Indigeneity at the 1948 Bogotá Conference

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Abstract

The article examines the history and legacy of the Bogotá diplomatic conference of 1948 in relation to Indigenous peoples. Indigenous voices were entirely absent from the Bogotá conference itself, and delegates relied instead on certain assumptions and narratives largely drawn from the Indigenismo movement in the Americas at the time. In considering Indigenous peoples as part of a broader social agenda, delegates confronted the legacies of colonialism and the ongoing exploitation and resistance of Indigenous peoples, invoking threads that we today might label a racial capitalism critique of international law. Their efforts, however salutary, culminated in an instrument, the Inter-American Charter of Social Guarantees, that was never ultimately adopted. Nevertheless, the debates at Bogotá are illuminating of the subsequent trajectory of Indigenous peoples' rights in international law, and the alternative possibilities that can still be recovered to live up to the Bogotá conference delegates' aspirations of Indigenous emancipation.

Keywords

Bogotá conference – Indigenous peoples – emancipation – Indigenismo – racial capitalism

1 Introduction

The Bogotá conference that ultimately created the Organization of American States (OAS) and reset the institutional architecture of Pan-Americanism...
had an incredibly ambitious agenda. If the OAS Charter\(^1\) and the Economic Agreement of Bogotá\(^2\) were not enough, the Bogotá conference also set out to discuss a wide range of issues like the status of women (which resulted in two treaties: one on the political rights of women,\(^3\) and another on the civil rights of women),\(^4\) workers' rights,\(^5\) state borders,\(^6\) the status of dependent territories in the Americas,\(^7\) and even human rights (with the American Declaration of the Rights and Duties of Man\(^8\) [sic] pre-dating the Universal Declaration of Human Rights\(^9\) by several months). In the midst of this very ambitious agenda, Indigenous issues also arose, even if they were not particularly prominent. This contribution explores how Indigenous issues came up during the Bogotá conference, reflecting on their positioning in relation to other agendas during the Bogotá debates.

Indigenous issues have been fairly prominent in Latin America at least since the 1970s. This prominence is manifest through constitutional recognition,\(^10\) landmark international human rights cases,\(^11\) and a prominent regional

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3. ‘Convención Interamericana sobre la Concesión de los Derechos Políticos a la Mujer’, in Novena Conferencia Internacional Americana: Actas y documentos, vol. VI (Bogotá: Ministerio de Relaciones Exteriores de Colombia 1948), 191–202. Unless otherwise indicated all quotes from the Bogotá conference are drawn from the Spanish original and translated by me. All errors are my own.
4. Ibid., 203–212.
8. Inter-American Commission on Human Rights (IACHR), American Declaration of the Rights and Duties of Man, Organization of American States (2 May 1948).
declaration on the rights of Indigenous peoples. Further, the Americas are the first part of the world where Indigenous peoples were identified as such, and their existence has been instrumental in creating a distinctive regional identity to juxtapose that of European colonisers. This prominence, and the historical placement of Indigenous peoples in Pan-American identity, raises the question of why Indigenous issues did not feature more heavily in the Bogotá discussions.

And, yet, Indigenous issues only appear as part of other social (and economic) topics on the Bogotá agenda. While failing to highlight Indigenous rights in the region, this blending of issues also allows one to examine the position of Indigenous peoples, and the struggle for their rights, more contextually. This article looks at that context from two distinctive perspectives. The first perspective is that of Indigenous peoples as a sort of historical artefact that helps cement and create a shared Pan-American identity and culture to underpin the new organisation. The second is Indigenous rights as part of a broader debate on the problems of economic inequality and access to land in the region, in which the interests of peasants and Indigenous peoples came hand in hand. My thesis is that, juggling between these two themes, delegates at the Bogotá conference made useful inroads to position Indigenous peoples and rights beyond assimilationist policies that prevailed at the time, helping pave the way for later developments in the Americas. Of course, this thesis is necessarily undermined in that there were no clear Indigenous voices present at Bogotá, and that delegates present at the conference discussed Indigenous peoples and issues without first-hand perspectives. Despite this gap, which is more glaring with the benefit of hindsight than Bogotá delegates would have perceived, uncovering the Bogotá conference proceedings helps us reimagine a framing of Indigenous rights and issues more committed to redressing inequality, despite not making extensive reference to the language of recognition. It makes one wonder, thus, whether the turn to rights and the language of recognition in relation to Indigenous peoples has left certain causes and aspirations under-served in the Americas and beyond.

