



Freedom of Speech

FROM THE

United States

TO THE

United Nations

THE INFLUENCE OF AMERICAN VALUES ON THE NINETEENTH
ARTICLE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

A MASTER THESIS
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Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Universal Declaration of Human Rights, article 19

Freedom of speech, from the United States to the United Nations

The influence of American values on the nineteenth article of the Universal Declaration of Human Rights

Master thesis

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Introduction

For the past several years, freedom of speech¹ seems to have become a controversial subject within the United States, and regarding American foreign policy in particular. Technological innovations such as the internet have revived the issue, and have done so specifically in regard to US foreign-intelligence. While whistleblowers such as US Army soldier Bradley Manning and National Security Agency (NSA) contractor Edward Snowden are both facing charges for disseminating classified information, several American politicians and government officials have aspired to prosecute journalists that did not steal but merely published such information as well. Senator for the Republican Party Peter King, for instance, called for the persecution of The Guardian journalist Glenn Greenwald because of his publications regarding the NSA cyber-surveillance program PRISM leaked by Snowden.² Likewise, the Australian editor-in-chief and founder of WikiLeaks, Julian Assange, has been hiding in the Ecuadorian embassy in London for over a year in fear of extradition to the United States for the publication of diplomatic cables, allegedly provided by Manning.³ And Assange's fear does not seem unfounded, since US prosecutors were indeed studying ways to prosecute the editor-in-chief.⁴ Less known, but not less relevant, is the tremendous charges imposed on journalist Barrett Brown, who is facing a century-long prison sentence after reporting on hacked private intelligence firms, revealing "varying schemes to attack WikiLeaks and Greenwald."⁵ This seeming crackdown on journalists could be considered highly controversial, considering that freedom of speech has been universally accepted as an inalienable and fundamental human right for well over half a century; the right to freedom of speech, including freedom of the press, has been safeguarded through the nineteenth article of the 1948 United Nations Universal Declaration of Human Rights (UDHR). To be precise, this article states:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

¹ For purposes of this thesis, I will treat 'freedom of speech', 'freedom of the press' (both as - for instance - in the American Constitution), 'freedom of expression' (as for instance in the tenth article of the European Convention of Human Rights), 'freedom of opinion' (as for instance in de Universal Declaration of Human Rights), 'the right to free speech' and 'free speech' as synonymous unless stated otherwise.

² A. Blake, 'Rep. Peter King: Punish journalists for leaks' (version June 12, 2013), <http://www.washingtonpost.com/blogs/post-politics/wp/2013/06/12/rep-peter-king-punish-journalists-for-leaks/> (June 21, 2013).

³ A. Osborn, 'WikiLeaks' Assange fears U.S., says will stay in embassy' (version June 19, 2013), <http://www.reuters.com/article/2013/06/19/us-britain-assange-idUSBRE95I01E20130619> (June 21, 2013).

⁴ C. Savage, 'U.S. Prosecutors Study WikiLeaks Prosecution' (version December 7, 2010), http://www.nytimes.com/2010/12/08/world/08leak.html?_r=0 (June 22, 2013).

⁵ A. Gupta, 'How Barrett Brown shone light on the murky world of security contractors' (version June 24, 2013), <http://www.guardian.co.uk/commentisfree/2013/jun/24/surveillance-us-national-security> (July 7, 2013).

Furthermore, at the time of inception of the UDHR, freedom of speech and freedom of the press had already been regarded a fundamental right within the US through the First Amendment to the United States Constitution, which reads:

“Congress shall make no law restricting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Neither does the similitude of these two articles seem to be wholly unrelated. During the first years after the Second World War – the years in which the UDHR was drafted - US foreign policy appeared particularly influential within the domain of international relations. The United States took the initiative to introduce several new international platforms and agreements, such as the economic Bretton Woods system and the military cooperation under NATO. The current dissonance concerning freedom of speech – in particular regarding American foreign-intelligence - raises the question: to what extent did American values influence the UDHR article on freedom of speech?

Although the influence of American values on the UDHR article on free speech has not been the subject of much debate specifically, the influence of American values and the United States in general during these first years after the Second World War has been discussed extensively. The American foreign policy of these years - more commonly regarded as the early Cold War – is a widely examined issue, covered by various historians.

The earliest interpretation of early Cold War American foreign policy is heavily directed towards the realist perception of international affairs, a school of thought that is largely based on Hans Morgenthau's book *Politics Among Nations*, first printed in 1948. Realists regard states as the main actors within international affairs, and view the world order among these states as essentially anarchistic. According to realists, the central and inevitable motivation for all states is fundamentally grounded in human nature itself, and therefore contains two main objectives: the potentially aggressive strive for power, and the battle for its own survival. Hence, actions taken by states are typically regarded as pure calculations of power in relation to other states. In line with this reasoning, peace is commonly regarded as nothing more than the result of a balance of power. Likewise, these assumptions hold that American values and ideals such as human rights or freedom of speech would not have had anything to do with the foreign policy of these countries in any sincere manner; nothing but a struggle for power would have motivated the regarded policymakers.⁶

⁶ See for instance: H.J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace* (New York 1948).

Somewhat similar, the orthodox school of thought - which primarily originated from (mostly retired) US officials - holds that the main motivation behind American foreign policy was the assessment of Soviet intentions. In essence, this explanation holds that the Soviets were intrinsically expansionistic, and posed a fundamental threat to both the security as well as the values of the United States. American foreign policy would have been a response to this distinct threat. Hence, again, not domestic values and ideals - such as free speech - but external factors would have dictated the American strategy.⁷

After this initial wave of realist interpretations of early Cold War history, a new generation of historians set out to revise these accounts in the 1960's and 1970's, presumably inspired by contemporary events such as the war in Vietnam, and a dissatisfaction with the orthodox characterization of the Soviet threat. Scholars such as William Appleman Williams, Joyce and Gabriel Kolko, and Fred Block lay a much bigger emphasis on the domestic environment of the United States as an influential factor in regard of its foreign policy. The American post-war concern, according to this new generation of scholars, was not so much to stop the Soviets, but rather the expansion of capitalism; in order for the American economy to grow, it was deemed of great importance to expand the market for American products. A certain type of world economy would benefit the US, these revisionist argue, while a potential rise to power of the Soviets was merely considered a risk because of this primary economic concern.⁸ Hence, although these historians firmly rebutted the initial realist and orthodox conceptions of early Cold War history, the revisionist school leaves even less room for domestic ideals such as free speech to have influenced US foreign policy; the primary American objective was the expansion of capitalism.

Subsequently, post-revisionist Cold War historians have developed a school of thought that rests somewhere in between the former perspectives – although it cannot be regarded as a coherent synthesis of the older approaches. John Lewis Gaddis, the ‘founding father’ of the post-revisionist account, had already wrote about the Cold War while it was not over yet, but he dissented his most influential and complete analysis of this period in the 1990's, shortly after the Soviet Union had collapsed. Distinctively, in his book *We Know Now*, Gaddis argues that the Soviet threat as described by the first realist school of thought was exaggerated, and that the communist block was not as big a danger to the US as previously claimed. However, as the historian points out, the actual threat of the Soviet Union was not the decisive factor for contemporary US statesmen. Rather, it was the *perceived* threat as experienced by US diplomats that was critical.⁹

Tony Smith has attempted to combine the domestic and external factors as a basis for US foreign policy as well. Smith argues that most US officials have throughout the twentieth century genuinely tried to spread democracy and Liberalism to foreign countries. The main motivation for

⁷ See for example D. Acheson, *Present at the Creation: My Years in the State Department* (New York 1969).

⁸ W.A. Williams, *The Tragedy of American Diplomacy* (New York 1972); J. Kolko and G. Kolko, *The Limits of Power: The World and United States Foreign Policy, 1945-1954* (New York 1972); F.L. Block, *The origins of International Economic Disorder: A Study of United States International Monetary Policy from World War II to the Present* (London 1977).

⁹ J.L. Gaddis, *We Now Know: Rethinking Cold War History* (Oxford 1997).

them however, was not necessarily an ideological one. Rather, the strategy of choice would have been elected predominantly because the American government believed that a democratic world would be a safer environment for themselves. This of course means that such domestic ideals were primarily a means to an external factor: “[R]ealism was packaged as idealism: democratic government was not so much an end in itself as a way to limit Soviet expansion.”¹⁰

To different degrees, these post-revisionists do attribute a certain influence of American values to US foreign policy, but freedom of speech in specific is never covered extensively. Furthermore, none of these authors believed that there was any sincere belief in such ideals. If any type of American values or ideals were pursued within the sphere of foreign affairs at all, they were used for primarily realist purposes.

More recently, however, much of the scholarly debate concerning the Cold War has shifted towards cultural history. The American foreign policy was now analyzed from a cultural perspective - although varying historians have used somewhat deviating definitions of ‘culture’. Akira Iriye, for instance, has extensively examined the production and transmission of memory, ideology, lifestyle, and symbols such as artwork, films, and books, while Andre Rotter alternatively regards culture as a collection of overlapping ‘webs of significance’. But both of these cultural historians argue that culture and power are inextricably entwined. The state, they maintain, does not have a monopoly on power, such as realists maintain in particular, since influences on the manner in which power is organized, who holds it, and how it is perceived differ vastly throughout various cultures.¹¹

Apart from the varying definitions of ‘culture’, cultural historians can roughly be devised between two strands of thought. On one side are those that address cultural exchange or ‘cultural transfer’ between the United States and other countries. These historians analyze the motivations that influenced the American government, as well as corporations, interest groups and NGO’s that often reach beyond US borders, and examine how those reshape American culture to their own ends. Other scholars focus on the manner in which culture affects American policymakers in their own worldviews, and the decisions they make.¹² This would hold that a sincere belief in the merits of freedom of speech could have influenced the American officials involved with the drafting process of the UDHR article on free speech, although this specific subject has not been examined by these historians either.

Likewise, some historians have specifically studied the first post-World War II years from the perspective of the ‘human rights revolution’. Many of these scholars argue that a profound concern for human rights as based on Enlightenment ideals did motivate American policymakers, greatly in response to the Holocaust – or Nazism in general. Paul G. Lauren, for instance, argues

¹⁰ T. Smith, *America’s Mission: The United States and the Worldwide Struggle for Democracy in the Twentieth Century* (Princeton 1994) 119.

¹¹ For an overview of the literature on culture and foreign relations, see A. Iriye, ‘Culture and International History’, in: M.J. Hogan and T.G. Paterson, *Explaining the History of American Foreign Relations* (Cambridge 2004) 221-40.

¹² Iriye, ‘Culture and International History’, 221-40.

that it was the unimagined destruction of human life in the genocide of the Holocaust's 'Final Solution' that exceeded all previously known bounds that finally tipped the scale in favor of human rights, while Michael Ignatieff has termed the post-war concern with human rights a 'firewall against barbarism', which chiefly symbolized a "war-early generation's reflection on European nihilism and its consequences."¹³

Given these vastly divergent interpretations of US foreign policy during the early Cold War years, the influence of American values on the UDHR article on freedom of speech would not only be interesting in light of recent events, but could also provide valuable information concerning the influence of ideals on American foreign policy in general. Since the preamble of the UDHR itself states that the document aspired to establish freedom, justice, and peace in a world with friendly relations between nations, it is interesting to see whether a sincere belief in American ideals have influenced the article, or if perhaps quite realist motives have been the predominant incentive. The ideals that influenced the UDHR article on free speech could also tell us a lot about the ideals that influenced the declaration as a whole, and possibly even the ideals behind the United Nations organization itself. Hence, the central question this thesis will seek to answer is: to what extent did American values influence the UDHR article on freedom of speech?

In order to answer this question, this thesis will lay-out four sub-topics, divided over the same number of chapters. The first chapter will examine what the American values concerning freedom of speech consisted of exactly, and in particular what these American values on the subject consisted of during the specific early Cold War years in which the UDHR was drafted. By analyzing the historic development of free speech within the United States, this first chapter will show how and why the right to free speech was established, how it developed in American thought through time, and ultimately how the ideal was interpreted during the 1940's. The main question this chapter will seek to answer will therefore be: how did the American ideal of free speech develop, and how was it interpreted right after the Second World War?

The second chapter will examine the contemporary issues, events and ideas concerning US foreign policy in relation to the American interpretation of freedom of speech. The post-war situation of the late 1940's placed the US before major choices on how to handle the newfound international distribution of power. It is particularly interesting to see how early Cold War foreign policy was shaped, and how this relates to the issue freedom of speech. The question this second chapter will answer will therefore be: how did American values concerning free speech relate to ideas on contemporary American foreign policy?

The third chapter will outline which intentions have driven the inclusion of a UDHR article on freedom of speech. This chapter will explain which United Nations bodies and which people were responsible for the article, and what motivated them. The focus will remain on any possible American influences, and in particular on the American individuals that were directly involved with the drafting process of the article. The main question this third chapter will therefore answer

¹³ P.G. Lauren, *The Evolution of International Human Rights: Visions Seen* (Philadelphia 1998).

is: why was an article on free speech included in the UDHR, what part did Americans play in the creation of this article, and what motivated them to do so?

Lastly, the fourth and final chapter will explore the drafting process of the UDHR article on free speech itself. In order to examine which values have influenced the article, and to what extent these values are typically American, this chapter will analyze the discussions on the subject of freedom of speech within the responsible bodies. The chapter will show how this discussion translates itself into the article, and how this article was (or was not) formed and reformed according to the issues discussed. Of course, the role that Americans, and American values, have played during this process is of central importance, and therefore constitutes the main point of focus. Hence, the principal question this fourth chapter will answer is: how did the American interpretation of freedom of speech influence the drafting process of the UDHR article on free speech?

Chapter 1

THE AMERICAN INTERPRETATION OF FREEDOM OF SPEECH

Introduction

Ideas regarding freedom of speech are much older than the Universal Declaration of Human Rights. The value of free speech has been both recognized as well as condemned for centuries, making the nineteenth article of the 1948 declaration a global mile-stone in a long-lasting debate. In order to analyze the influence of American values on this article, the different motives and arguments on which the right to free speech is based, and particularly what the American interpretation of this right was need to be understood. This first chapter will therefore consist of two main parts. The first part of the chapter will construe what arguments for freedom of speech have been raised throughout modern Western history. The second part of the chapter will in turn outline how the ideal of free speech was interpreted throughout the history of the United States. This analysis of the interpretation of free speech in the United States will in turn itself be divided in two main parts. First, it will explain how and why this particular right developed in early American history, and second, it will show how free speech was interpreted during the first half twentieth century, and in particular during the years leading up to 1947 and 1948 in which the UDHR was drafted. In doing so, this chapter will answer the question: how did the American ideal of free speech develop, and how was it interpreted right after the Second World War?

