

**REFLECTIONS ON THE AMBIGUOUS UNIVERSALITY OF  
HUMAN RIGHTS: CYRUS THE GREAT'S PROCLAMATION AS A  
CHALLENGE TO THE ATHENIAN DEMOCRACY'S PERCEIVED  
MONOPOLY ON HUMAN RIGHTS**

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*By day I praised you and never knew it.  
By night I stayed with you and never knew it.  
I always thought that I was me—but no,  
I was you and never knew it.  
Rumi\**

I. INTRODUCTION

[Europe] is... the source – the *unique* source – [of the]... ideas of individual liberty, political democracy, equality before the law,... human rights, and cultural freedom.... These are *European* ideas, not Asian, nor African, nor Middle Eastern ideas, except by adoption.<sup>1</sup>

This assertion of Arthur M. Schlesinger Jr. illustrates the fact that, to date, in

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\*HUSH DON'T SAY ANYTHING TO GOD: PASSIONATE POEMS OF RUMI 68 (Shahram Shiva trans., Jain Pub. 1999).

1. ARTHUR M. SCHLESINGER, JR., *THE DISUNITING OF AMERICA: REFLECTIONS ON A MULTICULTURAL SOCIETY* 133 (W.W. Norton & Co. 1998) (1991).

the Western legal, philosophical and political literature, the established viewpoint has consisted of setting the ideas shaped around the 508 B.C.E. Athenian Democracy as the origin of human rights.<sup>2</sup> And it is true that despite the vicissitudes of history, the ideas that germinated in the minds of distinguished thinkers such as Socrates, Plato and Aristotle journeyed through millennia and profoundly influenced the Age of Enlightenment's philosophical movement. In Western Europe and North America, through the contributions of great thinkers such as Locke, Montesquieu, Voltaire and Rousseau, that philosophical movement resulted in a series of declarations and charters of human rights. The *Habeas Corpus* (1679), the Bill of Rights (1689), the American Constitution of 1787 and its first ten amendments of 1791, and the French *Déclaration des droits de l'homme et du citoyen* (1789) were all brought into life in the seventeenth and eighteenth centuries.<sup>3</sup>

This study does not seek to refute the unquestionable achievements of the above-mentioned values in the world civilisation. Instead, this study will focus on an old – often anthropological – debate over cultural relativism, which, by initiating the very heated Universalist/Relativist debate, has inevitably impacted the understanding of human rights which are perceived in two main diverging ways. Firstly, there are the partisans of universality who claim that human rights are, and must be, the same everywhere. Opposed to this first category are the advocates of cultural relativism who “claim that rights and rules about morality... are encoded in and thus depend on cultural context.”<sup>4</sup> While each of these approaches presents its own arguments – which will not concern the present study – a paradox has emerged within the partisans of universality. Accordingly, some Universalists maintain that, on the one hand, human rights are universal – hence they should be applied by all members of the international community. On the other hand, they see the values that they consider universal as an exclusive emanation of one selected civilisation – that is, the civilisation linking itself to the values formulated by the Athenian Democracy. In other words, the above subgroup is Universalist only to the extent that the application of human rights is concerned; whereas, with regard to the origins of human rights, it remains profoundly – whether or not knowingly – Relativist. Hence the impression that Universalists use human rights as a tool in order to promote values intrinsic to their own civilisation.

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2. See, e.g., YVES MADIOT, *DROITS DE L'HOMME* 6-7 (Masson, 2<sup>nd</sup> ed. 1991); Hans-Otto Sano, *Development and Human Rights: The Necessary, but Partial Integration of Human Rights and Development*, 22 HUMAN RIGHTS Q. 734, 736 (2000) (“Human rights thought is rooted in the European natural rights philosophy and in the age of Enlightenment with its struggle against absolute monarchy”); CAROL DEVINE ET AL., *HUMAN RIGHTS: THE ESSENTIAL REFERENCE* (Hilary Poole ed., Oryx Press 1999) (“[this manual] presents a snapshot of the pivotal eras and moments in the history of Western civilization that helped to shape our twentieth-century conception of human rights. It begins with the philosophers and rulers of ancient Greece and concludes with the aftermath of World War II when the United Nations established the Universal Declaration of Human Rights.”).

3. With some exceptions, such as the *MAGNA CARTA* (June 15, 1215).

4. See HENRY J. STEINER AND PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS* 192 (Clarendon Press 1996).

Since reality is not composed of one element, but instead, like a prism, offers a multitude of facets with each of them reflecting only one aspect of the whole, this paper aims not at contradicting the contribution of Athenian values but at bringing to the attention of the reader another facet of the prism in relation to the origins of human rights, whereby the Athenian Democracy should be viewed as only one component of a general egalitarian aspiration within the ancient world. Thus, while modern democracy and human rights are fundamentally complementary to each other, it is interesting to consider how and to what extent thirty years before the official birth of the Athenian Democracy human rights were conceptualised outside the European continent in Western Asia, in Cyrus' Proclamation – a replica of which is kept in the United Nations (UN) Headquarters, New York. By analysing the 538 B.C.E. Proclamation of Cyrus the Great, founder of the first Iranian Empire, this study proposes to place the emphasis on the above paradox of human rights' Universalist debate. More concretely, this study will call into question the dualistic conception according to which human rights could only find their roots in the Athenian Democracy and its inheritors – perceived as necessarily progressive – as opposed to all “other” civilisations, often symbolised by the so-called Oriental Despotism.

Accordingly, an eighteenth and nineteenth century intellectual trend – which included, among others, the Physiocrats, the Utilitarians and the Marxists – considered Oriental Despotism as the expression of an ignorant and stagnant society characterised by the despot's arbitrary inclination and a repressed civil society.<sup>5</sup> In short, as it has been viewed by Edward Said, it was the expression of a society characterised by “its sensuality, its tendency to despotism, its aberrant mentality, its habits of inaccuracy, its backwardness.”<sup>6</sup> Among the aforementioned schools of thought, Marxism provides the most startling example. Thus, Karl Marx, one of the most radical thinkers of his age, while – unsurprisingly – condemning colonialism declared – surprisingly – that Asiatic colonies

*had always been* the solid foundation of Oriental despotism, that they restrained the human mind within the smallest possible compass, making it the unresisting tool of superstition, enslaving it beneath the traditional rules, depriving it of all grandeur and historical energies.<sup>7</sup>

What is striking is the certainty with which Marx asserts that Asian lands have “always” been subjected to Oriental Despotism, almost as if they had been marked by a congenital misconception. Even Marx – the man who condemned imperialism and the proletariat's exploitation, the man whose message has represented for over a century the hope of the world's marginalised – fails to conceive a genuine equality between civilisations and ultimately concludes that the coloniser has to accomplish a double mission in the colonies: “one destructive, the

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5. NICHOLAS ABERCROMBIE, STEPHEN HILL, AND BRYAN S. TURNER, PENGUIN DICTIONARY OF SOCIOLOGY 250-51 (Penguin Group, 4<sup>th</sup> ed., 2000). *See generally*, EDWARD W. SAID, ORIENTALISM (Vintage Books 1994).

6. SAID, *supra* note 5, at 205.

7. KARL MARX, SURVEYS FROM EXILE 306 (David Fernbach ed., Penguin Classics 1993) (emphasis added).

other regenerating – the annihilation of the Asiatic society, and the laying of the material foundations of *Western society* in Asia.”<sup>8</sup> Thus, in this almost eschatological dialectic leading to the salvation of the oppressed, precedence is still given to the values of the oppressor. Through his dark side, the tutor may have mistreated the minor, but it will still be up to the tutor — and the tutor alone — to overcome his dark side and rectify his behaviour towards the minor. Even in order to break free from its alleged chains of backwardness, Asia needs Europe because, ultimately, it is defined and exists through Europe. Even to Karl Marx, no other option is conceivable.

In fact, this persistent dualistic approach finds its roots in Antiquity where the Greeks saw themselves as the centre surrounded by the “Barbarian” hordes, in other words an early version of the “Oriental Despots.” As this paper will argue (see particularly Section V), this psycho-sociological pattern may explain why, in human rights education, important texts such as the Proclamation of Cyrus have fallen into oblivion despite solemn reminders, as in the case of the first International Conference on Human Rights in 1968, Teheran.<sup>9</sup>

Among the early precursors of social regulation figure the Babylonian king Hammurabi’s 1780 B.C.E. Code of Laws along with Moses’ circa 1300 B.C.E. Ten Commandments.<sup>10</sup> The common point between Hammurabi’s Code and Moses’ Ten Commandments is that both constitute codes of laws applying to a specific people, that is Babylonians in the former case and Hebrews in the latter. The diverging point is that Hammurabi’s Code is a legalistic code issued in a polytheistic context – a God and its pantheon – while the Ten Commandments bear a moral emphasis in Judaism’s monotheistic context. As for the object of this study, that is, Cyrus’ Proclamation, it combines aspects of both of the above instruments. Contrary to Hammurabi’s Code, the Proclamation does not constitute a code of law. But like the Code, the Proclamation addresses the peoples of the empire in a polytheistic approach, as opposed to the Ten Commandments which is addressed to a specific people in a monotheistic context. On the other hand, like the Ten Commandments, the Proclamation bears a strong moral emphasis.

A pertinent aspect of Cyrus’ Proclamation is the fact that it represents the recognition of human rights norms by the State *proprio motu*; i.e. by an emperor

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8. *Id.* at 320 (emphasis added).

9. A.H. ROBERTSON & J.G. MERRILLS, HUMAN RIGHTS IN THE WORLD 7 (Manchester University Press 4<sup>th</sup> ed. 1996) (1972) providing that during that conference, Shah Mohammad Reza Pahlavi of Iran noted in his opening address that the Proclamation was to be viewed as a precursor in human rights declarations, see also the final Act of the International Conference on Human Rights, Teheran, 1968, UN Document A/Conf 32/41).

10. See GERARD ISRAËL, CYRUS LE GRAND : FONDATEUR DE L’EMPIRE PERSE 300-303 (Fayard 1987). With the exception of the Summerians, Hammurabi’s Code, which consisted of 282 provisions subdivided in categories such as labour, family, trade, etc., was the first comprehensive code to fix rules pertaining to private law and to determine the sanctions resulting from the violations of those norms. Hammurabi’s Code was a catalogue of sanctions aiming at repairing the prejudices caused to both the victims and the society, with a human dimension and a lesser intervention of gods. It was a code of law *stricto sensu* in the sense that it was legalistic, not moral. Later, similar codes would come into existence, such as the 565 Emperor Justinian I’s *Corpus Iuris Civilis* (Body of Civil Law).

who – at the zenith of his power – grants rights constituting the principles of human rights which, by nature, would limit his power in favour of his subjects – in modern terminology, the power of the State and of its Government in favour of the citizens. Thus, this study is not about a conqueror, but instead about the expression in one of those “other” civilisations, of the ideal of human rights, whose vector happened to be one of those so-called “Oriental Despots”: Cyrus.

By illustrating the fact that they also developed outside the civilisations depositories of the Athenian Democracy, may this study contribute to the understanding that human rights are not the monopoly of a given civilisation – as it is frequently thought – and that they are indeed more universal than they are so often perceived. Indeed, human rights find their roots in the superior principles of what has been referred to as natural law which, depending on the civilisations where they take shape, may be based on god, providence, conscience, moral, reason, etc. What matters is not their designation, whether they should be called natural rights, rights of Man, or, since World War II, human rights.<sup>11</sup> Nevertheless, regardless of their corresponding civilisation those superior principles have a common denominator, that is their philosophical grounds are laid on the essence of human dignity, pre-dating the sophistication of political organisations.<sup>12</sup>

This study follows the spirit of the UN General Assembly Resolution on the United Nations Decade for Human Rights Education, holding that “education for human rights and democracy is itself a human right and a prerequisite for the realization of human rights, democracy and social justice.”<sup>13</sup> More fundamentally, this study echoes the spirit of the UN Resolution on the Dialogue among Civilizations, which reaffirms:

the purposes and principles embodied in the Charter of the United Nations, which, *inter alia*, call for collective effort to strengthen friendly relations among nations, remove threats to peace and foster international cooperation in resolving international issues of an economic, social, cultural and humanitarian character and in promoting and encouraging universal respect for human rights and fundamental freedoms for all ...<sup>14</sup>

Indeed, without dialogue, neither friendly relations nor international co-operation can be strengthened and the lack of the latter augments the risks of clashes. Because they constitute the last rampart protecting citizens’ rights from the public authorities’ propensity to curtail them, human rights always constitute the primary victim of clashes.

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11. *Human Rights*, BRITANNICA CONCISE ENCYCLOPEDIA, ENCYCLOPAEDIA BRITANNICA ONLINE, Oct. 20 2007, <http://0-www.search.eb.com.bianca.penlib.du.edu:80/ebc/article-9367540>.

12. MADIOT, *supra* note 2, at 10.

13. United Nations Decade for Human Rights Education, G.A. Res. 1994/184, at 2, U.N. Doc. A/RES/49/184 (March 6, 1995) (referring to the Commission on Human Rights resolution 1993/56 “that knowledge of human rights, both in its theoretical dimension and in its practical application, should be established as a priority in education policies”).

