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Human Rights and Disinformation Under the Trump Administration: The Commission on Unalienable Rights

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**HUMAN RIGHTS AND DISINFORMATION UNDER THE TRUMP
ADMINISTRATION: THE COMMISSION ON UNALIENABLE
RIGHTS**

ROBERT C. BLITT*

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ABSTRACT

The former administration of Donald J. Trump shattered norms governing the responsibility to relay accurate, truthful information to the public. Whether regarding trivialities or vital issues of the day, the “Trump Doctrine” unleashed a global torrent of damaging misinformation and disinformation. This penchant for falsehood and distortion did not spare U.S. human rights policy. The administration’s decision to establish a Commission on Unalienable Rights (COUR) represented a high-water mark in its campaign to subvert international human rights norms.

After introducing key concepts relating to misinformation and disinformation, this article reviews the establishment of the COUR and the substance of its final report. Among other things, the COUR report prioritizes “unalienable rights” while dismissing other “lesser” or “newer” rights intended to protect vulnerable groups. Coupled with this hierarchical framing, the report aspires to freeze the substance of human rights as it was in 1948 and to invoke state sovereignty as a legitimate shield against international scrutiny of domestic human rights conditions.

With this background established, the Article explores how the COUR’s disinformation assault on the common political knowledge shared by democratic states operated to disrupt shared values while empowering authoritarian and illiberal actors. More damaging, this section also demonstrates how the administration compounded this disinformation fissure through its subsequent advocacy of selective elements of the COUR report for the purpose of prioritizing “religious liberty” at the expense of other rights, as well as the United States’ longstanding democratic alliances.

The final section of this Article reasons that restoration of the United States’ vital leadership role in the international community is contingent on repairing its commitment to the promotion and protection of human rights both at home and abroad. Despite the Biden administration’s swift, if perfunctory, repudiation of the COUR project, the Article concludes that an effective and durable rebuttal of its pernicious and lingering disinformation will demand more significant policy and educational change.

INTRODUCTION

Candidate Donald Trump made it clear from the outset that human rights would play little part in any Trump presidency. Among other things, his campaign called “for bringing back torture and killing the family members of terrorists.”¹ Likewise, he belittled international institutions intended to serve as a restraint on malevolent state behavior.² Once in office, Trump promptly relegated human rights to the backburner, both at home and abroad, to a degree unseen in recent U.S. history.³ As but one telling example, Trump’s first Secretary of State, Rex Tillerson, “rather conspicuously”⁴ opted to break with long-established precedent by failing to show up for the State Department’s public release of its annual human rights report.⁵

As Trump’s term advanced, the administration did precious little to reverse this dim start.⁶ Even the frontal assault on the integrity of U.S. elections through Russian interference⁷—a foreign power tampering with the very foundation of

1. Nahal Toosi, *Human Rights Groups Turn Their Sights on Trump’s America*, POLITICO (July 1, 2020), <https://www.politico.com/news/2020/07/01/human-rights-trump-us-346423>.

2. *Id.*

3. See, e.g., Mark Philip Bradley, *Human Rights in the Era of Trump*, PERSP. ON HIST. (Jan. 31, 2017), <https://www.historians.org/publications-and-directories/perspectives-on-history/january-2017/human-rights-in-the-era-of-trump>; *USA: 100 ways Trump has threatened human rights in first 100 days*, AMNESTY INT’L (Apr. 25, 2017, 6:00 AM), <https://www.amnesty.org/en/latest/news/2017/04/usa-100-ways-trump-has-threatened-human-rights-in-first-100-days/>; Elliot Abrams, *Does Trump Care About Human Rights?*, POLITICO (May 24, 2017), <https://www.politico.com/magazine/story/2017/05/24/donald-trump-human-rights-foreign-policy-215184/>; Sarah B. Snyder, *Is the Trump Administration Abandoning Human Rights?*, WASH. POST (July 2, 2017), <https://www.washingtonpost.com/news/made-by-history/wp/2017/07/02/is-the-trump-administration-abandoning-human-rights/>.

4. Christian Caryl, *Donald Trump’s Foreign Policy Is Already Undercutting Human Rights Around the World*, WASH. POST (Mar. 8, 2017), <https://www.washingtonpost.com/news/democracy-post/wp/2017/03/08/donald-trumps-foreign-policy-is-already-undercutting-human-rights-around-the-world/>.

5. Nahal Toosi, *Rubio Chides Tillerson Over Absence on Human Rights Report’s Launch*, POLITICO (Mar. 2, 2017), <https://www.politico.com/story/2017/03/marco-rubio-rex-tillerson-human-rights-report-state-department-235635>. During his confirmation hearing, Tillerson had already come under “withering fire” for failing to call out human rights abuses in the Philippines, Saudi Arabia, Russia, and elsewhere. See Tracy Wilkinson, *Human rights groups slam Rex Tillerson, Trump’s pick for secretary of State*, L.A. TIMES (Jan. 12, 2017), <https://www.latimes.com/politics/la-na-pol-tillerson-human-rights-20170112-story.html>.

6. See, e.g., *US: Trump’s First Year Sets Back Rights*, HUM. RTS. WATCH (Jan. 18, 2018), <https://www.hrw.org/news/2018/01/18/us-trumps-first-year-sets-back-rights#>; Gary J. Bass, *Trump’s Cynical Use of Human Rights*, N.Y. TIMES (Feb. 12, 2018), <https://www.nytimes.com/2018/02/12/opinion/trump-human-rights.html>; *Trump Administration Civil and Human Rights Rollbacks*, LEADERSHIP CONF. ON CIV. & HUM. RTS., <https://civilrights.org/trump-rollbacks/> (last visited Oct. 11, 2021).

7. S. COMM. ON INTEL., RUSSIAN ACTIVE MEASURES CAMPAIGNS & INTERFERENCE IN THE 2016 U.S. ELECTION, S. REP. NO. 116-290, at 12 (2020).

American democracy—failed to divert the administration’s attention from matters it deemed more pressing.⁸ As Freedom House damningly summarized in its 2019 FREEDOM IN THE WORLD report, although prior presidents may have infringed on the rights of American citizens,

No president in living memory has shown less respect [than Trump] for [the nation’s] tenets, norms, and principles. Trump has assailed essential institutions and traditions including the separation of powers, a free press, an independent judiciary, the impartial delivery of justice, safeguards against corruption, and most disturbingly, the legitimacy of elections.⁹

Where the administration did place value on human rights,¹⁰ it typically prioritized a stilted and cynical view of “religious liberty”¹¹ within a vacuum

8. Farah Stockman, *What I Learned From a List of Trump Accomplishments*, N.Y. TIMES (Sept. 11, 2020), <https://www.nytimes.com/2020/09/11/opinion/trump-fact-check.html>; John McMurtrie et al., *Lest We Forget The Horrors: A Catalog of Trump’s Worst Cruelties, Collusions, Corruptions, and Crimes*, MCSWEENEY’S (Jan. 20, 2021), <https://www.mcsweeneys.net/articles/the-complete-listing-atrocities-1-1056>.

9. FREEDOM HOUSE, FREEDOM IN THE WORLD 2019: DEMOCRACY IN RETREAT, <https://freedomhouse.org/report/freedom-world/2019/democracy-retreat> (last visited Oct. 11, 2021).

10. Although the Trump administration claimed credit for combatting trafficking in persons, observers noted that “[i]n many key ways, the Trump administration’s approach to trafficking in the United States has made matters worse for the most vulnerable communities.” Jenna Krajeski, *Trump’s Human Trafficking Record Is Fake News*, FOREIGN POL’Y (June 20, 2019), <https://foreignpolicy.com/2019/06/20/trumps-human-trafficking-record-is-fake-news/>. See also TRAC REP., CHILD SEX TRAFFICKING PROSECUTIONS FALL DURING TRUMP ADMIN. (2020), <http://trac.syr.edu/tracreports/crim/629/> (“The number of prosecutions for child sex trafficking has significantly declined during the Trump Administration, after climbing steadily during the Obama years.”); Noah Y. Kim, *Graph Showing Rising Human Trafficking Arrests Under Trump Draws on Bogus Data*, POLITIFACT (Aug. 12, 2020), <https://www.politifact.com/factchecks/2020/aug/12/viral-image/graph-showing-rising-human-trafficking-arrests-und/> (concluding that “[a] graph shared on Facebook appear[ing] to show that the number of human trafficking arrests increased dramatically under President Donald Trump” is false); Coleen Long, *AP FACT CHECK: Trump on Human Trafficking*, AP NEWS (Feb. 5, 2019), <https://apnews.com/article/north-america-human-trafficking-united-states-donald-trump-politics-4f0e224371a74c00bcd6dd41dae5584f> (demonstrating as false Trump’s 2019 State of the Union claim that “[h]uman traffickers and sex traffickers take advantage of the wide open areas between our ports of entry to smuggle thousands of young girls and women into the United States and to sell them into prostitution and modern-day slavery”).

11. Emily London & Maggie Siddiqi, *Religious Liberty Should Do No Harm*, CTR. FOR AM. PROGRESS, Apr. 11, 2019, at 3 (observing the Trump administration redefined the extent of religious liberty protections by “establishing a broad license to discriminate,” among other things, by “prioritiz[ing] religious exemptions over all other rights”). For more context relating to use of the term “religious liberty,” see, e.g., Jonathan Merritt, *How Conservatives Have Changed the Meaning of ‘Religious Liberty’*, WASH. POST (Aug. 2, 2018), <https://www.washingtonpost.com/news/acts-of-faith/wp/2018/08/02/how-conservatives-have-changed-the-meaning-of-religious-liberty/> (“In the hands of the Trump administration, the phrase connotes freedoms and privileges granted mostly to Christians . . .”). Marci A. Hamilton, *The Hijacking of the Term ‘Religious Liberty’ for Political Gain*, JUSTIA (Aug. 6, 2015), <https://verdict.justia.com/2015/08/06/the-hijacking-of-the-term-religious-liberty-for-political-gain> (observing politicization of “religious

utterly disconnected from other rights.¹² The Trump administration's enumeration of its own accomplishments in this area confirm this approach, showcasing that it "[s]tood up for religious liberty in the United States and around the world," primarily through measures restricting abortion access and expanding the depth and breadth of religion-based exemptions from generally applicable law and at the expense of other rights.¹³

Alongside this disdain for human rights, Trump's presidency also shattered administration norms governing the responsibility to relay accurate, truthful information. According to United Nations ("UN") Special Rapporteur David Kaye, Trump represented the "worst perpetrator of false information" in the United States.¹⁴ Whether it related to trivialities—like misrepresenting his inauguration crowd size or Melania Trump's popularity¹⁵—or vital issues of the day—such as promoting a false theory that Ukraine framed Russia for meddling in U.S. elections,¹⁶ urging Americans to just "stay calm. It will go away" when confronting Covid-19,¹⁷ or peddling a delusional fantasy about a stolen election¹⁸ and dismissing a deadly insurgency at the U.S. Capitol as "events that

liberty" has "stretched [the term] well beyond its constitutional meaning"); Andrew Silow-Carroll, *No One Owns 'Religious Liberty'*, N.Y. JEWISH WEEK (Dec. 1, 2020), <https://jewishweek.timesofisrael.com/no-one-owns-religious-liberty/> (discussing competing ways liberals and conservatives invoke "religious liberty").

12. Robert C. Blitt, Academic Commentary, *Trump Administration's Continued Scorn for Human Rights*, JURIST (July 26, 2018, 9:24 AM), <http://jurist.org/forum/2018/07/Blitt-Trump-Scorn-human-rights.php>.

13. WHITE HOUSE, TRUMP ADMIN. ACCOMPLISHMENTS (2021), <https://trumpwhitehouse.archives.gov/trump-administration-accomplishments/>.

14. Aristos Georgiou, *Trump Fake News: U.N. Rapporteur Says President Is 'Worst' Peddler of Misinformation in America*, NEWSWEEK (Dec. 27, 2018, 8:22 AM), <https://www.newsweek.com/donald-trump-fake-news-un-special-rapporteur-freedom-expression-and-opinion-1272348>.

15. *In four years, President Trump made 30,573 false or misleading claims*, WASH. POST, updated Jan. 20, 2021, Fact Check #26,438 & #30,569, <https://www.washingtonpost.com/graphics/politics/trump-claims-database/?claim=31611>.

16. Jane C. Timm, *President Donald Trump's 10 Biggest False Claims in 2019 — and One That Finally Became True*, NBC NEWS (Dec. 31, 2019, 3:30 AM), <https://www.nbcnews.com/politics/donald-trump/president-donald-trump-s-10-biggest-false-claims-2019-one-n1101151#anchor-Claim1Ukraineinterferedinthe2016election>.

17. THE ASSOCIATED PRESS, *'Stay Calm, It Will Go Away: Trump Plays Down Coronavirus Threat*, N.Y. TIMES (Mar. 10, 2020), <https://www.nytimes.com/video/us/politics/010000007026448/trump-coronavirus.html>. These instances reflect but a small sample. See also Libby Cathey, *Legacy of lies — how Trump weaponized mistruths during his presidency*, ABC NEWS (Jan. 20, 2021), <https://abcnews.go.com/Politics/legacy-lies-trump-weaponized-mistruths-presidency/story?id=75335019>; Igor Bobic, *The First 100 Lies: The Trump Team's Flurry Of Falsehoods*, HUFFPOST, https://www.huffpost.com/entry/donald-trump-administration-lies-100_n_58ac7a0fe4b02a1e7dac3ca6 (updated Feb. 28, 2017).

18. Hope Yen, *AP Fact Check: Yes, Trump Lost Election Despite What He Says*, AP NEWS (May 6, 2021), <https://apnews.com/article/donald-trump-michael-pence-electoral-college-elections-health-2d9bd47a8bd3561682ac46c6b3873a10>; Domenico Montanaro, *Trump Returns To*

happen when a sacred landslide election victory is . . . viciously stripped away”¹⁹—the Trump administration embraced a torrent of misinformation and disinformation that was without precedent.²⁰

Trump’s interminable penchant for falsehood and misrepresentation did not give matters pertaining to human rights a bye.²¹ This Article explores the misinformation and disinformation associated with U.S. human rights policy under the Trump administration by scrutinizing its decision to establish a Commission on Unalienable Rights (“COUR”). The Commission’s work is likely to stand as a high-water mark for the Trump administration’s efforts to subvert international human rights norms through misinformation and disinformation. The Article’s first section briefly introduces key concepts relating to misinformation and disinformation. The second part reviews the establishment of the COUR and the substance of its final report, released in August 2020. With this background in place, the third and fourth sections highlight how the Commission and its report represent a skewed vision of human rights that fails to align with previous U.S. policy and contemporary international norms, and moreover, has opened an ongoing disinformation fissure that risks undermining U.S. leadership and its defense of the international human rights system against other authoritarian and illiberal actors. Despite the Biden administration’s perfunctory repudiation of the report, this paper concludes that an effective and durable rebuttal to the COUR initiative is necessary and will require active policy engagement and educational efforts.

I. ON MISINFORMATION & DISINFORMATION

In discussing the Trump administration’s misinformation and disinformation efforts surrounding human rights, it is useful to first clarify the distinction in terms. Misinformation and disinformation are typically distinguished on the basis of intention.²² The European Union (“EU”), under its

Campaign Trail With Election Lies and Dark Warnings, NPR (updated June 5, 2021), <https://www.npr.org/2021/06/05/1003282315/silenced-on-facebook-and-twitter-trump-is-set-to-speak-out-again-on-campaign-tra>.

19. Brooke Singman, *Trump Says Election was ‘Stolen’ and ‘These are the Things and Events That Happen’ Tells People to ‘Go Home’*, FOX NEWS (Jan. 6, 2021), <https://www.foxnews.com/politics/trump-tells-protesters-to-go-home-maintaining-that-the-election-was-stolen-amid-violence-at-the-capitol>.

20. Glenn Kessler et al., *Trump’s False or Misleading Claims Total 30,573 Over 4 Years*, WASH. POST (Jan. 24, 2021, 3:00 AM), <https://www.washingtonpost.com/politics/2021/01/24/trumps-false-or-misleading-claims-total-30573-over-four-years/>.

21. Nor did Trump desist in spreading disinformation after vacating the White House. See, e.g., Maeve Reston, *Trump Advances Dangerous Disinformation Campaign as More States Move to Restrict the Vote*, CNN POL. (June 6, 2021), <https://www.cnn.com/2021/06/06/politics/trump-election-lies-north-carolina/index.html>.

22. Claire Wardle & Hossein Derakhshan, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policymaking* 5 (Council of Eur., Rep. DGI(2017)09, 2017),

action plan to combat disinformation, equates the latter phenomenon with “verifiably false or misleading information that is created, presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm.”²³ As the EU plan observes, actors responsible for spreading disinformation “may be internal . . . or external, including state (or government sponsored) and non-state actors.”²⁴ As a further clarification, disinformation transcends “fake news,” “a term [that] has been appropriated and used misleadingly by powerful actors to dismiss coverage that is simply found disagreeable.”²⁵ Additionally, the term “information manipulation” is sometimes used to describe the “coordinated use of social or traditional media to manipulate and influence public debate by deliberately spreading or amplifying information that is false, misleading, or distorted. . . .”²⁶

State and non-state actors alike can function as the “origin” or “maker” of disinformation.²⁷ These actors in turn distribute disinformation through various channels that can consist of both witting and unwitting “agents of influence.”²⁸ The disinformation at issue “can be projected *internally* against the state’s own

<https://rm.coe.int/information-disorder-report-november-2017/1680764666> (distinguishing “misinformation” and “dis-information” from “mal-information” which arises when “genuine information is shared to cause harm, often by moving information designed to stay private into the public sphere”).

