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Citation: Hoover, J. (2013). Rereading the Universal Declaration of Human Rights: plurality and contestation, not consensus. Journal of Human Rights, 12(2), pp. 217-241. doi: 10.1080/14754835.2013.784663

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Link to published version: https://doi.org/10.1080/14754835.2013.784663

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Rereading the Universal Declaration of Human Rights: Plurality and Contestation, not Consensus

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Abstract:

In this paper I examine the drafting of the Universal Declaration of Human Rights. My analysis counters conventional narratives of consensus and imposition that characterize the development of the UN human rights regime. The central argument is that within the founding text of the contemporary human rights movement there is an ambiguous account of rights, which exceeds easy categorization of international rights as universal moral principles or merely an ideological imposition by liberal powers. Acknowledging this ambiguous history, I argue, opens the way to an understanding of human rights as an ongoing politics, a contestation over the terms of legitimate political authority and the meaning of "humanity" as a political identity

Rereading the Universal Declaration of Human Rights: Plurality and Contestation, not Consensus

1. Reading the Universal Declaration of Human Rights

While human rights have long provided a vision for improving social life, the conventional conception of those rights has been as universal moral principles based on each individual's inherent dignity, which make clear the requirements of any and all legitimate political authority. From the natural law tradition offering universal standards constraining all sovereigns (Koskenniemi 2009; Finnis 2011), to modern "political" accounts of international human rights drawing limits around the state's right to self-determination (Baynes 2009), our understanding of human rights is dominated by a legislative conception of rights. This legislative conception starts from some set of foundational moral principles – arrived at by divine dictate, transcendental reason, constitutional authority, etc. – that then form the basis for legitimate law and provide an authority beyond the political.[1] The legislative conception of universal human rights has been subjected to criticisms that it reinforces rather than challenges state power, bolsters an objectionable liberal-capitalist order, and neglects the violence done to difference by Eurocentric accounts of human nature (Douzinas 2002; Evans 2005; Tascon and Ife 2008; Žižek 2005). It has also been revised repeatedly to take account of these objections (Ackerly 2008; Benhabib 2008; Cohen 2004; Langlois 2002). At the centre of this still-ongoing debate is the unavoidable claim – inherent to the legislative conception of human rights – that humanity has a common, and perhaps singular, moral nature, shared by each of us, which provides a universal standard that all political authorities should meet. The persistence of ethical diversity threatens to reduce this moral authority to mere coercion and imposition, to make human rights an imperial ideology (Pagden 2003). It is in front of this conceptual backdrop that the ratification of the Universal Declaration of Human Rights (UDHR) is taken to represent a vital moment of consensus that provides the authority necessary to the legislative conception of human rights. Critics, however, call our attention to the shadow cast by the historical imposition of human rights as an ideology justifying Western political dominance and

marginalizing weaker states and non-Western societies (Mutua 2002). Yet, we need not be confined to such accounts of the UDHR's significance if we reconsider our understanding of human rights, which in turn alters the contemporary relevance of the UDHR.

In contrast to the legislative account of human rights, we can see an emerging agonistic understanding that focuses on the use of rights as contentious political claims that demand social transformation (Honig 2009; Hoover and Iñiguez De Heredia 2011; Schaap 2011).[2] This understanding is based on the use of human rights as a political tool, particularly by social movements that challenge institutionalized authority with new rights claims (Goodale 2009; Hunt 2008; Stammers 2009). An agonistic understanding of human rights places the plurality and discontinuity of rights claims at the fore, focusing on the way rights open up new political possibilities, in contrast to the legislative understanding that focuses on delimiting a core set of rights that constrains authority. Political theorist Bonnie Honig argues that legislative accounts of human rights 'invite us to assess new rights-claims as judges would – in terms of their analogical fit to previous ones, of the appositeness of the claim to legitimate subsumption under existing higher law (whether constitutional or universal) in a gradually unfolding linear time, of whether the new rights were in nascent from always already' part of the human rights ideal (2008, 104–105). An agonistic understanding of rights shifts our focus, and as Honig suggests, 'there is another way to think about some of these emergent rights, in relation to different contexts, not against the backdrop of the increasing universalization of rights as such but rather in relation to a politics of rights and a politics of foreignness that might (yet) go lots of different ways.' (Honig 2008, 95) Rethinking rights and rereading the UDHR as agonistic provides us with an alternate way of understanding human rights, an alternative that focuses on contestation and discontinuity.

Human rights entail a particular logic, which shapes the politics that emerges. Human rights make use of the category of humanity to make a moral claim upon the legitimate organization of social life – these claims are formally universal in reference and global in scope, but the nature of these claims is not fixed. A legislative account of human rights presumes some final and

fundamental universality to human identity. If we instead view human rights agonistically, rights claims open up a contest over the significance of humanity as an identity, which places the question of legitimate social organization into a global context, but without presuming that there is a single or final set of rights, nor a single form that legitimate political authority must take. The central purpose of this article is to suggest that *if we think of human rights differently*, such that '[e]ach new right inaugurates a new world' (Honig 2008, 104), then the historical meaning of the drafting of the UDHR changes. A further purpose is to attend to the details of the drafting of the UDHR as an act of claiming human rights, so that it can inform an agonistic understanding of human rights. Before turning to an analysis of the drafting of the UDHR, I consider both the conventional significance it has for supporters and critics, and the general question of how the history of human rights has been understood.

Our understanding of the significance of the UDHR tends to oscillate between two poles: on one side it can be seen as a moment of founding for the human rights regime, based on the documents unique status as a symbol of moral consensus (Cerna 1994, 740–752), while on the other hand it can be seen as a political imposition by the post-war liberal powers intent upon remaking the international order in their image (Mutua 2007, 552–555).

> Forty-five years ago, on 10 December 1948, the international community adopted by consensus, the Universal Declaration of Human Rights, still the preeminent document in the growing corpus of human rights instruments. Today, a group of nations is seeking to redefine the content of the term "human rights" against the will of the Western states. This group sees the current definition as part of the ideological patrimony of Western civilization. They argue that the principles enshrined in the Universal Declaration reflect Western values and not their own. (Cerna 1994, 740)

The UDHR has a special status in either narrative, but my primary task is to upset these competing narratives and the legislative understanding of rights that makes them plausible. Many histories of the UDHR have been written, all of them acknowledge the complex political context of the drafting to some degree (Glendon 2006; Morsink 1999; Lauren 2003; Waltz 2002), but the connection between how we read that history through our understanding of human rights is under appreciated and too little explored. While historical knowledge of human rights is invaluable for deflating

myths, our return to past events is unavoidably reflected though the conceptual framing we carry with us, which suggests that reading the UDHR agonistically will change how we understand that historical moment and provide insight into contemporary human rights politics.[3]

In the consensus narrative, the General Assembly's endorsement of the UDHR symbolized a break with a terrible era of world politics – based on narrow state interests, nationalism, colonialism and racist ideologies – and provided a cornerstone of the foundation upon which a new international order could be built. 'The human rights instruments and covenants, as conceptualized in [the] UDHR and other major UN conventions, exhibit common narrative standards based on the widest attainable consensus among nations with diverse cultural traditions, religious doctrines, and ideological systems.' (Chowdhury 2008, 349) The consensus achieved by the UDHR, reflecting both the content and the process of its drafting, then served as a basis for the development of human rights that followed.

> There appears to be consensus within the UN and among states, academics, and human rights advocates that the UDHR is the most significant embodiment of human rights standards. It has been described as "showing signs of having achieved the status of holy writ within the human rights movement." Elsewhere, the UDHR has been described generously as the "spiritual parent" of other human rights documents. (Mutua 2007, 553)

Even where care is taken to acknowledge the limits of the original consensus in 1948, which excluded colonized peoples and was opposed via abstention by six communist states, as well as Saudi Arabia and South Africa, this imperfect consensus is presented as a political failing, rather than a failure of the rights regime as such.

