

A 21st Century Economic Bill of Rights:
A Score Card and a Proposal
by Gertrude Schaffner Goldberg and Sheila D. Collins

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The interdependence of economic and civil and political rights is the outstanding characteristic of FDR's Second Bill of Rights. He was not the first to recognize their interdependence. Tom Paine's *Rights of Man* include both, and R.H. Tawney held that, "a large measure of equality, so far from being inimical to liberty, is essential to it."¹

Though he was not the first to recognize their interdependence, Roosevelt's human rights declaration was proclaimed, not by a social philosopher or political activist, but by a head of state who charged its legislature with implementing it. The Senate, for its part, enacted a Full Employment bill in 1945 that echoed FDR's call for "useful, remunerative work for all," but the House subsequently turned down the employment guarantee.²

The second outstanding characteristic of FDR's approach was his genius for connecting new values to cherished, traditional ideals. The political rights guaranteed by the U.S. Constitution, he held, "proved inadequate to assure us equality in the pursuit of happiness." His earlier call for "Freedom from Want" connected economic rights with liberty and linked new ideas with traditional values. **Today we desperately need new, progressive ideas and FDR's genius for justifying them.**

In leading the Commission that framed the Universal Declaration of Human Rights, Eleanor Roosevelt reflected her husband's formulation. "Freedom without bread," she held, has

¹ R. H. Tawney, *Equality* (London: Unwin, 1931), 168.

² For a history of this legislation, see Stephen Kemp Bailey, *Congress Makes a Law: The Story behind the Employment Act of 1946* (New York: Columbia University Press, 1950).

little meaning.³ FDR would have been pleased with the universality of the United Nations' Declaration. After naming each of the Four Freedoms, he had followed with the reprise, "Everywhere [or anywhere] in the world."⁴

By contrast, Ronald Reagan viewed economic rights as inimical to freedom. A la Ted Cruz, he warned, in 1961, that if Medicare were enacted, other similar programs would follow and "We ... would spend our sunset years telling our children and our children's children, what it once was like in America when men were free"⁵ – free to work until they dropped, free to be dependent in old age on their relatives, often hard-pressed themselves, free to go to the poorhouse, itself a kind of prison, and free to go without medical care.

What is the relationship of economic equality to the Economic Bill of Rights? If enacted, it would not guarantee economic equality. It would assure certain economic rights previously denied to large sectors of the population. Thus, if enacted, the Economic Bill of Rights would result in great reduction in economic inequality

We want to comment briefly on the extent to which Roosevelt's economic rights have been assured and then suggest what an Economic Bill of Rights for the 21st Century should include. We keep score on the achievement of these rights: to a job at a living wage, to enjoy good health, to a good education, to decent housing and to security in old age.

The Right to Useful, Living-Wage Employment

It is unlikely that Roosevelt would have proposed a Second Bill of Rights had the experience of full employment during World War II not shown that the right to employment

³Eleanor Roosevelt, *My Day: The Post-War Years, 1945-1952*, David Emblidge, ed. (New York: Pharos, 1990), 17, as cited in Mary Ann Glendon, *The World Made New : Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 43.

⁴ Franklin D. Roosevelt, State of the Union Address, January 6, 1941, <http://voicesofdemocracy.umd.edu/fdr-the-four-freedoms-speech-text/>.

⁵ Ronald Reagan, "Medicare Will Bring a Socialist Dictatorship," Recording of Speech for the American Medical Association's Operation Coffee Cup, December 1961, <http://www.youtube.com/watch?v=Bejdhs3jGyw>

could be achieved. “We have had full employment during the war,” he stated,” because the Government has been ready to buy all the materials of war which the country could produce—*amounting to... approximately half our present productive capacity....*” “After the war,” he held, “we must achieve a level of demand and purchasing power by private consumers which is sufficiently high to replace wartime Government demands.” The private sector should have the main responsibility, but government would have to do what private industry was not able to do. Recognizing the stimulative effects of social welfare he held that “an expanded social security program and adequate health and education programs must play essential roles in a program designed to support individual productivity and mass purchasing power.”⁶

