

Introduction

When the international discourse of human rights began to crystallize in the 1940s, it was evident that the right to religious freedom would constitute one of its main principles. This was reflected most visibly in the human rights rhetoric deployed by Allied leaders in the course of World War II. In his momentous State of the Union Address on January 6, 1941, President Franklin Delano Roosevelt singled out the “freedom of every person to worship God in his own way – everywhere in the world” as one of the central pillars (the others being freedom of speech, freedom from want, and freedom from fear) of the posttotalitarian world order to come.¹ Less than a year later, on New Year’s Day 1942, the Allied Powers echoed this vision by identifying the promotion of religious freedom as an official rationale for engaging in total war against the Axis forces.² But the centrality of religious freedom was also manifested in the prototypes for an international bill of human rights, which had begun to emerge already in the interwar period, mainly from the efforts of internationally minded lawyers and activists. In 1929, the International Law Institute issued a declaration stressing the “duty of every State to recognize the right of every individual to the free practice, both public and private, of every

¹ Franklin D. Roosevelt, “Annual Message to Congress on the State of the Union,” January 6, 1941.

² Declaration by the United Nations, January 1, 1942. It is not clear what motivated the inclusion of human rights in this statement. See, for instance, A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention* (Oxford: Oxford University Press, 2001), 184. For more on the reference to religious freedom, see Anna Su, *Exporting Freedom: Religious Liberty and American Power* (Cambridge, MA: Harvard University Press, 2016), 71.

faith, religion, or belief, provided that the said practise shall not be incompatible with public order and good morals.”³ In 1944, the American Law Institute adopted a similar Statement on Essential Rights, which in its opening clause announced that the “Freedom of belief and of worship is the right of every one.”⁴

For many of its leading proponents in this era, religious freedom was a principle of immense symbolic value. There is evidence suggesting that one of the reasons why Roosevelt decided to omit direct references to democracy from his 1941 address was his deeply held conviction that “democracy would exist wherever religious liberty could be found.”⁵ To Roosevelt, religious freedom was thus much more than a basic individual right. It was also a necessary component of any decent political system, a standard by which the civilizational progress of any nation could be determined. Convinced that sustainable peace could only be established among democratic nations, he further regarded commitment to religious freedom to be a cornerstone of any future international system. In an American foreign policy context, religious freedom thereby functioned as a rhetorical device for motivating a break with the path of isolationism.⁶

Toward the end of the decade, religious freedom also evolved into a central tool for establishing the front lines of what is sometimes known as the “spiritual” or “moral” Cold War.⁷ The clearest expression of this was the massive outcry that followed the incarceration of the Hungarian

³ Cited in Louis B. Sohn, “How American International Lawyers Prepared for the San Francisco Bill of Rights,” *American Journal of International Law* 89, no. 3 (1995): 546.

⁴ Cited in Sohn, “How American International Lawyers Prepared for the San Francisco Bill of Rights,” 551. The UN Secretariat made extensive use of the statement when compiling its first outline for a bill of human rights in 1947. See, e.g., UN Doc. E/CN.4/W.16 (1947). For an account of its drafting, see Hanne Hagtvedt Vik, “Taming the States: The American Law Institute and the Statement of Essential Human Rights,” *Journal of Global History* 7, no. 3 (2012): 472. Vik notes how the drafting of the religious freedom article was accompanied by a number of difficult questions, not least whether or not it should explicitly recognize the right to carry out missionary work.

⁵ For fuller discussions of the place of religious liberty in FDR’s political rhetoric, see Andrew Preston, *Sword of the Spirit, Shield of Faith: Religion in American War and Diplomacy* (New York: Alfred A. Knopf, 2012), 325; Su, *Exporting Freedom*, chapter 3. See also, Elizabeth Borgwardt, “FDR’s Four Freedoms as a Human Rights Instrument,” *OAH Magazine of History* 22, no. 2 (2008): 9–11.

⁶ “Roosevelt’s toleration,” Preston writes, “was limited in a way that was typical for American religion and politics. While he tolerated all faiths, he could not tolerate a lack of faith. Without faith, there was no morality, and without morality no democracy.” Preston, *Sword of the Spirit, Shield of Faith*, 321.

⁷ Jonathan P. Herzog, *The Spiritual-Industrial Complex* (New York: Oxford University Press, 2011), 77.

Cardinal József Mindszenty in late December 1948 on fabricated charges of treason. Pope Pius XII denounced the act as a violation of the “holy rights of religion.”⁸ Winston Churchill, for his part, used this case of “religious persecution committed on an innocent man under the direct orders of Moscow” to underpin his plea for an effective European human rights framework. Such a system, he maintained, would be crucial for cultivating a common “sense of being Europeans,” thereby hastening the coming of a “United Europe.”⁹ At the United Nations, the Mindszenty affair also influenced what became one of the organization’s first country-specific resolutions on human rights. The resolution, which was adopted by the UN General Assembly in April 1949, decried the “suppression of human rights and fundamental freedoms” in Hungary and Bulgaria, and recalled the obligations befalling these states under the Peace Treaties of 1947, including the duty to respect religious freedom.¹⁰

Together, these instances reveal just how central the right to religious freedom was to the wider midcentury international discourse of human rights. It is telling that even the Soviet Union – which by all accounts constituted the most common target of religious freedom rhetoric in the 1940s – did not spurn the idea of giving it a prominent place within an international bill of rights.¹¹ But even if most agreed that religious freedom belonged at the heart of the human rights idea, there was no corresponding consensus on precisely what was meant by the term or how it should be framed in a future international instrument.

