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Recovering the Dimensions of Dignity in Religious Freedom: Protecting Religious Proselytization in International Human Rights

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Abstract

This article addresses the challenge of conceptualizing the practice of religious proselytism in the context of international human rights law and its significance for the law of religious freedom. The author examines the evolving approach taken to religious proselytism within the landscape of human rights law, revealing that important aspects of religious freedom risk being lost given complex positive and negative views on proselytization. The author then explores the concept of human dignity and argues that there are relational and interactive dimensions associated with human dignity that are obscured in the international legal discourse of religious freedom. Recovering these dimensions of dignity will help address religious proselytization in international human rights law and reinvigorate the law of religious freedom.

Keywords: religious freedom; religious proselytism; human dignity; spiritual freedom

Résumé

Cet article aborde le défi que représente la conceptualisation de la pratique du prosélytisme religieux dans le contexte du droit international des droits de la personne, et son importance pour le droit à la liberté religieuse. L'auteur examine l'évolution de l'approche du prosélytisme religieux dans le paysage du droit des droits de la personne, révélant que des aspects importants de la liberté religieuse risquent d'être perdus compte tenu des points de vue positifs et négatifs complexes sur le prosélytisme. L'auteur explore ensuite le concept de dignité humaine et soutient qu'il existe des dimensions relationnelles et interactives associées à la dignité humaine qui sont occultées par le discours juridique international sur la liberté religieuse. Retrouver ces dimensions de la dignité aidera à lutter contre le prosélytisme religieux dans le droit international des droits de la personne et à revitaliser le droit à la liberté religieuse.

Mots-clés: la liberté religieuse; le prosélytisme religieux; la dignité humaine; la liberté spirituelle

1. Introduction

Religious proselytism is traditionally understood to be the practice of seeking to make religious converts. Classic examples of proselytism would include missionaries going door to door to start conversations about religion, giving away religious pamphlets in public places, or standing on a soapbox at a busy street-corner preaching sin and forgiveness.¹ But proselytism may also be conceptualized more broadly as involving a range of different types of religious conversions, like religious rediscovery or establishing religious preferences.² A further distinction could be drawn between proselytism, which is the programmatic act of attempting to make a convert, and proselytization, which is the process of proselytizing.³ There is, no doubt, a significant amount of overlap and similarity between these distinctions and conceptions of religious proselytism. However, it is all too easy to oversimplify religious proselytism and to treat it as a peculiar — and perhaps problematic — religious practice. This is particularly so in the context of international human rights law.

For some religions, proselytism is central to their ethos and beliefs. For example, the Protestant Christian religious tradition includes what is called the “Great Commission,” which is the final directive that Jesus gave to his disciples to “go and make disciples of all nations.”⁴ At the heart of this religious tradition is a missional response to what Christians believe Jesus achieved through his life, death, and resurrection. Proselytizing, from this view, is a natural response to the truth of the good news of Christ. I mention the Great Commission because it exemplifies a couple of important features of religious proselytization. First, one’s knowledge and experience of religious truth is intricately connected to sharing one’s religion with others — religious proselytization is a matter of sharing what one understands to be true. Some have gone so far to say that proselytizing is natural to, and, *per se*, central to, religious belief.⁵ Second, proselytizing is based on the view that one’s religious truth is true for others too (commonly, for everyone). This means that proselytization normally involves interactions between persons across boundaries, whether they be religious, cultural, social, or political.

On the other hand, religious proselytization is often viewed cynically or, at least, skeptically. Interestingly, these negative views typically flow from similar features to those mentioned above.⁶ The belief that one’s religious truth is for everyone and

¹These kinds of religious proselytism have been the subject of judicial proceedings internationally as well as domestically. See e.g. *Kokkinakis v Greece* (1993), 260A ECHR (Ser A), (1994) 17 EHRR 397 [*Kokkinakis*]; *Saumur v Quebec (City)*, [1953] 2 SCR 299, 4 DLR 641 (SCC) [*Saumur*]; *R v Pawlowski*, 2014 ABCA 135 [*Pawlowski*].

²Shanta Premawardhana, ed, *Religious Conversion: Religion Scholars Thinking Together* (West Sussex, UK: Wiley Blackwell, 2015), ch 2. For further discussion of the etymology and meaning of “proselytism,” see Paul Griffiths & Jean Bethke Elshtain, “Proselytizing for Tolerance,” *First Things* (November 2002) at 30; Rosalind IJ Hackett, “Revisiting Proselytization in the Twenty-first Century” in Rosalind IJ Hackett, ed, *Proselytization Revisited* (London: Routledge, 2014) 1 [Hackett, “Revisiting”]; Howard O Hunter & Polly J Prince, “Regulation of Religious Proselytism in the United States” (2001) BYUL Rev 537.

³See Blair Major, “Religious Proselytization in Canadian Law: The Residue in the Periphery” (2020) 98 SCLR (2d) 213 at 215 [Major, “Religious Proselytization”]; Hackett, “Revisiting,” *supra* note 2 at 2.

⁴*Holy Bible*, New International Version, Matthew 28:16–20.

⁵Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, 2nd rev ed (Arlington: NP Engel, 2005) at 310.

⁶See Silvio Ferrari, “Proselytism and Human Rights” in Frank Alexander & John Witte Jr, eds, *Christianity and Human Rights: An Introduction* (Cambridge: Cambridge University Press, 2010) 253 at 254–58. Ferrari

ought to be shared with everyone appears to some as arrogant and aggressive.⁷ Religious proselytizers, from this view, elevate their own conception of truth and seek to have all others adopt it. In addition to this, the cross-religious aspect of proselytization is susceptible to being co-opted for achieving political goals, and it is often viewed negatively because of the times where religious mission coalesces with colonization.⁸ The promotion of religious truth for everyone is, from this view, a spiritual cloak for imperialist universalism. The difficulty is that, although religious proselytization ideally involves a neutral and respectful encounter between persons promoting the truth of their respective religions — which would be relatively uncontroversial — the practical experience of proselytism is often neither neutral nor balanced. Proselytism tends to be programmatic and opportunistic.⁹ A proselytizer seeks out, or “targets,” another to try to convince them of the truth of the

explained the differences in attitudes about proselytism within different religious traditions, including different Christian traditions. According to Ferrari, there are four coordinates — the voluntariness or involuntariness of religious membership and the prevailing sense regarding the universality or particularity of the religion in question. See also W Cole Durham Jr, “International Human Rights: The Protection of Religious Persuasion” [2001] *Fides et Libertas: Journal of the International Religious Liberty Association* 17 at 20–22, where various social attitudes were identified that lead to opposition to religious proselytism.

⁷For example, a well-known outspoken religious leader in Canada, Art Pawlowski, has been involved in several public nuisance proceedings. He was prosecuted for violating city noise by-laws when using a microphone and speakers to preach in a city park in Calgary (*Pawlowski*, *supra* note 1); he was also prosecuted for interfering with the city of Calgary Stampede parade when he and some of his co-religionists stepped in to march in the parade, carrying religious banners and wearing costumes, without prior authorization (*R v Pawlowski*, 2014 ABPC 126). Another example of perceived “aggressiveness” in proselytism can be seen in the classic case of *Kokkinakis*, *supra* note 1, where a Mr. Kokkinakis, a Jehovah’s Witness, was prosecuted for attempting to convert a woman away from the Greek Orthodox religion. The local criminal court found that Mr. Kokkinakis had taken advantage of the woman’s inexperience, low intellect, and naivety, entering her home under false pretenses and using religious literature to confound her in her beliefs (at paras 8–10). Although Mr. Kokkinakis’s proselytism was perceived as aggressive by the lower courts, the European Court of Human Rights found that his activity did not constitute “improper proselytism” and therefore could not be subject to legal constraint (at paras 45–49).

⁸For a forceful argument on this point, see Makau Mutua, “Proselytism and Cultural Integrity” in Tor Lindholm, W Cole Durham Jr & Bahi G Tahzib-Lie, eds, *Facilitating Freedom of Religion or Belief: A Deskbook* (Leiden: Martinus Nijhoff, 2004) 651.

⁹Sometimes opportunism can be tied to humanitarian relief or provision of other material supports and goods. An extreme example of this can be seen in the international humanitarian response to the tsunami that devastated Sri Lanka in 2004. There were reports of significant religious proselytizing efforts being made by those who travelled to Sri Lanka to provide humanitarian aid. See e.g. David Rhode, “In Tsunami Area, Anger at Evangelists,” *New York Times* (24 January 2005), online: <www.nytimes.com/2005/01/24/world/asia/in-tsunami-area-anger-at-evangelists.html>. These proselytizing efforts were perceived by some to threaten social stability in the country and to exacerbate ongoing challenges in establishing religious and cultural tolerance. This led to government intervention and attracted the attention of the United Nations’ special rapporteur on the freedom of religion or belief. See UN Commission on Human Rights, *Report Submitted by the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, Mission to Sri Lanka*, 62nd Sess, Agenda Item 11(e), UN Doc E/CN.4/2006/5/Add.3 (2005) at paras 32–51 [Doc E/CN.4/2006/5/Add.3 (2005)]. See also UN General Assembly, *Report of the Special Rapporteur of the Commission on Human Rights on Freedom of Religion or Belief, Asma Jahangir*, 60th Sess, Agenda Item 71(b), UN Doc A/60/399 (2005) at paras 55–68. Opportunism may also be connected to particular relational dynamics that place one party in a place of authority over another, such as was the case in *Larissis and Others v Greece* (1998), 65 ECHR (Ser A) 362, 27 EHRR 329 at para 51 [*Larissis*] (where the European Court of Human Rights [ECtHR] found that senior ranking airmen wrongly took advantage of their authority when they proselytized their subordinates — this constituted undue influence).

proselytizer's religion.¹⁰ As Martin E. Marty has noted, “[t]he proselytizer violates boundaries and disrupts traditions.”¹¹ The purpose is to change someone else's mind, to make them convert their religious beliefs — quite often from one religion to the other. This is sometimes experienced as socially disruptive.¹² But, yet, there is something about religious proselytization that remains central to the ethos of many religions that goes beyond a simple “soul winning” campaign.

Hence the challenge: how should a practice with such polarizing features be conceptualized in law and integrated into the system of international human rights? It is unsurprising to find that the international human rights discourse has struggled to fit religious proselytization into the prevailing account of religious freedom. Religious proselytism is simultaneously resonant and dissonant with human rights protections. On the one hand, religious proselytism seems to be a practice that is deeply connected to religious belief and the manifestation of belief, which is part of what religious freedom is meant to protect.¹³ On the other hand, religious proselytism is a homogenizing practice that may be personally intrusive and culturally harmful. To say that it is difficult to translate religious proselytization into human rights language is not surprising in itself. Religious matters are notoriously difficult to translate into legal language.¹⁴ There is ample scholarship about how to locate religious proselytism in human rights laws, both internationally and domestically.¹⁵

¹⁰The *Kokkinakis* case, *supra* note 1, shows that there is a fine line between pursuing an opportunity to proselytize and taking advantage of a scenario in a way that is unfair to the person being proselytized. The ECtHR found that Mr. Kokkinakis did not cross that line. Another case where the ECtHR found that the proselytizer did cross the line was *Larissis*, *supra* note 9. In *Larissis*, the ECtHR said that it was improper proselytism for officers in the airforce to proselytize their subordinates because the hierarchical nature of the relationship between them created a situation of “undue influence” (at paras 51–53).

¹¹Martin E. Marty, “Proselytizers and Proselytizees on the Sharp Arete of Modernity” in John Witte Jr & Richard C. Martin, eds, *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Maryknoll, NY: Orbis Books, 1999) 1 at 2.

