

# The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea

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With the passage of time and the deaths of all the main participants, the origins of the post–World War II international human rights project have been obscured by forgetfulness and myth. The polestar of that movement, the 1948 Universal Declaration of Human Rights (“UDHR”), is widely regarded as nothing more than a compendium of classical Western political and civil liberties. Its provisions relating to the family and to social and economic justice are routinely ignored, even by major human rights organizations. Yet those provisions, based in large part on Latin American models, played a key role in helping the UDHR to gain wide acceptance among diverse cultures. Indeed, Latin American diplomats, documents, and traditions had such a profound influence upon both the decision to include human rights protection among the purposes of the UN, and the content of the Universal Declaration, that it is fair to refer to Latin America as the forgotten crucible of the universal human rights idea.

## I. LATIN AMERICAN INFLUENCES ON THE UN CHARTER

In April 1945, when delegates from fifty countries gathered in San Francisco to put the finishing touches on a proposed charter for the United Nations, representatives of Latin American and Caribbean nations arrived with a plan to work for the inclusion of an international bill of rights. That idea was far from the minds of the Allied leaders who called the conference. Their draft proposal for the new organization had been negotiated in a much more exclusive meeting a few months earlier at Dumbarton Oaks. It was only after Churchill, Roosevelt, and Stalin had settled everything that was most important to them that they announced a meeting where the rest of the Allies could have a say. The “Big Three” leaders do not seem to have contem-

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plated that the San Francisco conference might produce major changes in their design. As Churchill had put it to Roosevelt and Stalin at Yalta, when discussing the extent to which “smaller powers” should participate in the peace process: “The eagle should permit the small birds to sing and care not wherefore they sang.”<sup>1</sup> What Churchill, Roosevelt, and Stalin wanted was a collective security arrangement for the postwar period. Human rights ranked so low among the priorities of the major powers that they mentioned it only once, briefly, in their draft charter.

Among the delegates who came to the UN founding conference, however, were several who had a more expansive vision of the new organization: a vision that included protection of human rights. The twenty-nation Latin American contingent, as the single largest bloc, was in a position to press the human rights agenda.<sup>2</sup> The delegates were well-suited for that role by experience as well as numbers, for they had been engaged for some time in thinking about human rights at the supranational level. As early as 1938, with war impending, the Inter-American Conference (the predecessor of the Organization of American States) adopted a “Declaration in Defense of Human Rights” at its eighth international meeting in Lima, Peru. That Declaration stated that when “recourse is had to war in any other region of the world, respect [should] be given to those human rights not necessarily involved in the conflict, to humanitarian sentiments, and to the spiritual and material inheritance of civilization.”<sup>3</sup> At the same conference, three forward-looking resolutions were adopted: one condemning racial and religious persecution,<sup>4</sup> one in favor of women’s rights,<sup>5</sup> and one on freedom of association for workers.<sup>6</sup> In addition, in 1945, just before the San Francisco gathering, the Inter-American Conference held a meeting in Mexico City where they resolved to seek inclusion of a transnational declaration of rights in the UN Charter.<sup>7</sup>

That surge of regional interest in supranational human rights had grown out of several Latin American countries’ efforts to establish constitutional democracies where rights of citizens would be legally protected. According to Hector Gros Espiell, vice-president of the Inter-American Court of Human Rights, the 1940s were “a moment of idealistic optimism and demo-

1. CHARLES E. BOHLEN, *WITNESS TO HISTORY, 1929–1969*, at 181 (1973). Churchill was recalling lines from Shakespeare’s *Titus Andronicus*: “The eagle suffers little birds to sing/And is not careful what they mean thereby.” WILLIAM SHAKESPEARE, *TITUS ANDRONICUS*, 4.4.84–85 (Russ McDonald ed., Penguin Books 2000) (1594).

2. The countries represented were Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.

3. CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, *INTERNATIONAL CONFERENCES OF AMERICAN STATES, FIRST SUPPLEMENT, 1933–1940*, at 246 (1943).

4. *Id.* at 260.

5. *Id.* at 250.

6. *Id.* at 238.

7. MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 15 (2001).

cratic euphoria.”<sup>8</sup> As Johannes Morsink puts it, “In their joint reaction to the Great Depression and to the absolutism of both right and left, they all (or almost all) hit a democratic stretch at the same time.”<sup>9</sup> Cuba, for example, adopted a democratic constitution in 1940 and voted out its corrupt leader, Fulgencio Batista, in 1944. Within eight years, Batista would return to power with the aid of the military and would suspend all constitutional guarantees; the Batista regime, in turn, would be overthrown by Fidel Castro in 1959. But in 1945, Cuba was enjoying a brief interlude of political hope and promise. The nation sent an eloquent young democrat, thirty-year-old Guy Pérez Cisneros, to be its representative at the San Francisco meeting.

As soon as the San Francisco proceedings got underway, Panama submitted a draft declaration of human rights (complete with rights to education,<sup>10</sup> work,<sup>11</sup> health care,<sup>12</sup> and social security<sup>13</sup>). Delegates from Chile, Cuba, and Mexico joined Panama in waging an unsuccessful fight to have that declaration incorporated into the UN Charter. In a more productive effort, the Latin coalition joined forces with delegates from newly independent countries like the Philippines and Lebanon, and with observers from Catholic, Protestant, and Jewish religious groups, civic associations, and labor organizations, to try to make sure the Charter would at least proclaim a serious commitment to the protection of human rights.<sup>14</sup>

The reaction of the major powers to those human rights initiatives ranged from coolness on the part of the United States to outright hostility on the part of the Soviet Union and colonial nations like France and Britain. But in May 1945, two developments gave a decisive boost to the movement for raising the profile of human rights in the Charter. First, the conference members were shocked by the photographs that began to arrive from the newly liberated concentration camps in Europe. Second, and no doubt related to those revelations, the United States dropped its opposition to the idea of creating a UN Human Rights Commission.<sup>15</sup> By the time the conference ended in June 1945, principles of human rights had been inserted

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8. Hector Gros Espiell, *La Declaración Americana: Raíces Conceptuales y Políticas en la Historia, la Filosofía y el Derecho Americano*, Número Especial, REVISTA INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS 41, 44 (1989).

9. JOHANNES MORSINK, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT 130 (2000).

10. *Id.* at 6. The draft was the product of cross-national collaboration conducted under the auspices of the American Law Institute. AMERICAN LAW INSTITUTE, *Statement of Essential Rights*, in AMERICAN LAW INSTITUTE, SEVENTY-FIFTH ANNIVERSARY 1923–1998, at 272 (1998).

11. AMERICAN LAW INSTITUTE, *supra* note 10, at 283.

12. *Id.* at 286.

13. *Id.* at 285.

14. For an account of the initiative, see GLENDON, A WORLD MADE NEW, *supra* note 7, at 15–18.

15. M. Glen Johnson, *The Contributions of Eleanor and Franklin Roosevelt to the Development of International Protection for Human Rights*, 9 HUM. RTS. Q. 19, 26 (1987).

into the UN Charter in seven places, including a provision establishing a commission on human rights.<sup>16</sup>

## II. LATIN AMERICAN INFLUENCES ON THE DRAFTING OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Latin American delegates remained active on the human rights front once the UN was up and running. One of the first tasks the new organization assigned to its Human Rights Commission (chaired by Eleanor Roosevelt) was the preparation of what was then referred to as an "international bill of rights."<sup>17</sup> The Commission was to produce a set of common standards that would serve as a kind of yardstick by which all countries could measure their own and each others' progress toward making human rights a reality. The eighteen-member Commission, constituted with a view toward cultural and political diversity, was reasonably well-suited for that assignment. Three of the eighteen seats were given to Latin American countries: one to Chile, one to Uruguay, and one to Panama. The other seats were held by Australia, Belgium, China, Egypt, France, India, Iran, Lebanon, the Philippines, the United Kingdom, the United States, and four Eastern bloc members: Byelorussia, the Soviet Union, the Ukraine, and Yugoslavia.<sup>18</sup>

