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20th annual Sambell Oration

**‘Wake up Australia’
The New World Order:
The Human Dimension**

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Introduction

53 years ago this December, a war-ravaged and war-weary world ushered in a new international order with what was called the Universal Declaration of Human Rights. It was a bold and brilliant document full of words, phrases and concepts that everyone wanted to hear. It spoke of recognising the inherent dignity and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. It observed that disregard and contempt for human rights had resulted in barbarous acts which have outraged the conscience of mankind. It called for the advent of a world in which human beings shall enjoy freedom of speech and belief, and freedom from fear and want, as the highest aspiration of the common people. It declared as essential that human rights should be protected by the rule of law.

As a consequence, a common standard of achievement was declared for all people and all nations. Every individual and every organ of every society was required to strive by teaching and education to promote respect for these rights and freedoms, and to work to secure their universal recognition and effective observance.

It was too late for the 20 million Russians who had died in the freezing winters of 1942 and 1943. It was too late for the 15 million civilians in other parts of Europe who had died as the innocent victims of the power-hungry half crazed lunatics of the Third Reich and their millions of German, French, Polish, Ukranian, Croatian, Italian and other sympathisers.

It was too late to save the 17 million allied soldiers who had died in defence of the gravely imperilled frontiers of freedom, and their German, Italian, Japanese and other counterparts who hardly had a stake in the cause which sent them to their inglorious deaths. And it was too late for the 6 million Jews and the hundreds of thousands of gypsies, communists, social democrats, Catholics, non-Aryans, homosexuals and humanitarian sympathisers — including 1½ million children — who were subjected to the rifles, the preposterous death camps and the Zyklon B gas of the SS and Einsatzgruppen.

The atrocities of the Nazi era and the horrors and devastation of the Second World War compelled the international community to unite in a vow to create a world free of war, persecution, and injustice and never again to allow such horrors to darken the lives of humankind. And on 10 December 1948, the General Assembly of the newly created United Nations proclaimed this extraordinary declaration of humanitarian principles.

The pen was almost still writing the Universal Declaration when the Iron Curtain descended on Europe. Behind this almost impenetrable barrier for another 40 years, the so-called workers' revolution against the evils of capitalist materialism held sway. Under the guise of establishing an egalitarian proletariat, Soviet and Eastern European communism constructed a secret society of repression, fear, inhumanity, and nuclear might.

They built the monstrous Berlin Wall, attempted to blockade and perhaps obliterate the United States by carpeting Cuba with nuclear missiles, and armed ruthless regimes oppressing their own peoples, from North Korea to Angola, from the Middle East to South America. In some places, such as Ukraine, they engaged in genocide. They paralysed the United Nations with their infamous

veto, and built an environmental legacy from which to this very day hundreds, perhaps thousands, die every year just by breathing the air and drinking the water.

In response, the western world built armies, armaments and armadas of ships, planes, bombs and rockets. Amongst other places, we fought in Korea, Indo China and the Persian Gulf, as it turned out, for very elusive results. We ignored and not infrequently funded ruthless dictators even when they butchered their own people, because they were seen as “friends” of the West or at least anti-communist. Yet when Mikhail Gorbachev, almost singlehandedly, brought the communist house of cards crashing down, and when the tragic followers of the evil Saddam Hussein gave up their unequal struggle, we cried out victory.

The new international order

40 years after the first one was virtually stillborn, the second new world order of our era was born — this one was alive, or so the politicians told us. There was no Universal Declaration Mark 2. We had done such a good job ignoring the first version, and it was so well expressed, there was no point in trying another exercise in grandiloquence. There had been other international treaties on human rights in the meantime but the world’s main countries wanted nothing to do with them. Britain waited until it went into Europe when it was given no choice. Australia took until 1980 to ratify the main 1966 treaties and even then only embraced them tentatively and in part. The USA ratified its first and only human rights treaty just 6 years ago with a veritable host of reservations.

The world had come a long way in that 40 years — colour television, people on the moon, space research and travel, the Salk vaccine and other fantastic medical advances prolonging life and alleviating suffering, the end of colonialism, the US Civil Rights Act, progress for Aborigines, a human rights charter for Canada, and subsequently for the UK and New Zealand leaving only Australia of the western industrialised world without one, mobile and car phones which can telephone Moscow as easily as Moorabbin, and so on.

But while all this was happening, people were getting swamped by the tyranny of bureaucracy, the politics of the unprincipled or negligent — even of the dishonest, and the effects of massive national debt brought about in part simply by bad government in many countries. Much of it by corruption. And millions became beset by famine, poverty and persecution by new warlords.

The allies spent \$150 billion on ousting Saddam Hussein from Kuwait – without achieving even a skerrick of democracy in Kuwait itself where women can still not have a driver’s licence let alone a vote – and then we permitted him to murder, starve and freeze to death thousands of his Kurdish and Shiite citizens. And we have allowed him to remain in power so that he can go on oppressing his own people and doing horrible mischief around the world - just as we have allowed the Turks to persecute the Kurds from the other side of the border while we in Australia gave an AC to a visiting former President of Turkey.

We failed dismally in Somalia; we ignored the warnings about Rwanda and then withdrew UN personnel allowing thousands more to die; we set up safe havens in Bosnia and then stood by while the people we were supposedly protecting were forcibly uprooted and mercilessly shot; we have largely ignored the

massacres in Algeria, done little to assuage or reverse the suppression of the Burmese and the Tibetans, and for four decades virtually made love to the ruthless autocrat Soeharto and his voracious family in priority to helping the Indonesian poor and seeking justice for the East Timorese.

And this is only a tiny part of democracy's perfidy to the humanitarian principles the Universal Declaration was supposed to get us to uphold.

