

**Subject:** FW: Updates to the Commission on Unalienable Rights Website  
**Date:** Monday, January 27, 2020 at 4:11:17 PM Eastern Standard Time  
**From:** Walker, Duncan H  
**To:** FOIA  
**Attachments:** October 23 2019 Minutes - SIGNED.pdf, November 1 2019 Minutes - SIGNED.pdf, Commission - Jan 10 Agenda DW.docx, Commission - Dec 11 Agenda DW.docx, Commission - November 1 agenda DW.docx, Commission - October 23 agenda DW.docx

Dear Vibha,

Please see the Commission's website: <https://www.state.gov/commission-on-unalienable-rights>. The State Department created the website to provide agendas, minutes, and information on each document received, issued, or approved by the advisory committee at the public meeting. To the best of our knowledge, the web page contains all such documents for the meetings held so far.

I have also attached the Commission agendas from our four completed meetings, as well as the certified minutes from October and November. Please let me know if this completes the FACA Request: STATE-20-0085.

With best regards,  
Duncan

**Duncan H. Walker**  
Member  
Policy Planning Staff (S/P)  
U.S. Department of State  
202-647-2236  
[walkerdh3@state.gov](mailto:walkerdh3@state.gov)

**From:** FOIA <[foia@americanoversight.org](mailto:foia@americanoversight.org)>  
**Sent:** Thursday, January 23, 2020 10:26 AM  
**To:** Walker, Duncan H <[WalkerDH3@state.gov](mailto:WalkerDH3@state.gov)>  
**Subject:** FACA Request (STATE-20-0085)

Dear Mr. Walker,

Please find attached a request for records under the Federal Advisory Committee Act.

Sincerely,

Vibha Kannan  
Paralegal  
American Oversight  
[foia@americanoversight.org](mailto:foia@americanoversight.org)  
[www.americanoversight.org](http://www.americanoversight.org) | [@weareoversight](https://twitter.com/weareoversight)



## **Commission on Unalienable Rights – Agenda**

United States Department of State, Office of Policy Planning

Dean Acheson Auditorium

Harry S. Truman Building

October 23, 2019

### **October 23**

- 12:00**                    **Doors open for public**  
*(Dean Acheson Auditorium)*
- 13:15**                    **Secretary Pompeo Opening Remarks**  
*(Dean Acheson Auditorium)*
- 13:20 – 13:30**           **Executive Secretary Dr. Peter Berkowitz Remarks**
- 13:30 – 13:35**           **Chair Ambassador Glendon Remarks**
- 13:35 – 14:05**           **Introduction of Commissioners – 3 minutes/each**  
- Each commissioner introduces self, provides brief bio, states area of expertise and personal/professional interest in Commission’s work.
- 14:10**                    **Chairwoman Glendon introduces first speaker**
- 14:10 – 14:30**           **Remarks: Michael W. McConnell, Richard and Frances Mallery Professor and Director of the Constitutional Law Center, Stanford Law School, former judge – U.S. Court of Appeals for the 10<sup>th</sup> Circuit**
- 14:30 – 15:15**           **Commissioners’ discussion with McConnell**
- 15:15**                    **Chairwoman Glendon introduces second speaker**
- 15:15 – 15:35**           **Remarks: Wilfred M. McClay, G.T. and Libby Blankenship Chair in the History of Liberty, University of Oklahoma**

<b>15:35 – 16:20</b>	<b>Commissioners’ discussion with McClay</b>
<b>16:20 – 17:20</b>	<b>Public comment</b>
<b>17:20 – 17:30</b>	<b>Concluding remarks</b>
<b>17:30 – 17:45</b>	<b>Commission meeting adjourns</b>



## **Commission on Unalienable Rights – Agenda**

United States Department of State, Office of Policy Planning

November 1, 2019

Dean Acheson Auditorium

Harry S. Truman Building

### **November 1**

- 07:30**                    **Doors Open for Public**  
*(Dean Acheson Auditorium)*
- 08:00**                    **Commissioners' Arrival at C Street Entrance**
- 08:40 – 08:45**        **Executive Secretary Dr. Peter Berkowitz Opening Remarks**  
*(Dean Acheson Auditorium)*
- 08:45 – 08:50**        **Remarks by Chair Ambassador Glendon**
- 08:50 – 09:00**        **Statements by Commissioners – 2 minutes/each**  
- Each commissioner states goals/intentions/hopes for the day and offers comments on last meeting
- 09:00 – 09:05**        **Executive Secretary Dr. Peter Berkowitz Introduces Cass Sunstein**
- 09:05 – 09:35**        **Cass Sunstein, Robert Walmsley University Professor, Harvard Law School and former Administrator of White House Office of Information and Regulatory Affairs (OIRA)**
- 09:35 – 10:20**        **Commissioners' Discussion with Sunstein**
- 10:20 – 10:30**        **Break**
- 10:30 – 10:35**        **Executive Secretary Dr. Peter Berkowitz Introduces Orlando Patterson**
- 10:35 – 11:00**        **Orlando Patterson, John Cowles Professor of Sociology, Harvard University**
- 11:00 – 11:45**        **Commissioners' Discussion with Patterson**

**11:45 – 12:45**

**Public comment**

**12:45 – 12:50**

**Chair Glendon Concluding Remarks**



## **Commission on Unalienable Rights – Agenda**

United States Department of State, Office of Policy Planning

Dean Acheson Auditorium

Harry S. Truman Building

December 11, 2019

### **December 11**

- 12:00**                    **Doors open for public**  
*(Dean Acheson Auditorium)*
- 13:15 – 13:20**        **Chair Ambassador Glendon Remarks**  
*(Dean Acheson Auditorium)*
- 13:20 – 13:40**        **Introduction of Commissioners – 2 minutes/each**  
- Each commissioner introduces self, provides brief bio, states area of expertise and personal/professional interest in Commission’s work.
- 13:40 – 13:45**        **Commissioner Professor Paolo Carozza introduces first speaker**
- 13:45 – 14:10**        **Remarks: Michael Abramowitz, President of Freedom House, member of the Council on Foreign Relations, former director of the U.S. Holocaust Memorial Museum’s Levine Institute for Holocaust Education, former National Editor and White House correspondent for the Washington Post**
- 14:10 – 14:55**        **Commissioners’ discussion with Michael Abramowitz**
- 14:55 – 15:10**        **Break**
- 15:10**                    **Commissioner Professor Paolo Carozza introduces second speaker**
- 15:10 – 15:35**        **Remarks: Miles Yu, Member of the Policy Planning Staff, Department of State, Professor, U.S. Naval Academy, member, Chinese Military History Society, member, Military**