That very heterogeneity, however, posed daunting challenges. Not least of these was that no one really knew whether there were any rights with a plausible claim to acceptance in all the cultures of the world, or, if so, what they might be.<sup>19</sup> As an initial step, the Human Rights Commissioners asked the Director of the UN's Human Rights Division, the Canadian international lawyer John Humphrey, to prepare a first draft.<sup>20</sup> Humphrey began by having his staff conduct a complete survey of the world's existing rights documents, together with all the proposals that had been submitted to the UN. Following up on their initiative at San Francisco, the first three governments to submit proposed bills of rights were Panama, Chile, and Cuba.<sup>21</sup> After studying the material he had received and collected—over four hundred

16. U.N. CHARTER, pmbl. and arts. 1, 13, 55, 62, 68, 76.

17. MORSINK, *supra* note 9, at 13. For detailed histories, *see id.* and GLENDON, *A WORLD MADE NEW*, *supra* note 7.

18. U.N., *YEARBOOK ON HUMAN RIGHTS FOR 1947* at 422, U.N. Sales No. 1949.XIVI (1949).

19. To examine those questions, UNESCO appointed a committee of philosophers, including some, such as Jacques Maritain and Benedetto Croce, who were prominent in the West, and others who belonged to Confucian, Hindu, and Muslim traditions. The philosophers in turn sent a questionnaire to other leading thinkers all over the world—from Mahatma Gandhi to Teilhard de Chardin. In due course, the Committee reported that, somewhat to their surprise, the responses they received indicated that there were a number of principles of basic decency that were widely shared—though not always formulated in the language of rights. Gandhi, for example, recommended framing a bill of duties. The Committee's report, the questionnaire, and several responses are collected in *HUMAN RIGHTS: COMMENTS AND INTERPRETATIONS* (United Nations Educational, Scientific and Cultural Organization ed., 1949).

20. A. J. Hobbins, *René Cassin and the Daughter of Time: The First Draft of the Universal Declaration of Human Rights*, 2 *FONTANUS* 7, 10 (1989).

21. MORSINK, *supra* note 9, at 131.

pages—Humphrey took as his principal models the Panamanian and Chilean submissions.<sup>22</sup>

The Panamanian-sponsored document was the same proposal that Latin American delegations had unsuccessfully put forward at San Francisco.<sup>23</sup> It was the product of a cross-national study conducted in 1942 and 1943 under the auspices of the American Law Institute (“ALI”), an organization of U.S. judges, practitioners, and academics dedicated to the improvement of the law. With assistance from the ALI, a multinational committee had consulted experts from “Arabic, British, Canadian, Chinese, French, pre-Nazi German, Italian, Indian, Latin American, Polish, Soviet Russian and Spanish”<sup>24</sup> countries and cultures in order to ascertain to what extent there could be worldwide agreement respecting rights.<sup>25</sup> In 1944, reporting that it had “found a very large measure of agreement which, in view of its multinational make-up, was most encouraging,” the committee had produced a “Statement of Essential Human Rights” that they believed to have a claim to acceptance “by men of good will in all nations.”<sup>26</sup> In their preface, the drafters took pains to emphasize: “This is not a statement made by the American Law Institute, which is composed exclusively of United States citizens. It is a statement by a committee representing many different nations.”<sup>27</sup> It was this Statement that Panama’s Foreign Minister, Ricardo Alfaro, a member of the drafting group, had proposed for inclusion in the UN Charter.

The Chilean draft was a preliminary version of the American Declaration of the Rights and Duties of Man, commissioned by the Mexico City Inter-American Conference in 1945.<sup>28</sup> Its authors, too, had consulted a wide variety of sources, including an early version of the Statement of the ALI group.<sup>29</sup> Dated December 31, 1945, the draft was signed by a four-person committee that included Felix Nieto del Ríó, who represented Chile at the first meeting of the UN Human Rights Commission.<sup>30</sup> The American Declaration, often known as the Bogotá Declaration, became the world’s first international human rights declaration when it was adopted on April 30, 1948, at Bogotá, Colombia.<sup>31</sup>

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22. JOHN P. HUMPHREY, *HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE* 31–32 (1984).

23. MORSINK, *supra* note 9, at 6. For the actual draft, see UNITED NATIONS, GENERAL ASSEMBLY, STATEMENT OF ESSENTIAL HUMAN RIGHTS, STATEMENT SUBMITTED BY THE DELEGATION OF PANAMA, U.N. Doc. A/148 (1946).

24. *Statement of Essential Rights*, *supra* note 10, at 269.