The argument for truth

Modern arguments for freedom of speech mostly developed during the Age of Enlightenment. The emergence of the printing press – invented around the year 1450 - has been a particularly important catalyst for the first of these modern arguments: the argument for truth. The printing press was a very influential instrument within the political and religious realm. During the English Civil Wars of the seventeenth century, for instance, printed pamphlets with inflammatory rhetoric became an important medium of revolt against the establishment. In an attempt to put this insurgency to a halt, the British authorities introduced the ‘Licensing Act’ in 1662, a controversial law that imposed pre-publication censorship on any printed material.¹⁴ This regulation of course formed a great hindrance for printers, the workman that printed for a living. Hence, with the governmental restrains on their source of income, contemporary printers opposed the Licensing Act severely, and contended to regain their freedom to print without constraints.¹⁵

This chiefly economic motivation for a free press would soon be overshadowed by a more ideologically founded argument, however. Poet and writer John Milton was unquestionably the most influential contemporary opponent of governmental restrictions on the press. After Milton had one of his works on divorce law banned from publication, he wrote his famous ‘Areopagitica’, the pamphlet that would become his magnum opus. In this pamphlet, which the writer had

¹⁴ S.H. Steinberg, *Five Hundred Years of Printing* (Bungay 1974) 202.

¹⁵ F.S. Siebert, *Freedom of the Press in England 1476-1776: The Rise and Decline of Government Controls* (Urbana 1952) 1-11.

printed and spread illegally, Milton argued that governmental censorship – or any censorship for that matter – was a problem in particular because it obstructed the human quest for knowledge.¹⁶

And even though Milton directed his plea specifically against the Licensing Act, and therefore against pre-publication censorship, this argument for truth would remain relevant even until long after this specific act itself lapsed in 1695. Several influential thinkers have throughout the centuries picked up and elaborated further on the argument for truth, including nineteenth century political philosopher John Stuart Mill and twentieth century philosopher of science Karl Popper.¹⁷

At the heart of the argument for truth rests the concept that freedom of speech is required for the advancement of human knowledge. According to proponents of the argument for truth, the best and soundest rational judgment on essentially any issue can only be made once all arguments and facts on a given proposition are taken into account. In order to seek knowledge, it is crucial that multiple explanations or theories are considered before sound judgments can be made to distinguish true from false. Sometimes termed the ‘marketplace for ideas’, it is suggested that the truth on debated matters will rationally come afloat through discussion, and shall therefore naturally prevail over false arguments. Consequently, suppression of ideas, information, thoughts, or any other form of expression is considered a block on this process. Once dissenting opinions or arguments are censored simply because they do not stroke with common thought or dictate, it becomes impossible for new ideas to be generated, consequently causing erroneous views to maintain devoid of rebuttal.¹⁸

This subsequently holds that the quest for knowledge, the process of discovering truth, is by definition a continuous one: new ideas will always arise, and new arguments will continuously remain to be constructed. Revelation of new insights will and should always open up possibilities to revise any judgment. This naturally demands that the debate must be kept open and accessible even when a particular position seems to be a certain truth. After all, it is always conceivable to construct a new insight, therefore obliterating even the possibility of something like an imputable certainty.¹⁹

The argument for self-fulfillment

The second modern argument for freedom of speech is the argument for self-fulfillment. Much like the argument for truth, the argument for self-fulfillment has its roots in the Age of Enlightenment, and in Liberal ideology in particular. Based on the Enlightenment ideal of reason, eighteenth and nineteenth century liberals rejected hereditary privilege, and therefore

¹⁶ J. Milton, *Areopagitica: For the Liberty of unlicenc'd Printing* (Oxford 1954).

¹⁷ T.I. Emerson, ‘Toward a General Theory of the First Amendment’, in: J.H. Garvey and F. Schauer, *The First Amendment: A Reader* (St. Paul 2004) 47-53.

¹⁸ Emerson, ‘Toward a General Theory of the First Amendment’, 47-53.

¹⁹ *Ibidem*, 47-53.

disapproved of the absolute power held by monarchs. Instead, they contended that all human beings were created equal, which in turn was commonly linked to personal autonomy. These classical liberals especially sought to protect the individual from the power of the state, hence contended for ‘negative freedom’, which holds that freedom consists mainly of the individual freedom from (state) interference, and the individual freedom to act however one may choose. In extension of these ideals, liberals supported individual freedom of conscience and religion.

This belief in freedom of conscience serves as the cornerstone of the argument for self-fulfillment. Proponents of this argument regard self-realization and personal development as a central purpose of human beings. A crucially important and distinguishing way to optimize individual potential would be through the development of personal thoughts, ideas, and opinions. It would be through individual insight that man was able to find meaning in life, and discover his place in society. And of course, these personal insights are naturally unrestrained; even though the mind can and will certainly be influenced by fellow men, it is ultimately an individual sphere. It is unbound, and impossible for anyone to limit.²⁰

Proponents of the argument for self-fulfillment argue that this freedom to develop personal insights, ideas, and opinions in turn leads to related freedoms. If an individual is free to feel and think as he chooses, it follows that he should be able to express these thoughts as well. Expression is regarded as an integral part of the development of ideas, because those ideas would be of little actual account otherwise. Hence, the right to free speech is a very direct natural right: it is a manner in which an essential human quality can be fulfilled. And correspondingly, the quest for knowledge should be without any constraints, for in order to be able to shape individual views and decide on personal preferences, it is deemed essential that information is open and accessible. Limiting this accessibility, for instance through censorship, inherently limits this personal liberty.²¹

The argument for democracy

The third modern argument for free speech is based on the ideal of democracy. Even though Enlightenment-era liberals believed that the state was the main threat to personal freedom (the negative freedom), the absence of a state would result in a society in which each member would become each other’s enemy. In this ‘state of nature’, no one was expected to be save, and therefore no one was expected to be free at all. Hence, liberals proposed the existence of the ‘social contract’: the fictional contract that was mutually entered by all members of a society on basis of the Enlightenment ideal of reason. The political authority of the state was legitimately created through this contract, liberals contended, since the state was – rationally – the lesser evil. And since the legitimation of the state was vested in this social contract, this in turn held that the ‘signatories’ of this contract, the members of society, are the ultimate source of this authority. This

²⁰ Ibidem, 47-53.

²¹ Ibidem, 47-53.

is why liberals argued that the legitimacy of the state is ultimately dependent on the consent of its subjects; the people are the sovereign of the state. Therefore, many liberals held that this sovereignty of the people could best be realized by empowering the eligible citizens in the political process. This led to the ideal of democracy.

Since proponents of the argument for democracy accept democracy as the best form of government, they argue that the public should correspondingly have the right to freely and openly discuss public matters. It would after all be of indispensable importance for members of a democratic society to inform themselves on social issues, in order to make informed choices. Ideas and information must therefore be allowed to circulate free from restrictions, and free from governmental restriction in particular: once state authorities would be able to manipulate or censor information, this would not only constitute a direct attack on the sovereignty of the people, it would effectively end true democracy. Free speech is considered a crucial condition for the legitimacy of a true democracy, with the freedom to criticize the government as an essential component and indispensable right.²²

Freedom of speech in early American history

The ideal of freedom of speech has been a major factor throughout the history of the United States, and particularly during the revolutionary era in which the country was founded. Paradoxically, the colonials in the British-American colonies that would later become the United States had acquired a culture rooted in the British Revolutions of 1688, which provided for a firm belief in the above mentioned virtues of democracy.²³ These colonials had themselves devised a domestic governing system, in which an increased type of political representation had become the new standard: in this New World system elections were not incidental, but central to the process of democratic representation. As a result, the colonials did not agree that the democratic rights were applied to them in the same way as they were applied to their European counterparts. While the British authorities regarded the colonials to be represented in parliament by the English House of Commons, the Americans did not share this perspective, since they did not get to vote for their representatives themselves. Concordantly, during the latter half of the eighteenth century, the Americans grew increasingly unhappy with their European imperial rulers.²⁴

The perceived lack of voting rights evolved into a standoff between the British authorities and the American colonials, that was fueled and ideologically defended on Liberal grounds by the colonials when they were faced with new British taxations through the 'Stamp Act' in 1765. The Americans widely considered the inability to vote in combination with the duty to pay taxes an

²² E. Barendt, *Freedom of Speech* (Oxford 1985) 20-30.

²³ J.H. Elliot, *Empires of the Atlantic World: Britain and Spain in America 1492-1830* (London 2007) 9, 326-331.

²⁴ G.S. Wood, 'Democracy and the American Revolution', in: J. Dunn, *Democracy: the Unfinished Journey 508 BC to AD 1993* (Oxford 2008) 96.

infringement on their liberties; a perception of civil rights that was greatly influenced by leading Liberal thinkers of the Enlightenment era.²⁵

These Liberal thinkers of course typically defended freedom of speech as well, since both Liberalism and all of the modern arguments for freedom of speech were based on Enlightenment ideals. And moreover, these Liberal ideals could spread through the American colonies greatly *due to* freedom of speech. The Licensing Act had lapsed in the late seventeenth century, which meant that eighteenth century colonials did not require a state issued license in order to print.²⁶ The Americans could therefore enjoy a relatively free press, and extensively used this freedom to debate British rule and Liberal ideology. Particularly during the years following the introduction of the Stamp Act, American newspapers as well as especially distributed pamphlets were commonly stuffed with arguments, opinions and polemic concerning the authority of Parliament over the colonies; discussions that have undoubtedly been a crucial influence on subsequent developments, culminating to the American Revolution. As Revolutionary John Adams himself stated in 1815: “The Revolution was in the minds of the people, and this was effected, from 1760 to 1775, in the course of fifteen years before a drop of blood was shed at Lexington.”²⁷

After the American War of Independence, which had characteristically sprang from popular uprisings by the people in 1775, thirteen former British colonies in North America faced freedom from imperial rule in 1883. This newfound independence required political institutions, which would be established through the American Constitution. A first draft of this new constitution was published in 1887, and subsequently broadly and publicly discussed throughout the following year. Conventions at which the proposed constitution was discussed were organized all throughout of the former American colonies, while newspapers where once again commonly filled with polemic concerning the issue.²⁸ Consequently, any American citizen with a desire to join the political conversation to establish the new nation was free and able to do so.

As a consequence of this debate, freedom of speech was included in the Bill of Rights, the first ten amendments to the American Constitution, which guarantee a number of personal freedoms, and limits the power of the American government over its subjects. The first of these amendments, which concerns freedom of speech, specifically restricts governmental control on the press and limitations of free speech in general, as seen in the introduction of this thesis. Additionally, the amendment explicitly supports the right of citizens to participate in political discussions, including “the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”²⁹

²⁵ B. Bailyn, *The Ideological Origins of the American Revolution* (Cambridge 1971) 22-8.

²⁶ Elliot, *Empires of the Atlantic World*, 330.

²⁷ Bailyn, *The ideological origins of the American Revolution*, 1-8.

²⁸ J. Dunn, *Setting the People Free: the Story of Democracy* (London 2006) 73-75.

²⁹ The full text of the First Amendment is: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Early twentieth century interpretation of freedom of speech in the United States

Although some disputes on the scope of free speech arose throughout the late eighteenth, and during the nineteenth century, it was in the first half of the twentieth century that the public debate on the interpretation of the right developed to what it would be in the United States during the early Cold War. The main catalyst for this revival was the First World War. Shortly after the United States had entered this war in 1917, American authorities imposed a number of repressive measures on their own populaces, including the controversial 'Espionage Act'. This act prohibited civilian interference of military operations, including the promotion of insubordination and the hindering of recruitment.³⁰

The Espionage Act did face immediate ideological resistance within the United States, however. The predominant medium that opposed the new act was the magazine *The New Republic*. The progressive coterie involved with this magazine regarded the Espionage Act an infringement on the right to free speech as it was guaranteed under the First Amendment, and as a consequence became increasingly unreserved in their support for this civil freedom. They were not, however, ardent classical liberals, who conceived freedom of speech as an individual freedom, like proponents of the argument for self-fulfillment did. Alternatively, those involved with *The New Republic* interpreted the right to free speech in the tradition of Milton, who had first established of the argument for truth. Much like the Liberal authors, the progressives involved with *The New Republic* held that truth could be pursued and would prevail only as long as discourse and discussion was open and free, which in turn would serve the progression of society as a whole and the United States as a nation.³¹

One of the people involved with *The New Republic* eventually became the most influential American First Amendment scholar of the early twentieth century: Zechariah Chafee, jr. (1885-1957). The Rhode Island-born Chafee had graduated from Brown University at age 21 in 1907, after which he received his Bachelor's degree in law at Harvard six years later. After a short career at a law firm, Chafee became a professor at Harvard in 1916, where he would remain employed for the rest of his working life. As a young scholar in 1918, Chafee was for the first time asked to write an article for *The New Republic* in response to the Espionage Act. As anticipated, the Harvard professor fiercely objected to the Espionage Act in this article, and the ardent supporter of free speech wrote many more articles for the magazine, during subsequent years.³²

Chafee's interpretation of the First Amendment closely resembled that of the other progressives, and as such it closely resembled that of Milton. The scholar supplemented – or merged – this argument for truth with another argument, however: the argument for democracy. Chafee argued that it was not so much truth in itself that was of crucial importance, but truth in the context of social issues in particular. Throughout his articles for *The New Republic*, Chafee repeatedly contended that the importance of free speech was not so much the guarantee of individual rights

³⁰ R.A. Primus, 'Canon, Anti-Canon, and Judicial Dissent', *Duke Law Journal* 48 (Durham 1998) 294.

³¹ Primus, 'Canon, Anti-Canon, and Judicial Dissent', 294.

