

The Statement of Essential Human Rights (1944)

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During the Second World War, the “Project Model International Bill of Rights,” under the auspices of the American Law Institute (ALI), drafted what was at that time the most elaborate code of human rights ever created, in both scope and detail. Examining the project sheds light on the geography and content of the human rights discourse that had emerged by the end of the war in and beyond the United States. The project participants anticipated problems and considerations that provoked discussions within the United Nations and elsewhere for years to come. From the first conference in November 1942 to the final conference in January 1944, the project involved almost 30 people as formally appointed or associated advisers, several of whom had worked in international institutions. The project assembled and worked from collections of rights provisions found in national constitutions as well as international instruments and declarations. The advisers included scholars with strong, sophisticated convictions about what kinds of rights the law could and should protect. In this way, the ALI project combined experiences and ideas from different national contexts and previous efforts in international cooperation into one of the key documents from which the contemporary international human rights system has evolved. Their final document, the “Statement of Essential Human Rights,” included a set of civil, political, social and economic rights, each followed by interpretative comments. It was promoted by the Panamanian delegation to the 1945 San Francisco Conference, and used extensively by John P. Humphrey, director of the UN Secretariat’s Division for Human Rights, and the UN Commission on Human Rights to prepare the outline for the UN Declaration on Human Rights.

Genesis

World War II provided the pretext for a flurry of interest among American intellectuals, associations and pressure groups in the necessary conditions for a durable peace and the future role of the United States. With its mainland territory safe from the fighting, and an impressive governmental and private capacity to elucidate and develop technical, organizational and ideational plans, the United States was what historian Ilya V. Gaïduk described as “most propitious for an unbiased analysis and wishful thinking about life after the war.”² This included proposals on the protection and promotion of human rights, a development that Mark Philip Bradley, among others, has argued was made possible by transnational and local actors who “created an imaginative terrain of what might transform the post-war world.”³ The ALI was among those that took up the mantle to provide blueprints for the post-war world.

Established in 1923, the ALI was a quintessential elite organization. At the time it comprised 850 judges, practicing lawyers and law professors. Its principal activity was to develop “restatements” of American law, designed as authoritative interpretations of US case law, and to recommend “model codes” or draft laws to states and government agencies for adoption. Both kinds of documents were developed by a group of experts and further

moulded by the institute's governing bodies. Drafting an International Bill of Rights was a challenge, its director William Draper Lewis admitted, because the institute's members were "more or less conservative lawyers with not much knowledge of world conditions."⁴ Some participants had international experience, however: some were also members of the American Society of International Law, the American Bar Association's Section of Comparative and International Law, and other associations and groups that studied problems of international law and politics.

The Executive Committee of the ALI Council discussed a proposal to embark on a project to create a model International Bill of Rights in August 1941, two weeks after Franklin D. Roosevelt and Winston Churchill issued the eight-point joint proclamation of war and post-war aims known as the Atlantic Charter. The ALI initiative had been in preparation since mid-July. In addition to the idealistic motivation for taking on the project – to help create the foundation for a lasting peace – the Executive Committee emphasized that the project could promote the ALI and attract funding. The perception within the ALI that turning to post-war problems could secure its future relevance reflected the increasing support among American elites for a US leadership role in the future international order.

The Carnegie Endowment for International Peace, the Commonwealth Fund and the American Philosophical Society each donated USD 5,000 to the project. While less than what ALI's director, William Draper Lewis, had hoped for, it was enough to embark on the task he described as "perhaps the most important and intensely interesting work the Institute has yet undertaken." Lewis coordinated and directed the project. In 1941, he began collecting and translating documents from as many geographically diverse sources as practicable. This included earlier efforts to enumerate individuals' rights in international documents by the Institut de Droit International (1929), the League of Nations (1933, not adopted) and the International Conference for the Maintenance of Peace in Buenos Aires (1936) as well as various documents by intellectuals and associations, including the World Citizens Association (1941). He also collected excerpts of national constitutions, and in 1942 he asserted that he possessed all the "individual rights of all the constitutions of the world." William Sanders of the Pan American Union (PAU) and Wilfred Jenks of the International Labour Organization (ILO) provided the bulk of the materials, including a collection of constitutional provisions regarding economic and social policy of "practically all constitutions of the world." The documents collected for the project demonstrate that the transnational conversation on the rights of individuals began before the war. This conversation was rooted in professional networks of international lawyers within and across Europe and America, including in Pan American frameworks and in various activities at the League of Nations. The United States – and the ALI project in particular – became the hub in this conversation during the Second World War.