23. *Commission Joint Communication to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions Action Plan Against Disinformation*, at 1, JOIN(2018) 36 final (May 12, 2018) [hereinafter *Action Plan Against Disinformation*]. See also Manuel Rodriguez, *Disinformation Operations Aimed at (Democratic) Elections in the Context of Public International Law: The Conduct of the Internet Research Agency During the 2016 US Presidential Election*, 47 INT’L J. LEGAL INFO. 149, 153 (2019) (defining disinformation as “deliberately misleading information that has the function of misleading someone. It is the deliberate creation and/or sharing of information known to be false. Therefore, the intent to deceive and the low facticity are central”) (internal quotes omitted).

24. *Action Plan Against Disinformation*, *supra* note 23, at 3.

25. *Commission Report of the independent High level Group on fake news and online disinformation: A multi-dimensional approach to disinformation*, at 5 (Mar. 12, 2018), <https://digital-strategy.ec.europa.eu/en/library/final-report-high-level-expert-group-fake-news-and-online-disinformation>.

26. This definition also includes “engaging in deceptive practices like masking or misrepresenting the provenance or intent of content, and/or intentionally suppressing information.” *Authoritarian Interference Tracker: Methodology*, ALL FOR SECURING DEMOCRACY, <https://securingdemocracy.gmfus.org/toolbox/authoritarian-interference-tracker/#methodology> (last visited Oct. 11, 2021).

27. Anna Yamaoka-Enkerlin, *Disrupting Disinformation: Deepfakes and the Law*, 22 NYU J. LEGIS. & PUB. POL’Y 725, 734 (2020) (relaying the “Disinformation Disruption Framework” developed by the DeepTrust Alliance).

28. Scott J. Shackelford et. al., *Defending Democracy: Taking Stock of the Global Fight Against Digital Repression, Disinformation, and Election Insecurity*, 77 WASH. & LEE L. REV. 1747, 1759–60 (2020).

population or *externally* against the population of another state, or both.”²⁹ In an effort to extract desired strategic outcomes, these campaigns aspire to influence or distort the social discourse, foment internal fissures, sow “confusion and informational paralysis,”³⁰ and undermine public faith in and credibility of institutions, including government and the media.³¹ As the EU has concluded, disinformation “also often supports radical and extremist ideas and activities.”³²

More broadly, permitting the spread of disinformation threatens the very fabric of democracy “by hampering the ability of citizens to take informed decisions.”³³ By distorting public opinion, societal debates, and behavior, disinformation can in turn negatively affect the policy-making process itself.³⁴ This conclusion is corroborated by a 2018 RAND study, which identified disinformation as a danger “because it can sow confusion among media consumers (including in the [general public] and among political leaders) and lead to policies that have unintended negative implications or that do not address key issues.”³⁵

This type of policy manipulation can impact a state’s approach to various initiatives, including human rights. Disinformation drives what the RAND study labels “truth decay”—diminishing respect for facts, data, and analysis—“because it obscures the distinction between opinion and fact and massively inflates the amount of false information, effectively drowning out facts and objective analysis”³⁶ More troubling still, the potential for this type of manipulation is amplified by the “pernicious” ability of misinformation “to continue to influence thinking long after someone initially sees it.”³⁷ This persistence, lingering “even after someone has been shown a factual correction

29. Marko Milanovic & Michael N. Schmitt, *Cyber Attacks and Cyber (Mis)information Operations During a Pandemic*, 11 J. NAT’L. SEC. L. & POL’Y 247, 266 (2020).

30. THE DISINFORMATION AGE: POLITICS, TECHNOLOGY, AND DISRUPTIVE COMMUNICATION IN THE UNITED STATES 3 (W. Lance Bennett & Steven Livingston eds., Cambridge Univ. Press 1st ed. 2021) [hereinafter Bennett & Livingston].

31. Jill I. Goldenziel & Manal Cheema, *The New Fighting Words?: How U.S. Law Hampers the Fight Against Information Warfare*, 22 U. PA. J. CONST. L. 81, 83–84 (2019).

32. *Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions for Tackling online disinformation: a European Approach*, at 1, COM (2018) 236 final (Apr. 26, 2018).

33. *Id.*

34. *Id.* at 2.

35. JENNIFER KAVANAGH & MICHAEL D. RICH, TRUTH DECAY: AN INITIAL EXPLORATION OF THE DIMINISHING ROLE OF FACTS AND ANALYSIS IN AMERICAN PUBLIC LIFE 124 (RAND Corporation 2018).

36. *Id.* at 126.

37. Beth Goldberg, *Can “Inoculation” Build Broad-Based Resistance to Misinformation?*, JIGSAW (Mar. 17, 2021), <https://medium.com/jigsaw/can-inoculation-build-broad-based-resistance-to-misinformation-6c67e517e314>.

of the false claim,” makes the effective refutation of misinformation particularly challenging.³⁸

It is important to recognize that while much contemporary media attention focuses on Russia and China as purveyors of misinformation and disinformation, the United States has a long record of conducting similar projects abroad.³⁹ Additionally, in the specific context of human rights, efforts to downplay or undercut norms or possible violations raise profound challenges for the international order at large. Misinformation and disinformation targeting human rights not only challenges the stability of international and regional institutions intended to either elaborate on such rights or shine light on their abuse; it also exposes vulnerable groups and individuals to heightened risk while creating an atmosphere of impunity for those eager to fuel the disinformation as a tactic for masking malign action. As Human Rights Watch has observed,

[P]urveyors of fake news seek to make facts fungible, and to render the world a cacophony of competing hyper-partisan narratives where adjudication becomes meaningless and the only truth flows from supporters of the demagogue. . . . they seek to break the link between evidence and culpability, making it more difficult to ensure those accountable pay for their misdeeds.⁴⁰

These concerns are rendered manifest in the face of the Trump administration’s onslaught of misinformation and disinformation directed at downplaying or deflecting human rights. One can, for example, draw a direct line from Trump’s distorted messaging regarding detention conditions at the U.S. border,⁴¹ racial discrimination,⁴² the free press,⁴³ and White supremacy⁴⁴

38. *Id.*

39. Adam Taylor, *Before ‘Fake News,’ There was Soviet ‘Disinformation’*, WASH. POST (Nov. 26, 2016), <https://www.washingtonpost.com/news/worldviews/wp/2016/11/26/before-fake-news-there-was-soviet-disinformation/>.

40. *Why ‘Fake News’ as Word of the Year is Bad for Human Rights*, HUM. RTS. WATCH (Nov. 6, 2017), <https://www.hrw.org/news/2017/11/06/why-fake-news-word-year-bad-human-rights>.

41. Jane Dalton, *Trump’s migrant camps on US border ‘undignified and damaging’*, says UN human rights chief, INDEPENDENT (July 8, 2019), <https://www.independent.co.uk/news/world/americas/us-border-migrant-camp-mexico-trump-un-human-rights-children-a8994831.html>.

42. Morgan Chalfant, *Trump Dismisses Question on Deaths of Black Americans in Police Custody*, HILL (July 14, 2020), <https://thehill.com/homenews/administration/507329-trump-dismisses-question-on-deaths-of-Black-Americans-in-police-custody->; Kevin Liptak & Kristen Holmes, *Trump Calls Black Lives Matter a ‘Symbol of Hate’ as he Digs in on Race*, CNN (July 1, 2020), <https://edition.cnn.com/2020/07/01/politics/donald-trump-black-lives-matter-confederate-race/index.html>.

43. Nick Cumming-Bruce, *U.N. Human Rights Chief Condemns Trump’s Attacks on Media*, N.Y. TIMES (Aug. 30, 2017), <https://www.nytimes.com/2017/08/30/world/europe/trump-press-untied-nations.html>.

44. See, e.g., Adam Serwer, *The President’s Pursuit of White Power*, ATLANTIC (Jan. 13, 2019), <https://www.theatlantic.com/politics/archive/2019/01/trump-embraces-white-supremacy/579745/>; Sarah McCammon, *From Debate Stage, Trump Declines to Denounce White Supremacy*,

to increased vulnerability of targeted groups and their exposure to rights violations.⁴⁵ Trump's domestic practices of denying the legitimacy of human rights concerns also align with his international embrace of autocrats around the globe. Indeed, beyond merely diminishing the status of rights protections⁴⁶ and the rule of law at home, Trump's misinformation campaign took every opportunity to lambast traditional U.S. allies⁴⁷ and undercut international human rights institutions, while eagerly shoring up adversaries and minimizing their own abuses.⁴⁸

For example, while the media provided much coverage of Trump's decision to withdraw from the UN Human Rights Council on the grounds that it represented a "hypocritical and self-serving organization that makes a mockery of human rights,"⁴⁹ a lesser-told story reveals the Trump administration's nearly total rejection of the legitimacy of that body's special procedures mandate-holders. These independent special rapporteurs and experts report on a range of human rights issues including arbitrary detention, disability, migrants, racism, and religion or belief.⁵⁰ Most states have extended "standing invitations" to these procedures.⁵¹ During President Obama's second term in office, the United States

NPR (Sept. 30, 2020), <https://www.npr.org/2020/09/30/918483794/from-debate-stage-trump-declines-to-denounce-white-supremacy>.

45. See, e.g., *100 Ways Trump Has Threatened Human Rights – And How We Fought Back*, AMNESTY INT'L, <https://www.amnestyusa.org/Trump100Days/> (last visited Oct. 12, 2021).

46. See, e.g., Kate Sosin, *Trump has Gutted LGBTQ+ Rights. Could a Biden Presidency Undo the Damage?*, USA TODAY (Oct. 10, 2020), <https://www.usatoday.com/story/news/politics/2020/10/10/trump-has-gutted-lgbtq-rights-biden-presidency-might-undo-damage/3608929001/>; Jacob Knutson & Orion Rummier, *Trump Pushes to Expand Ban Against Anti-Racism Training to Federal Contractors*, AXIOS (updated Sept. 23, 2020), <https://www.axios.com/trump-discrimination-training-federal-contractors-63b3515d-9720-4d53-abfd-530262f9f9b8.html>.

47. *G7 Summit: Donald Trump Lashes out at America's Key Allies*, BBC NEWS (June 11, 2018), <https://www.bbc.com/news/world-us-canada-44434558>; J. Edward Moreno, *Trump Insulted UK's May, Called Germany's Merkel 'Stupid' in Calls: Report*, HILL (June 30, 2019), <https://thehill.com/homenews/administration/505182-trump-insulted-uks-may-called-germanys-merkel-stupid-in-calls-report>.

48. Liz Williams, *Trump Administration Excludes Key Human Rights Issues From Its Reports*, OPENDEMOCRACY (Oct. 28, 2020), <https://www.opendemocracy.net/en/openjustice/trump-administration-excludes-key-human-rights-issues-its-reports/> (noting several leading human rights NGOs criticized significant gaps in U.S. State Department reports on human rights issued under Trump, "including the reduced reporting on women's and LGBTI rights and omissions of abuses perpetrated by non-state actors").

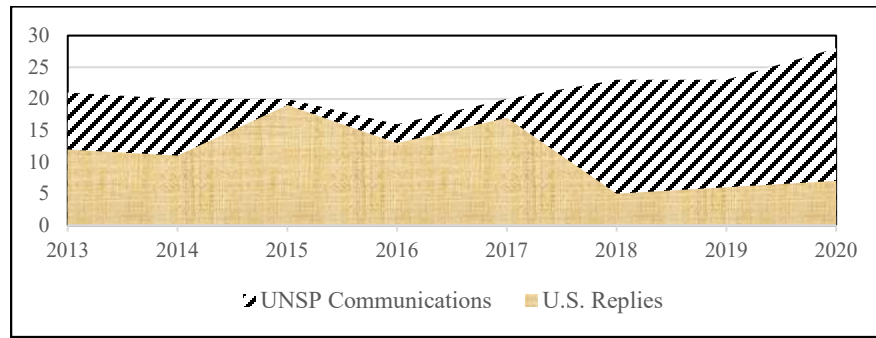
49. Matthew Lee & Josh Lederman, *Trump Administration Pulls US out of UN Human Rights Council*, AP NEWS (June 19, 2018), <https://apnews.com/article/united-nations-north-america-ap-top-news-international-news-politics-9c5b1005f064474f9a0825ab84a16e91>.

50. See U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, THEMATIC MANDATES, <https://spinternet.ohchr.org/ViewAllCountryMandates.aspx?Type=TM&lang=en> (last visited Oct. 14, 2021).

51. As of this writing, 127 UN Member States and one non-Member Observer State have extended a standing invitation to thematic special procedures. See U.N. HUM. RTS. OFF. OF THE

maintained a reply rate of seventy-one percent to communications from UN mandate-holders. This rate dropped precipitously to thirty-six percent during the Trump administration (see table below).⁵² This degree of non-cooperation invites similar action from other governments seeking to distort their own human rights records and avoid engagement with the international community. The damage that flows to U.S. leadership from alienating international human rights reporting mechanisms is plainly summarized in one U.S. official's take, "It was hard to lobby the Somali government . . . for human rights when Trump and Tillerson were saying that human rights weren't important."⁵³

UN SPECIAL PROCEDURES: COMMUNICATIONS FROM MANDATE-HOLDERS AND U.S. REPLIES, JANUARY 2013–JANUARY 2020



Within this disinformation environment, Trump single-handedly rendered democratic alliances more tenuous and unsteady in their resolve against grave ongoing global challenges. At the same time, these actions emboldened autocrats across the globe. Some regimes eagerly transplanted Trump's approach to their own ends, justifying suppression of media outlets⁵⁴ and

HIGH COMM'R, STANDING INVITATIONS, <https://spinternet.ohchr.org/StandingInvitations.aspx> (last visited Oct. 14, 2021).

52. Data compiled from Jan. 1, 2013, to Jan. 1, 2020, thematic procedures. U.N. HUM. RTS. OFF. OF THE HIGH COMM'R, COMM'N REP. & SEARCH, <https://spcommreports.ohchr.org> (last visited Oct. 14, 2021).

53. BOB MENDEZ, U.S. SENATE COMM. ON FOREIGN REL., THE COST OF TRUMP'S FOREIGN POLICY: DAMAGES & CONSEQUENCES FOR U.S. & GLOBAL SECURITY 61 (Oct. 21, 2020), https://www.foreign.senate.gov/download/2020-sfrc-minority-report_the-cost-of-trumps-foreign-policy—damage-and-consequences-for-us-and-global-security [hereinafter *The Cost of Trump's Foreign Policy* (2020)].

54. See Caryl, *supra* note 4. This conduct continued unabated for remainder of Trump's term in office. Robin Wright, *The Unbelievable Hypocrisy of Trump's New "Unalienable Rights" Panel*, NEW YORKER (July 9, 2019), <https://www.newyorker.com/news/our-columnists/the-unbelievable-hypocrisy-of-trumps-new-unalienable-rights-panel> [hereinafter Wright (July 2019)].

undermining government institutions.⁵⁵ In Myanmar, for example, one Burmese security official asserted, “There is no such thing as Rohingya. . . . It is fake news.”⁵⁶ In Syria, President Bashar al-Assad responded to an Amnesty International report about prisoner deaths by asserting, “we are living in a fake-news era.”⁵⁷ Most egregiously, the Trump administration’s approach to human rights—emphasizing disinformation and rejecting its international relevancy—fueled “Russia’s general aims of questioning the value of democratic institutions, and of weakening the international credibility and international cohesion of the United States and its allies and partners.”⁵⁸

To be clear, this critique is not intended as partisan in nature. As Robin Wright observed, Trump’s attack on human rights “discarded or ignored” established “American principles and policies shared by both parties—promoting democracy, defending human rights, containing aggression, and addressing climate change, migration, and public health . . .”⁵⁹ This view is affirmed by dozens of Republican national security officials who recognized that:

Donald Trump has aligned himself with dictators and failed to stand up for American values. Trump has regularly praised the actions of dictators and human rights abusers. He proclaimed his “love” and “great respect” for North Korean strongman Kim Jong Un, endorsed “brilliant leader” Xi Jinping’s move to serve as China’s president for life, repeatedly sided with Vladimir Putin against our own intelligence community, and pronounced himself a “big fan” of Turkish president Recep Erdogan despite his crackdown on democracy.⁶⁰

55. Steven Erlanger, *Fake News, Trump’s Obsession, Is Now a Cudgel for Strongmen*, N.Y. TIMES (Dec. 12, 2017), <https://www.nytimes.com/2017/12/12/world/europe/trump-fake-news-dictators.html> [hereinafter Erlanger (Dec. 2017)].

56. Uri Friedman, *The Real-World Consequences of ‘Fake News’*, ATLANTIC (Dec. 23, 2017), <https://www.theatlantic.com/international/archive/2017/12/trump-world-fake-news/548888/>.

57. Erlanger (Dec. 2017), *supra* note 55.

58. U.S. DEP’T OF STATE, GLOBAL ENGAGEMENT CENTER SPECIAL REPORT: PILLARS OF RUSSIA’S DISINFORMATION AND PROPAGANDA ECOSYSTEM 6 (2020), https://www.state.gov/wp-content/uploads/2020/08/Pillars-of-Russia’s-Disinformation-and-Propaganda-Ecosystem_08-04-20.pdf.

59. Robin Wright, *A Dubious Pompeo Speech for an Empty Trump Foreign Policy*, NEW YORKER (Aug. 26, 2020), <https://www.newyorker.com/news/our-columnists/at-the-republican-national-convention-a-vacuous-pompeo-speech-for-an-empty-trump-foreign-policy>.