³² *Ibidem*, 294-5.

or self-fulfillment, but rather the great social interest it provided. He argued that free speech was a vital value for any society, since it allowed all sides of any social issue to be heard, which would ultimately help move society towards the best view.³³

Initially, *The New Republic* and Chafee's opposition to the Espionage Act had little effect, as witnessed by a critical legal battle concerning freedom of speech in 1919. Socialist Party officials who had distributed leaflets propagating the obstruction of military recruitment were during the First World War arrested on basis of the Espionage Act, and prosecuted shortly after the war was over. In the iconic US Supreme Courts case 'Schenk v. United States', the justices unanimously decided that the Espionage Act was not unconstitutional, hence upholding the defendants convictions.³⁴ In doing so, the Supreme Court established the 'clear and present danger' test. This test limited the right to free speech as guaranteed under the First Amendment in some cases. As Supreme Court Justice Oliver Wendell Holmes phrased it:

“The question in every case is whether the words used are used in such circumstances and of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight, and that no Court could regard them as protected by any constitutional right.”³⁵

Chafee severely criticized this 'clear and present danger' test, mainly because the Supreme Court Justices had interpreted the First Amendment solely from the Liberal perspective, based on the argument for self-fulfillment. Presumably in part due to the Supreme Court decision, Chafee elaborated his position on the issue of free speech in his book *Freedom of Speech*, first published in 1920. (He expanded, revised, and republished the book in 1941, this time titled *Free Speech in the United States*.) In his book, Chafee once again contended that free speech is not solely an individual right, but also a social virtue and a political device, particularly in a democratic nation.³⁶ The scholar argued that it is through open discourse that the best solutions for social issues can be pursued, and through freedom of speech that government can be informed of the public opinion, which he contended is of vital importance in a representative democracy:

³³ Ibidem, 295.

³⁴ O.W. Holmes, 'Schenk v. United States – 249 U.S. 47 (1919)' (version March 13 1919), <http://supreme.justia.com/cases/federal/us/249/47/case.html> (November 11, 2012).

³⁵ Holmes, 'Schenk v. United States – 249 U.S. 47 (1919)'.

³⁶ Z. Chafee, jr., *Free Speech in the United States* (Cambridge 1964) 31.

“The true meaning of freedom of speech seems to be this. One of the most important purposes of a society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion.”³⁷

Additionally, in the second version of his book, Chafee specifically berated and clearly despised the intolerant administrations of the German (Nazi), Italian (Fascist) and Russian (Soviet) governments in Europe, particularly for repressing the freedom of the press and the voices of university professors. Moreover, the Harvard scholar recognized how this censorship in turn only further strengthened these totalitarian regimes: “Once commit ourselves to the ideal of enforced national unanimity, and all this logically and easily follows.”³⁸

Chafee’s critique on the Supreme Court ruling in ‘Schenk v. United States’ and his proposed interpretation of the First Amendment – although ignored at first - did turn out to have some impact on subsequent juridical interpretation of the right to freedom of speech in the United States later on. Several Supreme Court Justices, including Holmes, revised their interpretation of the ‘clear and present danger’ test, and thus revised their interpretation of the First Amendment itself. Leading up to the 1940’s, they reinterpreted the test to require imminent danger or serious evil, and no longer merely the tendency to cause social harm. Hence, influenced by Chafee, Holmes and several other Supreme Court Justices predominantly came to regard freedom of speech as a great social value, rather than solely an individual freedom.³⁹

Conclusion

The right to free speech has been very influential throughout United States history, while all three of the modern arguments as developed during the Enlightenment era have at some point and to some degree effected the American interpretation of the right. Free speech, and in particular freedom of the press, was of a major influence leading up to the American War of Independence, and it was a characteristic factor during the open discussions regarding the establishment of the American Constitution. This, in turn, resulted in the inclusion of free speech in the First Amendment to this constitution. Although it is difficult to determine on which exact motives this particular amendment was based, both the Liberal backgrounds of the Bill of Rights as well as the formulation of the amendment suggest that it was specifically aimed at the limitation of governmental control, and correspondingly individual freedom. This implies that the First Amendment served to protect freedom of speech based on the argument for self-fulfillment. At the same time, however, the events leading up to American independence as well as – once again - the formulation of the First Amendment suggest that the amendment was meant to provide a

³⁷ Chafee, *Free Speech in the United States*, 31.

³⁸ *Ibidem*, 564.

³⁹ Cohen, *The First Amendment: Constitutional Protection of Expression and Conscience* (New York 2003) 8-23; for relevant example of Supreme Court ruling see: *Gitlow v. New York*.

safeguard in support of political participation by the people. This of course predominantly matches the argument for democracy. The dispute between these two interpretations, based on the argument for self-fulfillment and the argument for democracy, was debated by leading First Amendment scholars as well as American Supreme Court Justices during the decades leading up to the establishment of the UDHR. Hence, because consensus was lacking, it is safe to conclude that the contemporary American interpretation of freedom of speech was characterized by both the argument for self-fulfillment, as well as the argument for democracy merged with the argument for truth. Finally, as we will see in subsequent chapters, it is important to note that it was Chafee who favored an absolute interpretation of freedom of speech based on this argument for democracy merged with the argument for truth – a combination that was proposed by himself.

Chapter 2

**THE ARGUMENTS FOR FREEDOM OF SPEECH
IN RELATION TO AMERICAN FOREIGN POLICY**

Introduction

The first chapter of this thesis showed that the contemporary American interpretation of freedom of speech was characterized mainly by the arguments for self-fulfillment and the argument for democracy influenced by Zechariah Chafee, jr., who had merged it with the argument for truth. This second chapter will examine how these American interpretations of freedom of speech related to American foreign policy. In order to examine this relation between the American interpretations of freedom of speech and foreign policy, this second chapter is divided in two main parts. The first part of the chapter will briefly explain the relevant historical context of the period in which the UDHR was drafted, followed by an analysis of George F. Kennan, who was (largely) responsible for the rationale behind the contemporary American foreign policy strategy. Subsequently, the second part of the chapter will analyze how this rationale regarding foreign affairs relates to the American interpretations of freedom of speech. This main question this chapter will answer will therefore be: to which effect did the American interpretations of free speech influence United States foreign policy during 1947 and 1948?

Historical context

In order to understand why the UDHR was drafted, it is important to understand the historical context. What was the situation in global perspective during the years after the Second World War, and how did this affect the United States at this time?

Even though the United States and the Soviet Union were formal allies during the Second World War, this alliance was always an uneasy one. This mutual distrust serviced even before the war was over. Early in 1945, once it became clear that the Allies were going to defeat the Axis powers, Soviet-leader Joseph Stalin openly declared that the Soviets deserved to reap most of the benefits the victory would yield, since they had suffered more losses in capital and population while fighting Nazi-Germany. Hence, Stalin claimed the right to annex several territories in Eastern Europe, and pledged to put other countries in the continent under his sphere of influence. The United States, however, did not concord with these demands. Opposing Stalin's proclamations, President Franklin D. Roosevelt pressured the Soviet leader to allow for free elections in the various eastern European territories after the war instead.⁴⁰

Although Stalin formally agreed with Roosevelt's demands for a democratic Eastern Europe, it would soon become clear that he was lying: the Soviet Union established communist regimes in Poland, Bulgaria and Romania shortly after the war was over. Furthermore, the Soviets requested a trusteeship over Tripolitania in northern Africa, and kept their anti-German troops stationed in Iran and northeast Asia even though the Nazi's were defeated, all of this to the dismay of Washington.⁴¹

⁴⁰ J.L. Gaddis, *The Cold War: A New History* (New York 2005) 1-22.

⁴¹ G.C. Herring, *From Colony to Superpower: U.S. Foreign Relations since 1776* (Oxford 2008) 601.

Henceforth, the United States and the Soviet Union dominated the European continent, and in extension, the world, leading up to the years in which the UDHR was drafted. And importantly, the two superpowers had opposing prospects for the future of – primarily – the continent, and the role that the two nations should come play in this part of the world.

George F. Kennan

To understand the American foreign policy that resulted from this post-war standoff in Europe by the two new-found world-powers, we need to first understand who devised this strategy.

Shortly after the Second World War was over, George F. Kennan, the Deputy Chief of Mission of the United States to the Soviet Union, wrote a five thousand word telegram from Moscow to Washington, in response to one of Stalin's speeches. Throughout this telegram, commonly referred to as the 'Long Telegram', Kennan thoroughly explained the intrinsic problems he had encountered with the Soviet ideology and Stalin's envisioned foreign policy.⁴²

Additionally, Kennan explained how the United States could best deal with these new-found circumstances. The envisioned solution was greatly appreciated by important actors within the upper ranks of the United States government, including Secretary of State James Byrnes and Secretary of the Navy James Forrestal. Forrestal quickly reproduced the telegram and distributed it to the very top of the presidential administration, including to Roosevelt's successor, President Harry S. Truman.⁴³

Subsequently, Kennan became increasingly involved with policy planning in the upper echelons of the US government. After serving as an educator on the Soviet Union for high-ranked men in the military and the government throughout 1946, Kennan was in 1947 employed as head of the newly established Policy Planning Staff: a strategic arm for the State Department which in the words of US Secretary of State Dean Acheson was established "to look ahead, not into the distant future, but beyond the vision of the operating officers caught in the smoke and crises of current battle."⁴⁴

In this new function, Kennan formulated the well-known containment strategy that would characterize the Cold War for decades to come. In a 1947 report entitled 'The Sources of Soviet Conduct' which was originally submitted to Forrestal – and that would later also be published anonymously in *Foreign Affairs* magazine - the policy planner argued for a foreign policy strategy targeted at the prevention of any further spread of Soviet influence:

⁴² Gaddis, *George F. Kennan* (New York 2011) 201-27.

⁴³ Gaddis, *George F. Kennan*, 201-27.

⁴⁴ *Ibidem*, 253.

“[T]he main element of any United States policy toward the Soviet Union must be a long-term, patient but firm and vigilant containment of Russian expansive tendencies.... Soviet pressure against the free institutions of the Western world is something that can be contained by the adroit and vigilant application of counterforce at a series of constantly shifting geographical and political points, corresponding to the shifts and manoeuvres of Soviet policy, but which cannot be charmed or talked out of existence.”⁴⁵

The very first official assignment of the Policy Planning Staff was the design the European Recovery Plan, better known as the Marshall Plan. As another significant expansion of Kennan’s Containment strategy, the Marshall Plan was specifically conducted to prevent the communist ideology from taking root in a war-deprived Western Europe, and instead intended to supply financial aid to war-ridden European countries.⁴⁶

Hence, Kennan was at the heart of the branch of American government concerned with foreign affairs before and during 1947 and 1948, and specifically constructed and even actively navigated some of the American strategies regarding the Soviet Union.

Soviet “truth”

How then, did Kennan perceive the threat that he believed the Soviet Union posed? Where did this threat stem from?

One issue stands out very clearly throughout all of Kennan’s contemporary writings: the policy planner was particularly concerned with the Soviet perception of truth. The Soviet concept of power, which Kennan explained did not permit any focal points of organization outside the Party itself, required that the governing body in theory held the monopoly on “truth”. Concordantly, diverging views were strictly forbidden by the Party leadership. Kennan henceforth argued that for the Russians, as opposed to the Americans, there were no objective criteria of right and wrong, nor even of reality and unreality. Instead, it were men that determined “what is right and false.”⁴⁷ According to Kennan, the outlook on life with which the Russians proceeded was merely an artificial structure, produced by the devices of state propaganda: “Every means of influencing, organizing, and channeling public sentiment had been monopolized by the Communist Party.”⁴⁸

Kennan even posed this state monopoly of truth as the cornerstone of his disquisition on the Soviet Union in the Long Telegram. He explained how the Soviet ideology was “seemingly

⁴⁵ G.F. Kennan, ‘The Sources of Soviet Conduct’, in: G.F. Kennan, *American Diplomacy: Expanded Edition* (Chicago 1984) 107-128.

⁴⁶ Gaddis, *George F. Kennan*, 249-275.

⁴⁷ G.F. Kennan, ‘Russia – Seven Years Later’, in: G.F. Kennan, *Memoirs: 1925-1950* (Boston 1967), 503-531, 529.

⁴⁸ G.F. Kennan, ‘Russia’s International Position at the Close of the War with Germany’, in: G.F. Kennan, *Memoirs: 1925-1950* (Boston 1967) 532-546, 542.

inaccessible to considerations of reality in its basic reactions,⁴⁹ and was disturbed by this Russian oppression of truth (as he perceived it), and repeatedly emphasized how the results of the Soviet propaganda mechanisms were a disgrace.⁵⁰ In his own words:

“[T]he vast fund of objective fact about human society (...) is not the measure against which outlook is constantly being tested and reformed, but a grab bag from which individual items are selected arbitrarily and tendentiously to bolster an outlook already preconceived.”⁵¹

Moreover, Kennan realized that this oppression and distortion of truth through Soviet propaganda was not even merely an authoritative issue in which the leaders willfully deceived their subjects. He regarded this Soviet policy as a self-confirming and self-reinforcing problem, and therefore particularly persistent. This “most disquieting feature”⁵², as Kennan described it, held that many of those who were in some manner part of the propaganda machinery might have not even been necessarily disingenuous or insincere:

“Many of them are too ignorant of outside world and mentally too dependent to question self-hypnotism, and have no difficulty making themselves believe what they find comforting and convenient to believe.”⁵³

The individuals that were part of the propaganda apparatus had therefore become resilient to argument or reason derived from deviating sources, Kennan argued. The Soviet “truth” had in his eyes become what was perhaps best explained as an autonomous force, in which possibly even Stalin was trapped. Poetically explaining the problem, Kennan quotes Edward Gibbon in ‘The sources of Soviet conduct’:

“From enthusiasm to imposture the step is perilous and slippery; the demon of Socrates affords a memorable instance how a wise man may deceive himself; how a good man may

⁴⁹ G.F. Kennan, ‘Excerpts from Telegraphic Message from Moscow of February 22, 1956’, in: G.F. Kennan, *Memoirs: 1925-1950* (Boston 1967) 547-559, 557.

⁵⁰ For example, see: Kennan, ‘Russia – Seven Years Later’, 512.

⁵¹ Kennan, ‘Excerpts from Telegraphic Message from Moscow of February 22, 1956’, 557.

⁵² *Ibidem*, 551.

