ESSAY

On American Values, Unalienable Rights, and Human Rights: Some Reflections on the Pompeo Commission

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On July 8, 2019, U.S. Secretary of State Mike Pompeo unveiled a Commission on Unalienable Rights, charged with "one of the most profound reexaminations of the unalienable rights in the world since the 1948 Universal Declaration."[1] A day earlier, he had published an op-ed article in the *Wall Street Journal* on the matter.[2] The term "unalienable" refers back to the U.S. Declaration of Independence, which famously states, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness." Pompeo's article also draws on this sentence when he insists that a moral foreign policy should be grounded in a conception of human rights organized around those rights.

But it is not merely the U.S. Declaration of Independence that Pompeo's statements (and, in particular, the language of unalienable rights) take us back to; they take us back, more generally, to the intellectual context of natural law theory. Natural law theory, as it originally emerged in the ancient world and was further developed in Christian doctrine, offered universal moral principles that, in one way or another, were supposed to be part of nature. In the Christian context, this was so because of the belief that nature had been designed in a certain way by a divine will. Natural law, as understood in the eighteenth century, when the

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American Declaration of Independence was issued, focused on political participation and protection of person and property. By contrast, contemporary human rights are not meant to depend on views that find such rights in nature, let alone on the existence of a divine will that would have made such rights part of nature in the first place. Contemporary human rights are also broader in scope than the natural law of the eighteenth century, encompassing, inter alia, economic rights and rights against discrimination on the basis of race and gender. For the UN, human rights also include expansive reproductive freedoms.[3] At the same time, contemporary human rights law deemphasizes property rights and, to some extent, speech rights. And so, while natural law theory and contemporary human rights share a focus on the idea that human beings as such would have certain rights, they differ enormously in terms of scope and answers to questions about why human beings would have such rights.

Pompeo's commission has been tasked to reexamine human rights philosophically, and to do so by way of reference to the American founding principles. In his July 2019 speech announcing the Commission on Unalienable Rights, Pompeo's questions included these:

> What does it mean to say or claim that something is, in fact, a human right? How do we know or how do we determine whether that claim that this or that is a human right, is it true, and therefore, ought it to be honored? How can there be human rights, rights we possess not as privileges we are granted or even earn, but simply by virtue of our humanity belong to us? Is it, in fact, true, as our Declaration of Independence asserts, that as human beings, we—all of us, every member of our human family—are endowed by our creator with certain unalienable rights?[4]

Pompeo offers various reasons for such reexamination. First, a concern about proliferation arises from adding "ad hoc rights" to unalienable ones. Second, institutions charged with protecting human rights often drift from their mission: "loose talk" about rights implies we have lost sight of what matters. Third, as a result, human rights could be and are enlisted for "dubious or malignant purposes."[5] Resistance to the contemporary human rights project has long come from authoritarian regimes, though it has not been limited to them. And now, it would seem that Pompeo's goal is to situate the United States as a member of this resistance, attempting to outflank the human rights community on philosophical grounds.[6]

To be sure, neither the human rights community nor observers of that community seem to accept Pompeo's characterization of the commission's tasks in

philosophical terms. They see it as, at best, some philosophical icing on a political cake and, at worst, an intellectual deceit from an illusion of a fair-minded investigation with a preexisting political agenda. The *Economist* surmises that "there is not much reason to think the new commission is a good faith effort," even lumping the commission together with a previous one charged with substantiating Trump's baseless claim that his election saw massive vote rigging.[7] Many in the human rights community are concerned that this commission was designed to strengthen Trump's conservative social agenda, with the administration unhappy that human rights are cited to uphold reproductive freedom or protect LGBTQ people from discrimination. Kenneth Roth of Human Rights Watch spoke to these concerns, noting that these fears were "only intensified by Pompeo's selection of Mary Ann Glendon, a prominent scholar opposed to abortion and same-sex marriage, to head the commission."[8] On this point I would disagree, though. Rather, I take the selection of a distinguished scholar as chair as an indication that intellectual engagement with this commission is called for.[9]

To focus my thinking on the matter for this essay, I assume Pompeo hopes the commission will substantiate—by appeal to the Declaration of Independence and natural law—three key conservative ideas: (1) that there is too much human rights proliferation, and once we get things right, social and economic rights as well as gender emancipation and reproductive rights will no longer register as human rights; (2) that religious liberties should be strengthened under the human rights umbrella; and (3) that the unalienable rights that should guide American foreign policy neither require nor benefit from any international oversight. I aim to show, however, that despite Pompeo's framing, the Declaration of Independence, per se, is of no help with any of this, whereas natural law is to some extent, but only in ways that reveal its limitations as a foundation for foreign policy in our interconnected age.

The Declaration of Independence

Pompeo's *Wall Street Journal* op-ed starts by pointing out that America's founders

> defined unalienable rights as including "life, liberty, and the pursuit of happiness." They designed the Constitution to protect individual dignity and freedom. A moral foreign policy should be grounded in this conception of human rights.[10]

However, by the time we reach this list of rights in the Declaration itself (it arrives in the second sentence), various other ideas have already been introduced.[11] The first sentence is as follows:

> When in the Course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We should note in passing that, as we learn here, the Declaration was written owing to "a decent respect to the opinions of mankind." The kind of change that concerns everybody—like dissolution of political bands at the envisaged scale—entitles humankind to an explanation. The presumption is that if no good explanation is available, the measure should be dropped. This cosmopolitan starting point is worth emphasizing in light of the isolationist tendencies in Trump's America. What matters most for our purposes, however, is that this sentence presents a notion of *equality*.

