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Defaming the freedom of religion or belief: a historical and conceptual analysis of the United Nations

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2 Freedom of Religion or Belief as a Universal Human Right

In the previous chapter, the history of the freedom of religion or belief and its codification in human rights treaties was discussed. In order to answer the main question—and thus prove that, to some extent, the current interpretations of the freedom of religion or belief demonstrate an undermining of its universal status—it first has to be determined whether freedom of religion or belief can be interpreted as a universal human right. In Chapter 2, the focus is on this question.

2.1 Introduction

This chapter discusses the nature of freedom of religion as a universal human right, with a focus on the Universal Declaration. The Declaration has celebrated its 70th birthday, and it still has significant influence in the legal order. Over the years it has reached a distinctive status within international law and politics. The Declaration has become the world's most translated legal document and has been a tremendous inspiration for national constitutions and international law. The Declaration has become an effective instrument in the practices of international relations and is used to diplomatically and morally pressure governments that violate its provisions.

However, despite this influence and recognition, there is the perpetual reproach of ethnocentrism, fed by the suspicion that something went wrong at the start of the drafting process. This criticism comes from different angles, such as religious actors and international organisations, and it is fuelled in academic circles, which results in the *disputation of the universality* of human rights standards as adopted in the Universal Declaration. This accusation or claim of ethnocentrism, which is to be examined within the overall theme of cultural relativism, is not one of recent years: it was also expressed during the drafting of the Universal Declaration by the American Anthropological Association. Other political-philosophical movements have also adopted a sceptical attitude towards the adoption of universal moral standards, such as multiculturalism, communitarianism, and postmodernism. The focus in this chapter is on the (cultural) relativist criticism.

This chapter presents some arguments to question the cultural-relativist claim of ethnocentrism. Firstly, I argue that the accusation is partially instigated by the fact that these critics do not seem to have a clear insight into the discussions of the drafting process. This has resulted in inaccuracies in their idea of how the Universal Declaration was drafted and what the intentions and goals for the document were. In order to do this, it is imperative that a legal-historical analysis is made to understand and assess these complex and sometimes perplexing academic debates on the universal status of the freedom of religion or belief.

This historical analysis consists of an elaborate analysis of the drafting history, and it may also be innovative in the sense that it is done in a detailed manner. There is a particular focus on the provision regarding the freedom of thought, conscience, religion, and belief as adopted in Article 18 UDHR. I demonstrate that the delegates strove for a consensus approach in which universalism and idealism were essential principles that were endorsed by (a significant number of) delegates during the drafting process. The analysis also demonstrates that when the religious-related matter was discussed, a pragmatic attitude was adopted to overcome the doctrinal and religious divisions of the participating parties.

Secondly, I examine who made substantial contributions to the debate and 'influenced' the text of the Universal Declaration. It is often assumed, or rather insinuated, that the Universal

Declaration expresses a purely Western vision regarding human rights and that only Western intellectuals took part in the preparations, which leads to the accusation of ethnocentrism. For this reason, a close analysis is made of which representative made what contribution during the discussions regarding the freedom of religion or belief provision and related matter. Given their role and influence in drafting the Universal Declaration, the reports of the discussions of the representatives are an authoritative source for the meaning and correct interpretation of the provision.

In this context, a question regarding the philosophical and theoretical underpinnings of the Universal Declaration naturally arises: what religious and secular, or rather universal and relative, conceptions did the representatives think the Declaration should embody? Furthermore, since the members of the drafting committee had a tremendous influence, especially in the beginning of the drafting process, on the content and realisation of the text, it is essential to ascertain who was part of the committee and what their views were. Moreover, it is interesting to determine if they discerned any essential incompatibility between their personal and political stances.

Thirdly, the critique that was formulated by (cultural) relativists who oppose the universal aspirations of the Universal Declaration is examined. They view the proclamation of universal standards as a form of cultural imperialism, rife with Western bias, and sometimes even as fictions or urges that need to be repressed. I argue that, although the theory of cultural relativism seems to be convincing at first glance, a closer analysis may demonstrate the opposite.

The result of this analysis is that I contest the claim that ethnocentrism underpins the freedom of religion or belief (as enshrined in the universal declaration), and I argue that it can be safely established that this freedom is a universal human right, which is an essential assumption for my overall research. The research in this chapter also provides a better insight into the derivative normative framework (which was set out in the previous chapter), consisting of Article 9 ECHR, Article 18 ICCPR, the 1981 Declaration, and General Comment 22 drafted by the Human Rights Committee in 1993. Most academic books on freedom of religion or belief disregard the Universal Declaration for its lack of direct legal force. In this research, however, it is the starting point, for it has provided the theoretical and philosophical basis for the religious-freedom-human rights framework that followed.

2.2 The Call for Universal Human Rights

The first modern human rights regime for national and international relations arose during the interbellum, culminating after the Second World War. It was, *inter alia*, a response to the threat of totalitarian ideologies such as fascism and communism and the military force and expansion of totalitarian regimes in various parts of the world. In reaction to these ideologies, intellectuals, statesmen, and politicians drafted various human rights documents in which they planned a new world order aligned with a utopian post-war vision.¹⁷⁷

¹⁷⁷ Prior to the Second World War, the discussion about fundamental human rights remained a political and intellectual discourse. During the War, fundamental human rights became part of the ideological offensive.

2.2.1 Roosevelt's Four Freedoms

A statement that made a profound impression was the 1941 State of the Union address by President of the United States Franklin Delano Roosevelt (1882–1945). This statement is known as *The Four Freedoms speech*, and in it, Roosevelt expressed a grand vision:

In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression—everywhere in the world. The second is freedom of every person to worship God in his own way—everywhere in the world. The third is freedom from want, which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world. The fourth is freedom from fear, which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbour—anywhere in the world.¹⁷⁸

Roosevelt thought that this was ‘no vision of a distant millennium’ and expressed that it would be the ‘antithesis’ of the current order in which tyranny and dictators ruled with violence.¹⁷⁹ This speech was held against the backdrop of the Second World War. He aimed to build an international order, a ‘moral order’, in which *essential human rights* were guaranteed for all.¹⁸⁰ What is significant is that the four freedoms Roosevelt addressed focus on the concepts of universality and morality; they are a call for a universal morality. Everyone everywhere in the world should be granted these four rights.

One of the freedoms Roosevelt addressed is (a form of) religious freedom, that every person should have the freedom ‘to worship God in his own way’. It is clear that this freedom is inspired by the First Amendment of the American Bill of Rights, in which it is stated, among other things, that ‘Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof [...]’. Besides subscribing to American values, Roosevelt had various reasons to address this freedom explicitly. As political philosopher Dirk Verhofstadt (b. 1955) correctly notes, Roosevelt also wanted to take an ideological stand against the oppression of religions in communist countries and sought to secure a haven for Jews who suffered from antisemitism and Nazism in Europe.¹⁸¹

2.2.2 Wells' Rights of Man Declaration

Research has revealed that Roosevelt was inspired by author Herbert George Wells (1866–1946), who was the initiator and main drafter of the ‘Rights of Man.’¹⁸² Besides Roosevelt’s Four Freedoms

¹⁷⁸ F. Roosevelt, ‘Franklin Roosevelt’s Annual Address to Congress - The “Four Freedoms” (87 Cong. Rec. 44 (1941))’.

¹⁷⁹ Roosevelt, ‘Franklin Roosevelt’s Annual Address to Congress - The “Four Freedoms” (87 Cong. Rec. 44 (1941))’.

¹⁸⁰ Roosevelt, ‘Franklin Roosevelt’s Annual Address to Congress - The “Four Freedoms” (87 Cong. Rec. 44 (1941))’.

¹⁸¹ D. Verhofstadt, *De vier vrijbeden van Franklin Delano Roosevelt*, Gent, Liberaal Archief, 2016, pp. 21-24.

¹⁸² J.H. Burgers, ‘The Road to San Francisco: The Revival of the Human Rights Idea in the Twentieth Century’, *Human Rights Quarterly*, Vol. 14, No. 4, 1992, pp. 465, 470; D.G. Hensel, ‘10 December 1948: H.G. Wells and the Drafting of the Universal Declaration of Human Rights’, *Peace Research*, Vol. 35, No. 1, 2003, p. 97; W.W. Wagar,

campaign, this Rights of Man Declaration is believed to be a catalyst in giving fundamental rights international status.¹⁸³ The drafting process for the Rights of Man Declaration started with Wells' letter of 23 October, 1939, to *The Times* in which he discussed the war aims and the rights of man (meaning both men and women).¹⁸⁴ In his second letter, Wells called for the protection of *fundamental rights* as a condition for a peaceful society after the conclusion of the war. He wrote:

It is a method which is entirely in the best traditions of the Atlantic Parliamentary peoples; the method of a declaration of rights. At various crises in the history of our communities, beginning with Magna Carta and going through various Bill of Rights, Declarations of the Rights of Man and so forth, it has been our custom to produce a specific declaration of the broad principles on which our social life is based, and to abide by that as our fundamental law. The present time seems peculiar suitable for such a restatement of the spirit in which we face life in general and the present combat in particular. It would [...] furnish a criterion for our subsequent treaties and behaviour.¹⁸⁵

Wells' letter was accompanied by a draft 'Declaration of Rights', which consisted of a preamble and ten articles in which he fervently argued for a *universal code of moral rights*.¹⁸⁶ In reaction to his letters, a committee was formed with various distinguished intellectuals and scientists who would contribute to Wells' ideas.¹⁸⁷ Their contributions to Wells' Declaration were published in the *Daily Herald* and together would later be presented as the 'Sankey Declaration', named after the chairman of the committee, Viscount Sankey (1866–1948).¹⁸⁸ It covered social, economic, civil, and political rights, including a non-discrimination clause based on religious grounds.¹⁸⁹

H.G. Wells: Traversing Time, Middletown, Wesleyan University Press, 2004, p. 255. Churchill had also made it known that he was an avid reader of Wells' (science fiction) books. W.S. Churchill, *Great Contemporaries: Churchill Reflects on FDR, Hitler, Kipling, Chaplin, Balfour, and Other Giants of His Age*, New York, Chartwell Booksellers 2012, pp. 376-377; D.C. Smith, *H.G. Wells: Desperately Mortal*, New Haven, Yale University Press, 1986, pp. 428-433, 442-449, 601-608.

¹⁸³ Burgers, 1992, p. 471.

¹⁸⁴ H.G. Wells, *The Rights of Man. Or What Are We Fighting For?*, London, Penguin, 2015, pp. 2-5, 14; Burgers, 1992, p. 464.

¹⁸⁵ Wells, 2015, p. 7.

¹⁸⁶ Wells, 2015, pp. 6-11.

Burgers, 1992, p. 466. Wells had written his Declaration and preamble with what he called 'a few friends'.

¹⁸⁷ The drafting committee consisted of H.G. Wells, Norman Angell (author, Member of Parliament, and 1933 Nobel Peace Prize winner), Margaret Bondfield (Labour politician and women's rights activist), Ritchie Calder (author and academic), Richard Gregory (psychologist and Professor of Neuropsychology at the University of Bristol), Lord Horder (leading physician at that time), Lord Lytton (statesman and poet), John Orr (doctor, biologist, politician, and Nobel Peace Prize winner in 1949), Viscount Sankey (Lord Chancellor, judge, and Labour politician), Baron Francis Williams (editor of the *Daily Herald*, in which the final version of the Declaration was published), and Barbara Wootton (sociologist, criminologist, and well-known economist). Burgers, 1992, p. 465.

¹⁸⁸ The 'Rights of Man Declaration' was published as a month-long debate in the *Daily Herald* from 5 to 24 February, 1940, with daily remarks from civilians, various intellectuals, and politicians, such as J.B. Priestley, C.E.M. Joad, A.A. Milne, Kingsley Martin, Salvador de Madariaga, and Clement Attlee. Burgers, 1992, p. 465.

¹⁸⁹ Wells, 2015, pp. 75-83.

Wells had the Sankey Declaration translated into more than thirty languages and expanded his 'British' moral code. He solicited reactions from presidents and vice-presidents;¹⁹⁰ the Declaration was praised for its 'protagonist's global aspirations' by Gandhi and publicly ridiculed by Goebbels and Mussolini.¹⁹¹ In the following years, the Sankey Declaration would prove to have a strong influence on the development of fundamental human rights: not only would its core ideas materialise in Roosevelt's and Churchill's Atlantic Charter, but it would also be used for the first draft of the Universal Declaration.

2.3 Plans for the Post-War World

A few months after Roosevelt's Four Freedoms Speech, more specifically on 14 August, 1941, Roosevelt and Winston Churchill (1874–1965), who was the Prime Minister of the United Kingdom at the time, drafted the Atlantic Charter.¹⁹² This document presented the plans for a post-war world that initiated the establishment of the United Nations.¹⁹³ It endorsed the idea of universality and focused on several principles, including the hope that, once the Nazi regime was defeated, they would 'see established a peace which will afford to all nations the means of dwelling in safety within their own boundaries, and which will afford assurance that all the men in all lands may live out their lives in freedom from fear and want'.¹⁹⁴ They also 'believe[d] that all of the nations of the world, for realistic as well as spiritual reasons must come to the abandonment of the use of force'.¹⁹⁵

Roosevelt and Churchill's plan soon attracted attention, and at the Arcadia Conference on the first of January, 1942, in Washington D.C., twenty-four other states expressed their support.¹⁹⁶ A joint declaration called the 'Declaration by United Nations', was signed. It underlined the principles of the Atlantic Charter and expressed the intention to create an international legal order

¹⁹⁰ R. Normand & S. Zaidi, *Human Rights at the UN: The Political History of Universal Justice*, Bloomington, Indiana University Press, 2008, p. 76.

¹⁹¹ C. Moores, *Civil Liberties and Human Rights in Twentieth-Century Britain*, Cambridge University Press, Cambridge 2017, p. 74; Normand & Zaidi, 2008, pp. 76-77.

¹⁹² The Atlantic Charter, Joint Declaration by the President and The Prime Minister, Declaration of Principles, Known as the Atlantic Charter, Aug. 14, 1941, U.S.- U.K., 55 Stat. app. 1603. The Atlantic Charter was drafted in Placentia Bay, Newfoundland. It was originally titled the 'Joint Declaration by the President and the Prime Minister'. The newspaper the *Daily Herald* called it the Atlantic Charter, which eventually was adopted by Churchill, who also referred to it that way in the English Parliament on 24 August, 1941. C. Wrigley, *Winston Churchill. A Biographical Companion*, Santa Barbara, Library of Congress, 2002, pp. 27-28; United Nations Department of Public Information, *Yearbook of the United Nations 1946-47*, Lake Success, United Nations Publications, 1947, pp. 1-2.

¹⁹³ David S. Weissbrodt, Connie de la Vega, *International Human Rights Law: An Introduction*, Philadelphia: University of Pennsylvania Press 2007, p. 22.

¹⁹⁴ The Atlantic Charter, principle six.

¹⁹⁵ The Atlantic Charter, principle eight.

¹⁹⁶ The participating states were (for some states the former name is used): The United States, Britain, USSR, Australia, Belgium, Canada, China, Costa Rica, Cuba, Czechoslovakia, the Dominican Republic, El Salvador, Greece, Guatemala, Haiti, Honduras, India, Luxembourg, the Netherlands, New Zealand, Nicaragua, Norway, Panama, Poland, South Africa and Yugoslavia. These countries were later joined by Bolivia, Brazil, Chile, Colombia, Ecuador, Egypt, Ethiopia, France, Iceland, Iraq, Lebanon, Liberia, Mexico, Paraguay, Persia, Peru, the Philippines, Saudi Arabia, Syria, Turkey, Uruguay, and Venezuela. These forty-eight states were the states that founded the United Nations. United Nations Department of Public Information, 1947, p. 1.

with fundamental rights for every human being, again focussing on the principle of universality with regard to fundamental rights.¹⁹⁷ It also expressed that defeating the enemies—Germany and its allies, Japan and Italy—was ‘essential to defend life, liberty, independence and religious freedom, and to preserve human rights and justice in their own lands as well as in other lands, and that they are now engaged in a common struggle against savage and brutal forces seeking to subjugate the world’.¹⁹⁸ The explicit reference to religious liberty underlines the importance of this freedom.

This Declaration by United Nations was the start of the UN; however, the framework was not construed until the Moscow conferences. In the resulting Moscow Declaration, which was signed on 30 October, 1943, it is stated in paragraph 4 that ‘they recognize the necessity of establishing at the earliest practicable date a general international organization, based on the principle of the sovereign equality of all peace-loving states, and open to membership by all such states, large and small, for the maintenance of international peace and security’.¹⁹⁹ This was part of the broader statement in which they vowed to combat their common enemy and establish international peace and security.²⁰⁰ At Dumbarton Oaks, between 21 August and 7 October, 1944, signatories of the Moscow Declaration, *viz.*, China, Great Britain, the USSR, and the United States came together to accomplish their goals as expressed in the Moscow Declaration. They drafted the general structure of the UN and agreed on ideas embodied in the Dumbarton Oaks proposals, which also entailed a draft of the UN Charter. This was further constructed in the Yalta agreement, reached in February 1945.²⁰¹

2.3.1 The UN Charter

On 25 April, 1945, the San Francisco Conference was held, and only the states who had declared war on Germany, or its allies and had signed or adhered to the Declaration by United Nations were invited.²⁰² During this conference, the UN Charter would be further elaborated on and realised. It is interesting that during this meeting the phrase ‘in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or *religion* [emphasis added]’ was added to the third purpose of the UN Charter. This paragraph did not appear in the Dumbarton Oaks Proposals.²⁰³ The lack of reference and focus on human rights in the Dumbarton Oaks drafts was actually one of the significant gaps that were discussed during the San Francisco meetings.²⁰⁴ The final Charter of the UN was signed in San Francisco, at the conclusion of the United Nations Conference on International Organization. It came into force

¹⁹⁷ United Nations Department of Public Information, 1947, p. 1.

¹⁹⁸ United Nations Department of Public Information, 1947, p. 3.

¹⁹⁹ United Nations Department of Public Information, 1947, p. 3. The Moscow Conference, October 1943, Joint Four-Nation Declaration, The governments of the United States of America, United Kingdom, the Soviet Union, and China participated in the conference.

²⁰⁰ There was also an explicit focus on Austria and Italy. A paragraph was added to the Declaration regarding Italy in which it was stated that the freedom of religious worship ‘shall be restored in full measure to the Italian people’.

²⁰¹ United Nations Department of Public Information, 1947, pp. 4-10.

²⁰² United Nations Department of Public Information, 1947, p. 12. The conference was officially known as the United Nations Conference on International Organization.

²⁰³ United Nations Department of Public Information, 1947, pp. 18-19.

²⁰⁴ United Nations Department of Public Information, 1947, p. 19.

on 24 October, 1945, and with this, the UN was formally established by 51 states.²⁰⁵ In the Charter, a total of seven references are made to human rights. For example, the preamble says: ‘We the people of the United Nations determined [...] to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small [...]’.

In the UN Charter, four references are made to religion. Article 1, paragraph 3 reads: ‘To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or *religion* [emphasis added]’. In Article 13 under b, it is stated that ‘The General Assembly shall initiate studies and make recommendations for the purpose of; promoting international co-operation in the economic, social, cultural, educational, and health fields, and assisting in the realisation of human rights and fundamental freedoms for all without distinction as to race, sex, language, or *religion* [emphasis added]’. In Article 55 under c it is established that the UN shall promote ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or *religion* [emphasis added]’. In Article 76, reference is made to religion in the context of the UN Trusteeship Council, whose activities were practically suspended in 1994 after Palau became independent.²⁰⁶ These provisions convey that discrimination on the basis of religion is not allowed.

With the adoption of Article 7 of the UN Charter, the establishment of the UN organs became a fact. Some insight into these organs is necessary to have a better understanding of the matter discussed in the subsequent sections. There is the General Assembly (UNGA), which consists of six main Committees: the First Committee (Political and Security); the Second Committee (Economic and Financial); the Third Committee (Social, Humanitarian and Cultural, including human rights), which is relevant for this chapter; the Fourth Committee (Trusteeship); the Fifth Committee (Administrative and Budgetary); and the Sixth Committee (Legal). Furthermore, there is the Security Council (UNSC); the Economic and Social Council (ECOSOC), which operates under the authority of the GA; the Trusteeship Council (UNTC); the Secretariat; and the International Court of Justice (ICJ).