¹²Laws restricting proselytization are sometimes connected to the maintenance of public order. The idea is that proselytization might cause religious offence and might stir up conflicts between religious groups. For example, see note 9 above. Another example of this is the experience of Jehovah's Witnesses in Quebec, Canada, in the mid-twentieth century. At the time, Jehovah's Witnesses were regularly charged and prosecuted in Québec for sedition and other kinds of offences to public order. This led to several leading constitutional law cases in Canada regarding the exercise of public authority, such as *Roncarelli v Duplessis*, [1959] SCR 121, 16 DLR (2d) 689 (regarding the power of the premier of Québec to unilaterally revoke the liquor license of Mr. Roncarelli on the basis that the latter was financially assisting fellow Jehovah's Witnesses in defending prosecution proceedings against them); *Saumur*, *supra* note 1 (regarding the prosecution of Jehovah's Witnesses under a city-by-law that prevented them from distributing religious literature); and *R v Boucher*, [1951] SCR 265, 11 CR 85 (regarding whether the religious disruption caused by the anti-papal messages of Jehovah's Witnesses in Québec could warrant a criminal charge of sedition). See also Ahmed Shaheed, *Report of the Special Rapporteur on Freedom of Religion or Belief*, UN Human Rights Council, 40th Sess, Agenda Item 3, UN Doc A/HRC/40/58 (2019) at paras 31–32 [Doc A/HRC/40/58 (2019)].

¹³See Durham, *supra* note 6 (who argues that proselytism should be protected as part of religious freedom in order to provide sufficient social recognition and respect for religious groups and that their beliefs and ideas are not necessarily dangerous or intolerable).

¹⁴See e.g. Blair Major, “The Law's Apprehension of Religion as a Legal Fiction” (2022) 59:3 *Osgood Hall LJ* 767.

¹⁵See Heiner Bielefeldt, *Interim Report of the Special Rapporteur on Freedom of Religion or Belief*, UNGA, 67th Sess, Agenda Item 70(b), UN Doc A/67/303 (2012) [Doc A/67/303 (2012)]. For an analysis of religious proselytization in international human rights law, see Tad Stahnke, “Proselytism and the Freedom to Change Religion in International Human Rights Law” (1999) *BYUL Rev* 251; Natan Lerner, “Proselytism, Change of

But much of the discussion has focused on matters adjacent to proselytization itself, such as the freedom to change religions, the right to be free from compulsion and coercion in relation to one's religious beliefs, and the right to freely express and share one's religious beliefs with others. Given the way that religious proselytism straddles the freedom of religion, the freedom of expression, and the freedom of thought and opinion,¹⁶ discussions of religious proselytism tend to focus on balancing these different rights against each other in particular contexts. A central unresolved issue is whether this way of addressing religious proselytization sufficiently captures the broad range of conflicting concerns present in the interaction between proselytizers and proselytizees.

The aim of this article is to investigate and articulate what is being lost, or what is at risk of being lost, when proselytization is translated into the language of international human rights. The approach taken follows a theoretical line of inquiry, exploring the notion of human dignity and the conception of religious freedom as they pertain to religious proselytization in order to articulate what might be missing (or is at risk of being lost) in the human rights discourse. Human dignity is not a simple, straightforward concept. In spite of its pervasive presence in human rights discourse, there is no generally accepted definition of human dignity.¹⁷ I propose that there is a relational dimension both to the law of religious freedom and to the concept of human dignity that is central to religious proselytization and that this dimension is easily lost when translating religious proselytization into international human rights. This is apparent when considering the notion of spiritual freedom, which is part of the concept of human dignity at work in human rights law and, in particular, in religious freedom. Spiritual freedom is a unique human capacity for the pursuit of truth, which is intellectual and embedded in human interaction. It includes various relationships, such as high-level types of social relationships between parties involved in proselytization as well as the more granular types of interdependent relationships that individuals have with their families, friends, and religious communities. Religious proselytization engages all of these dimensions of spiritual freedom — it is an exercise of the individual pursuit of truth that occurs within a web of relationships.

I argue that these dimensions of spiritual freedom are present in the international human rights protection of religious freedom but that they are at risk of being overlooked and obscured by other principles. In particular, the evolving approach to religious proselytization in the international human rights domain has emphasized the individual concerns of proselytization, which frames the matter in terms of the freedom of the proselytizer to manifest their religion and the freedom of the

Religion, and International Human Rights" (1998) 12 *Emory Intl L Rev* 477 [Lerner, "Proselytism"]; Peter Danchin, "Of Prophets and Proselytes" (2008) 49:2 *Harv Intl LJ* 252; Paul M Taylor, "The Questionable Grounds of Objections to Proselytism and Certain Other Forms of Religious Expression" (2006) 3 *BYUL Rev* 811 [Taylor, "Questionable Grounds"].

¹⁶See e.g. Doc A/67/303 (2012), *supra* note 15 at para 27; Ahmed Shaheed, *Interim Report of the Special Rapporteur on Freedom of Religion or Belief*, UNGA, 76th Sess, Agenda Item 74(b), UN Doc A/76/380 (2021) at paras 22–24, 56–59. See also Major, "Religious Proselytization," *supra* note 3.

¹⁷See e.g. Michael Rosen, *Dignity: Its History and Meaning* (Cambridge, MA: Harvard University Press, 2012); Christopher McCrudden, "Human Dignity and Judicial Interpretation of Human Rights" (2008) 19:4 *Eur J Intl L* 655. There are some who argue that human dignity is capable of functioning as a legal and judicial concept. See e.g. Neomi Rao, "Three Concepts of Dignity in Constitutional Law" (2011) 86 *Notre Dame L Rev* 183. For further references and discussion, see section 2 of this article.

proselytizee to be free from coercion regarding their religious beliefs. Recovering and emphasizing the spiritual freedom dimensions of human dignity enables a fuller account of the cares, concerns, and interests at stake in religious proselytization. More specifically, it brings to the foreground the truth-seeking and relational dimensions of proselytization. The contribution that this makes to the way in which we frame a human rights analysis of religious proselytization is significant because it captures a broader range of interactive dynamics between proselytizer and proselytizee, and, in doing so, it opens new ways to articulate and delineate the scope of the freedom to proselytize and the freedom of religious choice. This may also generate new possibilities for the future evolution of religious freedom in international human rights law.

The analysis of this article unfolds in three stages. First, I will discuss the way in which religious proselytization factored into the formation and evolution of the main UN human rights instruments that protect religious freedom — the *Universal Declaration of Human Rights (UDHR)*,¹⁸ the *International Covenant on Civil and Political Rights (ICCPR)*,¹⁹ and the 1981 *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981 Declaration)*.²⁰ My aim is not to provide a full analysis of proselytization in relation to these legal texts, as this can be found elsewhere.²¹ Instead, my discussion focuses on tracing the way in which the individual and relational aspects of religious proselytization are translated into the human rights instruments and taken up in the institutional human rights discourse — in particular, in the works of the Human Rights Committee (HRC)²² and the special rapporteur on freedom of religion or belief (SRFRB).²³

¹⁸*Universal Declaration of Human Rights*, GA Res 217 (III), UNGAOR, 3d Sess, Supp No 13, UN Doc A/810 (1948) [UDHR].

¹⁹*International Covenant on Civil and Political Rights*, 19 December 1966, 999 UNTS 171, Can TS 1976 No 47 (entered into force 23 March 1976) [ICCPR].

²⁰*Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, GA Res 36/55, UNGAOR, 36th Sess, Supp No 51, UN Doc A/36/51 (1981) [1981 Declaration]. It is worth noting that religious freedom is protected in some other important international instruments, such as the *Convention on the Rights of the Child*, 20 November 1989, 1577 UNTS 3, Can TS 1992 No 3 (entered into force 2 September 1990), art 14 [CRC]; *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UNGAOR 61st Sess, Supp No 49, UN Doc A/RES/61/295 (2007). The former is discussed in passing in relation to specific points raised regarding the relationship between parents and children, but it is not discussed in depth because it has not been a central part of the conversation regarding religious proselytization. The latter is not addressed in this article because proselytism in relation to Indigenous peoples raises unique questions and issues, which deserve independent treatment. The focus of this article, therefore, remains on the UDHR, the ICCPR, and the 1981 Declaration.

²¹For a thorough discussion of proselytism in the UN human rights context, see Blair Major, *Religious Proselytism in Global Perspective: A Critical Examination of International and Regional Human Rights Law* (LLM thesis, McGill University, 2012) [unpublished]; Stahnke, *supra* note 15; Lerner, “Proselytism,” *supra* note 15; Danchin, *supra* note 15; Taylor, “Questionable Grounds,” *supra* note 15.

²²Created pursuant to the ICCPR, *supra* note 19, art 28ff.

²³Originally called the special rapporteur on religious intolerance, created in 1986 pursuant to the UN Commission on Human Rights’s Resolution 1986/20. See Commission on Human Rights, *Report on the 42nd Session*, UNESCO, Supp No 2, UN Doc E/1986/22 (1986) at 66–67. The Commission changed the name of the office to the special rapporteur on freedom of religion or belief (SRFRB) in 2000. See Commission on Human Rights, Resolution 2000/33 at para 11, reproduced in Commission on Human Rights, *Report on the 56th Session*, UNESCO, Supp No 3, UN Doc E/CN.4/2000/167 (2000) at 169–72.

Second, I will turn to look more closely at human dignity — the idea of spiritual freedom, in particular — which brings to the foreground the dynamic interactions between persons in the exercise of their religious freedom. In the discussion, I draw attention to the underlying philosophical perspectives of some of the drafters of the foundational international human rights instruments of the United Nations and how these continue to subtly persist in the evolving international human rights discourse. I also look to other theorists to expand upon and develop the connection between the relational dimensions of human dignity and the conception of religious freedom in international human rights law.

Third, in the penultimate section of the article, I look at a case example involving religious proselytization to consider how the theoretical and conceptual insights gained in the other parts of the article might shift the parameters of analysis. The discussion here is not meant to detract from the theoretical and conceptual arguments developed throughout the rest of the article. Instead, the case analysis shows that the dignity dimension of spiritual freedom is more than merely an abstract conceptual matter. Attending to the unique rational and relational dimensions of spiritual freedom latent in the freedom of religion can have a practical effect on analyzing and responding to challenging cases of religious proselytism in international human rights law. As such, this section of the article should be seen as gesturing towards future research that could be done to build off of the theoretical and conceptual analysis developed below.

2. Proselytization in international human rights

The record of the evolution of UN international human rights instruments shows awareness of the broad diversity of individual and relational dimensions at play in religious freedom and, specifically, how those dimensions are at stake in religious proselytization. The way in which these concerns were debated and translated into human rights instruments, and later taken up by the institutional interpretive bodies of the HRC and the SRFBRB, emphasized the individual and downplayed the collective and relational dimensions. One key challenge that the drafters faced when developing the protection of religious freedom in the UN human rights instruments was whether to specifically enumerate the right to change religions as part of the freedom of religion. The *travaux préparatoires* of the *UDHR*, the *ICCPR*, and *1981 Declaration* reveal that the various positive and negative attitudes regarding proselytism were present in these discussions. Those opposed to including a right to change religions were concerned about the social and political disruption that these changes could bring and, in particular, the way in which these social disruptions could be coopted to serve foreign political interests. Those in favour of including a right to change religions focused on the centrality of religious proselytism to religious beliefs and practices.

Even though the final version of the UN human rights instruments ultimately settled on embedding an individual's freedom to change or to choose their religion, which seems to privilege the individual's autonomy and downplays the socio-political concerns with proselytism, other aspects of proselytization that resonate with the socio-political concerns remained present, albeit in the background. For example, recent research into the theoretical and philosophical perspectives of the early drafters of the *UDHR* (and the *ICCPR*) shows that there was a deep appreciation and concern for the process of religious exploration, including interacting with others

of different religious traditions.²⁴ Likewise, recent reports of the SRFRB have drawn attention to similar features of religious freedom in its relation to free expression and free thought.²⁵ There is, I argue, an abiding connection between individual freedom and relational interdependence at the heart of the conception of religious freedom in international human rights law, which I will explore later in this article in terms of the spiritual freedom dimension of human dignity.