What follows explores the proceedings of the Bogotá conference by first offering some background to Indigenous issues in Pan-American conferences prior to Bogotá. This debate forces a confrontation with the different portrayals

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12 American Declaration on the Rights of Indigenous Peoples (ADRIP), 15 June 2016, AG/RES. 2888 (XLVI-O/16).
of Indigenous peoples and their identities by Latin American nation-states for their own purposes. Next, I examine the Bogotá conference from the two perspectives outlined above. These two perspectives offer a means to contrast how Indigenous peoples were portrayed as central to Pan-American identity, and how they should benefit from structural reform within the state. After this examination, I discuss the turn to human rights in relation to Indigenous peoples and their interests, to underscore the effects of abandoning broader political economy projects in favour of rights language. Concluding remarks follow, suggesting that Indigenous peoples be invited to consider the debates in Bogotá which, even though undertaken without them, might still offer useful insights for Indigenous advocacy.

2 ‘Problems of Indigenous Populations’: Background to Indigenismo in the Americas

*Indigenismo* (‘Indigenism’) was the prominent way of thinking about Indigenous peoples and their claims in the 1940s and 1950s. It is the idea that Indigenous peoples and identities are central to the statehood project in Latin America. Indigenous peoples, and the offence caused to them by colonisation, help nurture and drive independence movements, the creation of a national identity distinctive from European colonisers, and in many ways shape economic and land relations in Latin American countries.\(^{14}\) *Indigenismo* is also an important shift in thinking about Indigenous peoples, one that turns Indigenous peoples from idealised and romanticised ‘good savages’ into individuals and groups with needs worth addressing. The sterile caricature calling for an idealised past gives way, with *Indigenismo*, to social claims in the present that require political mobilisation.\(^{15}\) The past is still central to *Indigenismo* but, instead of being an artefact for passive appreciation, it can be mobilised for political claims.

Despite being grounded on identity, however, the call of *Indigenismo* is generally one of paternalistic assimilation, which suggests that the best way to protect Indigenous persons and peoples is to integrate them in the national community.\(^{16}\) This position makes sense from the perspective of its internal

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\(^{14}\) Ibid.


\(^{16}\) ‘Indigenismo’ 2014 (n. 13).
logic, since the grounding of new national identities on Indigenous identity would logically lead to the conclusion that the nation only exists to the extent Indigenous identity is intertwined with all levels of the national population, and therefore does not exist apart from it. But its effects have been and continue to be nefarious.

In other words, *Indigenismo*, as the prevailing ideology on the interaction between the state and Indigenous peoples at the time of the Bogotá conference, assumes that Indigenous peoples themselves, and their ‘problems’, are defined from the outside by the benevolent state itself, and Indigenous voices are not needed for this conversation. It was only in the 1970s, with the rise of *Indianismo* (‘Indianism’) as a rights-based discourse driven by Indigenous peoples themselves (as opposed to the state), that Indigenous claims and voices were gradually welcomed into these debates.17

Because of this discourse’s prominence, *Indigenismo* shaped the development of the international institutional architecture at the time, both within the Americas (Bogotá conference, the OAS), and beyond (the International Labour Organization (ILO), and the United Nations Educational, Scientific and Cultural Organization (UNESCO)).18 While Latin American *Indigenismo* attempted to frame Indigenous issues around development, UNESCO turned them into a cultural issue, and other international organisations made development a much broader issue, which diluted the specificity of Indigenous claims.19 The latter trend is particularly relevant even within the Pan-American movement, with Indigenous issues often part of a much broader social agenda. This trend repeated itself in Bogotá, where Indigenous issues fundamentally appeared as part of debates on the Inter-American Charter of Social Guarantees (*Carta Interamericana de Garantías Sociales*).20