The Declaration explains that the new country means to claim its "separate and equal station" among other states. It leaves behind a status of domination to join the community of equal sovereign states. Natural law and divine will license that move, leading the new country into a world already acknowledged as interdependent. The theme of equality reappears in the second sentence, which does not explain it further. The *only* understanding of equality the Declaration provides is the one from the first sentence, where equality is about *nondomination*.

The second sentence reads as follows:

> We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. —That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, —That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

By the time we reach "unalienable Rights," we have already encountered equality twice and have reason to understand it as being about nondomination. Rights to life, liberty, and the pursuit of happiness thus presented must be understood in

ways that advance mutual nondomination. As political theorist Danielle Allen states succinctly, the Declaration's central argument is that "equality has precedent over freedom; only on the basis of equality can freedom be securely achieved."[12] It is in order to realize freedom on the basis of equality that government exists, the presumption being that equality is *needed* to that end. It is a long way from there to Reagan's pronouncement that "government is not the solution to our problem, *government is the problem*."[13]

Jeremy Bentham referred to the American revolutionaries as "ungrateful and rebellious people" who had to be restored to the allegiance they were breaking.[14] But at the end of the Declaration, these ingrates pledge themselves to something extraordinary. The Declaration leaves all who are pledged to it through its signing with far-reaching commitments to put nondomination into practice:

> And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

That is how important creating a commonwealth shaped by nondomination was to the founders. Any government falling short of these obligations fails in its central tasks.

When Pompeo refers to rights to life, liberty, and the pursuit of happiness, he omits the nondomination framework within which they appear. Of course, the Declaration left the new nation with the task of spelling out what exactly nondomination *is*. Each generation has had to assess what the rights to life, liberty, and the pursuit of happiness mean among equals. The pursuit of happiness, in particular, has over time fallen into numerous subordinate rights developed in a sequence of stages that include the Constitution; legislation; and, finally, policy and dispute resolution in courts.

What then about the three key conservative themes that Pompeo wishes to bolster? As far as the point about proliferation is concerned, mutual nondomination requires the government to act in ways that advance citizens' standing in society, including in regard to their economic status, to such an extent that they can live up to their roles as equal participants in the commonwealth. And although thinkers of the eighteenth century would not have conceived of nondomination in terms of gender emancipation, the ideal of nondomination should be interpreted as resisting *any* kind of discrimination. Similarly, on the face of it the Declaration does not permit any inferences regarding either reproductive rights or the status of

religious freedom. Rather, it urges us to reflect on these matters, too, in a spirit of nondomination. Therefore, then, the Declaration only supports a strengthening of religious liberties to the extent warranted by appeals to the ideal of nondomination. For instance, appeals to religious liberties could not be used to authorize actions that would enable or perpetuate domination of some over others; this would certainly include the exclusion of homosexuals from participation in certain aspects of public life or from the reception of certain legal benefits.

And regarding the third theme, it seems quite straightforward that the Declaration—a rather cosmopolitan document—does not support any aversion to international integration or oversight. Not only does it explicitly profess "a decent respect to the opinions of mankind" but it traces the origin of the relevant rights to a creator. That creator presumably gave the same rights to all other human beings and would not mind at all if they watched over each other in their efforts at implementation in order to maximize chances that everybody does indeed get to enjoy those rights.

Strikingly, the Declaration of Independence captures a stronger ideal of equality than the Universal Declaration of Human Rights does a century and a half later. The former states without reservation that "all men are created equal." The latter refers to "equal and inalienable rights" in its preamble, states in article 1 that all human beings are "born free and equal in dignity and rights," and in article 2 insists that discrimination in terms of its usual categories (race, religion, sex, and so forth) is impermissible. That is, while the Declaration of Independence attributes actual equality of status as given by creation, the Universal Declaration merely says that *to the extent* that persons have rights they have them equally. The latter's spirit is captured by Franklin Delano Roosevelt's four freedoms outlined in the UDHR preamble: freedom of speech and belief, and freedom from fear and want.[15] But, the ideal of equality as nondomination goes further.