⁵³ *Ibidem*, 551.

deceive others, how the conscience may slumber in a mixed and middle state between self-illusion and voluntary fraud.”⁵⁴

Kennan evidently despised the results of this Soviet structure regarding “truth” and the propaganda machinery. He excoriated the fact that the Party line was not based on an objective analysis of the situation both within as well as outside the Soviet Union, and was convinced that the state monopoly on “truth” deprived the Russians of knowledge he believed should be theirs. Kennan found the shortage of books, but also movies and other types of entertainment, intensely regrettable, and the resulting “hunger for knowledge, for amusement, for artistic experience (...) pitiful to behold.”⁵⁵ He remorsefully concluded that the Russians were left with a general and widespread sense of paranoia instead.⁵⁶

Moreover, Kennan recognized that the prevalent “truth” as it was fostered by the Soviet propaganda apparatus was of significant importance in regard of international relations in general, and the safety of the United States in specific. He argued that the Communist Party officials had originally been afraid for their subjects to learn the truth about the outside world, fearing that such public knowledge would deprive them of their totalitarian power. The Soviet leaders had therefore justified the retention of their dictatorship by continually stressing the evils of capitalism, and in fact created the anti-capitalist “truth” (obviously not considered true by Kennan at all) that capitalism inevitably held imperialist rule. And as a result of this Soviet propaganda, the Russian people had indeed come to believe that peaceful coexistence with the capitalist world was impossible. Kennan warned that this conviction had grown into a persistent misconception of reality, which had ultimately led to a neurotic post-war worldview even within the Kremlin itself. Since Stalin foresaw the Soviet Union and the United States to evolve as the two main economic centers in the world, this would in Stalin’s mind make the Soviets an inevitable target of American aggression. Kennan argued that all of these fears within the higher ranks of the Communist Party should consequently be considered a potential threat for the United States: if the Soviets regarded a war between the two world-powers inevitable, this prophesy might become self-fulfilling.⁵⁷

Hence, Kennan regarded the Soviet monopoly on “truth”, and the propaganda machinery, a major problem within the Soviet Union; this was arguable even the source of the most intrinsic dysfunctional aspects of the totalitarian system. It was after all because of this propaganda, and the resulting distortion of truth, that the Russians were predominantly guided by misinformation, which according to the American diplomat did not only harm the Soviet society itself, but even threatened the United States.

⁵⁴ Kennan, ‘Russia – Seven Years Later’, 512.

⁵⁵ *Ibidem*, 512.

⁵⁶ G.F. Kennan, *Memoirs: 1925-1950* (Boston 1967) 198.

⁵⁷ Kennan, ‘Excerpts from Telegraphic Message from Moscow of February 22, 1956’.

Freedom of speech and Soviet “truth”

Now that we have seen that Kennan regarded state propaganda a fundamental problem within the Soviet Union, it is interesting to see how this relates to the American interpretations of freedom of speech, and how this relates to the containment strategy.

Kennan’s dismay with the Soviet interpretation of “truth” is – somewhat unsurprisingly - rather similar to the motivations behind the freedom of speech argument for truth. Kennan’s disregard for the Soviet monopoly on “truth”, holds that he believed that a ‘marketplace for ideas’ was crucially missing within the Soviet Union. Kennan witnessed the result of suppression of ideas, information, thought, and other forms of expression first hand, and concluded that it resulted in the merely self-maintaining consequences, much like the proponents of the argument for truth had foreseen. This intrinsic problem was the reason why Kennan described the Soviet convictions as persistent, and why he believed that it was impossible for deviating ideas to penetrate the communist system.

Moreover, Kennan assumed that the implications of this preclusion of the quest for truth and the resulting skewed beliefs held by the Soviets were a huge disadvantage for the Russian society as a whole. Much like Chafee’s assessment of a society without freedom of speech – as explained in Chafee’s book *Free Speech in the United States* - Kennan described how policies in the Soviet Union were erroneous because of the lack of an open debate. This is why Kennan suggested that the seeds of decay were ingrained with Soviet power.⁵⁸ And while Chafee specifically condemned the rise of totalitarianism in Europe in the revision of his book, Kennan explicitly explained how he was severely disturbed by “a regime of police oppression which did not hesitate to proceed in the most ruthless manner against the lives and liberties of individual citizens.”⁵⁹ He was convinced that democracy could not possibly live in such an “atmosphere of terror and intimidation.”⁶⁰

While Chafee regarded freedom of speech an indispensable feature in the quest for truth, and therefore a vital factor for a successful and democratic society, Kennan observed how the Soviet perception and perseverance of “truth” bolstered totalitarianism. Kennan found that censorship rendered democracy impossible, and instead assisted dictatorship:

“On the principle of infallibility there rests the iron discipline of the Communist Party. In fact, the two concepts are mutually self-supporting. Perfect discipline requires recognition of infallibility. Infallibility requires the observance of discipline. And the two together go far to determine the behaviorism of the entire Soviet apparatus of power.”⁶¹

⁵⁸ Kennan, ‘The Sources of Soviet Conduct’ 125.

⁵⁹ Kennan, *Memoirs*, 288.

⁶⁰ *Ibidem*, 288.

⁶¹ Kennan, ‘The Sources of Soviet Conduct’, 116.

Even if Kennan was not aware of Chafee's writings, it seems like the two Americans had very similar ideas regarding freedom of speech – and the risks involved with suppression of this freedom. The benefits that Chafee anticipated to result of from his interpretation of the human right were exactly those that Kennan described to be a great deficiency in the everyday reality within the Soviet Union. Free speech was strictly confined within the SU, and Kennan's writings point out that the Russian society was troubled largely because of this. This was even regarded such a big problem, moreover, that Kennan feared it would endanger the United States; a danger that therefore ultimately emerged from the propaganda machinery, the monopoly on "truth", and henceforth, the suppression of free speech within the Soviet Union.

Containment

Now that we have seen that Kennan rejected Soviet policy, it is interesting to see why he contended for the containment strategy specifically. How did this strategy relate to his perception of Soviet propaganda and "truth", and the associated repression of free speech?

Presumably because Kennan regarded the issue of Soviet propaganda as "the greatest task [American] diplomacy has ever faced, and probably the greatest it will ever have to face,"⁶² his solutions were rather diverse. First of all, he insisted that the Americans should have the courage and self-confidence to cling to their own methods and conceptions of human society. In line with this intent, he asserted that the Soviets should be studied objectively, and conversely, and that the American public should be educated to the realities of the Russian situation.⁶³ This yearning for objectiveness regarding 'reality', is in itself telling for Kennan's adherence for a conception of 'truth' that severely diverged from the Soviet propaganda machinery.

Moreover, his envisioned containment strategy reveals the diplomat's concern with the Soviet mechanisms regarding propaganda and the resulting monopoly on "truth" as well – and thus his preference for free speech and open debate. In essence, Kennan argued that the Soviet problem was an ideological one. It was the Soviet belief, the Soviet "truth" that was the big challenge for American foreign policy. This – and his conviction that the Soviet policies would be inherently unsustainable in the long run - is why the advisor advocated a patient long-term solution. Kennan argued that it would not be possible to secure a military victory, since it is not possible to fight an ideology with aggression: it would not be possible to combat the Soviet "truth" with force.⁶⁴ The real solution would therefore be the containment of Soviet propaganda, or, concordantly: the containment of the (institutional) suppression of free speech.

Although Kennan was concerned with the expansionist policies and – particularly - the military might of the Soviet Union, he was concerned about these issues ultimately because of the "truth" in which the Soviets had come to believe. The American strategist particularly worried about the

⁶² Kennan, 'Excerpts from Telegraphic Message from Moscow of February 22, 1956', 557.

⁶³ Ibidem, 558.

⁶⁴ Kennan, 'The Sources of Soviet Conduct', 119-125.

expansionism of Stalinism as an ideology; the Soviet “truth” and the corresponding suppression of free speech. This Soviet “truth” and suppression of speech is what Kennan sought to contain primarily; the Soviets were “a political danger, not a military one.”⁶⁵

Conclusion

After the Second World War, the global balance of power had drastically shifted; it were now primarily the United States and the Soviet Union that faced each other, on the European continent in particular. Kennan got involved with US foreign policy during the years in which the UDHR was drafted because the American government was in search of a strategy to deal with this situation. Importantly, Kennan regarded the essential threat posed by the Soviet Union not so much the military or economic power of the country, but predominantly condemned the Stalinist ideology maintained as well as enforced through the Soviet propaganda machinery in itself. In concord with Chafee’s argument for freedom of speech, Kennan recognized that it was the lack of an open debate and the monopoly on “truth” that threatened both the domestic wellbeing of Russian society, as well as the safety of the United States. For Kennan, it was predominantly this repression of free speech that would need to be contained through the containment.

⁶⁵ G.F. Kennan, *American Diplomacy: Expanded Edition* (Chicago 1984) 161.

Chapter 3

**THE UNITED NATIONS BODIES CONCERNED WITH
THE UNIVERSAL DECLARATION OF HUMAN RIGHTS
AND FREEDOM OF SPEECH**

Introduction

The first two chapters of this thesis described the (contemporary) American interpretation of freedom of speech, and the relation of this interpretation to the American foreign policy of the first post-war years. In order to understand the influence of American values on the Universal Declaration of Human Rights article on free speech, this chapter examines the intentions of the specific American participants in the UDHR drafting process. This third chapter will look at the process that led to the decision to include an article on freedom of speech in the UDHR, while particularly focusing on the American influence herein, and the (individual) interests and motivations of some of the prominent Americans involved. The chapter will start with the establishment of the United Nations organization itself, followed by a step-by-step examination towards the individuals and commissions that were directly involved with the issue of free speech. This will answer the main questions of this chapter: why was an article on freedom of speech included in the UDHR, how did the Americans influence this decision, and what motivated them to do so?

The establishment of the United Nations

In order to understand the intentions behind the UDHR article on freedom of speech, we need to first understand the official motivation behind the full UDHR, and thus the official motivation behind the United Nations organization itself; why was the UN established, and what was the American influence on doing so?

The first public hint of an internationally accepted standard for human rights – including free speech - was revealed during American President Franklin D. Roosevelt's 1941 State of the Union address, in which he called for the protection of the 'Four Freedoms': four essential freedoms that all human beings in the world should possess. The first of these freedoms was the freedom of speech and expression, supplemented by the freedom of worship, the freedom from want, and the freedom from fear.⁶⁶

Roosevelt took the first significant steps towards the establishment of an internationally accepted standard for human rights one year later. The name 'United Nations' was for the first time used in an agreement by the allied forces of the Second World War, signed on the first of January, 1942. The participating nations, including the United States and the Soviet Union, officially pledged to fight for human rights through this document.⁶⁷

Roosevelt asserted the possibility of an actual United Nations organization one year later, at the 1943 Teheran Conference, and again at the 1945 peace conference in Yalta, attended by the heads of the governments of the UK, Winston Churchill, the SU, Joseph Stalin, and of course Roosevelt

⁶⁶ J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia 1999) 1.

⁶⁷ Morsink, *The Universal Declaration of Human Rights*, 1.

himself. Although Stalin in particular was not very eager to establish such an organization, he eventually accepted the idea.⁶⁸

Shortly before the war ended in 1945, representatives from fifty governments around the world joined the United Nations Conference of International Organization in San Francisco chaired by US government employee Alger Hiss. This is the conference where the UN was officially established.⁶⁹

Although some government representatives suggested that an international bill of rights should be included in the official United Nations Charter, Committee I/1 of the conference - which was in charge to consider the preamble, purposes and principles of the charter - recommended to deal with the subject of human rights after the UN organization was itself established first. Roosevelt's successor, President Harry S. Truman agreed with the committee, stating: "Under this document we have good reason to expect an international bill of rights, acceptable to all the nations involved."⁷⁰ The charter was ratified in October of 1945 by all the permanent members of the Security Council (the US, the SU, France, China and the UK), as well as a majority of the other 48 original members, thereby officially establishing the United Nations.⁷¹

The issue of human rights is a prominent topic throughout the whole charter. The objective to affirm, encourage, and promote human rights is mentioned seven times, Both in the preamble and throughout several of the articles, in most cases connected to "fundamental freedoms."⁷² The most significant description of the issue is defined in the ninth chapter of the charter:

"With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote (...) universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."⁷³

Moreover, the United Nations Charter mandated the installment of a commission that would specifically deal with the promotion of human rights: the United Nations Commission on Human

⁶⁸ Ibidem, 1-2.

⁶⁹ New York University, 'Who was Alger Hiss?', <https://files.nyu.edu/th15/public/who.html> (May 21, 2013).

⁷⁰ United Nations, 'United Nations Yearbook Summary, 1948' (version April 24, 1998), [http://www.udhr.org/history/yearbook.htm#\(5\) First Session of the Drafting Committee on the Bill of Human Rights](http://www.udhr.org/history/yearbook.htm#(5) First Session of the Drafting Committee on the Bill of Human Rights) (May 21, 2013).

⁷¹ United Nations, 'United Nations Yearbook Summary, 1948'.

⁷² United Nations, 'Charter of the United Nations', <http://www.un.org/en/documents/charter/index.shtml> (May 21, 2013).

⁷³ United Nations, 'Charter of the United Nations, Chapter IX', <http://www.un.org/en/documents/charter/chapter9.shtml> (May 21, 2013).

Rights (UNCHR).⁷⁴ Hence, the charter did not only guarantee that the member states of the UN agreed to make fundamental human rights a central issue of the organization, it also established a specific commission in charge of the subject.⁷⁵

In overview, it is evident that the United greatly influenced the establishment of the United Nations, and that the installation of internationally accepted standard for human rights was an official motive behind the organization. And even though specific human rights had not yet officially been agreed on through the charter, President Roosevelt did openly regard freedom of speech a fundamental freedom that every human being should possess.

The Economic and Social Council

Before moving on to the commissions that were directly involved with drafting process of the UDHR, it is helpful to briefly consider which other UN body was responsible for the issue of human rights: the Economic and Social Council (ECOSOC).

The ECOSOC was established to deal with economic and social issues, including cultural, educational and health matters and human rights, or, more specifically: “[to] make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.”⁷⁶ The ECOSOC was, however, limited in its scope: it was established to do research, or to initiate such research. The council consisted out 54 members from different states, of which eighteen were elected each year by the General Assembly, the main body of the United Nations. Each of the members of the ECOSOC was granted equal voting rights, with a majority of the votes decisive.⁷⁷ Both the United States and the Soviet Union were voted into the Economic and Social Council from the start.⁷⁸

By accepting the first resolution the Economic and Social Council would ever deal with, the council established a preparatory committee for the UNCHR, the ‘Nuclear Commission on Human Rights’. The task of this nuclear commission was to propose the terms of reference, term limits, size of membership and member status for the envisaged Commission on Human Rights.⁷⁹

⁷⁴ United Nations, ‘Charter of the United Nations, Chapter IX’.

⁷⁵ United Nations, *Yearbook on Human Rights for 1947* (New York 1949) 451.

⁷⁶ United Nations, ‘Charter of the United Nations, Chapter X’, <http://www.un.org/en/documents/charter/chapter10.shtml> (May 21, 2013).