14. United Nations Year of Dialogue among Civilisations, G.A. Res. 53/22, at 1, U.N. Doc. A/Res/53/22 (November 16, 1998).

After providing the background surrounding the Proclamation (II), this study will analyse the human rights related principles contained therein (III) and the historical evidence that corroborates those principles (IV) in order to conclude on the issues raised in the study (V).

## II. PROLOGUE

To fruitfully analyse an edict issued more than twenty five centuries ago, it should be borne in mind that the Proclamation inevitably reflects the philosophical, social, political and literary trends of its time. Accordingly, the study of the Proclamation requires a brief overview of the historical context leading to its declaration (A) as well as an analysis of its structure (B).

### *A. Historical Context of the Proclamation*

The historical context of the Proclamation can be characterised by two major events in Central and Western Asia in the 8<sup>th</sup>–7<sup>th</sup> centuries B.C.E. On the one hand, the decimation of the Jews as an organised entity, both geographically and institutionally – the beginning of the Jewish Diaspora – and on the other hand, the emergence of Iranians as an organised entity. Although when they happened these two events were totally unrelated, they would intersect and be immortalised by both the Proclamation of Cyrus and the Hebrew Bible.

#### **1. The Beginning of the Jewish Diaspora**

In the period stretching from the eighth to the seventh centuries B.C.E, the Semitic world was shaken by a major catastrophe, resulting in the beginning of the Jewish Diaspora outside the Promised Land, occurring in two successive waves of forced displacements. First, in 720 B.C.E., the Assyrian army attacked Israel, seized its capital Samaria, and deported the Ten Tribes of Israel. The troops perpetrated, on a wide-spread and systematic scale, what would be called twenty seven centuries later a policy of “ethnic cleansing.” Thus, alongside the physical atrocities and exaction, the troops forcibly displaced the conquered populations to other parts of their empire. Sometimes they would further this policy by settling other conquered populations in place of the displaced populations. For example “[they] brought men from Babylon, and from Cuthah, and from Avva, and from Hamath and Sepharvaim, and placed them in the cities of Samaria instead of the children of Israel; and they possessed Samaria, and dwelt in the cities thereof.”<sup>15</sup> On account of this type of practice, the trail of the Ten Tribes of Israel was lost and, apart from a few pieces of solid evidence, their fate has remained subject to speculation.<sup>16</sup>

One hundred and thirty four years later, in 586 B.C.E., the second wave of forced displacement occurred. There, upon the conquest of Judah and its capital Jerusalem, the Babylonian king Nebuchadnezzar’s troops burnt and destroyed the First Temple, which, built in the tenth century B.C.E. under kings David and Solomon, housed the Ten Commandments.

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15. 2 *Kings* 17:24 (King James).

16. See generally HABIB LEVY, COMPREHENSIVE HISTORY OF THE JEWS OF IRAN (THE OUTSET OF THE DIASPORA) 23-39 (Hooshang Ebrami ed., George W. Maschke trans., Mazda Publishers 1999).

These two events shattered the Jewish people, having a deep impact on their identity for the following twenty-seven centuries.<sup>17</sup> Of interest to this study is the formulation of a messianic hope – through prophets such as Ezekiel – in those years of exile that the Jews would ultimately return to the Promised Land.<sup>18</sup>

## 2. The Emergence of Iranians

The second event relates to the changes that had been taking place outside the Semitic world, eastwards. During their second millennium B.C.E. migration, a great number of tribes settled in a vast plateau stretching from Central Asia to Mesopotamia and the Persian Gulf, calling it after their own name: Airyana Vaedja, *i.e.*, the “land of Aryans” which, with the gradual evolution of the Persian language over millennia, became “Iran.”<sup>19</sup> During the early periods of their migration, Iranians went through both a spiritual revolution and secular changes.<sup>20</sup>

During the first millennium B.C.E., Zarathustra reformed the social and spiritual system of the Iranians.<sup>21</sup> He rationalised their plethoric divinities and introduced a system of thought based on both a cosmogony and an eschatology centered on justice and law.<sup>22</sup> According to the Zoroastrian cosmogony, the infinite world of harmony became, at one point, subject to the attacks of Ahriman (evil force) against Ahura-Mazda (force of good). This attack initiated “Movement,” which resulted in the “Creation” of the material world, Ahriman and Ahura-Mazda’s battleground.<sup>23</sup> However, as absolute good, Ahura-Mazda can not commit any harm, hence the creation of Man to arbitrate the cosmic battle between Good and Evil, a Man endowed with free choice. In the Zoroastrian eschatology, after a series of cosmic cycles characterised by victories on each side, Man will ultimately choose the Good which, because of Ahura-Mazda’s inability to destroy,

17. *Babylonian Exile*, BRITANNICA CONCISE ENCYCLOPEDIA, ENCYCLOPAEDIA BRITANNICA ONLINE, Oct. 20 2007, <http://0-www.search.eb.com.bianca.penlib.du.edu:80/eb/article-9011622> (“Although the Jews suffered greatly and faced powerful cultural pressures in a foreign land, they maintained their national spirit and religious identity.”).

18. *See Id.*

19. *See, e.g., Iran, Ancient*, BRITANNICA CONCISE ENCYCLOPEDIA, ENCYCLOPAEDIA BRITANNICA ONLINE, Oct. 20 2007, <http://0-www.search.eb.com.bianca.penlib.du.edu/eb/article-32107>; *Iran, People, Ethnic Groups*, BRITANNICA CONCISE ENCYCLOPEDIA, ENCYCLOPAEDIA BRITANNICA ONLINE, Oct. 20 2007, <http://0-www.search.eb.com.bianca.penlib.du.edu/eb/article-230041>. For a dynamic presentation of the worlds of the Aryans and of the Semites, *see* ISRAËL, *supra* note 10, at 11-21; *see also* LEVY, *supra* note 16, at 44-51.

20. *See generally Zoroastrianism and Parsiism*, BRITANNICA CONCISE ENCYCLOPEDIA, ENCYCLOPAEDIA BRITANNICA ONLINE, Oct. 20 2007, <http://0-www.search.eb.com.bianca.penlib.du.edu/eb/article-9383384>.

21. Zarathustra is said to have lived between the 7<sup>th</sup> century B.C.E. and the 7<sup>th</sup> millennium B.C.E. As iron is mentioned in his book, AVESTA, it is unlikely that he could have lived prior to 1300 B.C.E., *i.e.* the Iron Age.

22. Zarathustra’s system of thought –which included the conceptualisation of paradise (a Persian word), hell, purgatory and the day of resurrection– impacted on all Abrahamic religions. *See, e.g.*, ELIE BARNAVI, HISTOIRE UNIVERSELLE DES JUIFS 30 (Hachette 1992); *Zoroastrianism and Parsiism*, *supra* note 20.

23. BAHRAM FRAHVASHI, JAHAN-E-FRAVAHRI, BAKHSHI AZ FARHANG-E IRAN-E KOHAN 26-7 (2<sup>nd</sup> ed., Entesharat-e Kariyan 1985).

will proliferate, overwhelm and make Ahriman passive. This will be the *Rastakhiz* (resurrection) which will be announced by *Saoshyans* (justice incarnate). Consequently, under the aegis of *Zurvan* ("Time": the reconciliation between Ahura-Mazda and Ahriman), Movement will stop, the material world will disappear and all that "exists" will return to the kingdom of "infinite lights."<sup>24</sup> This is the purpose of humans' journey in the limited world. Once the battle is won, humans will return to the infinite world. In other words, if Ahriman had not initiated its attacks, the material world would not have been created.

Neither a material nor a natural force, Ahura-Mazda is a moral and spiritual essence, it is abstract. As such, it is not concerned with the more legal world order which is secondary and not attached to its moral power.<sup>25</sup> Rather, Ahura-Mazda is preoccupied with the reign of justice – less palpable – which it will establish by vanquishing Ahriman. For this purpose, in the material world the forces of Light (justice) confront the forces of Darkness (injustice) through law. Thus, to be achieved, justice (natural law) requires the conception and application of protective norms which take effect only through humans' secular power (positive law). However, because humans rely on their king (government), the latter is endowed with the responsibility to effect justice. This reflects aspects of the natural/positive law approach, whereby the incorporation of natural law into protective norms – i.e. norms that can be invoked before juridical persons by the victims of their violations – inevitably obeys positive law. Thus, Zarathustra's cosmogony and eschatology ensure a separation between the secular (the king and positive law) and the spiritual (Ahura-Mazda and justice) spheres.

This is of utmost importance for a better understanding of the secular changes that were taking place in the Iranian world, the focal point of which was the sixth century B.C.E. foundation of the first Iranian empire by Cyrus, a Persian king. This gigantic empire, which stretched from Central Asia to Africa (Egypt) and from South Asia (Indus) to Europe, was composed of Satrapies which were autonomous provinces each governed by a Satrap on the basis of powers delegated to them by the King of kings. As a result of both this secular construction and Zarathustra's cosmogony and eschatology, a bicephalous imperial ideology was conceived in which the Persian King – at the centre of the empire – defended the independence of the temples located in the Satrapies *vis-à-vis* the secular powers of his own Satraps.<sup>26</sup>

Of central relevance to this study is the 539 B.C.E. conquest of Babylon by Cyrus in which he deposed the Babylonian king Nabunidus. It was on the commemoration of this event that, in 538 B.C.E., thirty years prior to the Athenian Democracy's birth, Cyrus issued his Proclamation.

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24. *Id.* at 26-7, 30.

25. ISRAËL, *supra* note 10, at 324 (explaining that social order is symbolised by Mithra, who is more legal and military).

26. A. Sérandour, *Les récits bibliques de la construction du second temple: leurs enjeux*, TRANSEUPHRATENE XI 12-13, 29, 31 (1996).



### B. Structure of the Proclamation

The Proclamation follows the standards of its predecessors. Although the cylinder on which the Proclamation was carved has been partially damaged and has lacunae, it may be divided into three parts.<sup>27</sup> The first two parts explain why Cyrus conquers Babylon while the third part sets forth the measures taken by Cyrus upon his conquest.<sup>28</sup>

#### 1. Cyrus Conquers Babylon

In the first two parts, the style is impersonal: the narration is in the third person singular.<sup>29</sup> The first part relates to the background events, whereby the god Marduk – Babylon’s God of gods – is angered by the religious practices of Babylon’s king Nabonidus who has been disrespectful towards it by deporting its statues and worshipping instead Sin the moon-god. Consequently, the sacred temples have fallen in ruins while Nabonidus has imposed on its people “toils without rest”; therefore, Nabonidus is perceived by the Babylonians as a heretic tyrant.<sup>30</sup>

Then comes the second part: elected by Marduk, Cyrus peacefully conquers Babylon and liberates its people. As corroborated by both the Second Isaiah and the Chronicle of Nabonidus,<sup>31</sup> instead of being seen as a conqueror Cyrus is seen by the population as a liberator. The interesting feature of this part is the use of the word “justice,” where Marduk states that “(Cyrus) assiduously looked after the justice and well-being of the Black-Headed People over whom he had been made

27. Written on a 23 cm clay cylinder over 45 lines in the cuneiform alphabet, the Proclamation, which is now in the British Museum, was discovered in 1879 in Babylon. Wilhelm Eilers, *Le Texte Cunéiforme du Cylindre de Cyrus*, in 2 ACTA IRANICA: COMMEMORATION CYRUS 25, 25-7 (Bibliothèque Pahlavi, Tehran-Liege 1974).

28. The British Museum, [http://www.britishmuseum.org/explore/highlights/article\\_index/c/cyrus\\_cylinder.aspx](http://www.britishmuseum.org/explore/highlights/article_index/c/cyrus_cylinder.aspx) (last visited April 1, 2008) (Translation: THE ANCIENT NEAR EAST (Mark Chavalas ed., Blackwell 2006)) [hereinafter Chavalas Translation].

29. These parts follow the 3<sup>rd</sup> millennium B.C.E. Sumerian narrative style. Eilers, *supra* note 27, at 27.

30. Chavalas Translation, *supra* note 28. The full text of part one provides:

When ... his ... [...] the regions ..., an insignificant (candidate) was installed as high priestess (of the Moon) in his land, and [...] he imposed upon them. He made a replica of the Esaggil, [... established] improper rites for Ur and the remaining cult centres as well as [unclean offer]ings; daily he continuously uttered unfaithful (prayers); furthermore he maliciously suspended the regular offerings and upset the rites. He plotted to end the worship of Marduk and continuously perpetuated evil against his city. Daily [he ...] brought all his [people] to ruin by (imposing) toils without rest.

Hearing their complaints, the Enlil of the Gods was terribly angry [and left] their territory; the gods living amongst them abandoned their abodes. (Nabonidus) brought them into Babylon, to (Marduk's) fury. Marduk, ex[alted one, the Enlil of the God]s, roamed through all the places that had been abandoned, (and upon seeing this) reconciled his anger and showed mercy to the people of Sumer and Akkad who had become (as) corpses.

31. Eilers, *supra* note 27, at 26.

victorious (by Marduk).<sup>32</sup> This is a prelude to the enunciation of Cyrus' magnanimous measures.