But, first, in order to set the background, I will review the evolution of the freedom of religion in the UN human rights context in relation to religious proselytization. The *UDHR* provides protection for freedom of religion in the following terms: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”²⁶ This declaration of religious freedom does not explicitly provide protection for religious proselytization. However, it does implicitly recognize religious proselytization as a central part of religious life. This can be seen in two ways. First, the freedom to “manifest ... religion ... in teaching” might be interpreted to include proselytizing, which is a form of teaching and expression of one’s own religious beliefs. Second, the inclusion of the “freedom to change” one’s religion implies that people should be able to hear about other religious ideas, which assumes the occurrence of religious proselytization.

This reading of the *UDHR* is confirmed when one looks at the *travaux préparatoires* of the *UDHR*. In particular, those opposed to including reference to the freedom to change religions point to practices of religious proselytism as part of the problem. They have argued that overtly protecting the right to change religions encourages proselytism, which would lead to conflict between religions, threats to local religious groups, “unethical” or improper acts of proselytism, and the proliferation of political ideology under the guise of religion. Jamil Baroodi, the representative from Saudi Arabia, forcefully argued this, claiming that “throughout history missionaries had often abused their rights by becoming the forerunners of a political intervention, and there were many instances where peoples had been drawn into murderous conflict by the missionaries’ efforts to convert them.”²⁷ This perspective was echoed by the representative from Egypt, who said that “by proclaiming man’s freedom to change his religion or belief the declaration would be encouraging, even though it might not be intentional, the machinations of certain missions, well known in the Orient, which relentlessly pursued their efforts to convert to their own beliefs the masses of the population of the Orient.”²⁸

Other related concerns were also raised by representatives of non-Islamic states. For example, the representative of Greece expressed concern that the reference to the freedom to “manifest” one’s religion or belief would encourage “unfair” practices of proselytism and would result in unfair competition between religions. He stated that,

²⁴See generally Linde Lindkvist, *Religious Freedom and the Universal Declaration of Human Rights* (Cambridge: Cambridge University Press, 2017); Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2002).

²⁵See Doc A/67/303 (2012), *supra* note 15; Shaheed, *supra* note 16.

²⁶JCCPR, *supra* note 19, art 18.

²⁷UN General Assembly 3rd Committee Official Records (UNC3OR), 3rd Sess, 127th Mtg, UN Doc A/C.3/SR.127 (1948) at 391 [Doc A/C.3/SR.127 (1948)].

²⁸UN General Assembly Official Records (UNGAOR), 3rd Sess, 183rd Mtg, Agenda Item 119, UN Doc A/PV.183 (1948) at 913.

“[i]n fact, free lodgings, material assistance and a number of other advantages were offered to persons who agreed to belong to one religion or another. ... While, admittedly, every person should be free to accept or reject the religious propaganda to which he was subjected ... an end should be put to such unfair competition in the sphere of religion.”²⁹ Those who supported the freedom to change religions argued that the concerns expressed about the right to change one’s religion were misguided and that freedom to change religions was essential to the guarantee of freedom of religion more generally. For example, Fernand Dehousse, the representative of Belgium, argued that proselytism is a matter inherent to all religions: “In professing or propagating a faith one could, to a certain extent, interfere with the freedom of others by seeking to impose an unfamiliar idea upon them. But proselytism was not limited to any one faith or religious group. If it was an evil, it was essentially an evil from which all sides had to suffer.”³⁰

Ultimately, the right to change religions remained in the final text of the *UDHR*. In spite of this, the attitude of the international community regarding proselytism was divided among those viewing it as inherent to freedom of religion as compared to others concerned about socio-political disruption and foreign political interference. This division did not dissipate with time. The same issues raised in the *UDHR* drafting continued in the other UN human rights instruments and affected the language adopted. For example, the right to freedom of religion included in Article 18 of the *ICCPR* generally reflects the Article 18 of the *UDHR*, with the notable difference that the freedom to change religion is rephrased as the “freedom to have or adopt a religion” of one’s choice.³¹ The right to change one’s religion was part of the original draft of the *ICCPR*, but it was later amended. Likewise, Article 1(1) of the *1981 Declaration*, which is nearly identical to Article 18(1) of the *ICCPR*, only provides for the right to “have” a religion or belief of one’s choice, which is a further move away from the explicit protection to change religion found in the *UDHR*.

One way to explain why both the *ICCPR* and the *1981 Declaration* successively step back from the freedom to change religions asserted in the *UDHR* is that the United Nations was responding to the ongoing pressure from Islamic states to remove the language and sought to achieve as broad of a consensus on the instruments as possible.³² Although there may be some truth to this view, it does not fully account for the fact that it was not only Baroody, or representatives from other

²⁹Doc A/C.3/SR.127 (1948), *supra* note 27 at 393–94.

³⁰*Ibid* at 395.

³¹The full text of art 18 is “1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching; 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice; 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”

³²Natan Lerner, “The Final Text of the UN Declaration against Intolerance and Discrimination Based on Religion or Belief” (1982) 12 *Israel YB Human Rights* 185 at 187–89 [Lerner, “Final Text”]; Paul M Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge: Cambridge University Press, 2005) at 36 [Taylor, *Freedom of Religion*] (“[t]hose countries which resisted a different version from that in Article 18 of the *ICCPR* agreed to compromise in order that the form of the draft could win more widespread acceptance throughout the Islamic world that was represented, but only on the understanding that the Article as amended still entitled everyone to have or adopt their religion of choice”). See also the

Islamic countries, that expressed concern about the relationship between certain religions, colonialism, and aggressive proselytism in certain regions.³³ Baroody was, however, the ringleader, so to speak. He was incredibly persistent in his argument, raising the issue at every opportunity over a span of approximately fifteen years through the drafting of the *UDHR*, the *ICCPR*, and the *1981 Declaration*. It is interesting to note that he did not oppose the freedom of people to change their religions *per se* but, rather, the explicit inclusion of that freedom in the human rights instruments.³⁴ His arguments typically revolved around three points: first, it is redundant to include the freedom to change religions as it was already implied in the guarantee of freedom of religion; second, it was suspicious that no similar “freedom to change” was stated regarding opinions and beliefs (such as political ideologies); and, third, he was concerned that there would be an adverse effect on Muslim populations.³⁵

The key problem for Baroody had to do with the cultural and political forces at play in religious proselytization. During the drafting of the *1981 Declaration*, he argued that special consideration regarding the differences between religions — such as the fact that not all religions were active in proselytism and because of the imbalance of resources between different religions and their associated governments — should be reflected in the principle of the freedom of religion.³⁶ According to Baroody, missionary activities often were related to political propaganda, both in terms of methods and in terms of historical coincidence. He went so far as to say that “[missionary activities] had merely been the precursors of [political propaganda]. ... The crusades, in particular, had concealed undeniable economic and political ambitions under the cloak of religion.”³⁷ He went on to argue:

Freedom of thought, conscience and religion in itself implied the individual’s right to change his belief of his own free will without compulsion. To single out the right to change beliefs might not only ruffle religious susceptibilities but — far worse — might be interpreted as giving missionaries and proselytizers a free rein. Missionaries might harbour the best intentions but, in their zeal, might unwittingly act as agents, as they had in the past, for organizations or countries bent on colonial exploitation. With the best intentions such missionary bodies might attempt to put pressure upon the Commission on Human Rights for the inclusion of such a phrase. The power of propaganda had become so strong that it was tantamount to actual pressure.³⁸

comments of the Iranian representative in the meetings of the Third Committee. UNC3OR, 36th Sess, 29th Mtg, UN Doc A/C.3/36/SR.29 (1981) at para 16.

³³See e.g. the comments of Burundi (UNC3OR, 28th Sess, 2010th Mtg, UN Doc A/C.3/28/SR.2010 (1973) at 179), Byelorussian Soviet Socialist Republic (UNC3OR, 28th Sess, 2011th Mtg, UN Doc A/C.3/28/SR.2011 (1973) at 185 [Doc A/C.3/28/SR.2011 (1973)]), and Zambia (*ibid* at 183).

³⁴UNC3OR, 9th Sess, 563rd Mtg, UN Doc A/C.3/SR.563 (1954) at para 11 (“[i]t went without saying that freedom of religion in fact existed; everybody had the right ‘to maintain or change his religion’ at will and there seemed to be no point in laying such stress on it”).

³⁵UNC3OR, 5th Sess, 289th Mtg, UN Doc A/C.3/SR.289 (1950) at 115ff [Doc A/C.3/SR.289 (1950)].

³⁶See UNC3OR, 28th Sess, 2009th Mtg, UN Doc A/C.3/28/SR.2009 (1973) at paras 3–9.

³⁷Doc A/C.3/SR.289 (1950), *supra* note 35 at para 43.

³⁸UNC3OR, 6th Sess, 367th Mtg, UN Doc A/C.3/SR.367 (1951) at para 41.

In one sense, Baroody was right. There is evidence that missionary organizations actively lobbied to have the freedom to change religion included within the human rights texts.³⁹ However, Baroody's subsequent point that missionary activity cloaks other political agendas solicited strong objections. Costa Rica, for example, felt that concerns about missionaries acting as "enemy agents" was overblown and that the non-discrimination principles in the *1981 Declaration* did not prevent a country from protecting its policies and citizens from missionaries that are acting illegally, even if certain freedoms to seek to convert others were expressed therein.⁴⁰ Likewise, the representative from the Netherlands argued that, although there were connections in the past between religion and colonialism, this was no longer the case; rather, religious, and, specifically, missionary, activity was more of a force of good than evil in the international context.⁴¹

In the drafting of the *ICCPR*, the representative of Ceylon (now Sri Lanka) argued against Baroody's suggestion to remove the freedom to change one's religion, noting the importance of having a historical perspective when looking at the issue of freedom of religion. He argued that the freedom to change religions was achieved through significant conflict, in that it was won through the religious wars in Europe and ought not to be given away lightly.⁴² The right to freely change one's religion can easily be lost in the development of societies and should therefore be protected in the freedom of religion.⁴³ It is worth noting that, even though he argued for the inclusion of the freedom to change religions in the *ICCPR*, he was still critical of historical examples of religious proselytism, noting that the European powers, specifically the Portuguese, caused much conflict in Asia when "fired by religious zeal, had sought to impose Catholicism on the indigenous peoples."⁴⁴ Nonetheless, the freedom to change religions should remain specifically protected. Although the representative of Ceylon did not argue that proselytism should be banned, some of the other representatives expressed their views that the right to change one's religion should not include the right to proselytize.⁴⁵

As mentioned earlier, some legal scholars have argued that the West wanted the language of the *1981 Declaration* to explicitly guarantee the freedom to change religions to make clearer the freedom to propagate one's own religion, but they chose to compromise on the language used in order not to jeopardize the ongoing development of international human rights instruments.⁴⁶ Despite giving up specific reference to the freedom to change religion, Article 8 of the *1981 Declaration* maintained that "[n]othing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human

³⁹Lindkvist, *supra* note 24 at 67–85.

⁴⁰Doc A/C.3/28/SR.2011 (1973), *supra* note 33 at paras 18–21.

⁴¹UNC3OR, 28th Sess, 2012th Mtg, UN Doc A/C.3/28/SR.2012 (1973) at paras 11–14. Paul Taylor makes a similar argument: "Few commentators today would disagree with the remarks made on behalf of Saudi ... but few would consider that missionary work or proselytism, as understood in the West, bore any relation to such historic events." Taylor, *Freedom of Religion*, *supra* note 32 at 56.

⁴²UNC3OR, 15th Sess, 1022 Mtg, UN Doc A/C.3/SR.1022 (1960) at para 21.

⁴³*Ibid* at para 22.

⁴⁴*Ibid* at para 21.

⁴⁵See e.g. Nigeria (UNC3OR, 15th Sess, 1023rd Mtg, UN Doc A/C.3/SR.1023 (1960) at para 23) or Afghanistan (UNC3OR, 15th Sess, 1024th Mtg, UN Doc A/C.3/SR.1024 (1960) at para 28).

⁴⁶Lerner, "Final Text," *supra* note 32 at 188.