25. *Id.* at 267.

26. *Id.*

27. *Id.*

28. MORSINK, *supra* note 9, at 131. For the actual draft, see UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, DRAFT DECLARATION OF THE INTERNATIONAL RIGHTS AND DUTIES OF MAN, DRAFT SUBMITTED BY THE INTER-AMERICAN JURIDICAL COMMITTEE, U.N. Doc. E/CN.4/2 (1947).

29. Gros Espiell, *supra* note 8, at 48.

30. The other signers were Francisco Campos, Charles Fenwick, and Antonio Gómez Robledo. *Id.* at 45.

31. *American Declaration of the Rights and Duties of Man*, in BASIC DOCUMENTS ON HUMAN RIGHTS

Morsink's line-by-line comparison of the Panamanian- and Chilean-sponsored drafts with the first draft of the Universal Declaration led him to conclude that "Humphrey took much of the wording and almost all of the ideas for the social, economic, and cultural rights of his first draft" from those two proposals.<sup>32</sup>

What made the Latin American-sponsored drafts such important sources for Humphrey and the Human Rights Commission was their compatibility with the broad range of cultures and philosophies represented in the United Nations. No small part of that wide appeal was due to the fact that several elements of Latin American legal traditions resonated with non-Western traditions. As I have described elsewhere, the modern language of rights, from the outset, developed two main branches.<sup>33</sup> The differences were ones of degree, but their spirit had penetrated every corner of the societies affected. One branch, influenced by the rhetoric of the American revolution and by early modern Anglo-American thinkers, placed greater emphasis on individual liberty and property than on equality and fraternity (or, as we would say today, solidarity). This dialect was infused with a good deal of mistrust of government. The other dialect was more influenced by the continental European branch of the Enlightenment, where the break with classical, biblical, feudal, and Roman-law thinking about man and government had been less complete. Continental rights documents had more room for equality and fraternity along with liberty; they often explicitly tempered rights with duties and limits; and they generally presented government in a positive light as a guarantor of rights and protections for the needy.

When Latin American nations gained independence in the nineteenth century, those two strains converged, and merged with an older, more universalist, natural law tradition. The result was a distinctively Latin American form of rights discourse. Paolo Carozza traces the roots of that discourse to a distinctive application, and extension, of Thomistic moral philosophy to the injustices of Spanish conquests in the New World.<sup>34</sup> The key figure in that development seems to have been Bartolomé de Las Casas, a sixteenth-century Spanish bishop who condemned slavery and championed the cause of Indians on the basis of a natural right to liberty grounded in their membership in a single common humanity.<sup>35</sup> "All the peoples of the world are

488 (Ian Brownlie ed., 3d ed., 1992). The Bogotá conference where the Declaration was adopted was the scene of a violent far-left demonstration (known as the Bogotazo) in which 5000 persons lost their lives. Among the participants in the Bogotazo was the young Fidel Castro. CLAUDIO F. BENEDI, *HUMAN RIGHTS: THE THEME OF OUR TIMES* 38–39 (1997).

32. MORSINK, *supra* note 9, at 131.

33. See MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* 20–46 (1991); MARY ANN GLENDON, *ABORTION AND DIVORCE IN WESTERN LAW: AMERICAN FAILURES, EUROPEAN CHALLENGES* 112–34 (1987).

34. See generally Paolo G. Carozza, *From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights*, 24 *HUM. RTS. Q.* (forthcoming 2002) (on file with author).

35. BRIAN TIERNEY, *THE IDEA OF NATURAL RIGHTS: STUDIES ON NATURAL RIGHTS, NATURAL LAW AND CHURCH LAW* 1150–1625, at 272–74 (1997).

humans," Las Casas wrote, and "all the races of humankind are one."<sup>36</sup> According to Brian Tierney, Las Casas and other Spanish Dominican philosophers laid the groundwork for a doctrine of natural rights that was independent of religious revelation "by drawing on a juridical tradition that derived natural rights and natural law from human rationality and free will, and by appealing to Aristotelian philosophy."<sup>37</sup> Carozza builds on Tierney's work to show how an identifiably Latin American understanding of human rights emerged from the fusion of the teachings of Dominican opponents of slavery and conquest with French revolutionary ideas, United States constitutionalism, and the Pan-American vision of the Liberator, *Símon Bolívar*.