Lewis assembled a list of potential advisers through correspondence and meetings with renowned experts in international law and international organizations, as well as contacts with embassies and officers of international organizations. The list was not limited to ALI members, and their profiles differed significantly from Lewis's description of the average ALI member. In September 1942, 17 people had been invited and had agreed to serve as advisers to the project. All of them had prominent positions in academia, diplomacy or nongovernmental organizations. Several had been international bureaucrats or had

worked for international institutions in other capacities; some had contributed to the peace settlement that had followed the First World War. The group was less globally representative than Lewis envisioned, primarily for financial and practical reasons, but also likely reflecting the limits of Lewis's personal and professional networks. The advisers had to be available to take part in several conferences and in-between meetings, which meant that most had to live on the East Coast of the United States or just across the border in Canada. The large group of consultants Lewis wanted to establish as a second-tier group of experts never materialized. Only two of the advisers had been born and raised outside North America or Europe: diplomat, politician, civil law expert and member of the Permanent Court of Arbitration in The Hague Richardo J. Alfaro, from Panama, and philosopher and diplomat Hu Shih, from China. Since there were no Russians in the group, Lewis included Kenneth Durant, an American who headed the US branch of the Soviet news agency TASS. Lewis attempted to expand the geographic diversity of the group in preparation for the final plenary conference in January 1944. He succeeded in broadening the composition of the group, but the latecomers generally added little to the final result. For example, K. C. Mahindra of the Indian Supply Mission in Washington agreed to attend the conference and made a few written comments. George 'Leo' M. Barakat accepted the invitation to represent the "view and culture of Arabia." Barakat was born and educated in America, but had spent his childhood years in Syria and Lebanon. No female advisers were involved in any stage of the project.

American lawyers dominated the group. Manley Hudson, Harvard professor and judge in the Permanent Court of International Justice, had contributed to the drafting of the minority treaties following the First World War, and was organizing several post-war planning activities within the American legal community. Philip Jessup was a well-respected and widely connected international lawyer and diplomat. Noel T. Dowling and John E. Mulder were experts in American constitutional law. Warren A. Seavey taught law at Harvard University. He had served as an adviser to the ALI for many years, and was considered an expert on China, where he had lectured in 1906. Rowland S. Morris was a professor of law and had served as the US ambassador to Japan from 1917 to 1921. David Riesman, Jr., lawyer and later, sociologist, was an expert on labour law. Historian James Shotwell had a key role at the Carnegie Endowment for International Peace and had close ties to the US State Department. Canadian Percy E. Corbett of the Law Faculty of McGill University had cooperated closely with his American colleagues for many years, and had helped Lewis prepare the ALI Bill of Rights project since mid-summer of 1942. In late 1942, at the second plenary conference, American lawyer Charles E. Kenworthy was added to the group. University of Chicago professor and leading internationalist Quincy Wright took part from the third plenary conference, held in May 1943.

Europeans formed the second-largest group of advisers. Most of them had recently left Europe due to Jewish backgrounds or political convictions. Jurist and diplomat Julio Alvarez del Vayo from Spain had represented the Spanish Republic in Mexico and the Soviet Union. Henri Laugier from France was a medical doctor and respected scientist. Ernst Rabel from Austria, Karl Loewenstein from Germany and Ludwik Racjzman from Poland were all Jewish. Rabel was a legal expert employed by the ALI at the time. Loewenstein was an expert in comparative constitutional law. Racjzman was a medical doctor who had been in charge of the League of Nations' Health Organization. C. Wilfred

Jenks from Britain was the Legal Adviser to the International Labour Office, which then operated out of Montreal. Three European jurists, Gerhart Husserl (German), George M. Wunderlich (German), and Paul Weill (French), were added to the group before the second plenary conference. Italian jurist Angelo P. Sereni took part in the final conference.

The project also had informal members. Lewis consulted regularly with William Sanders, who was the Chief Juridical Adviser to Pan American Union and embodied the connections between the evolving US and Latin American human rights discourses. Durward Sandifer of the State Department was appointed an “observer,” and connected the ALI project with the parallel secret post-war planning work by the US government, which included the drafting of an international bill of rights. ALI officials, in particular ALI president, former Senator George Wharton Pepper (R-PA, 1922-1926), and ALI Council member Herbert F. Goodrich, also kept an eye on the project. Lewis hired two lawyers, John R. Ellingston (American) and lawyer Lucie Krassa (Australian), to strengthen the project’s coordination and to assist the subcommittee reporters. Ellingston quickly became Lewis’s closest collaborator and signed the final report as an adviser.