**History/Contemporary Conflict Working Group, the Hoover  
Institution, Stanford University**

- 15:35 – 16:20**      **Commissioners' discussion with Miles Yu**
- 16:20 – 17:25**      **Public comment**
- 17:25 – 17:30**      **Concluding remarks**
- 17:30 – 17:45**      **Commission meeting adjourns**



## **Commission on Unalienable Rights – Agenda**

United States Department of State, Office of Policy Planning

Dean Acheson Auditorium

Harry S. Truman Building

January 10, 2020

### **January 10**

- 12:00**                    **Doors open for public**  
*(Dean Acheson Auditorium)*
- 12:30 – 12:40**        **Transit to Dean Acheson Auditorium**
- 12:55 – 13:00**        **Executive Secretary Dr. Peter Berkowitz Remarks**
- 13:00 – 13:05**        **Chair Ambassador Glendon Remarks**
- 13:05 – 13:25**        **Introduction of Commissioners – 2 minutes/each**  
- Each commissioner introduces self, provides brief bio, states area of expertise and personal/professional interest in Commission’s work.
- 13:25**                    **Commissioner Carozza introduces Kenneth Roth**
- 13:30 – 13:55**        **Remarks: Kenneth Roth, Human Rights Watch: Reflections on human rights in foreign policy**
- 13:55 – 14:40**        **Commissioners’ discussion with Kenneth Roth**
- 14:40 – 14:50**        **Break**
- 14:50**                    **Commissioner Carozza introduces Professor Diane Orentlicher, American University**
- 14:55 – 15:20**        **Remarks: Professor Orentlicher: Human rights law and war crimes tribunals**

<b>15:20 – 16:05</b>	<b>Commissioners’ discussion with Professor Orentlicher</b>
<b>16:05 – 16:15</b>	<b>Break</b>
<b>16:15 – 17:15</b>	<b>Public Comment</b>
<b>17:15 – 17:20</b>	<b>Concluding remarks</b>
<b>17:20</b>	<b>Commission meeting adjourns</b>

# U.S. DEPARTMENT OF STATE COMMISSION ON UNALIENABLE RIGHTS MINUTES

## First Meeting

**Date:** October 23, 2019

**Time:** 15:00

**Location:** Dean Acheson Auditorium, Harry S. Truman Building.

## In Attendance

Mary Ann Glendon, Chairwoman

Peter Berkowitz, Executive Secretary

Russell Berman, Commissioner

Paolo Carozza, Commissioner

Hamza Yusuf Hanson, Commissioner

David Tse-Chien Pan, Commissioner

Meir Soloveichik, Commissioner

Katrina Lantos Swett, Commissioner

Christopher Tollefsen, Commissioner

Duncan Walker, Designated Federal Officer

F. Cartwright Weiland, Rapporteur

## Approval of Minutes

Rapporteur F. Cartwright Weiland drafted these minutes. I have certified their accuracy.

  
\_\_\_\_\_  
Mary Ann Glendon, Chairwoman

  
\_\_\_\_\_  
Date

## Public Meeting: The Nature of Rights at the American Founding (Part I)

The Commission convened at 3pm. Chairwoman Glendon began by introducing Secretary of State Pompeo. In his opening remarks, the Secretary thanked all in the audience for attending. He emphasized the public nature of the meeting, acknowledging that America historically has been characterized by extensive civil deliberation, not “governed by private writ of kings.” The Secretary expressed hope that the Commission’s ideas and discussions will profit the nation, and traced the long lineage of human rights advocates in the United States, citing Thomas Jefferson and the Declaration of Independence, Abraham Lincoln, Eleanor Roosevelt, African Americans who led the civil rights movement, and those who played a role in ending apartheid and communism in the latter part of the 20<sup>th</sup> century. He said that, unfortunately, a certain confusion now exists regarding rights. People are not always sure about whether they are talking about fundamental rights, political priorities, or personal preferences, as these distinguishable concepts have a tendency of being jumbled together in contemporary discourse. On top of this problem are others: Human rights advocacy groups have experienced mission drift, and authoritarian governments have misused international bodies like the U.N. Thus, it is past time, the Secretary said, to ask and answer key questions in a thoughtful and deliberate way. That is what the Commission will attempt to do.

After the Secretary’s remarks, Berkowitz and Glendon spoke. Berkowitz acknowledged that, since Secretary announced the Commission last summer, it has been a “lightning rod” for controversy. But Berkowitz said that this controversy is proof of the need to have commission in the first place – and the need to reassess the foundations, and scope, of human rights.

Glendon offered a few thoughts on the Commission’s mission and explained the upcoming meeting schedule to the audience. Afterwards, she stressed what the Commission is *not* charged to do. Since, under federal law, it is independent and nonpartisan, the Commission is not an echo chamber for Trump Administration, nor is its job to weigh in on certain policies, since it is serving in a purely advisory capacity and is operating “at the level of principle.” She then explained why it is that the Commission is needed *now*. She said that the word “crisis” is overworked in modern discourse, but that it nonetheless applies to the current state of the international human rights project. More than half of world’s population lives under political regimes where rights are systematically denied, and the fragile consensus that existed in 1948 (when UDHR was drafted) is now crumbling. Glendon cited the current civil unrest in Hong Kong as proof that many across the world still long for the rights Americans often take for granted. Some of protesters even waved U.S. flags – a humbling reminder of the faith many around the world retain for the American model of “liberty under law.” Glendon then asked the other commissioners on stage to introduce themselves. Afterwards, Berkowitz invited the first speaker, Stanford Law professor and former federal appellate judge Michael W. McConnell, to take the stage.

McConnell was invited to speak to commissioners about individual rights in the context of the American Founding, a topic he described as daunting. Delving into it, McConnell pointed out two principal strains of thought that contributed to the American understanding of rights in the 18<sup>th</sup> century. The first, for which Thomas Jefferson and political theorist John Locke are paradigmatic thinkers, is the *Enlightenment tradition* involving natural rights. The second is the *reformed Protestant tradition* handed down by John Calvin and Puritan dissenters, which John Adams in some respects typified.

McConnell summarized the social compact theory of John Locke, which proceeded from the hypothetical premise of people existing in a pre-political “state of nature” in which each individual enjoyed full and perfect freedom within the bounds of the natural law. But in Locke’s imagined world, this “live and let live” social situation turns out not to work very well. Some persons are naturally stronger than others, and thus the rights of weaker individuals become imperiled. That is what generates the social compact. To safeguard their interests and protect themselves from harm, people come together to form political communities and systems of government.

McConnell said that it was clear that Locke’s conception was shared by the founders because, during the Constitutional Convention, when a draft of the U.S. Constitution was sent to Congress, an accompanying letter included a key phrase borrowed from Locke. It referred to individuals “giv[ing] up a share of liberty” and “surrender[ing]” certain rights when they form political societies. The letter also noted that is difficult to say with specificity which *natural* rights are given up for the sake of gaining *civil* rights, and which natural rights “may be reserved.”