## 2. Cyrus Announces His Magnanimous Measures

It is the third part of the Proclamation which presents the king's achievements that will concern this study. Of psychological importance is the shift in the style where the narration becomes personal through the use of the first person singular: now it is Cyrus in person who speaks. According to the traditions, he begins by introducing himself as the king of Babylon, Mesopotamia and Persia. Following the standards of his time, he is careful to provide his dynasty with a divine approbation.<sup>33</sup> Then Cyrus goes on to describe his peaceful acts as well as a number of magnanimous measures that he took upon the conquest of Babylon.

After entering Babylon in peace, amidst joy and jubilation I made the royal palace the centre of my rule. The great lord Marduk, who loves Babylon, with great magnanimity, established (it) as (my) destiny, and I sought to worship him each day. My teeming army paraded about Babylon in peace, and I did not allow any trouble in all of Sumer and Akkad. I took great care to peacefully (protect) the city of Babylon and its cult places. (And) as for the citizens of Babylon ... whom (Nabonidus) had made subservient in a manner (totally) unsuited to them against the will of the gods, I released them from their weariness and loosened their burden. The great lord Marduk rejoiced in my deeds. Kindly he blessed me, Cyrus, the king, his worshipper, Cambyses, the

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32. Chavalas Translation, *supra* note 28. The full text of part two provides:

He sought and looked through all the lands, searching for a righteous king whose hand he could grasp. He called to rule Cyrus, king of Anshan, and announced his name as the king of the universe. He made the Guti-land and all the Medes (Ummanmanda) bow in submission at his feet and so (Cyrus) assiduously looked after the justice and well-being of the Black-Headed People over whom he had been made victorious (by Marduk). And Marduk, the great lord, leader of his people, looked happily at the good deeds and steadfast mind of Cyrus and ordered him to march to his own city Babylon, set him on the road to Babylon, and went alongside him like a friend and companion. His teeming army, uncounted like water (flowing) in a river, marched with him fully armed. (Marduk) allowed him to enter Babylon without battle or fight, sparing his own city of Babylon from hardship, and delivered Nabonidus, who had not worshipped him, into his hands.

All the people of Babylon, the entire land of Sumer and Akkad, rulers and princes, bowed down to him, kissed his feet, and rejoiced at his rule, filled with delight. They happily greeted him as the lord, by means of whose trust those who were as dead were revived and saved from all trial and hardship; they praised his name.

33. *Id.* This passage reads as follows:

I am Cyrus, king of the world, great king, mighty king, king of Babylon, king of the lands of Sumer and Akkad, king of the four quarters of the universe, son of Cambyses, great king, king of Anshan, descendant of Teispes, great king, king of Anshan, from an ancient royal lineage, whose reign is beloved by (the gods) Marduk and Nabu, whose kingship they desired to make them glad.

offspring of my loins, and all of my troops, so that we could go about in peace and well-being.

By his lofty command, all enthroned kings, the whole world, from the Upper Sea to the Lower Sea, inhabitants of distant regions, all the kings of the West, tent dwellers, brought their heavy tribute to me in Babylon and kissed my feet. From [Babylon] to Ashur and Susa, Agade, Eshnunna, the cities of Zamban, Meturnu, Der as far as the borders of the Gutians - I returned to these sanctuaries on the other side of the Tigris, sanctuaries founded in ancient times, the images that had been in them there and I made their dwellings permanent. I also gathered all their people and returned to them their habitations. And then at the command of Marduk, the great lord, I resettled all the gods of Sumer and Akkad whom Nabonidus had brought into Babylon to the anger of the lord of the gods in their shrines, the places which they enjoy.

May all the gods whom I have resettled in their sacred cities ask Marduk and Nabu each day for a long life for me and speak well of me to him; may they say to Marduk, my lord that Cyrus, the king who worships you, and Canbyeses, his son ... their ... I settled all the people of Babylon who prayed for my kingship and all their lands in a peaceful place. Daily I supplied (the temple) [with offerings of x geese, two ducks, and ten turtledoves above the former (offerings) of geese, ducks, and turtledoves. The wall Imgur-Enlil, the great (city) wall of Babylon, I strove to strengthen its fortifications [...] the baked brick quay on the bank of the city moat, constructed by an earlier king, but not completed, its work [I ... thus the city had not been completely surrounded], so [to complete] the outside, which no king before me had done, its troops, mustered in all the land, into Babylon [...]. I made it anew with bitumen and baked bricks and [finished the work upon it ... I installed doors of] mighty [cedar] clad with bronze, thresholds and door-opening[s cast of copper in all] its [gates ... I saw inside it an in]scription of Ashurbanipal, a king who came before [me ... for e]ver.<sup>34</sup>

Apart from the last paragraph, and although written in a practical and fact-based style, an analysis of this third part reveals a number of principles pertaining to human rights.

### III. PRINCIPLES CONTAINED IN THE PROCLAMATION<sup>35</sup>

The Proclamation has a pragmatic purpose and a number of concrete dispositions. It does not contain any traces of theory.<sup>36</sup> However, through the third

34. *Id.*

35. Of course, the sporadic references made in this section to 19<sup>th</sup>-20<sup>th</sup> century legal instruments do not purport to constitute an exact comparative approach. But when envisaged in the context of its contemporaneous institutions, Cyrus' approach appears to bear more similarities with the 19<sup>th</sup>-20<sup>th</sup> century legal instruments, and therefore constitutes a progressive move ahead.

36. Ismaël Quiles, *La Philosophie Sous-jacente au Message de Cyrus*, in 1 ACTA IRANICA: COMMEMORATION CYRUS 19, 19 (Bibliothèque Pahlavi, Tehran-Liege 1974).

part of the Proclamation it is possible to identify theoretical principles which foreshadow the core principles of present day human rights, that is: freedom of thought, conscience and religion (A), protection of civilians (B), protection of property (C), and more generally, the idea of peace (D).

*A. Freedom of Thought, Conscience and Religion*<sup>37</sup>

Although it is not clear which Iranian divinity Cyrus worshipped, his dynasty worshipped Ahura-Mazda. As such, Cyrus must have been at least influenced by Zarathustra's spiritual revolution, to some degree. He probably had in mind a supreme God to which a pantheon of divinities and angels was subordinated. This may explain why the Proclamation refers to a number of divinities, including Marduk, the mightiest of the Babylonian gods. Thus, Cyrus understood that other people too had a pyramidal cosmogony similar to Zarathustra's, hence his respect for Marduk – this non-Iranian god – which he worships, at least before the Babylonians' eyes. Cyrus first announces that he “sought to worship him each day” while punctuating his Proclamation with phrases such as “Cyrus, the king, his worshipper” or “May all the gods [...] say to Marduk, my lord that Cyrus, the king who worships you...” Thus, Cyrus manifested a solemn respect towards gods alien to his, the conqueror's.

But Cyrus' attitude goes beyond mere tolerance. Indeed, he does not just allow people to continue their spiritual and religious practices, he also encourages them to do so by personally bowing to their gods and worshipping them. By referring to a reality beyond human reality, which constitutes humans' last resort to defend their rights against authoritarianism, Cyrus refers to what would be called natural law, that is a means which enables humans to transcend positive law in that it may be filled with a passionate force otherwise stronger than the strict legalism of positive law.<sup>38</sup> Cyrus' liberal attitude in his recognition of the religious and spiritual freedom of others constitutes the real freedom of religion. It is suggested that this is a very early *esquisse*<sup>39</sup> of secularism, whereby not only does the centre not impose its spiritual beliefs on the periphery – the multitude – it allows it to practice its own beliefs. Whether the components of the multitude are polytheistic or monotheistic, this is an individual matter as long as it is in accordance with their conscience and that they are not forced to behave according to an imposed canon. It is thus likely that Cyrus believed in a metaphysical order transcending human and temporal events and constituting a moral guaranty for human relations;<sup>40</sup> in other words, natural law. This respect for other peoples' beliefs arguably prefigures Article 18 of the Universal Declaration of Human Rights (UDHR) which provides, “[e]veryone has the right to freedom of thought, conscience and

37. See also Christian Daubie, *Cyrus le Grand: Un Précurseur dans le Domaine des Droits de l'Homme*, 5 REVUE DES DROITS DE L'HOMME, 300-301 (1972) (discussing the freedom of religion contained in the Proclamation).

38. MADOIT, *supra* note 2, at 22.

39. See generally OXFORD ENGLISH DICTIONARY (2d. ed. 1989), available at [http://dictionary.oed.com/cgi/entry/50078108?single=1&query\\_type=word&queryword=esquisse&first=1&max\\_to\\_show=10](http://dictionary.oed.com/cgi/entry/50078108?single=1&query_type=word&queryword=esquisse&first=1&max_to_show=10).

40. Quiles, *supra* note 36, at 23.

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.”<sup>41</sup>

Regardless of the extent to which he believed in Zarathustra’s ideas, Cyrus saw in Marduk and the Babylonian pantheon an element of a political and religious system with its accompanying obligations, which he chose to respect.<sup>42</sup> His personal beliefs remained a private matter. As the emperor, he ensured that his subjects enjoyed their spiritual freedom – a freedom of choice. This approach may be regarded as an early manifestation – whether or not conscious – of the idea of secular government, whereby religion and State constitute two different domains, carefully separated. Cyrus – the State – does not interfere in the citizens’ spiritual domain – religion. He honours peoples’ religious beliefs, as varied and as different from his own practices as they can be, and he does not suppress them. His intervention in that respect is less than minimalist. It is passive in the sense that Cyrus does not impose the vision of his dynastic religion on the people of his empire and let them celebrate their religion. It is active in the sense that he does encourage them to practice their various cults, both in private and in public. Forgotten are the Assyrian and Babylonian days and the forcible displacement of populations, such as the Jews. Now, people can enjoy their spiritual quests without the emperor’s threat. To protect the freedom of thought, religion and conscience is to respect humankind, and to respect the latter is also to protect its property and cultural heritage.

### *B. Protection of Civilians*

#### **1. Behaviour of Combatants**

Although it seems that the Babylonians welcomed the conqueror as a liberator (see II. B. 1.) it should be noted that Cyrus’ troops – like present day troops, including those sent for the purpose of humanitarian intervention – were subject to the mistreatment and abuse of civilians, *inter alia*, as a consequence of psychological pressure related to isolation in foreign lands. Nevertheless, Cyrus announces that his “teeming army paraded about Babylon in peace” and that he “did not allow any trouble in all” of Mesopotamia. He further adds that he “took great care to peacefully (protect) the city of Babylon and its cult places.” This is an exceptional statement not only from the mouth of a conqueror but also in its temporal context. Indeed, Cyrus goes against the virile culture of his time where the respect for kings and emperors was thought to be induced by the demonstration of the cruelest acts and penalties by them; where strength and superiority had to be proven by shattering the enemy into submission, by humiliating him. Thus, it was thought that the more brutal the acts of the State – usually in the name of its god – the deeper the fear felt by the subdued populations and, consequently, the more sustainable the respect manifested by them. In contrast, this act of Cyrus was a challenge against millennia of established, accepted and almost codified inhuman

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41. Universal Declaration of Human Rights, G.A. Res. 217A, at 71, U.N. GAOR, 3d Sess., 1<sup>st</sup> plen. mtg., U.N. DOC A/810 (Dec. 10, 1948).

42. ISRAEL, *supra* note 10, at 240.

practices. Cyrus dared to defy the mainstream cult of virility with the risk of being perceived by gods and humans as no more than a weakling with an undermined authority. Nevertheless, he did it. And by doing so, that is by proscribing the harming of civilians, the acts contained in the Proclamation can be read in parallel with Articles 3 and 5 of the UDHR which, twenty-five centuries later, would provide: "Everyone has the right to life, liberty and security of person"; and <sup>43</sup> "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."<sup>44</sup> While the UDHR followed World War II's atrocities, the Proclamation was issued after Babylon's relatively peaceful conquest. Even if one argued that Cyrus' measures were more related to war time, then it could still be held that they were in conformity with what would be called, millennia later, humanitarian law. Indeed the nineteenth and twentieth centuries would witness the development of instruments aimed at protecting the civilians in times of armed conflicts; most notably the Geneva Convention IV of August 12, 1949 Relative to the Protection of Civilian Persons in Time of War. Not only do Cyrus' deeds not depart from the requirements set forth in those instruments, but also they prefigure a number of them, twenty five centuries earlier, when the conquerors killed, raped and forcibly displaced the vanquished population.

## 2. Right to Liberty and Security

One sentence in the Proclamation contains a prescient statement by Cyrus in relation to the rights of persons: "as for the citizens of Babylon ... whom (Nabonidus) had made subservient in a manner (totally) unsuited to them against the will of the gods, I released them from their weariness and loosened their burden". This passage is to be read in accordance with the first part of the Proclamation, which reads: "Daily [he ...] brought all his [people] to ruin by (imposing) toils without rest". The word subservient means "[s]lavishly submissive; truckling, obsequious"; as for the word toil, it means "[s]evere labour; hard and continuous work or exertion which taxes the bodily or mental powers".<sup>45</sup> On the basis of these passages of the Proclamation, as well as its broader context, it is possible to believe that the inhabitants of Babylon were subjected to burdensome tasks, most probably in exchange for either nothing or very little. Although it is not clear to what extent this encompassed slavery, and if so, to what extent Cyrus limited slavery – he might have completely abolished it, or he might as well have placed it under strict regulation, such as granting slaves rights – Cyrus seems to have at least limited human exploitation.