Rights and the International Covenants on Human Rights” and so in a round-about way retained the freedom to change one’s religion as included in prior instruments.⁴⁷ This view was confirmed by the HRC in its General Comment 22, where it said that “the freedom to ‘have or to adopt’ a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s religion or belief.”⁴⁸ The HRC went on to relate this idea to the prohibition against religious coercion in Article 18(2) of the ICCPR:

Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18.2.⁴⁹

The HRC has not directly commented on religious proselytization often, although the topics of proselytism and conversion regularly arise.⁵⁰ The HRC did comment directly on the issue of proselytism in 2010 in a report regarding

⁴⁷Scholars have argued that the core purpose of Article 8 of the 1981 Declaration was to ensure continuity between the 1981 Declaration and previous UN instruments. See Taylor, *Freedom of Religion*, *supra* note 32 at 36; Lerner, “Final Text,” *supra* note 32 at 188–89.

⁴⁸UN Human Rights Committee, *General Comment No 22: The Right to Freedom of Thought, Conscience and Religion*, 48th Sess, UN Doc CCPR/C/21/Rev.1/Add.4 (1993) at para 5 [General Comment 22]. It is worth highlighting the fact that the freedom to change one’s religion includes more than merely changing between established religions; it also includes the freedom not to believe, to dissent, or to reject religion more broadly (atheism). The point was emphasized in para 2 of *General Comment 22*, where the Human Rights Committee said that “Article 18 protects theistic, non-theistic, and atheistic beliefs, as well as the right not to profess any religion or belief.” This approach to religious freedom dovetails with the notion of “spiritual freedom” developed later in this article, which focuses on the rational and relational aspects of religious freedom rather than its confessional nomenclature.

⁴⁹*Ibid* at para 5.

⁵⁰The Human Rights Committee often hears complaints through the *Optional Protocol* process regarding decisions of signatory states to deport persons to countries that have criminal prohibitions against conversion. For example, the Human Rights Committee considered a claim against Canada that it should not have ordered the deportation of a person to Iran because of the serious risk of execution, torture, or other cruel punishment or treatment. The claimant converted to Christianity and, because of their conversion, had become an active evangelizer of his faith (proselytizing). The claimant argued that they would be subject to criminal prohibitions in Iran because of this. The Human Rights Committee ultimately held that the Canadian authorities took sufficient account of the evidence and the arguments made by the claimant. See Human Rights Committee, *Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 2632/2015*, UN Doc CCPR/C/133/D/2632/2015 (2022). Another recent example had to do with a claim considered by the Human Rights Committee that Denmark committed a procedural error when it ordered a person to be deported to Iran. The allegation, which was affirmed by the committee, was that Denmark did not pay sufficient attention to the risk of serious mistreatment (risk of life, torture, or other cruel and inhuman treatment) to the person in Iran because of their conversion to Christianity. See Human Rights Committee, *Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No 3188/2018*, UN Doc CCPR/C/132/D/3188/2018 (2022).

Uzbekistan laws that punished religious proselytism.⁵¹ In this comment, the HRC said that proselytism is inherent to religion and protected under international law, although in variegated form. One committee member said that the right to proselytize others is implied in the right to manifest religion in teaching, as referred to in Article 18 of the *ICCPR*.⁵² Another member said that the right to proselytize should be read in conjunction with Article 19 of the *ICCPR* as implying a corresponding right to receive information.⁵³ The committee members also expressed an understanding of proselytism that distinguished between aggressive and non-aggressive proselytizing, where the former was unacceptable for assaulting the conscience and employing non-peaceful means, while the latter was permitted and should not be restricted by law.⁵⁴

The SRFRB has affirmed and developed the principles outlined by the HRC. The SRFRB solidified the view that there is an individual freedom to proselytize as well as a right of others to remain free from religious coercion.⁵⁵ There are several contexts in which the SRFRB has dealt with conversion and proselytism, including situations involving Greece,⁵⁶ Sri Lanka,⁵⁷ Tajikistan,⁵⁸ Lao People's Democratic Republic,⁵⁹ Turkmenistan,⁶⁰ and Azerbaijan.⁶¹ In addition, there are reports from the SRFRB to the UN General Assembly, the Human Rights Council, and the HRC that have dealt

⁵¹Human Rights Committee, 98th Sess, 2694th Mtg, UN Doc CCPR/C/SR.2694 (2010) at para 22 [Doc CCPR/C/SR.2694 (2010)]. It is worth noting that the most recent Human Rights Committee's report regarding Uzbekistan identifies the persistence of laws that ban proselytizing and missionary activities. Human Rights Committee, *Fifth Periodic Report Submitted by Uzbekistan under Article 40 of the Covenant, Due in 2018*, UN Doc CCPR/C/UZB/5 (2019) at paras 287–92. The recent report of the SRFRB visit to Uzbekistan in 2018 highlighted the continued criminalization of proselytism and the inconsistency of these laws with international human rights (*Report of the Special Rapporteur on freedom of religion or belief on his mission to Uzbekistan*, UN Human Rights Council, 37th Sess., Agenda item 3, UN Doc A/HRC/37/49/Add.2 (2018) at paras 32–36).

⁵²Doc CCPR/C/SR.2694 (2010), *supra* note 51 at paras 5, 22.

⁵³*Ibid* at para 22. The SRFRB also takes the view that proselytism is protected by the right to freedom of expression under Article 19 of the *ICCPR*. See e.g. Asma Jahangir, *Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, on Her Mission to Turkmenistan*, UN Human Rights Council, 10th Sess, Agenda Item 3, UN Doc A/HRC/10/8/Add.4 (2009) at para 59 [Doc A/HRC/10/8/Add.4 (2009)].

⁵⁴Doc CCPR/C/SR.2694 (2010), *supra* note 51 at para 5.

⁵⁵See e.g. Doc A/67/303 (2012), *supra* note 15 at paras 26–29; Ahmed Shaheed, *Report of the Special Rapporteur on Freedom of Religion or Belief on His Visit to Sri Lanka*, UN Human Rights Council, 43rd Sess, Agenda Item 3, UN Doc A/HRC/43/48/Add.2 (2020) at para 32 [Doc A/HRC/43/48/Add.2 (2020)].

⁵⁶Abdelfattah Amor, Special Rapporteur of the Commission on Human Rights, *Implementation of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief* (interim report), UNGA, 51st Sess, Agenda Item 110(b), UN Doc A/51/542/Add.1 (1996) [Doc A/51/542/Add.1 (1996)].

⁵⁷Doc A/HRC/43/48/Add.2 (2020), *supra* note 55; Doc E/CN.4/2006/5/Add.3 (2005), *supra* note 9.

⁵⁸Asma Jahangir, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir*, UN Human Rights Council, 7th Sess, Agenda Item 3, UN Doc A/HRC/7/10/Add.2 (2007).

⁵⁹Asma Jahangir, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, on her mission to the Lao People's Democratic Republic*, UN Human Rights Council, 13th Sess, Agenda Item 3, UN Doc A/HRC/13/40/Add.4 (2010).

⁶⁰A/HRC/10/8/Add.4 (2009), *supra* note 53.

⁶¹Asma Jahangir, *Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, on her Mission to Azerbaijan*, UN Human Rights Council, 4th Sess, Agenda Item 2, UN Doc A/HRC/4/21/Add.2 (2006).

with the issue of religious proselytism.⁶² The SRFRB affirmed that, despite the divergent wording in the *UDHR*, the *ICCPR*, and *1981 Declaration*, international human rights law ensures the freedom of individuals to change their religion or beliefs.⁶³ The SRFRB viewed the matter as being already settled and has relied on this principle as axiomatic. The legal guarantee to freely choose and change religions, including non-theistic and atheistic beliefs, is understood to be one of the fundamental principles of religious freedom in the UN system of human rights. Indeed, the SRFRB has said that religious conversion and proselytization are both core to the freedom of religion.⁶⁴ The first statement in this regard was from a SRFRB report pertaining to the anti-proselytism laws of Greece: “The Special Rapporteur notes that proselytism is itself inherent in religion, which explains its legal status in international instruments and in the 1981 Declaration.”⁶⁵ This statement was carried forward and referred to in future reports of the SRFRB.⁶⁶

The SRFRB’s discussion of religious proselytism is just as variegated as the HRC’s. The principle of non-coercion, which has taken a prominent role in the SRFRB’s commentary on religious proselytization,⁶⁷ implies several rights, including the right to change one’s religion, the right not to change one’s religion, and the right to try to share one’s religion and try to convert others.⁶⁸ The HRC noted that, “[o]n proselytism, the Special Rapporteur is of the view that no restrictions or sanctions should be imposed on peaceful missionary activities which do not amount to coercion.”⁶⁹ Non-coercive religious proselytism is protected as part of the “freedom to manifest one’s religion or belief,” which means that it may be limited but only under certain conditions — in the terms outlined in Article 18(3) of the *ICCPR*,⁷⁰ in a manner that is narrowly defined, proportionate, and not discriminatory in its implementation.⁷¹

⁶²See e.g. Doc A/67/303 (2012), *supra* note 15; Asma Jahangir, *Report of the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief*, Asma Jahangir, UNGA, 60th Sess, Agenda Item 71(b), UN Doc A/60/399 (2005) [Doc A/60/399 (2005)]; Asma Jahangir, *Report of the Special Rapporteur on freedom of religion or belief*, Asma Jahangir, UN Human Rights Council, 6th Sess, Agenda Item 3, UN Doc A/HRC/6/5 (2007) [Doc A/HRC/6/5 (2007)]; Elizabeth Odio Benito, *Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief* (New York: United Nations, 1989) at paras 191–95 (also accessible at UN Doc E/CN.4/Sub.2/1987/26 (1986) [Doc E/CN.4/Sub.2/1987/26 (1986)]).

⁶³This has been stated by the SRFRB on several occasions, including in Abdelfattah Amor, *Report Submitted by Mr. Abdelfattah Amor, Special Rapporteur, in Accordance with Commission on Human Rights Resolution 1996/23*, UN Commission on Human Rights, 53rd Sess, Agenda Item No 19, UN Doc E/CN.4/1997/91 (1996), at paras 77–79. See also Doc A/HRC/6/5 (2007), *supra* note 62 at para 7. The SRFRB draws this point from the earlier work of Elizabeth Odio Benito, see Doc E/CN.4/Sub.2/1987/26 (1986), *supra* note 62 at para 21.

⁶⁴See Doc A/60/399 (2005), *supra* note 62 at para 40; Doc A/HRC/10/8/Add.4 (2009), *supra* note 53 at para 49; and A/HRC/43/48/Add.2 (2020), *supra* note 55 at paras 31–33.

⁶⁵Doc A/51/542/Add.1 (1996), *supra* note 56 at para 12.

⁶⁶See e.g. Doc A/HRC/6/5 (2007), *supra* note 62 at para 17.

⁶⁷See e.g. Doc A/67/303 (2012), *supra* note 15 at paras 15–16, 26–29, 41–43. See also, more recently, Doc A/HRC/43/48/Add.2 (2020), *supra* note 55 at para 32.

⁶⁸Doc A/67/303 (2012), *supra* note 15 at para 16.

⁶⁹Doc A/HRC/10/8/Add.4 (2009), *supra* note 53 at para 60.

⁷⁰“Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law, and are necessary to protect public safety, order, or morals or the fundamental rights and freedoms of others.” *ICCPR*, *supra* note 19.

⁷¹Doc A/67/303 (2012), *supra* note 15 at para 28.

