

**‘Holding Fast to the Heritage of Freedom’: The Grotian Moment(s) of the Universal Declaration of Human Rights and the Early United Nations (1941-1949)**

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## **Abstract**

As our contemporary international order seems to come apart at its seams in the trenches of Eastern Europe, many observers have sought solace in the promises made by the historical crucible in which this order was forged. It was, after all, in the aftermath of a previous global conflagration that a planetary constellation of statespeople attempted to create an architecture that would save ‘succeeding generations from the scourge of war’ under the aegis of the ‘United Nations Organization’ (UNO). In hindsight, it is easy to look at the years that led to the creation of this international institution —and the proclamation of the Universal Declaration of Human Rights (UDHR) of 1948, one of its central pillars— as a decisive ‘Grotian moment,’ insofar as it promised a new age for international ordering. And yet, the historical record shows that the making of the UNO and the UDHR were less certain about the ‘Grotianness’ of the moment they were living. In this sense, I argue that the plural legacies of the years 1941-1948 have been contested and disputed from the outset. In this contribution I think with, and perhaps against, the notion of ‘Grotian moments’ to interrogate how a narrative of the UDHR as a watershed period for secularized individual rights came to eclipse another account of the UDHR, which highlighted the centrality of collective welfare for the post-war settlement.

**Keywords:** Theory and History of International Law; Human Rights Histories; Grotian Moments; United Nations; Universal Declaration of Human Rights.

*The Universal Declaration's cosmopolitanism needs to be placed back in this atmosphere, where the general conclusion from World War II was that economic disaster underlay military conflict, and guaranteeing freedom from want would prove the key to securing freedom from fear.*<sup>1</sup>

*[I]t seemed at times that the chief protagonists in the conference room [of the Third Committee in Paris in 1948] were the Roman Catholics and the communists, with the latter a poor second.*<sup>2</sup>

## **1. Introduction: Setting the Law in Stone**

Under the scrutiny of the whole world—and at least 16,000 spectators on-site—the two men claimed to set the word of the law in stone.<sup>3</sup> The tallest was the US architect Wallace K. Harrison, towering awkwardly next to the Norwegian Trygve Lie: first Secretary-General of the United Nations Organization (UNO).<sup>4</sup> Their mission was as follows: in a rigorously planned and choreographed ceremony, Harrison, in his capacity as the UNO's Director of Planning, would escort Lie down to the building site.<sup>5</sup> Harrison would instruct one of his workers to place an ornate cornerstone emblazoned with the name of the UNO in all of its five official languages and that year's date solemnly registered in Roman numerals 'MCMXLIX' (1949). Lie, carefully so as the audience and cameras could register his movements, would place two legal documents in a small box. These instruments were the United Nations Charter and the Universal Declaration of Human Rights (UDHR), adopted in 1945 and 1948 respectively.<sup>6</sup> Harrison immediately ordered the worker to seal the box and to lower the cornerstone so that the former would be entirely embedded in the latter (Fig. 1). Their hope was that the letter of the law would, literally, be inscribed into the materiality of the UNO Headquarters—which Harrison was entrusted to build under Lie's direction. To consummate the marriage of law and (corner)stone, the two white collar workers

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<sup>1</sup> Samuel Moyn, 'The Universal Declaration of Human Rights of 1948 in the History of Cosmopolitanism,' *Critical Inquiry* 40:4 (2014): 365–84, p. 372. Italics in the original.

<sup>2</sup> John P. Humphrey, *Human Rights & the United Nations: A Great Adventure* (New York: Transnational Publishers, 1984), p. 66.

<sup>3</sup> Charles McHarry & Nel Patterson, '16,000 see UN Site Dedicated,' 29 October 1949, *Daily News*. 1. in United Nations Archives and Records Management Section (UNARMS), Serge Wolff Collection, S-0593-5892. Thereafter, any archival materials are scanned on file with the author and any translations from French or Spanish are my own.

<sup>4</sup> On them, see —respectively— Ellen Jenny Ravndal, 'Trygve Lie, 1946–1953,' in *The UN Secretary-General and the Security Council: A Dynamic Relationship*, ed. by Manuel Frölich and Abiodun Williams (Oxford: Oxford University Press, 2018), pp. 22–41; Victoria Newhouse, *Wallace K. Harrison, Architect* (New York: Rizzoli, 1989). As I've done consistently in my work, I prefer not to use the adjective "American" to refer to the United States —for the Americas are two continents and the US is but a single country. I thank one of the reviewers for their comments in relation to this as it allows me to justify this idiosyncratic use of the performativity of language more explicitly.

<sup>5</sup> 'Memorandum: Proposed Cornerstone Ceremony,' 19 October 1949, in UNARMS S-0472-0001-15-0001. p. 20.

<sup>6</sup> Hans Kraus, *The Home of the United Nations: A Story in 300 Pictures* (New York: A. De Milly, 1952), pp. 24–25.

diligently applied mortar to the cornerstone's base—a task both were woefully untrained for. Returning to his comfort zone, Lie closed the ordeal with a speech. A fitting end to a day already marked by speeches from Carlos Romulo (President of the UNO General Assembly), William O'Dwyer (New York City Mayor), Thomas Dewey (Governor of New York), and even Harry Truman (President of the United States).<sup>7</sup>



Figure 1: The Director of Planning and the Secretary-General at the UNO Cornerstone Ceremony (first and second to the right of the cornerstone). United Nations ©.<sup>8</sup>

According to the seasoned *New York Times* correspondent George Barrett, during this ‘historic ceremony’ acerbic rivalries were temporarily suspended.<sup>9</sup> As the world gathered to dedicate the site of the UNO’s ‘headquarters for peace,’<sup>10</sup> most left their grudges—even if just momentarily—behind. The Soviet Foreign Minister Andrei Vishinsky and the British Attorney-General Hartley Shawcross—who roughly a year ago were fiercely debating against each other at UNO’s General Assembly in Paris and had already clashed in their joint service as lead prosecutors in the Nuremberg International Military Tribunal—now sat side by side, locked in ‘friendly

<sup>7</sup> A copy of each speech can be consulted at ‘Provisional Summary Record of the 237 Plenary Meeting,’ 25 October 1949, A/SR.237 in UNARMS S-0472-0001-15-0001, pp. 24-37.

<sup>8</sup> United Nations Multimedia Library. UN7771354 (24 October 1949). <https://dam.media.un.org/asset-management/2AM9LO1O8KO8> (last consulted on 21 November 2022).

<sup>9</sup> George Barrett, ‘Animosities Fade at U.N. Dedication,’ 25 October 1949, *The New York Times* in UNARMS S-0593-5892.