Generally, this measure somehow pre-figures Article 3 of the UDHR: "Everyone has the right to life, liberty and security of person." Insofar as the economic exploitation of humans is concerned, one could also mention Article 4 of the UDHR, which provides: "No one shall be held in slavery or servitude; slavery

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43. G.A. Res. 217A, *supra* note 41, ¶ 3.

44. *Id.* ¶ 5.

45. See, e.g., OXFORD ENGLISH DICTIONARY (2<sup>nd</sup> ed. 1989) available at <http://dictionary.oed.com/cgi/entry/http://dictionary.oed.com/cgi/entry/50241019> (defining the word subservient); and <http://dictionary.oed.com/cgi/entry/50253896> (defining the word toil).

and the slave trade shall be prohibited in all their forms.”<sup>46</sup> Furthermore, this prohibition has been criminalised in the Statute of the International Criminal Court (ICC Statute), which qualifies enslavement in Article 7(1)(c) as a crime against humanity while Article 7(2)(c) defines it as “the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children.”<sup>47</sup> Whether Cyrus eliminated totally or partially these inhuman practices, their mere mention as negative burdens are undoubtedly an original measure amounting to the recognition of human dignity, including individuals’ rights not to be exploited and not to be owned. This, particularly in its temporal context where slavery – and the exploitation of vanquished people in general – was the standard practice. Indeed, despite its unquestionable achievements, the Athenian Democracy neither abolished slavery nor did it grant slaves any rights to participate in the life of the City, that is in its democracy’s decision making process.<sup>48</sup> This was the case contemporaneously with Cyrus’ Proclamation. Even two centuries later, a distinguished thinker such as Aristotle – Alexander the Macedonian’s tutor – considered the slave as a piece of living property which exists only in service to his master.<sup>49</sup>

In the light of these measures, Cyrus does not appear to fit the Barbarian profile that the Greeks were sketching at his time nor does he correspond to the eighteenth and nineteenth century Western perception of the stereotypical Oriental Despot. Whereas centuries later Romans would still be discussing whether and how to ameliorate the slaves’ conditions, whereas it would take millennia for the UDHR to be issued, Cyrus – through the Proclamation – sets free from their yoke those who had been exploited through cruel and demeaning means.

### 3. Return of Displaced Persons

Of paramount importance is the fact that Cyrus settles the status of the displaced persons when he indicates, “I also gathered all their people and returned to them their habitations,” a reference to Cyrus helping the displaced people return to their homelands (see IV. A.). This measure covers parts of UDHR’s Articles 9 and 13, which provides respectively:

No one shall be subjected to arbitrary arrest, detention or exile.<sup>50</sup>

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

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46. G.A. Res. 217A, *supra* note 41, ¶ 4.

47. Rome Statute of the International Criminal Court, art. 7, July 17, 1998, 37 I.L.M. 999 (“When committed as part of a widespread and systemic attack directed against any civilian population, with knowledge of the attack.”) [hereinafter ICC Statute].

48. The scope of the Athenian Democracy was limited only to the adult Athenian males, excluding thereby approximately two-thirds of the adult population, that is, women and slaves, from that system of government.

49. *See generally* ARISTOTLE’S POLITICS 55-63 (Benjamin Jowett trans., Random House 1943) (1943) (providing a comprehensive justification of slavery).

50. G.A. Res. 217A, *supra* note 41, ¶ 9.

(2) Everyone has the right to leave any country, including his own, and to return to his country.<sup>51</sup>

In the course of the two centuries preceding Cyrus' conquest of Babylon, many people had been "ethnically cleansed" by various conquerors. The pattern consisted of massacring part of the vanquished population and forcibly displacing another part to other territories in order to either use them as slaves for their hard labour, or to isolate their elite from the homeland, in order to gradually erode the cultural identity of the vanquished population. Simultaneously, the conqueror would populate the conquered land with a different population.

Contrary to this well-established practice, after his capture of Babylon, Cyrus liberated the displaced populations. Not only did he permit them to return to their homelands, he encouraged them to do so, sometimes even financing this return as in the Jewish Diaspora's case (see IV. A.). Millennia later, protective acts such as these would be reflected in international instruments addressing the status of the civilians in times of armed conflicts.<sup>52</sup> Since the twentieth century, a violation of provisions such as these may qualify as a crime against humanity. For example, Article 7(1)(d) of the ICC Statute defines "deportation or forcible transfer of population" as a crime against humanity. Article 7(2)(d) further defines "deportation or forcible transfer of population" as "[f]orced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law."<sup>53</sup> Article 8(2)(b)(viii) of the ICC statute qualifies as war crimes; "[t]he transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory."<sup>54</sup> Although Cyrus' measures did not prevent the practice of ethnic cleansing throughout the following millennia, what is important is that the Proclamation set the tone by condemning these inhuman practices. What motivated Cyrus is not as important as the fact that he as a Statesperson – as one of the representatives of what had been unilaterally declared by the Greeks as the Barbarian world – did it; further proof that Cyrus did not fit this evidently negative image that would travel throughout history and apply to civilisations not resembling the civilisations depositories of the Athenian Democracy – an image that would help to shape one's fears by projecting them onto the "others."

### *C. Protection of Property*

#### **1. Private Property**

One passage in the Proclamation indicates unequivocally Cyrus' concern in respect to private property, where the emperor announces that he "also gathered all

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51. *Id.* ¶ 13.

52. *E.g.*, The Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, arts. 1-159, Aug. 12, 1949, U.S.T. 3516, 75 U.N.T.S. 287.

53. ICC Statute, *supra* note 47, art. 7.

54. *Id.* art. 8 ("unlawful deportation or transfer[...] of persons protected under the provisions of the relevant Convention).



their people and returned to them their habitations.” It can be thought that the emperor took these positive measures for those persons whose houses had been confiscated or who had been dispossessed of or expelled from their property. This should be read in conjunction with Article 17 of the UDHR, which provides:

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.<sup>55</sup>

The idea expressed in this provision applies to both peace and wartimes. Thus, international humanitarian law contains provisions aimed at protecting civilian objects during armed conflicts, for example the 1907 Hague Convention (IV) Respecting the Laws and Customs of War on Land and the Regulations Annexed thereto,<sup>56</sup> or the Geneva Convention IV of August 12, 1949 Relative to the Protection of Civilian Persons in Time of War. The ICC Statute equates to war crimes the acts of “[d]estroying or seizing the enemy’s property unless such destruction or seizure be imperatively demanded by the necessities of war” and “pillaging a town or place, even when taken by assault.”<sup>57</sup> A second passage in the Proclamation confirms this, insofar as civilian objects are concerned, where Cyrus affirms “The wall Imgur-Enlil, the great (city) wall of Babylon, I strove to strengthen its fortifications [...] the baked brick quay on the bank of the city moat, constructed by an earlier king, but not completed, its work [...]. I made it anew [...] and [finished the work upon it ... I installed doors of] mighty [cedar] clad with bronze, thresholds and door-opening[s cast of copper in all] its [gates ...]”.

By not confiscating or destroying private properties upon his Babylonian conquest and by restoring or rebuilding those destroyed prior to his conquest, Cyrus’ attitude constitutes an original approach, not only for his time but especially since then, where these acts continue to occur in troubled times, including in wartime. It can arguably be held that Cyrus’ attitude was considerably ahead of his time. His approach is an almost sacred one towards human values and what human beings – whether as individuals or as groups – cherish. Whether motivated by Zarathustra’s precepts – who fiercely opposed acts of human and animal sacrifices, and who celebrated the natural environment – or simply driven by an instinctive sense of respect for human dignity, Cyrus also proclaimed protective measures extending to cultural heritage.

## 2. Cultural/Spiritual Heritage

The Proclamation contains a number of passages pertaining to what would qualify twenty five centuries later as cultural heritage, encompassing both a religious (such as buildings dedicated to spiritual activities) and a secular

55. G.A. Res. 217A, *supra* note 41, ¶ 17.

56. See Hague Convention IV Respecting the Laws and Customs of War on Land arts. 1-56, Oct. 18, 1907, 36 Stat. 2277, 205 Consol. T.S. 277.

57. ICC Statute, *supra* note 47, art. 8(b)(xiii), (xvi). See also *id.* art. 8(2)(a)(iv), (qualifying as a grave breach of the Geneva Conventions of 12 August 1949 the “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”, if committed against property protected under the provisions of those Conventions).

component (such as institutions dedicated to education or science). Thus, Cyrus states that he “returned to these sanctuaries on the other side of the Tigris, sanctuaries founded in ancient times, the images that had been in them there and [he] made their dwellings permanent.” This passage confirms the fact that the sanctuaries had been abandoned at an earlier stage and that their sacred items had been pillaged. The plunder of these shrines was seen by believers as nothing less than both a personal and collective humiliation, a spiritual rape. One of the measures Cyrus takes in order to rectify this situation is to return the sacred items to their sanctuaries and bring their pillage to an end: “I resettled all the gods of Sumer and Akkad whom Nabonidus had brought into Babylon to the anger of the lord of the gods in their shrines, the places which they enjoy.” But Cyrus goes beyond merely halting this trend and proceeding with the restitution of their divinities. He orders the restoration of those sanctuaries which had fallen in ruin, such as Esaglia and Ezida, the principal Babylonian temples.<sup>58</sup> (For an extensive discussion, see IV. A. and B.).

Generally speaking, the emperor puts an end to the chaos surrounding people’s spiritual life by the restitution of their spiritual heritage: “All the gods whom I have resettled in their sacred cities.” These measures somehow prefigure Article 18 of the UDHR:

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.<sup>59</sup>

One of the most explicit ways for spiritual groups to manifest their freedom of religion is to gather in their temple. And a corollary obligation incumbent upon the State is, *inter alia*, to enable them to cater for their temple, which Cyrus did. The twentieth century international law would restate these measures through conventions aimed at protecting cultural property in time of armed conflict<sup>60</sup> and in peacetime, some emphasising the restitution of illegally exported cultural property.<sup>61</sup> As for the ICC Statute, its Article 8(2)(b)(ix) qualifies as war crimes, “[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments... provided they are not military objectives.”<sup>62</sup> By protecting the cultural heritage of the people of his empire, Cyrus undertook a remarkable act. He transcended the protection of the life of human beings – already a novelty in his time – to encompass their tangible

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58. The truth of Cyrus’ pronouncement can be seen on a brick inscription found in Uruk, Mesopotamia, which commemorates the reconstruction of those two temples; see Eilers, *supra* note 27, at 25.

59. G.A. Res. 217A, *supra* note 41, art. 18.

60. *E.g.*, Convention for the Protection of Cultural Property in the Event of an Armed Conflict pmbl, May 14, 1954, 249 U.N.T.S. 240.

61. *See, e.g.*, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property art. 13, Nov. 14, 1970, 823 U.N.T.S. 231.

62. ICC Statute, *supra* note 47, art. 8(2)(b)(ix).

cultural heritage. Thus, if by encouraging their religious beliefs Cyrus celebrated the intangible aspect of the cultural/spiritual heritage of the people of his empire, by protecting and restoring their spiritual sanctuaries Cyrus celebrates the tangible components of their spiritual/cultural heritage.

In the light of the above-mentioned instruments, the Proclamation can certainly be viewed as pioneering in respect to human rights, that is those subjective laws that translate, in the legal order, the natural principles of justice on which the dignity of human persons is based.<sup>63</sup> Bearing in mind that their core principles relate to the right to life, to the freedom of thought, conscience, religion and expression, and to the equality of human beings then clearly the above-mentioned analysis establishes that each of these principles is reflected in the Proclamation. Respect for these principles yields to the best outcome: peace.

#### *D. Peace*

Basically, one word characterises the Proclamation: peace. As he claims it four times in the Proclamation, Cyrus brought and restored peace wherever he went. Thus, as indicated previously, Cyrus' "teeming army paraded about Babylon in peace." He then adds that he "took great care to peacefully (protect) the city of Babylon and its cult places." Finally Cyrus mentions that "we could go about in peace and well-being" in order to conclude by stating that he "settled all the people of Babylon who prayed for [his] kingship and all their lands in a peaceful place." This Peace leitmotif constitutes a remarkable approach to human relations at a time when the conquerors would expose their power by asserting the degree of their cruelty, such as this Assyrian king who announces:

I swept the entire land of Elam [*South-west of Iran*] in one month and one day. I denied this land the passage of cows and sheep and even the blessings of music and allowed predatory animals, snakes, desert animals, and gazelles to overrun it.<sup>64</sup>

No trace of compassion or of respect for life, be it human, animal, or vegetal; no room for domesticated livings, but plenty for the predatory ones – hence the exaltation of war and the repression of peace. Perhaps it is the word "peace" that best encapsulates the underlying purpose of the UDHR's following provisions. Article 1 provides that: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."<sup>65</sup> Article 2 follows with: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status...."<sup>66</sup> Obviously, the above-enumerated rights are best ensured in peacetime. In war times, even in democratic societies, there tend to be derogations – although mainly social – to

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63. MADIOT, *supra* note 2, at 26.

