

THE NEW HUMAN RIGHTS AGENDA: THE FIRST SHELDON CHUMIR LECTURE

Irwin Cotler

I am honoured to be here this evening and to participate in the common cause which brings us together: the inspired memory of Sheldon Chumir, the integrity of his person, the principles of his politics and public service, his legacy of ethics in government, and his compelling struggle for human rights and dignity in our time. Sheldon would have described this struggle as being, in the most profound and existential sense, a struggle for ourselves — that in what we say, or more importantly, in what we do, we make a statement about ourselves as a people.

I first met Sheldon thirty-two years ago, when we were both students on the World University Service Seminar to Poland. We spent three months in Poland and then travelled together to Israel. My first impression of Sheldon, the image that has remained with me since, was that of *mens sano in corpore sano* — a person of “a healthy mind in a healthy body.” This impression is, in retrospect, tragically ironic given his ultimate fate. I had the good fortune that summer to be his roommate. We struck up a quick friendship, the kind of friendship that deepened over the years. Though we did not see each other often, when we did we were able to pick up where we left off and speak in a kind of shorthand.

As fate would have it, our last reunion took place in what was to be Sheldon’s last visit to Montreal. He and Joel Bell, another good friend, came to my house in Montreal to spend a Sabbath lunch with me and my family. It was one of those wonderful lunches which lasted about six hours. We reminisced, as we often did, about that summer together in Poland and our ensuing trip to Israel. It had been the first visit to Israel for both of us, and it had a profound impact on

our lives. We spoke about the changes in the human rights agenda, with Sheldon laughingly referring to our disagreements about that agenda — about issues like free speech, hate propaganda, pornography, or support for religious education. Our disagreements always served to hone and refine my own position. Behind and beyond the laughter, Sheldon always remained enduringly committed to the Talmudic principle of *tikkun olam*, which, literally translated, means “to repair or heal the world” — a principle which found expression in Shelly’s abiding struggle for human rights and human dignity.

Indeed, we meet tonight at a rather critical juncture in this historic struggle for human rights and human dignity. For we live in a kind of Dickensian universe of the best of times and the worst of times, where there has been a literal explosion of human rights, where human rights have emerged as the organizing idiom of political discourse and political culture — increasingly spoken of as an organizing frame for foreign policy — where things that were thought impossible have not only happened, but have already been forgotten or are in danger of being forgotten.

Let us take a quick snapshot of the human rights universe since the baseline of 1989 — the year of the “velvet revolution,” as Václav Havel put it at the time.¹ Hundreds of millions of people now enjoy the franchise in the former Soviet Union and Eastern Europe, people who would have been imprisoned or exiled had they sought even to advocate, let alone exercise, that franchise some ten or twelve years ago. Russia, just last year, held its first Democratic election since 1917. Democracy is on the march from

Central America to Central Asia, and the reunification of Germany, once thought to be unthinkable, is now a reality. Namibia has been liberated from South Africa, Mandela has been liberated from a South African prison, apartheid is on its way to being dismantled and there is hope of the establishment of a post-apartheid, democratic, non-racial South Africa. Captive nations, the metaphor for the Baltic nations, and closed borders, the condition of that people, have been turned on their heads. The whole can be summed up by one vignette of that revolution. Erich Honecker, then leader of East Germany, began the year 1989 by saying: "the Berlin Wall will last for a hundred years." By the end of that year, the Berlin Wall had fallen and Erich Honecker was under house arrest.

What is true of the human rights revolution internationally is also paralleled by the human rights revolution domestically. In 1982, the then Minister of Justice and now Judge of the Federal Court of Appeal, Mark MacGuigan, spoke of the advent of the *Canadian Charter of Rights and Freedoms* as "the most significant legal act in Canada in the twentieth century."² In 1987, Madam Justice Claire L'Heureux-Dubé spoke of Canada stretching the chords of liberty more in five years than the U.S. Supreme Court had done in two hundred years. And in 1992, on the tenth anniversary of the *Charter*, the Chief Justice of the Supreme Court, Antonio Lamer, spoke of the *Charter's* revolutionary impact and compared it to the discoveries of Pasteur in science.³

As I have been giving you this snapshot of the human rights revolution, some of you may have been thinking to yourselves: "If everything is so good, why does everything appear to be so bad?" For at the same time as we have been witnessing this human rights revolution, we also have witnessed a counter-revolution, where violations of human rights continue unabated. The homeless of America, the hungry of Africa, the imprisoned of the Middle East, women victims of a kind of gender apartheid globally — all can be forgiven if they think that somehow the human rights revolution has passed them by; while the silent tragedy of the Kurds, the ethnic cleansing in the Balkans, the horror of Sarajevo, the agony of Angola — are metaphor and message of the assault upon, and abandonment of, human rights in our time.

