



Will the State Department's new Commission on Unalienable Rights get it right?

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In Monday's Wall Street Journal, Secretary of State Mike Pompeo unveiled the department's new Commission on Unalienable Rights, more than a month after news of the commission first broke. An advisory body, its mission, he writes, "isn't to discover new principles but to ground our discussion of human rights in America's founding principles," thereby to "help revitalize liberal democracy world-wide."

Excellent. This is long overdue. But talk of "natural law" in the run-up to this public unveiling raised concerns in the LGBTQ community, among others, and Pompeo's mention that Harvard Law's Mary Ann Glendon will head the commission will not allay them. Like Princeton's Robbie George, widely reported to have played a seminal role in the commission's creation, Glendon has a long record of opposition to gay rights. If a downgrade of those rights follows, that could seriously compromise the work of the department's Bureau of Democracy, Human Rights, and Labor, especially in countries with draconian anti-gay laws and practices.

But that's only one concern flowing from the op-ed. More troubling is its apparent theoretical confusion, which could undermine the department's work even further. Pompeo writes, correctly, that "when politicians and bureaucrats create new rights, they blur the distinction between unalienable rights and ad hoc rights granted by governments." He then states plainly: "Unalienable rights are by nature universal. Not everything good, or everything granted by a government, can be a universal right. Loose talk of 'rights' unmoors us from the principles of liberal democracy."

Fine so far. The confusion begins when Pompeo pegs this "loose talk" to the period "after the Cold War ended," when "many human-rights advocates turned their energy to new categories of rights." True, international human rights discourse did change after the Cold War ended, with a proliferation of "group rights," including rights against discrimination, xenophobia, and intolerance, leading to laws prohibiting hate speech and blasphemy. But the seeds for those developments arose much earlier.

In fact, if the conflation of human rights and "ad hoc rights granted by government" is our touchstone, that problem began in the international context in 1948, with the drafting of the United Nation's Universal Declaration of Human Rights. Arising from political compromises

between post-war progressives and some of the world's worst tyrannies, the UDHR starts with a list of traditional, unalienable rights. But it goes on with a list of so-called economic and social rights – to jobs, housing, “periodic holidays with pay” (Art. 24 of the UDHR) – which ever since have dominated human-rights debate and practice. As my co-author, Aaron Rhodes, and I wrote a year ago:

“Unlike natural rights to freedom, which require only that we be left alone, these economic and social rights, if rights at all, are not universalizable. They’re created by legislatures, requiring endless redistributive schemes. And as demand for them grows, governments grow and liberty yields. More sinister still, the original compromises that elevated these rights to the status of human rights have enabled totalitarian regimes to sit at the human-rights table. After 70 years, a toxic hypocrisy poisons the debate. Russia, China, Cuba, Islamic theocracies, even North Korea boast about their often illusory economic and social programs as evidence of human-rights compliance and their own legitimacy.”

Given that history, it’s hard to know what Pompeo is alluding to when he writes that “the human-rights cause once united people from disparate nations and cultures in an effort to secure fundamental freedoms and fight evils like Nazism, communism and apartheid,” especially when he adds that “no one believed the Soviet call for collective economic and civil rights was really about freedom.” True, no serious person did. But in what sense then were nations united when the UDHR was drafted in 1948? Many at the time were clear about the document’s internal contradictions. How then can this commission help reorient institutions like the UN “back to their original missions,” as Pompeo hopes, when those missions were compromised from the start, as history has shown in spades?

The answer is in recognizing those contradictions—and recognizing, more deeply, that our unalienable rights are indeed “by nature universal” and universalizable. We can all enjoy them at the same time and in the same respect. And the right that satisfies that criterion is that most basic of natural rights, pre-existing government, freedom, as Pompeo seems to recognize.

And that is why the right to marry as you wish is basic. It is perfectly universalizable. But by the same principle, you have no right to compel an unwilling baker, florist or anyone else to be part of your wedding, same-sex or otherwise, whatever his reason for declining, religious or otherwise. This commission can be a breath of fresh air, but only if it starts with and is clear about America’s true first principles.

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