



FALL / WINTER 2023

John Humphrey, Canada and the 75th Anniversary of UN Universal Declaration of Human Rights



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THE UDHR TURNS 75: TIME FOR CANADA TO GET SERIOUS ABOUT IMPLEMENTING INTERNATIONAL HUMAN RIGHTS DOMESTICALLY

ALEX NEVE

Alex Neve is a human rights lawyer who served as Secretary General of Amnesty International Canada's English Branch from 2000-2020. He has led and been part of numerous human rights research and advocacy delegations throughout Africa, Asia, Latin America, Guantánamo Bay and in First Nations communities across the country. Alex is currently an adjunct professor of international human rights law with the Faculties of Law at the University of Ottawa and Dalhousie University, as well as a Senior Fellow at uOttawa's Graduate School of Public and International Affairs, and a Fellow with the Atlantic Human Rights Centre at St. Thomas University. He also recently served as a Commissioner with the Ottawa People's Commission on the Convoy Occupation.

This year's 75th anniversary of the Universal Declaration of Human Rights is clearly a notable and auspicious milestone and invites reflection. Most obviously, and rather urgently, it compels us to take stock of the state of human rights around the world. Unquestionably that leads to a deeply worrisome report card. Be it Russia's invasion in Ukraine, the endless failure to meaningfully protect the rights of Palestinians, abdication of the responsibility to prevent genocide against the Uyghur and Rohingya peoples, and the inability to tackle such monumental worldwide human rights concerns as

the climate crisis, staggering levels of forced displacement and the rapid rise of hate, polarization and misinformation, our world faces enormous human rights challenges.

Against that troubling global landscape lies a crucial question for Canada. How does our country stack up when it comes to advancing respect for the UDHR and the wider array of international human rights norms that have been negotiated and adopted over these past 75 years?

One measure of that is to look at positions adopted and actions taken in our dealings with other governments and in multilateral settings such as the United Nations Human Rights Council. While far from perfect and often inconsistent, Canada is frequently and rightly commended as being a global human rights champion. Undeniably the Canadian government and individual Canadians have made vital contributions to strengthening the international human rights system and addressing human rights concerns around the world.

But how about when we bring that question closer to home and look at how well Canada does when it comes to domestic implementation of and compliance with those same international human rights obligations? Here the assessment is far less flattering.

In a general sense, there has often been a tendency to think of international human rights as something that is relevant to the rest of the world. There is a propensity to assume those principles are relevant when the Canadian government is advocating at the UN or pressing for human rights improvements on the ground in other countries, but not so much with respect to the human rights situation within Canada. After all, we have the Charter of Rights and Freedoms and federal, provincial and territorial human rights legislation such as the *Canadian Human Rights Act* to respond to domestic human rights issues. International human rights law is generally seen as largely redundant and unnecessary here at home.

But, of course, those international standards — starting with the UDHR 75 years ago — apply directly to us, as well. The laws we adopt, the

policies we set and the decisions we take, at all levels of government across the country, must live up to those obligations. That is, after all, what “universal” entails.

That universality matters for two reasons. First, respecting international human rights norms domestically helps address ongoing, serious human rights shortcomings in Canada. The Charter and the country’s human rights acts and codes are important — of course they are. But they are not enough. The Charter, after all, has no explicit guarantees with respect to fully one-half of the rights that are protected under international law, namely economic, social and cultural rights. That includes such vital human rights as housing, healthcare, education, adequate livelihoods, food security and safe water. And human rights legislation within almost all jurisdictions in Canada focuses entirely on concerns about discrimination which, while of vital importance, is again an incomplete guarantor of the full range of rights enshrined internationally.

Second, scrupulous domestic respect for international human rights matters as well because it helps strengthen regard for those rights around the world. After all, how credible and how effective are the efforts of Canada’s diplomats to press other countries to respect the UDHR and comply with UN human rights rulings and recommendations if our own willingness to do so is uneven, reluctant and even at times uncooperative? Essentially, complying with international human rights obligations at home strengthens the standing of those norms globally. The converse is also true. Turning our back on those obligations domestically adds one more naysaying voice when it comes to respect for international human rights around the world.

All of which begs the question: What stands in the way? Why is Canada, on the one hand, on board with the overall importance and value of international human rights while, on the other hand, failing to uphold those principles where we have the greatest control, here at home?

That is not to suggest that Canada is unique in this respect; obviously not. The world is replete with governments that unreservedly sign on to international human rights treaties and then cavalierly and shamelessly undermine and violate those standards and defy the UN bodies and experts charged with oversight responsibility. That level of defiance is certainly not improving, well witnessed by the contempt exhibited by Russia when it comes to international human rights concerns associated with the invasion of Ukraine. That does not in any way mean that Canada's shortcomings when it comes to upholding international human rights compare, even remotely, to the gravity and consequences of Russia's behaviour. Obviously not. But it still matters. With so many states thumbing their noses at the international human rights system, the need for countries like Canada to show up and exhibit full support and respect is more important than ever.

There are several factors that lie behind Canada's international human rights deficit. First, the role of the courts in enforcing compliance is limited because Canada maintains what is known as a dualist approach to international law. That means that international treaty obligations, including with respect to human rights, can only be directly enforced in a Canadian courtroom if they have first been incorporated into federal, provincial or territorial law through legislation. That happens very

rarely and means that in domestic courts international obligations are generally left, instead, to being a persuasive tool for interpreting the Charter and other laws, rather than a directly binding source of law.

Another key factor is the particular reticence of governments across Canada when it comes to recognizing that internationally guaranteed economic, social and cultural rights are of equal standing and require the same level of enforcement as civil and political rights. That mistaken and biased mindset has no doubt fuelled antipathy more widely towards arguments that international human rights should be taken seriously in the Canadian legal system.

Also contributing to the implementation gap is the lack of clear political responsibility and accountability for human rights, at any level of government in Canada. Many countries have a Minister of Human Rights; not in Canada — not federally, provincially or territorially. Instead, responsibility for meeting the country's international human rights obligations theoretically lies with all ministers. But when responsibility is dispersed to everyone, accountability effectively dissipates.

Without question, though, the most significant obstacle to international human rights implementation in Canada is federalism.

The matters that are covered by international human rights obligations touch on such concerns as healthcare, Indigenous peoples, education, racism, fair trials and prison conditions, refugee protection, environmental protection, the rights of persons with disabilities, housing, and gender equality, to name only a handful of topics. Under

our Constitution some of those issues are squarely in either federal or provincial/territorial jurisdiction, some fall within the jurisdiction of both orders of government, and some may not even be explicitly mentioned in the Constitution at all. All of that, of course, lays the ground for turf battles, buck passing and finger pointing, and for an endless series of excuses for inaction.

Canada is by no means unique. Federalism is a common form of governance around the world and many countries have much more complex and contested federal structures than Canada does. That said, it does undeniably make international human rights implementation more challenging. That requires political leadership and innovative solutions, and that has been lacking.

To date, government interest in strengthening regard for international human rights has been tepid. The primary responsibility for coordinating among the fourteen federal, provincial and territorial governments, lies with the federal Department of Canadian Heritage which, while well-meaning, is not an obvious choice. And while there are a growing number of committees, both within the federal government and across the federal, provincial and territorial governments, which convene regularly to discuss international human rights matters, there is a dearth of accountable decision-making bodies entrusted with the actual responsibility to make concrete decisions about compliance.

That said, in 2020, a new body, the Forum of Ministers on Human Rights, was established. Its creation means that for the first time, the federal, provincial and territorial governments will come

together at ministerial level on an ongoing basis to discuss international human rights issues. The first official gathering of the Forum was held in Halifax in June 2023 and was largely a disappointment. No decisions were taken. No announcements were made about the mandate and powers of the Forum. The meeting ended with no discernible progress in the country's international human rights implementation agenda. There is clearly more work ahead.

Meanwhile, Canada has announced its candidacy to be elected to serve a three-year term on the UN Human Rights Council between 2028-2030. If successful, that would be only the second time Canada has been a member of the Council since it was established in 2006, the earlier term having been in 2006-2009. The election is slated to take place in 2026. Canada is standing for one of three seats that will be open for countries from Western Europe and North America, as well as Turkey, Australia and New Zealand. Presently only one other country, Greece, has declared its candidacy.

Canada may well be back on the UN Human Rights Council when the UDHR turns 80. While Canada's election prospects currently look promising, it is still a critical time to put our best foot forward in demonstrating firm support for the international human rights system. That needs to include the strongest possible commitment to meaningful implementation and compliance domestically. There is no better way for Canada to demonstrate that we understand what "universal" means when it comes to protecting human rights.

JOHN HUMPHREY, THE UDHR, AND THE NARRATIVE OF CANADA AS LEADER IN THE DEVELOPMENT OF INTERNATIONAL HUMAN RIGHTS

JENNIFER TUNNICLIFFE

Dr. Jennifer Tunnicliffe is a human rights historian with a particular interest in how domestic and transnational activism shapes cultural attitudes and legislative approaches to rights and freedoms. Her work has appeared in the *Canadian Historical Review*, *Social History / Histoire Sociale*, *History Compass*, and on the ActiveHistory blog. She has contributed research to the Canadian Museum of Human Rights and the Centre for International Governance. Her first book, *Resisting Rights: Canada and the International Bill of Rights, 1947-76*, challenged the narrative of Canada as an historic advocate for international human rights and explored the key role that rights activists have played in shaping Canadian diplomacy at the United Nations.

Seventy-five years ago, on December 10, 1948, the United Nations adopted the Universal Declaration of Human Rights (UDHR), articulating for the first time a proposed set of inalienable and universal rights to be codified in international law. Many Canadians assume that Canada was a strong advocate for this early human rights document. In fact, the Canadian government openly opposed the adoption of the UDHR in 1948, and resisted efforts

at the UN to draft an international bill of rights well into the 1960s. Yet this goes against the common narrative of Canada as an historic leader in the field of international human rights. On this 75th anniversary of the UDHR, then, it is worth considering how this more positive narrative came to be, why it continues to obscure Canada's opposition to the UN's first human rights documents, and what significance this holds for Canada today.

Canada had not been an active participant in attempts to include human rights principles as a key component of the UN Charter in 1945, and Ottawa had little enthusiasm for the idea of an international bill of rights. The concept of rights emerging from UN discussions challenged customary understandings of civil liberties in Canada, a country that, at the time, had virtually no laws to explicitly prohibit discrimination or protect human rights. Fully aware that discriminatory laws in Canada could be considered in violation of the UN's proposals, and concerned with keeping the international community from interfering in Canadian domestic affairs, the federal government was opposed to the UDHR and instructed its delegates at the UN to avoid any active involvement in its development.¹ And that is what they did. Throughout 1947 and 1948, Canadian delegates rarely contributed to discussions of the specifics of the draft declaration, and abstained in all early votes on the instrument's adoption in the General Assembly. It was only in response to international pressure, largely from Britain and the United States, that Canada changed its vote to support the adoption of the UDHR on Dec. 10, 1948. And it did so with officially stated reservations. Then, from the 1950s to the early 1960s, Ottawa resisted the second phase of the UN's international bill

of rights — the development of two covenants on human rights.²

By the 1960s, however, a burgeoning human rights movement at home, growing support for human rights in the international community, and a desire to build Canada's image as a humanitarian state, forced federal policy makers to rethink their approach to the UN's human rights instruments. As a result, in 1966 Canada voted to support the final adoption of both covenants on human rights, although its position could hardly be considered enthusiastic; in the article-by-article votes on the covenants, Canada abstained in fourteen of the forty-three votes³, and it took 10 years for Ottawa to ratify the instruments. Yet federal politicians did not want Canada to be remembered as a state that resisted human rights, and so they took steps to rescript this history.

In media releases, the federal government began to assert that, since the adoption of the UDHR, Canada had "played an active role" in the preparation of the UN's human rights instruments.⁴ On the eve of the adoption of the international covenants, federal officials went further to claim that Canada had "always expressed strong support" of international human rights agreements.⁵ And as

1 William A. Schabas, "Canada and the Adoption of the Universal Declaration of Human Rights," *McGill Law Journal* 43, 2 (1998): 403–41; A.J. Hobbins, "Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights: Looking Back on the 50th Anniversary of the UDHR," *International Journal* 53, 2 (1998): 325–42.

2 Canada was one of only eight states to abstain, and was in the company of the Soviet Union, its allies, and South Africa and Saudi Arabia. For a broader discussion of this history, see Jennifer Tunnicliffe, *Resisting Rights: Canada and the International Bill of Rights, 1947–76* (Vancouver: UBC Press, 2019).

3 "Convention on Human Rights – Canadian Votes," 1966, File 45-13-2-3, Part 1, Vol. 13112, RG25, LAC. Within the Covenant on Civil and Political Rights, Canada abstained from Articles 6, 13, 14, and 15. Within the Covenant on Economic, Social and Cultural Rights, Canada abstained from Articles 2, 6, 7, 8, 9, 10, 11, 12, 15 and 25.

4 News Release, Ottawa, 10 December 1965, file 1, box 16, "Human Rights," accession #82–001, Thomas Symons Papers, Trent University Archives.

5 Background Paper on the International Human Rights Covenants, September 1975, container 47282, Human Rights Commission fonds, RS972, PANB.

support for human rights at home continued to grow, Ottawa's efforts to present itself as an historic advocate for international human rights intensified. By 1979, External Affairs went so far as to declare that Canada had been "at the forefront of multilateral human rights initiatives designed to promote human rights."⁶ Today, the Canadian Government's website continues to promote this narrative by stating that, "Canada has been a consistently strong voice for the protection of human rights... [from] our central role in the drafting of the Universal Declaration of Human Rights in 1947-1948 to our work at the United Nations today."⁷

The attempt by politicians to recover a new image for Canada as a global human rights defender was not only a response to a surge in public support for human rights principles, however. In the 1970s, it complemented several important domestic goals of then-prime minister Pierre Elliot Trudeau's Liberal government: Ottawa had announced its policy of multiculturalism and Trudeau was pushing the provinces to support the inclusion of a bill of rights in a repatriated constitution. Anxieties over national identity and unity also had a significant impact. The image of Canadians as historical rights advocates at home and as key players in the design of the UN's human rights regime was a tool that politicians continued to use throughout the 1980s and 1990s to promote a particular understanding of what it meant to be Canadian in a multicultural and "just" society.

