

Human Rights in Latin America

A Politics of Terror and Hope

Sonia Cardenas



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Preface

This project was entirely unforeseen. I had finished my first book, which included lengthy case studies of human rights in Chile and Argentina. That was a long and sinuous affair, with its origins in a dissertation begun over a decade earlier. With that behind me, I had no immediate plans to pursue another project on Latin America. It was nothing about the region per se. It was just that my research on human rights was much more global in scope.

Despite my broad interests, I regularly teach a course titled The Politics of Human Rights in Latin America. That too is an accident. Weeks after accepting a new position, I was in India conducting human rights research, when I received an urgent message from my soon-to-be department chair: they needed me to teach a human rights course on Latin America. Caught off guard, I raced against a flickering Internet connection and reluctantly agreed to teach the course.

Like the writing of this book, the course turned out to be immensely rewarding. I worked to capture the things that had originally moved and excited me about the subject—troubled me into the late hours of the night. My technique in the classroom was to combine political science insights with images and stories of human rights in Latin America. Rather than lecture from afar, I sat with the students in a circle. The students, numbering about twenty, were noticeably responsive; and, I confess, the process energized me more than I might have imagined.

One challenge I had was in assigning readings, especially when I first taught the course in 2002. Regularly assembling a thick course reader, I wished someone would write a general text, one appealing to introductory human rights courses as well as regional surveys. Before long, I decided to write the book myself. *Human Rights in Latin America* follows my course

outline, which served as a launching pad for the project, and draws on my own research as well as that of countless others. Fortunately, an increasing number of specialized books and films address many of the issues raised here, complementing the text; they are mentioned at the end of each chapter, and their creators have my gratitude for inspiring solidarity and setting high standards.

Tied so closely to my course, *Human Rights in Latin America* inevitably reflects my experiences with students. Their reactions, questions, and confusion have contributed fundamentally to this book. While there are too many students to thank individually, almost all of them—through their engagement or skepticism or even boredom and hostility—challenged me to sharpen my thinking and writing. Two additional students, Emily Costello and Danielle Harsip, served as my research assistants while I wrote the first draft of the book. Their enthusiasm was infectious, and I tried to keep them in mind as an important audience for the book as I struggled to set the right tone.

Most books depend on broader institutional support, and this one is no exception. The editorial team at the University of Pennsylvania Press were outstanding, and the book is better as a result of their intervention. I am especially indebted to my editor, Peter Agree, who encouraged me to pursue the project and is always a pleasure to work with. The anonymous reviewers made excellent suggestions, forcing me to be both comprehensive and accessible; and I am very grateful for their insights. Thanks are also due of course to Bert Lockwood, the series editor. While Getty Images and the United Nations permitted me to use their photographs, a generous grant from the Dean of Faculty's office at Trinity College proved invaluable for completing the project on schedule and as I had envisioned it; I am very appreciative.

In my first book, I used the full names of the victims of abuse when possible. Too often, however, I treated them as mere numbers and tragic factors in my analysis, perhaps understandable for a social scientist trying to make sense of human rights. As their stories have remained with me, I tried to give them a fuller voice in this venue. That said, one of my goals in the book is to demonstrate that human rights can be studied systematically, as a complex set of issues, *and* from a perspective that takes narratives of suffering and courage seriously.

My own beacons of hope—Alexander and Samantha—have infused this book with a sense of urgency. Watching them grow rapidly in a world

where terror abounds for so many, I wanted to record for them a message of hope (tinged with realism). This meant I had to work at record speed, sometimes watching an energetic toddler and a new infant out of the corner of my eye. My parents stepped in at crucial moments, for which I am thankful. As always, Andy kept me grounded, with his singular steadfastness and humor, encouraging me to pursue yet another project while reminding me of the few things in life that really matter.

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Introduction: Terror and Hope

In October 1992, when I was 19 years old, I was kidnapped at the entrance to La Cantuta University. . . . When I was completely naked, they gave me an injection in the left arm. I felt dizzy but despite that, I could feel the terrible pain. They did the same thing the next day. I would have rather died than that.

They weren't human beings.