60. Statement by Former Republican National Security Officials, *Defending Democracy Together* (Aug. 20, 2020), <https://www.defendingdemocracytogether.org/national-security/> (emphasis omitted). These conclusions place President Trump’s record in sharp contrast to the bipartisan tradition of promoting democracy and human rights. *See* Letter from U.S. Senators Marco Rubio, Susan M. Collins, Benjamin L. Cardin, Edward J. Markey, Cory A. Booker, Richard J. Durbin, Todd Young, Robert Menendez, Cory Gardner, Roger F. Wicker, Patrick Leahy, Christopher A. Coons, Thom Tillis, Lisa Murkowski, & Jeffrey A. Merkley to President Donald Trump (May 3, 2017) (recognizing a “longstanding and deep bipartisan Congressional commitment to advancing freedom around the world, just as Republican and Democratic administrations for

With an understanding in place concerning the impact of misinformation and disinformation in the human rights arena, the following sections focus on the Commission on Unalienable Rights (“COUR”) to demonstrate how far the Trump administration was prepared to go in using disinformation to upend long-standing consensus around human rights. This Commission, born of the Trump administration’s loathing of multilateralism and desire to prioritize select rights at the expense of others, crafted a retrograde narrative for human rights platformed on misinformation and disinformation. Further, as will be demonstrated, its final report—and the administration’s selective use of certain of its findings (effectively generating a second “wave” of misinformation and disinformation around the report)—exacerbated the threat posed to key human rights institutions, vulnerable populations, and U.S. relations with traditional western allies, while emboldening authoritarian and illiberal forces.

II. THE COUR REPORT: CHALLENGE TO COMMON POLITICAL KNOWLEDGE

It is helpful to consider the COUR report through the framework of common knowledge attacks on democracy. Henry Farrell and Bruce Schneier have argued that to better understand and mitigate disinformation, it should be framed as an attack that seeks to manipulate expectations and common understandings shared by a given state.⁶¹ This approach focuses on two forms of political knowledge, common and contested. The former relates to knowledge everyone needs to share for the political system to operate. This “roughly shared knowledge. . . allows for decentralized political coordination.”⁶² In contrast, contested political knowledge includes information that is contestable. In this space, people may disagree,⁶³ but such disagreements do not destabilize the underlying substance that represents the common knowledge, or what “everyone ‘knows.’”⁶⁴ Unlike disputes over contested knowledge, disagreements regarding common political knowledge pose a danger to democracies inasmuch as they target foundational knowledge necessary to maintain those societies.⁶⁵ These

decades have supported democracy and human rights”); *see also* Sarah B. Snyder, *The Trump Administration’s Insidious Approach to Human Rights*, in INT’L SEC. STUDIES FOREIGN POL’Y SERIES: AMERICA & THE WORLD—THE EFFECTS OF TRUMP’S PRESIDENCY 1, 2–3 (Diane Labrosse ed., 2021) (noting President Regan made human rights “one of the four points on the agenda . . . for all . . . discussions with the Soviet Union”).

61. Harry Farrell & Bruce Schneier, *Common-Knowledge Attacks on Democracy* (Harv. U. Berkman Klein Ctr. for Internet & Soc’y, Research Publication No. 2018-7, 2018) [hereinafter Farrell & Schneier (Oct. 2018)].

62. *Id.* at 6.

63. *Id.* at 2 (citing Russian efforts to target systems used to communicate election results in Ukraine and false content posted to U.S. social media in the leadup to the 2016 election as attacks on common political knowledge).

64. *Id.* at 7.

65. *Id.* at 11.

attacks tend “to be more aimed at degrading than persuading; that is, at making democratic debate more difficult rather than attempting to change people’s minds in a particular direction.”⁶⁶

Farrell and Schneier posit political actors and the public share two types of common political knowledge that are key to the proper functioning of democracy: (1) the nature of political institutions and commitment to the democratic process; and (2) common knowledge over the range of actors, beliefs, and opinions in society.⁶⁷ This common political knowledge, while helpful, does not go far enough in fleshing out key commonalities. For example, whether by implication⁶⁸ or corollary, shared knowledge common across democratic societies necessarily includes the political obligation to protect and promote human rights, including the rights of minorities and other vulnerable populations.⁶⁹

Accordingly, much like the attacks described by Farrell and Schneier that undercut common political knowledge by targeting political institutions, this Article reasons that information attacks on the source, nature, and function of human rights similarly undercut a more widely held common expectation that puts the larger collective of democratic states at risk. Farrell and Schneier acknowledge this possibility themselves by correctly suggesting that where people across many societies can generally agree on its broad contours, elements of common political knowledge have the capacity to transcend borders.⁷⁰ Therefore, like attacks on key political institutions such as elections, disinformation attacks relating to human rights risk damaging the common political knowledge required for democracy to work and render the community of democracies vulnerable.⁷¹

As noted below, the danger flowing from this scenario is even more acute because the human rights framework has traditionally been a common political priority of democratic states. Where that framework is challenged from within, as in the case of the COUR report, the common political knowledge of these states is attenuated, casting doubt on its foundational nature while at the same time empowering authoritarian and illiberal actors. Borrowing Farrell and

66. *Id.* at 4.

67. *Id.* at 8–9.

68. *Id.* at 11 (although the article in question does not reference the term “human rights”, it is implicit in concepts like “the democratic process” and the need to prevent “attacks on shared expectations about the fairness of the political system”).

69. See Larry Diamond, Stan. Univ., Lecture at Hilla University for Humanistic Studies: What is Democracy? (Jan. 21, 2004), <https://diamond-democracy.stanford.edu/speaking/lectures/what-democracy> (noting democracy consists of four basic elements, including “Protection of the human rights of all citizens”); U.N., GLOBAL ISSUES: DEMOCRACY, <https://www.un.org/en/global-issues/democracy> (last visited Oct. 15, 2021) (noting “Democracy provides an environment that respects human rights and fundamental freedoms. . .”).

70. Farrell & Schneier (Oct. 2018), *supra* note 61, at 11.

71. *Id.* at 11–12.

Schneier's words, "such attacks disrupt democracy by degrading citizens' and groups' shared political knowledge . . . fomenting confusion . . . [and] widening the political debate so that it includes perspectives that enjoy little actual public support."⁷² By disconnecting its assessment of human rights from the realities reflected in customary international law, multilateral treaties, and international and regional human rights institutions, the COUR report destabilizes consensus and undercuts the resilience of this community's common political knowledge.⁷³ This in turn seeds doubt about U.S. leadership and its commitment to human rights, exposing allied states, human rights institutions and advocates, and vulnerable minorities and other victims of human rights abuses to emboldened authoritarian actors who seek to discredit democracy while downplaying their own human rights violations.

From the outset, Secretary of State Mike Pompeo's intention to establish a "Commission on Unalienable Rights" drew expressions of puzzlement and concern, at least in part because it appeared to target common political knowledge. One former Bush administration official wondered what the COUR was "supposed to do that the [State Department's Bureau of Democracy, Human Rights, and Labor ("DRL")] doesn't already do."⁷⁴ More critically still, media reports linked the Commission's stated mandate of providing "fresh thinking about human rights discourse where such discourse has departed from our nation's founding principles of natural law and natural rights"⁷⁵ to Princeton

72. *Id.* at 15–16.

73. *Id.* at 14.

74. Nahal Toosi, *State Department to Launch New Human Rights Panel Stressing 'Natural Law'*, POLITICO (May 30, 2019), <https://www.politico.com/story/2019/05/30/human-rights-state-department-1348014>; Press Release, Human Rights First, State Commission on Unalienable Rights Must Focus on Reversing Harm Done by Administration (July 8, 2019), <https://www.humanrightsfirst.org/press-release/state-commission-unalienable-rights-must-focus-reversing-harm-done-administration> (noting the Commission was devised "without the input or awareness of the State Department's human rights experts or members of Congress").

75. Department of State Commission on Unalienable Rights, 84 Fed. Reg. 25109 (May 30, 2019). This purpose was echoed in a draft of the Commission's charter, however the language relating to "principles of natural law and natural rights" appears to have been struck from the final version. Compare Department of State Commission on Unalienable Rights Charter art. 3 (May 10, 2019) ("The Commission provides the Secretary of State informed advice and recommendations concerning international human rights matters. The Commission provides fresh thinking about human rights and proposes reforms of human rights discourse where it has departed from our nation's founding principles of natural law and natural rights, to which Lincoln called us at Gettysburg and to which King called us while standing in front of the Lincoln Memorial on the Mall in Washington, D.C."), with Department of State Commission on Unalienable Rights Charter art. 3 (June 26, 2019) ("The Commission provides advice and recommendations on human rights to the Secretary of State, grounded in our nation's founding principles and the 1948 Universal Declaration of Human Rights. The Commission's charge is not to discover new principles, but to furnish advice to the Secretary for the promotion of individual liberty, human equality, and democracy through U.S. foreign policy.") [hereinafter COUR Charter (June 2019)].

Professor Robert George, a conservative ideologue. George, a champion of religious liberty at the expense of other rights, is also the co-founder of the National Organization for Marriage (“NOW”),⁷⁶ an anti-same sex marriage NGO that has partnered with Kremlin-linked groups⁷⁷ to supplant individual human rights and to oppose what it perceives as “a growing international threat against the family” stemming from “overreach by international institutions.”⁷⁸

Alongside the throwback use of “unalienable” rights, the invocation of “natural law” and “natural rights” as the impetus for deliberations around contemporary human rights norms signaled a clear intention to prioritize conservative values, including the “natural family.”⁷⁹ A letter addressed to

76. Conor Finnegan, *State Dept. Panel to Redefine Human Rights Based on ‘Natural Law and Natural Rights’*, ABC NEWS (May 31, 2019), <https://abcnews.go.com/Politics/state-dept-panel-redefine-human-rights-based-natural/story?id=63400485>. NOW’s current president, Brian Brown, is also president of the International Organization of the Family (“IOF”), an organization branded “an anti-LGBT hate group” by the Southern Poverty Law Center. See Hatewatch Staff, *Brian Brown Named President of Anti-LGBT World Congress of Families*, S. POVERTY L. CTR. (June 2, 2016), <https://www.splcenter.org/hatewatch/2016/06/02/brian-brown-named-president-anti-lgbt-world-congress-families>.

77. Rosalind S. Helderman & Tom Hamburger, *Guns and Religion: How American Conservatives Grew Closer to Putin’s Russia*, WASH. POST (Apr. 30, 2017), https://www.washingtonpost.com/politics/how-the-republican-right-found-allies-in-russia/2017/04/30/e2d83ff6-29d3-11e7-a616-d7c8a68c1a66_story.html (noting that Brown “visited Moscow four times in four years, including a 2013 trip during which he testified before the Duma as Russia adopted a series of anti-gay laws”). As part of these burgeoning ties to Russia, Brian Brown is linked to Konstantin Malofeev, a Russian oligarch closely associated with the Kremlin and Russian Orthodox Church, who is also the target of U.S., EU, and Canadian sanctions for his support of pro-Russian separatists in Ukraine’s Donbas region. See Hannah Levintova, *The World Congress of Families’ Russian Network*, MOTHER JONES, Feb. 21, 2014, <https://www.motherjones.com/politics/2014/02/world-congress-families-us-evangelical-russia-family-tree> (describing the connection between “NOW” and Malofeev’s St. Basil the Great Charitable Foundation, the largest Orthodox Charity in Russia); DEP’T OF THE TREASURY, OFF. OF FOREIGN ASSETS CONTROL, SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS LIST (“SDN LIST”) (2021) (confirming U.S. sanctions in place against Malofeev); Maksym Bugriy, *Hot Issue – Konstantin Malofeev: Fringe Christian Orthodox Financier of the Donbas Separatists*, JAMESTOWN FOUND. (Aug. 8, 2014), <https://jamestown.org/program/hot-issue-konstantin-malofeev-fringe-christian-orthodox-financier-of-the-donbas-separatists/> (confirming Canadian and EU sanctions).

78. NAUREEN SHAMEEM, RIGHTS AT RISK: THE OBSERVATORY ON THE UNIVERSALITY OF RIGHTS TRENDS REPORT 2017, (OURs Working Group et al. eds.) (describing an “unholy alliance” between “traditionalist actors from Catholic, Evangelical, Mormon, Russian Orthodox, and Muslim faith backgrounds” who have “found common cause in shared talking points and advocacy efforts attempting to revert feminist and sexual rights gains at the international level”).

79. See, e.g., Clifford Bob, *Why Trump’s New Commission on Unalienable Rights is Likely to Upset the Human Rights Community*, WASH. POST (June 6, 2019), <https://www.washingtonpost.com/politics/2019/06/06/this-is-why-trumps-new-commission-unalienable-rights-is-likely-upset-human-rights-community/>; Wright (July 2019), *supra* note 54 (concluding the Commission’s Federal Register notice “invoked rights only as ‘God-given’ [and] implicitly challenged man-made

Secretary Pompeo by a group of democratic senators reiterated the “deep concern” over the flawed process and intent surrounding the COUR. The senators cautioned that the term “natural law” was “sometimes used in association with discrimination against marginalized populations” and that State Department’s list of COUR commissioners—“individuals known to support discriminatory policies toward LGBTQ people, hold views hostile to women’s rights, and/or support positions at odds with U.S. treaty obligations”—could not satisfy the requirement for diversity of views under the Federal Advisory Committee Act (“FACA”).⁸⁰ Further clouding the COUR’s start, several human rights groups sued Secretary Pompeo under FACA, arguing the State Department failed to comply with its requirements concerning the Commission’s chartering and the public release of its records.⁸¹

Pompeo’s opening remarks at the COUR’s official inauguration only reinforced these initial concerns, putting a bizarre array of “the most basic of questions” to the Commission members and in the process betraying his parochial insistence that any rights had to be God-given:

- 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?⁸²

laws as well as decisions by the Supreme Court on abortion, homosexuality, and same-sex marriage”).

80. Letter from U.S. Senators Robert Menendez, Patrick Leahy, Richard J. Durbin, Jeanne Shaheen, & Christopher Coons to Sec’y of State Michael R. Pompeo (June 12, 2019) (warning the Commission “must not serve as a platform to further erode U.S. leadership and undercut U.S. interests”); *see also* Letter from Jamie Raskin Chair, House Subcomm. on Civil Rights & Civil Liberties, Comm. on Oversight & Reform, & Joaquin Castro, Chair, Subcomm. on Oversight & Investigations, Comm. on Foreign Affairs, to Mary Ann Glendon, Ambassador & Chair, Comm’n on Unalienable Rights, & Dr. Peter Berkowitz, Exec. Sec’y, Comm’n on Unalienable Rights (June 9, 2020) (expressing “serious misgivings about the direction taken by the State Department’s new Commission on Unalienable Rights” and requesting the production of various documents and information as well as a briefing by the COUR commissioners before a House subcommittee).

81. Complaint at 4–5, 24, 35, Robert F. Kennedy Ctr. for Just. & Hum. Rts. v. Pompeo, No. 1:20-cv-02002 (S.D.N.Y. Mar. 6, 2020), *dismissed*, No. 1:20-cv-02002(JGK) (S.D.N.Y. Feb. 17, 2021) (suit dismissed without prejudice as moot).

82. Michael R. Pompeo, U.S. Sec’y of State, Remarks to the Press (July 8, 2019) (transcript available at <https://2017-2021.state.gov/secretary-of-state-michael-r-pompeo-remarks-to-the-press-3/index.html>) [hereinafter Pompeo Remarks (July 2019)]. Secretary Pompeo’s last question to the Commission suggested the COUR also take on the task of proving God’s existence.

Although a newly revised COUR charter acknowledged the Universal Declaration of Human Rights (“UDHR”) as a touchpoint for the Commission’s inquiry, it failed to reference or incorporate the significant body of law that had emerged in the seventy years since the UDHR, in the form of binding custom and international human rights treaties, including several ratified by the United States. Thus, from the outset, the COUR would undertake its task of “providing advice to the Secretary regarding human rights in international settings” against an artificially constrained framework that effectively denied the robust evolutive nature of the international human rights system and remained anchored to a limited notion of “unalienable” rights derived from the “nation’s founding principles.”⁸³

Secretary Pompeo did not attempt to conceal the rationale for this warped departure point:

[W]hen politicians and bureaucrats create new rights, they blur the distinction between unalienable rights and ad hoc rights granted by governments. Unalienable rights are by nature universal. Not everything good, or everything granted by a government, can be a universal right. Loose talk of “rights” unmoors us from the principles of liberal democracy.⁸⁴

To further justify the intention that the COUR bifurcate worthy unalienable rights rooted in the U.S. Declaration of Independence from less worthy so-called “ad hoc” rights, Secretary Pompeo misleadingly invoked Dr. Martin Luther King, Jr.’s iconic *I Have a Dream*⁸⁵ Speech as illustrative of “fidelity to our nation’s founding principles.”⁸⁶ More accurately, Dr. King’s speech recognized social and economic rights—what Pompeo disparagingly labels “new rights” created by “politicians and bureaucrats”—as a requisite component for fulfilling the Framers’ promise of “unalienable rights,”⁸⁷ and alongside this, also

83. COUR Charter (June 2019), *supra* note 75, at ¶ 3.

84. COUR Charter (June 2019), *supra* note 75; Michael R. Pompeo, *Unalienable Rights and U.S. Foreign Policy: The Founders’ Principles Can Help Revitalize Liberal Democracy Worldwide*, WALL ST. J. (July 7, 2019), <https://www.wsj.com/articles/unalienable-rights-and-u-s-foreign-policy-11562526448>.

85. *Id.*; see also Pompeo Remarks (July 2019), *supra* note 82.