Providing answers to these questions became one of the many challenges facing the eighteen members of the United Nations Commission on Human Rights (UNCHR) as they began their codification efforts in January 1947. The Commission, which was organized as a subsidiary body to the Economic and Social Council (ECOSOC), initially worked on both a nonbinding declaration and a binding treaty, as well as mechanisms for enforcement, but soon decided to focus its energy on the less

⁸ Glenn Mitoma, *Human Rights and the Negotiation of American Power* (Philadelphia: University of Pennsylvania Press, 2013), 177.

⁹ Marco Duranti, “Conservatism, Christian Democracy and the European Human Rights Project, 1945–50” (PhD diss., Yale University, 2009), 176.

¹⁰ UN Doc. A/RES/272 (III) (April 30, 1949). The decision to invoke the peace treaties rather than the UN Charter or the Universal Declaration was likely informed by US aspirations to discredit the human rights records of Soviet allies while making sure not to invite criticism of its own record on racial inequality. Mitoma, *Human Rights and the Negotiation of American Power*, 167.

¹¹ John N. Hazard, “The Soviet Union and a World Bill of Rights,” *Columbia Law Review* 47 no. 7 (1947): 1112

controversial, nonbinding text. In the summer of 1948, during its Third Session, the Commission adopted a final draft of what was then known as the International Declaration of Human Rights. The draft was then transmitted (via the ECOSOC) to the Third Session of the UN General Assembly, which convened in Paris between September and December the same year. After three months of deliberations in the Assembly's Third Committee, the text – now renamed as the Universal Declaration of Human Rights – was adopted during a plenary meeting on December 10, 1948. The vote was 48–0, with 8 abstentions.¹²

In the Declaration's Article 18, we encounter a forty-seven-word sentence that has later been characterized as “one of the most influential statements of the religious rights of mankind yet devised.”¹³ Put crudely, it is this Article that this book is about:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and 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.¹⁴

Since the Declaration was adopted, this statement has come to shape our understanding of what it means to speak of religious freedom as a human right. In 1950, the very same phrase was incorporated into binding international law as it reappeared in Article 9(1) of the European Convention of Human Rights. It has also inspired the religious freedom clauses in other significant international human rights treaties, including the International Covenant on Civil and Political Rights of 1966, the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981, and the UN Convention on the Rights of the Child of 1989. Among many present-day advocates of human rights, Article 18 is considered as a nearly timeless distillate of religious freedom's essential aspects. Recent initiatives in international human rights forums to broaden the discussions on the topic, so as to include questions concerning the intersection between religious and racial

¹² The abstaining votes came from Belarus, Czechoslovakia, Poland, Saudi Arabia, Ukraine, the Union of South Africa, USSR, and Yugoslavia. For a nuanced treatment of the different reservations these delegations had with the final text, see Roger Normand and Sarah Zaidi, *Human Rights at the UN: The Political History of Universal Justice* (Bloomington: Indiana University Press, 2008), 192–4.

¹³ Malcolm D. Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997), 192.

¹⁴ UN Doc. A/RES/217 (III) (1948), Article 18.

discrimination, or “defamation” of religious symbols and doctrines, have been forcefully rejected by Western diplomats and UN experts as attempts to undermine the essence of “a classical human right.”¹⁵

The view of Article 18 as an authoritative statement on a “classical” or “first-generation” individual right, is also shared by many scholars of human rights and religion. In keeping with a more general narrative of the Universal Declaration as a crown achievement of centuries of accumulated reflection on human dignity and rights,¹⁶ many introductions to international religious freedom portray Article 18 as a synthesis of ancient ethical precepts and the core ideas of Western natural rights theory.¹⁷ We are, in other words, told that Article 18 was revolutionary, not because of its content, but because it was promulgated as part of a “universal” canon of human rights. Surely, there are no reasons to deny that the concept of religious freedom has a deep and multifaceted history. Yet approaching Article 18 as a nutshell representation of a long tradition of thinking on religious rights and freedom is potentially misleading. Above all, such an approach may lead us to overlook the substantial differences between the way religious freedom was framed in the Universal Declaration and how it was articulated in early modern rights discourses or the classical bills of rights emerging during the era of democratic revolution – including iconic texts like the Virginia Declaration of 1776,¹⁸ the First Amendment of

¹⁵ See, for instance, Heiner Bielefeldt, “Misperceptions of Freedom of Religion or Belief,” *Human Rights Quarterly* 35, no. 1 (2013): 41–3. The literature on the UN debates on defamation of religion is already massive, but has in general been more polemical than clarifying. For now, see Jonas Otterbeck, “Blasfemi som problem för mänskliga rättigheter,” in *Mänskliga rättigheter och religion*, ed. Dan-Erik Andersson and Johan Modée (Malmö: Liber, 2011), 237–8. For a thorough discussion of the legal aspects, see Malcolm D. Evans, “The Freedom of Religion or Belief and the Freedom of Expression,” *Religion and Human Rights* 4, no. 2 (2009).

¹⁶ See, for instance, Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 56.

¹⁷ Bielefeldt, “Misperceptions of Freedom of Religion or Belief,” 34–5; Arcot Krishnaswami, *Study of Discrimination in the Matter of Religious Rights and Practices* (New York: United Nations Publications, 1960), 1–4. For a critical discussion of the generation approach, see Daniel J. Whelan, *Indivisible Human Rights: A History* (Philadelphia: University of Pennsylvania Press, 2010). “The problem,” Whelan says, “is that it permanently categorizes rights, not only by fixing the categories in history but also by finding within each generation incompatible philosophical sources of inspiration” (at 210).

