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The Dean Who Never Was

John P. Humphrey*

The following is the inaugural lecture of the John P. Humphrey Lectureship on Human Rights, delivered by Professor John Humphrey himself on 16 November 1988. This annual lectureship has been established by the Faculty of Law of McGill University and InterAmicus.

La Faculté de droit de l'Université McGill et InterAmicus ont récemment créé les Conférences John P. Humphrey sur les droits et libertés de la personne. Nous reproduisons ici la première conférence prononcée par le professeur Humphrey lui-même, le 16 novembre 1988.

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*Lectureship in Human Rights, Faculty of Law, McGill University.

On November 16, 1988, the Faculty of Law of McGill University, in association with InterAmicus, the Canadian based international human rights advocacy center, established the John P. Humphrey Lectureship in Human Rights. The lectureship was created in the honour of John Humphrey, O.C, O.Q., whose name has become synonymous with universal human rights. Indeed, the lectureship was inaugurated on the eve of the 40th anniversary of the United Nations Declaration of Human Rights, the drafting of which was very much the product of John Humphrey's handiwork.

It would be impossible to summarize John Humphrey's illustrative career. He began teaching at the Faculty of Law of McGill University in 1936. He served on the United Nations Secretariat from 1946-66, and was presented with the U.N. award for outstanding achievement in the field of human rights in 1988. Humphrey has been a significant member of numerous committees and organizations for human rights, and has been honoured by awards from many others. Highlights include doctorate degrees from not less than ten universities.

The Faculty of Law of McGill University and InterAmicus were honoured to receive as distinguished a personage as John Humphrey as the inaugural lecturer on this memorable evening marking the 40th anniversary of the Universal Declaration. Accordingly, the McGill Law Journal has chosen to publish the lecture in honour of John Humphrey and in commemoration of the evening.

*Irwin Cotler
Professor of Law, McGill University
Chair, InterAmicus*

Le 16 novembre 1988, la Faculté de droit de l'Université McGill, en collaboration avec InterAmicus, centre international d'appui aux droits et libertés de la personne situé au Canada, a institué les Conférences John P. Humphrey sur les droits et libertés de la personne. Les Conférences ont été instaurées en l'honneur de John Humphrey, O.C., O.Q., dont le nom est devenu, au fil des ans, synonyme de droits et libertés de la personne. Les Conférences ont été inaugurées à la veille du 40ième anniversaire de la Déclaration universelle des droits de l'Homme dont, incidemment, la rédaction est en bonne partie de la main même de John Humphrey.

Il serait impossible de résumer en quelques phrases la brillante carrière de monsieur John Humphrey. Il a commencé à enseigner à la Faculté de droit de l'Université McGill en 1936. Il a été au service du Secrétariat des Nations Unies de 1946 à 1966; on l'a aussi récompensé, en 1988, du prix des Nations Unies pour sa contribution exceptionnelle dans le domaine des droits et libertés de la personne. Monsieur Humphrey a été une figure centrale dans plusieurs comités et organisations oeuvrant dans le domaine des droits et libertés de la personne, et a il reçu de nombreux prix de plusieurs autres organisations oeuvrant dans ce domaine. Soulignons aussi que plus de dix universités lui ont décerné un doctorat.

La Faculté de droit et InterAmicus étaient très honorés de recevoir comme premier conférencier invité ce distingué personnage qu'est John Humphrey. En conséquence, la Revue de droit de McGill a décidé de publier le texte de cette conférence, en l'honneur de monsieur John Humphrey et en commémoration de cette soirée.

*Irwin Cotler
Professor of Law, McGill University
Chair, InterAmicus*

Mr. Chairman, My Lords, Mr. Principal, Mr. Dean, Friends and Colleagues:

Thank you, Mr. Principal, for what you have said. It is obvious that you are a good friend. It is a great honour that McGill is paying me tonight and I appreciate it at its full value. I have spent a great part of my life at this university, have graduated from four of its faculties — commerce, arts, law and graduate studies — and at the end of this academic year, I will have taught here for 31 years. And I hope, Mr. Dean, that I will continue on for at least another decade. Perhaps you will understand why I am inclined to identify myself with McGill.

