

LATIN AMERICA'S PROTAGONIST ROLE IN HUMAN RIGHTS

Kathryn Sikkink

- *How the region shaped human rights norms post World War II •
and what it means for the field today*

ABSTRACT

Latin American governments, social movements, and regional organisations have made a far bigger contribution to the idea and practice of international human rights than has previously been recognised. Most discussions of the global human rights regime stress its origins in the countries of the Global North. This article explores the role of Latin America states as early protagonists of the international protection of human rights, focusing in particular on the American Declaration of the Rights and Duties of Man, adopted 8 months before passage of the Universal Declaration. In light of this, Sikkink calls into question the idea that human rights originated only in the Global North.

KEYWORDS

Global South | Norm development | Human rights | Universal Declaration of Human Rights | American Declaration of the Rights and Duties of Man

1 • Introduction

Scholars looking at who sets the global human rights agenda often argue that attention to human rights issues is the result of the dominance of powerful states. Others argue that northern-based NGOs continue to be powerful gatekeepers who often block or reshape issues from NGOs and social movements based in the Global South.¹

There is a need for scholars of international norms to pay greater attention to the potential agency of states outside the Global North. But the very binaries of North/South or West/Non-West may obscure the process we hope to illuminate. Latin America, for example, complicates these binaries that associate the Global North with the West. Because Latin American scholars and politicians are from the Global South, and yet, as Fawcett has argued, were neither fully “Western” nor “Non-Western”, the West/Non-West dichotomy in some international relations scholarship has neglected Latin American contributions.²

Elsewhere I have made the case for the historical normative agency of Latin America with regard to democracy promotion and human rights, and more recently for Argentina as a “global human rights protagonist”.³ Another way to talk about these processes of norm diffusion is to think of “norms entrepreneurs” in and from the Global South.⁴ Eric Helleiner, for example, discusses Southern agency for the norm that international institutions should support economic development of poor countries.⁵ In a related vein, Dominguez has stressed that Latin American regional organisations have been “international rule innovators” rather than simply “price takers”.⁶

Here I argue that Latin American countries were protagonists of the idea of “international human rights”. I will illustrate this argument by looking at the role of Latin American states promoting these international human rights norms in the post World War II period, in particular drafting the first intergovernmental declaration of rights – the American Declaration of the Rights and Duties of Man (the “American Declaration”), a full 8 months before the Universal Declaration of Human Rights (the “UDHR”) was passed in the UN General Assembly on December 10, 1948. The UDHR is usually seen as the starting point of the global human rights regime, and the American Declaration has been largely ignored outside the hemisphere. While this argument relates to debates about Latin American and the “new regionalism” it goes beyond it in stressing Latin American contributions to the global normative and legal order, and not only to regional orders.⁷

Latin American countries have a strong tradition of support for the doctrines of sovereignty, sovereign equality, and non-intervention as a means by which weaker countries might find refuge from the less law-like interventions of the more powerful, especially the US.⁸ Latin American countries saw international law as one of the “weapons of the weak” to balance US power.⁹

At the same time as they defended sovereignty, however, Latin American legal scholars, policy makers, and activists have also long been at the forefront of the struggle for

international human rights and democracy.¹⁰ One reason why they promoted the international protection of human rights is that it would “eliminate the misuse of diplomatic protection of citizens abroad”, especially by the US.¹¹ But these Latin American diplomats and legal scholars were also committed to the ideal of rights: they were part of the Western and enlightenment intellectual tradition even as they operated from what we would now call the periphery or the Global South. Carozza, for example, has traced the origins of Latin American concern with human rights to the work of Bartolomé de las Casas in the colonial period and to Latin America’s embrace of enlightenment writers during the wars of independence.¹² Latin American revolutions of independence, like that in the US, were motivated by enlightenment ideas of rights, present at the very moment of state creation, rather than as a result of a later export or diffusion of ideas.¹³ However, although informed by enlightenment ideas, Latin American scholars and politicians, as mentioned above, were neither fully “Western” nor “Non-Western.”¹⁴ Liliana Obregon has traced the origins of a “creole” legal consciousness that blended elements of unique Latin American experiences and concerns with the international legal traditions of the time.¹⁵ The Latin American jurists and diplomats *from* the periphery, but they were not at all peripheral to global debates on international law and institutions during their lifetime.¹⁶

