

THE HUMAN RIGHTS REVOLUTION AND COUNTER-REVOLUTION: DANCE OF THE DIALECTIC

Irwin Cotler*

It is a distinct privilege to participate in the common cause which brings us together – the inspired memory of Bernie Vigod: the integrity of his person; the principles of his scholarship; the legacy of his vision of human rights and human dignity. As Madame Justice Rosalie Abella put it so well in the inaugural Bernie Vigod Lecture:

This lecture is about human rights because Bernie Vigod was. And it speaks to its legacy because that's what Bernie Vigod's legacy was. Born in the shadow of the Holocaust, as many of us were, he could not help but be shaped by its legacy. And having been shaped by it, he devoted his life to shaping a new legacy.

I first met Bernie some twenty years ago, and then many times thereafter, as a convergence of interests and involvements kept bringing us together. We first met in the mid-1970s when I was President of the Canadian Professors for Peace in the Middle East and Bernie was its vice-president for the Atlantic region. Indeed, to paraphrase Thomas Kuttner in another connection, Bernie *was* Canadian Professors for Peace in the Middle East in Atlantic Canada just as, as Thomas Kuttner elsewhere put it, he *was* the League for Human Rights in Atlantic Canada.

It was with Bernie's passionate commitment to peace – to a politics anchored in human rights and human dignity and to a vision of what the Middle East might yet become – that we fashioned the fundamental principles that were to guide Canadian Professors for Peace in the Middle East throughout its existence. These principles which seemed so remote from acceptance – let alone implementation – twenty years ago, now underpin the peace process in the Middle East today. They are the following:

- (i) there can be no just resolution of the Arab-Israeli conflict which does not include the right of Israel to exist within secure and recognized boundaries, free from any threats or acts of force;
- (ii) there can be no just resolution of the Arab-Israeli conflict which does not include recognition of the Palestinians as a people, with legitimate rights, including the right to self-expression and self-determination;
- (iii) the parties to the conflict must be the parties to the peace.

*Of the Faculty of Law, McGill University (Montréal). Text of the 3rd Bernie Vigod Memorial Lecture in Human Rights, delivered at St. Thomas University, Fredericton 1995.

The second area of involvement which we shared was the struggle for human rights and against racism – racism being the ultimate assault on human dignity, anti-Semitism the most enduring of race hatreds, and Holocaust denial the cutting edge of anti-Semitism, old and new.

A third area where our interests and involvements naturally converged was education. For Bernie, the importance of education meant not only being a scholar of history but learning from history and acting on it. History was not just an academic discipline; it was a looking-glass into the meaning of life itself; and it dovetailed with, if not underlay, Bernie's abiding passions: that education be a means not only for understanding the Arab-Israeli conflict but for bringing about its resolution; that education be an instrument for equity and fairness – as in Bernie's commitment to bilingualism, biculturalism and multiculturalism long before “educational equity” or “minority language rights in education” became buzzwords or passwords; and that education be a bulwark against racism through the teaching of tolerance as an antidote against intolerance.

It is this vision and legacy of human rights which bears recalling and reaffirming. We meet at a rather critical, historical juncture in the struggle for human rights and human dignity. There has been an explosion of human rights, where human rights has emerged, as it were, as the organizing idiom of our political culture – as the “new secular religion of our times”. Things thought impossible as recently as five years ago have not only happened, but have already been forgotten or are in danger of being forgotten. Consider the following snapshot of the human rights universe since 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 five or ten years ago. Democracy is on the march from Central America to Central Asia. The reunification of Germany, unthinkable just five years ago, is now a reality. Namibia has been liberated from South Africa; Mandela has been liberated from a South African prison; and South Africa has been liberated from apartheid. Captive nations, the metaphor for the Baltic nations, and closed borders, the condition of that people, have been turned on their heads. The notion of “women's rights as human rights” became the clarion call in Vienna in 1993 for the first United Nations Human Rights Conference in 25 years, and energized the whole human rights movement.

¹See V. Havel, [Untitled], Speech in acceptance of German peace prize, October 1989, in *The Independent [London]* (9 December 1989).