64. HASSAN PIRNIYA, TARIKH-I IRAN AZ AGHAZ TA INQIRAZ-I SASANYAN 42 (1991), *cited in* LEVY, *supra* note 16, at 11.

65. G.A. Res. 217A, *supra* note 41, art. 1.

66. *Id.* art. 2.

many of them –hence the idea of peace for their best respect. Finally, Article 3 concludes: “Everyone has the right to life, liberty and security of person.”<sup>67</sup>

Thus, anticipating the norms with twenty-five centuries, Cyrus makes the above-mentioned provisions the principal object of his reign and the essential element of his empire’s social balance. His Proclamation represents a vision of the human person different from that of its time, one where all humans are simply equal. Each individual is granted freedom of conscience by being allowed to refer to the divinity of his choice; each individual has the right to own property and to live in the land of his choice.<sup>68</sup>

Cyrus’ policy was to possess an empire made of numerous peoples while recognising the rights of each person not to renounce his identity.<sup>69</sup> An empire which possessed the structure of what qualifies today as a federal state: the federal government’s intervention being limited to the organisation of a common market, a common fiscal and defence policy. Means were different and an exact comparison with the twenty-first century democratic approach would be inappropriate. But a relative comparison with its contemporaneous institutions shows that Cyrus’ approach constituted a progressive jump. By minimising State intervention, perhaps Cyrus created the conditions for pacific development.<sup>70</sup>

#### IV. HISTORICAL EVIDENCE CORROBORATING THE PRINCIPLES CONTAINED IN THE PROCLAMATION

But to what extent can one rely on the veracity of this Proclamation, that it was not just an instrument of imperial propaganda and that the rights announced therein were actually implemented? In fact, there is ample historical evidence to corroborate Cyrus’ deeds. This section utilises historical evidence emanating from the Hebrew Bible, which tends to corroborate directly the Proclamation (A) and Greek sources which corroborates, if not directly the Proclamation, at least the spirit that shaped it (B) in order to suggest that the Proclamation constitutes an early form of human rights declaration (C).<sup>71</sup>

##### A. *The Hebrew Bible*

There is no mention of the Jewish Diaspora in the remains of Cyrus’ Proclamation or in the shorter inscriptions discovered in Mesopotamia in 1850. Nevertheless, as it will be explained throughout this section, the most compelling historical evidence corroborating the truth of the principles contained in the

67. *Id.* art. 3.

68. ISRAËL, *supra* note 10, at 268-69.

69. *Id.* at 289.

70. *Id.* at 298.

71. Beyond the Jewish and the Greek traditions, a number of sources have focused on Cyrus’ humanity. However, since they are not contemporaneous with the first Iranian Empire, they will not be envisaged in this study. For example, Allameh Tabatabaei, one of the most prominent 20<sup>th</sup> century thinkers of Shia Islam has considered the proposal that the magnanimous conqueror “Zulgharneyn” cited in the Koran (Kahf Sura XVIII, Aya 83-102) is no other than Cyrus; see OSTAD ALLAMEH SEYYED MOHAMMAD HOSSEIN TABATABAEI REZVAN-ALLAH ELAYH, TAFSIR-OL-MIZAN Vol. XIII 638-68 (Ostad Seyyed Mohammad Bagher Moussavi Hamadani trans.) (1984).

Proclamation is provided by Biblical sources. This explains why “[the] figure of Cyrus the Great in the Jewish sacred writings [...] has occupied Jewish thought through the ages. Cyrus is mentioned and discussed in passages in Talmud, Midrash, in the medieval commentaries and in Judeo-Persian writings.”<sup>72</sup> Indeed, this omnipresence of Cyrus would reach such heights in Judaism that, for example, in the Talmudic writings the word כּרֶשׁ (Koresh, i.e. Cyrus) would be considered as a variation of כּשֶׁר (Kosher, i.e. proper, appropriate).<sup>73</sup> To have attained this outstanding status, Cyrus’ contribution to the Jewish history must have been tremendous. To be fully understood, it should be viewed in the light of the Books of Isaiah, Ezra, Nehemia and II Chronicles.<sup>74</sup>

### 1. Cyrus: God’s Anointed

As explained earlier (see II. A. 2.), when Cyrus conquered Babylon, among the deported populations he found the Jewish Diaspora who had then been in exile for between two to half a century. During those dark days of exile, parts of the Diaspora had come to the conclusion that nothing but the forthcoming arrival of a Messiah would allow them to return to Jerusalem and rebuild the Temple. Accordingly, the Lord says, “I have roused up one from the north, and he is come, from the rising of the sun one that calleth upon My name; and he shall come upon rulers as upon mortar, and as the potter treadeth clay.”<sup>75</sup> As it has been suggested by Gérard Israël, was Cyrus not the Aryan originating from the North (Central Asia) who erupted from the East of the Semitic world, where he and his people had settled (the Iranian plateau)?<sup>76</sup> If, in his Proclamation, Cyrus was called upon by Marduk to come and help the Babylonians, in the Hebrew Bible it is YHWH who called him in order to liberate the Jews. Even if the Proclamation was an act of imperial propaganda the same cannot be said of the Hebrew Bible. The Proclamation was written by Babylonian scribes but not the Hebrew Bible. After all, couldn’t it be that, at a given point of history, by actually implementing his promises, Cyrus came to be represented as the hope for captives all over Western Asia, regardless of their religious, ethnic, or racial origins? Perhaps in a less questionable way than today, in those millennia divinities occupied a greater space in peoples’ life. It could thus be affirmed that the respect expressed in the Proclamation to divinities such as Marduk is not mere imperial propaganda. It is corroborated in the Hebrew Bible in many different passages where the Lord mentions the Iranian in different capacities. Thus, YHWH says: “He is My

72. Amnon Netzer, *Some Notes on the Characterization of Cyrus the Great in Jewish and Judeo-Persian Writings*, in 2 ACTA IRANICA, COMMÉMORATION CYRUS, ACTES DU CONGRÈS DE SHIRAZ 1971 ET AUTRES ETUDES RÉDIGÉES À L’OCCASION DU 2500ÈME ANNIVERSAIRE DE LA FONDATION DE L’EMPIRE PERSE, HOMMAGE UNIVERSEL 35 (1974).

73. 1 PARYAVAND 11 (Amnon Netzer ed., Mazda Publishers 1996).

74. It is, *inter alia*, on the basis of these books that Allameh Tabatabaei envisages the likelihood for Cyrus being in fact the Koran’s Zolgharneyn, OSTAD ALLAMEH SEYYED MOHAMMAD HOSSEIN TABATABAEI REZVAN-ALLAH ELAYH, TAFSIR-OL-MIZAN Vol. XIII 638-61 (Ostad Seyyed Mohammad Bagher Moussavi Hamadani trans.) (1984).

75. *Isaiah* 41:25 (Hebrew).

76. ISRAËL, *supra* note 10, at 262.

shepherd, and shall perform all My pleasure.”<sup>77</sup> Cyrus is the Lord’s conduit. He is also a protector of what the Lord desires to be protected. And Cyrus will undertake whatever actions will be required to satisfy the Lords’ desires, to please Him. Having granted Cyrus such an intimate role, YHWH then addresses him in the most privileged way, that is, his anointed:

Thus saith the LORD to His anointed, to Cyrus, [...] I will go before thee, and make the crooked places straight; I will break in pieces the doors of brass, and cut in sunder the bars of iron; And I will give thee the treasures of darkness, and hidden riches of secret places, that thou mayest know that I am the LORD, who call thee by thy name, even the God of Israel.<sup>78</sup>

The tone has now been set more concretely. Cyrus has been given a dual mission. To witness the Lord break any resistance manifested against His will. But also to witness Him repair the fallen places, to undo the oppressors’ wrongs. Esoterically thus, Cyrus participates in that divine enterprise. But beyond the promises of treasures, beyond the promises of hidden wealth and secret places, YHWH provides the Iranian emperor with the highest of honours. An honour so exceptional, so rare, that not only Cyrus – a non-Jew – but even Jews could hardly conceive of it: Cyrus is both the Lord’s shepherd and His anointed, the most privileged of the titles granted by YHWH to both an ordinary and non Jewish mortal. Cyrus has been elected, consecrated by YHWH to come and vanquish the oppressors and tyrants; to save the weak, the victims, and the oppressed. He is to redress the situation. With such characteristics, could he not be the Messiah that the Hebrews had been awaiting during those years of alienating captivity? Would the Lord finally not have decided to send him to help His followers, His believers, those who have remained truthful to Him after all these decades – centuries – of deportation and suffering? As explained by one commentator:

The title “God’s anointed” in the Bible – which has no room for prejudice in its recounting of history and in which many Jewish kings, including Solomon, the builder of the Temple, were criticized for their sins – cannot be taken lightly. Cyrus’ deeds and thoughts and the Bible’s praise for and acknowledgement of indebtedness to him elevate him to the status of a great and godly man who received the commandments of the God of Israel.<sup>79</sup>

The above-mentioned passages corroborate Cyrus’ respect for freedom of thought, conscience and religion, as manifested throughout his Proclamation. Had it been otherwise, he would have certainly not been viewed with such respect in the Hebrew Bible, the written memory of the roots of the Jewish people, their definition as a group. Although it is most likely that Cyrus did not recognise YHWH from a monotheistic viewpoint, that is as a unique god or at least his unique god, he nevertheless recognised the Jews’ God in the same way he did with

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77. *Isaiah supra* note 75, at 44:28.

78. *Id.* at 45:1-4.

79. LEVY, *supra* note 16, at 53.

other peoples' divinities, such as Marduk. He understood that for the Jews, YHWH was a unique god and they did not conceive any other gods than YHWH. Whether he was polytheistic, monotheistic or even atheistic is irrelevant. What is important is that he recognised the right of the Jews to be monotheistic and the Babylonians' right to believe in their polytheistic Pantheon headed by Marduk. He built a system in which the emperor – the State – was the guarantor of respect for peoples' spiritual beliefs. Similarly, the extent to which the Jews estimated the degree of Cyrus' belief in their god is not relevant. What matters is that through the mediation of Cyrus, YHWH intervenes in the history of His people.<sup>80</sup> And Cyrus' mediation was such that they incorporated him in the holiest records of their identity: the Hebrew Bible. To have been granted such a privileged status, Cyrus must have played a special role in Jewish history.

## 2. Return to the Promised Land and Rebuilding of the Temple

Along with the freedom of thought, conscience and religion, the Hebrew Bible also corroborates two other principles contained in Cyrus' Proclamation: the return of displaced persons as well as the protection of cultural heritage. The Holy Scriptures set the context: "Thou shalt be built; and to the temple, Thy foundation shall be laid."<sup>81</sup> The message is clear: Solomon's Temple, destroyed half a century ago during the second cataclysm inflicted on the Jewish people, will be rebuilt. Such is the Lord's desire. This new undertaking is to be combined with the rise of Cyrus. It has to be understood in conjunction with his divine anointment. After this indication, it is in reality the following part of the Hebrew Bible that, by providing the historical background, explains Cyrus' deeds in relation to the return of exiled people and the reconstruction of their cultural heritage, thereby confirming the Proclamation. Firstly,

Now in the first year of Cyrus king of Persia, that the word of the Lord by the mouth of Jeremiah might be accomplished, the Lord stirred up the spirit of Cyrus king of Persia, that he made a proclamation throughout all his kingdom, and put it also in writing, saying: Thus saith Cyrus king of Persia: All the kingdoms of the earth hath the Lord, the God of heaven, given me; and He hath charged me to build Him a house in Jerusalem, which is in Judah. Whosoever there is there among you of all His people –his God be with him– let him go up to build the house of the Lord, the God of Israel, He is the God who is in Jerusalem.<sup>82</sup>

The prophecy has materialised. Finally, Jews' captivity has come to an end. First, they are set free. Secondly, they are permitted to return to their original land. Moreover, they are informed – almost divinely ordered – to rebuild Solomon's Temple. The Lord –through Cyrus, His secular arm– has manifested Himself.

According to the above proclamation, after his conquest of Babylon and the issuance of his generous measures, the emperor called upon the exiled Jews and

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80. J. Briand, *L'édit de Cyrus et sa valeur historique*, in 11 *TRANSEUPHRATÈNE* 33, 35 (J. Elayi & J. Sapin eds., Librairie Gabalda 1996).

81. *Isaiah*, *supra* note 75, at 44:28.

82. *Ezra* 1:1-3 (Masoretic Hebrew).

helped a large number of them leave for Jerusalem and rebuild the Temple. Thus, the measure is twofold. On the one hand, it is the fate of forcibly displaced humans that is at stake. This is undone by their release and encouragement to return to the homeland. On the other hand, it is their tangible cultural heritage that is concerned. Beyond liberating them from captivity, Cyrus enables the Jews to rebuild their Temple; their heart, the very centre of Jerusalem; the most physical and tangible aspect of their spiritual heritage; what half a century earlier constituted the most obvious manifestation – and yet the most fragile aspect – of their identity; and the symbol, the kind of which has continuously constituted a primary target in ethnic, racial and religious conflicts – the World War II burning of synagogues by the Nazis; the destruction of Mosques, Catholic and Orthodox churches during the 1990s implosion of the Socialist Federal Republic of Yugoslavia.