Sadly the remoteness of global humanitarian reform is truly great. There is simply no sign at all that at last, economic equity and social equanimity are about to supplant the essentially selfish and aggressive pursuits of most nations. There is not even a whisper of a world united in its commitment to redirecting its abundant skills and resources towards taking up the challenges of the real problems of humankind.

These challenges include alleviating hunger and disease; confronting, exposing and overcoming exploitation and corruption; removing torture and cruelty; attacking prejudice and discrimination; and addressing constructively the human imbalances and inequities which abound everywhere. At the end of 1998, for example, a million Indonesians were starving while the USA spent \$40 million on investigating the business activities and sexual peccadillos of its President, and we Australians spent \$30 million or more — who knows — on a campaign to explain and sell tax reform which on everyone's admission still has a long way to go before it will deliver the promised benefits. And just as we very recently refused 433 Afghans their legal and moral entitlements to apply for - not to win - refugee asylum in Australia, we spend \$300 million a year on a refugee program for about 10,000 people a year when if we and other western countries handling many more put all this money to alleviating the plight of the world's 25 million refugees and displaced people, we might actually give real relief to these hapless victims of selfishness, racism and neglect and do away with the need for boat people at all.

The present international crisis

And now the world cries at the outrageous wicked destruction of human life and property in New York and Washington just four weeks ago. It reels from the economic havoc caused by those events and others. It faces the realisation that humanity is threatened not so much by superpower rivalry or nuclear confrontation - as we have been brainwashed for so long - as by a much more sinister threat of chemical and biological attack on such things as our water resources, power generation capacity, oil supplies, transportation and communication facilities and other fundamentals to our way of life. It is hardly any wonder that sane minds everywhere question the proposed massive expenditure on "star wars" technology and missile defences which will be totally irrelevant to our contemporary risks and dangers.

And now we brace for the apparent inevitability of a war on whom and to achieve what we cannot understand but must trust in our leaders to choose wisely and execute efficiently, when we generally do not trust them to do much simpler things almost every day.

There is, to be sure, not a lot upon which we can be happy and contented at this time. And although geographically remote and politically unimportant, Australia and we Australians are going to feel the pain, pay the cost, and endure the risks that so many others are facing at this time.

If nothing else, it should make us take stock and look to what we can and should do to address our own weaknesses and faults.

Australian human rights

For most of these last 53 years since the Universal Declaration, Australia has been one of the leaders in accepting the high humanitarian standards it identifies. As a middle power with a respected human rights record, Australia has been looked to and listened to by the international community on human rights issues. This proud tradition of support for human rights and dignity casts upon us a great responsibility. As the largest developed democracy in our region, indeed the sixth oldest democracy in the world, Australia not only has an obligation to speak out and act against persecution running rampant in other countries; we have an obligation to prevent and remedy human rights abuses on our own soil. And the standards we must observe are those we set for ourselves, not alien credos which we loudly, and rightly, reject.

Some people label these human rights principles as foreign ideas imposed upon us by unattractive regimes or ideologies from elsewhere. But none of the tenets of the Universal Declaration and the raft of international laws which have followed have in fact been forced on Australia by anyone. For one thing, when they were passed, the UN was firmly under western control. But much more significantly, none of their principles are foreign to us or to decent people anywhere. All of them are recognised and accepted as part of our and many others' cultural and legal framework in any event. The driving force for their enthusiastic adoption in Australian terms is the evolution of our nation into a society where laws, employment and human relations reflect decency and honour; where legitimate controversy is fought and resolved with a passion devoid of stereotypes, and of minority, group or racial defamation; where a fair sharing of our country's resources and benefits is open to every sector of the community; and above all, where decisions of all kinds stem from considerations of merit and true deserts, free from preconceptions, prejudices and prejudgments.

However, in my perception, we Australians, together with the peoples of many others of the so-called developed countries, are today in serious danger of forgetting these goals. Continuing to recall and nominally respect the Universal Declaration of Human Rights and all the other human rights treaties is one thing. It is quite another to ensure that our governments and people actually honour these rights. And as of late our commitment is looking decidedly hollow and the world is taking notice.

Contrary to what some of our leaders claim from time to time, breaches of human rights and decency occur every day in Australia and all of the so-called developed societies. We fall far short of our obligations to children, women especially those in poor circumstances, people with disabilities, refugees, new migrants, senior citizens and others. Recent year cutbacks in this country in public funding for social justice, allegedly due to economic imperatives sometimes rather ironically called economic rationalism, might have produced a budget bonanza but they have resulted in major reductions in our provision of childcare, in job creation, education and social welfare programs, and in efforts to care for children, especially refugee and new migrant children, and to assist Aborigines and Islanders to improve their situation – so that again the poor are being hit to help the rich and the gap between the two widens even further. The

so-called “trickle down effect” supposed to flow to the poor from helping the rich become richer has again reversed or at best stopped its flow, as it always does.

If I may say so, we need a little less economic rationalism and a little more rational economics. And judging by our reactions to the recent boat arrivals and the shocking events overseas, we are even losing our compassion and tolerance for others different to ourselves. I am a proud, patriotic Australian – but I have been ashamed at some of what we have been up to of late.

Children

Although it saddens me to say it, developed nation status does not guarantee respect for the human rights of children. Indeed, in one particularly turbulent area of the world, children are, as we speak, actually being allowed, perhaps encouraged, by their parents and leaders to occupy the front line of battle between 2 parties to conflict, and there being subjected to heavy arms fire including live bullets and tear gas, and to injury and loss of life. I can understand, even if I cannot personally accept, that religion may be a legitimate impetus for personal sacrifice, even martyrdom. I can certainly understand what the national security imperative might demand. But whatever the reasons or justifications of both the parties to the Middle East conflict permitting this situation to occur, this wilful exposure of children to injury and death, without any other nations being willing to intervene effectively to stop it from happening or continuing, is nothing less than a shameful reflection on international morality not 60 years after the brutal killing of 1½ million children by the barbarous Nazis.

