

A Missed Opportunity In the Struggle for Human Rights

Roger Pilon and Aaron Rhodes

July 25th, 2020

A year ago, when Secretary of State Mike Pompeo announced the creation of a Commission on Unalienable Rights to advise him on how America's human rights policy could be re-centered on the nation's founding principles, the left-leaning human rights establishment howled, fearing the move threatened not only women's and LGBTQ rights, but the very firmament of international human rights. Yet the lengthy report the secretary released late last week at Philadelphia's National Constitution Center suggests they have little to fear, despite their renewed outrage. The report doesn't advocate restricting the rights of women or sexual minorities, but it does paper over a contradiction at the core of our human rights policy, and therein lies a problem, with implications that are more than theoretical.

Make no mistake, this draft report is sophisticated and tightly argued. Proceeding chronologically, it starts with the moral and political theory underpinning our Declaration of Independence, locates that theory in the Constitution, and then focuses on our post-Civil War corrections. It does not sugar-coat our history, but neither does it shy away from highlighting the role of property rights, religious freedom, democratic institutions, and civic virtue in securing our unalienable, pre-governmental rights to liberty.

But the report turns then to the very different *statutory* rights that emerged during America's Progressive Era and New Deal, reflecting Franklin Roosevelt's "Four Freedoms," including "freedom from fear and want." Unlike our inherent unalienable rights, these redistributive "social and economic rights" are not universalizable. They're created by legislatures to solve perceived social problems. But as demand for them grows, governments grow and liberty yields.

To its credit, the report recognizes that. "Social and economic rights are most compatible with American founding principles when they serve as minimums that enable citizens to exercise their unalienable rights, discharge their responsibilities, and engage in self-government. They are least compatible when they induce dependence on the state, and when, by expanding state power, they curtail freedom."

Good. But the report contradicts that when it gets to the bedrock document of the modern human rights movement—the UN's 1948 Universal Declaration of Human Rights where these "welfare rights" appear alongside unalienable rights to freedom—calling the UDHR's principles "highly compatible" with America's own rights tradition: "Indeed, the UDHR belongs to the same modern tradition of freedom as does the Declaration of Independence, the U.S. Constitution, and the nation's quest to honor its founding principles."

That might surprise Americans from the founding to the civil rights generations who've fought for freedom *from* government, not for dependence on government. Perhaps the commissioners thought it impolitic to press the contradiction between these two kinds of rights. But the practical problem is that by endorsing UN dogma—"the indivisibility of human rights"—not only are those legislated social and economic rights put on a par with our innate unalienable rights to freedom, but brutal authoritarian regimes can boast of their support for social and economic rights even as they repress the freedom of their citizens—and all in the name of "human rights."

Worse still, the compromises embedded in the UDHR opened the door for the very tyrants it was meant to expose not only to wrap themselves in the mantle of human rights but to sit on and take over the institutions the UDHR spawned to better expose such tyrants. In fact, the original UN Commission on Human Rights was so corrupted by those regimes that it was replaced in 2006 by the UN Human Rights Council, where the corruption only deepened to the point that the U.S. withdrew two years ago.

Indeed, only a day after the commission's report was released, we learn from a *Newsweek* piece by UN watchdog Hillel Neuer that China, chairing the UN Human Rights Council's vetting process, was able to secure its candidate as the UN's next free speech monitor.

In the end, if this draft report is to help re-center America's human rights policy on the nation's founding principles, its authors will have to grasp the nettle. For the 1948 contradiction between unalienable rights to freedom and the modern redistributive rights that have increasingly reduced freedom must be faced, especially insofar as it lends legitimacy to autocratic regimes. People know the difference between the two kinds of rights. They demonstrate it when they vote with their feet, where they can—a question alive right now in Hong Kong.

But what of the feared threat to women's and LGBTQ rights, about which this report is almost silent? Ironically, because the report effectively underwrites the UN's indivisibility-of-rights dogma, it gives cover to the regimes that are the greatest threat to women and the LGBTQ community. Those communities would be better served by getting on board the freedom agenda America's founders set in motion in 1776.

Roger Pilon holds the Cato Institute's B. Kenneth Simon Chair in Constitutional Studies. He was the director of policy for the State Department's Bureau of Human Rights and Humanitarian Affairs (1986–87) during the Reagan administration. Aaron Rhodes, president of the Forum for Religious Freedom–Europe, was the executive director of the International Helsinki Federation for Human Rights from 1993 to 2007 and is the author of The Debasement of Human Rights: How Politics Sabotage the Ideal of Freedom (Encounter Books, 2018).