There is, of course, profound irony in the fact that this ideal was articulated at a time when there was no political will among the liberated whites to extend their freedom to enslaved blacks, or, for that matter, for the male citizens to emancipate women to the status of full participants in political life. These contradictions at the moment of the country's conception reveal how big a challenge it is to take seriously the ideal of nondomination. They also reveal that, for the Declaration to address contemporary concerns, we must see it as a living document: it must

be unmoored from the hypocrisies of its own era, and new interpretations must guard against hypocrisies of later ages.[16]

Nondomination: A Contemporary Approach

The reconciliation of liberty and equality under one government, which the Declaration asks its adherents to undertake, involves two things: an analysis of the types of conflicts among citizens that would require the kind of neutralization involved in nondomination, and then a proposal for how to think about nondomination given those potential conflicts. A contemporary proposal comes from John Rawls.[17]

According to Rawls, the crucial conflicts societies face today arise from the fact that their social spaces must be shared among adherents of multifarious moral doctrines with deep metaphysical and epistemological disagreements (for example, Christians, Muslims, Buddhists, secular liberals, and so forth). After millennia of disputes, we should be able to recognize that people enduringly interpret human experiences differently and that we cannot realistically hope that these differences will ever fully disappear. But people must still live together. To that end, conflicts must be handled the right way. If they are, it may be neither desirable nor necessary to overcome them.[18]

For Rawls, the key to handling such conflict (thus reconciling equality and freedom) is "public reason." Exercising public reason requires of citizens that they justify decisions on fundamental political issues using publicly available values and standards. Such issues include questions about which religions are tolerated, who gets to vote, who is eligible to own property, and how to determine suspect classifications for discrimination in hiring.[19] One implication of the public-reason interpretation of the task the Declaration gives us is that religion plays a limited role in public life. Since interactions among citizens, for basic political and economic questions, must be decided by appeals to public values and standards, freedom of religion should be considered freedom to worship as one sees fit and act on the prescriptions of one's religion, within limits, but not freedom to shape public life in the image of one's religion. Accepting such limitations is the price to pay for living life in a society that guarantees the same freedom for everybody.

However, the Declaration does not merely talk about equality but also about people being *created equal*, and people being endowed with rights *by a creator*. While the Declaration does not presuppose any particular story about creation,

it presupposes a kind of divine normativity in nature. One challenge is that the Declaration must remain relevant in an age where fundamental conflicts include parties without religious convictions. As Thomas Jefferson wrote in a letter to Henry Lee in 1825, "All [the Declaration's] authority rests then on the harmonizing sentiments of the day."[20] The sentiments of the eighteenth century required an appeal to creation. Those of the twenty-first call for broader foundations. Accordingly, the Declaration's commitment to equality should be understood as being based on the value of common humanity, regardless of whether it is backed up by creationist foundations. In any event, nondomination is just as plausibly derived from humanist commitments to the value of life. Nothing in the Declaration contradicts such commitments.[21]

Natural Law, Natural Rights, and Human Rights: Basic Ideas

Natural law, natural rights, and human rights all draw on the idea that humans inhabit a "cosmopolis," or a shared space of humanity with its own moral principles. Those principles impose obligations to desist from wrong and do what is right in ways not always overridden by a loyalty to one's local community. As David Boucher says, "While natural rights and human rights are quite different, even though they may have similar objectives and policy goals, they are nevertheless related in that they are part of the same historical process by which the one develops into the other."[22]

One way of understanding these notions is as follows. Natural law and natural rights are both grounded in ideas about a reality outside of humankind. Natural *law* captures principles of right and wrong without in the first instance formulating them in terms of what individuals can demand. By contrast, natural *rights* are possessed by the individuals that hold them. Human rights are formulated by way of reference to those who hold them, without reference to grounds outside of humankind. The shift to a direct reference to persons reflects a profound skepticism about our ability to identify foundations for morality outside of humankind, a skepticism that has become increasingly prevalent over the last two centuries.

However, there is a second way of understanding the notions of natural law, natural rights, and human rights. In this approach, the term "natural" contrasts with "associative" and "transactional." The manner in which natural laws or rights are derived does not dwell on membership in associations or transactions like

promises or contracts. Instead, natural laws/rights have justifications that depend on the attributes of persons and facts about the nonhuman world that are "natural" in ways that can be captured without making memberships or transactions central, as the latter can undermine the universal acceptability of rights thus generated. If human rights are understood in terms of a common humanity, or a distinctively human life, they will be natural rights in this second sense. In both ways of understanding "natural" rights, their force is meant to be recognizable by all reasonable people independently of provisions of positive law.[23]

Today, this second understanding is more common among philosophers than the first. However, philosophers in this camp often do not advertise their views along such lines, lest these views be confused with the tradition of natural law/rights thinking that dominated Western political thought for centuries, for which a grounding outside of humankind was essential. There have been two influential brands of such thinking. One is a Thomist-Aristotelean account; the other an early modern account associated with Hugo Grotius, Thomas Hobbes, John Locke, and others. The key difference is that for Aristotle and Aquinas human sociability preceded individual decision-making, whereas for Grotius and Hobbes civil (and thus genuinely human) society was solely the creation of an act of will.

According to the first brand, natural *law* provided the principles by which the resulting living arrangements would be morally assessed. According to the second, humans were autonomous individuals bearing natural *rights*. It was for the protection of these rights that people would establish political communities (and if they did not, as was allegedly the case in the Americas and Africa, there was said to be something wrong with them). The emphasis here becomes the individual: whereas law merely *applies* to individuals, individuals can actually *possess* rights. But to underscore their grounding outside of human choices, these rights were usually presented as being inalienable. Voluntarily renouncing them was seen as so contrary to human nature that no clear-minded person would do so. Though the first tradition was originally formulated in the ancient world and thus preceded Christian doctrine, a divine will played a central role in both traditions, since it was responsible for making nature the way it is and providing the ultimate source of obligations. Underlying references to God and human godlikeness would also support the equality stated in the Declaration of Independence.[24]

In contemporary times, the Thomist-Aristotelean view has been rearticulated by Germain Grisez, John Finnis, Joseph Boyle, Robert George, and others.

