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PAOLO G. CAROZZA

# “They are our brothers, and Christ gave His life for them”

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## The Catholic Tradition and the Idea of Human Rights in Latin America

THROUGH THE LANGUAGE OF HUMAN RIGHTS, law can both reflect and constitute some of our most basic ideas about the requirements of human dignity and the human desire for freedom. It captures certain culturally embedded understandings about the nature of the human person in society and carries them forward in time through an institutionalized discourse and practice. This is especially so in those legal traditions that have inherited Western law's historically consistent orientation toward the individual. Law never makes those sorts of claims in a systematically theoretical way, however. Instead, it is a form of *praxis*, combining theory and practice, speculation and experience. In this essay I will explore the way that an idea of human rights, one deeply influenced by Catholic traditions of thought about the nature of the human person, was given shape in the mold of historical experience in Latin America and then carried forward through the language of law. Out of that *praxis*, Latin America forged a distinctive way of talking about and understanding human rights—its own particular accent, as it were, of a language that in the last fifty years has become global.

*The Latin American Contribution to Legitimate Pluralism*

To some it may seem a little self-contradictory to speak of a purportedly universal language—human rights—in terms that deliberately seek to emphasize local or regional particularities. It is certainly true that human rights has become, globally, the most recognizable and accessible form of communication across cultures regarding the minimal standards of human decency and dignity. This is because there is a basic way in which the terms of human rights genuinely reflect certain universal human desires—the hopes and needs of every human heart for justice and freedom.

The problem, of course, is that the language of human rights is necessarily open-ended, abstract, and to a certain degree indeterminate. It has to be so precisely as a function of its capacity to embrace the many varied expressions of its core ideals in the different concrete historical circumstances of all of the human family, across time and space. The result is that the single language of human rights does have—indeed, it *must* have—different “dialects.” The virtue of this openness is its flexibility and adaptability, its capacity to accommodate the search for truth and meaning that characterizes every genuinely human culture the world has ever known. It recognizes, implicitly, that a person’s quest for freedom and justice depends on being situated in a history and in a community that provides that person with a first proposal for leading a flourishing life.

But the openness of human rights language also has a darker side: indeterminacy can mean manipulability too. It can mean, for instance, that one partial view of the meaning of human rights—which is the meaning of humanity and society, really—can capture the entire discourse. Then that view not only dominates, but it dominates with the legitimating aura of a universal ethical language. This is the danger, in other words, that human rights will be the blunt instrument of enforcing a global conformity to the culture of the rich and powerful, who are able to say, “My rights must be your rights, whether you think so or not.” Alternatively, the openness

and indeterminacy of the idea of human rights can lead to the emptying of the concept, to the evacuation of its meaning and its replacement by a relativization of the underlying truth about the human person of which the idea of human rights is a sign. This is the danger of the cruder forms of a so-called “cultural relativism”: “Your American rights are not my Asian rights nor her African ones, because there is no true commonality among us.” Note that here, just as in the case of human rights becoming the tool of an imperial global culture, the end result of severing human rights from our common humanity is that the content and meaning of human rights becomes determined only by convention and ideology, by the whims of the powerful.

To sum this up in another way, the paradox of the idea of human rights is that the very quality that allows it to serve as a universal, cross-cultural language of justice and dignity is the same quality that poses a danger of deforming the idea into an instrument of oppression and colonialism instead of liberation and dignity. It follows, then, that the task of cultivating a legitimate pluralism within the universal idea of human rights is a critical part of making the promise of human rights possible. Embracing legitimate pluralism is a recognition that, in the words of John Paul II, “every culture is an effort to ponder the mystery of the world and in particular of the human person.”<sup>1</sup>

The pope made that observation as part of a speech praising the Universal Declaration of Human Rights as “one of the highest expressions of the human conscience of our time.”<sup>2</sup> And indeed, since its approval by the General Assembly of the United Nations in 1948, the Universal Declaration has become the single most recognizable and influential reference point for cross-cultural communication about humanity’s longing for justice and freedom—universal in more than just name. But when the declaration was drafted, its framers were well aware of the need for legitimate pluralism and of the potential dangers that human rights posed in its absence. That is

one of the reasons they sought to avoid tying the declaration too closely to any one cultural context and why they took great care to draw broadly from a diverse set of understandings in order to fashion this *universal* declaration.<sup>3</sup>

Against this background, one of the most interesting things that has been brought back to our attention recently as a result of some of the most current research on the origins of the Universal Declaration, has been the immensely important contribution that was made by Latin Americans to the genesis of the document.<sup>4</sup> As individual representatives of their countries, and as groups working together, members of the Latin American delegations provided critical political and intellectual initiative. Without that initiative, the Universal Declaration would certainly have looked very different, if indeed it existed at all. Most notably, Latin American proposals formed the first models on which the Universal Declaration of Human Rights was drafted, and many of the rights in it were inserted or modified in important ways through the intervention of Latin American delegates—ways that emphasized, for example, the universality of human rights, the equality of men and women, the centrality of family life, and the importance of economic and social rights. Overall, both the depth of their commitment to the idea of human rights and the particular accent they gave to its expression were quite remarkable.