<sup>10</sup> George A. Dudley, *A Workshop for Peace: Designing the United Nations Headquarters* (Cambridge: MIT Press, 1994).

chatting.’<sup>11</sup> But not only did international tensions lessened, but also domestic confrontations seemed to subside. Indeed, the most telling example of this was that the US President Truman and New York Governor Dewey also amicably shared the ceremony’s dais—as if the former had not narrowly defeated the latter in the 1948 presidential election. It was a day of consensus, as ‘politics gave way to jovial spirits.’<sup>12</sup> It was a brief interlude of respite in a scared by the terrible memories of the previous global war and the anxieties related to a future marked by the prospect of nuclear annihilation.<sup>13</sup>

I suspect that those scholars that invoke the notion of a ‘Grotian Moment’ in contemporary legal scholarship share plenty with the diplomats, statespeoples, and architects who met in 1949 to lay the UNO’s cornerstone. As Sparks and Somos aptly explain, this notion—first invoked by Richard Falk in 1985, later amplified by more mainstream legal scholars and institutional actors in the post-Cold War era—broadly refers to ‘rapid crystalli[z]ations of new rules and doctrines of customary international law.’<sup>14</sup> Indeed, this notion has been quite entangled with the ‘frenzy of lawmaking’ of the post-Cold War period—and its corresponding dreams, and nightmares, of an unipolar global order under United States hegemony.<sup>15</sup> Be that as it may, like Lie and Harrison’s cornerstone ceremony, I argue, claims of the ‘Grotianness’ of any given ‘moment’ seek to—figuratively, as Lie and Harrison did literally—set the words of the law into stone. They attempt to reduce the cacophony of conflict into a general tone of consensus. In particular, through the alchemies of historical argument, these claims seek to translate the fluidity of past legal uncertainty into a concrete cornerstone for the present – erecting a solid foundation for the future. In the first invocation of this notion, Falk made the historicity of this move explicit, as it was an attempt ‘to [synthesize] the old that is dying with the new that is emerging [... to forge] a [singular] formation of a political community.’<sup>16</sup> But I think this is especially true for later accounts that link claims of

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<sup>11</sup> George Barrett, ‘Animosities Fade at U.N. Dedication,’ 1. See also ‘Excerpts from Shawcross Reply to Vishinsky,’ p. 14 October 1948, *The New York Times*. [https://timesmachine.nytimes.com/timesmachine/1948/10/14/84540568.html?pdf\\_redirect=true&ip=0&pageNumber=4](https://timesmachine.nytimes.com/timesmachine/1948/10/14/84540568.html?pdf_redirect=true&ip=0&pageNumber=4) (last consulted on 21 November 2022).

<sup>12</sup> George Barrett, ‘Animosities Fade at U.N. Dedication,’ p. 1.

<sup>13</sup> David Reynolds, *From World War to Cold War: Churchill, Roosevelt, and the International History of the 1940s* (Oxford: Oxford University Press, 2006).

<sup>14</sup> Tom Sparks and Mark Somos, ‘Grotian Moments: An Introduction’, *Grotiana* 42, no. 2 (2021): 179–91, pp. 179–80. Of course, as the contributions curated by Sparks and Somos show, there are ‘several contrasting but closely connected definitions’ of this notion. See footnote 25 below.

<sup>15</sup> Joost Pauwelyn, Ramses A. Wessel, and Jan Wouters, ‘When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking’, *European Journal of International Law* 25, no. 3 (August 1, 2014), 733–63, p. 737. See further, *United States Hegemony and the Foundations of International Law* (Cambridge: Cambridge University Press, 2003), ed. by Michael Byers and Georg Nolte.

<sup>16</sup> Richard Falk, ‘Some Thoughts on the Decline of International Law and Future Prospects,’ *Hofstra Law Review* 9 (1981), 399–409, p. 408. See also Edward Jones Corredera, ‘Why International Lawyers Measure Time with a Telescope: Grotian Moments & Richard Falk’s Histories of the Future,’ *Grotiana* 42 (2021), 212–28.

‘Grotianness’ to an argument about the ‘crystalli[z]ation’ of international custom.<sup>17</sup> For, if we interrogate the use of ‘crystalli[z]ation’ as a metaphor—as Barad has done in relation to the work of Walter Benjamin<sup>18</sup>—the allure of the crystal lies in its promise to thicken time into matter.<sup>19</sup> To stick to geological metaphors,<sup>20</sup> claims for/against a Grotian moment are but exercises in stratigraphy: arguments grounded in an archeological analysis of the stratum of meaning that have been patiently deposited by the sands of time over a given legal terrain.<sup>21</sup>

But the seeming fixity of ‘the material’ should not give us false notions about its permanence. As I and other voices committed to pursuing avenues of engagement between our discipline and the so-called ‘new materialisms’ are trying to show, the solidity of any given material constellation is not determined by its physical characteristics but rather by its relationship to systems that reproduce and consolidate social meaning.<sup>22</sup> As such, one should not be surprised to learn that even the most petrified consensuses of yesteryear are often rewritten by the debates of the present, reopening discussions for the future. Returning to the UNO Headquarters offers us a painful example of that: no amount of mortar in its cornerstone could have prevented the slow but certain unmaking of the fragile alliance that lay at the heart of the project of the ‘United Nations.’ Does that make the years (1941-1949) that laid the foundation for this universal international institution less ‘Grotian’? Were they, perhaps, not as ‘momentous’ at it seems at first sight? More dramatically, are we witnessing an equally ‘Grotian moment’ nowadays in relation to the death of the UNO?<sup>23</sup>

In this chapter, I read these early years—and, in particular, of the processes that led to the adoption of the ‘epoch-making’ UDHR<sup>24</sup>—to think with, and perhaps against, the notion of a ‘Grotian moment.’ My understanding of the notion itself sits at the middle, perhaps, of what

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<sup>17</sup> Michael P. Scharf, ‘Grotian Moments: The Concept,’ *Grotiana* 42, no. 2 (2021): 193–211, p. 194. See also Michael P. Scharf, ‘Seizing the Grotian Moment: Accelerated Formation of Customary International Law in Times of Fundamental Change,’ *Cornell International Law Journal* 43, no. 2 (2010): 339–469, p. 443.

<sup>18</sup> And, in particular, of his highly idiosyncratic Arcades Project. See Walter Benjamin, *The Arcades Project*, ed. Rolf Tiedemann, trans. Howard Eiland and Kevin McLaughlin (Cambridge: Harvard University Press, 1999). For an overview of this unfinished work and its relevance in international legal history, see Daniel R. Quiroga-Villamarín, ‘Endroits of Planetary Ordering: Violence, Law, Space, & Capital in the Diplomatic History of 19th Century Europe,’ *German Law Journal* (forthcoming in 2023). See further Nassima Sahraoui, ‘A Crystal of Time: (Political) Reflections towards a History of the Now: Benjamin and Derrida,’ *Anthropology & Materialism*, Special Issue I (2017), 1–24.

<sup>19</sup> Karen Barad, ‘What Flashes Up: Theological-Political-Scientific Fragments,’ in *Entangled Worlds: Religion, Science, and New Materialisms*, ed. Catherine Keller and Mary-Jane Rubenstein (Fordham University Press, 2017), pp. 21–88.

<sup>20</sup> To be sure, one of our field’s favorite metaphorical terrains. See J. H. H. Weiler, ‘The Geology of International Law – Governance, Democracy and Legitimacy,’ *Heidelberg Journal of International Law* 64 (2004): 547–62, p. 551.

<sup>21</sup> Liliana Obregón, ‘Response to Professor Weiler’s ‘Geology of International Law,’ *Proceedings of the Annual Meeting (American Society of International Law)* 100 (2006), 103–7. p. 104.

<sup>22</sup> Daniel R. Quiroga-Villamarín, ‘Domains of Objects, Rituals of Truth: Mapping Intersections between International Legal History and the New Materialisms,’ *International Politics Reviews* 8, no. 2 (2020), 129–51.

<sup>23</sup> Hitoshi Nasu, ‘The End of the United Nations?: The Demise of Collective Security and Its Implications for International Law,’ *Max Planck Yearbook of United Nations Law Online* 24, no. 1 (2021), 110–36.

<sup>24</sup> Moyn, ‘The Universal Declaration of Human Rights of 1948 in the History of Cosmopolitanism’, p. 367.

