A Blessing Sought to Share?

Violence, Sovereignty and Domination in the United States International Religious Freedom Act of 1998

Master Thesis

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List of Abbreviations

CPC	Country of Particular Concern
ICCPR	The International Covenant on Civil and Political Rights
IRF	International Religious Freedom
IRFA	The International Religious Freedom Act of 1998
UDHR	The Universal Declaration of Human Rights

Introduction

The International Religious Freedom Act of 1998

> AN ACT. To express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of individuals persecuted in foreign countries on account of religion; to authorize United States actions in response to violations of religious freedom in foreign countries; to establish an Ambassador at Large for International Religious Freedom within the Department of State, a Commission on International Religious Freedom, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes (the incipit of the International Religious Freedom Act of 1998).

On October 27, 1998, President Clinton signed the International Religious Freedom Act of 1998 (IRFA) into law. As the process that lead to the founding of the law reveals, proponents of the IRFA conceived of the statute as a way to address what the Director of the Office of International Religious Freedom has termed "the U.S. religion avoidance syndrome" in American foreign policy (Farr 2008: 47). Thus designed to address secularist tendencies, the IRFA obligates the President, his appointees as well as Congress to incorporate concerns for religious freedom in their development of American foreign policy. The IRFA thus institutes a new branch of foreign policy, which I refer to as (American) International Religious Freedom (IRF) policy.

As such, the IRFA can be considered an American call for rectitude in the face of the global religious persecution. As we see in the above quoted incipit, the IRFA opposes the persecution of individuals "in foreign countries on account of religion" and authorises "United States actions in response to violations of religious freedom in foreign countries." If these violations of religious freedom are

deemed to be of a particularly severe character, the IRFA calls for economic sanctions against the country in question. The IRFA thus not only strengthens United States advocacy on behalf of victims of religious persecution, it also authorises American unilateral economic sanctions.

As a basis for the determination of IRF policy actions, the IRFA requires the annual issuing of a State Department Report on IRF. These reports catalogue religious persecution across the globe and divide countries into different categories according to types and degrees of discrimination. The annual State Department Reports also include an introduction written by the President appointed Ambassador at Large for IRF. In these introductions the Ambassadors sketch the motivation behind American IRF policy and thus provide a valuable insight into the American self-conception in relation to religious freedom.

Moreover, if we further scrutinise the introductions to the State Department Reports, however, we can start to appreciate that there is more at stake for the United States than a simple response to injustice. Although these introductions are written for annual Reports that exclusively deal with foreign states, a striking feature is their emphasis on self-representation. As it happens, the introductions focus heavily on constructing the United States in the image of religious freedom as well as against violators of religious freedom, and in that way everything in the introductions become connected to the United States either by way of affirmation or exclusion. Curiously, this focus means that the United States emerges as the pivotal point in a discourse meant for the supposed empowerment of persecuted individuals and minorities across the globe.

Motivation

My interest in the IRFA began as I was researching religious persecution in the Middle East. Especially two things struck me as particularly interesting about this relatively new American law that I had stumbled upon: firstly, the law's authorising function, and, secondly, its prominent attention to the construction of the United States as a paragon of religious freedom. What initially struck me as odd regarding the statute's function "to authorize United States actions in response

to violations of religious freedom in foreign countries" was that a domestic law with foreign subjects should be authorised only domestically. Would the IRFA not need some kind of international authority in order to secure the global legitimacy of the foreign policy actions it sanctions? With no global authority could the IRFA not be perceived as a self-authorisation of American unilateral actions? Questions such as these led me to become interested in the problematics related to the IRF policy discourse's attempt to establish the global legitimacy of the IRFA by situating it within the framework of international human rights texts.

The second thing I found particularly interesting about the IRF policy discourse was the previously mentioned prominent attention given to the construction of the United States as the personification of religious freedom. For example, the IRFA includes a small historical narrative about the importance of religious freedom to the United States' Founding Fathers, and the introductions to the annual State Department Reports continuously construct religious freedom as constitutive of the American tradition. The thing that struck me as particularly interesting was the fact that the IRF policy discourse constructs the United States as the diametrical opposite of that which it opposes: violations of religious freedom. This binary structure of identity/difference in the discourse made me think that perhaps more was at stake than simply reacting to the dictates of an independent and unjust world: it seemed to me that the discourse was actually constructing the world in such a way as to naturalise the political authority of the United States as a global judge on issues pertaining to religious freedom. These interests have led me to construct and work within the following problem field.

Problem Field

The Universal Declaration of Human Rights of 1948 (UDHR) marked the beginning of a revolution in interstate relations. By introducing the concept of inalienable human rights on the international state, the Declaration gave persecuted individuals and minorities across the globe an instrument for empowerment that transgressed the boundaries of the nation-state. At the same time, however, the UDHR not only empowered marginalised groups within states;

it also empowered powerful states to legitimately intervene beyond their territorial border in the name of human rights (Beck 2006: 143). The IRFA is an articulation of this empowerment of powerful states to intervene in foreign states on the grounds of human rights. It authorises American foreign policy actions in response to violations of religious freedom. Since these actions include economic interventions in the form of unilateral sanctions, we might observe a complicity between the IRFA and violence (economic coercion) in the sense that it attempts to abolish violence by acting violently itself" (Newman 2005: 106). This complicity between violence and law raises the important question of how to distinguish between the legitimate violence that enforces law and the illegitimate violence that threatens law and order, and points to a paradox in the human rights revolution: "the prosecution of states and groups who trample human rights under foot is just, but not the prosecution of groups and states who enforce human rights against others" (Beck 2006: 142). In order to fully investigate and grasp this problematic between legitimate and illegitimate violence, I have found it necessary to literally get to the bottom of law and interrogate the foundations on which its authority rests. Only then may we begin to understand the nature and consequence of the distinction legitimate/illegitimate.

The human rights discourse also has a moral-authoritarian aspect to it. It categorises the world in absolutes: you either violate human rights or you do not—there are no grey areas (*ibid*: 141). The notion of human rights thus carries with it the possibility of becoming a discourse of domination when powerful states are constructed as "good" and weak states are constructed as "evil." This structure may certainly be observed in the IRF policy discourse. The discourse divides the world according to the binary opposition of "religious freedom"/"violations of religious freedom" and emphasises the United States as the only country on a global level that unequivocally supports religious freedom. The IRF policy discourse thus establishes a positional superiority for the United States on two levels: 1) a legal level that grants the United States sovereign power on global issues pertaining to religious freedom, and 2) an ideological level that emphasises the United States as the model ideal against which other countries may be judged.

Problem Definition

As may be gathered from the above problem field, the aim of this thesis is to problematise the IRF policy discourse as a justified human rights discourse by unmasking its hidden links to violence, sovereignty and domination. In order to do so, I ask the following question:

> *What violence at the foundation of the IRF policy discourse compromises its authority, and how does the IRF policy discourse's binary structure facilitate American domination in relation to religious freedom?*

Analytical Assumptions

The above question is not asked out of nothing. It rests on certain assumptions that I will briefly name here and return to at depth further on in the thesis. The first part of the above question is based on the assumption that all institutions are founded on violence. I base this assumption of Derrida's critique of authority, which I fully explain in chapter 2. The second part of the question is based on the assumption that all meaning is constituted through difference, and that there can be no declaration about the self that is totally free from the supposition of the other. I return to this notion in the section outlining Derrida's thoughts on the binary structures governing signification in the below.

The IRF Policy Discourse

Throughout the thesis I refer to and analyse what I have decided to term "the IRF policy discourse." I therefore include a small section explaining what I mean to signify with this term and what particular data it consists of. Perhaps obviously enough, I use the term "IRF policy" to signify that I am dealing with a particular branch of American foreign policy and thus not American foreign policy in general. My analytical interest is thus limited only to American foreign policy as it pertains to IRF.

I use the concept "discourse" to refer to the structure and practice of language. By this I mean that discourses "comprise the rules that govern what can

be said (language as structure), as well as instances of what *is* said (language as practice) that can lead to changes in those rules" (Rowley & Weldes 2008: 190). However, discourse not only structures language practice. Drawing on Michel Foucault's conception of discourse, I also regard discourse as the very structure in which the social world is constructed and controlled as an object of knowledge (Morton 2003: 85). In that sense, I view the study of discourse as inseparable from the study of institutional power and domination. By examining the IRF policy discourse, it becomes possible to understand the systematic way in which the United States is able to manage and produce the entire world in relation to religious freedom. My aim in analysing the IRF policy discourse is thus to show how the United States gains strength and identity by setting itself off against foreign states that violate religious freedom, thus creating a place of power that enables it to dominate the world on issues relating to religious freedom. My analytical approach to the IRF policy discourse thus focuses on how it constructs the world and the United States' place in it.

I construct the IRF policy discourse from primarily two sources: 1) the introductions to the annual State Department Reports on IRF and 2) the IRFA itself. The introductions to the State Department reports are interesting because they construct the official purpose(s) and necessity of American IRF policy. Each annual State Department Report includes a new introduction written for that particular year by the current Ambassador at Large for IRF. There are two main reasons why I have chosen to focus on the introductions to the State Department Reports: firstly, because they actively concern themselves with constructing American IRF policy as a legitimate human rights policy discourse grounded in international human rights standards. The introductions' thoughts on human rights are invaluable to my deconstruction of the IRF policy discourse's authority since they enable a comparative examination of the inconsistencies between the IRF policy discourse and international human rights standards.

My other reason for choosing to work with the introductions to the State Department Reports is their immense attention to the construction of the United States as the personification of religious freedom. This emphasis on constructing the United States in the image of religious freedom in a discourse that opposes and

criminalises violations of religious freedom suggests to me that more is at work than simply reacting to a perceived reality of injustice. It suggests the ideological representational work of a powerful state to create and recreate the world in its own favour. This last point is reinforced and cemented by the IRFA, which I primarily use theoretically to draw attention to the conception of law as a power-making practice that establishes sovereignty.

Theory of Science: Poststructuralism

My position in the field is starts from a poststructuralist perspective focusing on the way in which binary structures produce and organise our political reality. I am thus not so much interested in the actual implementation of IRF policy in foreign states as I am interested in the particular ways in which IRF policy, international relations and state identities are constituted in the IRF policy discourse. I am thus working within the epistemologically oriented theory of science. The consequence thereof is that my object of study is not presupposed (Andersen 1999: 14). Rather than observing the implementation of the IRFA as a series of intentional acts carried out by the pregiven subject, the American state, I have oriented my perspective to observing how the IRF foreign policy discourse constructs the world by drawing on the logic of binary oppositions.

The IRF policy discourse perceives the world through certain perspectives, which make the world appear in a certain way (Andersen 1999: 14). My intention with the analysis is to examine the standpoint, or place of power, from which the IRF policy describes and creates the world. I do this with the aim of making problematic the IRF policy discourse's claims to legitimacy and "normality." I thus expose the violence and domination behind the IRF policy discourse and show its dependency on more or less arbitrary exclusionary practices for the maintenance of consistency (Newman 2005: 1). By drawing attention to the aporias in its representation of experiences as homogenous and stable phenomena, I am thus able to show that there is nothing inevitable or natural about the IRF policy discourse.

It is with this understanding in mind that, instead of asking how the IRFA serves or is obstructed by American interests, I examine how the American IRF policy discourse, through the inscription of foreignness, helps produce and

reproduce the political identity of the United States as the dominant part in a legal framework structured by binary oppositions.

Derrida's Binary Hierarchies

In my analysis of the IRF policy discourse, I have been particularly influenced by Derrida's thoughts on signification—the process of meaning making—which are inspired by Ferdinand de Saussure's argument that all meaning is relational (Hall 1997: 234). Derrida argues that meaning is structured in terms of how signs differ from other signs and that being or knowing depend on a system of differences he terms binary oppositions. However, Derrida exceeds the thoughts of Saussure by emphasising that a final point of stable meaning is unreachable in any signifying system because meaning is always perpetually deferred in space and time (Morton 2003: 25f). To Derrida, there is thus no such thing as a pure and self-contained identity; identity is always contaminated by what it excludes (Newman 2005: 98).[1]

For Derrida, the idea of a complete identity is authoritarian in the sense that it establishes a series of hierarchical relationships in which one term is subordinated to another (Newman 2005: 85). Arguing that very few neutral binary oppositions exist, he notes: "[I]n a classical philosophical opposition we are not dealing with the peaceful coexistence of a *vis-à-vis*, but rather with a violent hierarchy. One of the two terms governs the other (axiologically, logically, etc.), or has the upper hand" (Derrida 1981: 41). Binary structures, then, almost always express a power relation where the stronger pole of the binary dominates and includes the weaker within its field of operations (Hall 1997: 235). In that sense, binary structures form what Saul Newman (2005) has termed a "place of power" (Newman 2005: 86). Consequently, the binary structures organising the IRFA could be expressed **"religious freedom"**/ "violations of religious freedom" and the "**United States"**/"foreign states." Moreover, as reflected in the United States' self-positioning in the binary hierarchy, the identity constituted in the stronger

[1] Incidentally, this is the same thought governing Derrida's deconstruction of the authority of law where he finds the legitimacy of law to be compromised by the excluded, illegitimate violence at its foundation. See chapter 2 for further detail.

pole typically also has the power to construct the identities constituted in the weaker pole (Rowley & Weldes 2008: 192).

For Derrida, the point is to avoid or resist these hierarchies of absolute opposites, although he does recognise that "to deconstruct the opposition, first of all, is to overturn the hierarchy at a given moment. To overlook this phase of overturning is to forget the conflictual and subordinating structure of opposition" (Derrida 1981: 41). He thus recognises the inversion of the hierarchies as the first stage of a deconstructive strategy because it shakes the hold of their underlying axioms and can lead to new ways that resist the formation of binary hierarchies (Stocker 2006: 124). However, to avoid the lure of authority that is inherent to all hierarchies, Derrida insists that one must go beyond both the inversion and subversion of hierarchies. Seeking to transform hierarchical structures rather than overthrow them, deconstruction thus employs a strategy of *displacement*, which questions and tries to make problematic the hierarchical structure, rather than simply reversing the binary opposition (Newman 2005: 87).

The Structure of The Thesis

In this section, I present each chapter of the thesis. Chapters 2 and 3 contain the main analysis. I present them by distinguishing the main argument each chapter brings forward after which I the theoretical basis on which I argue. In these sections, I thus also present and comment on the main literature that has influenced my working process.

Chapter 1 This chapter is meant as an introduction to the IRFA. It focuses on two main issues: 1) the motivating factors driving the creation of the IRFA and 2) the law's structure. The first three sections of the chapter examine the IRFA's Christian origins, its attempt to influence executive power in American foreign policy, as well as the critique of the law as an instrument of the American Christian right. These three sections draw largely on Thomas F. Farr's work *World of Faith and Freedom: Why International Religious Liberty Is Vital to American*

Security (2008). Farr has been employed in the Office of IRF[2] since 1999. He started out as Deputy to Ambassador at Large for IRF Robert Seiple in June 1999 but soon became Director of the Office of IRF. In this book, Farr criticises IRF policy for neglecting to promote religious freedom in favour of a focus on religious persecution reduction. Arguing for the indispensable value of religious freedom for American security, Farr suggests ways in which it may be more comprehensibly integrated in American foreign policy. Farr's book has been invaluable to my introduction to the IRFA in virtue of its comprehensive detailing of the political processes leading to the founding of the IRFA as well as the past ten years of IRF policy making inside the State Department. I thus rely on it for informative value rather than its arguments for strengthening American IRF policy. The remaining four sections of chapter 1 examine the entities mandated by the IRFA, as well as its key terms and overall strategy.

Chapter 2 In this chapter, I argue that the IRF policy discourse's international legitimacy is compromised by its Americanised interpretation of international human rights. By imposing an unprecedented hierarchy in human rights in favour of religious freedom, the IRF policy discourse violates the authority of the UDHR and the United Nations General Assembly, which both call for a common understanding of human rights as equally important. In spite of contrary claims by IRF policy officials, the IRFA is thus not consistent with international human rights standards but a unilateral global venture in the name of a new, American conception of human rights that lacks the backing of the United Nations and other international organisations.

The above argument is based on Derrida's critique of institutional authority in his essay *Force of Law: The "Mystical Foundation of Authority* (1992b). In this essay, Derrida problematises the legitimacy of the violence that law sanctions by exposing the foundations of all institutions as essentially violent, empty spaces resting on no anterior legitimacy. From this position, Derrida is able to deconstruct the distinction between legitimate and illegitimate violence, showing that the legitimate violence sanctioned by law is actually dependent on the illegitimate

[2] The Office of IRF is situated within the State Department.

violence at the foundation of law. Derrida's deconstruction of authority is thus useful in the critique of any political discourse that claims to be grounded in and authorised by law because it exposes the instituting act of law as an act of self-entitled power-making.

In order to expose the violence at the foundation of the IRFA, I look to the IRF policy discourse for an answer to the question: *what authorises the IRFA?* Since the IRFA claims to be founded in the anterior legitimacy of international human rights, I quickly proceed to an interrogation of both the foundation of human rights as they are contained in the UDHR as well as the foundation of human rights as they are contained in the IRF policy discourse. I have chosen to focus on the UDHR as the primary source of human rights simply because it is the most referenced international human rights document in the IRF policy discourse. My aim in making a comparative interrogation of the foundations of human rights in the UDHR discourse and the IRF policy discourse respectively is to highlight the ways in which the IRF policy discourse differs from or, indeed, *violates* the UDHR's understanding of human rights. Having thus shown the IRF policy discourse's understanding of human rights to be an unprecedented reinterpretation of international human rights, I proceed to interrogate the foundation of this interpretation and link the unilateral violence I find at its base to the punitive sanctions authorised by the IRFA.