That story is still far too unknown, but it has been told elsewhere, and it is not my aim to retell it here.<sup>5</sup> But the story does provoke further questions. Where did this deep and broad Latin American commitment to the idea of human rights in 1948 come from? And what accounts for the particular understanding they gave to the idea? Already these questions take us out of the realm of the most conventional attitudes toward human rights and Latin America. Even among human rights enthusiasts and activists, the South American continent has long been the *object* of human rights concerns more than a *contributor* to human rights thinking. Or rather, its “contribu-

tions” have been perceived almost exclusively in negative terms: the creativity of its repressive regimes in fashioning new forms of abuse like the “disappearance,” provoked the governments and human rights organizations of Europe and North America to come up with new norms and institutions to address the problems. Or, more recently, the impunity with which its former dictators elect to travel in Europe has sparked a significant development of the principles of universal jurisdiction. But the affirmative dimensions of human rights in Latin America almost always have been seen to be the poor relatives of grand, rich, European ideas.

For that reason, the effort to identify the roots of any distinctive Latin American tradition of human rights needs to start at the beginning and to try to synthesize centuries of intellectual history, recasting it in terms of its own protagonists rather than as a tarnished, inferior copy of northern intellectual history. In this process I will need to be selective, rather than exhaustive, identifying a few strands of thought and following them through time in order to make them vivid again today. It is not so much a detailed, continuous chronology, but rather a family history skipping across events, generations, and geography like a novel by Gabriel García Márquez in which a single anecdote evokes a richer collective memory. The challenge here is to recognize and articulate some distinctive and unifying tropes to the tale.

In particular, I will focus my attention on three moments in this family history that I believe were critical watersheds in giving the Latin American human rights tradition its particular cast. First is the ethical response to the injustices of the early Spanish conquest and colonialism as embodied particularly in the life and works of Bartolomé de Las Casas, the sixteenth-century Dominican missionary and later bishop of Chiapas. Second is the late eighteenth century and the triumph of liberal revolutionary ideas from the Latin American reaction to the French Declaration of the Rights and Duties of Man and the Citizen, through the thought of Simón Bolívar, to

conceptions of human rights discernable in early republican constitutions. Third is the Mexican Constitution of 1917—one of the most immediately and widely influential constitutional documents in the history of the region.

### *The Midwife of Modern Human Rights Talk*

The modern idea of human rights had a period of gestation lasting millennia. But it would be fair to say, even if it is not commonly recognized, that the birth of human rights was in the encounter between sixteenth-century Spanish neo-scholasticism and the New World. If that encounter were embodied in a single person, it would be Bartolomé de Las Casas.<sup>6</sup>

Las Casas first came to the Indies from Spain at age eighteen in 1502, and after his ordination a few years later, he served as a chaplain during the Spanish conquest of Cuba. Like many other clerics in the West Indies, Las Casas lived off the toil of the Native Americans of his *encomienda*—the system by which Spanish colonists were given tracts of land and the rights to the forced labor of the native people in return for the promise to instruct them in the Catholic faith. At the time, the foremost critics of Spanish brutality were the Dominican friars in the Indies. They were already condemning the Cuban conquest while Las Casas participated in it, but he remained unpersuaded, even after one Dominican refused to hear Las Casas's confession because he owned slaves. But after a profound conversion of conscience in 1514, Las Casas arranged to free his slaves and began a lifelong, passionate devotion to the cause of just and humane treatment of the indigenous peoples. Perhaps in no other time or place has a single man's life and work so deeply embodied the cry for justice of a whole continent.

After an early experiment founding a model community of peaceful farmers and traders turned out to be a spectacular failure, Las Casas entered the Order of Preachers and turned toward the

Dominican charism of study and reflection. He spent most of the next decade and a half serving the cause of the Indians by producing a flood of treatises, memorials, and testimonies before emerging from his self-described “slumber” to become active again as the “Protector of the Indians,” the official state office to which he was appointed by the crown. He crisscrossed Spanish America from Peru to Guatemala, campaigning against conquest, and travelled on many occasions to Europe to plead his case before the court. Las Casas’s arguments against the *encomienda* system and the sensational accounts of the cruelty and neofeudalism of the *conquistadores* in his book, *History of the Indies*, persuaded Charles V to promulgate the New Laws in 1542. These laws were supposed to ensure that no more Indians would be enslaved, and the laws were intended to deprive officials of their *encomiendas*, although the implementation and enforcement of the New Laws proved to be next to impossible from the start.