86. Pompeo Remarks (July 2019), *supra* note 82.

87. Among other things, King’s historic address speaks to the crippling inequality derived from *economic* discrimination and segregation, observing that Black people were relegated to “liv[ing] on a lonely island of poverty in the midst of a vast ocean of material prosperity,” and that the “true meaning” of the creed “all men are created equal” entailed the removal of economic barriers fueled by discrimination. Martin Luther King, Jr., *I Have a Dream* (Aug. 28, 1963), in NPR (Jan. 18, 2010), <https://www.npr.org/2010/01/18/122701268/i-have-a-dream-speech-in-its-entirety> [hereinafter King, *I Have a Dream* Speech]. Others have recognized this connection, see, e.g., Douglas E. Thompson, *Economic equality: Martin Luther King Jr.’s Other Dream*, WASH. POST (Jan. 21, 2019), <https://www.washingtonpost.com/outlook/2019/01/21/economic-equality-martin-luther-king-jrs-other-dream/>; Michael K Honey, *Martin Luther King’s forgotten legacy? His fight for economic justice*, GUARDIAN (Apr. 3, 2018), <https://www.theguardian.com/commentisfree>

articulated a sweeping right to freedom as necessarily belonging to “all of God’s children.”⁸⁸

As the newly minted Commission members and a revised COUR charter took shape, a large coalition of foreign policy, human rights, civil liberties, social justice and faith leaders formally urged the secretary of state to “disband [the] body [and] focus [his] personal attention on the significant challenges currently facing the protection of human rights globally.”⁸⁹ In brief, the chief concerns raised by this group remained focused on the Trump administration’s decision to establish the COUR without the DRL’s input, its failure to “be fairly balanced in its membership,”⁹⁰ and its disregard for the prevailing international consensus “that all rights are universal and equal.”⁹¹

Already before starting its work, therefore, the COUR’s mandate was platformed on disinformation and information manipulation that undercut conventional common political knowledge across western democracies and beyond. These seeds of untruth planted by Secretary Pompeo—constricting consideration of international human rights law against a stilted backdrop of natural law/natural rights and stipulating a division between unalienable and lesser “ad hoc” rights despite the international consensus view that “all human rights are universal, indivisible and interdependent and interrelated”⁹²—nurtured an illusory realm utterly detached from the contemporary international legal framework. It is within this artifice that the COUR would purport to provide “advice and recommendations on human rights.”⁹³ Further, given their backgrounds signaling a heavy emphasis on religious freedom, the commissioners themselves ultimately would reinforce this distorted and

/2018/apr/03/martin-luther-king-50th-anniversary-; *Martin Luther King Jr. and the Fight For Racial and Economic Justice*, UAW (Jan. 21, 2019), <https://uaw.org/martin-luther-king-jr-fight-racial-economic-justice/>.

88. King, I Have a Dream Speech, *supra* note 87 (emphasis added). This language echoes the inclusive departure point premise of the Universal Declaration of Human Rights: “All human beings are born free and equal in dignity and rights.” G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 1 (Dec. 10, 1948) (emphasis added) [hereinafter UDHR].

89. Letter to Sec’y of State Michael R. Pompeo (July 23, 2019) (undersigned by “U.S. foreign policy, human rights, civil liberties, social justice, and faith leaders, experts, scholars, and organizations”) [hereinafter Letter to Pompeo (July 2019)].

90. According to the coalition letter, many of the commissioners maintained “extreme positions opposing LGBTQI and reproductive rights, and some have taken public stances in support of indefensible human rights violations. The Commission’s chair, [Mary Anne Glendon], has stated that marriage equality undercuts the welfare of children.” *Id.*

91. *Id.*

92. World Conference on Human Rights, *Vienna Declaration and Programme of Action*, § I ¶ 5, U.N. Doc. A/CONF.157/23 (June 25, 1993), <https://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>.

93. COUR Charter (June 2019), *supra* note 75.

restrictive vision of human rights. As the coalition letter to Secretary Pompeo summarized:

Almost all of the Commission's members have focused their professional lives and scholarship on questions of religious freedom, and some have sought to elevate it above other fundamental rights. . . . No Commissioner focuses nearly as exclusively on any other issue of pressing concern contained with the UDHR, including the right to asylum, the right to be free from torture, the right to equal protection against any discrimination, or any of the UDHR's enumerated economic, social, and cultural rights, among other topics.⁹⁴

Between 2019–2020, the COUR held a handful of public consultations leading up to publication of a draft report in July 2020.⁹⁵ Following a two-week public comment period, the COUR released its final report on August 26, 2020. This report reflected only minimal changes because, in the COUR's view, the public comment period "restated perspectives" already taken into account.⁹⁶ The absence of any notable modifications meant that the COUR's final work product embedded many of Secretary Pompeo's original omissions and distortions. Predictably, an array of human rights organizations aligned to reject the report as undermining U.S. commitments to human rights.⁹⁷ At the same time, conservative, religious, and family-rights groups—as well as the Commission's own members—applauded the COUR for its work.⁹⁸

94. Letter to Pompeo (July 2019), *supra* note 89.

95. See U.S. DEP'T OF STATE, DRAFT REPORT OF THE COMMISSION ON UNALIENABLE RIGHTS (2020), <https://2017-2021.state.gov/draft-report-of-the-commission-on-unalienable-rights/index.html>. In response to the two-week public comment period, the author submitted a standalone letter, Robert C. Blitt, *To Russia, With Love*, JURIST (July 30, 2020), <https://www.jurist.org/commentary/2020/07/robert-blitt-to-russia-with-love>, and co-signed a coalition letter released by Human Rights First, Press Release, Letter to Mary Ann Glendon, Chairperson, Commission on Unalienable Rights (July 30, 2020) [hereinafter Letter to Glendon (July 2020)].

96. U.S. DEP'T OF STATE, FINAL REPORT OF THE COMMISSION ON UNALIENABLE RIGHTS (2021), <https://2017-2021.state.gov/report-of-the-commission-on-unalienable-rights/index.html> [hereinafter REPORT OF THE COUR]. On January 5, 2021, Peter Berkowitz sent an action memorandum to then Secretary Pompeo recommending that the Commission be terminated because its work was complete. Pompeo approved this action memorandum, setting termination of the Commission effective January 14, 2021. Declaration in Support of Motion at 3, Robert F. Kennedy Ctr. for Justice & Hum. Rts. v. Pompeo, No. 1:20-cv-02002 (S.D.N.Y. Mar. 6, 2020), *dismissed*, No. 1:20-cv-02002(JGK) (S.D.N.Y. Feb. 17, 2021) (suit dismissed without prejudice as moot).

97. Letter to Glendon (July 2020), *supra* note 95.

98. See, e.g., *Commission on Unalienable Rights Did a Good, not Great, Job*, RUTH INST. (Aug. 17, 2020), <http://www.ruthinstitute.org/ruth-speaks-out/ruth-inst-commission-on-unalienable-rights-did-a-good-not-great-job> ("We applaud the Commission for an excellent exposition of the origins of human rights. But we wish it had gone further and issued a strong defense of the natural rights that are currently under assault."); Emilie Kao & Brett Schaefer, *Pompeo's Panel Offers Needed Clarity, Guidance on Human Rights*, DAILY SIGNAL (July 20, 2020), <https://www.dailysignal.com/2020/07/20/pompeos-panel-offers-needed-clarity-guidance-on->

Several of the most problematic COUR distortions merit attention. First, although its final report observes that human rights are “indivisible and interdependent,” its substance is dedicated to undercutting this premise and entrenching a rights hierarchy with property and religious liberty at its apex.⁹⁹ This approach in turn dismisses other *lesser* rights or *new* rights that operate to protect vulnerable groups. One might presume that such a dismissal includes rights extended to the disabled and elderly—two specific classes omitted from enumerated protection under the UDHR. But more explicitly, the Commission makes plain that its framing denies the legitimacy of LGBTQ equality and non-discrimination as a rights issue, instead characterizing the issue as a “divisive social and political controvers[y]”¹⁰⁰—in the COUR’s own words, a “contestable political preference” cloaked “in the mantle of human rights.”¹⁰¹

Taking this dim view does serious damage to the UDHR’s article 1 *grundnorm* establishing that “[a]ll human beings are born free and equal in dignity and rights.”¹⁰² It also gravely ignores the UDHR’s forward-looking orientation to ensure for *everyone* “the rights and freedoms set forth in [the] Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth *or other status*.”¹⁰³ This intentional phrasing demonstrates that the enumerated grounds envisioned in 1948 were intended as illustrative and flexible, rather than narrow and restricted.¹⁰⁴ The Commission further diminishes this foundational truth by failing to observe that this same spirit has carried over to all major

human-rights/ (both authors affiliated with the Heritage Foundation); E. Douglas Clark, *Protecting Sacred Rights and Rejecting Pseudo Rights: Secretary Pompeo and the Draft Report of the Commission on Unalienable Rights*, INT’L FAMILY NEWS (July 23, 2020), <https://ifamnews.com/en/protecting-sacred-rights-and-rejecting-pseudo-rights-secretary-pompeo-and-the-draft-report-of-the-commission-on-unalienable-rights> (“applaud[ing] the leadership of Secretary Pompeo and the work of the Commission he established—a landmark initiative as bold and timely as was the creation of the Declaration of Independence itself”); Teleforum, *The Commission on Unalienable Rights Report, Human Rights, and U.S. Foreign Policy*, FEDERALIST SOC’Y (July 31, 2020), <https://fedsoc.org/events/the-commission-on-unalienable-rights-report-human-rights-and-u-s-foreign-policy>; Peter Berkowitz & Mary Ann Glendon, *Commission on Unalienable Rights: Lessons Learned*, REALCLEARWORLD (Jan. 7, 2021), https://www.realclearworld.com/articles/2021/01/07/commission_on_unalienable_rights_lessons_learned_655765.html [hereinafter Berkowitz & Glendon (Jan. 2021)].

99. REPORT OF THE COUR, *supra* note 96, at 13, 37.

100. UDHR, *supra* note 88, art. 25; REPORT OF THE COUR, *supra* note 96, at 24.

101. REPORT OF THE COUR, *supra* note 96, at 25.

102. UDHR, *supra* note 88, art. 1. The Commission so buries this fundamental norm, that one must reach the second to last page of its report before it is clearly acknowledged. REPORT OF THE COUR, *supra* note 96, at 56.

103. UDHR, *supra* note 88, art. 2 (emphasis added).

104. Robert C. Blitt, *Leveraging Regional Human Rights Mechanisms Against Universal Human Rights: The OIC Independent Permanent Human Rights Commission Study on Sexual Orientation*, 60 WM. & MARY L. REV. ONLINE, no. 1, 2018, at 1, 33 (internal quotes omitted).

international human rights instruments—including those ratified by the United States¹⁰⁵—and reflects a longstanding practice to ensure provisions governing non-discrimination close “with the words ‘other status.’”¹⁰⁶

Second, the COUR justifiably raises concerns over the proliferation of “soft law” norms that are untethered from “formally binding legal norms in ratified treaties.”¹⁰⁷ The Commission observes that this practice runs the risk of damaging the credibility of the human rights framework. This norm proliferation critique is by no means a new one.¹⁰⁸ But in pointing it out, the COUR neglects the much larger damage its analysis inflicts upon the human rights system. The Commission attacks the process of norm creation, asserting that it “frequently privilege[s] the participation of self-appointed elites.”¹⁰⁹ This attack on elites—reiterated by the COUR elsewhere¹¹⁰—neglects the fact that the United States’ own “elites” have played a central role in these processes. But more profoundly disturbing, it also taps into the narrative constructed by an assortment of radical-right parties espousing nationalist agendas that “attack elite ‘deep state’ and ‘globalist’ institutions with conspiracy theories, and widen social divisions with racism, religious hatred, alarming stories about migrants, and other exclusionary discourses.”¹¹¹ This “rejection of the elites” mantra has been identified as “a root cause of the crisis of information manipulation,”¹¹² and, perhaps not

105. See, e.g., G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 2, ¶ 1 (Mar. 23, 1976) (“Each State Party . . . undertakes to respect and to ensure to all individuals . . . the rights recognized in the present Covenant, without distinction of any kind, *such as* race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”) (emphasis added).

106. U.N. High Comm’r for Human Rights, Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law, at 40, U.N. Doc. HR/PUB/12/06 (Aug. 2012). More generally, the law of treaties recognizes that where “a treaty is open to two interpretations one of which does and the other does not enable the treaty to have appropriate effects, good faith and the objects and purposes of the treaty demand that the former interpretation should be adopted.” *Report of the Commission to the General Assembly: Draft Articles on the Law of Treaties with Commentaries*, at 219 [1996] 2 Y.B. Int’l Law Comm’n. 187, U.N. Doc. A/CN.4/SER.A/1966/Add.I. In the International Law Commission’s view, when properly limited and applied, this approach “does not call for an ‘extensive’ or ‘liberal’ interpretation in the sense of an interpretation going beyond what is expressed or necessarily to be implied in the terms of the treaty.” *Id.*

107. REPORT OF THE COUR, *supra* note 96, at 41.

108. See generally, Robert C. Blitt, *Who Will Watch the Watchdogs? Human Rights Nongovernmental Organizations and the Case for Regulation*, 10 BUFF. HUM. RTS. L. REV. 261 (2004).

109. REPORT OF THE COUR, *supra* note 96, at 41.

110. For example, the COUR report attacks international human rights institutions as “rife with serious flaws,” because of the “enormous discretion in the professional elites who staff their permanent bureaucracies.” REPORT OF THE COUR, *supra* note 96, at 48.

111. Bennett & Livingston, *supra* note 30, at 11.

112. Jean-Baptiste Jeangène Vilmer, et al., POL’Y PLAN. STAFF (CAPS) OF THE MINISTRY FOR EUR. & FOREIGN AFF. & THE INST. FOR STRATEGIC RSCH. (IRSEM) OF THE MINISTRY FOR THE

coincidentally, is readily evidenced in statements by former president Trump¹¹³ and members of his cabinet,¹¹⁴ as well as conservative outlets¹¹⁵ that have championed the COUR report.

The Commission's preoccupation with lamenting the proliferation of soft law norms also flouts the nine duly entered into force and formally binding treaties that have built upon the rights and norms originally expressed by the UDHR.¹¹⁶ Detaching its assessment from these formally binding legal norms alienates the U.S. from other established democracies and endangers vulnerable groups and individuals who might fall outside the narrow black letter of human rights law as the COUR—or the hostile state—perceives it.

Ultimately, the COUR's sweeping effort to discard "non-binding resolutions, declarations, standards, commitments, guiding principles, etc." as it heaps praise upon the UDHR—itsself originally a non-binding UN General Assembly resolution—is awkward at best. At worst, however, it manifests an overt attempt to distort seventy years of tireless effort on the part of the international community—the United States included—to build consensus towards codifying a better, more durable, if still imperfect, system of rights protection for everyone, everywhere. Rather than offer a measured and nuanced

ARMED FORCES, *Information Manipulation: A Challenge for Our Democracies*, at 37 (Aug. 2018), https://www.diplomatie.gouv.fr/IMG/pdf/information_manipulation_rvb_cle838736.pdf.

113. At one rally in Louisiana, president Trump incoherently cut into the "elites": "You know they call them the elite? We're the elite. We're the elite. I know this, speaking for myself, I went to better schools than they did, I have nicer houses than they do. I have nicer apartments. I have nicer everything. And they're elite. But we're not elite? You people work your asses off. You're making a lot of money." James Walker, *Donald Trump Blasts Elites at Louisiana Rally, Boasts He Has 'Nicer Houses' Than They Do*, NEWSWEEK (Nov. 7, 2019), <https://www.newsweek.com/donald-trump-elites-nicer-houses-louisiana-rally-1470298>.

114. For example, Trump's Attorney General, William Barr referred to the International Criminal Court as "little more than a political tool employed by unaccountable international elites." Julian Borger, *Trump Targets ICC with Sanctions After Court Opens War Crimes Investigation*, GUARDIAN (June 11, 2020), <https://www.theguardian.com/us-news/2020/jun/11/trump-icc-us-war-crimes-investigation-sanctions>. On his way out of office, Secretary Pompeo similarly lashed out at critics, branding them "elites" and "globalists." Julian Borger, *Mike Pompeo Declares China's Treatment of Uighurs 'Genocide'*, GUARDIAN (Jan. 19, 2021), <https://www.theguardian.com/world/2021/jan/19/mike-pompeo-china-uighur-genocide-sanctions-xinjiang>.

115. See, e.g., a Heritage Foundation report asserting that "[e]lites have ignored the concerns of U.N. member states and are trying to manufacture and impose new sexual orientation and gender identity ("SOGI") rights. Creating new rights based on membership in special identity groups corrodes the principles of equality and universality." Emilie Kao & Grace Melton, *The U.S. Must Protect Human Rights of All Individuals Based on Human Dignity—Not on Membership in Identity Groups*, HERITAGE FOUND., May 24, 2018, at 1, BACKGROUND, No. 3321. Writing elsewhere, Kao lauded the COUR's final report. See Kao, *supra* note 98 (claiming the COUR report provided "much-needed clarity to a domestic and global conversation that has become muddled and politicized.").

116. U.N. HIGH COMM'R FOR HUM. RTS., *THE CORE INT'L HUM. RTS. TREATIES*, at 1, U.N. Doc. ST/HR/3/Rev. 1, U.N. Sales No. E.14.XIV.1 (2014).

critique of legitimate flaws with the contemporary human rights system, the COUR charts a path favoring the wholesale discrediting of international human rights institutions and a dangerous retrograde static framing of human rights norms that throws the baby out with the bathwater.