Thus the project was situated in the United States and dominated by American lawyers, but was nevertheless shaped by ideas, events and interactions reaching far beyond the United States.

Content

The project inspired elaborate discussions on what constitutes fundamental human rights, and how these rights could be enhanced at a supra-national level. From the outset, Lewis and his collaborators sought to create a globally acceptable bill of rights. They approached the task by reviewing the collected documents and lessons learned from past experiences of international cooperation.

Based on the collected documents and excerpts from national constitutions, Lewis, assisted by Sanders and Corbett, identified which rights the advisers should consider. The first conference in November 1942 focused on two questions. First, should the international bill of rights be drafted with its future use in mind – as a declaration, a model code that states could adopt as domestic law, or a legally binding international treaty? Secondly, which rights should be included? To keep the project moving forward, Lewis urged the advisers to focus on identifying which rights belonged in a universal statement of individuals’ rights. Here, the key problem was how far the statement should move beyond the Bill of Rights in the US Constitution. Lewis’s final categorization of rights presented at the November 1942 conference included four groups of rights: “negative rights,” “positive rights or social justice,” “political rights” and “other rights.”

Lewis and his closest collaborators had different instincts as to which rights should ultimately be included. Seavey envisioned a bill limited to familiar personal and procedural rights, which he argued would help establish friendly relations between states and secure minority rights. Corbett, however, favoured expanding the scope of the bill and found there was a widespread “popular urge” for the realization of positive rights. Thus, the contours of what later became the major controversies over the scope of the bill were evident from the

start. Following Lewis's recommendation, the advisers decided to side-track the issue of promulgation, which would have clarified the intended future of the document as either a model code for adoption by individual states, an international statement of aspiration, or a treaty that would make the rights part of international law.

The advisers presented the results of their deliberations to the ALI Council, which contained a preamble and 18 short articles on the freedoms of religion, opinion, speech, assembly, association; freedom from wrongful interference; the right to a fair trial; freedom from arbitrary arrest; a prohibition on retroactive laws; and the rights to property, education, work, reasonable work conditions, food and housing, social security, participation in government, and equal protection from arbitrary discrimination. Each article highlighted the state's duty to provide these rights, and the final article was a general limitation clause stating that each right was limited by the rights of others and "by the just requirements of a democratic state." Each comment, with the exception of the one related to property, opened with a statement of the status of the right in "current and recent (pre-Nazi) constitutions."

The statement was the most elaborate version of an international bill of rights ever created up to that time, in both scope and detail. The advisers acknowledged that their proposal would expand the scope of generally accepted constitutional guarantees of individual rights. In the comments on the specific rights, they noted that the right to work was found in only 9 constitutions, work conditions in 18, food in none, housing in 11, and social security in 27 constitutions. The right to education was by far the most accepted social right: it was found in 40 constitutions. There were two primary sources of controversy in the proposal.

The first source of debate was the inclusion of social welfare rights. Wilfred Jenks of the ILO played a pivotal role in convincing the ALI advisers to include social rights in their final report. Seavey, who was against doing so, grew increasingly frustrated. He wrote to Lewis in January 1944: "[I]t is a perversion of language to speak about social security as making men free. It makes them at the same time dependents and unwilling contributors." In his opinion, the ALI should not approve the bill. Lewis likely appreciated the damage that this controversy could wreak on the project and the ALI, and was careful to ask for the Council's approval to circulate – rather than endorse – the statement.

The second major source of disagreement was the scope of (and potential limits to) political rights, which were divisive in all project meetings. For example, after the first plenary meeting, Lewis reported to the Executive Council that there were "considerable differences in opinion" as to whether "any attempt" should be made to include such rights as the right to vote or participate in government. Karl Loewenstein had been the main advocate of emphasizing democratic government and including limitations on free speech and freedom of association in order to defend it. His arguments, documented by Udi Greenberg, built on his theory of militant democracy, which stemmed from his experiences during the Weimar Republic and further developed during Nazi rule into the right of democracies to defend themselves against totalitarianism.⁵ Some project participants opposed references to democracy in an effort to ensure their model bill was acceptable to states with different systems of government. Others argued that democracy and participation in government

could be organized in different, yet acceptable, ways and that the document should not endorse a particular type. Limitations on free speech and association were expected to be highly controversial in the US context. This expectation was somewhat ironic, given the contemporaneous internment of Japanese Americans and the leading US role in Pan-American diplomatic efforts to incarcerate and deport individuals in Latin America deemed enemies of the democratic order. Loewenstein served as adviser to the latter effort, and maintained that democracies should protect themselves at home and abroad.⁶

Loewenstein's central importance became clear when a smaller group, the Special Subcommittee, met in August 1943 without him present. While the subcommittee removed all explicit references to democracy in the draft bill, Loewenstein succeeded in re-inserting several such references in the final document. Only Corbett and Seavey opposed the inclusion of political rights in any form.

