

# THE MITCHELL ORATION

## 1991

"Human Dignity For All:  
A Pie In The Sky?"

by

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Her Excellency, the Honourable Dame Roma Mitchell. I am deeply honoured by the invitation to present the Mitchell Oration for 1991. It is an occasion for the Australian community to pay tribute to a person who has led and is leading a truly remarkable life, so much so as to become a living symbol of the highest aspirations of a great many people. As a leader in my own profession, as a predecessor of mine in the presidency of the national human rights organisation in this country and as a friend of many years' standing, Dame Roma holds a special place in my affections. I am delighted to have the opportunity of sharing this evening with her.

I commend the Equal Opportunity Commission of South Australia for its vision in providing this occasion each year when reflection on a theme inspired by Dame Roma's achievements may encourage those of us who carry the responsibility of community leadership to promote desirable changes in community attitudes.

### **Human Dignity**

My theme is focussed on human dignity. Sometimes the phrase "human rights" is understood in a narrower sense that overlooks the place of responsibility as an essential element in the continued exercise of rights. Of course, the assurance of equal opportunity and the enjoyment of fundamental rights and freedoms ordinarily accompany the expression of human dignity. But it occurs to me also that sometimes it is the exception that proves the rule, when the voluntary surrender of one's own human rights as narrowly understood marks the

highest conceivable expression of human dignity: for example, think of the crucifixion of an itinerant preacher who hailed from Galilee two thousand years ago; or the response of the nurse tending wounded Japanese soldiers in circumstances of indescribable filth and deprivation who received a visit from a reporter who said, "I wouldn't do what you are doing for a million dollars." "Nor would I," said the nurse.

### **An extraordinary international consensus**

It is ironic that a century that has seen unparalleled acts of sophisticated savagery by human beings against each other has nevertheless witnessed an extraordinary growth of consensus amongst the nations of the world about the inherent dignity of a human being. At the very time, and perhaps because of, the suffering of innocent civilians in the obliteration bombing of the second World War and the dawning horror of the Nazi holocaust, diplomatic activity was preparing for the adoption of the Charter of the United Nations in 1945. In that Charter "We, the peoples of the United Nations" affirmed their faith in the dignity and worth of the human person. They established the Commission for Human Rights, the first achievement of which was to secure the proclamation of the Universal Declaration of Human Rights in 1948. That Declaration affirmed that every human being is born free and equal in dignity and entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

From the beginning, the recognition of the inherent dignity and of the equal and inalienable rights for all members of the human family was asserted to be the foundation of freedom, justice and peace in the world. Interestingly, the issues of a just international economic order were embraced within this breathtaking expression of global idealism.

The hopes of the world, at once modest and immense, were summed up by Australia's early champion of the United Nations, Dr Evatt, who became the President of the UN General Assembly and who pleaded with the Governments of the world to keep faith with their peoples who wanted, he said, not much: just peace and justice and decent standards of living, for themselves perhaps, but mainly for their children.

It is relevant to my theme tonight to emphasise the primacy that was accorded to the inherent dignity of the human person. Human rights were recognised as being derived from that dignity.

### **International human rights law**

The Universal Declaration in 1948 was seen as a "common standard of achievement" but did not establish any mechanism for its implementation and was not then, at least, regarded as creating binding obligations. Further and more detailed instruments imposing obligations have therefore been pursued. The UN Commission on Human Rights, and other UN bodies, have set an impressive record of standard setting on human rights.

In 1966, after fourteen years of patient negotiations, hampered by the stresses of the Cold War, two covenants of great importance were adopted by the General Assembly: the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

Particular standards have been adopted with respect to the rights of vulnerable groups. Prominent in this category are the Conventions on the elimination of Racial Discrimination and of Discrimination against Women.

