

# Historical Approach on Protected Human Rights

Luísa L. Oliveira <sup>a</sup>

<sup>a</sup> Faculty of Law, Universidade Federal de Minas Gerais, luisalobatooliveira@gmail.com

**Abstract.** Human Rights have, per definition, the intent of being applicable to humanity as a whole. However, their drafting processes did not necessarily presuppose equal involvement of all nations that would later be affected by their positivization. In this sense, this paper intends to analyse which were the values, concepts and definitions that lead to the characterization of the rights today known as Human Rights. To that aim, a review of the literature on the matter was conducted, specially related to the preparatory works and historical background of the drafting of the Universal Declaration of Human Rights. Thus, Human Rights are presently accessed with a political and historical approach, to analyse if and how some specific, notably Western values, were imbued in them during and after their drafting processes. Finally, the present work also analyses the theories regarding the dissemination of Human Rights throughout the globe and how Human Rights treaties were received and into domestic legal systems.

**Keywords.** Human Rights. Human Rights Treaties. Preparatory Works. Universalism. Cultural Relativism.

## 1. Introduction

By referring to guarantees that should be granted to every person regardless of their personal characteristics, such as nationality, gender, ethnicity and religion, Human Rights have an inherent universal goal. Our aim in this paper is to analyze, in light of this reliance on human dignity, which values and definitions lead to the choice of rights to be protected, as well as how their dissemination is received globally.

In this sense, it is important to highlight that we will argue that Human Rights have Western foundations, but we acknowledge that further studies could be developed by analyzing the multiple Human Rights regional systems.

## 2. Historical Approach

### 2.1 Origins of the Concept

The movements towards the establishment of fundamental rights to be globally applied was intensified after the atrocities of the two World Wars, most notably World War II. In this context, this paper focuses on the Universal Declaration of Human Rights (UDHR), which, together with the International Covenant on Civil and Political Rights (ICCPR) and its optional Protocol and the

International Covenant on Economic, Social and Cultural Rights (ICESCR), is referred to as the International Bill of Human Rights [14].

After the World War I, discussion on the recognition of fundamental rights emerged on the civil society and the Institut de Droit International (International Law Institute), an elite of law scholars, drafted the Declaration of the International Rights of Man (1929). Although this document was not a treaty open to signatures, it influenced the future Declaration of Human Rights by proposing provisions like the rights to life, liberty, and property, as well as their subjects as being all persons, regardless of their sex, race, language, or religion [12].

After that, during the Second World War, the Atlantic Charter (1941), adopted by Roosevelt and Churchill, had provisions regarding what would later be known as the right to self-determination of peoples.

Both documents - the Declaration of the International Rights of Man and the Atlantic Charter, the first drafted by a private institute originated in Belgium and the second adopted by national leaders from the United States and from the United Kingdom - directly influenced the future UDHR, both by setting the political arena that made it possible and by addressing some guarantees later adopted by it.

Still during the War, the Declaration of the United Nations (1942) was drafted and signed by thirty-six

States, such as the United States, the United Kingdom, the Soviet Union, China, Canada, Haiti, Cuba, India, New Zealand, and South Africa. Its provisions included independence, liberty, and religious freedom, which should be internationally protected, and a reference to a new international organization, whose establishment would begin in 1944.

After the end of World War II, the international efforts to ensure and maintain peace and international security converged towards the Charter of the United Nations (1945). However, despite several propositions on the matter, notably by Panama and Cuba, the Charter did not include a Human Rights Charter, which would just be discussed some years later.

## 2.2 Selecting Protected Rights

The drafting of the later called Universal Declaration only began with the creation, by Economic and Social Council, of a Nuclear Commission of Human Rights that had six active participants: René Cassin, a Frenchman; Hsia, a Chinese; Neogi, from India; Brkish, a Yugoslavian; Eleanor Roosevelt, from the US and Nicolai Kriukov, a soviet .

