

the second bill of rights sunstein

The Second Bill of Rights Sunstein: Exploring a Modern Vision for Economic and Social Justice

the second bill of rights sunstein is a concept that has gained attention in contemporary discussions about rights, democracy, and social justice. Rooted in the vision of Franklin D. Roosevelt's historic call for a "Second Bill of Rights" in the 1940s, this idea has been revisited and reinterpreted by scholars like Cass R. Sunstein, a prominent legal thinker and constitutional law professor. Sunstein's analysis sheds light on why expanding the traditional Bill of Rights to include economic and social rights remains a crucial step toward building a fairer society. In this article, we'll delve into the nuances of the second bill of rights as understood by Sunstein, its implications for modern law and policy, and why it continues to resonate in today's political climate.

Understanding the Second Bill of Rights: A Historical Perspective

The original Bill of Rights, ratified in 1791, primarily focused on protecting civil liberties such as freedom of speech, religion, and the right to a fair trial. However, during the tumultuous years of the Great Depression and World War II, President Franklin D. Roosevelt proposed a "Second Bill of Rights" aimed at guaranteeing economic security and social welfare for all Americans. Roosevelt argued that political rights alone were insufficient if people lacked access to essential economic opportunities such as jobs, housing, education, and healthcare.

What Roosevelt Envisioned

Roosevelt's second bill of rights included rights like:

- The right to a useful and remunerative job
- The right to earn enough to provide adequate food and clothing
- The right of every family to a decent home
- The right to adequate medical care
- The right to security in case of old age or unemployment

These rights sought to address systemic inequalities and create a foundation where citizens could fully participate in democracy, not just politically but economically.

Cass Sunstein's Interpretation and Modern Analysis

Cass Sunstein has taken Roosevelt's vision and analyzed it through the lens of constitutional law and behavioral economics. He argues that while the original Bill of Rights emphasizes negative rights—freedoms from government interference—the second bill of rights advocates for positive rights, which require government action to secure.

Positive vs. Negative Rights

One of Sunstein's key contributions is clarifying the distinction between negative and positive rights. Negative rights protect individuals from government intrusion, such as freedom of speech. Positive rights, by contrast, oblige the government to provide certain goods or services, like education or healthcare.

Sunstein points out that incorporating positive rights into the Constitution or legal framework would fundamentally shift how we think about government responsibility. It challenges the classical liberal notion that government's role is mainly to prevent harm, suggesting instead that it should actively ensure economic and social well-being.

The Legal Challenges and Opportunities

Sunstein is aware of the legal complexities involved in embedding the second bill of rights into constitutional law. For example, courts traditionally hesitate to enforce economic and social rights because these often require policy judgments better suited to legislative bodies.

However, Sunstein proposes that courts and policymakers could develop new mechanisms to recognize and protect these rights without overstepping their roles. This might include:

- Using the second bill of rights as a guiding principle in interpreting existing laws
- Encouraging legislative action to fulfill economic rights
- Promoting judicial deference balanced with protective oversight

Why the Second Bill of Rights Matters Today

In an era marked by rising inequality, job insecurity, and debates over healthcare and education access, the second bill of rights as discussed by

Sunstein remains highly relevant. Many argue that political freedoms lose meaning without economic security.

Economic Security as a Foundation for Democracy

Sunstein emphasizes that economic security empowers individuals to participate fully in democratic life. When people fear unemployment or lack healthcare, their ability to exercise political rights diminishes. Ensuring economic rights helps create a more robust and resilient democracy.

Addressing Modern Social Issues

The second bill of rights offers a framework for tackling contemporary challenges such as:

- Affordable housing crises
- Healthcare accessibility
- Educational disparities
- Income inequality and labor rights

By recognizing these as fundamental rights, governments can prioritize policies that reduce social marginalization and foster inclusivity.