2 • Historical Background

By the end of World War II a consensus began to emerge that human rights and democracy would need to be an essential part of the post war order. This consensus was particularly strong in Latin America, where an unprecedented wave of democratisation had taken place in the mid 1940s, bringing to power various governments of the centre-left with strong support from labour unions.¹⁷ Most scholars are familiar with the initiatives taken by the Allies during the war to stress the importance of human rights: in particular, Roosevelt’s “Four Freedoms” speech and the inclusion of human rights language in the Atlantic Charter.¹⁸ But with the important exception of work by Glendon and Morsink, scholars are much less aware of the important role Latin American delegations and NGOs played in promoting the idea of international human rights, first at the San Francisco meeting where the UN Charter was drafted, and later in drafting the UDHR.¹⁹

The initial US drafts of the Charter contained no reference to human rights, while the proposals which emerged from the Big Four meeting at Dumbarton Oaks – composed of the Republic of China, the Soviet Union, the United Kingdom and the US - to prepare for the San Francisco conference contained only one reference to human rights.²⁰ The failure of the Great Powers to include human rights language in the Dumbarton Oaks draft mobilised both the community of non-governmental organisations and a group of less powerful states, particularly in Latin America, but also including New Zealand and Australia. Latin American countries felt betrayed, both because they had not been involved in the Dumbarton Oaks discussion about a post-war organisation, but also

because the Dumbarton Oaks draft did not incorporate various ideals they supported, including human rights.²¹ To promote their concerns and formulate a collective policy, Latin American countries called an extraordinary meeting in the Chapultepec Castle in Mexico City in February 1945, the Inter-American Conference on Problems of War and Peace, ending just weeks before the opening of the San Francisco Conference. Delegates at the meeting raised a series of important issues about Great Power dominance, the importance of international law, regional agreements for security, and economic and social problems. Human rights issues figured prominently in the speeches and resolutions.²²

At the 1945 Conference in Mexico City, many Latin American states argued that World War II had created a worldwide demand that rights should be recognised and protected on the *international level*.²³ At an earlier meeting of the Inter-American Bar Association in Mexico City in 1944, resolutions had also emphasised the “necessity” of a Declaration of Rights of Man, and the importance of international machinery and procedures to put the principles in the declaration into action. Acting on these concerns, the delegates in Mexico City instructed the Inter-American Juridical Committee to prepare a draft declaration of the rights and duties of man.²⁴

Latin American delegations, and especially Uruguay, Chile, Panama, and Mexico, argued in favour of the international protection of rights at the San Francisco conference in 1945. There they were supported by a number of (US based) NGOs also present. Latin American countries made up twenty of the fifty states present at the San Francisco Conference.²⁵ Because there were many democratic countries with a shared worldview at this historical moment in Latin America, they became the most important voting bloc at San Francisco.²⁶ The British government gave this Latin American bloc credit for changing the US government position on human rights at San Francisco.²⁷ They were able to do this in part because they supported and reinforced a position already held by a minority faction with the US government that had lost influence in the drafting of the Dumbarton Oaks proposal. But without Latin American protagonism it is unlikely that the Charter would contain references to human rights.

The record of the success of the NGO lobbying effort and the pro-human rights position adopted by Latin American delegations find testimony in the Charter itself. The final UN Charter has seven references to human rights, including key amendments whereby promotion of human rights is listed as one of the *basic purposes* of the organisation, and the Economic and Social Council (ECOSOC) is called on to set up a human rights commission, the only specifically mandated commission in the Charter. In particular, the initiatives of the Latin American countries helped extend the economic, social, and human rights objectives in the Charter, in particular articles 55 and 56, upon which so much later human rights work of the organisation rested.²⁸

If the Charter, adopted at a high point of post war collaboration, had not contained references to human rights and specifically to a Human Rights Commission, it is quite

likely that the Universal Declaration of Human Rights would not have been drafted in 1948. The inclusion of the human rights language in the Charter of the UN was a critical juncture that channelled the history of post-war global governance in the direction of setting international norms and law about the international promotion of human rights. This language was *not* the language of the Great Powers, and was finally adopted by the Great Powers only in response to pressures from smaller states and civil society.