The model for *Indigenismo* in Latin America is one that blends political citizenship, cultural transformation, and socio-economic development, all under the label of ‘integration’.21 This model is central to the creation of the Interamerican Indigenist Institute, which predates the Bogotá conference,

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17 Ibid.
18 Cunin, Elisabeth. ‘¿Hacia un indigenismo sin indígenas? Encuentros y desencuentros entre el instituto indigenista interamericano y las organizaciones internacionales (UNESCO, OIT)’. *Revista de Historia* 83 (2021), 55–80, available at: https://dx.doi.org/10.15359/rh.83.3 (last accessed on 04 December 2023).
19 Ibid.
20 Acta Final de la Conferencia de Bogotá – XXIX – Carta Internacional Americana de Garantías Sociales, in *Actas y documentos* 1948 (n. 3), 239 (Carta Inter americana de Garantías Sociales).
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having been created in 1942 on the back of a conference held in Michoacán, Mexico, in 1940. But the delegates at Bogotá also noted other antecedents that helped shape the positioning of Indigenous issues on their agenda.

The Inter-American Juridical Committee prepared the base draft of the Inter-American Charter of Social Guarantees, which referred to many of these previous moments in the debates about Indigenismo in the Pan-American Union. The presentation (‘exposición de motivos’) to the Charter noted a number of initiatives, such as debates in the Montevideo Conference of 1933 about the possible organization of a ‘congress of American Indigenists’ as part of a broader social agenda at Montevideo. The eighth Pan-American Conference in Lima (1938), likewise, called for the ‘protection of the American Indigenous nuclei’ alongside issues like the improvement of the living conditions of peasant women and workers’ migratory patterns across the continent. The 1946 conference in Mexico City approved a range of resolutions on matters such as unionisation, migration, equal remuneration for labour, admission into the ILO, and ‘problems of Indigenous populations’.

Against this background, the draft of the Charter was driven by a series of principles, ‘guarantees that one cannot do without today in social matters’, which included the idea that ‘in countries where an Aboriginal population exists, measures must be dictated in their favor’. This impulse led to a draft which included the duty of states to educate Indigenous peoples, and quoted in its explanatory memorandum backing the draft a resolution of the 1938 Lima conference which recognised Indigenous peoples as descendants of the first populators of American lands, [who] have a preferred right to the protection of public authorities to cover the deficiency of their physical and intellectual development, and, therefore, all that is done to improve the status of the Indians [sic] will be reparation for the incomprehensible way in which they have been treated in previous eras.
Note that the Lima language openly recognises that Indigenous peoples are owed protection as a means of reparation for the harm they suffered as a result of colonisation. Despite the reparations tone, the fact remains that Indigenous peoples were still considered ‘deficient’, and were to be passively protected by the state as part of a much broader agenda, and one that did not take Indigenous claims centrally.

Elsewhere in the Bogotá Conference, however, Indigenous peoples are cited as an example of special programs that help leverage the rights of specific groups. In a debate about the emancipation of women, the Interamerican Indigenist Institute was mentioned as an example of a specialised organisation that could serve as a model for shaping a similar body to advance the status of women, given that specialised organs had ‘as their objective to undertake certain activities in determined fields or to benefit certain groups’.

In other words, there is limited acknowledgment of Indigenous peoples and their claims, as part of Indigenismo and the language of reparations, but Indigenous peoples’ interests ultimately end up woven into a broader narrative about social guarantees.

These positions show us that Indigenismo’s casting of Indigenous peoples as part of a national narrative within which they are owed protection by the state made them easy to capture in other projects, especially since Indigenous peoples themselves were not present at Bogotá. It was only in the 1970s that a shift begins to include Indigenous voices, and reframe Indigenous claims around rights (a theme to which I will return later). Therefore, in Bogotá, the discourse within which delegates operate was one that framed Indigenous peoples as passive, and, to a certain extent, still artefacts that contributed to the shaping of a distinctive Pan-American identity. This theme, while not central to debates on Indigeneity at Bogotá, is still worth noting in the following section.