How well has the right to employment been achieved? Although the nation has avoided the periodic depressions that marked our history until 1940, we have never assured the right to employment to all who want it. Unemployment is a chronic problem blighting the lives of millions of people in the best of times. In 2000, with the lowest unemployment rate in 30 years, there were in a typical month, 13 million people who were either officially unemployed, forced to work part-time though they wanted full-time work, or wanted work but were not counted officially because they weren’t actively searching.⁷ In that year official unemployment for African Americans was 7.6%, higher than the present general unemployment rate that we consider a continuing crisis. What is perceived as a crisis for the general population is the

⁶ Franklin D. Roosevelt, State of the Union Message to Congress, January 6, 1945, <http://www.presidency.ucsb.edu/ws/?pid=16595>. Roosevelt first proposed the Economic Bill of Rights in his State of the Union Message, January 11, 1944, <http://www.presidency.ucsb.edu/ws/?pid=16518>

⁷ U.S. Bureau of Labor Statistics. *The employment situation*: June 2000. U.SDL 80-194. Washington, http://www.bls.gov/news.release/history/empst_07072000.txt

general lot of African Americans. The post-war years, 1947 to 1972, registered an average official unemployment rate of 4.7 %, better than what followed, 6.2% between 1974 and 2007.⁸

FDR didn't just call for a job; he specified a *useful* one. Proposals for government job creation like Representative John Conyers' Humphrey-Hawkins 21st Century Full Employment and Training Act would achieve this criterion because these jobs would improve infrastructure, increase human services, and help to make the economy more sustainable.

FDR also wanted living wages or as he put it: "The right to earn enough to provide adequate food and clothing and recreation"--the latter, particularly, going beyond bare necessities. The first post-war decades were promising in this regard with average real wages rising yearly by an average of 2.3%.⁹ The trend reversed in the 1970s, and between the end of that decade and the present, men's hourly wages fell in all percentiles up to the 60th. Women's wages rose in all but the lowest percentile but were still lower than men's in every percentile.¹⁰ In the late 1990s when unemployment was relatively low, a fourth of US year-round, full-time workers earned less than the three-person poverty level.¹¹ Related to this failure is the steep decline in the value of the minimum wage which, in the late 1960s earned an income for full-time, year-round workers equal to 120% of the three-person poverty standard. It is now equal to only 77% of that standard—a particular hardship for women who are the bulk of low-wage workers.

⁸ U.S. Department of Labor Statistics, Databases, Tabulators, and Calculators by Subject, Labor Force Statistics from the Current Population Survey, Unemployment Rate, Series Id: LNU04000000, Data extracted November 11, 2013.

⁹ Lawrence Mishel, Josh Bivens, Elise Gould, and Heidi Shierholz, *In Working America*, 12th ed. Ithaca, NY: Cornell University Press, 2012), 184, <http://stateofworkingamerica.org/files/book/Chapter4-Wages.pdf>.

¹⁰ *Ibid.*, tables 4.5, 186; 4.6, 189.

¹¹ Lawrence Mishel, Jared Bernstein, and John Schmitt, *The State of Working America, 1998-99* (Ithaca, NY: ILR Press, 1999), table 2.11, 133.

Security in Old Age

Old age security is one of the breakthrough rights of the New Deal, and these were strengthened over the years, moving from narrowly conceived insurance for a portion of workers to one with near-universal coverage, not only of retired individuals but their dependents and survivors-- and, in time the disabled. Old-age poverty has been greatly reduced since the 1940s, but it still remains, even as measured by our inadequate standard of poverty. In 2012, as measured by a very stringent poverty standard of \$11,011 a year for one person 65 and older and \$13,878 for an elderly couple, the rate in 2012 was 9.1% or nearly four million people.¹² Calculated by relative poverty rates of 40% and 50% of the median income, the latter being the lower of two poverty standards in Europe, U.S. elderly poverty in 2010 was 12% at the 40% level and 20% at the 50% level-- or one in five elderly women and men. The comparable figures in Germany, for example, were less than half the U.S. rate at the lower level and about half at the higher.¹³ Owing to cutbacks in Senior Nutrition programs and declining economic conditions, nearly 15 percent of Americans over the age of 60 face the threat of hunger.¹⁴

