

Book Review

DIARIES OF A FORGOTTEN FRAMER

On the Edge of Greatness: The Diaries of John Humphrey, First Director of the United Nations Division of Human Rights. 4 vols. Edited and with introductions by A.J. Hobbins. Montreal: McGill-Queen's University Press, 1994–2000. Vol. 1: 1948–1949. Pp. 304, \$55.00, cloth. Vol. 2: 1950–1951. Pp. 308, \$55.00, cloth. Vol. 3: 1952–1957. Pp. 250, \$55.00, cloth. Vol. 4: 1958–1966. Pp. 228, \$55.00, cloth.

Reviewed by Mary Ann Glendon*

Though the name of John Peters Humphrey is not well known outside his native Canada, he was one of the twentieth century's most influential international lawyers. Thanks to the historical detective work of John Hobbins, associate director of the McGill University Libraries, Humphrey's authorship of the first draft of the 1948 Universal Declaration of Human Rights has been firmly established.¹ So far as Humphrey was concerned, however, his most important professional achievement was his stewardship of the U.N.'s Human Rights Division through twenty turbulent Cold War years (1946–1966).² Fortunately for historians and legal scholars, he was also a keen observer of people and events, who kept extraordinarily detailed diaries covering eighteen of those years. These journals, edited and annotated by Hobbins, are a rich trove of material for anyone interested in the early years of the United Nations or the evolution of the modern human rights project.

That Humphrey's contributions to the UDHR long went unrecognized was probably due to the fact that his work took place behind the scenes. The center stage was held by the eighteen members of the U.N. Human Rights Commission, chaired by Eleanor Roosevelt. When that high-profile group was assigned the task of preparing an "international bill of rights" in early 1947, Humphrey and his multinational staff began assembling documentation on all previously existing rights instruments. He remained at the Commission's disposition throughout his tenure at the U.N., providing re-

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1. A.J. Hobbins, *René Cassin and the Daughter of Time: The First Draft of the Universal Declaration of Human Rights*, 2 FONTANUS 7 (1989).

2. A.J. Hobbins, *Introduction*, 1 ON THE EDGE OF GREATNESS 7.

search, advice, and drafting services. Humphrey's presence assured continuity and preserved institutional memory. He attended nearly every meeting of the Human Rights Commission; an unobtrusive international civil servant playing his part in what he called "a great adventure."³

The Human Rights Commissioners were a highly diverse group of men and women, each representing a different country, and most endowed with forceful personalities. It was inevitable that their collaboration on a common project would be attended by linguistic, cultural, political, and personal conflicts and misunderstandings. Realizing that the committee as a whole was ill-suited to perform the actual drafting, the members unanimously approved a resolution that a "preliminary draft" should be prepared by their three officers (Chairman Eleanor Roosevelt, Vice-Chairman Peng-chun Chang of Nationalist China, and Rapporteur Charles Malik of Lebanon) "with the assistance of the Secretariat" (Humphrey and his staff).⁴ Mrs. Roosevelt promptly invited Chang, Malik, and Humphrey for tea at her Washington Square apartment, where, as she recalled in her memoir, "[i]t was decided that Dr. Humphrey would prepare the preliminary draft."⁵ It was a logical choice, especially since none of the officers was a lawyer. Humphrey was firmly grounded in both civil and common law and fluent in French and English. Additionally, he and his assistants had already collected pertinent material from all over the world and were continuously analyzing the proposals, models, and drafts arriving from governments, non-governmental organizations, and private individuals far and wide.

While Humphrey plunged ahead, however, the French and Soviet governments had second thoughts about the composition of the drafting committee. They complained that it included no representatives from Europe, Latin America or any of the people's republics.⁶ For the sake of harmony, Mrs. Roosevelt added five more members to the drafting committee. The expanded eight-person team consisted of the three original members as well as representatives from France, the Soviet Union, Australia, Chile, and the United Kingdom.⁷

By the time that the expanded committee held its first meeting in June of 1947, Humphrey had spent four full months preparing a draft declaration.⁸ Striving to be comprehensive, he borrowed freely from two models that were themselves based on world-wide surveys: a draft of a transnational rights declaration then being deliberated in Latin America by the predecessor of the Organization of American States, and a "Statement of Essential Human

3. JOHN P. HUMPHREY, *HUMAN RIGHTS AND THE UNITED NATIONS: A GREAT ADVENTURE* (1984).

4. Human Rights Commission, First Session, Summary Records, at 5, U.N. Doc. E/CN.4/SER.12 (1947).

5. ELEANOR ROOSEVELT, *ON MY OWN* 77 (1958).

6. Human Rights Commission, *supra* note 4, at 2.

7. *International Bill of Rights to be Drafted: Secretariat Documented Outline Submitted*, U.N. WEEKLY BULL., June 17, 1947, at 639.

