

LAW & CULTURE



A WORLD MADE NEW: Eleanor Roosevelt and the Universal Declaration of Human Rights

Mary Ann Glendon; Random House, 2001; 368 pp, \$52 (hardback)

1998 marked the 50th anniversary of the *Universal Declaration of Human Rights*. I was working in the human rights sector for the Australian Baha'i Community, but could have told you very little about the creation of the Declaration. Mary Ann Glendon has told the story of its drafting in this book.

Looking back ten years later, I wish I had known some of that history. The stories of those who work for human rights give a perspective on their fundamental nature unobtainable from reading human rights instruments. It is a source of strength in undertaking human rights work to understand those who have devoted their lives to the cause. Their life stories remind us also that the Declaration is not merely a set of ideas and philosophies with an abstract beauty; it is the outcome of the real lives of those who worked to improve conditions for their fellow human beings.

Many were involved in bringing the Declaration into being. Civil society organisations had actively fought for the inclusion of human rights in the *UN Charter*, and campaigned for an international bill of human rights. Scholarly organisations prepared and circulated drafts of possible texts. The UN Secretariat prepared the initial draft. UNESCO convened thinkers and philosophers from a diversity of cultural traditions to develop a list of rights. The Commission on Human Rights debated and revised submissions from its drafting committee, as did the Third Committee of the UN General Assembly. Officers in foreign ministries around the world studied the drafts and gave instructions to their delegations on positions to be adopted.

The drafting committee appointed by the Commission on Human Rights initially consisted of three members: Commission Chair, Eleanor Roosevelt, Peng Chun Chang (Vice Chair) and Charles Malik (Rapporteur). They first met in June 1947,

and John Humphrey attended on behalf of the UN Secretariat. Later the committee was expanded to eight members, including René Cassin of France. Hansa Mehta of India also made a notable contribution.¹

We can thank Eleanor Roosevelt for the fact that any document was concluded at all in 1948. She did not feel a binding treaty would be negotiable, or accepted, in the United States. Rather, she was committed to a document which, like the US Declaration of Independence, would have non-legal effect but would shape the values of the UN and the world community. She was right: the Declaration is a fundamental constitutive document that speaks to all people everywhere, a virtue that would have been lost if it had been a treaty document focussed on the duties of states.

Eleanor Roosevelt was a remarkable woman in many ways, recognised in her own right for her work for the poor and advocacy of equal rights for African-Americans. She had, for example, been a member of the Daughters of the American Revolution which in 1939 refused to let Marian Anderson, a black singer, perform in Constitution Hall. Eleanor Roosevelt resigned her membership and organised a free open-air concert for Anderson at the Lincoln Memorial, drawing an audience of 75 000 people. It was her reputation in advocating for equal rights, rather than as First Lady of the US, that led to her election as first chairperson of the UN Commission on Human Rights.

On the tenth anniversary of the Declaration, she spoke of the importance of human rights being grounded in the grassroots of society:

Where, after all, do universal human rights begin? In small places, close to home — so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighborhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.²

Canadian law professor John Humphrey was the first head of the UN Division of Human Rights and, with staff of the UN Secretariat, he prepared the first draft of the Declaration. They examined human rights instruments and ideas from around the world, including declarations and bills of rights from Latin America, and the list of rights they compiled largely survived through to the final version of the Declaration.

René Cassin was a secular Jew and prominent jurist. Many members of his family died in the Holocaust. He prepared the second draft and gave the Declaration its poetic structure. Cassin described the Declaration as the portico of a temple: its foundation the fundamental values of dignity, liberty, equality and brotherhood, and its steps the seven paragraphs of the preamble. He grouped its rights into four columns: life, liberty and personal security (articles 3–11); rights in civil society (articles 12–17); rights in the polity (articles 18–21); and economic, social and cultural rights (articles 22–27). The whole structure was crowned by ideas of duty, limits on rights, and social order.

The separation existing today between civil and political rights on the one hand, and economic social and cultural rights on the other, arose as a product of the Cold War and is not inherent in the Declaration. Similarly, a view that human 'rights' diminish or ignore human 'responsibility' is a later development not apparent in Cassin's model.

In 1921 Professor Peng Chun Chang of China introduced to the West the ancient Chinese story of Mulan, a girl who disguises herself as a boy to fight on behalf of her father in the Chinese army, challenging the subordinate and predetermined position of women. He did so in the form of an English-language play, a venture also to raise funds for famine relief in China. As a member of the drafting committee, Chang helped resolve disputes in the drafting process, and strove to ensure the language of the Declaration did not implicitly exclude Eastern philosophies. He contributed to the text the Confucian ethical idea of 'rén' — 'two man mindedness', or consciousness of one's fellow human beings. A difficult concept

to translate, it is represented in the English version of Article I of the Declaration by the word 'conscience' in the phrase 'they are endowed with reason and conscience'.