The challenge was to reconcile this image of Canada with its history of resistance to the UN's early human rights instruments. To do so, the government has relied heavily on the legacy of one particular Canadian: John Peters Humphrey. Humphrey was a Canadian legal scholar and a professor at McGill University who, after the Second World War was invited to take a position in the UN Secretariat as director of its Human Rights Division. He sat on the UN Commission on Human Rights, where he worked with individuals like Eleanor Roosevelt, René Cassin, Peng Chun Chang, and Charles Malik. From their discussions, Humphrey was tasked with formulating the very first draft of what would eventually become the UDHR. During his more than 20-year career at the UN, Humphrey was a determined advocate for international human rights, at home in Canada and globally.⁸ For his efforts, in 1988, the UN awarded Humphrey its Prize in the Field of Human Rights.

It is important to note, however, that John Humphrey did not represent the Canadian government in his work at the UN. As a member of the Secretariat, he played no role in setting, nor was he even privy to, Canadian policy toward the UDHR or the covenants. In fact, Humphrey was deeply critical of the Canadian position. Citing the lack of support from Canada and Canadians toward international human rights at the UN, he wrote a letter in 1948 stating:

6 V.M. Edelstein, "The Impact of Human Rights on Canadian Foreign Policy," United Nations Division, Department of External Affairs, 18 May 1979, File 45-CDA-13-1-1, Part 2, Vol. 15901, RG25, LAC.

7 Government of Canada. "Canada's approach to advancing human rights." Global Affairs Canada, July 19, 2023. www.international.gc.ca/world-monde/issues_developpement-enjeux_developpement/human_rights-droits_homme/advancing_rights-promouvoir_droits.aspx?lang=eng#

8 For details of Humphrey's activism, see A.J. Hobbins, ed., *On the Edge of Greatness: The Diaries of John Humphrey, First Director of the United Nations Division of Human Rights*, Volumes 1-4 (Montreal: McGill University Libraries, 1994-2000).

One thing that has appalled me since coming down here is the realization that, in our own country Canada, there is relatively less interest in this question than in certain other countries which we sometimes think are less democratic than our own.⁹

In a speech given at Canada's celebration for International Year of Human Rights in 1968 – on the 20th anniversary of the adoption of the UDHR – he described how he had been “embarrassed” by Canada's decision to abstain in the vote on the adoption of the UDHR in 1948, and how he continued to be disappointed with the government's lack of commitment to international human rights.¹⁰

Despite this, it is John Humphrey's work, and specifically his role in drafting the UDHR, that forms the basis of the claim that Canada played a “central role” in the development of the document, with little to no recognition that Humphrey was exceptional in his early support for the UN's human rights regime. He was the most active advocate for the UDHR in Canada, using his position at the UN to try to generate enthusiasm for the instrument at home. While he had some success, more often than not he met either opposition or indifference to the declaration. Yet his accomplishments continue to be promoted as evidence of Canada's historical commitment to the UN's human rights program.

One clear example of this is how Canada's history with international human rights has been treated in

school curricula. By the late 1990s, human rights education had become an important component of social science, history, and civics curriculum guidelines across the country. In Ontario, for instance, Grade 10 academic and applied history courses included strands on “Identity, Citizenship, and Heritage” which stated that, by the end of the course, students would understand Canada's changing attitudes toward human rights. The guidelines specifically highlighted Canada's role in the UDHR as a key moment in this change, and this was therefore reflected in textbooks produced to support that curriculum in the early 2000s.

John F. Fielding and Rosemary Evans' *Canada: Our Century, Our Story* featured a page on the UDHR, which included a biography on Humphrey. The main text read:

The Universal Declaration of Human Rights was adopted by the UN in December 1948. John Humphrey, a professor of law at McGill University in Montreal, was one of the authors of the original draft of this document. The Declaration was the inspiration for Canada's Charter of Rights and Freedoms, which itself is now a model for other countries.¹¹

While this text is not factually incorrect, it only tells part of the story. Nowhere does it state that Canada originally abstained from supporting the UDHR, nor does it include any information on Humphrey's exceptionalism or his embarrassment

9 John Humphrey, as quoted by A.J. Hobbins, “Eleanor Roosevelt, John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights,” 333.

10 Krista Maecots, “Ex-UN official raps Canada on its human rights record,” *Ottawa Citizen*, 14 November 1968, 29.

11 John F. Fielding and Rosemary Evans, *Canada: Our Century, Our Story* (Scarborough, Ont: Nelson Thomson Learning, 2001), 274

over Canada's opposition. Instead, it implicitly links Humphrey, the UDHR, and Canada's human rights tradition. Similarly, Janice Parker's *Great Canadians: Humanitarians* highlighted Humphrey as one of 18 Canadians whose humanitarian efforts had an impact on the world. Again, Humphrey's role in supporting the development of the UDHR is transferred to Canada and all Canadians when the book argues, "Canadians have proven to the world that they care about humans and human rights."¹²

Canada's role in the adoption of the UDHR was reinforced through the creation, in 1997, of a *Heritage Minute* on John Humphrey. The *Heritage Minutes* video clips were first developed in 1991 by the Historica Foundation to "enhance Canadianism" and, according to Erin Peters, the dramatized scenes they feature are designed to encourage the Canadians watching them to assume these episodes as a part of their own personal heritage.¹³ The clip on Humphrey begins by depicting him defending the universalism of a proposed declaration of human rights to members of the UN Commission on Human Rights in 1947, and then moves to a scene from the European Court of Human Rights in 1986 in which lawyers are using the UDHR to challenge national employment laws that discriminate based on physical disability. In the background sits Humphrey, with another member of the audience leaning over and whispering: "Isn't that the Canadian that actually wrote the Universal Declaration of Human Rights?" The goal is to create a Canadian collective memory in which

John Humphrey's efforts become a symbol of Canada's central role in developing and promoting international human rights instruments that can be used to fight discrimination around the globe.

The UDHR and Canada's part in it continue to be celebrated annually on Human Rights Day and have been further commemorated on honorary stamps and on a 50-dollar bank note. This year, on the 75th anniversary of the adoption of the instrument, however, it would better serve Canadians to learn the true history of Canada's lack of support for international human rights after the Second World War. Canada's opposition to the UDHR in 1948, and to the development of international covenants on human rights in the 1950s and 1960s, provides important context to other examples of Canadian resistance to the UN's human rights initiatives; it reveals these to be part of a longer history rather than aberrations unto themselves. Many of the same arguments used to resist the UDHR, for example, were used to oppose the UN's Declaration of the Rights of Indigenous Peoples (UNDRIP) in 2007. This history also helps to explain the gap between Canada's rhetoric of human rights and its lack of real implementation of international human rights law — as discussed in this volume, for example, by human rights advocate Alex Neve. Most often, the Canadian government has only reluctantly supported human rights instruments at the UN, and has done so to satisfy international and public opinion rather than out of "strong support" for the substance of the documents themselves. As

¹² Janice Parker, *Great Canadians: Humanitarians* (Calgary: Weigl Educational Publishers, 2000), 5.

¹³ Erin Peters, "The 'Heritage Minutes' and Canadian collective memory: an analysis of the use of nostalgia and nationalism to build a unifying cultural memory," PhD dissertation, Institute of Germanic and Romance Studies, 2009, <http://sas-space.sas.ac.uk/2289/1/Peters%20-%20Heritage%20Minutes%20-%20Text.pdf>, 67

a result, once signed, there has been little motivation to genuinely engage with or take direct action on the provisions outlined in the instruments.

Human Rights Day *should* be a time to celebrate achievements in enhancing the human rights protections enjoyed by Canadians and all humans. But it should also be an opportunity to learn more about histories of the violation of human rights, and of resistance to the development of strong human

rights protections, so that we can continue to pressure our governments to do better. It should be a time to look past narratives that only promote a positive sense of our human rights history, and also engage with the more difficult realities of our past and present shortcomings. The 75th anniversary of the adoption of the UDHR therefore provides a time for reflection on the ongoing challenges of creating a more socially just world in which all humans can truly enjoy human rights.

ENSHRINING THE CHARTER OF RIGHTS AND FREEDOMS: ‘THE MOST IMPORTANT EVENT IN MY POLITICAL LIFE’

LLOYD AXWORTHY

Lloyd Axworthy is the chair of the World Refugee & Migration Council, a group of leaders, innovators and influencers aimed at devising a new, predictable and cooperative refugee system. Axworthy was Canada’s minister of foreign affairs from 1996 to 2000 and previously served as federal minister of employment and immigration, minister of labour and minister of transport. He served as a Manitoba MLA (1973–79) and Liberal member of Parliament for Winnipeg (1979–2000). He also served as president and vice-chancellor of the University of Winnipeg from 2004 to 2014. He is considered the chief architect of the United Nations’ Responsibility to Protect doctrine and was instrumental in the 1997 adoption of the international Anti-Personnel Mine Ban Treaty.

The following are excerpts from an interview with Lloyd Axworthy conducted by Association for Canadian Studies project coordinator & research assistant Lisa Abramovich.

‘I REALLY LEARNED WHAT DISCRIMINATION MEANS’

Well, I’m born and bred in prairie soil and so bring with it all of the benefits of having a big blue sky in the prairies, but also a sense of being far, far away from where the real decisions are being made in Canada, which is to the east of us. I also had the

opportunity to grow up in a very highly multicultural community in the north end of Winnipeg, where it the residential living area of a number of Canadians who came from Ukraine and Germany and Poland. And I was in a distinct minority, but coming from a WASP background. So I learned to run fast and talk fast and it’s part of my survival.

But it was a terrific experience. I really learned... as a 12 or 14-year old, what discrimination means. I recall one of my close friends coming to school one day and announcing that his name had been changed. And the reason was that he worked for a downtown business operation. And if he wanted a promotion, the Ukrainian-sounding name had to be revised to be more acceptable to WASP ears.

That was a huge embarrassment, and I began to understand a little bit the caste system that was very much part of growing up in the north end in Winnipeg...

'ONE'S FAITH IS REFLECTED BY WHAT ONE DOES ON EARTH'

I also have and I'm still really responsive to a strong upbringing in the United Church of Canada, which at the time in Winnipeg was still infused with the social gospel idea that one's faith is reflected in what one does on Earth — not what you're doing to prepare for the afterlife... And I eventually did my undergraduate work at United College, which was a liberal arts college, but had been formed by the Presbyterian, Methodist and Congregationalist churches, and they formed the United Church.... It was a very, very active university community because it really did believe in social action. And that was, I think, part of my upbringing. And that was followed by a sojourn in the United States for close to five years.

I did my graduate work in Princeton, but I was in the midst of civil rights movements and Vietnam protests and in fact participated in the March on Montgomery for a couple of friends and some students that I was teaching when I was at Middlebury

College, my first teaching job out of Princeton. So I became very much influenced by the notion of people participation and how they how the people become involved in making decisions that that affect them as opposed to the top down.

And I guess my politics became Liberal in the sense that I was a great admirer of Mike (Lester B.) Pearson (prime minister of Canada, 1963-68). He gave a lecture in Winnipeg when I was in my last year of high school that kind of changed my life and talked about what it meant to be a Canadian and how we had a distinct role to play in the world. We were, by our history, used to making accommodations, finding ways of overcoming divisions, and that because we had the privilege of being in a safe place, we're able to do things that many other countries couldn't do. So that was very much part of my, I guess, adoption of becoming part of a Pearsonian Liberal internationalist in my outlook along the way. And that led into my public life...

CHARTER RIGHTS AND CANADIAN IDENTITY

I was elected federally in 1979... And then in 1980, when we came back into power with Mr. (Pierre Elliott) Trudeau, I found myself in the cabinet as Employment and Immigration Minister, which was an incredible experience... Immigration was very much part of the efforts to bring large numbers of Vietnamese, Laotians from the Vietnam Peninsula 60-70,000... And I also the opportunity to experience the most important event in my political life, which was being part of a the government that brought forward the Charter of Rights and Freedoms. I still say that whenever asked what was the most important event in my political life, that was certainly it. And the fast forward to the

next question as to why that's important. I read just about a month ago a recent poll done by Environics, and Michael Adams showed that the belief and adherence to the Charter of Rights is by far now the most distinguishing identity that Canadians have... As a foreign minister for close to five years in Canada, and that was certainly the highlight overall, being able to represent some of the ideas I had about how Canada could play a role in the world in a positive, constructive role. And we developed a human security agenda, which meant that we were as much interested in protecting people as we were protecting nation states and boundaries and so on. And that led to the landmine treaty banning landmines. The National Criminal Record protocol, protecting child soldiers, things of that kind that I think gave us a distinguishing position for a period in the world.

REFUGEES AND MIGRANT RIGHTS

And now I act as a chair for the World Refugee and Migration Council, where we do really make an attempt to try to develop pragmatic, practical ways of assisting people. And it's I think in the 4 or 5 years I've been involved, the issue has just become exponentially massive. Numbers, demands the retreat by so many governments towards a kind of restrictive form of migration, particularly for displaced persons and refugees. So it's an uphill battle, but it's one worth doing so.

... We're one of the most privileged countries in the world in terms of our security and our safety. We have a resource base that has created wealth for us over the years. And as I said earlier, the enactment of certain key elements of government policy like the Charter of Rights and the independence of

the judiciary and fair elections... I think that really enabled us to maintain a degree of trust amongst people. And I think that, you know, there aren't many countries like us...

ON RECONCILIATION: 'THERE'S A LOT TO BE DESIRED'

I was talking to a friend of mine the other day who was very active in Indigenous matters and he said, 'Can you believe that in this modern, highly developed, wealthy country with charters of rights and strong efforts about how democratic and diverse we are, that we still countenance that there is 40 to 50 indigenous communities in Canada that don't have drinking water?' I mean, it's just a clear example of how we can put a lot of money into things that we really think is a priority.... There was a big celebration last year here in Manitoba when Shoal Lake — which is the major supplier of fresh water to the city of Winnipeg — actually was given some money by the federal government to start developing its own freshwater program for the community that surrounds the lake. I mean, if you ever want to talk about a horrid... irony about who we are as Canadians. It was that example — that the 700,000 people can enjoy the water of Shoal Lake, but not the people who live around it. And there's multiple examples and I think that (on the issue of) reconciliation, there's a lot to be desired. I don't think that there is a very serious buy-in in terms of what really needs to happen. There isn't the kind of leadership that we need... There's a lot of lip service and we give some money to some places to talk about it, but when it actually comes down to reconciliation, there's not a lot of political leadership in the country going on... And I think it affects us as a country. It certainly hurts our reputation. I think

other countries, while they may regard us positively in many respects, take a look at our own human rights issues in Canada and realize that we've been very negligent, our history has been distorted, and we're not doing an awful lot to correct them.

