

The Universal Declaration of Human Rights at 75 and beyond: historical, contemporary, and future perspectives

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**The View of the Past in the Universal
Declaration of Human Rights**

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Abstract

This essay postulates that the Universal Declaration of Human Rights reveals a clear and coherent view of the past. This claim is defended in two ways: by examining the mindset and vocabulary of the drafters of the Universal Declaration and by reconstructing the history of the two historical recitals about barbarism and rebellion in the Universal Declaration's preamble. On this basis, seven characteristics of a view of the past in the Universal Declaration become apparent: it has eighteenth-century precedents; it is holistic; it is abstract, but not ahistorical or transhistorical; it is marked but not determined by natural law; it claims to be the interpreter of human conscience; it takes a manifest anti-dictatorial and a discreet pro-democratic stance; and it is unique.

Keywords:

historical recitals of preambles; holistic approach to the past; natural law; right to rebellion.

1. Introduction

The Universal Declaration of Human Rights was approved by the United Nations General Assembly on 10 December 1948.¹ Perhaps the most famous declaration in existence today, it surpassed the Bible as the most translated document in the world in 1999; by January 2025, it was available in 576 languages.² Spawning many other human rights instruments, it became the flagship of human rights. According to most experts it is now part of customary international law, giving it a *status aparte* of the highest authority.³ Its brief text of not even 1,800 words mainly contains aspirations. Given its brevity and focus on the present and the future, one would not expect the Universal Declaration to contain an elaborate view of the past.

This is a mistake. The discussions held between 1946 and 1948 leading to the Universal Declaration have been preserved, and they show that its drafters were considering history constantly when discussing the seven successive versions of its text. Similarly, their vocabulary was coloured by historical references. But above all, two recitals located in the preamble, 88 words in total, are dedicated to the historical underpinnings of the Universal Declaration. This essay will defend the claim that the Universal Declaration reveals a clear and coherent view of the past.

¹ Official webpage of the Universal Declaration: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. All URL's mentioned in this contribution were last checked on 14 January 2025.

² See <https://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>.

³ For discussions of the Universal Declaration's legal force, see Oraá Oraá (2006) and Schabas (2013), cxix-cxxiii.

2. Mindset and vocabulary of the drafters

The drafters of the Universal Declaration exhibited a notable historical awareness. During the first part of the concluding debate on the Universal Declaration, on 9 December 1948, Eleanor Roosevelt – the first chairperson of the United Nations (UN) Human Rights Commission and widow of former President Franklin Roosevelt – told the UN General Assembly that the Universal Declaration ‘might well become the Magna Carta of all mankind’,⁴ comparing it to the 1215 treaty that was perhaps the first instrument in the West that provided protection against arbitrary State action. Her iconic phrase resonated like an oracle. During the second part of this concluding debate, on 10 December 1948, the Icelandic delegate Thor Thors told the UN General Assembly that Iceland regarded the Universal Declaration ‘as a preamble to a future world constitution.’⁵ His words echoed the legal tradition initiated in France and the United States of having a list of rights prefixed or annexed to a country’s constitution. Most delegates participating in the drafting sessions of the Universal Declaration (the *travaux préparatoires*) were cognisant that they were working on texts that would likely have a lasting impact. This led many to appeal to ‘history’ and some to propose historical recitals. For example, in footage of the concluding debate over the Universal Declaration, one protagonist of the writing process, Lebanese delegate Charles Malik, told the UN General Assembly: ‘While history alone can determine the historic significance of an event, it is safe to say that the Declaration before us may be destined to occupy an honourable place in the procession of positive landmarks in human history’.⁶ And indeed, the Universal Declaration with its historical recitals has been reproduced and quoted endlessly over the years, thus extending its influence to vast audiences. These texts and recitals were the result of collective authorship, lengthy negotiations, severe selection, compromise, and consensus building or voting among delegates of participating States. Their content represents a majoritarian view of the past among the States participating in the *travaux préparatoires*. A few delegates even suggested that the Universal Declaration expresses world public opinion and can be regarded as ‘the voice of the peoples of the world’.⁷ For example, the representative of Ecuador, Jorge Carrera Andrade, told the drafters of the Universal Declaration that ‘the international declaration of human rights was the most important document of the century,

4 UN Doc. A/PV.180 (9.XII.1948).

5 UN Doc. A/PV.181 (10.XII.1948).

6 At <https://www.ohchr.org/en/video/2021/udhr-70-history>.

7 The term ‘world public opinion’ was used by delegations of the United States in UN Doc. E/CN.4/82/Rev.1 (17.XII.1947) and UN Doc. E/CN.4/85 (1.V.1948); E/CN.4/SR.81; France in UN Doc. E/CN.4/SR.71 (14.VI.1948) and UN Doc. E/SR.215 (25.VIII.1948); Denmark in UN Doc. E/SR.215 (25.VIII.1948); Canada in UN Doc. A/C.3/SR.151 (22.XI.1948), and the USSR in UN Doc. A/C.3/SR.156 (25.XI.1948).

and, indeed, was a major expression of the human conscience'.⁸ We will investigate this human conscience claim later.

3. History of the historical recitals

Before approving the Universal Declaration as a whole, the UN General Assembly voted on all separate parts of the final version. This is why we know that the two historical recitals were unanimously adopted (each with fifty-six votes in favour). One preamble recital refers to barbarism and the other to rebellion. They read:

The historical recitals of the Universal Declaration of Human Rights

'Preamble

(...) Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, (...)

Now, therefore,

The General Assembly, (...)

Source: UN General Assembly Resolution 217(III)A (10.XII.1948).