After a brief, troubled tenure as bishop of the poor of Chiapas, Las Casas became ever more enmeshed in scandal and controversy. He had his *Confesionario*—the rules for confessors that he had composed—confiscated because it insisted that every penitent be required to free his Indian slaves and make full restitution of all the Spaniards’ unjustly acquired wealth in the New World. This seemed to call into question the very legitimacy of Spain’s claim to rule the Indies, and Las Casas was accused of treason. Everything came to a head when, in 1550, the emperor halted all conquests and instructed a panel of theologians and jurists to hear both Las Casas and his principal intellectual enemy, Juan de Sepúlveda, debate the justice and lawfulness of the Spanish occupation of the Americas. These famous debates in Valladolid in 1550 and 1551 were in a sense the climax of Las Casas’s advocacy, even though ultimately inconclusive in their outcome. After 1551, Las Casas remained in Spain until his death, actively writing, exhorting, proclaiming, and beseeching with all the fervor of the prophet Jeremiah.

Any portion of Las Casas’s rich life is full of tales worth

recounting, but especially notable is the way he succeeded in articulating and advocating a set of ideas that in many senses represent the first clear announcement of the modern language of human rights. This may need a word of explanation. Las Casas has sometimes been regarded as somewhat of a second-rate thinker, whose understandings of philosophy and theology were not up to the standard of his senior Dominican brother in the School of Salamanca, Francisco de Vitoria. While Vitoria is universally regarded as a brilliant light of his era, Las Casas has often been relegated to Vitoria's shadow. The criticisms have sometimes been quite harsh: he was too polemical in rhetoric, too unsystematic and undisciplined in thought, a demagogue in practice. Why begin with the lesser disciple, then, instead of the master? The thing that distinguishes Las Casas from his contemporaries is his combination of speculation and experience, his engagement in practice with the struggle for justice. He never set out to reason abstractly about the duties and rights associated with the Spanish presence in the Indies, but rather formed his understanding of the requirements of justice in the crucible of action and in the face of lived necessity. (In this, by the way, he foreshadowed the typical dynamic of how human rights thinking developed in the twentieth century too.) In doing so, he contributed to the idea of human rights in a way that was unique and not simply derivative of Spanish thought. Las Casas became the first notable *American* proponent of the idea of human rights.

Admittedly, the way Las Casas meshed theory and practice can make it difficult to synthesize his views. They are not set out with the patient and thoughtful rigor of a philosopher, but with a litigator's focus on the practical results sought in the dispute at hand. Las Casas, therefore, grabs arguments to serve his cause wherever he can find them and is eclectic in choosing his sources. Nevertheless, a few core ideas persist throughout his work.

First, Las Casas constantly framed the requirements of justice in terms of the *rights* of the Indians. The importance of this must not

be understated simply because this language is so familiar to us today. Brian Tierney’s careful work of intellectual history shows us that Las Casas’s pervasive use of the language of natural rights represents a conscious and systematic grafting of the juridical language of Roman and canon law onto Aquinas’s teaching on natural law.<sup>7</sup> This was a direct result of the style of advocacy to which I alluded earlier—Las Casas drew from law, philosophy, theology, and direct experience almost indistinguishably, and his moral arguments are littered with juridical sources and language. The result, Tierney argues, was a language of natural rights that was not found in Thomas, but that could be said to be a recognizable and natural extension of the Thomistic tradition. In this way, Las Casas was innovative and, at the same time, was in deep continuity with the intellectual and moral tradition in which he was formed. This allowed him to make the theoretical doctrines of natural rights, which were being developed elsewhere, applicable to concrete historical situations and to the most practical and pressing moral problems of his day. The pragmatic interplay between law and philosophy that his work exemplified decisively influenced the development of subsequent natural rights theories.

As for Las Casas’s understanding of the foundations of the rights of the Indians, many of his voluminous polemics on behalf of the native peoples can be contained in one simple, eloquent phrase he used to conclude his rebuttal of Sepúlveda in the Valladolid debates. While his rival argued that the Indians were beastlike “natural slaves,” Las Casas affirmed that “they are our brothers, and Christ gave His life for them.”<sup>8</sup> His case is based on the first principle of the unity of the human family. This puts his notion of natural rights on a decidedly universal plane. One of his most famous statements proclaims,

All the races of the World are men, and of all men and of each individual there is but one definition, and this is that they are rational. All have understanding and will and free choice, as all

are made in the image and likeness of God. . . . Thus the entire human race is one.<sup>9</sup>

First and foremost, the rights that Las Casas sought for the native peoples were theirs simply by virtue of their humanity—a humanity common to all of God’s children.