Their "new natural law theory" insists that the "natural" in "natural law" primarily means "reasonable." They introduce principles of practical reasonableness, and argue that reasonableness in one's conduct is the highest human good. By appealing to practical reason, they avoid enlisting human nature to immediately derive prescriptions (which would leave them vulnerable to the naturalistic fallacy of deriving normative statements from descriptive ones).[25]

Nonetheless, the natural law/rights tradition in all its versions has an uneasy relationship with contemporary human rights. The sheer fact that the latter are *human* rather than *natural* rights sidesteps the foundational questions central to this tradition. Philosopher Elizabeth Anscombe famously insisted that without God as lawgiver, obligatoriness becomes metaphorical, which is like saying that if we did not have criminal law, criminality would endure.[26] Similarly, natural law theorists may argue that talking about human rights without tying them to a reality outside of humankind, and ultimately to a divine source of obligation, renders talk of human rights empty.

It is worth remembering, however, that ancient sources of the natural law/rights tradition (such as the works of Aristotle, the Stoics, or Cicero) were formulated outside of religious traditions organized around revelation. The point of reformulating such sources within Christianity was that human reason could secure certain insights and prescriptions whose obligatoriness was based on the divine will. But while revelation might relate detailed prescriptions, natural law/rights reasoning could not do so beyond a threshold of reasonable doubt. In fact, a major difference between traditional natural law/rights and human rights is that the reasoning that renders natural law/rights plausible only licenses generic and abstract prescriptions—paradigmatically the rights to life, liberty, and the pursuit of happiness.

By contrast, the thirty articles of the Universal Declaration of Human Rights present numerous rights that cannot be derived from human nature or basic goods without taking detours through specifics about living arrangements. On the one hand, it is exactly this point that creates uneasiness about human rights proliferation among natural law theorists. But on the other hand, this point also shows that these theorists will actually have to revert to revelation rather than natural law principles to bring their approach to bear on many policy issues. After all, the generic and abstract prescriptions of the natural law tradition can only deliver generic and abstract advice that does not illuminate truly specific, pertinent details of policy issues.

Natural Law/Rights and Public Policy

The tension in efforts to enlist natural law/rights reasoning in public policy can be captured as follows: *Either* we are talking about natural law/rights in ways that do not involve revelation and that contrast with associative and transactional rights, *or else* we add elements from Christian (or other theological) traditions. In the former case, we only reach rather broad prescriptions. In the latter, we obtain more specific conclusions, but only by enlisting foundations that today have little chance of being broadly shared. To illustrate this point, I look at two passages from the work of Robert George, an advocate of the new natural law theory.

George writes that human rights exist "if it is the case that there are principles of practical reason directing us to act or abstain from acting in certain ways out of respect for the well-being and dignity of persons whose legitimate interests may be affected by what we do."[27] He agrees that there are such principles, including the right not to be enslaved and the right of innocent persons not to be killed. Other seemingly straightforward contenders, such as potential rights to education or healthcare, are more complicated and raise additional questions: Who should provide what to whom, and why, and with what priority? And why would it be the government that does so rather than any other entity? Such matters, argues George, go beyond moral principles and require prudential judgments, which speaks against counting them as human rights. On this understanding, natural law reasoning by itself does not generate rights to education or healthcare.

One might want to push back against George that at least a generic subsistence right would plausibly be implied by natural law reasoning, and so in that sense there would be some kind of economic rights that count as human rights. Taking this a step further, under particular political and economic conditions this would also imply rights to education and healthcare. After all, as Henry Shue has classically argued, for anybody to be able to enjoy any right at all, both a basic right to security and a basic right to subsistence would have to be among the rights that person enjoys.[28] But let us set that aside for now.

What matters for present purposes is that, in the domain of sexual relations, George finds it easier to get specific. However, in order to do so he enlists a traditional Christian understanding of personhood; namely, that of personhood as a "dynamic unity." According to this view, a bodily self (a soul deeply connected to a body) inhabits a personal body (a body deeply connected to a soul). The person comes to be at the same time the body does and survives as long as that body does.

This understanding contrasts with the idea that a nonbodily person (a detached soul) inhabits a nonpersonal body (a body the soul only temporarily inhabits and is not deeply connected with).

From the dynamic-unity view of personhood, George draws three conclusions: that marriage should be between one man and one woman because only then can a union between two persons (dynamic unities) truly occur; that gender transformations are immoral; and that abortions amount to the killing of human beings. Very different conclusions emerge from a view of personhood that sees less of a unity between body and soul; thus allowing, for example, souls to want bodies with a different sex than assigned at birth. But regardless, and importantly, this dynamic-unity view does *not* derive from natural law reasoning, but from Christian tradition.[29]

Let us take stock. The Declaration of Independence stands in the natural law tradition, but integrates a strong notion of equality as nondomination, and thus does not support the three key conservative ideas Pompeo seems to want his commission to substantiate. Natural law as such does support a skeptical attitude toward rights proliferation (the first idea). But to vindicate specific claims of any sort concerning gender or reproduction, or concerning religious liberties (the second idea), we would need to add elements from revealed religion with less broad appeal than natural law itself.[30] And that natural law does not substantiate an aversion to international oversight (the third idea) is obvious for reasons we already recorded when discussing the Declaration of Independence: natural law equally applies to everybody, regardless of political jurisdiction, and thus it would be rather implausible that oversight of its implementation would have to happen one country at a time.