Upon independence, most of the new nations in South and Central America retained their European-style legal systems based on civil codes but adopted constitutions inspired by the U.S. founding documents, the rhetoric of the French Revolution, and a natural law tradition to which the idea of the common humanity of all persons was central. These constitutions were less libertarian than the U.S. model and bore no trace of the anti-clericalism that characterized the French constitutions of the revolutionary period. Later, in the first half of the twentieth century, many Latin American countries supplemented their constitutions with protections for workers and the poor. Though conventional history treats Latin American constitutionalism as merely derivative of American and European models, it is more accurately regarded as representing a distinctive fusion of moral and political traditions. The insistence on the correlation between human rights and duties, for example, has been a characteristic feature of Latin American political philosophy and constitutional law since the beginning of the nineteenth century.<sup>38</sup> The universalizing, internationalist dimension of this heritage was furthered by the Inter-American Conference, established in 1890.

In view of that background, it is not surprising that Humphrey found the Panamanian- and Chilean-sponsored drafts especially useful resources for a UN declaration that aspired to be universally applicable. In the first place, by emphasizing the importance of the family and the idea that rights are subject to duties and limitations,<sup>39</sup> both drafts resonated with several non-Western as well as continental European traditions. Secondly, they were both based on extensive cross-national research with the aim of finding acceptance from a large group of countries that are far from homogeneous. And thirdly, they were prime examples of the modern constitutional trend to combine

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36. *Id.* at 273.

37. *Id.* at 287. Tierney says that Las Casas's "essential achievement, on a theoretical level, was to graft, quite consciously, a juridical doctrine of natural rights onto Aquinas's teaching on natural law." *Id.* at 276.

38. Gros Espiell, *supra* note 8, at 53.

39. "The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty." *American Declaration of the Rights and Duties of Man*, *supra* note 31, at 489.

“first generation” political and civil liberties with “second generation” rights relating to social justice. Though many other cultures contributed to the Universal Declaration of Human Rights, the UN document bears unmistakable marks of the strong influence of the same ideas and sources that helped to shape the 1948 American Declaration of the Rights and Duties of Man (“ADRDM”).<sup>40</sup>

40. An emphasis on human dignity, for example, is pervasive in both documents, and both begin by sounding the theme of liberty, equality, and fraternity (solidarity):

UDHR, 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.

ADRDM, Preamble: All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.

Both documents also recognize the importance of the family:

UDHR, Article 16 (3): The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

ADRDM, Article 6: Every person has the right to establish a family, the basic element of society, and to receive protection therefor.

Both recognize a right to social security:

UDHR, Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

ADRDM, Article 16: Every person has the right to social security which will protect him from the consequences of unemployment, old age, and any disabilities arising from causes beyond his control that make it physically or mentally impossible for him to earn a living.

Both recognize a worker's right to remuneration that assures a decent existence for the worker and the worker's family:

UDHR, Article 23 (3): Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

ADRDM, Article 14 (2): Every person who works has the right to receive such remuneration as will, in proportion to his capacity and skill, assure him of a standard of living suitable for himself and for his family.

Both accord special protection to motherhood and childhood:

UDHR, Article 25 (2): Motherhood and childhood are entitled to special care and assistance.

ADRDM, Article 7: All women, during pregnancy and the nursing period, and all children have the right to special protection, care and aid.

Both expressly state that people have duties as well as rights:

UDHR, Article 29 (1): Everyone has duties to the community in which alone the free and full development of his personality is possible.

ADRDM, Preamble: The fulfillment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man. While rights exalt individual liberty, duties express the dignity of that liberty.

Both expressly state that rights have limits:

UDHR, Article 29 (2): In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

ADRDM, Article 28: The rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy.

The texts of the Universal Declaration and the American Declaration can be found in BASIC DOCUMENTS ON HUMAN RIGHTS, *supra* note 31, at 21–27 and 489–94.