On 21 June, 1946, the Economic and Social Council created the UN Commission on Human Rights based on Article 68 of the UN Charter. It was defined as a subsidiary body of the Economic and Social Council, and it has been supported in its operations by the Office of the United Nations High Commissioner for Human Rights since 1993. The Commission’s principal task is the protection and promotion of human rights and the drafting of an international bill of human rights. It consists of one representative from each of its eighteen members.²⁰⁷

²⁰⁵ According to paragraph 3 of Article 110 of the UN Charter, the Charter would come into force upon the deposit of ratifications by China, France, the U.S.S.R., the United Kingdom, the United States, and by a majority of the other signatory states. United Nations Department of Public Information, 1947, p. 33. The Charter was amended in 1963, 1965, and 1973.

²⁰⁶ T/RES/2200(LXI) 25 May, 1994. The Trusteeship Council made procedural changes and only gathered when necessary.

²⁰⁷ United Nations Department of Public Information, 1947, p. 523. E/RES/9(II), adopted on 21 June, 1946.

2.4 An International Bill of Human Rights

On 27 January, 1947, the Commission on Human Rights had its first meeting. In this meeting, the Commission selected Eleanor Roosevelt, the former first lady of the United States, as chairwoman, Pen-Chun Chang from China as vice-chairman, and Charles Malik from Lebanon as Rapporteur, to form a *drafting committee*. John Humphrey, Director of the Division of Human Rights, which is part of the UN Secretariat, would function as the Secretary of the committee.²⁰⁸ It was their task to, inter alia, create a *preliminary draft* of an international bill of human rights; a task which would turn out to be quite significant and influential.²⁰⁹

Humphrey—who is an important source for insights into the drafting process—explains in his book *Human Rights & the United Nations: A Great Adventure* that the formation of the drafting committee faced several challenges, for instance that it did not have enough members, which created the risk of a biased view regarding human rights.²¹⁰ It appears that those intended to be the original drafters, Roosevelt, Malik, and Chang, also believed that they did not sufficiently represent the various ideas regarding human rights that existed in the world. Roosevelt tried to solve this shortcoming by writing a letter to the Economic and Social Council, asking for an expansion of the drafting committee.²¹¹ For this reason, they proposed that representatives from Australia, Chile, China, France, Lebanon, the Soviet Union, the United Kingdom, and the United States join the drafting committee to provide various perspectives on human rights.²¹² The Commission on Human Rights approved the expansion.

2.4.1 The Composition of the Drafting Committee

Since the members of the drafting committee had a tremendous influence on the text, especially at the beginning of the drafting process, it is essential to consider the actual composition of the drafting committee more closely. What can we say about the members? The delegates served as representatives from their countries, not in any personal capacity, so they were expected to serve their state's ideologies and interests. Did they, however, discern any essential incompatibility between their personal and political views?

²⁰⁸ The appointed persons were given the opportunity to enlist the co-operation of any member of the UNCHR and could be given any observations or suggestions by its members. They were also allowed to consult any person who was thought to be of relevance for composing the preliminary draft. E/CN.4/SR.1.

²⁰⁹ E.CN.4/SR.12. See for an extensive overview, United Nations Department of Public Information, 1947, pp. 523-526.

²¹⁰ J.P. Humphrey, *Human Rights & the United Nations a Great Adventure*, New York, Transnational Publishers inc. Dobbs Ferry, 1984, pp. 29-30; Humphrey, 2012 [1984]. This book is an overview of Humphrey's experiences as director of the Division of Human Rights and gives a detailed overview of the drafting process. The merit of this book is that Humphrey openly addresses the controversies, bureaucracy, and sometimes even the hypocrisy within the UN discussions. See for an interesting review of this book P. Alston, 'Reviewed Work: Human Rights and the United Nations: A Great Adventure by John P. Humphrey', *Human Rights Quarterly*, Vol. 6, No. 2, 1984, pp. 224-235. Alston, among others, lauds Humphrey for the chapters about the drafting of the Universal Declaration. Humphrey was the director of the Division of Human Rights director for twenty years. Theo van Boven, the Dutch professor emeritus in international law, whose work is discussed in the previous chapter and is again addressed later in this chapter, also held this position.

²¹¹ United Nations Department of Public Information, 1947, pp. 523-526; Humphrey, 1984, pp. 29-30.

²¹² E/383 27 March, 1947, United Nations Department of Public Information, 1947, pp. 523-526; Van Boven, 1967, p. 98; Humphrey, 1984, pp. 29-30.

As said, Anna Eleanor Roosevelt (1884–1962), was the chairperson of the Commission on Human Rights and acted as a delegate for the United States at the General Assembly. She was the widow of President Roosevelt—who had died a few weeks before the end of the war in 1945—and was appointed by her late husband’s successor, President Harry S. Truman. In her autobiography, she writes that her work at the Commission on Human Rights was one of her most significant assignments within the UN.²¹³ She is often described as the driving force behind the drafting process and was determined to realise the ideals that had been put forth by her late husband in the Four Freedoms speech.²¹⁴ Roosevelt made the members of the commission work hard to get the draft ready.²¹⁵ In her autobiography, she writes about this that she was, she hoped jokingly, called a ‘merciless slave driver’.²¹⁶ She was one of the co-founders of the Freedom House and posthumously received the UN Human Rights Prize in 1968.

The vice-chairman of the drafting committee, Peng-Chun Chang (1893–1957), was a U.S.-schooled academic, philosopher, diplomat, and playwright. He was one of the representatives of China, the vice-chair of the Commission on Human Rights, and represented his country in the Economic and Social Council. In the drafting process, he often elucidated the Chinese concept of human rights and based his arguments on Chinese philosophy. Chang is praised for his intellectual and philosophical contribution to the draft declaration. Humphrey considered him to be ‘a master of the art of compromise’, for he often found a middle ground between contradicting ideologies.²¹⁷ Humphrey also described him as a pragmatist, and Chang called himself a pluralist.²¹⁸ He advocated removing ‘all allusions to nature and God’ from the draft Declaration ‘in the name of universalism’.²¹⁹ In association with Malik, he discussed the concept of universalism in the Declaration. They were both of the opinion that the Declaration should have universalistic aspirations but differed on how this could be entrenched in an international document. As is described further on in this chapter, Chang argued that the drafting committee should show more respect for and pay more attention to the Chinese philosophers, such as Mencius, who was a famous adherent of Confucius.²²⁰

The representative of Lebanon, Charles Habib Malik (1906–1987), occupied the position of rapporteur of the drafting committee. He also served as the president of the Economic and Social Council and as chair of the Third Committee during the 1948 draft-declaration debates, which are discussed in detail in the subsequent sections. Malik was born and raised in Bttram, Lebanon, and studied mathematics and physics at the University of Beirut. In the following years, he developed an interest in philosophy. Malik studied at Harvard University, under Alfred North Whitehead (1861–1947), who is known for his theory on ‘philosophy of organism’ or ‘process philosophy’, and in Freiburg, Germany, under Martin Heidegger (1889–1976). He stayed with Heidegger for a brief period, but due to the rise of Nazism he moved to the USA. In 1937, Malik

²¹³ E.A. Roosevelt, *The Autobiography of Eleanor Roosevelt*, New York, Harper Perennial, 2014 [1961], p. 315.

²¹⁴ Verhofstadt, 2016, p. 4.

²¹⁵ Humphrey, 1984, p. 48.

²¹⁶ Roosevelt, 2014 [1961], p. 319.

²¹⁷ Humphrey, 1984, p. 23.

²¹⁸ Humphrey, 1984, p. 23.

²¹⁹ Dag Hammarskjöld Library, ‘Drafting Committee - Members’, research.un.org.

²²⁰ Dag Hammarskjöld Library, ‘Drafting Committee - Members’, research.un.org.

received his doctorate in philosophy from Harvard and remained in the U.S. to teach at various universities. He also founded the philosophy department at the American University of Beirut. Malik self-identified as Christian, Lebanese, and Arab, and as a theologian he held important positions within Christian organisations after his work at the UN.²²¹

Because of his academic intellect and humanistic point of view, Malik became an important figure in the drafting process. He was pivotal in the discussion, both in the elucidation and in the refinement of some of the essential articles and central concepts of the Declaration. As is demonstrated later, Malik was religiously motivated, and Humphrey described him as a Thomist and as someone who believed in natural law, but also as a bit surly. Humphrey writes: 'Malik believed that his chosen philosophy provided the answers to most, if not all questions, and his thinking was apt to carry him to rigid conclusions. But he was one of the most independent people to ever sit on the commission and he was dedicated to human rights'.²²² Together with Chang, he dominated the commission intellectually.²²³

William Hodgson (1892–1958), a Lieutenant Colonel, was one of the representatives for Australia on the Commission on Human Rights, as well as on the Security Council, and was part of the drafting committee. He studied law at the University of Melbourne, was a World War I veteran and an experienced diplomat, and had occupied positions in, inter alia, France and Canada. Hodgson was one of the representatives who pleaded with great conviction for a convention on human rights that would be multilateral and whose content would be legally enforceable by the establishment of an international court. Humphrey described him as 'peppery' and someone who wanted a convention 'with teeth in it'.²²⁴

Hernán Santa Cruz (1906–1999), one of the representatives of Chile, was a judge at the Superior Military Court and taught criminal and military procedures in Chile. A salient detail is that Santa Cruz provided Humphrey with one of the initial drafts for the Universal Declaration to draw from. In his role on the drafting committee, Santa Cruz strongly advocated the inclusion of socio-economic rights.²²⁵ Susan Waltz writes that he was 'vigilant' in defending these rights and was convincing 'when North Atlantic nations sought to trim them back'.²²⁶ Humphrey described him as 'politically left of centre' and also noted that he had important input in the Declaration.²²⁷ Morsink praises Santa Cruz for his vital contributions to socio-economic rights and explains that this is one of the reasons why the Universal Declaration is 'no mere copy of its Enlightenment predecessors'.²²⁸ By these predecessors he means the French *Déclaration des Droits de l'Homme et du Citoyen* from 1776 and the United States' Declaration of Independence from 1776.

²²¹ He became the president of the World Council on Christian Education from 1967 to 1971, and served as vice-president of the United Bible Societies from 1966 to 1972. Joe, 'Remembering Charles H. Malik', 9 February 2011, *thedisorderofthings.com*.

²²² Humphrey, 1984, p. 23.

²²³ Humphrey, 1984, p. 23.

²²⁴ Humphrey, 1984, pp. 23-24.

²²⁵ Morsink, 1999, p. 30.

²²⁶ S. Waltz, 'Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights', *Human Rights Quarterly*, Vol. 23, No. 1, 2001, p. 60.

²²⁷ Humphrey, 1984, p. 37.

²²⁸ Morsink, 1999, p. 30.

René Cassin (1887–1976) was one of the French representatives. He was a jurist and committed advocate of human rights. Being of Jewish descent, his opinion was strongly influenced by the horrors of the Holocaust and Second World War. He had a prominent role in the sessions of the Commission on Human Rights and also on the drafting committee. Just like Roosevelt, Cassin received the UN Human Rights Prize, and he also won the Nobel Peace Prize in 1968. Cassin served for years as a judge at the ECtHR and later as its president.²²⁹ Humphrey described him as a “dynamic personality and a sharp and quick mind”.²³⁰

The representative of the USSR was Alexandre E. Bogomolov (1900–1969). Bogomolov had been a professor at Moscow State University before he started working as a diplomat. He was the Ambassador of the USSR in France when he became a member of the drafting committee. Similar positions would follow in Czechoslovakia and Italy.²³¹ Prior to the second session of the drafting committee, Bogomolov was substituted for Alexie P. Pavlov. Pavlov had studied at Leningrad University and worked as a lawyer. He was the USSR ambassador in Belgium during the years of the drafting process. He also represented the USSR in the Third Committee.²³² Pavlov strongly advocated the adoption of the principle of non-discrimination. Waltz described Pavlov as ‘tireless in his efforts to promote certain causes. He did not often use diplomatic niceties to couch his criticisms of Western powers, but because many of his comments were meticulously researched, they found their targets’.²³³

The United Kingdom of Great Britain and Northern Ireland was represented by Charles Dukes (1880–1948), who later became Lord Dukeston. He was a fervent trade unionist and one of the founding members of the British Socialist Party. He would later become a politician in the Labour Party. As a conscientious objector, he had refused military service during the First World War. Throughout the drafting process, Dukes left his stamp on both the Declaration and what would later become the International Covenant on Human Rights.

The last member of the drafting committee was John P. Humphrey (1905–1980), who was also the director of the United Nations Division of Human Rights. Humphrey was a Canadian scholar and jurist and had the crucial task of selecting and providing the background information and documents for the Commission on Human Rights. It is said that Humphrey ‘served as an important link between English-speaking and French-speaking cultural perspectives, between scholars and pragmatists, and between politicians and civil servants’.²³⁴ After a long career at the UN, Humphrey worked as a professor at McGill University in Canada and remained an outspoken advocate for human rights. During his life he received due recognition; in 1992, the John Humphrey Freedom Award was founded and named after him in his honour. This is an annual prize awarded by the International Centre for Human Rights and Democratic Development, also known as ‘Rights & Democracy’, which was established by the Canadian government. It is a prize

²²⁹ ‘René Cassin: Biographical’, *nobelprize.org*. The court building of the ECtHR is named after him.

²³⁰ Humphrey, 1984, p. 24.

²³¹ Dag Hammarskjöld Library, ‘Drafting Committee - Members’, *research.un.org*; Morsink, 1999, pp. 30-31.

²³² Morsink, 1999, pp. 30-31.

²³³ Waltz, 2001, p. 61.

²³⁴ Dag Hammarskjöld Library, ‘Drafting Committee - Members’, *research.un.org*.

for an organisation or individual for extraordinary accomplishments within the human rights framework and democracy.²³⁵

Although he was not part of the drafting committee, some insight must be provided into the representative of Saudi Arabia, Jamil M. Baroody (1905–1979), for he would become an essential figure in the debates regarding religious-freedom-related matter. He was born in Suq el-Gharb, a farming village in Lebanon, and came from a Christian and Islamic background. Baroody was a Christian, so it is surprising that he represented the most orthodox Muslim country in the world. Since its proclamation in 1932, the state religion of Saudi Arabia has been Wahhabism, a fundamentalist movement within Sunni Islam. Baroody was married to an American woman, and their children received a U.S. education. However, this did not keep him from delivering anti-Western speeches. Baroody was a close friend of King Feisal of Saudi Arabia and received full support for his actions within the UN from the Saudi Foreign Minister.²³⁶

From this overview, it can be inferred that the drafting committee was made up of a variety of individuals of different nationalities, cultures, and backgrounds who adhered to various doctrines, ranging from Western liberalism to Eastern socialism, and who were subject to various religious influences. It seems only natural that these substantial differences, assuming that they were in accordance with their state ideologies and national interests, influenced their stance on human rights, and in particular on the freedom-of-religion-or-belief provision.

2.4.2 The Secretariat's Outline

After the expansion of the drafting committee, the Commission on Human Rights asked Humphrey to come up with an 'outline' for an international bill of human rights.²³⁷ According to Humphrey, this was also suggested by the 'original three', for Malik and Chang differed too much in their philosophical approach to cooperate in drafting the international bill.²³⁸ With the assistance of his deputy, French lawyer Emile Giraud (1894–1965), Humphrey prepared a first draft of the UN Universal Declaration of Human Rights.²³⁹ Regarding this task, he writes that he 'was no Thomas Jefferson and, although a lawyer', he 'had practically no experience drafting documents'.²⁴⁰ However, as Humphrey explains, there was much material to work with, and he borrowed 'freely' from it.²⁴¹ Humphrey sums up various documents which he had at his disposal. The

²³⁵ Due to various disputes, it was terminated by the Canadian government in April 2012 and was incorporated by the Department of Foreign Affairs and International Trade.

²³⁶ 'Jamil the Irrepressible', *Time*, Vol. 98, No. 24, 1971, pp. 32-34; W. Saxon, 'Jamil M. Baroody, Saudi Arabia's U.N. Delegate, Dies', *The New York Times*, 5 March 1979.

²³⁷ Humphrey, 1984, p. 30. United Nations Department of Public Information, 1947, pp. 523-526.

²³⁸ Humphrey, 1984, pp. 29-30.

²³⁹ Humphrey, 1984, pp. 31-32. Humphrey writes '[i]f I were to draft a text of such importance, I needed to be alone and quiet for a few days with a chance to think'. He was therefore absent from his workplace for a week and created the draft declaration at the Lido Beach Hotel.

²⁴⁰ Humphrey, 1984, pp. 31-32.

²⁴¹ Humphrey, 1984, pp. 31-32. E/CN.4/AC.1/3/Add.1, in this addendum Humphrey added an overview for the members of the Commission on Human Rights to consider during the drafting process. It included observations made by members of the Commission on Human Rights, draft international declarations and proposals made by national governments from, inter alia, Chile, Cuba, India and the United States of America, an overview of the national constitutions of the member states, and a draft international declaration submitted by non-governmental

interesting fact is that he refers to a text prepared by ‘a committee chaired by Viscount Sankey, after a public debate conducted in the Daily Herald’, and a text written by H.G. Wells.²⁴² Evidently, these are the Rights of Man Declaration and the subsequent Sankey Declaration discussed in the previous sections.

Humphrey’s outline consisted of forty-eight short articles, and to his discontent, the drafting committee called it the ‘Secretariat Outline’.²⁴³ He thought this a ‘misnomer’, for it was more than a mere outline: he saw it as a draft declaration.²⁴⁴

2.4.3 Balancing Differences: a Draft Declaration

From 9 to 25 June, 1947, the expanded drafting committee held its first session. During this period, the committee had to keep in mind several concepts and ideas regarding an international bill of rights that had already been introduced during the years in which the UN had been created.²⁴⁵ There was also the Secretariat Outline, created by Humphrey, and a draft created by the United Kingdom.²⁴⁶ However, all drafts were based on various theories regarding human rights, and it was the delicate task of the drafting committee to keep these differences in mind. It was decided that there were two possibilities for working out the submitted proposals: one would be to draw up a preliminary draft for a convention, meaning an enforceable legal instrument; the other one was a draft for a declaration, i.e., a normative document for human rights.²⁴⁷

The drafting committee used Humphrey’s outline as a starting point for their discussion.²⁴⁸ During the first session—there were two in total—of the extended drafting committee, Humphrey

organisations, such as the American Federation of Labor. In the UN Yearbook, reference is also made to drafts submitted by the delegations of Panama, Chile, and Cuba, as well as private drafts from dr. Lauterpacht of Cambridge University, dr. Alvarez of the American Institute of International Law, the Rev. Parsons of the Catholic Association for International Peace, Mr. McNitt of the Faculty of Law of South Western University, and H. G. Wells. United Nations Department of Public Information, *Yearbook of the United Nations 1948–49*, Lake Success, United Nations Publications, 1950, p. 525.

²⁴² Humphrey, 1984, p. 31. D.G. Hensel, has researched to what extent Wells’ ideas are apparent in the UDHR, See Hensel, 2003, pp. 93-102.

²⁴³ Humphrey, 1984, pp. 31-32. The original name was Draft Outline of International Bill of Rights, E/CN.4/AC.1/3. The Secretariats Outline was accompanied by two addenda (E/CN.4/AC.1/3/Add.1) and (E/CN.4/AC.1/3/Add.2).

²⁴⁴ Humphrey, 1984, p. 37. Some authors, such as Van Boven, do not sufficiently acknowledge that Cassin’s revised version was indeed based on the Secretariat Outline, which was created by Humphrey.

²⁴⁵ A non-exhaustive enumeration: E/CN.4/2, Draft Declaration of the International Rights And Duties of Man, formulated by the Inter-American Juridical Committee (8 January, 1947); E/CN.4/4 United States Proposals Regarding An International Bill of Rights (28 January, 1947); E/CN.4/11 Draft of a Resolution for the General Assembly, submitted by the Representative of India (31 January, 1947); E/CN.4/12, Draft Resolution Regarding Composition of a Drafting Committee of the Commission on Human Rights, submitted by the Representative of India (1 February, 1947); E/CN.4/13, Draft Resolution Regarding the Composition of a Drafting Committee of the Commission on Human Rights, submitted by the Representative of the Union of Soviet Socialist Republics (1 February, 1947); E/CN.4/15, Draft Resolution for An International Court on Human Rights, Submitted by the Representative of Australia (5 February, 1947); E/CN.4/17, United States Proposals regarding an International Bill of Rights (6 February, 1947).

²⁴⁶ E/CN.4/AC.1/4.

²⁴⁷ E/CN.4/21, paragraphs 11-12.