Chimni in this volume has theorized as the second and third way in which this concept has been deployed in the literature.<sup>25</sup> In other words, I see invocations of this notion as justifications for developments that are not merely ‘inside’ the international legal order but that are not revolutionary enough to be understood as entirely ‘external’ to the order either. My difficulties with Chimni’s (otherwise helpful) categories stems from the fact he seems to give the ‘international legal order’ a degree of historic continuity and cohesiveness which I find somewhat hard to square with our rich historiographies of the fragmented experiences of international order during the twentieth century.<sup>26</sup> As much as I agree that Grotius can—and should —be read in the context of the rise of a ‘nascent Dutch bourgeoisie,’<sup>27</sup> I am not entirely convinced I follow Chimni in relation to the emergence of what he calls a ‘bourgeois world order’ that consolidated its grip over international affairs in the ‘19<sup>th</sup> century.’<sup>28</sup> Much has been written about the persistence of aristocratic elements in domestic and international affairs during the last two centuries,<sup>29</sup> and even projects of ‘bourgeois’ reform have been polysemic from the outset.<sup>30</sup> For that reason, I find Gerstle’s idiom of a ‘political order’ more useful as an analytical category to understand the transformations of twentieth-century ideological projects for global governance—bourgeois, aristocratic, or socialist, or otherwise—during this planetary age of extremes.<sup>31</sup> For what Chimni calls the ‘bourgeois world order’ has had plenty of moments of inflections that transformed its structure in ways that are hard to categorize as *either* ‘external’ or ‘internal.’<sup>32</sup> I think Slobodian is right insofar as the great wars of 1914 or 1937-1939, the great depression of 1929, and the ‘revolt of the Global South’ of the seventies, were truly moments of rupture that exerted enormous pressure on the ‘bourgeois order’ and opened vistas for its internal & external transformations.<sup>33</sup> For that reason, it would be a disservice to see the ‘post second world war period’ as merely a ‘Grotian moment 3’ —as if the transformations that occurred then were merely ‘internal’ to the bourgeois ‘international legal order.’<sup>34</sup> In other words, I think one can only talk of ‘bourgeois world orders’ in the plural—for the meaning of what a ‘bourgeois’ reform of international relations entails was different in 1609

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<sup>25</sup> B.S. Chimni, ‘The Grotian Tradition, Grotian Moment, and Decolonization: A TWAIL Perspective,’ *Grotiana* 42, no. 2 (2021): 252–76. pp. 266–7.

<sup>26</sup> Compare, for instance, with Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Cambridge: Harvard University Press, 2018), on ‘world orders’ at p. 4.

<sup>27</sup> Chimni, ‘The Grotian Tradition, Grotian Moment, and Decolonization’, p. 253.

<sup>28</sup> Chimni, ‘The Grotian Tradition, Grotian Moment, and Decolonization’, p. 266.

<sup>29</sup> Arno J. Mayer, *The Persistence of the Old Regime: Europe to the Great War* (London: Verso, 2010).

<sup>30</sup> Charles S. Maier, *Recasting Bourgeois Europe: Stabilization in France, Germany, and Italy in the Decade after World War I: With a New Preface*, New paperback edition (Princeton: Princeton University Press, 2016).

<sup>31</sup> Gary Gerstle, *The Rise and Fall of the Neoliberal Order: America and the World in the Free Market Era* (New York: Oxford University Press, 2022), p. 2. See also Eric Hobsbawm, *Age of Extremes: The Short Twentieth Century* (London: Abacus, 1994).

<sup>32</sup> Chimni, ‘The Grotian Tradition, Grotian Moment, and Decolonization’, p. 266.

<sup>33</sup> Slobodian, *Globalists*, pp. 17–18. To be sure, I make more emphasis on the importance of the second great war — especially for the purposes of this chapter— than Slobodian.

<sup>34</sup> Chimni, ‘The Grotian Tradition, Grotian Moment, and Decolonization’, p. 267. Compare with Stephen Wertheim, *Tomorrow, the World: The Birth of U.S. Global Supremacy* (Cambridge: Harvard University Press, 2020).

than in our days, and even changed radically in the relatively short span of time between 1931 to 1973.

Now, to be sure, I am not too invested in arguing for, or against, the transformative nature of this period. Rather, I am interested in seeing how claims of crystallization and consensus — which, as I have argued in this introduction, are central to the operations of ‘Grotian moments 1, 2, or 3’— have been deployed to inscribe the meaning of the legal developments of this period into stone. In particular, I argue that a second ‘Grotian reading’ of the early UNO and UDHR years (one that highlights the importance of these years for the emergence of secularized individual rights that can be mobilized against the state) came to cover a previous stratum of meaning.<sup>35</sup> Under this layer of crystallized meaning, the archeologist of international order can still find the echoes of a previous geological sedimentation of meaning—in which the early UNO and the UDHR are seen instead as cornerstones for a vision of the state-led fulfilment of promises for collective welfare.<sup>36</sup> I do not necessarily seek to offer an ‘empirical’ argument about which of these Grotian readings is more adequate, but rather to show the precariousness and open-endedness of ‘historical’ arguments for political or legal ends.<sup>37</sup> To do so, after this introduction, I will analyze these two Grotian readings of the early UNO and UDHR, starting with the (section 2) ‘Collective Welfarist’ interpretation, before I turn to the (section 3) ‘Individual Rights’ narrative. I conclude with (section 4) some remarks on the petrification of conflict and politics through legal consensus—a potent fantasy that has long fascinated ‘Grotian’ and non-Grotian legal scholars alike.

## **2. Work, War, and Welfare: Situating the Mid-Century ‘New Deal’ International Legal Order**

Even if the creation of the UNO and the drafting of the UDHR marked, indeed, a Grotian moment, when did this period actually begin? As Gasbarri notes, ‘[d]uration depends on when you start

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<sup>35</sup> See, broadly, Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge: Harvard University Press, 2010).

<sup>36</sup> See also Samuel Moyn, *Christian Human Rights* (Philadelphia: University of Pennsylvania Press, 2015); Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard University Press, 2018). To avoid confusion, my reference here to “archaeology” follows the geological metaphors introduced in footnote 20—not the Foucauldian tradition of archaeology as a method for discourse analysis. Conversely, see Michel Foucault, *The Archaeology of Knowledge and the Discourse on Language* (New York: Pantheon Books, 1972). Finally, see also Fritz Bartel, *The Triumph of Broken Promises: The End of the Cold War and the Rise of Neoliberalism* (Cambridge: Harvard University Press, 2022).

<sup>37</sup> For a mandatory but not particularly helpful reference, see Anne Orford, *International Law and the Politics of History* (Cambridge: Cambridge University Press, 2021). Compare with Dan Edelstein, Stefanos Geroulanos, and Natasha Wheatley, ‘Chronocenosis: An Introduction to Power and Time,’ in *Power and Time: Temporalities in Conflict and the Making of History*, ed. by Dan Edelstein, Stefanos Geroulanos, and Natasha Wheatley (University of Chicago Press, 2020), pp. 1–50. See also Daniel R. Quiroga-Villamarín, ‘Friendly Fire: The Politics & Elective Affinities of *International Law and the Politics of History*,’ *Global Intellectual History*, March 15, 2023, 1–16, <https://doi.org/10.1080/23801883.2023.2183879>. Advance copy online.



counting.’<sup>38</sup> There is no natural way to answer this—in fact, many of the debates in the historiography have been caused by bitter divergences between accounts of how far, and where, one should go back to the past to tell the history of human rights.<sup>39</sup> In this chapter, I take 1941 as our point of departure—challenging narratives that often posit 1945 as a ‘degree zero’ from which the UNO was erected upon a previously blank slate.<sup>40</sup> With Diggelmann and Mohny, instead, I suggest that to understand the human rights project of the latter half of this decade we must begin with the ‘great power’ politics of its origins.<sup>41</sup> And, as such, we must look into the unstable coalition of ‘associated powers’ that started together in 1941 and eventually claimed the mantle of the ‘United Nations’ for their makeshift military alliance in 1942.<sup>42</sup> In particular, some of the promises of mid-century international legal order—which Gerstle and others have read as an attempt to globalize an Unitedstatesean ‘New Deal’ political order<sup>43</sup>—were first issued at the domestic level with the famous promise of the Four Freedoms.<sup>44</sup> In his 1941 state of the union address, the then US President Franklin D. Roosevelt offered his national constituency a galvanizing call to arms. If a previous US President had wrongly vowed that the outcome of the first great war would be the end of all wars,<sup>45</sup> then his successor’s pledge would be that the outcome of the second great war would be a world in which all peoples were to be ‘free from fear and want,’ and enjoy their ‘freedoms of speech and of religion.’<sup>46</sup>

These four freedoms would be the reward for the enormous sacrifices the war demanded on the people(s) of the US. With the proclamation of the Atlantic Charter in 1941 and the Declaration of the United Nations of 1942, these promises were globalized for the peoples of the whole military alliances—a fitting outcome given that the sacrifices of the war were also

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<sup>38</sup> Lorenzo Gasbarri, ‘(Meta) Grotian Moment: International Organizations and the Rapid Formation of Customary International Law,’ *Grotiana* 43, no. 1 (2022), 113–32, p. 117.