BALANCING FREEDOM WITH OTHERS' RIGHTS

Several years ago, I spent a summer reading Charles Taylor's book on the secular state. And I thought he made a lot of sense that as we moved away from faith-based... values to secular ones, that there aren't a lot of value commitments. And where they are religious, they become extreme. I mean, the evangelicals did the anti-vax and stuff like that. They hook onto these kinds of notions without recognizing that freedom is not unlimited license. Freedom always has to be (balanced) by how does it affect other people? And I think that our secularism, as (Taylor) said, we have to put into place the affirmation of ordinary life, the right to get up in the morning, to look at the sunset, to have a job, to send your kids to school, and to be free of the kind of intimidation or exploitation — that affirmation of ordinary life. But it's hard to do in a case where the politics are becoming so toxic.

'DIVERSITY IS A GOOD THING'

The Mike Adams study showed that Canadians have basically bought in (to multiculturalism) — we think diversity is a good thing and we are a very diverse country now. I mean, the old Anglo-Franco (idea) — now we're realizing, my goodness, there's been an Indigenous population here for thousands of years and there's a new populations have come to Canada since the Second World War, are now becoming a majority. And I think that's good. And

they bring so much more... I value just the level of sort of experience and outlook and ideas and entrepreneurship that was brought. And so I think Canadians generally — they don't necessarily buy the idea of everything is ethnically based — but there certainly is a real respect, I think, for other groups generally. And I think the black movement, the black rights movement is now advancing itself. I think... we still have very strong elements of misogyny in our country, that women are in so many places under real pressure or harassment. I think that's something that, again, we talk a good game — we're not doing much about it.

THINKING ABOUT INTERGROUP RELATIONS IN CANADA

Which of the following do you think represent the biggest challenge when it comes to the reconciliation of differences? Relations between Indigenous and non-Indigenous? Relations between Quebec and the rest of Canada? Relations between religious and secular persons? Visible minorities, racialized persons and white persons? Relations between immigrants and non-immigrants?

I'd say I'd say all of the above needs some serious work done. Some more than others. There's one element that is not included in that list, which I think is the is the gender issue. But I think that women women's rights are really under real pressure. And you're seeing it in all kinds of ways... I think I go back to an earlier statement when it comes to relations with Indigenous people. I would give a kind of an F-minus...

We're just not doing what you need to do to solve this...

'A NATIONAL RECKONING'

I think this is a time for another serious reckoning, a national reckoning ... I think that there has to be a real re-evaluation of our federal policies and program, both as we deal with migration overseas or across our borders, but also at our borders. Our settlement programs will be substantially buttressed and rebuilt. I think we have to look at the asylum claim. One of the projects we have at the World Refugee & Migration Council is the connection between climate change and migration. We're going to have large migration inside Canada as communities on the oceans — communities in vulnerable areas — are going to start having to move. And where do they go? Who gets them? We're having this debate.

On the issue of migration and refugees. We follow all kinds of stupid programs like the safe third-party agreements that we know are discriminatory... If you're an asylum claimant, you have a good chance of landing in a provincial jail because we didn't bother to find other alternative housing or people were waiting for their claims to be heard. And four

provinces have now broken the agreement with the federal government — to their credit — but we still have Ontario, and Quebec and the federal government using a system in which we incarcerate people who are silent claimants. I mean, what kind of nonsense is that?...

'WE'VE GOT TO UP OUR GAME'

As someone who has been around for a lot of years in public life, I see that over time we've really done some important investment in giving Canadians a way of dealing with identity issues. There's a generational shift away from people saying that hockey and buffalo are part of our identity to talking about human rights and charter rights being so much who we are. Talking to my son and people around him, they don't think in the kind of wacky terms we're getting in the States about transgender (issues) and stuff. They simply say. People are people. They have rights to the degree that we can support them. But we've we failed terribly with Indigenous people and we're failing terribly with women's rights in this area. I think we've got to up our game.

CELEBRATING THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND CONFRONTING THE CHALLENGE OF SAFEGUARDING HUMAN RIGHTS IN TIMES OF WAR

MIRIAM COHEN

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The *Universal Declaration of Human Rights*, adopted by the United Nations General Assembly on 10 December 1948,¹ celebrated its 75th anniversary in 2023. A visionary document, the Declaration is a testament to humanity's commitment to justice, human dignity and the pursuit of human rights. It may be said that the norms and values enshrined in

the Declaration are as crucial today as when they were enacted.

The origins of the Universal Declaration, and the international human rights movement that it sparked, are intimately connected to Canada. John Peters Humphrey, a Canadian legal scholar, was

¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: www.refworld.org/docid/3ae6b3712c.html [accessed 16 November 2023]. Hereinafter: the "Declaration" or "Universal Declaration".

a foundational figure in the international human rights movement, and in particular, the Universal Declaration. His contributions to the development of the Declaration, and his subsequent dedication to the advancement of human rights principles shaped how human rights principles were recognized. Humphrey was the first Director of the United Nations Division of Human Rights, and in this role, he was responsible for translating the ideals enshrined in the Declaration into a concrete document. Working closely with important figures and an international team of legal experts, Humphrey had a crucial role in drafting the Declaration, and making it a reality. His impact on the Declaration was crucial, as his commitment to the protection of human rights shaped the document and ensured that it reflected the shared values of the global community.²

Humphrey's intellectual contributions extended beyond the drafting process of the Declaration. His writings and speeches emphasized the philosophical underpinnings of human rights, advocating for the inherent dignity of every individual. His work laid the foundation for the legal principles that underpin the human rights framework, emphasizing the indivisibility, interdependence and universality of human rights. Humphrey pursued his work on human rights as the United Nations' first Special Rapporteur on the Prevention of Discrimination and Protection of Minorities, which highlighted his devotion to addressing contemporary challenges to human rights. Humphrey's commitment to social justice, exemplified in his later work as a human rights professor and author,

highlighted his long-lasting contribution to the field beyond his formal role in the United Nations.

The post-Second World War era witnessed a surge in the development of international human rights instruments. International conventions such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* reinforced the commitment to protecting human rights at the international level. These instruments set the stage for more robust protections for civil and political rights, as well as economic, social and cultural rights. Together with the Declaration, these two Conventions form the International Bill of Human Rights. Many other international conventions and declarations on human rights were adopted, and the Declaration also set the stage for treaties on the repression of international or transnational crimes, such as torture, that perpetuate human rights violations.

Against this background, as we look back and pause on the history of the adoption of the Declaration, we witness flagrant violations of human rights around the globe. In times of war, for example, where chaos and violence threaten the fabric of a human rights-based system, upholding the norms announced in the Declaration assumes even greater relevance. How can human rights be protected and upheld during armed conflicts? This short essay explores the complex and crucial intersection of human rights during armed conflicts, underscoring the significance of safeguarding the inherent dignity and fundamental rights of individuals, even in the darkest of times, even in times of war. As

2 See generally about John Peters Humphrey: R. St. John Macdonald, "Leadership in Law: John P. Humphrey and the Development of International Law of Human Rights", Reprint from: (1991) *The Canadian Yearbook of International Law* 29 at 3–92.

the Declaration is commemorated, it is imperative to examine its omnipresence and the relevance of human rights values in armed conflicts, as well as the challenges posed by evolving warfare dynamics.

SAFEGUARDING HUMAN RIGHTS IN TIMES OF WAR

Despite the foundational principles of the Declaration, challenges persist in the effective implementation of human rights during times of war. The protection of human rights is tested during times of armed conflict, where the obligation to protect civilians becomes paramount. Warfare poses unique challenges to the protection of human rights. Civilians are far too often victims of war crimes and human rights violations.

Moreover, the nature of modern armed conflicts, at times marked by the participation of non-state actors and asymmetric warfare, complicates the application of traditional humanitarian norms. The conduct of armed conflicts has undergone profound changes since the adoption of the Declaration. The complexities and challenges faced by civilians have multiplied. The rise of non-state actors, the proliferation of technology, and the often-blurred lines between combatants and non-combatants necessitate a comprehensive human rights approach to protect the inherent dignity of individuals during hostilities.

The synergy between human rights norms and the laws of war is crucial in mitigating the impact of armed conflicts on civilians, and minimizing human suffering. The laws of war provide a specialized legal framework for the conduct of hostilities, complementing the broader existing human rights norms, including those enacted in the Declaration.

The Declaration and Human Rights Norms in Armed Conflicts

Article 3 of the Declaration emphasizes the *right to life, liberty, and security of person*. In times of war, this principle underscores the imperative to minimize civilian casualties and uphold the safety of non-combatants. Articles 5 and 7 unequivocally *condemn torture and cruel, inhuman, or degrading treatment*. Upholding these principles is crucial in preventing the abuse of detainees and ensuring the humane treatment of prisoners of war. Articles 9 and 10 affirm the *right to liberty and a fair trial*. Protecting these rights is essential to prevent arbitrary detention. Furthermore, states of emergency, frequently declared during wartime, may grant governments power to suspend certain rights temporarily. However, the danger lies in the potential abuse of these powers. Legal mechanisms must be in place to prevent the misuse of emergency powers and to ensure that individuals are guaranteed the protection of their rights.

One of the primary challenges in times of war is distinguishing between combatants and non-combatants. International humanitarian law delineates the rights and protections owed to civilians during armed conflicts. Nonetheless, the practical application of these provisions remains a challenge, as the nature of contemporary warfare blurs traditional lines between combatants and non-combatants. The rise of non-state actors and asymmetrical conflicts complicates efforts to protect civilians, necessitating a re-evaluation of legal frameworks to adapt to the evolving nature of warfare.

Governments bear the primary duty to protect the rights of their citizens, both in times of peace

and war. State responsibility is a crucial aspect of safeguarding human rights. The failure to prevent human rights abuses by armed forces can result in consequences, both domestically and internationally. Moreover, non-state actors, including militia groups and private military contractors, further complicate the landscape of human rights protection in times of war. While international law traditionally focuses on the responsibilities of States, international criminal law recognizes the responsibility of individuals for international crimes (e.g. war crimes, crimes against humanity, genocide), which encompass massive human rights violations. Legal mechanisms and international cooperation are essential in ensuring accountability for human rights violations, so that the quest for justice is not hindered by jurisdictional gaps.

CONCLUSION

As we celebrate the anniversary of the Universal Declaration, it is imperative to recognize its

enduring importance, while not ignoring some persisting challenges in the protection of human rights globally. The norms enshrined in the Declaration serve as a moral compass, guiding nations and individuals toward a more just and humane world, even in the face of armed conflict. By reaffirming our commitment to these universal values, we can strive to build a future where the inherent dignity and rights of all individuals are respected, protected, and fulfilled, regardless of the circumstances. The Declaration provides a foundational framework, and its concrete application requires a global commitment. As the global community confronts the multifaceted challenges of the 21st century, the protection of human rights both in times of peace and in times of war remains a crucial goal on the journey to a more just and humane world.

WE CAN NEVER FORGET HOW THE WORLD LOOKS TO THOSE WHO ARE VULNERABLE

ROSALIE SILBERMAN ABELLA

Rosalie Silberman Abella is the Samuel and Judith Pizar visiting professor of law at Harvard Law School and is a former justice of the Supreme Court of Canada. She was the first Jewish woman and first refugee to serve as a justice with Canada's top court.

This article is adapted with her permission from a speech she gave upon receiving the 2023 Ruth Bader Ginsburg Medal of Honor from the World Jurist Association at the United Nations in New York in July 2023. A version of the speech was also reprinted in the Washington Post. Ruth Bader Ginsburg served on the U.S. Supreme Court from 1993 to until her death in September 2020.

In introducing Madame Justice Abella to receive the award at the UN in July, Canada's Ambassador to the United Nations, Bob Rae, recalled first meeting her at the University of Toronto in autumn 1967 and described her as "truly a force of nature." He added: "It is no exaggeration to say that Rosie Abella has been changing the world since childhood... No one person in my country has done more to explain the importance of equality, of justice and of equity – and to ensure their impact on the real lives of Canadian women and men – no single person has done more than Rosalie Silberman Abella."

You have just heard from one of the most extraordinary, most brilliant, and most admired lawyers and public servants in Canada. He's been a close

friend for almost 60 years, and I think now you can see why. He is also proof that with hard work and patience, even men can make it to the top. (Laughter)

Happy 60th birthday to the World Jurist Association and thank you for the magnificent honour of awarding the Ruth Bader Ginsburg award to me.

The incandescent Ruth Bader Ginsburg was a jurist, a woman and a Jew. It was a defining combination that shaped her vision and her passions, transforming her from distinguished U.S. Supreme Court justice to iconic global metaphor.

When she pursued justice on the Supreme Court, she was a judicial juggernaut who was catapulted into international orbit by two forces: enthusiastic gratitude for her ever-bolder judgments, but also, as time went on, by the vituperative reaction of an increasingly regressive climate in which those progressive judgments were anathema.

Regrettably, that regressive climate is where we find ourselves today, especially about the judiciary. Critics call the good news of an independent judiciary the bad news of judicial autocracy. They call women and minorities seeking the right to be free from discrimination special interest groups seeking to jump the queue. They call efforts to reverse discrimination “reverse discrimination.” They say courts should only interpret, not make, law, thereby ignoring the entire history of common law. They call the advocates for diversity “biased” and defenders of social stagnation “impartial.” They prefer ideology to ideas, replacing the exquisite democratic choreography of checks and balances with the myopic march of majoritarianism.