To those who look for and purport to find excuses for the recent wanton destruction and loss of life in the USA, I say that no ethos, no political goal, no cause, however passionately held, can possibly justify the deliberate unprovoked killing of innocent men, women and children. Nothing! Ever!

In Australia and too many other countries, it is becoming increasingly easy for children to fall through the cracks into the margins of society. By many of the conventional indicators – gross domestic product, for instance – Australia is more prosperous today than it has ever been. Through our ratification of the *UN Convention on the Rights of the Child*, Australia has undertaken to commit its maximum resources towards children and their well-being.

Yet more than 40% of our children live with families on welfare benefits or on incomes that make them the working poor. Time and again evidence has shown that worse health is being experienced by children from lower socio-economic backgrounds. There is also evidence that rural Australian children, particularly infants, experience a higher illness rate than children residing in metropolitan areas.

In fact many Australian children regularly suffer infringements of their basic rights. The Human Rights Commission reported just over 13 years ago when I was President that more than 100,000 youngsters were homeless in a country of affluence and prosperity. They are still there, some not very far from here, vulnerable to unsavoury even criminal influences, many living on the streets of our cities and towns, in clothing bins and under bridges, injecting their arms and selling their bodies just to stay alive.

Research conducted by the Melbourne City Mission has found that more than one-third of Australia's homeless thousands are aged between 15-24. The Salvation Army has even reported that 400 children sleep on the streets of Sydney every single night. Many kids have no medical or dental care. There were 30,000 substantiated cases of child abuse and neglect in Australia in each of the last three years. Our youth suicide rate is the fourth or fifth highest in the world. Who was it who once said that by 1990 no Australian child would live in poverty? The fact that it has not been achieved should provide the rest of us with all the more incentive to achieve that goal today.

The Australian newspaper of 11 October 1999, two years ago, contained an article entitled "Children pay the price of poverty". I quote a bit of it:

Australia's welfare departments are being swamped by cases of child neglect, with more than 6000 children every year confirmed as victims of a problem caused largely by the poverty that still affects 600,000 children ... Studies here and overseas show poverty and social isolation are big factors in neglect cases ... parenting is hard for everyone, let alone for those without a phone, a car, living in the fringe areas without accessible transport, no money for a babysitter, no money to go out for a night and certainly not for a weekend break. Day in, day out. Depression, drug use and neglect become a regular part of existence.

The situation has not changed. In fact it is getting worse.

In a quite scathing country report on Australia last year, Amnesty International found that many children, particularly Aboriginal children, were arrested and detained in circumstances amounting to cruel, inhuman or degrading treatment. Amnesty said that at least 92 largely young people died in custody or during police operations that year, 16 of them Aborigines.

Similar criticisms were made in the Progress of Nations, an annual report on the state of the world's children and their mothers, which I have launched for UNICEF from time to time, where the massive over-representation of Indigenous children in our justice system was brought to the world's attention. They are still there, and the numbers are increasing with every day that mandatory sentencing laws remain in force.

Youth unemployment

Youth unemployment in Australia is in disaster territory. Nearly 22% of our 15 to 19 year olds looking for work are unable to find full time work – a number on which we have now been stuck for many years. The figure is approaching 60% in some parts of the country, comparing with around 6-7% for the whole community. Whatever the politicians say, it is by any standards now chronic. It demands something more than platitudes and changing the tax system. People who do not work pay no tax. They just use what is collected from others to feed their bodies and their depression. Young people all around Australia are hurting as they deal with the insecurities of being unemployed. How much do all these tragedies cost? Is it less than the cost of providing work?

The Olympic and Paralympic Games are thus not Australia's only introduction to the 21st century. It behoves us all to spare no effort to address this disaster. The sufferings and deprivations of the young are not just about statistics, public opinion polls and money; they are a moral issue that impacts on the whole of society.

Education

And as at last some are graphically pointing out, when I and others have been squealing about it for years, our education system is reeling after a criminal running down of public facilities for many years. I warmly welcome Rupert Murdoch and the Australian Business Council to this great cause. Do our leaders, including the relevant unions, not realise how dependent Australia's small population, geographic isolation and economic irrelevance are on maximising the intellectual skills of every possible individual child? Do they not understand that the inevitability of public education neglect is that people will cross to the private system even at the cost of impoverishing themselves to do so? Do they not accept that if the working conditions, class sizes and personal rewards are unsatisfactory, more and more competent teachers will seek work elsewhere and those who are left will become more militant and resistant to change?

Everything should be on the table - school hours and vacations, the range and priority of courses, skill enhancement of teachers, availability of sophisticated technology, modernity of buildings and teaching aids, and so on. And it is all way past urgent. As Albert Einstein once said:

We cannot expect to solve today's problems with the same thinking that created them.

And as for adult education, which is hardly less important, the madcap race to privatise TAFE colleges and cut back their courses is precisely the opposite of what we should be doing. Perhaps we do not need every boutique course on offer but we do need a multi-skilled and comprehensively educated populace whose knowledge and intellectual strength at least matches and wherever possible exceeds that of other nations especially our trading partners and competitors.

Women

The disadvantages that women face must not be consumed and forgotten as they are real and persisting. They are the reason why UNICEF's work is so crucial. And it is part of my job as a UNICEF Ambassador for Children to make sure that people are aware of the problems and take steps to address and correct them.