<sup>39</sup> Samuel Moyn, ‘Substance, Scale, and Salience: The Recent Historiography of Human Rights,’ *Annual Review of Law and Social Science* 8, no. 1 (2012), 123–40. See also Pamela Slotte and Miia Halme, *Revisiting the Origins of Human Rights* (Cambridge: Cambridge University Press, 2015).

<sup>40</sup> Oliver Diggelmann, ‘The Creation of the United Nations: Break with the Past or Continuation of Wartime Power Politics?,’ *Die Friedens-Warte* 93, no. 3–4 (2020), 371–89. To be sure, the human rights project of the forties had deep roots in interwar experiments in relation to collective and minority rights, as Mazower has convincingly argued. See Mark Mazower, ‘The Strange Triumph of Human Rights, 1933–1950,’ *The Historical Journal* 47, no. 2 (2004), 379–98.

<sup>41</sup> Diggelmann, ‘The Creation of the United Nations.’ See also Sean Mohny, ‘The Great Power Origins of Human Rights,’ *Michigan Journal of International Law* 34, no. 4 (2014), 827–60.

<sup>42</sup> Inis L. Claude, *Swords into Plowshares: The Problems and Progress of International Organization*, 4. ed (New York: McGraw-Hill, 1984), pp. 57–60.

<sup>43</sup> Gerstle, *The Rise and Fall of the Neoliberal Order*, pp. 19–47. See also Elizabeth Borgwardt, *A New Deal for the World: America’s Vision for Human Rights* (Cambridge: Harvard University Press, 2007), pp. 14–86; Daniel R. Quiroga-Villamarín, ‘The Americas and the United Nations: Reimagining Good Neighborliness for a Global Era (1939–1973)’ in *The Oxford Handbook of International Law and the Americas* (forthcoming, 2024).

<sup>44</sup> Samuel Moyn, ‘From Communist to Muslim: European Human Rights, the Cold War, and Religious Liberty,’ *South Atlantic Quarterly* 113, no. 1 (2014), 63–86, p. 68.

<sup>45</sup> Thomas J. Knock, *To End All Wars: Woodrow Wilson and the Quest for a New World Order*, New edition (Princeton: Princeton University Press, 2019).

<sup>46</sup> Pablo Toral, ‘Four Freedoms in a Global Context,’ *Counterpoints* 271 (2007), 57–74.

thoroughly planetary.<sup>47</sup> As the famous US international lawyer Jessup rightly noted in 1956, ‘[t]he New Freedom and the New Deal were not sold only in the domestic market.’<sup>48</sup> But, as the Allied military efforts slowly advanced on every front, it seemed clear that the great powers were perhaps more concerned with the details of a collective security mechanism of ‘legali[z]ed hierarchy’ than with the promises of human rights.<sup>49</sup> The developments that occurred in the late forties should be read as negotiations through which the ‘we the peoples of the United Nations’ demanded that the great powers fulfil the entangled wartime promises of work, welfare, and religious freedom for all. The drafters of the UDHR offered different approaches to this same problem: some placed more emphasis on work and welfare; others on religious freedom.<sup>50</sup> But, to a degree, all were committed to a ‘welfarist consensus’ that placed the state at the center of a project for collective emancipation.<sup>51</sup>

Accordingly, the UDHR is—I argue—better read as a part of a broader mid-century ‘democratic bargain’ through which the state extended ‘rights’ to its citizens in exchange for their efforts in past wars (and commitment to serve in future conflagrations).<sup>52</sup> If this was a ‘Grotian moment’ of crystallization and consensus, it was one in which ‘rights’ were intimately linked to state power—and its capacity to fulfil promises of collective welfare. Human rights were not yet seen as secularized individual entitlements or trumps which were to be entrenched against state encroachment. As Gunn notes, ‘[critiques] of Western individualism [which we now associate with the UDHR] arose frequently during the UDHR drafting process.’<sup>53</sup> These concerns were raised from all corners of the world. Delegates from Haiti, Belgium, Mexico, Australia, the Soviet Union, Cuba, Yugoslavia, and Saudi Arabia stressed—from different perspectives—the importance of a non-individualist human rights project.<sup>54</sup> This partially explains the importance many delegations

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<sup>47</sup> Paul M. Kennedy, *The Parliament of Man: The United Nations and the Quest for World Government* (London: Allen Lane, 2006), p. 25.

<sup>48</sup> Philip Jessup, *Transnational Law* (New Haven: Yale University Press, 1956), p. 31.

<sup>49</sup> Bertrand G Ramcharan, ‘Norms and Machinery,’ in *The Oxford Handbook on the United Nations*, ed. by Thomas Weiss and Sam Daws (Oxford: Oxford University Press, 2007), pp. 439–62. See also Gerry J. Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order*, Cambridge Studies in International and Comparative Law (Cambridge: Cambridge University Press, 2004).

<sup>50</sup> Humphrey, *Human Rights & the United Nations: A Great Adventure*, pp. 12–3. For an overview, see William A. Schabas, ed., ‘Introductory Essay: The Drafting and Significance of the Universal Declaration of Human Rights,’ in *The Universal Declaration of Human Rights* (Cambridge: Cambridge University Press, 2013), pp. lxxi–cxxxvi.

<sup>51</sup> As I have argued with more detail elsewhere, see Daniel Ricardo Quiroga-Villamarín, ‘“An Atmosphere of Genuine Solidarity and Brotherhood”: Hernán Santa-Cruz and a Forgotten Latin American Contribution to Social Rights,’ *Journal of the History of International Law* 21, no. 1 (2019), 71–103. p. 74. See also Moyn, *The Last Utopia: Human Rights in History*, p. 64.

<sup>52</sup> John Ferejohn and Frances McCall Rosenbluth, *Forged through Fire: War, Peace, and the Democratic Bargain* (New York: Liveright Publishing, 2017), p. 2.

<sup>53</sup> T. Jeremy Gunn, ‘Do Human Rights Have a Secular, Individualistic & Anti-Islamic Bias?,’ *Daedalus* 149, no. 3 (2020), 148–69. pp. 153–5.