The story of the historical recitals, and especially the one on rebellion, is turbulent and breathtaking. It begins in June 1945 with the approval of the UN Charter. The founding document of the UN, it was an instrument to advance peace and international understanding, but not a typical human rights document. Some of its drafters unsuccessfully hoped to incorporate a human rights bill directly into it.⁹ However, the idea lingered and a few months later, in November 1945, the UN decided to prepare an International Bill of Rights to supplement the Charter. In January 1947, early in the preparatory process, the delegate from the Republic of China P.C. (Peng-chun) Chang noted that such a Bill needed a preamble in which the history of human rights was recalled.¹⁰

⁸ UN Doc A/C.3/SR.905 (1.X.1948).

⁹ See UN Doc. 2 G/7 (g) (2) (5.V.1945) (Panama's proposal) in *Documents of the United Nations Conference on International Organization San Francisco, 1945* (further abbreviated as *UNCIO*) (London/New York: UN Information Organizations, 1945-1955), volume 6, 545-551, and *UNCIO*, volume 3, 265-271.

¹⁰ UN Doc. E/CN.4/SR.7 (31.I.1947).

The head of the Human Rights Division of the UN Secretariat, Canadian John Humphrey, prepared a first draft of the Bill in early June 1947.¹¹ This document contained only a brief set of suggestions for a preamble, in particular a reference to the famous Four Freedoms – freedom of speech and belief and freedom from fear and want – formulated by American President Franklin Roosevelt in 1941.¹² Later in June 1947, the Drafting Committee of the Commission on Human Rights decided to split the Bill into two: a Manifesto or Declaration and a Convention. The idea was to work on both simultaneously.¹³ Following this two-pronged approach, a Working Group of the Drafting Committee consisting of delegates from France, Lebanon, and the United Kingdom was entrusted with producing a draft for the Declaration and after some discussion the Working Group invited French delegate René Cassin to formulate that draft ‘because it felt that such a document might have greater unity if drawn up by one person’.¹⁴ Cassin’s work would eventually earn him the Nobel Peace Prize in 1968.

3.1 The recital on barbarism

Upon presenting his draft of the Universal Declaration in mid-June 1947, Cassin explained that he had taken the liberty of including a preamble in his draft ‘to express the general principles’.¹⁵ It began as follows: ‘We, the Peoples of the United Nations, *Considering* 1. that ignorance and contempt of human rights have been among the principal causes of the sufferings of humanity and of the massacres and barbarities which outraged the conscience of mankind before and especially during the last world war; and (...) 3. that it has been proclaimed as the supreme aim of the recent strife that human beings shall be free in speech and in worship and free from fear and want (...)’.¹⁶

This draft exhibits an early version of the barbarism recital and a reference to the Four Freedoms. Initially, Cassin had worded his first recital differently: ‘Whereas: 1. ignorance and contempt of human rights have been among the principal causes of the sufferings of humanity and particularly of the massacres which have polluted the earth in two world wars (...)’.¹⁷ It is not clear why Cassin eventually omitted the First World War – a war in which he had fought and which rendered him a war invalid – and why he added a reference to ‘barbarities which outraged the conscience of mankind’ to his proposal. His draft was adopted by the Working Group and remained basically unchanged (but with minor variations) until June 1948, when the Committee on the Preamble

11 UN Doc. E/CN.4/AC.1/3 (4.VI.1947).

12 UN Doc. E/CN.4/AC.1/3 (4.VI.1947).

13 UN Doc. E/CN.4/AC.1/SR.6 (13.VI.1947).

14 UN Doc. E/CN.4/AC.1/SR.7 (17.VI.1947).

15 UN Doc. E/CN.4/AC.1/SR.7 (17.VI.1947). For Cassin’s prior experience with human rights preambles, see Winter/Prost (2013), 164-165.

16 UN Doc. E/CN.4/AC.1/W.1 (16.VI.1947).

17 UN Doc. E/CN.4/W.2/Rev.1 (18.VI.1947).

(composed of the officers of the Commission on Human Rights), following a proposal by the Lebanese delegation, transferred the first recital to the second place and rephrased it as: ‘*Whereas* ignorance and contempt for human rights resulted, before and during the Second World War, in barbarous acts which outraged the conscience of mankind and made it apparent to all that the fundamental freedoms were the supreme issue of the conflict (...)’.¹⁸ The word ‘ignorance’ was disputed as it suggested that the Axis powers were excused for their atrocities because they supposedly did not know that they were violating human rights. After lengthy discussions, ‘ignorance’ was replaced by ‘disregard’ (which is ‘intentional ignorance’).¹⁹

Less than a month before the adoption of the Universal Declaration, several new amendments were tabled. France suggested inserting a reference to the perpetrators of the crimes (‘*Whereas*, particularly before and during the Second World War, Nazism and Racism engendered countless acts of barbarism’).²⁰ This proposal was supported by the Soviet Union and the Philippines, while Ecuador, Australia, Cuba, Chile, Brazil, and Belgium sought to delete any indications of time and perpetrators.²¹ On 30 November 1948, France and Australia thus tabled a compromise which virtually constituted the definitive text of the second recital.²² This new recital also included Cassin’s initial third recital about the Four Freedoms. It was added as a contrast to the passage about barbarism.²³

3.2 The recital on rebellion

Arguably, the most controversial idea of the entire Universal Declaration was the right to rebellion. Quite surprisingly, it survived every scrutiny and found its way into the preamble where it became the new third recital. Unbelievable as it may sound, the Universal Declaration was once banned in some places, including El Paso (Texas) during McCarthyism and Brest (Belarus) under Lukashenko. This provocative historical recital may well have been the primary explanation.²⁴

¹⁸ UN Doc. E/CN.4/138 (5.VI.1948).

¹⁹ UN Doc. E/CN.4/SR.75 (16.VI.1948). UN Doc. A/C.3/SR.166 (30.XI.1948) (discussion). UN Doc. E/CN.4/148/Add.1 (18.VI.1948) (updated version).