That my Alma Mater should have created during my lifetime an annual lectureship in my name is something that I still have difficulty believing. I have not been told the name of the benefactor who was responsible for setting up this lectureship. I want, however, to thank him for his friendly act. I imagine that the reason he did it was his own belief in and support for a cause, the protection of human rights and fundamental freedoms with which I have been identified over the years. Mr. Hobbins has just told you that in my capacity as the first director of the United Nations Division of Human Rights — a job I held for 20 years — I drew up the first draft of the *Universal Declaration of Human Rights*. This is true. It was part of my job. Somebody must start a ball rolling. I must say, however, that I have never attached the importance to what I did that some people now do. If I have any real merit — and the person who created this lectureship may have also had this in mind — it is because of the role that I was able to play in keeping the United Nations human rights programme alive when it was under attack, especially in the United Nations Secretariat. I quote from an entry in my diary dated 13 March 1954. The Secretary-General, the late Dag Hammarskjöld, had called me to his office to acquaint me with his thinking about his proposed reorganization of the Secretariat. In the course of his remarks, he said that he would like to throw the two *Human Rights Covenants* out of the window. His office, I must say, was on the 38th floor. Hammarskjöld was referring of course to the drafts of the two multilateral treaties, the *Covenant on Civil and Political Rights* and the *Covenant on Economic, Social and Cultural Rights*, which were then being debated in the U.N. Human Rights Commission and would soon come before the General Assembly. It is true that these covenants had become a vehicle for political controversy, particularly as regards colonialism and the right of peoples to self-determination. But these were issues that had to be debated: and, if that debate had not taken place in the context of the covenants, it would have taken place elsewhere. The two covenants have now been ratified by some 87 and 91 states respectively and are helping to revolutionize international law. On another occasion, Hammarskjöld told me that he

wanted to keep the human rights programme going at the slowest speed possible. "There is", he said, "a flying speed below which an airplane will not remain in the air. I want you to keep the programme at that speed and no greater." Fortunately perhaps, these instructions — which I now confess I did not follow — were given to me after the programme had been well launched. I dare to mention them now because they illustrate the kind of opposition with which I had to cope, even in the Secretariat, during my 20 years at the United Nations. If you want more details, you can consult a book that I wrote some 4 years ago. Resisting that opposition was my greatest contribution to the United Nations human rights programme.

When Dean Macdonald and Professor Cotler first spoke to me about this lectureship, I said that they should find as the first speaker some well-known expert in the international law of human rights. I wanted the lectureship to get off to a good start. But they insisted that I do it myself; and here I am. I apologize: they did not tell me what to talk about. But, because we are celebrating this year the 40th anniversary of the adoption of the *Universal Declaration of Human Rights* in the drafting of which I played a role, I assumed that they expected that I would say something about an international instrument that Eleanor Roosevelt called the *Magna Carta of Mankind*. And I will do this presently, but partly because many of you here are good friends — some of you come from as far away as Belgium — and also because it will illustrate the value of being bilingual in the two official languages of Canada, I want to say something about how I became the dean of this law faculty who never was — a unique experience, I think, in the history of the faculty. In order to do that, I must tell you something about how I became the first director of the Division of Human Rights at the United Nations.

It was pure luck. I was not sent to the world organization by the Canadian government. It happened, however, that I knew and made friends during the war with a French refugee. Henri Laugier had been a titular professor of medicine at the Sorbonne. He left France because he would not remain in a country that had come to terms with the Nazis. Somehow he arrived in the United States. But he hardly spoke any English; I do not remember ever even having heard him try. The Rockefeller Foundation solved that problem by arranging to have him come to Montreal and teach at the Université de Montréal. I first met him at the home of the painter, Louise Gadbois. Laugier and I soon learned that we had a lot in common and we became friends: I was a francophile; I spoke French — a rare thing in those days for an English-speaking "wasp" with a name like mine; I was married to a French Canadian; had studied at the Sorbonne; was an outspoken supporter of the Free French in the war; and together with the writer Hugh McLennan and Emile Vaillancourt — who later became a well-known

Canadian diplomat — supported in a series of radio programmes the cause of bilingualism in Canada, including the protection of linguistic minorities in the English-speaking provinces.

With the liberation of North Africa, Laugier left Canada and became the rector of the University of Algiers, the only free French university at the time. And, after the war, he became, to my great surprise, an Assistant Secretary General of the United Nations. It was in that capacity that in June 1946 he telephoned me from New York and asked me to become the first director of the Division of Human Rights. "Ce sera là", he said, "une grande aventure." I had just become the dean of the Law Faculty here at McGill, but Laugier's offer was such a challenge that I accepted it. The university gave me two years leave of absence, but I remained at the United Nations for 20 years.