Together with private pensions the social security system had created a phase of life-- retirement--for many more than the privileged few who, in earlier times, both survived into old age and had the means to spend it independently and at leisure. Retirement is not a biological time of life but a social construction or phenomenon made possible by public and private pension systems. Already the number of years for benefit receipt have been shortened, and the private pension system is diminished. Slightly over two-fifths of the labor force are covered at all, and

¹² Carmen DeNavas-Walt, Bernadette D. Proctor, and Jessica C. Smith, *Income, Poverty, and Health Insurance Coverage in the United States, 2012*, Current Population Reports, P60-245 (Washington, DC: U.S. Census Bureau, 2013), Table B-2, <http://www.census.gov/prod/2013pubs/p60-245.pdf>-

¹³ Luxembourg Income Study, LIS Cross-National Data, Inequality and Poverty, All Waves, <http://www.lisdatacenter.org/data-access/key-figures/download-key-figures/>

¹⁴ "Senior Poverty: 4.8 million Americans over 60 Are Found Insecure, *Huffington Post*, May 24, 2013, http://www.huffingtonpost.com/2013/05/24/senior-poverty-food-insecurity_n_3332326.html

only about one-fifth has defined-contribution rather than defined-benefit plans.¹⁵ President Obama's budget reportedly cuts billions out of Social Security in the next ten years. Indeed, future generations may well look back on a time when older people had the *freedom* to retire.

The Right to Adequate Medical Care

New Dealers stayed clear of health insurance—though they considered it very important, for they feared its inclusion, given the strength and opposition of the AMA, would sink old age and unemployment insurance. The failure of Congress to pass President Truman's health care plan in 1950 led to private, largely workplace coverage and the growth of a huge health care industry that stands in the way of affordable care. In the 1960s, the Social Security Act added health insurance for the elderly and for certain categories of the poor. Nonetheless, when Barack Obama became president, 47 million Americans were without health insurance.

The Affordable Care Act covers millions more people, **but not all**, and it removes certain barriers such as pre-existing conditions. However, since it does not significantly reduce the exorbitant cost of US health care, the possibility of cutback looms. Already, Medicare cuts are threatened.

The Right to a Decent Home

In his Second Inauguration Address Roosevelt famously called attention to “one-third of a nation, ill-housed....”¹⁶ Significant portions of the population remain ill-housed or are paying too much of their incomes for shelter, thus curtailing more elastic expenditures like food, clothing and recreation. According to the U.S. Department of Housing and Urban Development, an

¹⁵ For overall coverage, see Alice H. Munnell, Rebecca Cannon Fraenkel, and Josh Hurwitz, “The Pension Coverage Problem in the Private Sector,” Center for Retirement Research at Boston College, September 2012, No. 12-16, http://crr.bc.edu/wp-content/uploads/2012/09/IB_12-16-508.pdf ; for defined benefit coverage, see Barbara A. Butrica, Howard M. Iams, and Karen E. Smith, “The Disappearing Defined-Benefit Pension and Its Potential Impact on the Retirement Incomes of Baby Boomers,” *Social Security Bulletin*, 69, 3, 2009, <http://www.ssa.gov/policy/docs/ssb/v69n3/v69n3p1.html>

¹⁶ Franklin D. Roosevelt, Second Inaugural Address, January 20, 1937, <http://www.bartleby.com/124/pres50.html>

estimated 12 million households pay more than 50 percent of their annual incomes for housing with resultant difficulty in meeting other necessities. Moreover, families with a full-time worker earning the minimum wage cannot afford the local fair-market rent for a two-bedroom apartment anywhere in the United States.¹⁷ The Center for an Urban Future reports that in the third quarter of 2008, only 10.6% of all housing in New York City (NYC) were affordable to people earning the median income for the area.¹⁸ This is but one instance of the inter-relationships among these economic rights, for availability of higher- wage jobs and steady employment would reduce the affordability problem--although the wages would have to increase substantially. For every 100 extremely low income renter households—with incomes below 30% of the area median and amounting to no more than \$19, 180 (still higher than the yearly yield for the minimum wage)--there are just 30 affordable and available units.¹⁹

Among the New Deal programs was a fledgling public housing program, but it has never been an entitlement for all who meet its income eligibility criteria. Low-income households desperately in need of housing find themselves on years-long waiting lists or are closed out entirely. Households on waiting lists for housing assistance have a median wait time of two years.²⁰ Many of them experience unstable housing situations, living “doubled up” with family or friends, or in the worst cases suffering bouts of homelessness as they bounce from one untenable housing situation to another.