Finally, in its effort to narrow the possibility of “new” human rights, the Commission promotes a flawed emphasis on sovereignty and an underdeveloped baseline for human rights compliance that is at odds with the principle of universality. Four of the COUR’s twelve formal conclusions work to undercut universality by enlarging allowances for non-uniformity and national traditions, in turn encouraging a prioritization of sovereignty that abets relativism. For example, the report concludes that states must be permitted their “independence and sovereignty . . . to make their own moral and political decisions that affirm universal human rights within the limits” provided by the UDHR.¹¹⁷ This formulation is troubling in three key respects.

First, in making this claim, the COUR imposes an originalist reading on the UDHR. Doing so belies the document’s open-ended drafting, its evolutive history over seventy years,¹¹⁸ and the overarching obligation to interpret human rights texts to ensure their contemporary and practical effect.¹¹⁹ This approach unnecessarily impedes the scope of potentially protected rights. Exacerbating this, the COUR erroneously holds out the UDHR’s provision on rights limitations as the international gold standard. This view neglects the legally binding standards established under the core human rights treaties, including the International Covenant on Civil and Political Rights (“ICCPR”), that enshrine limitations clauses that are decidedly more specific and narrowly tailored than the UDHR.¹²⁰

117. REPORT OF THE COUR, *supra* note 96, at 57.

118. U.N., THE FOUNDATION OF INTERNATIONAL HUMAN RIGHTS LAW, <https://www.un.org/en/about-us/udhr/foundation-of-international-human-rights-law> (last visited Oct. 17, 2021).

119. *Loizidou v. Turkey (Preliminary Objections)*, App. 15318/89, ¶ 72 (Mar. 23, 1995), <http://hudoc.echr.coe.int/eng?i=001-57920>.

120. Secretary Pompeo might be dismayed to learn that the UDHR would authorize sweeping limits on the right to freedom of thought, conscience, and religion “for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare.” UDHR, *supra* note 88, art. 29. In contrast, the legally binding ICCPR “does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally.” U.N. Hum. Rts. Comm., General Comment 22, at art. 18 ¶¶ 3, 8, Freedom of Thought, Conscience or Religion, U.N. Doc. CCPR/C/21/Rev. 1/Add. 4 (1993). Only one part of this broad right is subject to limit—the freedom to manifest one’s religion or beliefs—and then, only where “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” *Id.*; U.N. Int’l Hum. Rts. Instruments, at 35–37, Compilation of General Comments & General Recommendations Adopted By Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev. 1 (1994).

Freezing human rights as they were in 1948 and endorsing a sweeping limitations clause to restrict those rights derides the international system's progress over the last seventy years. But perhaps most alarmingly, the COUR report's untethered approach furnishes authoritarian states with new fodder to reenergize their worn invocations of sovereignty and non-interference as a means of avoiding accountability for their own rights violations. By validating state sovereignty as a shield against international scrutiny of human rights norms disparaged as new or out of line with national traditions, the COUR clouds longstanding recognition that human rights are justifiably a matter of international concern.¹²¹ This in turn lends credence to those who cleave to the false notion that any critique of domestic human rights abuses is tantamount to interference in internal affairs and violates state sovereignty.¹²²

As the next section demonstrates, the misinformation and disinformation contained in the COUR report and disseminated by U.S. officials and others damages common political knowledge concerning the source, nature, and function of international human rights. In so doing, the report destabilizes international institutions and weakens the community of democratic states that are waging a genuine struggle against illiberal and authoritarian forces seeking to undermine the substance of contemporary human rights and the effectiveness of international human rights mechanisms. From this perspective, the COUR report feeds into the Trump administration's penchant for illiberalism and provides a dangerous new tool for authoritarian actors seeking to validate their own repressive policies.¹²³

121. OSCE Off. for Democratic Inst. & Hum. Rts. (ODIHR), *OSCE Human Dimension Commitments: Thematic Compilation Vol. 1*, at XXVII (3d ed., 2005) ("OSCE participating States are no longer in a position to invoke the non-intervention principle to avoid discussions about human rights problems within their countries. This explains why the OSCE is not only a community of values but also a community of responsibility. And it has to be stressed that this responsibility focuses not only on the right to criticize other States in relations to violations of human dimension commitments but also on the duty to assist each other in solving specific problems.").

122. See, e.g., Robert C. Blitt, *The Organization of Islamic Cooperation's (OIC) Response to Sexual Orientation and Gender Identity Rights: A Challenge to Equality and Nondiscrimination Under International Law*, 28 U. IOWA TRANSNAT'L L. & CONTEMP. PROBS. J. 89, 102–11 (2018) (discussing and comparing various OIC resolutions with non-interference provisions of the *Bangkok Declaration*, issued by representatives of Asian states in the leadup to the 1993 World Conference on Human Rights); Report by the Ministry of Foreign Affairs of the Russian Federation, *Human Rights Situation in Certain Countries (Moscow 2021)*, https://www.mid.ru/en/web/guest/foreign_policy/humanitarian_cooperation/-/asset_publisher/bB3NYd16mBFC/content/id/4025481 (noting "[T]he issue of human rights is still used by some countries . . . as a pretext for interference in internal affairs of independent states in violation of their sovereignty.") (unofficial unedited translation released by Ministry of Foreign Affairs on file with the author).

123. *The Cost of Trump's Foreign Policy* (2020), *supra* note 53, at 50 (noting autocratic governments have emulated Trump's illiberal attacks on freedom of the press and the rule of law).

III. PERPETUATING DISINFORMATION: PEDDLING THE COUR REPORT

From the moment of its release, the COUR report provided fodder for human rights disinformation. Secretary Pompeo praised the report's emphasis on the primacy of property rights and religious liberty.¹²⁴ He further expressed an eagerness to restrict U.S. support to only "foundational, unalienable rights" at the expense of what the COUR report branded social and political controversies dressed up as rights violations.¹²⁵ As discussed below, Secretary Pompeo's advocacy—particularly his selective framing of the source for human rights and the nature of the American rights tradition—effectively generated an additional layer of disinformation by blatantly discarding certain other key findings acknowledged in the COUR report.¹²⁶

For her part in perpetuating the COUR's human rights misinformation, Mary Ann Glendon, the Commission's chair, cautioned that permitting a "rapidly expanding catalog of rights...not only multiplies the occasion for risks of collision, but risks trivializing core American values."¹²⁷ This warning openly contradicted the deliberate seventy-year march towards enlarging the international community's understanding of human rights and building out protections for children, women, migrants, and persons with disabilities, among others. Moreover, it wrongly depicted the U.S.'s own core values as stagnant, in turn diminishing our collective capacity to repurpose them and render them relevant to contemporary needs and challenges. Indeed, the same flawed rationale underlying Glendon's advocacy of rights retrenchment is mirrored in the retrograde arguments proffered in the wake of Abraham Lincoln's 1863 Emancipation Proclamation that preserved for over seventy years the defective notion that separate but equal would suffice for achieving racial equality under the U.S. Constitution.

These and similar glosses on the COUR report, reflecting further varying degrees of information manipulation, came to be repeated by U.S. government

124. Michael R. Pompeo, U.S. Sec'y of State, Speech at the National Constitution Center: Unalienable Rights and the Securing of Freedom (July 16, 2020) (transcript available at <https://2017-2021.state.gov/unalienable-rights-and-the-securing-of-freedom/index.html>) [hereinafter Pompeo Speech at National Constitution Center (July 2020)].

125. *Id.*

126. REPORT OF THE COUR, *supra* note 96, at 29. See discussion in Part IV below and *infra* note 223.

127. Pompeo Speech at National Constitution Center (July 2020), *supra* note 124.

officials at the United Nations,¹²⁸ with foreign government¹²⁹ and civil society interlocutors,¹³⁰ and even incorporated into U.S. policy in the waning days of the Trump administration. Moreover, as demonstrated below, each of these subsequent interactions underscored how the COUR's disinformation functioned to detach the United States from the community of democratic states and from international human rights law, and instead invite a rapprochement with illiberal and authoritarian actors.

A. *COUR Advocacy at the United Nations*

To explore this phenomenon in greater depth, consider a virtual event at the United Nations hosted by the United States on the heels of release of the COUR report. At this meeting, Secretary Pompeo expressed hope the COUR report would “serve as an inspiration to other nations and peoples. They should turn to their traditions and rededicate themselves to their moral, philosophical, and religious resources to affirm the rights inherent in all persons—the rights at the core of the UDHR.”¹³¹ In making this statement, the Secretary of State at least tacitly encouraged states to set aside any binding treaty obligations they might have in favor of the COUR's faulty portrayal of a narrow set of rights frozen in 1948 and detached from seventy years of international evolution. This deeply problematic disinformation was not lost on western diplomats. Many democracies declined to participate in the event, with the European Union urging its member states to stay away.¹³² According to one diplomat, the U.S. approach

128. Carol Morello, *Pompeo Urges Other Countries to Join Alternative U.S. View on Human Rights*, WASH. POST (Sept. 23, 2020), https://www.washingtonpost.com/national-security/pompeo-human-rights-un/2020/09/23/f34a4d2c-fdc2-11ea-830c-a160b331ca62_story.html (explaining that the event featured “a roundtable with [Mary Ann] Glendon, an Indonesian Muslim scholar and a Chinese human rights advocate who spoke on the principles rooted in Confucian philosophy”) [hereinafter Morello (Sept. 2020)].

129. Michael R. Pompeo, U.S. Sec’y of State, Speech at Wallenstein Palace (Czech Republic): Securing Freedom in the Heart of Europe (Aug. 12, 2020) (transcript available at <https://it.usembassy.gov/securing-freedom-in-the-heart-of-europe/>).

130. Michael R. Pompeo, U.S. Sec’y of State, Speech at Nahdlatul Ulama & Gerakan Pemuda Ansor Event: Remarks by Secretary Pompeo on Unalienable Rights and Traditions of Tolerance (Oct. 29, 2020) (transcript available at <https://id.usembassy.gov/remarks-by-secretary-pompeo-on-unalienable-rights-and-traditions-of-tolerance/>) (observing “the most fundamental of these rights is the right to freedom of conscience, including religious freedom” and “our people have the same yearning for God-given unalienable rights as people everywhere do”) [hereinafter Pompeo Remarks (Oct. 2020)].

131. Michael R. Pompeo, U.S. Sec’y of State, Video Remarks on Promoting and Protecting Human Rights: A Re-Dedication to the Universal Declaration of Human Rights (Sept. 23, 2020) (transcript available at <https://2017-2021.state.gov/promoting-and-protecting-human-rights-a-re-dedication-to-the-universal-declaration-of-human-rights/index.html>).

132. Morello (Sept. 2020), *supra* note 128.

avored “cherry picking” some rights and “few [western diplomats] were interested in attending.”¹³³

In another revealing UN meeting during the 2020 Universal Periodic Review for the United States, the U.S. permanent representative boasted, “at home and abroad, we continue to advocate for the universal freedoms of religion, speech, including for members of the press; and for the rights of individuals to peaceably assemble, and to petition their government for a redress of grievances.”¹³⁴ But a quick review of the examples proffered by the ambassador to demonstrate the U.S. commitment to protecting this ostensibly varied set of human rights betrayed the Trump administration’s penchant for human rights misinformation, and instead reflected a singular preoccupation with religion and “traditional” family values:

- A memorandum on religious liberty protections in U.S. federal law that guides all federal executive departments;
- An International Religious Freedom Alliance, joining twenty-five other member states in advancing freedom of religion or belief around the world;
- Signing the Geneva Consensus Declaration in support of defending life and protecting the family, with thirty-two other countries; and
- The first of its kind Commission on Unalienable Rights.¹³⁵

B. Building Foreign Support for the COUR: Nahdlatul Ulama & the Centrist Democrat International

In the context of dissemination of the COUR report abroad, a gathering sponsored by Nahdlatul Ulama (“NU”) (Revival of the Ulama)/Gerakan Pemuda Ansor,¹³⁶ Indonesia’s largest Muslim organization, bears consideration. Secretary Pompeo’s remarks at this event drew heavily on the COUR report, asserting that of the “God-given rights,” the most fundamental “is the right to freedom of conscience, including religious freedom. It’s the basis for the most important conversations about what conscience tells us and about what God demands of each of us.”¹³⁷

From this theologically-constrained human rights foundation, Secretary Pompeo insisted on the need to actively “uphold[] our traditions,” and saluted NU and its sister organization as “powerful forces in the defense of unalienable

133. *Id.*

134. Statement by Ambassador Andrew Bremberg, Permanent Representative of the U.S. to the U.N. in Geneva, Third Cycle Universal Periodic Review of the United States, U.S. Mission Geneva (Nov. 9, 2020), (transcript available at <https://geneva.usmission.gov/2020/11/09/upr-of-the-united-states-statement-by-ambassador-andrew-bremberg/>)

135. *Id.* The Geneva Consensus Declaration is discussed in greater detail below.

136. *Affiliations*, BAYT AR-RAHMAH, <https://baytarrahmah.org/affiliations/> (last visited Sept. 9, 2021).

137. Pompeo Remarks (Oct. 2020), *supra* note 130.

rights.”¹³⁸ Next, Secretary Pompeo discarded seventy years of human rights development—including binding treaty-based norms and obligations—to urge a world where international institutions should be limited to protecting unalienable rights alone.¹³⁹ Finally, Secretary Pompeo, with COUR chair Glendon in tow, used the visit to Jakarta to draw a direct connection between the COUR report and U.S. co-sponsorship of the newly signed Geneva Consensus Declaration (“GCD”) on Promoting Women’s Health and Strengthening the Family.¹⁴⁰

The GCD breaks with international norms on sexual and reproductive health,¹⁴¹ and instead promotes the “inherent right to life” of the unborn while foreclosing any allowance for abortion in the context of family planning.¹⁴² But for Secretary Pompeo, this declaration:

[S]imply acknowledges what we’ve been speaking about, this set of [unalienable] rights. And it protects the unborn. We’ve seen this even in international organizations where they’re actively hostile to some of the basic human rights that we’ve been speaking about here today. . . . [T]his Geneva Consensus . . . simply was a declaration of the very ideas that . . . our Unalienable Rights Commission spoke to, and the way that the international community must join hands to assist people in demanding that their governments respect this set of rights. . . . [W]e will never walk away from these fundamental protections for humanity and for human dignity.¹⁴³

With the link between the COUR and GCD established, Secretary Pompeo made plain that the COUR’s relegation of any right to abortion as a “social and political controversy” effectively translated life for the unborn into an unalienable right. As the Secretary summarized later: “The right to life is the first right, and without it, the other rights are meaningless.”¹⁴⁴

From Secretary Pompeo and the COUR’s perspective, therefore, the journey to Indonesia was a remarkable success. NU’s general secretary wrote that Indonesian society “has a natural predisposition to agree with the approach you advocate for positioning unalienable rights at the heart of a rules-based

138. *Id.*

139. *Id.*

140. *Id.*

141. G.A. Res 70/1 (Oct. 21, 2015) [AKA: Transforming our world: the 2030 Agenda for Sustainable Development]. Goal 3 is entitled, “Ensure healthy lives and promote well-being for all at all ages,” and target 3.7 states that “[b]y 2030, ensure universal access to sexual and reproductive health-care services, including for family planning, information and education, and the integration of reproductive health into national strategies and programmes.” *Id.* at 16.

142. Permanent Rep. of U.S. to the UN, Letter dated Dec. 2, 2020 from the Permanent Rep. of the U.S. to the Secretary-General, U.N. Doc. A/75/626 (Dec. 7, 2020) [hereinafter Geneva Consensus Declaration].

143. Pompeo Remarks (Oct. 2020), *supra* note 130.

144. Mike Pompeo (@mikepompeo), TWITTER (June 5, 2021, 4:15 PM), <https://twitter.com/mikepompeo/status/1401286465548603392>.

international order. . . . That is why we have unreservedly embraced the Report of the Commission on Unalienable Rights.”¹⁴⁵ For her part, Chair Glendon lauded the interaction as “vindica[tion]” for the COUR report and “an inspiring example of the exciting opportunities for which the commission’s work has laid the foundations.”¹⁴⁶

But as elaborated above, even an “unreserved” embrace of unalienable rights remains deeply flawed because it refutes the painstaking elaboration of the contemporary international human rights regime. Moreover, in this case, such a retrenchment potentially undermines the government of Indonesia’s compliance with duly ratified human rights treaties.¹⁴⁷

Beyond these concerns, the COUR’s boasting of NU as a human rights partner raises additional difficulties. NU’s goals of promoting humanitarian Islam¹⁴⁸ and curbing radicalism, extremism, and terrorism¹⁴⁹ are certainly laudable. But NU’s rejection of Islamic State-type theocracy alone does not convert the organization into a beacon for human rights broadly understood. Although “NU’s self-perception as the defender of pluralism has been echoed [in] much of the domestic and international academic discourse,”¹⁵⁰ the reality is more complex—and indeed less aligned with the image of an organization sincerely committed to promoting and protecting human rights for everyone. For example, a recent study suggests that pluralism and tolerance do not represent “deeply embedded norms” for NU, but rather function as “merely rhetorical instruments” to defend the organization’s political interests and power.¹⁵¹ This finding is corroborated by polling data indicating that NU supporters demonstrate religious and ethnic intolerance at rates “as high and pronounced as in the rest of the Indonesian Muslim community.”¹⁵² As the authors of the study conclude, these findings “should come as a sobering reminder to NU, as well as to those who have viewed it as a key promoter of tolerance and democracy in Indonesia. . . . [that] its campaigns have done little to ameliorate the levels of intolerance per se.”¹⁵³

145. Berkowitz & Glendon (Jan. 2021), *supra* note 98.

146. *Id.*

147. Indonesia has ratified ten of the UN’s eighteen human rights treaties. See U.N. HUM. RTS. OFF. OF THE HIGH COMM’R, RATIFICATION OF 18 INTERNATIONAL HUMAN RIGHTS TREATIES, <https://indicators.ohchr.org> (last visited Oct. 17, 2021).