> Given that eight countries abstained out of an international body made up then of only fifty-six states – most of which were from the West or politically "Westernized" – the Universal Declaration of Human Rights was thus not born "universal," even for those who took direct part in the process of its elaboration. There is no denying, therefore, that those who had not participated in the negotiations and who labeled the Declaration as a "Western product" did indeed have a point. Having had no voice in the negotiations period from 1946 to 1948 because they were, largely, Western colonies, Afro-Asian countries had a valid reason to question the legitimacy of the Declaration's authority over every cultural or political system. To a lesser extent, the same logic applied to the European socialist states, which abstained in the vote despite the inclusion in the document of the social and economic rights they had firmly defended. Nevertheless, all of them quickly lost the grounds for their objections. (Alves 2000, 481–482)

While failings are admitted, the human rights project is redeemed by the universality the UDHR later attained.

Sophisticated analyses of the UDHR point to the way in which its break with traditional international politics was resisted by both "Western" and "non-Western" states – reading it as the founding document for a new universal movement that is still unfolding (Moyn 2010, 81–83). Within this line of thinking, overcoming the biases of the state-centric system is key.

> Only by reiterating that human rights treaties are constructed outcomes of negotiations that demand change in all discriminatory and repressive cultures, can we stop the selective adoption of human rights and challenge all states that give lip service to human rights but continue to violate the rights of their citizens, support repressive regimes, or uphold corporate interests over human rights and dignity. (Arat 2006, 437)

While the UDHR itself may not represent a perfect or final consensus, it is a pivotal starting point for a more fully consensual and international human rights regime – for example, paving the way for the consensus reached on the 1993 UN Vienna Declaration on human rights (UN General Assembly 1993).

> Drawing representatives from the existing major cultures, religions, and sociopolitical systems, with delegations from over 170 countries, in a world virtually without colonies, the Vienna Conference was the largest international gathering ever convened on the theme of human rights. Its final document, the Vienna Declaration and Programme of Action – adopted by consensus without a vote or reservations, although with some interpretive statements – unambiguously affirms, in Article 1 that: "The universal nature of these rights and freedoms is beyond question." (Alves 2000, 482)

The Vienna Declaration, then, completes the consensus that justifies a world order based on human rights. This second moment of consensus, however, essentially confirms the universalism of the UDHR and redeems the imperfections of the original drafting process.

The contrasting narrative is one of ideological imposition and political dominance. In this narrative the US, and Western states generally, used their political superiority after the Second World War (WWII) to impose a new international order upon the rest of the world (Mazower 2009). This was resisted by communist states at the time and made possible, at least in part, by the marginal status of many of the world's peoples still living under colonial rule.

> The narrow club of states in the UN at the time seriously compromised the normative universality of the movement's founding document. Antonio Cassese, the former President of the International Criminal Tribunal for the Former Yugoslavia, wrote that the West imposed its philosophy of human rights on the rest of the world because it dominated the United Nations at its inception. (Mutua 2007, 554)

Therefore, rather than providing a moral basis for this new world politics, the UDHR merely continues the dominance of the West by imposing a distinctly liberal conception of individual human rights on the rest of the world. This critique runs deeper than an accusation of bare political domination. By justifying the content of human rights through an appeal to a universal and singular human essence, Western powers infused the new order with their own ideology. 'The official documents of human rights, therefore, embody a specific cultural world-view: that of the modern Western world, but more insidiously, in the very assumption of 'human' that this also entails.' (Tascon and Ife 2008, 318) The appeal to human nature and dignity justifies the imposition of human rights norms on everyone. It is this universal account of humanity and the assumed superiority of a liberal international order, not simply the act of exercising Western power, which is objectionable.

This critique retains its force even if one does not assign nefarious motives to the drafters of the UDHR. 'Ultimately the assumption of the natural dignity of human being became part of the UDHR despite the attempts by the drafters to keep the language neutral on this topic.' (Parekh 2007, 763) There is, it seems, an irresolvable contradiction in the idea of human rights – it requires an appeal to some feature of our essential humanity to justify the legitimacy of human rights, but that appeal is always partial (Hoover 2012). 'Though the UDHR is based on an essentialist view of the human being, the drafters were aware of the difficulties that come with such a basis. This historical moment reveals the depth of the problem that we are still trying to reconcile.' (Parekh 2007, 764) Whether critics see room for further practical agreement on human rights within the UN framework, or think that the regime is deeply compromised by its biases and inherent tensions, the presumed universality of the UDHR is seen as a moment to be overcome not celebrated.

Understanding human rights in agonistic terms suggests that we attend to their political content more closely, which the legislative conception of human rights obscures with its claims to be apolitical (Moyn 2010, 212–227). This claims is sustained by the supposed moral consensus that justifies human rights – famously defended by Michael Ignatieff (2001), but which has been challenged as limited and ideological (W. Brown 2004). An agonistic account of rights rejects the idea that we can achieve an apolitical moral consensus on the meaning or significance of human nature, suggesting that any such account will be partial and contestable. Further, it focuses our attention on the politics that follow from our account of humanity as a moral identity, such that even a limited political vision is still *political* and cannot be taken as incontestable or inherently desirable. An agonistic understanding of human rights suggests that we should see the UDHR's drafting and signing as a pivotal moment in an ongoing debate about human rights, which can be understood in terms of two key issues: (1) the meaning of human dignity, and (2) the implications of human rights claims for the transformation of world politics. To understand why these two issues emerge and why the UDHR responds to them in the way that it does, we need to appreciate the context of the drafting – namely as a particular response to the process of post-WWII reconstruction. The general purpose of human rights at the time was to affirm the significance, and reality, of our common humanity in the face of nationalist and racist ideologies, and as a nascent challenge to the supremacy of state sovereignty as the organizing principle of world politics. Further, an agonistic understanding of rights undermines the traditional narratives in which the UDHR's consensus provided the basis for future progress, as if the guaranteed promise of the future was necessarily contained in the past. Seeing the human rights project as open to both regressive *and* radical change, and progressing along plural lines of development, undermines and complicates criticisms that it is a limited political project imposed by powerful states.

The debates that occurred during the drafting of the UDHR suggest many of those involved saw themselves as providing a foundation to build a new world politics, that is, thinking very much in terms of a legislative understanding of rights. My own argument is not that thinking about human

rights agonistically reveals the true intentions of the drafters but rather that adopting an agonistic understanding we can see the drafters' disagreements as *exemplifying* the ambiguous and contested nature of human dignity within the supposed consensus found in the UDHR, and demonstrating a self-conscious and partial effort to reconstruct the institutions of world politics.[4] In the following section, I look at how the history of human rights is told and how this informs our understanding of the historical context of the UDHR before turning to the debates that took place during the drafting process. In the third section I focus on the debates during the drafting process concerning human dignity, and in the fourth section I focus on the alternative political orders considered in the drafting, emphasizing that the settlement that was reached was a specific and contested response to their contemporary problems and not the final word on the shape of the international order. Finally, in conclusion, I offer a brief account of the significance of this rereading of the UDHR for how we understand the human rights project.

2. The Contested Historiography of Human Rights and the Context of the UDHR

How one understands the importance of the UDHR depends in part on how one understands the history of human rights. A dominant strain in the literature searches for the deep historical roots of the idea.

> Since the phrase was consecrated in English in the 1940s, and with increasing frequency in the last few decades, there have been many attempts to lay out the deep sources of human rights... The worst consequence of the myth of deep roots they provide is that they distract from the real conditions for the historical developments they claim to explain. (Moyn 2010, 11–12)

As a result the history of human rights is often written in broad stokes and as a progressive narrative moving from natural rights to universal human rights.[5] More rigorous historical works examining the details of how the idea and discourse of human rights emerged, as well as the distinctive move to an international conception of these rights after WWII have begun to challenge this grand-narrative approach.[6] Nonetheless, how we understand human rights matters for how we write and read their history.[7]

Does the UDHR represent an important step in the progressive development of human rights as a universal morality?[8] If so, then it becomes a story of the search for universal rights that provide a single foundation for legitimate political authority – which is very much a story of Western political development spreading to the rest of the world (Charvet and Kaczynska-Nay 2008, 42–78). Or is it a disruptive event, one that grows out of a movement advocating for international human rights in opposition to an international order dominated by the inviolability of state sovereignty?[9] If so, the UDHR is a central chapter in the story of the revision of the European international order, where sovereignty is tamed through international organizations and treaties that articulate universal human rights as a central pillar in a new international legal order (Afshari 2007, 6–9).[10] Or, finally, is the UDHR a milestone in the development of democratic politics, in which social movement use human rights to challenge established authorities? Histories of popular political movements, working to realize a variety of political goals through universalist appeals suggest that the UDHR can be seen as emerging from a plurality of disparate developments that nonetheless form an identifiable tradition of democratic transformation (Lauren 2003, 37–70; Korey 1998, 29–50; Kurasawa 2007, 1–22). These different ways of constructing the history of human rights depend on how we understand human rights.