One key takeaway from Locke, McConnell argued, is that natural, retained rights are ultimately rooted in the concept of popular sovereignty – rather than in human reason, religious teachings, or other sources. In Locke’s world, people *deliberate* and *decide* which rights to relinquish to government (for example, the private right to violence that is granted to official law enforcement).

A second key takeaway from Locke is his emphasis on the rule of law. In this domain, Locke’s ideas migrated to Articles I, II, III of the U.S. Constitution. McConnell characterized the U.S. Bill of Rights, the first ten amendments that were added to the Constitution well after its ratification, as important but in some respects an “afterthought.” The *chief* guarantor of American freedom is not the Bill of Rights but rather the tripartite governmental structure (and series of checks and balances) established by the Constitution that helped usher in a true American rule of law.

McConnell then discussed unalienable rights in the context of the Protestant reform movement that began with John Calvin. Under this tradition, a right is “unalienable” if its derogation is precluded by a corresponding duty owed to one’s Creator. (This political and theological conception of a right, McConnell emphasized, should not be conflated with legal, justiciable rights.) In this regard, McConnell brought up James Madison’s 1785 “Memorial

and Remonstrance,” which may be the only instance in which the term “unalienable right” is defined. Madison wrote about freedom of mind (a somewhat ambiguous term which referred to overlapping freedoms of conscience and religion), and stated that “the Religion then of every man must be left to the conviction and conscience of every man.” Freedom of conscience, according to Madison, is unalienable because a person cannot “give up” (in other words, alienate) the interiority of his or her mind and thought processes. But it is also unalienable because no man can give away that which does not belong to him (and/or that which he does not wholly and exclusively possess). In Madison’s words, “It is the duty of every man to render to” the ultimate normative authority of universe “such homage, and such homage only” as his conscience dictates. This duty, Madison wrote, is precedent to any claims of civil society.

Turning to the question and answer portion of his remarks, McConnell responded to a question by Berkowitz about conceptions of human personhood. According to McConnell, a belief in a concept of “unalienable” rights does not require a narrowly Christian or necessarily even theistic conception of human existence, but it does require a belief that moral concerns are fundamental to human life.

Commissioner Soloveichik described the two American rights traditions McConnell identified as intertwining like “a double helix” and wondered the extent to which they are in tension with one other. McConnell acknowledged that there is some tension, but also stressed that the traditions are compatible. Under the Lockean view, popular sovereignty is seen as the ultimate authority in human life, whereas in the reformed Protestant view, there is an ultimate (theistic) authority which sits *above* popular sovereignty. What holds the two traditions together is idea that Americans, generally-speaking, are and have always been, guided by *some* sort of normative authority – whether secular or divine.

Tollefsen wondered openly about the relationship between human duties and human rights under the second (reformed Protestant) strand. At the time of the Founding, he said, the emphasis appears to have been more on duty *holder* rather than now (i.e. the twenty first century), when it is on the *beneficiary* of duty. As an example, Tollefsen pointed out the moral commandment not to kill (emphasis on a person’s duty to refrain from murderous violence), which today is framed in terms of a right to life (emphasis on a person’s moral entitlement to not be slain by another).

Berkowitz said that, as students of 18th century, today’s scholars tend to separate classical republican, reformed Protestant, and Lockean strands of influence. He asked McConnell if the American founders themselves would have been conscious of those strands as separate and distinct from one another. McConnell replied that, no, they would not have been. At the Constitutional Convention, they seamlessly invoked ideas from Locke, the Scottish Enlightenment, and other sources in a sort of intellectual blending. To this, Glendon added that the founders were relatively affluent individuals with the means to afford the proper “education of a gentleman,” which would have included training in Aristotle, biblical, and classical Roman sources.

Both Glendon and, later, Berkowitz asked McConnell about the extent to which the American rights tradition can be seen as one characterized by continuity – a sort of “unfolding” over time, as promises made in the Declaration of Independence were gradually extended to a larger and larger segment of the American population (women, racial minorities, etc.). McConnell said that that view is entirely defensible, but that the “other side” of the argument emphasizing *discontinuity* makes valid points. He cited federalism changing in light of the Civil War amendments, and legal tools like equal protection (which did not exist at time of Founding) being necessary to eradicate slavery.

Commissioner Swett asked whether the founders ever deployed the term human “dignity.” McConnell could not recall that word ever being used in a Founding era document but surmised that some of terminology used at the time could, today, be translated to something *like* dignity. Whatever that terminology was, he added, it was probably used more in religious than in governmental contexts.

Berman said he was struggling with the term “unalienable.” He asked whether, in McConnell’s view, that term was primarily in reference to a *rights holder’s agency* or rather was better understood as a *limitation on government*. McConnell said there was no contradiction between those two, but that, at the Founding, it was more in reference to government’s limited power. Under the founders’ understanding, the source of rights was nature, or nature’s God, not the government, and thus the government lacked authority to violate a core subset of fundamental rights.

Glendon brought up the English jurist William Blackstone, whose writings refer to “absolute” rights, and then she and McConnell discussed the fact that the U.S. Bill of Rights contains no qualifications or limitations on rights.

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After the conclusion of McConnell’s presentation, Berkowitz introduced Wilfred McClay, the G.T. and Libby Blankenship Chair in the History of Liberty at the University of Oklahoma, who specializes in researching and writing about the intellectual and cultural history of the United States.

McClay thanked Secretary Pompeo for being interested, and for seeing America as a global leader, in the realm of human rights. McClay began by characterizing the high regard Americans have for human rights as “exceptional” since it has never been the default position of human race and has been imperfectly realized even by citizens of the United States.

McClay then discussed the term “unalienable” in the context of the Declaration of Independence. He said that Americans today remain indebted to Thomas Jefferson and the American revolutionaries, while stressing that the U.S. has played an essential role in building the story of rights as a “fully developed theme in world history.” McClay explained

that his view stemmed more from factual history than puffed-up nationalistic pride. The Declaration of Independence was a great innovation for its time that spawned a profusion of imitators, and its influence continues today. McClay pointed out that the Hong Kong protesters this year are but the latest sign of the Declaration's enduring influence.

Citing a book by historian David Armitage, McClay went on to note that independence (severing ties with England) garnered more attention in its day than the rights espoused in the Declaration. It was arguably not until Abraham Lincoln in the 1850s that the implications of the Declaration (linking state legitimacy with the preservation of unalienable individual rights) become more fully recognized, though perhaps not fully embraced.

One problem to which the Commission will want to address itself, McClay said, involves human rights "vigilance." How do we preserve human rights when some economic, cultural, and political forces tend to erode them, or give them short shrift?