<sup>54</sup> *Ibid.* Due to limitations of space—and following my caveat above about the lack of empirical aspirations of this contribution—in what follows I will not carefully review all the debates related to the UDHR, as I have done in some of my previous work. See instead Quiroga-Villamarín, ‘“An Atmosphere of Genuine Solidarity and Brotherhood.”’

in this moment gave to ideas of ‘human *duties*—a project that apparently failed to crystallize enough to make it to our days.<sup>55</sup>

This ‘Grotian’ mid-century consensus was not a given. It was painstakingly forged from 1941 to 1948, behind closed doors and in public conference spaces. After a series of wartime meetings between the great powers (of which the Dumbarton Oaks conference of 1944 was of chief importance), the first space in which small powers reclaimed the fulfilment of the 1941 human rights promises was at the 1945 San Francisco United Nations Conference on International Organization.<sup>56</sup> While the notion of human rights had been absent from the League of Nations Covenant and had only obliquely figured in the draft prepared by the great powers, in the final version of the Charter they were included—one of ‘the significant changes from the Dumbarton Oaks proposals.’<sup>57</sup> I cannot properly review the diplomatic history of this provisions, but it is sufficient to note that their addition was, by and large, a result of the efforts of ‘small powers’—especially of Australia and of the Latin American states.<sup>58</sup> Due to the latter region’s early experiments in projects human rights international developments at the Pan-American level and its relatively overwhelming voting bloc at San Francisco, Latin American countries exerted an important pressure on the inclusion of human rights provisions to the Charter.<sup>59</sup> But it would be misleading to portray the great powers as necessarily against the idea either, as some of their leading diplomats (especially in the US and the Soviet Union) were committed to the project from the outset.<sup>60</sup>

The ties that cemented this uneasy consensus between West, East, and South continued to tighten as the negotiations regarding human rights continued within the UNO.<sup>61</sup> During the first session of the institution’s Economic and Social Council (ECOSOC)—a new council that was created to balance the great power focus of the Security Council following the lessons learned

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<sup>55</sup> Samuel Moyn, “Rights vs. Duties: Reclaiming Civic Balance,” *Boston Review*, May 16, 2016, <https://www.bostonreview.net/articles/samuel-moyn-rights-duties/>; Kathryn Sikkink, *The Hidden Face of Rights: Toward a Politics of Responsibilities* (New Haven: Yale University Press, 2020).

<sup>56</sup> Simpson, *Great Powers and Outlaw States*, p. 176.

<sup>57</sup> Borgwardt, *A New Deal for the World*, p. 184.

<sup>58</sup> Ian Clark, *Legitimacy in International Society* (Oxford University Press, 2005), pp. 139-40. See also Daniel-Erasmus Khan, ‘Drafting History,’ in *The Charter of the United Nations: A Commentary*, ed. by George Nolte et al., 3<sup>rd</sup> ed. (Oxford: Oxford University Press, 2012), pp. 2–23.

<sup>59</sup> Quiroga-Villamarín, “An Atmosphere of Genuine Solidarity and Brotherhood.” See also ‘United Nations Oral History Project. Interview with Ambassador W. Tapley Bennett by James S. Sutterlin on ‘The Founding of the United Nations,’” accessed January 3, 2022, <http://dag.un.org/handle/11176/89633>.

<sup>60</sup> See, respectively, Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (New York: Random House, 2003); Eric D. Weitz, *A World Divided: The Global Struggle for Human Rights in the Age of Nation-States*, Human Rights and Crimes against Humanity (Princeton: Princeton University Press, 2019), pp. 281-319.

<sup>61</sup> Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, Intent* (Philadelphia: University of Pennsylvania Press, 1999); Åshild Samnøy, *Human Rights as International Consensus: The Making of the Universal Declaration of Human Rights 1945-1948* (Bergen: Chr. Michelsen Institute, 1993).

from the League of Nations<sup>62</sup>— created a ‘Nuclear Commission’ to study this question. This eventually became the ‘Human Rights Commission,’ which was tasked to prepare a draft that could later be adopted by the ECOSCO and the UNO General Assembly (GA). The UDHR was forged in three sessions of that Commission, plus extra sessions of an ad hoc Drafting Committee.<sup>63</sup> While later accounts have portrayed these negotiations as a standoff between Soviet proposals for social rights vis-à-vis United States’ invocations of civil rights, this caricature does not really match the historical records.<sup>64</sup> To be sure, there were indeed important disagreements and acerbic confrontations. For instance, much energy was spent on clarifying the exact meaning of what an ‘international bill of rights’ should entail, as some delegations leaned towards a lofty statement of principles, whereas others preferred a binding legal instrument.<sup>65</sup> The Soviets rarely lost an opportunity to embarrass its erstwhile allies by highlighting the persistence of racial discrimination in the US or to critique the use of the trope of ‘civilization’ by European empires.<sup>66</sup> The right to property, unsurprisingly, was a particularly thorny issue, as the divergence in regulation between ‘socialistic form[s] of society’<sup>67</sup> and other countries rendered any attempt to meet in common ground ‘rather unreal.’<sup>68</sup>

But despite these differences, at the end the GA adopted the UDHR in its third session in Paris in 1948, with 48 votes in favor and 8 abstentions.<sup>69</sup> Tellingly, as least in its rhetoric, the Soviet Union and its allies did not abstain because of their opposition to the human rights project per se, but rather because they thought the draft had not gone far enough in its promotion of this agenda.<sup>70</sup> The Soviets only decided to abstain when the rest of the Assembly did not endorse a series of last minute amendments through which they wanted to correct the draft’s lack of engagement with the right of self-determination and certain ‘fundamental democratic principle[s],’ to say nothing of what they saw as its lack of anti-fascist commitments—as the aforementioned Soviet Ministry

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<sup>62</sup> Kennedy, *The Parliament of Man*, p. 24; Patricia Clavin, *Securing the World Economy: The Reinvention of the League of Nations, 1920-1946* (Oxford: Oxford University Press, 2015), p. 327.

<sup>63</sup> Quiroga-Villamarín, ‘An Atmosphere of Genuine Solidarity and Brotherhood’, p. 85.

<sup>64</sup> Daniel J Whelan and Jack Donnelly, ‘The West, Economic and Social Rights, and the Global Human Rights Regime: Setting the Record Straight’, *Human Rights Quarterly* 29, no. 4 (2007), 908–49; Sally-Anne Way, ‘The ‘Myth’ and Mystery of US History on Economic, Social, and Cultural Rights: The 1947 ‘United States Suggestions for Articles to Be Incorporated in an International Bill of Rights,’ *Human Rights Quarterly* 36, no. 4 (2014), 869–97.

<sup>65</sup> United Nations, Drafting Committee, First Session, Meeting no. 2. E/CN.4/AC.1/SR.2, 13 June 1947, p. 6. See also Christopher N. J Roberts, *The Contentious History of the International Bill of Rights* (Cambridge: Cambridge University Press, 2015), p. 69.

<sup>66</sup> Vladimir Koretsky (Soviet Union), cited at United Nations, Drafting Committee, First Session, Meeting no. 3. E/CN.4/AC.1/SR.3. 13 June 1947. 7; First Session, Meeting no. 2. p. 6.

<sup>67</sup> Charles Malik (Lebanon) at United Nations, Drafting Committee, First Session, Meeting no. 13. E/CN.4/AC.1/SR.9. 18 June 1947, p. 10.

<sup>68</sup> Geoffrey Wilson (British Empire), cited at United Nations, Drafting Committee, First Session, Meeting no. 13. E/CN.4/AC.1/SR.13. 20 June 1947, p. 17.

<sup>69</sup> Hundred and Eighty-Third Plenary Meeting, 10 December 1948, in Official records of the 3rd session of the General Assembly, part 1, 912-35, p. 933.

<sup>70</sup> Ibid. p. 927.