Whether private actors can effectively coerce someone regarding their religious beliefs (to change or maintain them) will depend on different factors and the use of different tools and techniques than state actors. The most common accusation against non-state actors is that they engage in “unethical” conversions, such as promising some material benefit or taking advantage of the vulnerable situation of a person whose conversion is sought — practices often associated with missionary activity. The SRFRB has described a fine line between proselytism that is or is not coercive. In 2005, the SRFRB said that “[m]issionary activity cannot be considered a violation of the freedom of religion and belief of others if all involved parties are adults able to reason on their own and if there is no relation of dependency or hierarchy between the missionaries and the objects of the missionary activities.”⁷² On the other hand, in 2012, the SRFRB indicated that organizations taking advantage of situations like humanitarian disasters to try to convert others may justifiably be restricted by state actors.⁷³ Having said that, the SRFRB insisted that such restrictions may only be justified on a case-by-case basis if the conduct is found to constitute religious coercion.⁷⁴

On the application of this standard, the SRFRB has confusingly distinguished between coercive proselytism, which may justifiably be restricted, and “unethical proselytism.” This can best be seen in a statement made by the SRFRB to the UN General Assembly:

[C]ertain forms of “unethical” conversion are not per se contrary to international standards. Moreover, while some of these acts may not enjoy protection under human rights law, they should not as a result necessarily be seen to constitute a criminal offence. [The Special Rapporteur]. ... recommends that cases of alleged “unethical” conversion be addressed on a case-by-case basis, examining the context and circumstances in each individual situation and dealt with in accordance with the common criminal and civil legislation. The Special Rapporteur is therefore of the opinion that the adoption of laws criminalizing in abstracto certain acts leading to “unethical” conversion should be avoided, in particular where these laws could apply even in the absence of a complaint by the converted person.⁷⁵

It is not clear how unethical conversion is simultaneously not contrary to international standards and that it also may not be protected under human rights law. If unethical proselytism is not protected under human rights law, then on what basis does the SRFRB assert that it ought not to be criminalized? How does the fact that it ought not to be criminalized affect the permissible scope of non-criminal regulation and sanction of religious proselytism by a state? A charitable reading would be that

⁷²Doc A/60/399 (2005), *supra* note 62 at para 67.

⁷³Doc A/67/303 (2012), *supra* note 15 at para 42 (“[i]f individuals or organizations try to convert people by resorting to means of coercion or by directly exploiting situations of particular vulnerability, protection by States against such practices may prove necessary. However, whether specific missionary activities in such situations of increased vulnerability amount to coercion should be established on a case-by-case basis, examining the context and circumstances in each individual situation”).

⁷⁴*Ibid.*

⁷⁵Doc A/60/399 (2005), *supra* note 62 at para 68. See also Doc A/67/303 (2012), *supra* note 15 at paras 44–47.

the SRFRB intended to say (1) that religious proselytism ought not to be severely restricted unless something more than mere “unethical” conduct is present and (2) that the regulation of religious proselytism ought to be regulated contextually rather than categorically. The mere fact that a proselytizer is using unethical means, such as offering material benefits to a materially needy group of people or people in crisis, does not automatically justify state restriction (especially not criminal sanction). This also speaks to a broader point: the legal regulation of religious proselytism must not look solely at the method used by the proselytizer and must also account for circumstances affecting the relationships and interactions between parties.⁷⁶ It is necessary to demonstrate that the actions of the proselytizer, in the context of the material and other relational dynamics of the encounter, is coercive.

The challenge is that there are competing contextual and categorical features of religious proselytism in such an analysis, which need to be connected to each other and weighed against each other. Categorically, religious proselytization is central to religious practice, to the freedom to choose one’s own religion, and to the freedom from coercion, whereas the nature of the relationship and circumstances of the interaction between the persons involved in proselytization is affected by various social, cultural, material, and political contextual factors. It is unclear, based on the HRC’s and the SRFRB’s commentary, how these categorical and contextual features of proselytization are to be used together in an analysis under international human rights doctrine. How are they to be balanced together in light of a unified conception of religious freedom?

These questions return us to Baroody’s arguments regarding proselytization and to a bird’s eye view of the evolution of the international human rights approach to religious proselytization. The specific socio-political and historical concerns expressed by Baroody were overcome by the growing consensus that changing one’s religion is connected deeply to the internal aspect of religious belief, which religious freedom was meant to protect. The commentary by the HRC and the SRFRB over the years shows that the practice of religious proselytization itself is connected in some way to the core of religious belief and religious expression. However, on the other hand, the contextual concerns expressed by Baroody have continued to define the limits placed on religious proselytization. Social and political contexts, as well as the effects felt in these spheres, are relevant for evaluating religious proselytization, but they are now viewed through the lens of the individual’s right to free religious choice and freedom from coercion.

In sum, the international human rights approach to religious proselytization is messy. A broad range of historical, contextual, political, relational, and individual concerns are present, but the relation between them is not clear. Despite the efforts of the SRFRB to synthesize and rationalize these concerns, there still seems to be something at work that has not been captured in the principles articulated. The approach taken to religious proselytization in the international system of human rights points towards ideas that lie beyond the principles of individual freedoms to change/abandon religion, to share religion, and to be free from religious coercion, even though these principles are the preferred language of analysis. There is something at the foundation of religious freedom that gives rise to these principles and that

⁷⁶See Ferrari, *supra* note 6 at 265. Ferrari argues that the individual or collective dimension of religious freedom has a significant effect on the way religious proselytism is framed in international legal doctrine.

keeps alive the contextual concerns of the relational dimensions between persons involved in proselytization. In the next section, I pursue this line of thought in terms of human dignity.

3. The dignity dimensions of religious freedom

From the forgoing discussion, we can see that the global international human rights instruments frame religious proselytism with particular emphasis on the individual. Starting with the *travaux préparatoires* for the UDHR, there was a fairly broad understanding of the interests involved. But these discussions crystalized around the question of the right and the freedom of the individual proselytizee to change their religion. The freedom of the proselytizer to seek to make converts was assumed and was not given much explicit attention. Over time, the broad assertion of the right to convert gave way to a narrower expression of religious freedom to “choose” or to “have” a religion of one’s choosing. Although the force of the specific right to change religion was pressed underground, so to speak, it remained core to the conception of religious freedom, which is apparent in the comments from the HRC and the SRFRB. This represented a shift in focus from the freedom of the proselytizee to change religions to their right to be free from religious coercion. As a result, the legal discourse surrounding religious proselytization also shifted its focus to the scope of the freedom of the proselytiser to proselytize and to the proper limits that may be placed on the practice.

The process of the interaction occurring in proselytization, and the relational dimensions of the interaction, seem to have fallen into the background of this account of religious proselytization. It is worth noting at the outset that these interactive and relational aspects bring into focus the ways in which moments of religious change are connected to broader processes of change in other, smaller thoughts, feelings, and practices. Religious proselytization involves the exchange between individuals regarding their spiritual and metaphysical ideas as well as personal identification with the religious traditions to which they belong. In terms of relationships, there are numerous dynamics of what it means for an individual to belong to a community, to interact at the boundary of other communities, to leave a community, and to cross (sometimes crisscross) between communities.⁷⁷ Religious ideas are not merely metaphysical abstractions acquired through intellectual activity; they are embodied in persons, whether those persons are friends and family or institutional actors and role models, and they take shape in us through our interaction with others.⁷⁸ Proselytization involves the relationships between the individuals and their religious communities, as much as it involves individual intellectual choices about religious beliefs.

⁷⁷See generally Marty, *supra* note 11. It is important to note that these intellectual and relational aspects of proselytization apply equally to non-theistic and atheistic beliefs and practices. The language employed here of religious belonging is simply a matter of convenience and should not be interpreted to imply that everyone ought to have religious beliefs or belong to a religious community. Indeed, this is quite contrary to the emphasis placed on the de-confessionalized notion of spiritual freedom discussed below.

⁷⁸See generally Darren E Sherkat, “Religious Socialization: Source of Influence and Influences of Agency” in Michele Dillon, ed, *Handbook of the Sociology of Religion* (Cambridge: Cambridge University Press, 2003) 151 (regarding the social influences on religious preferences, beliefs, and membership).

The interactive processes and relational dimensions at stake in matters of religious proselytization are, although not front and centre, foundational to the UN conception of religious freedom. This can be seen in the philosophical ideas and opinions of some of the drafters of the *UDHR*, which will be discussed below. Despite the move towards an individualized right, it is still possible for the interactive and relational aspects to play a role in religious freedom analysis in international human rights law. But it is also possible for these dimensions to fade into the background. If this happens, then a crucial element for analyzing religious proselytization — and the conception of religious freedom — may be lost.⁷⁹ It is important to draw attention to those elements and bring them to the foreground of the international human rights discourse on religious freedom and religious proselytization.

Before developing this interactive and relational aspect of religious freedom, and its relation to dignity and spiritual freedom, it is important to note that the concept of dignity plays an important, broad structural role in the United Nations and its human rights framework. Human dignity is referenced in the preamble to the *Charter of the United Nations* in connection with the project of international human rights.⁸⁰ Similarly, the preamble to the *UDHR* begins with a reference to human dignity that indicates the universality of the concept and its role as the foundation of freedom, justice, and peace in the world.⁸¹ The preamble to the *ICCPR* affirms both the *UN Charter's* and the *UDHR's* preambular statements and then emphasizes that the rights enumerated in the treaty are derived from the inherent dignity of the human person.⁸²

The meaning of “human dignity” generally, and its meaning within the context of these UN human rights instruments, is neither obvious nor settled, and the broader scholarly literature on human dignity and its role in law and human rights is extensive and varied.⁸³ It is beyond the scope of this article to summarize and comment on this literature. But there are a few points about human dignity that help lay the groundwork for my discussion. First, the basis of the worth of humans, which underwrites

⁷⁹Some scholars have a more pessimistic view. For example, Peter Danchin laments the loss of the relational dimensions of religious freedom evident in the analysis of religious proselytization. See Danchin, *supra* note 15 at 285–86 (“[m]y general point is that the right to freedom of religion and belief gives rise to both moral and ethical questions that bear a complex relationship to different types of relations between individuals and groups — what Robert Cover once termed different normative worlds or *paideic nomoi*. ... [C]onflicts involving claims of religious freedom cannot meaningfully be addressed or properly understood without taking into account these collective dimensions of the question”). Danchin argues that a radical shift in the conception of religious freedom must take place, moving away from an individualized “liberal” or “enlightenment” view to a value pluralistic view (*ibid* at 308–20).

⁸⁰*Charter of the United Nations*, 26 June 1945, Can TS 1945 No 7 (entered into force 24 October 1945) (“reaffirm[ing] faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”).

⁸¹*UDHR*, *supra* note 18 (“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”). The *UDHR's* preamble also refers to the *UN Charter's* preambular statement on human dignity.

⁸²*ICCPR*, *supra* note 19 (“Recognizing that these rights derive from the inherent dignity of the human person”).

⁸³See e.g. Christopher McCrudden, ed, *Understanding Human Dignity* (Oxford: Oxford University Press, 2013); Rosen, *supra* note 17. More recently, see Elen de Paula Bueno & Emilio Mendonça Dias da Silva, “An International Legal Perspective on Human Dignity: The Extrinsic Recognition of an Intrinsic Condition” (2021) 59 *Can YB Intl Law* 313.

the notion of human dignity and demands respect in the form of rights, is not universally agreed upon. There is quite a bit of evidence indicating that the architects of the *UDHR* and the *ICCPR* were aware of this issue and intentionally selected dignity because it is vague and amenable to being filled with content from different world views (philosophies, theologies, or whatever). The goal was for all of the different cultures and peoples of the world to embrace international human rights on their own terms, by enabling them to articulate the justification for those rights through their own intellectual traditions.⁸⁴ This means that dignity may serve as much of a structural role as a substantive role in international human rights.⁸⁵ Nevertheless, the concept of human dignity invariably ascribes an inestimable value to all human persons equally. Dignity is universal and individualized, it is something common to all humans, it is something that persists in the mere fact of being human, and it demands respect.

Second, there is an inescapable connection between the rights enumerated in the international human rights instruments and their basis in human dignity. As Jacques Maritain, a key theorist working behind the scenes of the development of the *UDHR*, said, “[i]f the affirmation of the intrinsic value and dignity of man is nonsense, the affirmation of the natural rights of man is nonsense also.”⁸⁶ Scholars have been unable to identify and agree on what it is about humans that supports ascribing dignity and respect to humans.⁸⁷ But insofar as the rights enumerated in

⁸⁴McCrudden, *supra* note 17 at 678 (regarding the drafting of the *UDHR*, McCrudden notes: “Dignity was included in that part of any discussion or text where the absence of a theory of human rights would have been embarrassing. Its utility was to enable those participating in the debate to insert their own theory. Everyone could agree that human dignity was central, but not why or how”). See also Erin Daly, *Dignity Rights: Courts, Constitutions, and the Worth of the Human Person* (Philadelphia: University of Pennsylvania Press, 2013) at 4.