All this has put us at the edge of a global future unlike any I’ve seen in my lifetime. We’re in a mean-spirited moral free-for-all, a climate polluted by bombastic insensitivity, antisemitism, racism,

sexism, islamophobia, homophobia and discrimination generally. Too often, law and justice are in a dysfunctional relationship. Too often, hate kills, truth is homeless and lives don’t matter. Too many governments have interfered with the independence of their judges and media, too many people have died, too many people are hungry, too many people have lost hope and too many children will never get to grow up period — let alone grow up in a moral universe that bends toward justice.

We need to put justice back in charge, and to do that, we need to put compassion back in the service of law and law in the service of humanity. We need the rule of justice, not just the rule of law. Otherwise, what’s the point of law? Or lawyers? Or a legal system? What good is the rule of law if there’s no justice? And to make justice happen, we can never forget how the world looks to those who are vulnerable. It’s what I consider to be the law’s majestic purpose and the legal profession’s noble mandate.

In 1948, having seen the horrendous cost of discrimination in World War II, the global community — here at the United Nations — made a commitment through the Universal Declaration of Human Rights that it would protect the world from inhumanity. Yet more and more, the arc of the moral universe is bending away from, not towards, justice.

For me, this is not just theory. I was born in a displaced-persons camp in Germany on July 1, 1946. My parents, who got married in Poland on Sept. 3, 1939, spent most of the war in concentration camps. Their two-year-old son and my father’s whole family were murdered at Treblinka. Miraculously,

my parents survived and, after the war, ended up in Stuttgart, where my father, who was a lawyer, taught himself English and was hired by the Americans as counsel for displaced persons in southwestern Germany. When we came to Canada in 1950 as Jewish refugees, he was told he couldn't practice law because he wasn't a citizen.

He died a month before I finished law school and never lived to see his inspiration take flight in his daughter or the two grandsons he never met who also became lawyers, but he knew it would turn out all right because he was confident in Canada's generosity. And how right he was.

A few years ago, my mother gave me some of my father's papers from Germany. One of the most powerful documents I found was written by my father when he was head of the displaced-persons camp in Stuttgart. It was his introduction of Eleanor Roosevelt when she came to visit our camp in 1948. He said: "We welcome you, Mrs. Roosevelt, as the representative of a great nation, whose victorious army liberated the remnants of European Jewry from death and so highly contributed to their moral and physical rehabilitation. We shall never forget that aid rendered by the American people

and army. We are not in a position of showing you many assets. The best we are able to produce are these few children. They alone are our fortune and our sole hope for the future."

As one of those children, I am here to tell you that the gift of hope is the gift that keeps right on giving, propelling me from a displaced-persons camp in Germany all the way to the Supreme Court of Canada.

My life started in a country where there had been no democracy, no rights, no justice. No one with this history does not feel lucky to be alive and free. No one with this history takes anything for granted. And no one with this history does not feel that we have a particular duty to wear our identities with pride and to promise our children that we will do everything humanly possible to keep the world safer for them than it was for their grandparents, a world where all children, regardless of race, colour, religion or gender, can wear their identity with dignity, with pride and in peace.

I am very proud to be a member of the legal profession but I'll never forget why I joined it.

CANADA COULD BE A LEADER ON INTERNATIONAL MIGRATION GOVERNANCE

IDIL ATAK AND FRANÇOIS CRÉPEAU

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Idil Atak is an associate professor at the Lincoln Alexander School of Law at Toronto Metropolitan University. She is a past president and a director-at-large for the Canadian Association for Refugee and Forced Migration Studies (CARFMS). She also served as Editor-in-Chief of the *International Journal of Migration and Border Studies* (IJMBS) from 2017 to 2020.

International human rights law plays a pivotal role in shaping the rights and freedoms of migrants. The 75-year-old *Universal Declaration of Human Rights* stands as a seminal milestone in this endeavour. Over time, the legal protection of migrants has evolved significantly, progressing toward the

recognition of fundamental rights inherent to every individual, irrespective of their migratory status.

All migrants in Canada benefit, as a matter of principle, from a comprehensive array of rights and freedoms granted under the UDHR and various

international human rights treaties that the country has ratified. These encompass prohibitions against racial and gender discrimination, protection for children, women, and persons with disabilities, among others. Additionally, Canada's commitment to protecting refugees stems from its international legal obligations under the 1951 Refugee Convention and the 1967 Protocol. These instruments are deeply grounded in the UDHR and provide a framework for offering refuge to those fleeing persecution.

Canada, often celebrated for its inclusive approach to immigration and refugee protection, finds its values intertwined with the principles reflected in international human rights law. These principles are not just abstract ideals but serve as relevant and persuasive sources for interpreting and upholding the *Canadian Charter of Rights and Freedoms* (Baker SCC 1999). However, despite progress, there is still ongoing work needed to fully extend the protections afforded by international human rights law to all migrants. Numerous obstacles and challenges persist in the advancement of the human rights of migrants.

FORCED MIGRANTS' ACCESS TO PROTECTION

A key issue experienced by forced migrants is access to international protection and its ensuing impact on the effective enjoyment of their rights. In the past decades, Canada has moved toward the criminalization of asylum seekers through legislative changes and international cooperation. A poignant illustration of this shift can be found in the treatment of some 600 Tamil asylum-seekers from Sri Lanka who arrived irregularly in Canada

aboard two vessels in 2009 and 2010. The government, rather than offering support and protection, stigmatized these passengers by labeling them as “terrorists”, “migrant smugglers” and “bogus refugees”. Several asylum seekers on board these vessels faced criminal prosecution. Efforts were deployed to exclude them from refugee protection (Grant 2018). Furthermore, in a bid to deter future irregular arrivals, the Canadian government implemented a series of changes that further restricted access to protection and significantly impacted the rights and freedoms of asylum seekers. The changes encompassed mandatory detention and the elimination of procedural rights, including the right of appeal, for asylum seekers arriving in Canada irregularly, as part of a group, and with the assistance of a migrant smuggler.

Another case in point is the 2004 Canada-United States Safe Third Country Agreement (STCA). According to this Agreement, refugee protection claims must be made by asylum seekers in the first safe country — the U.S. or Canada — they pass through. Most third-country nationals in the U.S. are thus barred from making an asylum claim in Canada. The STCA had initially applied to those who present themselves at official ports of entry along the land border and who, with some exceptions, were to be returned to the U.S. In March 2023, Canada and the U.S. expanded the STCA implementation across their entire land border. As a result, asylum seekers who cross the border irregularly outside of official ports of entry are no longer permitted to file an asylum claim in Canada for two weeks after their entry.

This expansion happened despite the Agreement

being subject to fierce criticism for exposing asylum seekers to arbitrary detention, gender-based discrimination and denial of access to a fair refugee process in the U.S. (*Canadian Council for Refugees* 2020 FC 770, paras. 135 and 146). It is also known to compound the vulnerability of migrants by pushing them to irregular, and often dangerous, crossings of the U.S.-Canada border. As a burden sharing instrument, the Agreement aims to prevent and deter the secondary refugee movements between the U.S. and Canada. The government pursued its close cooperation not only with the U.S. but also with some other destination countries, with a focus on (biometric) information sharing to track and block asylum seekers.

Moreover, Canada has provided capacity-building assistance to countries from which asylum seekers originate or through which they transit, in the name of cracking down on migrant smuggling — systematically depicted as international organized crime — and preventing the arrival of asylum seekers in Canada. Alliances and agreements reached with several countries further obstruct the mobility of asylum seekers at the earliest point possible away from Canada's borders. These policy developments infringe upon the freedom of movement and the right to seek and enjoy asylum from persecution, rights that are enshrined in the UDHR. They have also cast a negative spotlight on certain groups of asylum seekers, particularly those who, for lack of legal pathways, enter Canada through irregular means, thereby impeding their access to international protection and fundamental human rights, including the principle of *non-refoulement* (the return of asylum seekers to endangerment in the country from which they've fled).

EXPLOITATION OF MIGRANT WORKERS

Another key challenge Canada — and most other countries — will be facing in the coming decades is the progressive eradication of exploitative labour markets where migrant workers are shamelessly being exploited.

Basing the profitability of several economic sectors with low profit margins (agriculture, care, construction, hospitality, to name only a few) on the exploitation of migrant labour results in the violation of Canadian labour law, Canadian constitutional guarantees and Canada's international human rights and labour rights obligations.

Politicians and policy makers know very well that large numbers of undocumented migrants are employed in those sectors with unacceptable labour conditions in underground labour markets. (Although estimations are fraught, there may be just under a million such individuals in Canada, and perhaps close to a hundred million in the world.) Such undocumented migration is entirely *policy induced*, resulting from the combination of repressive migration policies preventing such migrants to come legally despite a huge demand for such labour, and the absence of enforcement of labour law with respect to such migrants.

Politicians pretend that the “fight against migrant smuggling” is a fight against international criminality, when they perfectly understand that the essential pull factor for undocumented migrants is the fact that all such migrants actually work in countries like Canada: no one dies of hunger, even if living conditions are harsh. Millions of employers

across the Global North are ready to employ those migrants at minimal wages and in subpar conditions, which those migrants accept for lack of alternative. As long as there is a huge demand for exploitable labour and as long as migration policies will not facilitate the legal mobility of such workers, other actors — smugglers — will help migrants irregularly find an employer.

Migrants are thus pushed into the underground, allowing employers (and smugglers, recruiters, lodgers, moneylenders, etc.) to exploit them; if a crime is committed, it usually is against the migrants themselves. And migrants in precarity will rarely risk complaining, for fear of detection, detention and deportation. Labour law complaint mechanisms are therefore useless for such migrants, and labour inspections — in Canada as in most other countries — do not protect the rights of all workers equally, often collaborating with immigration enforcement to hunt down some undocumented migrants.

Single-employer temporary migrant worker programs also create a precarious environment, as such migrants will hesitate to complain against their employer and risk being fired — which entails the loss of residence and work permits — or being blacklisted for next year as a “troublemaker”.

The only way to considerably reduce the number of undocumented migrants is through the repression of their hiring by employers, i.e. through heavily fining such employers and shutting down the businesses of repeat offenders. Reducing the demand for undocumented migrants will send a message through the channels of undocumented migration: If migrants cannot survive or send money home

from that country, they will avoid it or move on. Migrants are smart; they do not go to places where they cannot build a future for themselves and their family.

However, repressing employers is politically difficult for State authorities, for two reasons. First, employers are most often electors and taxpayers, whereas undocumented migrants do not vote and do not pay income tax (they pay all indirect taxes). The political pressure to make employers happy is not counterbalanced by political pressure to protect migrant workers. Second, such repression would lead to a considerable increase in the price of goods and services in the affected economic sectors, as employers would have to considerably raise wages and provide much better labour conditions to attract workers in “regular” labour markets. The price of food, in particular, would be multiplied.

Forty years of “cheap labour” thus cannot be erased from one day to the next. States will need to support those economic sectors through a long and painful transition towards progressively much saner labour markets, in which all workers — citizens or foreigners — can equally work in fair labour conditions. This will require economic strategies, subsidies, and support for mechanization in favour of employers, as well as effective labour inspections and better protection for migrant workers’ rights.

THE NEED TO FACILITATE MOBILITY

In order to achieve such a transition, governments will have to include progressively facilitating mobility in their strategic planning for the decades to come. This means being able to publicly debate such a transition. The dominant discourse

of migration as a threat — to jobs, to public health, to values, to way of life, to national security, to identity — must be deconstructed, and replaced by a discourse of migration as opportunity. All the advantages of mobility must be put forward, and the fantasies pelted by the extreme right — which stand uncontradicted by mainstream politicians for fear of electoral disaster — must be denounced.

Moreover, such a transition cannot be achieved by any State in isolation, for fear of attracting too many migrants if neighbouring countries do not also facilitate mobility. At least at a regional level, it must be a collective effort to concurrently change the mindset of the citizenry and the policies that govern mobility.

Unfortunately, the current populist political climate does not allow any government to plan such a transition. Anti-immigration sentiment, racist stereotypes, and utter fantasies regarding one's self-proclaimed "identity" are part of the anger-fueled "post-fact" rhetoric against a convenient scapegoat.

It will take great courage, and probably another generation, to tackle the issue upfront and start treating migration governance rationally. Current labour shortages and impending environmental catastrophes might hasten the emergence of a saner debate — or not.

In line with the 2018 Global Compact on Refugees, Canada should aim to improve refugee self-reliance and broaden their access to third country solutions. Facilitating mobility is an essential condition for the achievement of these durable solutions for refugees. As an official "champion" of the Global Compact on Migration — in which 152 States used the word "facilitation" 62 times! — and considering its experience in migration, Canada could and should play a significant leadership role in the transformation of the political discourse on migration and of the policy framework of its governance.

A VIEW OF HUMAN RIGHTS IN CANADA FROM THE HISTORICAL PERSPECTIVE OF AN INDIVIDUAL CAREER

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The development of a rights culture is a hallmark development of the 20th century. Some scholars of human rights place the rights revolution firmly in the 1970s. Such an approach ignores the long historical path that the campaigns by rights activists and architects have undertaken. Moreover, the rights revolution in Canada cannot properly be understood without an examination of how rights were interpreted and challenged by individual Canadians.

This paper will examine how one individual forwarded and complicated the rights revolution in Canada in the areas of labour, entrenched rights legislation, and refugee policy. The life and career of F. Andrew Brewin (1907-1983), a Canadian lawyer, politician and activist, reveals some socio-political events that are important to 20th-century Canadian human rights history. In his capacities as lawyer and politician, Brewin can be viewed both as inside state actor and outside

activist, moving between both venues used most often for social change in democratic nations. Through biography, this study will focus on evidence that complicates the lines between state and non-state actors. Notwithstanding principled objectors, the question of whether to work within or beyond Canadian political institutions is often one of access. Canadian activists between 1930 and 1980 accepted government positions believing that work within the political system was an effective means of reform, and certainly on human rights issues. At a time when Canadian governments engineered and administered new programs addressing many aspects of the citizen's life, activism and government employment were the natural response for those hoping to influence policy debates. Furthermore, in these capacities Brewin had the opportunity to mobilize a variety of resources that are central to the success and the impact of any social movement. According to Eduardo Canel (1992), these resources include money, organization and labour, as well as such non-material resources as "respectability," loyalty, and legitimacy.¹ How this one individual, Andrew Brewin, carried on the rights revolution in the spirit of the UDHR is a story worth telling.