²⁰ UN Doc. A/C.3/339 (15.XI.1948).

²¹ Australia: UN Doc. A/C.3/314/Rev.1 (20.XI.1948), UN Doc. A/C.3/SR.164 (29.XI.1948), and UN Doc. A/C.3/SR.166 (30.XI.1948). Belgium: UN Doc. A/C.3/SR.165 (30.XI.1948). Brazil: UN Doc. A/C.3/SR.165 (30.XI.1948). Cuba and Chile: UN Doc. A/C.3/W.13 (29.XI.1948). Ecuador: UN Doc. A/C.3/351 (18.XI.1948), UN Doc. A/C.3/SR.165 (30.XI.1948), and UN Doc. A/C.3/SR.166 (30.XI.1948). Philippines: UN Doc. A/C.3/SR.165 (30.XI.1948). USSR: UN Doc. A/C.3/SR.166 (30.XI.1948).

²² UN Doc. A/C.3/SR.167 (30.XI.1948).

²³ UN Doc. A/C.3/SR.167 (30.XI.1948).

²⁴ In 1953 the School Board of El Paso, Texas, temporarily banned T. Walter Wallbank’s 1951 *Man’s Story: World History in Its Geographic Setting* from public schools. It contained the United States Declaration of Independence and the Universal Declaration without comment. See *El Paso Herald-Post* of

The idea of a right to rebel against the tyranny of government has a long history. Under different guises, the idea has always been an object of speculation. The conditions under which tyrannicide is justified have been a problem of political philosophy since Antiquity. The right to rebel – or the right to resistance – stipulates that governments which ignore complaints from citizens and tyrants who usurp their power, promulgate unjust laws, and do not respect or protect human rights can be justly removed. The Declaration of Independence of the United States (1776) and the French Declaration of the Rights of Man and the Citizen (1789) mention this right as a crucial provision in the contract between rulers and their subjects.²⁵

However, most critics feared that a right to resistance would immediately be interpreted as a right to *armed* resistance, and for this reason many rejected it out of hand. Most famous among them was Jeremy Bentham, who attacked the French Declaration in a 1796 essay that remained unpublished in French until 1816 (and in English until two years after his death in 1832).²⁶ He called the French Declaration a set of ‘stale epigrams’ and famously declared that ‘*Natural rights* is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, – nonsense upon stilts’.²⁷ In particular he feared that a right to resist oppression would be exercised arbitrarily and violently, encouraging not only civil disobedience but also anarchy, for in justifying the overthrow of existing authorities, it undermined all future ones, including the one the rebels would establish.²⁸ Another critic of the right to rebellion was Immanuel Kant. Writing in 1792-1797 under the vivid impression of the French Revolution, Kant rejected the rights to rebellion and tyrannicide as self-contradictory concepts, although he did not deny that both could play a role as a tacit threat, distant but permanent, against any sovereign.²⁹

Nevertheless, the idea persisted over the centuries and was taken up in Humphrey’s 1947 Secretariat draft of the Universal Declaration as one of its last articles: ‘Everyone has the right, either individually or with others, to resist

30 December 1953, 1 and of 17 March 1954, 4. On 10 December 2000 – Human Rights Day after the date of adoption of the Universal Declaration – human rights activist Vladimir Velichkin was arrested and fined in Brest, Belarus, because he had distributed copies of the Universal Declaration. See UN Human Rights Committee, *Communication No. 1022/2001: Velichkin v. Belarus* (UN Doc. CCPR/C/85/D/1022/2001) (23.XI.2005), § 2.1.

25 Some constitutions also mention the right to resistance, for example the 1949 Basic Law for the Federal Republic of Germany, Art. 20 (4).

26 Bentham (1987), 46-69. In 1776, Bentham had co-written a similar critique of the American Declaration of Independence.

27 Bentham (1987), 49 and 53.

28 Bentham (1987), 47, 55 and 59.

29 Immanuel Kant, ‘On the Common Saying: “This May Be True in Theory, But It Does Not Apply in Practice”’ (originally German, 1792), ‘Perpetual Peace: A Philosophical Sketch’ (originally German, 1795), and ‘The Metaphysics of Morals’ (originally German, 1797), all in Reiss (1991), 81-86, 126-127 and 143-147. See also Reiss (1991), 263-267.

oppression and tyranny'.³⁰ Cassin adopted this article but qualified it in his draft: 'When a government seriously or systematically tramples the fundamental human rights and freedoms, individuals and peoples have the right to resist oppression and tyranny, without prejudice to their right of appeal to the United Nations'.³¹ Discussing Cassin's article in mid-June 1947, Hernán Santa Cruz of Chile observed that it might be very difficult to prove when exactly a regime deprived its people so systematically of its rights as to allow the right to resist oppression.³² In early July 1947, then, many delegates expressed the wish to move this right to the preamble.³³ This finally occurred in May 1948, when it became the sixth preamble recital with the following text: '*Whereas* it is essential, if mankind is not to be compelled, as a last resource, to revolt against tyranny and oppression, that human rights should be protected by the community of nations and guaranteed both by international and by national law'.³⁴

Fierce debates followed about the five options on the table: either the right to rebellion could become a full-fledged article in the Universal Declaration, or a part of the preamble, or the object of a special UN General Assembly resolution or of a special report, or it could be completely removed. Among the opponents of a right to rebellion were Omar Loutfi of Egypt and Salvador López of the Philippines. They thought that it was enough to mention that human rights had to be protected by a regime of law.³⁵ Additionally, Víctor Pérez Perozo of Venezuela believed that a reference to the right of rebellion would have been more appropriate in a separate UN General Assembly resolution.³⁶ In mid-June 1948, the text was eventually located after the recital on barbarism in a slightly adapted form: '*Whereas* it is essential, if mankind is not to be compelled as a last resort to rebel against tyranny and oppression that human rights should be protected by a regime of law'.³⁷ At the instigation of the British delegation, the wording 'regime of law' was further changed into 'rule of law'.³⁸

However, in October 1948 the Cuban delegation planted a bomb under the discussions by questioning the placement of the right to rebellion in the preamble. It proposed reinstating it as an article with the following wording: 'Every person has the right to resist acts of oppression or tyranny'.³⁹ This was a restatement of a passage from a draft Declaration on Human Rights that the delegation had already submitted in February 1946.⁴⁰ In November 1948, Ecuador proposed

³⁰ UN Doc. E/CN.4/AC.1/3 (4.VI.1947).