Implementing the Second Bill of Rights: Practical Steps

While the idea of a second bill of rights is inspiring, translating it into practical policy requires careful planning and consensus-building. Drawing from Sunstein's insights, here are some pathways forward:

- **Incremental Legislative Reforms:** Expand social safety nets and labor protections through new laws and amendments.
- **Judicial Innovation:** Encourage courts to interpret existing constitutional rights in ways that support economic security.
- **Public Awareness and Advocacy:** Build popular support for economic rights through education and grassroots movements.
- **Collaboration Across Branches:** Foster cooperation between the executive, legislative, and judicial branches to uphold these rights.

Sunstein's approach encourages a balance between idealism and pragmatism, recognizing that while a constitutional amendment may be difficult, policy and judicial strategies can make meaningful progress.

The Broader Implications for Global Human Rights

The second bill of rights concept also resonates beyond the United States. Around the world, debates about economic and social rights have become central to international human rights discourse. Sunstein's work contributes to understanding how these rights might be integrated into constitutional democracies without undermining existing political structures.

By advocating for economic rights alongside civil liberties, societies can pursue a more holistic vision of human dignity and justice.

Ultimately, the second bill of rights Sunstein champions is more than a legal theory; it is a call to reimagine the social contract. It challenges us to think about what rights truly mean in a complex, interconnected world and how governments can ensure that all people have the means to live with dignity, security, and opportunity. As conversations around economic justice continue to evolve, Sunstein's perspective offers valuable guidance for shaping policies that honor both freedom and fairness.

Frequently Asked Questions

What is the Second Bill of Rights as proposed by Sunstein?

The Second Bill of Rights, as discussed by Cass Sunstein, refers to a set of economic and social rights aimed at ensuring security and equality, such as the right to employment, adequate housing, healthcare, and education, expanding on traditional civil liberties.

How does Sunstein interpret the Second Bill of Rights in modern society?

Sunstein interprets the Second Bill of Rights as a framework to address contemporary challenges like economic inequality and social injustice by advocating for government policies that guarantee fundamental economic rights alongside classic constitutional rights.

What historical context does Sunstein provide for the Second Bill of Rights?

Sunstein highlights that the original concept of the Second Bill of Rights was introduced by President Franklin D. Roosevelt in 1944, aiming to secure economic security and opportunity for all Americans, and Sunstein explores its relevance and application in the 21st century.

Why does Sunstein believe the Second Bill of Rights is important today?

Sunstein believes the Second Bill of Rights is important today to help address systemic issues such as poverty, healthcare access, and unemployment, ensuring a more equitable society through expanded legal and policy measures.

What criticisms does Sunstein address regarding the Second Bill of Rights?

Sunstein acknowledges criticisms that the Second Bill of Rights could lead to increased government intervention and potential limitations on individual freedoms, but he argues that well-designed policies can balance rights and responsibilities effectively.

How does Sunstein suggest the Second Bill of Rights be implemented?

Sunstein suggests implementation through legislative reforms, judicial recognition, and public policy initiatives that guarantee socioeconomic rights, supported by democratic processes and constitutional interpretation.

What impact could the Second Bill of Rights have on the U.S. legal system according to Sunstein?

According to Sunstein, the Second Bill of Rights could transform the U.S. legal system by expanding the scope of constitutionally protected rights to include economic and social protections, potentially leading to new legal standards and greater governmental accountability in ensuring these rights.

Additional Resources

The Second Bill of Rights Sunstein: Revisiting FDR's Vision Through a Modern Lens

the second bill of rights sunstein represents a contemporary exploration of Franklin D. Roosevelt's ambitious proposal to expand the scope of fundamental rights in the United States. Legal scholar Cass Sunstein, a prominent

constitutional law expert and former Administrator of the White House Office of Information and Regulatory Affairs, has critically engaged with Roosevelt's "Second Bill of Rights," analyzing its implications, feasibility, and resonance in current political and legal discourse. This article delves into Sunstein's interpretation and critique, situating the Second Bill of Rights within ongoing debates about social justice, economic security, and constitutional evolution.

Understanding the Second Bill of Rights

The original Second Bill of Rights was introduced by President Franklin D. Roosevelt in his 1944 State of the Union Address. Roosevelt proposed a set of economic rights aimed at guaranteeing Americans security and prosperity beyond the traditional civil liberties enshrined in the U.S. Constitution's Bill of Rights. These included rights to employment, food, clothing, leisure, education, and medical care, reflecting a vision of government responsibility for economic welfare and social justice.

