

ROMA MITCHELL ORATION

“Dialogue or Monologue – Human Rights in Australia”

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The Annual Mitchell Oration is held as a tribute to Dame Roma’s lifelong efforts to improve the respect in Australia for human rights, and to counter discrimination experienced by many people, especially women, members of Indigenous communities, and of ethnic minorities.

I am sure all of you here tonight who knew Dame Roma have very fond memories of her. She was a person who I greatly admired. Her role in public life has influenced me, as I am sure it has influenced many of you.

During my years in the law I had the privilege of hearing many lectures by Dame Roma and of appearing before her during her distinguished 18 years as a Judge of the Supreme Court of South Australia. I found all of these experiences rewarding, as were her endless contributions to conferences and education programs run by the Law Society.

It was a sad day in the legal profession when Dame Roma retired from the Bench. Little did we realise that her retirement was not to be the end of her pioneering career, but the start of other equally outstanding contributions to charities and to public life, especially in her role as Chair of the Australian Human Rights Commission, and later as Governor of South Australia.

Dame Roma was appointed as the first Chair of the Human Rights Commission on its establishment in 1981, and held that position

until December 1986. It was in her role as the Chair of the Commission that I had an encounter with her which I wish to draw on tonight. It demonstrated the public importance of the work the Commission was carrying out under her guidance.

As the Chair of the Commission Dame Roma was a staunch advocate of Aboriginal issues. The event was, I think, in late 1984. As an officer of the Law Council of Australia I was one of a number of community representatives invited to attend a meeting with a panel of Aboriginal women that Dame Roma convened in Adelaide to discuss discrimination issues which they encountered.

The women spoke of their life experiences in urban and country South Australia. I found the meeting a confronting and moving experience. I had never before been party to an intimate sharing of the experiences of lifelong tragedy and discrimination which the women related. It was Dame Roma's view that commitment to equality comes from realising that equality does not exist, and plainly it did not for these women, and their communities.

I left the meeting also with a feeling of wonderment about the dignity of the women who had told their stories dispassionately, without trace of bitterness or hostility towards those who had denied them opportunities in virtually every aspect of childhood and adult life.

That meeting illustrated to me themes I wish to pursue this evening – that it is the fear of difference that leads to discrimination, that the way forward is genuine dialogue that will allow us to understand and learn from each other, and that it is through dialogue that shortcomings in the enjoyment of human rights in Australia must be addressed.

Dame Roma's efforts to further the interests of the disadvantaged in our community are legendary, and her work as the first Chair of

the Human Rights Commission set standards of excellence that remain a benchmark.

It is a great honour and privilege to be invited by the Equal Opportunity Commission of South Australia to present this year's Mitchell Oration.

Australia remains one of a diminishing number of common law countries without a bill of rights or a charter of fundamental rights. Many say Australia does not need a bill of rights. The official Government line is that Australia is a harmonious multicultural society with a strong sense of natural inclusiveness; a land where everyone gets a "fair go", a land with a firmly entrenched rule of law. This view assumes legal rights beyond those already recognised by the common law and statute are not needed.

In the closing years of the 20th century, this optimistic assessment seemed correct. Australia had acceded to major international human rights instruments. Large parts of them had been enacted into domestic law. Anti-discrimination law was in place federally and in States and territories.

Apart from Australia's treatment of Indigenous people and emerging concerns in the international community about the way it was dealing with asylum-seekers, Australia was regarded internationally as a leader in protecting human rights.

There was a promising movement towards reconciliation with Aboriginal and Torres Strait Islander communities. It was boosted by the Mabo decision and an understanding of the cruel imprints of history through the Royal Commission into Aboriginal Deaths in Custody and what was widely known as the Stolen Generation Inquiry. The "bridge walks" in 2000 were powerful public displays of support for reconciliation. Promising dialogue was taking place.

But what then happened? In recent years dialogue on human rights seems to have stalled. The enjoyment of rights by Indigenous people and by minorities has suffered serious blows.

For Indigenous people, major High Court decisions since *Mabo* and *Wik*, and political discourse have shifted their attitudes towards reconciliation in ways that have caused a pervasive sense of apathy and disillusionment which has brought the promising impetus to a halt.