In certain parts of the world, the key problem is the inability to establish rights in first place. But in the most advanced parts of the developed world, a separate and opposite problem is that of rights proliferation (or "hypertrophy"). McClay's view is that by introducing contingency and questionability into rights claims, we do damage to the idea of unalienable rights. In his words, "[i]f everything comes to be regarded as a right, then it becomes an easy step to say that nothing is."

Rights and government entitlements are distinct, and the language of rights, when left unchecked, can become a "cultural solvent" that dissolves social solidarity in favor of individualism. McClay called this the "imperial and inexorable forward march of rights."

McClay said there are two prongs to the fight that will be necessary. On the one hand, in much of the world, fundamental rights will have to be upheld where they are currently eroded or absent, while on the other, the hypertrophy of lesser rights claims will need to be curtailed. The key question is how to protect an "irreducible minimum."

McClay then spoke more about the term "unalienable" – noting that "to alienate" means "to separate," so "unalienable" means *that which cannot be separated from its possessor, or taken (or given) away by force or consent*. In its fullness, the word unalienable reflects a view of human anthropology – one congruent with (but not necessarily equal to) the Christian and Jewish view of humans endowed with a divine image – an endowment that cannot be taken away or refused. McClay described this anthropological view as somewhat in tension with contemporary libertarian ideas of self-ownership. It is suggestive of the idea that our lives are not entirely our own – and that, with rights, we also bear responsibilities to others, and to ourselves.

McClay stated the unalienable rights we should seek to defend and uphold will have to be few in number and extremely well-defined. Perhaps the best example of an unalienable right, he said, is freedom of conscience. Like McConnell earlier, he discussed James

Madison's "Memorial and Remonstrance." He closed by saying that, to strike the right balance moving forward, duties must be seen as part and parcel of our rights, and vice versa, both of them flowing from our obligations to other human beings and to God.

Opening the question and answer portion of the remarks, Berkowitz lauded McClay, as well as McConnell, for emphasizing the correlation between rights and duties. That connection is built into the idea of Commission itself, since it is premised on the idea that the United States has duties to non-citizens in the human rights realm. Berkowitz also praised McClay for thinking anthropologically about how rights play into ideas of human personhood. McClay politely responded that any defense of rights must contemplate human nature and "what kinds of creatures we are."

Berkowitz and McClay continued their discussion of the founding, with McClay mentioning the inherited national tradition (rights of Englishmen) that revolutionaries would have understood themselves as possessing. He also remarked that, in drafting the Declaration of Independence, Thomas Jefferson did not see himself as doing anything new but rather writing down the "common sense of the American mind." Because the Declaration was directed toward an international audience (foreign nations like France, whose support the revolutionaries would need in order to defeat the English), however, references to the "rights of Englishmen" would not resonate very well. Thus, the document made more abstract appeals to a broad audience.

Soloveichik talked about how July 4<sup>th</sup> came to be known as a national holiday and asked why and how the Declaration, over time, became a document that united the nation civically. He and McClay brought up Pauline Maier's book *American Scripture*, which addresses these matters.

Berman described McClay's remarks as very interesting but wondered about how a discussion invoking Edmund Burke and the "rights of Englishmen" becomes relevant to foreign policy. Berman said that useful in this regard were McClay's comments on the anthropological – or "perhaps existentialist" – idea that rights are things that inhere in us as human beings. When that view is embraced, Berman identified there being a shift from a quietist right to conscience ("think what you want, but keep it to yourself") to a more active, pursuit of, and obligation to defend, the rights of community members (one example of this being abolitionists seeking to eradicate slavery).

Hamza and McClay briefly discussed property rights, and then Tollefsen asked whether attaching duties as a condition to rights make sense, in McClay's view. Glendon concluded by thanking McClay for participating.

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Afterwards, the public comment portion of the day's proceedings began. A representative of the Human Rights Campaign said that many of the speakers and commissioners' remarks on the founding period had focused on the views of white, slaveholding males, and that

female and minority perspectives were notably absent. Others asked about how the Commission was organizing itself, and about the upcoming meeting schedule. Amnesty International reminded commissioners that “unalienable right” is not a legal or constitutional concept. The American Global Jewish Service encouraged commissioners to continue to correspond and interact with the Department of State’s Bureau on Democracy, Human Rights, and Labor (DRL). A professor from George Mason University (and member of Concerned Women for America) praised the formation of commission and asked it to consider the role civil society has to play in defining what human rights are, and are not. A law professor from the University of Oklahoma (who used to work at the Department) encouraged commissioners to receive briefings from the Office of the Legal Adviser (L) and the Bureau of International Organizations (IO). Another audience member asked the Commission to supply speakers’ names on its website prior to the next meeting.

## Committee Materials

During the October 23 meeting, Commissioners received copies of the following materials:

- Bureau of Democracy, Human Rights, and Labor (DRL) PowerPoint presentation overview.
- Binder of previously-assigned readings.

## Announcements

Commissioner Hanson will join the “Terms and Concepts” Working Group, chaired by Commissioner Tollefsen.

The Commission plans to launch a website in the coming days or weeks. By using an email address provided on the site, members of the general public will have the opportunity to submit written materials for the Commission’s consideration.

## Next Meeting

November 1, 2019 | Time 1:15 p.m., Room TBD, Harry S. Truman Building, Washington, D.C.

Expert witnesses: Prof. Cass Sunstein (Harvard Law School, former Administrator of the Office of Information and Regulatory Affairs (OIRA)), Prof. Orlando Patterson (Harvard University).

# U.S. DEPARTMENT OF STATE COMMISSION ON UNALIENABLE RIGHTS MINUTES

## Second Meeting

**Date:** November 1, 2019

**Time:** 09:00 to 15:00.

**Location:** James Madison and Henry Clay Rooms, Harry S. Truman Building;  
Dean Acheson Auditorium, Harry S. Truman Building.

## In Attendance

Mary Ann Glendon, Chairwoman

Peter Berkowitz, Executive Secretary

Russell Berman, Commissioner

Paolo Carozza, Commissioner

Hamza Yusuf Hanson, Commissioner

Jacqueline Rivers, Commissioner

David Tse-Chien Pan, Commissioner

Meir Soloveichik, Commissioner

Katrina Lantos Swett, Commissioner

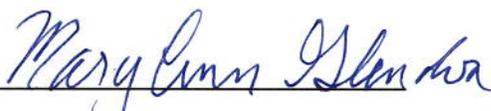
Christopher Tollefsen, Commissioner

Duncan Walker, Designated Federal Officer

F. Cartwright Weiland, Rapporteur

## Approval of Minutes

Rapporteur F. Cartwright Weiland drafted these minutes. I have certified their accuracy.