Cass Sunstein's work revisits these ideals with a critical eye, assessing their relevance in today's socio-economic landscape. He probes whether such rights can be institutionally realized without undermining constitutional principles and examines the tension between positive rights (entitlements) and negative rights (freedoms from government interference).

The Context of Sunstein's Analysis

Sunstein's scholarship often focuses on constitutional interpretation, regulatory policy, and behavioral economics. In evaluating the Second Bill of Rights, he addresses several key questions:

- How do economic rights fit within the framework of the U.S. Constitution?
- What legal mechanisms could enforce these rights?
- What are the political and social trade-offs involved in adopting a Second Bill of Rights?

By framing these questions, Sunstein contributes nuanced perspectives on the feasibility and desirability of expanding constitutional rights to include economic and social guarantees.

Cass Sunstein's Interpretation: Legal and Political Dimensions

Sunstein approaches the Second Bill of Rights not merely as a historical artifact but as a potential blueprint for constitutional reform. His analysis balances optimism about social progress with caution regarding judicial

overreach.

Legal Challenges and Constitutional Constraints

One of Sunstein's core arguments centers on the constitutional challenges of codifying economic rights. Unlike civil and political rights, economic rights require positive government action and resources, raising questions about separation of powers and judicial enforceability. Sunstein notes that courts traditionally hesitate to mandate economic entitlements, viewing them as political questions better resolved by legislatures.

Furthermore, the U.S. Constitution's structure emphasizes negative liberties—protecting individuals from government intrusion—rather than guaranteeing positive entitlements. Sunstein explores how this foundational orientation limits the judicial branch's capacity to enforce a Second Bill of Rights, suggesting that any such transformation would necessitate legislative commitment and possibly constitutional amendments.

Political Feasibility and Public Perception

Sunstein also assesses the political landscape surrounding economic rights. He acknowledges growing public support for policies such as universal healthcare, guaranteed employment, and education access, which echo Roosevelt's vision. However, he cautions that broadening rights to include economic guarantees involves complex trade-offs, including increased government spending, potential tax burdens, and questions of individual responsibility.

His analysis highlights the delicate balance policymakers must strike between expanding social safety nets and maintaining economic dynamism. Sunstein's insights into behavioral economics further illuminate how framing economic rights can influence public acceptance and political will.

Comparing the Second Bill of Rights with Contemporary Rights Frameworks

Sunstein's examination invites comparison between Roosevelt's Second Bill of Rights and modern rights frameworks, including international human rights treaties and domestic social welfare policies.

International Human Rights and Economic Guarantees

Globally, economic and social rights are embedded in instruments like the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. Sunstein contrasts these international commitments with the U.S. constitutional tradition, noting the U.S.'s historical reluctance to fully embrace economic rights as justiciable claims.

This comparison underscores the uniqueness of the American legal system and the challenges inherent in translating international economic rights norms into domestic law. Sunstein's perspective encourages reflection on whether America's distinctive constitutional architecture can evolve to incorporate these broader rights without sacrificing foundational principles.

The Role of Social Welfare Policies in Realizing Economic Rights

While the Second Bill of Rights has not been constitutionally codified, many of its principles have influenced social welfare policies, including Social Security, Medicare, and public education. Sunstein highlights how these policies represent partial, pragmatic implementations of Roosevelt's vision.

He critically examines the effectiveness and limitations of such programs, considering issues like coverage gaps, funding sustainability, and bureaucratic efficiency. Sunstein's analysis suggests that while social programs advance economic rights in practice, they often lack the legal certainty and enforceability that a constitutional guarantee would provide.

Pros and Cons of Institutionalizing the Second Bill of Rights

Sunstein's balanced approach weighs the advantages and potential drawbacks of formally recognizing economic rights through a Second Bill of Rights.

- **Pros:**

- Promotes social justice and reduces economic inequality.
- Provides legal clarity and enforceability for economic entitlements.
- Strengthens government accountability in ensuring citizens' welfare.