In a nutshell, natural law as such mostly helps to validate Pompeo's concern with proliferation. But if natural law only delivers rights at a high level of abstraction (along the lines of life, liberty, and the pursuit of happiness), does this mean the more comprehensive list provided by the Universal Declaration and subsequent developments overreaches? Or does it instead mean something is wrong with natural law? And if the latter, does natural law need to be supplemented with something else, or is an entirely different approach to human rights needed?

Understanding Human Rights beyond Natural Law/Rights

Indeed, one response to the fact that natural law reasoning delivers a more limited set of rights than the human rights movement does is to become revisionist: there

are too many human rights and we should shrink that list substantially to equate human rights with genuinely *unalienable* rights. It would then be an open question as to what exactly the shape of that list would be. But without appeal to religious traditions, it seems implausible that economic rights would fall off the radar completely, that strong religious liberties would appear, and that relationships and reproduction would somehow be regulated in the spirit of an old-fashioned gender binary.

However, I submit that there are three more plausible alternatives to the above approach. The motivation for pursuing them is that in our intensely interconnected world where governance may be developed in a variety of different ways to create sets of winners and losers, we need more moral clarity than what a limited understanding of natural law/rights provides. In all three of these alternatives, additional rights would not be "ad hoc" rights; they would simply not be rights derived by appealing to a morality outside of humanity or to a distinctively human life. In an intensely interconnected world, there is no reason to expect that rights so derived would deliver all the rights we need to live together.

The first alternative approach I propose is to stick to a natural law/rights understanding of human rights, but to examine the condition of domestic and international society in order to assess what the possession of the resulting generic rights amounts to within contemporary economic and political structures. To illustrate, a meaningful right to the pursuit of happiness would amount to much higher expectations for government in the twenty-first century than it did in the eighteenth century, given the deep levels to which the government penetrates society today.

The second alternative is to abandon the natural law/rights understanding of human rights altogether and adopt what is variously called a "practical," "political," "functional," or "institutionalist" understanding. On such an understanding, it is the *purpose* of international human rights discourse and practice (rather than their *foundations*) that defines the scope of human rights. The most plausible example of such a purpose would be the preservation of an international order in which peaceful democratic societies can flourish. Human rights would thus be those rights necessary to effect such a world.[31]

The third approach is one I have pursued myself: to think of human rights in ways that supplement the natural rights approach. For natural rights, all human beings could be duty bearers: implementation is a global responsibility. But we may ask: how *else* could rights become a global responsibility? Instead of thinking of human rights exclusively as rights individuals hold *in virtue of being human*,

one could understand them as those rights for which there is a genuinely global responsibility. Or, perhaps, as *membership rights in the world society*. Human rights thus understood differ from rights people hold everywhere but that are accompanied only by respectively local responsibilities (which would be rights of citizens and thus matters of social justice).

A conception of human rights as membership rights in the world society derives these rights from multiple *sources*, using contingent facts more freely by way of enlisting features of an empirically contingent but relatively abiding world order. Natural law/rights reasoning is *one* of these sources, but becomes just one among several. An additional source would be "enlightened self-interest"; that is, if one first concedes that certain matters give rise to rights domestically, then an enlightened self-interest argument would dictate that this matter is globally urgent. The preservation of international peace, for example, may require that state authority be exercised in certain ways in the domestic arena, perhaps because unchecked governments may be abusive vis-à-vis their neighbors or because troubled states may create negative externalities, such as refugees. Troubled states are global liabilities, as too are states struggling with disease control and environmental sustainability. Issues such as drug trafficking, illegal immigration, arms trade, human trafficking, money laundering, and terrorism must be fought globally because the networks behind them often operate globally. These examples highlight that it is in the global enlightened self-interest that all governments treat their own citizens in ways that include more rights than generated by natural law reasoning.

Another such source is "interconnectedness": something may be globally urgent if somehow the world society as such is seen as causally responsible for certain problems of people in a particular country for which an assignment of rights would be the solution. Enlightened self-interest and interconnectedness often apply jointly. To illustrate, consider the following argument for a human right against any form of slavery, bondage, or human trafficking: To begin with, drawing on general considerations about the legitimacy of state coercion, individuals have a claim against their state for protection against such treatment. The increasing intensity of transnational interactions creates opportunities, and triggers demand, for human trafficking and thus modern-day slavery. Millions are smuggled across borders and kept in bondage to work in the sex industry, in private households, and in sweatshops. Since in any given country (especially in those that are major destinations of human trafficking), individuals have a right to

protection against enslavement, it is in every country's enlightened self-interest to combat human trafficking. Otherwise, the number of de facto slaves *in each country's midst* will increase. Regions where certain groups are held in contempt and kept in dependency are among the likely origins of such trafficking. The combination of enlightened self-interest and interconnectedness supports a human right not to be enslaved or trafficked in any way.