148. NUSANTARA STATEMENT, BAYT AR-RAHMAH (Oct. 25, 2018), <https://www.baytarrahmah.org/media/2018/Nusantara-Statement.pdf>.

149. Krithika Varagur, *World’s Largest Islamic Organization Tells ISIS To Get Lost*, HUFFPOST (Dec. 2, 2015) https://www.huffpost.com/entry/indonesian-muslims-counter-isis_n_565c737ae4b072e9d1c26bda.

150. Marcus Mietzner & Burhanuddin Muhtadi, *The Myth of Pluralism*, 42 CONTEMP. SE. ASIA 58, 60, 61 (2020).

151. *Id.* at 61, 62.

152. *Id.* at 61, 74.

153. *Id.* at 61, 78.

NU's checkered past,¹⁵⁴ coupled with more contemporary events, throw into sharper relief the organization's tenuous embrace of tolerance as well as its suspect commitment to human rights beyond those grounded in tradition as elaborated by the COUR. For example, recent investigations indicate NU's grassroots clerics and followers have readily cast aside the theology of tolerance and pluralism promoted by senior leadership, and instead have instigated violent attacks against Indonesia's Ahmadi and Shiite religious minorities.¹⁵⁵ This assessment is rendered even more damning when one considers that the organization's impressive 60 million adherents are not readily controlled by NU's national leadership, but in actuality follow guidance from these local clerics ("kiais"), "who voluntarily affiliated themselves and their [Islamic boarding schools] with the NU."¹⁵⁶ The U.S. State Department has confirmed the destabilizing effect of NU's decentralized organizational structure. In a 2006 cable, embassy officials identified "deeper fissures" in NU's leadership stemming from, among other factors, an "increasing influence of conservative blocs" within NU resulting from "more Wahhabist, radical teachings [] pulling students away from traditional learning from senior kiai" and the "increasing influence of hardliners over senior kiai."¹⁵⁷

COUR commissioners also pointed to the Centrist Democrat International ("CDI" or "IDC-CDI") as evidencing further global support for its prioritization

154. In the lead up to the Indonesian military's violent overthrow of President Sukarno, NU played a pivotal role in facilitating the campaign of annihilation against the PKI, Indonesia's Communist Party, and its affiliated organizations. *U.S. Embassy Tracked Indonesia Mass Murder 1965*, in NATIONAL SECURITY ARCHIVE, BRIEFING BOOK 607 (Brad Simpson, ed., 2017), <https://nsarchive.gwu.edu/briefing-book/indonesia/2017-10-17/indonesia-mass-murder-1965-us-embassy-files>. Among other things, NU's leadership endorsed the killing of individuals who "consciously joined PKI," provided the "bulk of support" for paramilitary operations to "root out" PKI elements, and used the chaos surrounding its "brutal attacks" to target "non-PKI victims involved in personal feuds with Ansor members [NU's youth wing]." Telegram 184A from the American Consulate, Medan, to the American Embassy, Jakarta (Dec. 6, 1965) (on file with the National Security Archive); Telegram A-386 from American Embassy, Jakarta to Secretary of State on the PKI Hunt in Central Java (Dec. 10, 1965) (on file with the National Security Archive).

155. Alexander R. Arifianto, *Practicing What it Preaches? Understanding the Contradictions Between Pluralist Theology and Religious Intolerance within Indonesia's Nahdlatul Ulama*, 55 AL-JAM'AH: J. ISLAMIC STUD. 241, 244 (2017). Arifianto suggests this inconsistency is due to NU leaving "ultimate theological authority with local clerics who run their own Islamic boarding (*pesantren*) schools and issue their own theological interpretations and rulings (*fatwa*) to be obeyed by their students and followers." *Id.* at 244-45.

156. *Id.* at 259.

157. Memorandum from Am. Embassy, Jakarta, on Central and East Java: Increasing Conservatism Concerns Local Nahdlatul Ulama (NU) Leadership (Nov. 26, 2006, 10:09 AM) (on file with the Public Library of U.S. Diplomacy).

of unalienable rights.¹⁵⁸ CDI describes itself as an international political group dedicated to promoting democracy and development, “whose thinking and behaviour are based on Christian values and principles of integral humanism open to transcendence and united in brotherhood.”¹⁵⁹ In an October 2020 resolution on “promoting solidarity and respect among the diverse people, cultures and nations of the world,” CDI went out of its way to name-drop the COUR report, calling it a “re-affirmation of the spirit and substance of fundamental human rights”¹⁶⁰

Chair Glendon described CDI’s decision to acknowledge the COUR report as “a particularly gratifying development,” and added that CDI’s president separately wrote to the COUR to communicate that CDI “unreservedly embrace[d] the report.”¹⁶¹ However much gratification the COUR might attach to the CDI’s embrace, its dubious validation is no more than a rubber stamp from global purveyors of misinformation already hostile to human rights. CDI’s executive committee boasts Trump-allied human rights antagonists including Prime Minister Viktor Orbán of Hungary and Prime Minister Janez Janša of Slovenia. In one damning report, the Council of Europe (“CoE”) accused the Orbán government of failing to comply with human rights obligations governing “the reception of asylum seekers and the integration of recognised refugees;” “stigmati[zing] and criminali[zing]” legitimate civil society activities; and “backsliding in gender equality and women’s rights.”¹⁶² Exacerbating this conduct, Orbán has refused to condemn instances of anti-Semitism in

158. Formerly the Christian Democrat International, the name change came about in 1999 due to the increasing membership of non-Christian political parties. See *History*, IDC-CDI, <https://www.idc-cdi.com/history/> (last visited Oct. 17, 2021).

159. IDC-CDI, *Statue of the Organization*, Doc. 16147 (Oct. 1, 2020), <https://www.idc-cdi.com/wp-content/uploads/2021/07/Legal-English.pdf>.

160. IDC-CDI, *Resolution on Promoting Solidarity and Respect Among the Diverse People, Cultures and Nations of the World*, Executive Video Conference 1/10/2020 (Oct. 1, 2020), <https://www.idc-cdi.com/wp-content/uploads/2020/10/Resolution-on-promoting-solidarity.pdf>.

161. U.S. DEP’T OF STATE, SECRETARY MICHAEL R. POMPEO WITH NINO SCALIA OF MADISON’S NOTES PODCAST (2020), <https://2017-2021.state.gov/secretary-michael-r-pompeo-with-nino-scalia-of-madisons-notes-podcast/index.html>.

162. Dunja Mijatović, Comm’r for Hum. Rts., Council of Eur., Report Following Her Visit To Hungary From 4 To 8 February 2019 (CommDH(2019)13, 2019), <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942f0d>. A year earlier, the UN High Commissioner for Human Rights refused to walk back his conclusion that Orbán was a racist: “It is time to stand up to the bullies of Mr Orbán’s ilk. So yes, I did call the increasingly authoritarian—though democratically elected—viktör Orbán a racist and xenophobe.” Tom Miles, *U.N. Human Rights Chief Calls Hungarian PM Orban a Racist*, REUTERS, Mar. 6, 2018, <https://news.yahoo.com/u-n-human-rights-chief-calls-hungarian-pm-165243153.html>.

Hungary¹⁶³ and has harnessed misinformation and disinformation¹⁶⁴ to, among other things, “attack women in politics, aggressively challenge feminism, and attack liberal values.”¹⁶⁵

For his part, Janša has been dubbed “Marshal Tweeto,” “mini-Trump,”¹⁶⁶ and “one of Europe’s most illiberal political figures.”¹⁶⁷ These monikers are an outgrowth of Janša’s penchant for spreading disinformation¹⁶⁸ and rejecting the application of international and regional norms intended to secure fundamental rights including the protection of migrants and media freedom. In response to a CoE memorandum criticizing the deterioration of freedom of expression and media freedom in Slovenia, Janša tweeted that the CoE Commissioner for Human Rights was part of a “#fakenews network.”¹⁶⁹

Orbán and Janša stand at the forefront of an assembly of illiberal-trending states seeking “to redefine norms and renegotiate the boundaries of acceptable behavior,” and they embody what Freedom House has labeled “the anti-

163. Ira Forman, *Viktor Orbán Is Exploiting Anti-Semitism*, ATLANTIC, Dec. 14, 2018, <https://www.theatlantic.com/ideas/archive/2018/12/viktor-orban-and-anti-semitic-figyelo-cover/578158/>.

164. Patrik Szicherle & Péter Krekó, Commentary, *Disinformation in Hungary: From Fabricated News to Discriminatory Legislation*, HEINRICH-BÖLL-STIFTUNG (2021), <https://eu.boell.org/en/2021/06/07/disinformation-hungary-fabricated-news-discriminatory-legislation> (noting the Orbán government has “set up a Russia-like model of media centralisation, leading to the manipulation of the population through centrally-controlled disinformation and a media empire following political orders.”).

165. Lucina Di Meco & Kristina Wilfore, *Gendered Disinformation is a National Security Problem*, BROOKINGS INSTIT. (Mar. 8, 2021), <https://www.brookings.edu/techstream/gendered-disinformation-is-a-national-security-problem/>.

166. Stephan Ozsvath, *Prime Minister Janez Jansa, Slovenia’s Marshal Tweeto and the Media*, DEUTSCHE WELLE (Mar. 4, 2021), <https://www.dw.com/en/prime-minister-janez-jansa-slovenias-marshall-tweeto-and-the-media/a-56764735>.

167. Amanda Coakley, *In Slovenia, a Trumpian Populist Assumes a Key European Post*, FOREIGN POL’Y (June 30, 2021), <https://foreignpolicy.com/2021/06/30/slovenia-janez-jansa-trumpian-populist-illiberal-european-council-presidency/>.

168. In one celebratory tweet, Janša wrote: “It’s pretty clear that American people have elected @realDonaldTrump @Mike_Pence for #4moreyears. More delays and facts denying from #MSM, bigger the final triumph for #POTUS. Congratulations @GOP for strong results across the #US.” @JJansaSDS, TWITTER (Nov. 4, 2020, 3:02 AM), <https://twitter.com/jjansasds/status/1323913419200864256?lang=en>.

169. *Slovenia n° 110/2021 Alert: Prime Minister Janša Attempts to Discredit Commissioner for Human Rights Dunja Mijatovic’s Report on Media Freedom in Slovenia*, COUNCIL OF EUROPE (June 11, 2021), https://www.coe.int/en/web/media-freedom/detail-alert?p_p_id=sojdashboard_WAR_coesojportlet&p_p_lifecycle=0&p_p_col_id=column-4&p_p_col_pos=2&p_p_col_count=3&_sojdashboard_WAR_coesojportlet_alertId=101263588. The CoE memorandum at issue called on Slovenian authorities “to put a stop to the marked deterioration of freedom of expression and of the media in the country.” Comm’r for Hum. Rts., Council of Eur., *Memorandum on Freedom of Expression and Media Freedom in Slovenia* (CommDH(2021)17, 2021), <https://rm.coe.int/memorandum-on-freedom-of-expression-and-media-freedom-in-slovenia/1680a2ae85>.

democratic turn.”¹⁷⁰ These actors have become so untethered that President Joseph Biden excluded Hungary from his 2021 virtual “Summit for Democracy.”¹⁷¹ As for Slovenia, it most recently confirmed its relegation to the EU’s “rogue club” by opting to confront that organization’s “serious concern” over rule of law issues in the country with a peculiar combination of diplomatic snubs and hate-speech.¹⁷² The fact that these leaders—driven as they are by a proclivity for misinformation and rejection of international human rights norms—have blessed the COUR exposes how antithetical its findings are to liberal democratic governance and the UDHR’s foundational promise of freedom and equality for all. Yet despite the deeply problematic nature of this endorsement, as well as NU’s, the COUR’s supporters continue to invoke both instances as validation for the Commission’s work well into the Biden administration.¹⁷³

C. *COUR Disinformation Informs U.S. Policy . . . And Attracts Authoritarian States*

In addition to manifesting itself in public statements and international diplomatic engagement, the COUR’s distorted approach to human rights also began to insert itself in policy in the waning days of the Trump administration. For example, the United States Agency for International Development (“USAID”) published a draft Gender Equality and Women’s Empowerment Policy, which defined “Gender Equality” as “[t]he state in which women, girls, men, and boys have equal access to opportunities, resources, benefits, and legal protections and which recognizes their equal inherent human dignity, worth, and *unalienable rights*.”¹⁷⁴ Besides expressly incorporating the language of “unalienable” rights, the draft policy also erased all preexisting references to “sexual orientation” and transgenderism contained in the same policy from

170. Freedom House, *NATIONS IN TRANSIT 2021: THE ANTIDEMOCRATIC TURN*, 1–2, https://freedomhouse.org/sites/default/files/2021-04/NIT_2021_final_042321.pdf.

171. Lili Bayer, *Biden Sees if a Snub will get Orbán’s Attention*, POLITICO (Dec. 9, 2021), <https://www.politico.eu/article/joe-biden-viktor-orban-hungary-democracy-summit-snob/>. The virtual event hosted by the U.S. president gathered “leaders from government, civil society, and the private sector to set forth an affirmative agenda for democratic renewal and to tackle the greatest threats faced by democracies today through collective action.” U.S. DEP’T OF STATE, *THE SUMMIT FOR DEMOCRACY* (2021), <https://www.state.gov/summit-for-democracy/>.

172. Wester Van Gaal, *Snubbed and Hated: How Slovenia’s Janša Treated MEPs*, EU OBSERVER (Oct. 18, 2021), <https://euobserver.com/democracy/153244>.

173. See, e.g., Daniel Philpott, *Commentary, Blinken’s Dissent From the Human Rights Magisterium*, NAT’L CATHOLIC REG. (2021), <https://www.ncregister.com/commentaries/blinken-s-dissent-from-the-human-rights-magisterium> (claiming the “report’s approach has been vindicated by its global reception . . . secur[ing] the endorsement of the Centrist Democrat International . . . and of Indonesia’s Nahdlatul Ulama”).

174. U.S. AGENCY FOR INT’L DEV., *DRAFT 2020 GENDER EQUAL. & WOMEN’S EMPOWERMENT POL’Y 10* (external review Aug. 19, 2020) (emphasis added).

nearly a decade earlier.¹⁷⁵ This initiative offered a window into the Trump administration's intent to harness the COUR report to prop up traditional "unalienable rights," while denying protections for contemporary vulnerable groups as constituting merely "new rights" or a "social and political controversy."

A deeper look at the GCD further drives home how the Trump administration harnessed the COUR's selective endorsement of rights and muscular assertion of sovereignty to undercut U.S. human rights policy. As noted above, Secretary Pompeo relied on the COUR's emphasis on unalienable rights to justify the GCD's full-throttled protection for the right to life of the unborn. And in transmitting the GCD to the UN Secretary General, the U.S. delegation emphasized the Declaration's main objectives, including "to protect life at all stages; [and] to declare the sovereign right of every nation to make its own laws protecting life, absent external pressure."¹⁷⁶ By channeling human rights disinformation in this manner, the GCD initiative provides a very practical example of the potential damage wrought by the COUR's invitation to alienate the United States from traditional democratic allies and from positions more closely reflecting international consensus.¹⁷⁷ So glaring a departure from these norms does the GCD represent, that the UN's Working Group on discrimination against women and girls branded it "an example of the harmful mobilization of States with conservative and anti-women's rights agendas to undermine the well-established and globally recognized human rights of women and girls."¹⁷⁸

The push to secure signatories for the GCD ultimately mustered the buy-in of only thirty-four states. But a closer look at their precise makeup provides striking evidence of the COUR's deleterious impact (see table below). Tellingly, of the thirty-four GCD states at the end of 2020,¹⁷⁹ nearly half rank as "Not Free" based on Freedom House's Global Freedom survey. Another near half fall under "Partly Free," leaving only four states—three excluding the United States—as

175. U.S. AGENCY FOR INT'L DEV., GENDER EQUAL. & FEMALE EMPOWERMENT POL'Y (2012), <https://www.usaid.gov/sites/default/files/documents/1870/GenderEqualityPolicy.pdf>.

176. Geneva Consensus Declaration, *supra* note 142.

177. Underscoring this, for example, a larger and more diverse coalition of states has already further enlarged the substance of the contested UN resolutions at issue, concluding that "sexual and reproductive health and rights are a cornerstone of [universal health coverage]." Sigrid Kaag, Minister for Foreign Trade & Dev. Coop., Gov't of the Neth., Joint Statement on SRHR in UHC (Sept. 23, 2019), <https://www.government.nl/documents/diplomatic-statements/2019/09/23/joint-statement-on-srhr-in-uhc>.

178. U.N. Hum. Rts. Council, Report of the Working Group on discrimination against women and girls on its Forty-Seventh Session, *Women's and girls' sexual and reproductive health rights in crisis*, U.N. Doc. A/HRC/47/38, at ¶ 49 (2021).