LABOUR RIGHTS

The 1944 Saskatchewan *Trade Union Act* was one of the political Left's earliest legal accomplishments in the realm of broad-based worker rights to self-determination. As Laurel Sefton MacDowell has demonstrated, one of the most dramatic changes

to occur over the course of the Second World War was the growth of the organized labour movement. Conflict between labour, industry, and government over wage controls and working conditions, as well as the inadequacy of the existing collective bargaining legislation, resulted in unprecedented levels of industrial conflict. By 1942, the federal Co-operative Commonwealth Federation (forerunner of today's New Democratic Party) had adopted a clear set of priorities for labour. When the CCF under T. C. "Tommy" Douglas won the Saskatchewan provincial election in June 1944, a flurry of new labour legislation was introduced in the assembly that fall, the result of a pre-election promise of a new deal for labour. The CCF introduced the *Trade Union Act*, which made collective bargaining mandatory and the government extended the rights of civil servants to join unions. The act was one of the first to grant the central parts of the modern labour relations system — exclusivity, mandatory recognition, bargaining in good faith, and protections against unfair labour practices. An independent Labour Relations Board consisting of members representing employers and employees and a non-aligned chair administered this new system. While there have been some amendments to the *Trade Union Act*, the basic structure has remained the same. The act itself was described by Walter Reuther, noted American labour leader, as "the most progressive piece of labour legislation on the continent."²

To help facilitate his government's labour program, Douglas brought in a number of CCF labour

1 Eduardo Canel, "Democratization and the Decline of Urban Social Movements in Uruguay: A Political-Institutional Account." in Arturo Escobar and Sonia Alvarez (eds.) *New Social Movements in Latin America: Identity, Strategy and Democracy* (Boulder: Westview Press, 1992): 276–290.

2 Library and Archives Canada, F. Andrew Brewin Fonds, MG32 C26, vol. 7, file 27. Letter, Brewin to A. D. Cherniak, March 4, 1949.

specialists, including F. R. Scott, David Lewis (then-CCF National Secretary) and labour lawyer Andrew Brewin who worked with government staff. Brewin, however, is generally acknowledged as being responsible for drafting the new *Trade Union Act*, referred to in one source as the “Magna Carta for Saskatchewan labour.”³ One of the main complications, however, was pre-existing federal legislation Order-in-Council P.C. 1003, the Wartime Labour Relations Regulations, adopted by the Liberal government of William Lyon Mackenzie King on February 17, 1944. In this case, the federal government exercised its wartime emergency powers granted under the *War Measures Act* to legislate in spheres normally under provincial jurisdiction. Thus, the government of Saskatchewan had to negotiate with the federal government. Brewin had a major role to play in this, accompanying Saskatchewan Minister of Labour C. C. Williams to meetings with Humphrey Mitchell, the federal Minister of Labour, in their discussions on the nature of the province’s proposed labour legislation. Brewin, along with Scott and Lewis, also met with organized labour, such as the Canadian Congress of Labour, via its president, Aaron Mosher, a long-standing supporter of collective bargaining rights.

It was not long before the basic principles of the *Trade Union Act* were tested in Saskatchewan. At issue was the dismissal of six employees from the John East Iron Works in Saskatoon for their involvement in union activity, which the United Steelworkers of America brought to the attention of the Labour Relations Board in June 1947. The Board

ordered the reinstatement of the affected employees with compensation for lost wages, whereupon the employer decided to appeal to the Saskatchewan Court of Appeal for, among other concerns, a judicial review of the Board’s orders, arguing the Board breached constitutional boundaries and encroached on the authority of the superior courts in the matter. While the Court of Appeal ultimately ruled that section 5(e) of the act was ultra vires because it conferred upon the Labour Relations Board judicial powers in the realm of employee hiring and termination — powers that are exercised by the superior, district and county courts — it did regard the issues raised by the case to be of such public importance that it granted the Labour Relations Board appeal to the Judicial Committee of the Privy Council.

The *John East Iron Works* case would become an important case in the history of Canadian judicial review, but more broadly it now speaks to the issue of collective bargaining as a human right, an idea which was reviewed by the Supreme Court of Canada a few years ago. At the time, the success of the Saskatchewan CCF government with respect to its labour rights agenda spoke clearly to the broader, national CCF vision of “an active role for government” with “human rights legislation and labor legislation encouraging the expansion of unions” as David Goutor has noted.⁴ This is not to say that Brewin had in mind the exclusive issue of human rights when drafting his defence of the Board, for he saw that success in the Supreme Court would only come on jurisdictional matters. Yet despite the restrictive nature of the legal argument, Brewin

3 Thomas H. MacLeod and Ian MacLeod, *Tommy Douglas: The Road to Jerusalem* (Edmonton: Hurtig Publishers, 1987): 157.

4 David Goutor, “A Different Perspective on the ‘Labor Rights as Human Rights’ Debate: Organized Labor and Human Rights Activism in Canada, 1939–1952,” *Labor Studies Journal* 36 (2011):415.

played a facilitative role in the formation of a connection between the protection of human rights and social and economic rights by the state.

THE BILL OF RIGHTS

Frank Scott once remarked that “constitutionally speaking, the 1950s was predominantly the decade of human rights.” Scott was referring to a spate of cases that would become famous for their articulation of a constitutional theory known as the “implied bill of rights.”⁵ Brewin was a strong advocate throughout his legal and his political career for a Bill of Rights that would be entrenched in the constitution and played a central role in the articulation of the “implied bill of rights” principle. The Committee for a Bill of Rights (CBR) used the example of the wartime treatment of Japanese Canadians in connection with the wider issue of the passage of a Canadian bill of rights. In building upon the success of the campaign to end deportations, Canadian advocates began to forward the idea that, considering events at home and abroad, it was necessary to demonstrate clearly to all Canadians the urgency of a “basic law which recognizes human personality and the right to freedom under the law of every Canadian irrespective of race.” The enshrining of a bill of rights in the Constitution was a popular idea among advocates in postwar Canada and even received serious attention in Parliament and in the Senate.

Brewin drafted a proposal for an amendment to

the BNA Act [1867] that would prohibit the federal and provincial governments from enacting legislation that would infringe upon certain civil rights, including freedom of religion, freedom of speech and religion, and the right to lawful assembly, among others. Three years later, the CBR would again pressure the Liberal government of Louis St. Laurent, with an appeal even more rooted in international concepts of human rights. But despite the clear hypocrisy of having Canada as a signatory to the UDHR, the federal government refused to move on a constitutionally entrenched bill of rights. As Carmela Patrias has noted, the Liberals of the day were hesitant in supporting a national bill of rights for fear that state action on political rights would lead to state action on social rights and the welfare state.⁶

Diefenbaker’s arrival to the prime minister’s office in 1957 challenged him with the task of obtaining consent from provincial premiers such as Quebec’s Maurice Duplessis to achieve a constitutionally entrenched rights guarantee. Without such cooperation he fell back to the defence that a federal parliamentary statute, rather than a constitutional amendment, could provide adequate and effective protection of Canadians’ rights. This argument was rejected by constitutional scholars like Frank Scott, Bora Laskin, and Brewin, who correctly anticipated the limited effectiveness of Diefenbaker’s Bill of Rights. It represented, as Lambertson has suggested, half a loaf; but it also represented the conclusion of a major struggle for the emerging human rights community in Canada.⁷

5 Frank R. Scott, “Expanding Concepts of Human Rights,” *Essays on the Constitution: Aspects of Canadian Law and Politics* (Toronto: UTP, 1977):353.

6 Carmela Patrias, “Socialists, Jews, and the 1947 Saskatchewan Bill of Rights,” *Canadian Historical Review* 87, no. 2 (June 2006): 269.

7 Ross Lambertson, *Repression and Resistance: Canadian Human Rights Activists, 1930–1960*, (Toronto: UTP: 2005): 370.

THE RIGHTS OF REFUGEES

In 1973, more than 7,000 Chilean and other Latin American refugees were admitted to Canada after the violent overthrow of Salvador Allende's democratically elected Socialist-Communist government. Supporters of the Allende regime fled the oppression directed against them by Chile's new military ruler, General Augusto Pinochet. When Argentina faced a military *coup d'état* in March 1976, an event that marked the beginning of Argentina's now famous, 'Dirty Wars' of 1976 to 1983, a second wave of Chilean refugees sought to come to Canada.

In the aftermath of the 1973 *coup d'état*, members of the Protestant and Catholic Churches of Canada called on the Canadian government to denounce the human rights abuses and grant asylum to Chilean refugees located both inside Chile and in neighbouring Argentina. Robert Andras, the Minister of Immigration and External Affairs, remained reluctant to do so. On the advice of Canadian Ambassador to Chile, Andrew Ross, the Canadian government recognized the Pinochet junta on September 29, 1973, on the ground that it was the only authority in the country. This decision was not well received by refugee advocates, as Andrew Thompson has noted.⁸ Many, including the churches, questioned whether the Canadian government was displeased to see the Allende government fall. Andras feared that among the refugees were terrorists, communists and other subversives. Only after a chorus of disapproval from various social justice groups, along with three parliamentarians (Brewin, David MacDonald, Louis Duclos)

did the Canadian government re-evaluate its position and begin the process by which Canada would take in more than 4,500 Chilean refugees by the end of 1976.

For their part, the three MPs recommended that standards for the definition and admission of refugees be clearly set out in legislation or in explicit regulations. Along with their proposal that a separate and suitable application form for refugees be prepared, Brewin, MacDonald and Duclos recommended that all UN-accredited refugees be considered as refugees for the purposes of Canadian immigration. While Canada accepted the United Nation's definition of a refugee at the time of the report's publication in November 1976, it did not accept the UN determination or assessment of who is a bona fide refugee. Indeed, Canadian immigration officers were known to reject a high number of refugees registered by the UNHCR. Brewin would use this information in recommending numerous amendments to the proposed refugee policy being formed at this time via the Sub-Committee on Immigration. The year 1978 then, marked the first time an Immigration Act included a humanitarian category for refugees needing protection and resettlement. It also established the *Private Sponsorship of Refugees Program*, which allowed Canadians to be involved in the resettlement of refugees. A noted improvement, reflective of the recommendations from Brewin, MacDonald and Duclos, was that they were not required to be outside the country when making their claim.

At the same time as the refugee crisis was being investigated, Brewin, MacDonald and Duclos also

8 Andrew Thompson, *In Defense of Principles: NGOs and Human Rights in Canada* (Vancouver: UBC Press, 2010): 22.

detailed human rights violations, such as the use of torture and death squads in the search for political adversaries on the left. They even linked the restoration of human rights as a pre-condition for the granting of loans and capital from Canada, or the rest of the investing international community. In the 1970s, the issue was with Noranda Mines in Chile and Canadian bank loans to that country, which the churches via the Taskforce on the Churches and Corporate Responsibility and Amnesty International continued to protest. This led to another outcome of this visit – Brewin’s attempt to pass a bill on the issue of fair trade and human rights. In 1977 and then in 1978, Bill C-371 and 272 respectively, a private member’s bill titled “An Act to prohibit aid to foreign countries that consistently violate human rights,” was Brewin’s attempt to have principles of human rights recognized in Canadian trade operations. The context of the bill was almost entirely based on the observations he and his colleagues made during their trip to South America in 1976. His effort failed, as the

bill died on the floor of the House of Commons, voted down by the majority Liberals. He did, however, follow through on his promise to withdraw all his personal accounts from the Canadian Imperial Bank of Commerce upon learning of a \$210-million loan to the government of Chile.

In delving into the past, this study has demonstrated the importance of individual activism and the manner in which movement politics is vital alongside electoral politics. It sheds light on the way individual agency contributed to the history of Canadian human rights, especially since so many actions live or die by the enthusiasm and involvement of key leaders. While governments, international organizations, and NGOs play essential roles in human rights advocacy, individual activists can shape a movement. F. Andrew Brewin’s career dedication and grassroots activism helped to drive positive change and held accountable those responsible for human rights violations.

HISTORY DOESN'T GO IN A STRAIGHT LINE — IT HAS UPS AND DOWNS AND UPS AGAIN

BOB RAE

Bob Rae is Canada's Ambassador to the United Nations in New York. He previously served as Canada's special envoy on humanitarian and refugee issues, continuing work that he began in 2017 as Canada's special envoy to Myanmar. The former premier of Ontario and former interim leader of the Liberal Party of Canada, Rae was elected 11 times to federal and provincial parliaments between 1978 and 2013. He stepped down as a member of Parliament in 2013 to return to legal practice and, in particular, to work with Indigenous communities and continue his work in education, governance and human rights. His passion for social justice dates back to his early days in student politics and community service.

*Bob Rae spoke from New York via Zoom with Randy Boswell,
guest editor of this edition of Canadian Issues, in September 2023*

Your father's time at External Affairs and at the UN would have overlapped with John Humphrey's time. I just wondered if you knew Mr. Humphrey personally?

I did. I had the chance to meet him as a teenager when my dad (Saul Rae) was ambassador to the UN in Geneva (early 1960s), and John would come through. My dad used to have people to dinner all the time when they came through. He introduced John; we had dinner together and one very interesting night he told the stories about working with

Eleanor Roosevelt and his work as the pen holder of the declaration — and also the delay in Canada on ratifying the declaration, which is not a story that's frequently admitted to.

I was going to ask you about that, as a matter of fact.

So, I did know him, and he was a very kind man. He encouraged me and my taking an interest in this. I was always fascinated by listening to people's stories, and he was a great storyteller. And he was obviously very proud of his work — and very happy

to talk about it. So yeah, I remember him very well.

As you've noted, John Humphrey held the pen on that first draft of the Universal Declaration. Can you describe the context in which a Canadian would have played such a prominent role at the time? In other words, how was the project of the universal rights charter and the UN itself seen from Canada's perspective in that postwar period?