³¹ UN Doc. E/CN.4/AC.1/W.2 (16.VI.1947).

³² UN Doc. E/CN.4/AC.1/SR.8 (17.VI.1947).

³³ UN Doc. E/CN.4/21 (1.VII.1947).

³⁴ UN Doc. E/CN.4/82/Add.8 (6.V.1948).

³⁵ UN Doc. E/CN.4/SR.75 (16.VI.1948).

³⁶ UN Doc. E/SR.215 (25.VIII.1948).

³⁷ UN Doc. E/CN.4/138 (15.VI.1948).

³⁸ UN Doc. A/C.3/253 (11.X.1948).

³⁹ UN Doc. A/C.3/261 (12.X.1948).

⁴⁰ UN Doc. E/HR/1 (12.II.1946).

merging the two historical recitals into one: ‘*Whereas* disregard and contempt for human rights are the main cause of wars and insurrections, since the oppressed ever seek to revolt against tyranny (...)’.⁴¹ Both proposals, the sharpening of the right to rebellion by Cuba and its blunting by Ecuador, engendered a fierce debate on 29 November 1948 – barely eleven days before the adoption of the Universal Declaration.

Cuban delegate Guy Pérez Cisneros referred to the nineteenth-century independence struggles of the Latin American countries.⁴² French representative René Cassin recalled ‘the noble principles of 1789 and also the situation created by recent events’ and warned that the right to rebel should only apply when a regime practices tyranny systematically; it should not function as a permission to disobey in single instances of abuse.⁴³ For Hernán Santa Cruz from Chile, the right to resist oppression was the very basis of the existence of a democratic State.⁴⁴ Aleksandr Bogomolov from the Soviet Union saw a parallel between the French and Russian Revolutions and thus defended the idea of a right to rebellion,⁴⁵ with Stephan Demchenko of the Ukrainian Soviet Socialist Republic joining his lead.⁴⁶

Opposition to the Cuban proposal was fierce and echoed Bentham’s and Kant’s arguments. Argentinian delegate Enrique Corominas wanted the United Nations to undertake a study of the rebellion clause.⁴⁷ Other countries warned that individuals would interpret the right to rebel as a license to arbitrarily disobey authority. United States delegate Eleanor Roosevelt feared that if stated too explicitly, the formula could be abused with the purpose of inciting disorder, subversion, and sedition against a legitimate government.⁴⁸ Still others remarked that rebellion could never be a right as it was illegal by definition. The British delegate Ernest Davies observed that rebellion was ‘a last resource’ only to be used ‘when the legal regime came to the point of collapsing, as had been the case with many countries after the Nazi invasion; at such time, resistance was not only a necessity, it was a duty’.⁴⁹ He discussed the difficulty of determining when tyranny began⁵⁰ as well as the slippery slope from rebellion to anarchy,⁵¹ adding that it would be extremely difficult to identify who could

41 UN Doc A/C.3/351 (18.XI.1948).

42 UN Doc. A/C.3/SR.164 (29.XI.1948).

43 UN Doc. A/C.3/SR.164 (29.XI.1948).

44 UN Doc. A/C.3/SR.164 (29.XI.1948). UN Doc. A/C.3/SR.166 (30.XI.1948).

45 UN Doc. A/C.3/SR.164 (29.XI.1948).

46 UN Doc. A/C.3/SR.165 (30.XI.1948).

47 UN Doc. A/C.3/377 (29.XI.1948).

48 UN Doc. A/C.3/SR.164 (29.XI.1948). UN Doc. A/C.3/SR.165 (30.XI.1948).

49 UN Doc. A/C.3/SR.164 (29.XI.1948).

50 UN Doc. A/C.3/SR.164 (29.XI.1948). Anze Matienzo (Bolivia) made the same remark: UN Doc. A/C.3/SR.166 (30.XI.1948).

51 UN Doc. A/C.3/SR.164 (29.XI.1948). Alan Watt (Australia) and Henry Carton de Wiart (Belgium) asked the same question: UN Doc. A/C.3/SR.164 (29.XI.1948).

decide when given levels of repression were sufficient to constitute systematic tyranny and legitimise a rebellion. In sum, there was a wide-spread fear that the right to revolt would be abused. Still, the delegates eventually reached a compromise. Three proponents of the idea – Cuba, Chile, and France – submitted a joint amendment on 30 November 1948 suggesting that rebellion would be mentioned in the preamble ‘as a last resort.’ The amendment was carried (with twenty-five votes in favour, one against, and eleven abstentions).⁵²

The same historical recital also suggested a strong recipe to avoid rebellion by prominently referring to the general protection of the rule of law. In the final vote on 10 December 1948, the recital on rebellion was adopted unanimously. Thus, the right to rebellion miraculously survived in the Universal Declaration, albeit in a mitigated form: it was moved from the operative paragraphs to the preamble, it was no longer called a right, and although presented as a powerful incentive for adhering to the rule of law, it was merely seen as a remote possibility.

Invariably, the first versions of the recitals were thoroughly redrafted. The principal authors of the definitive versions came from France, Australia, Cuba, and Chile, thereby demonstrating the decisive involvement of a variety of State representatives and pushing back against the claim that Western countries exclusively dominated the writing process. If we see how much criticism these recitals have faced, we may be surprised that they survived at all.