Vishinsky argued in a rather convoluted speech.<sup>71</sup> The other abstentions came from South Africa—which, contrary to the Soviet Union, felt the UDHR had gone too far—and Saudi Arabia. While the last polity never publicly explained its abstention, those following the debates noted the previous dissent Saudi Arabia (and Pakistan) had raised against a provision that guaranteed not only religious freedom but also the right to change one's creed.<sup>72</sup> But the fact that these countries decided to abstain instead of voting against the UDHR certainly provided this document with a thick layer of Grotian expectations of consensus. For the Chilean Delegate Hernán Santa Cruz, one of the protagonists of this process, the adoption of the UDHR in 1948 truly marked a new era for the international order.<sup>73</sup> The US negotiator Eleanor Roosevelt—widow of the President who had promised a new world anchored in the four freedoms and perhaps the 'most important person in the [UN] human rights program'<sup>74</sup>—agreed (Fig. 2). In her famous 1948 'the struggle for human rights' speech, she concluded that 'in the acceptance and observance of these rights lies the root [...] for our chance for peace in the future.'<sup>75</sup> For that reason, it was imperative for the UNO to 'hold fast to the heritage of freedom won' by struggles past, entrusting its legacies to 'generations to come.'<sup>76</sup>

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<sup>71</sup> Ibid. p. 917.

<sup>72</sup> Humphrey, *Human Rights & the United Nations: A Great Adventure*, p. 73.

<sup>73</sup> Hernán Santa Cruz, *Cooperar o Perecer: El Dilema de La Comunidad Mundial* (Buenos Aires: Grupo Editorial Latinoamericano, 1984), p. 194.

<sup>74</sup> Humphrey, *Human Rights & the United Nations: A Great Adventure*, p. 4.

<sup>75</sup> Eleanor Roosevelt, 'The Struggle for Human Rights,' in *The Eleanor Roosevelt Papers, Vol. 1: The Human Rights Years, 1945-1948*, ed. by Allida M. Black (Charlottesville: University of Virginia Press, 2009), pp. 900-5.

<sup>76</sup> Ibid. Of course, this is not the end of the story. For lack of space, I cannot do justice to the enormous efforts undertaken to popularize this vision of human rights that then followed. See Hilary Charlesworth, 'The Travels of Human Rights: The UNESCO Human Rights Exhibition 1950-1953,' in *Routledge Handbook of International Law and the Humanities*, ed. by Shane Chalmers and Sundhya Pahuja (Abingdon: Routledge, 2021), pp. 173-90.



Figure 2: Consensus and Crystallization: Roosevelt and Santa Cruz at the UDHR Drafting Committee. The Canadian Human Rights Officer John Humphrey can be seen in the background. United Nations ©.<sup>77</sup>

### 3. A Grotian Moment Overwriting Another: The UDHR and the Human Rights Revolution of the Seventies

With the adoption of the UDHR in 1948 we have consensus and crystallization; we find the sudden sedimentation of past experiments into a solid ground that would allow for the erection of a future order. We find what some have even called a ‘International Constitutional Moment.’<sup>78</sup> With this in mind, we might wonder if a ‘moment’ more ‘Grotian’ than this ever existed? Well, the actual mid-century followers of Grotius certainly thought so! In his famous essay of 1946 on ‘The Grotian Tradition,’ Hersch Lauterpacht lamented that the drafters of the UNO Charter had missed an opportunity to consecrate the Grotian ‘doctrine of humanitarian intervention’ into positive law.<sup>79</sup> Instead, he lamented that this principle was relegated to ‘a signpost and a warning’—an unrecognized factor that had paved the way for the incomplete ‘fundamental human rights and

<sup>77</sup> United Nations Multimedia Library. UN7768355 (6 September 1949). <https://dam.media.un.org/CS.aspx?VP3=DamView&VBID=2AM94S6VAUQLN&PN=1&WS=SearchResults&RW=1120&RH=695> (last consulted on 21 November 2022).

<sup>78</sup> Milena Sterio, ‘Statehood: A Grotian Moment 2,’ *Grotiana* 43, no. 1 (2022), 133–58, p. 135.

<sup>79</sup> Hersch Lauterpacht, ‘The Grotian Tradition of International Law,’ *British Yearbook of International Law* 23 (1946): 1–53. p. 46.

freedoms' provisions of the Charter.<sup>80</sup> Earlier, during the tense years of the war, Lauterpacht had delivered a speech before the Grotius Society in defense of proposals of an 'International Bill of the Rights of Man.'<sup>81</sup> But by 1950, he had also grown skeptical about what the UNO and its UDHR had to offer vis-à-vis the promises of the previous decade. In his monograph *International Law and Human Rights*, he took no prisoners with regards to the UDHR's shortcomings.<sup>82</sup> Among other problems, the Declaration lacked 'moral authority,' insofar as the credibility of an 'international pronouncement of this nature must be in direct proportion to the degree of sacrifice of the sovereignty of [s]tates which it involves.'<sup>83</sup> Alas, he surmised, 'the [UDHR] does not purport to imply any sacrifice [...] on the altar of the inalienable rights of man and, through them, of the peace of the world.'<sup>84</sup> Even before book was published, Lauterpacht had gone to great lengths to explain his dissatisfaction to the first Director of the UNO Human Rights Division, John Humphrey, after dining with him and his wife in 1948 and after he sent him proofs of his forthcoming monograph in 1949.<sup>85</sup> The latter found the argument 'far-fetched,' but he recognized that the dissent of perhaps the 'greatest international lawyer of this time' raised problems for the UDHR's claims to consensus.<sup>86</sup>

From a distinctively non-Grotian perspective, another Central European Jewish exile and 'great international lawyer' also penned his disappointments with the outcome of the UNO early years and with the UDHR. In his critical analysis of *The Law of the United Nations*, also published originally in 1950, Hans Kelsen had little to commend about this whole ordeal.<sup>87</sup> His critique of the UNO Charter's inconsistencies were only tempered by the fact that these provisions were 'without any legal importance since the Charter does not impose upon the Members a strict obligation to grant their subjects the rights and freedoms mentioned.'<sup>88</sup> The problem for Kelsen—and, for all of their differences, Lauterpacht would agree—was that the 'Charter does not confer upon individuals the legal possibility to appeal to an international court.'<sup>89</sup> For that reason, Kelsen even went as far as to affirm that there was no legal difference between the San Francisco Charter

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<sup>80</sup> Ibid.

<sup>81</sup> Hersch Lauterpacht, 'The Law of Nations, the Law of Nature and the Rights of Man,' *Transactions of the Grotius Society* 29 (1943), 1–33.

<sup>82</sup> Hersch Lauterpacht, *International Law and Human Rights* (New York: F.A Praeger, 1950), pp. 394–434. For the context of his intervention, see Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2009), pp. 392–9.

<sup>83</sup> Lauterpacht, *International Law and Human Rights*, p. 419.

<sup>84</sup> Ibid.

<sup>85</sup> Humphrey, *Human Rights & the United Nations: A Great Adventure*, p. 74.

<sup>86</sup> Ibid.

<sup>87</sup> Hans Kelsen, *The Law of the United Nations: A Critical Analysis of Its Fundamental Problems: With Supplement* (London: Stevens, 1950), pp. 27–49. Kelsen was equally skeptical of the Nuremberg trials, though for different reasons. See Hans Kelsen, 'Will the Judgment in the Nuremberg Trial Constitute a Precedent in International Law?,' *International Law Quarterly* 1, no. 2 (1947), 153–71.

<sup>88</sup> Kelsen, *The Law of the United Nations*, p. 29.