3 Historical Artefacts of Distinctiveness: Indigenous Peoples and Pan-American Identity

The discussion of Indigenous peoples and indigeneity in the context of education during the Bogotá Conference, while not central to the proceedings nor as extensive as that under the Charter of Social Guarantees, is

30 ‘Informe de la Subcomisión sobre el Estatuto Orgánico de la Comisión Interamericana de Mujeres, sometido a la Comisión sobre la Organización del Sistema Interamericano en la sesión del 29 de enero de 1948’, in Actas y documentos 1948 (n. 24), 44.
nonetheless illustrative of the perceived place and role of Indigenous peoples in the Pan-American project that the Bogotá conference sought to expand and consolidate. Indigenous peoples were important for cementing Pan-American unity, but did not necessarily lead an autonomous existence.

Indigenous claims in the Inter-American Charter of Social Guarantees were the central appearance of Indigenous issues during the Bogotá Conference. Other appearances, in addition to the passing reference to the emancipation of women discussed above, leveraged the idea of Indigenous peoples as an important part of Pan-American identity. In this sense, indigeneity was not just a justification for the separation of American nations from their European colonisers, it was also something that brought these American nations together. In other words, indigeneity was not just useful in relation to the outside – it also helped imagine a more cohesive inside.

Ideas about Indigenous peoples therefore appeared in a Draft Convention about the American Educational Charter for Peace (‘Proyecto de Convención sobre la Carta Educativa Americana para la Paz’). This draft called for the ‘humanization of social studies’, and Article 8 indicated that the teaching of social studies should be geared at ‘affirming democracy and understanding among American peoples’, including respect for ‘the historical truth’; and that ‘in explaining certain shared historical facts or phenomena, like Indigenous culture, ‘the Pan-Americanist tendency must be cultivated’.

In other words, Indigenous peoples should appear in the curriculum as a means to reinforce the unity of American nations, and aid in the teaching of cultural diversity and ‘American fraternity’.

A similar Colombian proposal called for the teaching of history to be ‘oriented towards stimulating democracy in all countries in America, and towards the friendly understanding of its prominent people (prohombres) and cultures, including the Aboriginal, within the deep (severa) truth and justice’. It reinforced the same call for the teaching of Indigenous cultures as a ‘shared historical fact or phenomenon’ from the Honduran proposal. This proposal

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33 Ibid., art. 8(a).
34 Ibid., art. 8(c).
35 Ibid., art. 8(f).
36 Ibid., art. 8(g).
37 ‘Colombia propuesta sobre normas educativas interamericanas para la paz’, (CB-331/C.V-20) in *Actas y documentos* 1948 (n. 24), 86, art. 2.
38 Ibid., art. 3.
calls for teaching within a social justice context, including Indigenous peoples among the prominent features of history to be taught.

Ultimately, this treaty was never adopted. Instead, the final act of the Bogotá conference simply referred its content to the Inter-American Cultural Council, with a commendation from the Bogotá conference that ‘ratifie[d] the importance of cultivating in the countries in the continent the peaceful and Americanist sentiments and to foment through education the spirit of democracy and international co-existence.’

This description of the Bogotá discussions shows that even debates that placed Indigenous peoples in the present still did not treat Indigenous issues as autonomous, or a central part of the agenda. The next section shows how, in the debates about the Charter of Social Guarantees, Indigenous peoples were not only just a small part of the discussion, but also became intertwined with broader debates about the role of land distribution and agrarian reform for the peasantry at large in the continent.

4 Indigenous Peoples and the Political Economy of the Peasantry

The perceived needs of Indigenous peoples in Bogotá centred on land, usually in conjunction with the interests of peasants. The move is unsurprising, considering the objective of the Charter of Social Guarantees being larger than Indigenous peoples, and focused particularly on labour. Despite the paternalistic undertones of Indigenismo, however, delegates at Bogotá did much work to focus on the emancipation of both peasantry and Indigenous groups.