But is the above-mentioned “proclamation” the same as the Proclamation of Cyrus, the remains of which have been examined in the present study? Most probably not, at least not as far as its beneficiary subject matter is concerned. Indeed, Cyrus’ Proclamation is broader with regard to the people who had the benefit of the protective measures enumerated therein, whereas the proclamation referred to in *Ezra* is concerned solely with the Jews. Alternatively, could the latter proclamation be a different proclamation issued by Cyrus as well but in parallel to The Proclamation? Neither of these options makes any decisive difference for, as far as the magnanimous spirit of it is concerned, the proclamation referred to in *Ezra* presents remarkable similarities with The Proclamation. If there were to be any doubts as to whether the measures enunciated in Cyrus’ Proclamation were actually implemented, the above passage should confirm the emperor’s clemency as manifested in the Proclamation.

Secondly, as attested by the Hebrew Bible:

Also Cyrus the king brought forth the vessels of the house of the Lord, which Nebuchadnezzar had brought forth out of Jerusalem, and had put them in the house of his gods; even those did Cyrus king of Persia bring forth... and numbered them unto Sheshbazzar, the prince of Judah [...]. All the vessels of gold and of silver... did Sheshbazzar bring up, when they of the captivity were brought up from Babylon unto Jerusalem.<sup>83</sup>

Clearly, Cyrus did not merely help the Jewish Diaspora return to Jerusalem and rebuild the Temple. The emperor went further and took the very exceptional measure consisting of the restitution to the Jews of the parts of their spiritual heritage – including valuables – that had been pillaged and confiscated by Nebuchadnezzar during the First Temple’s destruction and the Jews’ second deportation. This is about the redefinition of a scattered identity, damaged following years of deportation and cultural alienation. The Temple is rebuilt but this reconstruction must be exhaustive. Not only must its walls be re-erected, the walls of the immovable, but all of its symbolic movable items should be gathered

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83. *Ezra*, supra note 82, at 1:7-8, 11.



under its protection. The dispersed identity must be reassembled. The momentum is created and Cyrus stimulates it.

Thirdly, the Hebrew Bible explains the modalities of the restitution of valuables and the reconstruction of the Temple. Years later, while the reconstruction of the Temple continued under Darius, the emperor who followed Cyrus' path, it became necessary to provide the emperor with the information regarding Cyrus' proclamation. Hence,

[D]arius the king made a decree, and search was made in the house of the archives.... [a]nd there was found [*in Hamadan, Iran*], a roll, and therein was thus written: "... Cyrus the king made a decree: Concerning the house of God at Jerusalem, let the house be builded, the place where they offer sacrifices, and let the foundations thereof be strongly laid;... and let the expenses be given out of the king's house; and also let the gold and silver vessels of the house of God, which Nebuchadnezzar took forth out of the temple which is at Jerusalem, and brought unto Babylon, be restored, and brought back unto the temple which is at Jerusalem, every one to its place, and thou shalt put them in the house of God."<sup>84</sup>

The above-mentioned passage corroborates the previous account of Cyrus' deeds; that he returned to the exiled Jews their valuables pillaged by the Assyrian and Babylonian troops; that he helped them to return to Jerusalem and rebuild their Temple. Interestingly, this passage suggests that Cyrus implemented those measures with his own imperial financing<sup>85</sup> and not the resources of the Jewish Diaspora. This latter measure is full of symbolism, as it recalls seven centuries earlier where the Egyptians divested themselves of their wealth in favour of those returning to Canaan.<sup>86</sup>

By favouring 50,000 exiled Jews' return to Jerusalem, Cyrus' Proclamation ushered in the Jewish history, what is referred to as the "Return to Zion."<sup>87</sup> True, centuries earlier, Jews had already travelled to Jerusalem – from Egypt – but that was under the commands of Moses who, as a Hebrew, had obvious interests in protecting his group from gradual disappearance. Initiated by Cyrus, considered by

84. *Ezra*, *supra* note 82, at 6:1-5.

85. BARNAVI, *supra* note 22, at 29. Based on this record, Darius ordered his governor to help the Jews build the Temple. The Second Temple was inaugurated in 516 B.C.E., under Darius' reign, who had said

"[L]et the governor of the Jews and the elders of the Jews build this house of God in its place. Moreover I make a decree concerning what ye shall do to these elders of the Jews for the building of this house of God; that of the king's goods . . . expenses be given with all diligence unto these men, that they be not hindered. And that which they have need of, . . . let it be given them day by day without fail . . . and may the God that hath caused His name to dwell there overthrow all kings and peoples, that shall put forth their hand to alter the same, to destroy this house of God which is at Jerusalem." *Ezra*, *supra* note 91, at 6:7-9, 12.

86. Briend, *supra* note 80, at 42.

87. BARNAVI, *supra* note 22.

some as a “founding father” of Israel, this return of the Jews “to history,”<sup>88</sup> presents the same similarity, in that without this attempt it is doubtful whether they could have avoided the fate of other exiled people, disappearance within more powerful entities.<sup>89</sup> But the “return” is also different from the journey under Moses. Indeed, from a human rights perspective, Cyrus’ initiative represents two capital importances. Firstly, the “return” – a liberation – was initiated and conducted by a person belonging to a group other than that of the persecuted group. Indeed, it may be argued that as a non-Jew, Cyrus did not have Moses’ inherent, instinctive and urging interests in protecting the Jews as a group. Secondly, Cyrus was a statesperson. As such, perhaps his interests diverged from the motivations which animated Moses, who might have been more detached from political games. Therefore, in terms of secular power, Cyrus is not in Moses’ place, rather in the Pharaoh’s. However, in terms of the protection of the Jewish group as such, Cyrus’ deeds are comparable to Moses’, seven hundred years earlier: salvation from cultural extermination.

### 3. The Continuous Effect of the Proclamation

This humanistic treatment was such a novelty that, according to David Ben-Gurion, “[under the first Iranian Empire,] the Jews enjoyed religious autonomy in their own country. Judaism was crystallized and strengthened itself for the whole era of the Second Temple.”<sup>90</sup> Thus, the treatment of Jews was favourable not only under Cyrus but also under the whole of his dynasty which would last more than two centuries until its destruction by Alexander. Indeed, prior to the conquest of the first Iranian Empire by the Macedonian, occurred the saga of Mordechai and Queen Esther under king Xerxes and the salvation of the Jews from extermination, hence the Purim celebration. Both Esther and Mordechai remain buried in their mausoleum near Hamadan, present-day Iran. So is Daniel the prophet, who is buried in Shush – ancient Susa – South-west of today’s Iran, and whose shrine is visited by pious Muslims who pay respect, through Islamic prayers, to this Jewish figure; “their” Jewish figure. On the other hand, Darius institutionalised Jerusalem’s Chief Priest as the guardian of the Satrapy of Judah, by virtue of which the law of YHWH was constitutive of the law of the “people of YHWH” throughout the empire, regardless of whether or not they were in Judah.<sup>91</sup> Finally, the Torah, as presently known, was compiled and finished under the reign of the Iranian king Artaxerxes I.<sup>92</sup> Later, after the century-long Hellenic brackets, other

88. Yaacov Shavit, *Cyrus King of Persia and the Return to Zion: A Case of Neglected Memory*, in HISTORY AND MEMORY, 2 STUDIES IN REPRESENTATION OF THE PAST, 51, 52, 55 (Indiana University Press 1990).

89. BARNAVI, *supra* note 22; *see* Shavit *supra* note 88. Anecdotally, the theme of “repetition of the Return” was used in the 1880s, by the Hibbat Zion movement, which saw their new Return to Zion parallels with Cyrus’ Return to Zion, since, *inter alia*, it was being achieved not by Eretz Israel’s military conquest, but under the aegis of the ruling power, to the point that contemporaries saw in the Balfour Declaration a repetition of the Proclamation. *Id.* at 56, 67-68, 74.

90. David Ben-Gurion, *Cyrus, King of Persia*, in 1 ACTA IRANICA, COMMÉMORATION CYRUS, 134 (Bibliothèque Pahlavi 1974).

91. Sérandour, *supra* note 26, at 22.

92. BARNAVI, *supra* note 22, at 33.

Iranian dynasties would revive the longest uninterrupted Iranian Empire for a thousand years, with Rome as their European challenger. Despite the ups and downs inevitable in such a time scale, the overall good treatment of Jews would continue. Militarily speaking, and first of all because of their persecution by the Romans, Jews would regularly help Iran fight Rome.<sup>93</sup> When conquered by Romans – the inheritors of the Athenian Democracy – who would destroy the Second Temple inaugurated by Darius – the Oriental Despot – the myth of the Messiah would be reborn through Jewish religious leaders who would declare “our saviour the Messiah may appear from any land where Iranian soldiers set foot.”<sup>94</sup> Indeed, the Jews’ friendship with Iran would become so famous throughout the antiquity that their oppression by Iran’s foes was considered as a vengeance against the Iranians.<sup>95</sup>

Centuries later, Cyrus’ name would be used in the Jewish literature of expectation. This “Cyrus spirit” appeared in the Spanish and Portuguese generation of the exiles where Jews would see Cyrus in the Ottoman Sultan Mehmet II (Ottomans were identified as Persia and Christianity as Rome); in the eighteenth century, the Italian Jewish Maskil Morpurgo compared the *Toleranzedikt* of the Habsburg Emperor Josef II to Cyrus’ Proclamation; in the nineteenth century the Russian Jewish Maskil poet Y. L. Gordon made the Tsar Alexander II appear in the figure of “Cyrus the Shepherd,” because of his pro-Jewish reforms; and finally, in the nineteenth century, Napoleon Bonaparte was compared to Cyrus by the Jewish Sanhedrin.<sup>96</sup>

Most importantly, this friendship reached tremendous cultural heights, first and foremost, through the Babylonian Talmud – the Jewish corpus of law, written under Iranian rule, in the third to fifth centuries.<sup>97</sup> Indeed, many Jewish scholars who participated in its writing had always lived in the Iranian Empire and had never travelled to Jerusalem which was then under Roman rule.<sup>98</sup> This in turn explains why the Babylonian Talmud is influenced by some Iranian ideas and contains a number of Persian words.<sup>99</sup> Ashi, the prominent Jewish scholar of this codification/compilation had personal access to the Iranian kings.<sup>100</sup> Under his impulse, the Jewish oral law – the Mishna and Gemara – which, throughout the centuries, had been forbidden to transcribe, was finally written.<sup>101</sup> It has been suggested that in the same way as Christians accepted the Torah in its entirety, on the basis that it had been written, the Jewish faith would have gradually disappeared had the oral tradition not been gathered in writing in the Talmud.<sup>102</sup> Indeed, it is in the Iranian Empire that the Babylonian *Yeshivot* set forth the

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93. *Id.* at 64.

94. LEVY, *supra* note 16, at 115.

95. *Id.* at 63.

96. Shavit, *supra* note 88, at 65-66.

97. BARNAVI, *supra* note 22, at 64-65.

98. LEVY, *supra* note 16, at 133.

99. NETZER, *supra* note 72, at 18.

100. 3 ENCYCLOPAEDIA JUDAICA 710 (1971).

101. LEVY, *supra* note 16, at 136-37.

102. *Id.* at 137.

method to comment the Torah serving as a basis for the Babylonian Talmud which, ultimately adopted by the Jews, would continue to shape their existence until modern times.<sup>103</sup> While the Talmud of Jerusalem would fall in desuetude, the Babylonian Talmud – written in the-then Iran – became the second most important Jewish religious/legal text after the Torah.<sup>104</sup>

### B. Greek Thinkers

During the first Iranian Empire, the Greeks and the Iranians were, for the most part, enemies, although when the Greeks were fighting amongst each other, numbers of them would ally themselves with Iranians for “the Persian gold,” contributing to a long *pax Persiana*. Feeling threatened by the dynamics of the Iranian Empire, the Greeks developed their sense of national identity through a negative definition, presenting the Iranians as the decadent Barbarians who sought to conquer Europe by all means. In this dangerous enterprise, Greeks had the heroic mission of defending the small but rational Europe from the vast but chaotic Asia. Exaggerations built upon exaggerations helped them finally shape a myth of the victimised prey but master of a refined civilisation, attacked by the greedy Asiatic hordes, led by their oriental despot.<sup>105</sup> This myth has endured until the present day and continues to be reproduced in different moulds, as convenience requires;<sup>106</sup> a civilisation, redefining other civilisations in order to explain – justify – its own behaviour. Here, one may recall the distinguished Aristotle – Alexander’s mentor – who asserted, “[w]herefore the poets say, ‘It is meet that Hellenes should rule over barbarians.’”<sup>107</sup> But despite the Greeks’ aforementioned perception, it is possible to identify some very positive accounts of Cyrus’ deeds from among the most famous Greek writers and thinkers. True, none of these accounts directly corroborate the Proclamation; however, they all reach consensus on one point: that Cyrus was a compassionate ruler. This may be understood, *a posteriori*, as an implicit acknowledgement of the king’s magnanimity which crystallised into the Proclamation.