- **Cons:**

- Risks judicial overreach and politicization of the courts.
- May impose significant fiscal burdens on government resources.
- Could blur the line between rights and policy preferences, complicating governance.

Sunstein emphasizes that these trade-offs require careful deliberation, particularly in a polarized political environment where consensus on economic rights is elusive.

Sunstein's Recommendations for Moving Forward

Rather than advocating for immediate constitutional amendments, Sunstein suggests incremental approaches to advancing economic rights. These include:

- Strengthening statutory protections and social programs through legislation.

- Encouraging judicial recognition of economic rights within existing constitutional frameworks.

- Promoting public dialogue to build consensus around the role of government in economic security.

By focusing on pragmatic steps, Sunstein's framework aims to balance idealism with political and legal realism.

Broader Implications for Constitutional Law and Social Policy

Sunstein's engagement with the Second Bill of Rights enriches contemporary debates about the evolving meaning of rights in American society. His work challenges scholars, policymakers, and citizens to reconsider the boundaries of constitutional protections and the state's role in ensuring not just freedom, but also economic dignity.

In an era marked by widening economic disparities and political polarization, revisiting Roosevelt's vision through Sunstein's analytical lens offers valuable insights. It underscores the persistent tension between individual liberties and collective welfare, inviting renewed discussion about how constitutional democracy can adapt to 21st-century challenges.

The second bill of rights sunstein has thus become a crucial reference point in ongoing conversations about social equity, legal reform, and the future

trajectory of rights in the United States.

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the second bill of rights sunstein: The Second Bill of Rights Cass R. Sunstein, 2009-03-25 In 1944, Franklin Delano Roosevelt gave a State of the Union Address that was arguably the greatest political speech of the twentieth century. In it, Roosevelt grappled with the definition of security in a democracy, concluding that unless there is security here at home, there cannot be lasting peace in the world. To help ensure that security, he proposed a Second Bill of Rights -- economic rights that he saw as necessary to political freedom. Many of the great legislative achievements of the past sixty years stem from Roosevelt's vision. Using this speech as a launching point, Cass R. Sunstein shows how these rights are vital to the continuing security of our nation. This is an ambitious, sweeping book that argues for a new vision of FDR, of constitutional history, and our current political scene.

the second bill of rights sunstein: Wertordnung und Verfassung Thilo Rensmann, 2007 English summary: Since the Second World War the classical liberal model of constitutionalism has been increasingly challenged by a competing conception which perceives the constitution and the bill of rights as a normative order of values. This new approach to constitutionalism probably found its first expression in the early jurisprudence of the German Federal Constitutional Court. Thilo Rensmann retraces the development of this new paradigm of modern constitutionalism from the seminal Luth decision to the current challenges posed by transnational constitutionalism. German description: Das wertorientierte Grundrechts- und Verfassungsverständnis des Bundesverfassungsgerichts bleibt als pratorische Rechtsschöpfung in seiner Rationalität und Legitimität prekar. Thilo Rensmann legt mit der Einbeziehung des grenzüberschreitenden Kontexts eine 'Rationalitätsreserve' frei, die bislang noch nicht hinreichend gewürdigt worden ist. Die Grundthese seiner Untersuchung lautet, dass das Grundgesetz und die Wertordnungsjudikatur des Bundesverfassungsgerichts von Anfang an in den Kontext des nach dem Zweiten Weltkrieg aufkeimenden transnationalen Menschenrechtskonstitutionalismus eingebunden waren und daher nur aus diesem Zusammenhang vollständig verstanden werden können. Ein wesentliches Anliegen des Autors liegt in der Aufschlüsselung dieses genetischen Zusammenhangs zwischen den Grundrechten des Grundgesetzes und dem menschenrechtlichen Wertsystem der internationalen Gemeinschaft, wie es in der Allgemeinen Erklärung der Menschenrechte seinen authentischen Ausdruck gefunden hat. Rationalität und Legitimität der Wertordnungsjudikatur des Bundesverfassungsgerichts werden aber auch in ihrem aktuellen grenzüberschreitenden Kontext überprüft. Dabei werden nicht nur die 'Wertordnungsverfassungen' anderer Staaten, sondern auch die Verfassung der Vereinigten Staaten als der wirkmächtige liberal-rechtsstaatliche Gegenentwurf ('Verfassung ohne Wertordnung') in das Untersuchungsspektrum einbezogen. Schliesslich zieht der Autor die Linien des Wertordnungsdenkens in den übernationalen Raum aus, indem er die Transformation der Europäischen Union von einer supranationalen Wirtschaftsgemeinschaft zu einer konstitutionalisierten Wertegemeinschaft sowie die allmähliche Wandlung des Völkerrechts von einer staatenorientierten Konsensordnung zu einer anthropozentrischen Wertordnung nachzeichnet.