¹⁸ Section 16 of the Virginia Declaration of Rights (1776) declares “That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it

the US Constitution,¹⁹ and the French Declarations of the Rights of Man and Citizen of 1789 and 1793.²⁰ In general, these earlier proclamations of rights had focused on the “free exercise” or “pursuit” of religion, or the separation between Church and State. In contrast, the Universal Declaration foregrounded the inner freedoms of thought and conscience and never touched on the vexed issue of establishment. Thinking of Article 18 as nothing but a conventional expression of a “classical human right” may therefore prevent us from recording its context-bound characteristics; of grasping its place in the wider human rights discourse of the 1940s.

Not only was Article 18 different from the religious freedom clauses of the eighteenth-century bills of rights, but it was also different from the corresponding clauses in most other international instruments of the first half of the twentieth century. In the context of the League of Nations, religious freedom had generally been construed as either an individual right to the “free exercise” of religion or a right of religious minorities to establish and maintain institutions, including religious schools and charitable organizations. In the Paris Peace Treaties of 1947, religious freedom had been framed, in keeping with Franklin D. Roosevelt’s wartime rhetoric, as a freedom of “religious worship” for all persons within the jurisdiction of the state.²¹ The American Declaration of the Rights and Duties of Man – which was adopted by the Conference of American States in the spring of 1948 – spoke of the right to “freely to profess a religious faith, and to manifest and practice it in both public and

is the mutual duty of all to practise Christian forbearance, love, and charity toward each other.”

¹⁹ The First Amendment to the US Constitution (1791) prescribes that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

²⁰ In the 1789 Declaration of the Rights of Man and of the Citizen, the closest we get to a statement on religious freedom is Article 10 which declares that “No one shall be disquieted on account of his opinions, including his religious views, provided their manifestation does not disturb the public order established by law.” Article 7 of the Declaration of 1793 holds that “The right to express one’s thoughts and opinions by means of the press or in any other manner, the right to assemble peaceably, the free pursuit of religion, cannot be forbidden.”

²¹ See, e.g., the Treaty of Peace with Italy, February 10, 1947, Article 15. As one participant in peace conference noted, there was no clarifying discussion “about the meaning of these human rights and freedoms because there were no attempts to define their contents.” Stephen D. Kertesz, “Human Rights in the Peace Treaties,” *Law and Contemporary Problems* 14, no. 4 (1949): 636. For more on the language of religious freedom in the peace treaties, see Su, *Exporting Freedom*, 75–6.

private.”²² Although these earlier international standards on religious freedom differed among themselves, they all centered on the outward expressions of religion and belief. What they protected was primarily the right to religious practice, including – at least in the context of the League of Nations – the collective and institutional aspects of religious life.

Although Article 18 mentioned “worship” as a legitimate manifestation of belief and recognized that religious freedom can be exercised “alone or in community with others,” it stopped short from awarding direct protection to religious communities and the right to establish religious institutions. Instead, it was organized around a basic distinction between inner and external freedom, between the individual person’s “thought, conscience and religion” on the one hand, and the outward “manifestations” on the other. It may be fair to say that this formula echoed an ancient, dualistic anthropology, but it is important to note that it also marked a new way of framing religious freedom in international settings. And this new understanding of religious freedom as a shield for the inner freedoms was further amplified by the inclusion in Article 18 of a right that prior to 1948 had not received widespread international recognition: the right to change religion or belief.

Far from expressing an established view on the core meaning of religious freedom, Article 18 gave voice to a conception of this right that rested on a specific anthropology and an equally specific understanding of what constitutes authentic religion. The fact that the available literature has rarely highlighted, let alone explored, these features of the text is, in short, why this study is motivated. It may be reasonable to argue that the inclusion of a religious freedom article in a UN bill on human rights was, as Martin Scheinin puts it, “an easy case.”²³ But what was it that prompted the framers to articulate this right in a way that, in many respects, was unconventional in international settings in the 1940s? To answer this question, we have to return to the Declaration’s genesis and situate the making of Article 18 in a wider historical context. This is, in broad strokes, what constitutes the purpose of this book.

²² The American Declaration of the Rights and Duties of Man. Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948. For the version that was circulated in the UN Commission on Human Rights in the Summer of 1948, see UN Doc. E/CN.4/122 (1948).

²³ Martin Scheinin, “Article 18,” in *The Universal Declaration of Human Rights: A Common Standard of Achievement*, ed. Gudmundur Alfredsson and Asbjørn Eide (The Hague: Nijhoff, 1999), 379.

SITUATING THE STUDY

The drafting of the Universal Declaration is by no means uncharted territory for scholars of human rights. On the contrary, since the 1990s this process has become one of the most frequently explored areas of the field.²⁴ Apart from the coverage that religious freedom has received in general treatments of the Declaration's making, some studies have also focused intently on the negotiations precipitating the finalization of Article 18. The lion's share of these accounts consists of attempts to track the Article's emergence through the official UN records, including the corpus of drafts and amendments, as well as stenographic records of the relevant committee meetings.²⁵ Taken together, these studies provide a good overview of the central issues that surfaced in the course of the debates. They also allow us to distinguish some of the alternative routes that the delegates rejected in favor of what would become the outcome text. But the drafting histories generally stop short of situating the debates in a larger frame. Instead, they often conclude by asserting that the outcome was ambiguous; that the delegates agreed on a final text without a common understanding of what it actually said. Here is Malcolm D. Evans: "It was entirely unclear what the article was meant to imply, and the discussions surrounding its adoption provide no clarification."²⁶

Apart from the drafting histories, the making of the Universal Declaration has also been illuminated by studies that focus on the individual drafters. This literature includes works on some of the most well-known personalities of the UN Commission on Human Rights, including the US delegate and chairperson, Eleanor Roosevelt, as well as the French representative, and later Nobel peace laureate, René Cassin.²⁷ There are

²⁴ For the most comprehensive study to this date, see Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999). Morsink provides clarifying, but limited, discussion of religious liberty on pages 24–6, 259–63.