<sup>89</sup> Ibid. p. 32.

and the human-rights-less Dumbarton Oaks proposals ‘from a strictly legal point of view.’<sup>90</sup> Kelsen’s concerns about the UDHR revolved around the same set of issues. The confused Declaration seemed to ignore that ‘[n]o right in a legal sense of the term exists if there is no possibility for the subject of the so-called right to put into motion the coercive machinery of the state or [...] an international organization.’<sup>91</sup> The result was an ‘almost worthless’ and ‘vague formula.’<sup>92</sup>

These dissents go to show that not all was well in the UDHR’s ‘Eden of the innate rights of man.’<sup>93</sup> Of course, I cannot do justice to the long and tormented process through which the individual became a subject of international law in the course of the twentieth century.<sup>94</sup> For the purposes of this chapter, I just want to note that those who saw the human rights project as one that empowered the individual to constrain the state were relatively marginal in the forties and fifties.<sup>95</sup> These voices existed—and it was during these years that a certain strand of ‘Cold War’ or ‘anti-totalitarian’ liberalism anchored in the defense of ‘negative liberties’ started to take form in certain circles in legal and political theory.<sup>96</sup> But in the UNO conference rooms and at the Foreign Ministries of the world, the mainstream view was that human rights were linked to the enlargement of the state, not its encasement. As Moyn notes, ‘it was not the Second World War that shattered confidence in the [...] nationalist model of rights. On the contrary, that war, empowering the nation-state to an unprecedented acme, ushered in the era of [...] the state’s] triumph.’<sup>97</sup> It is not a coincidence that the early years were also the ‘Grotian moment’ for what was later called the ‘military-industrial complex,’<sup>98</sup> the welfare state in the Global North and the developmentalist state in the South.<sup>99</sup> At the international level, this confidence in the state was mirrored by the enormous expectations placed on international institutions to globalize national

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<sup>90</sup> Ibid. p. 33.

<sup>91</sup> Ibid. p. 41.

<sup>92</sup> Ibid. pp. 41-42.

<sup>93</sup> Karl Marx, *Capital: A Critique of Political Economy. Volume One*, trans. Samuel Moore and Edward B. Aveling (New York: Dover Publications, 2019), p. 195.

<sup>94</sup> See broadly Anne Peters, *Beyond Human Rights: The Legal Status of the Individual in International Law*, trans. Jonathan Huston (Cambridge: Cambridge University Press, 2016), pp. 11-34; see further Anne Peters and Tom Sparks, *The Individual in International Law: History and Theory* (Cambridge: Cambridge University Press, forthcoming).

<sup>95</sup> Samuel Moyn, ‘Mazzini in (and beyond) the History of Human Rights,’ in *Revisiting the Origins of Human Rights*, ed. by Pamela Slotte and Miia Halme-Tuomisaari (Cambridge: Cambridge University Press, 2015), 119–39. pp. 125-6.

<sup>96</sup> Katrina Forrester, *In the Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy* (Princeton: Princeton University Press, 2019), pp. 18-19; Samuel Moyn, *Liberalism against Itself: Cold War Political Thought and the Making of our Times* (New Haven: Yale University Press, 2023).

<sup>97</sup> Moyn, ‘Mazzini in (and beyond) the History of Human Rights’, pp. 130-1.

<sup>98</sup> Daniel R. Quiroga-Villamarín, ‘“The Spirit of the Dead Weighs Heavily on the Technology of the Living”: Transport, Communication, and Technology in the Short Twentieth Century and its Cold War(s)’ in *The Cambridge History of International Law –Volume XI: International Law during the Cold War (1945-1990)*, ed. by Sundhya Pahuja, Gerry Simpson, and Matthew Craven with Caitlin Murphy (Cambridge: Cambridge University Press, forthcoming).

<sup>99</sup> Quiroga-Villamarín, ‘An Atmosphere of Genuine Solidarity and Brotherhood’, p. 74.



state-like machineries in pursuit of a ‘welfare world.’<sup>100</sup> This view of human rights was further entrenched by the waves of decolonization that followed, as formerly colonized peoples embraced this language to empower their newly created states and remake international institutions in their own image.<sup>101</sup> This is especially clear if we focus on the histories and politics of right to self-determination and the right to development—which were then understood as justifications for the collective pursuit of welfarist goals through the nation-state, and not as individual prerogatives to be erected against it.<sup>102</sup>

But, as the ‘heritage of freedom won’ was actually passed to newer generations, the welfarist consensus that had cradled the nascent UDHR started to fade. As the ‘New Deal’ political order that had grounded the early human rights project started to unravel both at the domestic and the international level in the late sixties, a new rereading of human rights started to take shape during the seventies. It was, after all, in this decade in which the ‘breakthrough’ of the notion of human rights *as individual rights* really occurred. The fact that all of this occurred in the backdrop of the emergence of a ‘neoliberal’ political order, of course, raised many questions about the political limitations of this new rereading of the human rights project.<sup>103</sup> For the purposes of our conversation on ‘Grotian moments,’ I want to merely highlight that this new rereading effectively *overwrote* the previous welfarist consensus with a new layer of meaning. Instead of raising a critique of the limitations of the early vision of human rights (like Lauterpacht or Kelsen did), this new understanding of human rights simply inserted itself into the picture to claim that it had, in fact, *always been part of the human rights project*. Retrospectively, this ‘textbook narrative’ that emerged in the seventies simply extended their contemporary consensus into the past to claim that human rights had always been about individual prerogatives.<sup>104</sup> Just as the greatest trick the devil

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<sup>100</sup> Samuel Moyn, ‘Welfare World,’ *Humanity: An International Journal of Human Rights, Humanitarianism, and Development* 8, no. 1 (2017), 175–83. See also Moyn, *Not Enough*; Guy Fiti Sinclair, *To Reform the World: International Organizations and the Making of Modern States* (New York: Oxford University Press, 2017).

<sup>101</sup> Steven L.B Jensen, *The Making of International Human Rights: The 1960s, Decolonization, and the Reconstruction of Global Values* (Cambridge: Cambridge University Press, 2016) ; Negar Mansouri & Daniel R. Quiroga-Villamarin, ‘Global Welfare, Religious Modernism, and Third Worldist Institutional Reform: The Parallel Histories of Santa-Cruz and Aga Khan’ (under review).

<sup>102</sup> Margot E. Salomon and Martin Scheinin, ‘Book Review - Not Enough: Human Rights in an Unequal World,’ *Leiden Journal of International Law* 32, no. 3 (2019), 609–13, pp. 610-11 (noting that these rights were initially framed to challenge the ‘deceptive atomism at the heart of the liberal defense of individual rights’).

<sup>103</sup> Gerstle, *The Rise and Fall of the Neoliberal Order*, p. 75. See, for instance, the debate between Susan Marks, ‘Four Human Rights Myths,’ in *Human Rights: Old Problems, New Possibilities*, ed. by David Kinley, Wojciech Sadurski, and Kevin Walton (Cheltenham: Edward Elgar Publishing, 2013), pp. 217–35 and Samuel Moyn, ‘A Powerless Companion: Human Rights in the Age of Neoliberalism,’ *Law and Contemporary Problems* 77 (2014), 147–69. See further Jessica Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (Brooklyn: Verso Books, 2019).

<sup>104</sup> Miia Halme-Tuomisaari and Pamela Slotte, ‘Revisiting the Origins of Human Rights: Introduction,’ in *Revisiting the Origins of Human Rights*, ed. by Pamela Slotte and Miia Halme-Tuomisaari (Cambridge: Cambridge University Press, 2015), pp. 1–36. For a good example, see Louis Henkin, ‘Chapter 2: The Triumph of Human Rights after the Second World War,’ in *Human Rights: University Casebook Series*, ed. by Louis Henkin et al. (New York: Foundation Press, 1999), pp. 73–116.

ever pulled was convincing the world that she did not exist, the new conventional narrative effectively rewrote the history of human rights as a ‘global vocabulary for the protection of individual civil and political rights’ vis-à-vis the state.<sup>105</sup> Despite some differences in relation to sources or geographical areas in the literature, it seems most voices in the historiography argue that the seventies effectively witnessed a ‘hijacking’ of a previous collectivist political project.<sup>106</sup> Personally, I have no stakes in arguing if this was either warranted, beneficial, or counterproductive. Instead, I highlight the instability of the Grotian moment of 1948. If it was a moment of consensus and crystallization, it was one that was open for future generations to rewrite as the political consensus changed and new times brought new forms of crystallization.<sup>107</sup> Even the very ground upon which we stand can be terraformed.