The dominant account, leading to the view of the UDHR as a foundational moment of consensus, has been one of an expansive history of moral universalism that culminates in the utopian project of human rights in the twentieth century. A more skeptical reading suggests that human rights are far newer and break with past legal and moral traditions in the post-WWII era. Both readings, however, are tied together by a legislative understanding of rights. In adopting an agonistic understanding of human rights, I want to suggest that the diverse histories we tell are the result of the ambiguity of the idea of human rights itself. The ambiguity of human rights is not unique, as a matter of its historical development, but acknowledging and even affirming that ambiguity in our normative conception of human rights is a distinctive aspect of an agonistic approach. Further, the plural ways we can represent the history of human rights shows how the

concept is contested and always political. The reading of the UDHR I develop here is not only concerned with the use of rights to further democratic politics, which it supports, but also with the contradictory uses and consequences of human rights claims.

Whatever historical understanding of rights we take up, the specific concept of international human rights only begins to feature in modern international law in the late 19th century, most notably in the Geneva Conventions addressing the lawful treatment of wounded and captured combatants, as well as non-combatants and civilians. An explicit internationalist agenda, aimed at undermining the traditional balance of power system emerges as a significant political force after the First World War (WWI), and while they were not formal human rights organizations, the League of Nations and the International Labour Organization did express concern for the rights of individuals and peoples as an important part of maintaining international peace (Lauren 2003, 71–102; Burgers 1992). In the inter-war period and during the WWII the idea of human rights, and specifically an international law of human rights, gained momentum among intellectuals, activists and civil society organizations. Numerous associations, including labor unions, religious societies and political campaigns, embraced the idea of an international law of human rights and pushed reluctant states to uphold them. For example political groups such as the Commission to Study the Organization of Peace and the American Association for the United Nations, as well as religious groups like the Federal Council of Churches and the American Jewish Committee actively worked to include human rights in the UN Charter (Korey 1998, 30–33). Labor organizations were active early on, including the American Federation of Labor, which submitted a draft declaration to the committee that produced the UDHR (Morsink 1999, 168–169). Individually, H. G. Wells, Franklin and Eleanor Roosevelt, Jacques Maritain, W. E. B. Du Bois and Kwame Nkrumah were influential public intellectuals calling for human rights at the time, though ranging in their views from utopian socialism to Pan-Africanism (Lauren 2003, 147–154). The idea of human rights gained a degree of plausibility and acceptability among governments as well, and not just among the major Allied powers using them to justify their war with the Axis powers (Lauren 2003, 136–146 and 154–165).

In particular, Latin American countries were early supporters of the development of international human rights law, as well as former British colonies such as Australia and New Zealand (Lauren 2003, 166–177). Also, the ongoing anti-colonial and nationalist struggles were supportive of efforts to affirm the right of self-determination as a central human right (Morsink 1999, 92–129).

Focusing on this immediate context, in which the UDHR emerges as the first official and global human rights document, explains the institutional form that the post-war human rights movement took and the lasting significance of the UDHR. As the UN became the primary international organization for the creation of a reformed international politics, it likewise became the institution within which human rights laws would be drafted and agreed. As important as it was, this nascent movement to institutionalize international human rights through the UN, in hopes of taming the existing system of sovereign states, was hardly an uncontested or unambiguous development. Not only was the UN dominated by victorious post-War powers that were broadly supportive of the existing international order (Mazower 2009) and resistant to including human rights in the UN, but the idea of human rights was also marginalised among socialist states (Moyn 2010, 39–41). This meant neither the US nor the USSR was particularly interested in developing an effective international human rights regime. Retrospectively, the UDHR and the human rights system of the UN have been framed as key developments in a legalized and moralized international order – and the post-war period certainly was vital in the development of international human rights law – but this obscures the marginality of human rights at the time.

Along with these traditional understandings of human rights, as both marginal to power politics and giving rise to a new legalized order, the discourse that emerged around universal emancipation enabled a plurality of political movements that were potentially more disruptive. The human rights discourse informed movements that took aim at deep-seated and wide-spread patriarchy, racism and imperialism, which were insufficiently addressed even by the more utopian aspirations of the UN system. This broader notion of universal human rights was in conflict with the prevailing notion of sovereignty, as well as the more reformist supporters of human rights. The

incoherence of the emergent human rights regime could be taken to reflect the persistent force of statist structures or the politically compromised nature of human rights, but these evaluations persist because it is assumed that true human rights will be coherent, indivisible even, rather than ambiguous and at times working at cross purposes.[11]

The dominant story of both the post-war human rights movement and the founding of the UN is told as a response to the tragedy of WWII. While I do not want to promote the idea that the post-war order was a great victory for the forces of justice and order – a political mythology that is challenged by the injustices sustained and created by this new order (Mutua 2007, 552–557 and 619–629) – I do want to suggest that the war was the event that gave the human rights movement substantial force and made the UDHR a possibility. Certainly, there had been many destructive wars before and WWI had similarly shaken the old Westphalian faith, but the breakdown of international political order in WWII was more extreme, and was part of a massive social disruption in which the Western world found its technology turned against life itself with staggering ferocity, its moral superiority proved an illusion, and its institutions of political authority under siege at home and in the colonized world. Further, the contributions of women and minority groups in the war enabled marginalised populations to gain new experience and knowledge, which gave rise to a desire to see their sacrifice redeemed through political change – as the project of rallying the world in a "fight for freedom" against tyranny inspired those subject to different tyrannies to continue their fight, including African-Americans, Black South Africans, the working class throughout Europe, Latin American states and nations just emerging from the yoke of empire. The old international order was consciously being remade not just by and for the victorious powers, but with the inclusion of many new voices silenced by the previous order.

The Western rights tradition was certainly not the only political and ethical tradition that could have responded to the loss of political legitimacy brought on by the disorder of WWII. Yet, in the context in which the UDHR was written that tradition was dominant. Rights were the currency of social and political reform in European countries – democratic revolutions were fought in the

name of the civil rights; the working classes struggled for labor rights; minorities claimed rights of self-determination and equality under the law; women struggled for emancipation using the vernacular of rights (Ishay 2008, 85–172).[12] This is not to suggest that all struggles for social change were expressed in a language of universal or human rights, but it is important to note the historical dominance of the rights tradition within powerful states and that the idea of universal rights spread and pluralized rapidly. Where white, Christian, middle-class, property owning men demanded political and civil rights in the French revolution, suddenly Catholics, Protestants, Jews, Women, ethnic minorities and the "lower" classes were making their own claims in the name of human dignity (Hunt 2008, 146–175).[13] A similar process began during and after WWII among disadvantaged groups in Western states and among colonized peoples (Lauren 2003, 147–154). This should not, however, imply that a single set of universal human rights was being progressively realized, rather it demonstrates the persistence of exclusions within expressions of human rights, and the contestation of those exclusions. The development of human rights has often been played out as a struggle of the oppressed or weak against established powers, but overcoming exclusion or marginality is always a fragile achievement, as the powerful are able to co-opt or rollback social change (Stammers 2009, 160–189). This is true of the UDHR and the international human rights regime it helped initiate, as powerful states and international actors can make use of the language of rights as often as the marginalized – suggesting that we need to be attentive to the ongoing politics of human rights.