the second bill of rights sunstein: *Hermann Broch und die Menschenrechte* Paul Michael

Lützel, 2021-06-08 Hermann Broch wird in den 1930er Jahren in der Konfrontation mit der Versklavungsideologie der totalitären Staaten zum Verteidiger von Menschenrecht und Demokratie. Seine politischen Essays sind Dokumente des Widerstands. Sie werden im Kontext des Menschenrechtsdiskurses mit Bezug auf Jacques Maritain, Hannah Arendt, Hans Joas und Samuel Moyn analysiert. Auch seine Romane sind Beiträge zur Human Rights Culture.

the second bill of rights sunstein: *The Constitution in 2020* J. M. Balkin, Reva B. Siegel, 2009-05-26 'The Constitution in 2020' is a powerful blueprint for implementing a more progressive vision of constitutional law in the years ahead. The book provides a new framework for addressing the most important constitutional issues of the future in clear, accessible language.

the second bill of rights sunstein: Recht oder Rhetorik? Sebastian Hartwig, 2023-06-07 Im kontinentaleuropäischen Rechtsdiskurs besteht seit Langem die vermeintliche Gewissheit, dass man anderen Rechtskreisen eine wesentliche Errungenschaft voraushat: die verfassungsrechtliche Garantie menschlicher Würde. Vor allem von den Vereinigten Staaten als dem Mutterland des modernen Konstitutionalismus wird angenommen, dass sie vom globalen Aufstieg der Menschenwürde im nationalen und internationalen Recht nach dem Ende des Zweiten Weltkriegs ausgenommen seien. Doch ist dieser Eindruck zutreffend? Sebastian Hartwig spürt dem Gebrauch des Würdebegriffs von der Amerikanischen Revolution bis in die Gegenwart des verfassungsrechtlichen Diskurses der Vereinigten Staaten nach - und gelangt zu überraschenden Erkenntnissen. Dabei werden die vielfältigen Wandlungs- und Anpassungsvorgänge, denen der Würdebegriff unter den Vorzeichen wechselnder Zeitläufe und Sachzusammenhänge unterlag, sichtbar gemacht. (Verlag).

the second bill of rights sunstein: *That Broader Definition of Liberty* Brian Stipelman, 2012-10-04 This book offers a comprehensive theory of the New Deal, covering the ends it hoped to achieve and the means it used to achieve them. Looking at a mixture of history, American political development, and political theory, it aims to fill a critical gap in scholarship and provide a theoretical framework for contemporary progressive political actors.

the second bill of rights sunstein: *Courts and Social Transformation in New Democracies* Roberto Gargarella, Theunis Roux, 2017-03-02 Using case studies drawn from Latin America, Africa, India and Eastern Europe, this volume examines the role of courts as a channel for social transformation for excluded sectors of society in contemporary democracies. With a focus on social rights litigation in post-authoritarian regimes or in the context of fragile state control, the authors assess the role of judicial processes in altering (or perpetuating) social and economic inequalities and power relations in society. Drawing on interdisciplinary expertise in the fields of law, political theory, and political science, the chapters address theoretical debates and present empirical case studies to examine recent trends in social rights litigation.