Apart from our friendship, I can think of only two reasons why Laugier should have made me such an offer: my interest in minorities; and the fact that I was bilingual in English and French, something that was important for Laugier, who spoke no English. I say this, Mr. Chairman, because my own experience in life is some proof of the great personal advantage of being bilingual in these two languages. As a Jesuit priest who was going to give me private lessons in French said to me: "Young man, if you have two languages, you have two brains." And I wish that some of the red-necks in this country could hear what I am saying.

I arrived at Hunter College in New York, where the U.N. Secretariat was temporarily lodged, on the first of August, 1946. I did not have the faintest idea what was expected of me. I was not taking over a job from someone else and there was nobody from whom I could seek instructions. About all I knew was that references to human rights ran through the *United Nations Charter* like a golden thread, but the San Francisco Conference had refused to entrench a bill of rights in the instrument. Provision had however been made for the creation of a Commission on Human Rights, and the Economic and Social Council had now instructed this Commission to prepare a draft of an international bill of rights.

The Commission held its first session in late January and early February of 1947 under the chairmanship of Eleanor Roosevelt. The consensus at that first session was that the international bill of rights should be adopted in the form of a resolution of the General Assembly, that is to say as a declaration. It was only later that it was decided there would also be two covenants, one on civil and political rights and the other on economic, social and cultural rights. The Commission then appointed a drafting committee of three: the Commission's chairman, Eleanor Roosevelt; its vice-chairman, P.C. Chang of China; and its rapporteur, Charles Malik of Le-

banon. This committee only met once, in Mrs. Roosevelt's Washington Square apartment. Chang and Malik were so far apart in their philosophical approach that it very soon became obvious that the committee would never itself prepare a text. Chang had studied under John Dewey and called himself a pluralist. Malik was a Christian Lebanese who seemed to believe that St. Thomas Aquinas had had the answers to all questions. In the result, the committee asked me to prepare a text. But, before I could do this, the Soviet Union, which had not at first taken the United Nations commitment to human rights seriously, challenged in the Economic and Social Council the arrangements that the Human Rights Commission had made for the drafting of the *Declaration*. Mrs. Roosevelt responded by appointing a new committee of eight governments. This committee met at Lake Success in June. It and its parent body, the Commission, worked so well that it was possible to send a draft declaration to the General Assembly in time for it to be adopted, with some amendments, as the *Universal Declaration of Human Rights*, on the night of 10 December 1948.

The Human Rights Commission had not done its work alone. Many other bodies, including other organs of the United Nation, some of the Specialized Agencies — UNESCO, the ILO and the World Health Organization — and certain non-governmental organizations and government departments helped. The fact is, Mr. Chairman, that the *Declaration* had no father in the sense that Thomas Jefferson was the father of the American *Declaration of Independence*. One of the reasons for the *Declaration's* great authority is indeed its very anonymity. The *Declaration* was adopted as a resolution of the General Assembly. Now the Assembly is not a world parliament and, except in house-keeping matters like the adoption of the budget, its resolutions do not have the force of law. The *Declaration* nevertheless immediately acquired a moral and political authority equal, if not superior, to that of any other contemporary international instrument, including the *Charter of the United Nations*. As I have already mentioned, Eleanor Roosevelt called it the *Magna Carta of Mankind*. Alexander Solzhenitsyn once said that its adoption was the greatest success of the United Nations. And in a recent speech at the United Nations His Holiness, Pope John Paul II referred to the *Declaration* as “the basic inspiration and cornerstone of the United Nations”. But all this hardly describes the greatness of the achievement. By reason of subsequent events, the *Declaration* has now become much more than, in the words of its preamble, it was originally meant to be, that is to say, simply “a common standard of achievement for all peoples and all nations”, an exhortation, as it were, however important.

Those of you who know anything about international law know that it has two principal sources of authority: treaties and custom. Treaties — and the two United Nations covenants on human rights are treaties — are like

contracts, and are binding on all states that ratify them. Custom is, in the words of article 38 of the Statute of the World Court, "general practice accepted as law". You will note that there must be a psychological element, what the lawyers call *opinio juris*. This practice must be thought to be obligatory. One could write a doctoral thesis about this. The fact is, in any event, that the *Declaration* has been invoked so many times as if it were law; has been used so many times to interpret the *Charter* which nowhere defines or even lists human rights; and so many resolutions have been adopted saying that the *Declaration* shall be observed, that it is now part of the customary law of nations and is therefore binding on all states just as if it were a treaty. Customary law is indeed stronger than treaty law. It is binding on all states; states cannot make reservations to it as they can to most treaties, and states cannot escape their obligations under it as they can by renouncing most treaties.