Amnesty's campaign report in 1995 entitled "Human Rights are Women's Rights" stated amongst other things that:

Most casualties of war are women and children; most of the world's refugees and displaced people are women and children; most of the world's poor are women and children. Human rights violations against women remain rampant because they are largely hidden.

In the same year the "Beijing Declaration and Platform for Action", adopted at the Fourth World Conference on Women, stated:

Women's poverty is directly related to the absence of economic opportunity and autonomy, lack of access to economic resources, including credit, land ownership and inheritance, lack of access to education and support services and their minimal participation in the decision-making process. Poverty can also force women into situations in which they are vulnerable to sexual exploitation.

Six years on, not only has the situation not changed, it has worsened. Obviously I cannot deal comprehensively with this subject today. I say only this, especially in reference to developed country situations – if men bore children, no one would have ever dared argue that the cost of childcare should not be tax deductible or a social security entitlement. Mind you, if men bore children, the birthrate would stop overnight so childcare would be irrelevant.

Indigenous Australians

There can be no doubt that the continuing sufferings of Indigenous Australians are undoubtedly our greatest shame – and the deprivations endured by the children are the very worst aspect of that shame.

Many people in this country, including many leaders and moulders of public opinion, speak of everyone having or being given equal rights in our society. This is a glib, albeit seductively expressed, point of view. If two people commence life far apart in assets, whether personal or material, and they thereafter receive proportionately equal benefits, the gap between them actually increases. In other words, equal treatment of people on unequal levels at the outset of the equalisation process merely perpetuates the inequality.

Hence the superficially attractive appeal of "everyone should be treated equally" **as from now** is in fact a recipe for retaining differences, imbalances and discrepancies because of the commencing inequality. When used in relation to our Indigenous peoples or to new migrants, for example, it is also surreptitious and insidious discrimination if not racism. For whether conscious or unconscious, the consequences for the victims are exactly the same.

The truth is that in this eighth year of the UN-declared Decade of the World's Indigenous Peoples, and despite the increased volume of legislation and very significant financial allocations by governments from the seventies onward, Australia's Indigenous peoples still face gross inequality deeply rooted in history and the prejudiced, intolerant or stubborn attitudes of the white community. Whichever social indicator is looked at, whether it is health, education, justice, employment or housing, Indigenous Australians are identified as the most disadvantaged group in the country. This situation represents a manifest and fundamental breach of Australian and international law. What it says about the morality of our nation I leave you to contemplate.

National apology

Some argue that it is not necessary to say 'sorry' for this awful, and unlawful, state of affairs on the stated but completely misconceived basis that an apology means blaming today's generation for past sins. I fervently disagree with this small-minded sophistry. Not one other country in the world in the same or a similar position has taken this mean-spirited approach. Just as one stark example – today's Germans are not Nazis and do not run concentration camps of slave labour or gas ovens for the incineration of human beings but virtually nothing has proved too much for them in their efforts to effect reconciliation as they pay out billions in compensation and reparations for the acts of their forebears. Many other countries have issued their apologies, made their peace and moved on – Canada, the USA, New Zealand, the Scandinavian countries are some. Why not Australia?

Saying sorry has two simple purposes – one is to clear the air by a public national recognition of a heinous policy, or a series of policies, carried out by our nation supposedly for our future; the second is to show kindness and compassion for its hapless helpless victims. If those who have the insensitivity to demean these incontestable goals as the sad bleatings of what they are pleased to call the "sorry industry", had taken the trouble to listen to the stories of some of these people, as I have done of so many, or if they had taken the trouble to read even some of the pages of the Human Rights Commission's Stolen Children Report, all of which should be compulsory reading for every Australian and beyond, they would be thoroughly ashamed of themselves. Which is why I do not agree with those well-meaning people who argue that we should forget about the apology and move on. That approach would just reward the mean-spirited for their resistance. We owe it to living people, including ourselves and our children, to do what we can to right past wrongs. In addition, as we all know from personal experience of life, an apology actually makes the giver feel a lot better too.

What is being spoken of might only be a mere symbolic repentance but it is a symbol that our Indigenous fellow citizens would give everything to hear. They surely deserve at least that much – and I can think of not one even slightly sensible reason why they should not be given it. Some fear is occasionally expressed that an apology might carry with it a legal obligation to pay compensation. Judges do not normally give legal advice, free or otherwise, but you may take it from me – it does not and it would not.

Not that it would matter if the nation as a whole did have to pay compensation. Most other countries in the same position have done so. The amount would be minimal and not less deserving than we have paid to other victims of injustice

and loss. Last year, taxpayers paid more than \$300 million just for the promotion campaign for the Goods and Services Tax – not to mention the millions more for its actual cost of implementation. Yet no one understands why a barbecued chicken is not taxed if it is whole but is taxed if it is cut up. Or is it vice versa? Not even, apparently, the Tax Office itself. For my part, compensating people for personal loss is a far more important priority for a humanitarian nation. And money is actually the easiest thing to provide because it is always someone else's we are giving.

You can test this matter by asking yourself just one question – if any single one of us more fortunate people can bring some happiness to another long suffering person, especially when we can do so by one word, what in the name of heaven does it matter who was to blame?

The Stolen Children

Many wrongs have been committed against our Indigenous people and their ancestors during 213 years of European civilisation in Australia. They did not deserve what they received. And it cannot all be laid at the door of the past. Certainly past generations acted quite appallingly and in a most violent and discriminatory way. The Stolen Children experience – whereby Indigenous children were removed from their communities and placed in government-funded homes or in the households of white Australians – was not, as it has been described by some people who should and do know better, “well-meaning if misguided”. To my mind, this is just another example of a great Australian cover-up. In any country and every language, kidnapping is a criminal offence. So are rape and assault. Stopping youngsters from ever seeing their parents again, in many cases not even allowing them to go home to attend their parents’ funerals, may and ought to be criminal. It is certainly gross immorality.