4. Features of the view of the past in the Universal Declaration

Now that it is clear that history was never absent from the minds of the drafters of Universal Declaration and that it found expression in two recitals, we can sketch the contours of the view of the past in the Universal Declaration.

4.1 A view with eighteenth-century precedents

The Universal Declaration echoed some well-known formulas that silently positioned them in a longer – and largely Western – tradition of legal thought. Indeed, the parallels between the preambles of the French Declaration of the Rights of Man and the Citizen (1789) and the Universal Declaration are obvious: as the prime drafter of the Universal Declaration, the Frenchman René Cassin served as the link between them. The recital on barbarism in the 1948 Declaration is reminiscent of the first line of the preamble of the 1789 Declaration, which stipulated: ‘[B]elieving that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of

52 UN Doc. A/C.3/382/Rev.1 (30.XI.1948). UN Doc. A/C.3/SR.167 (30.XI.1948). Sweden voted against. Belgium, Burma, Canada, China, Denmark, Pakistan, Peru, the Philippines, the United Kingdom, the United States, and Venezuela abstained.

the corruption of governments'.⁵³ And the recital on rebellion echoes Article 2 of the same Declaration, which stated that 'The purpose of every political association is the preservation of the natural and non-derogable rights of Man. These rights are liberty, property, security, and resistance to oppression.'⁵⁴ The recital on rebellion also resembles the second recital of the American Declaration of Independence (1776), which stipulates that 'whenever any Form of Government becomes destructive of these ends [i.e. of the inalienable human rights], it is the Right of the People to alter or to abolish it, and to institute new Government.'⁵⁵

Another more recent influence was Franklin Roosevelt's Four Freedoms. Roosevelt's interest in human rights was inspired by the campaigns before the Second World War of high-profile individuals such as historian and science fiction writer Herbert G. Wells.⁵⁶ Roosevelt sought concise formulas to package the key ideas of human rights and present them to a wider audience. He eventually found such a formula and launched it under the name 'the Four Freedoms' in his State of the Union Address in January 1941.⁵⁷ The Four Freedoms found their way into the second recital of the Universal Declaration as an explicit tribute to Roosevelt.

4.2 A holistic view

The drafters of the Universal Declaration were not particularly fond of philosophy. For example, an authoritative contribution of the American Association of Anthropologists published in the fall of 1947 was critical of the notion of human rights and emphasised cultural diversity, but it went almost unnoticed by the drafters of the Universal Declaration.⁵⁸ This is significant because the philosophical-anthropological question of how to understand human beings was an important theme in the *travaux préparatoires*. In December 1947, the drafters of the Universal Declaration learned about a UNESCO initiative that presented the findings of an international survey among intellectuals on the metaphysical and philosophical problems raised by the concept of human rights. Their reaction was indifferent, if not dismissive.⁵⁹ Most

⁵³ *Déclaration* (1789), first line. See also Marks (1998).

⁵⁴ *Déclaration* (1789), Article 2 (written by Jean-Joseph Mounier).

⁵⁵ *Declaration* (1776) (recital written by Thomas Jefferson). The 1581 Dutch Act of Abjuration (*Plakkaat van Verlatinghe*) also contained a right to rebellion; the Act was well-known among the drafters of the 1776 Declaration. See Wolff (1998).

⁵⁶ 'A Declaration' (1940).

⁵⁷ Roosevelt (1941).

⁵⁸ American Anthropological Association (1947), 539-543.

⁵⁹ The UNESCO had established a Committee on the Theoretical Bases of Human Rights (led by historian Edward Carr), which presented a report with its findings on the survey on 31 July 1947. For the reception of the report by the UN Commission of Human Rights, see UN Doc. E/CN.4/SR.26 (3.XII.1947). For UNESCO's reaction, see UN Doc. E/CN.4/78 (16.XII.1947). A selection of responses to the survey was published as UNESCO (1948). The 'right to rebellion or revolution' was listed as

respondents to the UNESCO survey felt that practical but not theoretical agreement on a Universal Declaration could be reached. In his introduction to the survey, French philosopher Jacques Maritain recalled how delegates of opposing ideologies preparing the Universal Declaration had exclaimed: 'Yes, we agree about the rights but on condition that no one asks us why'.⁶⁰ Ironically, with their tepid reception of the UNESCO survey, the drafters unwittingly proved that a philosophical consensus on human rights was impossible and unnecessary to agree on a list of rights.

Nevertheless, in expressing their view of the past, the drafters of the Universal Declaration acted more as philosophers of history than as historians. Indeed, what they ultimately did in the recitals was muse about the events of the whole of history, both recent and distant. What they observed was a long and continuous chain of human rights catastrophes across world history, the most recent one being an especially cruel example or the straw that broke the camel's back, depending on the observer's perspective. Of course, the memories of the Second World War that had prompted the establishment of the United Nations were still vivid, but much had happened in the meantime; the debates about the Universal Declaration developed in 1946-1948 against a background of turmoil and nascent Cold War. The world saw civil wars in China and Greece, the partitions of Palestine-Israel and India-Pakistan, decolonisation wars in Vietnam and Indonesia, and Communist interventions in Prague and Berlin. While finalising the historical recitals, a new awareness dawned that the Universal Declaration had to somehow transcend the present era.

In hindsight, the drafters of the recitals eventually omitted all specific time indicators from the historical recitals: 'Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.' They subtly used the present perfect ('have resulted', 'have outraged'), the tense used to speak about past events which are still relevant in the present or about events that began in the past and are still ongoing. As such, it was a powerful message addressing past and present alike. Their approach to the past was holistic.

