

**What Are Human Rights?** by Thomas Fleiner [Sydney, Federation Press, 1999, vii-xvi + 160 pages, ISBN 1 86287 328 3, soft cover]

In recent years there has been a noticeable evolution within the human rights movement. What we have seen towards the end of this century, and what we will no doubt see more of in the new millennium, is a human rights movement that is no longer willing to adopt a passive stance when it comes to the protection of human rights. One only need turn on the radio or the television or pick up a newspaper to hear daily reminders that states are adopting a more active stance when it comes to the protection of human rights. NATO attacks on Yugoslavia and more recently the intervention of INTERFET forces in East Timor are just two examples of this more aggressive stance.

Some would argue that an offensive stance is necessary if human rights were to be taken seriously. Others would argue that such an approach is anti-human rights in itself. On either side of the equation the arguments are as plentiful as they are convincing. However, whichever view one takes, one sure thing is that the protection of human rights, beset as it is with moral and legal dilemmas, is becoming more and more the concern of all on a practical level and not simply an exercise in academic rhetoric.

In this context, Fleiner's book, *What are Human Rights*, is a timely publication. What the author seeks to do is take human rights out of the theoretical and often highly technical realm and place it in a context that will have meaning to the average person. Fleiner achieves this not only through the presentation and language of the book, but also through his writing style.

The book is divided into 35 short chapters, several of which pose interesting questions:

- What is a Human Right? (Chapter 3)
- Why Do We Need Human Rights? (Chapter 6)
- Should People Govern the Law or Should the Law Govern the People? (Chapter 7)
- Are the Police All-Powerful? (Chapter 14)
- Why Does a Murderer Have Human Rights? (Chapter 16)
- Are Asylum Seekers Human? (Chapter 17)

Simply by reading the Chapter titles, the reader can see Fleiner's attempt to place human rights in a more practical context.

None of the chapters are over six pages in length. While it may seem trite, the use of short chapters gives the reader a sense of progress being made. The absence of footnotes or endnotes also assists in this respect as it makes the book more readable.

The absence of authorities from the text, however, does not detract from the book's credibility. Fleiner brings a rich perspective to the text through his practical experience stemming from his involvement with the International Committee of the Red Cross, as well as his work in both civil law and common law countries. As Professor Cheryl Saunders notes in the Preface:

[Fleiner] has a practical understanding of the operation of government in countries as diverse as South Africa, Russia, the United States, China and Columbia...His wide ranging practical knowledge of governance in most major regions of the world add (*sic*) immeasurably to both the interest and usefulness of the book"<sup>1</sup>

A good example of this is the penultimate chapter titled 'Human Rights On Either Side of the Atlantic' in which Fleiner considers the differences between the United States and Europe in terms of the role that courts play in the protection of human rights.

As a cautionary point, it is worth reading the translator's note at the beginning of the book as it explains some of the difficulties experienced in translating the book into English.<sup>2</sup> The difficulties exist not only because the book is translated from Fleiner's native Swiss German but because it surveys different systems of law with slightly differing concepts. For example, the "rule of law", a concept with which common law traditions are familiar, has no direct translation in German.

However, any problems that might have been experienced in translating the book do not detract from its flow. The conversational style employed by Fleiner is one of the most distinctive aspects of this book. It serves not only

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<sup>1</sup> At xiii.

<sup>2</sup> At vii-viii.

to simplify convoluted and theoretical concepts but also lends the subject matter a high measure of practicality and honesty.

Fleiner makes good use of examples and analogies. For example, in Chapter 13 entitled "The Secret of a Fair Trial", Fleiner begins with an analogy of a mother who wants to divide a slice of cake in half for her two children. She would like to treat her children fairly and wants them to feel that they have been treated fairly. Does she divide the slice herself and risk claims from one child that the other received the bigger slice, or does she allow one child to divide the slice while the other is allowed to choose a piece? With this analogy, as simple as it is, Fleiner subtly leads the reader to a central proposition of fair trial discourse as follows:

A good process often guarantees more justice than any standards set for the content of justice [and that] the credibility of a process carried out in accordance with human rights standards depends on whether those affected take part in the process.<sup>3</sup>

Fleiner adopts a similar approach throughout the book and in this way is able to avoid an overly theoretical analysis of human rights. What he successfully presents is a realistic appraisal of human rights, one that acknowledges and highlights rather than avoids the difficulties inherent in the protection of human rights. For example, in Chapter 17 entitled "Are Asylum Seekers Human?" Fleiner describes the treatment of asylum seekers when first brought to a reception camp in Switzerland:

Your proof of identity must be surrendered...While your application is being processed you are not allowed to return to your home country...Your family members are not allowed to come to Switzerland until your application for asylum has been processed... If you breach any of the duties of cooperation outlined here, you take the risk that your application for asylum will not be processed.

Fleiner then questions:

What Swiss national would be prepared to accept this sort of harsh restriction on his freedom of movement, to hand over his identity papers, to submit to disciplinary measures without a judicial

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<sup>3</sup> At 46.

examination of the consequences which might result, namely, the refusal to process an application for asylum?

This is the experience for the vast majority of asylum seekers, a reality lived by thousands throughout the world.

However, it is not so much the plight of the asylum seeker that Fleiner puts forward as a measure of the reality of the human rights movement. Rather it is the balancing of the rights of the asylum seeker with those of the nationals of the country in which asylum is sought which highlights one of the inescapable dilemmas of the human rights movement, namely, what happens when one human right is pitted against another. Just as much as the asylum seeker has the right to freedom of movement or freedom from fear, so too do the nationals of the country in which asylum is sought. It is the latter's right to have job security, accommodation and social benefits, all of which are threatened when asylum seekers are given refuge.

*What Are Human Rights?* is about awareness in a world where in one form or another, human rights have become the concern of all. While the reality of what exists in practice is often more difficult to digest, it is better to be aware rather than being presented with concepts that sound great on paper but do not work in practice.

Jason Levin