Impact

Lewis explained that the goal of the ALI project was not to engage in “an academic enterprise,” but to help develop an international bill of rights. The project's primary contribution was to precisely elaborate what should be considered basic human rights and to circulate such ideas, including to people who took part in initiatives under the auspices of other organizations. The group of advisers and people involved in parallel initiatives and processes monitored progress in the ALI project and were inspired by it. This included the US Department of State, which drafted its own international bill of rights in 1942.

The project's ideas were also circulated beyond the United States. Before the war, and hence prior to his involvement in the ALI project, Alfaro had warned against the totalitarian threat to human rights and the destruction of civil liberties. Reflecting on the Lima Conference in 1938, his primary concern was that the international situation required Pan Americanism to be developed into an engagement in world affairs beyond its traditional regional focus. He spoke favourably of a vast number of resolutions on a broad range of issues, including Mexico's resolution on human rights, but did not propose to launch an effort to make human rights a central concern in global politics.⁷ In July 1942, the minutes of the Inter-American Juridical Committee, PAU's juridical committee, mentioned an international bill of rights.⁸ The ALI project had circulated its final document before the efforts conducted under this regional framework gained traction; Simpson has concluded that it was only after the 1944 Dumbarton Oaks Conference that PAU's juridical committee did any “serious work” on human rights.⁹ The committee prepared the “Draft Declaration of the International Rights and Duties of Man and Accompanying Report” (December 1945), which laid the groundwork for the “American Declaration of the International Rights and Duties of States” (1948). William Sanders served as one of the personal connections between the ALI project and the Pan American Union, but there were also others, including Alfaro.

The Panamanian delegation tabled the Statement of Essential Human Rights in San Francisco, probably due to Alfaro's personal engagement, but it stood no chance of being directly adopted. However, the text itself and the materials on which it was based became key sources of inspiration for later work on an international bill of rights and the drafting of the Universal Declaration of Human Rights in 1948. John P. Humphrey, the Canadian lawyer appointed as the United Nations' Human Rights Director in 1946, later claimed that

the ALI Statement was “the best of the texts on which I worked” and that he “borrowed freely from it.”¹⁰ He also used the ALI project’s work to assemble the rights’ provisions of national constitutions and various international documents.

Furthermore, immediately after it was created and then again recently, in the work of historians, the statement became an exhibit in the proclamation and reconstruction of a global prehistory of the Universal Declaration of Human Rights. The front page of the report stated that it was produced by a committee of advisers “representing the principal cultures of the world.” Thirteen “cultures or countries” were listed as represented among the group of advisers: American, Arabic, British, Canadian, Chinese, French, pre-Nazi German, Italian, Indian, Latin American, Polish, Soviet Russian and Spanish.¹¹ No indication of their level of involvement or relative importance was given. The positive reception of the report at the time, and in recent scholarship, testifies to Lewis’s success in creating a report with a wide appeal and legitimacy. The project strove to identify globally accepted, or acceptable, individual rights by collecting examples from national constitutions. However, as the archival record reveals, although it represented the most inclusive process up to that time, it was dominated by American lawyers and, to a somewhat lesser extent, their European counterparts.

For historians, the ALI project is a highly interesting lens through which to study the emergence of the human rights imaginary during the war, and to uncover connections to pre-war intellectual developments in national and transnational contexts as well as efforts in international governance. It also reveals forgotten meanings of human rights in the post-war years. Udi Greenberg has argued that Loewenstein’s wartime efforts provide keys to understanding the paradox of how the post-war human rights project was hailed for promoting democracy while at the same time providing it with the “authority and duty to curb the liberties of anti-democrats.”¹² This paradox, Greenberg argues, made Loewenstein both “a powerfully illustrative figure in the broader shift of liberals toward militant human rights” and a person who “helped facilitate their turn to aggressive democratic politics.”¹³ Fear of totalitarian – particularly communist – threats to democracy later motivated the effort to create a European convention on human rights, as detailed recently by Marco Duranti.