John had a job at the UN. He was what would now be called the assistant secretary-general for human rights in the Secretariat. So, he had responsibility for that. The fact that he was the penholder wasn't because he was appointed simply as a Canadian. He happened to be working in the Secretariat at the time, when there was a feeling that a stronger clarification call on human rights needed to find its place in international law. And I think one has to put that in the context of the challenging situation in the world — where, at the time the UN was founded, was just when one war was ending, and another war was starting. A hot war was ending — the Second World War — and a Cold War was starting, almost simultaneously. And there was this tremendous challenge in the world of figuring out: Now where do we go? And where there was a sense, I think, particularly from the (U.S. president Harry) Truman administration, but from others, that there needed to be a stronger way of expressing support for human rights. And that's really what led to the UN declaration and to the debate around it, and what did it mean, and the wording and all of that — the drafting of it. But eventually it was accepted. The initial days of the Universal Declaration were a question of how many countries would ratify it, but then also the question of ... what structures do you need within the UN organization to make it real?

And that's a longer story, that's a longer process — getting to the Human Rights Council, getting to the Office of the High Commissioner for Human Rights and so on. This is much longer-term discussion. But it was an important moment. And John was part of a generation of people — Canadians — who engaged in diplomacy as a matter of commitment and feeling for the kind of world that people wanted to build after the war. And that was very much part of who he was and how he saw things.

You alluded earlier to the — let's call it a hesitation — on the part of Canada to endorse the declaration at the very outset. It only took a few days before Canada actually expressed its formal support in the General Assembly, but what at that time might have created that hesitation? And what were the factors that were at play in that moment in terms of the independence of nation states and their commitment to a universalist ideal?

We still have these issues today. There were political and legal issues. And these have not gone away. Many of the areas covered by the Universal Declaration are areas of provincial jurisdiction in Canada — property and civil rights, as you know, are under a provincial heading. So parallel to this discussion going on in New York, there were discussions going on in Canada, that eventually did not bear much fruit, about the patriation of the Constitution and ways in which this could happen. Mr. (Maurice) Duplessis was the premier of Quebec, a very strong advocate for provincial rights and provincial jurisdiction. And I think there was a debate inside cabinet about whether this was going to help or hurt, or how it fitted in with that (domestic political) conversation. But I think as in other debates, eventually it became very clear that

politically this was the way things were moving and it was important for Canada to be engaged in this issue — and to be engaged in a way that was that was going to be effective.

And I think there was a sense that having been as effective as Mr. Humphrey was ... secretary of the committee and of the discussion, and trying to really produce the drafts that would be negotiated and worked through — that it was important for Canada to embrace it.

So, you would have had people like Mr. (Louis) St. Laurent (prime minister by November 1948) on perhaps one side of the conversation and Mr. (Lester B.) Pearson (external affairs minister by September 1948) on the other side of the conversation, just at a moment when Mr. St. Laurent was taking over from Mr. (Mackenzie) King, and Mr. King himself was not enthusiastic about treaties or foreign involvement. He had a very cautious view.

I think it was the sense that the world we were entering was very different was one of the reasons why (King) decided to retire ... It's a fascinating period in our international life, because we were... a whole generation of people — John Humphrey was one, my dad was another ... many, many diplomats — who were on the world stage involved in the creation of the General Agreement on Tariffs and Trade, roughly the same time, Canada was very involved. Dana Wilgress was one of the drafters, one of the leaders of creating the new economic structures, the discussions going on with the IMF, and the creation of the World Bank and any number of ways in which we were building the building blocks of multilateralism. The Universal Declaration was very much one of those. And so I

think I've seen it. I've seen it in other circumstances — I mean, look at the hesitation and reluctance on the part of governments to endorse the (United Nations) Declaration on the Rights of Indigenous People. The (UNDRIP) was the creation — not solely — but Canadian Indigenous leaders played a huge role. (B.C. Chief) Edward John and (Alberta Chief) Wilton Littlechild and (former Assembly of First Nations chief) Phil Fontaine and a number of people played a very strong role in the UN declaration. And then the government wouldn't sign it, which was seen by the First Nations at the time as a betrayal. And then it took some time before the Canadian government said — No, we're going to do this. And that's what happened. So, it's all part of the process.

But I think it's also important for Canadians to know that history doesn't go in a straight line. It has ups and downs and ups again, and that's the way it is.

How well do you think this country has lived up to the principles enshrined in the Universal Declaration of Human Rights?

Well, frankly, I think pretty well. One of the things that's interesting is the debate around the Charter, the debate around the patriation of the Constitution, and what it would take to achieve that was really an extension of the debate that took place on the Universal Declaration. I think there are a few ways in which we were slow. I think we were slow in recognizing the meaning of the Universal Declaration as it related to equality between women and men, as related to the treatment of Indigenous people in Canada. But over time — I mean, it's been a slow process. It's one that has come out of protest and out of struggle. There's been a recognition that, well, if

you if you say you believe in these things, these are the institutions you have to change. This is what needs to happen. There needs to be a right to vote, there needs to be a shift. But each step of the way, it's taken a long time when you look at the history of the implementation of civil rights in Canada, both provincially and federally. It's been a struggle. It didn't come automatically. And I think it's important — you can't take the politics out of civil rights, out of human rights. It is a political issue. You have a document that says I believe in the equality of women and men. I believe in all kinds of other things that are in the Universal Declaration. But then you say, well, yeah — but what am I really prepared to do about that? So how do we actually make that that progress? How do we make that change?

But I think there's been a remarkable degree of shared purpose in Canada about the importance of human rights and the inviolability of the principles of the human rights in the charter.

I was present as a member of Parliament in the late 1970s and early '80s, when the debate around a creation of the (Canadian Charter of Rights and Freedoms) was very real, very direct. And I was looking back on it now. And those were exciting and fascinating times. For a young MP, in my late 20s and early 30s, it was a very dramatic moment. And then I went into provincial politics and we had many debates around gay rights, around abortion, reproductive rights, and so on. And they're always a challenge. Nothing happens without a struggle. It's that simple.

On the international side, what do you think have been Canada's chief contributions in making the

protection and extension of human rights a central mandate of the United Nations?

Well, I think it's the way we've tried to make real the institutional changes that are required if you're going to take human rights seriously. So, these institutions take time to build and are frequently weak, not as strong as they could be. But right through the work of the UN, we've always been willing to go the extra mile, and saying, we're going to fund these things, we're going to do these things, that we're going to take steps to deal with the cost and consequences of bad behavior. Again, it's not a perfect structure. I think the anthem of the of the UN should be Leonard Cohen's song *Anthem*, where the chorus is, you know, there are no perfect offerings. There's a crack in everything, a crack in everything. And that's where the light gets in. Right? We're building the little places where the light gets in. There are no perfect offerings here. We can be justly criticized, the UN can be justly criticized for our failings. But that doesn't stop us from keeping on trying, even though it's difficult to achieve the results that everybody would like to see.

What do you think are the greatest human rights challenges facing Canada and the world today?

Well, I think the biggest challenge right now is the growth of autocracy as a method of government and as a method of governing that that is being actively supported in a number of countries. And where autocratic ways of thinking and populist ways of thinking are combining to create a world of misinformation, disinformation, organized lying, propaganda and oppression. And we're seeing this — unfortunately, tragically — we're seeing it in many, many parts of the world. That's the first

thing. The second great challenge is, it's important to recognize that in the Universal Declaration, there's reference to economic and social rights. And I think generally speaking, those have been slow to really develop. There are some countries that have taken these more seriously in expanding the rights to a better life as part of what freedoms are. And this is a continuing debate among scholars — about, well, is freedom just negative liberty, as my old professor (Russian-British political philosopher) Isaiah Berlin used to call it, saying, really? The best you can do is just to be free from oppression and free from things preventing you from doing things and free from interference. And other people would say: Well, yes, that's true. It's an important part of freedom. But the other part of freedom is the creating of social conditions that allow you to exercise your rights. In other words, your rights are not just theoretical. The old statement about the rich and the poor are both free to sleep under bridges. Yeah, but it's only the poor that actually do. So, you need to understand the importance of the social condition as a place where freedom matters.

And finally, in addition to autocracy, I think we have to say that patriarchy and discrimination against people — against women, against freedom to sexual rights and reproductive rights. The rights of members of the gay community and the bisexual community and communities where people are not allowed to express themselves. And these are areas that are really the battlegrounds in the UN — but also, more importantly, in many, many countries where countries are reaffirming the “illegitimacy” of gay rights and sexual identity rights. And I think that's a very negative trend.

These battles don't just end.

No, they continue. And I think that's the reason why the 75th anniversary (of the Universal Declaration) is such an important thing. Why do we commemorate these events? Well, it's not just because, well, John Humphrey was one of our guys and so we should celebrate. No, it's about celebrating his contribution, which was tremendous. But it's also about taking a sense of pride in the nature of the battle that we have, the nature of the struggle that we're in. And I think it's really important for us to remember that. And that's why I call the UN — it's what (U.S. civil rights activist and congressman) John Lewis called “good trouble.” We're making good trouble here. And that's what we do if we're going to succeed.

How has the challenge of protecting and extending human rights shaped your own journey in public life as a political leader, as an advisor to First Nations, as a representative of Canada on the world stage?

I think it's certainly been part of what I would call the melody of my life. I mean, it's been a very important theme through many aspects of what I've done. In politics — provincially, federally, — as I mentioned, the work on the Charter, being present at the last vote (in 1982) before I returned to the Commons (in 2008), the last vote that I voted on was the patriation of the Charter. I had the opportunity (but) I didn't want to leave and resign until I finished that. Then I went and became provincial leader. And in the province, I was leader during a time when issues around abortion rights and reproductive rights for women and rights of minorities, employment equity, moving to end systemic racism, dealing with Aboriginal issues in the province at the time, and issues around gay rights were

very, very important parts of my political advocacy. Again — didn't achieve everything. But I think we made a lot of progress and that's continued. And when I left Parliament in 2013, for the second time, it was to go back and work on Indigenous rights in Canada, and I'm very proud of that work. Unfortunately, political events, provincial elections and other things happen, which made that not come to fruition. But we did good work, and I'm very proud of the work that I did there.

Looking around the world today, with so many reasons — some of which you've enumerated — that would leave one pessimistic about the future of human rights, of peace and security, of even democracy — why shouldn't we despair?

I've been asked that question quite a lot, which I think is a reflection of the times. I would just say that, for me, despair is not an option, because of where I sit and what I do. If I were to despair, I think it would simply take all the oxygen out of the struggle. I mean, you just say, well, there's nothing I can do. So I really do believe that we have to keep the lights on. We have to keep it shining and keep working at it. And yeah, it's tough. It's very difficult. Democracy is contested around the world. Freedom is contested around the world. Civil rights are contested. Pluralism is contested. Everything that I believe in, in terms of human values and social values, and morality, is challenged everywhere. And it's very tough. But I don't believe that despair is an option for me. And I don't think it's right for Canada, either. I think you always have to say: Where can the light get in here? Where can we move this thing? And where can we create assurances in our own country that we're going to continue to take these issues seriously, and then

continue to be advocates for them? And I think we really have to continue to do that. I think it's fundamental to our way of being in the world.

Can you elaborate a little bit on where you're looking to fuel hope these days? What gives you optimism about the future?

Well, it's interesting, I was at a dinner last night put on by the Center for Reproductive Rights, which is an NGO in New York. We heard testimonies from Africa, from Latin America, from Asia. And there are lots of places where we're making progress. There's lots of places where we're making breakthroughs. And I think there's also a lot of hope in the next generation. There are billions of young people who do not accept autocracy and who do not accept patriarchy, and who do not accept decisions being made for them by other people. And I think that's what gives me a lot of hope. I don't think the governments that are run by these old dictators have really got a lot of life left in them. I don't think they do. But I'm not naive about what it takes to change things. But we have to be able to continue as Canadians and as representatives of Canada, to talk clearly and emphatically about why these things are important. And I think they're important because they're based in human values, human nature. I don't care where you live in the world, oppression is wrong. Cruelty is wrong. And everybody understands that. There's no doubt about it. And so we have to keep pushing ahead on.

Ambassador, you've been very generous with your time. Thank you.

HUMAN RIGHTS EVOLUTION: REFLECTIONS ON 75 YEARS OF CANADA'S HUMAN RIGHTS HISTORY

PEARL ELIADIS

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In 1946, John Peters Humphrey (1905–1995) was an international public servant at the fledgling United Nations when he served on a committee tasked with drafting the Universal Declaration of Human Rights. The process would take two years, and the Declaration was proclaimed in 1948.

professor at McGill's law faculty and president of a Montreal-based NGO, the Canadian Human Rights Foundation (now Equitas: International Centre for Human Rights Education). I recall a conversation we had in the early 1990s about how he viewed the Declaration and what was in store for the future.

When we met many years later, Humphrey was a

"What you need to understand," he said, "is that we

wrote the Universal Declaration of Human Rights as the foundation of a global human rights order. All you need to do now is implement it!"

Two things strike me as noteworthy when considering this extraordinary statement as we reflect on the legacy of the Declaration in 2023. The first is that Humphrey saw the Declaration as revolutionary. The second and related point is that it represented the summit of our human rights achievements. The rest would be about mere execution.

The idea of a human rights revolution is not new: it has been expressed by others, including prominent Canadians like Irwin Cotler and Michael Ignatieff. Indeed, the 1948 Declaration did play a Promethean role. It has served as an inspiration for other international human rights systems. At the state level, it spurred the emergence of rights-based constitutions, and national laws, codes, and institutions that have echoed its aspirations to a greater or lesser degree.

But the Declaration was not the high-water mark in the history of human rights ideas. The twists and turns of geopolitical events both before and after 1948 have meant that there have been many different challenges than simply implementing its blueprint and carrying out the human rights *revolution*. Rather, we have been struggling towards a more inclusive and progressive rights *evolution*.

THE UDHR: PART OF AN ITERATIVE, HISTORICAL PROCESS

The Declaration signalled a moment in time but was also part of a much longer narrative arc. It was

the conclusion of a carefully curated codification that distilled centuries of legal thought. Humphrey is part of that story: Clinton Curle's important book *Humanité: John Humphrey's Alternative* (2007) traces the evolution of Humphrey's thinking about law and human rights, as well as his role in the development of the first draft of the Declaration, in the context of the political thought of Henri Bergson, the influential French philosopher.

Humphrey was not, of course, working alone. The UN held dozens of meetings of committees and working groups — almost 300 — in which many legal scholars, experts and UN officials worked to hammer out the 30 articles of the Declaration through the collective and iterative processes that led to its proclamation.