Let me give you some specific graffiti from the counter-revolution against human rights. The dialectics of *glasnost* and democracy in the former Soviet Union have unleashed the repressed demons of

racism and antisemitism. The new extremist Russian right blames the Jews for bringing about Communism, and the old extremist Communist left blames the Jews for the downfall of Communism — either way, the Jew is caught in a classic pincer movement — while the political uses of antisemitism resonate in the former Soviet Union. In a unified Germany, neo-Nazis stalk the streets in search of *l'étranger*, and a new xenophobia has begun to spread across Europe. Opening the gates of emigration has been met by closing of the doors of asylum. The mass rape of women in Bosnia-Herzegovina has not only been a consequence of war, though that would be tragic enough, but has emerged as a strategy of ethnic cleansing, as an actual purpose of the war. Democracy has been on the march, but not the war on poverty. Thirty-five thousand children die each day in the developing world from preventable diseases. Enfranchisement of the citizen has not been met by the empowerment of the disadvantaged. The emergence of new nations has not resulted in the recognition of First Nations. Despite Canada's ratification of the International Convention on the Rights of the Child,⁴ more than one million Canadian children continue to live in poverty.

It is not surprising, therefore, that the rhetoric of the human rights revolution may yet invite the not uncynical rejoinder that, to paraphrase Bentham,⁵ human rights law is so much nonsense on stilts, that it is rights without writs, rhetoric without remedy, semantics without sanctions. But I want to suggest to you — and it is the underlying theme of my remarks — that we abandon the human rights cause at our peril, indeed at the peril of our case and cause. For the struggle for human rights and dignity, as Sheldon would have put it, is ultimately the struggle for ourselves. If we abandon this revolutionary moment — what Havel called the power of a revolutionary human rights idea and movement to transform history — we run the risk, not only of betraying the idea and the movement, but indeed of losing it.

How then, do we confront injustice? Where and how are we to begin? Against what injustice? On behalf of what cause or victim? How does one rank human suffering? How does one organize human rights advocacy? I want to suggest that the problem is not which particular human rights cause we are serving but whether we are serving the cause of human rights at all; not which victim we are defending but why we are indifferent to the cause of the victim whoever he or she may be; not whether a claim is being asserted on behalf of a particular

minority, but why that minority must always appear to be standing alone.

I would like to offer to you a human rights agenda that would take us towards the year 2000. This agenda is more illustrative than exhaustive, more for purposes of animation than example. You can fill in, in your way, not only the details but the priorities as you yourselves deem appropriate. I am only going to share with you some of the priorities that I believe should be associated with such a human rights agenda:

- *The importance of human rights education* (*sensibiliser*, as the French would put it). The task here is to develop a culture of human rights, a human rights sensibility. In other words, as human rights activists have described it, what is needed is "conscientization," a constituency of conscience on behalf of human rights. As the UNESCO convention has put it so well, "war begins in the minds of men."⁶

- *The combatting of racial incitement*. One of the more disturbing and dangerous contemporary phenomena, both in Canada and around the globe, is the proliferation of racist hate speech. The corrosive, catastrophic effects of Nazism, as the Canadian Supreme Court has put it, is the chilling stuff of history. What is needed is a strategy involving education, elite group condemnation, and the invocation and application of the panoply of rights and remedies available to us, including administrative, civil, criminal and human rights avenues. Such a strategy must be anchored in fidelity to a number of fundamental principles including the inherent dignity of the human person; the equal dignity of all persons; the right of minorities to protection against group-vilifying speech; the underlying values of a free and democratic society such as respect for group identity and cultural pluralism; the preservation and enhancement of our multicultural heritage which, as the Supreme Court put it, is itself under assault from racist hate speech; and adherence to our international law obligations which call upon us to enact domestic measures to combat racial incitement. We must remember, in this as in everything else, that the test of our civilization will be the way we treat and protect our minorities.

- *The right to food*. It is a case study of the Dickensian character of the human rights universe that we have over a hundred international instruments

that purport to promote and protect the right to food, yet this internationally guaranteed right has meant little to the hungry. It shields neither the famine victim, nor the victim of armed conflict, nor the welfare mother from the calamity of food shortages. It continues to lie dormant in unimplemented treaties and unread or unused legal doctrine. It thus becomes our legal responsibility to make the elimination of hunger and the right to food the focal point for both our domestic and international justice agenda, the message and metaphor of the human rights revolution of the 90s. In the words of the 1980 U.S. Commission on Hunger:

Whether one speaks of human rights or basic human needs, the right to food is the most basic of all. Unless that right is first fulfilled, the protection of all other human rights becomes a mockery for those who must spend all their energy merely to maintain life itself. The correct moral and ethical position on hunger is beyond debate. The major world's religions and philosophical systems share two universal values: respect for human dignity and a sense of social justice. Hunger is the ultimate affront to both.⁷

- *The rights of children*. If the right to food is a fundamental and overriding right, the rights of children must have first call on our resources. Yet, the dissonance is compellingly clear. On the one hand, more nations ratified the International Convention on the Rights of the Child more quickly than any other treaty. On the other, thirty-five thousand children die of preventable diseases every day. Redirecting the revenues spent on tobacco advertising in the United States alone could redress this entire situation.