The choice of nationalities present was Cassin's suggestion: he proposed the assemblance of experts from Europe, Africa, and Asia, based on the argument that the proposals of a Declaration, one Cuban and one Mexican, were already from the west [12].

After considering the report of the Comission, the Economic and Social Council finally established the Commission on Human Rights and determined it would be composed by political representatives of States instead of individual experts.

Regarding the rights the new Commission chose to protect, one of their basis was Roosevelt's speech about why the Second World War was being fought, given months prior to the USA entering the conflict [9]. As the president of the country at the time, Roosevelt stated the defense of four freedoms: of speech and expression, of religion and worshipping, of want, which meant having economic basic needs met, and from fear, which was related to peace. These freedoms were given the status of principles and compose the preamble of the Declaration. Today they are referred to by scholar as the three generations of Human Rights: civil and political rights; economic and social rights; and diffuse rights regarding the whole humanity.

Furthermore, the Commission relied on several experts' materials, but, according to the Secretary Jonh Humpfrey, the most used one was the Report to the Council of the Institute and Statement of Essential Human Right, written by the American Law Institute [12]. The Secretariat also considered Proposals submitted by the governments from Chile, Cuba, Panama, India, and the United States. The only non-profit organization to submit a draft was the American Federation of Labor. In this sense, a large

influence of Western thinking can be percieved by the countinued reference to North-american and Western European jurists, political figures, and assotiations.

Finally, fifty national constitutions around the World were considered, most of them from Europe and Latin America. Among the countries not taken into consideration there were Australia, Canada, New Zealand, and the United Kingdom, which did not have written provisions. That did not mean, however, a diminishment of the British influence, because it was present in most of the constitutions analyzed, since the English common law had great impact on the earliest fundamental rights adopted at the time of the American and French revolutions, included in the compilation, which, on their part, also influenced other constitutions considered by the Comission [12].

This view demonstrates that the influence of some Western European and North American values on the drafting cannot be restrained to the drafting of the UDHR in itself.

The British and French legal provisions had been disseminated in Latin America, Africa and Asia during colonialism, which, in some countries, was still in force by the time of the UDHR's drafting. And even after that, North American economical and political influency was intensified, specially after the end of World War II. Thus, the process of incorporation of Western values into the legal systems and into the establishment of fundamental rights, in some countries, date back to the historical developments that built national legal systems, marked by colonization or economic influence of actors such as the United States, Great Britain and France [13].

Therefore, despite the participation of representatives of non hegemonic regions on the Human Rights Commission, and of the existence of relative consensus regarding the positivization of Human Rights, some values, due to historical processes, still prevailed during the drafting of the UDHR and the selection of protected rights, which, nevertheless, aspire universalization.

## 3. Culturalist and Cosmopolist

To discuss the possibility of applying Human Rights to every person, two main theories arose: cosmopolitanism and culturalism.

Cosmopolitanism defends the existence of a sole humanity with the common goal of Human Rights and of the principles that come with it, such as peace and freedom. In this sense, every human being, as part of a global community instead of only part of a nation, is protected as a person, not as a citizen [6].

This, however, disregards cultural aspects present on the multicity of cultures that exist globally and

that differ from the main aim of defending said rights, which might foment the hegemony of one sole culture, in the present case, Human Rights [15]. But if, as demonstrated above, Human Rights are mostly influenced by Western values, these would be imposed and should prevail instead of local culture according to the cosmopolitanism.

On the other hand, Culturalism denies the existence of a human nature. This was discussed by Richard Rorty in his article "Human Rights, Rationality and Sentimentality", where he defends the rejection of "any sort of Kantian identification with a transcultural and ahistorical self", that is, of the concept of a sole humanity brought by cosmopolitanism [10]. According to Rorty, every human being should identify with its local culture and be seen as a historical product of it, and the same applies to the rights this person detains. Thus, it can be concluded that Human Rights should, therefore, consider cultural differences and self-determination and therefore should be relativized when going against these principles. Without regarding the merits of this approach in terms of ensuring the effective guarantee of those rights, culturalism can be viewed as a solution to avoid the global imposition of the Western values that Human Rights derive from.