Moreover, this explosion in human rights has been inspired by an explosion in human rights law, in international human rights standard-setting as representative of the common language of humanity. For example, the dramatic increase in human rights treaties combatting torture, prohibiting racial discrimination, defining the rights of women, or protecting the rights of children, indigenous people, minorities, victims of enforced disappearances and the like; the emergence of international humanitarian law, or international law respecting the protection of human rights in situations of armed conflict, and which bespeak not only a right, but a duty, to intervene in situations which exhibit "a consistent pattern of gross violations of human rights"; the increasing use of international human rights norms by domestic courts, or by governments in designing foreign policy; the internationalization of human rights and the humanization of international law – the individual as subject, not object, of international law – thereby confirming Father Robert Drinan's dictum "that the elevation of human rights into an international juridical norm is the most dramatic development in the history of contemporary international law."

What is true of the human rights revolution internationally is also paralleled by the human rights revolution domestically. In 1982, then Minister of Justice and now a 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 development in Canada in the twentieth century."² In 1987 Madam Justice Claire L'Heureux-Dubé of the Supreme Court of Canada spoke of Canada stretching the chords of liberty more in five years than the U.S. Supreme Court had done in 200 years. And in 1992, on the tenth anniversary of the *Charter*, Chief Justice of the Supreme Court, Antonio Lamer, spoke of the *Charter's* revolutionary impact and compared it to the discoveries of Louis Pasteur in science.³

I suspect that as I give you this snapshot of the human rights revolution, some of you may well have been thinking to yourselves: "If everything is so good, why does everything appear to be so bad?" Indeed, we are witnessing a human rights "dance of the dialectic". At the same time as we have been witnessing this human rights revolution, we also have witnessed a counter-revolution, wherein the violations of human rights not only continue unabated but have in fact intensified. The homeless of America, the hungry of Africa, the imprisoned of the Middle East, the female victims of a kind of gender apartheid globally, can be forgiven if they think that the human rights revolution has passed them by. The silent tragedy of the Kurds, the ethnic cleansing in the Balkans, the horror of Sarajevo, the agony of Angola and Rwanda are literally part of the assault upon, and abandonment of,

²Speech by M. R. MacGuigan on the eve of the Proclamation of the *Canadian Charter of Rights and Freedoms*, April 17, 1982.

³Chief Justice Lamer in G.-A. Beaudoin, ed., *The Charter – Ten Years Later* (Cowansville: Les Éditions Yvon Blais, 1992).

human rights in our time provide further evidence of the counter-revolution against human rights.

As well 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 the classic pincer situation 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*: a new xenophobia has begun to spread across Europe. An opening of the gates of emigration has been met by a 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, an actual purpose of the war.

Democracy has been on the march, but the war on poverty has not. 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.

It is not surprising, therefore, that the rhetoric of the human rights revolution may yet invite the not uncynical rejoinder that, to paraphrase Bentham, human rights law is so much "nonsense on stilts", that it is rights without writs, rhetoric without remedy, semantics without sanctions.⁴

As if this were not enough, one can even be blindsided by one's 15 year-old child, as reflected in my daughter's comments on hearing that I would be speaking on the human rights agenda. "Face it daddy, you're an anachronism. Your human rights agenda is over. Prisoners of conscience? They have all been released (and no thanks to you anyway). Captive nations? Soviet Jews? They are all free to emigrate. Demonstrations against South Africa (you've been taking me to them since I was born) for the release of Nelson Mandela? Well, he's been released and is President of South Africa. Apartheid? It's been dismantled. Nazi war criminals? It's too late. Face it daddy, it's all over. You have nothing to do."

But as I said to her, and wish to share with you this evening, we ignore the human rights revolution at our peril. It would be as wrong to assume that the human rights revolution has been won as it would be to assume that it can never be won. Moreover, the human rights ideas that empowered a human rights revolution – that all people everywhere are entitled to fundamental rights, that

⁴See J. Bentham, "Anarchical Fallacies" in J. Waldron, ed., *Nonsense Upon Stilts: Bentham, Burke and Marx on the Rights of Man* (London: Methuen, 1987) at 46.

states have an obligation to protect the rights of their people, that other states, NGOs, and people have a right and responsibility to protest and intervene against such human rights violation – are themselves under attack. Indeed, the problem today lies not only in the dichotomy or dissonance between human rights norms and human rights violations; it now extends even to the questioning of the human rights norms themselves. While the *Vienna Declaration of Human Rights* is anchored in the universality of human rights, of human rights norms as “the common language of humanity”, that very universality was challenged in Vienna by a host of states seeking exemption or immunity from it on grounds of “cultural relativism”, on grounds of the particularity of faith, culture, or ideology.