Slave labour was outlawed by Abraham Lincoln 150 years ago. The Australian convict settlement ended about the same time. Yet for decades up to as late as 1970, many stolen children were effectively enslaved to white farmers and were the victims of all those other crimes. It does not strike me as “well meaning” to require a 6, 8, 10 or 12 year old to work 14 hours a day or more, 7 days a week, and to pay them \$1 or \$5 a week for doing so. Yet that is what often occurred. Many of these Aborigines are well and truly alive today. Many of the white people involved are also still with us. An apology is the least we owe for that wickedness.

The present generation

But our generation has an even more solid case to answer as well. On this very day - the International Day for the eradication of Poverty - against a national figure of around 6-7%, the Aboriginal adult unemployment rate, including Indigenous persons who forgo their rights to unemployment benefits to participate in community development employment projects, is 41%, and is expected to rise to 48% by 2006; unemployment among Indigenous youths is 18 times worse than their white counterparts; the average income for Indigenous adults is \$14,000 per annum, some 30% lower than the overall Australian average; and the deaths of Aborigines in official custody are still happening, even increasing, despite a \$30 million investigation by a judicial inquiry and a considerable expenditure of effort and money.

We have just not spent enough time or effort on Aboriginal health and education. It is well known - and heartbreaking to have to acknowledge even now - that the mortality rates among Indigenous people continue to greatly exceed the rest of the population at all ages in both genders, particularly among infants. But it is not as well acknowledged that Indigenous Australians are more likely than the rest of us to be sick from almost every type of disease or condition for which information is available. Most of them, such as heart disease, respiratory infections, middle ear infections, intestinal infections, and eye diseases, which plague Indigenous communities throughout Australia, are symptomatic of the poor living environment in which most Aborigines live. Contaminated water, inadequate hygiene, overcrowding, poor basic utilities such as the lack of toilets, running water and electricity, and a scarcity of preventative and curative medical and dental care all contribute to this deplorable situation. The Aborigines concerned have no power themselves to improve those matters.

In terms of education, almost 50 percent of those aged 15 years and over receive little or no formal education. For almost one third, the year 10 certificate is the highest educational attainment. Although their participation rate in higher education has risen in recent years, it remains far less than other Australians and their success and retention rates are about 20 percent lower. Only a little over 11% of Indigenous people are likely to have a post-school educational qualification as opposed more than 30% for non-Indigenous people.

Juvenile justice

Mandatory sentencing – which I prefer to call compulsory jailing – is a nasty insidious creation of our generation that not even the convict settlement introduced. I oppose it absolutely, and have been doing so for many years. I was President of the Human Rights Commission when compulsory jailing was introduced by the Government of Western Australia in 1987. We went to WA to try to talk them out of it. It is to my everlasting dismay that we failed. I have been speaking out against it ever since, spurred on by the experiences of our own and American Federal Judges in having to enforce these awful concepts. Tragically it took a young boy's death early last year to bring public and political attention to it.

As a general statement, I do not believe that politicians unaccountable to consistency or case by case review should replace judges and magistrates as

arbitrators of appropriate penalties for the commission of criminal offences. Nor do I think that the Australian people trust their politicians more than their judges to do this work. What is more – compulsory jailing legislation expressly abandons the internationally agreed principle of imprisonment as a sanction of last resort, with priority given to other more base interests¹.

However, there are much more important reasons why these laws should be opposed. Whatever their actual words, compulsory jailing laws clearly discriminate against Aborigines – and were intended to do so. Why else were they framed to require the compulsory jailing of people convicted of offences, mostly petty, which have disproportionately involved Indigenous Australians?

How can we impose the same or a greater penalty on an offender who has stolen one can of beer than on one who has destroyed thousands of dollars of public property? How can stealing half a pizza because the young Aboriginal thief is hungry receive an automatic jail sentence when fraudulent use by a white adult of someone else's credit card to buy the pizza to take to a party with friends does not? And even more significantly, how and at what cost will the community be protected from a young person turned into a confirmed criminal by unnecessary, too early, and excessive exposure to hardened criminals in prison?

We are talking of Australian legal regimes in which, for example, in sentencing a teenager on a second or third property offence, judges and magistrates are given no power to take into account any of the usual circumstances appropriate to the sentencing process, such as the triviality of the offence, general good character, illness, family poverty or dislocation, and most importantly a real and genuine commitment to go straight in the future. They must send the offender to jail yet a 50 year old who drives like a maniac and causes injury, even death, can get a bond.

There are dozens of cases I could quote, but because of time constraints, I invite you to take a closer look at just one of the stories – that of a young Aboriginal lad named Chris of Gunbalanya in the Northern Territory. This 18 year old copped 28 days in jail for receiving – not stealing – \$2 worth of petrol. As far as I can find out, there have been at least five other jailings of young people in recent years for stealing or receiving similar amounts of petrol. That petrol was certainly not taken to fuel their company cars. It was to feed their addictions as petrol sniffers.

In the Northern Territory we have been jailing kids not because they are dangerous criminals, but because they are ill. And in the Northern Territory, magistrates hearing these cases have been prevented by law from taking into account that these kids are petrol sniffers. As much as I support them, where is the logic in having non-custodial treatment orders as an option for heroine addicts but not for petrol sniffers? What jurisdiction in Australia, indeed what country in the world, would jail petrol sniffers? Where in the world is there such inhumanity? We are not yet quite in a position to lecture too many other countries.

Which is no doubt why the newly elected and installed Labor Government of the Northern Territory is moving with alacrity to remove these laws from the statute books. Pity their brethren in Western Australia are not doing the same. I warmly

¹ Section 125 *Young Offenders Act* 1994 (WA).

welcome this development. Far too many young people, especially Aborigines, have been and remain their unjustified victims.