The choice for such an approach was not predetermined. Opponents of the holistic and macrohistorical view put forward a battery of arguments; they feared that those who painted a picture of the whole of history would conjure up everything and nothing, leaving one behind with a residue of confused impressions about the past. The high degree of abstraction of the holistic approach would blur any specific assertions and preclude any enumeration of even the worst tragedies. Following the template of the UN Charter, the May 1948 draft of the Universal Declaration still contained a reference to the Second World War. It has been suggested that deletion of this reference was done intentionally

point 14 in 'The Grounds of an International Declaration of Human Rights' of the Carr Committee (page 275).

⁶⁰ UNESCO (1948), i.

to avoid a reference to the Holocaust, but there is no evidence of this.⁶¹ Another explanation is far more plausible.

As Malik sensed, the increasing self-awareness among drafters that this document must stand the test of time confronted them with its potentially historical impact. This awareness engendered a philosophical attitude, inclining the drafters to take the longer view and avoid language that would look outdated with the passage of time or even at the moment of adoption. Singling out one atrocity, even one of such extraordinary magnitude, would open the door for enumerations of atrocities. Similar reasons underlie the removal of specific references to the crimes of World War II, their perpetrators or their adjudication in the Nuremberg trials, which were then underway. The insertion of these references was rejected with the argument that human rights violations had already occurred before the Second World War and that they had been committed by perpetrators other than just the Nazis. A list of crimes and perpetrators was ill-suited to the purpose of the historical recital and bound to be incomplete from the start, therefore it was preferable to abandon the idea altogether.⁶²

If the Universal Declaration was meant to last, it had to avoid specific time references that would feel outdated and ineffectual after some decades had passed. Once the drafters opted to refer to the whole of history and not merely to recent history, they excluded any explicit mention of contemporary periods, regimes, and events.

4.3 An abstract – not an ahistorical or transhistorical – view

The price of a holistic view is its abstract appearance. Some have claimed that the holistic and abstract language of the Universal Declaration is proof of its ahistorical or transhistorical character, but this is untenable. For example, Martti Koskenniemi claimed on three occasions that the Universal Declaration is ahistorical, but this view is inconsistent with the text.⁶³ So is Nathan Kurz's contention that the Universal Declaration is intentionally transhistorical.⁶⁴ In fact, the Universal Declaration and its preamble are deeply historical. They have an author and narrator, namely the UN General Assembly. They tell a story of crimes, that is, the history of barbarous acts, tyranny and oppression. They identify the common people and humanity at large as the victims of these atrocities. And they address the story to an audience of individuals, groups, peoples, and States. All this action takes place in the middle of history – not outside of it or above it.

⁶¹ Kurz (2021), 55. De Baets (2021) shows that the influence of the Holocaust upon the Declaration was indirect.

⁶² UN Doc. A/C.3/SR.166 (30.XI.1948).

⁶³ Koskenniemi (1999), 30, 31 and 33.

⁶⁴ Kurz (2021), 55. For Kurz, the intention was to avoid mention of the Holocaust and polarisation in the Cold War.

4.4 A view marked but not determined by natural law

An evident characteristic of the Universal Declaration is its use of the vocabulary of natural law, which tends to express itself in universal and absolute truths with ahistorical overtones. For example, this vocabulary is present in the first word of the title, 'Universal,' which replaced the original option of 'international'.⁶⁵ This adjective made the declaration applicable to all countries, including those that were not UN members at the time. The language of natural law is visible in several recitals and articles, but its influence in the historical recitals themselves is limited.

It can be observed in two locations. The recital about barbarism uses the phrase 'conscience of mankind'.⁶⁶ Although this metaphysical phrase has a strong appeal, it can be invoked abusively, for who decides when the 'conscience of humanity' speaks and what it says? Additionally, the recital about rebellion echoes the natural law theory that the State is created with the primary purpose to protect the rights of its citizens, and that if the State abuses human rights (that already existed before its foundation), the individual is entitled to rise against it.⁶⁷ Still, these natural law references do not invalidate the historical character of the two recitals.

Some drafters felt that the decision of the Universal Declaration to refer to the whole of history lent more gravitas to these instruments. One drafter, Lebanon's representative Karim Azkoul, even formed a theory of history around the structure of the first three recitals of the Universal Declaration. According to him, the first recital ('Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world') laid down the general principle, the second recital (about barbarism) told us how this principle was violated in the course of history, and the third recital (about rebellion) explained how humanity could avert the dangers of such violations in the future (through the protection of human rights by the rule of law).⁶⁸

When commenting on the recitals of the Universal Declaration in 1999, Koskenniemi developed a similar idea. He argued that the three recitals contained a narrative: from the initial truth (first recital), to setbacks and tragedies (the fall from that truth, second recital about barbarism), and finally to redemption (the reaffirmation of that truth, third recital about rebellion). He added that the Universal Declaration saw 'history (...) [as] a slow process of (political) truth being gradually revealed to human communities'.⁶⁹ This is a tempting observation, except that his terms 'redemption' and 'gradual

⁶⁵ This was a French proposal: see UN Doc. A/C.3/339 (15.XI.1948) and UN Doc. A/C.3/SR.167 (30.XI.1948).

⁶⁶ See also Morsink (2009), 55-111.

⁶⁷ Cassese (1990), 41-42.

⁶⁸ UN Doc. E/CN.4/SR.75 (16.VI.1948).

⁶⁹ Koskenniemi (1999), 33.

revelation' are purely speculative. The drafters of the Universal Declaration keenly explored the natural-law language from the Enlightenment, but adapted it firmly to the new circumstances by rejecting proposals from Brazil and the Netherlands to mention God and nature as the sources of human rights.⁷⁰ This is why Koskenniemi's terms 'redemption' and 'revelation' do not fit the circumstances.⁷¹ The holistic view of history in the Universal Declaration shows that the human rights movement is not focused on redemption, but on the interruption of the chain of human rights catastrophes. The objective is non-recurrence, not redemption.