To examine the concrete influence of these two theories on the application of Human Rights, we will observe their usage by the Human Rights Council, United Nations' authority on Human Rights, which refers to them as universalism and cultural relativism.

## 4. Universalism and Cultural Relativism

The Universal Declaration of Human Rights intended to be equally applied throughout the world. During the Cold War, however, delegations from Communist States and from the Non-Aligned Movement, that is, countries that did not support the United States nor the Soviet Union, started to question Western interests on Human Rights [1]. From this discussion arose cultural relativism, whose main historical supporters are China, Colombia, Cuba, Indonesia, Iran, Iraq, Malaysia, Mexico, Myanmar, Pakistan, Singapore, Syria, Vietnam, and Yemen.

After the end of the Cold War, during the XXI century, some of these countries, such as Mexico, while still recognizing having a multicultural background, promoted cultural changes to preserve Human Rights [18]. Some others, like China or Iran, reported facing difficulties in applying Human Rights due to the necessity of considering cultural differences [16][15].

Without discussing the reasons that lead historically relativist countries to be prone to change their cultural aspects to comply with international standards of Human Rights while others call for a

relativization, it is possible to conclude that these rights entail mostly Western European and North American values, which are not necessarily shared by all nations. That, as stated by China and Iran, can lead to difficulties and inefficiency in applying Human Rights treaties internally.

To better analyse that, we will briefly address the processes of national incorporation of Human Rights treaties and some of the alternatives to avoid culture shock.

## 5. Human Rights in National Law

To comprehend the acceptance of rights mostly based on particular values as universal in character, we will address their acceptance and incorporation into national law. It is important to highlight, however, that, since the UDHR was based on several constitutions, which already contained some of these rights, not every guarantee to be discussed was incorporated domestically as a consequence of the Declaration.

### 5.1 Acceptance, Reservations, and Ratification of Treaties

Eric Neumayer's research analyzed the six most signed Human Rights Treaties and observed that reservations are only common in the ones related to women and children and even in these the majority are reservations from specific determinations [8].

This, however, already stresses the discrepancies between Human Rights and some cultures. Saudi Arabia, for example, refused to implement provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) that were not in accordance with the Islamic Shariah. In addition, Brunei, Djibouti, Indonesia, Iran, Mauritania, Qatar, and Saudi Arabia have set up general exemption clauses against all articles in the Convention on the Rights of the Child (CRC) and Mauritania, Pakistan, and Saudi Arabia, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) [8].

Although this situation makes it seem like Western democracies would make less reservations due to their values being, in theory, more aligned with Human Rights, evidence shows that "liberal democracies generally have more, not fewer, RUDs in place than other countries" [8]. Even if, in these States, reservations are more related to political interests and conflicts with their constitutions than with culture, this situation highlights how Human Rights are not always universally accepted, regardless of cultural background.

## 6. Conclusions

Relating to Human Rights, times of optimism came after times of violations and political disagree. That was true after the Second World War, when multiple nations came together for the goal of drafting an Universal Declaration. That also happened at the end of the Cold War, a period that seemed prosperous to harmonize and unite local and international justice to respond to humanitarian issues.

However, the union that moments of tension naturally create was not enough to eliminate cultural and political differences that can differ from the values expressed by said rights, because, as we perceived through this paper, the principles that guide Human Rights were mostly based on Western, notably North American and European values, present not only on the drafting of the UDHR, but also in domestic systems marked by colonization.

In this context, both universalists and cultural relativists present their solutions. Nevertheless, as shown by the *travaux préparatoires* of the Declaration and by the reservations made to international treaties, nations have not achieved a consensus on whether and how some conceptions should be incorporated into Human Rights.

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