Chapter 3 In this chapter I argue that the binary structure of "religious freedom"/"violations of religious freedom" organising the IRF policy discourse facilitates American global domination and colonialism. I detect this American positional superiority on at least two levels. Firstly, the United States positions itself as a global sovereign on religious freedom by instituting a law that encompasses all states while at the same time excluding itself from the reach of the law. I make this observation on the theoretical basis of Giorgio Agamben's (1998) concept of sovereignty, which he defines as the capacity to be at the same time inside and outside of the law. The United States can thus be considered inside the law in virtue of its power to define and act upon violations of religious

freedom, but can at the same time be considered outside the law in the sense that it excludes itself from the field of the law's operation.

Secondly, I detect American positional superiority on a state identity level that is organised around the principle of identity versus difference. The IRF policy discourse partly constitutes the identity of the United States in the image of religious freedom by excluding and externalising violations of religious freedom and religious violence to foreign states. I base this part of the argument on Derrida's theoretical notion of binary oppositions as violent hierarchies of signification in which the stronger pole almost always draws the weaker pole into its field of domination. Following Derrida's notion that identity is both dependent on and threatened by the externalisation of difference for its constitution, I attempt to destabilise the binary hierarchy organising identity and difference in the IRF policy discourse by showing that the American identity is partly constituted by the religious violence it excludes and externalises to foreign states.

Finally, I should note that David Campbell's work *Writing Security: United States Foreign Policy and the Politics of Identity* (1998) has been a considerable influence on this chapter's analysis. His analysis of identity's dependence on the externalisation of danger in American foreign policy compliments Derrida's poststructuralist theoretical framework by adding to it the notion of a "temptation of otherness," that is, the self/other mechanism through which identity emerges as a fictive paragon and regulative ideal by which the externalised "other" is judged (Campbell 1998: 131). Campbell's thoughts have thus supplemented the theoretical basis on which I argue that the binary structure of the IRF policy discourses implies the mechanism of colonialism.

Integrating English and Cultural Encounters

Since this is an integrated thesis combining the two programmes English and Cultural Encounters, I have tried to distinguish which parts of the thesis might be constructed to fall under the aegis of which programme. I must emphasise, however, that I do not think a clear-cut distinction is possible, both because of the integrated nature of the thesis, but also because English and Cultural Encounters

share many approaches. I would thus argue that the entire thesis could fall under the aegis of both programmes. However, in the following, I try to briefly present each chapter of the thesis in relation to both the English programme and the Cultural Encounters programme.

Chapter 1 As an introductory chapter to the IRFA that situates the law in its political context and presents the general structure of the law, I would argue this chapter falls under the aegis of either programme. However, if I had to impose a division, the religio-political contextualisation of the IRFA could fall under the English programme as an example of administration culture, whereas the examination of the structure and categories of the IRFA could perhaps fall under the Cultural Encounters programme.

Chapter 2 In this chapter, I would argue that the parts of the analysis that examine the IRFA's complicity with violence could fall under both programmes. The parts examining the problematics related to containing "universal" rights in law could be constructed to fall under the aegis of Cultural Encounters since these parts expose the cultural and political contingency of the human rights. However, I would also argue that the part of the analysis that examines the influence of the American rights tradition on the IRF policy discourse's interpretation of human rights is just as relevant to the English programme.

Chapter 3 I would argue this chapter falls under the aegis under both programmes.

As a final note on the formalities relating to the integration two different programmes at Roskilde University, it should be emphasised that I have had to relate to two different study guidelines with likewise different formal requirements. This means that I have been forced to find a middle way between the requirements of each of the programmes' study guidelines. In terms of the length of the thesis, I have thus had to find a compromise between the maximum of 60+25% pages required at the English Department and the minimum-maximum

range of 80-100 pages required at Cultural Encounters Department. As a compromise, I have chosen to more or less meet the minimum requirement at Cultural Encounters, thus exceeding the maximum page limit at the English Department only slightly. In relation to the Danish summary, I have, likewise, had to find a compromise between the 450 words (1 page) required at the English Department and the 2-3 pages required at the Cultural Encounters Department. Again, I have opted for the middle way, restricting the summary to 2 pages.

1 The Creation and Structure of the IRFA

A Christian Reaction to a Secular Bias in American Foreign Policy

In the introduction to the 2000 State Department Report on IRF, the IRFA is described as "a textbook case of democratic activism" and the result of "grassroots democracy."[3] Individuals and organisations from Christian, Buddhist and Jewish communities are represented equally as the impetus behind the legislation. The IRFA is thus presented as the result of relatively diverse religious lobbying efforts. However, most scholars agree that the IRFA is primarily the effect of Christian, especially evangelical, lobbyism. As one scholar contends: "More than any other force, it was activism on the part of US Christians—overwhelmingly evangelical Christians—that put religious persecution on the agenda of the State Department and the Congress in the mid-1990s" (Castelli 2005: 321f). The powerful Jewish Washington lawyer Michael Horowitz was another central character in the early movement trying to turn the global persecution of Christians into a political cause.[4] As we shall now see, the largely Christian impetus behind the movement that lead to the IRFA had a considerable effect on the composition of the bill that preceded the IRFA, the so-called "Wolf-Specter," in the sense that it had an almost exclusive focus on Christian victims of persecution abroad.

First, however, let us probe the question of why activists thought the persecution of Christians needed exceptional attention in American foreign policy. Religious freedom is not a new element in American foreign policy. In fact, the United States has reported on religious freedom since 1976 when the State Department started issuing Country Reports on Human Rights Practices. Providing information on human rights on 194 countries and territories, these reports have an entire section devoted to religious freedom (Pastor 2005: 713).

[3] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2000: 1).
[4] Horowitz is also an activist at Washington's Hudson institute.

Regardless of this place for religious freedom within the framework of the overall American human rights policy, the original supporters of the Wolf-Specter—particularly the bill's principal author, the aforementioned Horowitz—had a strong distrust of what they perceived as the State Department's secularist disdain for religion, especially evangelical Christianity (Farr 2008: 116). In Horowitz' mind, the State Department was deliberately ignoring the plight of Christians.

The success of the activism and public focus on persecution is reflected already in 1996, when the International Operations and Human Rights Subcommittee of the House of Representatives conducted hearings about the global persecution of Christians and Jews. Following those hearings, Congress adopted resolutions on the persecution of Christians and Baha'is in Iran (Pastor 2005: 715). In a climate of increasing concern for the persecution of Christians, such resolutions were, however, not deemed adequate enough. As a result of the strong distrust of the State Department, some members of Congress saw the need for a law requiring the United States to act (*ibid.*). The first bill to emanate from this climate was the "Freedom from Religious Persecution Act" of May 1997, which emerged out of a coalition led by Horowitz and Nina Shea.[5] Horowitz drafted the bill, which became known as the "Wolf-Specter" after its two Republican sponsors Congressman Frank Wolf and Senator Arlen Specter (Farr 2008: 113f).

The concern for the persecution of Christians is reflected in several elements of the Wolf-Specter bill. Firstly, the bill's supporters believed that immigration judges and the U.S. Immigration and Naturalization Service were discriminating Christians who had fled their countries of origin on grounds of religious persecution by turning them away without a full hearing "because they were deemed to have failed the legal standard of establishing "a credible fear" of persecution" (Farr 2008: 122). In response to this perceived injustice, the Wolf-Specter included a provision that amended the Immigration and Nationality Act. However, the immigration provisions turned out to be highly controversial. Not

[5] Nina Shea is a Roman Catholic and founder of Freedom House's Center for Religious Freedom. She also wrote the book *In the Lion's Den: A Shocking Account of Persecution and Martyrdom of Christians Today and How We Should Respond* (1997), which had a particularly widespread impact on the activism and advocacy of Christian organisations (Castelli 2005: 322). Shea was a U.S. Delegate to the UN Human Rights Commission between 1993-2001; a member of the U.S. Department of State Advisory Committee on Religious Freedom Abroad from 1997 until 1999, when she was appointed Vice Chair of the U.S. Commission on International Religious Freedom.

only was the evidence of bias against Christian applicants for asylum and refugee status largely anecdotal; critics also argued that the provisions heightened the status for victims of religious persecution, thus creating a hierarchy of human rights in which religious—and especially Christian—asylum seekers were favoured over victims of other human rights violations (*ibid.*). Therefore, the controversial immigration provisions did not make it into the IRFA. The IRFA only retained the more inconsequential provisions such as the required training of American immigration and consular officials on the subject of religious persecution (*ibid*: 126).[6]

Indications of a Christian Bias and the Missionary Critique

A Christian bias was also reflected in the Wolf-Specter's definition of "persecuted communities," which emphasised Christians to the apparent detriment of other persecuted minorities, most notably Muslims (Farr 2008: 115). Only two non-Christian communities were mentioned in the bill, Tibetan Buddhists and Iranian Baha'is. Since these particular communities have some of the most effective lobbyists in Washington, Director of the Office of IRF, Thomas Farr, suggests that their inclusion in the bill reflected a kind of pork-barrel approach to identifying victim groups (*ibid*: 122). [7] The apparent Christian-centric approach to the legislation, however, attracted accusations of Christian crusading and imperialism from both domestic and international critics. To critics the Wolf-Specter was the work of the Christian right, which from their perspective meant that the bill sought to advance its narrow, sectarian intentions such as clearing the way for missionaries (Farr 2008: 115).

Driven by a different vision of how the American government should address religious persecution, a group of congressional staffers led by John

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[6] See Section 602 ("Reform of refugee policy") and 603 ("Reform of asylum policy") of the IRFA (1998) for further detail.

[7] Writes Farr: "No doubt many Wolf-Specter supporters included Tibetan Buddhists and Baha'is in the bill because of genuine concern for those groups. And, much to their credit, the lobbyists for the two groups are among the most effective in Washington, largely because they are credible. But the rationale for naming only those victims and excluding others proved weak and unsustainable. The Baha'is, whose beliefs require them to avoid any involvement in partisan politics (and who did not endorse any of the IRF bills), expressed their concern when approached about inclusion in Wolf-Specter but did no object. As one Baha'i representative put it to me, including the Baha'is in the bill was clearly understood as "an opportunity to include other groups so the [Wolf-Specter] won't be seen as a Christian bill"" (Farr 2008: 333).

Hanford and consisting of Laura Bryant, William Inboden and Tom Delay produced the IRFA, which broadened the focus from the persecution of Christians to the persecution of all religious groups (Cozad 2005: 63; Farr 2008: 114). The bill was sponsored by Republican Senator Don Nickles and Democrat Senator Joseph Lieberman and introduced in the Senate in March 1998 before being passed and signed into law in October 1998. However, although this new law claimed to represent all persecuted religious minorities, the Christian-centric accusations directed at the Wolf-Specter were transposed to the IRFA (Farr 2008: 122). Matthew L. Fore (2002), for example, notes that Arab and Muslim critics detected a distinct Christian bias in the rhetoric of the rallying campaigns in support of the IRFA:

> Various conservative Christian groups such as the Southern Baptists, the National Association of Evangelicals, and the Family Research Council rallied to support IRFA initially because they were outraged that Christians were being denied the right to evangelize in other countries. Arab-American and American Muslim opposition to IRFA "was based on the concern that the bills were not part of a serious effort to provide balanced protections to the rights of religious minorities. Rather, they saw clear signs of ideological bias in the rhetoric of the legislation's advocates" (Fore 2002: 448).

In her study of the imposition of the IRFA in India, Laurie Cozad (2005) likewise detects a Christian bias in the data collected in the Annual State Department Reports on IRF. She contends:

> As such, at certain times and in certain contexts in the International Religious Freedom Act appears to privilege certain religious groups over others. This is clear as one looks at the language and the topical emphases of both the Commission and State Department Reports as well as public statements made by commissioners highlighting inconsistent policy decisions (Cozad 2005: 65).

In the study, Cozad notes two particular ideological trends that function to privilege certain religious groups over others: firstly, an evangelical concern with the protection of Christians and their right to proselytize; and secondly, an

unwillingness to address the issue of Israeli treatment of Palestinians. The latter position she attributes to the political influence of both evangelical Christians and neoconservatives (Cozad 2005: 67). More generally, Cozad finds the language of the State Department and Commission Reports disproportionately concerned with the persecution of Christians as well as Christian missionaries (*ibid*.). With regards to the State Department Reports on India, she notes that the documentation of Christian persecution consistently outweighs the documentation of Muslim persecution in spite of the Muslim minority being considerably larger[8] and the its persecution more severe.[9] This disproportionate representation is attributed to a practice of passive data collection, a method that seriously compromises the validity of all the Reports' evaluations of the status of religious freedom in each foreign country. Cozad quotes former director of research and deputy general counsel for the United States Commission on International Religious Freedom Jeremy Gunn to support this theory. To Gunn, the disproportionate emphasis on Christian persecution is due to the effective lobbying of Christian groups:

> Part of the reason for this is that [Christian] groups, they know about this act. They know a report is being issued, and they go and make noise about it. They will pick up the phone and tell the embassy and the embassy will record it. It's not malice or lack of concern by the State Department, people writing the report will write what they know about (Gunn cited in Cozad 2005: 65).

We thus see, that a Christian bias can be detected in the IRF policy discourse to this day. While this presents a general problem to the credibility of the IRFA, it also provides arguments for the critics who insist on perceiving the IRFA as an instrument in the Christian right's mission to convert the world to Christianity.

A Threat to Executive Power in American Foreign Policy

As mentioned, distrust of the State Department drove many of the key decisions in the construction of the Wolf-Specter. One big problem the bill had to circumvent

[8] In India, Christians make up approximately 2.3% of the population, whereas Muslims make up approximately 12% (Cozad 2005: 66).

[9] Cozad notes, for example, that in the three-year period 2002-2004, "more than 2,000 Muslims were killed as a result of communal violence, whereas the total number of Christian deaths did not exceed ten" (Cozad 2005: 66).

in order to secure the incorporation of religious freedom in American foreign policy is the President's executive prerogative to act in the United States' self-interest in American foreign policy. A one scholar notes:

> [T]he predominant pattern to have emerged over American history has been the rise of the Presidential office in the formulation of foreign policy and in the responsibility for American lives and interests abroad. This has been, and remains a controversial development in a system of government specifically designed to be one of limited powers and reciprocal restraints. But over the course of the republic, the presidency has been able to claim the existence of a synergy of development between the executive office and the policy sector of foreign policy. […] Foreign policy issues have been instrumental in the evolutionary transformation of American government into an extensive and centralized system of administration relating to the resources and actions of a world power (Foley 2008: 110).

In order to circumvent this executive power in foreign policy, the Wolf-Specter and its immediate successor[10] created an office of religious persecution monitoring, which was to be placed within the President's executive office, rather than in the State Department. The director of the office, who was to be appointed by the President, would have the authority to impose punitive sanctions against countries in violation of religious freedom without any substantive input from the State Department or any direction from the President's chief foreign policy official, the Secretary of State (Farr 2008: 117). The sanctions were to be automatic and based on a one-sanction-fits-all approach, and the only power the President would have over the Director was the authority to waive sanctions, but even then he was required to explain to Congress why a waiver was necessary to protect American national security (*ibid.*). As Thomas Farr has remarked: "Horowitz wrote his religious persecution bill to make punitive actions automatic and to bypass the State Department altogether" (*ibid.*).

The Wolf-Specter's threat to executive power in American foreign policy was a strong motive in both the Clinton administration and the State Department's opposition to the bill (Farr 2008: 118). IRFA co-sponsor Republican senator Don

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[10] The original Wolf-Specter bill was introduced in May 1997, but then amended and reintroduced in September 1997 (Farr 2008: 117).

Nickles was also a prominent opponent of the Wolf-Specter, especially its provisions on mandatory punitive sanctions. His opinion—which was echoed by the State Department—was that the bill's approach to punitive sanctions would not only be counterproductive in convincing foreign governments to support religious freedom; it would also, eventually, lead to repercussions against the very minority groups the bill was trying to protect.[11] The Wolf-Specter also met strong opposition from American businesses and corporations that exported their products to countries potentially subject to sanctions.

Although the revised version of the Wolf-Specter passed 375-41 in the House on May 14, 1998, it "was known to have little chance in the Senate" (Farr 2008: 114). Realising this, Horowitz and his supporters transferred their hope to the new kid in Washington, the IRFA, which also sought to establish an agency outside the State Department, namely, the independent United States Commission on International Religious Freedom (*ibid*: 118). In the wake of the Wolf-Specter's failure, Horowitz started lobbying vigorously for the Commission. His efforts helped secure its ample funding ($3 million per year), a nine-member staff completely independent of the State Department, as well as a mission reaching considerably beyond fact-finding (*ibid*: 120). Let us now turn to a brief examination of all entities established by the IRFA.

