

'The Universal Declaration of Human Rights: Sixty years on'

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This is quite a year for 60th anniversaries.

The NHS is 60 years old this year. So is Prince Charles, the world health organisation, the game of scrabble and of course...Any Questions.

At a special birthday edition recently, the any questions panellists were asked about the most significant developments of the last 60 years.

Some mentioned the NHS, others the internet and globalisation. But no-one uttered a word about the Universal Declaration of Human Rights and the revolution in rights consciousness it gave birth to.

I found myself wondering what the drafters of that famous document would think if they were to come back today and hear that this illustrious panel had overlooked their contribution?

A cast of 5 ghosts assembled before me to give their verdict on the last 60 years.

First up, was Eleanor Roosevelt, the wife of the US president. As the first chair of the fledgling United Nation's Commission on Human Rights,¹ she drove the process that led the UN to adopt the Universal Declaration of Human Rights (or UDHR). Her role in drafting the declaration is sometimes overstated, but it would probably never have seen the light of day without her. Eleanor clearly fitted her own description of a woman as "like a tea bag - you never know how strong she is until she gets in hot water."

Second, came Chang Peng-Chun, the Chinese playwright, philosopher and diplomat who was vice-chair of the commission. He is credited as resolving philosophical and ideological stalemates in the negotiations over drafting by quoting Confucian proverbs like "sweep the snow in front of one's own door; overlook the frost on others' roof tiles."

My third apparition was, Dr Charles Malik, the Lebanese academic and ethicist who, as rapporteur, played a vital role in shaping the ethical contents of the UDHR.

Fourth, was Rene Cassin, the Jewish resistance activist and legal advisor to Charles de Gaulle, who played a major drafting role. He later went on to become president of the European Court of Human Rights.

¹ The Commission on Human Rights, a standing body of the United Nations, was constituted to undertake the work of preparing what was initially conceived as an International Bill of Rights. The membership of the Commission was designed to be broadly representative of the then membership of the UN with representatives of the following countries serving: Australia, Belgium, Byelorussian Soviet Socialist Republic, Chile, China, Egypt, France, India, Iran, Lebanon, Panama, Philippines Republic, United Kingdom, United States, Union of Soviet Socialist Republics, Uruguay and Yugoslavia

Finally, John Humphrey, the Canadian representative of the UN Secretariat who, as a legal academic, provided the first draft of the declaration. Like civil servants the world over, his contribution is often overlooked.

These five central figures were joined on the UN Human Rights Commission by representatives from 14 other nations from different regions of the world, including Australia, Belgium, Chile, Egypt, India, Iran, the Philippines, the Soviet Union and the UK.²

The most notable exception was sub-Saharan Africa, still largely colonised by the European powers, [although in enunciating a set of internationally agreed standards for all humankind, the UDHR was subsequently to provide a lever in some struggles for independence].

The aims of the drafters can be summed up as threefold,

1. To enhance protection for individuals from state tyranny and abuse wherever they live in the world, and regardless of other cultural or religious differences.
2. To foster peace between nations on the basis that states that treat their own citizens well were less likely to have aggressive designs on other nations.
3. To promote understanding of the inherent dignity and equal worth of “all members of the human family.”

How would these ghosts of drafters past assess progress on these goals over the last 60 years?

In their quest to fulfil goal no 1 – bolster the protection of individuals by influencing governments throughout the world - they would surely be gratified that whereas 8 countries abstained³ when the UDHR was adopted by 48 governments on 10 December 1948⁴, nowadays all 192 UN member states have signed up as a condition of UN membership.

The drafters would be pleased that December 10th is still celebrated in the four corners of the globe as international human rights day. And they would surely be delighted to

² The full list of 18 nations represented on the first UN HRC were: Byelorussia, China, Lebanon, Panama, UK, Uruguay, Egypt, France, India, Iran, Ukraine, Soviet Union, Australia, Belgium, Chile, Philippines, USA, Yugoslavia.

