

A Contrapuntal Reading of the Development of the Universal Declaration of Human Rights

Conceptualized, and ultimately codified, at the start of the Cold War, the Universal Declaration of Human Rights (UDHR) provided both the United States and the Soviet Union with an opportunity to champion nascent human rights—and thereby to develop additional grounds for criticizing each other on the international stage. As debate regarding the UDHR within the General Assembly reveals, participating state delegates were starkly divided regarding the question of how “rights” ought to be understood. In this paper, I will analyze archival data from the UDHR and subsidiary drafting meetings to crystallize the rhetorical framework employed by the US and the UK as it sought to advance an individualist universalism. However, I will also analyze resistance to this—particularly by smaller states—through the lens of Edward Said’s contrapuntal method. I will argue that while the US and the UK succeeded in determining the primary legal architecture of the UDHR, smaller states should also be understood as authors of the UDHR, whose resistance directly shaped the final UDHR and two main human rights Covenants.

More specifically, while the USSR and comparatively smaller states such as India, China, Pakistan, the Philippines, Egypt, and Saudi Arabia prioritized collective “economic” and “social” rights, the US and the UK subordinated economic and social rights to individual, “civil” and “political” rights. Crucially, self-determination was one of the primary economic and social rights in question and spurred intense debate as the US and the UK sought to maintain their vested colonial interests while simultaneously rendering the USSR as an especially egregious violator of “human rights.” Ultimately, the US and the UK’s vision of a decidedly “individualist” universalism won out, as reflected within the abiding legal architecture of the UDHR.

From this seems to follow a bleak picture of the UDHR drafting process as dominated by Northern powers, and the Convention itself as a metropolitan text accordingly. However, I argue that when analyzed vis-à-vis Said’s (1993) contrapuntal method, the Convention drafting transcripts reveal a different story: delegates from the Global South actively staged their resistance to the clause by directly invoking the incongruity between the professed universalism of Northern states and their attempts at restricting the refugee definition. These Southern

delegates thus positioned themselves as actual universalists and, in turn, legitimators of the Convention as an international legal instrument.

In *Culture and Imperialism*, Said develops his contrapuntal reading method through a close analysis of several canonical Western literary works, including Jane Austen's *Mansfield Park*, Joseph Conrad's *Heart of Darkness*, Rudyard Kipling's *Kim*, Giuseppe Verdi's *Aida*, and Albert Camus' *The Stranger*. Overall, Said posits that each of these works rest upon a tacit foundation of colonialism: in *Mansfield Park*, for example, Sir Thomas Betram—the uncle and benefactor of Austen's protagonist, Fanny Price—owns several plantations in Antigua. As Said describes, Austen treats these properties “as a natural extension of the calm, the order, the beauties of Mansfield Park” (1993, 79). Accordingly, “even where colonies are not insistently or even perceptibly in evidence, the narrative sanctions a spatial moral order.”

The term “contrapuntal,” as Said describes, derives from Western classical music: more specifically, “in the counterpoint of Western classical music, various themes play off of one another, with only a provisional privilege being given to any particular one; yet in the resulting polyphony there is concert and order” (51). Paralleling this, Said's contrapuntal method of reading Western texts entails first connecting their narratives with the suppressed histories of colonialism that they rely upon. Importantly, Said also asserts that a contrapuntal reading requires considering “not only the construction of the colonial situation as envisaged by the writers, but resistance to it as well” (79): in other words, given that Said appears to characterize contrapuntal readings as processes of hermeneutical completion, conducting them also requires accounting for the “pressures and counter pressures” (79) that exist within a given colonial context.

Turning now to the applicability of Said's contrapuntal method to juridical interpretation, legal scholar Gautam Bhatia (2018) invokes Robert Cover's article “Nomos and Narrative” (1982) while presenting his own contrapuntal reading of law. Cover posits that “no set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning...a legal tradition is hence part and parcel of a complex normative world.” Crucially, Cover identifies the scope of this “complex normative world” by tracing the proliferation of legal meanings and narratives well outside the Courts.

Of note here, as Bhatia (2017) points out, is Cover's emphasis on the "pluralism" of meaning around legal and constitutional texts, as well as the pluralism of the narratives within which those texts are situated. Bhatia directs Cover's argument towards analyzing *non-legal* meanings and narratives—such as those from history, sociology, and anthropology—which, Bhatia argues, play a significant role in influencing judicial decisions: ultimately, in his view, "a contrapuntal reading of a judicial decision excavates the competing, non-legal narratives that were offered to the Court for it to ground its legal decision (whether they are visible or invisible in the text of the actual judgement), identifies the Court's chosen narrative, and finally, resurrects the rejected narratives on their own terms" (Bhatia 2017). I thus draw from both Cover and Bhatia in identifying the specific normative world that the Convention was debated, and eventually codified, within.

Unlike Cover, however, who explicitly describes "the universalist virtues that we have come to identify with modern liberalism, the broad principles of our law" as "system maintaining, weak forces" (12), I examine universalism as itself the subject of debate across particularist sets of meaning within the UDHR drafting process. Furthermore, unlike Bhatia's exploration of judicial decision making by established Courts, the empirical case I am parsing entails active discursive combat by delegates aiming to shape the terms of the international juridical field. As I will illustrate within my analysis of select meeting transcripts, a contrapuntal reading of the UDHR requires considering its drafting history: this, in turn, reveals two intertwined narratives of universalism—one, on the part of Northern delegates in favor of individualism, and another, on the part of Southern delegates in favor of collective rights, which involved laying bare the tension in the former's rhetoric and advancing a legitimate universalism in response. Overall, a complete analysis of the Convention as a text requires recognizing these dueling narratives as they shaped its development—in this vein, I characterize this reading as decidedly contrapuntal. From this reading follows a view of the UDHR as not solely a metropolitan text, but instead as one which still contains within it scope for resistance from the Global South.

I thus maintain that a contrapuntal reading of the Convention drafting process provides a more complete understanding of not only the Convention itself, but also of international legal universalism in turn: tracing the rhetorical combat between delegates during this drafting process

illuminates a discourse of resistance which, across the span of these meetings, also entailed an overarching argument in favor of truly universal universalism. Furthermore, I argue that a contrapuntal reading of the UDHR drafting process per se also reveals that Southern delegates themselves framed their resistance to the clause contrapuntally, by way of invoking the historical and political context that Northern delegates omitted while trying to maintain both their universalist commitments and their eschewing of the right to self-determination. In sum, therefore, this reading of the Convention drafting process provides a blueprint for envisioning truly universal rights the present.