—Testimony of Magdalena Montesa to Peru's Truth and Reconciliation Commission; pardoned in 1998 after spending six years in prison, falsely accused of terrorism

Fernando, my brother, used to discuss a lot with me. In the tough times, he did not want to leave. . . . Fernando felt happy there, with his political activity in his neighborhood and psychology and political theory studies. He spoke softly, unlike me. . . . My mother dedicated most of her life to looking for him. She still wears the white handkerchief with his name. In the intimate moments of life at home, a disappearance acquires its real meaning.

There is an empty chair, with no clear explanation.

—Marcelo Brodsky,
commenting on his brother's disappearance in Argentina in 1979

Survivors of torture and captivity often describe their experience as a seemingly impossible mix of terror and hope: agonizing fear and pain, combined with an ardent wish for a better day. Studying human rights issues also entails an uncomfortable blend of terror and hope: terror at witnessing the betrayal of other human beings, a restrained

hope for greater justice. As observers, we can be simultaneously drawn to and repelled by human rights accounts. Stories of terror expose the darkest side of humanity while evoking empathy for the victims; given a different set of conditions, any one of us could fall prey to human rights abuse. Stories of hope inspire confidence in the ability of human beings to overcome horrific obstacles, even as we wonder whether we could muster similar courage in comparably terrifying circumstances.

Latin America is fertile ground for exploring the twin themes of terror and hope that underlie the study of human rights. Four factors, in particular, make the region a productive arena for studying human rights issues: an inordinately high level of abuse, powerful human rights organizations, impressive efforts to promote truth and accountability, and a checkered history with the United States.

- In the span of only a few decades, the region experienced an enormous share of egregious abuses and terror. These have led to hundreds of thousands of deaths; clandestine detention centers, where people of all ages and walks of life have been tortured; and the disappearance of countless individuals, some of whose bodies have never been found.
- During the same period, the region has also seen the formation of thousands of vibrant and courageous human rights organizations, whose members have dared to protest even during the height of repression. Today, activists and nonactivists alike continue to fight against impunity, or the idea that those who commit human rights abuses will not be punished. To this end, some of the first systematic attempts in the world to pursue truth and justice for past human rights abuses have taken place in the region.
- Truth commissions and human rights trials have been facilitated in part by the Inter-American human rights system, the developing world's most extensive regional system of institutions to promote human rights. A network of treaties, a body of experts who investigate and monitor abuse, and a regional court all offer forums for human rights victims and their advocates. While imperfect, the region's human rights mechanisms are setting important precedents around the world.
- Finally, no discussion of Latin America can ignore the region's geographic position. As a southern neighbor of the United States, the

region has always served as an important testing ground for human rights considerations in U.S. foreign policy. And whether one is critical or supportive of U.S. policies, the role of this powerful country has to be factored into most discussions of human rights in world affairs.

We will grapple with all these issues in this book, which joins a broad range of research and testimony to understand three central concerns: *the origins of abuse*, *the sources of reform*, and *the challenge of accountability*. These issues together reveal the human rights story in Latin America and the political themes running through it. Our goal is to fuse real-world issues with political analysis to understand why human rights conditions vary so widely, serving both to terrorize and to liberate people.

What Is at Stake?

Human rights violations and impunity are an ongoing reality in Latin America. A recent annual report by Amnesty International observed that “Respect for human rights remained an illusion for many as governments across the Americas failed to comply with their commitments to uphold fundamental human rights.”¹ Amnesty International documents that at the outset of the twenty-first century, torture, disappearances, extrajudicial executions, and ill treatment persist throughout the region, alongside systematic violence against women; attacks on human rights defenders; and an endemic poverty that disproportionately harms society’s most vulnerable members, including children and indigenous groups. Even if the “geography” of political violence has shifted over time or the overall magnitude of abuse has declined in recent decades, as subsequent chapters show, oppression still is a way of life for many of the region’s people. Despite the progress associated with truth commissions and legal trials, the vast majority of human rights violators continue to walk the streets of Latin America, often in close proximity to their victims.