There is a Declaration on the rights of people with disabilities. There is a Convention against torture, that includes detailed standards on the rights of prisoners and detainees. There are international standards on refugees. There was a Declaration, and now a Convention on the Rights of the Child. There is a Declaration on the elimination of religious intolerance and discrimination. Principles have recently been formulated on the rights of mentally ill persons. A Declaration on the Rights of Indigenous Peoples is in the process of preparation.

There is, then, a respectable body of "law" designed to encourage members of the UN to fulfil the hopes of 1945.

### **A Pie in the Sky?**

Sadly, at least to all appearances, those hopes of 1945 are as yet far from being fulfilled. The world presents a picture of human dignity denied on a colossal scale.

The reports of Amnesty International record an appalling catalogue of torture, "disappearance", arbitrary execution and repression in many countries. This was brought close to home not so long ago when an Australian 17 year old girl who also held nationality in a South American country went to her former home to visit relatives. With a friend she was abducted by five men in plain clothes, four of whom were later identified as members of the military police. Their bodies were found the next morning on a rubbish tip. The Australian had been raped before being shot in the head.

Furthermore, in too many countries, merely to seek justice for the poor is a recipe for liquidation.

There are hundreds of millions of the peoples of the United Nations living in extreme poverty, many of them facing the spectre of death from starvation. It is difficult to discern any sign of dignity in the exposed ribs, distended stomachs and resigned, expressionless eyes of the small children in Ethiopia and the Sudan who are pictured in our newspapers and on our television screens from time to time. It is said that some forty thousand children die every day, two-thirds of whom could be saved by a very small expenditure. More than anything else, that small expenditure is not available because of the stranglehold that militarism has on the

budgets of so many nations of the world. The armaments industry - one of the greatest growth industries of all time - not only denies peace and justice, depriving international co-operation of the material resources it needs, but it distorts the economic order and leaves whole nations struggling under crushing burdens of debt. Wars and rumours of wars leave countless civilians helpless pawns in somebody else's power game and too many children conscripted as soldiers to fight and die for somebody else's gain. In this context, many Australians find it hard to believe that their national Government, committed as it is to world disarmament, should nevertheless encourage the international sale of arms by holding another arms bazaar - the 1991 Aidex arms exhibition - in Canberra shortly.

Again, it is a sad commentary on our generation that for whatever reason there are now more refugees in the world than at any other time in its history. Millions of children, boys as well as girls, are subjected to prostitution while child abuse disfigures the family and community life of every country.

The position of women, despite important advances, remains radically unequal. This in turn diminishes efforts to promote human well-being and dignity in many fields, from education and economic development to the fight against disease.

Race discrimination directly affects human dignity and the international community has directed its efforts against it more intensely than against any other human rights problem. Yet again, despite important advances, it remains a major problem. Of particular difficulty is the struggle to secure to indigenous peoples their full equality with other sections of the community. In many nations, indigenous peoples continue to find their very existence denied.

### **What of Australia?**

I had occasion recently to discuss Australia's human rights record at a Press Council function in Perth. I want to refer to some of the matters I addressed on that occasion. Among other things, I suggested that the complacency which characterises the attitude of many Australians, including some sections of the media, towards the notion of a "fair go" for all Australians puts us at risk. In the context of my theme tonight, it puts us at risk of ensuring that, for a significant body of our fellow Australians, the pie remains in the sky.

The truth is that our human rights record is relatively good by international standards. Compared with oppressive conditions in many other countries, we can derive some comfort from the way things are in this country. We can point to reasonable laws and considerable expenditure on social welfare. But welfare of itself does little for the human dignity of the recipient. If welfare is not set in the context of a recognition of human worth it will always be deficient. In any event, in assessing a human rights record, the legal framework and well-intentioned administrative measures are only the starting point. The ultimate criteria are to be found in what is happening to people and the attitudes towards each other of those who belong to the one community.

One way of combating complacency is to cease dealing in abstractions, in the currency of noble sentiments and fine words detached from the immediacy and tensions of real life, and to remember that behind every human rights problem there are people hurting, people longing for a sense of dignity and self-respect, of having a sense of worth in themselves.