A number of notable events have also changed, perhaps only subtly, the attitudes of the majority of the wider community towards minority groups generally.

The detention of asylum seekers who arrive by boat, the Tampa incident and the Pacific solution that followed are recognised by Australian human rights organisations and lawyers as gross breaches of Australia's international obligations. They have attracted international condemnation. Yet the government injected into public discourse the notion that these people are 'illegals', and the vanguards of an invasion of Australia's privileged lifestyle.

Then came September 11 2001 and the Bali bombings last year. These events brought home to Australians that they are not immune from terrorism and terrorist threats. Fear and ignorance made ethnic minorities in Australia the targets of racist and religious violence and discrimination. The Federal Government has introduced anti-terrorism legislation, and there is talk of more to come. Aspects of these laws permit significant curtailment of well recognised rights to liberty, privacy and legal representation.

Since 11 September 2001, Arabic and Islamic community organisations have reported increased levels of prejudice, discrimination and vilification. Muslim women who wear the hijab have been particular targets for abuse.

Intolerance towards these particular groups encourages discrimination against other minorities – including Sikhs, Jews, Christian Arabs or non-Arab Muslims. Attacking respect for cultural and religious diversity has an alarming ripple effect.

Sikhs were harassed following September 11 because they wore turbans. It seems that some thought they were Arabs. Jews continue to be the target of racial and religious violence – usually directed to the things that make them stand out from other Australians – for example, their synagogues and schools. Indigenous people continue to face rampant stereotyping.

Fear of difference is not a new phenomenon in Australia. Successive waves of migrants have been viewed with suspicion and hostility. Chinese prospectors in the gold rushes were not always welcomed as fellow Australians. Italians, Yugoslavs, and Vietnamese in the early years after they arrived all faced barriers and taunts. The glee with which proponents of eugenics greeted the notion that Aboriginality would die out shows they wanted Indigenous people to become less different. Fear of difference manifests itself in many ways. People are shunned and ignored or discriminated against or become targets for violence. In Australia in 2003 it is not acceptable for us to treat people in this fashion.

Xenophobia alone does not explain the current animosity towards Arab and Muslim Australians, many of whom are not new to our nation. Muslims established a presence in Australia in the 1860s when Afghan cameleers arrived to work the camel trains which opened up the vast interior of our continent. The remains of Australia's oldest mosque was built by these cameleers in Maree, South Australia.

People of Arabic background first came to Australia in the late nineteenth century. Today there are over 200,000 Arabic-speaking Australians. Arab Australians are an extremely diverse group -

socially, economically and even religiously. Despite the widespread misconception that all Arabs in Australia are Muslim, statistics prove otherwise. For example, 55% of Lebanese-born Australians and 84% of Egyptian-born Australians are Christian. Only 31% of Iraqi-born Australians are Muslim.

It may be difficult for some to make sense of Australia's rich cultural diversity. But we are a sophisticated nation and should be able to handle debate on this complex issue.

Fears are played on by Government and others who benefit from the perpetuation of myths and stereotypes. One of the myths that seems to be current is the view that allowing minorities to enjoy a measure of human dignity commensurate with that enjoyed by the wider community means the wider community has to give up some of their rights. Put simply – they believe the left hand takes from ordinary Australians what the “rights hand” gives to minorities. Typically peoples’ response to this kind of threatening belief is driven by self interest, and not by compassion and reason.

The Federal Government received strong electoral support for the 1998 changes to the Native Title Act which promised ‘buckets of extinguishment’ and its stance on asylum seekers. Any incentive individual members of government may have had to show generosity and fairness to these groups evaporated in favour of political self-interest. Leaders who follow their perception of the current sentiments of the electorate add strength and direction to those sentiments. Whilst leadership can bring positive results if decisions are based on fairness and equality, it can be destructive where decisions are otherwise based on preserving popular support.

The potential for beneficial leadership was demonstrated following the terrorist events. Bigots sought to demonise people who had characteristics in common with the terrorists e.g. people of middle-eastern appearance, Arab ethnicity or followers of Islam.