8. Hobbins, *supra* note 1, at 22. See also *International Bill*, *supra* note 7, at 639.

Rights” produced on the basis of a comparative study sponsored by the U.S.-based American Law Institute.⁹ After poring over all the material available to him, he came up with a list of forty-eight items that represented, in his view, the common core of the documents and proposals his staff had collected. He had aimed, he said, at including “every conceivable right which the Drafting Committee might want to discuss.”¹⁰

In effect, Humphrey’s forty-eight-article draft provided the drafting committee with a distillation of nearly 200 years of efforts to articulate the most basic human goods and values in terms of rights. It contained the “first generation” political and civil rights found in British, French, and American revolutionary declarations of the seventeenth and eighteenth centuries: protections of life, liberty and property; and freedoms of speech, religion, and assembly. It also included several “second generation” economic and social rights: rights to work, education, and basic subsistence. In a separate document, Humphrey submitted an extensive annotation for each article in his draft, detailing its relationship to rights instruments then in force in the U.N.’s Member States. In total there were over four hundred pages of commentary. The U.N. Weekly Bulletin described it as “the most exhaustive documentation on the subject of human rights ever assembled.”¹¹

Apparently daunted by this mountain of material, the Drafting Committee created a small four-person working group (Roosevelt, Malik, the French delegate René Cassin, and the U.K. representative Geoffrey Wilson) “to suggest a logical arrangement of the articles of the Draft Outline supplied by the Secretariat” and “a redraft of the various articles in the light of the discussions of the Drafting Committee.”¹² The working group soon decided that the document would have greater unity if the revisions were handled by a single drafter, and asked Cassin “to undertake the writing of a draft Declaration based on those articles in the Secretariat outline which he considered should go into such a Declaration.”¹³ With the help of one of Humphrey’s assistants, Cassin revised the draft over a single weekend.¹⁴ He preserved most of the substantive content of Humphrey’s draft, but added a preamble, followed by what is known in continental legal terminology as a “General Part”—a set of introductory principles to guide the interpretation of the specific provisions that followed. He arranged the rights themselves according to the logic of the general principles, proceeding from those belonging to persons as such to the rights of persons in social and political relation-

9. HUMPHREY, *supra* note 3, at 31–32. See also *International Bill*, *supra* note 7, at 639.

10. Human Rights Commission, Drafting Committee, First Session, Verbatim Record of June 9, 1947 Meeting (Charles Malik Papers, Library of Congress, Manuscript Division) (on file with *Harvard Human Rights Journal*).

11. *International Bill*, *supra* note 7, at 639.

12. Human Rights Commission, Report of the Drafting Committee, First Session, at 3–4, U.N. Doc. E/CN.4/21 (1947).

13. *Id.* at 4.

14. Hobbins, *supra* note 1, at 12.

ships. A comparison of the two drafts, however, shows that Cassin introduced very little new content.¹⁵ Though the document underwent many further changes over the next year and a half, most of the ideas in Humphrey's draft ultimately found their way into the Universal Declaration.

Many years later, a peculiar dispute developed over the question of who had written the first draft of the Universal Declaration. It was not exactly a paternity dispute since neither Cassin nor Humphrey had ever claimed to be the sole author of the Declaration (as Humphrey once put it, the Declaration "had no father in the sense that Thomas Jefferson was the father of the Declaration of Independence," because "literally hundreds of people contributed to its drafting").¹⁶ But when Cassin was in his seventies, he claimed that he had had "sole responsibility" for the "first draft," referring to Humphrey's contribution only as "an excellent basic documentary work."¹⁷ Some of Cassin's admirers then began referring to him as the "father" of the Declaration.¹⁸ In 1958, the U.N. itself helped to perpetuate that myth by permitting the French government to organize a display of Cassin's handwritten redraft in the lobby of U.N. headquarters on the occasion of the Declaration's tenth anniversary.¹⁹ Humphrey tried to set the record straight in his 1984 memoir,²⁰ but some confusion persisted in the literature.²¹

That Humphrey wrote the first draft, and that Cassin's draft was a revision of Humphrey's, is clear from the official U.N. records, as proved by Hobbins, and independently confirmed by others.²² To give Cassin his due, his revisions did make the document a more integrated whole (like a civil-law code), rather than a list or "bill" of rights in the Anglo-American sense. However, it was Humphrey's wide-ranging research that established the basis for a credible claim of universal applicability. It is hard to imagine how the Commission could have produced such a broad-based document without

15. JOHANNES MORSINK, *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: ORIGINS, DRAFTING, AND INTENT* 8 (1999).

16. JOHN P. HUMPHREY, *NO DISTANT MILLENNIUM: THE INTERNATIONAL LAW OF HUMAN RIGHTS* 149 (1989).

17. René Cassin, *Historique de la Déclaration Universelle*, in *LA PENSÉE ET L'ACTION* 108 (1972): "J'le fus chargé par mes collègues de rédiger, sous ma seule responsabilité, un premier avant-projet."