The actual drafting of the UN Charter challenges any sense that the human rights vision was dominant in post-war politics; rather it was surprising that the call for universal rights was given as much space in the charter as it received. In San Francisco, the influence of smaller powers, prominent individuals, emerging NGOs and public opinion proved sufficient to give the idea of universal rights an ambiguous but prominent place in the new charter. Along with the efforts of those at the conference in San Francisco, a conference of twenty-one American states held before the UN drafting convention expressly opposed the Dumbarton Oaks agreement and sought to

include human rights in the new UN Charter (Lauren 2003, 170). Three of the participants in the Inter-American Conference on War and Peace – Cuba, Chile and Panama – provided early drafts for a human rights declaration they hoped to see taken up by the UN (Morsink 1999, 2). The rights movement, however, was marginalized in the structure of the new agency – relegated to the Economic and Social Council (ECOSOC) it seemed highly unlikely that human rights would emerge as an institutional and political force sufficient to challenge the five permanent members of the Security Council.

The drafting of the UDHR started shortly after the UN charter came into effect and took place over two years. The initial process was characterized by a great deal of disagreement over what sort of action the new UN Commission on Human Rights (UNCHR), created within ECOSOC, should undertake. Recommendations were made for a declaration of common principles, for a legally binding international bill of rights and even for a complementary international human rights court (Morsink 1999, 12–20). To address the question of what kind of document or institution to produce for the UN system, the UN Educational, Scientific and Cultural Organization (UNESCO) conducted a survey of prominent thinkers from around the world on their thoughts regarding human rights (Glendon 1997, 1155–1157). Along with the UNESCO project, the Drafting Committee of the UNCHR was inundated with suggestions and drafts for an international bill of rights (Lauren 2003, 119–211; Morsink 1999, 1–4). Latin American governments submitted important drafts, with the draft from Panama proving influential, and also the American Law Institute produced a draft declaration and a number of important studies related to the issue (Morsink 1999, 5–6).[14]

The declaration itself is properly seen as primarily the work of two men. John Humphrey, an international lawyer from Canada who served as secretary for the UNCHR, produced the initial draft. He drew on the hundreds of pages of material submitted to the UNCHR, a survey of existing national constitutions, and included an extensive bibliography of sources (Morsink 1999, 28–35).[15] René Cassin, the French representative and also an international lawyer, then used this draft to

produce the document that was used in further deliberations. The final document is structured so that key principles that apply to the whole document, namely its universal and equal application to all people regardless of their political status, appear first. The different rights are then articulated in groups, with political, civic, economic, social and cultural rights all appearing in turn. The final provisions then underline the intentions of the document by stating a general right to a secure and peaceful international order (Glendon 1997, 1162–1173).

With a clearer sense of the ambiguous historical development of human rights and the specific context in which the UDHR was drafted, we can analyze the drafting process as a unique moment in the development of human rights, in part consolidating a diffuse ideal, while also setting the stage for further contestation and development. In the following two sections this is done by focusing on two key debates, first, on the meaning of human dignity and, second, on the nature of the political transformation human rights implied for international politics.

3. Contested Dignity, or, Where Agreement Stops and Politics Begins

The idea of human dignity is central in the UDHR. Parekh sums up the issue, saying 'Ultimately the assumption of the natural dignity of human being became part of the UDHR despite the attempts by the drafters to keep the language neutral on this topic.' (Parekh 2007, 763) Supporter and critic alike agree that "human dignity" in the UDHR points to the essential human characteristics that give rights their authority, where they part company is on whether a neutral and consensual definition was achieved – or is possible at all. There are two problems with this understanding. First, the focus on a neutral account of dignity, or its absence, is required by the legislative understanding of rights, which sees them as moral principles that determinately limit the boundaries of politics. If we reject this view in favor of an agonistic one, then the contestation over, and ambiguity of, human dignity is as important as the consensus, or lack thereof. This highlights the second problem with conventional understandings of human dignity in the UDHR: they only focus on those elements emphasizing the need for, and achievement of, consensus – leaving the contest over the meaning of dignity under-examined. In this section, I focus on why the drafters

thought human dignity was so important to the UDHR, as well as how they disagreed about the meaning of dignity, which suggests that rather than achieving a consensus, the UDHR is an early opening in an ongoing discussion of human dignity and its significance in world politics.

Reading histories of the UDHR, and transcripts of the drafting process, one is struck by how long the drafters spent suggesting, debating and revising individual articles. Yet, an important philosophical conversation prefaced this practical work and constantly re-emerged. As P. C. Chang, the primary Chinese representative, stated in a meeting of the UNCHR intended to define their task, 'I am afraid when we are asserting rights, rights, and rights, we are apt to forget the standard of man. It is not merely a matter of getting things, getting things, but also: what is the objective of being a man?' (UN Commission on Human Rights 1947b) The discussion of human dignity was seen by many of the drafters to be a vital part of the declaration, for it served as justification in the preamble for the rights articulated. While others, notably Colonel Hodgson, representing Australia, and Hansa Mehta, representing India, were critical of the extended philosophical debates that were had throughout the drafting process. Yet, despite trying the patience of some, there was an overall sense that these philosophical issues mattered. Charles Malik, of Lebanon, responded to Mehta's impatience with philosophical talk by underlining that ideology informs all thought and insisting that the UNCHR deal with such matters in the open.

> Then, the honourable representative from India said that the Charter already contains a mention of human dignity and worth and that we should not enter into any ideological maze in our discussion here. Well, unfortunately, whatever you say, Madam, one must have ideological presuppositions and, no matter how much you fight shy of them, they are there and you either hide them or you are brave enough to bring them out into the open and see them and criticize them. Furthermore, it is precisely my intention to give meaning to that vague phrase, human dignity and worth, which is used in the Charter to give it content and, therefore, to save it from hollowness and emptiness. (Charles Malik quoted in UN Commission on Human Rights 1947e)

The discussion of dignity was important in revealing the different views of why human dignity justified the new human rights declared, but it did more than that. By focusing the drafters on the task of, as Chang put it, 'making the standard of man respected,' (UN Commission on Human Rights 1947b) the focus on human dignity clarified the problem they were addressing. The

declaration of these new human rights was intended to affirm universal moral principles for international politics based not on the authority of states but the value of human dignity. Early on Chang grasped the novelty of what they were doing, saying, 'we are dealing with something which has not been dealt with before, namely the international aspect of equality.' (UN Commission on Human Rights 1947e)

While it is possible to overstate the importance of Nazi atrocities to the UDHR drafting (Waltz 2001, 53), the wider context of WWII was the immediate backdrop. In particular, there was a sense that the defense of human dignity provided by a new human rights institution was called for by the mistreatment of, and extreme demands placed on, individuals (Lauren 2003, 204–205). Assistant Secretary General, Henri Laugier, opened the 1st meeting of the UNCHR with a clear evocation of this purpose:

> With your boundless devotion to the cause of human rights and to the cause of the United Nations, let us here gather strength for our fight from the recent memory of the long darkness through which we have come, where tens of millions of human beings died so that human rights might stay alive, from the memory of all those men and women who have found in their dignity alone the strength to sacrifice their lives in order, obstinately, to proclaim, amidst the depths of surrounding darkness, the presence and the permanence of the stars. (UN Commission on Human Rights 1947a)

The work of defending human dignity was seen as a deeply moral task demanded by concrete political tragedy. In particular, there was a sense that a common humanity had to be affirmed and that individuals protected from the power of the state. Cassin expressed these commitments often:

> We have seen and lived through a period when human society has been practically destroyed by the application of a concept of race, or concept of the nation, or concept of the volk, I will call it; and it is a most important fact that we should have lived to see this possibility of men crushing and denying the rights of man, both as communities and as individuals. I think we must insist upon this fact: that we must finally reach the fusion of the idea of man as a community and man as an individual. (UN Commission on Human Rights 1947b)

> The State, in other words the collectivity, has asked the maximum from millions of people, the greatest thing they could offer - their lives. (Drafting Committee 1947f)

The sacrifice demanded by the state played a key role in understanding both rights to membership and welfare provisions as central to human dignity.[16] This is important because the discussion of human dignity was not simply an abstract philosophical discussion, but a form of practical moral reasoning at work, articulating a moral ideal to guide political change. Human dignity was defended against a backdrop of real offenses – all encompassing interstate war, mass slaughter, enormous civilian casualties, nationalist and racist ideology, statelessness, economic depression – and the debate reflected that situation even as it revealed a pluralism of views on how to address it.