²⁴⁸ Humphrey, 1984, p. 37.

was asked by Hodgson on which principals the draft was based and on what philosophy it relied. Knowing that he could not explicitly answer this question within a group that consisted of people with different backgrounds and ideologies, he answered that ‘the draft was not based on any particular philosophy; it included rights recognized by various national constitutions and also a number of suggestions that had been made for an international bill of rights’.²⁴⁹

Throughout the discussions of this first session, numerous views were presented, and the drafting committee therefore decided to create a *temporary working group* which could compare the views and create ‘a logical rearrangement’ of the Secretariat Outline.²⁵⁰ This working group consisted of representatives Cassin (France), Malik (Lebanon), Wilson (the United Kingdom), and Roosevelt (U.S.) as an ex officio member.²⁵¹ It was Cassin who was given the important task of creating a draft declaration. According to Humphrey, Cassin rearranged the Secretariat Outline over the weekend with the assistance of Emile Giraud. Humphrey claims that Cassin did not change much in his design, for he notes that ‘Cassin’s new text reproduced my own in most of its essentials and style. In many cases, he merely prepared a new French version of the official [...] English’.²⁵² Humphrey also writes that Cassin’s version was based ‘on a more or less undigested mass of material collected by the Secretariat’.²⁵³

In this context, it is relevant to address and rebut the claim that is often made in literature and within UN circles that Rene Cassin was the sole drafter of the Universal Declaration and thus ‘the father’ of the Universal Declaration. Understandably, Humphrey disagreed. He writes:

[...] while Cassin’s role was important, it was not more important than the one played by some other members of the commission. The Universal Declaration of Human Rights has no father in the sense that Jefferson was the father of the American Declaration of Independence. Very many people—in the Commission on Human Rights, in its drafting committee, in the Commission on the Status of Women, in the two sub-commissions, in the General Assembly, in the specialized agencies, in departments of national governments and in the nongovernmental organizations—contributed to the final result. It is indeed this very anonymity which gives the Declaration some of its great prestige and authority.²⁵⁴

The idea that Cassin is the father of the Universal Declaration was strengthened by the fact that Cassin’s (draft) version was presented during the tenth anniversary of the adoption of the Universal Declaration at the UN headquarters. Photos of the revision were also published. Rene Cassin’s book *La pensée et l’action*.²⁵⁵ According to Humphrey (and scholars A.J. Hobbins and Mary Ann Glendon have confirmed this), Cassin further reinforced the assumption by referring to the first draft as his sole responsibility in one of his later works.²⁵⁶

²⁴⁹ Humphrey, 1984, p. 49.

²⁵⁰ Humphrey, 1984, p. 42.

²⁵¹ E/CN.4/21, paragraph 13.

²⁵² Humphrey, 1984, p. 43.

²⁵³ Humphrey, 1984, p. 43.

²⁵⁴ Humphrey, 1984, p. 43.

²⁵⁵ R. Cassin, *Pensée et l’action*, F. Lalou, University of Michigan, 1972.

²⁵⁶ M.A. Glendon, ‘Diaries of a Forgotten Framer’, *Harvard Human Rights Journal*, Vol. 14, 2001, p. 280. A.J. Hobbins,

After the publication of Humphrey's memoirs in 1984, A.J. Hobbins researched the origins of the first draft of the Universal Declaration. Hobbins explicitly addresses the claim made by Humphrey that he created the first draft, and after a textual comparison of various versions by both men, he confirms Humphrey's claim.²⁵⁷ He writes: 'the only sense in which Cassin can be said to be the author of the first draft would be if his draft were quite original, not derivative, and formed the exclusive basis of discussion for the subsequent activities of the Drafting Committee'.²⁵⁸ Glendon later affirmed both Humphrey's and Hobbins' claims.²⁵⁹ Although it is incorrect to claim Cassin as the father of the Declaration, his contributions to the drafting process with regard to religious-freedom-related matter, as is demonstrated in the upcoming sections, were substantial.²⁶⁰ In the next section, the actual conceptualisation of the religious freedom provision is examined.

2.5 The Legal Conceptualisation of Religious Freedom

The draft that Humphrey created contained civil, political, economic, social, and cultural rights. The provision of freedom of religion was straightforward: 'there shall be freedom of conscience and belief and of private and public worship'.²⁶¹ Cassin made significant changes and altered the provision to:

The individual freedom of conscience, belief and thought is an absolute and sacred right. The practice of a private or public creed and the expression of conflicting convictions may not be subjected to any restraints except those necessary to protect public order, morality and the rights and freedoms of others.²⁶²

It is clear that there is a shift from a generally allocated religious freedom to a freedom that begins with the individual. Moreover, it is evident that Cassin's version includes a clause that addresses the legitimate restriction of religious freedom. As Van Boven correctly noted, in the latter formulation, a clear distinction is made between the freedom that belongs to the *forum internum*, which is absolute, and the external manifestations of this freedom, which may be subject to

'Rene Cassin and the Daughter of Time: The First Draft of the Universal Declaration of Human Rights', *Fontanus*, Vol. 2, 1989, p. 8; Humphrey, 1984, p. 43; J. Attali, *Dictionnaire amoureux du judaïsme*, Paris, Plon/Fayard, 2009, pp. 125-128.

²⁵⁷ Hobbins, 1989, pp. 10-14.

²⁵⁸ Hobbins, 1989, p. 22.

²⁵⁹ Glendon, 2001, p. 280. Initially, Glendon did not fully acknowledge Humphrey's contribution, as she merely remarks that Humphrey provided 'the analytical survey'. M.A. Glendon, 'Knowing the Universal Declaration of Human Rights', *Notre Dame Law Review*, Vol. 73, No. 5, 1998, pp. 1153-1190. A few years later, she seems to have reversed her point of view. Morsink also addresses this topic, but does not state that Cassin contributed to the wrong impression of being the sole author of the first draft. He does state that 'Cassin did not really enter the room until after the baby was born'. Morsink, 1999, p. 29.

²⁶⁰ A salient detail is that, during the declaration's drafting process, the document was actually long known as the international declaration, but at Cassin's suggestion the name was changed to Universal Declaration. J. Winter & A. Prost, *Rene Cassin and Human Rights. From the Great War to the Universal Declaration*, Cambridge, Cambridge University Press, 2013, pp. 249-250. A/C.3/339.

²⁶¹ E/CN.4/21, annex D, article 14.

²⁶² E/CN.4/21, annex D, article 21.

restrictions under certain conditions.²⁶³ It should be stressed, however, that not only Van Boven, but Humphrey too had made a distinction between these two fora, only in a less explicit manner than Cassin. Interestingly, Cassin's distinction is actually similar to the one described by Ruffini, discussed in the previous chapter.

It is peculiar that Cassin used the concept of 'sacred' in his provision. As French sociologist Emile Durkheim (1858–1917) explained: sacred is a distinctive trait of religious thought, and it must be regarded in contrast to the profane.²⁶⁴ Another characteristic of sacred is that it has a connection to a god or is intertwined with religious purpose and worship. It can be described as the ultimate value of life, or as the previously discussed 'numinous' coined by German philosopher Rudolf Otto.²⁶⁵ Sacred may even be described as 'religious rather than secular'.²⁶⁶ The question therefore arises: Was Cassin aware of the religious connotation when referring to the concept of the sacred in the provision? Or rather, did Cassin realise that he was bringing a religious element into the provision?

It may be assumed that he was not, for it was evident from the beginning of the drafting process that the Declaration was supposed to be a secular document, in accordance with the institution that was responsible for its drafting, to wit, the Commission on Human Rights. It is interesting that Cassin, a Frenchman who was a fervent defender of secularism, which is concomitant with moral and political autonomy, inserted this concept into the legal provision. It would probably have been more judicious to use a concept that does not have this religious connotation, such as 'inviolable', to stress the importance of the right.

2.5.1 The Introduction of the Right to Apostasy

The drafting committee did not immediately adopt Cassin's suggestions. It insisted that the words 'the expression of conflicting convictions' be deleted. And after it had been pointed out by several religious groups that religious manifestations do not only take place in the context of worship, but also within the context of teaching and discussing religious belief, the provision was changed.²⁶⁷

Malik, the Lebanese representative, then did something rather important. He introduced a consequence of the universality of the freedom of religion or belief that would make this right one of the most contested legal provisions of the modern era. Malik broke a centuries-old taboo, to wit, that the individual believer has the inalienable right to change his belief. He made clear that the essence of freedom of belief is not only that you can adopt a belief, but also that you can *change* your belief. Therefore, he insisted that the freedom to change belief, which was also included in the British proposal, was added to the text.²⁶⁸ This plea for the *right to apostasy* was a significant

²⁶³ Van Boven 1967, p. 99.

²⁶⁴ E. Durkheim, *The Elementary Forms of Religious Life*, New York, The Free Press, 1995 [1912], p. 34.

²⁶⁵ Otto, 1932, pp. 8-11.

²⁶⁶ Lexico, 'Sacred', *lexico.com*.

²⁶⁷ E/CN.4/AC.1/SR.8, p. 12.

²⁶⁸ E/CN.4/21; E/CN.4/AC.1/SR.13, p. 19-20. The United Kingdom's proposal was 'Every person shall be free to hold any religious or other belief dictated by his conscience and to change his belief. 2. Every person shall be free to practice, either alone or in community with other persons of like mind, any form of religious worship and observance, subject only to such restrictions, penalties or liabilities as are strictly necessary to prevent the commission of acts which offend laws passed in the interest of humanity and morals, to preserve public order and to

adjustment to the provision, for it has set the stage for what was to be—and still is—a fierce discussion regarding the rights of apostasy and proselytism in subsequent years. Two other salient details must be noted: First, no comments were made regarding the use of the concept ‘sacred’, and second, there was no explicit mention of the *freedom of religion*; it was merely about thought, conscience, and beliefs. The submitted changes led to the following revised text:

Individual freedom of thought and conscience, to hold or to change beliefs, is an absolute and sacred right. The practice of a private or public worship. Religious observances, and manifestations of differing convictions, can be subject only to such limitations as are necessary to protect public order, morals and the rights and freedom of others.²⁶⁹

A noticeable detail is that, besides the submitted comments, which were implemented in this revised provision, the words ‘manifestations of differing convictions’ were added. Cassin was responsible for this addition, for he wanted manifestations not only to include religious worship but also manifestations of *philosophical* beliefs.²⁷⁰ So even though the word sacred was still included in the provision, there was a definite shift made towards an *areligious sphere*.

2.5.2 Every Individual

In December 1947, the Commission on Human Rights decided that the bill of rights would consist of three parts: a declaration, a convention, and the implementation, and three ‘working parties’ would engage with these topics.²⁷¹ The drafting committee introduced the drafts to the Commission on Human Rights for discussion and the decision whether to continue with the Secretariat Outline, the revised version by Cassin, or the proposal as drafted by the UK. The Commission decided to continue with Cassin’s revised proposal.²⁷²

The drafting of the religious freedom provision proceeded, and the Commission on Human Rights soon experienced that it would continue to be a delicate process, as pressure was exerted from both religious and non-religious (atheistic and secular) actors. For instance, the Commission of Churches on International affairs stressed that all facets of the creed should be emphasised.²⁷³ From a non-religious angle, mainly advocated by Bogomolov from the USSR, it was stressed that full freedom of conscience included not only religious but also ‘anti-religious propaganda’, or rather, *atheistic perspectives*.²⁷⁴ It was argued that the freedom of religion or belief encompassed not only the right to apostasy but also included the right to take a stand against religion.

Interestingly, Roosevelt explained that the drafting committee understood the provision as covering full freedom of conscience for both believers and atheists. She felt that Bogomolov’s view

ensure the rights and freedoms to others’. E/CN.4/21, Annex F, article 20.

²⁶⁹ E/CN.4/21; Annex F, article 20.

²⁷⁰ E/CN.4/21; E/CN.4/AC.1/SR.13.

²⁷¹ E/CN.4/SR.29.

²⁷² E/CN.4/SR.29, E/600.

²⁷³ E/CN.4/AC.2/SR.6, Mr. Nolde of the Commission of the Churches on International Affairs argued that religious freedom had five aspects, *viz*: 1. Freedom of worship; 2. Freedom of observance; 3. Freedom of teaching; 4. Freedom of association; 5. Freedom of practice.

²⁷⁴ E/CN.4/AC.2/SR.6.

should be taken into consideration, and therefore all references to the term religion should be avoided in the provision. This was a controversial view to take for an American. The United States was—and still is—a country with significant church attendance, and atheism is unpopular there. But Roosevelt also met with opposition from within the UN. Bogomolov's proposals were vehemently opposed by Cassin. The Commission furthermore debated if the words 'philosophical and religious' needed to be added before the word 'teaching', so that both religious and non-religious education could be guaranteed.²⁷⁵ These comments and further deliberation led to a new proposal, which read as follows:

1. Individual freedom of thought and conscience, to hold and change beliefs, is an absolute and sacred right;
2. Every person has the right, either alone or in community with other persons of like mind and in public or private, to manifest his beliefs in worship, observance, teaching and practice.²⁷⁶

So the provision was split into two paragraphs, and the limitation clause regarding the protection of the public order, morals, and the rights and freedom of others was deleted. The second paragraph, thus, the freedom to individually or collectively practise belief, was also formulated as an individual right, and the term 'every person', which would be included in the definitive result in a similar manner, was introduced.

It is interesting that even though there was a distinct voice from a non-religious angle, the use of the concept of sacred in the provision was still not challenged. Considering the last USSR comment, and the support thereof by Roosevelt, the question arises as to why they did not oppose the usage of this terminology, for it is difficult to establish an impartial freedom of thought and conscience when an implicit reference is already made to the religious sphere.

In May 1948, the drafting committee gathered again. This time, however, not many remarkable changes were proposed. Pavlov, who had succeeded Bogolomov in the meantime, made a similar proposal as during the previous (second) meeting to change the article so that there was a more explicit focus on the freedom of thought, which was dismissed.²⁷⁷ The drafting committee adopted one change, consisting of a rearrangement of the second paragraph into 'to manifest his belief in teaching, practise, worship and observance'.²⁷⁸ Relevantly, still no explicit mention of the freedom of religion was adopted. During the meetings of the drafting committee, Roosevelt did mention that the United States wanted this insertion, but she withdrew her amendment in favour of the implemented changes.²⁷⁹

²⁷⁵ E/CN.4/AC.2/SR.6.

²⁷⁶ E/600, Annex A, Article 16.

²⁷⁷ E/CN.4/AC.1/SR.40, p. 4. Pavlov suggested 'Every person shall have the right to freedom of thought and to freedom to practice religious observances in accordance with the laws of the country and the dictates of public morality'. The amendment failed by 4 votes to 1, with 2 abstentions. The reasons why this line of argument as used in the amendment was rejected are discussed in the next section.

²⁷⁸ E/CN.4/AC.1/SR.40, p. 4.

²⁷⁹ E/CN.4/AC.1/SR.40, p. 2-3. She had suggested changing to provision into: 'Everyone is entitled to freedom of religion, conscience, and belief, including the rights, either alone or in community with other persons of like mind, to

2.5.3 Deleting the Freedom of Thought?

A month later, this slightly changed provision, which was included in the draft declaration, was introduced during the third session of the Commission on Human Rights. Regarding the religious freedom provision, Malik adopted Roosevelt's idea and introduced an amendment that would add the term 'religion' to the first paragraph of the provision. He also suggested altering certain elements, such as removing the division of the provision into two paragraphs, and deleting the clauses 'absolute and sacred right', and 'freedom of thought'. Malik's provision would, accordingly, be:

Everyone has the right (is entitled) to freedom of religion, conscience and belief; this right includes freedom to change his religion or belief, and freedom, either alone or in community with other persons of like mind and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

The justified deletion of the words 'sacred and absolute' did not encounter difficulties, but the proposal to delete the freedom of thought did. The reason for Malik to delete the freedom of thought was that it was already included in the following article, namely Article 17, regarding the freedom of expression.

Cassin and Pavlov, the representative of the USSR, strongly opposed Malik's suggestion. Pavlov argued that it was incorrect to leave it out, for thought should be safeguarded under the same conditions as religion.²⁸⁰ He also emphasised that 'atheists also had the right to express their opinions and to have their freedom of thought protected'.²⁸¹ According to Cassin, '[t]he right to freedom of thought was a sacred and inviolable right. It was the basis and the origin of all other rights. Freedom of thought differed from freedom of expression in that the latter was subject to certain restrictions for the sake of public order'.²⁸²

Besides the usage of the concept of 'sacred' in his remark, Cassin had a solid point, just like Pavlov. Cassin continued his argument by rhetorically addressing a critical question, somewhat rephrased. He wondered: why should thought be protected even before it was expressed? His answer was '[t]hat it was because the opposite of inner freedom of thought was the outward obligation to profess a belief which was not held. Freedom of thought thus required to be formally protected in view of the fact that it was possible to attach it indirectly. Hence the right to freedom of thought, which was the basis of other liberties, should be included in the article'.²⁸³

It seems that the reasoning behind this freedom is the right not to be compelled to adhere to a religion, belief, or ideology to which one does not subscribe. This provides protection for members of minority religions, who otherwise could be the victims of religious discrimination or religious persecution. As was discussed in paragraph 1.6, the freedom of thought relates to a

hold and manifest any religious or other belief, to change belief, and to practice any form of religious worship and observance'. E/CN.4/AC.1/20, p. 7.

²⁸⁰ E/CN.4/SR.60, p. 10.

²⁸¹ E/CN.4/SR.60, p. 12.

²⁸² E/CN.4/SR.60, p.10.

²⁸³ E/CN.4/SR.60, p.10.

freedom regarding the inner self, which should be unconditional and not be subjected to any limitations of a legal or public nature.

Eventually, the Commission on Human Rights decided to adopt both the concepts of thought and religion and, with 11 votes in favour and 4 abstentions, adopted Article 16, which reads:

Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom to change his religion or belief, and freedom, either alone or in community with others and public or private, to manifest his religion or belief in teaching, practice, worship and observance.²⁸⁴

This provision, as part of the draft declaration, was submitted to the Economic and Social Council and debated from July to August 1948. It was not discussed article by article, but the delegates submitted general remarks. This did not lead to changes, and the Declaration was sent to the General Assembly for discussion.²⁸⁵ Since the most substantial theoretical and (legal) philosophical discussion of the religious freedom provision's conceptual underpinnings occurred during the Third Committee's debate, there is an explicit focus on these discussions in the next section.

2.6 The Third Committee: Questioning the Theoretical Underpinnings

In Paris, the Social, Humanitarian & Cultural Committee of the General Assembly, also known as the Third Committee, discussed the draft declaration during its third session, which lasted from September till December 1948. They gathered more than eighty times to deliberate, and 168 formal draft resolutions were presented to amend the numerous articles.²⁸⁶ The state representatives devoted considerable attention to Article 16 regarding the freedom of thought, conscience and religion and suggested several changes.²⁸⁷

The USSR once more expressed that it did not agree with the proposed text and wanted to replace it with: 'Everyone must be guaranteed freedom of thought and freedom to perform religious services in accordance with the laws of the country concerned and the requirements of public morality'.²⁸⁸ Here freedom of thought was apparently presented as the central right, not freedom of religion. Peru also suggested deleting the complete provision and replacing it with: 'Every person has the right freely to profess a religious faith, and to express it in thought and in practice, both in public as well as in private'.²⁸⁹ Contrary to the Russian proposal, Peru placed

²⁸⁴ E/CN.4/SR.60, E/CN.4/SR.62; E/800, Annex A, Article 16.

²⁸⁵ E/RES/151(VII).

²⁸⁶ The sources mention different numbers regarding the number of meetings. In this chapter, the official records of the Yearbook of the United Nations 1948–49, department of public information New York, Lake Success, are used. This states that there were 81 meetings, p. 527. Many actions for the General Assembly are done in committees. It is common practice that topics are first discussed within the main standing committees. This way all representatives are able to give their opinions and cast their (initial) vote. After the topic's extensive discussion, it is introduced to the plenary meeting of the General Assembly, where a final vote is taken.

²⁸⁷ A/C.3/289/REV.1, Draft International Declaration of Human Rights: Recapitulation of Amendments to Article 16 of the Draft Declaration (E/800), 30 October, 1948.

²⁸⁸ A/C.3/289/REV.1, E/800, p. 33.

²⁸⁹ A/C.3/225.

religious faith centre stage, with the concept of ‘thought’ merely referring to religious thought. Cuba introduced an amendment that called for the first sentence of the provision to be changed to: ‘Every person has the right freely to profess a religious or philosophical belief. This right includes [...]’²⁹⁰ Here we see that religious and philosophical views are presented as being of equal significance. Saudi Arabia amended to delete the phrase ‘to change his religion or belief, and freedom’.²⁹¹ And Sweden proposed adding the words ‘provided that this does not interfere unduly with the personal liberty of anybody else’ at the end of the provision, so after the word ‘observance’.²⁹² This was ‘[i]n order to protect individuals, who have religious beliefs, different from the officially acknowledged religion, or who have no religious belief whatever, against manifestations of religious fanaticism’.²⁹³ The proposed amendments were cause for extensive debate. In the next section, the motivations of the delegates of the USSR and Saudi Arabia are examined in greater detail.