Let me remind you of the story of a young Australian as told by Commissioner Hal Wootten in the Report of the Royal Commission into Black Deaths in Custody. His name was Malcolm. He was 29 years old when he died in Sydney's Prince Henry Hospital seven days after he had gouged out his own eyes with a paint brush. This is Malcolm's story:

"Immediately prior to 5 May 1966, ... he was happy, healthy and free eleven year-old, albeit grubby, living in a humpy, and truant from a school made unattractive by racial prejudice and irrelevance to his life. He was taken away from his family by police, cut off from his family, whom he did not see again until he was 19, and sent to Kempsey, over 1,500 kilometres away on the coast, beyond the boundaries of their accessible world.

When he finally rediscovered them at the age of 19, it was too late for him to start a normal life. The intervening eight years, mainly in despotic institutions of various kinds, had left him illiterate and innumerate, unskilled and without experience of normal society. He had been taught a model of human life based not on mutual respect, co-operation, responsibility, initiative, self-expression and love, but on dependence, humiliation and fear, with escape or defiance as the only room for initiative.

He had experienced the law as a system which gave him no rights, no representation and no consideration, ignored the existence of his family and treated him as having no place outside an institution. Instead of being socialised into the family and kin network so important to Aborigines, he had been 'socialised' to survive in institutional communities. The society which had deprived him of an opportunity to grow up in a family and learn to live in a free community offered him no assistance whatever in adjustment or rehabilitation, but visited his every lapse with a penal sentence."

There are no torturers or murderers in Malcolm's story. Probably none of those who dealt with him wished him harm. But his dignity was violated and it was this, at least in the view of the Commissioner, which led to his death.

You will appreciate that Malcolm's story cannot be dismissed as an isolated instance. Aboriginal people remain, on almost any social indicator, Australia's most disadvantaged people. Confirmation of this fact can be found in a few statistics taken from a report on Aboriginal Child Poverty published by the Brotherhood of St Laurence.

An Aboriginal child at birth has a life expectancy twenty years less than other Australians, and is three times more likely to die in infancy than a non-Aboriginal child. I digress to mention that the UN Human Rights Committee has questioned the consistency of figures of this kind with Australia's obligations under the Civil and Political Rights Covenant dealing with the right to life.

An Aboriginal child has a one-third chance of having some form of trachoma by the time he or she is nine years old, and a 24% likelihood of being undernourished. Hearing loss is endemic. Some figures indicate that by the time an Aboriginal child in rural Australia is four years old, he or she will have a 72% chance of having one or both eardrums perforated. The house the child will live in is four times more likely to be an inadequate or temporary dwelling when compared with those of non-Aboriginal children. Household income is likely to be around half the national average. When the child reaches working age, he or she will face unemployment rates of 83% for teenage males and 73% for teenage females. These percentages applied before the present recession.

Too often the legal system reinforces rather than relieves this position of disadvantage. An Aboriginal child is far more likely, perhaps by a factor of fifteen to one, to be placed in institutional care than a non-Aboriginal child. The child is twenty times more likely to be detained in a juvenile justice institution than a non-Aboriginal child. And, as is well known, adult Aboriginal people also face disproportionately high rates of imprisonment.

What are we to make of these statistics? They may be seen as problems of politics, of administration, of economics or of social development. These perspectives are certainly important. The dimension that does not receive sufficient attention, however, is that of their status as human beings and the inherent dignity that belongs to that status. As was emphasised by Irene Moss, the Race Discrimination Commissioner, and Ron Castan QC, following the Report of the National Inquiry into Racial Violence (1991), ultimately, remedial measures by governments must be accompanied by a change in the attitudes towards each other of all Australians of whatever race. Only this will facilitate the emergence of mutual respect between us all.

