

What are Human Rights for U.S. Foreign Policy

by Michael Curtis



I've got a right to sing the blues, I've got the right to moan and sigh. I'm also entitled to all the human rights and freedoms without any distinction such as race, color, sex, language, religion, political opinion, national or social origin, property or birth. I now need to know what they are exactly.

On July 8, 2019 Secretary of State Mike Pompeo said he was setting up an advisory panel, the Commission on Unalienable Rights in the State Department to undertake an informed review of the role of human rights in U.S. foreign policy. Headed by a social conservative law professor, Mary Ann Glendon of Harvard, former Ambassador to the Vatican, the bipartisan panel is to review the definition of human rights, and look at "its relationship to principles of the U.S."

The panel has to consider the issue of definition of the subject in the light of at least four factors. One is that human rights claims have proliferated and clashed with each other resulting in the problem of which rights are entitled to gain respect. The second is the problem that some basic rights are being manipulated and ignored by the worst human rights violators in the world. A third factor is the attitude of the panel on social issues, gay and transgender issues, since Professor Glendon is known for opposing endorsing abortion as an inherent human right at the 1995 UN Women's conference in Beijing. The fourth is the challenge of cultural relativism, the rejection of the belief that Western culture and values are superior to all others, and which in extreme form denies the idea of universal human rights and moral values.

The starting problem is difference on origin and therefore controversy over human rights. It was the French philosopher Jacques Maritain who commented, "We agree about the rights, but on condition that no asks why." The Bill of Rights, the first ten amendments of the U.S. Constitution, states a number of rights, but does not discuss any origin. Thomas Jefferson in the Declaration of Independence of July 4, 1776 held that all people "are endowed by their creator with certain unalienable Rights, that among these are life, liberty, and the pursuit of happiness." If some analysts hold that human rights are innate, or stem from some divine power, most concepts of human rights derive from many sources, international law, treaties, custom, judgments of courts, and general principles, or reflect the political morality of society or government.

Some behavior, slavery or servitude, apartheid in former regime of South Africa, the Nazi genocide, is universally regarded as abhorrent and violations of human rights, barbarous acts that have outraged the conscience of mankind. As Martin Luther King Jr. put it in another context, it is "a moral responsibility to disobey an unjust law." It is more

difficult to obtain agreement on positive agreement of the concept of rights, even if all accept the idea of the inherent dignity of human beings. Whether rights are man-made, or innate in the nature of humanity, or endowed by the Creator, or established by political bodies, the problem remains of whether rights are to be regarded as universal or particular.

The UN General Assembly on December 10, 1948 adopted the Universal Declaration on Human Rights, a milestone document in the history of human rights. Article 1 states that "All human beings are born free and equal in dignity and rights." It lists a variety of those rights: liberty and security of person, no slavery or servitude, no subjection to cruel punishment, equality before the law, no arbitrary arrest or detention or exile. Positive factors are public trial, presumption of innocence, free movement, freedom of thought, conscience and religion, expression, assembly, and association, economic and social rights. A leading force in and father of the Declaration was Rene Cassin, French jurist, opponent of Nazism, President in 1943 in Algiers of the committee to establish republican legality of France. Cassin insisted on two things; the Declaration be called "Universal" and not "international," and that it be signed unanimously. Indeed, the Declaration is the last text in the UN to be adopted by unanimity, 48-0 with 8 absentions.

Irrespective of the ambitious objectives of advocates of human rights, including the end of discrimination, disagreement exists on the definition of what "dignity" requires in practical term, on specific items such as limits on state power, economic inequality, civic freedoms, welfare protection, provision of health, food, clothing, items needing governmental funding.

Criticism is warranted that international declarations of human rights have insufficiently outlined the details of the desirable human rights and specific freedoms and the complications relevant to their enforcement or the measures by

which they can be ensured. To take only one example, the principle of equal opportunity is only really meaningful if social and economic disparities between wealthier and poorer citizens are reduced. Or implementation of desirable rights, say provision of higher education or minimal conditions, may be beyond the capacity of societies to fulfill.

What rights stem from universal declarations? The list is familiar in many statements, stemming from Magna Carta 1215, the U.S. Constitution, the 1789 French Declaration of the Rights of Man and of the Citizen, and more recently the European Convention on Human Rights of 1950 and the accompanying European Court of Human Rights, and the UK Human Rights Act of 1998. The usually familiar items include security rights, protection against murder, torture, genocide, political and civic rights, citizens able to vote, serve in public office, peaceful assembly and protests, social rights, right to work and education, right to basic health services, equality for women in economic and social life, right to strike, equality before the law and no arbitrary punishment, freedom of belief, expression, association with others, and free movement.

However, there are a number of problems. The list of rights changes with time and shifting political opinions and sensibility as on homosexuality or climate change. One very new issue is whether same sex marriage is to be considered a fundamental human right. As a result, rights interrelate and may clash. A policy that provides education for all is likely to have an impact on political behavior and rights, just as lack of education is likely to limit participation in democratic societies.

The initial problem is that most civil and political rights are not absolute. For example, freedom of movement can be limited by public and private property rights or by retaining orders, or by requirements to deal with natural emergencies. The Declaration of Independence in the second paragraph speaks

of all being created "equal" and endowed with "liberty." Yet, even admitting that governments derive their "just powers from the consent of the governed," how are the rights of equality and liberty which may conflict to be balanced? The U.S. has experienced conflict over property rights and freedom of contract. In similar fashion, the U.S. has given different answers to views of civil rights, one in Plessy v. Ferguson 1896, another in Brown v. Board of Education 1954, and the Civil Rights Act 1964.

The panel must consider problems of diversity and rapidly advancing technology. What about diversity and moral relativism? Ethnocentrism, the doctrine that one's own group is the standard, rejects universalism. Asian values are said to favor family and community not individualism, social harmony over personal freedom. The World Conference on Human Rights in Vienna in 1993 dealt with this issue in its Declaration that all human rights are universal, indelible, interdependent, and interrelated. It held it was the duty of states, regardless of their political, economic and cultural systems, "to promote and protect all human rights and fundamental freedoms."

Yet, even with the high priority given to human rights they are not absolute or inalienable. They may be ignored or neglected by other factors, especially the ideology of a regime. The constitution of the Russian Federation states that the commonly recognized principles and norms of the international law and the international treaties that it accepts shall be a component part of the legal system. Yet the record of Russian behavior belies this, considering the death of accused persons in custody, torture, violation of rights, including those of children, discrimination, racism, killing of journalists and former security officials, murders of members of ethnic minorities.

The State Department has to consider technology factors. Should twitter ban all speech that can be considered

dehumanizing, or insulting, or unacceptable to the mainstream? Was it justified in removing a tweet when Louis Farrakhan of the Nation of Islam compared Jewish people to termites, or others called for ethnic cleansing of Rohingya Muslims in Myanmar. And what about the fast food chains, using a device originally associated with law enforcement, deploying cameras that recognize license plates of cars to identify customers. Or, the environmental tax that France, for assumed reasons of climate change is imposed on airlines flying out of the country.

It is to be hoped that the new State Department panel will tackle the many problems concerning human rights with alacrity of spirit and non-partisan sound mind. Then I can give up moaning and sighing with no complaints and no regrets, and put on a happy face.