This book takes these human rights violations as its point of departure. These abuses are more than historically significant or intellectually interesting. The ongoing pervasiveness of some rights violations makes them a pressing matter: at stake are the lives and welfare of individual human beings who are confronted daily by systems of oppression and perpetrators of abuse. Perhaps this is why the subject of human rights continues to evoke

such intense controversies, as different groups struggle to define the limits of acceptability for past and present behavior. From a policy perspective, moreover, devising effective human rights strategies—whether by governments, international organizations, or activist groups—may require a more accurate assessment of the roots of abuse. Without knowing why violations occur, stopping or preventing them can prove elusive. Taking human rights violations seriously also requires listening carefully to the voices of victims, some of which are presented in these pages. When these voices are silenced, it is all too tempting to overlook key questions, or to forget what really is at stake.

Human rights norms are defined in this book as *standards for how to treat human beings*. This is a deliberately minimalist, simple definition. Since human rights are standards, or rules about the way things *should* be, they exist even when they are not protected. In other words, having a right is not the same thing as enjoying a right. An analogy from domestic law illustrates this fundamental claim. The law stipulates that people should stop at red lights; everyone has a right not to be hit and injured by people who run red lights. Just because people do not always obey this standard does not mean that it does not exist. Likewise, I have a right not to be tortured. If I am tortured, my right is being violated; but it does not change the fact that I still have this right. Consequently, others can act on my behalf to assure that my right not to be tortured is protected.

Human rights are also *entitlements*, or things that any human being can hypothetically claim simply by virtue of being alive. When different human rights come into conflict with one another, an international legal consensus exists as to which rights should never be suspended; these protect individuals from slavery, torture, and extrajudicial executions. From a broader philosophical perspective, some experts claim that the most important human rights are those needed to assure a life of basic human decency, including rights to subsistence (i.e., basic food, shelter, health care) and physical security.²

For specifics about which standards constitute human rights, the principal international human rights documents can be consulted. Three of these documents, in particular, are at the core of global standards: the 1948 Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. Together, these three accords comprise the International Bill of Human Rights. All other human rights

treaties, whether international or regional, are more or less offshoots and elaborations of the standards enshrined in the UDHR (Table 1) and the two international human rights covenants.

Table 1.
Standards in the Universal Declaration of Human Rights (1948)

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2)

Right to life, liberty, and security of person	Right to education
Freedom from slavery or servitude	Right to a nationality
Freedom from torture or cruel, inhuman, and degrading treatment or punishment	Right to marry and found a family
Right to be recognized before the law	Right to own property
Freedom from arbitrary arrest, detention, or exile	Freedom of thought, conscience, and religion
Right to a fair and public hearing by an independent and impartial tribunal	Freedom of opinion and expression
Right to be presumed innocent until proved guilty	Freedom of peaceful assembly and association
Freedom from ex post facto punishments	Right to participate in government, including in periodic and genuinely free elections
Freedom from arbitrary interference with privacy, family, home, or correspondence and from attacks on one's honor or reputation	Right to social security . . . "indispensable for . . . dignity"
Freedom of movement	Right to work; equal pay for equal work; just remuneration; and right to form and join trade unions
Right to seek and enjoy asylum from political persecution	Right to participate freely in the cultural life of the community; protection of intellectual property
Right to a standard of living adequate for health and well-being	

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein (Article 30)

What is at stake in studying human rights in Latin America, therefore, are the rights enumerated in the major human rights documents, including the American Convention on Human Rights (1969). Approaching these standards critically requires confronting competing visions of how human beings should be treated. Are some people in some circumstances not subject to all of the rights enumerated in the Universal Declaration of Human Rights? If so, who gets to determine the exceptions, and according to what criteria? Alternatively, are *all* human beings entitled to certain rights, and if so, which ones? These are some of the difficult questions that any student of human rights must tackle.

Latin America and the Evolution of International Human Rights Norms

Contemporary observers tend to equate the story of human rights in Latin America with the region's relatively recent authoritarian past. The subject immediately evokes images of military coups, disappearances, death squads, and bloody civil wars. Accordingly, Latin America's relationship vis-à-vis international human rights norms is depicted as a one-way street; human rights norms are treated as external to the region, significant only insofar as governments comply with them or not. While this characterization is understandable, rooted in the region's recent violent history, it remains vastly incomplete and misleading.