⁸⁵The role of dignity is a highly contested matter and has been the basis of major works of scholarship. See e.g. Daly, *supra* note 84. Some have argued that the use of dignity may be distinguished in terms of the “value” and the “rights” of dignity. See Aharon Barak, foreword in Daly, *ibid*. Others have proposed that dignity may be distinguished in terms of its use as a “principle” and as a “right.” See e.g. Conor O’Mahony, “There Is No Such Thing As a Right to Dignity” (2012) 10:2 Intl J Constitutional L 551 at 559ff; Bueno & da Silva, *supra* note 83 (who argue that the structural, interpretive, and substantive aspects of human dignity make it a powerful mechanism for expanding the influence of human rights and integrating national and international legal orders). For yet another conception of the role of dignity in relation to human rights, Jürgen Habermas suggested that the idea of human dignity acts like a “seismograph that registers what is constitutive for a democratic legal order, namely, just those rights that the citizen of a political community must grant themselves if they are to be able to respect one another as members of a voluntary association of free and equal persons.” See Jürgen Habermas, “The Concept of Human Dignity and the Realistic Utopia of Human Rights” (2010) 41:4 Metaphilosophy 464 at 469.

⁸⁶Jacques Maritain, *Man and the State* (Washington, DC: Catholic University of America Press, 1998) at 97 [Maritain, *Man and the State*]. Regarding Jacques Maritain’s role in theorizing the basis of the *UDHR*, see Lindkvist, *supra* note 24 at 34–43; Samuel Moyn, *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015) at 16–17, 51–52, 68–100. See also Glendon, *supra* note 24 at 50–51, 73–78, 230.

⁸⁷See generally Jeremy Waldron, *Dignity, Rank, and Rights* (Oxford: Oxford University Press, 2012); Rosen, *supra* note 17. See e.g. Patrick Lee & Robert P George, “The Nature and Basis of Human Dignity” (2008) 21:2 Ratio Juris 173; Jeremy Waldron, “The Dignity of Groups” (2008) 1 Acta Juridica 66; Jeremy Waldron, “How Law Protects Dignity” (2012) 71:1 Cambridge LJ 200; Moyn, *supra* note 86. For a very different theory of human dignity and its place in international human rights, which is grounded on critical legal theory and challenges many of the accepted features of dignity (such as that it is inherent to human persons), see Matthew McManus, *Making Human Dignity Central to International Human Rights Law: A Critical Legal Argument* (Cardiff, UK: University of Wales Press, 2019).

international human rights treaties are understood to express some of what is required to respect human dignity, the rights themselves can help elaborate what it is about humans that deserves respect. The inverse is also true — namely, that the concept of human dignity, in spite of its variegated nature, can also help elaborate the content of human rights protections.⁸⁸ This is not to say that rights and dignity are synonymous. Instead, the two — human dignity and human rights — work and evolve symbiotically.⁸⁹ This means that to consider aspects of the concept of human dignity alongside the specific rights enumerated in the *UDHR* and the *ICCPR* is mutually enlightening.⁹⁰

Returning to interactive and relational ideas, which are latent in the UN discourse on religious freedom, we can trace a deep connection between religious freedom and human dignity. The idea that I will focus attention on in the following discussion is the notion of spiritual freedom, which is about the exercise of human reason in the pursuit of truth. The pursuit of truth through human reason is often seen in terms of individual autonomy and conscience, but, as I argue below, it is also deeply connected to relationships of interdependence. This connection between individual reason and relational interdependence as constituent elements of human dignity offers a conceptual basis for a more robust account of religious proselytization in international human rights law and, in particular, the freedom of religion. It links the individual concerns of religious choice, expression, and non-coercion to the contextual concerns of relationships of interdependence of which individuals are a part.

In a recent book on the philosophical perspectives of the drafters of the *UDHR*, Linde Lindkvist described the philosophical views of Charles Malik, the representative of Lebanon, who was highly influential in drafting the *UDHR*.⁹¹ Malik was deeply committed to the idea of the spiritual freedom of humanity, which was for him a key animating principle for the entire international human rights project. Malik was of the view that religious freedom is not simply a freedom to choose or to believe and practice one's belief but also a process freedom — it is the freedom to become.⁹² Freedom of religion is, from this view, something that empowers people to grow in their souls, to search for the truth, and then to follow their conscience in that regard. Protecting the right to change religions was not, for Malik, intended to grant special privilege or protection for the “horizontal” conversion between religions. Instead, Malik had in mind to protect the “vertical” process of becoming, which was the acquisition of knowledge and adjusting (converting) one's life in response to it, which may just as well occur within one's own religion or outside of religion. As Lindkvist explained,

The right to change was (for Malik), in other words, a right to progress more than a right to convert between different belief systems. As he made clear ... it was also a right that could not be perfectly exercised by anyone. The freedom of thought and conscience could only be mastered through rigorous training and continuous self-reflection. The ideal bearer of the right to change religion or

⁸⁸See generally Bueno & da Silva, *supra* note 83.

⁸⁹For a robust philosophical argument on this point, see Habermas, *supra* note 85.

⁹⁰See generally Daly, *supra* note 84. See also Adeno Addis, “The Role of Human Dignity in a World of Plural Values and Ethical Commitments” (2013) 31:4 *Nethl QHR* 403.

⁹¹Lindkvist, *supra* note 24.

⁹²*Ibid* at 86–89.

belief was not, in other words, a vulnerable person leaving one religious affiliation for another, but the great thinker, prophet, or poet gradually rising to ever-greater acquaintance with the truth.⁹³

The significance of spiritual freedom reached beyond the right to religious freedom. For Malik, this was a central part of the human person that the nascent system of international human rights was meant to honour and protect. Articles 1 and 18 of the *UDHR* were key for Malik because they most clearly articulate the “true mission” of the human person to freely search and to change.⁹⁴ According to Lindkvist, this explains why Malik supported framing Article 18 of the *UDHR* as protecting the “conscience” of individuals to follow a religion of their own choice, and why he supported including the right to change religions in the text. Prior to the *UDHR*, the protection of religious freedom was often framed primarily in terms of the freedom to “worship.”⁹⁵ Shifting the focus in Article 18 of the *UDHR* to the protection of “conscience” elevated the importance of the spiritual freedom of humanity, and of the necessity of human choice to this freedom, within the context of religious life. From this view, religious freedom is a crucial recognition of the human spirit and protects the practices related to the freedom of the human spirit.

Malik’s concern for the spiritual freedom of human persons — which manifested in the freedom to change religions — grew in response to the powerful influence of Communist materialism and a desire to ensure that the human rights project and the work of the United Nations more generally were not overtaken by Communist ideology.⁹⁶ The freedom of religion was an important site for defining and protecting the soul of the human person. Lindkvist summed up Malik’s view in this way:

To Malik, the most formidable threat to the rights of individuals posed by totalitarian regimes was not brute force, but denial of intellectual and spiritual freedom. ... The practical value of human rights and religious freedom was not directly to secure the goods of material subsistence, nondiscrimination, and bodily integrity. Rather, the point was to liberate the person from the external pressures that made it impossible to carry the existential burden of being free. The point is not that the memory of Nazi terror was an unimportant context in the drafting process, but that the drafters often focused on other aspects than the acts of genocide.⁹⁷

The debates in the *travaux préparatoires* mentioned earlier appear differently in light of these observations about Malik’s view of spiritual freedom. In particular, Baroody’s opposition to the freedom to change religion, the responses to this opposition, and the ultimate adoption of the right to change one’s religion in the text of the *UDHR* can be viewed as a proxy debate regarding a deeper dispute over the philosophical conception of the human person, the purpose of human rights, and the role played

⁹³*Ibid* at 97.

⁹⁴*Ibid* at 57.

⁹⁵See *ibid* at 22–23.

⁹⁶The battle over the material/spiritual nature of humanity, as represented in the conflict between the Communist and Western worlds, was a common theme of Malik’s writings. See e.g. Charles Malik, “The Spiritual Significance of the United Nations” (1955) 38:1 *The Christian Scholar* 19 at 25.

⁹⁷Lindkvist, *supra* note 24 at 58.

by religious freedom. By suggesting this, I do not mean to dismiss the substantive concerns that Baroody raised regarding the abuse of religious proselytism for political and cultural imperialist ends. Rather, I want to draw attention to the way in which the dispute over religious proselytization meant more to those involved in drafting the UN human rights instruments than what Baroody's words literally suggest.

The integration of spiritual freedom in human rights can be seen in an important conceptual feature of religious freedom — the distinction between the so-called *forum internum* and the *forum externum* aspects of religious freedom.⁹⁸ The idea here is that the internal aspect of religion — inner beliefs, knowledge, and conscience — can be distinguished from the external aspect of religion — the manifestations of religion, such as public expressions and acts of religious devotion. One of the key reasons for this distinction is pragmatic. It identifies what cannot be regulated (the internal) and what can be regulated (the external) through law in relation to religion. The freedom of the former is considered to be absolute, whereas the freedom of the latter is not and may be justifiably restricted in law.⁹⁹ But the internal/external distinction is also connected to the present discussion of spiritual freedom in two ways.

First, the concept of religious freedom is framed in terms of the agency of individual persons to determine their own religious path. The absolute freedom of the inner self — the *forum internum* — echoes the idea of human self-determination, which is a core part of the modern idea of human dignity and spiritual freedom that is often traced back to Giovanni Pico Della Mirandola's *Oration on the Dignity of Man*.¹⁰⁰ As Pico Della Mirandola explains, “[t]he nature of all other creatures is defined and restricted within laws which We (God) have laid down. Thou (humanity), impeded by no restrictions, according to thine own free will, in whose hand We have placed thee, shalt define thyself.”¹⁰¹ Recognizing that the interior of the person must never be deprived of its freedom to think and believe what it wants about the ultimate questions of human life is a declaration of the spiritual freedom of humanity.¹⁰² From this view, humanity is uniquely dignified because people are not determined but are able to choose their own path. Human persons are more than the product of their material conditions (whether their economic class or their historic cultural identity) — they are free in their personhood, whether that be called a soul or something else, to question and to affirm what they believe to be true.

Second, the concept of religious freedom goes beyond the inner aspect of belief to include an external aspect. As Max Stackhouse and Deirdre Hainsworth have noted, “[t]he point of all conversion is that we are not simply what we are but are related to a

⁹⁸See *General Comment 22*, *supra* note 48 at para 3. See also Lindkvist, *supra* note 24 at 21–22 (for a brief overview of the origins of the distinction).

⁹⁹Bahiyih G Tahzib, *Freedom of Religion or Belief: Ensuring Effective International Legal Protection* (Boston: Martinus Nijhoff, 1996) at 87–88.

¹⁰⁰Giovanni Pico Della Mirandola, *Oration on the Dignity of Man*, edited by Sebastian Michael, based on translation by Charles Glenn Wallis, reprinted in *Optimist Creations*, www.optimistcreations.com/orationonthedignityofman.html. See also Rosen, *supra* note 17.

¹⁰¹Pico Della Mirandola, *supra* note 100 at 19.

¹⁰²For a similar argument regarding the connection between religious freedom and freedom of thought, see Shaheed, *supra* note 16. Regarding the freedoms of opinion and expression, see also Human Rights Committee, *General Comment No 34*, UN Doc CCPR/C/GC/34 (2011).

greater reality than most of ordinary life discloses and have a duty, and thus the right, to turn to it intellectually, morally, and relationally.¹⁰³ Religious freedom is not simply about having a free mind and conscience, but also includes having the freedom to live life consistent with one's internal conscience. The concept has multiple dimensions. Religion is expressive, which means that religious freedom must protect external manifestations that flow from what one thinks and feels inside. Religion is also communal, insofar as it involves interactions between persons in terms of their religious thoughts and beliefs. For someone to be free in their religious beliefs means that they are free in their individual outward expression of their beliefs, as well as in their communal practice and engagement with others.