Entities Mandated by the IRFA

The IRFA established three new entities to investigate religious freedom around the world. Firstly, the law mandated the creation of an Office on International Religious Freedom within the State Department. According to the law, the office's mission is to promote religious freedom as a core objective of American foreign policy. The office is headed by an Ambassador at Large for International Religious Freedom. The Ambassador is appointed by and must serve as principal adviser to the President on issues pertaining to religious freedom. The Ambassador is, furthermore, responsible for the State Department's Annual Report on International Religious Freedom (IRFA 1998: Section 101). This report

[11] Testimony before the Foreign Relations Committee, Senator Don Nickles, Congressional Testimony, 12 May 1998. Internet: http://www.highbeam.com/doc/1P1-28839918.html (19 Oct. 2009).

has two components: one describing the status of religious freedom in each foreign country and another detailing the United States' actions and policies in support of religious freedom abroad. The State Department uses the report to identify "particularly severe" violators of religious freedom (IRFA 1998: Section 102). The IRFA requires the report be submitted to Congress annually on September 1st (IRFA 1998: Section 101).

The first Ambassador at Large was Robert Seiple, a Republican and evangelical Christian, who held the position for two years under Clinton's presidency (1998-2000). When Seiple's successor John V. Hanford assumed his position in May 2002, the position had been vacant for nearly 20 months during which Seiple's deputy Thomas F. Farr had run the office (Farr 2008: 163). Because the Office of International Religious Freedom had a hard time getting accepted within the State Department, Farr interprets the delayed appointment as an expression of the State Department's long-established habit of resisting unwanted congressional mandates (*ibid*: 162). In the words of Farr, the function the Ambassador at Large represented was "simply not viewed as important enough to treat as significant to the conduct of U.S. foreign policy, let alone to the protection of U.S. national security" (*ibid*: 163).

The second entity mandated by the IRFA was a bipartisan Commission on International religious freedom to monitor religious persecution abroad and serve as a "watchdog" in relation to the State Department (Farr 2008:156). The Commission consists of nine members, three of which are appointed by the President while the six others are appointed by the two Houses of Congress. Its members are "not being paid as officers or employees of the United States" (IRFA 1998: Section 201(b)(1)). The Commission's functions are primarily monitorial, evaluative and advisory: it must monitor facts and circumstances in relation to violations of religious freedom in foreign countries and evaluate United States Government policies in response to such violations. Furthermore, the legislation requires that the Commission must "consider and recommend options for policies[12] of the United States Government with respect to each foreign country

[12] The options for policies that the Commission may recommend include: "diplomatic inquiries, diplomatic protest, official public protest demarche of protest, condemnation within multilateral fora, delay or cancellation of cultural or scientific exchanges, delay or cancellation of working, official, or state visits, reduction of certain assistance

the government of which has engaged in or tolerated violations of religious freedom" (IRFA 1998: Section 202). Finally, the law requires that the commission "must submit a report to the President, the Secretary of State, and Congress setting forth its recommendations for United States policy options based on its evaluations" (IRFA 1998: Section 203).

Laurie Cozad (2005) notes a major problem stemming from the creation of two separate entities charged with the joint implementation of the IRFA. The division of labour between the Commission and the State Department office is far from clear-cut and IRFA offers no explicit description of each unit's responsibilities. This lack of clarity in the division of labour and responsibility, Cozad argues, has allowed the Commissioners to set their own agenda in their reports and thus led to an exclusive focus on the few countries they have deemed the most severe violators of religious freedom. In doing so, the Commission has foregone its primary function as a critical assessor of State Department policies and reports on international religious freedom (Cozad 2005: 61).

The third and final unit mandated by the IRFA is a Special Advisor on Religious Persecution for the National Security Council to "serve as a liaison with the Ambassador at Large for International Religious Freedom, the United States Commission on International Religious Freedom, Congress and, as advisable, religious nongovernmental organizations" (IRFA 1998: Section 301).

Definition of Religious Freedom and Violations Thereof

As Thomas Farr (2008) has noted that both the Wolf-Specter and the IRFA focus more on persecution and its reduction rather than the promotion of religious freedom. This negative focus is reflected in the IRFA's third section entitled "Definitions" in which a definition of religious freedom is glaringly absent while both "violations of religious freedom"[13] and "particularly severe violations of

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funds, termination of certain assistance funds, imposition of targeted trade sanctions, imposition of broad trade sanctions, and withdrawal of the chief of mission" (IRFA 1998: Section 202).

[13] The IRFA defines 'violations of religious freedom' as follows:

> The term "violations of religious freedom" means violations of the internationally recognized right to freedom of religion and religious belief and practice, as set forth in the international instruments referred to in section 2(a)(2) and as described in section 2(a)(3), including violations such as—
>
> (A) arbitrary prohibitions on, restrictions of, or punishment for—

religious freedom”[14] are defined and distinguished from one another. Religious freedom is thus only defined negatively in the “Definitions” section, namely, in relation to how it may be violated.

The only explicit definition of religious freedom can be found in the law’s second section entitled “Findings; policy” where the two virtually identical articles Article 18 of the UDHR[15] and Article 18.1[16] of the ICCPR are cited under the third finding. The IRFA does not attempt to define religious freedom in its own terms, a circumstance that at least on the surface supports the IRF policy discourse’s claim to be grounded in the authority of international human rights instruments.

The main difference between the two definitions of violations of religious freedom is their degree of intensity, the arbitrariness of the former as well as the “systematic, ongoing, egregious” nature of the more severe kind. It is, however, worth noting that in spite of the IRFA defining “particularly severe violations of religious freedom” as “egregious,” acts that may equally be considered egregious such as “torture,” “mutilation,” “rape,” “enslavement,” “murder,” and “execution” are also included as examples of simply “violations of religious freedom.” In that sense, one could accuse the boundary between the two categories of being somewhat unclear since their definitions make it possible to categorise “particularly severe violations” as simply “violations.” The IRFA delegates the

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(i) assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements;
(ii) speaking freely about one’s religious beliefs;
(iii) changing one’s religious beliefs and affiliation;
(iv) possession and distribution of religious literature, including Bibles; or
(v) raising one’s children in the religious teachings and practices of one’s choice; or

(B) any of the following acts if committed on account of an individual’s religious belief or practice: detention, interrogation, imposition of an onerous financial penalty, forced labor, forced mass resettlement, imprisonment, forced religious conversion, beating, torture, mutilation, rape, enslavement, murder, and execution. (IRFA 1998: Section 3(13)).

[14] The IRFA defines ‘particularly severe violations of religious freedom’ as follows:

The term “particularly severe violations of religious freedom” means, systematic ongoing, egregious violations of religious freedom, including violations such as—
(A) torture or cruel, inhuman, or degrading treatment or punishment;
(B) prolonged detention without charges;
(C) causing the disappearance of persons by the abduction or clandestine detention of those persons; or other flagrant denial of the right to life, liberty, or the security of persons (IRFA 1998: Section 3(11)).

[15] Article 18 of UDHR reads: “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.”

[16] Article 18.1 of the ICCPR reads: “Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

power to decide which instances of religious persecution count as "particularly severe violations" and which do not, ultimately resides with the President. The IRFA requires that the President must designate a country a "Country of Particular Concern" (CPC), if he determines that it is engaged in "particular severe violations of religious freedom" (IRFA 1998: Section 402(a)(2)).[17] Since a CPC designation, as we shall see in the following section, has policy consequences in terms of severity, the vague distinction between the two kinds of violations to some extent challenges the overall credibility of American IRF foreign policy. However, one could argue, that the independent Commission counterbalances this structural weakness in virtue of its function to evaluate government IRF foreign policy (including CPC designations) and recommend policies and countries eligible for CPC designation. In the past, the Commission has called out the United States Government for not designating its ally Saudi Arabia as CPC. As of today, the Commission faults the Government for not including the countries Iraq, Nigeria, Pakistan, Turkmenistan and Vietnam on its CPC list.[18]

Another critique that can be directed at the definition of the two kinds of violations of religious freedom in the IRFA is that it can be difficult to determine motivations in the discrimination of people. The definitions do not clearly define what constitutes violations of religious freedom, nor do they define how such violations can be distinguished from for example ethnic conflict and civil war. Moreover, one can also contest the need to separate the violations as specifically religious, since all of the violations described would also fall under the general hat of human rights violations.

Presidential Actions in Response to Violations

After determining which countries violate religious freedom and to what degree, the IRFA requires that the President must, in consultation with the secretary of state, the Ambassador at Large, the Commission and the National Security

[17] According to the section "Religious Freedom" on the United States Government website, however, the President has delegated the task of CPC designation to the Secretary of State. Internet: http://www.state.gov/g/drl/irf/index.htm (19 Oct. 2009).

[18] The current list of the Commission's CPC recommendations is available on the Commission's website: http://www.uscirf.gov/index.php?option=com_content&task=view&id=1456&Itemid=59 (19 Oct. 2009). The State Department's current list of CPC designations is available on the State Department's website: http://www.state.gov/g/drl/irf/c13281.htm (19 Oct. 2009).

Council Special Advisor, design a response to those countries. For this purpose, the IRFA lists fifteen enumerated Presidential actions.[19] The Presidential actions range from a private demarche to a whole menu of sanctions (Presidential actions 9-15). If a country is designated a CPC, the President has a 90-day deadline from the designation date to carry out "one or more of the Presidential actions described in paragraphs (9) through (15) of section 405(a)". CPC designation thus triggers punishment in the form of some kind economic sanction. There are, however, two exceptions to this rule: an "Exception for ongoing Presidential action under this act" (IRFA 1998: Section 402 (c)(4)) and an "Exception for ongoing, multiple, broad-based sanctions in response to human rights violations" (IRFA 1999: Section 408 (c)(5)).[20] Moreover, appropriate "commensurate action" is allowed if it furthers American religious freedom policy (IRFA 1998: Section 405(b)).

Recognising that punishment may have adverse effect on engagement, the IRFA also includes a clause requiring that the President, in determining whether to sanction a country, seeks to minimize any adverse impact on the targeted country's population as well as the humanitarian activities of American and foreign nongovernmental organisations in the country in question (IRFA 1998: Section 401(c)(2)). The IRFA does not, however, specify how such adverse

[19] The fifteen enumerated actions are (IRFA: Section 405(a)):

1. A private demarche;
2. An official public demarche;
3. A public condemnation;
4. A public condemnation within one ore more multilateral fora;
5. The delay or cancellation of one or more scientific exchanges;
6. The delay or cancellation of one or more cultural exchanges[19];
7. The denial of one or more working, official, or state visits;
8. The delay or cancellation of one or more working, official, or state visits;
9. The withdrawal, limitation or suspension of United States development assistance in accordance with section 116 of [the Foreign Assistance Act of 1961];
10. Directing the Export-Import Bank of the United States, the Overseas Private investment Corporation, or the Trade and Development Agency not to approve the issuance of […] guarantees, insurance, extension of credit, or participation in the extension of credit […];
11. The withdrawal, limitation, or suspension of United States security assistance in accordance with section 502B of [the Foreign Assistance Act of 1961];
12. Consistent with section 701 of [the International Financial Institutions Act of 1977], directing the United States executive directors of international financial institutions to oppose and vote against [specified] loans […];
13. Ordering the heads of the appropriate United States agencies not to issue any […] specific licenses, and not to grant any other specific authority […] to export any goods or technology to the specific foreign government […];
14. Prohibition [of] any United States financial institution from making loans or providing credits totalling more than $10,000,000 in any 12-month period to the specific foreign government […];
15. Prohibiting the United States Government from procuring or entering into any contract for the procurement of, any goods or services from the foreign government.

[20] Both of these exceptions have been quoted in accordance with the amendments in Section 2 "Technical corrections" of the Amendment of 1999 (U.S. Public Law 106-55).

impact may be minimized. This lack of specification weakens the IRFA's emancipatory aim of protecting persecuted religious minorities by coercing foreign governments into respecting their rights.

It should also be noted that actions (9)-(15) are not fixed responses. Reacting to the strong opposition against the automatic punitive sanctions suggested by the Wolf-Specter, the IRFA's approach to sanctions allowed for flexibility. As Nickles explains in a Congressional testimony in May 1998:

> We provide the President with a menu of options that makes it less likely that he will waive action and more likely that he will take action. We need to keep our eye on the goal. The goal of our bill is NOT to punish countries, but to change behavior, and if it is more likely that the President will take an action then it is more likely that behavior will change.21

The Presidential waiver is secured in the IRFA's Section 407 according to which the President may waive Presidential actions 9-15 or any commensurate action in substitution thereto on one of the three following conditions:

> (1) the respective foreign government has ceased the violations giving rise to the Presidential action;
> (2) the exercise of such waiver authority would further the purposes of this Act; or
> (3) the important national interest of the United States requires the exercise of such waiver authority (IRFA 1998: Section 407).

It is especially the third condition that Nickles sees as a threat to the effectiveness of the IRFA. The term "national interest" is flexible enough to make the argument for a Presidential waiver relatively easy. Nickles was so keen to minimise the chances of waived action, because he feared it could easily cause the State Department to appear both inconsistent and hypocritical in its international religious freedom policy if not all, especially severe, violators of religious freedom were punished.[22] We thus see that the Presidential waiver carries with it the

[21] Testimony before the Foreign Relations Committee, Senator Don Nickles, Congressional Testimony, 12 May 1998. Internet: http://www.highbeam.com/doc/1P1-28839918.html (19 Oct. 2009).
[22] *ibid*.

possibility of severe violations of religious freedom being overridden by unsubstantial category of "national interest."

A Twofold Strategy: Promote and Punish

As mentioned, Thomas Farr (2008) notes that neither the Wolf-Specter bill nor the IRFA had the promotion of religious freedom as a major goal. In stead, both bills focused on identifying and reacting to governments engaging in religious persecution (Farr 2008: 114). This partiality for religious persecution over religious freedom is perhaps reflected in the previously mentioned absence of "religious freedom" in the statute's list of definitions (IRFA 1988: Section 3). In spite of such alleged favouritism, the IRFA does not altogether dispose of the promotion of religious freedom. Rather, the statute defines American religious freedom policy as distinctly twofold: the United States must not only "oppose violations of religious freedom that are or have been engaged in or tolerated by the governments of foreign countries;" it must also "promote the right to freedom of religion in those countries through the actions described in subsection (b)" (IRFA 1998: Section 401(a)(1)(A)).

Title V of the IRFA is devoted to the promotion of religious freedom. In line with his criticism of the IRFA for focusing more on reducing persecution rather than promoting religious freedom, Farr, however, characterises Title V as a mere "rhetorical homage" to religious freedom, noting the title's brevity as well as its equivocal and nonbinding language (Farr 2008: 114). The title's ambiguous language is, for example, reflected in the formulation: "in the provision of foreign assistance, the United States should make a priority of promoting and developing legal protections and cultural respect for religious freedom" (IRFA 1998: Section 501(a)(2)). While such formulations may sound promising, neither "legal protections" nor "cultural respect" are defined, which potentially weakens the implementation of the title.

The central components of Title V are amendments to laws on foreign aid, international broadcasting, international exchanges, and foreign services to incorporate the promotion of religious freedom as a goal (IRFA 1998: Section

501-504). Similar provisions are made for American diplomatic missions abroad. According to Section 106 diplomatic missions should develop "a strategy to promote respect for the internationally recognized right to freedom of religion," as well as "give particular consideration to those programs and candidates deemed to assist in the promotion of the right to religious freedom" in their allocation and recommendations for allocations of funds from the United States Government (IRFA 1998: Section 106). That diplomatic missions should "give particular consideration" to matters concerning religious freedom plays into the "hierarchy of human rights" criticism that accuses the IRFA of favouring religious freedom over other human rights and which is examined in depth in the subsequent chapter of this thesis.

In this chapter I have attempted to give a general introduction to the IRFA by examining its origins and structure as well as some of the common criticisms that scholars have directed at it. In doing so, I have found that a Christian bias, alleged passive data collection, as well as unclear distinctions between the categories "particularly severe violations of religious freedom" and "violations of religious freedom" all present challenges to the credibility of the IRF policy discourse. The general introduction over, I now turn to the first step in my aim to unmask the IRF policy discourse's relation to violence, sovereignty and domination: a deconstructive interrogation of the foundation of the IRFA's authority and its relation to violence.

2 Authority and Violence in the IRFA

Derrida's Critique of Legal Authority

As mentioned in the introduction, one of the main functions of the IRFA is "to authorize United States actions in response to violations of religious freedom in foreign countries."[23] As a first step to unmask the link between violence, law and sovereignty in the IRF policy discourse, this chapter starts out by deconstructing the political authority of the IRFA. In order to do so, I interrogate the IRF policy discourse's answer to the question: *what authorises the IRFA?* First, however, it is necessary to become acquainted with the critique framing this chapter's analytic inquiry: Derrida's critique of authority.

In *Force of Law: The "Mystical Foundation of Authority"* (1992b), Derrida argues that the authority of is fundamentally ambiguous and open to question because the authority that grounds law is only legitimised after the law has been instituted. In other words, the authorisation of law is tautological; the law has authority because it is law. This means that the foundation of law, paradoxically, is non-legal. Says Derrida:

> Since the origin of authority, the foundation or ground, the position of the law can't by definition rest on anything but themselves, they are themselves a violence without ground. Which is not to say that they are in themselves unjust, in the sense of "illegal." They are neither legal nor illegal in the founding moment (Derrida 1992b: 14).