It is well to note Las Casas’s stress on the idea that the Indians’ fundamental humanity meant that they were created with *freedom*. His early treatise titled *On the Only Way of Attracting All Peoples to the True Religion*, which was dedicated to condemning forcible Christianization of the Indians by military means, is an extended appeal to the liberty of the indigenous peoples. They needed to be persuaded to accept truth, Las Casas argued, by the peaceful methods of reason, love, and the living example of practiced virtue. Las Casas took this position so seriously that he went as far as defending some of the native populations’ practice of human sacrifice. Of course, he didn’t defend human sacrifice as such, but rather insisted that the indigenous peoples needed to be educated through peaceful persuasion and that even their use of human sacrifice could not justify military conquest and forcible submission. This is, implicitly, more than an individualistic liberty. In Las Casas’s work, freedom is rooted in and expressed through the beliefs, practices, and authority of the community. Combined with his detailed and deeply appreciative writing about the customs and practices of the native populations he encountered, Las Casas’s defense of the freedom of the Indians has strong elements of what today we would regard as a defense of their cultural integrity and sovereignty.

There is some risk, I suppose, that in making such an observation I am reading Las Casas anachronistically. But I wouldn’t be the first to do so. One of the things that is most interesting about Las Casas in the context of the larger history of the idea of human rights in Latin America is the way that other historical periods have gone back to Las Casas to claim ancestry and inspiration from his example. This was certainly the case two and a half centuries later, when

Simón Bolívar, the Liberator, would refer to Las Casas as the “Apostle of the Americas,” and “a humane hero.” Bolívar even suggested naming the new capital city of his proposed Pan-American Union “Las Casas.”<sup>10</sup>

*Revolution, Rights, Rousseau*

Bolívar himself, of course, lies at the epicenter of the continental upheavals associated with the next historical “moment” I want to explore: the birth of the first constitutional republics in Latin America. Bolívar’s life, words, and works tower over the era, but they need to be understood within a certain context.

Most conventional histories of the idea of human rights in Latin America, including by Latin Americans themselves, tend to identify the intellectual and political roots of the continent’s commitment to rights language with the importation of European Enlightenment ideologies and the inspirations of the revolutionary movements of France and North America.<sup>11</sup> This is not unreasonable. The intellectual and political elites of the Spanish colonies did provide a ready audience for the ideas of Rousseau, Voltaire, Montesquieu, Smith, Paine, and others. They commonly held intellectual salons, or *tertulias*, to share these perspectives. Political pamphlets entered the colonies from abroad, including the enormously influential French Declaration of the Rights and Duties of Man. North American naval officers visiting South American ports also disseminated the Declaration of Independence and the Constitution of the United States. European scientists, such as von Humboldt, on their expeditions to America, were the sources of inflammatory political ideas.<sup>12</sup>

But it is simplistic to just see this traffic as a one-way transplantation of ideas that remained in the greenhouse of Latin America as unchanged as they were in their original garden. This view begs two questions. Continuing with this metaphor, we need to ask first how the soil in which the shoots were received was different, and

second, how the new environment affected their subsequent growth. In both cases, there is good reason to understand the seed of European and North American rights language to have produced a distinctive fruit in the Latin American experience.

Take, for instance, the role of the French Declaration of the Rights of Man and the Citizen. Even before being translated into Spanish in the colonies, the declaration was banned in 1789 by the Tribunal of the Holy Inquisition of Cartagena. Nevertheless, in 1794, Antonio Nariño translated the declaration and circulated it in New Granada, for which he was rewarded with imprisonment, exile, and the confiscation of his property. A few years later, one band of conspirators sought to oust the *capitán general* of Venezuela with a force of five hundred men who were carrying arms and distributing copies of the declaration. Other examples show that knowledge of and commitment to the principles of the French declaration were tremendous—to the point that one Venezuelan author described it as “a yearning, one could almost say an obsession” to make the French declaration into “the gospel of the new era that humanity was beginning to live.”<sup>13</sup>

At the same time, the ideology of the declaration in Latin America generally did not have the same strongly anticlerical orientation that it did in France. Many of the same revolutionaries who carried the banner of the declaration considered it fundamental to their constitutional ideas that the state would be a confessional one, with the recognition and protection of the Roman Catholic faith firmly at its core—indeed that was one of the few constants of the region’s constitutional thinking in this period.<sup>14</sup> More generally, one of the remarkable features of the diffusion of the declaration was that its principles typically do not seem to have been regarded as expressing a fundamental rupture with the Latin Americans’ prevailing precepts of political ethics. In fact, the declaration was seen by many as a synthesis of the principles long taught in the great colonial universities. Working from Aquinas, Suarez and Vitoria, Juan de Mariana and Luis Molina, and others primarily in the scholastic

tradition, it was commonplace to teach doctrines such as the priority of natural law over written law, the legitimacy of resistance to tyranny and unjust laws, and most of all, the existence of certain imprescriptable rights and guarantees due to every man by virtue of his humanity. It was not by accident that the Spanish crown, in the years leading up to the American revolts, tried unsuccessfully to ban all teaching of public law in the colonial universities. Even more telling, we know that Antonio Nariño, after he was arrested for having translated and disseminated the Declaration of the Rights of Man and the Citizen, defended himself by arguing that the most important articles of the declaration were merely reflections of the doctrines of St. Thomas that were being taught in the universities.<sup>15</sup> In short, the rights talk of the French declaration had a unique ground in which to grow in Latin America, one that explicitly drew nourishment from, rather than rejecting, the continent’s tradition of Catholic thought.