May I add that quite apart from the morality of all this, the statistics show that the stated goal of these laws to reduce the incidence of crimes like housebreaking and car stealing has totally failed. The Northern Territory Neighbourhood Watch Association has reported virtually no variation in property-related crime since compulsory jailing was introduced there five years ago. So far as concerns Western Australia, a University of New South Wales report revealingly headed "Capturing Crims or Capturing Votes"² concluded that a decline in the home burglary rate in WA commenced prior to the introduction of the new legislation and was not attributable to it. That research also showed that in fact the compulsory jailing legislation had the effect of crime displacement, because at the time the home burglaries were declining, there was a dramatic increase in robberies and armed robberies. I have actually witnessed this development for myself during my current service on the Supreme Court of Western Australia.

Finally, I take the liberty of querying what use has been made by the Northern Territory and Western Australia of the significant federal funds – millions of dollars – made available to deal with the 300 odd recommendations of the Royal Commission on Aboriginal Deaths in Custody, largely designed to avoid or minimise the incarceration of Aborigines on minor charges? And on the subject of cost to the community, why did we spend the millions to conduct the Royal Commission just to allow these inhumane laws to totally flout its findings?

Unequal justice

When Australian government representatives so frenetically attack international bodies for having the temerity to criticise our performance in this field, as they have again been doing in recent times, they might think for a moment about some other facts as well. Imprisonment of blacks continues to be far greater than whites everywhere in this country, with the Australian Bureau of Statistics reporting last year that the rate of Aboriginal imprisonment was 15 times greater than for the total population. In the Northern Territory a full 70% of the Territory's jail population are Aborigines as against 28% of the total population. In Western Australia where Australia's compulsory jailing laws originated and still remain, Indigenous people are just over 2% of the population yet their rate of imprisonment is 21 times that of the total WA population.

Statistics extracted by the Institute of Criminology last year showed that in New South Wales where Aborigines and Torres Strait Islanders represent even less than 2% of the population, they account for a third of the juveniles in detention, a fifth of adult female prisoners including one in four of all females in full time custody, and one in seven of all the adults in prison. The Institute has also reported that a New South Wales Aboriginal youth is twice as likely to receive a jail term or community service order as a non-Aboriginal youth of the same age, with the same criminal history, committing the same offence.

Which disposes of the argument that their high incarceration rates are due to a greater Aboriginal propensity to commit crimes. It is simply that the white community has not been and is not prepared to deal with the causes of the

² University of New South Wales Law Journal (Morgan, N (1999) 'Capturing Crims or Capturing Votes? The aims and effects of mandatories', *UNSWLJ*, 22(1), pp 267-279).

problems because it will cost money which in too much of the country it prefers to spend on incarceration. Where alternative methods have been tried – and there are a number of such examples – they have been strikingly successful in reducing the crime rate. Our generation has its own quite new Stolen Children saga to confront.

A fair go for all

In short, we continue to deny Indigenous people the very equal opportunity to a fair chance in life which we Australians like to call a 'fair go' for all. Which is not to say that Australia is not a wonderful country – I would say the best in the world – and that we are not generally a kind and generous people. It is just that we are not as good as we say or think we are. Indeed, while this situation persists, we are engaged in an empty untruthful boast about our supposedly superior standards.

These things should not be happening. The things in the past should not have happened. Together they are human wrongs, not for blame in the crude sense, but for the deepest regret and for a commitment to put them right as a matter of the utmost urgency. If they represent what some have called a black armband view of history, I for one wear it as a mark of sorrow, and as a commitment to reconciliation. Rather a black armband than a white blindfold to shut out the truth.

It can never be right to be wrong – or to continue a wrong. We certainly do not need to convict ourselves of a past which we did not influence and over which we had absolutely no control. But future generations will undoubtedly judge us harshly if we do not respond now. This is not a question of anyone's attitudes to people different to ourselves. It is about justice and fairness to all people, not just some.

Asylum seekers

Finally, let me say just a few things about the way we are approaching the current problems posed by asylum seekers arriving here by boat.

The first thing to say is this. People seeking refugee asylum are not illegal migrants. In making their applications for refugee status, they are doing something expressly permitted by Australian and international law. No one suggests that we should have open borders. There must be controls on movements of people in and out of countries not their own. But the current problems have been caused by many events in many countries, not all of their own making, and are not within the power of any one country to regulate. While the world finds a way to deal with the problem - and there are certainly ways we can reduce and minimise the problem for ourselves - we should not resort to false and racist labels to heighten the rhetoric and gain a political advantage.

Second. To denigrate people escaping persecution, torture, terror or starvation because they are Muslim or non-White or unkempt-looking is pure prejudice and intolerance. To label them as actual or potential terrorists, because some of them are from Afghanistan, as some of our politicians and others have recently done, demonstrates breathtaking arrogance, displays appalling ignorance, and plays shameful and unashamed politics. These people have **rejected** or **been rejected by** their leaders. That is why they are here.

Australians told public opinions polls in 1947 to the tune of no less than 80% that we should reject the Jewish survivors of the Nazi Holocaust. The poll respondents were never asked where precisely these tragic victims of unspeakable barbarity were supposed to go and why we could and should not contribute to alleviating their plight. Indeed, a boat called the St Louis which had sailed from Bremerhaven with 600 escapees from Hitler's death squads was turned back by the British authorities in mandated Palestine in 1942 for much the same reasons we are now using to turn these boats away. Every one of the 600 was gassed at Auschwitz. Australians also voted 60% against accepting Vietnamese and Cambodian refugees from countries we had actually helped to wreck. When will we learn?