The founding moment of law thus exists outside of the structure of law, or, phrased differently, does "not recognize existing law in the moment that it founds another" (Derrida 1992b: 40). Moreover, since it "could not itself have been

[23] Opening statement of the IRFA.

authorised by any anterior legitimacy" (*ibid*: 6), the founding moment is an illegitimate act of discursive violence. This is what Derrida means when he calls the position of the law "a violence without ground." Moreover, since the founding moment of law exists outside of the structure of law, the identity of law is constituted by something it simultaneously excludes. The originary violence thus occupies a position of undecidability with regards to the law. It is at the same time inside and outside the law, and cannot be fully incorporated into it. This position of undecidability prevents the law from forming a closed, complete identity and makes the structure of law fundamentally *aporetic* (Newman 2005: 93). The structure of law is thus haunted by an irreconcilable internal disjunction, which makes the legitimacy of all laws and legal decisions fundamentally ambiguous. Derrida's critique of authority is, consequently, useful in the interrogation of political and institutional discourses that claim to derive their authority from law. By interrogating the foundation of the IRFA, we may thus approach a critique of the authority sanctioned by this American foreign policy law.

The Presupposed Legitimacy of International Human Rights

In consulting the IRF policy discourse, it quickly becomes clear that the discourse claims to be authorised by an anterior legitimacy. As a federal statute with foreign subjects, the IRFA depends on the international human rights regime for legitimacy. The law cites and quotes several international human rights instruments and is, for the most part, cast in the language of human rights. The introductions to the State Department Reports on IRF consistently claim that, as the first Ambassador at Large Robert Seiple phrases it, the IRFA "draws on the internationally accepted belief in the inviolable dignity of the human person and of the universal rights that flow from that belief."[24] Moreover, we are told by IRFA co-writer William Inboden that the IRFA not only draws on but is meant to strengthen the international human rights regime: "IRFA seeks to strengthen, rather than undermine, international institutions such as the United Nations" (Inboden in Hackett, Silk & Hoover 2000: 14). The discourse thus also recognises

[24] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 1999). Pp. 2.

that the United States is acting within the context of an international human rights effort when it enforces the law.

Does this reliance on an anterior legitimacy then mean that the IRFA is immune from a Derridean critique of authority? Derrida's reply would be: no. "Even if the success of performatives that found law or right […] presupposes earlier conditions (for example in the national or international arena), the same "mystical" limit will reappear at the supposed origin of said conditions, and the origin of their dominant interpretation" (Derrida 1992b: 14).

Since the presupposed anterior condition authorising the IRFA is the international human rights regime, it is thus the foundation and discursive limits of international human rights that must be questioned and challenged in a Derridean deconstruction of the IRFA's authority. Moreover, since we are dealing with an American law that, in order to influence the realisation of religious freedom on the global stage, establishes a legal framework only for this right, what must also be interrogated is the limits and inconsistencies in the IRF policy discourse's interpretation of international human rights. The two questions I ask to interrogate the authority sanctioned by the IRFA are thus: *what are human rights founded on according to the IRF policy discourse, and how is this foundation deconstructable?* and: *what authorises the IRF policy discourse's interpretation of international human rights and religious freedom?*

Since the IRF policy discourse's interpretation of international human rights is based primarily on the UDHR, I start out by interrogating the foundations as well as discursive limits and assumptions of human rights as they are contained in the UDHR.

The UDHR's Doctrine of Inherence: Implied Natural Rights

We may start out by noting that the UDHR is an outright secular document. The Declaration does not attempt to authorise human rights with references to theological or metaphysical natural laws. Metaphysical concepts such as "natural rights," "human nature" and "God" are thus completely absent in the Declaration. Johannes Morsink's (1999) comprehensive investigation of the drafting process

has also shown that the majority of the drafters of the UDHR were not interested in finding the alleged metaphysical foundations of the "inherent" rights listed in the Declaration. Rather, "they were content to just find them where the theists say God placed them, in the human person" (Morsink 1999: 294). The phrase "by nature" did appear in Article 1 for a while as a possible substitute for God in the sentence: "They are endowed [by nature] with reason and conscience […]." Even so, the phrase ended up being "deleted in a bargain to avoid a reference to God" (*ibid*: 284f).

So what legitimises the UDHR, if not a metaphysical absolute? Although the UDHR does not explicitly reference nature, this to some analysts does not mean that its drafters saw no connection between human rights and human nature. Scholars such as Johannes Morsink (1999) and Mary Ann Glendon (2001) have still noted that the UDHR has an inescapable natural law connotation. This connotation is especially evident in the choice of words in the following two excerpts from the UDHR:

> **The first recital of the Preamble:** "Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world" (UDHR 1948: Preamble).
> **Article 1:** "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" (UDHR 1948: Article 1).

Most scholars agree on the interpretation of human dignity as the universal norm that legitimises human rights in the UDHR. For example, one scholar notes: "Dignity of human beings is […] the source from which the validity and universal authority of human rights is derived" (Schwartländer quoted in Dicke 2002: 119). The UDHR, however, does not attempt to define human dignity. Dignity remains a supposed transcendent essence inherent in all human beings. Glendon argues that the UDHR's view of dignity as "inherent" in all humans suggests that the UDHR traces its legitimacy not just in a universal norm, but a norm in human nature. Not only the "inherent dignity" suggests this foundation of rights in human nature, she also credits the notions that human beings are "born" free and equal in dignity and

rights as well as "endowed" with reason and conscience for having the same suggestive effect (Glendon 2001: 175).

Morsink has argued along the same lines, noting that the UDHR contains words that indicate that people have rights "by virtue of their humanity and not from external causes, like acts of governments, courts, legislatures, or international assemblies" (Morsink 1999: 190). To Morsink, these indicative words are "inherent," "inalienable" and "born"—all of which make up what he terms the "inherence view of human rights." The inherence doctrine holds that dignity is "inherent" in all members of the human family because we are "born" with "equal and inalienable" rights. "Inalienable" means "unable to be taken away from or given away by the possessor."[25] The inherence view thus holds that since we are born with our rights, no person and no political or social body or organ could have given us these rights. At the same time, these persons or organs cannot take these rights away from us (*ibid*: 293). The doctrine of inherence thus points towards some sort of connection between nature and human rights while at the same time acknowledging the absence of notions such as "natural rights," "natural law" and "human nature" in the UDHR (*ibid*: 290).

The Language of the UDHR: Roots and Discursive Assumptions

What is clear, then, is that although it professes to universality, the UDHR is written in a certain language, the key concepts of which carry with them certain discursive assumptions about human nature, society and the human good that can be deconstructed. The UDHR has roots in Western Enlightenment philosophy thus exemplifies Derrida's assertion that: "The law is neither manifold nor, as some believe, a universal generality. It is always an idiom" (Derrida 1992a: 210). Key concepts noted in the section above such as "dignity," "inherent," "inalienable" and the idea of being "born" into rights are all Enlightenment terms (Dicke 2002: 113; Morsink 1999: 293). For example, the first sentence in Article 1: "All humans are born free and equal in dignity and rights," reminds us of Rousseau's Social Contract of 1762, which opens with the sentence: "Man is born free, yet

[25] New Oxford American Dictionary (second edition 2005).

everywhere he is in chains." Article 1's first sentence is, moreover, moulded after the French Declaration of the Rights of Man and of the Citizen of 1789, which states that: "Men are born and remain free and equal in rights" (Morsink 1999: 290f). The language of the UDHR is thus clearly rooted in the Enlightenment rights tradition, which as we saw in the previous section is reflected in its implied foundation of human rights in the concept of (human) nature.

Another example of the influence of language on the discursive assumptions and exclusions in the UDHR is the articulation of the term "rights" itself. Human rights are expressed as "rights" rather than as "wrongs." For example, the human rights discourse expresses the norm "it is wrong to kill me" by saying "I have a right to life." This choice carries with it subtle implications of meaning. First of all, it shows that the human rights discourse's perception of the norm is clearly subjective. The fact that it is possible to talk about "your" rights and "my" rights indicate a certain ownership—that humans have rights in their possession. This further implies that we have an active role in enforcing our rights and consequently also have the power to waive them. Some scholars attribute this waiver to the reason Locke articulated rights as "inalienable" (Taylor 1999: 127). Rights needed to be conceived of as "inalienable" in order to prevent governments from persuading its citizens to "freely" give up their rights.

The subjective humanism that the notion of human rights is based on also stresses the incomparable importance of the human agent to the exclusion of any other non-human subject. The notion that the human has a higher status and dignity than anything else in cosmos has roots in Christianity and certain strands of ancient thought. The perspective centres everything on the individual, thus making his self-control and freedom of utmost importance. In that sense, the defence of "human rights" is inextricably linked to this exaltation of human agency in the Western mind (Taylor 1999: 135f). Moreover, subjective humanism's emphasis on the individual's freedom and right to consent to the political arrangements under which he lives also ties human rights to Western democratic traditions (*ibid*: 128). We thus see that the underlying philosophy of human rights both gives primacy to the individual and is tied to a specific form of government.

The Marginal Areas in Human Rights

The point of insisting on the contextual embeddedness of human rights is not to dismiss the concept of "rights" altogether. On the contrary, Derrida insists on the ongoing and universal importance of human rights as a standpoint from which the sovereign state can be challenged: "We must [*il faut*] more than ever stand on the side of human rights. *We need [il faut] human rights*" (Derrida quoted in Newman 2005: 97). To Derrida, however, this is not just a question of affirming the same set of "original" human rights. Rather, the ontological foundations of rights must be constantly challenged, questioned and rethought. Only by leaving the discourse of human rights structurally open, may it be further strengthened by the inclusion of its "marginal areas:"

> Nothing seems to me less outdated than the classical emancipatory ideal. We cannot attempt to disqualify it today, whether crudely or with sophistication, at least not without treating it too lightly and forming the worst complicities. But beyond these identified territories of juridico-politicization on the grand geo-political scale, beyond all self-serving interpretations, beyond all determined and particular reappropriations of international law, other areas must constantly open up that at first can seem like secondary or marginal areas. This marginality also signifies that a violence, indeed a terrorism and other forms of hostage-taking are at work (the examples closest to us would be in the areas of laws on the teaching and practice of languages, the legitimization of canons, the military use of scientific research, abortion, euthanasia, problems of organ transplant, extra-uterine conception, bio-engineering, medical experimentation, the social treatment of AIDS, the macro- or micro-politics of drugs, the homeless, and so on, without forgetting, of course, the treatment of what we call animal life, animality. […]) (Derrida 1992b: 28).

Before 1945 when the term "human rights" became predominant instead of "rights of man," women and sexual and ethnic minorities embodied such marginal areas (*ibid*.). And if we go even further back, we may note that the rights guaranteed in the Magna Carta of 1215 were not even rights of men as such, but special rights or privileges to be enjoyed by specific persons with specific belongings such as

peers, feudal lords, and the clergy. Individual rights that were abstracted from specific belongings only emerged after the formation of sovereign states dissolved *corps intermédiares* (Yasuaki 1999: 110).

The history of human rights thus shows rights as evolving matter, rather than static, essential truth. In looking to the future, Derrida particularly emphasises animals, noting that an inclusion of norms for the treatment of animals in our emancipatory rights discourse would demand a total reconsideration of "the metaphysico-anthropocentric axiomatic that dominates, in the West, the thought of just and unjust" (Derrida 1992b: 19). One way of getting around this could be looking the expression of human rights norms in other cultures with different conceptual languages. This has been done by Charles Taylor (1999), for example, who emphasises Buddhism in Thailand as an alternative way to arrive at human rights norms. Instead of founding human rights in the dignity of the human person, Thai Buddhists ground their human rights outlook in the doctrine of non-violence. Since this doctrine entails a non-predatory stance towards the environment in its entirety, it leaves the discourse of non-violence structurally open to the inclusion of, for example, animal and even plant life (Taylor 1999: 134f).

Another marginal area or limit concept of human rights is the refugee fleeing persecution (political, ethnic or religious) whose cause is compromised by the UDHR's limited containment of the right to move between countries and the right to asylum. Article 13 secures the individual's right to *leave* any country but does not secure his right to *enter* another: "(1) Everyone has the right to freedom of movement and residence within the borders of each State. (2) Everyone has the right to leave any country, including his own, and to return to his country." This right is insufficient for the individual fleeing persecution since it is not followed up with the right to be granted asylum. Rather, Article 14 grants the persecuted individual the ambiguous right to "seek and enjoy" asylum: "Everyone has the right to seek and enjoy in other countries asylum from persecution." It is thus a question of interpretation whether or not the persecuted individual's right to be granted asylum is secured in Article 14. However, it was certainly not the intention of the United Kingdom delegate, I. Corbet, who penned the phrase "and to enjoy asylum." During the drafting process she explained that her intention with

the phrase “was not to grant to a person fleeing persecution the right to enter any and every country but to ensure for him the enjoyment of the right of asylum once that right had been granted him” (Corbet quoted in Morsink 1999: 78). What may be concluded from Article 13 and Article 14 is that the right to move between countries and the right to be granted asylum are not sufficiently secured in the UDHR, and this circumstance keeps refugees fixed in the marginal areas of the international human rights discourse. National borders and immigration laws would thus impose a boundary on the figure of human rights that separates and excludes the refugee from its order. The problem the refugee poses to the universality of human rights in their contemporary configuration can be understood by reference to Giorgio Agamben’s (1998) discussion of biopolitics and the rights of man.

Agamben borrows the term biopolitics from Foucault to refer to how natural life is inscribed into the juridico-political order of the nation-state. Agamben shows that natural life is placed at the foundation of the modern nation-state in the connection between birth and nationality. This connection is at the same time concealed and natural life is excluded as it “vanishes into the figure of the citizen” (Agamben 1998: 127). The foundation of the modern nation-state is thus aporetic in the sense that it is founded on something that it simultaneously excludes.

To Agamben, the concept of the refugee represents a radical crisis in the state order by breaking down the originary fiction of modern sovereignty, namely, the supposed “continuity between man and citizen, *nativity* and *nationality*” (Agamben 1998: 131). The refugee brings light to the difference between birth and nation, and thus causes “the secret presupposition of the political domain—bare life—to appear for an instant within that domain. In this sense, the refugee is truly “the man of rights,” as Arendt suggests, the first and only real appearance of rights outside the fiction of the citizen that always covers them over” (*ibid.*). Agamben thus exposes the incapacity of the system of the nation-state to protect the so-called “inalienable” rights of man “at the moment in which they can no longer take the form of rights belonging to citizens of a state” (Agamben 1998: 126).

Agamben observes a contradiction in the way the United Nations and humanitarian organisations confront the problem of refugees and human rights protection: in order to represent and protect the refugee they separate the rights of man (that once made sense as the presupposition of the rights of the citizen) from the rights of the citizen. In other words, they conceive the refugee in terms of his bare life and not in terms of his citizenship. Humanitarianism is thus separated from politics—a separation that is reflected in the definition of the United Nations' High Commission for Refugees' mission, which, according to statute, is not to have a political but rather a "solely humanitarian and social" character (Agamben 1998: 132f). In thus grasping the refugee problem as a "humanitarian" concern, rather than a civil and political rights concern, the United Nations and humanitarian organisations reproduce the refugee problem by operating in perfect symmetry with state power that isolates bare life at the foundation of sovereignty (*ibid*: 133f). Like Derrida, Agamben suggests that the inclusion of the marginal refugee in the figure of human rights would require a total reconsideration of the fundamental axioms that produce the exclusion. We would thus have to reconsider in totality the fundamental categories of the nation-state that, as we have seen, function to exclude bare life from its order. These categories would include the birth-nation and the man-citizen links (*ibid*: 134).

What should be clear by now is that human rights are neither universally applicable nor absolute essences. The construction of human rights as "universal" and "absolute" hides their fundamental instability by removing them "from the sphere of mundane and sectional interests, from the ebb and flow of historical change and contingency" (Harris 1996: 6f). The above discussion of excluded marginal areas in the international human rights discourse have served to show the importance of questioning, challenging and rethinking the foundations and discursive limits of human rights. Only through such deconstructive interrogation may the discourse of human rights be left structurally open towards the inclusion of its margins. With this in mind, I now turn to the interrogation of the foundations as well as the discursive limits and assumptions of human rights as they are constructed in the IRF policy discourse's interpretation of the UDHR.

The IRF Policy Discourse's Theist Interpretation of the UDHR

The IRF policy discourse sees human rights as logically prior to and morally superior to the state. The introduction to the 2000 State Department Report on IRF asserts that the very universality of human rights depends exactly on their disassociation from the social and political realm:

> [M]ost democratic traditions recognize that fundamental rights are not "grants" from the state or society but exist prior to both. If they do not—if human rights are in fact created by governments—then they cannot be said to be "universal" as the world acknowledged them to be in the 1948 Universal Declaration. […] If governments were the source of rights, governments could abolish them.26

Had governments created rights, we would thus not be universal and they would be in danger of being abolished. The 2001 introduction further asserts: "The belief that fundamental human rights are not created by, but exist prior to, governments is reflected in international instruments as well."[27] These statements are certainly in congruence with the doctrine of inherence expressed in the UDHR, according to which governments cannot take away the individual's human rights because they are inscribed in human essence. Had governments, on the other hand, created these rights, they rights would be nothing more than contingent articulations conditioned by cultural, political, economic circumstances; as easily granted as taken away.

The IRF policy discourse thus addresses the aporia—the logical disjunction between the contextual embeddedness of rights and their declared universality—in the structure of the international human rights discourse. Unlike the UDHR, however, the IRF policy discourse tries to overcome the aporia by explicitly articulating a metaphysical "source" of universal rights now that social and political bodies and institutions have been disqualified.