But of course Aboriginal people are not the only disadvantaged section of Australian society. I remind you of that significant section of the community who are so easily forgotten because they are often out of sight - those who suffer some impairment, whether of body or of mind. They constitute a large section of our community with much to contribute and the disadvantage they suffer is very real.

Then there are those who suffer racial or religious discrimination because they have come to make a new life in Australia, bringing with them the riches of a different culture.

Prisoners are largely forgotten people where human rights are concerned, as in many cases are the victims of crime.

Finally, there is no room for complacency towards human rights in Australia while so many women are put down and treated as inferior to men. Undoubtedly, we have come a long way in the past decade, but there is still much to do. Even where there are avenues of advancement open to women in employment, very often it is a continual struggle to make something of those opportunities. Systemic or indirect discrimination, frequently unrecognised, will often have the effect of depriving women of promotion opportunities or of access to over-award payments. I like to repeat Professor Lowe's (of Griffith University) remark to a university graduation ceremony in Perth last March that sex discrimination would not be seen to have been overcome until there were as many demonstrably incompetent women in positions of authority as there are men!

But there is another indication of community attitudes to the human rights of women that is disturbing. The Bulletin in its issue of 18 June 1991 reported that the two most talked about works of art in Australia presently are Thomas Harris' thriller *The Silence of the Lambs* (both book and film), and the Bret Easton Ellis novel *American Psycho*. Both books have been on the best-seller list, even though the Australian Censor has stipulated that *American Psycho* be wrapped in plastic and sold only to those over the age of 18. The film topped sales at the box office. The tragedy is that both works of so-called art are about violence, and that the victims are mainly women. What does this say about the attitude of the artists in question towards women? In this case the artists are American. But then, what does it say about a community - an Australian community - that affords them such high priority in their reading and viewing?

You will notice that I am not pitching the debate at the question of free speech and whether pornography promotes violence. That may raise other questions. Pornography is violence. And, when it is directed against women, it is sex discrimination. Judging by the description of these two so-called works of art that I have seen, they are extreme and inexcusable exercises in the degradation and abuse of women. By the standards of an civilised nation, they ought to be instant failures at the box-office and bookshop respectively.

### **Signs of hope**

The picture I have drawn adds up to a formidable litany of pain and suffering and thwarted aspirations. But it is not the end of the story. There are creative signs of hope all around us, ensuring that the future beckons us not to despair but to encouragement and challenge. The most potent factor of all is the invincible hunger of the human spirit for justice and freedom.

In Dostoevsky's novel *CRIME AND PUNISHMENT* Katerina Marmeladov, evicted from her home on the very day of her husband's funeral, exclaims in desperation: "There is law and justice on earth, there is, and I will find it." And in a frenzy that is a prelude to madness she runs into the street with the intention of going, at once, somewhere, she knows not where, to find justice.

It is good to be reminded by the novelist that behind all our words on an occasion like this there are people running, at once, somewhere, to find a new life - a life that offers them greater

understanding and acceptance, greater justice, a greater recognition of their basic dignity. They are running, impelled by an instinctive conviction that all human beings are born free and equal in dignity and that everyone is entitled to the human rights and fundamental freedoms largely accepted, in theory, by the nations of the world.

In recent times, the reality of all this has been brought into our homes through the television screen as we have witnessed the excitement and the joy of many thousands of people thronging the streets of eastern Europe and the Soviet Union celebrating the prospect of an enhanced life. The signs of hope are not confined to Europe. In South America, dictatorships which had waged war on their own people, with torture and abduction, appear to be in retreat in several nations. In Southern Africa, Namibia has attained independence while in South Africa apartheid is crumbling. The urge to freedom is contagious and all oppressors must take seriously recent world events.