The ALI project enables similar explorations of other aspects of wartime human rights conceptions, including the meanings, significance and fate of social welfare rights. For example, the project reveals connections to efforts by the League of Nations and the ILO. It gave the ILO’s Wilfred Jenks, who became one of the original drafters of the Declaration of Philadelphia of May 1944, an arena in which to advocate an international proclamation of social rights and to refine his own ideas. The advisers’ controversial decision to incorporate several social and economic rights into the statement also helped facilitate John P. Humphrey’s decision to include them in his outline for the Universal Declaration of Human Rights.

Annotated Bibliography

The above text is an abbreviated and updated version of the article “Taming the states: the American Law Institute and the ‘Statement of Essential Human Rights,’” in: *Journal of*

Global History 7:3, pp. 461-482. Research for the article was conducted in the digital and unpublished archival materials of the American Law Institute, and the archival collections of the US Department of State, the Carnegie Endowment for International Peace, the Rockefeller Foundation, the Pan American Union, the International Labour Organization, the United Nations and several personal collections of the involved advisers. Please consult the article for a more exhaustive treatment of the ALI project and for references to the information provided above, including the direct quotes that appear above without references.

For an examination of Loewenstein's thinking about a "militant democracy," and how this thinking shaped his interventions in the ALI project and his application of these ideas in wartime US and Latin America as well as in West Germany after the war, see Udi Greenberg: *Militant Democracy and Human Rights*, in: *New German Critique* 42:3 (2015), pp. 169-195.

For a discussion of the project based on the proceedings of the 1942-44 ALI annual meetings and Louis B. Sohn's personal recollections (at the time he worked as a research assistant for Manley Hudson), see Louis B. Sohn: *How American International Lawyers Prepared for the San Francisco Bill of Rights*, in: *American Journal of International Law* 89 (1995), pp. 540-553.

For a discussion based on letters exchanged between Lewis and Seavey from 1941 to 1944, see Sarah A. Seo: *A Shattered Dream: The American Law Institute and the Drafting of the International Bill of Rights*, in: *Thomas Jefferson Law Review* 30 (2007-2008), pp. 179-196.

For an account of the establishment of the ALI and its early years, see Herbert F. Goodrich and Paul A. Wolkin: *The Story of the American Law Institute, 1923-1961*. St. Paul 1961. See also Mitchell Franklin: *The Historic Function of the American Law Institute: Restatement as Transitional to Codification*, in: *Harvard Law Review* 47 (1934), pp. 1367-1394. Nathalie E. H. Hull has challenged the view of the institute as a neutral juristic centre, seeing it as a progressive, pragmatic reform of the law; see: N. E. H. Hull: *Restatement and Reform: A New Perspective on the Origins of the American Law Institute*, in: *Law and History Review* 8 (1990), pp. 55-96.

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Fußnoten

1. University of Pennsylvania Law School, American Law Institute, 6054, 44, 'Report to the Council of the Institute and Statement of Essential Human Rights by a Committee of Advisers, representing the principal cultures of the world,' 7 February 1944.
2. Gaiduk: *Divided Together*, p. 10.
3. Bradley: *World Reimagined*, p. 7.
4. UPL, ALI, 6051, 27, Minutes of the special subcommittee, 10-12 December 1943, p. 1. See also UPL, CEMM, Executive Committee, 19 December 1942, p. 38 ff.
5. For a discussion on Loewenstein, his views on democracy and how this debate evolved within the ALI project, see Udi Greenberg: *Militant Democracy. On free speech*, see Khan: *Hate Speech*. See also Loewenstein: *Militant Democracy*.
6. Greenberg: *Weimar Century*, pp. 169-210, esp. pp. 189-198.
7. Alfaro: *The Future*.
8. Columbus Memorial Library, Pan American Union, Minutes of the Inter-American Juridical Committee, Vol I, Session 10, pp. 149, 155.
9. Simpson: *End of Empire*, pp. 188 f.
10. Humphrey: *A Great Adventure*, pp. 31 f. See UN document E/CN.4/AC.1/3/June 4, 1947, 'Draft Outline of International Bill of Rights.'
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12. Greenberg: *Militant Democracy*, p. 170.
13. *Ibid.*, p. 194.

Zitation

Hanne Hagtvedt Vik: The Statement of Essential Human Rights (1944), in: Quellen zur Geschichte der Menschenrechte, ed. by Arbeitskreis Menschenrechte im 20. Jahrhundert, February 2019, URL: www.geschichte-menschenrechte.de/the-statement-of-essential-human-rights-1944.