⁷⁷ United Nations, ‘Charter of the United Nations, Chapter X’.

⁷⁸ United Nations, *Yearbook of the United Nations 1948-49* (New York 1950) 36-7.

⁷⁹ United Nations, ‘The Universal Declaration of Human Rights: An Historical Record of the Drafting Process’, http://www.un.org/Depts/dhl/udhr/meetings_1946_nuclear.shtml (May 21, 2013).

The Nuclear Commission on Human Rights

The Commission on Human Rights was to be composed by the Nuclear Commission on Human Rights. Therefore, in order to understand the composition and the objective of the actual commission, it is useful to first understand these aspects about this nuclear commission. Who participated in the nuclear commission, what did they decide on, and why?

The Nuclear Commission on Human Rights met for the first time in 1946. It consisted of nine government representatives from nine different countries: Belgium, China, France, India, Norway, Peru, the SU, Yugoslavia and the US. The American member of the nuclear commission was Anna Eleanor Roosevelt (1884 – 1962), the widow of the late President Roosevelt, and she was appointed as chairman of the Nuclear Commission by her fellow members. In her acceptance speech, Roosevelt declared that it was her intention to “help the United Nations achieve its primary objective of keeping the peace of the world by helping human beings to live together happily and contentedly.”⁸⁰

Interestingly, the issue of freedom of speech was raised by several American press and media associations even before the drafting process had started. Hugh Baillie, the president of the United Press Association, Wilbur Forrest, the chairman of the Standing Committee on World Freedom of Information of the American Society of Newspaper Editors, and Kent Cooper, the executive director of the Associated Press, had sent letters concerning free speech to the ECOSOC, which in turn redirected the letters to the Nuclear Commission on Human Rights. They specifically insisted on the importance of freedom of speech and insisted that, as Cooper emphasized, “[v]ague phrases such as freedom of information are inadequate.”⁸¹

Although no specific examples or ideological motivations were brought up in these letters, shreds of all of the modern Western arguments for free speech as covered in the first chapter can be traced throughout their argumentation. Forrest, for instance, explicitly warned about the dangers of a state-controlled press in his letter, which was co-signed by a dozen editors in chief from different newspapers countrywide. He specifically argued for:

“[r]ecognition that any government or private monopoly of the media of information is inimical to the public interest and incompatible with freedom of expression and competition of ideas on which a well-informed public opinion is based.”⁸²

Comparably, Cooper warned about the risks of government controlled propaganda:

⁸⁰ Nuclear Commission of Human Rights sessional documentation, E/HR/6 (New York 1946).

⁸¹ E/HR/2.

⁸² Ibidem.

“Alternative is use of communications once more to regiment human minds through contests of debased use of propaganda by governments leading inevitably to disastrous military conflict.”⁸³

The United States government pronounced its support to the efforts taken by the American journalists. Edward Stettinius, jr., the US ambassador to the United Nations who remained in close contact with his government and occasionally corresponded with George F. Kennan directly⁸⁴, forwarded the letters to the relevant commissions. He added assenting remarks in his own attached letter as well:

“May I take this occasion to reaffirm the belief of the United States that the Commission on Human Rights should undertake as promptly as possible after it has been fully constituted a study of the problem of freedom of information with a view to preparing draft recommendations or a draft convention thereon to be submitted to the Economic and Social Council and later to member governments.”⁸⁵

The Nuclear Commission on Human Rights took the recommendations of the American editors into account, and decided that the issue of free speech was too complicated for the main Commission on Human Rights to handle. The commissioners agreed that a special commission should be established to deal with the issue: the Sub-commission on Freedom of Information and of the Press.

While discussing the terms of reference for the sub-commission, several disagreements on the issue of a free press surfaced between members of the nuclear commission, however. A majority of the members did agree that government control should be limited, much like the American journalists had argued in their letters. But some members of the Nuclear Commission on Human Rights contended that newspapers and news agencies had “poisoned the mind of the public”⁸⁶ by twisting the facts. They argued that freedom should always be coupled with responsibility, and that “measures should be considered against deliberate and systematic distortion of the truth.”⁸⁷ And although sessional documentation unfortunately does not specify which members raised these concerns, the fourth chapter of this thesis will show that the Soviet representative was almost certainly involved.

⁸³ Ibidem.

⁸⁴ See for instance: A.J. Kochavi, *Confronting captivity: Britain and the United States and their POWs in Nazi Germany* (North Carolina 2005) 257-61.

⁸⁵ Ibidem.

⁸⁶ Nuclear Commission of Human Rights sessional documentation, E/38/Rev.1 (New York 1946).

⁸⁷ Nuclear Commission of Human Rights sessional documentation, E/38/Rev.1 (New York 1946).

A brief examination of the Nuclear Commission on Human Rights shows a number of things. The first is that this commission was chaired by Eleanor Roosevelt. Second, the nuclear commission decided that the issue of free speech required a whole autonomous (sub-)commission. The incentive for this sub-commission, however, did not come from within the nuclear commission itself, or even from within the United Nations, but was suggested by (private) American press and media associations, who denounced the Soviet state interference regarding the press. Furthermore, their argumentation closely resembled that of the contemporary American interpretation of freedom of speech, as defended by – in particular – Zechariah Chafee, jr.

The Commission on Human Rights

Next is the (actual) Commission on Human Rights. Once again, it is important to (briefly) consider the design of this commission. Who exactly participated in the UNCHR, what did they decide on, and why?

Shortly after the meetings of the Nuclear Commission on Human Rights in 1946, the ECOSOC accepted most of the recommendations of this commission, and established the Commission on Human Rights. This commission was formally charged to submit proposals, recommendations and reports to the council regarding an “international bill of rights”⁸⁸ and “international declarations or conventions on civil liberties, the status of women, freedom of information and similar matters.”⁸⁹

UNCHR members were democratically appointed by the members of the ECOSOC as representatives for the countries of which they were nationals.⁹⁰ Many of the members that had been part of the initial nuclear commission were now appointed to the actual UNCHR, which included nine additional members as well. Eleanor Roosevelt was (unanimously) voted chairman of the UNCHR by the other members.⁹¹

The UNCHR received several working papers as well as a number of draft bills submitted by different UN member states and various non-governmental organizations during its first session. The main question during this session was how to treat those submissions, and, thus, how and by whom the (future) UDHR should be drafted. The commission ultimately decided that a drafting committee should be established to handle this, containing merely a couple of the members of the actual commission.⁹²

This Drafting Committee consisted out of the UNCHR representatives from the Philippines, the Ukrainian SSR, the USSR, the UK, Uruguay, Yugoslavia, and chairman and American representative Roosevelt, who of course held the American nationality. The drafting committee

⁸⁸ United Nations, *Yearbook on Human Rights for 1947*, 451.

⁸⁹ Ibidem.

⁹⁰ Morsink, *The Universal Declaration of Human Rights*, 4.

⁹¹ United Nations Commission on Human Rights, ‘Report of the commission on human rights to the second session of the ECOSOC’ (New York 1946).

⁹² United Nations, ‘United Nations Yearbook Summary, 1948’.

was assigned to prepare a first draft of an international bill of rights, which was to be submitted to the UNCHR.⁹³

All this shows three things about the UNCHR. The first of these is the fact that the members were actual representatives for their respective countries, as opposed to ‘neutral’ members. The second is that Eleanor Roosevelt was the chairman of this commission. The third is that the commission in turn appointed some of its own members to a drafting committee that was set to submit a first draft of the eventual UDHR, and that both Roosevelt and the Soviet representative were a part of this committee.

Eleanor Roosevelt

Since Eleanor Roosevelt had such a big part in the drafting process of the UDHR, it is interesting to examine her motivation before moving on to the Sub-commission on Freedom of Information and of the Press. How did Roosevelt get involved in the drafting process, and why did she do so?

Eleanor Roosevelt was the widow of President Roosevelt by the time she was asked to join the several United Nations bodies. She had served as First Lady of the United States for the twelve years that her husband was in office prior to his death in 1945. Before her husband became president of the United States, Eleanor was a member of the League of Woman Voters as well as the Woman’s Trade Union League in the 1920’s, two organizations that were primarily concerned with the role of females in society. Eleanor became the personal representative of Franklin in the political arena after her husband was diagnosed with polio in 1922, and played an active role in the 1932 campaign which led to her husband’s election to the presidency. Unlike many of her predecessors, Eleanor Roosevelt remained politically active after she entered the White House as the First Lady. She toured the nation many times, wrote newspaper columns and aired radio programs in which she championed human rights for the disadvantaged, an issue which she sought to include into Franklin’s policies as well.⁹⁴

Peaceful international relations had been a concern for Eleanor Roosevelt for years before she was appointed at the United Nations. Roosevelt spoke ardently for peace during the 1930’s, and particularly emphasized the role women could play in this process. She hosted a reception at the White House to celebrate the twentieth anniversary of the woman’s International League for Peace and Freedom, hosted a radio broadcast named “Women Want Peace”, and was involved with a number of American organizations that strived for international peace. It is worth noting however, that Roosevelt called herself a ‘realistic pacifist’, meaning that she did support both military preparedness and conscription.⁹⁵

⁹³ Ibidem.

⁹⁴ J. Hoff-Wilson & M. Lightman, *Without Precedent: The Life and Career of Eleanor Roosevelt* (Bloomington 1984) 1-13.

⁹⁵ Hoff & Lightman, *Without Precedent*, 108-13.

Much like her efforts for a peaceful international community, Eleanor Roosevelt endeavored to advance liberty and democracy in the world as well; she even publicly demanded free elections in countries that risked falling into the Soviet sphere after the Second World War was over.⁹⁶ During her time at the United Nations, moreover, Roosevelt repeatedly argued in favor of individual freedom, which she defended concordantly: “It is not that you set the individual apart from society but that you recognize in any society that the individual must have rights that are guarded.”⁹⁷ This Liberal vision of course led to Roosevelt’s belief that the Universal Declaration of Human Rights should defend the rights of the individual, and specifically the rights of the individual against the state: “Certain rights can never be granted to the government, but must be kept in the hands of the people.”⁹⁸ Likewise, in her book *Tomorrow is Now*, which was published posthumously in 1963, Roosevelt argued that the United States needed to resurrect with conviction and daring the good American word ‘Liberal’; “which derives from the word *free* (...) we must cherish and honor the word *free* or it will cease to apply to us.”⁹⁹

This leads to conclude that Eleanor Roosevelt’s ideals and values derived from a very sincere, and profoundly American mindset, which colluded with certain Soviet ideals. Even though Soviet officials claimed that their union was democratic, Eleanor Roosevelt rejected this notion firmly. After visiting refugee camps in Germany after the Second World War, which were mostly populated by exiles from the Baltic states, she condemned the Soviet accusation that the detained people were fascists simply because they did not support their governments. Roosevelt supported the refugees instead, and doubted whether the Soviet Union had a solid understanding of democracy at all. As Soviet authorities used the word, Roosevelt argued, “it would seem that democracy is synonymous to Soviet.” Clearly a questionable assessment, according to Roosevelt: “Under that formula I am not very sure that he would accept some of the other nations in the world who consider themselves democracies and who are as willing to die for their beliefs as are the people of the Soviet Union.”¹⁰⁰

Eleanor considered it an honor to join the Nuclear Commission on Human Rights. She regarded the United Nations as the most significant legacy her husband had left to the world, and wanted his name to be associated with the organization; Roosevelt believed that she could help forward Franklin’s moral.¹⁰¹

In short, Eleanor Roosevelt was a politically active woman. She valued the issue of human rights in a sincerely idealistic and rather American manner. Roosevelt greatly appreciated individual liberty, and the rights of the people versus the state. Furthermore, Roosevelt preferred the American democratic process as opposed to the Soviet manner - which she did not regard as democratic at all. This, alongside the hope to realize the promise of her late husband, was an

⁹⁶ Ibidem, 119.

⁹⁷ J. Lash, *Eleanor: The Years Alone* (London 1972) 62.

⁹⁸ Lash, *Eleanor*, 75.

⁹⁹ Hoff & Lightman, *Without Precedent*, 121.

¹⁰⁰ Lash, *Eleanor*, 60.

¹⁰¹ Ibidem, 36.

important reason why she accepted the offer to join the UNCHR, and got involved with other stages of the drafting process of the UDHR.

The Sub-commission on Freedom of Information and of the Press

The main UN body that was engaged with the issue of free speech was the Sub-commission on Freedom of Information and of the Press. Hence, the members of this commission were responsible for the most important step of the drafting process of the UDHR article on free speech. To understand the motivation behind the article, it is vital to know who the members of this commission were, and in particular what motivated the American member.

The twelve members of this sub-commission were chosen by the Economic and Social Council, out of a list of people submitted by the UNCHR, in consultation with the Norwegian Secretary-General Trygve Lie, and with the consent of the governments of which the members of the sub-commission were nationals: Canada, China, Czechoslovakia, France, Netherlands, Norway, Panama, Philippine Republic, the UK, Uruguay, the SU, and the US. Interestingly, Zechariah Chafee, jr., was appointed as the American member of the Sub-commission on Freedom of Information and of the Press.¹⁰²

Much like his function officially entailed, Chafee did not regard himself a delegate of the United States, nor did he consider any of his eleven colleagues to work for their own country, even though the governments of each of the members had to approve of their involvement. Instead, Chafee considered himself a United Nations official for the time being. He did, however, receive much help from the permanent officials of his own State Department, and openly acknowledged to pay considerable respect to the wishes of his government. Likewise, Chafee had an American take on the subject matter. He regarded the article regarding free speech with which the sub-commission dealt to correspond with the First Amendment of the American Constitution.¹⁰³

Unsurprisingly therefore, Chafee took his ideas and vision on freedom of speech with him to the sub-commission. As he described the importance of the right to free speech himself, while later writing about his work for the sub-commission in retrospect: “Historically it grew up as an immunity against suppression by governments and government officials.”¹⁰⁴ The right should therefore ideally be accepted without limitations or restriction, the Harvard professor argued. Chafee feared that including limitations on freedom of speech, for instance for the benefit of the welfare and security for all (comparable to clauses of the Espionage Act), could be used to justify almost any restriction on freedom of expression that any official would want to impose. Likewise, Chafee did not support governmental action in favor of free speech either:

¹⁰² United Nations, *Yearbook on Human Rights for 1947*, 477.

¹⁰³ Z. Chafee, ‘Legal Problems of Freedom of Information in the United Nations’, *Law and Contemporary Problems* 4 (1949) 545-83.

