Chapter 11  American Convention on Human Rights: “...in general, from the moment of conception”

The Inter-American human rights system was adopted by the Organization of American States in 1948, seven months before the United Nations Universal Declaration of Human Rights (1948) and two years before the Council of Europe’s European Convention for the Protection of Human Rights (1950). From the very first draft (1947) of the human rights principles that comprise the American Declaration on the Rights and Duties of Man (1948) to their final codification in the American Convention on Human Rights (1969), it was consistently recognized that unborn children were included in the human rights protections being drawn up.

The American Convention on Human Rights recognizes that every person has the right to have his life respected. Article 1(2) says:

For the purposes of this Convention, “person” means every human being.

and Article 4(1) declares:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception...

Together, these provide for protection by the law for every human being “in general, from the moment of conception”. This is an invaluable and irrevocable recognition of the inalienable human rights of newly conceived children in international human rights law.

“person’ means every human being…”

Perhaps the greatest contribution made by the drafters of the American Convention on Human Rights to modern international human rights law is the consensus definition that ‘person’ means every human being. Modern international human rights law owes a great debt to the eminent Latin-American jurists¹ who wrote this定义—

tion and did so expressly to prohibit the use of the concept of ‘personhood’ as an exclusionary tool. The original framers of the American human rights instruments purposefully eschewed any definition of ‘persons’ that might be construed by future national legislatures to exclude some human beings.

It is not by accident or mere chance that it was from the continents of the Americas that this great metaphysical truth that ‘person’ means every human being emerged and was endorsed. The violent histories of North and South America and the Caribbean served as an invaluable lesson to the framers of the American Convention, as a constant reminder of just how easily the rule of law is corrupted when certain groups of human beings such as native Indians or African slaves are denied personhood.

From bitter experience, they understood that human rights belong to every human being because they are human. They understood that it is not in the gift of governments to confer human rights on some human beings and withdraw them from others. The State has no authority to divide the human race into ‘persons’ and ‘non-persons’, while deeming the privileged group only to be ‘persons’ worthy of human rights protection.

In examining the history of the Pan-American Declaration of the Rights and Duties of Man (later known as the Bogotá Declaration) and its influence on the Universal Declaration, Mary Ann Glendon, Harvard Learned Hand Professor of Law, traces an important connection between the Latin American concepts of human rights and personhood and the Catholic philosophical tradition with which Latin American jurists were familiar:

That document in 1948, just before the Universal Declaration itself was adopted, became the first international human rights declaration and that document, that Latin American document, had in turn been influenced by Catholic social thought. That is why certain verbal formulations in the Universal Declaration of Human Rights have a familiar ring to persons who are familiar with say “Rerum Novarum” and “Quadragesimo anno” [Papal Encyclicals: “Rerum Novarum”, Leo XIII, 15 May, 1891; “Quadragesimo anno”, Pius XI, May 15, 1931]. For example, the consistent use of the word «person» rather than “individual”. By the 1940s, those ideas had found their way into the legal systems, constitutions of many Latin American and continental European countries, via the political programs of Christian Democratic and Christian Social political parties and Christian labour organizations.

Glendon’s research on this provides valuable confirmation that many of the delegates doing double duty on drafting both the American Declaration of the Rights and Duties of Man and the Universal Declaration in the late 1940s shared the universal Catholic concept of ‘person’ as including all human beings by virtue of their humanity.