2.6.1 The USSR Amendment: A Focus on the Freedom of Thought

The USSR representative, Pavlov, explained that the provision as drafted by the Commission on Human Rights ‘merely announced the right of freedom of thought, conscience and religion, whereas the USSR amendment expressly guaranteed the enjoyment of that right’.²⁹⁴ He placed

[...] a particular emphasis on freedom of thought which it was necessary to sanction in order to promote the development of modern sciences and which took account of the existence of free-thinkers whose reasoning had led them to discard all old-fashioned beliefs and religious fanaticism. The times when scientists were condemned to be burnt at the stake were past, and science occupied a most important place in human life.²⁹⁵

In general, it seems that Pavlov was of the opinion that adherents of religions were assigned a privileged position in comparison with those subscribing to atheistic or areligious views.

In addition, Pavlov said that there were religious practices which ‘represented a real danger for society’. He referred to the practice of ritual human sacrifice that had been performed in the name of religion in particular regions of Africa and to the possible effects on children who witnessed public ceremonies of flagellation in the ‘Far East’.²⁹⁶ Pavlov seems to concentrate on the dangers of religion. Atrocities are indeed conducted in the name of religion, and most religions or

²⁹⁰ A/C.3/232. The Cuban representative, Guy Pérez Cisneros, suggested changing the first sentence of the provision, arguing that it currently started with ‘a phrase which meant nothing, as it stated a right which was evident, which existed a priori and which need not be defended’. A/C.3/SR.127, p. 404. This demonstrates a clearly different view than, for example, that of Cassin during the third meeting of the Commission on Human Rights, in which he said that the freedom of thought was the basis and the origin of all other rights and expressed that it should be explicitly addressed in the provision.

²⁹¹ A/C.3/247/REV.1 Baroody had revised his amendment. He had first suggested to ‘[d]elete the second part of th[e] article, which begins with the words: “this right includes” etc., retaining only the first part which reads: “Everyone has the right to freedom of thought, conscience and religion”’. A/C.3/247.

²⁹² A/C.3/252.

²⁹³ A/C.3/252.

²⁹⁴ A/C.3/SR.127, p. 391.

²⁹⁵ A/C.3/SR.127, p. 391.

²⁹⁶ A/C.3/SR.127, p. 391.

belief systems have black pages in their histories. For instance, Christianity imposed the death penalty for heresy in the 13th century, and it is responsible for the Inquisition (1478–1834). Islam has a long history of condemning apostates, such as the Ridda wars in the years 632–633.²⁹⁷ But religion has not been the only thing used as a pretext to carry out atrocities; deplorable actions have also been conducted in the name of ideology. Illustrative is Lysenko’s evolution theory during the days of the Soviet Union.

In the period from 1929 to 1962, biologist Trofim Lysenko (1898–1976) was able to acquire an essential position as a scientist by introducing a new theory of evolution. Lysenko claimed to have developed a theory which could bring about a revolutionary reform in agriculture. At the time, science was used to serve Communist propaganda, and with the support of Stalin, Lysenko achieved great success in the Soviet Union. During that time, opponents of his theory were sent to prison or murdered. Years later, his theory would turn out to be pseudoscientific. The Lysenko affair has become a symbol for the biased Soviet science policy in which political leaders had a significant influence on the development of science.²⁹⁸ Stalinism was also used as the instrument for denying scientific discoveries when they did not comply with Soviet ideology.

These examples demonstrate that indeed, atrocities have been committed in the name of various doctrines. It is therefore important to emphasise that the *ratio legis* of the provision is to protect the individual from these kinds of wrongful practices, whether they are the product of a religious, scientific, or political doctrine.

2.6.2 The Saudi Arabian Amendment: Fear of Political Proselytism

One of the most significant challenges to the attempt by people like Chang and Malik to universalize the freedom of religion or belief came from the Kingdom of Saudi Arabia. The Saudi Arabian delegation suggested changing the words of the provision into the following: ‘Everyone has the right to freedom of thought, conscience and religion; this right includes the freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance’.²⁹⁹ This means that the freedom to relinquish religion was removed in the proposal.

The delegate of Saudi Arabia, Baroody, extensively elucidated the motivations for his amendment. It may be assumed that one of the reasons for this extensive elaboration was that Saudi Arabia was not represented in the Commission on Human Rights, and there was finally the opportunity to express his delegation’s thoughts. Baroody was surprised that the Commission ‘had sponsored an article wherein, after stating those three freedoms, it had concentrated exclusively on freedom of religion and the right to change religious beliefs, without any mention of the right of the individual to change his general conception of things and the dictates of his conscience’.³⁰⁰

²⁹⁷ B.B. Lawrence, ‘Muslim Engagement with Injustice and Violence’, in M. Juergensmeyer, M. Kitts & M.K. Jerryson (eds.), *Violence and the World's Religious Traditions: An Introduction*, New York, Oxford University Press, 2017, p. 147.

²⁹⁸ ‘Lysenko Affair’, *Encyclopedia of Modern Europe: Europe Since 1914: Encyclopedia of the Age of War and Reconstruction*. *Encyclopedia.com*, 6 September, 2018; D. Joravsky, ‘The Lysenko Affair’, Vol. 207, No. 5, 1962, pp. 41-49.

²⁹⁹ A/C.3/247/REV.1; E/800, Annex A, Article 16.

³⁰⁰ A/C.3/SR.127, p. 391.

He furthermore said that ‘throughout history missionaries had often abused their rights by becoming the forerunners of a political intervention, and there were many instances where peoples had been drawn into murderous conflict by the missionaries’ efforts to convert them’.³⁰¹ Accordingly, he noted that ‘bloody and unjustifiable crusades organized in the name of religion, had had as their real economic and political purpose the acquisition of a place in the sun for the surplus populations of Europe. Religious wars between Catholics and Protestants had caused, in Europe, the death of millions of persons of both faiths which differed but little from each other’.³⁰² Baroody continued by arguing that ‘[...] even at that time when, according to some, tolerance prevailed, the dangerous weapon of propaganda was being used in all parts of the world to stir up peoples’ religious or other beliefs’.³⁰³ Baroody thus made it clear that he feared that the freedom to change religion would be used as a political force through missionary activities.³⁰⁴

Several representatives argued with Baroody’s point of view. Cassin remarked that ‘it was a delicate matter for the holders of certain religious beliefs to see it proclaimed that all men had the right to change their beliefs. He admitted that a certain lowering of respect for those religions might result from the adoption of that clause’.³⁰⁵ Cassin continued that, beside this so-called ‘lowering of respect for those religions’, a topic which is addressed in the following chapters, ‘the Committee must place itself on the broader plane of humanity as a whole. Not content with proclaiming freedom of thought, it must adopt all the consequences of that proclamation; and one of the most important corollaries of freedom of thought was the freedom of the individual to change his opinion’.³⁰⁶ The Filipino delegate, Aquino, argued that it was “inevitable that the definition of freedom of religion should give rise to differences of opinion”.

Aquino saw Article 16 as the outcome of ‘a compromise based on the spirit of conciliation and tolerance [...]’.³⁰⁷ In addition, he argued that the ‘precedents of the Crusades and the wars of religion he had evoked, far from militating against the adoption of Article 16, clearly demonstrated the utility of provisions designed to prevent a repetition of such conflicts’.³⁰⁸

The Chinese representative, Chang, emphasised the relationship between freedom of thought and religion again and noted that the Commission on Human Rights had agreed that ‘freedom of belief was an integral part of freedom of thought and conscience, and if special emphasis was laid on the necessity of protecting it, that was to ensure the inviolability of that profound part of thought and conscience which, being largely emotional, was apt to lead mankind into unreasonable conflict’.³⁰⁹

³⁰¹ A/C.3/SR.127, p. 391.

³⁰² A/C.3/SR.127, p. 392.

³⁰³ A/C.3/SR.127, p. 396.

³⁰⁴ A/C.3/SR.127, p. 404.

³⁰⁵ A/C.3/SR.127, p. 397.

³⁰⁶ A/C.3/SR.127, p. 396–397. What is interesting is that Cassin proposed in this discussion to change the word ‘croyance’ in the French draft, for it ‘was less satisfactory than that of the English. The French text used the term “croyance” which had an essentially religious favour, whereas the English text used the wider term “belief”’. He saw this as a ‘purely formal alteration’ and did not want to change the meaning of the text. A/C.3/SR.127, p. 397.

³⁰⁷ A/C.3/SR.127, p. 395.

³⁰⁸ A/C.3/SR.127, p. 396.

³⁰⁹ A/C.3/SR.127, p. 398.

From Baroody's explanation, it is evident that he feared the adoption of the freedom to change religion and the right to proselytism. For now, it suffices to merely point this out; the rights to apostasy and proselytism are discussed in detail in Chapter 3.

2.6.3 A Plea for Atheism

In this discussion, another interesting development occurred, initiated by the representative of Haiti, Emile Saint-Lot, who strived for the opposite of what Baroody was after. Besides the USSR delegates, Saint-Lot was one of the few delegates who made a plea for the *freethinker*. He said that the text was formulated too restrictively, for it was not 'drawn up in general broad terms'.³¹⁰ According to Saint-Lot '[a]n attempt had been made in it to proclaim not only freedom of belief, but also the right of the individual to change his belief. There was, therefore, ground for astonishment that its authors had not thought of making it still clearer by affirming the right not to believe'.³¹¹ He made this reservation 'in the name of the great mass of free-thinkers'.³¹² This was a crucial moment in the discussion. Implicitly, Saint-Lot supported the USSR delegates and brought up the issue of whether secular creeds should not receive the same protection as religious creeds.

In this context, it can be argued that the provision already guarantees the right to be an atheist or freethinker, since it proclaims the freedom of thought. Textually, it is even the freedom that is mentioned first, so prior to conscience and religion. This line of reasoning was also adopted in the discussion in the Commission on Human Rights. However, in line with Saint-Lot, it must be asked: if the right not to believe was already conceptually included in the provision, why not explicitly proclaim it? Especially when we know that there are particular risk categories. Both at present and in history, atheists have been the victim of discrimination and persecution in various parts of the world. The explicit adoption of the freedom to be an atheist would reduce the risk of misinterpretations or even misuse of the provision by states.

Despite the fact that Saint-Lot approached the subject from a different perspective, his argument seems to be in the line with that of the 'communist' representatives. But unlike them, Saint-Lot wanted the right 'not to believe' explicitly proclaimed. It is interesting that Baroody did not comment on, or tried to amend, this implicit right to atheism.

In sum, it seems that Baroody was not persuaded by the arguments of his colleagues. During the debate, he continued to plead his cause with increasing emotion and asked if '[...] colonial powers, notably the United Kingdom, Belgium and the Netherlands, whether they were not afraid of offending the religious beliefs of their Muslim subjects by imposing that article on them'.³¹³ Baroody introduced two new elements in the discussion. First, he delegitimized other participants in the conversation because of their colonial past. Second, Baroody introduced a notion that would prove to be very influential in the course of the discussions: he spoke of 'offending religious beliefs'. This would be a crucial point in a later debate, which is discussed in detail in Chapters 4 and 5.

³¹⁰ A/C.3/SR.127, p. 399.

³¹¹ A/C.3/SR.127, p. 399.

³¹² A/C.3/SR.127, p. 399.

³¹³ A/C.3/SR.127, p. 404.

2.6.4 Rejection of the Amendments

The points introduced by Pavlov and Baroody did not convince the other members of the Third Committee that there was a need to change the provision.³¹⁴ The USSR's amendment was put to the vote in four parts. This resulted in its rejection by 23 votes to 9, with 8 abstentions, and 24 votes to 9, with 8 abstentions. These two rejections led to the overall veto of the amendment.³¹⁵ Baroody had asked that the words 'this right includes freedom to change his religion' were put to the vote. To his disappointment, the words were adopted with 27 votes to 5, with 12 abstentions.³¹⁶ Baroody's determination did not pay off in the end, as his amendment was rejected by 22 votes to 12, with 8 abstentions.³¹⁷

It is often said that only Islamic countries supported the Saudi Arabian amendment, but this was actually not the case. Iraq, Syria, and Afghanistan did indeed subscribe to Baroody's stance, but Bolivia, Venezuela, Cuba, and Denmark also endorsed the amendment, although for different reasons.³¹⁸ The amendments of Sweden, Peru, and Cuba were also rejected after careful consideration.³¹⁹ The Third Committee put the article to the vote per paragraph and in its entirety, and it was adopted 38 to 3, with 3 abstentions.³²⁰

2.6.5 Islam as a Missionary Religion

During the plenary meeting of the General Assembly on 10 December, 1948, Mohammed Zafrullah Khan, the Pakistani delegate, noted that although the discussion about the freedom of religion provision had already been concluded, he still wanted to make some remarks.³²¹ Zafrullah Khan argued that he did not just want to make a political statement in which he would claim that Pakistan held the freedom of religion or belief in high regard, but he wanted to provide some insight into the teachings of Islam with regard to proselytism and the freedom to change religion or belief.³²² Zafrullah Khan explained that

[t]he teaching of Islam was based on the Koran which contained the oral revelations made to the prophet Mohammed; the Koran was, therefore, the very word of God for Moslems. Now it stated that neither faith, nor conscience which gave birth to it, could have an obligatory character. The Koran expressly said: 'Let he who chooses to believe, believe, and he who chooses to disbelieve, disbelieve', and it formally condemned not lack of faith but hypocrisy. The Moslem religion was a missionary religion: it strove to persuade men to

³¹⁴ A/C.3/SR.128, p. 404-408.

³¹⁵ A/C.3/SR.128, p. 405.

³¹⁶ The states that voted against were: Afghanistan, Iraq, Saudi Arabia, Syria, and Pakistan. A/C.3/SR.128, p. 405-406. It is peculiar that Pakistan voted against the phrase, considering the statement they made during the plenary meeting on 10 December, 1948, and their stance during previous discussions.

³¹⁷ A/C.3/SR.128, p. 405.

³¹⁷ A/C.3/SR.128, p. 405.

³¹⁸ A/C.3/SR.127 and A/C.3/SR.128.

³¹⁹ A/C.3/SR.128, p. 405. The Swedish amendment was rejected by 27 votes to 10, with 7 abstentions. The Cuban amendment was rejected by 26 votes to 5, with 10 abstentions.

³²⁰ A/C.3/SR.128, p. 406.

³²¹, p. 889-891.

³²² A/PV.182, p. 889-891.

change their faith and alter their way of living, so as to follow the faith and way of living it preached, but it recognized the same right of conversion for other religions as for itself.³²³

Zafrullah Kahn did not mention the surah in which the phrase is to be found, but he seems to have been referring to Verse 29 of Al-Kahf (Chapter 18, The Cave, Quran). This verse is often cited to substantiate the assumption that the freedom of religion is recognised within Islam. The verse starts with the phrase: ‘And say, O Prophet, “This is the truth from your Lord. Whoever wills let them believe, and whoever wills let them disbelieve”.’ Yet, the Verse continues with the words ‘Surely We have prepared for the wrongdoers a Fire whose walls will completely surround them. When they cry for aid, they will be aided with water like molten metal, which will burn their faces. What a horrible drink! And what a terrible place to rest!’³²⁴ It seems that the latter part of the Verse nullifies Zafrullah Khan’s claim.

Interestingly, this is a holistic interpretation, which demonstrates that it is difficult to isolate the meaning of a particular sentence from its context. And although the examination and interpretation of possible references to the freedom of religion within Islamic scriptures are interesting, it is not my aim to enter into a theological discussion. What can be plausibly said after the analysis of the debate is that the Islamic religion was interpreted differently. More specifically, in contrast to Baroody, Kahn believed Islam to be a missionary religion, and he emphasised the freedom to change religion.³²⁵ He was also of the opinion that the freedom to change religion should therefore be adopted in the provision. By adopting this stance, Kahn seems to undermine Baroody’s pointing an accusing finger at (Christian) missionary religions. What is relevant in this regard is that, in the following years, the Pakistani view changed more towards the Saudi Arabian stance. At that time, Pakistan was the homeland for Indian Muslims, but it was officially a secular state. It only became the Islamic Republic of Pakistan in 1956. In 1948, the state religion in Saudi Arabia was already Wahhabism, a fundamentalist movement within Sunni Islam.

2.6.6 The Final Vote

On 10 December, 1948, the General Assembly voted on the provision regarding the freedom of thought, conscience, and religion—it was changed to Article 19 (A/777) and later to Article 18—in their plenary meeting, and it was adopted by 45 votes, with 4 abstentions.³²⁶ That same day the Universal Declaration was adopted with 48 in favour and 8 abstentions, but more importantly, no state voted against.³²⁷ Interestingly, there was one country, namely Saudi Arabia, that abstained

³²³ A/PV.182, p. 889-891.

³²⁴ M. Khattab, *The Clear Quran*, Illinois, Book of Signs Foundation, 2006.

³²⁵ A/PV.182, p. 889-891.

³²⁶ A/PV.183, Plenary Meeting 10 December, 1948, p. 933. Articles 15 to 18 were adopted unanimously.

³²⁷ A/PV.183, p. 933-934. In favour: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam (Thailand), Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela. The abstentions were: Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, Saudi Arabia, Ukrainian Soviet Socialist Republic, Union of South Africa, Union of Soviet Socialist Republics, and Yugoslavia. A/RES/217 (III) of 10 December, 1948, UN Doc.

from voting due to Article 18 UDHR. Other Islamic countries, such as Syria and Iran that had supported Baroody's amendment during the Third Committee discussions, nevertheless voted in favour of the adoption of the Universal Declaration.³²⁸

As the previous sections have demonstrated, the delegates strived for consensus and for universal validity, which was eventually formally reached by the international community. More specifically, there was a two-year-long endeavour to adopt a universal idea of the freedom of religion or belief. All states contributed to the Universal Declaration: they drafted documents, sent delegates, voiced their opinions during the discussions, introduced amendments, and voted on the drafts and amendments. The reasons why some states abstained from the final vote varies, but that did not deter these states from actual participation in the two-year drafting process. Accordingly, all states participated in the project to strive for moral universalism, expressed as fundamental universal human rights. The freedom to change religion or belief would, however, remain a fundamental issue for Saudi Arabia. This is discussed in detail in the next chapter.

2.7 A Deity in the Universal Declaration

From the outset of the drafting process of the Universal Declaration and continuing throughout, there were many debates about creating a *religious foundation* for human rights. One of the most contentious issues regarding the religious freedom provision in the Universal Declaration was the question of whether a deity should be mentioned.³²⁹ Representatives from various countries proposed inserting such a concept. Malik is one of them, and he attempted it on several occasions in the early drafting process.³³⁰

In his relatively unknown article from 1949, *Human Rights and Religious Liberty*, Malik reflected on the preamble and Article 18 of the Declaration. He discussed the foundation based on natural law and argued that '[w]e are trying in effect, knowingly or unknowingly, to go back to the Platonic-Christian tradition which affirms man's original, integral dignity and immortality'.³³¹ He advocated strongly for the Church and a return to Christian morality, saying that 'the Church of Christ is the only real answer'.³³² These points are essential to Thomist philosophy, which is a philosophical movement derived from the thoughts of scholastic Thomas Aquinas (1225–1274).

A/3/810 (1949). See also United Nations Department of Public Information, *Yearbook of the United Nations 1947–48*, Lake Success, United Nations Publications, 1949, pp. 534–535. The adopted text of the Universal Declaration (217(III) A).

³²⁸ During this same plenary meeting the General Assembly adopted a resolution regarding the preparation of a 'draft covenant and draft measures of implementation', Res. 217 E (III). The resolution was adopted with 44 votes, with 8 abstentions. The General Assembly 'Requests the Economic and Social Council to ask the Commission on Human Rights to continue to give priority in its work to the preparation of a draft Covenant on Human Rights and draft measures of implementation', Res. 217 E (III). On 9 February, 1949, ECOSOC conveyed the resolution to the Commission on Human Rights for action. With the adoption of the Universal Declaration a start was thus made for the drafting process of the two international covenants, inter alia, the ICESCR and the ICCPR. See also United Nations Department of Public Information, 1950, pp. 537–538.

³²⁹ Humphrey, 1984, p. 67.

³³⁰ Humphrey, 1984, p. 67. Malik made an attempt during the second session of the Commission on Human Rights and during the second session of the drafting committee.

³³¹ C.C. Malik, 'Human Rights and Religious Liberty', *The Ecumenical Review*, Vol. 1, No. 4, 1949, p. 404.

³³² Malik, 1949, p. 409.

It seems apparent that Malik was a fervent adherent of Christian values and accordingly tried to enshrine his Thomistic philosophy in Article 18 of the Declaration. As the previous analysis has demonstrated, however, Malik failed in his effort (since a provision with a secular basis was adopted), but his ideas were adopted by other representatives.