In 1948, after two years, Byelorussia and Panama were replaced by Denmark and Guatemala.

³ The 8 abstainers consisted of all the Soviet bloc states, South Africa, and Saudi Arabia.

⁴ The following countries voted in favour of the Declaration: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Thailand, Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela.

know that the *Guinness Book of Records* now describes the UDHR as the "most translated document" in the world?

And whilst the declaration was never intended to be a legally binding treaty as such, most informed commentators agree that, despite all the terrible events of the last 6 decades, it has exerted a significant moral and legal influence across the globe. Parts of its terms are cited so often that they have become generally accepted as part of 'customary international law.'

Even its critics would generally accept that the UDHR was a triumphant example of the optimism of the intellect *and* the will (to misquote Gramsci). Crafted to celebrate the best that humans are capable of, amidst the debris and ashes of a devastating world war, it is very difficult to imagine the nations of the world agreeing to draft such an aspirational declaration now.

It is easy to forget that until the UDHR was adopted, virtually *any* criticism - let alone interference - by one government with the treatment of the citizens of another, was considered a breach of the principle of national sovereignty. Human rights abuses were perfectly lawful if they complied with a country's domestic law. However *morally* repugnant, Nazi Germany's racial purity policies were all in accordance with the law.

The influence of the UDHR has not stopped at exhortation. It has followed the biblical injunction to go forth and multiply. Its 30 articles -which gave equal weight to traditional civil and political liberties alongside path breaking economic, social and cultural rights - have formed the backbone of about 30 subsequent international and regional treaties. Most attribute their parentage to the UDHR in their preamble.

Nearly two decades after its introduction, two legally binding international covenants were adopted by the UN; one on civil and political rights (which Britain was very influential in drafting) to please the west and the other on economic, social and cultural rights to please the soviet dominated east (this was the Cold War!).⁵ Together with the UDHR, these were labelled the international bill of rights.

There is no equivalent to the European Court of Human Rights to enforce these treaties, but there is a mechanism for victims (whose states have ratified the relevant protocol) to complain to the UN's Human Rights Committee which can name and shame states that violate their citizens' rights.⁶

A new International Criminal Court, just six years old but recognised by 108 states – plus ad hoc international tribunals in Rwanda, Kosovo, the former Yugoslavia, Cambodia and East Timor - signal to dictators and torturers that they can no longer rely on the world turning away.

⁵ *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*, both adopted on 16 December 1966 and ratified ten years later.

⁶ In relation to the ICCPR. A similar mechanism for the ICESCR is in the process of being adopted by the UN.

The UDHR has also served as the model for many domestic bills of rights around the world. This includes the UK's Human Rights Act.

Although drafted to respect Britain's constitutional tradition of parliamentary sovereignty with parliament, rather than judges, having the final say, the rights in the HRA are, of course, drawn from the European Convention on Human Rights (ECHR). It is not always appreciated that the ECHR explicitly owes its genesis to the universal declaration. The civil and political rights it protects are largely drawn from the UDHR, refined and adapted by British lawyers, generally to make them more specific, or limited.

More than 80 human rights commissions, committed to promoting the values and importance of human rights – often at great risk to the lives of their staff – now operate in virtually all regions of the world.

One of the newest kids on the block is our own Equality and Human Rights Commission (EHRC). Our first statutory human rights body - charged with protecting and promoting human rights and the HRA - is also celebrating the 60th anniversary this week, though thankfully without putting any of us in danger; unless you include the risk of falling flat on your face when giving lectures !

Sitting on a human rights inquiry panel for the EHRC over the last few months, we have heard evidence that human rights can fortify individuals to challenge bureaucracies or participate more effectively in the decisions that effect their lives or help public officials to design policies that are more respectful of the most vulnerable people in their care.