  
\_\_\_\_\_  
Mary Ann Glendon, Chairwoman

  
\_\_\_\_\_  
Date

## Public Meeting – The Nature of Rights at the American Founding (Part II)

The Commission on Unalienable Rights (hereafter, the “Commission”) convened at 9 a.m. for its second public meeting. Executive Secretary Berkowitz began by outlining the need for the Commission, as evidenced by recent controversy and confusion over the nature, limits, and foundations of human rights. He then introduced Chairwoman Glendon, noting that she is a former U.S. ambassador, has served on previous government commissions, and has authored numerous books, including two on the relevant topic of individual rights.

Glendon welcomed members of the general public in the audience. She explained that the Commission is still in the very beginning stages of its task, which is to advise the Secretary of State on the role human rights play in foreign policy, with that advice grounded in America’s founding principles, as well as the international commitments the United States made after World War II. Glendon emphasized the Commission’s independence: Commissioners are obliged to give the Secretary their best advice, to be non-partisan, and to consult broadly with experts from Department of State (for example, in the Bureau of Democracy, Human Rights, and Labor (DRL)), but also with outside activists and academic specialists. Glendon praised the speakers who participated in the Commission’s previous meeting in October and then asked the other commissioners to introduce themselves to the audience.

Each commissioner explained his/her professional background and reflected on the speakers from the last session (see Oct. 23, 2019 Minutes). Commissioner Rivers voiced a sentiment, shared by others, that bridged the different topics and time periods the Commission will consider in its work. For Rivers, one crucial question is how to avoid repeating a “major failing” at the time of the Founding, when there was a *great articulation* of rights (for example, in the Declaration of Independence) but also, because of the prevalence of chattel slavery and the political subordination of large segments of society, a *graphic failure to live up to those principles*. As she contemplates how the United States can prevent that same failure from re-occurring *internationally*, one focus for Rivers will be on achieving consistency in forcefully stating, and then implementing protections for, human rights.

After commissioners’ introductions, Berkowitz introduced the first speaker Professor Cass Sunstein from Harvard Law School, who, during the Obama Administration, led the White House Office of Information and Regulatory Affairs (OIRA). Sunstein described his participation as a great honor and thanked the commissioners for their service. He was appreciative of Secretary Pompeo and the State Department’s ambition and inspiration to rethink critical human rights issues at a time when the need to do so internationally is at its height.

Launching into the substance of his remarks, Sunstein said that he wished to make two main points: First, that the U.S. conception of rights was a *historical outgrowth of a sustained attack on monarchical legacy and the notion that some people rank above other*

*people by birth.* Rights, he said, reflected a belief in human dignity and hence in citizenship. Sunstein's second point was that "*freedom from desperate conditions*" had widespread support at the Founding. Although it was not constitutionalized in any sense, Sunstein said that the articulation of, and public support for, this freedom later culminated in President Franklin Delano Roosevelt's Second Bill of Rights. Thus, in Sunstein's view, there is a degree of continuity between newer, twentieth century conceptions of rights and freedoms and those from the founding era.

*Rights and citizenship:* Sunstein noted that that the American Revolution is often considered to be "conservative," relatively speaking – or at least cautious and milder than the French and Russian revolutions. But, he said, that characterization is misleading, given the major break with British legacy that occurred in the American colonies in the decades leading up to the revolution. During that time period, cultural notions of republicanism were popular, which led to fresh thinking about what governments "do" and the purposes for which they exist. In America, "radical" republicanism entailed self-government and eliminated social class-based hierarchies of various kinds. Sunstein spoke of the so-called "down look" of the poor – a sign they "knew their place" and had resigned themselves to their lowliness. This down look changed as the explosive new ideas of liberty and equality took hold on society. John Adams wrote with amazement that "Idolatry to Monarchs, and servility to Aristocratical Pride, was never so totally eradicated from so many Minds in so short a time." Sunstein said that this quote is significant because Adams's surprise is palpable – he did not express such obvious "shock" in any of his other writings. The transformation upon which Adams was remarking involved people who once regarded themselves as *subjects* coming to regard themselves instead as *citizens*, who possess sovereignty. This is a major development, in Sunstein's view, and to lament on what the revolution did *not* accomplish is to miss the remarkable social and political restructuring that it set into motion.

*Citizenship as unifying theme in Bill of Rights.* Shifting to the U.S. Bill of Rights, Sunstein asserted that the American Founders sought, above all, to guarantee the preconditions of effective self-government. (He said that we fail to understand the Bill of Rights if we see it as based solely on opposition to government, or on a kind of laissez-faire individualism.)

In a brief aside, Sunstein mentioned that he lives in a house in Concord, Massachusetts that dates back to the colonial era. Upon moving in, he became intrigued by the house's long history, and since then he has been poring over documents from the Founding. What he is finding among the writings is a convergence of several intellectual traditions, both theological and otherwise.

Turning to individual provisions of the Bill of Rights, Sunstein spoke of the jury trial protected by the Sixth and Seventh Amendments, which he emphasized should be thought of not only in terms of the individual legal right created. The jury trial also allows for the participation of citizens – ones, who, prior to the Revolution, may have borne the "down look" – in American civil and criminal justice systems. In deciding individual cases, jurors can modify the harsh

edges of law by finding defendants innocent in close cases. And in carrying out their duties, jurors also receive an education in the law itself.

In the same regard, Sunstein spoke of the right to private property, which creates a sphere of individual control (by protecting people's holdings against government taking without just compensation) but is also necessary for the status of citizenship. Since private property provides a means for people to live and support themselves, citizens possessing it are not solely dependent on the good will of government.

As for the Second Amendment, Sunstein admitted that it is controversial in modern times. He argued that it is a political right, which, at a minimum, prevents the federal government from outlawing state militias. These militias perform important democratic functions – by providing a training ground for the cultivation of virtue, and a constraint on potentially tyrannical government.

At the close of this section of his remarks, Sunstein reiterated his overarching point – that the Bill of Rights is not only about creating a sphere of individual liberty, free of government control, but also about creating conditions that would allow for the robust practice of citizenship.

*Social and economic rights:* Sunstein said that the Founders gave no serious thought to including social and economic guarantees in the Bill of Rights. But he was quick to add that some of the founders' writing, while not at the constitutional level, shows a surprisingly strong commitment to such guarantees. James Madison, for example, wrote of "withholding unnecessary opportunities from a few, to increase the inequality of property, by an immoderate, and especially unmerited, accumulation of riches." Madison also appeared in favor of "rais[ing] extreme indigence toward a state of comfort." Meanwhile, Thomas Jefferson, while not a framer of the Constitution, exerted a strong influence during the founding period and wrote of "lessening the inequality of property" by "exempt[ing] all from taxation below a certain point, and . . . tax[ing] the higher portions of property in geometrical progression as they rise."