²⁵ See, e.g., Evans, *Religious Liberty and International Law in Europe*, 183–193; Scheinin, "Article 18," 379–92.

²⁶ Evans, *Religious Liberty and International Law in Europe*, 189.

²⁷ Works that are either explicitly biographical or focus extensively on the personal contributions include Glendon, *A World Made New*; Marc Agi, *René Cassin: fantassin de droits de l'homme* (Paris: Plon, 1979); Jay Winter and Antoine Prost, *René Cassin and Human Rights: From the Great War to the Universal Declaration* (New York: Cambridge University Press, 2013). We still lack a comprehensive biography of Charles Malik. For now, see Mitoma, *Human Rights and the Negotiation of American Power*, 104–133; Tony E. Nasrallah, "Charles Malik und die Universalität der Menschenrechte," in

also studies on actors that made significant contributions from behind the scenes, such as the representative of the Commission of the Churches on International Affairs (CCIA), O. Frederick Nolde, who by all accounts played a significant part in the drafting of Article 18.²⁸ These works add to the overall picture by identifying the central actors and by discerning some of the concerns motivating their positions. Their main drawback is their tendency to let the drafters' biographies overshadow their concepts and arguments. The biographical accounts generally tell us more of the drafters' individual journeys and the different activities they pursued in promoting the internationalization of "religious freedom" and "human rights" as blanket terms, than of how they understood the concepts they incorporated in the Declaration text.

Lately, we have also seen the emergence of a third category of literature that has advanced our understanding of the Universal Declaration and its place in the wider human rights discourse after World War II. One of the most radical claims of the so-called second generation of historians of human rights is that the promulgation of this document did not give rise to a wider human rights movement and did not push the language of human rights to the forefront of political discourse.²⁹ These scholars do not deny that the Declaration influenced the drafters of the European Convention of Human Rights of 1950, or that it triggered some political debate in individual states.³⁰ That being so, they suggest that it was not until decades later, in the late 1970s, that dedicated human rights

Identität und Menschenrechte: Transkulturelle Perspektiven, ed. Sarhan Dhoubi (Weilerswist: Velbrück Wissenschaft, 2012).

²⁸ John Nurser, *For All Peoples and All Nations: The Ecumenical Church and Human Rights* (Washington, DC: Georgetown University Press, 2005). For a condensed version, see John Nurser, "The Ecumenical Movement Churches, Global Order, and Human Rights: 1938–1948," *Human Rights Quarterly* 25, no. 4 (2003). For a more recent treatment that draws heavily on the archives of the World Council of Churches, see Matti Peiponen, "Ecumenical Action in World Politics: The Creation of the Commission of the Churches on International Affairs, 1945–1949" (PhD diss., Helsinki University, 2012). For a more theological account, see Pamela Slotte, "Blessed are the Peacemakers: Christian Internationalism, Ecumenical Voices and the Quest for Human Rights," in *Revisiting the Origins of Human Rights*, ed. Halme-Tuomisaari and Slotte, 293–329.

²⁹ For critical introductions to the field, see Kenneth Cmiel, "The Recent History of Human Rights," *The American Historical Review* 109, no. 1 (2004); Devin O. Pendas, "Toward a New Politics? On the Recent Historiography of Human Rights," *Contemporary European History* 21, no. 1 (2012); Philip Alston, "Does the Past Matter? On the Origins of Human Rights," *Harvard Law Review* 126, no. 7 (2013).

³⁰ For the Declaration's early reception in the UN, see John Humphrey, "The Universal Declaration of Human Rights," *International Journal* 4 (1949): 358. For a discussion of the limited attention to human rights in US politics in the early 1950s, see Barbara J. Keys,

organizations like Amnesty International and Helsinki Watch (later Human Rights Watch) became significant transnational players and Western governments began to specify the promotion of human rights as a central objective of their foreign policies. With the increased presence of human rights in political discourse, the adoption of the Universal Declaration was in a sense rediscovered and redefined as a world-changing event by actors seeking political legitimacy for their different causes.³¹

Yet this turn to the 1970s has not made the task of historicizing the origins of the Universal Declaration less challenging or meaningful. To the contrary, the realization that it is impossible to draw a straight line from the 1940s to the 1970s has pushed scholars to dig even deeper for the ideological currents that helped to shape this document. These efforts pose a challenge to the still-dominant line of interpretation – in academic and political circles alike – which suggests that this work was not ideological at all, but was powered by what Lynn Hunt calls “the power of empathy,” an intuitive and widely shared aspiration to ensure that mankind would never again experience the horrors of World War II.³² Critics claim that this humanitarian reading says more about our present-day expectations on the international human rights regime than the subjective views of those involved in creating it.³³ Some of the more nuanced

Reclaiming American Virtue: The Human Rights Revolution of the 1970s (Cambridge, MA: Harvard University Press, 2014), 23–5.

³¹ Apart from Keys's recent study, see several of the contribution in Jan Eckel and Samuel Moyn, eds., *Moral für die Welt? Menschenrechtspolitik in den 1970er Jahren* (Göttingen: Vandenhoeck & Ruprecht, 2012). For a nuanced treatment, which also problematizes Moyn's strategy of contrasting the 1940s and the 1970s, see Jan Eckel, *Die Ambivalenz des Guten: Menschenrechte in der internationalen Politik* (Göttingen: Vandenhoeck & Ruprecht, 2015), 23. For a competing account, see Steven L. B. Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (New York: Cambridge University Press, 2016).

³² See, e.g., Morsink, *The Universal Declaration of Human Rights*, 37; Willy Strzelewicz, *De mänskliga rättigheternas historia: från den amerikanska oavhängighetsförklaringen till våra dagar* (Stockholm: Ordfront, 2001), 256–63.