Third. To turn them away because they arrive without papers is cruel. If you are fleeing your own government because it is persecuting you or will not protect you from the persecution of others in your homeland, obtaining papers from them is a nonsense, and Australia has no office to apply to for authorisation in most of the countries concerned. When you can and do apply, you wait for 2, 3 or more years for permission to come. How do you survive lack of food and water and gangs of killers and rapists while all that is going on?

And as for blaming the captain of the Tampa for "invading Australia's sovereignty" - as if the King of Norway was about to declare war on Australia, let alone with an oil tanker, instead of lauding him as a hero, I cannot find the appropriate words of condemnation.

Fourth. There is no such thing as a queue of refugees. Refugees escape persecution and possibly death or starvation for themselves and their children. They do not fix or regulate the times or places for their terror. It is true that a boat person granted asylum may temporarily displace someone else wanting to come here. But this is partly because Australia has in recent years substantially reduced the numbers of refugees it is willing to accept. We have come down from 25,000 to around 10,000 in a period when the number of refugees and displaced people in the world has grown substantially and our population has increased by almost 3 million, not to mention our national wealth and levels of personal consumption. It is also partly because we have linked the onshore and offshore refugee programs so that once the yearly quota of refugees has been reached, the processing of overseas asylum seekers stops, notwithstanding the fact that we have often actually processed and taken in less than the allocated quota, presumably because too great an allowance has been made for boat people and other informal arrivals. We have thus created the situation that even if there were a queue for asylum seekers to join, none of them could be sure that their applications will even be considered when they reach the head of the queue. Human beings facing personal horrors ought not to be the plaything of bureaucratic procedures.

Like other similar countries, we have a binding legal obligation to all refugees, not just some. Who is to say that people arriving on our doorstep by informal means are less likely to have suffered, or be likely to suffer, persecution than those living under someone's protection overseas whom the bureaucrats have chosen after years of procrastination and delay which showed no recognition of any urgency in their cases.

And fifthly, we are now the only developed country in the world which practises indiscriminate indeterminate incommunicado detention of asylum seekers.

Alone of all countries in the world, including Canada, the United States and the nations of Europe and Scandinavia, we have indiscriminately detained all of them – the elderly, the children, the sick and the pregnant – at a cost by the way of around \$50,000 per person per year – when the Catholic Archbishop of Perth was offering free accommodation for all of them in Catholic homes while the review process ground on.

In any civilised country, freedom from arbitrary detention is a fundamental human right derived from the common law, yet successive Australian governments have detained for long periods of time – up to 5 years and more – asylum seekers who have arrived in this country, having fled terror, persecution, hunger and other human rights violations too horrible to dictate, in their homelands. Most detention centres in this country suffer overcrowding, a lack of natural light and recreational facilities, and have completely inadequate sanitary conditions. As our own Human Rights Commission has found, they are more like overnight police lock-ups than places suitable for the lengthy detention of people who have committed no crime. And of course they are mostly sited thousands of miles from civilisation!

I could hardly believe my ears when I heard the Minister describe them as something like Australians' homes.

Some 482 children under the age of 18 have been facing this very horror. Thirty or so of them have been facing it alone³. Some have spent, and more will spend, the years from age 0-5, or 3-8, or 6-11 in compulsory detention without having committed a single offence. Both the United Nations Human Rights Committee, and our own Human Rights and Equal Opportunity Commission, have condemned the Australian legislation as breaching fundamental human rights. So have many outspoken Australians.

Unfortunately, such criticism has been brushed aside as bleeding heart stuff not worthy of serious consideration. I do not agree that inhumanity can be accepted with impunity. We simply must protest this fundamental violation of decent conduct. And if you don't mind my saying so, church organisations and religious leaders should be at the forefront of the struggle! I recently read a debate between Reverend Tim Costello and Father Frank Brennan, two fine and courageous Australians, on the difficulties facing church leaders in this connection. I say merely that whatever the problems, if the churches and church people cannot and do not take or join the lead, the morality of our nation and our people is for the high jump. We certainly cannot leave it to the politicians who, too often have a problem finding a single moral principle between them all.

Most of the developed world, including Australia, has for 50 years unequivocally declared a commitment to provide protection to people seeking asylum as refugees and to ensure that they are treated in accordance with internationally agreed principles and human rights standards. Some of our own foreign military ventures, notably in Vietnam and Cambodia - which we entered not for their peoples but, as we were told, to protect ourselves - have actually created refugees. Yet we have detained them too.

Guidelines issued by the United Nations High Commissioner for Refugees (UNHCR) state that detention should be avoided. Only in exceptional

³ Australian Department of Immigration and Multicultural Affairs, *Detention Report*, 11 May 2000.

circumstances is a state entitled to temporarily detain an asylum-seeker and detention should never be automatic, prolonged or imposed as a penalty or as a deterrent to others. It should certainly not be indiscriminate. And if you are only a child following your parents' ill-fated lead, how can detention possibly be just?

From recent political propaganda in this country, you would think that Australia had been swamped by boat people. It may interest you to know that in the last 12 years, less than 20,000 boat people have arrived on Australia's shores without visas, not the tens of thousands a year the preachers of doom and racial prejudice would have us believe. And we have given refugee status or entry on other humanitarian grounds to more than 4000 of the 20,000 – meaning that we have held and paid for all these people in detention for up to 5 and 6 years without charge, trial or bail, and eventually found at least 25% of them innocent of even the technical offence of arriving in our country without appropriate documentation. There would be a furore if this statistic applied to people detained on criminal charges. And we have continued to detain many thousands more because there is nowhere safe to deport them to which only goes to prove that they also were probably refugees as well.