In the discussions in the Third Committee, so at a later stage than Malik's attempt, various arguments were also put forth about the question whether or not a reference to a deity should be inserted into the Universal Declaration. In the upcoming sections, these arguments are presented and discussed.

2.7.1 Acknowledging Religious Sentiment

In the deliberations in the Third Committee, the Brazilian delegate, Belarmino Austregesilo de Athayde, suggested incorporating a reference to a deity by proposing to amend the second sentence in Article 1 UDHR. This implied that, after the sentence 'all human beings are born free and equal in dignity and rights', the sentence 'Created in the image and likeness of God, they are endowed with reason and conscience, and should act towards one another in a spirit of brotherhood' would be inserted.³³³ De Athayde noted that 'he did not wish to start a discussion on religious or philosophical matters but the amendment submitted by his delegation [...] was simply intended to express the *religious sentiments* [emphasis added] of the Brazilian people [...]'.³³⁴ Even though it was only De Athayde's intention to have his peoples' religious sentiment recognised, his proposal triggered a fierce debate.

The Ecuadorian delegate, Jorge Carrera Andrade, responded with strong counterarguments and wanted to remind his colleague of the aim of the Declaration: 'In many parts of the world, men were not born free and equal; it was to remedy that situation that the United Nations was preparing the declaration of human rights'.³³⁵ Furthermore, he argued that

[...] the Committee should distinguish between the divine and the human, and should refrain from placing the divine on the political plane by introducing it into the declaration. That document was, moreover, intended for people of all faiths; in it, man was regarded in relation to the social structure. Inasmuch as it was hoped that States would adopt laws to ensure the rights proclaimed in the declaration, the latter should contain not beautiful phrases, but principles readily translatable into legal terms. The declaration should not be a philosophical treatise but a document containing a minimum guarantee of human rights.³³⁶

The Uruguayan representative, Justino Jiménez De Aréchaga, also opposed a reference to a deity but provided a different argument; he highlighted the idea of universality. He reasoned that '[n]o reference to a godhead should be made in a United Nations document, for the philosophy on which the United Nations was based should be universal. The declaration was a legal document and therefore no transcendental source of rights should be stated'.³³⁷

³³³ 2 October, 1948 A/C.3/215, 7 October, 1948, A/C.3/243, p. 1.

³³⁴ A/C.3/SR.95, p. 91.

³³⁵ A/C.3/SR.96, p. 100.

³³⁶ A/C.3/SR.96, p. 100.

³³⁷ A/C.3/SR.96, p. 101.

2.7.2 Harmonising Religion and Politics

The Argentine representative, Enrique V. Corominas, supported the proposed amendment by De Athayde and said that the

[...] amendment introduced a philosophical question the full answer to which was beyond human knowledge. He wished to make it clear that in supporting that amendment he had no intention of imposing any one philosophy of faith on any group of human beings. To say that men were “created in the image and likeness of God” was to refer to a belief which all men held in common; the statement could be given the widest possible interpretation.³³⁸

De Athayde’s position is quite radical. Not only did he claim that the idea of a godhead was universal, but that the same was true of one specific idea about the relationship of God to man, i.e. that man is created in the image of God. Is the world of religious ideas not much more pluralistic than De Athayde surmised? He continued:

All men existed and struggled in the same world; their struggle was the basis of history and philosophy. [He] [...] felt strongly that there was no conflict between religion and politics. On the contrary, religion gave man the inspiration he needed to follow in the paths of peace; politics and religion should be harmonized and mankind should be guided in its pursuits by evangelical principles. It could properly be said that the Ten Commandments were the first declaration of human rights.³³⁹

De Athayde managed to present a host of ideas about which humankind has quarrelled for a long time as basically uncontroversial. And it cannot come as a surprise that he met with great opposition from his colleagues. The USSR representative, Pavlov, provided strong arguments against the adoption of the amendment. He argued that equality before the law depended on the actions of a state and its *equal attribution* of rights to civilians before the law, as most legal scholars would attest.³⁴⁰ He also commented that the amendment Brazil had proposed was so far ‘removed from the original text; the two were, in fact, as far apart as heaven and earth’.³⁴¹ He also argued that the Universal Declaration does not need components that have a ‘theological nature’, for they are not only unnecessary but also cause a conflict for states which have a constitutional entrenchment of the separation of church and state.³⁴² He also referred to the incorporation of the freedom of thought in the Declaration and argued that adopting a reference to a deity would be forcing faith or philosophy upon civilians, which would conflict with the aforementioned freedom.³⁴³ It is evident that Pavlov was against the use of religious ethics, and he was one of the representatives who strived for a strict separation between law and religion.

³³⁸ A/C.3/SR.98, p. 109.

³³⁹ A/C.3/SR.98, p. 109.

³⁴⁰ A/C.3/SR.98, p. 110.

³⁴¹ A/C.3/SR.98, p. 111.

³⁴² A/C.3/SR.98, p. 111.

³⁴³ A/C.3/SR.98, p. 111.

Ramirez Moreno, the Colombian representative, was in favour of the amendment and reacted quite ambiguously to Pavlov's statement. He argued that a reference to God would not contradict the separation between church and state, since each country would be free to interpret it according to its own beliefs and it would even 'lend great weight' to the provision.³⁴⁴ It seems that Moreno meant to express that the adoption of a reference to a deity would provide states with the opportunity to interpret it along the lines of their state religions, or the religion of the majority. Moreno's stance was endorsed by Eduardo Anze Matienzo, the Bolivian representative. He argued that 'the idea of God was not a debatable theological doctrine but a positive reality'.³⁴⁵

To persuade De Athayde to withdraw his amendment, some practical arguments were also introduced, such as that of the Indian representative, Lakshmi Menon, who urged this 'for the sake of unanimity'.³⁴⁶ In this context, the reaction of French delegate Grumbach is particularly relevant. In accordance with the Chinese delegate Chang's view, he said that the delegates should not try and discuss man's origin and comparable subjects.³⁴⁷ He elucidated that the Commission on Human Rights had tried to draft an agreement about fundamental principles that 'could be put into practice' by 'believers and non-believers alike'. To emphasise his stance, he referred to the 'great Catholic', French philosopher, Jacques Maritain (1882–1973), who had argued on this point that states should have 'agreement on a declaration of human rights', and that it was 'useless to try to reach agreement on the origin of those rights'. It is about 'practical fundamental rights'.³⁴⁸

The reaction of the representative of the Netherlands, nowadays one of the most secularized countries in the world, was interesting. Leo Josephus Cornelis Beaufort agreed with the intentions and stance of De Athayde, but asked him to withdraw his controversial amendment, for he had presented an amendment to the preamble with like effect, which would also be discussed.³⁴⁹ De Athayde complied with Beaufort's request and withdrew his amendment, accompanied by the remark that he was still of the opinion that a deity should be mentioned in the Universal Declaration, but that he would bring the subject up again when the amendment of his Dutch colleague was taken into deliberation.³⁵⁰ But before Beaufort's amendment is discussed, it is vital to analyse and assess the core arguments from the previous discussion.

2.7.3 Fundamental Rights and Divine Authority

From the previous discussion, some essential pro and contra arguments for the adoption of a reference to a deity in the Declaration can be derived. It seems that three arguments in favour of

³⁴⁴ A/C.3/SR.98, p. 112.

³⁴⁵ A/C.3/SR.98, p. 113.

³⁴⁶ A/C.3/SR.98, p. 116.

³⁴⁷ A/C.3/SR.98, p. 116.

³⁴⁸ A/C.3/SR.98, p. 116-117.

³⁴⁹ A/C.3/SR.98, p. 117. Beaufort (1890–1965) was a Franciscan father and member of the Catholic People's Party (Katholieke Volkspartij). He studied theology, philosophy, and law, and was appointed as professor of international law at the Radboud University in the Netherlands in 1947. See L.J.C. Beaufort, *Van anarchie naar rechtsgemeenschap*, Nijmegen, Dekker & Van de Vegt, 1948; J.W.H.C.M. Schneider, 'Beaufort, Leo Josephus Cornelis (1890–1965)', *Biografisch Woordenboek van Nederland, resources.buygens.knaw.nl*, retrieved 14 April, 2018. Right after the completion of the UDHR, he published two interesting articles about the Universal Declaration. See L.J.C. Beaufort, 'Universele verklaring van de rechten van de mens I', *Katholieke Staatkundig Maandschrift*, 1949, pp. 459-464; L.J.C. Beaufort, 'Universele verklaring van de rechten van de mens II', *Katholieke Staatkundig Maandschrift*, 1949, pp. 483-490.

³⁵⁰ A/C.3/SR.98, p. 117.

the reference-to-God proposal were presented. The first one was introduced by De Athayde, who sought a religious foundation for human rights corresponding—in his view—with the religious sentiment of the overwhelming majority of the people. The second argument, provided by Corominas, was in line with the point made by Malik, who argued that we need religious values as a basis for ethics, politics, and law. In other words, religion was brought to the fore as a foundation for ethical claims. And thirdly, also put forth by Corominas, the Ten (Christian) Commandments were the basis of human rights, or rather, some sort of first declaration thereof.

The delegates also brought up various arguments to oppose the adoption of a reference to a deity in the Universal Declaration: 1. There is a distinction between the divine and the human realm, and the Declaration should refrain from bringing the divine into the political by introducing it into the Declaration; 2. It should be a document for people adhering to all kinds of different faiths and beliefs; 3. It should be a document containing a minimum guarantee of human rights and not be a philosophical treatise; 4. It should be a legal document, and therefore no transcendental source of rights should be addressed; 5. The adoption of theological concepts conflicts a constitutional separation of state and church, which exists in some states; 6. Adopting a reference to a deity would be forcing a faith or philosophy upon individuals, which would conflict with the incorporated freedom of thought; 7. No reference to a deity should be made in the Universal Declaration, because the philosophy on which it was based should be universal; 8. No paragraph should be inserted into the Universal Declaration that cannot reach unanimity; 9. The Universal Declaration should contain practical fundamental principles that could be put into practice by believers and non-believers.

It seems that the delegates provided various justifiable arguments against the adoption of a religious foundation for human rights, or more specifically, against a reference to a deity in the Universal Declaration. However, more can be said about the proponent's arguments, and some additional theory is necessary to reflect upon the discussion, which is the task in the next section.

2.7.4 Religion as a Basis for Ethics

The first argument that is discussed is the third claim made by Corominas, namely that the Christian Ten Commandments could be seen as some sort of human rights declaration. This claim can be refuted on the grounds demonstrated by Cliteur and Verhofstadt, also supported by the British-American journalist Christopher Hitchens, which is that most of the Ten Commandments conflict with (modern) human rights. In order to remedy this, in their book *The Atheistic Dictionary*, they provide the Ten Secular Commandments.³⁵¹ In line with their thoughts are the Ten Non-commandments, drafted by Lex Bayer and John Figdor in their book *Atheist Mind, Humanist Heart*.³⁵² In *The Good Book: A Secular Bible*, British philosopher Antony Grayling provides a solution by extracting Christian elements from the Bible and creates a 'holy book' without a religious foundation.³⁵³

³⁵¹ P.B. Cliteur & D. Verhofstadt, *Het Atheïstisch woordenboek*, Antwerpen, Houtekiet, 2015, pp. 304-305. Verhofstadt has formulated the ten secular commandments in his book D. Verhofstadt, *Atheïsme als basis voor de moraal*, Antwerpen, Houtekiet 2013; C. Hitchens, *God Is Not Great: How Religion Poisons Everything*, New York, Twelve/Hachette Book Group 2007.

³⁵² L. Bayer & J. Figdor, *Atheist Mind, Humanist Heart*, Maryland, Rowman & Littlefield, 2006.

³⁵³ A.C. Grayling, *The Good Book: A Secular Bible*, London: Bloomsbury 2011.

Moreover, the question arises as to which god, or rather whose god, Corominas *cum suis* are referring to in the suggested phrase ‘Created in the image and likeness of God’. Is this deity merely to be understood as the Christian god? Or is the concept comprehensive enough to include the monotheistic god of the Jews, Muslims, and Bahai, the multiple gods of the Hindu’s and Shintu’s, or even the gods of faded glory, such as in the Greek or Norwegian mythologies?

The amendment’s proponents tried to remedy this question by arguing that the concept of God was *broad* enough so that *all* believers would feel addressed. However, one must question if it is not up to the adherents of those different religions to decide for themselves whether or not they feel ‘included’ based on that kind of phrasing. It seems a bit peculiar for an individual who calls his deity Allah, Deva, Thor, or The Force to identify this with the concept of ‘God’, which is often affiliated with Christianity. What is argued here is that when a particular religious deity or concept that focuses on one specific group is included, the ‘other believers’ are *ipso facto* implicitly excluded. In essence, it goes beyond the idea of equality as endorsed within human rights law.

This argument can also be extended to the first argument in favour of the amendment, namely the argument that a reference to a deity should be adopted so that the religious sentiment of believers was satisfied. Again, one must ask, whose religious sentiment is addressed? Are communist or Scientology sentiments also included? On the other hand, one must critically reflect on the question of whether religious or belief sentiment has a place within the Declaration and law at all. This topic will be discussed in Chapters 5 and 6.

The most interesting angle is perhaps the second argument, also made by Corominas, when he proposed to have religious values as a basis for law. In other words, religion was brought to the fore as a basis for ethical claims. Pavlov and other delegates from the ‘Eastern bloc countries’ rebutted the arguments to a certain extent, but they come from a political-atheistic perspective and endorse political atheism, which generally suppresses religion.³⁵⁴ In this sense, it is essential to emphasise that, right at the beginning of the drafting process, the UN intended to draft a document that was of a secular, not an atheistic nature.

As often is suggested, secularism is not against or ‘hostile’ towards religion.³⁵⁵ Secularism aims to facilitate the equal treatment of all religions and worldviews. It opposes the use of religion or religious arguments to support moral, political, or legal claims.³⁵⁶ Of course, some secularists have adopted a more militant attitude towards religion, such as Christopher Hitchens, who qualified religion as ‘poison’; Richard Dawkins, who is against religion, since it ‘teaches us to be satisfied with not understanding the world’;³⁵⁷ and scholars like Daniel Dennett and Bertrand Russell who have argued that religions are untrue and harmful.³⁵⁸ But despite their general criticism of religion, none of the thinkers mentioned wanted to eradicate religion by means of governmental power.

³⁵⁴ Cliteur & Ellian, 2020, pp. 103-132.

³⁵⁵ Blackford, 2012.

³⁵⁶ P.B. Cliteur, ‘A Secular Critique of Religious Ethics and Politics’, in P. Zuckerman & J.R. Shook (eds.), *The Oxford Handbook of Secularism*, Oxford, Oxford University Press, 2017, pp. 390-391.

³⁵⁷ Hitchens, 2007; R. Dawkins, *The God Delusion*, Boston, Houghton Mifflin Company, 2006.

³⁵⁸ D.C. Dennett, *Breaking the Spell: Religion as a Natural Phenomenon*, New York, Viking, 2006. B. Russell, ‘What is an Agnostic?’, in R.E. Egner & L.E. Denonn (eds.), *The Basic Writings of Bertrand Russell*, New York, Routledge, 2009 [1953], pp. 557-565; Russell, 1957, pp. 13-27.

These thinkers were not in favour of some Stalinist model. Atheism is a private conviction, not political atheism.

Simply put, atheism is manifested in a wide variety of views centred on the absence of belief in the existence of deities or related metaphysical matter. Secularism concerns itself with the relationship between church and state. It stands apart from questions of metaphysics; it could even be agnostic towards them. Moreover, and this is particularly relevant, within secularism a distinction is made between moral claims, claims that have to be grounded ethically, and political claims, which have to be grounded politically. Religious arguments are not, or rather are not supposed to be brought to the fore when discussing these claims.³⁵⁹ The same applies to the law. Religious arguments should not have any weight when discussing legal matters—in this case, the Universal Declaration.³⁶⁰

What is essential to understand is that the *motivation* for these moral, political, or legal claims may be of a religious nature, but they ought not to be exclusively *based* on religious scripture. Fundamental rights are not (solely) commanded by some divine authority. In other words, there is no necessary relationship between fundamental rights and divine authority. From a secular perspective, ethical consequences cannot (solely) be grounded in faith, or, rather, religion as such should not be the sole foundation for legal claims. If this principle is adhered to, then there is no friction between secularism and religious arguments. In this aspect, secularism contrasts with atheism.³⁶¹

This means that, from a secularist perspective, the Christian values that were expressed in the discussions, such as Cormonias claiming ‘religion gave man the inspiration he needed to follow in the paths of peace’, are not irrelevant. If this motivates him to advocate for peace and social justice in the legal system—in this case in the Universal Declaration—then the secularist could, on the condition that this motivation is not solely based on religion, endorse this. So what secularists dispute is not that religious and political ideas can be *derived* from religion, but the idea that one *needs* religion to justify these ideas.³⁶² This leads to the implication that a religious motivation for legal claims is allowed, provided that it is not (only) based on religious scripture.

2.7.5 Man’s Divine Origin in the Preamble

A few days after De Athayde’s proposal, Beaufort’s amendment was discussed. He had suggested inserting the words ‘based on man’s divine origin and immortal destiny’ after the words ‘human family’ in the preamble.³⁶³ Beaufort elaborated on his proposal and tried to take the wind out of the sails of the opponents of De Athayde’s amendment. Beaufort’s approach is interesting in particular because he did not argue from a theological perspective, but from an agnostic point of

³⁵⁹ Cliteur, 2017, p. 390.

³⁶⁰ Even though formally the Universal Declaration is not a legal document, it is the primary source of global universal human rights standards.

³⁶¹ Cliteur, 2017, pp. 390-391.

³⁶² P.B. Cliteur, ‘A Secular Critique of Religious Ethics and Politics’, in: Phil Zuckerman and John R. Shook (ed.), *The Oxford Handbook of Secularism*, Oxford: Oxford University Press 2017, pp. 390-391.

³⁶³ 4 October, 1948, A/C.3/219. 92nd meeting. The preamble would then be as follows: ‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family based on man’s divine origin and immortal destiny is the foundation of freedom, justice and peace in the world’.

view, focussing on the question of whether or not the adoption of a reference to a deity was offensive or caused harm to agnostics and atheists. He said:

It had been said that amendments of that kind could not be accepted by members who were agnostics. It would most certainly be a crime to impose ideas, since all convictions should be respected. Those, however, who wished to see their convictions respected, should also respect those of others. For those who were agnostics or atheists, the Netherlands' amendment was merely devoid of any meaning, but it could not harm them or offend their conscience, since they adhered to the formula *ignoramus et ignorabimus*.³⁶⁴

Beaufort also reasoned in the line of thought of Malik and his Thomistic philosophy, for he argued that there should be a more comprehensive definition of nature, for 'the whole nature of men' and 'the fundamental relations existing between man and his Creator should [...] be recognized'.³⁶⁵

The Dutch amendment also triggered discussion. Some arguments were similar to those in the debate about De Athayde's amendment, but they were now expressed by different state representatives. In order to have a complete overview of the main arguments put forth by the plurality of representatives, all relevant arguments are addressed.

The Belgian representative, Count Henry Carton De Wiart, said that the amendment addressed 'a very delicate philosophical problem; and in any case it would be inconceivable for the Committee to try to solve that question by a vote'.³⁶⁶ The representative of Poland, Fryderika Kalinowska, argued that the Dutch suggestion failed to notice that it concerned a UN document, so it should not deal in metaphysical matters.³⁶⁷ The Indian representative, Menon, said that he 'would [...] vote against the Dutch amendment for [...] India was a secular State, in which numerous creeds, ranging from animism to atheism, were practised. The declaration, which was to be universally applicable, could not make a dogmatic statement on that point'.³⁶⁸ Leonid Kaminsky, the Belarusian Soviet Socialist Republic representative, could also not approve the Dutch amendment, for it could not be scientifically substantiated.³⁶⁹ The French representative, Grumbach, argued, in line with De Wiart, that this involved a topic that had fragmented society for centuries and that it was not fair to impose a majority decision about the origin of man.³⁷⁰

Stephan P. Demchenko, the representative of the Ukrainian Soviet Socialist Republic, offered a clear warning, stating that the 'amendment was unacceptable because it raised a philosophical and often disputed question. It violated the right to freedom of conscience and did not take into consideration the fact that in many countries the State was separated from the church.

³⁶⁴ A/C.3/SR.164, p. 755.

³⁶⁵ A/C.3/SR.164, p. 755.

³⁶⁶ A/C.3/SR.165, pp. 760-761.

³⁶⁷ A/C.3/SR.165, pp. 761-762.

