



Universality by Consensus: The Evolution of Universality in the Drafting of the UDHR

By Amy Eckert

A review of The Universal Declaration of Human Rights: Drafting, Origins & Intent by Johannes Morsink. Philadelphia: University of Pennsylvania Press (Pennsylvania Studies in Human Rights), 2000. 400pp.

The Universal Declaration of Human Rights (UDHR) has helped to define human rights standards and bring them to the forefront of global concern. Yet the UDHR continues to suffer from charges of cultural imperialism. While many scholars have answered these charges with philosophical justification for universal human rights, Johannes Morsink takes another approach to the question of cultural relativism in The Universal Declaration of Human Rights: Origins, Drafting & Intent. Rather than taking an ethical approach to argue that all humans inherently possess equal rights, Morsink argues for universality of human rights based on consensus among drafters of the UDHR. Through his meticulous examination of records, drafting materials, and secondary sources, Morsink disputes cultural relativists' contentions that the UDHR merely recasts Western capitalist values in the guise of universal rights. Morsink reveals that the process by which the UDHR was drafted included a variety of social, cultural, and ideological traditions and that the final document reflects this diversity.

Cultural relativists deny that the UDHR incorporates the values of non-Western political cultures. They contend that the rights asserted by the UDHR grow out of individualistic Western values that do not translate to other parts of the world where communitarian cultural traditions elevate group interests over individual liberty. As evidence, cultural relativist critics of the UDHR point to the countries that abstained when the U.N. General Assembly voted on the UDHR as evidence of the document's cultural particularity. Those who abstained included six Communist states led by the Soviet Union, Saudi Arabia, and South Africa. Morsink's examination of the process by which the UDHR emerged reveals that the states that abstained from voting played an active role in the drafting process and were instrumental in the final form of several articles. Consequently, their objections to the UDHR did not amount to a rejection of the idea of human rights as their active participation in the drafting process indicated. They abstained either because they believed that the UDHR had gone too far in proposing universal standards or because they believed it did not go far enough in implementing those ideals.

Having noted that the abstentions, of which cultural relativists make much, do not imply a rejection of universal human rights standards, Morsink proceeded to identify the influences on the drafters. Key among these was the experience of World War II. A number of the rights contained in the UDHR responded directly to the human rights abuses committed by Hitler's Nazi government. For example, Hitler's view of the state as an organic entity, in which individuals cannot be understood except as members of the group, led to a breakdown of barriers between the state and its citizens. This view of the state, in combination with Hitler's views on eugenics, led to some of the worse abuses against those perceived as genetically inferior to the Aryan race. The drafters of the UDHR sought to prevent a recurrence of this aspect of the Holocaust through the inclusion of specific rights. The first five articles of the UDHR, which focus on rights to personal security, sought to prevent a recurrence of those types of violations. Other key provisions of the UDHR similarly reflect the drafters' desire to prevent a second Holocaust. This desire—shared not only by the Member States of the United Nations but by organizations and individuals—helps to explain the emergence of the UDHR at that point in time as well as the shape that the document ultimately took.

While World War II and the lack of legal norms to prevent or address Nazi horrors provided the major impetus for drafting the UDHR, this was by no means the only factor that led to the creation of a human rights instrument or influenced its content. In addition to the experience of World War II and global reaction to Nazi abuses, Morsink identified other influences on the drafters of the UDHR that included the women's movement, Latin American socialism, and Cold War rivalry. Morsink describes the influence of each of these factors on the content and form of the UDHR.

The influence of the superpowers on the process of drafting the UDHR affected not only the content of specific articles but also the broader purpose of the document. When the Economic and Social Council charged the Commission on Human Rights with drafting an instrument to elaborate on the human rights provisions of the United Nations Charter, delegates debated over whether that instrument should be a mere statement of principles of a covenant complete with implementation mechanisms. Some delegations believed that the Council expected a convention with mechanisms for implementing the rights set forth. The USSR and the US, however, maintained that the Council intended that the document be a declaration of principles, with questions of implementation deferred until later. Ultimately the superpowers won this argument, and the UDHR sets forth rights with no provisions for their protection. Morsink argues that this victory for the US and the USSR was also a victory for the UDHR. By giving this document a separate moral status, the drafters allowed it to assume a central role in protecting human rights among and within states that it may not otherwise have attained.

While united on the point of implementation, the USSR and US were divided on other points regarding the UDHR. Ideological differences led them to argue over the content of many of the articles, for instance freedom of conscience. Western nations favored protecting freedom of political belief. Communist states, led by the Soviet Union, opposed protecting freedom of *political* conscience. Ideology dictated that only one political ideology could be correct and they therefore withheld their support from the right to hold other ideologies. Morsink effectively captures the philosophical underpinnings of this conflict. Ultimately the Western bloc won this disagreement and the final form of the UDHR defended the right to hold political opinions free from state persecution. The debate over this right illustrates the divisive effect of Cold War politics on the drafters of the UDHR.