Anecdotal information indicates a surge in attacks following the bombings. Prompt and decisive comments at the time in support of Australia's Arab and Moslem communities from some senior politicians and other community leaders appeared to have immediate effect. With the passage of time, however the message was forgotten, and not renewed. And bigots have begun to hold sway. Their message of exclusion is often delivered through the media in a perversion of the notion of freedom of speech. They have kept alive simmering fears by disseminating frightening misinformation about Arabs and Muslims.

Some Australians have spoken out vigorously against the human rights denials of recent times. They have become the voice of human rights in Australia. Yet instead of being part of a productive dialogue they appear to be delivering monologues – either to the converted or the disinterested. There are few signs that the concerted efforts of these advocates are significantly changing the minds of the electorate or the behaviour of the discriminators.

When we look at our relationship with Indigenous Australians, reports continue to find that reconciliation is off-track. Some former advocates have withdrawn from the debate. What began as an attempt to reduce the fear of difference, gain mutual understanding and teach non-Indigenous Australians about Indigenous culture, spirituality and symbolism has become a debate about statistics, funding and administration.

On any measure of disadvantage, the figures continue to be disheartening. Life expectancy for Indigenous women is decreasing. The gap between life expectancy for Indigenous and non-Indigenous women is widening. The unemployment rate

amongst Indigenous people is continuing to rise, and in the criminal justice area the rates of incarceration, especially for women, are many times higher than in the rest of the community. We should be horrified, but a significant number of Australians are shrugging their collective shoulders then turning their backs on these figures.

Passionate advocates on the international scene and within Australia are essential. Knowledgeable experts will continue to publicly record human rights denials. But are the promulgation of benchmarks and logs of abuses changing reality? Events around us suggest not.

It is easy in a gathering such as this – or in the media – to present a catalogue of abuses; to mesmerize the audience with graphic details of tragic events. It is more difficult to offer solutions to bring about change. Advocates who identify abuses and then call for government action will have little or no effect unless the government sees electoral support. Policy changes at the political level depend very much on the attitudes of the electorate. Changing community attitudes is a slow process, especially when emotions such as fear are involved. Basic, unassailable facts and gentle persuasion must be the starting point.

This brings me to two simple propositions. First, that our efforts to promote and protect human rights in Australia must be directed to educating and persuading the majority. We need to focus on those who can dictate to Governments through the electoral process the sort of nation they want.

Let us work with the tools of democracy – not bemoan their failure to deliver our own agendas.

Dame Roma remarked eloquently upon this process in a speech to Amnesty International two decades ago, in 1983, when she said:

“human rights will be won not by spectacular pyrotechnics but by gradually warming the heart of man towards fellow man.”

In similar vein, in a recent speech, the Professor of Law and Indigenous Studies at the University of Technology Sydney, Dr Larissa Behrendt, said that the challenge for equality is to link law reform with a “hearts and minds” change in middle Australia.

It remains for people of good conscience to speak out about injustice, racism and inequality – in our neighbourhoods, in academic debate, in political discourse. And to question, question relentlessly. Too often, people go ahead with policies and attitudes that contradict human rights, and are contrary to our vision of Australia as a place where everyone is treated fairly.

Legislation that allows lengthy detention of suspects, the questioning of minors and restricts access to legal advice may seem acceptable in the climate of fear generated by terrorist acts. However, people must question whether there are sufficient safeguards to protect ordinary citizens from abuse of that power should they ever be in the wrong place at the wrong time. Ask questions publicly and demand the answers be explained clearly so that everyone may understand.

I think we should also speak out about good news. Australia has made some notable advances in human rights. Some took decades longer than they should have to occur – but they have occurred. The abolition of the White Australia policy, the 1967 referendum on Indigenous rights, the equal pay decisions for men and women during the 1970’s, and the enactment of anti-discrimination laws. These changes have not caused the sky to fall in. They have benefited the whole community, not just those people affected.

There are many reconciliation success stories in Australia which we should not forget. In recent times they include economic agreements over mining and access to cultural lands and personal stories of Indigenous and non-Indigenous families meeting in friendship 100 years after hostilities divided them.

The Sorry books that sprang up around Australia which allowed hundreds of thousands of ordinary Australians to record their feelings about the past relationship with Aboriginal people are a good example. The Sea of Hands, initiated by Australians for Native Title and Reconciliation, were colourful and powerful symbols of reconciliation.