It turns out therefore that the adoption of the *Universal Declaration* was a much more important event than anyone could have dared to imagine in 1948. The *Declaration* is now binding on all states. This means, amongst other things, that those states, including the United States and China, which have not ratified the two United Nations covenants are nevertheless bound by almost identical norms of law enunciated by the *Declaration*.

Equally important, the *Universal Declaration* and the many treaties that have been inspired by it are helping to bring about a revolutionary change in an international legal order which has become obsolete. Traditional international law governed the relations of states and of states only. What is happening now is that its rules are reaching down to entities that are not states, on which it also confers rights and imposes duties. Traditionally a horizontal order, it is now becoming vertical. This radical change in the very nature and structure of international law — it would be better now to call it world law — is also taking place in other branches of the order. The World Court has, for example, ruled that the United Nations itself, which is not a state, has international juridical personality, that it can, that is to say, possess rights and owe duties under the order. But it is the world law of human rights, which confers rights on individual men and women, that is the principal actor in the process. When, a hundred years from now, jurists write about the history of international law in the 20th century, they will certainly say that by far the most important development was this radical change in the nature and structure of the order.

The catalyst that brought about the many references to human rights and fundamental freedoms in the *United Nations Charter*, in the *Universal Declaration*, in the two United Nations covenants, in the regional conventions on human rights, including the *European Convention on the Protection of Human Rights and Fundamental Freedoms*, and in other norms of world

law relating to human rights were the gross, cynical and studied violations of human rights that occurred in certain countries during and immediately before the Second World War, a war that was fought to vindicate human rights. There is, history tells us, a close relationship between respect for human rights and the peace of nations. "Is not peace, in the last analysis, a matter of human rights?", the late President Kennedy once asked. His question had already been answered by President Truman in the speech with which the latter closed the San Francisco Conference. Referring to the *United Nations Charter*, which had just been adopted, he said that it was "dedicated to the achievement and observance of human rights. Unless we can obtain these objectives for all men and women everywhere — without regard to race, language or religion — we cannot have peace and security in the world." Franklin Delano Roosevelt had already said in his Four Freedoms Address that human rights are "the necessary conditions of peace". The same truth is more formally expressed in the *U.N. Charter* and in the preambles of the *Universal Declaration* and of the two covenants. This close relationship between respect for human rights and the peace of nations is still another reason why this new world law of human rights is so important. If we could build a world in which human rights are better respected than they are now, the prospects of peace would be greater. I have said that the contemporary state system is obsolete. We must strengthen the role of the individual and weaken the role of the state.

I have been talking about the development of a new system of world law. But what is law? Unlike the laws of physical science which tell us what *will* happen, the law — as that term is understood by lawyers — only tells us what *should* happen. At the national level, in a country like Canada, there exist elaborate mechanisms — the courts, the police, etc. — for the enforcement or implementation of the law. These mechanisms, where indeed there are any, are extremely weak at the international level.

Let me distinguish between what I mean by enforcement and what I mean by implementation. They are quite different concepts. Enforcement implies an element of coercion or at least the fear of coercion. Implementation — look at your dictionary — means simply making something work, an idea that is also conveyed by the French equivalent of the word as it is used at the United Nations, *mise en oeuvre*. There are very few mechanisms of enforcement at the world level, for the simple reason that we have no international sheriffs or police that can enforce the law against recalcitrant countries. You will remember what I said about the contemporary state system being obsolete. It is almost as if, at the national level, in Canada for example, you could take a case to court — which you cannot always do at the world level — get a judgment against someone who has violated your

rights, but have no way of executing the judgment. You know what your rights are in law but you cannot ensure their protection.

It is true that if violations of human rights are such that they are a threat to the peace, a breach of the peace or an act of aggression, the Security Council can invoke sanctions, even military sanctions, against a recalcitrant state. This is, of course, enforcement. But the United Nations has no army of its own to enforce such sanctions, and in the final analysis the work must be done by the member states of the Organization, member states that cannot always be counted on to respect their obligations under the *Charter*. United Nations peace-keeping forces, which in the last analysis are also national forces, do not have such a mandate. Their function is to keep the peace between warring forces.