Still other political forces of the time helped to shape the UDHR. For instance, the women's movement influenced the content of nearly every article. The near absence of gender bias that resulted from the drafting process underscores the genuine universality of the rights contained in the UDHR. While ECOSOC had created a Sub-Commission on the Status of Women, the chair of that committee played an active role in the drafting of the UDHR. Bodil Begtrup's activism, coupled with pressure from the Soviet delegation, largely eliminated sexism from the final document. Nearly all articles refer to "all" or "every one" as the holders of rights rather than restricting the rights to men alone. The exceptions are found in Articles 23 and 25 that refer to workers' rights using the phrase "himself and his family." Morsink explains that, though sexist by today's standards, socialists, feminists, and labor unions had converged on the idea of a "family wage" at the time of the UDHR's drafting. The starkness manifested in these articles points to the progressiveness of the UDHR.

In part such progressiveness may be attributed to the influence of the Latin American socialist tradition. More than any other geographic bloc participating in the drafting of the UDHR, the Latin American states spoke with a single voice. Their unity allowed them to exert a strong influence on the final form and content of many rights—especially the group rights—contained in the UDHR. For instance, the presence in many of their constitutions of a right to food, shelter, and clothing led to the discussion of these rights during the drafting process and their ultimate inclusion in the final document.

In addition to such factors, Morsink also describes the influence of certain key individuals on the UDHR. Most influential was John Humphrey, who wrote the first draft of the UDHR. The pervasive influence of Humphrey throughout the process leads Morsink to refer to him as the "father" of the UDHR. This assertion debunks the commonly held view that Rene Cassin, the delegate from France, was the principal author of the UDHR. Though other drafts, including Cassin's, were also considered, they largely grew out of Humphrey's initial outline of rights to be included in the UDHR. Humphrey's background and inclinations therefore played a pivotal role in the final shape of the UDHR. Born in Canada, Humphrey practiced law before his appointment to a professorship at McGill University. He held socialist views, which led to his being passed over for the deanship of the McGill law school. Shortly thereafter he accepted the position of director of the Division of Human Rights at the UN. His socialist views allowed him to work closely with the Latin American delegates to the drafting of the UDHR and undoubtedly amplified the influence they would otherwise have had. The influence of Humphrey's socialist views survived the drafting process and is reflected especially in the UDHR's provisions on economic and social rights.

Though not involved directly in creating a draft, American first lady Eleanor Roosevelt also exerted considerable influence over the drafting process. She channeled intense international pressure for an international bill of human rights and directed it into the task of drafting the UDHR. Supervising the task, she maintained pressure on the delegations to keep the UDHR a short, simple document accessible to the common person. This direction undoubtedly contributed to the success of the delegates in drafting just such a document.

The picture of the UDHR that emerges from Morsink's book overturns stereotypes. Rather than an ethnocentric document that presents western values as universal rights, this thorough and meticulous study of the drafting process depicts the UDHR as an inclusive set of rights that transcend most cultural and ideological divisions. Diverse contingencies from among the UN's

membership participated actively in the drafting of the UDHR. Yet, the UN's membership itself excluded large populations still under colonial rule. While some former colonial territories, including India and Lebanon, made significant contributions to debate over the content, other parts of the world—including large parts of Asia and Africa—had not yet attained their political independence from their colonial powers. As dependent territories, they were not eligible for UN membership and were therefore excluded from the drafting of this human rights document. But within these constraints, the drafting process drew on multiple cultural traditions, religious doctrines, and ideological systems.

Morsink's book provides valuable insights into the process by which the drafters created the UDHR. The understanding of this process that emerges from The Universal Declaration of Human Rights: Origins, Drafting & Intent sheds light on some of the pressing questions and enduring doubts surrounding the UDHR. This thorough study will undoubtedly become an invaluable tool for interpreting the UDHR by shedding light on the intent of the drafters. As Morsink explains, the drafters intended for the UDHR to be viewed as an organic, integrated document. The emphasis on non-discrimination, found in Article 2, permeates the entire document. While scholars have drawn distinctions between political and economic rights, Morsink reveals that the drafters did not view economic rights as different from or inferior to older political rights. The drafters intended for the UDHR to be universal in terms of guaranteeing all rights contained in its articles to all people. Through his careful examination of the history of the UDHR, Morsink clearly strikes a blow against the lingering charges of ethnocentrism that cast a pall over the remarkable achievements of this document and the rights it guarantees.

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