The introduction to the first State Department Report is especially comprehensive on the subject of the source of human rights. Here, then Ambassador at Large Robert Seiple starts out with explicitly connecting nature and human rights by articulating "human nature" and "universal truth" as the self-

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[26] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2000: 5).
[27] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2001: 1).

evident "realities undergirding and legitimising the Universal Declaration itself."[28] Human nature is thus conceived of as a reality in whose essence human rights are inscribed. It also follows from this logic that if governments had created human rights, these rights would not reside in nature and consequently not be "a reality." True to the form of natural law theory, we thus see that the IRF policy discourse places emphasis on the notion of a common human nature that implies comparable rights and equality for all human beings.

Seiple, however, not only assumes the objective, external existence of metaphysical natural laws that confer rights upon individual human beings; he also believes that these laws are divinely governed. In his interpretation of the UDHR's first article he thus devolves the authority of nature on a theological foundation: "Every human being, declares the Declaration, is "endowed with reason and conscience;" reason and conscience direct us to the source of that endowment, an orientation typically expressed in religion."[29] To Seiple, the verb "endow" and the phrase "reason and conscience" in Article 1 become the point of entry for religion in his interpretation of the UDHR. "Endow" implies an endower, and this source is "typically" realised by reason and conscience grounded in religion. To Seiple, there are good reasons for choosing to ground human rights in religion:

> [W]hen the concept of human dignity is understood as grounded in religion, it becomes a bridge for people of all faiths. It roots the concern for human rights in metaphysical soil and guards against its exploitation for more transient ends. Indeed, when so defined, human dignity becomes more than a human idea. It becomes a reality, a part of the natural order of things. So understood, all human rights—as expressed in international covenants—take on a more profound meaning. When people do evil to others, it is not simply a practical rule that is being violated, but the nature of the world itself.30

As we see in the above, Seiple conceives of religion and nature as inseparably connected. In order for human dignity to become "a part of the natural order of things," it must be grounded in religion. Religion thus becomes the vehicle

[28] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 1999: 1).
[29] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 1999: 2).
[30] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 1999: 2).

through which human dignity is displaced from the realm of "human ideas" and "practical rules" to "reality." The capability of religion to project human dignity onto nature makes sense within Seiple's theist natural law framework if the Creator is perceived as the origin of the Law of Nature. Whereas the human is the origin of practical rules, God is the origin of natural law, and human ideas are thus subordinated to the idea of divine laws.

In his critique of Rousseau's *Social Contract* (1762),[31] Derrida questions the idea of natural rights by arguing that "natural" rights cannot claim to be natural because they are constituted discursively through the contract. Thus challenging the ontological foundation of rights, Derrida shows that rights are fundamentally unstable and, consequently, open to a multitude of different articulations (Newman 2005: 97). Saul Newman (2005) offers the following reading of the implications of Derrida's interrogation of natural rights:

> These rights then are displaced from the social to the natural realm, and the social is subordinated to the natural, just as writing was subordinated to speech. As Derrida suggests in his critique of Rousseau, the social is the supplement which threatens and, at the same time is necessary for, the identity of the natural. The idea of natural rights can only be formulated discursively through the contract. Therefore there is no pure natural foundation for rights, and this leaves them open to change and reinterpretation. They can no longer remain inscribed within human essence and, therefore, can no longer be taken for granted (Newman 2005: 97f).

We might observe the same about the God-given natural rights constituted in the IRF policy discourse. Since the idea of these rights can only be formulated discursively through the IRF policy discourse, they cannot be purely founded in theological and metaphysical laws. The identity of God-given natural rights is dependent on the political realm of "policies" for its constitution. These rights are thus not conditioned by God but by the historical, economic, political, cultural and even financial circumstances of the social context in which they are articulated (Dicke 2002: 118).

[31] According to Rousseau's social contract theory, natural persons join the state and give up their natural rights to become citizens and get civil rights in return. Should the civil rights fail to respect people's natural rights, the people have the right to overturn their government (Baumann 1999: 7).

Religious Freedom: The "First Freedom" of Human Rights?

The religious perspective on human rights is not alien to the American rights tradition—the theist natural law approach was immensely influential in the 1776 American Declaration of Independence, which spoke of people as "being endowed by their Creator with certain unalienable rights" (Ashbee & Ashford 1999: 22). Later introductions to the State Department Reports on IRF affirm the connection between the IRF policy discourse's understanding of international human rights and the American rights tradition. In the 2001 introduction, for example, the unidentified writer asserts that: "The Founders believed in the universality of human dignity—that all human beings are endowed by the Creator with certain rights that are theirs by virtue of their existence."[32] Seiple's successor John Hanford similarly states that: "We as a nation have always affirmed the principle that our Creator has endowed all people with fundamental rights and freedoms. We hold these rights to be sacred and inviolable."[33]

The IRF policy discourse sees no conflict in merging the American rights tradition with international standards on human rights: "U.S. policy draws deeply on two traditions: the history and commitment of the American people, and the standards established by the international community. These two traditions not only are consistent but are mutually supportive."[34] However, as we shall now see, the quasi-religious theory of human rights developed by Seiple in the introduction to the first State Department Report on IRF is actually inconsistent with this perception of mutual compatibility between the two traditions. Not only does the IRF policy discourse's constitution of human rights challenge the previously noted outright secularity of the UDHR; it also challenges the Preamble's call for a "common understanding" of human rights as the necessary precondition for the full realisation of the UDHR.

The seventh recital of the Preamble to the UDHR reads: "Whereas a common understanding of these rights and freedoms is of the greatest importance

[32] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2001: 1).
[33] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2003: 1).
[34] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2001: 1).

for the full realization of this pledge" (UDHR 1948: Preamble). According to the U.N. General Assembly, this "common understanding" is built on the notion that all rights are equally important, indivisible and interdependent: "All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights […]."[35]

The IRF policy discourse's explicit articulation of theological and metaphysical absolutes as the authorising foundations of human rights might not conflict with the "common understanding" of human rights per se since it concerns the underlying philosophical justification of these rights. However, the American rights tradition has might have influenced the interpretation of the UDHR in more aspects than the articulation of human rights as God-given. There is a final aspect to the quasi-religious theory of human rights developed by Seiple that we shall now examine, namely, his radical rearticulation of central elements in the UDHR. This rearticulation imposes a hierarchy of human rights and thus threatens the principle of their indivisibility and interdependence. Seiple builds this radical interpretative move on Article 18 of the UDHR:

> "Everyone," affirms the Declaration, "has the right to freedom, conscience, and religion; this right includes the 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 or observance" (Article 18). Thus, while religion can be a source of conflict, religious freedom—the right to pursue one's faith without interference—can be a cornerstone of human dignity and of all human rights. To protect religious freedom is to protect a human endeavor that directly addresses the foundation of human dignity.36

Whilst the UDHR as a whole rests on the concept of the dignity of the human person within the human family, Seiple uses Article 18 to rearticulate the relation between human dignity and religious freedom so that dignity becomes grounded in

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[35] Resolution 32/130, "Alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms," adopted by the General Assembly on the 16th of December 1977. Source: http://un.org/documents/ga/res/32/ares32.htm (site accessed 25/09/09).
[36] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 1999: 2).

religious freedom. Whereas human dignity is the foundation of religious freedom in the UDHR, religious freedom thus becomes the foundation of human dignity in the IRF policy discourse. In this way, religious freedom becomes the lynchpin of all human rights and thus ceases to exist on the same level as other rights. By making religious freedom the highest human right, Seiple would thus seem to impose a hierarchy of human rights although no international consensus exists regarding which rights are more important than others.[37]

It should, furthermore, be noted that although the unidentified author of the introduction to the 2000 State Department Report[38] seemingly disregards Seiple's radical theory by substituting it with a new theory in which "religious freedom and conscience" are presented as "a cornerstone of democracy"[39] rather than a cornerstone of human rights, Seiple's successor, the President George W. Bush appointed John Hanford revives Seiple's quasi-religious theory of human rights. Hanford even quotes Seiple's sentence "while religion can be a source of conflict, religious freedom – the right to pursue one's faith without interference – can be a cornerstone of human dignity and of all human rights" in his 2004 introduction, noting that it "articulated the holistic priority of religious freedom."[40] Seiple's quasi-religious theory was thus just as relevant to the self-legitimisation of the IRF policy discourse under Seiple's short stretch as Ambassador under President Bill Clinton as it was during Hanford's years under the Bush administration.

The rearticulation of religious freedom as the foundation of human dignity and human rights can also be comprehended in the light of Seiple's aforementioned religious understanding of reason and conscience. Dominique Decherf (2001) offers a particularly interesting reading of Seiple's theory of human rights. He notes that Seiple, in arguing that religious freedom directly addresses the foundation of human dignity, actually reconciles the first article of the UDHR with the American experiment in which religious freedom is "the first

[37] "The only true international consensus regarding human rights lies in the listing of rights in the Declaration. Though states cannot agree on the prioritizing of these rights, states can and have agreed as to their status as human rights. The Declaration stands as proof of the ability of states to identify those rights belonging to every human. But, at the same time, the Declaration provides evidence of the international community's unwillingness to rank human rights" (Wuerffel 1998).
[38] Seiple had resigned at this point.
[39] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2000: 5).
[40] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2004: 1).

freedom" of the Constitution.[41] Decherf arrives at this reading by noting Seiple's synonymous understanding of reason and conscience and religion: "If religion is already included in article 1 in "reason and conscience", understanding those two words and especially conscience as synonymous with religion, it is the first of all rights and the very condition of others" (Decherf 2001: 16). In other words, if reason and conscience are understood religiously, religion becomes present in the first article of the UDHR and can thus be considered the first of all human rights. From this perspective, Seiple's religious understanding of reason and conscience makes religious freedom the "first right" of the UDHR, just as it is "the first freedom" of the Constitution." Thus, Seiple arguably manages to reconcile the UDHR with the American tradition, in spite of his denial of doing so:

> Grounded in and informed by the American experience, in which religious liberty is "the first freedom" of the Constitution, the law nevertheless does not attempt to impose "the American way" on other nations. Rather, it draws on the internationally accepted belief in the inviolable dignity of the human person and of the universal rights that flow from that belief. 42

Moreover, Co-creator of the IRFA William Inboden's may be noted for a similar statement: "This Act is not trying to codify the First Amendment overseas, but rather to build on Article 18 of the Universal Declaration of Human Rights and other international accords" (William Inboden in Hackett, Silk & Hoover 2000: 14).

What this shows is that the IRFA cannot ground itself in both the international human rights tradition and the American tradition without avoiding accusations of cultural imperialism since the two traditions clearly differ in their view of the role of religious freedom within the international human rights framework. The UDHR propagates equal attention to all human rights, while the IRFA propagates a hierarchic emphasis on religious freedom. The disproportional emphasis on religious freedom is reflected not only in the theory of human rights developed in the IRF policy discourse, but also in the IRFA's method for the

[41] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 1999: 1).
[42] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 1999: 2).

realisation of religious freedom on the international scene. In establishing an Office of IRF, a Commission and a Special Adviser on IRF as well as a mechanism of Presidential actions to be taken in response to foreign states' violations of religious freedom, the IRFA establishes a de facto preference for religious freedom and thus a hierarchy of human rights in American law (Wuerffel 1998).

However, since the authority of the IRFA as a national statute with an international scope depends on the law's image as an articulation consistent with the standards of international human rights, the reconciliation between international human rights and the American rights tradition presents a serious challenge to the law's international legitimacy. The IRFA is in conflict with the international human rights regime that it claims authorises it. It would thus serve to strengthen the IRFA's cause if the IRF policy discourse distinguished between the two traditions and their separate tasks of protecting human rights respectively inside and outside of the United States' borders. As one scholar reminds us:

> Whenever a state acts unilaterally in the protection of human rights, it cannot ignore the context within which it acts, for this context is the international community. The United States acts to protect human rights inside and outside its borders. The Declaration of Independence, with its listing of the inalienable rights of "life, liberty, and the pursuit of happiness," and the Bill of Rights have served as the sources for the United States' commitment to human rights on a domestic level. The United States commitment to the protection of human rights outside of its borders, however, derives from its obligations as a Declaration signatory. To ignore this fact is to ignore the basis upon which the struggle for human rights began and the pledge which the member states took in their signing of the Universal Declaration: full realization of human rights lies in a common understanding of them (Wuerffel 1998).

Strengthening the IRFA in this way, would mean addressing the human rights hierarchy imposed by the law by legislating in a way that avoids running counter to the principle of indivisibility and interdependence. This would thus entail coming to terms with the United States' history of hesitancy and selectivity with

regards to the ratification of international human rights instruments[43] and altering legislation to protect all human rights equally instead of emphasising some to the detriment of others.

Moreover, the IRF policy discourse's reconciliation between international human rights standards and the domestic rights tradition may create more conflict than resolution on an international level. As one of the principal drafters of the UDHR, René Cassin, remarked in a retrospective essay, the success of the Declaration in finding worldwide acceptance was probably largely due to the fact that it is a secular document (Morsink 1999: 290). Founding human dignity and, consequently, all human rights in the notion of "a Creator" as well as "religion" and "religious freedom" could thus work to the detriment of the IRFA's justificatory cause. For example, the IRF policy discourse's unprecedented emphasis on the role of religion and religious freedom in international human rights only provides more ammunition to critics accusing the IRFA of supporting a religious (Christian right) agenda such as the proselytization of Christianity abroad. Indeed, Article 18 of the UDHR, which is singled out in the IRF policy discourse as especially important, even has its own proselytization controversy. During the drafting process of the UDHR, there was a hefty debate over the article's formulation of the right to change one's religious convictions. The debate centred on the problems of proselytism and the behaviour of missionaries in foreign countries, which some delegations felt this right supported. The ultimate decision to keep the right to change one's religious convictions in Article 18 caused strong objections from especially Muslim delegations and resulted in a Saudi Arabian abstention from the final vote on the Declaration (*ibid*: 261f).

A Unilateral Violence Without Ground

In this chapter I have attempted to deconstruct the authority of the IRFA by interrogating the foundations of human rights as they are contained in both the UDHR and the IRF policy discourse. I have interrogated both discourses in order

[43] For example, the United States ratified the ICCPR only in 1992 and did so with reservations, understandings and declarations that substantially nullified its effect (Yasuaki 1999: 111). Moreover, the United States has yet to ratify the ICESR.

to simultaneously highlight the different ways in which the IRF policy discourse's conception of human rights deviates from the UDHR discourse. In this process, I have found the IRF policy discourse's interpretation of human rights to be inconsistent with the "common understanding" of human rights that the Preamble of the UDHR calls for and that the United Nations General Assembly defines with terms such as "equal importance," "indivisibility" and "interdependence." What remains now in my quest to deconstruct the authority of the IRF policy discourse and expose its connection to unfounded violence is an answer to the question: *what authorises the IRF policy discourse's interpretation of international human rights?*

If we interrogate the origins of the IRF policy discourse's interpretation of international human rights, it becomes clear that no anterior legitimacy on the international level authorises it. In going against the "common understanding" of human rights and rearticulating central elements of the UDHR, the IRF policy discourse clearly does not recognise the authority of the dominant interpretation of international human rights instruments. In that sense, the IRF policy discourse paradoxically ends up undermining the very condition it claims authorises it. In what Derrida terms the "revolutionary moment" at the foundation of all laws (Derrida 1992b: 36), the United States suspends the order of existing international human rights law and interrupts it to unilaterally found another law. This new law, the IRFA, disregards the preceding order by establishing a new hierarchic understanding of human rights that favours religious freedom. The discursive violence of this reinterpretation corresponds to what Derrida terms originary violence. The IRFA's interpretation of international human rights is the "violence without ground" that founds the law. At the same time, however, this discursive violence is excluded and disavowed by IRFA, which is reflected in its insistence on being a cohesive expression of international human rights standards. The structure of the IRFA is thus aporetic. The law's constitution depends on a violence that is excluded from its structure and which thus prevents the law from forming a closed identity.

As mentioned in the beginning of this chapter, the non-legal character of originary violence presents a problem for the authority that it establishes. Derrida defines this problem in by posing the question:

> How are we to distinguish between the force of law of a legitimate power and the supposedly originary violence that must have established this authority and that could not itself have been authorised by any anterior legitimacy, so that, in this initial moment, it is neither legal nor illegal—or, others would quickly say, neither just nor unjust? (Derrida 1992b: 6).

Here Derrida refers to Walter Benjamin's distinction between two kinds of violence connected to law: law-making violence and law-preserving violence. Law-making violence is the originary violence that, as we have already seen, institutes and positions law. Law-preserving violence, on the other hand, is "the violence that conserves, the one that maintains, confirms, insures the permanence and enforceability of law" (Derrida 1992b: 31). Derrida's point in highlighting these two kinds of violence is that they cannot be clearly distinguished from one another. This means that the law-making violence taints the law-preserving violence because the law-making violence cannot be completely excluded from the structure of the law. As Derrida points out by referencing Benjamin, the relation between law-making and law-preserving violence is a relation of representation: "Benjamin says that that founding violence is "represented" (*repräsentiert*) in conservative violence" (Derrida 1992b: 55). Thus, while originary violence is not necessarily *immediately* present in a law, this paradoxically does not mean that it is completely absent from it. The presence of originary violence will always be "hidden" in the law-preserving violence that replaces or represents it. Derrida describes this relation as "the very passage from presence to representation" (Derrida 1992b: 47).