Accordingly may I share with you an agenda for human rights 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 not only the details but the priorities as you yourselves deem appropriate. I am going to share with you some of the priorities which I believe should be associated with such a human rights agenda.

I. Importance of Human Rights Education

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 that affirms the universality and indivisibility of human rights. While we respect cultural and religious pluralism, we must oppose the attempt to use or abuse culture or religion as a cover for human rights violations.

The bedrock principles that must inspire this human rights education, this culture of human rights, include:

- (i) the universality of human rights - the “common language of humanity” expressed by the *International Bill of Rights*;
- (ii) that all religions, all cultures, all peoples lay claim to ideas of justice, equality and human dignity;
- (iii) that there are certain universal norms which oblige us all; that neither murder, nor rape, nor racism, nor ethnic cleansing can be respected by any faith, culture or people that respects humanity;
- (iv) that human rights are as indivisible as they are interdependent;
- (v) that if development is essential to respect for human rights, respect for human rights is essential for development.

II. Importance of National or Domestic Institutions of Human Rights

As Max Yalden, the chair of the Canadian Human Rights Commission has pointed out, respect for, and implementation of, international human rights is bound up with the existence of a national infrastructure for the promotion and protection of human rights. Such a national infrastructure can help:

- (i) develop a culture of human rights that is both universalist and pluralist – one which promotes bedrock universal norms within the national culture, as it educates respect for pluralist norms within the universal culture;
- (ii) implement international universal human rights norms within the national or domestic culture through the enactment of domestic measures implementative of international treaty obligations; and help incorporate human rights norms within the domestic political, juridical, institutional, educational, and cultural institutions of the country including: the executive and legislative branches of government, and the judiciary, political and security forces, the education system, the media, the knowledge industry. As well, the domestic infrastructure can monitor, investigate, expose and remedy human rights abuses, thereby promoting respect for, as well as application of, human rights and the rule of law.

III. Combatting 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. As the Supreme Court has put it, these corrosive, catastrophic effects of racism are the “chilling stuff of history”. What is needed to combat it is a strategy of commitment involving education, elite group condemnation, and the invocation and application of the panoply of legal remedies available to us, including administrative, civil, criminal and human rights avenues. Such a strategy must be anchored in, if not inspired by, fidelity to a number of fundamental principles as enunciated by the Supreme Court itself in the *Keegstra* case 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 that in this, as in everything else, the test of our civilization will be the way we treat and protect our minorities.

While domestic courts in Canada have invoked international human rights norms against racist incitement, the international community has not enforced

these human rights norms against state-sanctioned racial incitement, perhaps the most dangerous and explosive threat to both human rights and international peace and security. What we have been witnessing in the Balkans, with the Kurds, in Nagorno-Karabach, and in Rwanda is state-sponsored ethnic cleansing organized around the demonizing of the other and, in the case of Rwanda, state-sponsored incitement to genocide. What is as appalling as it is horrific is not only that there is evidence of state-sponsored, state-orchestrated genocide as in Rwanda, but that this state-sponsored genocide was known and preventable. Indeed, "if preventive diplomacy" is now the buzzword for both the international protection of human rights and the international protection of peace and security by the United Nations, then the U.N. has failed miserably in Bosnia, in Rwanda, and in Nagorno-Karabach.

IV. Bring War Criminals to Justice

One of the more encouraging developments this past year has been the steps taken to build an international justice system to ensure that those responsible for war crimes, crimes against humanity, and genocide be brought to justice. I refer to two developments: appointment of a distinguished Chief Prosecutor for the International Tribunal of Inquiry into War Crimes in the former Yugoslavia, and extension of the jurisdiction of the Yugoslavian Tribunal to Rwanda.

If war crimes justice is to be secured, certain principles and recommendations should be borne in mind, if not acted on. An international criminal court must be established. Until such a court is established, member states and their national courts must be the "agents of international law" and enforcers of human rights. The necessary resources must be advanced to the International Tribunal of Inquiry respecting war crimes in the former Yugoslavia. We must eschew peace agreements that provide immunity or amnesty for the perpetrators of war crimes, for we shall have neither peace nor justice. War criminals – whatever "killing field" they are in – must be put on notice that they will be held accountable for their crimes.