¹⁷ U.S. Department of Housing and Urban Development, “Affordable Housing,”

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/affordablehousing/

¹⁸ Housing Opportunity Index, compiled by the National Association of Home Builders and Wells Fargo. cited in Jonathan Bowles, Joel Kotkin, & David Giles, “Revising the City of Aspirations: A Study of the Challenges Facing New York’s Middle Class,” New York, Center for an Urban Future, 2009, 19, http://nycfuture.org/pdf/Reviving_the_Middle_Class_Dream_in_NYC.pdf

¹⁹ Elina Bravve, Megan Bolton, and Sheila Crowley, *Out of Reach*, 2013 (Washington, DC: National Low-Income Housing Coalition, 2013, http://nlihc.org/sites/default/files/oor/2013_OOR.pdf

²⁰ Bravve, Bolton, and Crowley.

Homelessness, like many social problems, notably poverty and unemployment, is undercounted by official U.S. statistics—in this case, leaving out millions of doubled-up families. Homelessness is partly an affordability and housing supply problem that has too often been treated as a mental health problem. According to research of the National Low-Income Housing Coalition, “The lack of decent housing affordable to low income households remains a pervasive national issue, affecting every single community across the United States.”²¹ Although other New Deal-initiated programs enabled many people of modest incomes to purchase homes, the needs of too many remained and still remain unmet.

The Right to a Good Education

The fulfillment of this right also depends on the achievement of other ones, like income and housing, the latter because schools in areas with higher-cost housing generally offer better education. Better off parents have more time to nurture their children’s intellectual growth, the ability to do so and to purchase such props to cognitive development as good child care and pre-school education. As a result, the gap between the achievement of their children and that of middle- and lower-income children grows, thus exacerbating future income inequality.

It’s not all-- or perhaps even mostly-- a matter of schools, and some research has found initial disparities greater than those after schooling intervenes. Nonetheless, there is clearly disparity in schools, by state, city, school district and even within schools, all favoring the better off or the initially more competent.²² Sophisticated analysis of test scores by researchers at the Economic Policy Institute (EPI) found that US lower-income children do better, if anything,

²¹ Ibid.

²² Jennifer L. Hochschild, “Social Class in Public Schools,” *Journal of Social Issues*, 59, 4, 2003, 821-840.

than their counterparts in other rich nations, but there are proportionately more of them here so that overall U.S. test scores are lowered.²³

How about access to higher education? EPI researchers found that among children from high-income families, 74% of those who scored high on math tests in eighth grade finished college, compared to 29% of those from low-income families who also scored high--a percentage about equal to college completion of children from high-income families who score low on these tests. Lower-scoring children from high-income families are 10 times more likely to finish college than their low-achievement peers from low-income families.²⁴ Even when achievement is not the issue, low income is a barrier to higher education.

A 21st Century Economic Bill of Rights

FDR's Economic Bill of Rights was far-reaching, but with the passage of time, new rights have arisen. With failure to assure the economic rights included in FDR's initiative, one might ask, "why add more?" The reason, in addition to the importance of the additional rights and the issue of justice, is political. The more rights covered, the more constituencies with a stake in an economic bill of rights and the better to promote and promulgate the concept. Moreover, an Economic Bill of Rights that takes cognizance of oppressed constituencies that have asserted their rights more forcefully since the 1940s and that includes rights that have arisen or become threatened since then is more contemporary and more compelling. It becomes A 21st Century Economic Bill of Rights.

In addition to specifying rights, FDR proclaimed that they were to be assured, "regardless of station, race, or creed." To that we must add gender, often overlooked by the New Deal,

²³ Martin Carnoy and Richard Rothstein "What Do International Tests Really show about U.S. Student Performance? (Washington,DC: Economic Policy Institute, 2013), <http://www.epi.org/publication/us-student-performance-testing/>

²⁴ Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, *The State of Working America 2006/2007* (Ithaca, NY: ILR Press, 2007), 97-101

national origin, ethnicity, disability and sexual orientation. The disabled have made gains in recent years. Not so long ago they were seldom in the workplace. Many are there now but suffer high rates of unemployment—similar to those of African Americans. Think how many who want work aren't counted because, anticipating discrimination or unable to find barrier-free workplaces, they are not even looking.