The punitive unilateral sanctions authorised by the IRFA correspond to Benjamin's concept of law-preserving violence. These so-called Presidential actions are the violent means that insure the enforceability of the IRFA. As we have seen, the IRFA claims that it its punitive measures are meant to conserve not only itself but also international human rights standards by coercing foreign governments into respecting religious freedom. As this chapter has also shown, however, the IRFA paradoxically

undermines the international human rights standards it claims to conserve by unilaterally imposing a hierarchy on human rights. This unilateral originary violence is also clearly reflected or represented in the IRFA's law-preserving violence. Just like the IRFA's interpretation of international human rights lacked the legitimacy of international authority, the unilateral sanctions it authorises lack multi-state input as well as legitimacy by the United Nations and other international organisations (Lavers 2001). We thus see that the non-legal, unilateral violence that instituted the IRFA taints the violent means through which the law is enforced. In other words, the IRFA's illegitimate founding violence haunts its structure, rendering its authority fundamentally ambiguous and open to question.

Having thus destabilised the authority of the IRFA and, consequently, the IRF policy discourse, I now move on to an examining the link between the IRFA and American sovereignty on a global level. As we shall now see, the IRF policy discourse is not only concerned with identifying violations of religious freedom, it also meticulously constructs the American identity in the image of religious freedom.

3 American Sovereignty and Domination

The Geography of Religious Freedom

The IRF policy discourse places strong emphasis on asserting "the right of all countries to speak out when human rights, including religious freedom, are abused."[44] The discourse does thus not believe that violations of human rights should be addressed exclusively in international forums:

> Indeed, as elaborated elsewhere in this Report, the United States agrees that issues of religious freedom ought to be addressed in international forums. It does so regularly and vigorously. But the United States also believes that all nations have the right, and the obligation, to address on a bilateral basis with other nations those international standards they themselves have accepted.[45]

According the IRF policy discourse, it is not just a question of having the *right* to address violations of human rights bilaterally; violations of human rights instil in the onlooker a sense of moral *obligation* to act. International human rights treaties are thus viewed as binding agreements that commit signatory states not only to adhere to their standards, but also to monitor and be monitored by each other on the basis of these standards and be morally obliged to intervene in instances of human rights violations. In the IRF policy discourse's understanding of international relations, all states are thus viewed as potentially equal actors that relate to one another on the international level on the basis of international human rights standards. The IRFA can thus be understood in relation to the commands brought forth by the introduction of human rights in international relations. At the

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[44] Frequently Asked Questions: IRF Report and Countries of Particular Concern. Internet: http://www.state.gov/g/drl/irf/c13003.htm (14 Oct. 2009).

[45] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2000: 4).

same time, however, this view of international relations would seem assume the equal power of all states "to address on a bilateral basis with other nations those international standards they themselves have accepted"—an assumption that may be problematised by a theoretical glance into the effect human rights have had on international relations.

Theorists agree that the post-war human rights revolution marked by the UDHR initiated the gradual decline of Westphalian sovereignty. Since then, the "international community" has increasingly been seen to have legitimate interests in what goes on within countries in terms of human rights, and the consequent human rights interventions have made the norms of state sovereignty increasingly contingent (Ikenberry 2008: 423). The problem with the concept of "humanitarian intervention," however, is that it is situated in a grey zone that Algerian President Bouteflika has pointed to by asking: "Where is the dividing line between humanitarian, political and economic intervention? Are only weak or weakened states candidates for intervention or does it hold for all without exception?" (quoted in Beck 2006: 143). Indeed, one of the implications of the transformation of interstate norms is that powerful states now have a new "licence" to intervene in the domestic affairs of weak and troubled states since there are fewer principled and normative inhibitions on intervention (Ikenberry 2008: 424). Ulrich Beck (2006) employs the notion of a *geography of human rights* to address this problematic related to human rights intervention and geopolitical asymmetry. Beck's point is that the human rights revolution has not completely abolished sovereignty; rather, sovereignty has been *redistributed* in favour of the powerful West. Asserts Beck: "The cultural, legal and moral transcending boundaries favours the emergence of a cosmopolitan monopoly of the West on morality, law and violence" (Beck 2006: 143). In that sense, the geography of human rights can be understood as a discourse that redraws old colonial maps by empowering the West while keeping the Third World in a submissive position.

In this chapter I argue along the same lines that the IRF policy discourse establishes a geography of religious freedom by inscribing the world in the binary hierarchy of "religious freedom"/"violations of religious freedom". Only, the IRF policy discourse does not impose this structure in favour of the West in general,

but in favour of the United States exclusively. This is most evident in the moral-superiority code that I examine in depth later in this chapter. In this code, the IRF policy discourse constructs the United States as a paragon of religious freedom, whereas scepticism or hostility towards minority religions is externalised to all foreign states. When one adds this moral-superiority code to the IRF policy discourse's understanding of international relations, it becomes possible to view the discourse as a whole as a vindication for American economic intervention to seek control of a given state's steering mechanism in regards to religious freedom. Within the IRF policy discourse's logic, such an intervention would, of course, be for the country in question's own moral benefit.

The exclusion of other Western democracies from the stronger pole in the binary hierarchy of "religious freedom"/"violations of religious freedom" has certain sovereign characteristics that are important to note too. In the introduction to the 2000 State Department Report the unidentified writer asserts: "Religious freedom is a good, not a danger from which citizens must be protected—a fact that even some mature democracies have not yet accepted."[46] Here the introduction refers to one of the five barriers to religious freedom that the executive summaries of the State Department Reports use to classify foreign states,[47] namely, "stigmatization of certain religions by wrongfully associating them with dangerous "cults" or "sects.""[48] This category has been applied to primarily European countries, for example, France and Greece, but most notably Germany where the authorities have monitored and attempted to ban Scientology for years under the claim that the movement's structures and methods poses both a danger to the individual's mental health as well as a possible threat to the country's rule of law

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[46] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2000: 4).

[47] The five categories are: 1) "Totalitarian or authoritarian attempts to control religious belief or practice;" 2) "State hostility toward minority or non-approved religions;" 3) "State neglect of the problem of discrimination against, or persecution of, minority or non-approved religions;" 4) "Discriminatory legislation or policies disadvantaging certain religions;" and 5) "Stigmatization of certain religions by wrongfully associating them with dangerous "cults" or "sects" (Executive Summary to the Annual Report on International Religious Freedom (U.S. Department of State 2001).

[48] In the Executive Summary to the the Annual Report on International Religious Freedom (U.S. Department of State 2001), the category is described as follows: "The governments of a few countries, in an attempt to protect their citizens from dangerous or harmful groups, have adopted discriminating laws and policies. By blurring the distinctions between religions and violent or fraudulent groups, the governments of these countries have disadvantaged groups that may appear to be different or unusual, but are in fact peaceful and straightforward. In all of these countries, existing criminal law is sufficient to address criminal behavior by groups of individuals. New laws or policies that criminalize or stigmatize religious expression can put religious freedom at risk."

and “democratic order.”[49] The IRF policy discourse thus inscribes Western democracies in the weaker pole of the “religious freedom”/“violations of religious freedom” binary if they “wrongfully” view some “religions” as “a danger from which the citizens must be protected.” Here, the IRF policy discourse thus displays what would appear to be a sovereign power to define and distinguish between “religions” and “cults” or “sects.” Let us now examine more closely this exclusive sovereignty that is redistributed in favour of the United States with the institution of the IRFA.

The Sovereign Exclusion of the United States

The position the IRFA establishes for the United States is well understood through the prism of Giorgio Agamben’s (1998) thoughts on sovereignty. Drawing on Carl Schmitt’s definition of the sovereign, Agamben argues that sovereignty, like the extra-legal violence that grounds the law, marks the limit of the juridical order by being simultaneously inside and outside the law. The sovereign embodies this paradox in virtue of his legal power to decide the exception to the law. The power to suspend the law places the sovereign inside the law, while he uses this legal power to simultaneously place himself outside the law (Agamben 1998: 15). To Saul Newman (2005) sovereignty is the point where violence and law intersect and become indistinguishable from one another. Writes Newman:

> From this perspective, the claims of the sovereign state to moral and legal legitimacy would be precarious – what lies at the heart of sovereignty is not the public good, but rather a dimension of violence that is beyond the limits of the law. Moreover, the law cannot protect us from the violence of the state, because it is itself grounded ultimately in this violence (Newman 2005: 94).

The law’s self-professed aim is create order by protecting the victims of religious persecution from a violence either conducted, condoned or ignored by their respective governments. However, since the IRFA is grounded in the unilateral violence of the

[49] “Germany moves to ban Scientology” (8 Dec. 2007). Internet: http://news.bbc.co.uk/2/hi/europe/7133867.stm (17 Oct. 2009). For more on religious persecution in Western Europe and the issue of Scientology see Hackett, Silk & Hoover (2000: 33-44).

United States, it cannot protect anyone from the violence of the United States. As a foreign policy law, the IRFA positions the United States as the global sovereign, making all foreign countries its legal subjects. In doing so, the IRFA thus creates a sovereign sphere in which foreign states may be justly punished with economic sanctions. Moreover, since the subjects of the IRFA's enunciation—foreign states—also contain the very individuals and minorities the IRFA acts to protect, not even they are safe. As we saw in chapter 1, the IRFA does include a rhetorical recognition of the President's need to seek to minimise any adverse impact on a targeted country's population, should he decide to sanction it.[50] However, since the protective steps to minimise adverse effects are not further specified in the IRFA, it would seem that its attempt to protect the weakest groups in target states (including persecuted religious minorities) fails.

The IRF policy discourse expresses the paradox of sovereignty by excluding the United States as legal subject. The discourse situates the United States outside of the IRFA, while at the same time declaring that there is no outside of the law. The IRF policy discourse displays this sovereign power to define the exception in at least two ways. Firstly, it does not include the United States in either the State Department Reports or the independent Commission Reports on IRF. As one scholar points out: "This failure supports the claim that the United States believes it is superior to the rest of the world on human rights values" (Fore 2002: 449). However, the glaring absence of the United States in the Reports not only makes the United States appear superior; it also threatens the very universality of human rights that the State Department Reports argue for by presenting religious freedom as a paradigm that applies only to other countries and not to the United States itself. Secondly, the IRF policy discourse places the United States outside the reach of any law—national or international—by precluding the judicial review of any sentence or action taken under the authority of the IRFA: "No court shall have jurisdiction to review any Presidential determination or agency action under this Act or any amendment made by this Act" (IRFA 1998: Section 410).

We thus see that the IRF policy discourse's exclusion of the United States from the scrutiny of the IRFA effectually positions the country as the global sovereign

[50] See Chapter 1, section: "Presidential Actions in Response to Violations."

in relation to religious freedom, a position that only grants all other states conditional sovereignty in return. The originary unilateral violence that founded the IRFA can thus be understood as more than an interpretative discursive violence that undermines the "common understanding" of human rights and taints the law's coercive means; the IRFA's founding violence can also be understood as the imposition of a new hierarchic relation between the United States and the rest of the world. As we shall now examine in more depth, the chosen mode of self-representation enhances this hierarchic relation by bringing a dimension of moral superiority into the IRF policy discourse's binary structure.

The Limits of the Founding Myth

The IRFA and the State Department Reports do much more than simply offer analysis of the "reality" they confront; these texts also actively concern themselves with the scripting of a particular American identity in whose name the IRFA is implemented. As we shall now see, the IRF policy discourse inscribes the American identity in the binary opposition that structures the IRFA, namely, "religious freedom"/"violations of religious freedom." In doing so the United States externalises violations of religious freedom to foreign states. The aim of these next two sections is to destabilise the IRF policy discourse's uniform construction of the American identity by foregrounding violent identities excluded, marginalised and silenced by the discourse because they do not fit its chosen mode of identity. The analysis thus shows, like Derrida, that no identity is pure and closed, but always tainted by that which it excludes.

In the introduction to the 2007 State Department Report, John Hanford declares that: "The *Annual Report on International Religious Freedom Report* is a natural outgrowth of our country's history and a current reflection of our values."[51] As this quote suggests, the role of religious freedom in American history is greatly emphasised in the IRF policy discourse. In fact, religious freedom is most often constructed as ever-present in the history of the United States. For example, the 2001 introduction asserts that:

[51] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2007: 2).

> The United States has a longstanding commitment to religious liberty. America's founders made religious freedom the first freedom of the Constitution—giving it pride of place among those liberties enumerated in the Bill of Rights—because they believed that guaranteeing the right to search for transcendent truths and ultimate human purpose was a critical component of a durable democracy.[52]

Religious freedom is thus not only constructed as constitutive of American culture, it is also placed at the top of the hierarchy of the liberties enumerated in the Bill of Rights, thus implying that religious freedom is the most critical component of a "durable democracy." Chapter 2 has already examined how religious freedom's "pride of place" in the Bill of rights might have affected the IRF policy discourse's interpretation of human rights and raised the question of whether the United States is trying to export this "pride of place" to the rest of the world. The prominence given to the First Amendment in the State Department Reports also shows its importance in the American self-conception. Although the IRFA itself does not mention the First Amendment,[53] it still situates itself in American history by constructing a narrative in which religious freedom is articulated as a key aspect of the American tradition. The first "finding" of the IRFA thus reads:

> The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation's founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom They established in law, as a fundamental right and as the pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honoured this heritage by standing for religious freedom and offering refuge to those suffering religious persecution (IRFA 1998: Section 2).

Like in the previous quote from the 2001 introduction, we find that the first finding discursively links religious freedom to "our Nation's founders." It also links religious freedom to "our Nation's [...] birth" as well as to the concepts of

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[52] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2001: 1).

[53] Perhaps to avoid aforementioned accusations of attempting to export the First Amendment, we may speculate.

"legacy" and "heritage" to the effect of making religious freedom and American identity appear inseparably connected.

As Stuart Hall reminds us, however, the construction of identities through binary oppositions is both a reductionist and over-simplifying practice in the sense that all distinctions and subtleties are swallowed up in the rigid two-part structure (Hall 1997: 235). In order to fit the American identity into the category "religious freedom," other identities must be marginalised, silenced or denied. In the above quoted first finding of the IRFA, for example, the history of religious persecution in the United States is denied so that the United States may emerge as a country that has respected religious freedom "from its birth to this day." Scholars such as Winnifred Sullivan (1999) were also quick to contest the historical accuracy of the IRFA's first finding, accusing it of perpetuating exceptionalist myths about American history. Particularly the articulation of "our Nation's founders" as people who both fled religious persecution and "established in law [...] the right to freedom of religion" is problematic to Sullivan, who contends:

> Who are "they"? If by "our nation's founders" is meant those who fought the revolution and wrote the Constitution, none of them fled persecution. If "they" means the colonial founders, a few "cherished" religious liberty, William Penn, Roger Williams, and arguably Lord Baltimore. Most did not. The last sentence of section 2 is simply untrue. The United States has continuously denied religious freedom to some of its citizens, African-Americans, Mormons, Catholics, and Native Americans, among others, and it has refused to admit refugees persecuted for their religion, including Jewish refuges from Nazi Germany (Sullivan 1999).

However deceitful or mythical, this way of representing the past is not foreign to the construction of American identity in American foreign policy. This is shown in David Campbell's (1998) historical analysis of the modes of inclusion and exclusion applied in the production and reproduction of the American identity in American foreign policy. Campbell's study finds fictional representation of the past a central part of these identity practices, noting that "an endless array of modern political leaders have conjured up the Puritans and the "Founding Fathers" to be protagonists of particular positions in contemporary controversies"

(Campbell 1998: 131). As a consequence of this fictional use of the past, a seemingly paradoxical relationship between time and space arises in the production and reproduction of the American identity:

> Europeans who encountered the New World went out of their way to deny its historicity. Accordingly, the space that is America has taken on such significance that it becomes history. With all its qualities present at its genesis, America is understood as the land of freedom that derives its meaning from the frontier. Born modern, "'American' identity obviates the usual distinctions of national history – divisions of class, complexities of time and place – because the very meaning of American involves a *cultural*, not a national myth of consensus."[54] In consequence, the history of America is effectively de-historicized, for this privileging of the spatial over the temporal in American experience has given history the quality of an eternal present (Campbell 1998: 131f).

This de-historicising mechanism is also at work in the IRF policy discourse's construction and use of historical narratives. Religious freedom is privileged as present at the very founding of the country thus giving American history this quality of "an eternal present." As a consequence, the image of United States emerges as static and iconic—a paragon of religious freedom.

Perhaps in reaction to the critique of the exceptionalist construction of American history in the IRFA's first finding, the subsequent introductions to the State Department Reports do start to note that American history does not constitute the perfect example of religious freedom. In the introduction to the 2005 State Department Report, for example, John Hanford notes that: "Our record is not perfect. However, our imperfections cannot serve as an excuse to back down from the challenge of making this universal right real for all humankind."[55] Hanford thus falls back on the universality of human rights in order to brush away suggestions that human rights "imperfections" in American history might undermine the legitimacy of the IRF policy discourse.

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[54] Campbell quotes Bercovitch's work *American Jeremiad*.
[55] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2005: 2).

The Limits of the Construction of the American Present

The acknowledgement of past imperfections does not mean that the IRF policy discourse discontinues referring to American history in its construction of the American identity. I argue that the discourse merely substitutes the construction of the perfect past with the construction of the perfect present. In the introduction to the 2008 State Department Report, John Hanford thus contends that: "We are blessed to live in a country where freedom is respected."[56] Likewise, the introduction to the 2000 State Department Report asserts: "But today, at the dawn of the third millennium, religions are flourishing in the United States, their respective traditions enriching not only their own adherents, but American public policy as well."[57] We thus see that the construction of the United States as the world's paragon of religious freedom is restored in the present. At the same time, the American identity's binary relation with the IRFA's subjects of enunciation is also restored and the United States can re-emerge as the ideological ideal against which all other nations must be measured and judged.