Many other signs of progress could be identified. Let me mention some of them briefly. There is the continued industry of the UN in the human rights field. There is continuous monitoring, by elected committees comprised of representatives from many nations, of the observance of the major Conventions that are in force - on the elimination of racial discrimination, of discrimination against women, against torture and more recently the Convention on the Rights of the Child. In addition, creative work is presently being pursued in finalising principles relating to the rights of the mentally ill and generally of the disabled and in the preparation of a Convention on the rights of indigenous peoples. My colleague the Human Rights Commissioner Mr Brian Burdekin has been heavily involved in these negotiations. The growing influence of the UN Human Rights Commission was graphically demonstrated by the speed with which so many countries accepted the challenge presented by the UN General Assembly's unanimous adoption of the Convention on the Rights of the Child. Within nine months of its adoption, the Convention was in force, having been ratified by the requisite number of States. No other Convention has ever come into force in such a short time. This was followed by the World Summit for Children which, despite the threatening clouds of war over the Gulf, brought more than seventy heads of government to New York in September 1990 to pledge, together with the representatives of another seventy-five countries, their commitment to the implementation of the Convention.

Recent years have seen a substantial movement away from the position that human rights is essentially a matter of domestic or internal concern. Following China's suppression of demonstrators in Tiananmen Square in Beijing in June 1989, the UN Commission on Human Rights debated a motion expressing its concern. Despite strenuous lobbying on the basis that it was an internal matter, the People's Republic of China failed to move the Commission from its course. The USSR, as it was until recently, was long a proponent of the domestic concern view. It has now reversed its position. In July this year the USSR became a party to the First Optional Protocol to the International Covenant on Civil and Political Rights, thereby empowering the UN Human Rights Committee to entertain complaints from individual citizens concerning breaches of the Covenant where domestic remedies have been exhausted. In Moscow last week, delivering the keynote address to the Conference on Security and Co-operation in Europe, President Gorbachev reaffirmed his commitment to human rights, saying, "It is not enough to declare human rights. They must be assured by laws...." He recognised



that the Soviet Union's radical transformation in the wake of the failed coup provides "a great opportunity for all of us."

Another factor, the importance of which is not, to be discounted, is the growing solidarity of the religions of the world in the defence of peace and justice and hence of human dignity. I attended a conference last year in the USA convened by the World Conference on Religion and Peace at which all the major religions of the world were represented. The focus of the conference was on the desperate plight of millions of the world's children and the importance of commanding the new Convention to heads of government. There was complete unanimity in the adoption of a declaration and action plan which was later presented to the World Summit for Children to which I have referred. This is only one of the many initiatives being pursued by the WCRP.

Reference should also be made to the important contribution made by voluntary agencies throughout the world in the fields of literacy, health, development and the ending of hunger.

Again, despite the reality of disadvantage suffered by a significant number of Australians, there are encouraging signs of hope in this country. While there is still much to be done, for example, in the adoption of legislative standards nationally in relation to racial vilification, and discrimination on the grounds of physical disability and mental illness, we have come a long way in a comparatively short time. At the national level, we have laws which render unlawful specified acts of race and sex discrimination. In this regard, it is pleasing to note that, having ratified the International Covenant on Civil and Political Rights in 1980, the Commonwealth is moving to adopt the First Optional Protocol to which I have just referred in relation to the USSR. We have a law designed to protect privacy in particular circumstances. We have an independent statutory body with a number of important domestic responsibilities and a growing involvement in the international arena. The evolution of national machinery in Australia in the human rights field is due in no small measure to the pioneering vision and work of Dame Roma Mitchell. Importantly, we have an Anti-Discrimination Board in New South Wales and Equal Opportunity Commissions in South Australia, Victoria and Western Australia, with the prospect shortly of comparable legislation in Queensland, Tasmania, the Australian Capital Territory and the Northern Territory. While it is important to pursue uniformity so that all Australians will enjoy the same legal protection of their human dignity, and to avoid wasteful duplication, I welcome the federalist pattern and the scope for decentralised decision-making which it affords and I pay tribute to the achievements of the State bodies. Their mandate, like the mandate of my Commission, is primarily an educative and conciliatory one. The underlying conviction is that basically the Australian ethos is committed to a fair go for all Australians but that complacency and a lack of awareness of the existence of disadvantage impedes the achievement of that goal. An informed, sensitive and compassionate electorate is essential in order to ensure the provision of appropriate legislation and administrative procedures.