We propose to add to the additional groups that must be covered the rights to: collective bargaining, childhood security, and a sustainable environment.

Collective Bargaining Rights

The New Deal did more for labor rights than any administration before or after, yet these were already under attack by the late thirties. The Economic Bill of Rights did not include labor rights. In view of the decline in labor density since the 1950s, it is important to include the right to collective bargaining. Since unionized workers earn more, the decline in unionization-- from 26.7% in 1973 to half that rate, 13.1%, in 2011--is related to overall wage decline as well as to loss of a powerful social movement that can fight for other rights.²⁵ Labor density today is about back to where it was in the late 1920s, following a period of curtailment and decline after World War 1.²⁶

The Employee Free Choice Act might have strengthened labor rights, perhaps just as New Deal legislation did. In campaigning for the presidency, Barack Obama pledged support of this Act. However, it was accorded lower priority than the enactment of health rights which President Obama said must come first. There has been no second.

Security in Childhood

²⁵ Mishel, Bivens, Gould, and Shierholz, figure 4AC, <http://stateofworkingamerica.org/chart/swa-wages-figure-4ad-union-coverage-rate/>

²⁶ For union density in 1930, see James R. Green, *The World of the Worker: Labor in Twentieth Century America* (New York: Hill and Wang, 1980), 133.

FDR omitted children's rights. Indeed the Social Security Act, though including Aid to Dependent Children (AFDC), covered children less adequately than the elderly. One reason is that older people were represented by a powerful social movement. AFDC expanded during the 1960s but was repealed in 1995 and replaced by Temporary Assistance for Needy Families—a name that spells some of the differences.

Perhaps it was assumed by framers of the Economic Bill of Rights that children would be covered through other rights—a job at living wages for the family breadwinner, health care, and education. The high rate of childhood poverty in the United States, however, is manifest proof that they are not covered by these other rights or that the latter have not been achieved. Child poverty in the US is a national disgrace with more than one in five American children (21.8% in 2012) living in poverty.²⁷ That's more than 16 million children, and international comparison makes it an even greater disgrace.²⁸ A window on deprivation comes from a recent study at Yale showing almost 30% of low-income women can't afford an adequate supply of diapers--not exactly a case of less work for mother, but a deficiency with physical and emotional consequences for both parents and children.²⁹

Child neglect and abuse is all too frequent. Poverty is highly correlated with neglect and abuse, though the problem—three million reported cases yearly—doesn't stop there.³⁰ Clearly, more and better services are needed. A secure childhood, free of poverty, neglect or

²⁷ DeNavas-Walt, Proctor, and Smith, Table B-2.

²⁸ Luxembourg Income Study, <http://www.lisdatacenter.org/data-access/key-figures/download-key-figures/>

²⁹ Traci Pedersen, "Lack of Diapers tied to Mental Health of Poor Mothers," *PsychCentral*, August 2013, <http://psychcentral.com/news/2013/08/04/lack-of-diapers-tied-to-mental-health-of-poor-mothers/57971.html>

³⁰ In 2011, 3.7 million children were the subject of at least one report of child abuse and neglect. U.S. Children's Bureau, *Child Maltreatment 2011* (Washington, DC: Author, undated), <http://www.acf.hhs.gov/sites/default/files/cb/cm11.pdf>

abuse, is out of reach for too many children and needs to be part of a 21st century bill of rights. It is vital to the future of the nation.

The Right to a Healthful and Sustainable Environment

When Roosevelt took office in 1933, the United States faced not only an economic collapse, but the degradation and collapse of large parts of the natural environment. Seven-eighths of the original forest cover in the country had been destroyed, one-sixth of the nation's top soil was about to blow away in the Dust Bowl, and one-third of the people in the Tennessee Valley, covering parts of seven states, suffered from malaria. Moreover, the nation had been challenged by one of the greatest floods in the history of the country and would soon be challenged by more.