When it came time to fashion constitutions for the nascent American republics, the French declaration served as the principal source for individual rights and guarantees, but in light of the history previously described, we may reasonably see it as a document with a somewhat different meaning—in the context of Latin America, it represents more of a synthesis of the Enlightenment’s liberal, secularized version of natural law and the scholastic natural law tradition that had preceded it.

The new constitutions and their statements of rights also represent a different sort of convergence of traditions, the knitting together of two separate strands of Western legal thought. Even though the French declaration did exert a strong influence on the rights talk of the revolutionary moment, the United States discourse of rights was also well known, from Thomas Paine to the Declaration of Rights of the Constitution of Virginia and the constitutive documents of the U.S. federation. In drafting their constitutions, the new Latin American republics adopted structures that overall strongly

reflected the models of their neighbors to the north. Ever since, one of the most notable characteristics of Latin American legal systems has been their fusion of North American concepts of public law onto a base that is fundamentally a part of the Romano-Germanic legal tradition of Continental Europe. In terms of human rights, this dynamic created a unique confluence of ideas. The dominant genes of the idea of human rights in the early Latin American republics were undoubtedly inherited from Rousseau. Rights discourse in that tradition, when compared to its North American cousin of the same generation, exhibits more concern for equality and fraternity and less exclusive emphasis on liberty; it highlights the positive role of law as a pedagogical instrument for the cultivation of virtue and therefore is more willing to stress the duties that are correlative to individual rights. For all those reasons, the Rousseauian accent on rights tends to view government intervention much more favorably—it is not just a threat to liberty, but in many cases is essential to the securing of rights together with responsibilities.<sup>16</sup>

This is where we can return to Simón Bolívar, who most clearly embodies the political consciousness of the time. He was a military leader who liberated five nations from Spanish tutelage, a statesman and author of constitutions, a clear-eyed realist who clairvoyantly predicted much of the bleak future of the continent, and a romantic dreamer of international unity. But before all these he was a true disciple of Rousseau. Bolívar's long-time tutor and companion, the eccentric Simón Rodríguez, was utterly consumed by Rousseau. Rodríguez was not content just with teaching the philosopher's ideas to Bolívar; he practically made his student a living subject of Rousseau's pedagogical principles—a true *Émile*, as it were—and years later Bolívar would write to his former tutor "You cannot imagine how deeply the books you gave me are engraved on my heart. I have not been able to omit even a single comma from these great theses which you presented to me. They have ever been before my mental eye, and I have followed them as I would an infallible leader."<sup>17</sup>

It is not surprising, then, that no other figure is more frequently invoked by Bolívar in his speeches and writing than Rousseau, or that Simón’s language of rights might just as well be that of Jean-Jacques. Bolívar was firmly committed to the constitutional recognition of basic individual *liberty*; he reserved a special abhorrence of slavery, regarding it as a “shameless violation of human dignity” and any law perpetuating slavery to be a “sacrilege.” He also referred to *equality* as “that law of laws” without which all other rights and safeguards would vanish; he vigorously defended rights to material *security* such as the recognition and protection of private property.<sup>18</sup> But, for Bolívar, at their core all of these rights depended on two fundamental things. The first was the natural liberty of man as a creature of the Divine. “If there were no Protector of Innocence and freedom,” he proclaimed,

I should prefer the life of a great-hearted lion, lording it in the wilderness and the forests. . . . But no! God has willed freedom to man, who protects it in order to exercise the divine faculty of *free will*.<sup>19</sup>

The second foundation, though, puts that divinely ordained liberty firmly within a Rousseauian understanding of law and government. Bolívar believed that a person arrives at freedom by means of society and the state and, therefore, liberty is the result of an assiduous education of character that is obtained through appropriate legislation and a virtuous government.<sup>20</sup>

As previously mentioned, Rousseau’s—and Bolívar’s—understandings were not the only tradition of thought at work in the new constitutions of Latin America. The North American constitutions provided useful examples as well. The basic concept of individual constitutional rights, especially in a judicially enforceable form, reflected something of a North American twist. Rights were then placed in the context of constitutional structures that implicitly drew, to some degree, from the U.S. example of limited

government, separation of powers, and more negative understandings of liberty. The end result of this commingling of constitutional traditions was that the early Latin American nations provided strong examples of constitutionalized individual rights long before the countries of Europe, but did so with a substantive understanding of the content of the rights that was different from the more Lockean, libertarian, property-based notions dominant in most of the United States (especially at the federal level).