18. The biography by MARC AGI, *RENÉ CASSIN: PRIX NOBEL DE LA PAIX (1997-1976): PÈRE DE LA DÉCLARATION UNIVERSELLE DES DROITS DE L'HOMME* (1998), is misleadingly subtitled. In the text, Agi concedes that Cassin was not the "sole father" of the Declaration and that the Declaration was a "collective work," but claims too much when he says that "in comparison with what other persons brought to the project in their individual capacities, [Cassin] was its principal animating spirit." *Id.* at 229. Similar claims are made by Geoffrey Best, *Whatever Happened to Human Rights?*, 16 *REV. OF INT'L STUD.* 3 (1991).

19. HUMPHREY, *supra* note 3, at 42-43.

20. *Id.*

21. Gérard Israël states that Cassin was Rapporteur of the Human Rights Commission, a mistake apparently based on the fact that he was made Rapporteur of a small working group. GÉRARD ISRAËL, *RENÉ CASSIN 186-87* (1990). Disregarding Humphrey's role, Israël mentions only that Cassin was "greatly aided" by the "documentation" that the Secretariat assembled.

22. See the careful examination of the evidence and the detailed chronology in Hobbins, *supra* note 1. See also MARY ANN GLENDON, *A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS* 46-48, 64-66 (2001), and MORSINK, *supra* note 15, at 6.

the extensive staff work that Humphrey supervised. The myth that Cassin was the principal architect of the Universal Declaration of Human Rights not only scanted the drafting contributions of other key individuals (especially Humphrey, Malik, and Chang), but obscured the fact that the Declaration is a synthesis of ideas from many cultures and legal traditions.

One of Humphrey's most consequential decisions was to include social and economic rights in the preliminary draft. That part of the UDHR is so foreign to mainstream Anglo-American legal thinking today that many people assume those articles were included at the instance of the Soviet Union. The true story is quite different. Humphrey based the articles in question on provisions already in effect in a great many countries, some of them dating back to paternalistic eighteenth-century constitutions, many of them grounded in Christian social thought. Though the specific details of these provisions proved a continuing source of controversy within the Commission, no nation opposed them in principle. Even the U.S. State Department, under President Harry Truman, had included social and economic rights in the draft declaration that it had submitted for the Commission's consideration. In fact, the Soviet bloc cited the "weakness" of the UDHR's social and economic provisions as one of their reasons for abstaining from the General Assembly vote approving the Declaration.

From his post on the sidelines, throughout 1947 and 1948, Humphrey observed the debates that shaped one of the most important landmarks in the history of freedom. In August 1948, just before the Declaration was submitted to the General Assembly for final approval, he began keeping a diary. By that time, relations between the U.S.S.R. and the West had deteriorated to the point where most observers believed the Declaration would be dead if it were not adopted by the time the General Assembly adjourned in December. Before the General Assembly could vote though, the document had to be approved by the U.N. Committee on Social, Economic and Cultural Affairs (known as Committee Three). Most of the members of that large committee had never seen the Declaration before, and they took two long months and over eighty meetings to complete their review. The Soviet bloc representatives exploited the situation, making strenuous efforts to prolong the Committee Three proceedings until the clock had run on the Paris session. During those weeks, Humphrey found the role of a silent bystander almost unbearably frustrating. "Sitting next to the Chairman, and both professionally and emotionally involved, I wished at times that I were a delegate; . . . [t]here were times when I felt that I must speak, if only to set the record straight."²³

Finally, on December 7, 1948, the Committee Three approved the draft, with some revisions. Three days later, the General Assembly approved the

23. HUMPHREY, *supra* note 3, at 70–71.

UDHR without a single dissenting vote. The six-member Soviet bloc, however, abstained, as did South Africa and Saudi Arabia.