Latin America has contributed uniquely to the evolution of international human rights norms. These influences may not be widely known, but their legacy is nonetheless fundamental. Three historical developments deserve particular consideration: (1) philosophically, current notions of human equality and the rights of indigenous people are rooted in Bartolomé de las Casas's influence during the sixteenth century; (2) institutionally, national constitutions across the region, beginning with Mexico's revolutionary 1917 constitution, catapulted economic and social rights onto the world stage; and (3) politically, Latin Americans played a crucial role in developments of the 1940s, helping to place human rights norms on the global agenda and to craft key international legal documents.

Bartolomé de las Casas

A Spanish friar during the sixteenth-century conquest of the Americas, Bartolomé de las Casas left an indelible imprint on contemporary notions

of human rights. Las Casas is interesting partly because he was not always and fully committed to human equality. A participant in the Conquest, he experienced firsthand the slaughter, enslavement, and mistreatment of indigenous groups. This led him to advocate vigorously, impressively ahead of his time, for the equal treatment of indigenous groups. In a sense, he was the region's first human rights advocate, writing extensively about the plight of the Indians. Remarkably, he deemed Indians equal to other human beings, drawing on their capacity to reason. He traveled the region widely, despite the physical impediments and dangers of the period, spreading his message. And he argued passionately before the royal court in Spain for the liberation of all Indians, a step that he put into practice by freeing his own servants.

Las Casas's positions vis-à-vis human rights, however, were imperfect and inconsistent, which has made him somewhat controversial today. For example, the Spanish cleric's opposition to slavery did not extend initially

UP CLOSE: BARTOLOMÉ DE LAS CASAS, SIXTEENTH-CENTURY ADVOCATE

"... the entire human race is one; all men are alike with respect to their creation and the things of nature, and none is born already taught. And so we all have the need, from the beginning, to be guided and helped by those who have been born earlier" (*Apologetic History*, Chapter 48)

"... by what right or justice do you hold these Indians in such cruel and horrible servitude? On what authority have you waged such detestable wars against these peoples, who dwelt quietly and peacefully on their own land? Wars in which you have destroyed such infinite numbers of them by homicides and slaughters never before heard of? Why do you keep them so oppressed and exhausted, without giving them enough to eat or curing them of the sicknesses they incur from the excessive labor you give them, and they die, or rather, you kill them, in order to extract and acquire gold every day?" (*History of the Indies*, Book III)

Source: For a basic selection of Bartolomé de las Casas's writings, see *Witness: Writings of Bartolomé de las Casas*, ed. George Sanderlin (Maryknoll, N.Y.: Orbis, 1992).

to Africans, a position he adjusted only in his old age. Nor did he oppose the use of repression, including torture, against heretics in Spain.

Despite these serious problems, Las Casas's writings and work were critical in advancing notions of human equality, as applied to the Indians in Spanish America. Scholars recently have observed, therefore, that while he cannot fairly be credited with developing the idea of *human* rights per se (that is, rights held by individuals), Las Casas was one of the first people in history to advance the idea of *group* rights.³ He was also the first archbishop of Chiapas, the predominantly indigenous region in southern Mexico that has attracted global attention in recent decades with the massacre of peasants and the rise of the Zapatista movement, which we will revisit later. The leading human rights organization in the heart of Chiapas, a way station for activists from around the world, still carries the sixteenth-century advocate's name: Fray Bartolomé de las Casas Center for Human Rights.

Pathbreaking National Constitutions

The region has also been essential in elevating the profile of economic and social rights, especially through its national constitutions. As independence came to most countries of the region in the nineteenth century, newly formed postcolonial governments turned to European Enlightenment thinking, the French Declaration on the Rights of Man and Citizen, and to a relatively lesser degree the U.S. constitutional model of rights.⁴ Most of the region's constitutions therefore incorporated notions of individual rights and liberties apart from the state (following its northern neighbor) alongside an emphasis on equality and citizen duties (borrowing from continental Europe). Simón Bolívar, the talented Venezuelan general who helped liberate five South American countries and draft some of the region's constitutions, embodied this hybrid constitutional approach to rights: he upheld rights to liberty, equality, and private property; condemned slavery as a "shameless violation of human dignity"; and promoted active government involvement in securing rights.⁵ This model shaped constitution after constitution in the region for over a century.