The constitution of the Republic of Colombia of 1812 is one typical example.<sup>21</sup> The constitution of the Republic of Colombia is similar to the U.S. constitutive documents in the affirmation that human individuals, qua human, have certain inalienable rights prior to and above the state, and that the state is obliged to respect those rights. Looking more particularly at the text, however, we can immediately see serious divergences in understanding. Chapter XII of the Colombian constitution is titled “On the Rights of Man and the Citizen,” not only adopting the French title but also closely following the content of its French predecessor. Article 1 begins by declaring, “The rights of man in society are legal equality and liberty, security and property.” Article 2 continues, “Freedom has been granted to man not in order to do good or evil without distinction, but in order to choose to do good.” Even more striking is that chapter XIII, titled “On the Duties of the Citizen” starts by emphasizing, “The first obligation of the citizen aims at the preservation of society and thus requires that those who constitute it know and fulfil their respective duties.” This is followed by provisions such as article 4, which specifies, “no one is a good citizen who is not a good son, a good father, a good brother, a good friend, a good husband.” This is far from the stuff of the U.S. Bill of Rights, with its few, restrained, and terse injunctions like “Congress shall make no law . . . abridging the freedom of speech.”

Many other constitutions of the era were comparable to the Colombian constitution in their understandings of rights and duties,

liberty and equality. In fact, between their independence and 1948, the twenty independent Latin American countries adopted over *two hundred* constitutions.<sup>22</sup> During all of that time and through all of those basic laws, however, one event stands out as the “coming of age” of Latin American constitutionalism: the adoption of the Mexican Constitution of 1917 at the constitutional congress of Querétaro.

### *The Constitution of “New Things”*

What was so uniquely important about the Mexican Constitution of 1917? Part of the answer lies in its timing. It was crafted at a time of global upheaval and was the first constitution to begin to take into account a world being reshaped by World War I, Russian unrest, significant economic globalization, and the growing power of Latin America’s northern neighbor, the United States. This period was followed by an intense political ferment during which more than a dozen other Latin American countries rewrote their constitutive documents over a mere quarter century, making the Mexican constitution the eldest sibling in a new family of twentieth-century constitutions. The importance of the Mexican Constitution of 1917 is due even more to its content and specifically to its incorporation of extensive social and economic guarantees and protections on top of all the more classical rights of liberty and equality. The constitution’s detailed provisions on labor, agrarian reform, education, and the social dimensions of property rights were the first of its kind of any constitution—not just in Latin America but in all the world. Its principles were borrowed or imitated in varying degrees in nearly every Latin American constitution thereafter and were felt in the next wave of European constitutionalism as well.

The 1917 Constitution is commonly regarded today as a “socialist” document (which reinforces again the implicit perception that Latin American developments are merely derivative of European creativity). This view probably arises not only from the document’s

social protections but also from the very aggressive methods that it sanctioned for achieving its goals: expropriation and redistribution of property, nationalization, and a severe economic nationalism. The constitution also acquired a certain overlay of ideology as a result of the political stances of succeeding Mexican governments. Nevertheless, it is a misleadingly simplistic reduction to see it as socialist in its original orientation. In fact, the constitution as a whole does not reveal any consistent ideological stance; it is more of a hodgepodge of contradictory ideas. Similarly, the debates of the constitutional assembly are notable not for any advancement of socialist ideas but for the nearly complete absence of any single or systematic set of economic or social theories—Ricardo, Mill, and even Pope Leo XIII were as tacitly represented as Marx.<sup>23</sup>

Practically the only philosophical-juridical theme proposed as a consistent underlying idea of the 1917 Constitution at the time when it was drafted is “the conviction that the human being, as a human person, has rights prior to the state.”<sup>24</sup> It is largely a document about a certain vision of rights, one that encompasses social, economic, and cultural spheres, as well as political and civil ones. Where did the innovations in rights thinking come from? Not from narrowly socialist ideas, to be sure. There is very strong evidence that it was due, at least in significant part, to the pervasive presence and influence of the Catholic social doctrines that developed out of the first papal encyclical on the “social question,” Leo XIII’s *Rerum Novarum* of 1891.