Ghost no 1 should be pleased, for this precisely conforms to Eleanor Roosevelt's aspiration that the UDHR should spur protection "in small places...so close and so small that they cannot be seen on any maps of the world....the world of the individual person; the neighbourhood he lives in; the school or college he attends... such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, [she added] they have little meaning anywhere."⁷

But it hardly needs saying that the UDHR's goal no 1 is far from realised in the 'big places' of the world.

The catalogue of human misery around the globe appears to continue unabated, mocking the call of 'never again' which resounded in the ears of the drafters. In 2007 Amnesty International documented instances of torture and other cruel, inhuman or degrading treatment in 81 countries.

⁷ Eleanor Roosevelt, 'The Great Question', address to the United Nations Commission on Human Rights, 1958.

The international bill of rights might have provided a stronger benchmark by which to judge such violations, but their transparency is aided as much by the ingenuities of satellite television and the internet, as by UN reporting mechanisms.

Just in the last month we have witnessed peaceful democracy protesters in Burma sentenced to 65 years in prison, the live burial or stoning of rape victims in the border areas of Afghanistan and Pakistan, unspeakable atrocities on all sides in the Democratic Republic of Congo, and the distressing collapse of the once thriving Zimbabwe.

As I write this lecture, nearly 200 people lie dead in Mumbai, killed not by state forces but by a group of young men. Terror as a political weapon is not new, but its indiscriminate use and potential for mass casualties is escalating. It was Mary Robinson, the former UN High Commissioner for Human Rights, who was the first to describe the scale and systematic nature of the attacks on 11 September 2001 as a 'crime against humanity'.⁸ Human rights values speak loudly to such callous disregard for human life. "By any means necessary" is no part of the human rights lexicon.

Peace on earth has self-evidently not broken out! If the drafters' second goal - of contributing to the ending of war - was ever realistic, it seems a more remote possibility than ever. That said, there is some evidence that allegiance to a common standard of democracy and human rights, bolstered by the European Convention on Human Rights, has helped secure peace in formerly turbulent Western Europe in the last 60 years, just as Winston Churchill envisaged when he championed the Council of Europe, with human rights as its central mandate.

What the UDHR drafters could *not* have predicted in 1948 was that a new kind of war would be declared in the beginning of the 21st century; on a noun - terror - not a country.

A war whose first casualty was the human rights protections that it was supposedly waged to defend. A war fought in the name of democracy and liberty using some of the techniques of those who most despise democracy and liberty.

There is not much more than can be said about this, which has not already been said, but the greatest difficulty with this war has been that the ground rules that were carefully and delicately put together after 1945, were said to no longer apply in this new undefined battlefield.

If we think back 60 years to 1948, what a contrast! It was a year of much tension and renewed conflict around the world - between peoples, as well as between states - although only 3 years after the end of WW2.

⁸ Mary Robinson, *Lecture, Justice*, March 2006.

Ghandi was assassinated and the fall out over the partition of India and Pakistan was reverberating with catastrophic results that are still continuing.

The state of Israel was recognised by the UN and the Middle East conflict - which still rages – kicked off with all its concomitant human misery. And the descending cold war and arms race was already freezing out hopes for a peaceful future.

Yet the response of global leaders to the fractured world of 1948, and the Holocaust and war which preceded it, was not that torture *could* be legitimate in certain circumstances, but that it should be *forever* banned. Not that fair trials and indefinite detention were negotiables, but that the natural justice principles of the Magna Carta needed to be revived.

Now, perhaps, we have reason to be optimistic that the war on terror - at least - might be drawing to a close.

I know there are more expectations on President Elect Obama than on Santa Claus at Christmas, but his statement last year that *"it's time to tell the world that America rejects torture, without exception or equivocation"*⁹ gives cause for hope, audaciously or otherwise.

It certainly bears contrast to his predecessor. The previous year - amidst allegations that the CIA used water boarding as a permissible interrogation technique – George. W. Bush queried the meaning of the phrase *"outrages on human dignity,"* in the Geneva Convention.¹⁰

It was, of course, *"barbarous acts which outraged the conscience of mankind,"* - as the preamble to the UDHR puts it - that drove the lobbying of NGOs like the NAACP¹¹, the Federal Council of Churches and the American-Jewish Committee at the end of WW2.