¹⁰⁴ *Ibidem*, 566.

“Serious evils are indeed created by deprivations of academic freedom and by the bias of some of the men who control newspapers, but attempts to end these evils by law are likely to put government officials in charge of private discussion. The proper remedy lies in public opinion and the development of a genuine professional spirit among all those concerned with an educational institution or a newspaper.”¹⁰⁵

Hence, a close look at the Sub-commission on Freedom of Information and of the Press reveals two interesting aspects. First, it was a partly autonomous entity within the United Nations, although the ties between the several members and their respective nations were not entirely cut off. It is therefore fairly probable that government officials did in fact influence their own members of the sub-commission to some degree. But more significantly, Chafee was the American member of the sub-committee, and he took his distinct interpretation of the right to free speech with him.

Conclusion

It is evident that the American influence on the establishment of a UDHR article on free speech was prevalent. The US and several American individuals were prominently involved with the project, from the inception of the United Nations organization itself, up until the Sub-commission on Freedom of Information and of the Press. President Roosevelt, as well as the UN charter, made it clear that human rights – including freedom of speech – were always regarded an official objective of the organization. Furthermore, both the Nuclear Commission on Human Rights and the (actual) Commission on Human Rights and were chaired by Eleanor Roosevelt, who was also appointed to the drafting committee of the UNCHR. Examining the personal history of Eleanor Roosevelt, it seems like she profoundly and sincerely endeavored to secure democracy and individual liberty, ideals she had been fighting for for years before joining the UN. Likewise, Chafee was the American member of Sub-commission on Freedom of Information and of the Press, the sub-commission that was set up in part because of a letter from American journalists and backed by the US government representative to the UN. Chafee did not primarily regard himself as a US representative while working in this commission, however, but instead attempted to genuinely work on a just interpretation of freedom of speech. This, of course, held that he aspired to implement the type of free speech that he had promoted and defended for most of his career; the interpretation of free speech that was based on the argument of truth merged with the argument for democracy. This means that all of the Americans involved with the establishment of an internationally accepted standard for freedom of speech agreed that an absence of state interference was crucial to safeguard either personal liberty, or democracy, or both.

¹⁰⁵ *Ibidem*, 566.

Chapter 4

**THE DRAFTING PROCESS OF
THE UNIVERSAL DECLARATION OF HUMAN RIGHTS
ARTICLE ON FREEDOM OF SPEECH**

Introduction

The previous chapters have discussed which American interpretations of freedom of speech existed, how these interpretations relate to American foreign policy after the Second World War, why the right to free speech was included in the Universal Declaration of Human Rights, and which Americans were involved in doing so. This chapter will examine the drafting process of the article on freedom of speech. Starting with the very first draft up until the final version, this chapter will analyze which of the previously discussed elements effected the outcome. Hence, the principal question this fourth chapter will answer is: how did the American interpretations of freedom of speech influence the drafting process of the UDHR article on free speech?

The preliminary phase

The previous chapter explained how the Nuclear Commission on Human Rights installed a Sub-commission on Freedom of Information and of the Press, which was asked to determine what purpose the UDHR article on freedom of speech should have. We have also seen that the drafting committee of the Commission on Human Rights was charged to write a first draft of the whole declaration.

Even before the first session of the drafting committee in 1947, Eleanor Roosevelt, chairman of the UNCHR, Peng-chun Chang, the Chinese vice-chairman, and Charles Habib Malik, the Lebanese rapporteur privately met with the Canadian lawyer John Peter Humphrey. Humphrey was requested to write a first draft of a declaration of human rights, upon which the drafting committee of the UNCHR could subsequently base its further debates and considerations.¹⁰⁶

Humphrey based most of this first version of the UDHR on two drafts suggested by third parties. One of these two proposed drafts was submitted by Panama on behalf of the American Law Institute (ALI), an institution that promoted the clarification and simplification of United States common law and its adaption to changing social needs. The other was submitted by the Inter-American Juridical Committee (IAJC), a juridical collaboration between states of both of the American continents.¹⁰⁷

Humphrey used one article on freedom of speech from each of these proposals. The article that was suggested by the ALI read:

“Everyone has the right to form, to hold, to receive and to impart opinions.”¹⁰⁸

¹⁰⁶ Morsink, *The Universal Declaration of Human Rights*, 5.

¹⁰⁷ *Ibidem*, 6.

¹⁰⁸ United Nations Economic and Social Council sessional documentation, E/CN.4/AC.1/3 (New York 1947).

The article submitted by the IAJC read:

“Subject only to the laws governing slander and libel, there shall be freedom of speech and of expression by any means whatsoever, and there shall be reasonable access to all channels of communication. Censorship shall not be permitted.”¹⁰⁹

Humphrey wrote two additional articles regarding freedom of speech himself, reading:

“There shall be free and equal access to all sources of information both within and beyond the borders of the State.”¹¹⁰

“There exists a duty towards society to present information and news in a fair and impartial manner.”¹¹¹

Subsequently, the drafting committee took Humphrey’s draft into consideration. Every member of the committee could suggest alterations. On behalf of the United States, Eleanor Roosevelt proposed to replace the four articles regarding free speech with the following three:

“Everyone has the right to form and hold opinions and to receive them from, and impart them, within or beyond the borders of the State.”¹¹²

“Freedom of everyone to receive, read and listen to all matters of information shall not be impaired, and there shall be free and equal access to all sources of information both within and beyond the border of a State.”¹¹³

“There shall be freedom of speech, of the press and of expression by means whatsoever and there shall be reasonable access to all channels of communication.”¹¹⁴

¹⁰⁹ E/CN.4/AC.1/3.

¹¹⁰ Ibidem.

¹¹¹ Ibidem.

¹¹² United Nations Economic and Social Council sessional documentation, E/CN.4/AC.1/8 (New York 1947).

¹¹³ E/CN.4/AC.1/8.

Although these modifications mostly concern the specific phrasing of the articles, what stands out immediately is that the article supplied by Humphrey which made an for slander and libel was fully removed by Roosevelt, resulting in a more absolute interpretation of the right to free speech. Given Roosevelt's appreciation for individual liberty, as seen in the previous chapter, this suggests that she preferred to protect the rights of the individual versus the state through the article on freedom of speech as well. She would not motivate this alteration until a later stage of the drafting process, however.

Subsequently, the Commission on Human Rights installed a small working group to evaluate the proposed suggestions, after which this working group in turn asked French representative and judge Rene Cassin to draft a revised version of the declaration.¹¹⁵

This revised version contained merely two articles regarding free speech, although the first did touch upon two points itself:

“1. Every one is free to express and impart opinions, or to receive and seek information and the opinion of others from sources wherever situated. 2. No person may be interfered with on account of his opinions.”¹¹⁶

“There shall be freedom of expression either by word, in writing, in the Press, in books or by visual, auditive or other means. There shall be equal access to all channels of communication.”¹¹⁷

The UNCHR ultimately submitted these two articles to the Sub-commission on Freedom of Information and of the Press, for this sub-commission to discuss and report back on. It should be noted, however, that the articles were explicitly regarded as temporary articles, which could even be fully rejected or ignored by the sub-commission. This is presumably why these articles were not yet debated very extensively at this first stage of the drafting process.¹¹⁸

The preliminary phase of the UDHR, the only phase of the drafting process before the Sub-commission on Freedom of Information and of the Press would discuss the article(s) on free speech, does show two things in particular, however. First, even the very first drafts of the articles on freedom of speech seem to have been influenced by American ideals and law, since two of them were taken from the American Law Institute and the Inter-American Juridical Committee. Second, even before the Sub-Commission on Freedom of Information and of the Press considered

¹¹⁴ Ibidem.

¹¹⁵ Morsink, *The Universal Declaration of Human Rights*, 7-10.

¹¹⁶ United Nations, *Yearbook on Human Rights for 1947*, 542.

¹¹⁷ Ibidem, 542.

¹¹⁸ Morsink, *The Universal Declaration of Human Rights*, 7-10.

the proposed articles, Roosevelt successfully removed any type of governmental restriction on free speech.

The Sub-commission on Freedom of Information and of the Press

Now that we know what articles were submitted to the Sub-commission on Freedom of Information and of the Press, it is interesting to see how this sub-commission handled the suggestions. To what degree did Zechariah Chafee, jr. push for his own interpretation of the right to free speech within this sub-commission? How did this interpretation compare to the interpretations of other members of the sub-commission? Was Chafee's interpretation accepted by the entire sub-commission, and if not, why not?

Several issues regarding free speech were extensively debated within the Sub-commission on Freedom of Information and of the Press. The most prominent of these regarded the issue of censorship, and was repeatedly brought up by Soviet Union representative Jacob M. Lomakin throughout the dozens of sessions. The Soviet representative recurrently attempted to shift the focus of the sub-commission from the type of censorship that should (or should not) be allowed, to the question of who should be given the power to do so.¹¹⁹ Lomakin primarily argued that censorship should not solely be interpreted as a governmental measure. Instead, he approached the issue from a Marxist perspective, emphasizing the influence of capital on the process of publication. Lomakin claimed that experience had shown that:

“[T]he free interchange of ideas was checked even more effectively by methods such as the opposition of industrial groups, rival newspapers or the withdrawal of publicity from a paper that dared print expressions of ideas with which those advertising in the paper did not agree.”¹²⁰

Likewise, disregarding the state-monopoly on power while emphasizing the influence of corporations, Lomakin contended that if restrictions could be imposed upon a freely elected government through the debated article on freedom of speech, but not upon private enterprise, it was not clear to him “which of the two was the real government.”¹²¹

In response, and to Lomakin's pleasing, Chafee acknowledged that private suppression of information was a serious problem as well. Chafee, however, argued that the two types of censorship (governmental and private), required vastly different treatments, and that the efforts of

¹¹⁹ United Nations Economic and Social Council sessional documentation, E/CN.4/Sub.1-SR.26 (New York 1947).

¹²⁰ E/CN.4/Sub.1-SR.26.

¹²¹ United Nations Economic and Social Council sessional documentation, E/CN.4/Sub.1/SR.28 (New York 1947).

the sub-commission were supposed to target governments. Most other members of the sub-commission agreed with this position.¹²²

Lomakin regularly initiated another debate as well, which did concern the degree of state-issued limitation on freedom of speech. Lomakin fervently argued that the sub-commission ignored recent history, and that the objectives and scope of the press had changed. The Soviet representative specifically regarded limitations on the freedom of the press necessary if it was used as “a vehicle of war propaganda and exhortation to revenge.”¹²³ He contended that the press should actively counter war-mongers, and that freedom of the press should as a consequence only be justified if it did not hamper that mission.¹²⁴

Chafee, in contrast, argued that limitations granted through other articles of the UDHR were sufficient to prevent warmongering and similar threats, and did not believe that there was a need to include these specific limitations in the article concerning freedom of speech.¹²⁵ Instead, Chafee alleged that restrictions on free speech should be kept to a minimum, “even in matters where State interference was permissible, as in the case of obscene or revolutionary publications.”¹²⁶ Central in Chafee’s reasoning was the apprehension that limitations on free speech such as proposed by Lomakin would be “liable to too wide interpretation and might lead to abuses.”¹²⁷

Ultimately, the sub-commission decided to recommend the following article to the Commission on Human Rights:

“Everyone shall have the right to freedom of thought and expression: this shall include freedom to hold opinions without interference; and to seek, receive and impart information and ideas by any means and regardless of frontiers.”¹²⁸

This article clearly has a very unconditional character, much like Chafee had desired. No exceptions or limitations on free speech are mentioned at all, essentially providing for an absolute interpretation of the right to free speech. Furthermore, none of Lomakin’s suggestions seem to

¹²² E/CN.4/Sub.1/SR.28.

¹²³ United Nations Economic and Social Council sessional documentation, E/CN.4/Sub.1/SR.27 (New York 1947).

¹²⁴ United Nations Economic and Social Council sessional documentation, ‘E/CN.4/Sub.1/SR.30’ (New York 1947).

¹²⁵ E/CN.4/Sub.1/SR.27.

¹²⁶ United Nations Economic and Social Council sessional documentation, ‘E/CN.4/Sub.1/SR.29’ (New York 1947).

¹²⁷ E/CN.4/Sub.1/SR.30.

¹²⁸ United Nations, *Yearbook on Human Rights for 1948*, 494.

have influenced the article. And although this article was adopted by majority vote, Lomakin had absented from voting himself, stating that his proposals were not considered sufficiently.¹²⁹

In overview, the American interpretation of freedom of speech was seriously contested within the Sub-commission on Freedom of Information and of the Press, specifically by Lomakin, the representative for the Soviet Union. In particular, the Soviet representative inserted that the state had the important task to prevent a corporate version of censorship. Likewise, Lomakin considered certain types of speech potentially dangerous for the democratic process of a country, and argued for limitations. Chafee, in contrast, deemed the permission of almost any type of speech necessary in order to have a functional democracy at all. He believed that any governmental power to censor potentially harmful types of speech could be abused, which in itself would be far more harmful for the democratic process. Ultimately, Lomakin's assertions were rejected by majority vote. The proposed UDHR article was largely modeled after Chafee's absolute interpretation of the right to free speech instead, an outcome that even caused the Soviet-representative to abstain from voting.

Post Sub-commission on Freedom of Information and of the Press

Although the Sub-commission on Freedom of Information and of the Press was a crucial United Nations body in regard of the UDHR article on free speech, we have in the previous chapter seen that there were several other UN bodies involved in the process as well. This poses the question what happened in regard of the article after the sub-commission was done with it. What did the drafting committee of the Commission on Human Rights, the (actual) Commission on Human Rights and the ECOSOC discuss and decide regarding the UDHR article on freedom of speech?

Even before the drafting committee of the Commission on Human Rights discussed the proposed article on freedom of speech, the complete first draft of the UDHR was distributed among all participating governments for evaluation and feedback. Strikingly, the US government advised the drafting committee to implement the almost exact same article as proposed by the Sub-commission on Freedom of Information and of the Press, although some minor adjustments were made:

“Everyone is entitled to freedom of speech and expression including freedom to hold opinions, and to seek, receive and impart information and ideas by any means regardless of frontiers.”¹³⁰

¹²⁹ United Nations, *Yearbook on Human Rights for 1948* (New York 1950) 494.

¹³⁰ United Nations Economic and Social Council sessional documentation, E/CN.4/AC.1/20 (New York 1948).