³³ Lynn Hunt, *Inventing Human Rights: A History* (New York: W. W. Norton & Company, 2007), 28. The debate has mainly revolved around the relation between the Universal Declaration and the Holocaust. For four recent contributions, see G. Daniel Cohen, “The Holocaust and the Human Rights Revolution: A Reassessment,” in *The Human Rights Revolution: An International History*, ed. Akira Iriye, Petra Goedde, and William I. Hitchcock (New York: Oxford University Press, 2012); Marco Duranti, “The Holocaust, the Legacy of 1789 and the Birth of International Human Rights Law: Revisiting the Foundation Myth,” *Journal of Genocide Research* 14, no. 2 (2012); Samuel Moyn, *Human Rights and the Uses of History* (London: Verso, 2014), 87–98;

treatments have instead sought to construe the text as an international expression of New Deal welfarism,³⁴ the Latin American natural law tradition,³⁵ French republicanism,³⁶ and the Christian democratic views held by many of the drafters.³⁷ Historians like Mark Mazower and Samuel Moyn have also stressed that part of what made the prospect of a UN bill on human rights appealing to the major powers at the end of World War II was that it appeared as less threatening to the objective of international order than alternative projects like minority rights and the right to national self-determination.³⁸

The literature on the making of the Universal Declaration and its language on religious freedom is substantial, and the works that I have alluded to here all have their distinct qualities. But if we come to this literature with the aim of placing the Declaration's statement on religious freedom in context, we discover that it also has significant limitations. The drafting histories generally provide reliable descriptions of what transpired in the conference room, but give us few keys with which to construe this process as historically situated. The biographical works allow us to appreciate the contributions of individual representatives of states and nongovernmental groups, but they rarely involve deeper

Nathan Kurz, "A Sphere of the Nations? The Rise and Fall of International Jewish Human Rights Politics, 1945–1975," (PhD diss., Yale University, 2015), 105–27.

³⁴ Elizabeth Borgwardt, *A New Deal for the World: America's Vision for Human Rights* (Cambridge, MA: Belknap Press of Harvard University Press, 2005), 265. See also, Whelan, *Indivisible Human Rights*, 213.

³⁵ Mary Ann Glendon, "The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea," *Harvard Human Rights Journal* 16 (2003): 32–4.

³⁶ Jay Winter, *Dreams of Peace and Freedom: Utopian Moments in the Twentieth Century* (New Haven, CT: Yale University Press, 2006), 119.

³⁷ Samuel Moyn, *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015). Moyn advances an earlier historiography, which saw the Christian influences as expressions of theology and ethics, rather than politics. See, for instance, Carl-Gustaf Andrén, "De mänskliga rättigheternas religiösa och rättsliga bakgrund: Debatten inom Förenta nationerna och Europarådet i slutet på 1940-talet," *Svensk teologisk kvartalskrift* 51, no. 4 (1975); Wolfgang Vögele, "Christliche Elemente in der Begründung von Menschenrechten und Menschenwürde im Kontext der Entstehung der Vereinten Nationen," in *Ethik der Menschenrechte: Zum Streit um die Universalität einer Idee*, ed. Hans-Richard Reuter (Tübingen: Mohr Siebeck, 1999), 114–33.

³⁸ Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Belknap Press of Harvard University Press, 2010), 46; Mark Mazower, "The Strange Triumph of Human Rights, 1933–1950," *Historical Journal* 47, no. 2 (2004): 389; Mark Mazower, *No Enchanted Palace: The End of Empire and the Ideological Origins of the United Nations* (Princeton, NJ: Princeton University Press, 2009), chapter 3.

analysis of the concepts that they employed in the negotiations and incorporated in the outcome text. The contextual accounts in turn provide valuable key maps over the political and ideological landscape in which the drafting process unfolded and often suggest ways of situating this process in a longer historical perspective. But even the most subtle histories of human rights and religious freedom in the early postwar period rarely allow us to grasp to what extent different contexts mattered in the making of the text.³⁹ The collective scholarship has, in other words, not only failed to appreciate the fact that Article 18 was an atypical statement on religious freedom in the human rights discourse of the 1940s. The dominant ways of approaching the genesis of the Declaration also come with few possibilities of historicizing particular components of the text.

In what follows, I build on these earlier accounts, as well as a broad range of primary sources, with the purpose of addressing these gaps in the literature on Article 18. Here, the center stage is still occupied by the individual actors that we – thanks to the existent literature – may identify as central to the making of Article 18. But instead of offering alternative or supplementary accounts of their individual biographies and activities to promote the creation of the international human rights regime, this study calls attention to the arguments they – as both individuals and representatives of specific governments and organizations – made in the formal UN debates, as well as in other speeches and writings from the same period. What I hope to add to the available accounts is a better sense of the ways in which these actors construed the concepts they codified in the Declaration's article on religious freedom, as well as a better sense of the concerns that made the architecture of this statement into a question of outmost urgency.