- *International women's rights*. The struggle for international women's rights must be a priority on the justice agenda. The notion that women's rights are human rights must be not only a statement of principle but an instrument of policy. As UNICEF recently reported, "discrimination against women is an injustice greater than South Africa's Apartheid."⁸ Charlotte Bunch dramatically summed up this particular priority and principle: "significant numbers of the world's population are routinely subject to torture, starvation, terrorism, humiliation, mutilation and even murder simply because they are female."⁹

• *The plight of Indigenous peoples.* If there is a case that is an historic and continuing assault on our human rights sensibilities as Canadians, a case that has yet to be significantly touched by the human rights revolution, it is that of indigenous peoples. For the fourth straight year, the Canadian Human Rights Commission, in its annual report, singled out the plight of Aboriginal Peoples as the single most important human rights issue confronting Canada today.¹⁰ Indeed, it echoed the reports of governments in Manitoba, Nova Scotia and Alberta and the reports of non-governmental organizations, that the condition of Aboriginal Peoples is a “national disgrace.” One chilling fact among many — which bears as much on the issue of children’s rights and women’s rights as it bears on the question of Aboriginal rights and which dramatizes the pain and anguish of Aboriginal peoples — is that eighty percent of women on native reserves in Ontario have been abused or assaulted. Accordingly, what is needed here is a new cultural sensibility, a politics and policy of inclusion. What is required is, as Ovide Mercredi put it, “a recognition of Aboriginal peoples’ right to self-government, a recognition of their unique status by reason of their historic presence as First Nations, a generous rather than a grudging or recriminatory respect for their Aboriginal Treaty Rights and Land Rights.”¹¹ There is a need for the improvement of economic and social conditions on reserves and the reform of the Canadian justice system to accommodate the distinctiveness and the sensibility of Aboriginal cultures.

In conclusion, may I summarize the lessons of history and the hopes of this human rights revolution. First, and as history has taught us only too well, that while it may begin with Blacks, Aboriginals or Jews as victims of the violations of human rights, it doesn’t end with them. The struggle against racism, anti-semitism and the like must therefore not be seen simply as a Black issue or an Aboriginal issue or a Jewish issue, but as a profound justice issue of the first import. The words of the German Protestant theologian, Martin Niemöller, which I’m sure are very familiar to you, bear not only recall this evening, but acting upon them beyond this evening:

They first came for the Catholics, but I wasn’t a Catholic so I did nothing. Then they came for the Communists, but I wasn’t a Communist so I did nothing. Then they came for the trade unionists, but I wasn’t a trade unionist so I did nothing. Then they came for the Jews, but I wasn’t a Jew so I

did nothing. Then, they came for me, and there was nobody left.¹²

Second, as a corollary, and as the Ontario Court of Appeal recognized, in upholding the constitutionality of anti-hate legislation, “the holocaust did not begin in the gas chambers, it began with words.”¹³ As survivors of Sarajevo, be they Croatians, Muslims or Serbs said at a conference recently, “they are killing us with words.” Indeed ethnic cleansing began with this kind of degrading and dehumanizing of the other.

Third, nazism almost succeeded, not only because of the ideology of hate and the technology of terror, but because of the crime of indifference and silence. It becomes our responsibility, with regard to Sheldon Chumir’s legacy, to break the walls of indifference, to shatter the silence wherever it may be. As Sheldon said so well, “we must speak truth to power and must hold power accountable to the truth;” and as Nobel Laureate Elie Wiesel put it, “neutrality always means coming down on the side of the victimizer and never on the side of the victim.”¹⁴

The time has come, therefore, in Canada and elsewhere, to stand and be counted, and to not look around to see who else is standing before we make a judgment to do so. For we live at a time when there is too much appeasement and too little moral courage, where there are too few people who are prepared to stand, let alone to be counted. If this century is not to become known as the century which began with Sarajevo and ended with Sarajevo, it becomes our individual and collective responsibility to shatter the silence. As I learned from Helsinki monitors and imprisoned prisoners of conscience — and the code words were everywhere the same be it prisoners of conscience in South Africa, Latin America or the former Soviet Union — we are each, wherever we are, the guarantors of each other’s destiny. Each one of us has an indispensable role to play in this indivisible struggle for human rights and dignity. Each person can and does make a difference. But if you ever feel tired and cynical in wondering what one person can do to confront this juggernaut on human rights, then let us remember that one Swedish non-Jew by the name of Raoul Wallenberg saved more people in the Second World War than any single government. It is a staggering figure, but true. One Andrei Sakharov stood up against the whole Soviet Union and prevailed. One person, Nelson Mandela, nurtured the dream in a South African prison for 27 years, and has not only lived, but is organizing the dismantling of Apartheid.