#### 4. Concluding Remarks: The Promises of Constitutional Petrification

Seventy years after the initial cornerstone ceremony that I described in this essay’s introduction, in the now finished and fully operating UNO Headquarters, the US President Joseph Biden took the floor to address the 76<sup>th</sup> Session of the GA.<sup>108</sup> Providing an enormous example of the transformation I have described in this chapter, he reminded the audience that ‘[t]he founding ethos of the United Nations places the rights of individuals and the cent[re] of our system.’<sup>109</sup> In his view, the ‘clarity and vision’ of this mid-century ethos ‘must not be ignored or misinterpreted.’<sup>110</sup> But one could argue, by contrasting his vision of the human rights project with that espoused with the statespeople of the forties (and that of the Roosevelts in particular), that Biden’s speech was but an elegant exercise in misinterpretation. But again, my argument is not necessarily an empirical or corrective one that aims to show a truer interpretation of what the UNO or the UDHR’s ‘founding ethos was.’<sup>111</sup> Rather, hoping to strike a chord that might resonate throughout this

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<sup>105</sup> Mark P. Bradley, *The World Reimagined Americans and Human Rights in the Twentieth Century* (Cambridge: Cambridge University Press, 2016), p. 96.

<sup>106</sup> Joseph R. Slaughter, ‘Hijacking Human Rights: Neoliberalism, the New Historiography, and the End of the Third World,’ *Human Rights Quarterly* 40, no. 4 (2018), 735–75. Moyn, *Not Enough*.

<sup>107</sup> For similar argument in relation to the US Declaration of Independence, see David Armitage, ‘The Declaration of Independence and International Law,’ *The William and Mary Quarterly* 59, no. 1 (2002), 39–64, <https://doi.org/10.2307/3491637>. See further Tom Sparks, ‘Grotian Moments in the Law of Self-Determination: Law, Rhetoric, and Reality,’ *Grotiana* 43, no. 1 (2022), 159–86.

<sup>108</sup> Cited in United Nations, General Assembly, Seventy-sixth session, 3<sup>rd</sup> plenary meeting. A/76/PV.3. 21 September 2021, pp. 10-15.

<sup>109</sup> *Ibid.* p. 14.

<sup>110</sup> *Ibid.*

<sup>111</sup> To be sure, this might still be an important line argument to pursue in other conversations —I am just unsure if there is still much to say about it in human rights historiographies. See further Moyn, ‘Mazzini in (and beyond) the History of Human Rights’, p. 119. But when it comes to the history of international criminal law, the rich waves of recent historiographical work show that the empirical basis for Scharf’s declaration of Grotianness is rather flimsy. Of course, this is typical of such practice-oriented ‘foreign-office legal history.’ Compare Scharf, ‘Seizing the Grotian Moment: Accelerated Formation of Customary International Law in Times of Fundamental Change’, in *The Dawn of a Discipline: International Criminal Justice and Its Early Exponents*, ed. by Frédéric Mégret and Immi Tallgren,

volume and collective project, I want to focus on the malleability of this ‘founding ethos.’ No degree of past consensus can prevent present dogmas from becoming forgotten or rewritten in the future. This is both exciting and terrifying, in almost equal proportions. It means, on the one hand, that the future is always open for renegotiation—a point that has been stressed endlessly in the cottage industry of literature on ‘contingency in international legal history.’<sup>112</sup> But it entails, as Benjamin noted, that ‘*even the dead* will not be safe from the enemy if he wins.’<sup>113</sup>

To talk about ‘enemies’ might, rightly perhaps, scandalize a reader from a legal audience. After all, one of our key tenets of our discipline—which partly explains the enduring allure of the notion of a ‘Grotian moment’—is the search for consensus through deliberation.<sup>114</sup> Motivated by our disciplinary *horror vacui* of uncertainty and unclarity, invocations of a ‘Grotian moment’ seek to crystallize fluidity into solidness; conflict into consensus; the word of the law into the weight of the stone.<sup>115</sup> But despite our best efforts, Grotian moments often come undone. Conflicts return and crystals shatter—‘[a]ll that is solid melts into air.’<sup>116</sup> If only the UNO officials had paid more attention to the cornerstone of their ceremony back in 1951, perhaps they would have known. For the stone not only bore the names of the UNO in its five official languages and the ritual’s date, but also a minor scribble that an anonymous worker had added. ‘Vote for Dewey,’ it awkwardly read.<sup>117</sup> When Lie saw this mark during the practice ceremony held before the real event, he did not give it much thought. Three days later, during the actual ceremony, he did notice another scribble that read ‘Vote for Truman.’<sup>118</sup> But he did not give it any of these political slogans much importance. Perhaps *we* should.

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(Cambridge: Cambridge University Press, 2020); or Samuel Moyn, *Humane: How the United States Abandoned Peace and Reinvented War* (New York: Farrar, Straus and Giroux, 2021). But I also understand why Mégret, in this contribution to this volume, opted to tread lightly. See Frédéric Mégret, ‘The ‘Grotian Style’ in International Criminal Justice,’ *Grotiana* 42, no. 2 (2021), 304–34. Finally, see David Bederman, ‘Foreign Office International Legal History,’ in *Time, History and International Law*, ed. by Matthew Craven, Malgosia Fitzmaurice, and Maria Vogiatzi (Leiden: Brill, 2007), pp. 43–63.

<sup>112</sup> This is, above all, a mea culpa. See Quiroga-Villamarín, ‘An Atmosphere of Genuine Solidarity and Brotherhood,’ pp. 94–5. Compare with Daniel Ricardo Quiroga-Villamarín, ‘Beyond Texts? Towards a Material Turn in the Theory and History of International Law,’ *Journal of the History of International Law* 23, no. 3 (2021), 466–500. See further *Contingency in International Law: On the Possibility of Different Legal Histories*, ed. by Ingo Venzke and Kevin Jon Heller (New York: Oxford University Press, 2021).

<sup>113</sup> Walter Benjamin, ‘Theses on the Philosophy of History,’ in *Illuminations: Essays and Reflections*, ed. by Hannah Arendt, trans. Harry Zohn (Boston: Mariner Books, Houghton Mifflin Harcourt, 2019), 253–64, p. 255. Italics in the original.

<sup>114</sup> Lianne J.M. Boer, ‘The Greater Part of Jurisconsults’: On Consensus Claims and Their Footnotes in Legal Scholarship,’ *Leiden Journal of International Law* 29, no. 4 (2016), 1021–42.

<sup>115</sup> I think this partially explains the enormous attention given by many contributions to this debate to whether Grotian Moments have ‘legal effects.’ See Omri Sender and Sir Michael Wood, ‘Between ‘Time Immemorial’ and ‘Instant Custom’: The Time Element in Customary International Law,’ *Grotiana* 42, no. 2 (2021), 229–51; Dire Tladi, ‘Grotian Moments and Peremptory Norms of General International Law: Friendly Facilitators or Fatal Foes?,’ *Grotiana* 42, no. 2 (2021), 335–53.

<sup>116</sup> Karl Marx and Friedrich Engels, *The Communist Manifesto: A Modern Edition*, ed. Eric Hobsbawm (London: Verso, 2012), p. 38.

<sup>117</sup> Charles McHarry & Nel Patterson, ‘16,000 see UN Site Dedicated.’

<sup>118</sup> *Ibid.*