RIGHTS AS TOOLS OF POLITICS

One of the precepts shared by most scholars working in the field of human rights history is that human rights is an indeterminate, and politically contested, concept. This understanding clearly discords with the naturalistic and auto-emancipatory conceptions that powered most of the early attempts to write “the” history of human rights, efforts often

³⁹ For two notable exceptions, see *Su*, *Exporting Freedom*, chapter 3, Moyn, *Christian Human Rights*, chapter 4.

resulting in narratives of gradual moral progress.⁴⁰ But in their empirical work, historians have generally come to interpret this basic view of human rights in very different ways. One alternative has been to construe “human rights” as a polycentric subfield of international politics, a field that is constituted by a range of different institutions and actors, all speaking a language of rights. From such a standpoint, writing the history of human rights becomes a challenge of tracing the evolution and diversification of the field.⁴¹ Another approach has been to focus on what Wendy Brown, in an oft-cited 2004 article, refers to as the “discursive operations” of human rights. From this angle, the history of human rights is primarily a history of the unexpected (and often unwanted) consequences of human rights advocacy, and the particular kinds of subjectivities that such initiatives tend to nurture.⁴² A third alternative has been to construe “human rights” as one of many “competing universalisms” in human history. From this perspective, the history of human rights becomes a history, not only of the rise of any one particular project, but also of the simultaneous demise of alternative ideologies and visions.⁴³

In this study, I will depart from a somewhat different take on what it means to study concepts like human rights and religious freedom in history. This approach is one that rests heavily on insights borrowed from what is often known as the Cambridge School of the History of Political Thought. Although many of these points have been developed within the field of intellectual history, they also have relevance for wider discussions on the history of human rights and religious freedom. The perhaps most basic of these insights is an understanding of political concepts as “tools and weapons of ideological debate.”⁴⁴ As Quentin Skinner argues in opposition to more long-term conceptual history, “the only histories of ideas to be written are histories of their uses in argument.”⁴⁵ From this perspective, the historian of human rights and

⁴⁰ Stefan-Ludwig Hoffmann, “Genealogies of Human Rights,” in *Human Rights in the Twentieth Century*, ed. Stefan-Ludwig Hoffman (New York: Cambridge University Press, 2010), 25–6.

⁴¹ See, e.g., Eckel, *Die Ambivalenz des Guten*, 23–7.

⁴² Wendy Brown, “The Most We Can Hope For . . . : Human Rights and the Politics of Fatalism.” *South Atlantic Quarterly* 103, no. 2–3 (2004): 452. See also Su, *Exporting Freedom*, 9.

⁴³ Samuel Moyn, “On the Nonglobalization of Ideas,” in *Global Intellectual History*, ed. Samuel Moyn and Andrew Sartori (New York: Columbia University Press, 2013), 193.

⁴⁴ Quentin Skinner, *Visions of Politics: Vol 1, Regarding Method* (Cambridge: Cambridge University Press, 2002), 177.

⁴⁵ Skinner, *Visions of Politics: Vol 1*, 86.

religious freedom should strive to recover – not how these ideas have marched through history like distinct units, or how their meanings have changed from ancient times to the present – but how they have been put to use in particular, context-bound interventions.⁴⁶ What we should try to unearth is essentially what people in the past have been trying to say and do in the situations they found themselves in, and how specific political concepts were engaged for these ends.⁴⁷

This book is an attempt to bring this perspective to bear on the making of the Universal Declaration's statement on religious freedom. Put simply, my purpose is to recapture the specific arguments that guided the making of this statement, and how the concepts of human rights and religious freedom functioned within those arguments. This approach is in part motivated by the insight that the drafters of this text were addressing different audiences at once. When discussing the framing of Article 18, they were not only operating in a transnational space and occupied with the codification of universal norms. They were also individual thinkers and, not least, representatives of states, international institutions, or nongovernmental groups. Many of the suggestions they made – often on seemingly unimportant details – were closely linked to deeper political and ideological debates in a range of local contexts. In processes of codifying human rights, Sally Engle Merry once noted, "Important political issues lurk under the bland discussions about terminology."⁴⁸ The challenge of the historian is to recover, as far as possible, what these issues actually were.⁴⁹

At face value, the focus on the drafters and their deliberations may seem overtly conventional, especially in a study on the origins of the Universal Declaration. Yet, the approach suggested here is different from

⁴⁶ This perspective is one of the crucial dividing lines between the history of political thought and conceptual history. For followers of Reinhart Koselleck it has been essential to point out that it is meaningful to think that "concepts can actually change," not just the way they are put to use. See, for instance, Jan-Werner Müller, "On Conceptual History," in *Rethinking Modern European Intellectual History*, ed. Darrin M. McMahon and Samuel Moyn (New York: Oxford University Press, 2014), 75.

⁴⁷ See also, Lorrin Thomas, "When We Talk about Human Rights," *Humanity: An International Journal of Human Rights, Humanitarianism, and Development*, 6, no. 2 (2015), 338.

⁴⁸ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (Chicago: Chicago University Press, 2006), 37.

⁴⁹ For another account stressing the importance of local contexts for grasping international human rights activism, see Lora Wildenthal, *The Uses of Human Rights in West Germany* (Philadelphia: University of Pennsylvania Press, 2013), 4.

most other accounts in the field in at least two respects. First, it focuses less on the drafters' biographies than on what they actually said and wrote, both within the confines of the UN conference rooms at Lake Success, Geneva, and Paris, and in speeches and writings from the same period. So whereas this book foregrounds the interventions by individuals familiar to scholars of the Universal Declaration, including René Cassin, Charles Malik, O. Frederick Nolde, and Eleanor Roosevelt, it is not a book about their lives and accomplishments, but the ideas of human rights and religious freedom they in their various and shifting capacities brought into the discussions on Article 18 and the Declaration at large.⁵⁰ Second, this book construes the drafters and their interventions as access points to a set of broader contexts that mattered in the making of the text. It uses their writings, and the specific concerns they articulated, to construct a contextual map that allows us to make sense, not of the early UN human rights project in general, but of specific aspects in the Declaration text.