Sunstein also mentioned social theorists Montesquieu, John Locke, and Thomas Paine, all of whom were read by the American founders, and whose writings similarly suggest a commitment to social and economic rights. Sunstein concluded this part of his remarks by noting that, during the constitutional framing period, there was widespread support in America for legislation that would provide poor people with the basic necessities of life and that, unlike in England, where so-called "outdoor relief" to able-bodied poor people was restricted, nearly all U.S. states allowed that form of assistance.

*FDR and the Second Bill of Rights:* Next, Sunstein fast-forwarded to World War II, when his father was a U.S. military service member fighting in the Philippines. Sunstein reminded commissioners that, in 1944, President Franklin Delano Roosevelt (FDR) delivered a State of the Union address to Congress, which connected the war against tyranny with the Great

Depression and the subsequent effort to combat economic distress domestically. The speech characterized “the one supreme objective for the future” as “security,” a term with multiple meanings. For FDR, security entailed not only “freedom from fear” but also “freedom from want.” Sunstein emphasized that FDR explicitly used the threat from Germany and Japan as an occasion for a renewed emphasis on providing protection against the most serious forms of human vulnerability at home.

In his speech, FDR looked back to the framing of the Constitution and argued that the unalienable rights at the Founding had proved inadequate, since it had become obvious that “true individual freedom cannot exist without economic security and independence.” That provided the justification for FDR laying out his “Second Bill of Rights,” which included the right to employment, to a dwelling place, to medical care, and to a good education, among other rights. Sunstein insisted that Roosevelt did not mean for these rights to be judicially enforceable, and indeed argued that FDR would have “deplored” this idea. In his speech, however, FDR did call on Congress to “explore the means for implementing th[e] economic bill of rights—for it is definitely the responsibility of Congress to do so.”

For Sunstein, FDR’s speech is significant for marking the collapse of the idea, prominent in the period before the New Deal, that freedom comes from an absence of government. It was also important because the Second Bill of Rights went on to influence the content of the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and dozens of foreign constitutions.

After Sunstein concluded the substance of his remarks, commissioners posed questions. Berkowitz asked about the right to a jury trial that Sunstein had mentioned. Noting (and agreeing with Sunstein that) it is essential to citizenship in a *liberal democracy*, Berkowitz said that few would contend the jury right to be appropriately labeled as a “human” and/or “unalienable” right. Is a jury trial, Berkowitz wondered, essential to human flourishing in *non-democratic regimes*? Sunstein responded that only certain protections in the Bill of Rights are properly characterized as unalienable; off the top of his head, he was willing to say that free speech and property rights, for example, qualify. Sunstein said that he was “hoping and gambling” that many cultures have a “Locke-type” figure that provides the philosophical founding for these rights in non-Anglo American traditions. When it comes to social and economic rights, Sunstein said the situation is somewhat different. Were those rights to qualify as unalienable, what is necessary would be “a theory about how, if people are living in desperate conditions, a universal right is being violated.” He said that, in some sense, the destitute living on the street without food or shelter suffer from their humanity being “annihilated,” but also said he was “groping for right verbal formulation” to express this notion in terms of rights.

Commissioner Soloveichik spoke next. He said that the founders often stressed that certain rights are pre-political – like the free exercise of religion. He asked Sunstein if some of the other rights contained inside the Bill of Rights are also pre-political. Continuing with a multi-part question, Soloveichik also asked whether the promotion of social and economic rights

at the hands of government, however well meaning, will inevitably clash with individual liberty. (By way of example, Soloveichik noted that expanding health care coverage in recent times has been in tension with individual religious liberty claims.) Sunstein answered that tension between different rights is inevitable, regardless of whether social and economic rights (rather than other kinds) are involved. Citing the U.S. Supreme Court decision *Wisconsin v. Yoder*, Sunstein said that it is clear that certain kinds of rights – for example, the right to religious free exercise – prevail over others in legal disputes, and that, in order to decide, courts sometimes will look at the severity with which a right is being infringed, a question over which reasonable people may disagree. He said that clashes are an occasional but not devastating consequence of a regime recognizing multiple rights. Responding to the first part of Soloveichik’s question on pre-political rights, Sunstein said that the majority of the rights contained in the Bill of Rights are pre-political, but that that is not at odds with acknowledging the Bill of Rights as being fundamentally “about” citizenship.

Carozza asked Sunstein to elaborate on the nature of social and economic rights, and his rationale for saying that they are judicially unenforceable. In a self-deprecating response, Sunstein said that he had a “mundane” account of why they are not judicially enforceable, and that is because allocative decisions are not well suited, institutionally, for judicial oversight. He cited the example of judges in South Africa facing severe challenges when attempting to enforce social and economic rights in that country.

Tollefsen brought up the right to a jury trial, saying that he would have thought that the notion underlying it is not citizenship, as Sunstein put it, but rather *fairness*. Tollefsen asked if there a more pluralistic set of directions that the notion of dignity “can go in” that does not need to get “filtered through” citizenship. Sunstein agreed that the jury right is most fundamentally about fairness, but he pushed back against Tollefsen’s labeling citizenship as just a “bonus” in the Bill of Rights. Sunstein said that it was more like a *by-product* of notions central to our constitutional system. Sunstein further explained that it is hard to understand the Bill of Rights outside the context of a revolution recently fought for republican self-government. In his view, modern observers tend to read it in a way that is de-historicized.

Pan wondered if, in U.S. foreign policy, any defense of human rights necessarily entailed creating republican self-government everywhere. He asked Sunstein if, in his view, there could be some more a modest role for human rights that does not necessitate regime change. Sunstein answered that yes, the U.S. can hold republican self-government up as ideal while still working with other types of regimes. In Sunstein’s view, the writings of the American founders speak deeply to nations and peoples that are ambivalent about republican self-government, and part of the reason may be the writings’ emphasis, though never quite expressed in these terms, on human dignity.

Berman asked why FDR would have, in Sunstein’s words, “deplored” the judicial enforcement of social and economic rights. Sunstein said that FDR was not a fan of judicial “aggressiveness” generally and would have been attuned to tradeoffs and difficulties

inherent in economic allocation. That FDR nonetheless was insistent that social and economic guarantees be labeled as “rights,” in Sunstein’s view, speaks to the president’s view that they have some sort of moral foundation. Furthermore, that FDR was willing to embrace the rights in a presidential speech, but would probably not have elected for them to be extensions to the Bill of Rights, may have had something to do with his belief – shared by James Madison in his own day – in “infusing the culture” with ideas that eventually become part of the national fabric. Sunstein pointed out that the right to education, and bans on monopolistic corporations, still widely embraced in the 21st century, show that Roosevelt really did play an enduring role in shaping our national consciousness.