That proposal might seem implausible because, after all, Mexico was the paradigmatic anticlerical state—both under the dictatorship of Porfirio Díaz that ended with the revolution of 1910, and even more under the terms of the 1917 Constitution itself. A closer look shows that there was a window thrown open to tolerance in those few intervening years, which allowed the air of Catholic social mobilization that had been quietly blowing since the turn of the century to enter public discourse.<sup>25</sup> Without much publicity, the Mexican

Catholic Social Action movement began near the end of the nineteenth century, and the following decade witnessed four different National Catholic Congresses, a number of gatherings known as “Catholic social weeks,” and the organization of a confederation of Catholic workers’ societies. The constant theme of these events was a concern for poverty, the conditions of workers, education, and agrarian reform. In 1911, Mexico got its first and only political party to bear the word “Catholic” in its name: the National Catholic Party. The National Catholic Party’s explicit goal was to promote the principles of *Rerum Novarum*. It sought factory legislation, protection of labor unions, cooperatives, and land distribution to the poor. In some states of the federation, including the central and populous state of Jalisco, the National Catholic Party acquired control long enough to actually implement some provisions of its legislative program. These were widely seen as the vanguard of national reform efforts.

It is hard to pinpoint the influence of all this activity on the constitutional congress of Querétaro and its 1917 document. It is true that one does not find much evidence that Catholic social doctrine *directly* shaped the social provisions of the constitution. But the whole intellectual and political environment of the time was suffused with the ideas and rhetoric of the Catholic social agenda.<sup>26</sup> While the constitution does not provide a definitive indication of its different inspirations, the platforms of Catholic Social Action and the National Catholic Party bear remarkable resemblances to the provisions incorporated into the constitution on labor and agrarian reform, in particular—resemblances too strong to be merely accidental. Article 123 of the constitution, which runs to several pages with statutory-like detail on labor rights and working conditions, corresponds in almost every clause to some part of the basic texts and principles espoused by the Mexican social Catholic movement, from *Rerum Novarum* to the declarations of the different national congresses and “Catholic social weeks” of the preceding decade.<sup>27</sup>

There are notable differences, too, between the constitution's social and economic agenda and that of Catholic Social Action and the National Catholic Party. The methods for achieving the reform that the constitution adopted were more harsh than Catholics had been inclined to promote, and the constitution pays somewhat less attention to the cultivation and protection of intermediate forms of association between the individual and the states, such as the cooperatives and mutual-aid societies created under the National Catholic Party's auspices. Instead, the constitution entrusts more power to the state leviathan. Still, even within Catholic social thought, the emphasis on subsidiarity became more pronounced only later, with Pope Pius XI's, *Quadragesimo Anno* in 1931, and the rising threat of totalitarianism. Earlier in the century, as in *Rerum Novarum*, the church's concern was more sharply focused on trying to navigate a way between the Scylla of a brutally atomistic liberal capitalism and the Charybdis of excessive socialist collectivism. This narrow way is what Mexican social Catholicism ardently sought. The Constitution of 1917 shared that basic aim, accepting the received tradition of individual rights and supplementing it with greater recognition and protection of the social dimensions of the human person.

This is the "social liberalism" that Mexico bequeathed to constitutionalism generally and the banner that Mexico carried into the arena of international human rights a short thirty years later.<sup>28</sup> Like Las Casas and the liberal revolutionaries before them, the architects of the Mexican constitutional moment of 1917 appropriated the existing discourse of rights of their time, subjected it to the test of their experience, and emerged with their own metamorphosed contribution.

### *Conclusion*

The tradition that Latin Americans brought to the birth of the international law of human rights in 1948 was as old as the turbu-

lent encounter between Europe and the New World. From that time on it persisted with a richness that is mostly unknown and unappreciated. From its origins, the human rights tradition was strongly universalistic in its orientation, founded on the equal dignity of all members of the family. Continuing to build on its scholastic origins, it nevertheless absorbed the political and intellectual currents of republican revolution and produced a constitutional rights language with distinctively positive conceptions of freedom and the relationship of rights and responsibilities. When it met the economic and political transformations of the twentieth century, it aimed at a synthesis of the individualistic and the social dimensions of human dignity. Sometimes directly and at other times more passively, but no less certainly, the constant characteristic of the Latin American human rights tradition was its dynamic relationship with a fundamentally Catholic philosophical anthropology.

What has happened to this tradition in the explosive globalization of the human rights idea since World War II? There is a great deal left to study and say about the positive Latin American contributions to the more than fifty-year history of international human rights. The 1948 American Declaration of the Rights and Duties of Man became the first international instrument recognizing universal human rights. Later, various diplomatic delegations on the continent played critical roles in forging international consensus over the developing norms and institutions of international law regarding problems of racial discrimination and religious intolerance, the dignity of women and children, and the treatment of workers. The Inter-American system of human rights continues to give the world a wealth of thought and action regarding the problems of protecting the dignity of the human person in this hemisphere. At the more recent international conferences on women, population, and development, some of the Latin American voices seemed to be among the few willing to cry out on behalf of a vision of human

rights faithful to its original fullness and integrity. Even in the continent's darkest times of "dirty war," the responses of many Latin Americans were worthy of a modern-day Las Casas, tempering the edge of the idea of universal human rights in the hottest fire of experience.