The Soviet Union, in contrast, did not concur with the initially drafted article on free speech at all. Alexei Pavlov, representing the Soviet Union, held a speech before the drafting committee in which he condemned the manner in which the declaration was drafted up until that point. The SU representative particularly criticized the absence of an obligation to fight against Fascism and Fascist propaganda, as well as the inadmissibility of propaganda in favor of nationalist and racial enmities, which would “underline the very foundations of democracy.”¹³¹ He particularly condemned the proposed article on free speech:

“[The article mentions] the freedom of political convictions, of the expression and transmission of thought and the dissemination of views [while] there is nothing which could prevent the open and secret enemies of democracy of all kinds, Fascist and Nazi, from using, or rather abusing, these rights and freedoms, and from exposing democracy and human rights to deadly danger once again.”¹³²

Pavlov subsequently submitted an alternative text for the article on free speech. As opposed to the article submitted by the Sub-commission on Freedom of Information and of the Press (and the relatively similar proposal from the US government) this Soviet article did include explicit references to the desired exceptions on freedom of speech, as well as a solution to the alleged problem of private censorship:

“1. In accordance with the principles of democracy and in the interests of strengthening international co-operation and world peace, every person shall be guaranteed by law the right to the free expression of his opinions and, in particular, to freedom of speech and of the press, freedom of assembly and freedom of artistic representation. The use of freedom of speech and of the press for the purposes of propagating Fascism and aggression or of inciting to war between nations shall not be tolerated. 2) In order to ensure the right of the free expression of opinion for large sections of the peoples and for their organizations, State assistance and co-operation shall be given in providing the material resources (premises, printing presses, paper, and the like) necessary for the publication of democratic organs of the press.”¹³³

Hence, much like Lomakin, Pavlov regarded certain types of speech a threat to the democratic process, and proposed to include such limitations in the UDHR article on freedom of speech. Furthermore, Pavlov emphasized the influence of the ownership of capital - such as printing

¹³¹ E/CN.4/AC.1/29.

¹³² Ibidem.

¹³³ United Nations Economic and Social Council sessional documentation, E/CN.4/95 (New York 1948).

presses - on freedom of speech, and on the freedom of the press in specific. The Soviet representative suggested that freedom from government interference would be useless as long as a certain section of the population did not have access to the means to publish any information. Presumably referring to the working class, as based on Marxist theory, Pavlov proposed that the state should actively provide this section of the population with the means needed to disseminate information.

Pavlov's proposed article on freedom of speech was only supported by a small minority of the members of the drafting committee, but the full committee did agree to send it to the (actual) Commission on Human Rights, along with the original article.¹³⁴

Although the Commission on Human Rights did not discuss the articles on freedom of speech independently, Soviet representative Pavlov criticized the report within this commission as well. Much like he did within the drafting committee, Pavlov particularly criticized the draft declaration because of a lack of measures to prevent Fascism. Although he did not refer to limitations on free speech specifically this time, the resemblance to his previous criticism is evident; the principle error of the draft declaration was "the absence of any effective measures to combat Fascism and Nazism and to provide against the possibility of their re-appearance."¹³⁵

Pavlov did get some support within the Commission on Human Rights: the representatives of Soviet states Belarus and Ukraine agreed with Pavlov, as did the representative from Yugoslavia. None of the other twelve members of the commission – including the US – complied, however. This led to the approval of the draft declaration by majority vote, including the original version of article on free speech as opposed to the Soviet proposal.¹³⁶

The next step in the drafting process was the Economic and Social Council. Once again, it were the representatives of the United States and the Soviet Union that held opposing views on the draft declaration. US representative Willard L. Thorp was extremely positive, pronouncing the document an important step for the United Nations. He hoped that the declaration would serve as a beacon towards which all nations should strive, and even drew comparisons with the spirit expressed by Abraham Lincoln with reference to the United States Declaration of Independence. In his enthusiasm, Thorp compared the draft declaration to other "great documents of history,"¹³⁷ such as the American Declaration of Independence, the French Declaration of the Rights of Man and of the Citizen, and the British Magna Carta.¹³⁸

¹³⁴ E/CN.4/95.

¹³⁵ United Nations Economic and Social Council sessional documentation, E/CN.4/SR.81 (New York 1948).

¹³⁶ E/CN.4/SR.81.

¹³⁷ United Nations Economic and Social Council sessional documentation, E/800 (New York 1948), United Nations Economic and Social Council sessional documentation, E/800/Corr.1 (New York 1948), United Nations Economic and Social Council sessional documentation, E/800/Add.1 (New York 1948), United Nations Economic and Social Council sessional documentation, E/AC.27/W.1 (New York 1948), United Nations Economic and Social Council sessional documentation, E/857 (New York 1948) and United Nations Economic and Social Council sessional documentation, E/1009 (New York 1948).

¹³⁸ E/800, E/800/Corr.1, E/800/Add.1, E/AC.27/W.1, E/857, E/1009.

The Soviet representative – once again Pavlov - fiercely condemned the draft declaration, however. Much like he had done during the earlier stages of the drafting process, Pavlov disregarded the document because he did not think that it supplied enough safeguards to uphold democracy through the suppression of Fascism. Although Pavlov did not specifically mention the article on free speech within the ECOSOC, his argumentation did include a very similar reasoning as to why it was dangerous to exclude safeguards against Fascist and Nazi propaganda. Pavlov explained that the draft declaration would never be accepted by the Soviets as long as Fascist propaganda was to be allowed. In the end he did not, however, object to the transmission of the declaration to the General Assembly.¹³⁹

Hence, evidently, the exact same discord that had emerged between Chafee and Lomakin within the Sub-commission on Freedom of Information and of the Press prevailed throughout the drafting committee of the Commission on Human Rights, the Commission on Human Rights itself, and the Economic and Social Council. While all of the American UN representatives wholeheartedly approved of the article proposed by the Sub-commission on Freedom of Information and of the Press, the Soviet representatives repeatedly opposed to the absolute character of the article, and continuingly but idly advocated for state-imposed limitations on the right to free speech as well as state-assistance for the people of the state. The Soviet nations were, however, mostly devoid of further support, which given the democratic structure of the UN bodies did eventually lead to the progression of the proposed article to the General Assembly of the United Nations.

The General Assembly

The final stage of the drafting process of the UDHR occurred within the main body of the United Nations: the General Assembly. What was discussed regarding the article on free speech within the General Assembly, by whom, and why? And what did the General Assembly ultimately agree on, and how did they do so?

The General Assembly installed the Social, Humanitarian Cultural Affairs Committee, better known as the ‘Third Committee’, to propose a final draft. This Third Committee spent 81 meetings during late 1948, discussing the whole draft declaration, once again taking feedback from all of the UN member states.

Since no additional suggestions or criticism was submitted to the Third Committee by the United States whatsoever, the Americans were evidently content with the article on freedom of speech.

The Soviet Union, on the other hand, did demand major alterations. The SU submitted the exact same article on freedom of speech to the Third Committee as it had done to the drafting committee of the Commission on Human Rights. And furthermore, the Soviets alternatively

¹³⁹ Ibidem.

proposed an additional text to the original article as proposed by the Sub-commission for Freedom of Information and of the Press, which read:

“Everyone has the right to freedom of thought and its expression, wherein is included freedom of conviction and freedom of access to sources of information and means of communication for the transmission of information in the territory of his own country and also in other countries, within limits corresponding to the interests of national security.”¹⁴⁰

Notably, within this text, it was no longer solely Fascist and Nazi propaganda that was regarded as speech that should be censored, but rather any speech would be regarded a threat to national security. And furthermore, a provision was once again included which provides that people do not solely have the right to free speech, but an additional right to means of communication, presumably referring to the afore mentioned access to essential capital such as printing presses.

But regardless of Soviet objections, suggestions and proposed alterations, the original draft declaration was adopted by the Third Committee, although it did contain some slight adjustments regarding the precise phrasing and the sequence of the various articles.¹⁴¹ Hence, by now, the proposed UDHR article on freedom of speech was exactly phrased at it is today:

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Subsequently, the final and definitive stage of the drafting process was the approval of the proposed Universal Declaration of Human Rights by the General Assembly itself. A final round of discussion was henceforth held within this main body of the UN during the last months of 1948.

Once again, it was the Soviet representative, this time around Joseph Stalin’s state prosecutor Andrei Vyshinsky, that dismissed the proposed article on free speech, and argued that the article did not solve the real problem. He contended that it was the diffusion of dangerous and undemocratic ideas such as war-mongering and Fascism that should be prevented. Furthermore, he submitted that the current article made no provision for the free dissemination of just and lofty ideas. Once again clearly argued from a Marxist point of view, the Soviet representative emphasized that ownership of capital heavily influenced the dissemination of information. Vyshinsky argued, much like Lomakin and Pavlov had done before him, that it required capital, in

¹⁴⁰ United Nations General Assembly sessional documentation, A/C.3/294 (Paris 1948).

¹⁴¹ United Nations, ‘United Nations Yearbook Summary, 1948’.

particular in the form of printing presses and similar resources, to distribute ideas. These resources were of course not owned by the public at large, or the working class, but by the capitalist elite. The Soviet representative argued that if freedom of expression was to be effective, the working class must have the means to disseminate their opinions as well, for which they must have printing presses and newspapers at their disposal. The Soviet delegation henceforth submitted another amendment to the declaration, which would guarantee that “it is the inalienable right of every person freely to express and disseminate democratic views, and to combat fascism.”¹⁴²

This time Eleanor Roosevelt extensively rejected the Soviet reasoning as well as the amendment as proposed by the SU. She argued that the Soviet amendment to the article on free speech would not stimulate or guarantee freedom of speech, but instead could be used to restrict freedom of opinion and expression. The chairman of the Commission on Human Rights posed that the proposed Soviet article was in reality intended to establish standards that would allow states the denial of free speech without violating the article. Roosevelt explained how previous discussions showed that expressions like ‘democratic opinion’, ‘democratic State’, ‘democratic system’ and ‘Fascism’ were open to the most varied and misleading interpretations, and that the article on free speech as proposed by the Soviet Union introduced new elements without improving the originally submitted text.¹⁴³

In order to prevent state-abuse, Roosevelt henceforth argued for an absolute interpretation of the right to free speech, an interpretation that would protect the individual from state interference. This interpretation of course closely resembles the argument for self-fulfillment, as seen in the first chapter. For Roosevelt, the power of the state was the main threat to personal freedom, and it was this individual liberty that she sought to protect.

In overview, a similar dissonance between the representatives of United States and the Soviet Union as seen within all of the previous UN bodies was reiterated within the General Assembly. Roosevelt defended the article on free speech rather fiercely on grounds similar to the freedom of speech argument for self-fulfillment, while rejecting the Soviet proposed alterations unambiguously. The Soviets meanwhile approached the issue of state intervention from a rather Marxist perspective, and argued that such interference was required to enable the freedom of the press for the working class, while limits on certain types of speech was required to protect the democratic process.

The voting procedure

The very last step in the process of the establishment of the article on freedom of speech was the voting procedure within the General Assembly. Was the article on freedom of speech and the UDHR as a whole accepted by every member of the UN? And if not: which states did not vote in favor of the declaration, and why?

¹⁴² Ibidem.

¹⁴³ United Nations General Assembly sessional documentation, A/777 (Paris 1948).

The first round of voting on the article on freedom of speech regarded the question whether the new article as proposed by the Soviet Union should replace the article that had resulted from the drafting process within the several bodies of the United Nations. As a result, however, no more than six member states voted in favor of the Soviet proposal, all of which were either Soviet or communist states themselves: the Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, Ukrainian Soviet Socialist Republic, Yugoslavia and - of course - the Soviet Union. Most of the other members voted against the Soviet proposal however, namely: Australia, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Cuba, Denmark, the Dominican Republic, Egypt, El Salvador, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, the Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Sweden, Syria, Turkey, United Kingdom, Uruguay, Venezuela, and, indeed, the United States.¹⁴⁴

Next, all of the proposed UDHR articles were put to a vote individually. Strikingly, the article on freedom of speech was one of only two¹⁴⁵ articles that received any negative votes at all, with all of the Soviet states rejecting the article, and with a dispersion of votes similar to the voting round regarding the question which of the two articles to consider in the first place, as seen above.¹⁴⁶

The voting round regarding the UDHR as a whole was held on December 10th 1948. The declaration was adopted by majority vote. As much as 48 member states including the US voted in favor of the declaration, while none of the members voted against. There were, however, eight abstentions: the Byelorussian Soviet Socialist Republic, Czechoslovakia, Poland, Saudi Arabia, South Africa, the Ukrainian Soviet Socialist Republic, Yugoslavia, and the Soviet Union.¹⁴⁷

Through an elaborate explanation, Soviet representative Vyshinsky dismissed the whole UDHR on basis of the proposed relationship between the individual and the state: "Human rights could not be conceived outside the state; the very concept of right of law was connected with that of the state."¹⁴⁸ Once again clearly based on Marxist theory, Vyshinsky argued that "the contradiction between the State and the individual was a phenomenon which had occurred in history when society had been divided into rival classes."¹⁴⁹ In a state where the contradiction between these rival clashes had vanished, however, there would not be a contradiction between the government and the individual, since "the government was in fact the collective individual."¹⁵⁰ This was clearly the case in the Soviet Union, Vyshinsky argued, where "the State and the individual were in harmony with each other, [and] their interests coincided,"¹⁵¹ which of course made the need for

¹⁴⁴ A/777.

¹⁴⁵ The other rejected article concerned the right to freedom of movement and residence within the borders of each state and the right to leave any country, including his own, and to return to his country; this article was rejected by the Soviet countries as well.

¹⁴⁶ United Nations, 'United Nations Yearbook Summary, 1948'.

¹⁴⁷ Ibidem.

¹⁴⁸ Morsink, *The Universal Declaration of Human Rights*, 21-22.

¹⁴⁹ Ibidem, 21-22

¹⁵⁰ Ibidem, 21-22

¹⁵¹ Ibidem, 21-22

freedom from government interference as preferred by the American representatives and established through many UDHR articles completely obsolete.

Hence, much like the previous debate regarding the article on free speech, it were particularly the Soviets that demanded alterations. In particular, the Soviets wanted to see additional changes that would empower the state, or, adhering to Marxist ideology: the people of the state, through the state. Moreover, the Soviets rejected the article on free speech in particular - although they did vote against one other article as well. This leads to conclude that the SU abstained from voting on the complete UDHR either in very large part or completely because of the absence of state-empowerment regarding freedom of speech. The American delegation, on the other hand, got the article on freedom of speech adopted by majority vote, including the desired absolute interpretation of this right, thereby limiting the power of the state and protecting individual liberty.