V. Enforce International Humanitarian Law

Some of the most horrific of human rights violations today take place against civilians in situations of armed conflict. Civilians are not so much caught up in the conflict "par hasard" as they are targeted intentionally by it. Bombardment of civilian encampments, ethnic cleansing, mass rape and the like are not so much tragic consequences of war as instruments for waging it. While international humanitarian law has developed an elaborate code of conduct for protection of civilians in armed conflict, it sometimes appears as if military action, be it in Bosnia, Somalia, Angola, Liberia, Sudan, Nagorno-Karabach or Guatamala, has been intent not only on defeating the opposing army but on "cleansing" it of civilians.

VI. The Right to Food

It is a case study of the Dickensian character of the human rights universe that we have over 100 international instruments which 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 elimination of hunger and the right to food the focal point for both domestic and international justice agendas. These two goals are the message and metaphor of the human rights revolution of the 1990s. 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 world's major 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.⁵

VII. 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 one hand, nations ratified the *International Convention on the Rights of the Child* more quickly than any other treaty. On the other, many of the same 170 state parties to the Covenant continue to violate the basic rights of children. As a result, significant numbers of children find themselves in alarming situations. They are as much hostages as victims. Consider the fact that fourteen million children under the age of five die every year from hunger, sickness, conventional wars, or inhuman treatment suffered at the hands of adults; five million children are injured or handicapped by war; children make up more than half of the world's nineteen million refugees; 200 million children under the age of thirteen are forced to work; 100 million children roam the street, one-fifth of that number in so-called "developed" countries; 800,000 child prostitutes "work" in Thailand, 500,000 in Brazil, 400,000 in India; millions of children the world over are subjected to arbitrary detention, torture, cruel, inhuman and degrading treatment, and execution; "child soldiers" as young as seven are being trained and incited to rob, terrorize, and sometimes even kill civilians; 35,000 children die of preventable

⁵Presidential Commission on World Hunger, *Overcoming World Hunger: The Challenge Ahead* (Washington: Presidential Commission on World Hunger, 1980) at 3.

diseases every day. Redirecting the revenues spent on tobacco advertising in the United States could redress this entire situation.

VIII. 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 reported recently, "discrimination against women is an injustice greater than South Africa's Apartheid."⁶ Charlotte Bunch summed up this particular priority and principle dramatically: "significant numbers of the world's population are routinely subject to torture, starvation, terrorism, humiliation, mutilation and even murder simply because they are female."⁷

May I put forth a six-point expose of some of the more urgent instances of systemic discrimination and violence against women which must be addressed and redressed?⁸

(i) **Political Participation:** Women are excluded from, or severely under-represented in, political, social and economic decision-making processes. For example, women make up fewer than 5% of the world's heads of state, heads of major corporations and top positions in international organizations such as the United Nations. Only 11% of the world's parliamentarians are women. More than 80% of government middle-management positions are occupied by men even though there are large numbers of women at the lower administrative levels.

(ii) **Social and Economic Rights of Women:** In developing countries, women have limited access to land, employment, credit, food and family resources, particularly concerning health and education. The work of women internationally is undervalued and underpaid compared with that of men. For example, women in many developing countries work an average of sixty-nine to ninety hours a week. In Africa, Asia and the Pacific, women work an average of twelve to thirteen hours a week more than men and are often unpaid or paid considerably less for it. Women worldwide get 30% to 40% less pay than men for the same work. It is estimated that if women's unpaid work was counted as productive in national accounts, measures of global output would increase twenty to thirty percent. In virtually all countries, most illiterate people are female; 180 million women are

⁶UNICEF, *1992 Annual Report* (New York: UNICEF, 1993).

⁷C. Bunch, "Women's Rights As Human Rights: Toward a Re-Vision of Human Rights" (1990) 12 *Human Rights Q.* 486 at 486.

⁸This evidence of systemic discrimination and violence against women has been gleaned from the Global Tribunal on Violence Against Women in Vienna and from the International Centre for Human Rights and Democratic Development.

illiterate in India alone. As the report of the World Health Organization put it, "in many countries girls are fed less, breast fed for shorter periods of time, taken to doctors less frequently, and die or are physically and mentally maimed by malnutrition at higher rates than boys."

(iii) **War Crimes Against Women in Conflict:** Crimes of violence against women are under-reported in peace time and even more so during war and other situations of conflict. Atrocities against women by government security forces or other armed groups often occur on a massive scale and include single or gang rape, sexual torture and forced impregnation, both in zones of conflict and detention. In spite of the fact that the *Geneva Convention* offers women special protection against rape, enforced prostitution and indecent assault, no such crimes have ever been prosecuted. The data from contemporary conflicts are chilling: 80% of the world's twenty million refugees are women and children. In Bosnia-Herzegovina, the U.S. State Department has accused Bosnian Serb forces of using "massive systematic rape ... as an extension of 'ethnic cleansing' to terrify the population." Estimates of the incidence of rape range from 20,000 to 60,000 cases.