Thus, in his *Histories*, Herodotus – the father of historiography – describes Cyrus as a “Father” who, in relation to his subjects, “was merciful and always worked for their well-being.”<sup>108</sup> Herodotus was born almost half a century after Cyrus’ death, in Halicarnassus, a Greek Asian city of the Iranian Empire and who travelled to its confines. It is noteworthy that even after Cyrus’ death, Herodotus refers positively to his deeds. The term father is not to be taken lightly. Father means authority but it also suggests compassion and understanding, teacher and

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103. BARNAVI, *supra* note 22, at 65.

104. LEVY, *supra* note 16, at 132.

105. Of course, the Iranians did conduct military expeditions – mainly punitive, with sometimes devastating effects – against Athens, as under Xerxes. But what is interesting, is the way in which the Greeks – mainly Athenians – portrayed the Iranians’ both temperament and motivations; in other words, a cultural definition of the enemy.

106. *Id.*

107. ARISTOTLE, *supra* note 49, at 52.

108. HERODOTUS, *THE HISTORIES* bk. 3, ch. 89, at 208 (Robin Waterfield trans., Oxford Univ. Press 1998).

legislator, the law. Around six hundred years after Cyrus' death, Pausanias, another Asian Greek – this time a citizen of the Roman empire – referred to Cyrus as the “father of men” in his *Description of Greece*.<sup>109</sup> That Cyrus should be accorded this level of respect is notable, especially in view of the pride of ancient Greeks *vis-à-vis* the *grandeur* of their culture, to which the Romans linked themselves. Two Greeks, two travellers, both born in Western Asia, respectively under the rule of the Iranians and Romans with half a millennium of time difference, provide the same positive account on Cyrus.

If those were Asian Greeks, whom it could be argued were closer to the Asian cultures, earlier, one hundred years after the death of Cyrus, the great Plato, a European Greek – an Athenian – observed that,

the Persians, under Cyrus, maintained the due balance between slavery and freedom, they became, first of all, free themselves, and, after that, masters of many others. For when the rulers gave a share of freedom to their subjects and advanced them to a position of equality, the soldiers were more friendly towards their officers... and if there was any wise man amongst them, able to give counsel, - since the king was not jealous but allowed free speech and respected those who could help at all by their counsel, such a man had the opportunity of contributing to the common stock the fruit of his wisdom. Consequently, at that time all their affairs made progress, owing to their freedom, friendliness and mutual interchange of reason.<sup>110</sup>

The first sentence is important to the extent that it sets the background for the rest of Plato's discussion, that is, the Persians under Cyrus. The second and third sentences are a remarkable echo – whether or not conscious – of the principles contained in the Proclamation of Cyrus. Firstly, the freedoms and the equality that Cyrus accorded to his subjects are mentioned; freedom because, as Plato says, “free speech” was one of the mottoes of Cyrus,<sup>111</sup> equality because the subjects could – based on their knowledge and skills – reach higher positions without their promotion being censored by the emperor, that is, by the State apparatus. Thus, peoples' knowledge would be put at the service of the community – in other words, a glimpse at the idea of *res publica*.<sup>112</sup>

Secondly, according to Plato, if the Iranian Empire prospered under Cyrus it was because of the availability of “freedom, friendliness and interchange of reason.”<sup>113</sup> And these happen to be the core principles contained in Cyrus' Proclamation: dialogue, tolerance and peace. Indeed, did Cyrus not abolish/limit the previous cruel practices such as slavery and *corvée* which deprived people of

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109. PAUSANIAS'S DESCRIPTION OF GREECE bk. 8, ch. 43, pt. 6, at 431 (London, MacMillan 1898).

110. PLATO, LAWS 225 (R.G. Bury trans., Harvard University Press 1926) (n.d.).

111. *Id.*

112. See generally PLATO, THE REPUBLIC (n.p., 360 B.C.E.) available at <http://classics.mit.edu/Plato/republic.html> (delineating the concept of *Res Publica* as those things or concepts that members of a community place above their own self-interest).

113. PLATO, *supra* note 110.

their freedom? Did he not promote friendly relations by becoming the friend of each people's gods, thereby enabling them to follow their own spiritual practices? Furthermore, by publicly recognising these principles in the Proclamation, did Cyrus not serve – both personally and as head of State – as an example of interchange of reason, dialogue and thus of tolerance to his subjects?

Contemporaneously to Plato was the Athenian Xenophon, Socrates' aristocratic pupil, who would later become a military commander, an essayist and historian. To explain the ideal education, Xenophon wrote the *Cyropaedia* (the Education of Cyrus) in which Cyrus is referred to as the model of this ideal upbringing.<sup>114</sup> Eight volumes were dedicated to an Asian, by this conservative pro-Spartan. But even Aeschylus, the essayist and dramatist Athenian born just after the death of Cyrus, wrote in his play *The Persians*: "Cyrus, blessed of men, [w]ho, as he ruled, established peace for all his friends... God did not begrudge his rule, so wise was he."<sup>115</sup> So, even in this play which depicts the defeat of the giant but weak Asia by the small but determined Europe, Cyrus was characterised as a man of peace and tolerance.

But Cyrus' concrete deeds also extended to more material aspects of the Greek civilisation. He ordered the restoration of Apollo's temple in Magnesia of Meander, a spiritual symbol of his enemies. This enterprise corroborates the content of his message of tolerance as announced in his Proclamation in the form of the freedom to practice one's cult and to respect one's spiritual/cultural heritage. Cyrus further exempted the sanctuary's priests from any obligation to pay tax.<sup>116</sup> Years later, Darius ensured the continuity of this exemption when he wrote to the Persian Governor of Ionia that levying taxes would be "ignoring the sentiments of my ancestors toward the god who spoke the truth to the Persians."<sup>117</sup> These measures are reminiscent of the treatment that Cyrus applied to Solomon's Temple, as explained earlier (see IV. A. 2).

### C. An Early Form of Human Rights' Declaration?

As the above analysis shows, the Proclamation does not encompass normative abstractions, although its content foresees a general set of rights for the citizens, granted by an emperor. As explained in this study (see I and II), Cyrus granted these rights when he was at the height of his power. There was no popular revolution which would have forced him to concede them as a last-choice compromise to save his reign. Nor was his empire being broken-up (e.g. following a war of independence) which would have urged him to grant those rights in order to limit the losses. Nor was Cyrus threatened by an oligarchy, such as a parliament seeking to improve its rights and powers by weakening the Monarch, as has so

114. XENOPHON, *CYROPAEDIA* I (F.M. Stawell ed., Henry Graham Dakyns trans., Project Gutenberg 2000) (n.d.) available at <http://onlinebooks.library.upenn.edu/webbin/gutbook/lookup?num=2085>.

115. AESCHYLUS, *THE PERSIANS* 93 (Anthony J. Podlecki trans., Prentice-Hall 1970) (472 B.C.E.).

116. ISRAËL, *supra* note 10, at 326.

117. Peter Bedford, *Early Achaemenid Monarchs and Indigenous Cults: Toward the Definition of Imperial Policy*, in *RELIGION IN THE ANCIENT WORLD* 17, 18 (Matthew Dillon, ed. 1996).

often occurred in the regimes evolving toward a parliamentary system.<sup>118</sup> It is suggested that the Proclamation was made by an emperor who, at the zenith of his power, granted rights which constitute the principles of human rights. Principles which, by their nature, create obligations designed to limit the inevitable inclination of power to lead its holder to abuse his position. It has been said that Cyrus “was a wise king who respected the faiths of all nations and peoples, the standard-bearer of an international moral revolution in the ancient world.”<sup>119</sup>

Is this cloth of magnanimity and compassion, in which Cyrus’ political actions are wrapped, not an echo of Zarathustra’s vision of the world? Cyrus knew that, as a king, he had a duty to be truthful to the Iranian spiritual belief according to which an aura, the *Khvarenah* (Radiant Glory) legitimates the monarch,<sup>120</sup> as long as he aims to bring Justice to its triumph by the means of his secular power, including law. Cyrus knew that if he departed from his mission, the aura would abandon him. Although shaped by a different intellectual presentation, this initially spiritual conception has remained valid throughout history, even in the most rationalised systems of thoughts: is it not true that it is always on the basis of the superior principles of natural law – god, reason, etc – that the legitimacy of States’ positive law can be questioned?<sup>121</sup> That is, the continuation of even the most legitimately constituted regime could be interrupted by its citizens if, at some point, it has systematically and continuously violated their rights despite its primary duty to safeguard them. In other words, Locke and Rousseau’s idea that if the government fails to honour its share of the social contract then thoughtful and responsible popular uprisings can be justified. Complementarily, is it not true that human rights are fragile because, being the materialisation of the ideal of justice, they depend on human application which, by definition, will never be perfect?<sup>122</sup>

Somehow echoing Zarathustra’s philosophy, Cyrus merely sought to lay the foundation on earth for the future triumph of justice. He believed that he incarnated the secular power which, through the instrument of law, was invested with the mission of facilitating the realisation of justice.<sup>123</sup> With his understanding of his world and based on his own intuitions, Cyrus strove to achieve what would centuries later be called a secular system of government. True, in every passage of his Proclamation reference is made to metaphysical entities. But does his respect towards peoples’ spiritual identities – as evidenced by the fact that he proclaimed himself a follower of each people’s god – not constitute, in Cyrus’ days, an early

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118. See generally U.S. Const. amend. I-X and Declaration des Droits de l’homme et du citoyen [Declaration of the Rights of Man and of the Citizen] art. 1-17 (illustrating two systems of government created following a civil war and a revolution).

119. LEVY, *supra* note 16, at 46.

120. See Iranian Religions: Zoroastrianism, Fravahar, <http://www.cais-soas.com/CAIS/Religions/iranian/Zarathushtrian/fravahar.htm> (last visited Sept. 27, 2007) (providing detailed religious background information).

121. MADIOT, *supra* note 2, at 21.

122. *Id.* at 27.

123. See Sérandour, *supra* note 26, at 9, 12-13, 29, 31 (discussing Zarathustra’s concepts of earthly representation of God and the Achaemenid Empire’s bicephalous secular-spiritual functions).

*esquisse* of a secular system of government, coupled with the recognition of human rights?

While Cyrus should not be treated as a god-like figure – he was primarily a conqueror, an emperor – it is possible to affirm that he was a new type of ruler among those of Antiquity. It is true that Cyrus' clement policy towards the Jews may have been justified by the fact that their return to Jerusalem enabled him to have reliable allies for the conquest of Egypt, through crossing Judah and the Negev. It is conceivable that he may have needed the help of the Mesopotamian clergy for his conquest of Babylon. It can also be maintained that Cyrus may have needed to make promises to the inhabitants of the conquered regions in order to strengthen his power. But in those millennia of non-existent globally shared moral standards, nothing would have prevented him from betraying his promises once he had established his power – the greatest power of his time.<sup>124</sup> Instead, Cyrus rejected the cruel practices of the surrounding empires which would raze the conquered cities to the ground, destroy their private property and spiritual heritage, castrate the males, sell and rape the females, enslave the children, deport the population and settle others in their lands. Unlike Alexander's policy of systematically Hellenising the vanquished populations by imposing his own language and culture, naming and renaming cities after himself, Cyrus did not interfere in peoples' private sphere, in their spiritual and cultural values. Instead, Cyrus officially recognised his empire's multicultural character, an act followed even after his death where stone-carved public inscriptions were always multilingual: In Old Persian and other languages, such as the language of the province where the inscription was located.<sup>125</sup> As suggested by David Ben-Gurion: "Cyrus granted autonomy to all his peoples, autonomy in matters of cult and the spirit, and concentrated in his own hands political and military power only."<sup>126</sup> Perhaps because of his empire's multicultural dimensions, Cyrus had the wisdom not to interfere in the multitudes' spiritual sphere; in the mightiest power of its time, comprising both a territory and a population whose dimension and diversity had never before been equaled. This was a fundamentally different context from that of the Athenian Democracy: city-states located on narrow territories comprising small populations with, consequently, faster communication and reception of ideas – geographically, culturally and linguistically – as opposed to the Iranian Empire's gigantism – geographically, culturally and linguistically.<sup>127</sup>

Moreover, Cyrus remained faithful to his principles. Had he betrayed them, his memory would not have been engraved with such profound humanity among

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124. Ben-Gurion, *supra* note 90, at 128.

125. See Bedford, *supra* note 117, at 18 (providing an example of this type of tolerance in which Cambyses (the son of Cyrus) evicted foreigners who were occupying the Temple of the Goddess Neith at Saïs, restored its revenues and festivals, and prostrated himself before the Goddess as "every Pharaoh had done before.")