Malik, Chang and Cassin are widely considered to be the primary intellectual forces involved in the drafting (Glendon 1997, 1157–1159).[17] This, however, did not mean they were of one mind on the meaning of human dignity. In an early UNCHR meeting, Malik focused on dignity in terms of conscience, defined as the ability to change one's mind:

> If we have any contribution to make, it is in the field of fundamental freedom, namely, freedom of thought, freedom of conscience and freedom of being. And there is one point on which we wish to insist more than anything else, namely that it is not enough to be, it is not enough to be free to be what you are. You must also be free to become what your conscience requires you to become in light of your best knowledge. It is therefore freedom of becoming, of change that we stress as much as freedom of being. (Malik 2000, 16–17)[18]

This led him to focus on the protection of persons from the power of the state, to accord a special place to civil society, and to support the preservation of space for free thought, opposition and even rebellion against established authority (Malik 2000, 26). Further, he was among the strongest advocates of human rights because he thought they ensured that the people determined the state. 'We intend to say that the people are active and take the initiative in the determination of the State. It is not as though you come to the people, offer them something, and they consent to it. It is our intention that originally the people, themselves, take the initiative in determining what the state should be.' (Drafting Committee 1947f) So, while it is accurate to point to Malik's emphasis on 'natural rights', we see that his understanding of their justification was hardly orthodox and attempted to preserve, in the concept of human dignity, what he saw as essential in human being *and* becoming.[19] There is a tension in Malik's view, or perhaps blindness, in asserting that the most

important freedom to protect is a person's freedom to change and become, while also asserting that we can build a social order upon man's essential nature that does not limit that very freedom. Yet, despite his essentialist rhetoric, Malik continuously put the protection of the freedom of the person into the context of his times.

> Who is this person? This person, Mr. President, is the living, dying man who suffers and rebels, is scared, is often undecided, makes mistakes, the man who thinks, hesitates, decides, and gossips, and who needs to be lifted when he falls. It is the being even who blushes, laughs, and changes his mind when he knows better. This being, Mr. President, in his own personal dignity and self-respect is in danger of being drowned and obscured by political and ideological systems of all sorts. (Malik 2000, 60)

Whatever the consistency of his metaphysical beliefs about human nature, Malik's defense of human rights was based on an opposition to forms of social order that failed to respect persons as feeling, thinking and creative beings increasingly subject to the power of the nation-state, at the cost of intermediate ties, and devalued by contemporary conditions and ideologies.

Along with Malik, Chang was probably the most philosophically inclined participant.[20] In addition to clearly articulating the task the drafters had before them in terms of human dignity, Chang also made important contributions the idea as it developed in the UDHR. His primary thought was that conscience, as an essential aspect of dignity, involved what he called 'two-man mindedness.' (Drafting Committee 1947d) The idea of two-man mindedness implies sympathy as fellow feeling, but also something deeper and more demanding, what Chang described as 'extending our consciousness to others.' (Drafting Committee 1947d) This involved both recognition of mutual duties between all human beings and respect for the values of others. 'The definition of man is to be human-minded – namely, that whatever he does, he thinks of the other person as if the other person were in his place.' (UN Commission on Human Rights 1947b) This entailed not only the acknowledgment of a common humanity, but also an insistence that two-man mindedness enabled understanding across cultural barriers and could inspire consideration for others. Chang, for example, insisted that reference to a monotheistic deity be kept out of the document, as this would undermine its potential universality for non-theists (Glendon 2006, 47).

The idea of two-man mindedness develops dignity in a different way than Malik's notion of conscience, as Chang points to an orientation that individuals should, and can, take toward their relationships with others. This involves, as he said, 'the feeling of the sense of human dignity in the individual, that is, as an individual feels when he thinks of equality. He feels that he is as good as anybody else'. (UN Commission on Human Rights 1947e) This idea goes beyond the recognition of equality to suggest that the individual must see from the perspective of others. Therefore, along with asserting the freedoms and rights of the individual, the consideration of human rights requires determining the social ties and obligations that exist internationally. The practical consequences of this in the UDHR included recognition that individuals have obligations to the community and that states retain a degree of privilege as the political embodiment of distinct ways of life, which was reflected in several articles and shared by a number of those involved in the drafting process. Ronald Lebeau, from Belgium, supported Chang's focus on both individual freedom *and* duty (UN Commission on Human Rights 1947c). 'In the eighteenth century the human being was the individual whereas in our opinion, the human being nowadays is the person who participates in the normal life and existence of society.' (Ronald Lebeau quoted in UN Commission on Human Rights 1947c) Also, General Carlos Romulo, from the Philippines, shared a concern to 'take into account all the different cultural patterns there are in the world, especially in respect to popular customs and legal systems.' (UN Commission on Human Rights 1947c)

Cassin was the third major intellectual figure among the drafting committee.[21] While he often expressed his agreement with both Malik and Chang, his words reveal that he had his own particular views. More than perhaps any other participant Cassin felt the UDHR must respond to the horrors of WWII and ensure dignity by affirming the oneness of humanity and guarantee the *legal personality* of every individual:

> But the fundamental that there is a unity in human society, society composed of human beings which can be compared to one another, which has the same natural aptitudes whatever this would be, this is the most important thing which must be placed in our resolution. (UN Commission on Human Rights 1947e)

> This is a point which we have not yet examined and I think it is appropriate. Since we are studying the fundamental rights of man, to state that not only must everybody be free physically, but to state also that every human being normally possess rights and obligations, and, therefore, has "legal personality." (Drafting Committee 1947e)

While he affirmed Chang's notion of two-man mindedness by asserting 'that idea of reciprocal duties is at the foundation of the concept of fraternity,' (Drafting Committee 1947d) one wonders if it contained the same sense of struggling to extend one's consciousness to understand the perspective of another. Cassin's further remarks suggest he was less aware of, or concerned with, how a universal account of human dignity might impinge upon otherness. The violent particularlism that characterized WWII was at the forefront of his mind and while he argued that 'it is quite obvious that we cannot, in our International Organization, affirm or assert concepts or ideas which would be special to any one nation or to any one category of man,' (UN Commission on Human Rights 1947b) he expressed little doubt that each individual must hold their universal rights, which could be agreed upon without any imposition, as a recognized legal person before a representative political authority.

It is perhaps Cassin's familiar grounding in a liberal universalism that has lead many to see the entire UDHR as a "Western" project. This does a disservice to Cassin's thought, as he was remarkably cosmopolitan in his view, asserting that human rights break open the state, exposing it to scrutiny and interference. Further, he modulated the very French idea of "Fraternity" into a global register, looking beyond the national republic to a human community that must be protected through the establishment of international legal rights. Other liberal members also shared his individualistic view. Charles Dukes, the British representative, stated that 'the British conception of human rights rests fundamentally on a belief in the dignity and importance of the individual man. It is a conception which the United Kingdom will always defend.' (UN Commission on Human Rights 1947b) Dr Jose A. Mora, from Uruguay, echoed this sentiment, arguing that the individual should be placed at the centre of international law in order to undermine the absolute authority of national sovereignty (UN Commission on Human Rights 1947b). Likewise, Eleanor Roosevelt

spoke in individualistic terms, though it is worth noting that she, like the other "liberal" representatives, were concerned with economic and social rights as well as civil and political ones, taking it to be central to the dignity of individual that a person had health, welfare, food and income.[22]

It becomes clear in examining the debates over the drafting of the UDHR that there was no simple consensus on what dignity meant and that the contesting ideas informed the resulting list of rights – as well as further plans for institutionalization – in different ways. Yet, this contestation did not result in the victory of a single ideological view or the creation of a practical but empty consensus. Instead, we see a vigorous debate in which key lines of thought emerge that played crucial roles in the development of human rights. There was an agreement WWII, taken as a diverse experiential whole, revealed a grave threat to human beings in the forms of deprivation, war, murder, expulsion and statelessness – and, importantly, the state was inadequate to the task of preventing these abuses, and was in many cases a direct perpetrator of them. This lead to a common commitment to a shared humanity, yet even this common picture of human dignity was painted in many hues. Also, there was a shared sense that new political institutions were needed to protect people from the power of the state, again for many different reasons and leading to different suggested reforms, examined in more detail in the next section. Attending to the ambiguity of these early debates gives us more than a richer history of the ideas that motivated the early stages of the human rights project, they also provide an impetus for reconsidering how ethical and political theory relates to such events. It is all too common to read the lack of consensus as a failing, or part of a process that, ideally, will lead to consensus – this tendency comes out of how we understand human rights. The effort to capture a sense of the debates over human dignity highlights the value of an agonistic perspective, as we can understand that contestation in ethical terms.