A person in Canada, whose memory we have come together to honour and be inspired by this evening, Sheldon Chumir, nurtured the dream that a Canadian can make a difference. Indeed, we are sometimes even indifferent to what Canadians can do. But Sheldon showed us that an Albertan and a Canadian can touch people everywhere in Canada and beyond. This then must be our task. To speak on behalf of those who cannot be heard, to bear witness on behalf of those who cannot testify, to act on behalf of those who are not only putting their livelihood but, indeed, their lives on the line. At times such as these, as the French put it, *qui s'excuse, s'accuse* — whoever remains indifferent indicts himself or herself. A world which will not be safe for democracy and human rights, will not be safe for women, for minorities, disabled, disadvantaged, whoever they may be. A world which will not be safe for minorities, women, disabled, or the disadvantaged, will not be safe for democracy and human rights. That is Sheldon's legacy and our challenge. May this evening be not only an act of remembrance, which it is, but a remembrance to act, which it must be. □

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Endnotes

1. See: Václav Havel, [Untitled], Speech in acceptance of German peace prize, October, 1989 in *The Independent [London]* (9 December 1989).
2. Speech by the Mark R. MacGuigan on the eve of the Proclamation of the *Canadian Charter of Rights and Freedoms*, April 17, 1982.
3. Chief Justice Lamer in G.-A. Beaudoin, ed., *The Charter — Ten Years Later* (Cowansville: Les Éditions Yvon Blais, 1992).
4. G.A. Res. 44/25, opened for signing 26 January, 1990, 28 I.L.M. 1448 at 1456 with an addendum in 29 I.L.M. 1340 (entered into force 2 September, 1990).
5. See: Jeremy Bentham, "Anarchical Fallacies" in J. Waldron, ed., *Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man* (London: Methuen, 1987) at 46.
6. Preamble of the *Constitution of the United Nations Educational, Scientific and Cultural Organization*, adopted in London, 16 November 1945 as amended.

7. Presidential Commission on World Hunger, *Overcoming World Hunger: The Challenge Ahead* (Washington: Presidential Commission on World Hunger, 1980) at 3.
8. UNICEF, *1992 Annual Report* (New York: UNICEF, 1993).
9. C. Bunch, "Women's Rights As Human Rights: Toward a Re-Vision of Human Rights" (1990) 12 Human Rights Q. 486 at 486.
10. Canadian Human Rights Commission, *Annual Report, 1992* (Ottawa: Minister of Supply and Services Canada, 1993).
11. Remarks by Chief Ovide Mercredi, McGill University, October 23, 1992.
12. [Attributed]. See: John Bartlett, *Familiar Quotations*, 16th ed. by J. Kaplan (Boston: Little, Brown, 1992) at 684.
13. See *R. v. Andrews and Smith*, (1989) 65 O.R. (2d) 161 (Ont. C.A.) at 179.
14. Speech by Elie Wiesel, McGill University, November 7, 1987.

SHELDON CHUMIR

Sheldon Chumir was born on December 3rd, 1940. He attended Central Memorial High in Calgary and the University of Alberta, where he graduated in Arts and Law. He was very active on campus, won the Gold Medal in Law and was the 1963 Rhodes Scholar. At Oxford, he obtained a Bachelor of Civil Laws degree.

He returned to Canada to article and further his knowledge of tax law as a lawyer for the Department of Justice. In 1971, Sheldon joined the firm now known as Bennett Jones Verchere. He developed a reputation as one of Canada's leading tax lawyers. In 1976, he established his own law practice which allowed him the freedom to devote himself to community service and active leadership on public issues. He was a champion of civil liberties, founding the Calgary Civil Liberties Association and Calgary Legal Guidance. He supported public education and was an advocate of the powerless, many as *pro bono* clients. He sought justice for all.

Sheldon was first elected to the Alberta Legislature as the Liberal representative from Calgary Buffalo in 1986. He was overwhelmingly re-elected in 1989 and was widely respected as an informed, dedicated, accessible and effective representative of the people. Sheldon Chumir died on January 26, 1992. In order to perpetuate his memory, friends of Sheldon Chumir established an essay competition and a lectureship at his *alma mater*, the University of Alberta Faculty of Law. This first lecture was given by Professor Irwin Cotler in Calgary and Edmonton on February 9 & 10, 1994.