Additionally, there are "procedural" sources: one way in which concerns can become common within a political structure is for them to be regarded as such by an authoritative process, and one can thus argue that human rights express membership "as the world society sees it." For something to become a human right in this way, we must determine what counts as authoritative acceptance of a global responsibility across the world. Such acceptance presupposes domestic mechanisms to empower governments (or conceivably other entities) to consent to global duties, as well as international structures within which countries can authoritatively accept duties. There is currently no good example of an actual *membership right in the world society* (with accompanying duties of global reach) that has been accepted through authoritative processes both domestically and internationally. This is only something to look forward to in the future.[32]

Recall that I have assumed that Pompeo hopes his commission will support the following conservative key ideas: (1) there is too much human rights proliferation, and once we get things right, social and economic rights as well as gender emancipation and reproductive rights will no longer register as human rights; (2) religious liberties need to be strengthened under the human rights umbrella; and (3) the unalienable rights that should guide American foreign policy neither require nor benefit from any kind of international oversight, or even an international structure within which they are in some way grounded. At this stage, we can quickly dispose of the second and third idea: as far as the second is concerned, there does not seem to be anything in our explorations other than revealed religion that would actually support such a view, and the reasoning for rejecting the third idea that we encountered earlier—that natural law applies equally to everybody, making it implausible for oversight of its implementation to happen one country at a time—remains valid in this context.

As far as the first idea is concerned, my account too would be skeptical of human rights proliferation but would have more materials to work with (the various sources above) to show that certain rights actually are rights. Basic economic rights would definitely register. Even drawing on natural law reasoning alone, we

could see that for individuals to enjoy any kind of right at all, they would also have to enjoy rights to both basic security and basic subsistence.[33] Interconnectedness and enlightened self-interest would powerfully support my claim about economic rights: global interconnectedness means economic fortunes around the world are intertwined, and enlightened self-interest implies that it should be taken as a global responsibility that people can make ends meet wherever they live. Other rights that at this stage are contested in their nature as human rights could be described in terms of the procedural sources: efforts are underway to make sure these rights are properly accepted as human rights, in a manner that involves suitable authoritative processes both domestically and internationally.[34]

Conclusion

For the sake of the argument in this essay and based on Pompeo's public statements, I have assumed that he would hope that the three conservative key ideas that I attributed to him throughout this essay and reiterated at the end of the last section are substantiated by appeal to the Declaration of Independence and natural law. I have argued that the Declaration is of no help with any of this, owing to its distinctively cosmopolitan orientation and its strong understanding of equality as nondomination. Natural law can be understood in either the traditional sense of locating foundations for moral principles outside of human nature and choice, or in the contemporary sense of deriving rights by way of appealing to a distinctively human life. Either way, natural law/rights generates concerns about nonproliferation and supports a curtailing of any list of contemporary human rights, though not as extensively as Pompeo may hope. I argue that basic subsistence rights, including some economic rights, remain intact. Natural law theorists must enlist considerations beyond those provided by natural law/rights to reach specific conclusions about, say, marriage or reproduction.

Natural law is global in reach. But to dismiss all rights that cannot be derived by natural law/rights reasoning as "ad hoc" in times of intense global interconnectedness would mean ignoring our economic and political reality. An appeal to natural law is of some help with Pompeo's goals, but only in ways that reveal its limitations as a foundation for both human rights and foreign policy in our interconnected world. We should understand human rights more broadly as membership rights in an interconnected world society, and the United States in particular should live up to the responsibilities that accompany such an

understanding. The sheer interconnectedness of the world of the twenty-first century should mobilize resistance to efforts by authoritarian governments to undermine the human rights movement. And the United States, a country that has done more than any other to create a political and economic system in which the contemporary interconnectedness could develop in the first place, should refrain from joining such authoritarian regimes by attempting to philosophically undermine the human rights project.

NOTES

1 For the announcement, see Michael R. Pompeo, "Secretary of State Michael R. Pompeo Remarks to the Press" (remarks, Secretary of State Michael R. Pompeo Press Briefing Room, Washington, D.C., July 8, 2019), U.S. Department of State, www.state.gov/secretary-of-state-michael-r-pompeo-remarks-to-the-press-3/.

2 Michael R. Pompeo, "Unalienable Rights and U.S. Foreign Policy: The Founders' Principles Can Help Revitalize Liberal Democracy World-Wide," *Wall Street Journal*, July 7, 2019, www.wsj.com/articles/unalienable-rights-and-u-s-foreign-policy-11562526448?mod=searchresults&page=1&pos=1.

3 See "Sexual and Reproductive Health and Rights," United Nations Human Rights, Office of the High Commissioner, www.ohchr.org/EN/Issues/Women/WRGS/Pages/HealthRights.aspx.

