

# Foreword

SUSAN N. HERMAN

Just after I was elected President of the American Civil Liberties Union on October 18, 2008, a reporter asked me what my goals were for the organization. One of the top priorities I listed was to further expand the use of international law as part of the ACLU's work to protect and defend civil liberties in the United States.

Attention to international human rights norms is both an old and new frontier for the ACLU. Roger Baldwin, co-founder of the ACLU in 1920, argued for a broad vision of the ACLU's mission: in addition to protecting constitutional liberties by resisting censorship in all forms, Baldwin maintained that the organization should also devote itself to "aid Negroes in their fight for civil rights," to campaign against police misconduct, and to fight attempts to deport or exclude immigrants in unfair proceedings. These are all familiar parts of the ACLU's mandate today, which includes not only protection of civil liberties, but protection of civil and human rights. Baldwin also called for ACLU involvement in the international civil liberties community, recognizing the indissoluble connection between what was happening in the rest of the world and civil rights and civil liberties in the United States. His colleagues enthusiastically agreed with all of his agenda except for the international component. In its formative years, the ACLU understandably shied away from international involvement for fear of dissipating resources.

Baldwin understood, as his col-

leagues evidently did not, that American rights and liberties cannot be defended in isolation. The battle for civil rights provides one dramatic example of how international opinion helped to form domestic constitutional law. The ACLU was among the first organizations in the United States to fight racial segregation. Sometimes its efforts were successful, as when a challenge to racial segregation in the armed forces led to Harry Truman's 1948 executive order banning this form of segregation. But other victories, like desegregation of the schools, took decades of work to achieve. This was because so many Americans, including the courts, continued to believe that the American experience was unique, and that "separate but equal" facilities and other forms of racial discrimination were acceptable under the United States Constitution. Individual voices from outside the United States, like that of Swedish economist Gunnar Myrdal, helped to fuel the battle for civil rights in our country. Myrdal's 1944 study of race relations, *An American Dilemma*, is widely credited with contributing to the United States Supreme Court's landmark decision in *Brown v. Board of Education* that separate but equal education would henceforth be considered unconstitutional.

After World War II, the Universal Declaration of Human Rights (UDHR) melded individual voices from around the world into a powerful chorus of opposition to deprivation of rights on the basis of race or color, or on other

grounds like “sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” This Declaration, adopted by the United Nations in 1948, was a response to the chilling lesson of World War II: that intolerance of people based on their race, religion, sexuality, or opinions can culminate in inhuman behavior. In the Universal Declaration of Human Rights, the international community declared that every person has a right to be treated with dignity. This Declaration has consequences within and beyond the United States.

Roger Baldwin would be proud of today’s ACLU. In the early seventies, the ACLU Board of Directors first adopted a policy (amended in 1992) acknowledging that active and expressed support for international human rights legitimizes and strengthens the value of civil liberties and civil rights within the United States as well as in the rest of the world. The policy went on to express the ACLU’s support for promoting the Universal Declaration of Human Rights, in addition to other international covenants of human rights like the 1953 United Nations Convention on the Rights of Women, and the 1956 United Nations Convention on the Elimination of All Forms of Racial Discrimination.

To implement this policy, the ACLU established a Human Rights Program, whose mission is to ensure that the U.S. government complies with universal human rights principles as well as the U.S. Constitution. The Program uses human rights strategies to complement

preexisting ACLU advocacy on national security, immigrants’ rights, women’s rights, and racial justice issues. These strategies, sometimes invoking the UDHR and sometimes other international sources, have proved essential in areas where, as in early cases about race, parochial United States courts have been dismissive of our concerns.

One successful example of the use of international rights strategies to persuade the United States Supreme Court to change American law has been in the area of capital punishment. The current Supreme Court holds that capital punishment is not unconstitutionally cruel and unusual—unusual though it may be among the countries of the world. Nevertheless, advocates including the ACLU recently persuaded the United States Supreme Court to rule that execution of the mentally retarded (in *Atkins v. Virginia* in 2002) and of juveniles (in *Roper v. Simmons* in 2005), amounts to unconstitutional cruel and unusual punishment. Demonstrating to the Court that international human rights principles set a higher standard than American law was a critical part of this effort.

In other areas, American courts have not yet heeded international norms. During the week after I was elected President, ACLU lawyers brought their client, Jessica Gonzales (now Lenahan), before the Inter-American Commission on Human Rights (IACHR or “the Commission”) for a hearing. This was a second attempt at justice for Gonzales. She had been un-

able to obtain a hearing in United States courts on the merits of her claim, which asserted that her children were killed because the Colorado police refused to enforce a protective order she had won against her estranged husband.

Six months earlier, ACLU lawyers had asked the Commission to hear the case of Khaled El-Masri, who was denied a hearing in American courts on his claim that he had been a victim of the United States government’s practice of extraordinary rendition. The courts were willing to assume that El-Masri was telling the truth in his nightmarish tale of being kidnapped at the Macedonian border, sent to a black site, detained, and tortured, all in a case of mistaken identity. The United States courts nevertheless dismissed his case on the basis of the so-called “state secrets privilege”—in other words, ruling that the United States government should be allowed to keep its secrets, no matter how shameful.

Another successful example of ACLU involvement in the international arena is its advocacy surrounding the submission of a 2007 report to the U.N. committee that monitors the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The report, *Race and Ethnicity in America: Turning a Blind Eye to Injustice*, provides a detailed examination of human rights violations in the U.S., including the government’s response to Hurricane Katrina, escalating police brutality, racial profiling, the exploitation of migrant workers, a dramatic

increase in anti-immigrant practices, and the “school-to-prison pipeline,” whereby students of color are channeled out of school and into the criminal justice system. The ACLU sent a delegation to Geneva for the 2008 Committee review of U.S. compliance with ICERD. This delegation gave testimony, in a variety of forums, to the government’s failure to address problems of widespread racial and ethnic discrimination in America. The ACLU continues its involvement with the CERD process through documentation of violations, encouraging Congress to establish and implement treaty enforcement mechanisms and by incorporating the CERD Committee’s recommendations into its issue advocacy.

Participation in forums outside the United States and use of international human rights declarations and covenants like the UDHR are still relatively new tools for ACLU lawyers, but they

are and should be tools for the future. As the Board’s policy says, the ACLU’s primary concern is with defending civil rights and liberties in the United States and with the actions of United States officials. We are not looking to open branch offices in London or Beijing. But our work is very much connected with that of rights advocates in the UK and China. We work in the hope that American law will provide positive models for those defending rights and liberties in other countries. But in the areas where our country is not a leader, we hope that, as in the area of capital punishment, we can learn to follow.



Susan N. Herman  
*President, American Civil Liberties Union*  
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