179. In 2021, two additional states signed the GCD, Russia (designated as "Not Free") and Guatemala (designated as "Partly Free"). Rebecca Oas, *The Significance of the Geneva Consensus Declaration*, C-FAM, Nov. 19, 2021, <https://c-fam.org/definitions/the-significance-of-the-geneva-consensus-declaration/>.

designated “Free” (even then, these “Free” states rank near the cusp of “Not Free”).¹⁸⁰

TABLE: GENEVA CONSENSUS DECLARATION SIGNATORY STATES & HUMAN RIGHTS RANKINGS¹⁸¹

GCD SIGNATORY STATES	GLOBAL FREEDOM RANKING (Score of 100 is best; 0 worst)	WOMEN PEACE & SECURITY RANKING (Score of 1 is best; 167 worst)
Bahrain	Not Free 12	83
Belarus	Not Free 11	38
Benin	Partly Free 65	116
Brazil	Free 74	98
Burkina Faso	Partly Free 54	136
Cameroon	Not Free 16	148
<i>Congo (Democ. Rep)</i>	Not Free 20	<i>161</i>
Congo (Rep.)	Not Free 20	149
Djibouti	Not Free 24	145
Egypt	Not Free 18	151
Eswatini	Not Free 19	140
Gambia	Partly Free 46	126
Georgia	Partly Free 60	46
Haiti	Partly Free 37	140
Hungary	Partly Free 69	49
Indonesia	Partly Free 59	95
<i>Iraq</i>	Not Free 29	<i>162</i>
Kenya	Partly Free 48	98
Kuwait	Partly Free 37	96
<i>Libya</i>	Not Free 9	<i>158</i>
Nauru	Free 77	n/a

180. FREEDOM HOUSE, COUNTRIES & TERRITORIES: GLOBAL FREEDOM SCORES, <https://freedomhouse.org/countries/freedom-world/scores> (last visited Oct. 17, 2021) (data on file with the author).

181. Geneva Consensus Declaration, *supra* note 142. States denoted in bold are ranked as “Free” under Freedom House’s Global Freedom Ranking. States denoted in italics rank in the top ten worst countries for women’s security. States shaded in grey are members of the UN Group of Friends of the Family. *See infra* note 184.

GCD SIGNATORY STATES	GLOBAL FREEDOM RANKING (Score of 100 is best; 0 worst)	WOMEN PEACE & SECURITY RANKING (Score of 1 is best; 167 worst)
Niger	Partly Free 48	155
Oman	Not Free 23	n/a
<i>Pakistan</i>	Partly Free 37	164
Paraguay	Partly Free 65	68
Poland	Free 82	25
Saudi Arabia	Not Free 7	120
Senegal	Partly Free 71	114
<i>South Sudan</i>	Not Free 2	163
Sudan	Not Free 17	157
Uganda	Not Free 34	109
United Arab Emirates	Not Free 17	44
United States of America	Free 83	19
Zambia	Partly Free 52	107
Average Score for GCD States:	39	112

Reinforcing the dearth of human rights bona fides among the GCD signatories, consider how these states fare against the Women, Peace, and Security (“WPS”) Index, which “systematically measures and ranks women’s well-being worldwide.”¹⁸² Of the 167 countries ranked in 2019, five GCD signatories make up half of the world’s ten worst countries for women’s well-being, and a mere eight of thirty-four secure a spot in the top half of this ranking, with only one—the United States—placing in the top twenty.¹⁸³ Also well-represented among the GCD signatories are members of the UN Group of Friends of the Family, sometimes referred to as the “Axis of Medievals.”¹⁸⁴ This

182. GEO. INST. FOR WOMEN, PEACE & SEC. & PEACE RSCH. INST. OSLO, WOMEN, PEACE & SEC. INDEX 2019/20 1 (2019), <https://giwps.georgetown.edu/wp-content/uploads/2019/12/WPS-Index-2019-20-Report.pdf>.

183. *Id.* (data on file with the author).

184. The eleven “Friends of the Family” members that signed the GCD are: Belarus, Egypt, Indonesia, Iraq, Kuwait, Libya, Oman, Pakistan, Saudi Arabia, Sudan, and Uganda. *Organisers, UNITING N. FOR FAM. FRIENDLY WORLD*, <https://unitingnationsforthefamily.org/background-2/organisers/> (last visited Dec 21, 2021). This coalition arose under the auspices of Belarus and with the help of C-Fam, a U.S. based self-described “pro-family” NGO. *Group of Friends of the Family Launched in the UN*, MINISTRY OF FOREIGN AFFS. BELR. (Feb. 4, 2015), <https://mfa.gov.by/en/>

coalition of two dozen UN member states, supported by several conservative and religious groups with close ties to the Trump administration,¹⁸⁵ “seeks to pre-empt any expansion of rights for girls, women, and LGBT people and weaken international support for the [1995] Beijing Declaration.”¹⁸⁶ The group pursues this objective by sidelining certain human rights, prioritizing family rights over individual rights,¹⁸⁷ and appealing to state sovereignty and non-interference, in a manner that mirrors the GCD and the COUR.¹⁸⁸

This snapshot of the GCD’s antagonism towards international human rights, coupled with the fact that its members fail to represent any meaningful majority or consensus view on the international stage,¹⁸⁹ raises a glaring question: if the

press/news/f8ff663d7481c615.html; Julian Borger & Liz Ford, *Revealed: The Fringe Rightwing Group Changing the UN Agenda on Abortion Rights*, GUARDIAN (May 16, 2019), <https://www.theguardian.com/global-development/2019/may/16/cfam-rightwing-white-house-anti-abortion-un>. Elsewhere, C-Fam has fawned over the Russian Orthodox Church’s rejection of a UNICEF brief calling for the elimination of discrimination based on sexual orientation and gender identity and criticized a UN human rights report for its “progressive, and aggressive, attempt to expand the meaning of family in international law and policy to include same-sex relationships.” Robert C. Blitt, *Religious Soft Power in Russian Foreign Policy: Constitutional Change and the Russian Orthodox Church*, BERKLEY CTR. FOR RELIGION, PEACE & WORLD AFFS., May 2021, at 6, <https://berkeleycenter.georgetown.edu/publications/religious-soft-power-in-russian-foreign-policy-constitutional-change-and-the-russian-orthodox-church>; Blitt, *supra* note 122, at 133 n.211 (quoting Stefano Gennarini, *UN Report: “There is no Definition of the Family,”* CTR. FOR FAM. & HUM. RTS. (Jan. 29, 2016), http://c-fam.org/Friday_fax/un-report-no-definition-family/).

185. *Organisers*, UNITING N. FOR FAM. FRIENDLY WORLD, <https://unitingnationsforthefamily.org/background-2/organisers/> (last visited Dec 21, 2021). See related discussion concerning Brian Brown and the National Organization for Marriage, *supra*, note 76 & 77. Many of these conservative or religious advocacy groups vocally support the COUR’s approach. See, e.g., Ashley Traficant, *Groups Unite to Support the U.S. Commission on Unalienable Rights*, CONCERNED WOMEN FOR AM. (Aug. 8, 2019), <https://concernedwomen.org/groups-unite-to-support-the-u-s-commission-on-unalienable-rights-2/>; Tony Perkins, *Family Research Council Applauds the State Department’s Formation of a Commission on Unalienable Rights*, FAM. RSCH. COUNCIL (July 8, 2019), <https://www.frc.org/get.cfm?i=PR19G01>.

186. James M. Dorsey, *U.S. Secretary of State Pompeo set to Boost Indonesian Religious Reform Efforts*, WION (Oct 25, 2020), <https://www.wionews.com/opinions-blogs/us-secretary-of-state-pompeo-set-to-boost-indonesian-religious-reform-efforts-337856>.

187. Members of the “Friends of the Family”, including Indonesia, Nigeria, Pakistan, Qatar, Russia, and Saudi Arabia pushed a controversial “Protection of the family” resolution at the Human Rights Council in 2015 that endorsed a restrictive definition of family. C-Fam celebrated this resolution as a “big win” and “monumental development for the pro-family movement.” See Blitt, *supra* note 122, at 130–35, 133 n.211 (quoting Rebecca Oas, *Big Win for a Traditional Family at UN Human Rights Council*, CTR. FOR FAM. & HUM. RTS. (July 9, 2015), http://c-fam.org/Friday_fax/big-win-for-traditional-family-at-un-human-rights-council/).

188. In invoking sovereignty, the GCD posits “each nation has the sovereign right to implement programs and activities consistent with their laws and policies.” Geneva Consensus Declaration, *supra* note 142.

189. See U.N. Doc. A/HRC/47/38, *supra* note 178 (showing larger UN coalition opposing GCD, favoring expansion of women’s SRH rights). Elsewhere, the GCD’s signatories are described

COUR project truly intended to re-anchor U.S. foreign policy in the UDHR's core rights, why is it serving as a springboard for non-free states seeking to impair women's well-being and invoke sovereignty to deflect international human right concerns? Not to be lost in this puzzle, how does one reconcile the attribution of any merit to the GCD given the COUR's and Pompeo's collective bemoaning of "the widespread proliferation of non-legal standards," which, of course, describes the GCD precisely.¹⁹⁰ These questions are rendered even starker when considered against the Trump administration's parallel efforts to wreak further havoc on the cause of women's rights at the United Nations, COUR report and GCD in hand.

During the 75th session of the UN General Assembly, the Trump administration introduced various proposals intending to delete longstanding language relating to sexual and reproductive healthcare services for women and girls. A direct line can be traced between this action and the COUR's emphasis on a narrow set of unalienable rights, state sovereignty, tradition and culture, as well as its disparaging assessment of "new rights." Among others, the U.S.-proposed amendments targeted draft resolutions on child, early and forced marriage, and trafficking in women and girls. During discussions surrounding the vote on these amendments, the European Union and its member states expressed deep regret that the United States sought to delete "long-standing agreed language that struck a fine balance between the different positions,"¹⁹¹ and further lamented that the move was "very worrying" and undercut good faith.¹⁹²

The list of countries supporting the United States in its campaign to erase established rights at the UN is telling. So too is the scale of the U.S. defeat (see table). Based on Freedom House's Global Freedom score, nearly seventy percent of the states that voted in favor of the proposed U.S. amendments (19/28) are designated "Not Free."¹⁹³ From these twenty-eight states, eight voted with the United States on at least four occasions: Belarus, Cameroon, Libya, Nauru, Nicaragua, Qatar, Russia, and Sudan. Only one of these states, tiny Nauru

as a "combination of authoritarian governments, governments with very strong religious views on women's rights, highly populist governments that are exploiting polarization and cleavages, and often basic rollback of human rights." Nathan Paul Southern & Lindsey Kennedy, *Trump's Legacy Is a Global Alliance Against Women's Rights*, FOREIGN POL'Y (Jan. 20, 2021), <https://foreignpolicy.com/2021/01/20/trump-anti-abortion-global-alliance-legacy/>.

190. REPORT OF THE COUR, *supra* note 96, at 41.

191. U.N. GAOR, 75th Sess., Third Comm., 8th mtg., at ¶ 9, U.N. Doc. A/C.3/75/SR.8 (Jan. 29, 2021).

192. U.N. GAOR, 75th Sess., Third Comm., 9th mtg., at ¶¶ 33, 36, U.N. Doc. A/C.3/75/SR.9 (Feb. 12, 2021).

193. FREEDOM HOUSE, COUNTRIES & TERRITORIES, *supra* note 180. Of the remaining nine states supporting the U.S. amendments, seven are designated "Free" and two "Partly Free."

(population 9,770),¹⁹⁴ is considered “Free,” with the remaining seven classified as “Not Free.”

Refining this dubious list one step further, Libya, Russia, and Sudan—all “not free” and all GCD signatories¹⁹⁵—claimed the distinction of voting in lockstep with the United States in all five instances noted below (see table). So intense was the opposition of these three states to the notion of women’s rights that they went so far as to withhold support from the final UN resolution addressing “[i]ntensification of efforts to prevent and eliminate all forms of violence against women and girls.” That resolution, adopted 170 votes to none, recorded eleven abstentions: Libya, Russia, and Sudan, together with only eight other states (including two additional GCD signatories, Belarus, and Cameroon).¹⁹⁶

UN RESOLUTIONS ON WOMEN AND GIRLS: U.S. PROPOSED AMENDMENTS AND VOTING OUTCOMES

DRAFT RESOLUTION	U.S. PROPOSED AMENDMENT	COUNTRIES VOTING WITH THE UNITED STATES	OUTCOME OF VOTE ON U.S. AMENDMENTS (AGAINST — IN FAVOR — ABSTAIN)
Trafficking in women and girls ¹⁹⁷	A/C.3/75/L.68	Libya, Nauru, Palau, Qatar, Russia, Sudan, Syria, Tonga	120 – 9 – 28 ¹⁹⁸
Child, early and forced marriage ¹⁹⁹	A/C.3/75/L.84	Belarus, Cameroon, Libya, Nauru, Nicaragua, Qatar, Russia, Sudan, Syria, Tonga	121 – 11 – 32 ²⁰⁰
Intensification of efforts to end obstetric fistula ²⁰¹	A/C.3/75/L.86	None	153 – 1 – 11 ²⁰²

194. *Nauru*, WORLD FACTBOOK (Dec. 14, 2021), <https://www.cia.gov/the-world-factbook/countries/nauru/>.

195. Although not an original signatory, Russia joined the GCD in late 2021. Oas, *supra* note 179.

196. U.N. Doc. A/C.3/75/SR.9, *supra* note 192, at ¶ 67.

197. U.N. GAOR, 75th Sess., Third Comm., U.N. Doc. A/C.3/75/L.14 (Oct. 20, 2020).

198. U.N. Doc. A/C.3/75/SR.8, *supra* note 191, at ¶¶ 11–12.

199. U.N. GAOR, 75th Sess., Third Comm., U.N. Doc. A/C.3/75/L.18/Rev.1 (Nov. 10, 2020).

200. U.N. Doc. A/C.3/75/SR.8, *supra* note 191, at ¶¶ 75–76.

201. U.N. GAOR, 75th Sess., Third Comm., U.N. Doc. A/C.3/75/L.17 (Oct. 20., 2020).

202. U.N. Doc. A/C.3/75/SR.8, *supra* note 191, at ¶¶ 123–24.

DRAFT RESOLUTION	U.S. PROPOSED AMENDMENT	COUNTRIES VOTING WITH THE UNITED STATES	OUTCOME OF VOTE ON U.S. AMENDMENTS (AGAINST — IN FAVOR — ABSTAIN)
Intensification of efforts to prevent and eliminate all forms of violence against women and girls ²⁰³	A/C.3/75/L.69	Algeria, Belarus, Burundi, Cameroon, Eritrea, Jamaica, Libya, Nicaragua, Qatar, Russia, Sudan ²⁰⁴	117 – 12 – 28 ²⁰⁵
	A/C.3/75/L.70	Belarus, Brazil, Brunei, Cameroon, Egypt, Iraq, Libya, Nauru, Nicaragua, Pakistan, Qatar, Russia, Sudan, Tonga, Yemen, Zimbabwe	113 – 17 – 33 ²⁰⁶
	A/C.3/75/L.71	Belarus, Brunei, Cameroon, Egypt, Eritrea, Iraq, Jamaica, Laos, Libya, Malaysia, Myanmar, Nauru, Nicaragua, Oman, Russia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Sudan, Yemen	102 – 20 – 38 ²⁰⁷

The Trump administration’s reliance on the COUR report to justify these amendments underscores that document’s real corrosive effect on human rights. Like a pied piper, U.S. attacks on “new international rights” and assertions of the “sovereign right to implement . . . activities . . . without any external pressure or interference”²⁰⁸ marshalled the world’s most authoritarian and illiberal actors in a frontal assault on those very rights. Not to be lost in this debacle, the U.S. delegation without irony also invoked the GCD—itsself embodying a “new” soft law the type of so anathema to the COUR—to affirm the validity of its

203. U.N. GAOR, 75th Sess., Third Comm., U.N. Doc. A/C.3/75/L.19/Rev.1 (Nov. 11, 2020)

204. U.N. Doc. A/C.3/75/SR.9, *supra* note 192, at ¶ 52.

205. *Id.* ¶ 53.

206. *Id.* ¶¶ 54–55.

207. *Id.* ¶¶ 56–57.

208. *See, e.g.*, U.N. Doc. A/C.3/75/SR.8, *supra* note 191, at ¶¶ 16, 82, 129, U.N. Doc. A/C.3/75/SR.9, *supra* note 192, at ¶ 73.

position,²⁰⁹ effectively raising the bar for human rights disinformation under the Trump administration.

IV. AN END TO HUMAN RIGHTS DISINFORMATION?

With Trump's failed re-election bid and the inauguration of President Biden in January 2021, it seemed the effort to further promote and embed the COUR report through U.S. policy was destined to be cut short. One of President Biden's first acts in office directed the Secretary of State to "withdraw co-sponsorship and signature from the Geneva Consensus Declaration,"²¹⁰ with the State Department subsequently moving to reengage multilaterally "to protect and promote the human rights of all women and girls, consistent with the long-standing global consensus on gender equality and sexual and reproductive health and reproductive rights."²¹¹

Presenting the State Department's 2020 Human Rights Report, Secretary of State Anthony J. Blinken enlarged this pushback, taking direct aim at the COUR:

One of the core principles of human rights is that they are universal. All people are entitled to these rights, no matter where they're born, what they believe, whom they love, or any other characteristic. Human rights are also co-equal; there is no hierarchy that makes some rights more important than others. Past unbalanced statements that suggest such a hierarchy, including those offered by a recently disbanded State Department advisory committee [(“the COUR”)], do not represent a guiding document for this administration. At my confirmation hearing, I promised that the Biden-Harris administration would repudiate those unbalanced views. We do so decisively today.²¹²

209. See, e.g., U.N. Doc. A/C.3/75/SR.8, *supra* note 191, at ¶¶ 16, 82, 129, U.N. Doc. A/C.3/75/SR.9, *supra* note 192, at ¶ 73.

210. WHITE HOUSE, MEMORANDUM ON PROTECTING WOMEN'S HEALTH AT HOME AND ABROAD (2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/28/memorandum-on-protecting-womens-health-at-home-and-abroad/>.