As one would expect in diplomatic conferences, delegates were quick to point to their domestic experiences as pathways for international law-making. The Mexican delegate was particularly adept at this tactic, building on the heft of Mexican leadership in this area (the Interamerican Indigenist Institute was, not coincidentally, based in Mexico City). The Mexican delegate remarked on the importance of appeasing the ‘sufferings of the Mexican Indigenous population’, calling for ‘constitutional reform of as much transcendence as agrarian reform was for us.’

Delegates at Bogotá moved quickly to discuss the actual draft of the Inter-American Charter of Social Guarantees prepared by the Inter-American


40 ‘Acta de la Séptima Sesión de la Comisión Quinta 1948 (Versión Taquigráfica)’, in Actas y documentos 1948 (n. 24), 256.
Juridical Committee. The Venezuelan delegate, focusing on the specific provision on peasants (draft Article 22), attempted to shift the language away from a declaration of rights to ‘the improvement of their current level of living conditions’ with some incumbent state obligations to promote ‘better distribution of rural property’, and instead proposed stronger language on state obligations to ‘undertake planned and systematic action to transform the national agrarian structure’ so as to promote the ‘economic and social emancipation’ of the peasantry.

The Bolivian delegate was then quick to state that social justice will be achieved ‘not with the razing and destruction of capital, irreplaceable creative force, but through the just appreciation of social phenomena and the equitable satisfaction of the needs and rights of workers’. In other words, the Bolivian delegate attempted to push away from the language of systematic planning, and redirect the conversation towards the rights of workers, invoking the ‘dignification of the human person’ through ‘the elevation of the spiritual and material level of less favoured classes.’

Linking to Indigenous populations, the Bolivian delegate asserts that this task of dignification is ‘more difficult if one considers the complexity of our territory and the high prevalence (elevado índice) of our Aboriginal population’, which would require concerted action recognising the special needs of rural populations more broadly.

The question of whether agrarian reform should extend to the entire peasantry, or just Indigenous peoples, was the subject of debate by other delegates.

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41 This is the provision as adopted, largely incorporating the Venezuelan amendment: ‘Article 38. Rural or farm workers have the right to be guaranteed an improvement in their present standard of living, to be furnished proper hygienic conditions and to have effective social assistance organized for them and their families.

The State shall carry on planned and systematic activity directed toward putting agricultural development on a rational basis, organizing and distributing credit, improving rural living conditions, and achieving the progressive economic and social emancipation of the rural population.

The law shall establish the technical and other conditions, consistent with the national interest of each State, under which effect shall be given to the exercise of the right which the State recognizes on behalf of associations of rural workers, and on behalf of individuals suited to agricultural work who lack land or do not possess it in sufficient quantity, to be granted land and the means necessary to make it productive.’ Carta Interamericana de Garantías Sociales, 1948 (n. 20), 296 (official English translation).


43 Ibid., 291.
44 Ibid.
45 Ibid.
46 Ibid.
At stake here is whether the Charter of Social Guarantees could aim to promote broad economic reform, aligning peasantry and Indigenous groups, or if, rather, Indigenous groups would be entitled to separate (and potentially more generous) provisions on access to land, perhaps as a means of reparation in the way that the Inter-American Juridical Committee’s draft proposed (as discussed above). The Ecuadorian delegate, in this sense, remarked on the importance of Indigenous peoples and called for special (and more generous) policies in relation to Indigenous populations, suggesting a specific debate on Indigenous rights.47

Despite this split, the overall tone of the Ecuadorian delegate was one that acknowledges that ‘[w]ithout economic emancipation, once cannot speak properly of political emancipation, nor the effectiveness of democracy.’48 In a long speech to the Bogotá meeting, the Ecuadorian delegate acknowledged that Indigenous rights are economic and political, and indicted the Charter of Social Guarantees with not doing enough to promote Indigenous rights, and deferring the question to ‘future liberation’ of Indigenous peoples.49 Citing the ‘concrete aspirations of the proletariat’, the Ecuadorian delegate went on to say how land ‘transforms [the Indigenous person] into a human being with ambitions and the sensitivity to adapt to culture. The difference between the enslaved [Indigenous person] on farms, that are the “encomiendas” of the colonial era, and the small landowner, is so vast as to worry the feudal lord of our century.’50 In other words, the delegate signalled to the importance of emancipation through economics, while at the same time pointing to some form of assimilation (‘adapt[ation] to cultur[e]’) as the optimal pathway to Indigenous peoples.