Apart from construing human rights and religious freedom as tools of argument, this study is informed by a point, also advanced by Quentin Skinner, of the need to highlight the connections between codification and ideology. In a bold passage in one of the final essays of his collected methodological writings, Skinner suggests that "all attempts to legislate about the 'correct' use of normative terms must be regarded as equally ideological in character. Whenever such terms are employed, their application will always reflect a wish to impose a particular moral vision on the workings of the social world."⁵¹ This position is difficult to reconcile with the kind of minimalism now common in liberal theories of human rights. Human rights are rarely just bulwarks against different forms of political violence and repression. The way they are construed also reflects broader visions of what kind of social and political order that will emerge through their practical realization.⁵² When studying efforts to codify human rights we cannot simply narrow our focus to how these concepts were filled with content, but must also appreciate the expectations that particular actors and movements attached to them.

⁵⁰ See also, Skinner, *Visions of Politics: Vol 1*, 117–8. For further clarification, see Petri Koikkalainen and Sami Syrjämäki, "On Encountering the Past: Interview with Quentin Skinner," *Redescriptions: Yearbook in Political Thought and Conceptual History* 6 (2002).

⁵¹ Skinner, *Visions of Politics: Vol 1*, 182.

⁵² Brown, "The Most We Can Hope For . . .," 461. Cf. Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton, NJ: Princeton University Press, 2001), 173.

At the same time, it is essential that we do not fall into oversimplification on what the broader ideological projects were. It would be wrong to think that human rights are, in and of themselves, tied to any specific ideology, be it Christian personalism or neoliberalism.⁵³ Given that human rights and religious freedom are both deeply contested ideas in our time, the challenge is, in many ways, one of reminding us of the temporal distance that separates our discussions from those in the past. We may share part of the vocabulary that the drafters of the Universal Declaration used, but we do not always recognize the arguments and projects they used them for.

A NOTE ON SOURCES

Any history of the making of the Universal Declaration will naturally take the negotiations in the UN Commission on Human Rights as a point of departure. The text emerged through a process that stretched from the establishment of the Commission on Human Rights as a subsidiary body to the Economic and Social Council (ECOSOC) in 1946 to the adoption of the final text in December 1948. Apart from the Commission,⁵⁴ the central forum for the negotiations was the designated eight-member Drafting Committee.⁵⁵ Together, these groups hammered out a final draft that ECOSOC transmitted to the General Assembly and its Third Committee on August 26, 1948.⁵⁶ Here, the negotiations on the final texts took place at various points between late September and early December 1948.⁵⁷ The official UN records include drafts and amendments, as well as comprehensive (but not verbatim) records of the meetings in all of these bodies.⁵⁸

⁵³ Joe Hoover, "Towards a Politics for Human Rights: Ambiguous Humanity and Democratizing Rights," *Philosophy and Social Criticism* 39, no. 9 (2013): 9–14.

⁵⁴ The members of the Commission on Human Rights in 1947–48 were: Australia, Belgium, Belarus, Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippines, the United Kingdom, the United States, the USSR, Uruguay, and Yugoslavia. The Commission convened three times in the course of the drafting. In January–February (UN Doc. E/259) and December 1947 (UN Doc. E/600) and in May–June 1948 (UN Doc. E/800).

⁵⁵ The Drafting Committee consisted of representatives from Australia, Chile, China, France, Lebanon, the USSR, the United Kingdom, and the United States. They convened for rounds of negotiations in June 1947 (UN Doc. E/CN.4/21) and May 1948 (E/CN.4/95).

⁵⁶ UN Doc. E/1046 (1948).

⁵⁷ *Yearbook of the United Nations, 1948–1949* (New York: United Nations, 1950), 524–37.

⁵⁸ Apart from Morsink's study, there are a group of works that are useful for orienting oneself in the different stages of the drafting process and official UN Records, including

The official records can, as Johannes Morsink and others have demonstrated, serve as the basis of a rich and, in many ways, reliable account of how the Declaration and its individual articles evolved.⁵⁹ From these sources, we may discern the central questions that arose, the alternatives that were up for discussion, what positions the delegates held, and how they justified their views before the committee members. But these records are not always helpful if we seek to situate the negotiations in a wider historical framework. When the drafters speak to us through these records, they generally do so through brief statements declaring their positions on specific proposals. We rarely find elaborate arguments or open references to specific concerns. According to Morsink, this is not a problem. To the contrary, he suggests that the fragmentary character of the meeting records testifies to the drafters' ability to transcend their doctrinal conceptions of rights and specific political concerns in the search for cross-cultural consensus. He explains that his decision not to contextualize "came very naturally" because "the drafters themselves were very much focused on their task and almost never brought specific world events to the drafting table."⁶⁰

To my mind, this feature of the debates is precisely why the official records are an insufficient basis for any earnest attempt to read the Universal Declaration in context. The official records can be useful as a point of entry and as a source for reconstructing the central questions that arose in the negotiations. But we cannot assume from the lack of references to certain events, processes, and ideas in the official records, that such factors were insignificant for how the drafters construed particular human rights principles and promoted specific formulations in the text. By doing so, we would assume that the Universal Declaration was produced from a place outside history, a place where politics, ideology, and power were somehow put on pause.

My way out of the secluded space of the conference room is through the many texts that framers of the Declaration wrote in connection to the

Glendon, *A World Made New*; Mitoma, *Human Rights and the Negotiation of American Power*; Normand and Zaidi, *Human Rights at the UN*, chapters 5–6; Lauren, *The Evolution of International Human Rights*, chapter 7. For the most comprehensive and accessible collection of the official sources, see William A. Schabas, ed., *The Universal Declaration of Human Rights: The Travaux Préparatoires* (New York: Cambridge University Press, 2013).

⁵⁹ For a valuable study of the later developments of UN human rights law, which draws on Morsink's methodology, see Whelan, *Indivisible Human Rights*.