The initial unwillingness of the Great Powers to include references to human rights in the UN Charter calls into question both a realist and a critical theory explanation for the origins of human rights norms. If human rights emerged primarily from the goals and needs of powerful states, as realists claim, then why did these powerful states not include human rights language in the Dumbarton Oaks draft?²⁹ Only China, the weakest of the four, pressed for inclusion of some human rights language. But China's effort to include an explicit statement against racial discrimination was rejected by the other Great Powers.

The two other key governmental actors, the USSR and the UK, shared the US concern to limit possible infringement on domestic jurisdiction.³⁰ Although the human rights provisions did not carry teeth at this early stage, states were very wary of the sovereignty implications of the human rights issue. If human rights policy was the result of powerful states, as realist theory suggests, it simply cannot help us understand why these powerful states came to support international human rights norms so reluctantly.

If, as critical theorists suggest, human rights was a discourse that powerful states used to reaffirm their identity as superior to the weaker nations, and to promote monitoring and surveillance, why did more powerful states resist the adoption of human rights discourses and less powerful states promote it?³¹ I believe that both realist and critical theory accounts have misunderstood and misrepresented the history of human rights ideas and human rights policies. Reading the history of the human rights policies reveals that human rights policies, especially multilateral policies, have often been embraced by the **less powerful** to try to restrain the **more powerful**. These less powerful groups are more likely to succeed, however, when they also have allies **within** powerful states.

Both states and NGOs demanded an international organisation that would have more far-reaching power to enforce international human rights norms. The Uruguayan delegation, for example, proposed that the Charter itself should contain a "Declaration of Rights", and "a system of effective juridical guardianship of those rights".³² Uruguay proposed to make it possible to suspend countries from the organisation that persistently violated human rights.³³ The final language, however, only called upon the UN to promote, encourage, and assist respect for human rights.

As a result, the Charter mandate on human rights is less firm than many states and NGOs desired, calling on the UN to promote and encourage respect for human rights, rather than to actually protect rights.³⁴ More far-reaching alternative visions were

presented and articulated at the San Francisco Conference, and the NGO consultants and a handful of democratic Latin American states were among the most eloquent spokespersons for those alternative visions. These alternative visions continued to be further elaborated in the drafting of the American Declaration of the Rights and Duties of Man, which began just as soon as the San Francisco conference ended.

3 • The American Declaration of the Rights and Duties of Man and the UDHR

Most histories of human rights in the world emphasise the Universal Declaration of Human Rights (UDHR), passed by the UN General Assembly of December 10, 1948, as the founding moments of international human rights.³⁵ The dramatic story of the drafting of the UDHR and has been told well and at length elsewhere.³⁶ Here I will stress a much less well-known story – the ways in which the UDHR was drafted in a parallel process with the American Declaration of the Rights and Duties of Man (“American Declaration”), in which, the American Declaration in many ways preceded the UDHR. The American Declaration was first approved by the Ninth International Conference of American States in Bogota, Colombia, in April 1948, eight months before the passage of the UDHR. The OAS did not yet exist at the Bogota meeting, and so the American Declaration was formally adopted later by a unanimous vote of the newly formed OAS, but still some three months before the UN General Assembly acted on the UDHR.³⁷

Because Latin American states adopted the American Declaration before the UN General Assembly passed the UDHR, the American Declaration was in fact the “the first broadly detailed enumeration of rights to be adopted by an intergovernmental organisation”.³⁸ But because the two documents were being drafted around the same time, these two processes were overlapping and complementary, and it is useful to discuss them together.

But what I want to stress here is the process of drafting the American Declaration *was always a step ahead* of the drafting of the UDHR. Because the American Republics had requested a draft declaration of rights from the Inter-American Juridical Committee at the Mexico City Conference in 1945 *before* the San Francisco conference, the American process had a head start over the process of drafting the UDHR that had to wait until after the San Francisco meeting and after ratifications of the UN Charter to get started. The Inter-American Judicial Committee worked rapidly to produce this complete draft declaration, including 21 articles and another 50 pages of full commentary, by December 31, 1945, only six months after the San Francisco Conference had concluded. The document was published in March 1946, before the UN Preparatory Committee tasked with drafting the UDHR had even had its first meeting.³⁹ The American states expanded the final American Declaration beyond this draft declaration, adding eight additional articles on rights and ten additional articles on the duties of states, but all the core civil, political, economic, social and cultural rights of

the American Declaration are present in the draft. The Juridical Committee's justifications for rights in this document gives an idea of how some Latin American jurists were thinking about the relationship between sovereignty and human rights in this period.