What we then see is that the Universal Declaration has a mixed and paradoxical view of the past: the immanent historical processes of change described in the historical recitals are surrounded by some timeless truths about human beings in the rest of the text, in a metaphysics of permanence. Historicity and eternity alternate.

4.5 A view containing the claim to be the interpreter of human conscience

There can be little doubt that the historical recitals represent a majoritarian view of the past among the States participating in their formulation: they were unanimously approved. But can the bolder thesis that the Universal Declaration as a whole represents world public opinion and the 'human conscience' also be defended? Three arguments support this thesis. First, the Universal Declaration was produced under the aegis or inspiration of the UN General Assembly, which even in its early years was already considered the most authoritative forum for the interpretation of global public opinion among all international bodies.⁷² Meeting in Paris on 10 December 1948, the UN General Assembly approved the Universal Declaration with forty-eight votes in favour and eight abstentions. Although the Universal Declaration was not greeted with unanimous approval, no Member State voted against it. And although the world community now consists of more than 200 Member States, it is not unreasonable to suppose that this outcome would have been similar if they had all been represented in the *travaux préparatoires*. The evolution of international law in the direction of increasing human rights guarantees demonstrates this. Second, despite its imperfect approximation of world public opinion, the vague appeal to 'the human conscience' and the almost impossible task of guessing what the bundled intentions of the multiple authors of the recitals had been, it is difficult to find stronger collective expressions than the ones traced in these instruments. Third, odd as it may sound, the concise historical recitals under scrutiny here are often more compelling than the most inspiring

⁷⁰ Morsink (1999), 283-290.

⁷¹ Koskenniemi (1999), 30 and 38.

⁷² See, for example, *Trials* (1981), 983: 'The General Assembly is not an international legislature, but it is the most authoritative organ in existence for the interpretation of world opinion'.

history textbooks, precisely because they represent and condense a rarely seen multitude of voices and address worldwide audiences. Without a trace of exaggeration, they can be counted among the deepest-felt expressions of the fate of humanity ever written. Taken together, these three arguments are not implausible and support a humble version of the human conscience thesis.

4.6 A manifest anti-dictatorial and discreet pro-democratic view

The recital about barbarism mentions ‘tyranny and oppression’ in the same breath, emphasising the causal link between them. Therefore, in condemning past atrocities, the Universal Declaration simultaneously rejects dictatorship as a viable political regime. The logical complement of such an attitude would have been to instantly express a bold preference for democracy in the Universal Declaration. But this did not happen. An explicit reference to the principle of democracy had already been rejected during discussions about the UN Charter in 1945.⁷³ Additionally, there was the contrast between the liberal democracies of the capitalist bloc and the people’s democracies of the Communist bloc. Therefore, the drafters of the Universal Declaration were cautious. They eventually included a central principle of political democracy in Article 21 (‘The will of the people shall be the basis of the authority of government’), but did not explicitly refer to ‘democracy’ itself. A proposal to add a right to oppose the government within the bounds of the law to Article 21 was rejected.⁷⁴

Nevertheless, Article 29(2) of the Universal Declaration, a cardinal article describing the legitimate restrictions on human rights, includes the term ‘democratic society’ to define the sole political system that is able to guarantee that these restrictions would remain restricted themselves.⁷⁵ In the end, the Universal Declaration preamble did neither mention the winning political doctrine (democracy) nor condemn the losing one (fascism). In retrospect, we can say that the pronounced yet discreet preference for democracy in the Universal Declaration never acquired the status of an explicit, stand-alone right.

4.7 A unique view

The historical recitals of the Universal Declaration were not reproduced in the preambles of the two International Covenants that were derived from it. In December 1947, while the drafting of the Universal Declaration was already well underway, the two-pronged approach agreed upon in June 1947 was completed with the presentation of a first Draft International Covenant on

⁷³ A Colombian amendment to that effect was rejected (17-9). See Committee I/1: UN Doc 817, I/1/31 (5.VI.1945), in *UNCIO*, volume 6, 367-368.

⁷⁴ UN Doc. A/C/3/248 (9.X.1948).

⁷⁵ ‘Democratic state’ was replaced by ‘democratic society’: UN Doc. E/CN.4/SR.51 (28.V.1948).

Human Rights. This draft did not have a preamble.⁷⁶ Subsequently, a brief preambular text was added to the draft Covenant for the first time in May 1948.⁷⁷ Drafters deliberated over the content of the text annually for years, but the debates never led to the inclusion of any historical recitals. In March 1950, the Chinese delegate P.C. Chang observed that the Universal Declaration ‘had now become an historic document which would outlive political disturbances and nothing, not even the covenant, could diminish or weaken its significance’.⁷⁸ The belief that an explicit reference to the UN Charter and the Universal Declaration would constitute a stronger message than any new preamble formulas was widely held among covenant drafters. This strategy of reference and repetition was intentional: by recalling its weighty precedents, the Covenant would not only strengthen the impact of the two preceding instruments, but also emphasise the chain of continuity in the treaty system of international law.

In February 1952, the UN General Assembly decided to split the Covenant project into two: one Covenant would deal with civil and political rights and another with economic, social and cultural rights.⁷⁹ Around June 1952, delegates from Chile, Yugoslavia, Australia, and Sweden proposed nearly identical preamble texts for both Covenants. Adopted in October 1952,⁸⁰ during the great international political friction of the Korean War, these two preambles still mentioned Roosevelt’s Four Freedoms but had quietly dropped the historical recitals. Instead of the right to rebellion, two less radical guarantees were now introduced in the operative part of the Covenants: the right to a remedy and the right to petition – combined with protocols that required and regulated complaints procedures, inspection visits, and reporting obligations. This was an important change that requires some explanation.