Roosevelt, a naturalist from his youth, immediately recognized the connection between the health of the natural eco-system and the health of the economy, as well as the health of the body politic. There could be no economic security, he recognized, without a secure natural environment and no healthy democracy unless Americans saw themselves as related to each other through the interconnectedness of the natural world upon which they all depended. And so he created three great programs to help restore both economic security as well as the natural resource base: the Civilian Conservation Corps, the Soil Conservation Service, and the Tennessee Valley Authority. We know that the programs initiated by the New Deal did not go nearly far enough to end the Depression, but they did, to a large extent, restore the country's natural capacity to recover, and it is very likely that had these environmental programs, along with the building of infrastructure, not been enacted there would have been no capacity to recover so quickly after World War II.

The environmental challenges we now face, of course, are exponentially larger than those faced by Roosevelt, and their extent is not limited to one region or even to one country itself. Species extinction, climate change, the toxic poisoning of our air, water, and food cry out for remedy.³¹ The latest report of the Intergovernmental Panel on Climate Change (IPCC) makes clear that we may already have done so much harm to the Earth that some of it can't be undone in our lifetimes, or even in the lifetimes of future generations as far out as most of us can imagine. Yet one hardly hears mention in the press or by our government leaders that economic security is intimately tied to the health of the environment. In fact, they seem to assume they are mutually exclusive. It is as if the lessons of the New Deal had fallen on deaf ears and the evidence of both science and experience had fallen on rocky soil.

Climate-induced environmental disasters have severe economic consequences: the loss of homes, livelihoods, health, and even life itself. Yet people are still moving back into flood prone areas, even after disasters as severe as Hurricanes Katrina and Sandy; Americans are still driving SUVs; developers are still intent on building on wetlands; climate deniers seem to be in the drivers' seat; and our government is reluctant to make the investments or to enact the policies-- such as a rebatable tax on carbon and feed-in tariffs for renewables--that are necessary to move us away from fossil fuels, even as oil spills multiply and carbon levels soar to unprecedented heights. How have we come to such a place in history? The economics profession has much to do with our current dilemma. Viewing the natural world only as an "input" to the production process and the waste produced as an "externality," this economic

³¹ Chris Mooney, "Who Created the Global Warming 'Pause'?" *Mother Jones*, October 7, 2013
<http://www.motherjones.com/environment/2013/09/global-warming-pause-ipcc>

model disregards the fundamental characteristics of the earth system and the services it provides to humanity.

Ecologists tell us that we are living on borrowed resources. Instead of worrying about the budget deficit, we should be worrying about the resource deficit. By August 20th of this year humanity exhausted nature's budget—its biocapacity-- for the entire year. We are now operating in overdraft. For the rest of the year, we will maintain our ecological deficit by drawing down local resource stocks and accumulating carbon dioxide in the atmosphere.³² At our current rate of growth by the 2030s, we will need the bio equivalent of two Earths to support us. It goes without saying that we need a new economics that views the earth system as the ground of all economic activity and that takes into account its limits and its complex, interconnectedness and feedback loops.

When writing his Economic Bill of Rights Roosevelt must have thought that the environmental problems of the 1930s were behind him, as his Economic Bill of Rights does not include the right to a healthful and sustainable environment. Yet because of his prescient concern for the environment, which he called, "the rightful heritage of all," I would venture to argue that were he president today, he would be including the right to a healthful and sustainable environment in his Economic Bill of Rights and would be attempting to enact the long-term policies necessary to move us off the collision course with climate change and species extinction.

Protecting the earth requires long-term planning and commitment and Roosevelt was very clear about this. In his State of the Union message in 1935, he spoke of environmental sustainability as requisite to the security of the American people, placing it first, and hinting that long-term planning involved far more than the environmental programs he had already initiated.

³² "Earth Overshoot Day: In Eight Months Humanity Exhausts Earth's Budget for the Year," Global Footprint Network, http://www.footprintnetwork.org/en/index.php/GFN/page/earth_overshoot_day/.

An economy built on short-term profit and a political system bought by big money and structured around shorter and shorter election cycles is hardly conducive to preserving the environment for future generations, so the attempt to secure an Economic Bill of Rights that includes the right to a sustainable environment looks pretty hopeless. Nevertheless, it is absolutely critical that the effort be made, if only, initially, as a tool of education.