Conclusion

The principle discussion regarding the UDHR article on free speech concerned the role of the state concerning freedom of speech. And it was the American interpretation of freedom of speech – in which the role of the state was limited – that was particularly prevalent throughout the whole drafting process. Even before the Sub-commission on Freedom of Information and of the Press was consulted, the preliminary draft was influenced by American laws, and adjusted by Roosevelt to further limit the power of the state. Soviet representative to the Sub-commission on Freedom of Information and of the Press Lomakin, however, argued that the role of the state should be acknowledged through the article in order to prevent certain types of speech that were considered harmful to the democratic process. Clearly influenced by Marxist ideology, Lomakin likewise argued that the working class should be provided with the means to disseminate information through the state, in order to create a truly free press. Chafee, on the other hand, regarded any implementation of state interference within the article an opportunity for abuse and a potential threat to the freedom speech – as we have seen in previous chapters as well. Moreover, this discord remained a central conflict throughout the whole drafting process. All of the Soviet representatives within the United Nations objected to Chafee's interpretation, and instead favored Lomakin's approach. The American representatives however, and Roosevelt in particular, objected to any Soviet suggestions, and contended that the permission of state interference would ultimately lead to the suppression of individual freedom and democracy. Since the Soviet judgment was almost entirely isolated to the Soviet states within the United Nations, the interpretation as favored by the Americans was adopted by majority vote, a situation that presumable even caused the Soviet Union and other Soviet nations to abstain from voting on the UDHR at all.

Conclusion

The central question this thesis has sought to answer is: to what extent did American values influence the Universal Declaration of Human Rights article on freedom of speech? In order to answer this question, this thesis has covered four subtopics. The first of these subtopics was the development of the American ideal of free speech, and the interpretation of this right shortly after the Second World War. The second subtopic concerned the relation of American values regarding free speech to contemporary American foreign policy. Third was the question why an article on free speech was included in the UDHR, what part the Americans played in the creation of this article, and what motivated them to do so. The fourth and final topic regarded the influence of the American interpretation of freedom of speech on the drafting process of the UDHR article on free speech.

As for the development of the American ideal and interpretation of free speech, the first chapter of this thesis showed that free speech was imbedded in American culture ever since the country became independent from the British Empire. The right to free speech had a huge influence on the American Revolution and the drafting process of the Constitution and the Bill of Rights, and it was guaranteed through the First Amendment. In regard of the three main arguments for free speech, there was always an emphasis on the arguments for self-fulfillment and democracy, both of which are largely directed at the limitation of government control. During the twentieth century, Zechariah Chafee, jr. additionally merged the argument for truth with the argument for democracy, which amplified the importance of discussion itself as a prerequisite for society to progress.

On the topic of the American foreign policy of the first post-war years, the second chapter of this thesis explained that this was ideologically constructed by George F. Kennan, who as a diplomat in the Soviet Union had encountered the harm of repression of free speech in regard of individual liberty, democracy, and, most of all, truth. The Soviet propaganda and monopoly on "truth" that replaced the freedom of the press and open discussion withheld the Russian society from progressing and, perhaps of greater importance to Kennan, even endangered the safety and wellbeing of the United States. He henceforth specifically attempted to contain the Soviet propaganda, or the Soviet suppression of free speech.

As for the question why an article on free speech was included in the UDHR, the third chapter of this thesis showed that the American influence on this decision was predominant; several American individuals have actively pressed for such an article in a number of ways. President Roosevelt did not only commit to the formation of the United Nations organization, he specifically argued for the establishment of an internationally accepted standard for human rights, including freedom of speech. Furthermore, the initiative for an extensive discussion on the article on free speech within the United Nations came from American journalists, and was supported by the US government representative to the UN. Eleanor Roosevelt, in turn, chaired the Nuclear Commission on Human Rights, the (actual) Commission on Human Rights and the drafting committee of the Commission on Human Rights, and she helped to install a Sub-commission on Freedom of Information and of the Press. Chafee, finally, was the American member of this sub-commission. Strikingly, President Roosevelt, the American journalists, the US government

representative to the UN, Eleanor Roosevelt and Chafee all considered freedom of speech unrestricted by government interference a fundamental condition for a free and successful society, and rejected governmental control in this regard.

This also brings us to the fourth subtopic. Chafee was probably the single most influential individual involved with the whole drafting process, as the American representative for the Sub-commission on Freedom of Speech and of the Press. It was Chafee's rather absolute interpretation of the right to free speech – particularly in regard to state limitation – that repeatedly clashed with the interpretation of Soviet representative Lomakin. While Lomakin argued that government interference regarding freedom of speech was required to give the people of the state a voice, and to protect democracy, Chafee believed that government interference would inevitably be abused by the state, and would in fact compromise freedom of speech and democracy. This dissention regarding state interference, moreover, was a crucial rift throughout the whole drafting process of the UDHR. Most importantly, Eleanor Roosevelt shared Chafee's conviction that an absolute interpretation of freedom of speech was vital, and particularly defended the absolute character of the article before the General Assembly, thereby rejecting adjustments proposed by Soviet representative Vyshinsky.

It should, therefore, be concluded that American values influenced the UDHR article on free speech to a large extent. The absolute character of the nineteenth article of the declaration, void of any references to limitations or government interference, was the type of article that was argued for by all of the American representatives involved, and matched Kennan's envisioned containment strategy seamlessly. While the several Soviet representatives repeatedly argued for state interference regarding freedom of speech and of the press, presumably inspired by Marxist ideals regarding capital ownership of the means to disseminate information, all of the involved Americans took the lead within their respected UN bodies to reject this interpretation, and instead favored an interpretation that would protect the individual from the state.

And more specifically: it was Chafee's particular interpretation of the First Amendment of the Bill of Rights that strongly influenced the absolute character of the UDHR article on free speech. As the American member of the Sub-commission on Freedom of Information and of the Press, Chafee's interpretation of freedom of speech, based on the arguments for truth and democracy, unquestionably formed the cornerstone of the article. As opposed to the Soviet interpretation of the right, in which the state was required to limit dangerous types of speech and to enable free speech for certain segments of society, Chafee contended for an article on freedom of speech that was unequivocally free from government interference. He believed that societies could only progress if governments kept restrictions to a minimum; even in the case of obscene or revolutionary publications. He argued that it was only through open discussion that truth could be sought, which in turn was an absolute requirement for democracy to function, and for society as a whole to move forward.

Furthermore, the perceived importance of the UDHR article on freedom of speech is very evident; free speech was discussed extensively throughout the whole drafting process. The issue of freedom

of speech had its own sub-commission, and was subsequently debated within the drafting committee of the Commission on Human Rights, the Commission on Human Rights itself, the Economic and Social Council, and the General Assembly. Moreover, the article on free speech was only one of two articles that was ultimately rejected by a number of UN member states, including all of the Soviet states, and in all probability even caused these Soviet states to abstain from voting on the final version of the complete UDHR. All of this shows that both the Soviet and the American representatives considered freedom of speech a central and important issue.

Chafee in particular did not merely consider freedom of speech a byproduct of American values or ideals, or as an aspect of a bigger ideology. Instead, for him, the right to free speech formed the very heart of a free society. Chafee argued that in order for a society to move forward, members of that society should be allowed to discuss the rule of law in virtually all circumstances. While cultural conditions change, the people should always be allowed to question and debate the state of affairs in order for society to progress.

It is notable, moreover, that neither Chafee, Kennan nor Roosevelt regarded freedom of speech as a ledger against Fascism in specific – even though the UDHR is sometimes assessed as a direct reaction to Nazi atrocities by historians such as Paul G. Lauren and Michael Ignatieff, as seen in the introduction of this thesis. Although Chafee, Kennan and Roosevelt must surely have regarded freedom of speech as a useful and perhaps even a crucial condition to prevent Fascism, they all believed that free speech provided an even broader benefit than that. Hence, even though the Soviets pushed for limitations on Fascist speech, the American representatives univocally rejected such restrictions.

Although the realist and the orthodox interpretation of Cold War history might seem to contradict any notion of values or ideals such as freedom of speech, liberty or democracy, Kennan's writings show that this is not necessarily true entirely. Kennan himself, in particular, deemed the lack of freedom of speech an essential aspect of the foreign policy to which the Soviet Union adhered. Kennan argued that the SU maintained its monopoly on "truth" through propaganda and the repression of free speech. And he specifically warned that it was this "truth" that posed an irrefutable threat to the safety of the United States. It could be argued that according to Kennan, the repression of free speech and the Soviet propaganda machinery drove the realist threat, and in extension drove Kennan's motivation for the American containment strategy.

The issue of freedom of speech might in that case, however, fit the post-revisionist narrative slightly better. Post-revisionists, after all, argue that US foreign policy was predominantly motivated by the *perceived* threat of the Soviet Union – which was in turn partially based on Kennan's assessment of Soviet propaganda and the Soviet monopoly on "truth".

The democratic school of thought – as advocated by Tony Smith – matches the emphasis on freedom of speech even better. Kennan in particular believed that a world in which freedom of speech was guaranteed would be a safer world for the United States, much like Smith argued that a democratic world would. These two concepts, moreover, are closely related, according to Kennan, and to Chafee in specific. Chafee, after all, believed that true democracy could only live if

freedom of speech was guaranteed; free speech, unrestricted by government interference, was regarded a necessary condition for the democratic process. Hence, if American foreign policy was concentrated on the global dissemination of democracy, the promotion of freedom of speech through the UDHR would be an excellent way of doing so.

The cultural element suits this central importance for free speech best of all, however. Freedom of speech was, after all, deeply rooted in American culture, as the first chapter of this thesis showed. The right to free speech was of central importance to the independence of the United States, and was considered of crucial importance to the American style of democracy. Since neither Kennan, Chafee nor Roosevelt regarded the Soviet interpretation of democracy to be true, or the Soviet interpretation of “truth” to be valid, this certainly shows a form of cultural ideal. Likewise, the American rejection of governmental interference and preference for personal (‘negative’) freedom as established with the absolute character of the UDHR article on free speech shows a similar cultural ideal.

But regardless of which school of thought has provided the best explanation of the American foreign policy of the early Cold War, the central importance of an international safeguard for freedom of speech seems imminent: it conforms with several of them, while it interconnects some, and supplements others – arguably with the exception of the revisionist school.

It would, however, be an exaggeration to claim that freedom of speech was a central component of all of these interpretations, or to isolate international preservation of free speech as the prime motivation behind the American foreign policy during these early Cold War years. This is of course in part because the UDHR, and even the United Nations organization itself, was only one element of American foreign policy. The Bretton Woods agreements have little to do with human rights or free speech, for instance, and although the establishment of the NATO could be explained from the perspective of the containment strategy, and could therefore possibly even be regarded as a method to contain Soviet propaganda and suppression of free speech, much more research and evidence would be required in order to draw such a radical conclusion.

But if American values and sincere ideals had any part in the contemporary American foreign policy at all; if US officials were not *solely* motivated by American self-interest, the United Nations and the Universal Declaration of Human Rights in specific where the principal platforms on which such idealism could have been realized.

And it does indeed seem like a sincere belief in human rights, and a genuine appreciation for free speech, democracy and liberty inspired the American representatives to include the article on freedom of speech in the UDHR. Roosevelt and Chafee in particular aspired to establish an article on freedom of speech that would guarantee the freedom from government interference, in order to provide for true liberty and democracy. Likewise, Kennan genuinely despised the Soviet mode of conduct, where freedom of speech was repressed and substituted by the Soviet monopoly on “truth”, established through the propaganda machinery. Even though it would be another exaggeration to project the motivation behind the article on free speech onto the whole of the United Nations, or even on the complete UDHR, it should be concluded that a certain degree of

sincere (and American) idealism was present in the heart of the organization during these early Cold War years.

This is also interesting in regard of the recent crackdown on journalists by American politicians and US government officials as touched upon in the introduction of this thesis. As seen in the fourth chapter, the several Soviet representatives argued for state interference regarding freedom of speech because of two reasons in particular. First, the Soviets believed that it was necessary for the state to limit certain types of speech in order to safeguard democracy and to prevent the establishment of Fascism. And second, they argued that the state should actively enable freedom of speech for the people of a state, and for the working class in particular. Resembling Marxist theory, the Soviets predicted that without such state interference, corporate media would eventually seize a monopoly on the press, essentially limiting free speech for the great majority of people that would not have access to the capital means to disseminate information.

This second argument, regarding a corporate monopoly on the press, is particularly interesting in light of recent events. 65 years after the UDHR was drafted, the pluralism of private media in the United States has severely diminished. By some accounts, as much as 90% of all of the media read, watched and listened to by Americans is owned by no more than six corporations: Comcast Corporation, News Corporation, the Walt Disney Company, Viacom Inc., Time Warner Inc., and CBS Broadcasting Inc.¹⁵² And although this thesis is not the place to discuss the diversity between these media conglomerates (or the lack thereof), it is worth noting that neither Julian Assange, Glenn Greenwald nor Barrett Brown work for an outlet that is owned by any of these six corporations. Because of technological innovations such as the internet, as mentioned in the introduction of this thesis as well, none of them is dependent on capital means such as printing presses (or television-studio's) to disseminate their information – a dependence which the Soviets argued would eventually cause the corporate monopoly. Instead, all three of these journalists primarily publish their work online; the digital sphere that is difficult to control by governments, and seemingly impossible to monopolize – although it is of course possible to prosecute web-journalists.

If the American politicians and government officials succeed in criminalizing such journalists, they would beyond any doubt suppress the freedom of the press and the right to free speech unrestricted by governmental interference as intended by the American representatives involved with the drafting process of the nineteenth article of the UDHR, and as intended by Chafee in particular. Moreover, these politicians and officials would reject the central issue that separated the American representatives from those of the Soviet Union idealistically. This would in turn not only mean that the Soviet representatives have to great extent correctly predicted the development of the ownership of American media corporations into the hands of a small private elite, but it would also hold that the United States has partly become what its own United Nations

¹⁵² A. Lutz, 'These Six Corporations Control 90% of the Media in America' (version June 14, 2012), <http://www.businessinsider.com/these-6-corporations-control-90-of-the-media-in-america-2012-6> (July 11, 2013).

representatives sought to preclude not only for the United States domestically, but for the entire world through the Universal Declaration of Human Rights.

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