In tones that resemble more contemporary debates on racial capitalism,51 the delegate recalled the ways in which Indigenous peoples were exploited during colonisation and still were, and the need to break away from these legal structures towards ‘economic emancipation’. The latter could, in his view, be achieved by eliminating the assumption from landowners that the bodies and labour of Indigenous persons are ‘goods’ (‘mercancías’) that can be exploited through labour contracts imposed by landowners.52 The Ecuadorian delegate

48 Ibid., 359.
49 Ibid., 360.
50 Ibid.
52 ‘Acta de la Octava Sesión de la Comisión Quinta’ 1948 (n. 42), 360.
recalled the historical expropriation of Indigenous lands during colonisation, and historical and ongoing Indigenous resistance. ‘The Indigenous problem’, the delegate noted, ‘is thus not only a sentimental problem, but also economic, and, for the latter reason, essentially political.’\textsuperscript{53} The ‘solution’ according to the delegate, therefore, was not assimilation and catechisation, but rather land rights.\textsuperscript{54} Despite rejecting catechisation and assimilation, however, the Ecuadorian delegate still used the language of the ‘missionary Indigenist work’ that the Interamerican Indigenist Institute was then undertaking.\textsuperscript{55}

The provisions protecting peasants, the Ecuadorian delegate insisted, ‘contain the precise legal principles in which Indigenismo bases all of its claims’.\textsuperscript{56} Praising the emancipatory tone of the provisions on the peasantry, the Ecuadorian delegate criticised the specific draft provision on Indigenous peoples, indicating that the need for state protection in the draft provision ‘is precisely what led [Indigenous peoples] to [their] moral, social, economic, and political annihilation, with the expropriation of their own lands, reserving to them sterile and dry lands, which the state also took, or over which it exercises powers, when these lands became useful for their mineral wealth.’\textsuperscript{57} The draft, the Ecuadorian delegate suggested, ‘maintains exactly the slavery legal criterion of the colonization of the Americas’, and does not go far enough in emancipating Indigenous peoples and their agency.\textsuperscript{58}

In this forceful call for more Indigenous emancipation from the state, the Ecuadorian delegate concluded that the Venezuelan proposal, which put heavier duties on the state to put in place structures to guarantee access to land, is inadequate to promote full emancipation, because it still relies on the protection of a historically oppressive state. He called for the amendment to be withdrawn ‘as a form of collaboration with the Indigenist plight in America.’\textsuperscript{59}

The Bolivian delegate supported the overall Ecuadorian position.\textsuperscript{60} The Cuban delegate, on the other hand, opposed much of the proposal, albeit indirectly, by claiming that the ‘problem’ in the Americas was not one of race, and equality among the American peoples required transcending race.\textsuperscript{61}

\begin{thebibliography}{99}
\bibitem{} Ibid.
\bibitem{} Ibid.
\bibitem{} Ibid., 361.
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\bibitem{} Ibid., 365.
\bibitem{} ‘Acta de la Décima Sesión de la Comisión Quinta (Versión Taquigráfica)’, in \textit{Actas y documentos} 1948 (n. 24), 418. This speech found significant support, it seems, since the minutes record applause in response to it, even if it may be that the applause has more to
\end{thebibliography}
despite the powerful Ecuadorian call, with some support, ultimately there was not enough additional debate to shift the draft conclusively. As adopted, the provision in the Charter of Social Guarantees reads fundamentally like the one in the Inter-American Juridical Committee’s draft:

**ARTICLE 39.** In countries where the problem of an [I]ndigenous population exists, the necessary measures shall be adopted to give protection and assistance to the Indians, safeguarding their life, liberty and property, preventing their extermination, shielding them from oppression and exploitation, protecting them from want and furnishing them an adequate education.