4 Pompeo, "Secretary of State Michael R. Pompeo Remarks to the Press."

5 Ibid.

6 In a speech given in January 2019, Brazilian president Jair Bolsonaro also rejected what one might characterize as the leftish orientation of human rights (see Jair Bolsonaro, "Speech by the President of the Republic, Jair Bolsonaro," Plenary Session of the World Economic Forum, Davos, Switzerland, January 22, 2019, www.itamaraty.gov.br/en/speeches-articles-and-interviews/president-of-the-federative-republic-of-brazil-speeches/19992-discurso-del-presidente-de-la-republica-jair-bolsonaro-durante-la-sesion-plenaria-del-foro-economico-mundial-davos-suiza-22-de-enero-de-2020). However, concerns about proliferation are not limited to right-wing politicians. For a classic articulation of the view that human rights should be limited to civil and political rights, see Maurice Cranston, *What Are Human Rights?* (London: Bodley Head, 1973). For a broader understanding of human rights mindful of proliferation concerns, see James Griffin, *On Human Rights* (Oxford: Oxford University Press, 2008). For a recent rearticulation cognizant of the Pompeo Commission, see John Tasioulas, "Are Human Rights Taking over the Space Once Occupied by Politics?," *New Statesman*, August 26, 2019, www.newstatesman.com/2019/08/are-human-rights-taking-over-space-once-occupied-politics. For a survey of the philosophical concerns, see James Nickel, "Human Rights," in *Stanford Encyclopedia of Philosophy* online, last updated April 11, 2019, plato.stanford.edu/entries/rights-human/.

7 "There Is a Need for Fresh Thinking on Human Rights: But Mike Pompeo's New Commission Looks like a Partisan Stunt," *Economist*, August 10, 2019, www.economist.com/united-states/2019/08/08/there-is-a-need-for-fresh-thinking-on-human-rights.

8 Kenneth Roth, "Beware the Trump Administration's Plans for 'Fresh Thinking' on Human Rights," *Washington Post*, July 11, 2019, www.washingtonpost.com/opinions/2019/07/11/beware-trump-administrations-plans-fresh-thinking-human-rights/.

9 In addition to her grounding in Catholic social thought, Glendon is known for work on the genesis of the Universal Declaration of Human Rights seen through the lens of Eleanor Roosevelt's role; see Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002). She has written essays on many human rights themes; see Mary Ann Glendon, *Traditions in Turmoil* (Ann Arbor, Mich.: Sapientia Press Ave Maria University, 2006).

10 Pompeo, "Unalienable Rights and U.S. Foreign Policy."

11 The Declaration has received much scholarly attention; for recent work, see David Armitage, *The Declaration of Independence: A Global History* (Cambridge, Mass.: Harvard University Press, 2008); Pauline Maier, *American Scripture: Making the Declaration of Independence* (New York: Vintage, 1998); Allen Jayne, *Jefferson's Declaration of Independence: Origins, Philosophy, and Theology* (Lexington: University Press of Kentucky, 1998); Jay Fliegelman, *Declaring Independence: Jefferson, Natural Language, and the Culture of Performance* (Stanford, Calif.: Stanford University Press,

1993); Christian Y. Dupont and Peter S. Onuf, eds., *Declaring Independence: The Origin and Influence of America's Founding Document* (Charlottesville, Va.: University of Virginia Library, 2008); and Danielle S. Allen, *Our Declaration: A Reading of the Declaration of Independence in Defense of Equality* (New York: Liveright, 2015). See also Thomas G. West, *The Political Theory of the American Founding: Natural Rights, Public Policy, and the Moral Conditions of Freedom* (Cambridge, U.K.: Cambridge University Press, 2017); and Jill Lepore, *These Truths: A History of the United States* (New York: W. W. Norton, 2019), chs. 3–4. My discussion is influenced by Danielle Allen's.

12 Allen, *Our Declaration*, p. 275.

13 See Reagan's first inaugural address, "January 20, 1981: Reagan Quotes and Speeches," Ronald Reagan Presidential Foundation and Institute video, 23:37, www.reaganfoundation.org/ronald-reagan/reagan-quotes-speeches/inaugural-address-2/.

14 Bentham offers his assessment in Jeremy Bentham, "Short Review of the Declaration (1776)," in Armitage, *Declaration of Independence*; for the quote, see ibid., p. 186.

15 Jeffrey A. Engel, ed., *The Four Freedoms: Franklin D. Roosevelt and the Evolution of an American Idea*, 1st ed. (Oxford: Oxford University Press, 2015).

16 For a contemporary take on the founding principles, see Jill Lepore, *This America: The Case for the Nation* (New York: Liveright, 2019).

17 John Rawls, *Political Liberalism*, exp. ed. (New York: Columbia University Press, 2005).

18 One might say Rawls's understanding of conflict is naïve in that it omits an explicit formulation of racial tensions. That is true, but his approach, with its division between a public-reason standpoint and comprehensive doctrines, can be reformulated to be less naïve in that respect.

19 "Publicly available values" are those that can and must be shared among all citizens. Among them are those that inform the selection of principles of distributive justice, those related to freedom and equality of citizens, and those related to the fairness of the terms of social cooperation. Political equality, freedom of religion, efficiency of the economy, stability of the family (to help ensure reproduction), and concern about a healthy environment are also among these values. "Nonpublic values" are those internal to associations like churches or philosophical movements. "Public standards" are principles of reasoning and rules of evidence all citizens may reasonably endorse, standards drawing on common sense, and generally known facts and well-established scientific insights. Justification should not depend on prophecy, or on disputed social-scientific theories.

