

Criticisms Illustrate Need for State Dept. Human Rights Panel

COMMENTARY

By [Peter Berkowitz](#) - RCP Contributor
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In early July, Secretary of State Mike Pompeo launched the Commission on Unalienable Rights. “The commission’s mission,” he explained in a Wall Street Journal [op-ed](#), “isn’t to discover new principles but to ground our discussion of human rights in America’s founding principles.” The announcement of the panel’s existence and mandate immediately triggered a barrage of skepticism, indignation, and anger. The misunderstandings that the criticisms embody underscore the urgency of the commission’s work.

It’s not as if the movement to protect human rights internationally is free from confusion and controversy.

The very idea of human rights has come under fire from the left and the right for its supposedly sham universality. Hard-core progressives contend that human rights are nothing more than a vehicle for advancing Western imperialism and colonialism. Single-minded conservatives maintain that the essential function of human rights is to erode national sovereignty and promulgate progressive political goals around the world.

More measured and compelling objections focus on the excesses to which the human rights project has been exposed. The proliferation of rights claims has obscured the distinction between fundamental rights that are universally applicable and partisan preferences that are properly left to diplomacy and political give-and-take. International institutions charged with monitoring and safeguarding human rights sometimes include in their membership countries that flagrantly violate human rights and which wield international law as a weapon to undermine them. The growth of international institutions, courts, and NGOs dedicated to human rights has created a cadre of bureaucrats, judges, scholars, and activists. Many of these experts and advocates are dedicated to the cause of human rights and serve with distinction, but all face the temptation — typical of any professional community — of succumbing to special interests and self-serving agendas. And an overemphasis on universal rights can distract from other essentials of political life, including the discharge of responsibilities, the cultivation of virtues, and the caring for community.

It’s especially important for the United States to respond thoughtfully to the confusion and controversy swirling around human rights because of our country’s founding convictions. The Declaration of Independence affirms “certain unalienable Rights” — these include “Life, Liberty, and the pursuit of Happiness” — that inhere in all human beings. The Constitution

establishes the institutional framework that enables Americans to secure these fundamental rights through democratic self-government.

Moreover, as a driving force behind the Universal Declaration of Human Rights -- adopted by the U.N. General Assembly in December 1948 -- the United States reaffirmed the nation's founding conviction that all human beings deserve the rights and liberties secured by its Constitution. At the same time, the Constitution leaves to the American people and their elected representatives the discretion to determine the role in the country's foreign policy played by the universal rights that Americans and non-Americans share.

Yet an array of scholars, pundits, former political officials, and organizations are up in arms about the commission. Their critiques are illuminating, though not entirely as they intended.

First, critics charge that the Trump administration's record advancing human rights renders it unfit to establish a commission to provide advice on human rights. Set aside that the administration has engaged Kim Jong-un in pursuit of peaceful dismantlement of North Korea's nuclear program; imposed tough sanctions on Vladimir Putin's belligerent Russia; supported a democratic transition in Venezuela; opposed Iran's quest to impose a brutal hegemony throughout the Middle East; and convened in Bahrain an international forum attended by Saudi Arabia and the United Arab Emirates, among others, to discuss the economic reconstruction of the West Bank and Gaza and peace between Israel and the Palestinians. Isn't the State Department's determination to improve understanding of the connections between America's founding principles and the administration's foreign policy a sign of the enduring significance it attaches to human rights?

Second, critics detect a sinister ambition in Secretary Pompeo's "distinction between unalienable rights and ad hoc rights granted by governments." They worry that authoritarian countries around the world will conclude that the guiding purpose of the Commission on Unalienable Rights is to redefine human rights narrowly. But the American constitutional tradition turns on the difference between universal rights that are essential and unchanging and the contingent rights created by the consent of the governed that serve as a means to protecting citizens' fundamental freedoms, and which are bound to vary from country to country.

Third, critics express dismay that the commission was charged with examining the reasoning by which claims about human rights are assessed, because they believe that the debate about the foundations and the meaning of human rights has all but ended. It has been asserted, for example, that codification of human rights by widely ratified international treaties (in many cases, though, not ratified by the United States) renders the commission's work superfluous. This contention illustrates problems that gave rise to the panel. Contrary to the critics' belief, a right does not become inalienable simply because an international treaty says so. And the refusal of the United States to ratify many such treaties demonstrates the persistence of questions about what counts as a human right and about the status of such rights in international law.

Fourth, critics have warned that the commission intends to strip members of various groups and communities of their rights. In fact, the commission proceeds from the premise that all persons

— regardless of faith, nationality, race, class, and gender — share essential rights grounded in our common humanity.

Fifth, critics accuse the commission of lacking intellectual and political diversity. In fact, the political diversity and variety of intellectual perspectives represented compares quite favorably with the uniform political and intellectual outlook that informs so many of those who have condemned the commission.

In one respect, the quick-out-of-the-gate criticisms of the State Department's Commission on Unalienable Rights have been highly constructive. By throwing into sharp relief the passion and perplexity that surround the discussion of human rights, the critics themselves unwittingly make the case for sober and deliberate reflection about the roots of human rights in the American constitutional tradition, and their reach in the conduct of America's foreign affairs. That is precisely the task that Secretary Pompeo has directed the Commission on Unalienable Right to undertake, and which its members have proudly embraced.

Peter Berkowitz is director of the State Department's Policy Planning Staff and serves on the Department's Commission on Unalienable Rights.