This construction of an American paragon of the present can, however, also be contested by showing how violations of religious freedom still occur today in the United States and thus partly constitute the American state identity. One such example may be found in the American Model Penal Code's[58] criminalisation of polygamy—the right to multiple spouses—in the United States. Obvious targets of this criminalisation are Mormons and others who claim the religious right to polygamy. Interestingly, the Model Penal Code not only makes bigamy—where two or more spouses are unaware of each other—a crime, it makes the variety "polygamy" in which all participating spouses are aware of one another and enter into the marriage voluntarily the more serious of the two crimes: "A person is guilty of polygamy, *a felony of the third degree*, if he marries or cohabits with more than one spouse at a time in purported exercise of the right of plural marriage" (the Model Penal Code quoted in Feinberg 1986: 266). By contrast, bigamy is defined a as a mere misdemeanour. To Joel Feinberg (1986), this

[56] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2008: 1).
[57] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2000: 1).
[58] The Model Penal Code is a statutory text developed by the American Law Institute and published in 1962. The purpose of the Model Penal Code is to stimulate and assist legislatures in their continuous efforts to update and standardize the penal law of the United States of America. The current form of the Code was last updated in 1981.

"seems to imply the principle that a trivial crime becomes a serious one when it is openly committed or publicly flaunted by the perpetrators in what they claim to be an exercise of their rights" (*ibid.*). Feinberg suggests that the Model Penal Code's articulation of polygamy as the more serious crime be understood from the perspective of moral legalism. From this perspective polygamy is a potential threat to the appearance of respectability and would weaken the moral restraints if it were allowed to assume an air of purported legitimacy, and this legitimacy went unchallenged. Severe criminal prohibition thus becomes necessary to protect "public morals" (*ibid*: 267).

Regardless of how this restriction of what some claim to be their valid religious right is rationalised, however, it nevertheless exposes an aporia in the construction of the United States as a country in which religious freedom "flourishes." The criminalisation creates a sovereign sphere in which individuals may be sentenced to up to five years in prison for engaging in religiously prescribed marital practices that challenge the heteronormative family structure. The United States thus depends on the legal restriction of religious freedom for the constitution of a hegemonic social norm. Paradoxically, however, the solution to the threat posed by polygamy to heteronormativity ends up undermining another value that is considered constitutive of the American identity: individual liberty. By restricting what some Americans claim as their inviolable religious right, the criminalisation of polygamy becomes an example of "a group right trumping an individual religious belief" (Fore 2002: 439). The criminalisation of polygamy thus also shows that religious rights rather than being "universal" are defined in a political and cultural context and granted by the sovereign power in its capacity to decide what counts legally and what does not count legally as a "universal right."

Mormons and other minority religions practicing polygamy thus constitute what Derrida calls a marginal area or internal limit in the legal structure of "religious freedom" in the United States (Derrida 1992b: 28). The criminalisation of the religious minorities that practice polygamy consequently signifies that a violence is at work in the American legal system. Moreover, this violence at the limit of religious freedom exposes the idiomatic quality of the Model Penal Code—its cultural, political and economic embeddedness.

Another excluded narrative that can be constructed to contest the construction of the American paragon of the present is the continued repression of Native Americans in American society. This narrative contests the construction of the "United States" as a static, ideologically pure unit controlled by the federal government by referring:

> to the process by which white Europeans have been consolidating control over the continental domain (now recognized as the United States) in a war with several indigenous ("Indian") nations. This grammar, within which we could have the "United States" in a different way – as violent process [*sic.*] rather than as a static, naturalized reality – would lead us to note that while the armed hostilities have all but ceased, there remains a system of economic exclusion which has the effect of maintaining a steady attrition rate among native Americans. The war goes on by other means, and the one-sidedness of the battle is still in evidence. For example, in the state of Utah, the life expectancy of the native American is only half that of the European descendant (Shapiro 1988: 95).

The narrative thus challenges whether the war of the frontier ever truly finished by highlighting the continued troubles experienced by Native Americans. Although this critique might be perceived as a problem concerning ethnic rights rather than religious rights, the disciplining of the "barbaric" Amerindian also included forced conversion. Moreover, during the 19th century's de facto Protestant establishment the conversion of Native Americans to Christianity was effectively systematised through the efforts of the federal government (Sullivan in Hackett, Silk & Hoover 2000: 47). The continued repression of Native Americans thus also has a religious dimension.

In the past two sections I have attempted to destabilise the homogenisation of the American identity by pointing to contradictory identities and narratives that have been excluded, marginalised and silenced by the IRF policy discourse in order to render the contingent state identity secure. One may say that I in doing so have inverted the position of the United States by showing that the country also can be constructed as the weaker part of the binary hierarchy "religious freedom"/"violations of religious freedom." Having thus interrogated the limits of the American self-

conception in the IRF policy discourse, I now move on to an interrogation of the boundaries of the discourse's externalisation of religious violence to foreign states.

The Externalisation of Religious Violence to Foreign States

To examine the American IRF foreign policy discourse's definition of a state that violates religious freedom, a so-called "persecuting regime," we have to look no further than the IRFA's sixth finding, which states that: "Though not confined to a particular region or regime, religious persecution is often particularly widespread, systematic, and heinous under totalitarian governments and in countries with militant, politicized religious majorities" (IRFA 1998: Section 2(a)(6)). The two factors considered most conducive for violations of religious freedom are thus: totalitarian or authoritarian governments and states in with "militant, politicized religious majorities." "Totalitarian or authoritarian attempts to control religious belief or practice" is also listed as the most severe category in the executive summaries' categorising system for foreign states mentioned in the first section of this chapter.[59] In the Executive Summary to the 2001 State Department Report, the category is described as follows:

> Totalitarian and authoritarian regimes are defined by the high degree to which they seek to control thought and expression, especially dissent. It is not uncommon for such regimes to regard religious groups as enemies of the state because of the content of the religion, the fact that the very practice of religion threatens the dominant ideology (often by diverting the loyalties of adherents toward an authority beyond the state), the ethnic character of the religious group, or a mixture of all three. When one or more of these elements is present, the result often is the suppression of religion by the regime.[60]

As we shall now see, however, totalitarian and authoritarian regimes not only facilitate religious discrimination in their attempt to control thought and expression; this control also leads repressed religious groups onto the path

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[59] See section: "The Geography of Religious Freedom."
[60] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2002), Executive Summary to the Annual Report on International Religious Freedom (U.S. Department of State 2001).

religiously motivated violence. The IRF policy discourse's large focus on the threat posed by religious violence started in the reports after the September 11 attacks of 2001. This is perhaps not that surprising, considering that the attacks were almost immediately labelled "Islamic terrorism." In his introduction to the first State Department Report issued after the attacks, Ambassador John Hanford emphasises the importance of the attacks to IRF policy in the following way:

> U.S. religious freedom policy is a means of fighting the war on terrorism. The events of September 11, 2001 have had significant implications for that policy. The attacks by Al Qaeda highlighted the reality that people can and do exploit religion for terrible purposes, in some cases manipulating and destroying other human beings as mere instruments in the process.[61]

The IRFA is thus rearticulated as an instrument in the new global War on Terror. At the same time the violence is disassociated with "true" religion, since it is considered an "exploitation" of religion for "terrible purposes." Moreover, religious terrorism is constructed as intrinsically linked to states that do not respect religious freedom. These states are constructed as both intentional and unintentional contributors to terrorism in several different ways:

> All too often, countries that violate religious liberty also contribute to terrorism, intentionally or unintentionally. In some cases, those governments that are hostile to religious liberty have also been hospitable to terrorism. In other cases, nations have targeted religious believers, even under the guise of anti-terrorism campaigns, and driven some towards radicalism and violence.[62]

The link between persecuting regimes and religiously motivated terrorism is further cemented by the externalisation of religion-based violence from countries in which religious freedom is respected. Writes Hanford: "Where governments protect religious freedom, and citizens value it as a social good, religious persecution and religion-based violence find no warrant."[63] Religion-based

[61] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2002: 1f).
[62] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2003: 1).
[63] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2002: 2).

violence is thus viewed as a phenomenon that finds justification only in persecuting regimes. In this way, the differentiation of religiously motivated violence from the geographical category “religious freedom” is an indirect externalisation of this violence from the United States, in the sense that the United States constructed as the world’s leading paragon of “religious freedom.”

The IRF policy discourse also connects “militant, politicized religious majorities” with religious extremism and terrorism. In the introduction to the 2003 State Department Report, for, example, Ambassador Hanford asserts:

> The promise of religious freedom stands in stark, enduring contrast to the peril of religious extremism. Religious extremists cling desperately to the idea that religion demands the death of innocents and the destruction of liberty. We hold confidently to the idea that religious freedom respects the life of all and the cultivation of human dignity. While religious terrorism dictates violent intolerance, religious freedom encourages peaceful coexistence. What religious extremism demands as the iron rule of the state, religious freedom reserves for the sanctity of the individual conscience. Where religious terrorism defiles the sacred, religious freedom honors the sacred.[64]

In the above quote, we may observe that the construction of “religious extremism” and “religious terrorism” draws on language normally associated with authoritarian and totalitarian regimes. By articulating “religious extremism” and “religious terrorism” in associative chains with “dictate” and “the iron rule of the state,” Hanford makes religious extremism and religious terrorism seem naturally connected with totalitarian and authoritarian regimes. At the same time, “the iron rule of the state” references the politicization of religion, which runs counter with the IRF policy discourse’s private conception of religion as a matter reserved to the “sanctity of the individual conscience.”[65] If we further scrutinise the above quote, we see that, on a grander scale, “religious extremism” and “religious terrorism” are understood as phenomena directed directly against the inherent dignity, freedom and sacredness of the individual and thus the code of morals, law

[64] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2004: 1).

[65] The private conception of religion that we here see reflected in the IRF policy discourse’s conception of religious freedom originates in Protestant and Enlightenment theories of the relation between state and religion that also inspired the Establishment Clause in the First Amendment. The clause prohibits the establishment of religion by Congress as follows: “Congress shall make no law respecting an establishment of religion” (First Amendment to the Bill of Rights (1789)).

and order the is inscribed as constitutive of the American identity. In "demanding the destruction of liberty," "religious extremism" and "religious terrorism" are thus constructed as phenomena directed directly against everything the United States stands for. This construction is, of course, only further supported by the September 11 attacks.

Before the September 11 attacks, the IRF policy discourse had mainly the character of an emancipatory discourse. As we saw in the previous chapter, the introductions to the State Department Reports during this time were primarily concerned with the development of a theory of human rights to justify American foreign policy actions in response to the injustice of global religious persecution. In the wake of the September 11 attacks, however, the focus is split between an emancipatory discourse and a security discourse. "Nations that respect religious freedom rarely pose a security threat to their neighbors,"[66] writes Ambassador Hanford in 2004. This is not to say that the IRF policy discourse has not always been connected with national security—the connection present in the law's creation of a Special Advisor on Religious Persecution for the National Security Council. National security was just not particularly prominent in the discourse before religious extremism and terrorism started being discursively associated with states that violate religious freedom.

The security dimension of the IRF policy discourse is also articulated as a need to "protect what has been won" through the course of American history: "Our own historical record is admittedly far from perfect, yet that very history makes us all the more determined to protect what has been won."[67] While it is not entirely clear what Hanford is referring to here, we can assume he is referring to the United States' history of religious persecution and its present state of fully realised religious freedom. Implied in Hanford's statement we thus find the notion that in order to protect religious freedom in the United States, it is necessary to secure religious freedom in all other states. Consequently, the IRF policy discourse can be understood as a "civilising mission" that is justified by the need—or even duty—to civilise and educate foreign states in religious freedom to prevent a danger that would otherwise flourish. From this perspective, the IRF

[66] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2004: 1).
[67] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2003: 1).

policy discourse constructs world politics in such a way as to naturalise IRF policy as, partly, a defensive reaction to a hostile, dangerous and potentially violent political environment. Thus positioned as the endangered victim (as symbolised by the September 11 attacks), the "identity of the United States becomes part and parcel of the state's global reach" (Campbell 1998: 134).

Deconstructing the Dichotomy of "Inside"/"Outside"

It should be clear by now that the IRF policy discourse's construction of a geography of religious freedom serves to exclude the phenomena religious persecution and terrorism from the American identity by externalising them to foreign states. As we have already seen in the case of the American criminalisation of polygamy, however, restrictions on religious freedom is not simply a phenomenon that resides in the external realm. We might say the same of the threat posed by religious extremism, which the IRF policy also externalises to foreign states. Violent religious forces also threaten the United States from within. The Oklahoma City bombing in 1995, for instance, was a terrorist act carried out by a Christian fundamentalist connected to Elohim City, a local Christian extremist group (Newman 2005: 101). Antiabortion violence is another more persistent example of religious terrorism in the United States. Executed by members of Christian extremist groups such as Army of God, the violent methods of these antiabortionist individuals include arson, bombings as well as murders of abortion doctors and abortion clinic staff members.[68]

Moreover, in this age of "liquid modernity" characterised by flows and networks (Zygmunt Bauman in Beck 2006: 27), threats do not necessarily correspond to the category of the nation-state, which the IRF policy discourse relies on with its geography of religious freedom. If we consider the transnational terrorism of the al-Qaeda variety, we find that its operational methods deconstruct the binary of "inside"/"outside" that organises the IRF policy discourse. The al-

[68] Goodstein, Laurie & Thomas, Pierre: "Clinic Killings Follow Years of Antiabortion violence." Washington Post, 17 Jan. 1995. Internet: http://www.washingtonpost.com/wp-srv/national/longterm/abortviolence/stories/salvi3.htm (19 Oct. 2009). For more on Army of God's justification and endorsement of religious violence, see: Clarkson, Frederick, "Kopp Lays Groundwork to Justify Murdering Abortion Provider Slepian." Women's Enews, 2 Dec. 2002. Internet: http://www.now.org/eNews/dec2002/120202kopp.html (19 Oct. 2009).

Qaeda's "active units and their 'handlers' are motivated neither by territory nor by the state, and they are not fighting for their own state" (*ibid*: 139). This challenges IRF policy discourse's national outlook, such as its articulation of terrorism as the result of the repression of religious freedom in states with particularly authoritarian and totalitarian type governments. The al-Qaeda's transnational network structure completely transgresses the territorial boundaries imposed by the geography of religious freedom. It therefore makes little sense to speak of the terrorist threat as coming from a distinct "inside" or "outside."

Given all these possible locations of violence and threats in an unfinished and chaotic world, the IRF policy discourse's consistent location of them in the external realm must then be understood as serving a particular interpretative and political function (Campbell 1998: 63). Certainly, a very particular logic of representation is at work in the IRF policy discourse's construction of the United States. This representation is dependent on a logic of exclusion that converts all the "differences, discontinuities, and conflicts that might be found *within* all places and times […] into an absolute difference *between* a domain of domestic society, understood as an identity, and a domain of anarchy, understood as at once ambiguous, indeterminate, and dangerous" (Richard K. Ashley quoted in *ibid*.).

If we consider the hierarchic implications of the IRF policy discourse's inscription of the American identity in the image of religious freedom, the location of religious persecution and terrorism in the external realm would thus seem to serve the particular political function of "hiding" the fact that the American sovereign domain is just as violent, ambiguous and indeterminable as the threatening "other" realm from which it is distinguished. In this way, the United States can emerge as a morally pure space endangered by a chaotic "outside." This image is crucial for the constitution of the United States as the just global sovereign who acts out of moral obligation, not only in defence of persecuted religious individuals and minorities across the globe, but also to protect one of the most fundamental values of American society.

A Blessing Sought to Share?

The IRF policy discourse thus understands itself in multiple ways: it is an emancipatory discourse for the global victims of religious persecution as well a

necessary instrument for national security in the face of international terrorism. In consistency with the moral superiority code established by the direct identification between the United States and religious freedom, however, the IRF policy discourse is also constructed as an act of benevolence. In the introduction to the 2004 State Department Report, Ambassador John Hanford asserts:

> In short, religious freedom is a hallmark of our nation's history, and it is a blessing that we seek to share. "Almighty God hath created the mind free," declared Thomas Jefferson in introducing the landmark Virginia Act for Establishing Religious Freedom, "and the rights hereby asserted are the natural rights of mankind." Such natural rights are not confined to Americans, nor should they be.[69]

Hanford thus thinks of the IRF policy discourse in terms of "sharing" a value that is constitutive of the American tradition as evidenced by the Virginia Act for Establishing Religious Freedom, which was proposed by Thomas Jefferson in 1779 and adopted by the General Assembly in 1786. Since the Act was among the sources that inspired the Bill of Rights,[70] we may observe that Hanford articulates it to signify and reproduce the mythical conception of religious freedom as eternally present in American history. The iconic quality this construction gives the American identity is, moreover, further supported by the articulation of religious freedom as "a blessing," which further implies that the United States has been "blessed" with religious freedom. Hanford's statement is thus also consistent with the Pledge of Allegiance's construction of the United States as "one nation under God."[71] Moreover, Hanford's use of the modal verb "should" indicates that a sense of moral obligation and duty is connected to the IRF policy discourse. Things are not as they *should* be, and since the United States has been "blessed" with the knowledge and experience of religious freedom, it is morally obligated to address religious persecution on an international level, thus "sharing" its blessings like a

[69] Introduction to the Annual Report on International Religious Freedom (U.S. Department of State 2004: 1f.).