20 "From Thomas Jefferson to Henry Lee, 8 May 1825," National Archives "Founders Online," founders.archives.gov/documents/Jefferson/98-01-02-5212.

21 That religions cannot play prominent roles in public life has implications for how we should think about questions surrounding marriage, procreation, and beginning- and end-of-life questions, but it is no straightforward process from that insight to certain conclusions. For the complexities involved, see, for example, Robert P. George, *Conscience and Its Enemies: Confronting the Dogmas of Liberal Secularism* (Wilmington, Del.: Intercollegiate Studies Institute, 2016).

22 David Boucher, *The Limits of Ethics in International Relations: Natural Law, Natural Rights, and Human Rights in Transition* (Oxford: Oxford University Press, 2009), p. 245.

23 For this second understanding, see Mathias Risse, *On Global Justice*, 1st ed. (Princeton, N.J.: Princeton University Press, 2012), ch. 5. According to this second view, human rights may overlap with natural rights, in the sense that some human rights are natural, but not all.

24 See Anthony Pagden, "Human Rights, Natural Rights, and Europe's Imperial Legacy," *Political Theory* 31, no. 2 (April 2003), pp. 171–99.

25 John Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980); and John Finnis, *Aquinas: Moral, Political, and Legal Theory* (Oxford: Oxford University Press, 1998). For extended defenses, see Robert P. George, *In Defense of Natural Law* (Oxford: Oxford University Press, 2001). For introductions, see John Finnis, "Aquinas and Natural Law Jurisprudence," in George Duke and Robert P. George, eds., *The Cambridge Companion to Natural Law Jurisprudence* (New York: Cambridge University Press, 2017), pp. 17–56; and Robert P. George, "Natural Law, God, and Human Dignity," in Duke and George, *The Cambridge Companion to Natural Law Jurisprudence*.

26 Elizabeth Anscombe, "Modern Moral Philosophy," in Roger Crisp and Michael Slote, eds., *Virtue Ethics* (Oxford: Oxford University Press, 1997), pp. 26–44.

27 George, "Natural Law, God, and Human Dignity," pp. 60–61.

28 For the classic formulation of the argument that security and subsistence rights stand and fall together and must both be available in order for anybody to enjoy any other right, see Henry Shue, *Basic Rights: Subsistence, Affluence, and US Foreign Policy* (Princeton, N.J.: Princeton University Press, 1980).

29 George, *Conscience and Its Enemies*, part 3; and George, *In Defense of Natural Law*, part 2.

30 We have not looked at religious liberties in the last two sections on natural law/rights, but it should be plausible that in a highly pluralist society the need to curtail the relevance of religion in public life could only be superseded by appealing directly to the superiority of one religious tradition over others.
31 See Charles R. Beitz, *The Idea of Human Rights* (Oxford: Oxford University Press, 2011); John Rawls, *The Law of Peoples: With "The Idea of Public Reason Revisited"* (Cambridge, Mass.: Harvard University Press, 2001). For the debate between the moral and political approaches to human rights, see Adam Etinson, ed., *Human Rights: Moral or Political?* (Oxford: Oxford University Press, 2018).
32 One other source I have done much work with is humanity's collective ownership of the earth, but that topic is harder to expand upon given the present space limitations; see Risse, *On Global Justice*, part 2. For a summary of this approach, see Mathias Risse, "Human Rights as Membership Rights in the World Society," in Silja Voeneky and Gerald L. Neuman, eds., *Human Rights, Democracy, and Legitimacy in a World of Disorder* (Cambridge, U.K.: Cambridge University Press, 2018).
33 This is the argument taken from Shue, *Basic Rights*.
34 Chapters 12 and 13 in my book *On Global Justice* spell out the efforts for a human right to essential pharmaceuticals and for labor rights as human rights. I am genuinely not sure about gender emancipation and reproductive rights being understood *as human rights*. They might be better understood as domestic civil rights, and as such should then hold in every country in the world. But my approach can indeed also accommodate a global movement to see them as human rights, in terms of efforts to establish new human rights in the right procedural way. That might well currently be the best way of thinking about these rights.

Abstract: In July 2019, Secretary of State Mike Pompeo launched a Commission on Unalienable Rights, charged with a reexamination of the scope and nature of human rights–based claims. From his statements, it seems that Pompeo hopes the commission will substantiate—by appeal to the U.S. Declaration of Independence and to natural law theory—three key conservative ideas: (1) that there is too much human rights proliferation, and once we get things right, social and economic rights as well as gender emancipation and reproductive rights will no longer register as human rights; (2) that religious liberties should be strengthened under the human rights umbrella; and (3) that the unalienable rights that should guide American foreign policy neither need nor benefit from any international oversight. I aim to show that despite Pompeo's framing, the Declaration of Independence, per se, is of no help with any of this, whereas evoking natural law is only helpful in ways that reveal its own limitations as a foundation for both human rights and foreign policy in our interconnected age.

Keywords: human rights, Pompeo Commission, Trump administration, U.S. Declaration of Independence, Universal Declaration of Human Rights, natural rights, natural law, economic rights, human rights proliferation