They were determined that the sacrifice of a generation - and the near genocide of a people - would not be in vain. An international bill of rights would become as iconic of

⁹ *"The secret authorization of brutal interrogations is an outrageous betrayal of our core values, and a grave danger to our security. We must do whatever it takes to track down and capture or kill terrorists, but torture is not a part of the answer - it is a fundamental part of the problem...Torture is how you create enemies, not how you defeat them. Torture is how you get bad information, not good intelligence. Torture is how you set back America's standing in the world, not how you strengthen it. It's time to tell the world that America rejects torture without exception or equivocation. It's time to stop telling the American people one thing in public while doing something else in the shadows. No more secret authorization of methods like simulated drowning."* Barack Obama statement, 'Torture and secrecy betray core American values', 4 October 2007, available on www.barackobama.com

¹⁰ President G.W. Bush, *Press Conference*, Washington, 15.9.2006. Bush is misquoting the Third Geneva Convention (the Geneva Convention Relative to the Treatment of Prisoners of War), August 1949, Part 1, Article 3 which speaks of "outrages on personal dignity", not "outrages on human dignity" as Bush says. This is among the acts that are and shall remain prohibited at any time and in any place whatsoever with respect to persons presently taking no active part in hostilities, including prisoners of war.

¹¹ National Association for the Advancement of Coloured People

what it means to be human, as the US bill of rights was symbolic of what it means to be American.

This is the backdrop by which to judge the third, and in my view most important, goal of the drafters – to gain global recognition of the inherent dignity and worth of all human beings .

Why do I say *most* important? Well partly because, as a non legally binding declaration, this is the only realistic way to judge it. If the UDHR does not score well on that count, it arguably does not score at all!

But also because, for the very same reason, it has not been “captured and drained of life by lawyers” (to quote my colleague Professor Conor Gearty)¹², freeing the declaration to stand as a set of broad ethical values - or in Professor Amartya Sen's terms, “ethical demands”¹³ - which can inspire present and future generations world-wide. This is the mission of the UDHR. To underline common standards of decency in a diverse world, in a manner which reflects that diversity.

The essential message of the UDHR is often assumed or taken for granted, with little interrogation of its precise terms. Critics and supporters alike generally presume it is fundamentally a creature of the western Enlightenment, repackaged for the mid 20th century, with pretensions – substantiated or otherwise -to universality.

Yet this is to miss the distinguishing features of the declaration, reflecting the circumstances in which it was drawn up and the diverse philosophies and backgrounds of the drafters.

Notwithstanding the triumph of the defeat of fascism, the identity of Europe as the so-called ‘crucible of civilisation’ had been deeply shaken by the events of the 1930s and 40s which had taken root on European soil. The collapse of the Weimar Republic in Germany had exposed democracy as a weak defence against a ruthless demagogue determined to exploit its loopholes and capable of rousing citizens to effectively disenfranchise themselves.

“Enlightenment values” of liberty and justice had been reviled and betrayed by Hitler's Germany and Stalin's Russia alike – apparently two ends of a political spectrum, uniting in their disdain of individual rights and freedoms. The dream of Soviet style communism as liberation, which had ignited a generation, was looking tarnished at best and preposterous at worst.

¹² *Doing Human Rights: social justice in a post socialist age*, Conor Gearty, 25 November 2008.

¹³ ‘Elements of a Theory of Human Rights,’ *Philosophy and Public Affairs*, Vol 32, No 4 ,p319.

But it was the specific nature of the persecution and suffering which gave birth to the declaration that demonstrated, if any demonstration were needed, that tyranny cannot be conquered by restraints on governments alone.