When Humphrey finished the initial draft of the UDHR, he turned it over to the Human Rights Commission ("HRC"), which appointed an eight-member drafting committee to continue the work. A key member of that subcommittee was Hernán Santa Cruz, who succeeded Nieto del Río as Chile's representative on the HRC after the first meeting. Contrary to what many suppose today, it was Santa Cruz, far more than any Soviet bloc representative, who was the Commission's most zealous promoter of social and economic rights. Indeed, in his study of the origins of the Declaration, Morsink has concluded that the social and economic rights in the Declaration are mainly derived from the traditions of Latin American socialism.<sup>41</sup>

That the rights in question owe much to Latin American models is clear, but whether those models are best described as socialist depends on what one means by "socialist." By the 1940s, social and economic rights had found their way into the constitutions of many Latin American and continental European countries via the programs of socialist, social democratic, labor, Christian democratic, and Christian social parties.<sup>42</sup> Except in Mexico, which adopted a socialist constitution in 1917, the particular formulations of rights in Latin America—with their emphasis on the family, religion, and the dignity of the person—are significantly at odds with Marxist anthropology and with state socialism.

One feature that set most twentieth-century Latin American rights documents apart from Marxist models was their resemblance to two influential papal encyclicals that grounded social justice in respect for human dignity: the 1891 encyclical *Rerum Novarum*, and *Quadragesimo Anno*, published on the fortieth anniversary of *Rerum Novarum*. As Michael Novak has observed:

[U]nless one understands the Catholic intellectual traditions of southern Europe and Latin America, one cannot really enter the horizon of Latin American intellectual discourse. Many Latin Americans do not think of themselves as Catholic at all, and many may be quite irreligious. But even the irreligious have become used to expressing themselves within the horizon of Latin Catholic history.<sup>43</sup>

In *Rerum Novarum*, Pope Leo XIII deplored a state of affairs in which "working men have been surrendered, isolated and helpless, to the hard-heartedness of employers and the greed of unchecked competition,"<sup>44</sup> and

41. See MORSINK, *supra* note 9, at 130.

42. At least ten Latin American countries rewrote their constitutions in the 1940s, five others did so in the 1930s, and two had done so in the first quarter of the twentieth century. *Id.* See Mary Ann Glendon, *Rights in Twentieth Century Constitutions*, 59 U. CHI. L. REV. 519 (1992) on the constitutional incorporation of social and economic rights.

43. MICHAEL NOVAK, *THIS HEMISPHERE OF LIBERTY: A PHILOSOPHY OF THE AMERICAS*, at 1 (1992).

44. POPE LEO XIII, *Rerum Novarum* (May 15, 1891), *reprinted in* 2 *THE PAPAL ENCYCLICALS, 1878–*

gave a ringing endorsement to workers' rights on the basis of human dignity.<sup>45</sup> At the same time, he vigorously rejected state socialism as a remedy for grave social ills.<sup>46</sup> Forty years later, Pius XI observed that his predecessor's dignitarian approach to rights had played a role—via Christian political parties, labor organizations, and social action groups—in shaping social legislation enacted after the Great War.<sup>47</sup> He noted that “[a] new branch of law, wholly unknown to the earlier time, has arisen from this continuous and unwearied labor to protect vigorously the sacred rights of the workers that flow from their dignity as men,”<sup>48</sup> and he reaffirmed the duty to provide for the needy,<sup>49</sup> the right to form and join unions,<sup>50</sup> the right to an adequate wage for the worker and his family,<sup>51</sup> and the need to avoid the “twin rocks of shipwreck” of extreme individualism and collectivism.<sup>52</sup>

The contributions to the UDHR of Hernán Santa Cruz, the principal advocate of social and economic rights on the Human Rights Commission, were in keeping with that tradition. Santa Cruz was an aristocratic man of the left, a member of the Chilean Popular Front, and a close friend from boyhood of the ill-fated Salvador Allende, but he was seldom aligned with the socialist bloc in the UN. His vision of human rights—melding freedom, dignity, and social justice—is well-captured in the following amendment proposed by Chile to the UDHR's article on the right to life:

Unborn children and incurables, mentally defectives and lunatics, shall have the right to life.

All persons shall have the right to the enjoyment of conditions of life enabling them to live in dignity and to develop their personality adequately.