4. The Shape of Politics to Come: International Order and Human Rights

The second aspect of the drafting I consider is the self-conscious reconstruction of the structure of world politics that the participants took on. This was an unavoidable feature of their

work, as articulating an international set of human rights necessarily implied that new demands would be placed on all states. Therefore, the fundamental distinction within legal and political thought between domestic and international spheres was thrown into question. Yet, even though addressing this question is necessary to the idea of human rights, the debates during the drafting of the UDHR did not lead to one comprehensive set of reforms. Conventionally, the story told about the place of human rights in the immediate post-war era is one of political weakness. Not only was the inclusion of human rights in the charter of secondary concern to the major powers, but also the emerging Cold War rivalry marginalized human rights within the UN (Lauren 2003, 233–270). These accounts are accurate so far as they go, but they are importantly retrospective and I am interested in how the drafters understood their role in reconstructing international politics, separated from their eventual ineffectiveness. The appeal to the UDHR as a founding document for a still emerging international human rights regime is one-dimensional and ignores plural lines of possible development. Revisiting these debates, however, also undermines an account that sees human rights as marginal to international politics or only the tool of powerful states – the conceptual power of human rights is beyond such easy control.

Perhaps the most surprising thing about the debates that lead to the UDHR, especially given conventional criticisms that human rights were marginal to the UN, is that the participants in the drafting process acknowledged that declaring and institutionalizing human rights was a necessary part of the post war reconstruction. Also, there was a clear recognition that such a reconstruction would undermine conventional notions of state sovereignty and that the international community had a newly articulated duty of concern for individuals. These facts were seemingly taken as given starting points. Where there was disagreement was over what the practical implications of this shift in focus to individuals would be, and how far the traditional international order would be (and should be) undermined by a declaration of human rights. Important points of contention were on the necessity of an international court of human rights, the legal implications of a binding convention,

the direct reporting of human rights abuses to the UN and whether UN human rights institutions would be staffed by state representatives or independent individuals.

Hodgson and Mehta were strong advocates for a human rights court. They saw that such a court was essential to establishing an effective international bill of rights (UN Commission on Human Rights 1947c). Cassin, likewise, was a strong supporter of supra-state legal institutions that would confirm the international legal personality of the individual. During the first meeting of the UNCHR it was decided that the work of the Commission should focus on three tasks: drafting a declaration of principles, drafting a binding convention, and finally drawing up provisions for the implementation of human rights – this final task was the least successful (UN Commission on Human Rights 1947f).

The opposition to a human rights court (or other strong independent institutions for enforcement) was varied. It is easy enough to read the opposition of the UK, USA and USSR as being concerned with preserving their dominance by affirming state sovereignty over individual accountability. Yet, in each case there was a principled case against such a court. The USSR was most opposed. They not only rejected the creation of international legal institutions that would place the rights of the individual above those of the state in international law, but cogently pointed to the danger that such a move would institutionalize a standard of civilization that would recreate the logic of imperial and colonial authority, recently and partially discredited, only now expressed in terms of individual rights (Vladimir M. Koretsky quoted in Drafting Committee 1947b). The USSR was hardly alone in its concern that a strong international rights regime would be dominated by Western powers, potentially threatening international stability and undermining the right to self-determination of smaller and newly liberated states. Chang and Romulo were both hesitant to embrace a comprehensive international legal regime, and even Malik was keen to emphasise the protection small states needed, giving special emphasis to the right of self-determination for peoples in the UDHR (Drafting Committee 1947b; Drafting Committee 1947c). The UK and US were obviously less motivated by a fear of colonial imposition and rather more concerned with the

danger of weakening the authority of the state as the most effective and appropriate protector of individual rights, though they supported the idea that human rights provided a universal standard for the legitimacy of states.

While it is correct that the inclusion of human rights in the UN marked a dramatic change in the concern for individuals, and their rights, in international politics, the controversies that the question of enforcement generated reveals the politics of human rights present at the drafting. Attending to these disagreements is valuable, not only does it better inform our account of the early human rights regime, but it is telling for the contemporary regime as well. Hodgson, Mehta and Cassin were correct that international institutions were needed to enforce human rights effectively, and the creation of such institutions in recent decades is widely considered a positive development. Yet, the worries expressed by socialist states and newly liberated ones remain important, as the institutionalization and enforcement of human rights take place in a political arena with great power disparities. Then, as now, the desire to protect individual rights cannot be separated from more partial political interests.

Early during the first meeting of the Drafting Committee a distinction was made between a declaration and a convention. This was done to overcome questions regarding the legitimacy of the committee writing a binding legal document, with the USSR being skeptical of its authority to do more than recommend articles for discussion and seeking clarification of whether the representatives were obliged to express the official position of their government.[23] Other major powers were also cautious in establishing a binding legal document that infringed on state sovereignty. The US position, for example, was complicated by Roosevelt's personal support for strong human rights institutions and official US hesitance to agree to a document that defined state obligations beyond those in the UN charter (Glendon 2006, 71–72). Smaller states were concerned with the potential effects of a human rights treaty that would alter existing international law. In discussing the work to be taken on by the Drafting Committee, Dr Ghasseme Ghani, the Iranian representative to the UNCHR, worried that a strong human rights document could undermine the

stability of the established system (UN Commission on Human Rights 1947b). These concerns led to the decision to prepare both a declaration of principles and a convention, implying different procedures reflecting the different status the documents would have.

Those countries favoring a legally binding document tried to give priority to the drafting of a convention. Hodgson and Mehta were strong supporters of a convention, as was the UK, represented by Dukes and Geoffrey Wilson, both of whom were keen to specify any declared rights in order to clearly establish subsequent changes to the legal rights and duties of states.[24] In the end, however, the primary focus was given to a non-binding declaration. The reasons for this were complicated. Partly it was a matter of political expedience, writing a non-binding document proved less difficult, and partly a result of the difficulty of drafting even a declaration that could garner wide support, as the later stages of the drafting of the UDHR proved contentious. Importantly, it was only because the declaration did not require the UCHR to resolve the issue of the legal standing of a convention that it was possible for a widely accepted international document to emerge, as its legal and ethical ambiguity were central to its political success. The surprising value of the UDHR as a statement of principle capable of inspiring further and diverse forms of political action was most clearly perceived by Roosevelt (Glendon 2006, 173–174). For many, this early failure to have an enforceable legal document was a major failing of the early human rights efforts of the UN, yet it also initiated a broader human rights politics in which the ideas and language of rights was taken up in new contexts, making it a more democratic though less binding document.

The other major controversies were over the shape the new UN human rights institutions would take. In particular, there was disagreement over whether the UNCHR should set up mechanisms for individuals to directly report human rights abuses, and over the official standing of representatives in various human rights bodies – whether they would be state representatives or individuals free to express their own opinions and pursue ends set out by the UN human rights mechanisms. What on one level is a bureaucratic debate is also fundamental to the emerging human rights institutions and their degree of independence from state authority.