This is all the more the case when majorities turn on minorities, as the holocaust had so amply demonstrated, with its industrial methods of extermination to which so many private businesses and public officials had contributed. Across Europe Jews, Gypsies, homosexuals, disabled people, trade unionists and political opponents had been dehumanised and massacred in their millions, with the active collaboration or passive acquiescence of thousands of their fellow citizens.

The UDHR is generally understood as a restatement of the fundamental rights which are necessary to protect individuals against such tyranny; deservedly so. It is also beyond argument that many of the basic assumptions, of the 'natural rights movement' which had heralded the French and American revolutions were reproduced in the UDHR, most notably this statement in the preamble:

"it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law."

But ghost no 4, Rene Cassin, was keen to establish that the UDHR was *more* than an "offshoot of the eighteenth century tree of rights."¹⁴

There were three distinctive features to the UDHR, each of which bears some exploration.

First, the preamble was not just addressed to states, or to the citizens of particular countries, as in the idiom of the French and American bills of rights.

For the first time this was a document aimed at *all* "the peoples" of the world, not just to protect them from abuse of power by others, but to encourage them to take responsibility for justice and peace *themselves* and to "strive by teaching and education to promote respect for rights and freedoms (as the preamble puts it)"¹⁵.

The drafters of the UDHR concluded that freedom from unnecessary restraint was not a sufficient ideal on which to stake the future of the world. Freedom had to be capable of being realised, not just formally granted.

The experiences they had just lived through led them to conclude that international peace and prosperity were *unachievable* unless every man, woman and child has a

¹⁴ Johannes Morsink, *The UDHR, origins, drafting and intent*, University of Pennsylvania Press, 1999, p245.

¹⁵ *Preamble*, last para.

stake in their own future, an opportunity to flourish and an entitlement to be treated with equal respect and dignity. But to achieve this vision, people needed to be active participants, not passive recipients of a benign order.

“All human beings ...should act towards one another in a spirit of brotherhood” the first article thunders.

If this sounds like an old testament injunction, it is because it was intended to! According to Rene Cassin, it was inspired by the biblical imperative to “love thy neighbour as thyself.”¹⁶

This attempt to persuade people of the equal worth of every individual through moral exhortation, rather than legal compulsion, was emphasised by Cassin who described the declaration as “the first document about *moral* value adopted by an assembly of the human community.”¹⁷

The second departure from a classical enlightenment frame addressed head on critics as diverse as Edmund Burke, Jeremy Bentham and Karl Marx who dismissed the idea of ‘inalienable rights,’ not just as “nonsense upon stilts,”¹⁸ but as fostering a society of isolated individuals, pursuing their selfish wants and needs.

The drafters devoted considerable time to discussing the social nature of human beings and the responsibilities they owe to each other and the wider community, on whose flourishing individual rights depend.

You could be forgiven for thinking you’ve stumbled on a debate between Jack Straw, David Cameron, the Archbishop of Canterbury and Shami Chakrabarti if you immerse yourself too deeply, as I have, in the range of passionately held views expressed six decades ago in the UN Human Rights Commission on the interrelationship between rights and responsibilities.

The drafters disdained the idea that they were creating a new philosophy. Humphreys (our ghost no 5) - in the way of all good civil servants - especially eschewed this as a project.

Yet a fusion of liberal and socialist principles, with deeply held tenants from the Abrahamic faiths combined with Confucian philosophy, produced an alchemy best summed up by ghost no 2, P. C. Chang when he said

¹⁶ Leviticus XIX, *From the Ten Commandments to the Rights of Man*, Rene Cassin, speech in France, 1969. Published in *Of Law and Man*, Shlomo Shoham (Ed), Sabra Books (1971).

¹⁷ Moresink op cit, p 33.

¹⁸ Jeremy Waldon (ed) *Nonsense Upon Stilts- Bentham, Burke and Marx on the Rights of Man* (Menthuen, 1987).