Persons unable to maintain themselves by their own efforts shall be entitled to maintenance and assistance.<sup>53</sup>

Santa Cruz was unsuccessful in his efforts to have unborn children recognized in the Declaration as members of the human family, but no one played a greater role than he in securing recognition for the rights of persons who cannot provide for their own needs.

1903, at 241, ¶ 3 (Claudia Carlen ed., 1981), available at [http://www.vatican.va/holy\\_father/leo\\_xiii/encyclicals/documents/hf\\_l-xiii\\_enc\\_15051891\\_rerum-novarum\\_en.html](http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html).

45. *Id.* at ¶ 20, 34, 36, 42, 45, 49.

46. *Id.* at ¶ 4, 5, 6, 15.

47. POPE PIUS XI, *Quadragesimo Anno* (May 15, 1931), reprinted in 3 *THE PAPAL ENCYCLICALS, 1903–1939*, at 415, ¶ 12, 21, 22, 27 (Claudia Carlen ed., 1981), available at [http://www.vatican.va/holy\\_father/pius\\_xi/encyclicals/documents/hf\\_p-xi\\_enc\\_19310515\\_quadragesimo-anno\\_en.html](http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_19310515_quadragesimo-anno_en.html).

48. *Id.* at ¶ 28.

49. *Id.* at ¶ 25, 50.

50. *Id.* at ¶ 29, 30, 87.

51. *Id.* at ¶ 71.

52. POPE PIUS XI, *supra* note 47, at ¶ 46. See also ¶ 10, 14, 110.

53. GLENDON, *A WORLD MADE NEW*, *supra* note 7, app. 3, at 282.

### III. LATIN AMERICANS IN THE DEBATES LEADING TO APPROVAL OF THE UDHR BY THE GENERAL ASSEMBLY

In the autumn of 1948, the Human Rights Commission presented its draft declaration to the UN's Committee on Social, Humanitarian, and Cultural Affairs, a large body composed of representatives from each of the fifty-eight member nations, for review. Approval by that group was a necessary step before the Declaration could be presented for a final vote in the General Assembly. The Latin American countries were still the largest single group in the UN, and their delegates were eager to bring the experience gained in preparing the Bogotá Declaration to bear on the UN's human rights project. So proud were they of the newly minted American Declaration, that many backed a movement spearheaded by Cuba to send the draft UN Declaration to a committee to be compared line by line with the American one.<sup>54</sup> When that idea was rejected, several Latin American delegates began offering amendments aimed at conforming the UN draft to the Bogotá Declaration.<sup>55</sup>

This activity, though it produced a number of important last-minute changes to the UDHR, produced alarm among many of the Declaration's supporters, for it unwittingly aided Soviet efforts to delay the proceedings. Among those who feared that the Declaration's chance of approval would be dead forever if it were not adopted at the 1948 session was John Humphrey. In his memoir, referring to the Latin American initiatives as "the Bogotá Menace," Humphrey recalled his feelings of frustration as the "[h]ighly intelligent, Pérez Cisneros used every procedural device to reach his end. His speeches were laced with Roman Catholic social philosophy, and it seemed at times that the chief protagonists in the conference room were the Roman Catholics and the communists, with the latter a poor second."<sup>56</sup> In Humphrey's private diaries, published after his death, he describes Pérez Cisneros as a man who "combines demagoguery with Roman Catholic social philosophy," remarking that the Cuban "should burn in hell, but he will probably go down in history as a great defender of freedom."<sup>57</sup>

Fortunately, Hernán Santa Cruz, who sympathized both with Humphrey's sense of urgency and with the aims of his fellow Latin Americans, was in a position to intervene effectively. As a member of the drafting committee, he was able to point out to delegates who were seeing the UDHR for the first time how much of the document had in fact been based on the preparatory work for the Bogotá Declaration.<sup>58</sup>

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54. Carozza, *supra* note 34, at 7–8.

55. *Id.* at 8.

56. HUMPHREY, *supra* note 22, at 65–66.

57. Diary of John Humphrey (Dec. 4, 1948), in *ON THE EDGE OF GREATNESS: THE DIARIES OF JOHN HUMPHREY* 87 (A. J. Hobbins ed., 1994).

58. Santa Cruz's account can be found in his memoir, *HERNÁN SANTA CRUZ, COOPERAR O PERECER: EL DILEMA DE LA COMUNIDAD MUNDIAL 184–93* (1984). See also GLENDON, *A WORLD MADE NEW*, *supra* note 7, at 140–41.