But there does exist a whole cluster of mechanisms of implementation: debates in the General Assembly and other international organizations concerning human rights, including their violation; the adoption of resolutions condemning states for violating human rights, as in the case of South Africa; studies and reports by such bodies as the United Nations Human Rights Commission, its sub-commission and their working parties and rapporteurs; etc. The undeclared aim of all of these mechanisms is to educate world public opinion. We sometimes call it the organization of shame. It is something to which all governments, including authoritarian governments, are sensitive.

Here is an example near home of a mechanism of implementation with which you are probably familiar. Mrs. Sandra Lovelace, a Canadian Indian, married a non-Indian man. This meant that, under the *Indian Act* as it then was, she lost all her rights in the Indian band of which she had been a member; whereas if an Indian man married a non-Indian woman, he brought her into his band, a blatant case of discrimination based on sex. Under the *Optional Protocol to the Covenant on Civil and Political Rights*, Mrs. Lovelace took her case to the monitoring body set up by that *Covenant* which decided that Canada had violated her obligations under the *Covenant*. The United Nations had no way of forcing Canada to respect that decision. But the Canadian parliament nevertheless removed the offensive provision from the *Indian Act*. Why? Because, I have no doubt, the Canadian government did not want to appear before world public opinion as a country that does not respect its international obligations.

If it is true, Mr. Chairman, that in the present state of international law and organization, an educated public opinion is the ultimate sanction of this new rapidly developing world law of human rights, then it follows, you will agree, that non-governmental organizations, like Amnesty International, and even individuals have an important role to play. It is an

historical fact that non-governmental organizations played an important role at the San Francisco Conference. It was Franklin Roosevelt's idea, shortly before his death, to invite some 40 American n.g.o.'s to send observers to San Francisco, where they became consultants to the American delegation. By their energetic lobbying, they were partly responsible for the inclusion of the provisions relating to human rights in the *United Nations Charter*.

But what I have in mind now is the work which the n.g.o.'s and the media, when the latter are free, do to expose violations of human rights wherever they occur. If they were not doing the job, who would? I have myself, since my retirement from the United Nations, been a member of two unofficial missions sent abroad by non-governmental organizations to enquire into the state of human rights in the Philippines under Marcos and in Greece under the colonels. If non-governmental organizations can play this role, individual men and women can also play a role by supporting them.

Just one more word about education. When people know what their rights are, it is easier for them to put pressure on governments to respect them, and governments are consequently more likely to respect them. That is why the world-wide celebration this year of the 40th anniversary of the adoption of the *Universal Declaration* is so important. Never since 1948 has the message of the *Declaration* reached so many people. I am not particularly fond of rock music, but when several weeks ago I sat with my wife in the Montreal Stadium and watched over sixty thousand youngsters swaying to the music in an Amnesty International concert dedicated to the *Universal Declaration*, I knew that they were getting the right message.

And now, Mr. Chairman, let me address — and this will finish all that I have to say this evening — one other matter: the concept of duty. Article 29 of the *Universal Declaration* says that “everyone has duties to the community in which alone the free and full development of his personality is possible”. For every right, there are corresponding duties. I certainly have a duty to respect the rights of others. I have a duty to respect the law. That does not only mean that I must drive on the right side of the street, in Canada at least, and pay my income taxes. It may mean that, in time of national emergency, I must acquiesce when, in the interest of the nation, the state interferes in what, were it not for the emergency, would otherwise be my rights. It is also a fact that few, if any, human rights are absolute. Even John Stuart Mill recognized this. And this is recognized by that same article 29 of the *Declaration*, to which I have just referred. It says that “in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect of the rights and freedoms of others and of

meeting the just requirements of morality, public order and the general welfare in a democratic society." It is my duty, Mr. Chairman, to respect these legitimate limitations on the enjoyment of my rights.

I have, Mr. Chairman, said something about how the *Universal Declaration* was adopted and why; I have discussed its moral, political and juridical importance; I have said something about how the new world law of human rights is radically changing an obsolete world legal order; I have said something about the close relationship between respect for human rights and the peace of nations; I have said something about the mechanisms, weak as they are, that exist at the world level for the implementation of the world law of human rights. And I have said something about duty. Let me finish on this note. The generation to which I belong has successfully enunciated international legal standards in the matter of human rights. But that is not enough. The challenge of the future — and I mean the immediate future — is how to set up efficient mechanisms for the enforcement and implementation of these standards. This will not be an easy thing to do, but it is something that has to be done if this planet is to have any future.