Rachel Carson, writing in the early 1960s, was the first to suggest the concept of environmental human rights. Testifying before President Kennedy's Scientific Advisory Committee, she urged it to consider "the right of the citizen to be secure in his own home against the intrusion of poisons applied by other persons." "I strongly feel," she said, "that this ought to be one of the basic human rights."³³ Environmental rights fit, not only within the concept of individual dignity and security, but also within the concept of subsistence rights. Without clean air, water, and soil, humans are unable to enjoy other rights and life activities. The first formal articulation of such rights is found in the *Stockholm Declaration* of 1972, which emerged during the first global conference on the environment.

"Environmental human rights impose specific duties and obligations on governments,"³⁴ but unlike other rights they presuppose that government take into account the laws of nature. Since everything is interconnected, this implies a vastly complicated new legal framework. Moreover, planning and regulation are made more difficult by scientific uncertainty. No wonder, then, that governments have tended to shy away from environmental enforcement.

³³ Carson quoted in David R. Boyd, *The Right to a Healthy Environment: Revitalizing Canada's Constitution* (Vancouver: University of British Columbia Press, 2012), 1.

³⁴ Christopher Jeffords, "Constitutional Environmental Human Rights: A Descriptive Analysis of 142 National Constitutions," *Economic Rights Working Paper Series 16*, August 2011, 3 (University of Connecticut: The Human Rights Institute), available at <http://www.econ.uconn.edu/working/16.pdf>. See also David R. Boyd, *The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights and the Environment* (Vancouver: University of British Columbia Press, 2012; Donald K. Anton and Dinah L. Shelton, *Environmental Protection and Human Rights* (Cambridge: Cambridge University Press, 2011).

Although constitutional rights are only as good as the ability to enforce them, nevertheless, once they are on the books, at least victims have some basis for redress, some ground for legal standing. But perhaps even more important, they provide an aspirational moral framework that has both educational and organizing value. Eleanor Roosevelt once said that the effect of the *Universal Declaration of Human Rights* was, “frankly educational.” Writing fifty years after its adoption, Mary Ann Glendon, in her book on the making of the *Declaration*, *A World Made New*, said that its “nonbinding principles, carried far and wide by activists and modern communications, have vaulted over the political and legal barriers that impeded efforts to establish international enforcement mechanisms” so that “most, though not all, flagrant and repeated instances of rights abuse now are brought to light, and most governments now go to great lengths to avoid being black listed as notorious violators.”³⁵

The *Stockholm Declaration* served a similar purpose. Since its articulation of the right to a clean environment, the majority of the world’s countries have adopted constitutional provisions specifically guaranteeing an individual right to a quality environment. “As of 2010, out of 198 national constitutions of developed and developing countries across every continent, 142 include at least one reference to the environment, in a broad sense. While they vary in the ways in which these rights are enshrined: (1) as an unenforceable policy directive, (2) as a procedural right or duty, or (3) as an express, substantive right, and while enforcement has lagged behind the articulation of such rights, at least they are on the books.”³⁶

³⁵ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002), Epilogue.

³⁶ James R. May and Erin Daly, “Manifestations of Constitutional Environmental Rights,” Chapter 3 in *Environmental Rights and Constitutional Protections: Implications for Present and Future Generations* (Cambridge: Cambridge University Press, 2012 (unpublished discussion paper). Available at <http://www.blogs.law.widener.edu>.

Some, like Ecuador, have gone even further, enshrining rights to the earth itself in their constitution; and Bolivia has passed the first piece of legislation giving nature itself substantive rights.³⁷

Though the U.S. is a constitutional laggard, we have had some legislatively established environmental protections through the enforcement powers of the EPA and laws like the Clean Water and Clean Air Acts, the Food, Drug and Cosmetic Act, the Superfund Act and others; and in recent years through subsidies provided for renewable energy and passage of the Endangered Species Act we have taken some steps toward environmental sustainability. But laws are only as good as their enforcement and can be too easily altered or eroded when the political winds change. Moreover, the law as it exists in the U.S. makes it difficult to use the courts to sue for environmental harm.