The Declaration includes civil and political rights that protect individuals against state power. It also safeguards equality rights and requires that states progressively realize economic, social and cultural rights. All of these rights were contained in a single document.

RIGHTS-SPLITTING AND RIGHTS HIERARCHIES

Two decades later, the integrated rights framework that underpinned the Declaration was split into two, largely as a result of post-Cold War tensions. The West valued civil and political rights as precursors to an open, democratic society, while the Communist bloc saw economic and social values as priorities. In 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted as separate multilateral treaties. (Together, the Declaration along with

the two Covenants are known collectively as the 'International Bill of Rights')

These developments have had problematic consequences, including the bifurcation of rights categories and the creation of hierarchies among rights. For the West, the "great freedoms" (freedoms of expression, religion, conscience and peaceful assembly, for example) were seen in practice as being at the apex of human rights norms.

We know now that the idea that civil and political rights are at the apex of a rights hierarchy is inconsistent with established law. At the UN World Conference on Human Rights in 1993, the world's nations came together to reject hierarchies of rights through the Vienna Declaration and Programme of Action, which states that:

All human rights are universal, indivisible, interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

Statements from the Supreme Court of Canada have also made it clear that there is no hierarchy of rights.¹ The rhetorical rut of Cold War thinking nonetheless has cast a long shadow, dividing civil and political rights from economic and social rights. Equality rights are often seen as secondary or subordinate rights, antithetical to liberty. Economic, social and cultural rights are still seen in some

circles as largely aspirational. The result in countries like Canada has been a sustained reluctance to recognize social and economic rights as "real rights".

Ken Norman, a Saskatchewan-based human rights lawyer and emeritus professor of law, is one of Canada's leading experts on Canada's human rights history. On considering this rights-splitting and its historical context, he observed:

Look what happened to Franklin Roosevelt's second bill of rights [on economic and social rights]. The Cold War killed it dead. People who think that economic and social rights are bolshie sorts of socialism are out there, but that generation is slowly but surely leaving.²

The challenge then, has been to return to the unifying vision of the Declaration, while recognizing that it was just the beginning of making human rights truly universal.

NOT SO UNIVERSAL?

There are now nine core human rights instruments and about 100 "universal" human rights instruments³ in the UN system that have attempted to achieve universal rights. Regional systems contain their own, different, human rights instruments. In Canada, as in many other countries, there has been a push to develop new rights frameworks that are more capable of including human beings and

1 See, e.g., *Dagenais v. Canadian Broadcasting Corp* [1994] 3 SCR 835 at 839 and 877; *Gosselin (Tutor of) v. Quebec (Attorney General)*, [2005] 1 SCR 238, at para 2.

2 Pearl Eliadis, *Speaking Out on Human Rights: Debating Canada's Human Rights System* (Montreal-Kingston: McGill-Queens University Press, 2014).

3 Excluding the procedural and substantive optional protocols.

peoples who had been denied the promise of human rights, despite its claim to universal protection.

Predictably, perhaps, the proliferation of human rights instruments triggered something of a backlash. Civil liberties advocates like Alan Borovoy in Canada and Aryeh Neier in the United States argued not only for the supremacy of civil and political rights but also that the expansion of rights would devalue civil and political rights. Authors like Eric Posner argue, moreover, that ongoing and widespread global human rights violations demonstrate that human rights are not up to the job.

Combating these critiques and their attempts to restrain the evolution of human rights is not merely an issue of implementation. The iterative development of human rights has been an existential project, focused on expanding and extending protections. That is because the promises of universalism have not been met for all human beings. The changing recognition of human needs, capabilities and conditions has required new rights and reframed existing ones.

In so doing, the rights evolution has altered the contours and content of human rights. Women have battled for decades under the banner of “women’s rights are human rights”. The rights of people with disabilities were not even discussed as “human rights” until the 1980s, even in many human rights discourses. Indigenous people were denied the franchise, legal rights, and a host of other rights for decades in Canada. These are not historical phenomena of the distant past; it was only in 2008 that Indigenous people living on reserve were allowed to file human rights claims under the *Canadian Human Rights Act*.

These are but a few of the many examples. The human rights challenges that we have faced at home and around the world are about so much more than just implementing the Declaration’s blueprint.

CONCLUSION

It is true that enormous work is needed to implement human rights, a point that Alex Neve’s essay in this collection drives home with depressing accuracy. But there are many other challenges too. The political divisions discussed in this article that created rights “categories” have operated to weaken rights and marginalize human beings, although many of the more recent human rights instruments have started reversing the trend and now integrate civil and political rights with economic, social, and cultural rights, emphasizing the interdependence of human rights. That is why the struggle to create strong and novel legal protections for people’s freedoms and basic needs has been so important: it has led to important new human rights instruments like the Universal Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of Persons with Disabilities, among others.

The rights evolution has taken place in direct response to the need for meaningful solutions that respect the dignity of human life and promote democratic societies. Human rights law is, as a result, vulnerable to distortion and even attack because it is inherently, inevitably, and often explicitly political because it challenges established authority. The history of how rights emerged and the processes by which human rights law has responded to changing societies points to an iterative development of human rights that has been more “evolution” than “revolution”.

Thirty years ago, John Humphrey believed that the Universal Declaration of Human Rights was so important that it meant all the real work was already done. It was supposed to be downhill from there. That was not the case for reasons that were impossible to foresee at the time, but with the benefit of hindsight, we know that the Declaration was but one point of light along the longer arc of justice.

CHARTER LITERACY: ARE CANADIANS AWARE OF THEIR RIGHTS AND FREEDOMS?

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INTRODUCTION

Canadian lawyer and scholar John Peters Humphrey played a significant role in drafting of the United Nations' Universal Declaration of Human Rights. The UDHR provided a list of articles outlining everyone's universal human rights and influenced hundreds of international human rights conventions and declarations, amongst them Canada's human rights laws — and most notably, the 1982 *Canadian Charter of Rights and Freedoms*.

The year 2023 marked 75 years for the UDHR, which has given rise to much debate over diverging national identities, customs, traditions, conventions, values and politics. Taken together, these issues have led to varying interpretations of enshrined rights in various countries over the course of the UDHR's existence.

Discussion and debate over the meaning and application of human rights within Canada can sometimes be viewed as a microcosm of many

such global conversations. To the extent that many nations have been reticent to follow the global guidance offered by the UDHR, so too are country sub-governments frequently unwilling to follow national guidelines. This has resulted in many instances of internal/domestic jurisdictional disputes over questions of rights. In the case of Canada, the provinces have occasionally expressed concerns that the country's Charter of Rights does not sufficiently take into account distinct language identities and purported differences in values arising from diverging views around the place of religion in society. Hence, in Canada, the status of minorities is often the focus of public debate.

During the deliberations in 1948, the framers of the UDHR were hesitant to include references to the protection of minorities. As the UDHR was being drafted, Humphrey observed that the wording around the protection of minorities was not supported and in the decades that ensued this remained the case, as there was a persistent view in the UN that, "if everyone is treated alike [equally] there is no need for special measures to protect minorities." As Humphrey added: "... The argument quite misses the point, for, if linguistic, racial and religious minorities are to preserve their distinctive characteristics, they may need something more than equality." (Humphrey, 1983).

Decades later, in December 1992, the UN General Assembly adopted by consensus the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. This declaration, which builds on Article 27 of the International Covenant for Civil and Political Rights, is based on the premise found in its preamble that the promotion and protection of the

rights of persons belonging to minorities "contribute to the political and social stability of States in which they live."

Engaging in national conversations about the wellbeing of citizens is enhanced by knowledge of human rights. What follows offers insights into the state of such awareness globally, with a particular focus on knowledge about the *Canadian Charter of Rights and Freedoms*.

KNOWLEDGE ABOUT HUMAN RIGHTS: IN CANADA AND AROUND THE WORLD

A 2018 survey conducted by the firm IPSOS in 28 countries reveals that some 56 per cent of respondents say that they know about human rights generally. The four countries where respondents purport to know most about human rights generally are Turkey (79%), South Africa (76%), Malaysia (73%) and China (71%). Americans land eighth on the list at (65%) and Canadians rank 15th (57%). The Ipsos survey also asks whether people feel that laws protecting human rights make a difference in their lives. Overall, 53 per cent of respondents respond in the affirmative, with residents of South Korea (75%), China (70%), Turkey (69%) and India (69%) most likely to agree that human rights make a difference in their lives.

On this question, the Ipsos survey finds Americans in 10th place (59%); just behind respondents from the U.S. are those from Russia and the United Kingdom (58%). It is not entirely clear as to what might be concluded from the above responses to the 2018 Ipsos survey, as countries like Russia and China, amongst others, are not seen by most Americans and Canadians as setting a good

example regarding respect for human rights. Nor does the Ipsos survey¹ offer insight into what is meant by either general knowledge of human rights or how individuals see such rights making a difference in their lives.

The Ipsos survey raises a fundamental question about citizens' awareness of human rights both at the international level and in their own countries. What follows is an examination of how well Canadians are acquainted with select provisions of the country's own Charter of Rights.

In April 1982, the course of Canadian history was profoundly altered with the introduction of the Charter of Rights and Freedoms. The adoption of the Charter was an important milestone for the protection and promotion of human rights. The values and principles it embodied were widely seen as essential for building and sustaining democracy and for outlining the fundamental freedoms of Canadians. The Charter, among its many impacts, offered guidance for interaction between citizens of diverse origins.

Dominique Clément, a University of Alberta sociologist who specializes in the history of human rights, has stated that, "... awareness of human rights is greater than ever, while its meaning has expanded enormously since the postwar era."² He describes human rights awareness and affirmation as a largely post-1970s phenomenon and points to a widening definition of what constitutes a

human right (he offers a healthy environment as an example of something thought of as a right today that was not previously considered as such).

Others observe that, in Canada, human rights awareness has led to a slow but inevitable reckoning over the country's own historic abuses. In an October 2020 *Globe and Mail* article about Canada's historical human rights record, Toronto Metropolitan University history professor Jennifer Tunncliffe (a contributor to this volume) stated that "young people now are much more willing to be critical and think differently about Canada in ways that hopefully will make a change."³

How aware are Canadians of the country's Charter of Rights and Freedoms? To test such awareness, a Leger/Association for Canadian Studies survey asked whether Canadians have read the Charter of Rights. The survey reveals that about one in three Canadians say they have read the Charter. Those survey respondents between the ages of 18 and 34 were more likely to say they have read the document (43%) in contrast those over the age of 55, with just one in four in the older age bracket saying they've done so (see Table 1).

CHARTER KNOWLEDGE AND THE SUPREMACY OF GOD

The UDHR mentions neither God nor nature. But the debate over there being a reference to God in the UDHR was one of the most controversial

1 www.ipsos.com/en-us/news-polls/global-advisor-human-rights-2018

2 Morrow, 2020.

3 Morrow, 2020.

TABLE 1. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS – BY AGE COHORT

	TOTAL	18–34	35–54	55+
Read the Canadian Charter of Rights and Freedoms	33%	43%	36%	25%
Did NOT read the Canadian Charter of Rights and Freedoms	62%	51%	60%	70%
I don't know / I prefer not to answer	5%	6%	4%	5%
NET	100%	100%	100%	100%

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

issues that emerged during the drafting process, according to Humphrey. Several countries do make reference to God in their constitutions and Canada is no exception in this regard, as the opening line in the Canadian Charter of Rights and Freedoms stipulates that “Canada is founded upon principles that recognize the supremacy of God and the rule of law.”

As observed in the Table below, just as many Canadians agree as disagree — despite the Charter’s explicit validation of the concept — on whether “Canada is founded upon principles that recognize the supremacy of God and the rule of law.” Paradoxically those Canadians in the younger age cohorts — more of whom say they have read the Charter — are less likely than older Canadians to agree that Canada is founded upon principles recognizing the supremacy of God and the rule of law.

TABLE 2. CANADA IS FOUNDED UPON PRINCIPLES THAT RECOGNIZE THE SUPREMACY OF GOD AND THE RULE OF LAW BY AGE COHORT

	TOTAL	18–34	35–54	55+
Canada is founded upon principles that recognize the supremacy of God and the rule of law	38%	33%	36%	44%
Canada is NOT founded upon principles that recognize the supremacy of God and the rule of law	37%	41%	38%	33%
I don't know / I prefer not to answer	25%	26%	26%	23%
NET	100%	100%	100%	100%

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

Our contention is that the expression of disbelief that the supremacy of God and rule of law are part of the Charter is related to what respondents deem desirable. It is probable that those Canadians who prefer a more secular vision of Canadian society reject the proposition (see Table 2).

It is worth noting that Canada’s francophones are also far more likely than non-francophones to disagree with the idea that Canada is founded upon principles that recognize the supremacy of God and the rule of law. Other surveys that point to the more secular perspective held by francophones in Quebec in particular more so than others very likely explains the gap in the response to the proposition (see Table 3).

TABLE 3. CANADA IS FOUNDED UPON PRINCIPLES THAT RECOGNIZE THE SUPREMACY OF GOD AND THE RULE OF LAW (BY MOTHER TONGUE – FRENCH, ENGLISH AND OTHER)

	FRENCH	ENGLISH	OTHER
Canada is founded upon principles that recognize the supremacy of God and the rule of law	25%	41%	45%
Canada is NOT founded upon principles that recognize the supremacy of God and the rule of law	49%	35%	29%
I don't know / I prefer not to answer	26%	24%	26%
NET	100%	100%	100%

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

As the table below reveals, about one in three Canadians who say that they’ve read the Charter disagree with the idea that Canada is founded upon principles that recognize the supremacy of God and the rule of law, and nearly one of five in that group say they don’t know (see Table 4).