⁶⁰ Morsink, *The Universal Declaration of Human Rights*, xiii.

debates. These include published articles, book chapters, monographs, and speeches where the agents elaborated on themes that also arose in the Commission on Human Rights. These texts belong to different genres; they surfaced in very different forums, and they rarely stood in direct communication with each other. Even so, I will show that they may serve as fruitful ways to gain more insight into the series of decisions by which the Declaration materialized. Some of these works are well known to scholars of human rights, including Cassin's 1972 collection of essays, *La pensée et l'action*, and several short texts that Eleanor Roosevelt authored for her column, *My Day*, in the second half of the 1940s. But other texts are much less frequently, if ever, taken into account in the dominant studies of the Declaration's origins. Among these are several essays and monographs that Malik and Nolde penned in the 1940s, texts that engaged directly with the codification of human rights and religious freedom.

These published materials constitute the main sources for this study. But in the individual chapters, I also draw on some archival sources, including Charles Malik's papers at the Library of Congress, Washington, DC. Among these papers, I have paid particular attention to his published essays from the 1940s and '50s and his lectures at the American University of Beirut in the early 1940s. Because of the central role that he played in the making of Article 18 and the Declaration at large, and because these records have not yet been thoroughly explored, they are of particular relevance here. Because Malik was also part of the Commission of the Churches on International Affairs (CCIA), his archives contain a close to complete collection of the organization's internal memos related to the Universal Declaration and the drafting of Article 18.

Apart from these primary sources – as well as an inclusive body of texts on human rights and religious freedom from the period of drafting – I draw heavily on the existent scholarship in this field. My impression from working closely with this literature is that we already have sufficient knowledge of the way the Declaration and its individual articles evolved. We know that even if the drafting was a collaborative enterprise, individual actors were able to influence how particular rights – including that of religious freedom – were framed in the outcome text. Again, what I hope to add to this discussion is a clearer view of the arguments that guided the process, a better sense of the concerns that led the drafters to express religious freedom in the way that now comes to us in Article 18. Put most broadly, this kind of work can remind us of the uncertainties that surrounded the early attempts to codify human rights. It can help us

appreciate the fact that many of the formulations, which we now treat as unquestionable parts of the framework of international human rights, were neither inevitable nor necessarily what everyone wanted all along.

CHAPTERS

The following chapters spotlight three of the most central decisions that were made in the negotiations on Article 18. Chapter 1 focuses on the distinction between inner and external religious freedom that structures this statement. I claim that this was a subtle break, not only with the framework of minority rights of the League of Nations, but also with the formulation of religious freedom that President Roosevelt had advanced in his wartime rhetoric, and which was echoed in the Paris Peace Treaties of 1947. I show that even if several actors, including René Cassin of France and Zhang Pengjun of China, supported a strong emphasis on the concept of conscience, the most ardent proponent of this path was Charles Malik. Through a close reading of his writings on human rights, I reveal how Malik associated himself with a Christian personalist understanding of human rights. A common theme in his writings was that an international statement on human rights that revolved around the freedom of thought and conscience, would make for a useful antidote against all forms of materialism. Malik's anticommunism is well known and conspicuous in his writings, but in this chapter, I stress how he framed the struggle for the "the right to be free inwardly" as a battle on many fronts. In the concluding section, I suggest that if we zero in on the work to foreground the concepts of thought and conscience, it becomes difficult to insist on the interpretation that every part of the text was rooted in moral repudiation of World War II atrocities.

Chapter 2 focuses on Article 18's reference to right to change religion or belief. As is well known, this was an aspect that caused great controversy in the final stages of the negotiations. The contestations are commonly narrated as a part of a clash between a deep-rooted Western tradition of human rights and religious freedom on the one hand, and traditional Islamic teachings on apostasy on the other. In this chapter, I challenge this interpretation on several points. Most critically, I show that the right to change religion or belief had not received substantial international recognition prior to the Universal Declaration, wherefore it is difficult to establish that it constituted a conventional aspect of international religious freedom. This was also recognized by the actors who led the campaign to make this right part of the Universal Declaration.

Again, Malik was one of the main players. But in this regard, he joined forces with O. Frederick Nolde, of the CCIA. From Nolde's writings, we learn that the churches' efforts to find international recognition for this right originated in the experiences of Christian missionaries in the Middle East. But both Nolde and Malik realized that if they were to garner sufficient support for this right, they would have to develop more general arguments for why it should be part of the Universal Declaration. In the concluding section, I show that the difficulties that Saudi Arabia and others had with this right probably had more to do with concerns about the social consequences of proselytism than primordial Islamic doctrines on religious conversion.

Chapter 3 turns our attention to the second part of Article 18, which asserts that everyone has a right to "manifest" religion or belief "either alone or in community with others and in public or private" through "teaching, practice, worship and observance." As scholars before me have successfully shown, this broad formulation was also a victory for Nolde and the CCIA, who expressed unease with the tendency to collapse the talk of religious freedom to the mere freedom of religious worship. My contribution here is to show that even if Nolde and Malik were decisive in the making of Article 18, this text was not all that they wanted. To them, religious freedom was more than an individual right. Together with the representatives of other nongovernmental groups, and with indirect support from members of the Communist bloc, they advocated language that would have expanded the Declaration text to also cover the rights of religious groups and institutions. In the end, the American states (spearheaded by the United States) and France effectively defeated all such proposals. In this chapter, I turn to the arguments that Roosevelt and Cassin, advanced in favor of a narrow focus on rights of individuals. I show how their positions were motivated by domestic politics and by ideological positions on what constituted the essence of the US and French national projects. Albeit in somewhat different terms, they both viewed the Declaration as a document that dovetailed with policies of national assimilation.

In the Conclusion, I seek to bring the central threads of the study together for a more general assessment of the different arguments and concerns that guided the making of Article 18. I end with a few reflection on the relevance of this account for current debates on the history and politics of human rights and religious freedom.