[70] "The Virginia Statute for Religious Freedom, 16 January 1786." Internet: http://www.lva.virginia.gov/lib-edu/education/bor/vsrftext.htm (19 Oct. 2009).

[71] The Pledge of Allegiance to the United States flag (1954): "I pledge allegiance to the flag of the United States of America and to the republic for which it stands: one nation under God, indivisible, with liberty and justice for all." Over the years, words have been slightly altered from the original Pledge of Allegiance, which was written in 1892 by Francis Bellamy (1855-1931), a Baptist minister and Christian socialist. The phrase "under God" was added in 1954 after President Eisenhower attended a sermon in which "a Presbyterian argued that without this phrase, the Pledge could applicable to any republic, even the Soviet Union, for it was lacking "the characteristic and definitive factor in the American way of life"" (Campbell 1998: 149).

good Samaritan. Hanford thus glosses over the IRF policy discourse's connection to violence and sovereignty by constructing the United States as the charitable global guardian of religious freedom who is leading the world by example. However, as this chapter has attempted to show, this "blessing" of religious freedom that the United States "seeks to share" is a fiction that is constituted by the exclusion of all contradictory and inconsistent elements in American history and present.

The Mechanism of Domination

This chapter has interrogated the binary opposition of "religious freedom"/"violations of religious freedom" that structures the oppositional discourse of the IRFA. In doing so, I have shown how this structure serves to establish a violent global hierarchy in favour of the United States. In other words, I have attempted to show how the use of binary hierarchies in oppositional discourses implies a mechanism of domination. I think the IRF policy discourse is an exemplary example of this mechanism at work because it actively inscribes the American state identity in the category "religious freedom," while at the same time making the rest of the world's states different from the United States by inscribing them in the category "violations of religious freedom." By using this hierarchy binary hierarchy as the organising principle for difference, all foreign states are thus subordinated to the United States in the same way that "violations of religious freedom" is subordinated to "religious freedom." Religious freedom thus becomes associated with the moral authority of the United States, while violations of religious freedom become associated with the moral depravity of the rest of the world. In this capacity, I think the IRF policy discourse is an exemplary example of how binary structures perpetuate discourses and practices of domination (Newman 2005: 86).

We might say that the IRF foreign policy discourse succumbs to the temptation of otherness in its attempt to secure a stable, cohesive state identity. The object the IRF policy discourse opposes—violations of religious freedom—is made categorically different or "other" from the United States. The dichotomy of

"religious freedom"/"violations of religious freedom" is not fixed by any intrinsic characteristics of states, however; a state can move from the status of a persecuting regime to the status of having realised "religious freedom" by adopting the democratic principles that allow its citizens the freedom "to study, believe, observe, and freely practice the religious faith of their choice" (IRFA 1998: Section 2(4)). The possibility of movement between the categories "religious freedom" and "violations of religious freedom" presupposes that all states are seen as having the same potential and "capacities (although unfulfilled) as the higher standard against which they are judged" (Campbell 1998: 103). However, the inscription of identity/difference into the binary hierarchy of "religious freedom"/"violations of religious freedom" also carries with it the implication of colonialism. Campbell explains:

> This in-principle postulate of identity leads to the practice of colonialism as the values and figuration of the self are projected onto the equal but yet culturally blank other. […] Whenever these distinctions are called into service to fix ambiguity and judge diversity, they do so in terms of an unrequited egocentrism which given the history of exploration and interpretation, is concomitant with Eurocentrism and what Derrida termed the "metaphysics of presence." As Todorov notes, each of the orientations towards otherness begins with "the identification of our own values in general, of our *I* with the universe"" (Campbell 1998: 103).

That diversity is judged against the American paragon can be detected in the IRF policy discourse's affirmation of the American rights tradition, which the previous chapter found to be universalised in the IRFA.[72] Moreover, the first section of this chapter showed how the IRF policy discourse sovereignly displays the power to define and distinguish "religions" from "cults" or "sects." It would thus appear, that the standards against which a foreign state is judged (as well as the nature of the punishment) are defined exclusively by and in the image of the United States itself. This egocentrism would thus have some extent of colonial implications for states that receive the CPC designation and (if not waived) an economic sanction.

[72] See chapter 2, section: "Religious Freedom: The "First Freedom" of Human Rights?"

We thus see that the IRFA grants the United States the sovereign power to both define and act on violations of religious freedom in any state on a global level, whilst at the same time exempting all Presidential actions from the scrutiny and consequence of any law. Since law cannot be negotiated with, foreign countries that are sanctioned as a consequence of being designated CPC's have no agency left but subservience, if not resignation to their sentences. In that sense, the IRFA can be constructed as a unilateral attempt to force American standards on religion and religious freedom on foreign states with the threat of economic punishment.

In the examination of the binary structure organising the IRF policy discourse, I have thus detected the inherent idea that the United States is ideologically superior in comparison to all non-American peoples and cultures—at least in the area of religious freedom. I have also shown how this positional superiority is underscored by the sovereign exclusion of the United States from the sphere of the IRFA and any other law. In doing so, I have argued that the IRF policy discourse's representation practices thus serve to place the United States in a hierarchic relationship with the rest of the world in which it never risks losing the relative upper hand. By showing the connection between sovereignty and the originary violence at the foundation of all laws and institutions, I have, moreover, shown that the sovereign position of the United States is tainted by a violence lacking in any kind of anterior legitimacy.

Conclusion

The Violence at the Foundation of the IRFA

The aim of this thesis has been to expose the link between the American IRF policy discourse and violence, sovereignty and dominance. I tried to contain this aim in the two-part question I asked in the problem definition in the introduction. Before attempting an answer, let us refresh the question:

> *What violence at the foundation of the IRF policy discourse compromises its authority, and how does the IRF policy discourse's binary structure facilitate American domination in relation to religious freedom?*

To answer the first part of the question, I interrogated the foundations of the IRF policy discourse in order to expose its complicity with unfounded violence. In this interrogative process I detected a problematic related to the discourse's simultaneous foundation in the American tradition and international human rights standards. What I found was that the IRFA, rather than being a cohesive articulation of international human rights standards, actually rearticulates the American tradition within the context of international human rights. This rearticulation tries to universalise religious freedom as the "first freedom" of human rights, just as it is the "first freedom" of the Bill of Rights. I found this rearticulation to be the greatest problem to the global legitimacy of the IRF policy discourse, primarily because of the inconsistency in the IRF policy discourse's claim to be founded in a tradition that it clearly differs from structurally. Although the IRF policy discourse claims that the two traditions are "mutually supportive," I have thus found that the discourse violates the authority of international human rights standards by introducing an unprecedented interpretation of human rights

that so particularly favours religious freedom on the international stage. The violence at the foundation of the IRF policy discourse is thus a discursive violence that Americanises the international human rights discourse.

This violence at the foundation of the IRF policy discourse presents a problem to the economic sanctions authorised by the IRFA. The violent, unilateral discursive act at foundation of the law is also represented in its means in the sense that its unilateral sanctions lack the legitimacy secured by backing from international organisations such as the United Nations.

The Structure of American Domination

The binary hierarchy of “religious freedom”/“violations of religious freedom” is the central organising principle for the constitution of identity/difference in the IRF policy discourse. As we saw in the analysis of the discourse’s construction of the American state identity, this rigid either/or structure swallows up all distinctions in favour of the United States. Everything that does not fit the straightjacket of the category “religious freedom” is excluded from the American identity and externalised to the foreign realm. The IRF policy discourse does offer a few scattered admissions on a less than perfect past in terms of religious freedom, but these admissions nevertheless exist unproblematically side by side with a continuous emphasis on the constitutive role of religious freedom in American history and society.

This exclusionary identity practice is especially significant if we consider the context in which it appears: an oppositional foreign policy discourse based on a national law and the universality of human rights. The imposition of the IRFA created a sovereign sphere in which the United States possesses the sovereign power to define and act on matters pertaining to violations of religious freedom in all states. In addition, the United States uses this sovereign power to simultaneously place itself outside the law’s sovereign sphere—outside the reach of law. At the same time, the violent practices that are externalised to foreign states in the constitution of the American identity also constitute the acts that are criminalised by the law. It would thus seem that the exclusionary identity practice

serves the political function of legitimising the United States' sovereign power by glossing over any connection with that which it opposes.

With the inscription of the United States in the image of "religious freedom" and, potentially, the rest of the world in the figure "violations of religious freedom," the IRF policy discourse thus subordinates the world to the United States in the same way that "violations of religious freedom" is subordinated to "religious freedom." We thus see how this binary hierarchy forms the foundation for United States sovereignty in the IRF policy discourse and contributes to the perpetuation of American discourses and practices of domination in the sense that it subordinates all states equated with violations of religious freedom to the United States.

Moreover, the externalisation of violations of religious freedom and religious violence from the United States creates the ideal against which the all other states are judged in the IRF policy discourse. The possibility of moving from the weaker pole of the binary hierarchy to the strong pole entails a movement from "other" to "self." This is, for example, seen in the country category "stigmatization of certain religions by wrongfully associating them with dangerous "cults" or "sects," where the move from moral inferiority entails adopting an American conception of acceptable religious practices and religion. In doing so, we might say that the United States succumbs to the temptation of otherness by locking the world in a position of subservience and moral inferiority where the possibility of becoming morally sound to an extent also entails becoming more "American." In that sense, this thesis' analysis of the link between the IRF policy discourse and violence, sovereignty and domination has served to question whether religious freedom really is a blessing that the United States seeks to share.

Perspective

This thesis has focused on the connection between the IRFA, sovereignty and unfounded violence as well as the implications of dominance and colonialism in the binary structure organising the IRF policy discourse's construction of the United States against the rest of the world. In the analysis, however, foreign states were only represented in general categories such as "authoritarian" and "totalitarian governments." The problematisation of the State Department Reports' categorisation of individual states would add another perspective to the credibility and thus authority of the IRF policy discourse.

If we take the case of Egypt, for example, it is clear that the categorisation of the country is less severe than evidence suggests it could be. Egypt is only categorised as having a problem with "state neglect of the problem of discrimination against, or persecution of, minority or non-approved religions," which is defined as follows: "In some countries, governments have laws or policies to discourage religious discrimination and persecution but fail to act with sufficient consistency and vigor against violations of religious freedom by nongovernmental entities or local law enforcement officials."[73] However, evidence suggests that Egypt might also be constructed to fit the category "totalitarian or authoritarian attempts to control religious freedom and belief." For example, the IRF Reports on Egypt track the gradual success of the Egyptian government's efforts to bring all unauthorised mosques under its control in "an effort to combat Islamic extremists."[74] In 1999, the State Department Report thus reports that: "Of the country's approximately 70,000 mosques, nearly half remain unlicensed and operate outside the control of government authorities."[75] In 2008, the Report notes

[73] Executive Summary to Annual International Religious Freedom Report (U.S. Department of State 2001).
[74] Annual International Religious Freedom Report on Egypt (U.S. Department of State 1999: 1).
[75] *Ibid*.

that only 5,000 mosques out of 100,006 remain unsupervised.[76] This development could certainly be constructed as a near-successful totalitarian attempt to control religion under the guise of fighting extremists—especially in the light of the severe discrimination of Shi'a Muslims and Baha'is that the Reports also note. Moreover, as the Reports also note, only three religions are recognised officially in Egypt, and especially unrecognised Muslim minorities are discriminated against with arbitrary arrests for "insulting Islam," a violation of Article 98(F) of the Penal Code.[77] From this example we thus see that the categorisation of countries in the IRF policy discourse is largely a question of interpretation, a factor gravely contesting the credibility of the IRF policy discourse's methods and analyses.

Another interesting perspective could be to take note of how CPC designations are affected by American lead military interventions, for example, in connection with the War on Terror, which chapter 3 showed left a clear security imprint on the IRF policy discourse. Here, it would be especially interesting to note how both Afghanistan and Iraq were taken off the State Department's CPC list after the United States had successfully imposed new, democratically elected governments in these states. Iraq, for example, had been on the CPC list from 1999-2003 but was officially taken off the list in 2005 after the country's "first free election" in January that same year.[78] The reason Iraq was not on the list in 2004 is that no IRF record exists for Iraq in the interim year between the overthrow of Saddam Hussein's Baathist regime by the "U.S.-lead Coalition in Operation Iraqi Freedom on April 9, 2003"[79] and the January election in 2005. Iraq simply does not figure in the 2004 State Department Report on IRF.[80] However quick Iraq's removal from the CPC list was after 2005's "free election," I find it interesting that it is coherent with the IRF policy discourse's connection between authoritarian states and religious violence as well as its disassociation between "free democratic states" and violations of religious freedom. It would thus seem that the binary logic governing the IRF policy discourse supports the construction of the Iraq War as a success in terms of securing a greater degree of

[76] Annual International Religious Freedom Report on Egypt (U.S. Department of State 2008: 2).
[77] Annual International Religious Freedom Report on Egypt (U.S. Department of State 2001: 4).
[78] Annual International Religious Freedom Report on Iraq (U.S. Department of State 2005: 1).
[79] Annual International Religious Freedom Report on Iraq (U.S. Department of State 2003: 1).
[80] Annual International Religious Freedom Report on the Near East and North Africa (U.S. Department of State 2004).

religious freedom in the country by installing "democracy." On the other hand, the independent Commission does seem to be serving its job as a watchdog by insisting on the immediate re-designation of Iraq as a CPC due to continued problems with religious violence and persecution.

Resumé

Dette speciale tager udgangspunkt i den amerikanske udenrigspolitiske diskurs, der er autoriseret af den amerikanske lov International Religious Freedom Act af 1998 (IRFA). IRFA er en lov der modsætter sig overtrædelser af religiøs frihed på internationalt plan. Den ti år gamle lov er et resultat af særligt kristne gruppers lobbyisme i Washington for at få religiøs frihed inkorporeret i amerikansk udenrigspolitik for at bedre vilkårene for udenlandske ofre for religiøs forfølgelse i udenlandske stater. IRFA kræver, at USA iværksætter unilaterale sanktioner mod stater, hvis handlinger bliver kategoriseret som særligt strenge overtrædelser af religiøs frihed.

Målet med specialet er at problematisere IRFA diskursen som en oppositionspolitisk menneskerettighedsdiskurs ved at fremhæve dens sammenhæng med vold, suverænitet og dominans. Denne problematisering foretages gennem to analytiske greb: for det første gennem en derridiansk dekonstruktion af lovens autoritet, og for det andet gennem en destabilisering af den binære logik, der strukturerer IRFA diskursens konstruktion af det internationale samfund.

Det første skridt, som bygger på Jacques Derridas kritik af lov og autoritet, der viser, at alle institutioner er funderet på illegitim vold. Denne indsigt bruges til at vise, hvordan IRFA er funderet på en voldelig, illegitim diskursiv handling. Som udenrigspolitisk lov hævder IRFA at være autoriseret af det internationale menneskerettighedsregime. Denne påstand viser sig dog at være i modstrid med IRFA diskursens fortolkning af menneskerettigheder. Fortolkningen reartikulerer religiøs frihed som fundamentet for alle menneskerettigheder og bryder dermed

med FN's Generalforsamlings opfattelse af menneskerettigheder som udelelige og ligeværdige. IRFA diskursens fortolkning af menneskerettigheder kan dog ses i lyset af den amerikanske rettighedstradition, hvor religiøs frihed er den "første frihed" sikret i USA's Forfatning. Mens dette måske gør IRFA diskursens fortolkning legitim i en amerikansk kontekst, gør det dog den imidlertid ikke legitim på det internationale plan, den udsiges i. Som sådan anerkender fortolkningen ikke FN's Generalforsamlings autoritet men skaber en ny lov, som strider mod FN's menneskerettighedsprincipper og dermed lægger sig i kamp med den internationale opfattelse af menneskerettigheder. IRFA har således et legitimitetsproblem, der problematiserer de udenrigspolitiske handlinger, loven autoriserer.

Det andet analytiske skridt undersøger det binære hierarki, der strukturerer IRFA diskursens verdensopfattelse, og hvordan dette hierarki viderefører dominansdiskurser og -praksisser. Et af IRFA diskursens mest iøjnefaldende træk er dens kontinuerlige fokus på at konstruere USA i overensstemmelse med religiøs frihed og i modsætning til overtrædelser af religiøs frihed. Ved at destabilisere denne binære struktur viser specialet, hvordan IRFA diskursen afhænger af eksklusion for at skabe et ensartet billede af USA som et ophøjet eksempel på religiøs frihed. Samtidig eksternaliserer IRFA diskursen overtrædelser af religiøs frihed samt religiøs vold såsom terrorisme til udenlandske stater. Denne inddeling af verden til USA's fordel er med til at fastlåse udenlandske stater i en underdanig position. Det binære hierarki, som IRFA diskursen etablerer til USA's fordel understøttes tilmed af IRFA, idet den som lov skaber en suveræn sfære og tildeler USA den suveræne magt til at definere og dømme alle udenlandske stater i forhold til egne kriterier for religiøs frihed. Dermed understøtter IRFA og IRFA diskursens binære struktur hinanden i en konstruktion af verden, hvor udenlandske stater straffes og dømmes ud fra amerikanske kriterier, alt imens USA som den suveræne magt bruger denne magt til at stille sig udenfor loven.

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