It was a Brahmin woman from India, not a Westerner, who spoke most strongly for upholding the equality of women in the Declaration. Hansa Mehta, known in her own country as an advocate for women's rights, was determined that the Declaration should say 'All human beings are created free and equal' rather than 'All men', and she feared that if it did not, men in her own country would have an excuse to exclude women from the declaration of equal protection.

Charles Malik, a Lebanese professor of philosophy and of Greek Orthodox faith, proved a skilled negotiator, playing a critical role in managing the drafting to a successful conclusion. He succeeded Eleanor Roosevelt as chair of the Commission.

On 6 November 1948 he gave a masterly presentation to the Third Committee of the UN General Assembly, then considering adoption of the Declaration.

It is moving to hear Malik's rich, Arabic-accented English describing how the essential task of the Declaration was to give definition to what the world meant when, in the UN Charter 1945, it committed itself to 'fundamental human rights and freedoms'.³ Malik set out the Declaration rights, beginning with those most concerned with basic survival and physical integrity and building a vision of rights — reputation, leisure, family, the arts and sciences — that together, he said, captured what humankind understood to be human dignity. He concluded by saying that the Declaration 'will be an international document of the first order of importance, and will be read and pondered by our children's children.'

REFERENCES

1. Summary report, 1948–49 UN Year Book, 524 ff.
2. Eleanor Roosevelt, 'In Your Hands' (speech delivered at UN Commission on Human Rights, New York, 27 March 1958).
3. Charles Malik, speech to the Third Committee of the UN General Assembly, 6 November 1948, <webcast.un.org/ramgen/ondemand/legal/audio/humanrights/dr_charles_malik-human_rights_06_nov_48.rm> at 17 February 2009.

Now, at the 60th Anniversary, we are the children's children.

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DISCRIMINATION LAW

At the Standing Committee of Attorneys-General meeting in March 2008, Ministers put harmonisation of Commonwealth, state and territory anti-discrimination laws on the priority list. The first stage of harmonisation will involve identifying non-legislative options to improve consumer access to discrimination complaint-handling procedures. The second and third stages will identify options for minor, then substantive, legislative and institutional reforms. If anyone is hoping for a nationally uniform anti-discrimination Act in a hurry, don't hold your breath.

Although I am a junior practitioner who is relatively new to the field of anti-discrimination law, I am savvy enough to know that harmonisation in this area would be a good thing. I frequently muse over the matrix of ACT and federal anti-discrimination law, wondering which jurisdiction will offer my client the best prospects of success. Do the facts at hand lend themselves to a more convincing argument under the federal Sex Discrimination Act than the Discrimination Act (ACT)? If so, should this consideration trump the fact that if conciliation fails, and my client has to take the matter further, she would rather represent herself in the local Discrimination Tribunal than in the Federal Court? I sense that I am not the only one challenged by the intricacies of anti-discrimination law. Knowledge of this field is now essential, not just for lawyers practising in the area, but for the growing pool of employers, managers and human resource staff tasked with providing their employees, students and customers with non-discriminatory workplaces, schools, shops and services (and the list goes on).

In this context, Australian practitioners can thank The Federation Press for the wise guidance provided by these two new discrimination texts. Whilst taking markedly different approaches to the subject, both

texts offer the reader crucial practical and thought-provoking assistance regarding this complex area of law.

DISCRIMINATION LAW AND PRACTICE

Chris Ronalds; The Federation Press, 3rd ed, 2008; 266 pp, \$59.95 (paperback)

Chris Ronalds SC is a leading Sydney barrister with over 20 years experience in discrimination, employment and administrative law. When the first edition of this text was released over a decade ago, it was praised by the *Victorian Bar News* as an 'indispensable handbook for practitioners'. Ronalds says that she designed this edition to 'assist lawyers, equal opportunity and industrial relations practitioners, human resource managers and people involved in employment decisions as well as students and anyone with a general interest in the law and its effect' (p 1). The 3rd edition highlights Ronalds' skill in distilling complex legal concepts into a practical 'roadmap'. The text is a goldmine for those preparing to tackle a discrimination matter, particularly when trying to do so on a tight schedule. The book's A5 size and colourful cover makes it the kind of thing you might inadvertently pick up and flick through in a bookshop. The unfussy contents page allows you to jump straight to the section of interest; although, comrades intimidated by this field of law will feel substantially better if they take the couple of hours necessary to read the text cover-to-cover.

I was never allowed to eat dessert first, but I'll start by saying that some of the book's most obvious strengths are the handy appendices hidden at the back. Two tables summarise the grounds and areas of discrimination and where they can be found (if at all) in each of the relevant federal, state and territory anti-discrimination Acts. A further table outlines the exceptions that may be argued in defence to a discrimination complaint, again by jurisdiction. These time-saving tables bring back memories of carefully-crafted first-year law summaries (or at least the summary of that university medalist-winning friend of a friend that you