Roosevelt was a strong supporter of individual reporting mechanisms, motivated by the correspondence she received both as a private individual and as member of the UNCHR. Speaking of communications she had received, she said, 'I am conscious of the fact that human rights mean something to the people of the world, which is hope for a better opportunity for people in general to enjoy justice and freedom and opportunity.'(UN Commission on Human Rights 1947a) For her, and other supportive representatives such as Cassin and Malik, the UN could do vital work by providing a forum for individuals to appeal to when they were abused or neglected by their government. Debates within the UNCHR, however, were rendered peripheral by judgments higher up within the UN structure that determined that communication of any alleged rights abuses would be made anonymous before the UNCHR received them and that the UNCHR could only consult these communications to inform their work, not press for redress within the UN (UN Commission on Human Rights 1947g). This stunted effort at reform was partly inspired by the experience of WWII, where the states had turned against their citizens in horrific ways, but also by a developing sense that responsibilities to fellow human beings suffering in far flung locations required global institutions. This emergent cosmopolitan structure, however, did not survive the early debates and the new human rights institution deferred to state authority, a compromise fully institutionalized in later conventions in which monitoring was done through country reports prepared by state authorities then passed on to the UN.

The debate over representation risks seeming even more arcane, but it was a key issue. In the early sessions of both the UNCHR and the Drafting Committee there were many questions regarding the status of representatives, did they represent themselves or their government. Further, the question of who could be involved in the drafting of human rights documents was raised, particularly, whether outside experts or UN officials not representing governments could draft binding documents. It was decided that they could be consulted but authority rested solely with state representatives. The USSR was particularly emphatic, though the US shared this view (which complicated Roosevelt's own position). Further debates were over who would participate in the

human rights institutions that were being set up. Malik and Cassin, in particular, were supportive of having individuals capable of expressing their own views in these institutions, as well as the inclusion of experts and relevant organizations.[25] Again, these matters of procedure would have major effects on the kind of institution the UN became and how much power the suggested human rights standards would have. The interests of state sovereignty won this struggle as well and further entrenched a UN approach to human rights that was dominated by the rights of states, but the contest was hardly decisively ended – the UN has since adopted reforms to include non-state representatives and to improve their responsiveness to abuses reported to its various human rights bodies.[26] At the same time, these debates illustrate the depth of the divide between different understandings of human rights – between those that preserve the authority of states and those that seek an international politics defined by individual rights – and that they may be irresolvable, suggesting that a more global human rights regime must involve a profound political transformation unlikely to come about through moral suasion or piece-meal change.

While the success of more fundamental reconstructions of international political order was limited, small and important changes were made. Further, the contests seen in these early debates have continued to be important for the development of human rights. Two key changes are worth focusing on. Whatever the failings of the early human rights institutions and documents to overcome the priority given to state sovereignty, there was a revolutionary change simply in giving international legal status to individuals. Cassin was the most clearly aware of the significance of this change, and the most vociferous advocate of institutionalizing it. Also, the legal person that emerged was defined as importantly equal; the significance of the focus on non-discrimination in the UDHR, at that time, is hard to overestimate. Not only was it a response to the racist ideologies of the defeated Axis powers but it challenged a variety of practices that embarrassed the victorious powers as well. The UDHR's insistence on non-discrimination gave support to the decolonization movement, bolstered women's rights movements, challenged racist policies in South Africa and the Unites States, and empowered those opposed to nationalistic politics. While the legacy of this

institutionalized legal individual is not purely positive, these changes were historic and altered international politics in profound ways.

Also, the UDHR enshrined the equal sovereignty of states, while also making respect of that sovereignty dependent upon respect for human rights. At the time these were seen as important victories for colonies fighting for self-determination and small states, long made insecure by the actions of powerful states. Further, the focus on the conditions of legitimate sovereign authority spoke against the unmitigated power of state officials and was optimistically seen as a challenge to despotism, totalitarianism and systematic forms of oppression and deprivation. However, it is important to appreciate the sorts of politics it was thought would invalidate a state's sovereignty at that time. Those involved were concerned with the systematic forms of abuse enabled by the notion of absolute state sovereignty and the deprivation and insecurity brought about by modern economics and war, these concerns were especially shared by Malik, Santa Cruz and Cassin during the drafting process (Drafting Committee 1947f). This resulted in a focus on political reform in favor of democratic representation, the elimination of oppressive forms of international control (colonial and imperial), the importance of the provision of social and welfare rights, and establishing the guarantee of citizenship. Yet the fact that these reforms were broadly liberal or social-democratic says more about the context of the UDHR as an ethical response to the problem at hand than it does about the essential nature of the idea of human rights.

In the end, my concern is less with the role of the UDHR in establishing the UN human rights regime that actually emerged and more with the sort of questions about international order that it enabled. Two features of this debate are particularly important. First, that this sort of self-conscious reconstruction of international politics is a necessary consequence of human rights as an idea. Cassin was right that giving the individual central importance in international politics, by claiming rights in the name of a common humanity, fundamentally transforms those politics, but the final shape that reconstruction takes is not certain.[27] This is the second feature of the debate I want to emphasise: the victory of state interest in the early period and the revitalization of UN

human rights institutions after the Cold War were not necessary developments. This is a particularly important point for human rights supporters that see the UDHR as a foundational document upon which a grand edifice has progressively been built up – our current human rights politics is not the unfolding of some process begun in 1948. Its development is clearly influenced by the ideas and institutions that did emerge, but the opening for reconstruction created by human rights does not close. Just as the debate around dignity is ongoing and developing in diverse ways, so to is the human rights politics that was begun in earnest with the drafting of the UDHR.

5. Conclusion

Looking to the historical origins of human rights – both as a broad tradition of political thought and as a specific international development in the post-war era – suggests that an agonistic understanding of rights is in some measure plausible and also that it allows us to rethink conventional understandings of human rights. The key lines of inquiry developed here, looking to the plurality of values that are supported by an appeal to human dignity and the different lines of political development it enables, suggest that human rights remain an ambiguous political project, as much as a singular and utopian moral vision.

For those that are critical of the Western origins of human rights – the negative effects of which are exemplified in coercive practices of intervention justified as securing human rights, hierarchical relationships justified in terms of development and good governance, and the privileging of a individualistic liberal subjectivity over all others – rereading the history of the UDHR should give pause to any impulse to simply reject human rights. Acknowledging that human rights open up a discourse over the significance of humanity as a political identity and confront us with the challenge of creating a legitimate order in world politics also acts as an invitation to join in that contest and not to cede the emancipatory potential of human rights to dominant powers. Upendra Baxi warns that '[n]o contemplation of open and diverse human rights futures may remain innocent of their many histories,' which suggests that understanding human rights as an always-

contestable project undermines the myth 'that human rights traditions are "gifts of the west to the rest."' (2007, xxix)

Human rights advocates, on the other hand, should be cautious of their own capacity for myth making, especially if human rights politics are to retain their capacity to challenge existing power. The promise of a remade international politics that places the protection of individuals at the centre of legitimate authority is hardly a dream realized and the Janus-faced embrace of human rights by dominant states risks the dangers of institutionalization, highlighted by Neil Stammers (2009), in which the transformative demands of rights are reduced and made acceptable to existing power. Along with a wariness of established powers keen to make strategic use of human rights, we must also be alive to the danger of a lack of self-reflexivity in supporting human rights. Returning to the controversies surrounding the UDHR, and understanding those contests as the start of a new human rights politics rather than a founding moment, suggests that we need to attend to the fact that each articulation of human rights standards creates exclusions at the same time, such that a liberal human rights vision, for example, may run counter to the vision of human rights inspired by socialist aspirations or the struggles of indigenous peoples. Whether we see the pre-eminence of human rights as a negative or positive development in international politics, reading the drafting and adoption of the UDHR as something less than the very beginnings of contested and diverse political project does a disservice both to the potentials and the risks in supporting human rights.