The persistence of the Latin American delegates did result, however, in significant additions to the UDHR in the course of debates that stretched out over October and November 1948. On the motion of Minerva Bernardino of the Dominican Republic, the preamble was amended to emphasize that the Declaration's rights belong to women as well as men.<sup>59</sup> At the instance of Pérez Cisneros, the reference to the needs of families was inserted into what would become Article 23(3) on the right to just remuneration.<sup>60</sup> On the motion of Ecuador, what would become Article 9 was amended to include protection against arbitrary exile.<sup>61</sup> And at Mexico's behest, a new article (which would become Article 8) was added adopting the Latin American institution known as the *amparo* (the right to an effective remedy for acts in violation of fundamental rights).<sup>62</sup>

The importance of the Latin American contributions was officially recognized on December 9, 1948, when Charles Malik, as Rapporteur of the UN's Human Rights Commission, presented the draft Universal Declaration of Human Rights to the General Assembly for its vote.<sup>63</sup> Malik began by describing the document as a landmark in history: a synthesis of all existing rights traditions.<sup>64</sup> After noting that a great number of proposals for an international bill of rights had been submitted from all over the world, he singled out the Panamanian, Chilean, and Cuban drafts for special mention.<sup>65</sup> He recognized Hernán Santa Cruz for having "kept alive in our mind the great humane outlook of his Latin American world";<sup>66</sup> "Mr. Cisneros of Cuba and Mr. Carrera de Andrade of Ecuador [who] have contributed from the great fund of their erudition and high idealism";<sup>67</sup> "the keen legal logic of Mr. De Aréchaga of Uruguay";<sup>68</sup> and noted that "credit must go to Miss Minerva Bernardino of the Dominican Republic" for the mention of the equal rights of men and women in the Preamble.<sup>69</sup> He then proceeded to point the member States to places in the Declaration where they could either find their own contributions or the influence of the cultures to which they belonged.<sup>70</sup>

On the following day, the Universal Declaration was adopted by the UN General Assembly without any dissenting votes (although the Soviet bloc, Saudi Arabia, and South Africa recorded abstentions). As Malik had noted,

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59. Charles Malik, Speech of Thursday 9 December 1948, in *THE CHALLENGE OF HUMAN RIGHTS: CHARLES MALIK AND THE UNIVERSAL DECLARATION* 124 (Habib C. Malik ed., 2000).

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 117.

64. Charles Malik, *supra* note 59, at 117–18.

65. *Id.* at 118.

66. *Id.* at 121.

67. *Id.* at 123.

68. *Id.*

69. *Id.* at 124.

70. Charles Malik, *supra* note 59, at 124.

many nations contributed to that impressively, if imperfectly, multicultural document. The Latin American contributions, however, were among the major factors that helped it to avoid extremes of individualism or collectivism and to become the principal model for the majority of rights instruments in the world today. Neither a U.S.- nor a Soviet-style document could have commanded a consensus from a United Nations that included representatives from so many different cultures.

#### IV. CONCLUSION

As this brief survey demonstrates, the efforts of Latin Americans were instrumental in securing a place for human rights in the UN Charter, in providing models for the Human Rights Commission in its drafting process, and in endowing the UDHR with broad cross-cultural appeal. It is desirable to retrieve what Latin Americans brought to the human rights project, not only for the sake of giving credit where credit is due, but also because the expansive vision that inspired so many post-World War II rights instruments is currently at risk of being displaced by narrowly individualistic and libertarian interpretations.<sup>71</sup> I need to emphasize, however, that I have only excavated the top layer of a story that needs to be more fully explored. My hope is that Latin American thinkers and statespersons will soon recover this part of their heritage in its fullness, not only for the sake of their own democratic experiments, but for the sake of the human rights movement. In 1948, they helped to prevent the Universal Declaration from falling into the excesses of individualism or collectivism. Now that the UDHR has become the single most important reference point for discussions of human rights in international settings today, Latin America may once again help the human rights movement to realize the full promise of the Declaration's vision of human dignity.

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71. See GLENDON, RIGHTS TALK, *supra* note 33.