“ the aim of the United Nations was not to ensure the selfish gains of the individual but to try and increase man’s *moral* stature. It was necessary to proclaim the duties of the individual, for it was a consciousness of his duties which enabled man to reach a high moral standard.¹⁹”

But before some of our political leaders get too excited, the drafters explicitly ruled out producing a catalogue of individual duties or constructing a framework in which individuals forfeited their rights if they failed in their responsibilities.

Instead they affirmed, in article 29,²⁰ the interrelatedness of human beings, and the consequential duties individuals owe to the *community* – a term carefully chosen instead of state - without which none of us could hope to flourish or develop our full personality.

This was the context in which proportionate limitations on individual rights were given legitimacy (also in article 29) to “respect the rights of others and ...the general welfare in a democratic society.” Translated, this means human rights are there to protect us from threats to our safety by other people, and not just states.

This affirmation of the *social* aspect of human beings was part of a deeper exploration of what it is to be human; the 3rd, and, to my mind, most interesting distinguishing feature of the UDHR.

The different convictions and ideologies which the delegates brought to the drafting process created tensions throughout; often creatively, sometimes less so.

It is estimated that member states voted more than 1400 times on practically every word and clause of the text. But they never agreed on a formal definition of human rights. According to the Soviet delegate, there was a tacit understanding they wouldn’t do so.

In contrast to their enlightenment forbearers, they also refrained from declaring the *source* of human rights, whether in god or nature²¹.

¹⁹ Ninety-fifth meeting of the Third Committee of the UN General Assembly, 6 October 1948, e/800 p87.

²⁰ Article 29 (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

²¹ See M.Glen Johnson and Janusz Simonides, *The Universal Declaration of Human Rights, a history of its creation and implementation, 1948-1998*, Unesco, 1998, pp42-48.

But drawing on traditions of faith, as much as eastern and western philosophy, they developed a *framework* in the first article from which the justification of all the subsequent rights was deemed to flow.

This framework is usually described as affirming the essential dignity of every human being; both as a fundamental value and the framing of a right to respectful and dignified treatment. This owed as much to the biblical belief that human beings are created in the image of God as it did to Kantian notions of intrinsic worth.

The underlying premise of the UDHR is that human beings are an end in themselves; and never a means. They are of value simply because they are human and their fundamental rights – or what philosopher Martha Nussbaum terms their central capabilities²² - flow from our collective wisdom of the ages; our experience of what is necessary for humans to flourish.

There was no reference to ‘human dignity’ in the ‘Enlightenment’ bills of rights, whilst it is expressed 5 times in the declaration – twice in the preamble and most prominently in article one.

This impacted on the declaration in three ways:

A) It provided a justification for the path breaking catalogue of social, economic and cultural rights in the UDHR, to further “an existence worthy of human dignity” as the text said.²³ An individual who is free to starve is not free at all, and is certainly not dignified.²⁴

B) The reference to dignity fleshed out what is meant by equality. Dignity tells us that equal treatment does not take us very far if we are all treated equally badly. The UDHR contains the first modern anti-discrimination clause but equality was to mean *more* than non-discrimination and *less* than equality of outcome. To experience a life of dignity is to have your individual needs appreciated and differences catered for. True equality can only be achieved when differences are respected, and even celebrated .

This is the root to the various charters that have flowed from the UDHR on race, gender, children and most recently disability, all of which address the dignity of difference.

C) The importance attached to dignity means that no individual should fall so far that they are denied all rights, but only those rights that are necessary to protect others and the common good. It is this approach that gets human rights into hot

²² Martha Nussbaum, *Capabilities as Fundamental Entitlements: Sen and Social Justice*,” LSE, March, 2002.

²³ Article 23(3)

²⁴ Articles 22 .

water – of course – with people who believe that those who commit crimes or anti-social behaviour are undeserving of any human rights. In this sense the UDHR has more in common with Christian notions of redemption, than secular ideas of retribution.

But the more I study the debates on the UDHR, the more I conclude that the concept of dignity is *not* a sufficient way to understand the justification for the human rights it proclaims²⁵.