While standing in such cases has been somewhat widened over the years, environmental law remains a contested area.³⁸ Unless one can demonstrate conclusively that one has been injured by an environmental harm—extremely hard to do in cases like cancer where cumulative environmental poisoning takes years to develop—it is very difficult to get standing and even more difficult to get standing for the precautionary principle to prevent environmental degradation before conclusive evidence of injury exists.³⁹ Moreover, in the current conservative climate we see cases seeking redress for environmental harm, or those seeking to prevent environmental harm, increasingly fall to the “takings clause.”

³⁷ John Vidal, “Bolivia Enshrines Natural World’s Rights with Equal Status for Mother Earth,” *The Guardian*, April 10, 2011 <http://www.theguardian.com/environment/2011/apr/10/bolivia-enshrines-natural-worlds-rights>. See also Kevin Zeese, “The Rule of Law in Times of Ecological Collapse,” *Nation of Change*, October 3, 2013 available at <http://www.nationofchange.org/rule-law-times-ecological-collapse-1366642895>.

³⁸ A. Dan Tarlock, “The Future of Environmental Rule of Law Litigation (2000 Garrison Lecture),” *Pace Environmental Law Review*, 19, no. 2 (2002), 575.

³⁹ *Ibid.*, 577.

One reason for the difficulty in using the law to enforce the allocation of environmental values is that they go against the basic worldview of the last 500 years of Western civilization which has given priority to property rights over the concept of the “common heritage of mankind.”⁴⁰ “Environmental values had almost no support in the common law, in constitutional law or in legislation, so at the beginning of the environmental era, lawyers had to invent environmental law from whole cloth.”⁴¹

Dan Tarlock does not see much hope for the sustainability of the current litigation strategy with regard to environmental protection.

The grand objectives of environmental law are only partially related to the protection of human dignity and property. Environmental law is both anthropocentric and non-anthropocentric; it seeks to protect society from future risks of serious health problems, . . . and the irreversible impairment of ecosystem services. However, the actual human benefits of environmental protection are hard to demonstrate and much protection is implemented on the belief that nature should be protected for intrinsic reasons.⁴²

“Ecosystem management,” Tarlock maintains, “is an experiment which may require very different legal approaches from the first generation of environmental problems. . . . it must evolve from a negative strategy of simply trying to stop an action that disturbs a mythical natural baseline to a pervasive, affirmative one which provides incentives for creative super-

⁴⁰ The concept of the common heritage of mankind is a principle of international law which holds that defined territorial areas and elements of humanity's common heritage (cultural and natural) should be held in trust for future generations and be protected from exploitation by individual nation states or corporations. It is one of the most revolutionary and radical legal concepts to have emerged in international law in recent decades although its origins can be traced back hundreds of years. See Kemal Baslar, *The Concept of the Common Heritage of Mankind in International Law* (Brill, 1997); Prue Taylor, “The Future of the Common Heritage of Mankind: Intersections with the Public Trust Doctrine in *Confronting Ecological Collapse: Ecological Integrity for Law, Policy and Human Rights*,” Laura Westra, Prue Taylor and Agnes Michelot, eds. (London and New York: Routledge, 2013), 32-46.

⁴¹ Tarlock, 579

⁴² *Ibid.*, 586-587.

legal protection solutions that are sometimes ‘extra’ legal” [such as stakeholder consensus processes to resolve environmental disputes].⁴³

Given that environmental rights go against the grain of our entire way of life, it has been very difficult to get any kind of stakeholder consensus around environmental protection, much less protection that extends beyond individual injury to the protection of the entire planet and future generations. Thus, it is all the more important that we use every tool available to help people understand that the right to a healthful, sustainable environment is a human right, indeed, that it is a foundational right for all the others. Without a safe and sustainable environment, there can ultimately be no improvements in health, jobs, food security or housing for millions of people. There *can* be improvements in these areas if we understand, as Roosevelt did, that preserving the environment can go hand-in-hand with job creation, health care provision, sustainable agricultural practices and affordable housing. Given the sanctity of constitutional rights in the Western tradition, the promulgation of an Economic Bill of Rights that includes the right to a safe and sustainable environment is one way to create the basis for a more pervasive affirmative stakeholder consensus around environmental protection and sustainability.

⁴³ Ibid., 580-581.