During the lengthy debates about the Universal Declaration in 1947-1948, the delegates struggled to agree about the rights to remedy and petition. They did not know what to do with these procedural rights – rights necessary to protect other rights. The right to a remedy contained the entitlement to be heard and helped by competent national or international tribunals if one’s rights were violated, while the right to petition contains the entitlement to complain about and to the authorities. The outcome of these discussions diverged: the right to

⁷⁶ The French delegation proposed a short text for the preamble which it later withdrew. See UN Doc. E/600 (17.XII.1947), 24 (text of Draft Covenant), 30 (comment of France).

⁷⁷ UN Doc. E.CN.4/95 (21.V.1948).

⁷⁸ UN Doc. E.CN.4/SR.137 (29.III.1950).

⁷⁹ UN General Assembly Resolution 543(VI) (5.II.1952).

⁸⁰ On 16.XII.1966, UN General Assembly Resolution 2200(XXI)A unanimously adopted the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) as a whole (106-0 for the ICCPR; 105-0 for the ICESCR). For the preamble discussions, see UN Doc. E/2256 (14.IV-14.VI.1952), §§ 161-162 (ICESCR preamble discussion), §§ 286-289 (ICCPR preamble discussion), and pp. 44 and 46 (preamble texts). The preambles were adopted by the UN General Assembly (54-0-2) on 20 October 1955. See UN Doc. A/C.3/SR.640 (20.X.1955), § 59 and UN Doc. A/3077, §§ 25-26 (8.XII.1955).

remedy became an article in the Universal Declaration, but the right to petition was entirely removed from it.

The right to remedy became Article 8 of the Universal Declaration: ‘Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law’. It is a right that implicitly encompasses, among other things, the right to *habeas corpus*, or the right to a judicial determination of the lawfulness of a person’s detention as formulated in the Habeas Corpus Act of 1679. Later, the International Covenant on Civil and Political Rights provided both separately: Article 2(3) contains the right to an effective remedy and Article 9(4) the right to *habeas corpus*.

Strangely enough, the right to petition the government for a redress of grievances was completely absent from the Universal Declaration, although it guaranteed a more realistic enforcement of human rights than simply a right to rebellion. This omission was the unforeseen outcome of two potential sources of confusion: it was unclear whether and how the right to petition the national government had to be supplemented by a right to submit petitions to the UN and it was unclear how it would have to function in practice.⁸¹ As there was little time to think through these fundamental issues, deliberation over them was postponed. Consequently, the right was removed from the Universal Declaration.⁸² But it was not sacrificed for good. It became the subject of a UN General Assembly resolution entitled ‘Right of petition,’ which was approved (40-0-8) on the same night as the Universal Declaration. The resolution referred to the right of petition as ‘an essential human right as is recognised in the Constitutions of a great number of countries’ that needed to be considered in the drafting of what was then yet to become a single Covenant.⁸³

Many years and debates later, a solution was finally found regarding the right to petition under the guise of an Optional Protocol that would accompany each of the Covenants.⁸⁴ By virtue of these Protocols, two new committees – the UN Human Rights Committee, starting in 1976, and the UN Committee on Economic, Social and Cultural Rights, starting in 2013 – would be mandated to consider communications from individuals who claimed to be victims of a violation of one or more of their Covenant rights by a State party. In some respects, this system of complaints over human rights violations recalls the *cahiers de doléance*, the ledgers of complaints that circulated in France in the months before the outbreak of the 1789 Revolution. Compiled by a wide diversity of citizens, several of these *cahiers* survived; they give an idea of what the public

81 See, among others, the proposal for an Article on Measures of Implementation, and the French and Cuban amendments thereto: UN Doc. A/C.3/306 (25.X.1948).

82 Morsink (1999), 303-307.

83 UN General Assembly Resolution 217(III)B (10.XII.1948).

84 For the right to petition, see First Optional Protocol to the ICCPR (1966), and Optional Protocol to the ICESCR (2008).

opinion thought and demanded in the memorable year of 1789.⁸⁵ Likewise, the accumulated complaints before the UN Committees give a reliable impression of the state of human rights in the world.⁸⁶ Both procedures are modest, yet solid mechanisms to enforce human rights.

In the end, the historical recitals of the Universal Declaration were not repeated in the preambles of the human rights treaties derived from it. Nevertheless, they are still regularly quoted. For example, the recital on barbarism was cited as recently as 2022 in a UN General Assembly Resolution on Holocaust denial.⁸⁷

5. Conclusion

The view of the past in the Universal Declaration, and especially in its historical recitals, has several key characteristics: it has eighteenth-century precedents; it is holistic; it is abstract, but not ahistorical or transhistorical; it is marked but not determined by natural law; it claims to be the interpreter of human conscience; it takes a manifest anti-dictatorial and a discreet pro-democratic stance; and it is unique in the sense that the human rights treaties derived from the Universal Declaration do not explicitly reference it.

The content of the historical recitals of the Universal Declaration is carefully constructed, not in the sense that it is false (the historical claims in the recitals are true by all accounts), but in the sense that the mission to condense macro-historical views into just a few words compelled the drafters to extreme and negotiated selectivity. The time-sensitive yet abstract narratives of the recitals have narrators who tell stories about crimes and victims to a diverse worldwide audience. Above all, the historical recitals are put at the service of the future, but this future is not transcendental but immanent. The objective is not redemption, but non-recurrence. The unanimous approval of the recitals indicates an eventual consensus on this approach and, hence, on the view of the past in the Universal Declaration.

⁸⁵ See Llewellyn/Thompson (2023). The right to petition was also incorporated in the First Amendment (dating from 1791) to the United States Constitution that was adopted in 1787 and came into effect in 1789.

⁸⁶ De Baets (2017).

⁸⁷ UN General Assembly Resolution 76/250 (25.I.2022), third recital.

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