The references to dignity in the declaration are linked to another important insight. Human beings, the first article declares, are endowed with “reason and conscience” which is both why - and how - we should all treat each other well.

Our essential nature as human beings is rooted in two elements, it is proposed. Our ability to think and reason in the classical Enlightenment mould, but also our capacity to feel and care; our conscience. It is the fact that we are capable of moral choices that distinguishes us as humans and makes us able to treat others with respect; and be deserving of respect ourselves.

This insight into the human condition is what makes the whole enterprise of the declaration worthwhile. If we couldn't feel empathy for others, the project to create a fairer and more just world would have been doomed from the outset.

There are many testimonies to the capacity of the UDHR to inspire and inform (and thus fulfill the drafters 3rd and most important goal). Nelson Mandela has written movingly about the impact of the its adoption in South Africa, where apartheid was formally introduced in the same year.

"for all the opponents of this pernicious regime, the simple and noble words of the Universal Declaration were a sudden ray of hope at one of our darkest moments [he wrote]. During the many years that followed, this document....served as a shining beacon and an inspiration to many millions of South Africans."²⁶

But if our ghosts of drafters past were to judge the success of the UDHR – and in particular their third goal of enhancing all our understanding of human rights – by the quality of the current debate on human rights in the UK, they would probably wish to haunt us for the rest of their days.

In summary this debate appears to boil down to three propositions:

- 1) That human rights encourage selfishness and what we need are more responsibilities, not rights.

²⁵ Francesca Klug, *Values for a Godless Age, the story of the UK's new Bill of Rights*, Penguin, 2000.

²⁶ See Francesca Klug, *Values for a Godless Age: the story of the United Kingdom's new Bill of Rights*, Penguin, (2000), p.110.

- 2) That bad people get too many rights and should forfeit them.
- 3) That British liberties are in our DNA, whereas human rights are either something foreigners lack or something they have imposed on us.

This is a lecture about the UDHR and these charges are for another day. I have already touched upon points one and two in my exploration of the ethical framework of the UDHR and the treaties it begat.

But some political leaders are now playing with human rights like a kitten with a ball of wool. Whilst human rights should be as open to challenge as any other idea, myths and misinformation are scattered about like confetti.

Our ghost no 3, Dr Malik, was prescient when he predicted that the historical significance of the UDHR will be determined by whether “a sufficient number of morally and politically powerful countries will so identify themselves with its doctrine, *in all sincerity and truth*, as to use it as a potent weapon in the ideological warfare which is the mark of the contemporary scene.”²⁷

This observation is as true now as it was then. The responsibility on us all to speak with “sincerity and truth,” as Dr Malik put it, is considerable, as we are forced in this era to defend our democratic values and way of life from those who would undermine them, more clearly and resolutely than at any period in my lifetime.

So here is a slice of sincerity and truth to conclude with, in answer to the specific charge that human rights are somehow foreign, whether derived from the UDHR, the ECHR or the HRA – all of which, I hope I have demonstrated, are intimately related to each other.

When Eleanor Roosevelt proclaimed the Universal Declaration she announced her hope that it “become the international Magna Carta of all men everywhere.”²⁸ The influence of the British tradition of liberty is reflected throughout the UDHR and the whole world understands that. Indeed it was Britain who invented the idea of a Bill of Rights in 1689.

But as ground breaking and enduring as these early documents and the rights within them were, the Magna Carta also disparaged women and Jews and the 1689 Bill of Rights discriminated against Catholics. There is no right to free expression, association, privacy or family life and no anti-discrimination protection in these older charters; nor would you expect there to be.

²⁷ 3RD Session of the General Assembly, 9-10 December, 1948.

²⁸ Eleanor Roosevelt, Address to the United Nations General Assembly on the Adoption of the Universal Declaration of Human Rights, December 1948, published by the Department of State in "Human Rights and Genocide: Selected Statements; United Nations Resolution Declaration and Conventions," 1949.