Let me digress for a moment in order to share some of the sense of excitement I feel about the work being done by my colleagues in the Commission. Brian Burdekin is tireless in his forthright advocacy of the principles enshrined in international human rights law and sets a

cracking pace for himself. His statutory task is to promote observance of the Civil and Political Rights Covenant and the other instruments scheduled in the Human Rights and Equal Opportunity Commission Act. This has led him to attack, among other things, governmental and community complacency with respect to homeless children, the disabled, prisoners, the mentally ill, and discrimination in employment including discrimination based on age and sexual preference. The present national inquiry into the treatment of the mentally ill promises to make a substantial impact on us all.

The Race Discrimination Commissioner, Ms Irene Moss, is engaged in the challenging task of promoting harmonious race relations. Apart from oversight of the conciliation process in relation to individual complaints, she has a number of important projects in hand. There is the follow-up to the report of the extensive national enquiry into Racist Violence conducted by Ms Moss and Mr Castan and to the monumental report of the Royal Commission into Black Deaths in Custody. The report of an enquiry into health services to remote Aboriginal communities in the Cooktown area of northern Queensland has recently been published. A water project to enlist technology in solving the problems of water supply to remote communities is nearing completion. Two current community-based programmes hold considerable promise. One is being undertaken in co-operation with industry and focusses on race relations in the workplace. The other comes under the Commonwealth Government's Agenda for a Multi-Cultural Australia and is a major exercise described as a Community Relations Strategy.

The Sex Discrimination Commissioner, Ms Quentin Bryce, also has a busy time, challenging stereotypes that tend to disadvantage women. Last year she promoted a very successful publicity campaign directed against sexual harassment in the workplace. It is increasingly recognised that women suffer not only from direct discrimination but from systemic or indirect discrimination and I commend to you the report of seminar proceedings on this topic recently released in Ms Bryce's Occasional Papers series. I've been pleased to note that in recent months the Equal Opportunity Tribunal in Western Australia has published two perceptive judgements which address this issue. Ms Bryce has recognised the economic inequality that burdens women and has recently launched an inquiry to identify the reasons why women fare so badly in relation to over-award payments in employment. She has also found it necessary to make representations in appropriate quarters with respect to such matters as insurance, superannuation and paternity leave. In addition, there is a substantial load of individual complaints, alleging discrimination by reasons of sex, marital status or pregnancy, or sexual harassment, requiring investigation and resolution.

The Privacy Commissioner, Mr Kevin O'Connor, is playing an important pioneering role in ensuring that Government departments observe procedures designed to protect as much as possible the privacy of individual citizens. From this month, his responsibilities also involve the private sector and, in particular, scrutiny of the conduct of credit reporting agencies.

## CONCLUSION

You will appreciate that I would answer the question posed in the title of my speech with a resounding "No." If you have ever stood on a seashore and watched an incoming tide, you will have noticed how the leading ripple reaches a certain point before the rhythm of the sea causes it to recede for a moment before moving forward again. But the next forward movement will take it further up the beach, beyond the previous limit. The growing world consensus of faith in the inherent dignity of every human being is like that incoming tide. It will not be denied. Every day in every continent there are some who learn to read, who gain access to better nutrition and health care, who find justice and peace of mind, a new sense of self-worth. Every day, for those people, human dignity ceases to be pie in the sky.

Laws and institutions can only do so much. Ultimately, as I have said, it is people who by their relationships with each other can pluck that pie down from the sky and make the hope it symbolizes a reality in the life of the other. This means that every one of us here in Australia can contribute to making "A Fair Go for All" the reality it ought to be.