*In view of the widespread denial of these political rights by totalitarian governments in recent years it may be well to reinstate the basic theory underlying them. The state is not an end in itself, it is only a means to an end; it is not in itself a source of rights but the means by which the inherent rights of the individual person may be made practically effective... Not only, therefore, are particular governments bound to respect the fundamental rights of man, but the state itself is without authority to override them.*⁴⁰

This is as clear a statement as possible of the doctrine of popular sovereignty that was part of the legal tradition in Latin America. The Inter-American Judicial Committee then went on to say that the broad principles of distributive justice provide a justification for the inclusion of economic and social rights in the draft declaration as “the complicated economic lives of modern states has made the old doctrine of *laissez-faire* no longer adequate”.⁴¹

The American Declaration was completed before the second round of drafting of the UDHR, and it was very influential in the text of the UDHR, particularly for the articles on social and economic rights. In his detailed book on the drafting of the UDHR, Morsink wrote that the American Declaration “heavily influenced the drafting process and product of the universal one.”⁴²

The American Declaration includes 38 articles, of which 28 articles are devoted to an enumeration of rights, and 10 to duties. This attention to duties sets the American Declaration apart from the UDHR, which does not enumerate specific duties, although it does mention them in Article 29. Of the 28 articles on rights, approximately two thirds of the articles address civil and political rights, and approximately one-third address economic, social and cultural rights, including the right to health, to education, to work and fair remuneration, to culture, leisure, social security, and property. All of the rights in the UDHR also appear in the American Declaration, although the UDHR sometimes elaborates on these rights in greater detail. The American Declaration has a single right – that of petition – as well as the nine additional articles on duties, that are not in the UDHR.⁴³

This “heavy influence” of the American Declaration on the UDHR is not surprising because they had similar sources. When John Humphrey, the Canadian who served as the head of the UN Secretariat's Human Rights Division, wrote the Secretariat Outline (a draft bill of rights) for the Human Rights Commission to use its deliberations in producing the eventual UDHR, he used for models the score of drafts the Secretariat had collected from law professors and legal and social NGOs as well as from other inter-governmental organisations, including the Pan-American Union.⁴⁴ Although the Secretariat outline was modified significantly during

the debates, the influence of these diverse non-governmental and inter-governmental sources are clearly seen in the final version of the UDHR. Cuba, Panama, and Chile were the first three countries to submit full drafts of bills of rights to the Commission. Each of these contained references to rights to education, food, and health care, and other social security provisions.⁴⁵ Humphrey, a social democrat, used these drafts extensively in preparing the secretariat draft for the Commission to consider. "Humphrey took much of the wording and almost all of the ideas for the social, economic, and cultural rights from his first draft from the tradition of Latin American socialism by way of the bills submitted by Panama and Chile."⁴⁶ The research showing the impact of Latin American countries on the inclusion of economic and social rights in the UDHR corrected a long-held belief that the economic and social rights in the UDHR were primarily the result of Soviet pressure.⁴⁷

In addition to their contributions to the economic and social rights in the UDHR, Latin American delegates made other important contributions. Latin American delegations, especially Mexico, Cuba, and Chile, almost singlehandedly, inserted language about the right to justice into the UDHR, in what would become Article 8. The probable source for Latin American proposals on the need for accountability in the American Declaration and the UDHR are the "amparo laws" that existed in some, but not all Latin American countries.⁴⁸ Since there is no equivalent of a full amparo law in common law countries, it is difficult to translate. *Habeas corpus* is related, but it is only for protection against unjust detention, while amparo or "tutela" laws offer protections for the full range of rights violations that may occur as a result of "acts of authority". So, *habeas corpus* is like a "species" in a broader "genus" of protections, many of which are covered by amparo laws.⁴⁹ This is a clear example of normative innovation, where Latin American delegations took legal procedures from their own constitutional tradition, one that was not present in the constitutions of the large common-law countries, and used it to craft an essential article of the new human rights declarations. Far from an example of norm localisation or even vernacularisation, this is a clearer case of norm protagonism or innovation from countries in the Global South. This idea of a right to justice would later serve as the backbone of Latin America efforts to secure accountability through the Inter-American system. In this sense, there is genuine continuity from the normative and legal contributions that Latin American states made to the UDHR and the American Declarations and their later contributions in the 1970s and 1990s.

