

Remarks at Stiftung Genshagen (The Weimar Transatlantic Forum: Images, Perceptions, and the Future of the West) Panel: “The West Under Pressure: The External and Internal Dimension” (November 25, 2019)

– James R. Stoner, Jr.

No doubt any good European will attribute to what Alexis de Tocqueville called the “irritable patriotism” of Americans our tendency, when the issue is human rights, to speak only of our Declaration of Independence, our Constitution, and our Bill of Rights. Because that has long been so, it is notable that the American Secretary of State, Mike Pompeo, has appointed a “Commission on Unalienable Rights” to advise him on human rights concerns and has issued to them a charge that makes mention of our founding principles but not our documents and instead speaks first and foremost of the Universal Declaration of Human Rights. This might have passed without notice if the Commission had been created and issued its charge during the Obama administration, but it ought to surprise if not astonish in the administration of a president who insists on putting “America first.”

In my brief remarks this afternoon I want to say a few words about this initiative, not, I hope, as a way of bringing “fast food” to our intellectual banquet, but because I think it offers a window of insight into American thinking about the issues on the table and raises a question about the depth of the affinity between Europeans and Americans, whether we both still identify with Western civilization. The answer we give to that question ought to affect our prognostication about whether our foreign policies and historic military cooperation will remain closely linked (as in scenarios 1 and 4) or grow further apart (scenarios 2 and 3). Americans are as capable as anyone of thinking in terms of *realpolitik*, and I readily concede our actions can often be interpreted according to that perspective, but I think nevertheless that it makes a difference whether we share an understanding of what

constitutes justice and the common good—if only because Americans often speak to one another about the world in this way, claiming as friends those countries that share our fondness for democracy and freedom and casting a wary eye on those that don't.

The Commission is chaired by Professor Mary Ann Glendon of Harvard Law School, one-time Ambassador of the United States to the Holy See and author of an important book published almost twenty years ago called *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*. An expert on comparative law, particularly the law of the family and the law of banking, Professor Glendon undertook in that volume to draw the attention of her conservative admirers to the Universal Declaration, which I think it is fair to say she endorses wholeheartedly. Working from a vast array of documentary sources, she reconstructs the history of its drafting, highlighting the distinctive contributions of the major players: France's René Cassin for giving the document logical order and developing a clear statement of principle at its outset; Lebanon's Charles Malik and China's P.C. Chang for ensuring a universal, not exclusively Western, orientation; Chile's Hernan Santa Cruz for insisting on the inclusion of social rights, and a series of Soviet Russian envoys for supporting economic promises; General Carlos Romulo of the Philippines, who spoke for the ex-colonial nations and their concerns; and above all Eleanor Roosevelt, widow of the American president, who both upheld the traditional American focus on civil and political rights and affirmed the value of a Declaration, even if it only established a "common standard of achievement," rather than waiting for a fully formed treaty or covenant, a process that eventually required another twenty years or more—and who, by her presence and her voice, together with others such as India's Hansa Mehta, ensured that equal rights for women were supported throughout. In her analysis, Professor

Glendon refers to the document as a “Declaration of *Interdependence*,” stressing, as in its preamble, the view that peace in the postwar era would depend on a general acknowledgment of human rights, and then following Cassin’s distinction of the rights into four groups or pillars: the basic rights of life, liberty, and personal security (articles 3 to 11), rights in civil society (12 to 17), rights in the polity (18 to 21), and economic, social, and cultural rights (22 to 26). I expect that Professor Glendon’s analysis will guide the new Commission in its work.

What should we look for from the Commission? First, as I think its title indicates, the Commission is charged with distinguishing those rights that are fundamental and universal—that cannot justly be denied or abandoned—from others that, if still in some sense universal, will be understood and applied in different ways in different societies. Perhaps the line will be drawn between pillar one and pillars two through four, thus between the most egregious human rights violations—such as slavery, torture, murder by the state, and imprisonment without a trial—and other civil, political, social, economic, and cultural rights, which can be variously defined and pursued without raising international concern. Perhaps instead the rights of general concern will be defined broadly, including the freedom of thought and expression and the political freedoms associated with democracy, while leaving social, economic, and cultural concerns to be variously treated by various systems. Perhaps there will be a sliding scale or a re-sorting of the kinds of rights, recognizing a range of interpretations of civil and political rights—so, for example, accepting the condemnation of “hate speech” in Europe while protecting “free speech” more broadly in America, or accepting a continuum of forms of government, from democratic authoritarianism to representative democracy to direct democracy.

Second, I think the Commission will stress certain rights affirmed in the Universal Declaration that conservative Americans at least think have been neglected in much international human rights discourse. First would be the right to “freedom of thought, conscience, and religion,” as it is phrased in article 18. This has been a special concern in recent American constitutional law, and several Commission members have been involved with other projects to insure religious liberty worldwide. As Professor Wilfred McClay of the University of Oklahoma pointed out in his testimony before the Commission in October, freedom of conscience was described as an unalienable right by Thomas Jefferson and James Madison, meaning as something integral to what it means to be a human being because no mind *can* be forced to believe otherwise than it does, even if the body and the tongue can be coerced or evidence slanted to lead minds astray. Second would be the right to marry and found a family, a right acknowledged in article 16 as belonging to “men and women of full age.” Republicans are too divided on the question of same-sex marriage to be likely to characterize it as a breach of the Universal Declaration—and President Trump owes his own ascendancy in the party in part to his not being tied to opposition to that development—but especially because in the U.S. the leading organization promoting same-sex marriage calls itself the “Human Rights Campaign,” the Commission, which is bipartisan, may at least remind the Secretary of State that heterosexual, monogamous, consensual marriage was defined as a human right only a couple generations ago and thus that its redefinition ought not to be imposed as an international norm. Thirdly, I expect attention will be drawn to the right to a nationality in article 15 and to the fact that the rights of political participation suppose the division of the world into nations, where the “will of the people” expressed in article 21 is gathered nation by nation and state by state—since, as

Pierre Manent and others have written, the existence of sovereign nations is the precondition of political freedom, not a barrier to human rights.

Now what does this mean for the relations of the United States to the countries of Europe? I think it means the Europeans will be asked to distinguish between the project of integrating Europe, with its shared European Convention on Human Rights dating back to 1950, incorporating much language from the Universal Declaration, and enforced through the European Court of Human Rights, on the one hand, and on the other the internationalist project of erasing national boundaries and constructing a human rights regime worldwide—not just with regard to “first pillar” rights against genocide, slavery, and torture, but with regard to sexual rights and the so-called second- and third-generation rights as well. To be sure, Americans in the postwar era probably saw European integration and universal human rights as a continuous project, all intended to spare the world another cataclysmically destructive European war by affirming universal values. But as the postwar consensus on those values has changed, due to various developments and divergences, the distinction between the two projects—European integration on the one hand, and universal rights on the other—needs to be drawn. I don’t know that Americans would be uncomfortable in principle with “European sovereignty,” to use the phrase championed the other week by the president of France, unless it would involve betrayal of some of our European friends, but I do suppose that we don’t intend to be subjected to European hegemony in the definition of human nature and unalienable rights. Whether Europeans themselves choose to distinguish the union of Europe from an imagined union of all mankind—or at least whether Americans acknowledge that Europeans make such a distinction—will determine which of the four scenarios is most likely, or which course the West will chart.