Religious proselytism is a challenging practice because it defies a simple and neat division between the internal and external aspects of religion. To proselytize is in one sense purely external — it cannot be mistaken with purely personal practices of religion, such as prayer — because it necessarily involves the interaction between people. On the other hand, proselytization is deeply connected to, and flows from, the internal aspect of religion. As mentioned earlier, proselytization reflects the interior conviction of the truth of one's religious beliefs. Furthermore, proselytization is part of the process by which a person can develop their internal thoughts and feelings about religious truth and belief. The internal and external aspects of religious belief are closely aligned — the freedom to have and to choose one's own internal beliefs includes the freedom to externally engage in the necessary “communicative interactions” that enable someone to seek, receive, and impart ideas as well as to try to persuade others (or oneself) of these ideas.¹⁰⁴

It is interesting to note at this point that the *travaux préparatoires* of the UDHR, the ICCPR, and the 1981 Declaration addressed the issue of proselytism primarily in terms of the *forum internum*'s right to change one's religion, as if the right to change religions implies the right to proselytize. As the concept of religious freedom developed through the work of the HRC and the SRFRB, religious proselytism came to be seen primarily as a manifestation of religion, which locates it in the *forum externum*.¹⁰⁵ From this, the language of coercion as the limitation to the external action of proselytism came to dominate the international human rights discourse. In both situations, though, the discussion does not really engage with the inter-relation between the internal and external dimensions of religious life.

Although the *forum internum* and *externum* distinction is important and helpful in many ways, there are also some risks that come with its usage. The distinction may lead to the incorrect view that the internal and external lives of people can be neatly segregated and treated separately — that human minds and thoughts are separate from human actions and relationships. The connection between the *internum* and *externum* is undoubtedly more complex and integrated. This has been acknowledged by many who employ the distinction — for example, former SRFRB Heiner Bielefeld

¹⁰³Max L Stackhouse & Deirdre King Hainsworth, “Deciding for God: The Right to Convert in Protestant Perspectives” in John Witte Jr & Richard C Martin, eds, *Sharing the Book: Religious Perspectives on the Rights and Wrongs of Proselytism* (Maryknoll, NY: Orbis Books, 1999) 201 at 201.

¹⁰⁴Heiner Bielefeldt, *Report of the Special Rapporteur on Freedom of Religion or Belief*, UN Human Rights Council, 31st Sess, Agenda Item 3, UN Doc A/HRC/31/18 (2015) at para 34 [Doc A/HRC/31/18 (2015)] (explaining the significance of the connection between freedom of religion and of expression). See also Doc A/HRC/40/58 (2019), *supra* note 12 at para 31.

¹⁰⁵Doc A/67/303 (2012), *supra* note 15 at paras 26–28.

did not shy away from using the *internum/externum* distinction,¹⁰⁶ but he has also identified the intricate connection between the internal dimension of religious belief and the external communicative discourses on religious beliefs.¹⁰⁷ Even so, the internal/external distinction in religious freedom doctrine tends to enable analyses of religious proselytization that focus on one aspect and de-emphasize the other. This may be one way to view the discussion in the UN human rights context, where the emphasis flipped from the internal to the external. In the former, the contextual factors mentioned by Baroody were sidelined; in the latter, the internal features of proselytization were sidelined, and context came back into focus. This is not to say that the *internum* and *externum* distinction is incorrect or totally unhelpful but, rather, that careful attention must be given to ensure that the nuances and complexities of the inter-relation between the internal and external aspects of religion are not lost from view.¹⁰⁸

Turning to consider the idea of spiritual freedom in further depth may be helpful for holding the internal and external dimensions of religious freedom together, in the way that it brings to the foreground the relational dimensions of religious freedom. Although it is crucial to preserve the agency of individuals to pursue and decide for themselves questions of religion, it is not the case that this can be done in isolation. This notion is apparent in how humans exercise their rational capabilities. It is necessary to protect and to foster the kinds of encounters on which human reasoning and choice depend. To focus on the separation between religious *internum* and *externum* may inadvertently downplay the way in which relationships and community affect the internally held beliefs of individuals. The notion of spiritual freedom, on the other hand, emphasizes the connection between these elements. Religious belief and membership are more than individual matters. Although the degree to which religion penetrates a person's social life may vary from place to place and from person to person, religion is never separate from relationship. Religion is inherited first and only later taken up as one's own.¹⁰⁹ The processes of originally "inheriting"

¹⁰⁶*Ibid* at paras 26–29.

¹⁰⁷Doc A/HRC/31/18 (2015), *supra* note 104 at paras 34, 67.

¹⁰⁸It is important to note at this point that some scholars are much more critical regarding the effect of the internal/external distinction in international human rights law and are skeptical about whether it can be salvaged at all. See e.g. Danchin, *supra* note 15 (who argues that the internal/external distinction in religious freedom betrays an inherent "dualism" that is inimical to resolving the conflicts between different rights and interests at stake in religious freedom matters, at 263–97). For Danchin, the case of religious proselytism illustrates the conundrum. He argues for a dramatic shift in theoretical approach to religious freedom grounded in a philosophy of value pluralism (*ibid* at 307–19).

¹⁰⁹This fact provides the rationale for protecting the freedom of parents to provide religious education to their children, which is reflected in the CRC, *supra* note 20, the ICCPR, *supra* note 19, art 18(4), and the 1981 Declaration, *supra* note 20, art 5(1). For a robust analysis of the complex relationship between the religious rights and interests of parents and children, see Heiner Bielefeldt, *Interim Report of the Special Rapporteur on Freedom of Religion or Belief*, UNGA, 70th Sess, Item 73(b), UN Doc A/70/286 (2015) [Doc A/70/286 (2015)] (which argues for a holistic perspective whereby the rights and freedoms of religion of the parents and the child are seen as interconnected/correlated). Bielefeldt called parental and children's religious rights and freedoms "normatively interrelated" (at para 27) and "consonant" (at para 34). Bielefeldt noted that a child's right to religious freedom depends in large part on being raised within a family and community (at paras 20–23, 39–40, 43–45). On the other hand, Bielefeldt emphasized that the child is the primary, or "immediate," right-holder (at para 19) and that the rights of the parent/community cannot simply override or marginalize the rights of the child (at para 23). The religious autonomy of the child grows with the child's capabilities, and

and later “taking up as one’s own” religion is not straight-forward or uniform amongst all people. Neither is accomplished in isolation, but they always involve the individual’s interactions with others.¹¹⁰ Religions are living traditions, not simply creedal statements, practices, or theologies.

Choosing, changing, or abandoning religious belief and institutional membership is not simply an intellectual process. It is deeply personal, moral, and ethical — it affects one’s view of oneself, one’s view of their relation to reality, and one’s relationships with others.¹¹¹ Choosing or changing one’s religion is also not entirely a matter of exercising individual will. It may, for many, be experienced not as a choice at all but, rather, as feeling chosen or responding to being called.¹¹² It is easy to focus on the moment of decision regarding religious beliefs and membership when, in reality, change in one’s religion occurs slowly over time, through what some have called a crystalline process of personal transformation — a kind of long prelude to the moment of conversion.¹¹³ Change in religious belief, like changes in human beliefs more generally, involves more than affirming or denying truth propositions. It also encompasses a deeper sensibility of what is good and right. This sensibility is not just a “feeling” or a preference, but it is a kind of proto-rational knowledge of the truth. Some have called this “connatural” knowledge or inclination.¹¹⁴ Here, “the intellect is at play not alone, but together with affective inclinations and dispositions of the will, and is guided and directed by them.”¹¹⁵ Connatural knowledge is not developed through pure or abstract intellectual pursuit. It is produced by demonstration and discipline, through which one learns to shape their desires with direction and guidance. The end result is that the thing known is “embodied in ourselves ... or co-natured with it, in our very being.”¹¹⁶ Intellectual and rational evaluation of

this growing autonomy must be respected in religious families and communities (at paras 23–26, 54–55). See also Doc A/67/303 (2012), *supra* note 15 at paras 30–34.

¹¹⁰See e.g. Sherkat, *supra* note 78 (providing an overview of the main social influences that affect religious choice and agency).

¹¹¹Doc A/67/303 (2012), *supra* note 15 at para 59 (“[i]t has been argued that the language of ‘choice’ does not appropriately reflect the existential dimension of a deep religious or philosophical conviction and the sense of belonging and loyalty that goes with any profound conviction. The Special Rapporteur shares the view that religion or belief is not just an item within a catalogue of commodities that individuals may take or leave according to their personal tastes or preferences”). See also Sherkat, *supra* note 78.

¹¹²Patrick Riordan, “Which Dignity, Which Religious Freedom?” in Christopher McCrudden, ed, *Understanding Human Dignity* (Oxford: Oxford University Press, 2013) 421 at 431.

¹¹³This way of framing conversion as a crystalline process of transformation is developed extensively by Matthew Scherer, *Beyond Church and State: Democracy, Secularism, and Conversion* (Cambridge: Cambridge University Press, 2013), especially ch 2, “Authorized Narrative and Crystalline Structure: Conversion in Augustine’s Confessions” (at 30–70). It may be applied to religious and other forms of belief, including — as Scherer argued — secularism.

¹¹⁴This follows the Aristotelian, and Thomistic, philosophical tradition. See generally Jacques Maritain, *Natural Law* (South Bend, UK: St Augustine’s Press, 2001) at 13–24; Maritain, *Man and the State*, *supra* note 86 at 91–92 (“[rational knowledge through inclination] is not clear knowledge through concepts and conceptual judgments; it is obscure, unsystematic, vital knowledge by connaturality of congeniality, in which the intellect, in order to bear judgment, consults and listens to the inner melody that the vibrating strings of abiding tendencies make present in the subject”). It is worth noting that this notion of connatural knowledge is different than the notion of preference, which is used extensively in the scholarship on the sociology of religion.

¹¹⁵Maritain, *Man and the State*, *supra* note 86 at 15.

¹¹⁶*Ibid* at 14–15.

propositions, as well as practical reasoning about what is true and good and making choices that reflect these judgments, involves connatural knowledge in addition to propositional knowledge. Choices about religious beliefs, such as in moments of conversion, are influenced by changes in connatural knowledge.

There is a strong relational dimension at work in the development of human knowledge. There is also a strong relational dimension to the development and exercise of human rationality. Alasdair MacIntyre went so far as to argue that humans are dependent rational animals.¹¹⁷ According to MacIntyre, the rational capacity that distinguishes humans from other intelligent animals is the ability to self-reflect on our reasons for action, which enables the constant critique of one's own understanding of the ultimate good, the adjustment of the order that one gives to various goods and desires, and the ability to learn and establish related practices that support this reasoning process.¹¹⁸ This unique human capacity for autonomous reflection and choice — which is related to the notion of spiritual freedom and human dignity discussed above¹¹⁹ — is, according to MacIntyre, never exercised in social isolation. The capacity of persons to reflect on their own reasons for judgment presupposes that persons already have a conception of the ultimate good in the first instance, which means that they have inherited a conception of the ultimate good, and related virtues, from others (typically parents and other caregivers).¹²⁰ Even at the height of human independent action, people still depend on others (typically friends) to help them see the assumptions and desires that are otherwise hidden from their perception.¹²¹ Human autonomy is only possible within the context of interdependent human relationships.

Emerging from these ideas are some indications of the anthropology and ontology of human rights that Malik may have been fighting to embed in the *UDHR* and may also be alive in other references to dignity in other UN documents. Human dignity is grounded in our intellectual and relational capacities. The human person is capable of pursuing the truth, of questioning their beliefs and knowledge, and of hearing and learning about new ideas and, therefore, has dignity as a rational agent.¹²² But, simultaneously, the human power to reason, which is the hallmark of spiritual freedom and autonomous agency, is inextricably tied to human social relationality — in particular, relationships (and accompanying structures and processes) of interdependence. The freedom of religion, as the guarantor of this central spiritual freedom of the human person, is a multifaceted protection of the processes of intellectual and relational interaction.