4 • Conclusion

Why has Latin America's important role in the emergence of global human rights norms and law not been more broadly perceived or understood by international relations scholars, including even at times scholars from the Latin America region? There are a number of possible explanations. First, there was a paradox at the heart of Latin America defense of human rights that may have undermined its effectiveness. At the same time as many Latin American countries were advocating international human rights norms, practices

on the ground in many countries fell far short of the human rights ideal. This paradox was graphically present even at the Ninth Inter-American Conference where the American Declaration was first approved by the American states.

In the midst of the conference, an important populist political leader in Colombia, Jorge Eliécer Gaitán, was assassinated on the streets of Bogotá, leading to intense protests and violence that temporarily suspended the conference proceedings. Gaitán, a leader of the left wing of the Liberal Party, was an eloquent speaker greatly admired by the poor of the city, who responded to his murder with riots, looting and killings, which in turn led to a violent response by the state security forces. This riot is known as the *Bogotazo* or “Bogotá attack”, in which thousands were killed and a large part of the city burned to the ground. The *Bogotazo* is now seen as the start of the period in Colombia known as *La Violencia*, or “the time of violence”, in which hundreds of thousands of ordinary Colombians would die.

So, we have this juxtaposition of a conference to set up a new regional organisation and to proclaim the rights and duties of man and the importance of democracy in the region, at the same time as the government hosting the conference and the people in the streets have trampled on the rights of man. The response of the world community, and indeed many in the region, may have been to dismiss the noble words inside the conference that would appear to be contradicted by the practices outside the conference. Or perhaps the events simply foreshadowed the pressing problems of security and violence that would dominate the Cold War period leading to the disregard of general declarations.

But a second, and perhaps more important reason, is that many scholars of international relations have neither the training, the knowledge of other languages, nor the inclination to conduct field research in the developing world. So they turn to sources in the Global North. There is yet a new paradox here. For even scholars that critique how the Global North imposes norms upon the South often do so on the basis of research conducted almost solely in the Global North, using sources available here. The research design of these scholars reproduces the very situation they critique. In their efforts to stress how the countries of the Global North have silenced voices in the developing world and imposed Northern values upon them, they too have silenced the past by not investigating very carefully sources from the developing world itself. So, this short article is a plea of sorts for *attention to the possibility* of Southern protagonism at many stages of global norm development and global governance.

Doing this historical work tracing the origins of international norms helps shed light on current developments. In the case of Latin America, various developments on the international supervision of human rights and democracy in regional and international organisations can be seen as the manifestations of the ideas presented by Latin American states in San Francisco, and articulated in the American Declaration. Developments in the Inter-American system that now allows the OAS to suspend from membership governments that come to power through military coups are the concrete realisation of proposals that countries like Uruguay and Guatemala made in San Francisco in 1945. The International

Criminal Court is the embodiment of the idea that the international system should not only promote rights but should provide actual enforcement or juridical protection of those rights. Latin American involvement in these recent initiatives is thus not a puzzle or a result of Great Power leadership, but a continuation of much longer traditions and activism on behalf of the international protection of human rights and democracy.

NOTES

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24 • Pan American Union, *Draft Declaration*, 57–8.

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27 • Lauren, *The Evolution*, 337, ft. 86.

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29 • See, for example, Stephen D. Krasner, "Sovereignty, Regimes, and Human Rights," in *Regime Theory and International Relations*, ed. Volker Rittberger and Peter Mayer (Oxford: Clarendon Press; New York: Oxford University Press, 1993), 139–67.

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**KATHRYN SIKKINK – US**

Kathryn Sikkink is the Ryan Family Professor of Human Rights Policy at the John F Kennedy School of Government at the University of Harvard. Sikkink works on international norms and institutions, transnational advocacy networks, the impact of human rights law and policies, and transitional justice. She is a member of the Council on Foreign Relations, and a member of the editorial board of the *International Studies Quarterly*, *International Organization*, and the *American Political Science Review*.

email: kathryn_sikkink@hks.harvard.edu

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