the second bill of rights sunstein: **Foundations of Information Literacy** Natalie Greene Taylor, Paul T. Jaeger, 2021-11-15 It's not hyperbole to conclude that in today's world, information literacy is essential for survival and success; and also that, if left unchecked, the social consequences of widespread misinformation and information illiteracy will only continue to grow more dire. Thus its study must be at the core of every education. But while many books have been written on information literacy, this text is the first to examine information literacy from a cross-national, cross-cultural, and cross-institutional perspective. From this book, readers will learn about information literacy in a wide variety of contexts, including academic and school libraries, public libraries, special libraries, and archives, through research and literature that has previously been siloed in specialized publications; come to understand why information literacy is not just an issue of information and technology, but also a broader community and societal issue; get an historical overview of advertising, propaganda, disinformation, misinformation, and illiteracy; gain knowledge of both applied strategies for working with individuals and for addressing the issues in community contexts; find methods for combating urgent societal ills caused and exacerbated by misinformation; and get tools and techniques for advocacy, activism, and self-reflection throughout one's career.

the second bill of rights sunstein: Dissed Trust William DeMersseman, 2010-09-30 Distrust of government is a natural response to a controlling and out-of-control bureaucracy. The motivation for protest and reform is not animosity towards government and its legitimate functions, but a love of America and a passionate desire to pass on to the next generation the innumerable blessings of liberty. Citizens are frightened by the governments relentless growth, unsustainable debt trajectory, culture of corruption, and encroachment of individual rights.... Critics of the tea party movement attempt to derail it with meritless claims of racism, extremism, bigotry, conspiracy, class-warfare and malice. The claims are ridiculous. Tea party participants include members of every party, social class, ethnicity, age and gender; they hold varying views on a number of issues, but share a deep appreciation for the limited, constitutional government established by Americas founders. They see Washingtons profligate spending, imperious unaccountability, and reprobate political environment as symptoms of a federal government that recognizes no limitations on its power. They feel a civic responsibility to speak out and to work toward a return to constitutional governance and sound fiscal policy. This is not a book about the tea party movement. It is a book about the political, economic and cultural upheavals fueling the movement: the insanely escalating national debt; the increasingly coercive and contemptuous political establishment; the arrogant failure of true political leadership; and the pervasive assault on the society-sustaining virtues of truth, trust, integrity, morality, freedom, and civility.

the second bill of rights sunstein: The Progressive Revolution Ellis Washington, 2013-05-09 The Progressive Revolution (Vols. I & II) chronicles both the historical significance and political deconstruction that the Progressive Revolution, or the Progressive Age, (circa 1870-present) has continuously perpetrated against society, even to this day. These volumes are a collection of selected essays, articles, and Socratic dialogues from the weekly columns written by the author for WorldNetDaily.com, an independent news website of primarily conservative thought and ideas. This opus is divided into two volumes: Vol. I (2007-08 articles) and Vol. II (2009 articles) that are organized topically according to their subject matter of twelve intellectual disciplines including law, politics, foreign policy, philosophy, aesthetics, the academy, religion, economics, science, culture, society, and history.

the second bill of rights sunstein: The New American Social Compact Jane A. Grant, 2008-02-28 The New American Social Compact examines the need to redefine the social compact in twenty-first-century America. Grant explores the two components of this compact-the rights and obligations of citizenship-as well as what she sees as the four substantive areas that are critical to realizing a new social compact in America. Grant proposes a new social compact that would honor the expansion of civil, political, and social rights in America and would integrate these rights within a new civic procedural ethos, clarifying our obligations to each other, future generations, other nations, and other species.

the second bill of rights sunstein: Constitutional Politics in a Conservative Era Austin Sarat, 2008-05-05 Aims to bring together the work of leading scholars of Constitutionalism, Constitutional law, and politics in the United States to take stock of the field to chart its progress, and point the way for its future development.