Hanson and Sunstein exchanged ideas regarding private property. Hanson said that scholar Richard Weaver once described it as the “last metaphysical right” that people agree upon, but that, in the 20th and 21st centuries, it has not received as much attention as it did in the time of Locke and the American revolutionaries. Sunstein said that, in Western countries, the perceived need to fight for property rights is not acutely felt, because property is relatively secure in these places. But in other countries where those rights are most needed, the idea of private property is under attack.

Rivers segued into consideration of other types of property. She noted that the American welfare system is still weaker than in some other Western countries. Could that be, she wondered, because America has become overcommitted to protecting private property? Sunstein described himself as a proponent of private property and saw no conflict between endorsing private property rights alongside social welfare benefits. Sunstein brought up President Ronald Reagan, for whom he once worked, saying that Reagan was on record for endorsing a right to education and other rights conventionally associated with more socially progressive advocates.

In closing, Glendon thanked Sunstein for being helpful in achieving one of the most challenging parts of the Commission’s overarching task – showing a degree of continuity between the Founding and the New Deal, and from New Deal to the Universal Declaration of Human Rights (UDHR). She asked if the Bill of Rights leaving out social and economic guarantees could be thought of as an instance in which the founders took for granted the local associations and arrangements that would care for indigent persons. Sunstein answered affirmatively, saying that the Constitution contemplated institutional pluralism. He noted that, in the early years of the republic, the national government had a limited role and the Bill of Rights did not apply to states.

The Sunstein portion of the public meeting concluded at 10:29 a.m.

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After a short break, Berkowitz introduced the second speaker of the day, Orlando Patterson, who is the John Cowles Professor of Sociology at Harvard University.

Patterson said that meetings like the Commission's are an important part of the political and social order and Americans' experience as citizens. Outlining his remarks, he said he would be drawing on his earlier academic work addressing the concept of freedom, as well as his more recent work on modern-day slavery and human trafficking.

Patterson's first main point was that the idea of rights and the idea of freedom overlap but are not interchangeable. The United States has long seen itself as the "Land of the Free," and, as the global leader of the free world, its "mission" has been to ensure freedom of its citizens to a degree not enjoyed in many other countries. But Patterson said that another concept has come to compete with this notion. Especially since World War II, U.S. has come to embrace *individual rights* in fits and starts.

Patterson expanded on the distinction (freedom vs. rights) by clarifying what, in his mind, "freedom" means. He referred to it as a tripartite idea.

- First, human persons are free, at least to the degree they are not under power of others, to make choices, to do what they want, and to achieve the desires they set for themselves.
- Second, they are free to exercise power to influence the world. (Patterson called this "empowerment" and cited Indian economist and philosopher Amartya Sen.) For long periods of human history, Patterson argued, this type of freedom was associated with *power over other people*. This is important to recognize because, for him, freedom is not the *opposite* of power, even though it is commonly held to be.
  - To support his argument, Patterson mentioned "the Southern slaveholding conception of freedom" in the United States, which entailed the freedom of wealthy landowners to control the bodies and labor of African-Americans and was famously discussed by Abraham Lincoln and Stephen Douglas in their debates.
  - Even though slavery has been abolished in America for many years, Patterson said that freedom as "power over others" continues in the 21<sup>st</sup> century – in the form of some people controlling large amounts of property.
- Third, people are free, according to Patterson, to share in the collective power of groups. He referred to this as civic freedom, and as best realized through democracy.

Patterson called tripartite freedom quintessentially Western in origin, rather than universal. He explained that, although English philosopher John Locke held freedom to be "written on the heart of man" (Patterson's words), freedom actually involves an ancient, culturally specific, way of looking at the world. What is uniquely *Western* is not only the tripartite nature of freedom, but also its relative status – in other words, that freedom is valorized as

one of the pinnacle values of civilization. Contributing to this prioritization, Patterson said, are the religion that fashioned the West, Christianity (which emphasized redemption and sacrifice as the way to free one's self from spiritual slavery), as well as earlier, Roman notions of liberty. Patterson compared the spread of freedom across the world to Christian missionary work, arguing that freedom *became* more universal over time by persuasion. This, in his view, has not always been without negative consequences: U.S. military interventions in Iraq have shown that assuming all people (and especially non-Westerners) to desire freedom can be wrong and even dangerous.

"Rights" are distinguishable from freedom. For Patterson, they represent a set of claims concerning our condition as human beings. The claims are moral in nature, and their protection is necessary to preserve our most fundamental sense of what it means to be human. Rights are inherently egalitarian, whereas with "freedom," Patterson argued, there is no such assumption of equality.

Patterson then commented on America's complex relationship between rights and freedom, stressing that the American tradition differs from the European one. In Britain, Patterson said, there frequently has been skepticism about rights. The English jurist and social reformer Jeremy Bentham, for example, called natural rights "nonsense upon stilts." In the United States, there has been a stronger embrace of rights, but also a lingering uneasiness about them, according to Patterson. He mentioned that the Bill of Rights was a compromise measure that, at its adoption, few if any thought was perfect. Patterson noted that, throughout American history, there has been elite opposition to rights held by "the masses." He also mentioned the passage of the 14<sup>th</sup> Amendment and the Slaughterhouse cases as important rights milestones.

Patterson quoted an intellectual descendant of Jeremy Bentham, the philosopher Alasdair McIntyre, who once described rights as a "fiction," writing that "belief in them is one with belief in witches and unicorns."

Then Patterson shifted gears to discuss the U.S. "Rights Revolution," which he believes stands in stark contrast with the history preceding it. His view is that it is anachronistic to posit that rights are the most critical element of America's founding documents. That is because, in Patterson's view, rights did not gain currency until much later – specifically, when the horrors of Nazism during World War II shocked the world's conscience, triggering people's shared moral instincts that there must be some baseline that all people are owed, inhering their basic humanity. The war's atrocities combined with anti-imperial movements across the world and other developments: Black Americans fighting for freedom and returning home, wondering what their status would be in American politics, and what they held in common with others fighting for freedom; a shift in decisions by the U.S. Supreme Court; and the social movements waged by women and other groups. These trend lines converged and culminated in the 1970s, a decade which Patterson called quite extraordinary, even though, in his view, America in many respects is still (in the year 2019) in the midst of the lingering rights revolution.

Patterson held that the next phase of the rights revolution, almost as important as World War II in terms of focusing attention on the deprivation of human rights, began to occur in the 1980s, with the emergence of the fight against modern day slavery and human trafficking. Patterson emphasized that trafficking is normally spoken about as a violation of rights, more than it is a violation of freedom. He mentioned sex trafficking, the widespread condemnation of which has led to an alliance of strange bedfellows – the evangelical right and feminist left. He also mentioned labor trafficking, and employers being unable to say “stay out of our business” as various forms of on-the-job inequity are now challenged and subject to outside scrutiny.