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[1] What I am terming the legislative conception of rights is a generalization of a number of different accounts of what human rights are and how they are justified, but which share a common logic in their justification – namely that of a moral authority outside of, and above, politics that gives legitimacy to the law and its enforcement. See Michael Walzer's work (Walzer 2007, 1–21) for a similar account of this legislative conception of rights.

[2] Agonism is most basically the idea that politics and ethics are defined by the persistence of disagreement, which means that conflict is inherent part of social life – the challenge of agonism is to create a politics and an ethics in which conflict is transformed into contestation between parties that can nonetheless coexist – what Ernesto Laclau and Chantal Mouffe characterize as the move from antagonistic to agonistic relationships (Laclau and Mouffe 2001; Mouffe 2011). In the realm of rights, an agonistic understanding focuses on the plurality of moral claims that we can make on political authority (Connolly 2005) and the ongoing democratic contestation that those rights are a part of (Honig 2009) – this involves moving away from Ronald Dworkin's influential notion of rights as trumps (Dworkin 1978), to a conception of rights as ethico-political claims that make and remake both the institutions of political authority and the contours of the political community.

[3] See Reinbold (2011) for an examination of the history of the UDHR that understands the core idea of dignity as a founding myth that justifies the political practice of human rights. In contrast, Morsink (1984) offers a more conventional philosophy of human, which is importantly linked to how we understand the history of the UDHR. Moyn (2010) focuses on the distinctive nature of international human rights, in contrast to previous moral universalisms,

natural rights and constitutional rights. The key point is that that no historical study of the UDHR is innocent; what we find, and how we understand what we find, depends on what we think human rights are to begin with.

[4] I am not making the claim that any of the drafters were themselves thinking agonistically about human rights, and certainly not in the specific terms I outline here – though some were clearly more attentive to the partial and contestable nature of the human rights projects than historical readings influenced by a legislative conception of human rights fully appreciate. The claim I am making is that attending to the details of the drafting process helps us understand the contestation at the heart of the human rights project, which can be recovered by thinking about rights in agonistic terms.

[5] The most successful and historical of these studies is Lauren (2003). A less historically compelling study with an emphasis on the continuity of moral universalism and human rights is Ishay (2008).

[6] Exemplars of this approach include Moyn (2010), Hunt (2008), Morsink (1999), and Wasserstrom, et al. (2007).

[7] Moyn (2010), for example focuses on the distinctive challenge to state sovereignty that becomes central to human rights thinking from the 1970s onward and therefore emphasis the development of human rights in the late 20th century.

[8] Lauren's *The Evolution of International Human Rights* (2003) is the most comprehensive and convincing statement of this position.

[9] This account is made in compelling fashion in Moyn' *The Last Utopia: Human Rights in History* (2010).

[10] Also, see Philpott (2007, 17–37) and Brown (2002, 19–56).

[11] It is this reading that leads Moyn to argue that human rights do not come into their own until the end of the twentieth century (2010, 173–175), as a truly international human rights regime must necessarily be opposed to the dominance of state sovereignty as a principle of international order..

[12] Also see Afshari (2007, 9–35), although he is keen to point out these domestic and single-issue rights movements were qualitatively different from the idea of human rights. On the development of women's rights, see Fraser (1999).

[13] This process is very well illustrated in Hunt's analysis of the case of the French Declaration of the Rights of Man.

[14] Also, the American Law Institute published its work as Lewis and Elingston (1946).

[15] This account has served to establish Humphrey's vital role in the drafting in contradiction of Cassin's own assertions that he was the chief author.

[16] This connection is made most strongly by Cassin and Hernán Santa Cruz of Chile (Drafting Committee 1947f).

[17] For a detailed account of the drafting process see Morsink (1999, 4–35).

[18] Charles Malik was the youngest member of the Commission on Human Rights and was a novice in diplomatic matters, having only recently been selected as the representative for Lebanon – leaving his previous position as a philosophy professor. While Malik was a Christian, he also strongly identified as an Arab and was particularly concerned with the special threats faced by small states in an international society dominated by powerful states and imperial powers. Educated in the USA and Germany, he completed his PhD under the supervision of Martin Heidegger and Alfred North Whitehead. While he was a strong supporter of human rights and an opponent of Soviet communism, he was not a conventional liberal or Westernized elite – he remained committed to Arab independence and saw himself as a fundamentally religious thinker. For more on Malik's biography and thought see Joe Hoover, "Remembering Charles H. Malik", The Disorder of Things, 9 February 2011, http://thedisorderofthings.wordpress.com/2011/02/09/remembering-charles-h-malik/#more-1873 (accessed 29 March 2011).

[19] 'Obviously, the very phrase means that man in his own essence has certain rights; that therefore, what we are going to elaborate must answer to the nature and essence of man. Therefore, it must not be accidental. It certainly must not be changing with time and place. The Bill of Rights must define the nature and essence of man. It will reflect what we regard human nature to be.' (Malik 2000, 58) In particular, he was keen to emphasize that he was not defending an atomistic or pre-social individualism, but rather concerned with preserving the dignity of persons in light of the power of social and political orders. 'It can be shown that as the masses rose, man, humanity necessarily declined. When you become an atom in a massive ocean of identically like atoms, without structure, without distinction, without ontological differentiation of function, then you lose your sense of essential inalienable human individuality. The international work of human rights and fundamental freedoms is a faint effort to recover this lost individuality, to the end that the individual person should realize his own natural dignity, namely the rights and liberties with which he, as a man is endowed by nature.' (Malik 2000, 135)

[20] Peng-Chun Chang was originally an educator, playwright and literary critic, who earned a doctorate at Columbia University under the supervision of John Dewey. He was involved in the fight against Japan after they invaded China in 1937 and it was during and after the war that he was recruited to the Chinese diplomatic service, first as a spokesperson charged with disseminating information on Japanese atrocities, then later as an ambassador to Turkey and Chile. He was known to be a strong advocate of Chinese culture, keenly interested in cross-cultural dialogue and a committed secularist. Like Malik he was concerned to establish greater equality between states and was deeply affected by Western and Japanese dominance of China. For further details see Glendon (2006, 33 & 132–133). More extensive background on Chang can be found in R. Cheng and S. Cheng (1995).

[21] René Cassin was a secular French Jew who had served as a soldier in WWI before studying law. WWII interrupted his career as a professor of law when he went to England to join De Gaulle's resistance and served as the general's chief legal advisor. His support of human rights was influenced by the murder of many family members by the Nazis

and his conviction that the French rights tradition, focused on the equal legal standing of all citizens, should be expanded to the international levels. See Glendon (Glendon 2006, 61–64). Further details can be found in Agi (1988).

[22] The tenor of liberal or "Western" political thought at this time was very different that what we associate with later forms of philosophical liberalism or political and economic neo-liberalism. The UNESCO (1948) survey on human rights, illustrates this broader intellectual background well, as does the collection on human rights from the American Law Institute (Lewis and Ellingston 1946).

[23] Koretsky, for example, attempted to reopen debate on this point in the Drafting Committee even after the Commission on Human Rights decided that a binding document could be proposed, though it would subject to state ratification. His intervention on this point goes on for 30 pages of the transcript (Drafting Committee 1947b).

[24] Dukes make his position clear in the meeting on 31 January 1947 (UN Commission on Human Rights 1947b), and Wilson gives his support for a binding convention in the meeting on 12 June 1947 (Drafting Committee 1947b).

[25] The debates and votes over the issue can are carried out in across the 10th, 11th and 12th meetings of the Commission on Human Rights (UN Commission on Human Rights 1947c; UN Commission on Human Rights 1947d).

[26] In contrast to Moyn's claim that the human rights project was stillborn in 1948, I would suggest that this analysis highlights the fact that the human rights that state actors were willing to accept and which rights advocates were able to pressure states to accept were different and far more minimal than the reinvigorated account of human rights that emerged in the 1980s and 1990s.

[27] 'I think we must insist upon this fact: that we must finally reach the fusion of the idea of man as a community and man as an individual. There may be important intermediate stages, such as the existence of the state, but I think there is not one state in the world which does not at present recognize the necessity for the observance of human rights.' (UN Commission on Human Rights 1947b)

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