211. Press Statement, Secretary Anthony J. Blinken, U.S. Dep't of State, Prioritizing Sexual and Reproductive Health and Reproductive Rights in U.S. Foreign Policy (Jan. 28, 2021) (available at <https://www.state.gov/prioritizing-sexual-and-reproductive-health-and-reproductive-rights-in-u-s-foreign-policy/>). As part of this effort, the State Department's annual human rights report will restore expanded subsections on “Discrimination, Societal Abuses, and Trafficking in Persons” to address a broader range of issues related to sexual and reproductive rights, including “maternal health issues such as maternal mortality, government policy adversely affecting access to contraception, access to skilled healthcare during pregnancy and childbirth, access to emergency healthcare, and discrimination against women in accessing sexual and reproductive health care, including for sexually transmitted infections.” U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUM. RTS., & LAB., 2020 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES (Mar. 30, 2021) (available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/>).

212. Remarks to the Press, Secretary Anthony J. Blinken, U.S. Dep't of State, on Release of the 2020 Country Reports on Human Rights Practices (Mar. 30, 2021) (available at <https://www.state.gov/secretary-antony-j-blinken-on-release-of-the-2020-country-reports-on-human-rights-practices/>).

This decisive statement, however, may not have been enough to correct the misinformation and disinformation wrought by the COUR. In response to Blinken, Commission backers expressed indignation and doubled down on their intention to defend the report's relevancy for U.S. policymaking. In the words of one critic, Blinken "derogatorily dismissed" the commission, "not call[ing it] by its proper name" and "downplay[ing its] work . . . as mere 'statements' without referring to the landmark report."²¹³ According to another, Blinken's repudiation of the COUR was many different things: "unfair and misleading" and "lamentable and ironic."²¹⁴ Others still attested that the COUR report reflected a measured approach that successfully finessed the profound problems discussed above, leaving them to speculate that Blinken had not bothered to read the document.²¹⁵

Members of the now-defunct COUR likewise rushed to defend their work and attack the new administration. Peter Berkowitz, holding the Commission innocent of green-lighting any manipulation of human rights, decried the diplomatic costs and "partisan division" Blinken's action would stir.²¹⁶ Setting aside the irony of Berkowitz's observations, he remained silent about precisely what cost might be paid by abandoning states like Belarus, Cameroon, Qatar, Russia, and Sudan, and squarely rejoining the community of liberal democracies. Former COUR Commissioner Russell Berman's assessment similarly downplayed any controversial aspects of the COUR report or subsequent actions taken by the Trump administration. Instead, he accused Blinken of being unable to "pass up the opportunity for a snarky dismissal of the commission."²¹⁷

The stilted assessments proffered by these and other defenders of the COUR project—rejoinders that entirely disregard the human rights company kept by

213. Stefano Gennarini, *Biden Administration Repudiates Unalienable Human Rights, Elevates Sexual Rights Instead*, C-FAM (Apr. 15, 2021), https://c-fam.org/friday_fax/biden-administration-repudiates-unalienable-human-rights-elevates-sexual-rights-instead/.

214. Philpott, *supra* note 173. In Philpott's words, Blinken "missed an opportunity to sustain the human rights magisterium"—essentially the same distorted set of cherry-picked norms endorsed by the COUR.

215. Elliott Abrams, *Blinken's Unfair "Repudiation" of the Report on Unalienable Rights*, CFR (Mar. 31, 2021), <https://www.cfr.org/blog/blinkens-unfair-repudiation-report-unalienable-rights>. To build his case that the COUR report was without flaws, Abrams reprints its table of contents, urging readers to "take a quick look."

216. Peter Berkowitz, *Secretary Blinken Politicizes Human Rights*, REALCLEAR POL. (Apr. 9, 2021), https://www.realclearpolitics.com/articles/2021/04/09/secretary_blinken_politicizes_human_rights_145552.html. Berkowitz, now at Stanford's Hoover Institution, was the COUR's executive secretary.

217. Like Berkowitz, Berman is also affiliated with the Hoover Institution. Russell A. Berman, *Human Rights Hypocrisy: Why Blinken Misses the Mark*, NAT'L INTEREST, Apr. 3, 2021, <https://nationalinterest.org/feature/human-rights-hypocrisy-why-blinken-misses-mark-181734>.

the Trump administration, focus on God-given rights,²¹⁸ and allude to generalities rather than practical effects—constitute a further amplification of human rights disinformation. This second layer of disinformation relies on a distillation of the COUR’s findings to reiterate a religiously-fueled conservative vision of human rights, centered on prioritizing freedom of religion and obviating other “new” rights claims that might clash with it. Riding the crest of this disinformation wave as he contemplates a presidential run in 2024 is former Secretary Pompeo.²¹⁹

In Pompeo’s view, the Biden administration “essentially disowned [the COUR’s] work, which was glorious work.”²²⁰ Describing the COUR in this religiously infused manner is no Freudian slip. The prioritization of religious freedom hardwired into Pompeo’s support of the COUR reinforces an overriding impression that, above all, the Commission’s purpose sought to secure a vindication of religious rights in the face of any threat posed by contemporary “social and political controversies.” To this end, Pompeo has warned, “It’s going to take every Christian believer and all of us to continue to work hard in our churches and our towns and indeed, in our missions across the world, to promote religious freedom everywhere and always.”²²¹ Elsewhere, he has claimed the COUR recognized “human beings that were created in the image of God and the rights that we have as a result of that.”²²² By repeatedly enveloping the COUR in this theological cloak, Pompeo aspires to a new level of disinformation, effectively erasing two thirds of the COUR report’s context and content, which more accurately acknowledges *three* distinct traditions “that formed the American spirit” on rights: Protestant Christianity . . . infused with the beautiful Biblical teachings that every human being is imbued with dignity . . . because

218. Callista L. Gingrich, *The Importance of the Commission on Unalienable Rights*, NEWSWEEK (Apr. 9, 2021), <https://www.newsweek.com/importance-commission-unalienable-rights-opinion-1582556> (positing that “human rights advocates created new categories of rights that removed the important differentiation between rights granted by governments and unalienable rights from God” and stressing “It is critical that U.S. foreign policy continue to protect the unalienable, God-given rights of all human beings in cooperation with our partners and allies.”).

219. Meg Kinnard, *Pompeo Unveils PAC, Demurs on Possible 2024 Presidential Bid*, ABC NEWS (June 17, 2021), <https://abcnews.go.com/Politics/wireStory/pompeo-unveils-pac-demurs-2024-presidential-bid-78340172>.

220. Emily Wood, *Biden Admin. has De-prioritized Religious Liberty, ‘Disowned that Work’: Mike Pompeo*, CHRISTIAN POST (Apr. 20, 2021), <https://www.christianpost.com/news/biden-admin-has-de-prioritized-religious-liberty-work-mike-pompeo.html>.

221. *Id.*

222. Texas Public Policy Foundation, *Talk with Mike Pompeo: China on the Move & the Breakdown at the Border*, YOUTUBE (Mar. 24, 2021), <https://www.youtube.com/watch?v=17WUaaViYu4> (at approximately 25:22).

each is made in the image of God”); the civic republican ideal; and classical liberalism.²²³

Pompeo has taken this fixation to the extreme, analogizing the perceived threat presented by “atheists” to the threat presented by literally being surrounded by Nazis. Alluding to General Anthony McAuliffe’s famous retort after being confronted by a Nazi demand to surrender in the face of the 101st Airborne’s during WWII,²²⁴ Pompeo used his 2021 commencement address to warn Regent University graduates:

The effort to undermine our right to practice our faith is at the very pointy end of [an] atheistic spear . . . some on our side believe it’s possible to sue for peace. just work with them, find a comfortable middle ground. (Laugh, chuckle.) Look, I consider that a bit of a joke. . . . That compromise will move us from tolerance to acceptance to approval. My view of our collective response has to be this. . . . When the world says compromise your values, tell them “Nuts. It’s not gonna happen.” Never give an inch. Because if you do, the world will take a foot. And then a mile. And you’ll wake up one day with your religious freedom gone.²²⁵

These—sometimes even more extreme—amplifications of disinformation perpetuated through Pompeo and others seeks to repurpose human rights to uphold an unflagging protection of religious liberty steeped in conservative traditional values. As noted above, this effort is platformed on the same retrograde assessment of human rights espoused by the COUR, one that rests on hierarchical “originalism” and is detached from recent history. Like the COUR, it similarly discards the promise of human rights for securing equality and nondiscrimination for everybody and for offering a framework capable of reconciling competing interests.

Perhaps more troubling and telling amidst this ongoing disinformation effort, however, is the fact that no commissioners have spoken out publicly against these overt and ongoing secondary manipulations and distortions of the COUR report. Likewise, evidence indicates that the COUR report has not been vanquished to the trash bin of history despite the Biden administration’s efforts.

223. REPORT OF THE COUR, *supra* note 96, at 8. Indeed, on the question “To what extent do unalienable rights rest on the work of a creator Deity?”, the COUR itself concluded that “No single answer to these metaphysical questions was decisive in 1776. Still less today, when the very ideas of human nature, objective reason, and a creator God have come into disrepute among intellectuals, while the view that human beings are entirely explainable in terms of the physical properties of their bodies has grown in popularity.” *Id.* at 10–11.

224. Gary Sterne, “Nuts!” – *The Story Behind the Famous American Reply to the German Surrender Ultimatum at Bastogne*, MIL. HIST. NOW (Sept. 15, 2020), <https://militaryhistorynow.com/2020/09/15/nuts-the-story-of-the-famous-american-reply-to-the-german-surrender-ultimatum-at-bastogne/>.

225. Michael R. Pompeo, *Commencement Address to the Class of 2021*, REGENT UNIV. (May 8, 2021), https://www.regent.edu/admin/media/live_commencement/?live_event_name=commencement (quote starts at approximately 25:00).

Indeed, a former commissioner's home university has announced it will serve as a repository for the COUR report and its accompanying documents. Already, that university held a conference "to consider ways to carry forward the commission's work."²²⁶ These realities testify to misinformation's "pernicious" ability "to continue to influence thinking long after someone initially sees it," and underscore why effective refutation is especially challenging.²²⁷

CONCLUSION

This Article has identified misinformation and disinformation contained in the Commission on Unalienable Rights' final report and demonstrated how its approach to human rights has served to untether U.S. policy from the fold of western democracies and instead engender a cozying up to autocrats and illiberals. Despite the incoming Biden administration's fleeting repudiation of the report, the Article has further called attention to ongoing efforts to distort existing international human rights norms premised on sustaining the legitimacy of the COUR's work, even while adding another layer of misinformation to the mix. Taken together, this activity challenges the common political knowledge shared by democratic states, namely that human rights are not static nor premised on the singular prioritization of freedom of religion at the expense of other rights. The harm emanating from these concerted efforts is only compounded by the quotidian attacks directed against the international human rights system by the more usual authoritarian and illiberal actors that are similarly couched in the COUR's prioritization of tradition, sovereignty, and a narrow framing of rights. Accordingly, a more thorough and comprehensive response to the report is warranted.

To effectively address the malign effects of the COUR, the administration should consider additional measures capable of more durably correcting the impact of disinformation at home, in its bilateral relations, and throughout the UN's human rights system and other related bodies. In this vein, the administration has already taken several steps that implicitly repudiate the COUR's approach. For example, it revoked the Mexico City Policy, withdrew from the Geneva Consensus Declaration, and resumed support for the United Nations Population Fund as a means of promoting "women's health and equity at home and abroad. . . including sexual and reproductive rights."²²⁸ President Biden also moved to appoint a new U.S. Special Envoy to Advance the Human Rights of LGBTQI+ Persons.²²⁹ Most recently, the Biden administration

226. Berkowitz & Glendon, *supra* note 98.

227. Goldberg, *supra* note 37.

228. Remarks to the Press, Secretary Anthony J. Blinken, *supra* note 212.

229. Donald Judd & Kate Sullivan, *President Joe Biden Appoints Jessica Stern Special Envoy for LGBTQ Rights*, CNN (June 25, 2021), <https://edition.cnn.com/2021/06/25/politics/lgbtq-envoy-jessica-stern/index.html>.

rejoined the UN Human Rights Council²³⁰ and announced its intention “to issue a formal, standing invitation to all UN experts who report and advise on thematic human rights issues,”²³¹ as a means of facilitating visits and boosting U.S. engagement with these mechanisms.²³² As Secretary Blinken rightly pointed out in making this announcement, “Responsible nations must not shrink from scrutiny of their human rights record; rather, they should acknowledge it with the intent to improve.”²³³

These are important steps that can be supplemented by further reinvigorating U.S. leadership and regaling the alliance of democratic states. Efforts at the United Nations should be coordinated to clearly call out those who hide behind invocations of tradition and sovereignty to deny the UDHR’s foundational promise of human rights for everyone everywhere, as well as its *grundnorm*, “All human beings are born free and equal in dignity and rights.”²³⁴ From its seat on the UN Human Rights Council, the United States should work to build meaningful inroads through vigorous diplomacy and alliance-building. Engagement, not avoidance, will alleviate at least some of the real hypocrisy that prevents effective interventions and coalition building with more reticent states. This advocacy should forcefully and “consistently communicate detailed information rebutting . . . [retrograde] arguments and concerns, including highlighting their internal inconsistencies and incompatibilities with international human rights law,”²³⁵ across all multilateral and bilateral engagement.

One of the key challenges of confronting misinformation and disinformation stems from its ability to be perpetuated on an ongoing basis. In this context, several avenues exist for resisting and responding to disinformation. For example, Google’s Jigsaw project has observed that an “inoculation” approach designed to “build up people’s resistance or ‘mental antibodies’ to encountering

230. Editorial, *United States Rejoins UN Human Rights Council*, VOA, Oct. 29, 2021, <https://editorials.voa.gov/a/united-states-rejoins-un-human-rights-council/6291033.html>.

231. Anthony J. Blinken, *U.S. Leadership on Human Rights and Ending Systemic Racism* (July 13, 2021), <https://www.state.gov/u-s-leadership-on-human-rights-and-ending-systemic-racism/>.

232. For more on standing invitations, see *supra* note 51.

233. Blinken, *supra* note 231. Blinken’s efforts prompted the Republican Study Committee, the “conservative caucus of House Republicans and a leading influencer on the Right [that seeks to] preserve traditional values,” to declare: “Your culture-war diplomacy stands in marked contrast to . . . Mike Pompeo who made the protection of human rights . . . a top priority, especially through the creation of the non-partisan Commission on Unalienable Rights, which you have denounced.” Thomas D. Williams, *GOP Blasts Antony Blinken’s Pro-Abortion ‘Culture-War Diplomacy’*, BREITBART (July 21, 2021), <https://www.breitbart.com/politics/2021/07/21/gop-blasts-antony-blinkens-pro-abortion-culture-war-diplomacy/>; *About*, REPUBLICAN STUDY COMM., <https://rsc-banks.house.gov/about> (last visited Dec. 20, 2021).

234. Blitt, *supra* note 122, at 187.

235. More specific recommendations set out elsewhere to address sexual orientation and gender identity rights are equally relevant here. See Blitt, *supra* note 122, at 185–86.

misinformation” could serve to protect people through educating them “to spot and refute a misleading claim.”²³⁶ RAND echoes this approach by observing that “the strongest weapon against disinformation is our common sense.”²³⁷ In a related vein, a recent CoE report concluded that challenging false information effectively requires replacing it with a powerful alternative narrative that is repeated, capable of provoking an “emotional response,” and affords a strong visual aspect.²³⁸

Each of these proposed solutions points to one key factor: education. Education that is ongoing, dynamic, comprehensive, and accessible. What is obvious, then, is that a thorough repudiation of the COUR’s disinformation demands—together with policy actions—a detailed and lasting narrative capable of authoritatively rebutting its distorted context and findings. In addition, therefore, the administration should develop resources that provide an educational bedrock for informing people about the U.S. understanding of and relationship with international human rights in a manner that is not narrowly anchored to “unalienable” rights, but rather derived from a fuller, more complex accounting of our ongoing history and engagement. These resources can help people resist disinformation and misinformation while providing a more durable and comprehensive refutation of the COUR’s faulty remit and report.

To be certain, this will be no easy task. Writing over two centuries ago, Alexis de Toqueville noted that “A proposition must be plain to be adopted by the understanding of a people. A false notion which is clear and precise will always meet with a greater number of adherents in the world than a true principle which is obscure or involved.”²³⁹ Human rights are complicated. The act of balancing competing or conflicting human rights is especially complex. Engaging in this substance seems even more daunting when one considers new challenges, such as recent domestic efforts to strike civil rights education from public school curriculums.²⁴⁰ But this inherent difficulty should not dissuade the administration from thinking in bold new ways about undertaking educational outreach programs at home and abroad based on fulfilling the promise of human dignity rather than upholding a narrowly construed or static idea of what is or is not unalienable.

236. Goldberg, *supra* note 37.

237. Axelle Devaux, Commentary, *How to Contain the Disinformation Virus*, RAND BLOG (Apr. 9, 2020), <https://www.rand.org/blog/2020/04/how-to-contain-the-disinformation-virus.html>.

238. Wardle & Derakhshan, *supra* note 22, at 78.

239. ALEXIS DE TOQUEVILLE, *DEMOCRACY IN AMERICA* 166 (Alfred A. Knopf, Inc. ed., 2d ed. 1945).

240. Paul Stinson, *Texas Senate Votes to Remove Required Lessons on Civil Rights*, BLOOMBERG LAW (July 16, 2021), <https://news.bloomberglaw.com/social-justice/texas-senate-votes-to-remove-required-lessons-on-civil-rights>.