Patterson gave a tip of the hat to the U.S. Department of State for publishing its annual Trafficking in Persons (TIP) report, and said that, when it comes to condemning trafficking, the Department is better off using the language of rights than it is using the language of freedom. Each year, more and more people are able to make rights claims – for example, women in forced marriages, who have been newly defined as “slaves.” Patterson described the language of rights as infinitely expandable to accommodate new kinds of claims. He saw this largely as a good thing: America is leading by example, expanding rights for an ever-increasing number of people. As intimated at other points during his remarks, Patterson said that although he retains great love and respect for the concept of freedom, he thinks it is a mistake for the West to proclaim it to the world and try to convert others into showing similar reverence. Rhetorically speaking, rights are more effective tools to achieve similar ends.

After Patterson concluded his remarks, commissioners posed questions. Berkowitz thanked Patterson for his thoughtful talk and then explained that the Commission has heard some criticisms of rights that are very similar to ones Patterson made about “freedom” – that rights are exclusively Western, for example. Berkowitz said he welcomed Patterson’s thoughts on whether criticisms are equally applicable to both concepts. Patterson said that, in his view, the “rights are Western” claims are shallower than those waged against freedom. Rights have origins that go at least as far back as the Middle Ages and Reformation. Admitting that there is a complicated story of how the concept of rights evolved and influenced public discourse, Patterson said that “rights talk” – while Western in origin – was, from very beginning, seen as applying to *all human beings*, unlike freedom. Fundamental rights, thus, were extra-territorial and extra-political.

Tollefsen expressed some sympathy for the distinction Patterson drew between freedom and rights. Nothing that there are articulations of freedom that can come into tension with rights, Tollefsen cited the “freedom to consume,” which, when enjoyed, can sometimes mean disregarding the rights of those whose exploited labor produced goods consumers enjoy. But Tollefsen also worried that any moral concern over modern day slavery must involve an appeal to *some* notion of freedom. Patterson responded that the concepts in question (rights, freedom) definitely overlap. But he said that, when it comes to international advocacy, work on behalf of freedom does not always have the same force or

effect that rights-based advocacy does. Patterson mentioned Freedom House, which grades countries on their honoring of civil and political rights, and contrasted its work with the State Department's TIP report. Patterson discussed the TIP report's 3-tier methodology, and provided the example of Japan, where there was great consternation when the U.S. demoted it in its TIP report. In response to the demotion, Japan made important reforms. Patterson's basic point was that the United States can promote liberal democracy (and thus freedom) abroad but must remember that democracy requires preconditions in order to function successfully. He argued that, when it comes to making rights claims, those preconditions are not as necessary because people have rights regardless of what political system is in place.

In part agreeing with Patterson, Soloveichik acknowledged that the concept of freedom has been misused and perverted at times throughout America's history. But then he cited the abolitionist movement, during which the concepts of freedom and rights appeared to go hand in hand. Soloveichik also mentioned Martin Luther King, Jr., one of whose most famous lines is "let freedom ring." Soloveichik's question was whether freedom and rights enhance one another. Patterson responded that, yes, at America's best moments – in some of President Abraham Lincoln's writings, for example, during the struggle for women's suffrage and equality, etc. – rights and freedom complement each other "sublimely." But during our country's worst moments, the two concepts are twinned in perverted ways – for example, during the Confederacy, when southern liberty was held up as an ideal while African American slaves' rights were openly and appallingly violated.

Commissioner Swett said that she had always thought of freedom and human rights as inextricably connected, but that Patterson's writings and lecture were very challenging to her past understandings. She wondered as a practical matter if free and democratic societies do the best job of protecting rights. Patterson said that, absolutely, they do. But then he mentioned that somewhere on the order of 70% of the world's chocolate is (or previously was) produced by child labor. In recent years, thousands of NGOs have pressured chocolate manufacturers, farmers, and governments to change this situation. Patterson's point was that, when it comes to protecting human rights, advocates can achieve progress *even in* non-democracies. (Democracies are ideal, but they are not the *only* regimes where rights can be protected.) In another example, he said that China has cut poverty in half. People are no longer starving – because China, though far from a democracy, in certain respects has honored the "right to food" and the "right to life."

Glendon concluded by thanking Patterson for helping the Commission with a problem it will have to confront – the difficulties and confusion inherent in using terms and concepts to which different groups impute various meanings and connotations.

Then the Commission invited the audience to provide public comment.

A representative from the Center for Family and Human Rights spoke of the unintended consequences of rights expansion: Sometimes people have to give up certain rights in order

to accommodate new definitions of rights – thus promoting a “competition of rights.” Given growing skepticism regarding the United Nations (UN) approach to protecting human rights, the representative stressed that now is a prime opportunity for basic issues to be rethought. Fr. Mark Hodges, an Orthodox priest, spoke about the Christian conception of rights, a framework which involves concepts like universal dignity and free will. He urged the Commission to prioritize religious freedom and the right to life. A representative from the Center for Reproductive Rights asked a process question about how to submit comments. A Georgetown Law student who also works as a staffer on the U.S. House of Representatives Foreign Affairs Committee (HFAC) commented on the committee’s work regarding the right to health. Afterwards, Commissioner Swett thanked him and replied that legislative work is crucial to the protection of human rights. A representative from the Heritage Foundation said that when international bodies like the UN consider all rights on equal footing, it is worth asking whether they are confusing certain “desirable ends” with human rights. He asked how long internal conflicts can persist within the global human rights movement before we reach a point of human rights paralysis, and he wondered whether the proliferation of rights does violence to the notion of unalienable rights. Commissioner Carozza responded that, in international human rights law, there actually is a hierarchy of rights – some are non-derogable, and some achieve status of *jus cogens*, while others do not. A law professor from the University of Oklahoma then asked whether the comments submitted to the Commission by various civil society groups will be made public, and suggested the Commission publish specific questions, and set specific deadlines, so that outside groups can contribute more efficiently. Commissioner Carozza spoke about the dates of, and subject matter to be covered in, the subsequent two meetings scheduled for December and January. Representatives from Human Rights Watch urged the Commission to invite “grassroots” human rights defenders to come testify, saying their work is crucial but does not enter into “esoteric academic debates.” Staff from Amnesty International, Democracy Forward, and the Center for American Progress also provided brief comments.

The public meeting concluded at 12:38 p.m.

## Announcements

The State Department is in the process of finalizing Commissioner Kenneth Anderson’s security clearance. He will join the Commission for its meeting in December.

## Next Meeting

December 11, 2019 | Dean Acheson Auditorium, Harry S. Truman Building, Washington, D.C.

Expert witnesses: Michael Abramowitz (Freedom House); TBD.