³⁶⁸ A/C.3/SR.165, p. 764.

³⁶⁹ A/C.3/SR.165, pp. 764-765.

³⁷⁰ A/C.3/SR.165, pp. 767-768.

Should that amendment be accepted, he would be unable to vote for the declaration as a whole'.³⁷¹ Bogomolov repeated this argument in different wording.³⁷²

Chang, the Chinese representative, had a somewhat new argument, for he argued that: 'The [...] amendment would make the text even more lengthy and more complex'. Besides, 'if the idea of the divine origin of man were to be embodied in the declaration, it should be done in a separate paragraph so as to stress its importance; but, as certain delegations had pointed out, it was impossible to decide so important a problem by a vote which would only reflect political factors; for the consideration of such a question the number of votes for each country should be proportional to the size of its population'.³⁷³ The representative of the United Kingdom, Davies, said that Beaufort's amendment 'contained a very important principle which he wished to see included in the declaration. Nevertheless, he pointed out that the Committee had already decided not to include the concept of God in the declaration, since it was aware of the fact that such a concept might rouse the opposition of delegations representing more than half of the world's population. If the declaration was to have a universal character the views of those delegations should be respected'.³⁷⁴

From this discussion, more arguments against the adoption of a religious reference in the Universal Declaration (in addition to the nine already enumerated in the previous section) can be derived. They can be summarized as follows: 1. It contrasts with the idea of a secular state, in which numerous creeds, ranging from animism to atheism, are practised; 2. A reference to a deity cannot be scientifically substantiated; 3. It is not fair to let a majority decision decide about the origin of man; 4. The amendment will make the text lengthier and more complex.

2.7.5.1 Ignoramus et Ignorabimus

Beaufort's line of argument can also be rebutted on more theoretical grounds. The Latin maxim *ignoramus et ignorabimus*, meaning 'we do not know and will not know', to which Beaufort referred, was coined by German physiologist Emil du Bois-Reymond (1818–1896) in his work *Über die Grenzen des Naturerkennens (On the Limits of Our Understanding of Nature)* of 1872. This maxim, which represents the idea that scientific knowledge is limited, was adopted within agnosticism, which was as a doctrine introduced by Thomas Henry Huxley in 1869.³⁷⁵ In general terms, agnosticism is the encompassing view that knowledge of the divine cannot be guaranteed, because it cannot be scientifically verified. The metaphysical is unknown or unknowable.

What Beaufort seems to imply is that the atheist and agnostic cannot reject a theological doctrine unless they can prove that it is incorrect. However, the burden of proof does not lie upon the rejecter. J.B. Bury has demonstrated this with a remarkable analogy of donkeys on a strange planet: 'If you were told that in a certain planet revolving round Sirius there is a race of donkeys

³⁷¹ A/C.3/SR.165, p. 768.

³⁷² A/C.3/SR.166, p. 774.

³⁷³ A/C.3/SR.166, p. 771.

³⁷⁴ A/C.3/SR.166, p. 772.

³⁷⁵ See: T. Huxley, 'Agnosticism and Christianity', in *Collected Essays Volume V. Science and Christian Tradition*, New York, D. Appleton and Company (Gutenberg Project), 1902 [1889]. T. Huxley, 'Agnosticism', in *Collected Essays Volume V. Science and Christian Tradition*, New York, D. Appleton and Company (Gutenberg Project), 1902 [1889].

who talk the English language and spend their time in discussing eugenics, you could not disprove the statement, but would it, on that account, have any claim to be believed?³⁷⁶ To most of us, the whole idea of such a planet may sound absurd, but the crux is that you cannot refute it. Faith should not be explained or rationalised, for the reason that you can never rationally prove that a god exists. That is the challenge for every religion. One can never prove the existence of a God, and the other can never disprove the thesis; that is why it is called belief.

This is in line with Bertrand Russell's teapot analogy, also known as the celestial teapot. It goes as follows:

If I were to suggest that between the Earth and Mars there is a china teapot revolving about the sun in an elliptical orbit, nobody would be able to disprove my assertion provided I were careful to add that the teapot is too small to be revealed even by our most powerful telescopes. But if I were to go on to say that, since my assertion cannot be disproved, it is intolerable presumption on the part of human reason to doubt it, I should rightly be thought to be talking nonsense. If, however, the existence of such a teapot were affirmed in ancient books, taught as the sacred truth every Sunday, and instilled into the minds of children at school, hesitation to believe in its existence would become a mark of eccentricity and entitle the doubter to the attentions of the psychiatrist in an enlightened age or of the Inquisitor in an earlier time.³⁷⁷

Again, the burden of proof is on the individual making unfalsifiable claims; there is no burden of disproof for sceptics.

Furthermore, I think Beaufort is inaccurate in equating atheism with agnosticism. The maxim *ignoramus et ignorabimus* does not have to apply to atheism. Atheism is the absence of a belief in a god. Agnosticism does not relate to the belief in a god, but to the possibility of knowing the existence or non-existence thereof. The concepts are not mutually exclusive. Someone may find that he does not have sufficient *knowledge* about the existence of a god, and at the same time does not *believe* in a god: an agnostic atheist. As Russell described, 'an Agnostic may hold that the existence of God, though not impossible, is very improbable; he may even hold it so improbable that it is not worth considering in practice. In that case, he is not far removed from atheism'.³⁷⁸

On the other hand, someone can also be an agnostic but strongly believe in a god: an agnostic theist, such as Danish Philosopher Søren Kierkegaard (1813–1855). Kierkegaard claimed that '[w]ithout risk, no faith. Faith is just this, the contradiction between the infinite passion of inwardness and objective uncertainty. If I can grasp God objectively, then I do not have faith, but just because I cannot do this, I must have faith. If I wish to stay in my faith, I must take constant care to keep hold of the objective uncertainty, to be "on the 70,000 fathoms deep" but still have faith'.³⁷⁹

³⁷⁶ Bury, 1932 [1913], p. 20.

³⁷⁷ B. Russell, 'Is There a God?', *Illustrated Magazine (commissioned-but not published)*, 1952.

³⁷⁸ Russell, 2009 [1953], p. 557.

³⁷⁹ A. Hannay (ed.), *Kierkegaard: Concluding Unscientific Postscript* Cambridge, Cambridge University Press, 2009, pp. 171-172.

Returning to the debate: to the disappointment of De Athayde and Beaufort, the latter's amendment was not adopted. From this analysis it can be inferred that, although it was pursued from various angles, reference to (a) god did not garner sufficient support. The delegates could not be persuaded to establish the Universal Declaration and the freedom of religion or belief provision on a religious foundation. Various principled arguments were brought to the fore not to include a reference to a deity, but there were also numerous pragmatic arguments focussed on the impossibility of reaching a consensus on the definition of God as such. There were too many different views regarding a concept of a theological or philosophical nature, and arguments of a religious nature (mainly focused on Christianity) were outvoted. The analyses also demonstrate that the representatives searched for practical, neutral principles with regard to Article 18 UDHR, principles that could be filled in by the individuals themselves, whether or not religiously motivated.

This pragmatic attitude also makes it apparent that the pursuit of moral universalism continued to prevail. The Universal Declaration was meant to be a document that all people all over the world could understand and relate to. A language had to be adopted that was understood by all participants; it needed to reflect an autonomous humanitarian morality. The representatives legitimately avoided inserting metaphysical concepts that were of a distinctive philosophical character into the provision in order to reach the goals that were set. Evidently, in the end, the Declaration contained various metaphysical ideas, such as human rights 'inherent to human nature' and of course the concept of 'human dignity'. However, these concepts seem to be of a non-distinctive nature between humans.

2.8 Universalism in Article 18 UDHR

In the analysis in the previous sections, some elements have emerged that stress the universal nature of Article 18 UDHR. In this context, however, two issues still need to be emphasised.

Firstly, the scope of the interference of the state within religious matters. Article 18 is formulated in such a way that the state does not, or rather must not, interfere in 'the human good'. The state remains neutral towards religion. This entails the idea that the state does not have to deliver the 'good' to its subjects. The state endorses the idea that there is a plurality of ideologies, varying from religious to secular to atheist, which should be able to co-exist peacefully in the state. This involves the establishment of a legal framework that attributes equal rights to individuals, allowing them to determine their own 'good'.

This 'thin approach' regarding the delivery of the human good, i.e. no state interference in religious matters, was a progressive approach, for it did not distinguish between majority and minority believers. It means that every believer, no matter what religion he adheres to, is equal and especially entitled to the equal protection of the law.³⁸⁰ The Declaration is therefore neutral on the subject of religion, and the provision guarantees a structure wherein each individual is free to search for his moral fulfilment in private and in public, alone or in community with others. This means that Article 18 UDHR is phrased in such a way that there is an openness to different perspectives and ways of life; it means pluralism on different levels, e.g. the religious, the philosophical, and the scientific. More specifically, it means pluralism without state interference. The way the provision is

³⁸⁰ Morsink, 1999, p. 260.

formulated, so starting from neutrality, implies that the state recognises the equality of all this diversity naturally within the overall legal framework.

This paves the way for the second remark regarding Article 18 UDHR. As previously described, the freedoms allocated in the Universal Declaration are formulated with the words ‘everyone has the right to’, which concerns *individual* rights. The same is the case for Article 18 UDHR. However, this is not the only reason to conclude that the individual’s right is central. It is also presented in the same sentence with two other freedoms, namely those of thought and conscience, which are specifically aimed at the individual. Nonetheless, the manner in which this freedom is formulated does not detract from the communal element, which is an essential part of religion, for the proclaimed right provides the individual with the freedom to form his own thoughts on whether or not to join a religious collective.³⁸¹

2.8.1 Textual Universalism

When the Universal Declaration was adopted at the end of 1948, it was the first time that a document had been drafted that would apply to every human being anywhere in the world. It was the intention, continually pronounced by the drafters, to create it for all humankind, and it should therefore have a universal character. The textual content that demonstrates the universality varies.

The first sentence of the preamble of the Universal Declaration focusses on ‘all members of the human family’, and in Article 1 it is enshrined that ‘all human beings are born free and equal in dignity and rights’ and are ‘endowed with reason and conscience’. These rights are not only equally granted but considered to be inalienable, and the Declaration claims to be ‘a common standard of achievement for all peoples and all nations’. Its universal character can also be derived from the fact that most articles start with the concept of ‘everyone has’ followed by the freedom in question, or the phrases ‘no one shall’ or ‘no one will be’. Article 2, the non-discrimination and equality section, also makes it clear that there are no exceptions to its universality, for it proclaims that

[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, *religion* [emphasis added], political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Note the explicit mention of religion, i.e. no discrimination, or inequality, based on religion is permitted.

Article 2 UDHR is often read in conjunction with the equality before the law provision, which is enshrined in Article 7 UDHR. It states in full: ‘All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such

³⁸¹ Van Boven, 1967, pp. 119-120.

discrimination'. The second sentence of this provision is relevant since it implies that it is not only the duty of the state to abstain from incitement to discrimination, but it is also the duty of every individual to abstain from this out of respect for his fellow citizen.³⁸²

Relevant is that this is not about whether or not the freedoms formulated in the Universal Declaration are negative or positive, or may be either of a legal or a moral character: it is about the fact that, besides its universal character, the distinguishing element of the Universal Declaration is that it does not merely concern a vertical relationship, but also a horizontal one. It expresses that the state has a moral obligation towards the individual, and the individual towards other individuals. In Article 29—and slightly reworded in Article 30—references are even adopted which refer to the obligation of the individual to the community.³⁸³

2.9 Criticising the Universal Declaration

The adoption of the Universal Declaration is a historical novelty. Even though some states' agreement would in the following years be proven to have been mere lip service to ideals which they had no intention of adhering to, it was still historic. It is also symbolic in the sense that the world community was willing to come together, discuss, and proclaim something like rights inherent to human nature. However, there was criticism from various actors. In the following sections, the cultural-relativist critique is discussed.

2.9.1 A Cultural-Relativist View

During the drafting process of the Universal Declaration, the Commission on Human Rights received a statement on human rights from the executive board of the American Anthropological Association (AAA). The statement begins by highlighting that, in the Declaration, two points of view should be endorsed, *viz.*, respect for the individual and respect for cultures. The latter was, in their opinion, lacking.³⁸⁴ The AAA asked: 'How can the proposed Declaration be applicable to all human beings, and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America?'³⁸⁵ According to the AAA, the Universal Declaration was rife with Western ethnocentrism, and they strongly opposed it.

The AAA brought three propositions to the fore to be considered by the Commission on Human Rights:

³⁸² Van Boven, 1967, p. 109.

³⁸³ Article 29 states that: '(1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely 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 in a democratic society'.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations. And article 30 reads: 'Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein'.

³⁸⁴ Executive Board of the American Anthropological Association, 'Statement on Human Rights', *American Anthropologist/ New Series*, Vol. 49, No. 4, 1947, pp. 539-543.

³⁸⁵ Executive Board of the American Anthropological Association, 1947, p. 539.

1. The individual realizes his personality through his culture, hence respect for individual differences entails a respect for cultural differences; 2. Respect for differences between cultures is validated by the scientific fact that no technique of qualitatively evaluating cultures has been discovered; 3. Standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as a whole.³⁸⁶

The underlying idea was that what qualifies as a human right in one society does not have to be the same for another society. Even more, it could be seen as anti-social or time-and-place dependent. The AAA argued: 'Ideas of right and wrong, good and evil, are found in all societies, though they differ in their expression among different peoples. What is held to be a human right in one society may be regarded as anti-social by another people, or by the same people in a different period of their history'.³⁸⁷

The AAA concluded their advice with '[o]nly when a statement of the right of men to live in terms of their own traditions is incorporated into the proposed Declaration, then, can the next step of defining the rights and duties of human groups as regards each other be set upon the firm foundation of the present-day scientific knowledge of Man'.³⁸⁸

It is clear that the AAA's advice was dismissive of the whole notion of universalism. Therefore, they refused to acknowledge the idea of universal human rights; the Declaration would be an evident product of Western ethnocentrism. The Commission on Human Rights considered the AAA's advice but apparently did not agree, because they continued the drafting process.

The AAA advice is a short document, but its impact was huge. The ideas incorporated in this text would also grow in significance over the years. After the adoption of the Universal Declaration, the advice of the AAA was often cited as endorsing the charge of Western ethnocentrism of which the drafters had supposedly been guilty. The concept of universal human rights was and still is criticised and undermined by, inter alia, cultural relativism, which is the underlying theme in the AAA statement. But although the AAA advice is written in clear prose, it is not entirely clear what its aim is. Do the cultural anthropologists mean that the Universal Declaration was in the interest of the West, and that only Western values were adopted? Or do they imply that it was Western people who decided on the content of the Declaration? Moreover, what would a non-Western statement entail? More influence for socio-economic rights or religious law, such as Sharia?

In order to answer these questions, some insight into the cultural-relativist critique is needed. It is the focus of the following sections.

2.9.2 Against Universal Moralism

A prominent advocate of (modern) cultural relativism was Ruth Benedict. One may perhaps call her the founding mother of cultural relativism. Inspired by her teacher, German-American

³⁸⁶ Executive Board of the American Anthropological Association, 1947, pp. 541-542.

³⁸⁷ Executive Board of the American Anthropological Association, 1947, p. 542.

³⁸⁸ Executive Board of the American Anthropological Association, 1947, p. 543.

anthropologist Franz Boaz (1858–1942), another towering figure in modern anthropology, Benedict emphasises the differences and incomparability of cultures in her *Patterns of Culture*. She has the conviction that people should be tolerant, and adhering to an absolute concept of truth is considered an obstacle. According to Benedict, cultural relativism is about—and here are the pivotal words—the ‘equal validity of diverse patterns of life’. Benedict concludes her book with the following citation that concisely demonstrates her view:

The recognition of cultural relativity carries with it its own values [...]. It challenges customary opinions and causes those who have been bred to them acute discomfort [...]. As soon as the new opinion is embraced as customary belief, it will be another trusted bulwark of the good life. We shall arrive then at a more realistic social faith, accepting as grounds of hope and as new bases for tolerance the coexisting and equally valid patterns of life which mankind has created for itself from the raw materials of existence.³⁸⁹

In this sense the ideas of American anthropologist Melville J. Herskovits (1895–1963), who was also a student of Boaz, are equally relevant. He converted Benedict’s approach into something with great practical significance when he argued that morality is a social and cultural phenomenon that is conditional on the customs and beliefs of different cultural groups.³⁹⁰ The relevance is clear for the universalist aims of the UDHR, because on the premises of Herskovits’s approach, it is not possible to come to universal moral judgements about cultures. Herskovits favoured relativism. And in his view, the ‘great enemy’ of relativism is *ethnocentrism*, particularly as conveyed by European colonialism (here he foreshadows Baroody’s criticism, which we have seen in the previous paragraphs). To this end, he had analysed various African societies.³⁹¹

Herskovits defined ethnocentrism as ‘the point of view that one’s own way of life is to be preferred to all others’.³⁹² Sudanese-born scholar Abdullah Ahmed An-Na’im (born 1950), described ethnocentrism as ‘the tendency to regard one’s own race or social group as the model of human experience’.³⁹³ In a general sense, ethnocentrism thus seems to imply a location-specific assessment or judgement of cultures based on values or norms. A predetermined culture, often one’s own culture, is used to measure different cultures in a socio-cultural sense. It is a key concept within cultural relativism used to advocate against universal moralism.

The accusation of ethnocentrism is a major theme that often resurfaces in the work of many opponents of the conception of universal human rights. Talal Asad (born 1932), an American anthropologist, is such a critic. He argues that the language of human rights is not a transnational system of moral and legal accountability, but it is more a covert reason to realise (national) state

³⁸⁹ R. Benedict, *Patterns of Culture*, New-York, Routledge & Kegan Paul, 1959, pp. 239-240.

³⁹⁰ S. Satris, *Taking Sides: Clashing Views on Controversial Moral Issues*, Guilford, MacGraw-Hill/Dushkin, 2004, pp. 2-3; M.J. Herskovits, ‘Some Further Comments on Cultural Relativism’, *American Anthropologist/New Series*, Vol. 60, No. 2, 1958, pp. 266-273. Herskovits was president of the AAA during the drafting of their statement.

³⁹¹ Satris, 2004, pp. 2-3. Herskovits, 1958, pp. 266-273.

³⁹² M.J. Herskovits, *Cultural Relativism: Perspectives in Cultural Pluralism*, New York, Random House, 1972, p. 21.

³⁹³ A.A. An-Na’im, ‘Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment’, in A.A. An-Na’im (ed.) *Human Rights in Cross-Cultural Perspectives: A Quest for Consensus*, Philadelphia, University of Pennsylvania Press, 1992, p. 23.

interests, more specifically for ‘dominant’ countries such as the United States. It seems that for Asad, fundamental human rights are more an issue of *normative authority*. He claims that

[i]n an interdependent modern world, ‘traditional cultures’ do not spontaneously grow or develop into ‘modern cultures.’ People are pushed, seduced, coerced, or persuaded into trying to change themselves into something else, something that allows them to be redeemed. It may not be possible to stop this process; it may be a wonderful thing that this process takes place as it does because people really are redeemed through it. I do not argue for or against such directed changes here. I merely emphasize that they are not possible without the exercise of political power that often presents itself as a force for redeeming ‘humanity’ from ‘traditional cultures’. Or—and this comes down in the end to the same thing—as the force for reclaiming rights that belong inalienably to man in a state of nature.³⁹⁴

In this context, Ahmed An-Na’im’s views are interesting. An-Na’im is an advocate of human rights and claims to endorse the rights proclaimed in the Universal Declaration; however, he accuses the document of being biased and based on Western values.³⁹⁵ ‘Since we are just emerging from centuries of colonization by the West, and continue to suffer various types of dependencies on it, we have not yet had the opportunity to develop our own thinking on many fundamental philosophical and practical issues’.³⁹⁶ He understands that ‘like all normative principles, they are necessarily based on specific cultural and philosophical assumptions’, that this was ‘unavoidable’,³⁹⁷ and it is not his aim to ‘blame’ Western European countries.³⁹⁸ In a debate with Talal Asad, An-Na’im argues that universal human rights are something to construct, ‘not something to proclaim’ or to ‘discover’.³⁹⁹

2.9.3 Cultural and Ideological Critics

In this sense, the conclusions of some scholars who have researched the incompatibility between fundamental human rights and the values of specific societies or cultures are relevant. For instance, James Silk, a professor of law at Yale University who has made an interesting analysis of the literature on human rights in Africa, discusses various African scholars with contrasting views regarding the notion of *African values*’ compatibility with modern human rights.⁴⁰⁰ One of the

³⁹⁴ T. Asad, *Formations of the Secular. Christianity, Islam, Modernity*, California, Stanford University Press 2003, p. 154.