(iv) **Abuse Against Women in the Family:** Violence against women is common inside the family but has tended to be hidden, denied or condoned by legal systems and traditions which give women no protection or recourse. The most serious cases involve: wife-burning, dowry deaths, the killing of female fetuses or infants (because males are considered more desirable), death from aggravated beatings, and murder. Other statistics include: one-third to one-half of women in developing countries report being beaten by their partners; in Cochabamba, Bolivia, 7% of child prostitutes questioned said that they had run away from violent homes where male relatives had beaten and raped them; in Europe and North America, wife abuse is reported to be the leading cause of injury among women ages fifteen to forty; in parts of Canada, eight out of ten Native women report being beaten by their spouses.

(v) **Women's Bodily Integrity:** Women lack the authority and autonomy to control their own bodies. Violations of women's bodily integrity vary from one region to another but include female genital mutilations, forced pregnancies or forced sterilizations, sexually-transmitted diseases such as AIDS, compulsory dress codes, and discrimination in the allocation of food. For example: female genital mutilation continues to be performed in approximately 40 countries, mostly in East and West Africa and parts of the Arabian peninsula, and in some countries in Europe and North America because of migration. Between 80 and 100 million women alive today have been subjected to the practice; 25% of the world's women have access to abortion only if their lives are endangered. The U.N. report says 200,000 women die every year in botched abortions where safe, sanitary procedures are illegal. This is the leading cause of death for Latin American women ages fifteen to thirty.

(vi) **Violence Against Women:** This global phenomenon has long been marginalized by international human rights bodies. In addition to the violations of human rights that equally affect men and women, women face specific violent abuses that are often ignored by the human rights community: forced childbirth and forced sterilization, sexual slavery, rape, genital mutilation, female infanticide, domestic violence and sexual harassment. For example, each year more than one million female children die in Bangladesh, India, and Pakistan "simply because they are born female"; a recent study indicates that based on expected sex ratios, the world population is short by about 60 million women, apparently because of the selective abortion of female fetuses, female infanticide, the withholding of medical care and food from girls and women, and from beatings and wife murder.

Indeed, a review of the random international statistics of violence against women reveals that such international violence against women is as shocking as it is staggering. But one should not assume that discrimination against women in general, or violence against women in particular, or the violations of rights of children, can be regarded, smugly or condescendingly, as a "Third World Phenomenon" as if, assuming that the claim were true, it would be grounds enough to ignore or be indifferent to the problem. For here in the First World the facts are horrifying enough.

In the United States battery is the leading cause of injury to adult women, and a rape is committed every six minutes; in Canada, one of every four women will be sexually assaulted during her life, three sex assaults are reported every hour in Canada, 56% of women are afraid to walk in their own neighbourhoods after dark (as compared to 18% of men); one statistic, one set of numbers in particular, speaks volumes. The Canadian Panel on Violence against Women has recently noted that, on average, women who are beaten by their husbands do not report the incident until the thirty-fifth episode. As a *Montreal Gazette* editorial recently wrote, "Think about it! That's on average." It is no wonder then, that Pat Marshall, panel member, said that they "were hearing about levels of victimization in women's lives that are staggering."

IX. The Plight of Indigenous Peoples

If there is a case that is a historic and continuing assault on our human rights sensibilities as Canadians, a case that has yet to be touched significantly 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 the Aboriginal Peoples as the single most important human rights issue confronting Canada today.⁹ Indeed, it echoed the reports of governments

⁹Canadian Human Rights Commission, *Annual Report, 1992* (Ottawa: Minister of Supply and Services Canada, 1993).

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 80% 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."¹⁰ 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.

Conclusion

In conclusion, I summarize the lessons of history, the hopes of the human rights revolution and the action to be taken. As Aldous Huxley put it: "Life must be lived forward but can only be understood backwards." Herewith some of the existential truths – the understandings of history – as we meet on the eve of the fiftieth anniversary of the liberation of the death camps, the establishment of the United Nations, and the holding of the Nuremberg trials.