Whereas Latin American countries during the first century of independence incorporated civil rights and duties drawn from various constitutional traditions, in the beginning of the twentieth century the region broke new ground by promoting economic and social rights. The introduction of economic and social rights into Mexico's revolutionary constitution

of 1917 (still in effect today) was a watershed for constitutional development around the world. For the first time, labor rights and fair working conditions were emphasized in a national constitution, setting the stage for including them in new constitutions throughout the region and beyond. While the Mexican constitution also called for the expropriation and redistribution of property—quintessentially socialist concepts—its contribution to human rights standards should not be ignored. By incorporating economic and social rights alongside civil and political rights, Latin American constitutions played a key role in legitimating *both* sets of rights.

The region's national constitutions were therefore pathbreaking. Following in the tradition of Bartolomé de las Casas and indigenous influences, they acknowledged the importance of group rights beyond individual rights. The region's early constitutions were also innovative in fusing notions of rights *and* duties, which in turn influenced constitutions across the developing world. Likewise, the Mexican constitution built on these developments to highlight the role of previously overlooked economic and social rights that numerous countries in and out of the region then incorporated into their own constitutions. Just as Latin America's early constitutions imported and combined foreign constitutional insights, they also played a crucial role in advancing new human rights ideas: the importance of groups like minorities and indigenous people; the complementary nature of rights and duties; and the fundamental significance of economic and social rights, beyond traditional civil and political rights.

Between Bartolomé de las Casas and the emergence of national constitutions, there were three centuries of colonial rule. What happened of relevance during this period, between the conquest of the Americas in the 1500s and independence in the 1800s? This period of colonialism did not make a positive impact on the evolution of international human rights norms. Rather, in the human rights story, colonialism is more closely tied to a long trail of abuse throughout the region (Chapter 1). While human rights violations in the second half of the twentieth century could trace their historical roots to colonialism, they would ironically be challenged by a set of internationally recognized norms that Latin Americans themselves helped draft after World War II.

Leadership at the United Nations

The origins of the contemporary international human rights system are commonly traced to the Universal Declaration of Human Rights in April

1948. Far less is known, however, about the contribution of Latin American states to this key moment in the history of human rights. Perhaps most dramatically, the American Declaration of the Rights and Duties of Man came into existence a full six months before the UDHR. Four years earlier, at a regional conference in Mexico City in 1944, the need for such an international declaration was already discussed. And in 1946, six Latin American countries were joined by the United States to support collective intervention on behalf of democracy and human rights. Even if individual states had ulterior motives for promoting universal human rights, the region's proposals were unique and significant in global terms. One scholar has gone as far as to suggest that "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."⁶

The most direct influence that Latin American countries had on international human rights norms was in drafting the UN Charter and, subsequently, the UDHR. As early as 1938, the Inter-American Conference (predecessor to the Organization of American States, the OAS) adopted a "Declaration in Defense of Human Rights." At the end of World War II, at the April 1945 San Francisco meeting charged with completing the UN Charter, Latin America had the largest bloc of countries present at the meeting. Representatives of twenty countries from the region pushed for human rights to play a more prominent role in the charter. In addition to establishing the promotion and protection of human rights as central goals of the postwar international architecture, the UN Charter established a human rights commission charged with drafting formal international human rights norms. Eleanor Roosevelt headed this eighteen-person commission, which also included three delegates from Latin American countries (Chile, Uruguay, and Panama). In attempting to reconcile cultural and other differences, the Commission called for a proposed bill of rights. Significantly, the models submitted by Chile and Panama quickly became the dominant ones considered; and Chile's proposal became the basis of the 1948 American Declaration on the Rights and Duties of Man.

Part of the appeal of the Latin American proposals was that they resonated globally, beyond Western societies. The proposals attempted to identify similarities in human rights norms across a broad range of cultures and polities. Thus, Latin America's proposal regarding economic,