³⁹⁵ An-Na’im, 1992, pp. 427-428.

³⁹⁶ An-Na’im, 1992, p. 428.

³⁹⁷ An-Na’im, 1992, pp. 427-428.

³⁹⁸ A.A. An-Na’im, “‘Area Expressions’ and the Universality of Human Rights’, in D.P. Forsythe & P.C. McMahon (eds.), *Human Rights and Diversity: Area Studies Revisited*, Lincoln, University of Nebraska Press, 2003, p. 12.

³⁹⁹ Talal Asad and Abdullahi An-Na’im in conversation during the conference “Islam, Human Rights, and the Secular,” hosted by the Berkley Center for Religion, Peace, and World Affairs at Georgetown University on 29 september 2009, see Berkley Center, ‘Islam, Human Rights, and the Secular: A Conversation with Talal Asad and Abdullahi An-Naim’, 29 September 2009, *berkeleycenter.georgetown.edu*.

⁴⁰⁰ J. Silk, ‘Traditional Culture and the Prospect for Human Rights in Africa’, in A.A. An-Na’im & F.M. Deng (eds.), *Human Rights in Africa: Cross-Cultural Perspectives*, Washington D.C., The Brookings Institution, 1990.

academics Silk discusses is Asmarom Legesse. According to Legesse, ‘to impose universal human rights norms on Africa is a serious violation of human rights’.⁴⁰¹ Apart from this remarkable paradox, African traditional society and culture are often considered communal or group-oriented; this in contrast to Western values, which are often understood as individualistic. However, as was discussed in the previous sections, this would not be an obstacle to invoking human rights.

Fortunately, not all these scholars from the non-Western world are dismissive of the notion of universal human rights. Several other academics do find international human rights to be compatible with African human rights. One such scholar is Ghanaian philosopher Kwasi Wiredu (born 1931). Wiredu has endeavoured to demonstrate that African traditions, as carried out by the Akan people from West Africa, are compatible with international human rights standards. After examining various aspects of Akan values and institutional practises, Wiredu has come to the conclusion that the moral values endorsed in the Universal Declaration can also be found in African value systems and societies. More in particular, Wiredu argues that Akan values demonstrate significant similarities with human rights conceptions such as human dignity and justice.⁴⁰²

There is also criticism regarding the compatibility of *Asian values* and universal human rights. In this case, the conclusions of scholar Xiaorong Li (born 1958) are unequivocal: universal human rights are a Western concept and thus at odds with the values endorsed by Asian societies.⁴⁰³ In this regard, the adoption of the 1993 Bangkok Declaration is essential.⁴⁰⁴ In the Bangkok Declaration, the Universal Declaration and UN Charter were endorsed, and it highlighted ‘the interdependence and indivisibility of economic, social, cultural, civil and political rights, and the inherent interrelationship between development, democracy, universal enjoyment of all human rights, and social justice [...]’.⁴⁰⁵ Additionally, elements such as national sovereignty, territorial integrity, and non-interference in the internal affairs of States were underlined, and throughout the Declaration there is a clear emphasis on cultural and social rights. So even though the Bangkok Declaration seems to endorse the universalistic nature of fundamental human rights, it is considered to be an important Asian-values perspective.

Lastly we have to mention Islam as a factor challenging the universal aspiration of the UDHR. From an *Islamic perspective*, the critique of human rights universalism is substantial. The (supposed) Western bias has been emphasised by various Islamic scholars, such as, Riffat Hassan.⁴⁰⁶ Human rights are also viewed as a mere Western invention, which resounded in Edward Said’s work when he critiqued the West for its creation of ‘the Orient’.⁴⁰⁷ The critique resulted in a new

⁴⁰¹ Silk, 1990, p. 308.

⁴⁰² K. Wiredu, ‘An Akan Perspective on Human Rights’, in P. Hayden (ed.) *The Philosophy of Human Rights*, St. Paul, Paragon House, 2001, pp. 298-314.

⁴⁰³ X. Li, ‘“Asian Values” and the Universality of Human Rights’, in P. Hayden (ed.) *The Philosophy of Human Rights*, St. Paul, Paragon House, 2001, pp. 397-408.

⁴⁰⁴ The Bangkok Declaration was adopted prior to the World Conference on Human Rights.

⁴⁰⁵ Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights, also known as the Bangkok Declaration 1993.

⁴⁰⁶ See, for instance, R. Hassan, ‘Women’s rights in Islam: Normative Teachings versus Practice’, in S.T. Hunter & H. Malik (eds.), *Islam and Human Rights: Advancing a U.S.-Muslim Dialogue*, 2005, pp. 43-66.

⁴⁰⁷ E.W. Said, *Orientalism*, London, Penguin, 2003 [1977]. The Lebanese representative Malik was Said’s uncle, and according to Said, Malik played an ‘important role’ in his life. However, further on in his memoirs he explains that ‘the Divine Charles’ fell from grace and defined his admiration for him ‘as the great negative intellectual lesson of my

declaration, to wit, the Cairo Declaration, drafted by the Organisation of Islamic Cooperation. This Cairo Declaration contradicts several elements from the Universal Declaration, which will be extensively discussed in Chapter 6.

According to scholars Adamantia Pollis and Peter Schwab, the ‘Western’ conception of human rights is ‘inapplicable to third world countries or to socialist states’.⁴⁰⁸ Moreover, they claim that ‘[e]fforts to impose the Declaration as it currently stands not only reflect a moral chauvinism and ethnocentric bias but are also bound to fail’.⁴⁰⁹

2.9.4 Human Rights as Fiction and Urges

Some philosophers have rejected the human rights language altogether. One of them is British philosopher Alasdair MacIntyre (b. 1929), a communitarian thinker who dismisses the idea of universal human rights: ‘it is [...] a pseudo-concept available for a variety of ideological uses, but no more than that’.⁴¹⁰ He claims that human rights are ‘fictions – just as is utility’.⁴¹¹ With regard to the Universal Declaration, he writes that since its adoption, ‘the normal UN practice of not giving good reasons for any assertions whatsoever is followed with great rigor’.⁴¹² In this context, he makes the analogy between fundamental human rights and ‘unicorns and witches’, of which the existence can also not be demonstrated.⁴¹³ MacIntyre sees the solution in Nietzsche’s moral philosophy, of which he says: ‘if there is nothing to morality but expressions of will, my morality can only be what my will creates. There can be no place for such fictions as natural rights, utility, the greatest happiness of the greatest number. I myself must now bring into existence “new tables of what is good”’.⁴¹⁴ With his ‘new tables of what is good’ MacIntyre introduces an ambitious program, but whether these tables can function as an alternative for the notion of human rights is doubtful.

In this context I also have to mention American philosopher Richard Rorty (1931–2007), because his neo-pragmatic views also seem relevant. In contrast to MacIntyre, Rorty is not contemptuous of the idea of human rights; he is merely pragmatic in the sense of not-principled and in the sense of espousing a non-metaphysical world view. According to Rorty, we must abandon human rights *foundationalism*, since it has proven to be ineffective and is ‘outmoded’. Traditional moral theory, mainly based on a Kantian view in which reason is central, is rejected for the reason that it cannot inform concrete ethical or political action. Rorty considers Kant a metaphysician and his practical reason rather abstract and (therefore) mostly uninformative. Instead, sympathy is the fundamental moral capacity (one is reminded of Schopenhauer), and we

life, an example which for the last three decades I have found myself grappling with, living through, analysing, over and over and over with regret, mystification, and bottomless disappointment’. E.W. Said, *Out of Place: A Memoir*, New York, Vintage Books, 2000, pp. 282, 429.

⁴⁰⁸ A. Pollis & P. Schwab, ‘Human rights: A Western Construct with Limited Applicability’, in C.M. Koggel (ed.) *Moral Issues in Global Perspective. Volume I Moral and Political Theory*, Mississauga, Broadview, 2006, p. 67.

⁴⁰⁹ Pollis & Schwab, 2006, p. 68.

⁴¹⁰ A. MacIntyre, *After Virtue. A Study in Moral Theory*, Notre Dame, University of Notre Dame Press, 2007, p. 64.

⁴¹¹ MacIntyre, 2007, p. 70.

⁴¹² MacIntyre, 2007, p. 69.

⁴¹³ MacIntyre, 2007, pp. 69-70.

⁴¹⁴ MacIntyre, 2007, pp. 113-114.

should focus on solidarity, which can be realised by ‘sentimental education’.⁴¹⁵ In another work, Rorty writes about moral rights: ‘The urge to make philosophy into Philosophy is to make it the search for some final vocabulary, which can somehow be known in advance to be the common core, the truth of, all the other vocabularies which might be advanced in its place. This is the *urge* [emphasis added] which the pragmatist thinks should be repressed, and which a post-Philosophical culture would have succeeded in repressing’.⁴¹⁶

From the previously discussed critics it can be inferred, concisely put, that cultural relativism is at odds with the pretention of the universality of human rights. Cultural relativists see the proclamation of universal standards as a form of cultural imperialism rife with Western bias, and sometimes even as fictions or the result of urges that need to be repressed. Within cultural relativism, it is thus assumed that no culture has the right to dictate normative standards to another culture; the concept of human rights violates this norm.

Moreover, it is claimed that human rights defenders lack a tolerant attitude towards other cultures with different morals and customs than the Western ones. Although this criticism seems plausible to some extent, and in some cases even justified, the arguments are sometimes not as clear as they seem. The question to what extent the cultural-relativist critique is acceptable and whether its advocates are right in claiming that universality is untenable is discussed in the subsequent section. However, I will first discuss some cultural-relativist critique that is expressed with regard to the freedom of religion in particular.

2.9.5 The New Critics of Religious Freedom

In the context of this research, it is relevant to focus on a recent development in which the freedom of religion or belief has been the focal point of criticism by a group of anthropologists, legal scholars, and international relations scholars, who are called the ‘new critics of religious freedom’.⁴¹⁷ The new critics consists of scholars Peter Danchin, Elizabeth Shakman Hurd, Saba Mahmood, and Winifred Sullivan, and are influenced by the previously discussed scholar Talal Assad. It is their endeavour to criticise ‘liberal rights discourse’. In that sense their approach is similar to that of MacIntyre and Rorty. The new critics of religious freedom first expressed their ideas on their online forum *The Immanent Frame*.⁴¹⁸ It has now become ‘quite an industry’, as Daniel Philpott and Timothy Samuel Shaw argue in their, it seems fair to say, devastating critique of the new critics’ approach.⁴¹⁹

⁴¹⁵ R. Rorty, ‘Human Rights, Rationality, and Sentimentality’, in *Truth and Progress. Philosophical Papers (Volume 3)*, Cambridge, Cambridge University Press, 1998, pp. 180-181.

⁴¹⁶ R. Rorty, *Consequences of Pragmatism*, Minneapolis, University of Minnesota Press, 1994, p. xliii.

⁴¹⁷ See D. Philpott & T.S. Sha, ‘In Defense of Religious Freedom: New Critics of a Beleaguered Human Right’, *Journal of Law and Religion*, Vol. 31, No. 3, 2019, pp. 380-395.

⁴¹⁸ The Immanent Frame is a website dedicated to articles and blogs in the area of ‘interdisciplinary perspectives on religion, secularism, and the public sphere’. It was established in October 2007 and is hosted by the Social Science Research Council’s program on Religion and the Public Sphere. The blogs were created as part of the Politics of Religious Freedom research project.

⁴¹⁹ Philpott & Sha, 2019, pp. 380-395.

The new critics occupy high-level positions at various renowned universities in the U.S. and have published various op-ed articles,⁴²⁰ special issues of academic journals,⁴²¹ and books.⁴²²

The overall argument that can be discerned in their critique is in the line of the previously discussed cultural-relativist arguments, which is that religious freedom is a product of the West. They argue that in matters of morality, the West does not have the authority to make absolute moral judgements. More specifically, they address the ‘politics of religious freedom’; this is also the title of their joint book and project, in which they argue that the concept of religious freedom is ‘contingent’ and is ‘governed’ by those in ‘power’ and is relative to time and place.⁴²³

Moreover, they argue that Western states should not ‘export’ religious freedom. Shakman Hurd writes that ‘[t]he global promotion of religious rights and freedoms, like sectarianism, is a discourse of expert religion and governed religion, defined and authorized by those in power’.⁴²⁴ Danchin describes the right to religious liberty as ‘a technology of modern state governance’.⁴²⁵ Again, the quest for dominance comes to the fore, which was prominent in their inspirator, Talal Asad.

In particular, they agitate against the International Religious Freedom Act of the United States (RIFA), which was signed by former president Bill Clinton in 1998. In essence, the RIFA endorses the promotion of religious freedom as part of U.S. foreign policy in countries where the right is under pressure or advocates on behalf of individuals who are subject to religious persecution.⁴²⁶ According to Mahood, the adoption of RIFA ‘must be placed within th[e] long geopolitical history in which Western powers have often violated the principle of state sovereignty under the guise of promoting religious tolerance; no non-Western nation-state in modern history has been able to exert the same pressure to advocate the rights of religious, racial, or ethnic minorities living in Western European and American societies’.⁴²⁷ According to Mahood and Hurd, there is a correlation between religious freedom policy, social tension, discrimination, and conflict.⁴²⁸

⁴²⁰ Especially Elizabeth Shakman Hurd is very active in writing op-ed articles. A small selection is: E. Shakman Hurd, ‘The hegemony of religious freedom’, *The Globe and Mail*, 9 May 2018; E. Shakman Hurd, ‘How International Relations Got Religion, and Got it Wrong’, *The Washington Post*, 9 July 2015; E. Shakman Hurd, ‘The Myth of the Muslim Country’, *Boston Review*, 31 January 2017; E. Shakman Hurd, ‘The Tragedy of Religious Freedom in Syria’, *Chicago Tribune*, 29 March 2012; E. Shakman Hurd, ‘What’s Wrong with Promoting Religious Freedom?’, *The Middle East Channel*, 12 June 2013; W.F. Sullivan, E.S. Hurd, S. Mahmood & P.G. Danchin (eds.), *Politics of Religious Freedom*, Chicago, The University of Chicago Press, 2015; W.F. Sullivan, ‘The Impossibility of Religious Freedom: Hobby Lobby, Wheaton College and the Challenge for Liberals’, *Salon*, 10 July 2014.

⁴²¹ Such as, S. Mahmood & P. Danchin, ‘The Politics of Religious Freedom: Contested Genealogies’, *South Atlantic Quarterly*, Vol. 113 No. 1, 2014.

⁴²² Sullivan, Hurd, Mahmood & Danchin (eds.), 2015; Philpott & Sha, 2019, p. 381.

⁴²³ See for example, E.S. Hurd, *Beyond Religious Freedom. The New Global Politics of Religion*, New Jersey, Princeton University Press, 2015, pp. 41, 57, 59.

⁴²⁴ Hurd, 2015, p. 41.

⁴²⁵ P. Danchin, ‘Religious Freedom in the Panopticon of Enlightenment Rationality’, in W.F. Sullivan, E.S. Hurd, S. Mahmood & P.G. Danchin (eds.), *Politics of Religious Freedom*, Chicago, The University of Chicago Press, 2015, p. 252.

⁴²⁶ International Religious Freedom Act of 1998, H.R.2431, 105th Congress (1997-1998).

⁴²⁷ S. Mahood, ‘Religious Freedom, Minority Rights, and Geopolitics’, in W.F. Sullivan, E.S. Hurd, S. Mahmood & P.G. Danchin (eds.), *Politics of Religious Freedom*, Chicago, Chicago University Press, 2015, p. 145.

⁴²⁸ Hurd, 2015, p. XII.

The arguments of the new critics are of a similar nature as the previously mentioned arguments. For this reason, they are discussed simultaneously in the overall discussion of cultural relativism, which is the task in the following section.

2.10 Rethinking Cultural Relativism

As was remarked previously, at first glance, cultural relativism seems to be a feasible theory, but closer analysis may demonstrate its fallaciousness. In what follows it is argued that cultural relativism, although it contains some interesting ideas, is ultimately not a convincing perspective on the status of universal values and rights.

The weakness, or rather Achilles' heel of cultural relativism is that a normative claim is made on factual premises. In other words, it tries to base substantive claims about a subject on the mere fact that no consensus has been reached on it. As elucidated by legal philosopher Hans Kelsen (1881–1973), this is based on an unwarranted unjust transition from Is ("Sein") to Ought ("Sollen"); *viz.*, it transitions from descriptive to prescriptive language. Or, rather, it transforms facts to values, which is logically incorrect. In the Anglo-Saxon philosophical tradition, this is called 'the naturalistic fallacy': the logical mistake of deriving norms from facts. However, as the coming sections demonstrate, cultural relativism is not the only theory which seems to be guilty of the natural fallacy. Other theories also seem to be struggling with this. It is therefore pertinent that other inconsistencies within the cultural-relativist critique with regard to rejecting universal norms are discussed.

One of the difficulties with this theory is the fact that people adhering to different principles and values does not necessarily imply that there is no right value, or that one value is not better than the other. Consequently, all cultural relativism demonstrates is that the conclusion does not (have to) follow from the premises, not that the conclusion is false.⁴²⁹ To demonstrate this point, an example is in order, in this case one about the differences in the 'coming of age' ceremonies in various cultures.

In the United States, the custom exists of the 'Sweet 16' party, which consists of a party with cake and gifts that is often celebrated with friends and family. In Korea, the entry to adulthood is always celebrated on the third Monday of May. On this day, new adults wear traditional clothing and receive three symbolic gifts, to wit, perfume, roses, and a kiss. The Naghol, on the Island Vanuatu in the South Pacific Ocean, celebrate the coming of age of boys by strapping their feet to a vine and having them jump off a wooden platform. This represents the jump into adulthood, and the outcome of their fall predicts the yield of the harvest. In the Satere Mawé tribe of Brazil, boys have to wear woollen gloves filled with bullet ants. When the boy has endured the pain numerous times during the course of several weeks, the passage to adulthood has been realised.

The fact that people have different 'coming of age' ceremonies does not imply that no ceremony is the right one. In other words, from the fact that people have different views on cultural habits, it cannot be inferred that no view is actually the correct one. Cultural relativism seems to conclude too easily that universal standards do not exist because of the variety of these moral codes.

⁴²⁹ P.B. Cliteur, *De Filosofie van de Mensenrechten*, Nijmegen, Ars Aequi Libri, 1999, pp. 50-51; J. Rachels, *The Elements of Moral Philosophy*, New York, McGraw-Hill, 2007, pp. 19-21.

With a different example—not in the field of ethics but, for instance, in the field of science—it becomes even more evident. Suppose there is a discussion about applying Pythagoras’ theorem, and the outcomes of the participants’ sums differ. Does this mean that there is no correct formula by which to calculate the oblique side of a rectangular triangle? No, it does not; the only thing that can be deduced from this is that the participants may find Pythagoras’ theorem a difficult proposition and struggle with finding the correct answer. Strictly speaking, this cannot justify a sceptical attitude towards the truth. The cultural-relativist critique seems to be flawed on this point.

2.10.1 A Common Denominator

To critically reflect on cultural relativism, some comments about its factual basis are in order. As the previous sections have demonstrated, cultural relativism is based on the supposed differences between cultures or groups (or religions); it emphasises *pluralism*. However, it must be asked, is there really so much diversity, and are cultures truly incomparable? By merely emphasising cultural diversity, one may miss the *common denominators* that cultures actually share with each other.⁴³⁰

The example of the ‘coming of age ceremonies’ might again be useful. When the described cultural phenomena are compared, they seem widely divergent, ranging from cake eating to putting on gloves filled with bullet ants (with the pain and dangers to the health of minors it involves). Although the differences are evident, a common denominator might be perceived upon closer inspection of what is behind these practices, *viz.*, a ceremony to commemorate the fact that there is a transition from adolescence to adulthood.

It seems that in many, if not all cultures some passage to adulthood is celebrated. This demonstrates another problem within the cultural-relativist view: it seems that it stays too much on the surface. The superficial variety of cultures often seems to dissolve when we look more closely at the motivation for the cultural habit. For this reason, it seems that within cultural relativism (we see this both with the cultural anthropologists protesting against the UDHR and with the new critics of religious freedom), it is too readily accepted that there are no such things as universal patterns and norms.⁴³¹

That brings us to a second point. Is it really true that no examples can be found of moral rules prevalent in all cultures? One may doubt this. Closer analysis of cultures seems to indicate that in almost all cultures *some* moral rules can be deduced that are the same or at least very similar, such as the norms not to steal, to tell the truth, not to harm people without reason, not to commit murder, and not to torture people. These moral rules are adopted in order for society to function, or even to exist.⁴³² Without discussing the matter in terms of natural law, in this context it is relevant to point out what Thomas Hobbes (1588–1679) said: that without rules there would not be a functioning society. People would still be in the status *hominum naturalis*, in which man would be a wolf to other people, and life would be ‘solitary, poore, nasty, brutish, and short’.⁴³³ This does not

⁴³⁰ Cliteur, 1999, pp. 51-52; Rachels, 2007, pp. 19-21.