Whether a world grappling with the challenges that globalization poses to human dignity will continue to profit from the presence of distinct dialects of human rights will depend on Latin Americans and others understanding themselves to be part of a history and a people. In this, as in every field of human knowledge, we will make sense of the present and see our way forward only by belonging to a tradition handed on to us from the past.

### Notes

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1. Address of His Holiness Pope John Paul II to the Fiftieth General Assembly of the United Nations Organization, October 5, 1995, para. 9.
2. *Ibid.*, para. 2.
3. Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2001), 73–78.
4. Glendon, *World Made New*; Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999).
5. Mary Ann Glendon, "The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea," *Harvard Human Rights Journal* 16 (2003): 27.
6. Studies of Las Casas are plentiful, and the biographical details in the following section are drawn from the following works: Francis Patrick Sullivan, S.J., ed. and trans., *Indian Freedom: The Cause of Bartolomé de las Casas, 1484–1566: A Reader* (Kansas City: Sheed and Ward, 1995), 1–10; Mauricio Beuchot, *Los Fundamentos de los derechos humanos en Bartolomé de las Casas* (Barcelona: Anthropos, 1994), 13–27; Gustavo Guttierrez, *Las Casas* (Maryknoll, N.Y.: Orbis Books, 1993); George Sanderlin, ed. and trans., *Witness: Writings of Bartolomé de las Casas*, (Maryknoll, N.Y.: Orbis Books, 1971), 1–10; Henry Raup Wagner, *The Life and Writings of Bartolomé de las Casas*, (Albuquerque: University of New Mexico Press, 1967); Lewis Hanke, *Aristotle and the American Indians* (Chicago: H. Regnery, 1959).

7. Brian Tierney, *The Idea of Natural Rights: Studies on Natural Rights, Natural Law, and Church Law, 1150–1625* (Atlanta: Scholars Press, 1997), 255, 272–87.
8. *Ibid.*, 273.
9. Bartolomé de Las Casas, “Apologetic History,” *Obras Escogidas III*: 165–66, excerpted in Sanderlin, *Witness*, 174–75.
10. Simón Bolívar, “Jamaica Letter,” 6 September 1815.
11. E.g., Hector Gros Espiell, “La Declaración Americana: Raíces Conceptuales y Políticas en la Historia, la Filosofía y el Derecho Americano,” *Revista del Instituto Interamericano de Derechos Humanos* 41, Número Especial (May 1989).
12. Examples are taken from John J. Johnson, *Simón Bolívar and Spanish American Independence: 1983–1830* (Princeton: D. Van Nostrand, 1968), 27–28.
13. Jesús M. Yepes, “La Evolución del Pensamiento Constitucional de la América Latina (1810–1830),” in *El Pensamiento Constitucional de Latinoamérica, 1810–1830, Tomo III* (Caracas: Academia Nacional de la Historia, 1962), 95, 99.
14. *Ibid.*, 98.
15. *Ibid.*
16. Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991).
17. Gerhard Masur, *Simón Bolívar* (Albuquerque: University of New Mexico Press, 1948), 57.
18. The preceding examples are from Bolívar’s “Message to the Congress of Bolivia” (25 May 1826) and from Bolívar’s draft of the Bolivian Constitution of 1926.
19. “Message to the Congress of Bolivia.”
20. Alberto Ramos Garbiras and Héctor Alonso Moreno Parra, *Bolívar y el constitucionalismo* (Cali: Editorial Universidad Santiago de Cali, 1999), 65–66.
21. Reprinted in Yepes, “Evolución del Pensamiento Constitucional,” 131–36.
22. Russell H. Fitzgibbon, “The Process of Constitution Making in Latin America,” *Comparative Studies in Society and History* 3 (1960): 1.
23. José Gutiérrez Casillas, S.J., *Historia de la Iglesia en México*, 2d ed. (Mexico City: Editorial Porrúa, 1984), 403, 413; Robert E. Quirk, *The Mexican Revolution and the Catholic Church, 1910–1929* (Bloomington: Indiana University Press, 1973), 85–86; Ward M. Morton, “The Mexican Constitutional Congress of 1916–1917,” *Southwestern Social Science Quarterly* 333 (1952): 7, 26.
24. Alfonso C. Noriega, *La naturaleza de las garantías individuales en la Constitución de 1917* (1967), 9–10.
25. The following examples can be found in Manuel Ceballos Ramírez, *El Catolicismo social: Un tercero en discordia* (1991), 175–251.
26. Casillas, *Historia de la Iglesia*, 413.
27. *Ibid.*, 402–413.
28. Jorge Sayeg Helú, *El constitucionalismo social mexicano: la integración constitucional de México (1808–1986)*, Tomo II, 2d ed. (Mexico City: Universidad Nacional Autónoma de México, 1987), 387–90.