It was Winston Churchill – the British conservative, war time hero - who, after the war, called for a new charter of rights for the whole of Europe, based on the British tradition of liberty but enriched by the passage of time, and what we have learnt from our own history and what we share with others.

In his opening speech to the Congress of Europe in May 1948, Churchill proclaimed that the new Europe:

*“must be a positive force, deriving its strength from our sense of common spiritual values. It is a dynamic expression of democratic faith based upon moral conceptions and inspired by a sense of mission. In the centre of our movement stands the idea of a Charter of Human Rights, guarded by freedom and sustained by law.”*²⁹

The ECHR is as British as custard.

The European Convention on Human Rights, which forms the backbone of the Human Rights Act, was not only drafted by British lawyers, it was crafted only because of Winston Churchill and his vision for all our futures. There is nothing foreign or alien about it. It is just the next stage in the evolution of thinking about fundamental rights that Britain has contributed to every step of the way.

It was the British Foreign Office delegate to the UN, Ernest Davies who, when the UDHR was adopted, spoke of the “UK’s sense of pride” at having been part of the drafting process, proclaiming, *proudly*, not *ashamedly*, that the “declaration is not merely a statement of western thought or the common view of a country of homogenous background and outlook, ... it is an expression of world opinion of what in our day and age the rights of man should be.”

As we look around our shrinking, world from the vantage of 6 decades later, do we not, more than ever, need a set of principles that unite rather than divide?

If we are to live in a global capital market, do we not also need the security of “a common standard of achievement for all peoples and all nations,” as the UDHR puts it; the first experiment in globalisation?

As we take pride and benefit from our own diverse society are we not right to base our sense of who we are and what we stand for on principles which *everyone* can own, no matter what their heritage or family background?

Although the universal applicability of the declaration is inevitably questioned by some dictators, and those who only see western values reflected in its terms³⁰, most modern

²⁹ Winston S Churchill, *Complete Speeches, 1897-1963*, R.R.James (ed), 1974, pp7635-9.

³⁰ On 30 June 2000, members of the Organization of the Islamic Conference officially resolved to support the Cairo Declaration on Human Rights in Islam, an alternative document that says people have “freedom and right to a dignified life in accordance with the Islamic Shari’ah”.

democracies seem relaxed – or even proud – to trace the links between their *own* bills of rights or written constitutions and the UDHR.

The 1982 Canadian Charter of Rights has become emblematic of Canadian democracy. It is an excellent charter. It is based mainly on the UN's International Covenant on Civil and Political Rights, the 2nd leg of the international bill of rights, drafted with significant input from the UK, and with sections reflecting Canada's distinctive *modern* national identity.

Should we go on to adopt another bill of rights we should similarly take pride in fusing any civil liberties we uniquely associate with this island with the values that already have global recognition through the UDHR, many of which are reflected – word for word - in the HRA.

It is neither rational or honest to conjure a bill of rights based on 'British liberties' that is somehow an entirely different species to the Human Rights Act, whilst we stay signed up to the ECHR in order to secure our place in Europe. It is not possible to better Ken Clark's description of such a proposal as "xenophobic and legal nonsense."³¹

Speaking at last year's anniversary, Barack Obama emphasised the alchemy of the UDHR, which makes its broad values relevant for our times, but not alien or foreign.

Describing the principles encompassed in the declaration, he remarked that "the declaration also wove together a remarkable variety of political, religious and cultural perspectives and traditions. The US and the UK championed civil liberties. The French....helped devise the structure of the declaration. India added the prohibition on discrimination. China stressed the importance of family and... that every right carried with it companion duties."

He concluded "today should be a day of celebration, a day when we hail the universality of these core principles, which are both beacons to guide us and the foundations for building a more just and stable world."³²

Amen!

³¹ 'Has Cameron thought it through or is he just thinking aloud?', Rachel Sylvester, Daily Telegraph, 27 June 2006.

³² Statement by Senator Barack Obama on International Human Rights Day, 10 December 2007.