THE CHARTER AND LIMITS ON RIGHTS AND FREEDOMS

The Canadian Charter of Rights and Freedoms includes a notwithstanding clause and its presence has been the subject of much controversy. The Charter stipulates that legislatures in Canada have the power to override certain portions of the Charter for five-year terms when passing legislation. Most recently, it has been used in Quebec under Bill 21 to shield the law that prohibits the wearing of religious symbols in selected roles in the public sector. The clause acts, therefore, as a limit to the exercise

of certain rights and freedoms. Yet another example of how ‘rights’ can be limited pertains to restrictions on freedom of expression if legislators determine that said expression constitutes hate speech. While most Canadians recognize that the government of Canada can limit rights and freedoms, a substantial percentage of respondents to the survey either disagree with the idea or don’t know that it is the case. As observed in the Table below, amongst those Canadians that say they have read the Charter of Rights and Freedoms, some 30 per cent say they do not believe that the government can limit rights and freedoms and another 15 per cent say they don’t know. The percentage is higher amongst those saying that they have not read the Charter (see Table 5).

TABLE 4. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS; AND CANADA AND CANADA IS/IS NOT FOUNDED UPON PRINCIPLES THAT RECOGNIZE THE SUPREMACY OF GOD AND THE RULE OF LAW

	READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS	DID NOT READ THE CANADIAN CHARTER OF RIGHTS
Canada is founded upon principles that recognize the supremacy of God and the rule of law	47.7%	34.4%
Canada is NOT founded upon principles that recognize the supremacy of God and the rule of law	33.5%	39.2%
I don't know / I prefer not to answer	18.8%	26.4%
Total	100%	100%

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

TABLE 5. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS; AND CANADA AND THE GOVERNMENT OF CANADA CAN/CANNOT LIMIT RIGHTS AND FREEDOMS

	TOTAL	READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS	DID NOT READ THE CANADIAN CHARTER OF RIGHTS
The government of Canada can limit rights and freedoms	55%	65%	51%
The government of Canada CANNOT limit rights and freedoms	30%	24%	33%
I don't know / I prefer not to answer	15%	11%	15%
Total	100%	100%	100%

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

AMERICAN INFLUENCE ON CANADIAN VIEWS OF RIGHTS AND FREEDOMS

“Peace, order and good government” is a phrase that is used in Section 91 of Canada’s *Constitution Act*. But the phrase serves as a counterpart of sorts to the U.S. constitutional mantra — written into the 1776 Declaration of Independence — of each individual’s right to “life, liberty and the pursuit of happiness.” Yet, whether one purport to be or not to be Charter literate, nearly all Canadians believe that everyone in the country has the right to life, liberty and the pursuit of happiness. On the surface it is entirely conceivable that such words are sufficiently innocuous that agreement with the phrase is not particularly worrisome. But the strong association of the phrase with American constitutional principles suggests a further degree of unfamiliarity with the Canadian constitution among Canadian citizens (see Table 6).

WHICH RIGHTS DO CANADIANS THINK ARE MOST IN NEED OF PROTECTION?

Humphrey observed that the rights of minorities were the source of debate during the drafting of the UDHR, and ultimately it was decided not to use the term minorities in the Declaration. At that time, the national states that controlled the United Nations were more interested in assimilating their minorities — sometimes called nation-building — rather than in helping them retain their identities. With its 1982 Constitution, Canada attempted to break with a legacy of assimilation, although some would argue otherwise. Guarantees to language minorities and support for the preservation and promotion of the multicultural heritage of Canadians — as enshrined within the Charter — provide evidence of the direction to which the Charter aspired. Yet, when asked in 2023 which rights Canadians consider to be most in need of protection, they were less likely

TABLE 6. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS; AND EVERYONE IN CANADA HAS/DOES NOT HAVE THE RIGHT TO LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS

EVERYONE IN CANADA HAS THE RIGHT TO LIFE, LIBERTY AND THE PURSUIT OF HAPPINESS	TOTAL	READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS	DID NOT READ THE CANADIAN CHARTER OF RIGHTS
Yes	88%	85%	91%
No	9%	13%	7%
I don't know / I prefer not to answer	3%	2%	2%
Total	100%	100%	100%

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

TABLE 7. I HAVE READ/NOT READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS; AND RANK IN ORDER WHICH YOU THINK ARE MOST IN NEED OF PROTECTION IN CANADA

OF THE FOLLOWING, PLEASE RANK IN ORDER WHICH YOU THINK ARE MOST IN NEED OF PROTECTION IN CANADA	TOTAL	READ THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS	DID NOT READ THE CANADIAN CHARTER OF RIGHTS
Freedom of expression/speech	17%	19%	16.5%
The right to privacy	14%	11%	15%
Gender equality	13%	11%	13%
The right to vote	12%	11%	13%
Protection from racial discrimination	12%	13%	11%
Indigenous rights	8%	10%	7%
Sexual orientation (2SLGBTQIA+)	6%	6%	6%
Freedom of religion/conscience	5%	6%	5%
Freedom of peaceful assembly	5%	5%	4%
Minority language rights	3%	4%	3%
Other/ I Don't know	5%	4%	6%

Source: Leger Survey for the Association for Canadian Studies, September 25–29, 2023.

to select rights that are directly associated with minority protections. The ACS-Leger survey sees freedom of expression and the right to privacy as the top answers of Canadians when asked what requires most protection. Indigenous and language minorities were lower on the list of Canadians' priorities. It is worth noting that the differences with respect to which rights need most protection do not give rise to noteworthy differences between those purporting to have read the Charter and those saying they haven't read it (see Table 7).

CONCLUSION

The conclusions of the Leger-ACS survey raise questions about what might be described as Charter literacy, as well the state of education about human rights in the country. On some issues, respondents may be speaking to their preferences rather than to what is written in the Charter of Rights and Freedoms. To the extent that there is a link between knowledge about the Charter and a citizen's ability to defend their rights, the survey suggests a potential problem that would greatly benefit from further research. Canadians' lack of knowledge about human rights in Canada and elsewhere may also make them ill-equipped to meaningfully engage in debates about the many complicated rights issues affecting their lives and the overall well being of society. As an educator, it is safe to assume that John Humphrey would have endorsed efforts to expand collective knowledge about human rights and enhance thoughtful discussion about them.

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HUMAN RIGHTS IN CANADA: 'WE MAY BE BETTER THAN MANY, BUT THAT SHOULDN'T BE THE MEASURING STICK'

NINETTE KELLEY

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*Ninette Kelley spoke with Randy Boswell, guest editor of this edition
of Canadian Issues, in December 2023.*

Universally, across the globe, are we on the right path when it comes to human rights? Are we making continuous progress? Or is this something that can ebb and flow?

Well, from my perspective, I think the trajectory is definitely a positive one. But it's not necessarily a line that just keeps on accelerating upward... If you look at our society — the rights of women,

the rights of minorities, the rights of LGBTQ individuals — there's still a lot to a lot of progress we need to make, but it's nothing like it was 50 or 100 years ago. So, it's a question of whether you see the ground glass half empty, or the glass half full. I always prefer to see it as half full — but cautionary, that we can't become too complacent. Because there are so many areas in our lives, in our own practice, in practice of governments, that are inconsistent, and that we need to constantly hold ourselves to account.

The Universal Declaration of Human Rights is a set of words. It is a set of statements of principles. Do these things matter? Because, of course, human rights and their implications happen in real life, on the ground, where people live and interact with other people and militaries and other things. What does a declaration, a set of words, accomplish?

I think it does matter. I think it sets at least a normative framework, a threshold by which you can measure your actions against others. But the devil is always in the details. And I get a little tired, I would say, of a lot of rights talk. 'I have a right to this. I have a right to that.' Because quite frankly, I think we all have rights, and almost any manifestation of an expression of human preference or will or accommodation is a reflection of a right. Where it becomes difficult is when you have competing rights, (where one person says) 'I want my rights respected.' And another person says, 'That infringes on mine.' And that's where words themselves can't make the difference. What you need to do is (look to) a system of adjudication, of balancing of my rights against somebody else's — how much does this mean to me versus how what is the cost to others. And that's where I think the interplay

of rights becomes much more difficult. So while I think it's really important to have normative frameworks, I don't think standing in the middle of the street and chanting, 'We have a right and my right has been violated,' gets us very far. It's really in the adjudication of those rights, that the real progress is made, I would say.

In 1948, Canada initially abstained from supporting the Universal Declaration of Human Rights. It subsequently, under some pressure, signed on with the community of supporters who brought this into effect. Looking at Canada specifically, how would you characterize this country's embrace of the principles of human rights?

It depends on which period of time. Certainly in the post-war period, we were not very stellar. And in the area that I'm most familiar with, which is immigration, citizenship and all the rest, we were quite slow — particularly on immigration. We did not abandon our racial preferences until the late 1960s. We started to in the early 1960s, but they didn't really get banished until 1969 or so. We were very reluctant to take in refugees, including in the post-war period. We didn't sign the international refugee convention of 1951 until 15 years later, because we wanted to maintain our ability to select who came into our country and to do it in a way that preferenced those that we thought were the most desirable people. And others? We didn't open our doors. And even when we did start opening our doors in the refugee sphere, in the Cold War period, we were also very partial in that regard, too. So, tending to give preferential treatment to refugees from Communist bloc countries and very little attention to refugees from Africa or from the Americas who are fleeing right-wing dictatorships

and so forth. So I think our progress was initially very slow.

I would say, however, that with the advent of the multiculturalism policy, the *Multiculturalism Act*, the Charter of Rights and Freedoms, we made much more progress — which goes to show you, again, how normative policies can actually help shape developments going forward. So they remain very important. Now, are we fully there? Obviously not. I think there is a tendency for Canada and Canadians to view ourselves as honest brokers, as fair-minded, as generous. But there are many examples in our own policies, processes, approach to 'other', that still need a lot of work. And we may be better than many. But that shouldn't be the measuring stick. We should always strive to reach the ideals that we aspire to.

Your career has involved more than just speaking about human rights. And I wonder if you can conjure a time for us when you felt . . . I want to say an exhilaration, but maybe it is the opposite — frustration — when it comes to achieving progress in human rights. I'm asking you to talk about something personal. Is there something that stands out in your mind, from your time in this field, that helps illuminate what it means to achieve a human rights progress?

I've never really thought about it that way. But what an interesting question. There's not just one moment in time, but I can give you, maybe, more. I think I had the great privilege of sitting on the Immigration and Refugee Board, where I was heard refugee claims as well as appeals of removal orders in the denial of family sponsorships. And I have to say those two positions were wonderful. Because

we could provide, in that job, protection to people who were really in need of it. And I think that speaks well that we had a system and we continue to have a system that recognizes the rights of refugees to come to this country and have their claims determined, and to receive protection when they are in need of it. So that was pretty rewarding.

And secondly, on the immigration side, to be able to say to somebody who was brought up before the board for criminality, because they had mental difficulties, but they'd been in Canada for their whole lives, to give equitable relief in those circumstances. Again, that's a balancing of rights — the rights of the person versus the rights of Canada to say you must leave. And it was, it's in those, those experiences, I think, where you can feel heartened by the fact that we do have systems and mechanisms in place to give real meaning to the human rights that are embodied in these loftier principles.

Now, on the other side of it, I would say that probably my experience in Lebanon was among the most viscerally formative, in many respects, even though it came later in my career. But there, to witness first-hand the absolute shredding of all attention to human rights — the brutality inflicted on the Syrian refugees that fled into Lebanon, the loss of their entire lives and and really, in many respects, their futures, too. It was, well, it was searing in a way that I will never forget. And it shows how quickly we can slide off the rails — not we, but (a community, or some in a community) can violate people's individual human rights and collective human rights. (This is) tempered, of course, by the fact that there was a lot of international assistance that came in, to try to bring greater hope and dignity to the lives that were so uprooted and torn

apart. So you had those two sitting in the same in the same context — one, a positive one, that there's a lot that we can, coupled with this depressing scenario of ongoing war, conflict and violence that we see today, not just in Syria, but now elsewhere. That reminds us of how far we still need to go.

What is it that Canada can be doing — should be doing — on the international front to try to meet not just its own obligations, but to encourage other countries around the world to move in the right direction when it comes to recognizing and protecting human rights?

Well, it's interesting, as you say, not just in what we can do, because that's where I think you start. With Canada, we're very strong on vocalizing powerful sentiments of respect for human rights. And yet, in our own backyard, we have work to do. And I think if we look at our Indigenous communities, that is an ongoing issue that we need to really take much more seriously than we do right now. It's easy for us to preach to other countries (but) in our own backyard, we're not doing well. I can tell you, on the refugee side, — we're pretty good. We are seen as a very solid actor, and rightly so. We bring in a lot of refugees for resettlement. But remember, they're also ones that we select. And while the government selects persons that are the most vulnerable, we are moving more to a private sponsorship model that doesn't necessarily reflect (that); it chooses people (who) have connections in Canada, but they might not be the most vulnerable. And so, we're already starting to see our commitment to the most vulnerable refugees sliding. And where I think there's a real concern is our approach to asylum seekers who come to Canada to claim asylum. We are doing whatever we can to limit those numbers. We have

taken steps in the last 20 years to block access, to find people ineligible to make a refugee claim on, I would say, very dubious grounds. We've restricted rights of appeal, we've done all sorts of things that are inconsistent with our often-quoted and stated values of respect for human rights, responsibility and burden-sharing. That's in the refugee field, not to mention other areas of immigration law practice. So, I do think we need to start there. And I think we need to be a little bit humble on the international stage. I've been to many international meetings where Canada — for example in 2016 — got up and spoke in a very prideful way, understandably, about our how we had agreed to accept 40,000 Syrian refugees. But please remember, at the same time, Lebanon, which is probably a third of the size of Ontario, had taken in a million. So it's also respecting where we stand in relation not just to our peers in the developed world, but to those countries who have to shoulder far more in the middle- and low-income countries that are taking in way more refugees than we do. We need to to keep that perspective. I think sometimes we lose it.

We sometimes imagine ourselves, that Canada is a beacon to the world, when it comes to human rights. How bright, or dim, is that beacon in your view?

I think it's pretty good — I really do. But I think, again, we have to be humble. Look at the size of our population versus the size of our country . . . With environmental migration (for example), we should be expected to do more. I think you'd find us wanting, certainly, in respect to what our commitment is to foreign aid, foreign assistance, and also in terms of rights within the workplace and criminal law — there's all sorts of areas that I think we would

not compare favorably to other nations. I put the Nordics as an example. So I keep coming back to this — I think we've got to be humble and take and take a hard look at what we're doing well and what we still need to improve on, and be a little more transparent about recognizing the progress we still need to make.