126. Ben-Gurion, *supra* note 90, at 134.

127. See C. Herrenschildt, *Entre Perses et Grecs, I. Démocrite et le mazdéisme*, XI TRANSEUPHRATÈNE 115, 142-143 (1996) (offering a particularly interesting discussion on the conceptual gaps separating the Greek autonomous City and the Iranian heteronymous Empire).



all the people known to him: whether those who experienced his Empire's strength, or were subdued by him, or were liberated by him. His magnanimity is illustrated in the Hebrew Bible, which provides

Now in the first year of Cyrus king of Persia, that the word of the Lord spoken in the mouth of Jeremiah might be accomplished, the Lord stirred up the spirit of Cyrus king of Persia, that he made a proclamation throughout all his kingdom, and put it also in writing, saying, "thus saith Cyrus king of Persia, all the kingdoms of the earth hath the Lord God of heaven given me; and he hath charged me to build him a house in Jerusalem, which is in Judah. Who is there among you of all his people? The Lord his God be with him, and let him go up."<sup>128</sup>

II Chronicles marks the end of the Hebrew Bible. Of paramount importance is the fact that this passage reincorporates almost word for word what is already provided in *Ezra 1:1-3*, (see IV. A. 2.). What is the meaning of this reiteration of Cyrus' human rights related actions up to the end of the Hebrew Bible, if not the recognition – by one of the peoples who were liberated by him – of his outstanding deeds? As observed by David Ben-Gurion:

A special privilege this, to be accorded to a ruler who was not a Jew – to close the Book of Books, and to close it with a word that in our day as well has a fateful meaning for the whole people of Israel, both for our State and for Jewry in the Diaspora, the Hebrew word that says – "let him go up."<sup>129</sup>

So many positive accounts from so many different sources, stretching from Antiquity to the present day and including prophets, philosophers, historians and politicians – some friends, some foes – can only corroborate the fact that the Proclamation of Cyrus is an august outcome of a ruler's (Cyrus) perception of a thinker's (Zarathustra) ideas. Of course, this does not mean that the recognition of these principles by Cyrus was completely discreet. Rather, Cyrus' deeds were an outcome of the ancient world's egalitarian movements that had been struggling to materialise.<sup>130</sup> In this regard, it may be said that the Proclamation constitutes an early form of human rights declaration, granted by a monarch.

#### V. CONCLUSION: THE "VIRTUOUS" ATHENIAN DEMOCRACY *V.* THE "BACKWARD" ORIENTAL DESPOTISM?

This study was not an apologetic presentation of a conqueror. Instead, through the vehicle of a human representative of a civilisation located outside the Athenian Democracy's sphere, this study merely purported to show that human rights did flourish in other civilisations too. As explained in the previous section (IV. A. 3.), the deeds of Cyrus were merely an early humanist approach that has lasted for millennia under different systems. There have certainly been ups and downs – and there continues to be – but considering the time span this does not make them

128. *II Chronicles* 36: 22, 23.

129. Ben-Gurion, *supra* note 90, at 127; see also Shavit, *supra* note 88, at 63.

130. Ben-Gurion, *supra* note 90, at 128.

fundamentally any different from other cases. It could not be argued that Cyrus was a phenomenon, an almost happy “accident” for the type of civilisations he represented. Indeed, Cyrus could be used as an operative symbol in order to describe a certain type of human approach that could, and can be, found in those “other” civilisations, regardless of the type of political regimes that they experience at a given time whether liberal or oppressive. Thus, Cyrus is just the incarnation and the vector of aspirations for freedom that grew in one of those other civilisations which have so frequently borne the label of Oriental Despotism; i.e. societies allegedly unable to generate any patterns capable of being abstracted into protective norms of human rights. This may explain why almost no human rights manual mentions the many “Cyruses” of human history.<sup>131</sup>

In fact, this antagonistic approach is rooted in Antiquity where the Greeks – like any civilisation, for the sake of constructing their own identity – defined themselves as the centre surrounded by the peripheral others: the “Barbarian hordes” who, with the gradual evolution of mentalities, were replaced by terms such as Oriental Despots. This approach, in which “the development and maintenance of every culture require the existence of another different and competing alter ego,”<sup>132</sup> has characterised millennia of inter-civilisational confrontations. Indeed, in the Antiquity, each of the four empires that constituted a territorial *continuum* dominating Eurasia (Rome, Iran, India and China), considered itself to be the centre of the universe, surrounded by two types of foes. Firstly, the “civilised” enemies, that is the other empires whose existence was acknowledged by the other three through wars and commerce. Secondly, the “Barbarian” enemies, that is the nomads living in the “periphery” of the empires – even though the nomads actually occupied the majority of Eurasia’s landmass. Thus, China viewed itself as the Middle Empire surrounded by chaotic hordes – hence the Great Wall. India’s rulers bore the title of *Chakravartin*: “Lord of the entire world”. Iran’s perception was illustrated by its *Shahan Shah-e Ayrān o an-Ayrān*, that is “King of kings of Iran and non-Iran”; non-Iran denoting the other empires as well as the Turkic/Arab “Barbarians.” Rome’s *Imperator terrarum* too had its Germanic/Slavic “Barbarians.” Interestingly, contrary to the domestic oriented propaganda justifying its superiority, each empire recognised, in foreign policy, other empires’ equality and right to exist.<sup>133</sup> Conversely, all four empires denied their “Barbarians” the right to be considered their equals.<sup>134</sup>

131. *Contra* ROBERTSON & MERRILLS, *supra* note 9, at 7-9 (providing an exception to this assertion by discussing Cyrus and other similarly minded individuals in the context of human rights); *see also* Daubie, *supra* note 139 (discussing Cyrus in the context of human rights).

132. SAID, *supra* note 5 at 331-332.

133. For a didactically informative presentation of these issues, *see* MICHEL ROUCHE, *LES EMPIRES UNIVERSELS, IIE-IVE Siècles* (Larousse 1968).

134. Despite a millennium of war and peace, these four empires were not directly destroyed by each other. Instead, after failing to seriously consider the Barbarians, all four empires ultimately collapsed under their “invasions,” only to be reborn, in the new mixed forms of civilizations. Not surprisingly, the definition of their new identities, yesterday’s “Barbarians” – now the new masters - reproduced the behavior of the former empires. For examples, after Iran’s conquest, the Arab Caliphate viewed its environment through Arabs and Ajams (i.e. non-Arabs on whom the Caliphs exercised a

The above explanations illustrate the subjectivity of one's definition of one's identity. That "'Orient' and 'Occident' correspond to no stable reality that exists as a natural fact,"<sup>135</sup> reflects the volatility of these geographical considerations. However, because of the type of human rights problematic that this study assessed, attention is focused on the European civilisation's perception of its surrounding environment, especially of its "competing alter ego." Thus, for a millennium it was Europe (i.e. Greece and then Rome) *versus* its Oriental Western Asia (i.e. pre-Islamic Iran). Then, with the rise of Islam, it was European Christianity *versus* its Oriental Western Asia and North Africa (i.e. the Arab Caliphate and then the Turkish Ottoman Empire). In the mid-twentieth century, with the rise of Communism, Orient took an even wider scope through Central/Eastern Europe, Central America and parts of Asia: NATO *versus* the Warsaw Pact, China and Cuba. Most recently, after the collapse of the Soviet Union, NATO justified its *raison d'être* by redefining its policy, through the substitution of Soviet Communism, for terrorists perils of all *genres* as its natural enemy. From now on, the contemporary equivalent of the Orient and the Barbarian hordes can be located anywhere, even within the West. In other words, the geographic definition of the Orient has collapsed and now it is instead its racial/ethnic/cultural emanation – i.e. the Orientals, regardless of their geographic location – that increasingly constitutes the potential enemy.

With this ever-changing centre of gravity, currently it is not the West-East projection nor the North–South but, as Samuel Huntington has said, "the West and the Rest";<sup>136</sup> a formula that explains the Euro-centrism which has surrounded this identity-related debate since its initiation in Greece. This West/North entity corresponds to countries that view themselves as an emanation of the Greco-Roman civilisations; their common denominator being European languages and religion – following the Europeanisation of the originally "Oriental" Christianity – and a set of social/institutional values including individual rights and democratic structures.<sup>137</sup> As for the East/South entity, it is no more than a nebulous group, defined conversely by the West/North in its own mirror projection. Thus, because it is denied a life of its own and is a definition by default – i.e. only in relation to the West/North – East/South corresponds to a miscellaneous category which includes everything that does not fit in the first category, even if it embraces the majority of the world's countries and inhabitants.<sup>138</sup>

It is precisely this latter approach that constitutes the paradox in the reasoning of some Universalists. Indeed, it is impossible to maintain, on the one hand, human

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degree of social differentiation such as the imposition of special taxes).

135. SAID, *supra* note 5 at 331

136. SAMUEL P. HUNTINGTON, *THE CLASH OF CIVILIZATIONS AND THE REMAKING OF WORLD ORDER* 183 (Touchstone Books, 1997) (1993).

137. These are roughly the countries of the European Union, the United States, Canada, Australia, and New Zealand. Exceptions, such as Japan, had to surpass technologically and economically the overwhelming majority of those countries – i.e. to be better than the best – in order to be viewed as equal by the best.

138. Anecdotaly, modern Greece, the inheritor of the civilization that initiated these trends in the West, finds itself to represent both the South of the North and the East of the West.

rights' universality and, on the other hand, to present them as an exclusive emanation of a selected civilisation. Otherwise, what seems to be Universalism for some may be equated to imperialism by others. If human rights were universal and if there were to be a healthy dialogue designed to promote their development, then it should be accepted that they developed elsewhere too. This would be consistent with the spirit of the UN Decade for Human Rights Education which took note of the report of the High Commissioner for Human Rights, according to which "human rights education is essential for the encouragement of harmonious inter-community relations, for mutual tolerance and understanding and finally for peace."<sup>139</sup> Sadly, most of what the broader education offers is about the search of power for the sake of power: the epics of the Caesars, the Genghis Khans, the Tamerlans and the Napoleons. If Alexander's "Greatness" is studied it is because of the fascination induced by his expansionism; because he vanquished the greatest of the imaginable foes; because this non Asian conquered an empire which contained the Fertile Crescent, stretching from Egypt through to Western Asia – Pontos Euxeinos, Mesopotamia and Persia – thereby opening the doors of curiosity to those lands, as if all they had had to do after millennia of existence was to await their "exoticism" to be "explored" by the conqueror. In contrast, education offers little space to the kinds of Cyrus' humanist messages, perhaps out of ignorance, lack of interest, or a combination of both.

Therefore, a major goal of human rights education should consist of rectifying the heavily prejudiced idea that "other" cultures can develop human rights only through the sporadic initiatives of an "autochthonous elite," whose exposure to Athenian values combined with its exceptional cerebral predisposition to comprehend them, enable it to transcend its "torpid" societies. If not corrected, this assessment will always lead to the misunderstanding that those "other" civilisations systematically need a moral *areopagus*' advice as part of a civilising mission, as if their citizens had a congenital inability to perceive human rights. True, wide-scale crimes have been perpetrated by and in many of those "other" civilisations: e.g. the Armenian mass killing by Turks, the Khmer Rouges' Cambodia, the mass killing of Iraqi Kurds and Arab Shiites, the genocide of Rwandan Tutsis, and the Taleban/al Qaeda's Afghanistan. But this must not hide the fact that, in relation to both the respect and the violation of human rights, all civilisations have had their share. Thus, the past centuries' enslavement and deportation of hundreds of thousands of human beings from Africa, the decimation of the Americas' so-called "native" cultures, and the two World Wars' tens of millions of victims, including those of the Holocaust, did not occur in societies characterised by Oriental Despotism but instead in some of those civilisations that viewed themselves as the depositories of Athenian Democracy and of rational thinking.

In present times, the spirit characterising both the Athenian Democracy and the human rights principles contained in Cyrus' Proclamation have merged in a way that democracy and human rights have become inseparable. Even Alexander,

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139. G.A. Res 49/184, ¶ 8, U.N. Doc. A/RES/49/184 (Mar. 6, 1995).

the annihilator of the first Iranian Empire, realised that pan-Hellenism did not carry a global answer and that he had to merge his Hellenic values with those of the Fertile Crescent, where he deliberately chose to stay until his last day of life.<sup>140</sup> Unfortunately, it took the young Macedonian over a decade expedition – which ravaged civilisations – to realise that his values were not superior to those of the “other” civilisations, that is those values contained in Cyrus’ Proclamation.

Precisely, once it is understood that all civilisations result from constant interactions between cultures, the futility of some human rights misconceptions leading to a confrontational approach between cultures might fade away. Indeed, “tolerance and respect for diversity facilitate universal promotion and protection of human rights and constitute sound foundations for civil society, social harmony and peace.”<sup>141</sup> Only then might a constructive dialogue between cultures begin. As set forth in the UN Decade for Human Rights Education,

human rights education should involve more than the provision of information and should constitute a comprehensive life-long process by which people... learn respect for the dignity of others and the means and methods of ensuring that respect in all societies.<sup>142</sup>

This “respect for the dignity of others” requires that this world education take into account “other” civilisations’ experiences of egalitarian conceptions. No doubt that both Athenian Democracy and Cyrus’ Proclamation would then prove to be only two drops in the vast ocean of human rights aspirations. Only then could the ambiguity surrounding the universality of human rights be removed.

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140. Alexander married “barbarian” Roxana and is said to have ordered ten thousand of his men to marry Iranian women.

141. G.A. Res. 53/22, ¶ 5, U.N. Doc. A/RES/53/22 (Nov. 16, 1998).

142. G.A. Res 49/184, ¶ 5, U.N. Doc. A/RES/49/184 (Mar. 6, 1995).