First, that Nazism almost succeeded, not only because of the ideology of hate and the technology of terror, but because of the crime of indifference, the conspiracy of silence. Indeed, we are witnessing an appalling indifference in our day to the unthinkable – ethnic cleansing – to the unspeakable – genocide – and worst of all to the preventable genocide in Rwanda. It is our responsibility, then, to break the walls of indifference, to shatter the silence wherever it may be. As Nobel laureate Elie Wiesel put it, "neutrality always means coming down on the side of the victimizer, never on the side of the victim."¹¹

Second, as history has taught us, while it may begin with the victimization of Blacks, Aboriginals or Jews, it does not end with them. The struggle against racism, antisemitism and the like therefore must not be seen simply as a Black issue, 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 bear not only recall this evening but acting upon.

¹⁰Remarks by Chief Ovide Mercredi, McGill University, 23 October 1992.

¹¹Speech by E. Wiesel, McGill University, November 7, 1987.

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

Third, 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 Or as survivors of Sarajevo, be they Croatians, Muslims or Serbs said at a conference recently, "they are killing us with words." Indeed, this teaching of contempt, this demonizing of the other; this is where it all begins.

Fourth, that the Holocaust denial movement, the cutting edge of antisemitism old and new as Bernie Vigod would put it, is not just an assault on Jewish memory and human dignity in its accusation that the Holocaust is a hoax, but it is an international criminal conspiracy to cover up the worst crimes in history. Here is the most tragic, bitter and ironic historiography of the Holocaust, a historiography in its ultimate Orwellian inversion. For we move from the genocide of the Jewish people to a denial that the genocide ever took place; then, in a classic Orwellian cover-up of an international conspiracy, the Holocaust denial movement whitewashes the crimes of the Nazis, as it excoriates the crimes of the Jews. It not only holds that the Holocaust was a hoax, but maligns the Jews for fabricating the hoax.

Fifth, the presence of Nazi war criminals amongst us – 50 years after the Holocaust – is a moral, juridical obscenity, an affront to conscience, a betrayal of everything that people in this country fought and died for. Indeed, the expression "war criminal" is itself somewhat of a misnomer. For we are not only talking about the killing of combatants in the course of the prosecution of a war, but the murder of innocents in the course of the persecution of a race.

Sixth, and this is something that Bernie Vigod understood well, the question of bringing Nazi war criminals to justice is inextricably bound up with the struggle against Holocaust denial. As Holocaust denier Ernst Zundel put it, "As we all know, the so-called Holocaust is nothing else but a hoax, a gigantic fraud ... and if there were no crimes, that must mean that there are no criminals. There are no so-called Nazi war criminals to be brought to justice." And so, if we do not bring Nazi war criminals to justice there may be those who will say, ten or twenty years from now, "you see, there were no criminals, therefore there were no

¹²(Attributed). See J. Bartlett, *Familiar Quotations*, 16th ed., in J. Kaplan, ed., (Boston: Little, Brown, 1992) at 684.

¹³See *R. v. Andrews and Smith*, (1989) 65 O.R. (2d) 161 (Ont. C.A.) at 179.

crimes." Let there be no mistake about it, every time we bring a Nazi war criminal to justice, we strike a blow against the Holocaust denial movement.

Seventh, a world unsafe for democracy and human rights, will be unsafe for women, for minorities, for the disabled and disadvantaged, whomever they may be, and so we have a responsibility for the promotion of democracy and the protection of human rights. But a world unsafe for minorities, women, disabled, or the disadvantaged, will be unsafe for democracy and human rights, and so we have a responsibility for the promotion and protection of their rights.

Finally, as I learned from Helsinki monitors and imprisoned prisoners of conscience, 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 one of us, as Bernie Vigod showed by word and deed, can make a difference. If you ever feel tired and cynical wondering what one person can do to confront this assault 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; that one Andrei Sakharov stood up against the whole Soviet Union and prevailed; that one person, Nelson Mandela, nurtured the dream of a democratic, non-racial South African while languishing for twenty-eight years in a South African prison, and not only lived, but is presiding over the dismantling of apartheid as president of South Africa; that one movement, the women's movement energized, mobilized, ignited the whole of the human rights movement; that one community – the Black Jews of Ethiopia – "Falashas" as they have been called in the pejorative, "Beta Israel" or the House of Israel, as they prefer to call themselves – cut off from 2,000 years of human history in general, and Jewish history in particular, nurtured the dream, and came home to Israel in the largest humanitarian airlift in history.

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.