the second bill of rights sunstein: 1984 Redux Andrew Curtiss, 2011 July, 2009; Andrew Curtiss received a Chain Mail in his E-Mail box. The Message was sent to him from a former colleague he served with in the US Army Special Forces at Fort Bragg North Carolina. The subject line of the message read Congratulations you made the terrorist watch list! The content suggested that the Department of Homeland Security had labled millions of Americans who are Constitutionlists, Pro Life, of Christian faith, voters for rightwing politics, are combat veterans and more; as potential domestic terrorists. After researching the matter Andrew found that the DHS did infact publish such a report that was meant to be confidential for law enforcement only. The report was published April 7, 2009. It was during Andrew's research into the matter that he realized the Fundamental Transformation of America as promised by Barrack Obama was indeed transforming America into something much like Oceania in George Orwell's 1984. 1984 Redux digs deep into the

issues facing Americans today as America Fundamentally Transforms. Curtiss draws the comparison of where Obama and his leftist handlers and drones want to take America as part of this transformation; to the extreme Socialist Oligarchy depicted in Orwell's 1984. Supported by scores of references and facts, one might be surprised to see how close to Orwell's nightmarish depiction America is headed. 1984 Redux is not only a wakeup call to America, but the world; as to what could be if the most influential nation in the world and last hope for freedom falls to the left.

the second bill of rights sunstein: *Social Contract Theory in American Jurisprudence* Thomas R. Pope, 2013-06-07 Despite decades of attempts and the best intentions of its members, the United States Supreme Court has failed to develop a coherent jurisprudence regarding the state's proper relationship to the individual. Without some objective standard upon which to ground jurisprudence, decisions have moved along a spectrum between freedom and authority and back again, affecting issues as diverse as individual contractual liberties and the right to privacy. Social Contract Theory in American Jurisprudence seeks to reintroduce the lessons of modern political philosophy to offer a solution for this variable application of legal principle and to lay the groundwork for a jurisprudence consistent in both theory and practice. Thomas R. Pope's argument examines two exemplary court cases, *Lochner v. New York* and *West Coast Hotel v. Parrish*, and demonstrates how the results of these cases failed to achieve the necessary balance of liberty and the public good because they considered the matter in terms of a dichotomy. Pope explores our constitution's roots in social contract theory, looking particularly to the ideas of Thomas Hobbes for a jurisprudence that is consistent with the language and tradition of the Constitution, and that is also more effectually viable than existing alternatives. Pope concludes with an examination of recent cases before the Court, grounding his observations firmly within the developments of ongoing negotiation of jurisprudence. Addressing the current debate between individual liberty and government responsibility within the context of contemporary jurisprudence, Pope considers the implications of a Hobbesian founding for modern policy. This book will be particularly relevant to scholars of Constitutional Law, the American Founding, and Modern Political Theory.

the second bill of rights sunstein: *Human Rights, Democracy, and Legitimacy in a World of Disorder* Silja Voenekey, Gerald L. Neuman, 2018-10-11 *Human Rights, Democracy, and Legitimacy in a World of Disorder* brings together respected scholars from diverse disciplines to examine a trio of key concepts that help to stabilize states and the international order. While used pervasively by philosophers, legal scholars, and politicians, the precise content of these concepts is disputed, and they face new challenges in the conditions of disorder brought by the twenty-first century. This volume will explore the interrelationships and possible tensions between human rights, democracy, and legitimacy, from the philosophical, legal, and political perspectives; as well as the role of these concepts in addressing particular problems such as economic inequality, catastrophic risks posed by new technologies, access to health care, regional governance, and responses to mass migration. Comprising essays arising from an interdisciplinary symposium convened at Harvard Law School in 2016, this volume will examine how these trusted concepts may bring order to the global community.

the second bill of rights sunstein: *The Tools to Be Free* Stephen Minicucci, 2024-06-10 Linking broad-based public service to post-secondary education is the best way to make our society more free. Access to college ought to be a social right of citizenship. The core idea in T.H. Marshall's concept of social citizenship is that, in addition to civil and political rights, people hold social rights, including guarantees to housing, health care, basic income, and, especially, an adequate education. These are resources we all need to participate in society as full and equal members. In America, opponents of these guarantees have effectively mobilized deeply held liberal ideas, arguing that state action is a threat to freedom. Against this, progressive arguments about fairness have fallen flat. Looking outside liberalism, this book offers a new approach. It argues, first, the civic republican tradition provides an authentically American basis for the social rights of citizenship. Republicanism understands that true freedom requires a degree of personal independence. The ultimate justification for egalitarian policies, especially in education, is that they make us more free. Second,

our first major policy step in this direction ought to be adopting a large-scale service-to-school program designed to increase access to post-secondary education.

