their predecessors did so when they reflected the Four Freedoms into the Atlantic Charter. With the Universal Declaration of Human Rights, those same values were incorporated into the fundamental texts of international law. Today, those same Four Freedoms offer a framework for an effective security strategy. And as noted above, Barack Obama recognizes them as providing a valuable guide. And he has vowed to end torture, to close Guantánamo, and to “reject as false the choice between our safety and our ideals.”¹³⁷

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 significant threats to its long-term security and prosperity. These include the effects of climate change, degradation of the natural and built environments, energy insecurity, organized crime, shifting global employment patterns that accelerate growth of wealth disparities and destabilize communities, and yes, the possibility that a terrorist may use a weapon of mass destruction. But declarations of war – against poverty, crime, drugs, or terror – do not constitute practical solutions. By privileging a narrow interpretation of the freedom from fear over other freedoms, the language of war demands that all other policy objectives automatically assume lower priority. Waging wars also tends to occlude

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

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

137. President Obama, Inaugural Address, *supra* note 1.

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 the nation’s ability to make rational decisions about the allocation of resources. When compared with the pursuit of a “war on terror,” the elegance 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 respected nation.

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