¹¹⁷ Alasdair MacIntyre, *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court, 2012).

¹¹⁸ *Ibid* at 56–57.

¹¹⁹ See also Addis, *supra* note 90 at 423 (who argues, via a critique of the Kantian theory of dignity as autonomy, that “our very humanity is possible or comprehensible only as part or in a context of networks of relationships”).

¹²⁰ MacIntyre, *supra* note 117 at 81–84, 91–94.

¹²¹ *Ibid* at 94–97.

¹²² See also Riordan, *supra* note 112 at 431 (“the aspect of human dignity of particular relevance to religious liberty is the human capacity to enquire, to wonder, to seek to understand. It is only in being a certain kind of animal, a rational one, that the dignity of humans on the ladder of being consists; it lies also in possessing an openness to the most ultimate and comprehensive explanation of reality, whatever it turns out to be. This too constitutes an essential element of human dignity”).

Religious proselytization, from this view, is as much of a relational encounter as an intellectual encounter. Also, religious proselytization is, from this view, a very important practice that provides the opportunity for the exercise of spiritual freedom to flourish. A full and proper analysis of religious proselytization in international human rights law must account for the individual and relational aspect of religious belief and choice. Religious proselytization must be understood in terms of the process of the interaction between individuals and the relationships within which they live. Recovering the dignity dimensions of religious freedom, especially the notion of spiritual freedom, enriches the analysis of cases of proselytization in human rights law.

4. Case example

It is difficult to articulate the full range of implications that flow from incorporating the interactive relational dimensions of spiritual freedom into a religious freedom analysis of religious proselytism. Some of this can be seen in a unique case of proselytism discussed by Israel Doron and Charles Foster in their article “Is There a Duty to Respect ‘Historical’ Faith? Christian Proselytism of an Older Jewish Woman with Dementia.”¹²³ This case study involved an elderly Jewish woman, “M,” who was being proselytized by her Christian caretaker, “B.” “D,” M’s daughter, hired B to care for M because of the rapid deterioration of M’s condition due to Alzheimer’s disease. At first, things appeared to be going well with the arrangement, but, as time went on, D discovered that B was singing and reading Christian scriptures to M.¹²⁴ This made D quite upset so she fired B and initiated a criminal complaint against B for abusing and humiliating M.¹²⁵

There are two challenges to analyzing this case in terms of religious freedom. First, B’s actions may not immediately appear as “proselytism” in the classic sense because she does not seem to be trying to convert M. Having said that, B’s actions clearly line up with the concerns expressed throughout the UN human rights discourse regarding improper proselytism. B is in a position of power over M so that M is a captive audience, and M has no way to withdraw from B’s care or to avoid B’s religious expressions.¹²⁶ Even still, it is difficult to recognize this as proselytism because of the complicating fact of M’s illness. This leads to the second challenge, which is that M may not have the capacity to make the kinds of evaluations, engage in the kinds of communicative interactions, and make the kinds of choices that are normally associated with the exercise of religious freedom. Although M is captive to B’s religious expressions, M’s lack of capacity may mean that she cannot be “coerced” in the sense of being forced to abandon her religious convictions or to hide her true religious beliefs.

¹²³Israel Doron & Charles Foster, “Is There a Duty to Respect ‘Historical’ Faith? Christian Proselytism of an Older Jewish Woman with Dementia” (2016) 31:2 *JL & Religion* 118.

¹²⁴*Ibid* at 120.

¹²⁵It is worth noting here that D claimed M displayed behaviour that suggested she was disturbed by B’s conduct.

¹²⁶But this is not in itself sufficient to call B’s actions improper. There are some contexts in which the exercise of religious influence over vulnerable people is not condemned — for example, children are susceptible to the religious influence of their family members and to the religious communities in which they are raised, but this is openly protected (not condemned) in international human rights. *ICCPR, supra* note 19, art 18(4).

The challenge posed by this case study underscores some of the limitations with the way in which religious proselytism has been framed in the international human rights discourse. M's condition pulls in both directions in the human right analysis. On the one hand, as already mentioned, M is vulnerable, especially to those who have charge over her care. On the other hand, M's condition leaves her in a place where she does not have a clear set of religious beliefs that she can be "coerced" to leave behind. It must be the case that M's lack of capacity to make religious choices does not leave her subject to the whims of those who have care over her.¹²⁷ She must still have spiritual freedom as part of her human dignity, but how is this to be described? Focusing too much on the individualized concerns of religious choice and belief makes it difficult to analyze the situation with any clarity. As mentioned, it is unclear how to explain the problem with B's conduct in terms of coercion. It is also difficult to explain why this is a case of proselytization in the first place.

As I have already argued, there are resources within the international human rights discourse that can offer some clarity. For example, there are contexts where the religious lives of persons who do not have the capacity to make independent religious choices are placed in the hands of those who have care over them (for example, children and their parents).¹²⁸ The fact that the religion of some may be bound up in their dependence on others does not vitiate the concept of freedom.¹²⁹ And it need not be conceptualized as an exception to the general rule of autonomous religious choice. Rather, as I noted earlier, the exercise of individual spiritual freedom is always in some way dependent on others, even for those acting with what we call full autonomy. Spiritual freedom is a relational as well as an individual concept.

The role of relationship is relevant for analyzing religious freedom as well as the ethical concerns that Doron and Foster discussed in their article. Doron and Foster explored various conceptual approaches to frame the ethics of B's conduct, which includes focusing on M's autonomy, on her "new personality" due to the progression of Alzheimer's, on her connection to her family and community, on her "best interests," and on the implications of a Jewish religious perspective.¹³⁰ They conclude that all of these conceptual approaches are inadequate, and they suggest instead a holistic view of autonomy and relationality that is grounded on human dignity. This viewpoint, according to Doron and Foster, enables a novel construction of M's identity that is connected to all of her many relationships, current and historical.¹³¹ Doron and Foster observe that, because M's religious identity is bound up in her various relationships of dependence, an assessment of her dignity requires more than

¹²⁷Denise Réaume noted, although in a very different context than proselytization, that "if we simply treat people as responsible for their choices, we punish them for being the victim of autonomy stunting conditions; if we simply take away the power of choice when it is likely to be used badly, we deny the very capacity for choice, and run the risk of stigmatizing vulnerable groups as incapable of choice." Denise Réaume, "Dignity, Choice, and Circumstances" in Christopher McCutcheon, ed, *Understanding Human Dignity* (2013) 539 at 545.

¹²⁸See Doc A/70/286 (2015), *supra* note 109.

¹²⁹*Ibid* at para 23 (Bielefeldt went so far as to say that "the rights of a child can never flourish without an enabling environment").

¹³⁰Doron & Foster, *supra* note 123 at 121–25.

¹³¹*Ibid* at 126 ("[w]ho is M? She is the nexus of relationships in which she exists and in which she has existed. The boundaries of her identity are not as hard as pictured in the traditional atomistic picture of the autonomists. The boundaries are porous. These notions are captured by the idea of *human dignity*. They are not, we think, captured by anything else"; emphasis in original).

looking at her autonomy. It requires looking at the nexus between M's dignity and the dignity interests of the other persons implicated in the situation.¹³²

Similarly, in terms of religious freedom, the relational dimension of spiritual freedom enables us to recognize M's case as a matter of religious proselytism. The reason for this is that B is able to influence M's religious beliefs at a sub-rational level, or what may be called the formation of connatural knowledge or instinct. B's conduct may lead to real change in M's religion, although it may be slow and imperceptible or "crystalline." This is where the concept of proselytization, as a broad process that encompasses individual acts of proselytism and moments of religious change, proves its salience. The relational dimension of spiritual freedom also provides a way to frame the problem with B's conduct. Although B rightly recognized the need to support the spiritual life of M as a matter of her dignity, B failed to consider the role that M's other relationships of dependence play in her spiritual freedom. The other relationship that matters greatly to M's religious beliefs is her relationship with D. Not only does M depend on her daughter to maintain her dignity in a broad sense, but, in this case, D's religious identity also directly depends on M because, as Jews, D inherited her religious identity from her mother. The religious identity of M is intricately tied to the religious identity of D. In a very real way, then, the threat that B's actions posed to M's Jewish identity is also a threat to D's Jewish identity. B wrongly assumed a primary role in guiding the spiritual life of M when B should have deferred to D. Failing to do so interfered with M's spiritual freedom by undermining the core relationship in M's religious life.

The relational dimension of spiritual freedom affirms that relationships of dependence matter for preserving and fostering the human dignity of a person. Those who are not capable on their own to exercise their spiritual freedom depend on others to sustain their spiritual freedom. What dignity prescribes for religious freedom analysis is the identification and preservation of the relationships of interdependence in which people live their religious lives. Of course, this may include multiple relationships and requires characterizing each relationship and establishing the hierarchy between them. This example demonstrates that an overly individualized notion of choice and coercion is inadequate to assess B's proselytization of M in terms of religious freedom. To frame the question in individualized terms ignores the concerns and interests at stake that really matter — how does B's conduct affect the relationship between M and D? The larger question that has to be addressed is how to properly account for and incorporate the relational dimension of M's religious beliefs and identity into an account of her religious freedom?

To develop this fully would take us beyond the scope of this article and will have to be left for future scholarship. But from the brief discussion above, it is apparent that the discourse on international religious freedom will have to evolve to include the relational dimension of religious belief and practice as an aspect of the individualized principles of religious coercion and choice. It will also be necessary to develop a set of criteria for analyzing the different relationships that a person has, how these relationships intersect with each other (perhaps as a hierarchy of importance), and how these relational dimensions connect to the notions of religious belief and practice. The notion of spiritual freedom, as a dimension

¹³²Doron and Foster suggest a Bayesian-type analysis, which assumes that all are connected with each other and their interests given weight based on their proximity to the interaction. *Ibid* at 128.

of human dignity at work in the right to religious freedom, provides the conceptual coordinates to begin to formulate these answers.

5. Conclusion

Religious proselytism is a difficult religious practice to analyze and manage in international human rights law. On the one hand, religious proselytism is central to religious freedom insofar as it is an interaction regarding what people believe to be ultimately true and good. On the other hand, religious proselytism can be damaging and coercive, which undermines the core of religious freedom. In order to adequately address these complexities within religious proselytism in international human rights, it is necessary to engage with principles and ideas that are foundational to religious freedom. The ideas regarding human dignity discussed in this article provide a useful set of conceptual tools for addressing religious proselytization. They are useful because they hold together a broad range of individual and relational elements without collapsing them into each other. Human dignity is grounded not only in the abstract parts of the human self, like individual rationality and autonomy, but also in the concrete element of human relationships. The interactions between people shape their experiences and knowledge. The exercise of human reason and rational agency are possible only within the context of human relationships. Human dignity shows that humans are interdependent rational animals, and it is on this basis that human rights (such as religious freedom) operate.

The significance of religious proselytism to religious freedom, and the challenge of capturing the broad range of concerns involved in proselytization, is evident in the development and evolution of the international system of human rights. There is broad awareness of, and commitment to, the dimensions of human dignity described in this article. The trouble is that the international discourse appears scattered and disorganized, which has led to greater attention being paid analytically to the individual aspects of belief and choice than to the relational and interactive processes at play in religious proselytization. This poses a real risk that the relational dimensions of human dignity will be lost or overshadowed in the international law on religious freedom.

The puzzle and challenge posed by religious proselytization offers an opportunity to reinvigorate the concept of religious freedom in international human rights law. I have argued that it is necessary to recover and to re-emphasize the dignity dimensions of religious freedom — in particular, its relational interactive element — in order to adequately address religious proselytization. The language of spiritual freedom offers a robust framework by which the relational processes of human dignity are connected to religious belief and by which these concepts can be marshalled in legal analysis. From this view, religious freedom comes alive again as a deep commitment to a vision of the human person that is spiritually free, in and through their interdependence with others, to enquire about, to make choices regarding, and to live according to what they believe to be true.