⁴³¹ Cliteur, 1999, pp. 51-52; Rachels, 2007, pp. 19-21.

⁴³² Rachels, 2007, pp. 25-27.

⁴³³ ‘Whatsoever therefore is consequent to a time of Warre, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them with all. In such condition, there is no place for Industry; because the fruit thereof is

mean that exceptions to the norm are not allowed, or that norms cannot be violated.⁴³⁴ Obviously, this is possible, and in some cases it is even better to disregard the norm. What is argued here is that the exception to the norm, or the violation of the norm, does not imply that there is no *norm at all*. It seems that some minimum standards can be derived and formulated that apply to all individuals regardless of the culture, religion, or (political) ideology that is adhered to. The most powerful example is perhaps the norm not to torture. The cultural relativist is too quick in disregarding this.⁴³⁵ It seems that this disregard comes from a *difference in focus*; the cultural relativist focuses on *cultural pluralism*, on cultural diversity, and therefore disregards any possible common ground.

2.10.2 Moral Infallibility

Cultural relativism can be contested not merely on the discussed empirical grounds, but also on a more *normative* ground. Based on the existence of cultural pluralism, it is assumed that cultures are different and therefore incommensurable. Consequently, cultural relativism denies the ability to look critically at and judge other cultures. However valuable this call for tolerance on the part of cultural relativism may be, the attitude ‘When in Rome, do as the Romans do’, which is what this essentially means, is not without dangers, because it could result in a kind of moral paralysis. We simply deprive ourselves of the possibility of making moral judgments at all. This moral self-restraint that cultural relativists plead for easily culminates into a sort of *moral passivity*, which makes it impossible to assess situations and developments in other cultures critically.⁴³⁶

An additional argument that illustrates that cultural relativism may be problematic is that the origin of a cultural value in a particular place or time does not imply that *moral learning* is impossible for the cultural group. Cultural relativism wrongly embraces a kind of *moral infallibility* of cultures. As James Rachel writes, ‘the idea of moral progress is called into doubt’.⁴³⁷ From a cultural-relativist point of view, the emancipation of women or the abolition of slavery, which most people and cultures would consider progress, could be questioned. After all, progress is the adoption of a better standard, an advanced situation developed over time. The cultural relativist seems to dismiss this new and better standard, for it would imply a different standard than the original one by which the same culture is judged. It ‘implies a judgement that present-day society is better’, a ‘transcultural judgement’ that is objectionable within cultural relativism.⁴³⁸

Consequently, one must wonder if cultures are as rigid as the relativistic claim implies. Cultural relativism neglects the fact that cultures are malleable and they *can*, in fact, adopt human

uncertain; and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continual fear, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short’. Chapter XIII in T. Hobbes, *Leviathan*, St. Paul's Churchyard, Green Dragon (Project Gutenberg), 2009 [1651], p. 358.

⁴³⁴ Cliteur, 1999, pp. 52-54.

⁴³⁵ Cliteur, 1999, pp. 52-54.

⁴³⁶ Cliteur, 1999, pp. 49-50; Rachels, 2007, pp. 18-19.

⁴³⁷ Rachels, 2007, pp. 22-23.

⁴³⁸ Rachels, 2007, p. 23.

rights standards. Or as Jack Donnelly has argued, ‘whatever their practice, nothing in indigenous African, Asian, or American culture prevents them from endorsing human rights now’.⁴³⁹

As I have demonstrated in the previous paragraphs, much of the acclaim of pluralism and the criticism of universalism is motivated by a critique of colonialism, imperialism, and other objectionable actions by Western states and societies. In Baroody’s criticism of the Universal Declaration, in the American cultural anthropologist critique of the Declaration, and the later critical views of the new critics of religious freedom, this was an important theme. But we must bear in mind that human rights can also be used to criticise the West. The American civil rights movement is a case in point. The civil rights activists referred to universal human rights, which the black population had been denied. Human rights are certainly not exclusively, not even mainly, an instrument against suppression, but have functioned as an instrument of political emancipation.

2.10.3 The Civilizational Perspective; the Consensus Approach

Thus far, it seems that the cultural-relativist critique of universal norms is not as plausible as it appears at first sight, and as described in the previous section, some minimum standards can be established in order for society to survive, function, and certainly to flourish. Some scholars have discerned ‘things’ which are ‘good’ or ‘bad’ for people as universal norms. For instance, Michael Perry lists ‘affection, the cooperation of others, a place in a community, and help in trouble’.⁴⁴⁰ In this line, one may also add ‘not to be lied to’.

Rosalyn Higgins, former president of the International Court of Law, formulates a different approach and presents a firm basis for universalism. She states that

[i]ndividuals everywhere want the same essential things: to have sufficient food and shelter; to be able to speak freely; to practice their own religion or to abstain from religious belief; to feel their person is not threatened by the state; to know that they will not be tortured, or detained without charge, and that, if charged they will have a fair trial. [...] There is nothing in these aspirations that is dependent upon culture, or religion or state of development.⁴⁴¹

It seems that Higgins derives some universal norms not from the fact that they are good or bad, but from the fact that people *want* those standards, regardless of race, religion, language, gender, or culture. In this context, Higgins remarks that the cultural-relativist critique is mainly propagated by states and liberal scholars who are afraid of being accused of ethnocentrism. This is a fear that seems widely dispersed among intellectuals, as we have seen in the previous paragraphs, especially in the analysis of the contribution of the cultural anthropologists to the relativism discussion. It is

⁴³⁹ J. Donnelly, ‘The Relative Universality of Human Rights’, *Human Rights Quarterly*, Vol. 29, No. 2, 2007, p. 291. See for an extensive elaboration on this topic, J. Donnelly, *Universal Human Rights in Theory and in Practice*, Itaca/London, Cornell University Press, 2013.

⁴⁴⁰ M.J. Perry, ‘Are Human Rights Universal? The Relativist Challenge and Related Matters’, *Human Rights Quarterly*, Vol. 19, No. 3, 1997, p. 471.

⁴⁴¹ R. Higgins, *Problems and Process: International Law and How we Use it*, Oxford, Clarendon Press, 1994, p. 97.

‘rarely advanced by the oppressed, who are only too anxious to benefit from perceived universal standards’.⁴⁴²

In line with Higgins’ idea is the ‘civilisation perspective’, conceived by Cliteur, and also an influential factor for the present study.⁴⁴³ This perspective is based on an *evolutionary approach* to the law; it does not only reflect on the past and derives some minimum norms from it, but it also focuses on the future. This stance adopts the view that there is a set of values that may not have been found in all cultures in the past, but there is now a broad *intercultural consensus* on values. The most illustrative example is the rule not to torture. Torture used to be valued differently cross-culturally than it is today.⁴⁴⁴ If a government is confronted with such allegations, it is often denied, and if the evidence is incontrovertible, it is generally interpreted as interference in internal affairs.⁴⁴⁵ The same goes for forced labour.

The merit of this civilisation perspective is that individuals from various cultures decide for themselves: they reach a consensus on what is morally acceptable and what is morally reprehensible. The world community, or rather representatives from these various cultures, can participate in this process. It is possible, therefore, to arrive at values on which ‘intercultural’ acceptance exists; in this case, fundamental human rights. The described drafting process of the Universal Declaration serves as an example; during this period, an intercultural consensus was reached by the world community on *transnational* or *transcultural* norms. This ‘consensus approach’ also provides open mindedness with regard to the possible discoveries in the context of normative assertions.⁴⁴⁶ In other words, it is not as time-and-place bound as cultural relativism asserts. This stance thus goes beyond what individuals ‘want’ or ‘need’ or what societies need in order to function or exist; it is broader. The contemporary framework of human rights as expressed in the Declaration could therefore be qualified as the existing universal morality. They are the values on which the community reached intercultural consensus.

Now, in this civilisation perspective, the same weakness may be detected as in cultural relativism, namely that a normative statement is derived from a factual consensus; the naturalistic fallacy. The naturalistic fallacy was brought to the fore to demonstrate that the relativist claim is less plausible than it initially seems. More relevant, as has been emphasised in the previous sections, is that the cultural-relativist assertion is mainly flawed when it claims that there is so little consensus on values, and any possible common ground or denominator that cultures share with each other is disregarded.⁴⁴⁷

⁴⁴² Higgins, 1994, p. 96.

⁴⁴³ Cliteur uses the terms ‘beschavingsperspectief’ and ‘ontwikkelingsperspectief’. See for more P.B. Cliteur, *Conservatisme en cultuurrecht. Over de fundering van recht in rechtsbeginselen*, Eindhoven, Uitgeverij Damon, 2005 [1989].

⁴⁴⁴ Torture is now considered to be a serious human right violation and it is legally entrenched in various articles, protocols, and conventions. There is also an international day in support of victims of torture, *viz.*, 26 June.

⁴⁴⁵ Cliteur, 1999, pp. 52-56. L.E. Lomasky also argues for a consensus approach in L.E. Lomasky, *Persons, Rights, and the Moral Community*, New York, Oxford University Press, 1990, pp. 13-14.

⁴⁴⁶ Illustrative may be stance towards eating animals. In some cultures, people disapprove of eating certain types of animals. However, there are also worldwide movements that advocate not eating animals at all, for it is morally wrong. Obviously, this is speculation, but it may become the norm to stop eating animals.

⁴⁴⁷ Cliteur, 1999, pp. 52-56.

Despite the fact that there is no agreement regarding the theoretical foundation of human rights, consensus on actual human rights is achievable. If we look at the number of human rights in the current timeframe, then the consensus approach seems to have even more merit. Since 1948, the quantity of human rights law on which states all over the world have been able to reach consensus has increased considerably. As the previous sections have demonstrated, it is not the intention to eschew discussion about the philosophical foundations in favour of *de facto* international consensus, but it is still a strong argument against the cultural relativist's claim.⁴⁴⁸

2.10.4 Rebutting Ethnocentrism: A Plurality of Voices

The previously discussed arguments are meant to demonstrate that the position of cultural relativism is not so evident after all. In this section, I discuss the claim of the cultural relativist that the Universal Declaration is ethnocentric, more specifically focussing on the accusation that the Universal Declaration is a Western document and that it is in the interest of the West, since only Western intellectuals participated in the drafting process.

As the analyses in previous sections demonstrated, a considerable effort was made to reach consensus on universal human rights, which was eventually formally achieved by the international community. All states contributed to the Universal Declaration in various ways: governments sent draft declarations and suggestions and countless state representatives contributed to the final result on various occasions. Moreover, the draft declaration with which the representatives started the process was based on a firm international basis: as was demonstrated in the previous sections, the Secretariat's Outline as compiled by Humphrey was an assemblage of hundreds of proposals made by governments, private persons, and organisations, but also of the laws and legal systems of all the member states.⁴⁴⁹ So if, as its critics claim, the UDHR was 'Western', it was certainly not Western in the sense that most, let alone all, participants came from countries from the Western hemisphere.

If the Universal Declaration primarily reflects Western norms and values, then the question arises what the participants discussed during all those years debating the text. It is also remarkable that so many 'non-Western' states agreed to the Declaration. Moreover, states could have voted against the adoption or abstained from voting when certain elements of the Declaration met insurmountable religious or political objections, which some states in fact did.

As the analyses of the discussions in the previous sections have demonstrated, a variety of individuals and voices made up the drafting committee: the members had different nationalities, backgrounds, religions, and doctrines, ranging from Western liberalism to Eastern socialism. It was a 'plurality of voices'.⁴⁵⁰ It seems only natural that these substantial differences influenced their stances on human rights, in particular on the freedom of religion or belief provision.

⁴⁴⁸ According to some scholars, discussion about the theoretical underpinnings of human rights is unnecessary, since we merely have to refer to the rules of international human rights law as developed since 1945. See, for instance P. Sieghart, *The International Law of Human Rights*, Oxford, Clarendon Press, 1983, p. 15. This stance seems unconvincing; as Michael Freeman has said: 'rights without reason are vulnerable to denial and abuse'. M. Freeman, 'The Philosophical Foundations of Human Rights', *Human Rights Quarterly*, Vol. 16, No. 3, 1994, p. 493. See also M. Freeman, *Human Rights*, Cambridge, Polity Press, 2011.

⁴⁴⁹ E/CN.4/AC.1/3/Add.1

⁴⁵⁰ It is sometimes suggested that the drafting committee did not fairly represent the world community because some

Given the plurality in nationalities, politics, economics, state systems, cultures, and religions, it is essential to emphasise how extraordinary it actually was that consensus was reached on the universal nature of a list of human rights: Ten states from Europe, six from Asia, two from North America, eighteen from South America, three from Oceania, three from Africa, and six from the Middle East voted in favour of the Universal Declaration; six Eastern European countries, one African, and one Middle Eastern country abstained.⁴⁵¹ The reasons why these states abstained from the final vote (they did not vote against it) differ, but it is important to emphasise that these reasons had not deterred the states from participating in the two-year drafting process. Accordingly, all states contributed to the project to at least strive to reach a consensus on universal standards.

The contributing representatives did not merely represent (the interests of) their states; they symbolised the different views that exist in the world with respect to human rights: there were thirty-seven states with a Judeo-Christian tradition, six states with a communist view, eleven states with an Islamic tradition, and four states with a Buddhist view. It demonstrates that, even though the drafters adhered to different ideologies, they were able to discuss their differences, to extrapolate ideals from this discussion, and to find common denominators in order to reach consensus on universal human rights. This is what makes the Declaration a *universal, transnational normative standard*.

The endorsement of this transnational moral standard is reaffirmed by the fact that all states have adopted references to the Universal Declaration in their constitutions or ordinary law. Since the Universal Declaration has no enforceable power, all implementation of human rights into those national systems was based on voluntary decisions.

It is relevant to mention that the international community reaffirmed the universalistic aspiration of human rights during the UN World Conference on Human Rights in Vienna in 1993. Some governments, among them China and Iran, suggested that national cultural traditions and customs should sometimes supersede human rights. Despite this view, the world community, consisting of 172 states, by consensus adopted the Vienna Declaration and a Programme of Action, in which a confirmation of the universality of human rights was adopted. All states reaffirmed 'their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration of Human Rights'.⁴⁵² Moreover, they claimed that 'the universal nature of these rights and freedoms is beyond question'⁴⁵³ and '[w]hile the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in

of the members studied at American or Western European universities. This not only seems to be an *ad hominem*, but can also be rebutted on the grounds that, even if they did study at universities abroad, which was actually not the case for most of them, they were still selected by their national governments to represent their countries' ideals and interests. It is difficult to imagine that they would have had free reign in such delicate matters which would have strong national consequences.

⁴⁵¹ Turkey was added to the Middle Eastern countries.

⁴⁵² Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June, 1993.

⁴⁵³ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June, 1993, under I, para. 1.

mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms'.⁴⁵⁴

Another significant idea relating to moral universalism was adopted in the Vienna Declaration: the world community proclaimed that human rights are not only universal, but also 'indivisible', 'interdependent', and 'interrelated'.⁴⁵⁵ This means that all human rights rely on and are affected by each other, and certain rights are not more important or decisive than others. It is striking that all states, despite the critiques, agreed to the Vienna Declaration, which confirmed the great support for the universal status of human rights. Whether it is right to proclaim the universality of *all* human rights is open to discussion, but there seem to be good arguments for the universality of the freedom of religion or belief, the focus of this research.

2.11 Conclusion

In summary, this chapter examined the cultural-relativist critique of ethnocentrism levelled against the Universal Declaration. I argued that the accusation that the Universal Declaration is rife with ethnocentrism partially stems from the fact that these intellectuals do not take into account what was discussed during the drafting process and who participated in it. This has resulted in inaccuracies in their idea of how the Universal Declaration was drafted and what the intentions and goals were with the document. In order to come to this conclusion, I presented a legal-historical analysis of the drafting history and an analysis of the arguments some critics of the Declaration brought to the fore.

I also offered extensive descriptions of which representatives contributed to the text and what their motivations were in discussing the freedom of religion or belief, and of related matter, such as a possible religious underpinning for the Universal Declaration. I have demonstrated that, given their role and influence in drafting the Universal Declaration, the members of the drafting committee in particular were an authoritative source for the meaning and correct interpretation of Article 18 Universal Declaration.

From the analysis, it can also be inferred how the delegates understood the philosophical and theoretical underpinnings of the provision, and in particular what definitions of the concepts of 'religious', and 'secular', 'universal', and 'relative' they thought it should represent. It appears that the representatives evaluated the suggested content of Article 18 UDHR from the perspective of their own preconceptions, originating in the standards and customs of their states' doctrines and cultures, but an awareness quickly arose that this approach made it difficult to arrive at common principles.

Although pursued from various angles, there was insufficient support to establish the Universal Declaration and the freedom of religion or belief provision on a religious foundation. The delegates sought to realise an outcome that they (or at least a significant number of them)

⁴⁵⁴ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June, 1993, under I, para. 5. Although both quotations seem to imply that the cultural-relativist critique was explicitly rejected by the world community, there seems to be some room for debate with regard to the words 'regional particularities and various historical, cultural and religious backgrounds must be borne in mind'. However, it does seem that the focal point is on the latter part of the operating paragraph.

⁴⁵⁵ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June, 1993, under I, para. 5.

would be able to accept, consisting in adopting basic principles that would reflect the recognition of the full scope of the freedom of religion or belief, reflecting a claim to universalism, notwithstanding the fact that a consensus approach was used.

Various principled arguments were brought to the fore not to include a reference to a deity, but there were also numerous arguments focussed on the impossibility of reaching consensus on a reference to a deity. There were too many disparate theological and philosophical views, and arguments of a religious nature (mainly focused on Christianity) were outvoted.

In this sense, it is actually interesting that the Islamic countries tried to remove the freedom to change religion from the Declaration, but did not strive to have a reference to Allah or of something of a similar nature included. It is also interesting that the Christians and Muslims did not try to effectuate a reference to one god, such as the god of monotheism.

It has thus become clear that the representatives searched for practical neutral principles with regard to Article 18 UDHR: principles that could be filled in by the individuals themselves, whether or not they were religiously motivated. Thus, when the religion-related matter was discussed, a pragmatic attitude was adopted to overcome the doctrinal and religious divides of the participating parties.

This pragmatic attitude also makes it apparent that the pursuit of moral universalism continued to prevail. The aim of the Universal Declaration was to draft a document that all people all over the world could understand and relate to. A language had to be adopted that was understood by all participants; it had to encompass an autonomous humanitarian morality. The representatives legitimately avoided inserting specific metaphysical concepts into the provision in order to reach the goals that were set. This led to the insight that a universal basis for religious freedom was to be found in a secular version. It would be a freedom that was based on moral autonomy, which would not include a reference to a deity and could be exercised by both believers and non-believers. The Universal Declaration is therefore neutral on the subject of religion, and Article 18 UDHR is phrased in such a way that there is an openness to different perspectives and ways of life. It means religious and belief pluralism without state interference. The way the provision is formulated, starting from a neutral position, implies that the state recognises the equality of all this diversity.

In this chapter I analysed the perspectives of the various delegations on the scope and content of the freedom of religion or belief provision. I concluded that, while the drafting process was far from flawless, in the end the world community articulated a clear vision on the core meaning of the freedom of religion or belief and opposed policies in which individuals would be excluded.

In addition, the claim was challenged that the Universal Declaration is a Western vision of human rights and that only Western intellectuals took part in the preparations. These critics do not explain, however, why the Declaration is 'Western'. Moreover, I argued that the drafting committee was aware from the beginning that there could be a biased view regarding human rights. This is why, on Roosevelt's authority, the drafting committee was expanded to include delegates with a variety of nationalities, identities, creeds, and religions, ranging from Western liberalism to Eastern socialism.

Moreover, the proposals drawn up by the drafting committee were discussed by the eighteen representatives of the Commission on Human Rights and subsequently in the Third

Committee, in which all states were represented, resulting in a plenary adoption procedure in the General Assembly. As a result, during the complete drafting process, all representatives of all states were able to express their opinions, introduce amendments, and vote on the paragraphs of the provisions, certainly in the case of Article 18 UDHR. It is the consensus reached by this plurality of voices that makes the Universal Declaration a universal, transnational normative standard.

Lastly, the critique that is brought to the fore by (cultural) relativists, who oppose the universal aspirations of the Universal Declaration, was discussed. It was argued that the theory of cultural relativism seems plausible upon first inspection, but closer analysis of its arguments demonstrated that some flaws may be detected. This analysis was done within the context of the consensus approach to human rights.