This brings me to a second point – the importance of dialogue over monologue. As advocates we must be able to walk outside the circle of the converted and engage with the broader community. We must take the opportunity to engage in dialogue when it is presented. And our systems must enable “shared responsibility” for solutions.

I know many indigenous people have withdrawn from the formal process of reconciliation. However, as Prof Behrendt also pointed out, Indigenous people need to be able to articulate their vision for the future. Not engaging in dialogue limits the options for articulating that vision.

“Shared responsibility” is a notion well known to Indigenous people. It is evident in land use agreements, in community justice processes, and in whole of government community trials flowing from the Council of Australian Governments agreement. The Social Justice Reports by the Commission’s Aboriginal and Torres Strait Islander Social Justice Commissioner Dr Bill Jonas talk about shared responsibility as the basis for moving forward.

Indigenous think tanks, such as the Lingiari Foundation in Broome and groups promoting leadership such as the Australian Indigenous Leadership Centre, play a crucial role and must be properly recognised and consulted by Governments.

How do we go about warming the hearts of a sufficient majority to convince political leaders to make decisions that respect human rights?

Plainly, there is no easy solution. There are millions of hearts to be warmed, and what works for some may have little influence on others. There must be many programs, operating on many levels and operating incrementally so as to touch the greatest possible number of people.

In searching for solutions about how to alter community attitudes I mention two crucial areas in which HREOC is working.

The first concerns discrimination against Arab and Muslim communities since the terrorist attacks. The second relates to broader education on human rights.

The Commission began a dialogue with Arabic and Muslim representatives last year following concerns about continuing religious and racial discrimination. Called Isma (“listen” in Arabic), it has catalogued programs in place around Australia to tackle discrimination and violence. There are many programs – ranging from Arabic hotlines for reporting abuse, state-run conferences, seminars, information about Arabs and Muslims in Australia produced by their representative bodies, and recording of racially motivated crimes by police in some States. The responses are piecemeal; there is duplication and big differences between the actions taken in different States. To have the greatest possible effect, there needs to be more widespread adoption, greater co-

operation and learning from the success of others. And in this education will be a central tool.

To be effective all human rights programs must provide information simply and directly and explain the justice of allowing everybody to participate in community life on an equal footing.

Few people would be much the wiser by wading through the text of international instruments that set human rights norms. Understanding is more likely if the notion of human rights is set out in elementary terms. Overlooking this in human rights education can alienate people and lead to perceptions of a club that only the well-versed can join.

We are all born free and equal. There are basic freedoms that enable us to live with dignity – such as the freedom to make independent choices and to develop our potential as human beings.

Australia should be able to define itself as a nation in a way that reveals how we regard each other as human beings. My colleague Dr Bill Jonas has said reconciliation goes to the very core of our national identity - of what it means to be an Australian. This is a good start for our definition.

The fertile minds of primary and secondary students are a good place to begin human rights education. Programs often have to counter stereotyped views at home.

The Commission has developed educational programs for Australian schools. The Youth Challenge began as a day long human rights workshop involving schools from around Australia. It is now a comprehensive web-based program designed so that it can be slotted into the curricula of all secondary schools.

My host today, South Australian Equal Opportunity Commissioner Linda Matthews, federal Sex Discrimination Commissioner Pru Goward and I recently attended a Youth Challenge forum in Adelaide on sexual harassment that involved students from a number of city and country high schools. The students were very perceptive and gave us heart that we can advance an understanding of human rights through the youth of today.

Court decisions also have great educational value. This is why HREOC believes its power to intervene in court cases about human rights is extremely important in furthering community understanding about discrimination laws, and human rights issues generally.

There is a tendency in human rights discussion to refer to the old Chinese proverb that every journey of a thousand miles must begin with a first step. In Australia we are well into the human rights journey. We have made some notable advances along the way. But when the going gets tough, as it is today, each next step becomes as important as the first.

Horror stories about human rights abuses will always be part of the debate. However, if we can influence the large number of Australians not moved by horror stories we can shift the political process. And soften the heart of the nation.

The experience of listening to stories of the South Australian women told under Dame Roma's encouraging eye will remain with me. As advocates we must re-ignite old dialogues and coax the broader community to engage productively in the discussion.

As Australians let us not be damned by our silence. Or shamed by our ignorance.