the second bill of rights sunstein: A Progressive History of American Democracy Since 1945 Chris J. Magoc, 2021-12-29 A Progressive History of American Democracy Since 1945: American Dreams, Hard Realities offers a social, political, and cultural history of the United States since World War II. Unpacking a period of profound transformation unprecedented in the national experience, this book takes a synthetic approach to the history of the 1940s to the present day. It examines how Americans descended from a mid-century apogee of boundless expectations to the unsettling premise that our contemporary historical moment is fraught with a sense of crisis and national failure. The book's narrative explores the question of decline and more importantly, how the history of this transformation can point the way toward a recovery of shared national values. Chris J. Magoc also gives extensive treatments to the following: Grassroots movements that have expanded the meaning of American democracy, from the 1950s human rights struggle in the South to contemporary movements to confront systemic racism and the existential crisis of climate change. The resilience of American democracy in the face of antidemocratic forces. The impacts of a decades-long economic transformation. The consequences of America's expanding global military footprint and national security state. Fracturing of a nation once held together by a post-war liberal consensus and broadly shared societal goals to an America facing an attack from within on empirical truth and democracy itself. This book will be of interest to students of modern U.S. history, social history, and American Studies, and general readers interested in recent U.S. history.

the second bill of rights sunstein: The Cosmopolitan Constitution Alexander Somek, 2014-08-01 Originally the constitution was expected to express and channel popular sovereignty. It was the work of freedom, springing from and facilitating collective self-determination. After the Second World War this perspective changed: the modern constitution owes its authority not only to collective authorship, it also must commit itself credibly to human rights. Thus people recede into the background, and the national constitution becomes embedded into one or other system of 'peer review' among nations. This is what Alexander Somek argues is the creation of the cosmopolitan constitution. Reconstructing what he considers to be the three stages in the development of constitutionalism, he argues that the cosmopolitan constitution is not a blueprint for the constitution beyond the nation state, let alone a constitution of the international community; rather, it stands for constitutional law reaching out beyond its national bounds. This cosmopolitan constitution has two faces: the first, political, face reflects the changed circumstances of constitutional authority. It conceives itself as constrained by international human rights protection, firmly committed to combating discrimination on the grounds of nationality, and to embracing strategies for managing its interaction with other sites of authority, such as the United Nations. The second, administrative, face of the cosmopolitan constitution reveals the demise of political authority, which has been traditionally vested in representative bodies. Political processes yield to various, and often informal, strategies of policy co-ordination so long as there are no reasons to fear that the elementary civil rights might be severely interfered with. It represents constitutional authority for an administered world.

the second bill of rights sunstein: Re-Framers John R. Vile, 2014-07-15 This book is the most comprehensive review of all the major proposals to rewrite, revise, or even replace the U.S. Constitution, covering more than 170 proposals from the nation's beginnings to the present day. The U.S. Constitution was carefully written by a remarkable group of men, but subsequent generations of Americans have devoted enormous time and energy to improving it. From colonial times to the present day, Americans of all political persuasions have campaigned to reform, remake, or replace this key document. The growth of the Internet and self-publishing has spawned a virtual explosion of such proposals. This book documents the numerous ideas for change—some practical, some idealistic, and some bordering on fanatical—that reflect America's Constitutional heritage and could shape the nation's future. Re-Framers: 170 Eccentric, Visionary, and Patriotic Proposals to Rewrite the U.S. Constitution sets the stage for this review by describing various prequels to the U.S.

Constitution and explaining how the final document emerged at the Constitutional Convention. The subsequent chapters examine many proposed alternatives and revisions to the Constitution from its establishment until the present, illuminating perceived strengths and weaknesses of the current document as well as the pros and cons of possible amendments. Readers ranging from lay citizens who are interested in constitutional issues to historians, political scientists, law professors, and reference librarians will all benefit from this unparalleled examination of proposed constitutional amendment.

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