The State shall exercise its guardianship in order to preserve, maintain and develop the patrimony of the Indians or their tribes; and it shall foster the exploitation of the natural, industrial or extractive resources or any other sources of income proceeding from or related to the aforesaid patrimony, in order to ensure in due time the economic emancipation of the [I]ndigenous groups.

Institutions or agencies shall be created for the protection of Indians, particularly in order to ensure respect for their lands, to legalize their possession thereof and to prevent encroachment upon such lands by outsiders.62

These debates on the place of Indigenous peoples in the Charter of Social Guarantees highlight three important themes. First, in relation to the peasantry, there were concerted attempts to treat Indigenous peoples and peasants comparably. Doing so would trigger deeper reform of economic and social structures, particularly in relation to access to land. At the same time, it would fall short of acknowledging the past of colonisation and the expropriation of the bodies and labour of Indigenous persons and peoples. To the extent that reparations informed much of the thrust behind the drafting of the Charter of Social Guarantees, it is understandable that full equivalence between Indigenous peoples and peasants would not be desirable, despite the fact that provisions for both groups came together in both the original draft and the final adopted Charter. This connection was largely grounded on the

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62 Carta Interamericana de Garantías Sociales, 1948 (n. 21), 296–297 (official English translation).
discourse of emancipation of both peasants and Indigenous peoples. Notably, the debates to separate the two groups were not grounded on cultural distinctiveness of Indigenous peoples; rather, they were grounded on reparations for historical and colonial harm, which allowed for the language to be couched far more on structural economic and political reform than subsequent moves in the area of Indigenous rights (discussed below) achieved.

The second major theme in these debates relates to whether the state is the right conduit for the emancipation of Indigenous peoples. The state, after all, was responsible for the oppression and expropriation of Indigenous bodies and labour during colonisation and since. The Ecuadorian delegate in particular made a forceful case for the fact that the oppression (and resistance) of Indigenous peoples to colonisation survived into the independence of American nations. Therefore, despite these countries attempting to use indigeneity as a marker of national identity, the fact remained that they still allowed for the exploitation of Indigenous labour. It is perhaps this sense of capture that underlies the uneasiness of the Ecuadorian delegate's position: the state seeks to benefit from Indigenous identity and capture it for its own purposes, while keeping in place the oppressive economic and political structures inherited from colonialism. Therefore, it may be that the language of rights, as entitlements against the state, is better than reform through state structures, since states have continued to fail Indigenous peoples.

The move away from state structures and towards rights is precisely the third theme that arises from this debate. The language of rights comes across as a promise of emancipation against a state that cannot be trusted within its own institutions. This move, even though it did not prevail in Bogotá, heralds a shift away from mid-twentieth century Indigenismo and towards the language of human rights, which became prevalent in the Americas and beyond, culminating with the adoption of the United Nations and American Declarations on the Rights of Indigenous Peoples (2007 and 2016, respectively). This move is not without its criticisms, however, and to those we move next, as an epilogue to the impacts of the Bogotá conference on Indigenous peoples and claims.

5 After Bogotá: The Move to Rights

Despite arduous negotiations, and, for our purposes, signalling important debates in relation to Indigenous peoples, the fate of the Inter-American Charter of Social Guarantees was to disappear into the ether. The final documents of the Bogotá conference noted the adoption of the Charter, and contained a final text, but did not highlight it alongside the other key treaties opened for
ratification at the time (chief among those, the OAS Charter). The text thus became a declaration of intention for future adoption as a treaty, which was to never eventuate. The only remnant of this effort is a vague reference in the OAS Charter indicating that part of the Inter-American Cultural Council’s functions is to ‘promote ... the adoption of special programs of training, education and culture for the [I]ndigenous groups of the American countries’.63 Discourse within the nascent OAS framed Indigenous claims, therefore, around culture only, which aligns with the direction of Indigenismo already in the 1940s and 1950s, in which it became transformed by the interaction between the Interamerican Indigenist Institute and UNESCO, as discussed above.