For the first four years after this historic vote, Humphrey wrote in his diaries almost every day. The entries in Volumes 1 and 2 (1948–51) convey his sense of excitement at being so close to history in the making. Together with the recently published papers of Charles Malik,²⁴ these early volumes provide the best eyewitness accounts we have of the framing of the UDHR. Not the least of their interest resides in Humphrey's verbal portraits of the members of the Human Rights Commission, a remarkable group of men and women. Malik, the Rapporteur, was the Commission's most formidable intellectual, widely respected for his independence and integrity. A Lebanese philosophy professor-turned-diplomat, he was the chief spokesman for the Arab League during the Palestine crisis and was later elected to many key posts in the U.N., including the presidency of the General Assembly. Cassin was an ardent Zionist, who had served as Charles de Gaulle's wartime legal adviser and would later become a judge on the European Court of Human Rights. In 1968, he received the Nobel Peace Prize for his work in human rights. Peng-chun Chang, the vice-chairman of the Commission, was a leading Chinese educator-turned-diplomat who had also achieved renown as a poet and playwright. Presiding over the eighteen-member body from 1947 to 1952 was Eleanor Roosevelt, probably the best-known and most admired woman in the world at that time.

Starting in 1952, the mood of the diaries change as Humphrey records a number of developments that dulled the edge of his enthusiasm. Morale in his department suffered when several members of the staff came under investigation in the McCarthy era; the work of the Human Rights Commission stalled as it turned from framing rights to devising methods for their implementation; and the U.N.'s Secretary General Trygve Lie showed little interest in human rights. In 1953, Humphrey's hopes briefly revived when Dag Hammarskjöld succeeded Lie, but were dashed when Hammarskjöld turned out to be actively hostile to the human rights program and ordered cutbacks in its staff and funding.

During the years covered by Volumes 3 (1952–57) and 4 (1958–66), Humphrey's entries were more sporadic, but they contain much valuable information on the Hammarskjöld years and on the origins of the idea for one of Humphrey's pet projects, the establishment of a High Commissioner for Human Rights. With the Human Rights Commission deadlocked over Covenants to implement the UDHR, Humphrey sought to keep the human rights program alive by holding a series of seminars as part of the U.N.'s technical assistance program. These seminars, devoted to specific human rights topics, were held all over the globe. Thus, in Volume 4 one finds entries from Baguio in the Philippines, Tokyo, Lima, Santiago, Buenos Aires,

24. See CHARLES MALIK, *THE CHALLENGE OF HUMAN RIGHTS: CHARLES MALIK AND THE UNIVERSAL DECLARATION* (Habib C. Malik ed., 2000).

Montevideo, Teheran, Ljubljana, and Ulan Bator, as well as from New York and Geneva. Humphrey's impressions of the famous and near-famous characters he encountered in his work and travels also make for interesting reading, even though he seems to have had no taste for gossip whatsoever. He seems to have compensated for declining job satisfaction by devoting more time to reading, theater-going, concerts, and bird-watching. According to Hobbins, "Prior to 1952, Humphrey worked for love of his job and a belief in what the U.N. was doing. After this, he appears to have stayed on from a sense of duty to protect the programme and the Division [of Human Rights] from an unfriendly world."²⁵ Upon his retirement from the U.N. at age sixty-one, Humphrey returned to teaching law at McGill. He remained active in the cause of human rights, helped to establish the Canadian branch of Amnesty International, championed the cause of Korean comfort women, and wrote his memoirs.

On more than one occasion, Humphrey expressed the belief that "every individual can make some contribution to the development of the [human] race, and [. . .] he lives on as it were in that contribution."²⁶ His own contributions to international human rights were, by any standard, exceptional. Certainly he deserves to be ranked with Eleanor Roosevelt, Charles Malik, Peng-chun Chang, and René Cassin as one of the key "founding parents" of the Universal Declaration of Human Rights. With the publication of his diaries, he now adds to our understanding of an important phase of legal and political history.

The diaries have been made eminently usable by their editor, who knew Humphrey in the latter's later years at McGill. Hobbins tracked down and supplied background information for literally thousands of references to names. It should also be noted that Hobbins has written a series of fine biographical essays that illuminate and contextualize the main themes of the diaries.²⁷ If those essays could be collected in a companion volume, they would provide a perfect capstone to this valuable series.

25. Hobbins, *supra* note 2, at 7.

26. A.J. Hobbins, *Human Rights inside the United Nations: The Humphrey Diaries, 1948-1959*, 4 FONTANUS 143, 153 (1991). See also Humphrey's Letter of September 30, 1928 to his sister Ruth in A. J. Hobbins, "Dear Rufus . . .": A Law Student's Life at McGill in the Roaring Twenties, from the Letters of John P. Humphrey, 44 MCGILL L.J. 753, 775 (1999).

27. See also Eleanor Roosevelt, *John Humphrey and Canadian Opposition to the Universal Declaration of Human Rights: Looking Back on the 50th Anniversary*, 53 INT'L J. 325 (1998); *Humphrey and the Old Revolution: Human Rights in the Age of Mistrust*, 8 FONTANUS 121 (1995); *Mentor and Protégé: Percy Corbett's Relationship with John Peters Humphrey*, 37 CANADIAN Y.B. INT'L L. 3 (1999).