What is the legacy of the Charter of Social Guarantees, then, and why is it at all useful in how we think about Indigenous peoples and international law today? The Inter-American Court, shortly after its establishment in the 1980s, noted in its Annual Report that this Charter was ‘an international declaratory act’ useful to outline the scope of Economic, Social, and Cultural Rights in the continent.64 Specifically in relation to Indigenous peoples, Anaya and Williams highlighted in the early 2000s the Charter as a predecessor to using the language of international human rights in relation to Indigenous peoples in the Americas.65 These references predate the development of the Inter-American Court’s jurisprudence on Indigenous rights, which shifted away from much of the spirit underlying the Charter.

Specifically, the shift towards rights in the Americas has meant consolidating the grounding of Indigenous claims not on political and economic emancipation, but on culture. Critics have pointed out that culture has served to weaken Indigenous claims,66 and Indigenous voice, creating a precondition for the existence and exercise of Indigenous rights: Indigenous peoples, and their claims, only exist as long as their identity can be verified and judged by an outsider. Therefore, the language of rights has in effect trapped Indigenous peoples into precisely what the Ecuadorian delegate sought to avoid in Bogotá: the need for state endorsement and verification of indigeneity.

The language of rights attempted to move Indigenous peoples away from needing state endorsement by rejecting calls for state institutional reform

63 OAS Charter, 1948 (n. 2), art. 74 (d).
in the first instance. Instead, the call became to deploy international human rights law subsidiarily, as a pathway against the state when the state has failed. But the language of rights has also meant, in addition to or perhaps precisely because of the reliance on culture, a certain reluctance or inability to promote systemic lasting change. Indigenous peoples have, outside of the language and mechanisms of international human rights law, increasingly relied on a return to institutions as a pathway to self-determination that would otherwise be unattainable under the guise of culture.

The move to rights has not had only negative impacts, of course. Crucially, it has made Indigenous voices much more present (at least over time), and currently indispensable for entertaining any Indigenous issues in international fora, which was not even within the realm of possibility at the Bogotá conference. The addition of Indigenous voices to law-making would not have been possible without the assertion of rights and identity that the drafters of Charter of Social Guarantees seemed to desire, but could not practically articulate beyond a commitment to emancipation via the benevolent paternalism of the state.

Even if the language and institutional mechanisms of international human rights law can arguably be paternalistic in some respects,67 its legacy does shift the conversation from the Bogotá conference in a direction that may be more fruitful to some Indigenous interests. But Bogotá can still resonate in ways that the language of human rights could not: the recognition of the need for reparations for historical harm, the engagement with political economy and political and economic power, the references to what we today might recognise as a racial capitalism critique of international and domestic law and institutions. These are all fruitful paths that deserve retracing as we celebrate the seventy-fifth anniversary of the Bogotá conference and try to come to terms with its legacies and even reignite its unfulfilled promises.

6 Concluding Remarks

Delegates in Bogotá seventy-five years ago pushed the debate on Indigenous peoples forward to a limited extent. They acknowledged the existence of these populations, the need for reparations for historical harm, and attempted to create mechanisms that would lead to the emancipation of Indigenous peoples. In doing so, they paved the way to a conversation about Indigenous peoples

and international law, despite the absence of Indigenous peoples themselves. This conversation was very different from where the language of international human rights law has taken us in the second half of the twentieth century, despite shared aspirations to the emancipation of Indigenous peoples and their claims.

Even though the Inter-American Charter of Social Guarantees ultimately failed to be adopted in Bogotá, and was largely replaced by a new discursive and institutional framing of Indigenous peoples and their encounter with international law, the debates on the ‘Indigenous problem’ in Bogotá can still yield valuable insights into the imaginative possibilities of international law. International legal norms and institutions can be designed and used to promote not only rights in the present, but also a reckoning with the past that can more successfully come to terms with the ways in which the past shapes the background norms of the present. Doing so would allow us to advance Indigenous peoples to upend the economic, political, and cultural institutions that repeat, reinforce, and expand colonial violence. It is worth unearthing and reconsidering the ideals at Bogotá, and present those possibilities to Indigenous peoples themselves, leveraging their voices to consider, endorse, or reject these projects and their emancipatory promises.

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