Moreover, contrary to the scare campaign and playing to people's fears that we are being invaded by boatloads of gangsters from the Middle East, it should be recorded that of the recent arrivals of Afghans and others from Iran, Pakistan and elsewhere in the region, more than 90% have been granted refugee status by the department itself or by the Refugee Review Tribunal. So much for the so-called invasion by criminal elements! So much for the absurd publicly-funded and government-authorised publicity videos that characterise Australia as the land of snakes, sharks, man-eating crocodiles and killer spiders! One is on my mantelpiece at home. I make my children watch it! It is amazing how our Olympic visitors escaped unscathed! How do we ourselves survive? If we had a land border with a country of oppression, our problem would be thousands of times worse. Our protection is our geography, not draconian laws or advertising slogans.

And make no mistake. The millions of dollars a day - at least 20 million dollars a week it is costing us, first, to have the Navy permanently stationed off the north-west coast providing public transport facilities around the Pacific, and then to pay, some would say to bribe, Nauru and Papua New Guinea to take them, will not save us from a single refugee. For at least 85% or 90% will be back here after processing, and of course after the election – the same number that would have been admitted if we had taken them onshore in the first place, at much less cost. And after Nauru and Papua New Guinea are full, we will do the same in Kiribas and other tiny Pacific nations until they are full and even our own Christmas Island, which we have just legally cut adrift from our national unity of treatment. I wonder what would be happening if the boat people were white farmers from Zimbabwe or Afrikaners from South Africa with their appalling human rights credentials. Well, I don't wonder really. We all know perfectly well.

Is this madness or just politics? It is certainly not compassionate or in accordance with our voluntarily undertaken legal obligations.

I have been in some of the Pakistani camps these people have come from. I was in camps in Bosnia and Kosovo during the wars there. They are as bad as can be imagined and worse than most could ever conceive. During the recent court case brought by the Tampa people, the Federal Court heard evidence that

some of these people had had to watch while their parents were murdered and their wives raped. I mean - who is kidding whom? If I were there, I would accept a trip in a bath, let alone a leaky river boat, to anywhere at whatever cost, even an island of bird droppings like Nauru or one in chaos like Papua New Guinea or one about to disappear under water like Kiribas, to save my children from death due to gang warfare or starvation brought about by inadequate food and insufficient clean water! And by the way, the camps do not have television sets. If they did, Australian leaders would not be on them. Let us forget this nonsense about "sending a message". The boat people are desperate, not intellectual balancers of risk.

Let me also remind you that contrary to what we have all been hearing in recent times, Australia is not a target. Many more asylum seekers without papers are going to the UK and European countries, Pakistan, Indonesia, and many other places than are coming here. There have been tens if not hundreds of thousands of people from the former Yugoslavs in Germany, Austria, Switzerland, the UK and the Nordic countries, none of whose peoples do to their asylum seekers what we do to those who try their luck here. They include Canada whose Prime Minister has just announced to his Parliament that despite the difficulties his country is facing - with far greater numbers than here - his government will permit every one of them to make an application for refugee status in accordance with the same laws as apply here. Let us get a hold of ourselves and actually live up to our much-trumpeted decency!

My questions are simply these: What have people fleeing persecution and the risk of injury, torture or death done to deserve all this unconscionable treatment? If there are some cheats amongst the people seeking asylum in Australia, what crime have the rest committed to warrant the Australian Parliament and its members from the two major political groupings taking leave of their senses? What are the crimes of the children and the elderly? The nicest answer is the opinion polls, which on this subject like all such important humanitarian matters, leaders should lead not follow. The worst answer I leave to you.

Conclusion

The great American black civil rights leader, Martin Luther King, once said:

The 20th century is strewn with the victims of human cruelty, and is also replete with examples of human triumph. The world-wide struggles against war, racism, poverty, colonialism, and totalitarian repression all testify to the truth that while men may be oppressed by slavery, the urge for freedom will persist undiminished, and that while death may break men's bodies it shall have no dominion over their souls.

He was of course right. The human spirit has proved over and over again a remarkable ability to resurrect itself under the most difficult of conditions. Spirituality itself is an essential feature of our capacity to survive. But if these saintly concepts are to take hold and survive in 21st century democracies, a new international order based on morality and the eternal sanctity of the human condition must be made to prevail over brutality and terror.

The current so-called war against terrorism is nothing of the kind. It is a propaganda offensive to appease a nation in fear and grief, not least because its

power has not saved its people and territory from mortal attack and tragedy, and because of the belated recognition that power alone can and will never do so. The Clinton administration spent billions trying to find Bin Laden and destroy his network, and failed. How and why will the present effort do any better? Will the Sixth Fleet, after toppling the Taliban and killing Bin Laden - which is what Western leaders mean by bringing him and his gangsters to what they are calling "justice" - and in the process also killing heaven only knows how many innocent civilians, then move off to Ireland, Spain, Japan, Israel and countless other places to deal with what they call their "terrorists"? Will the CIA then come, with its massive list of failed exercises in protecting anyone, to Australia or go to Britain, France and Germany to seek out and destroy the Al Qaida cells operating here and there? I would not hold my breath. And what on earth will they do to root out the terrorists that live in the USA itself? Does anyone seriously think that eliminating Bin Laden, however justified that may be in itself, will eliminate terrorism?

No. Despite massive efforts at great cost for centuries to stamp out crime here and elsewhere, crime has always been and will always be with us. While realising that there will always regrettably be bad people who will provide work for domestic and international police authorities and criminal courts, we must attack the root causes of crime, terrorist and otherwise - poverty, injustice, inhumanity, intolerance, inequity, hate - and isolate those who would persist with evil whatever is done, so as to limit the task of finding them and the harm they cause.

What we need is not more laws and political grandstanding. As a great philosopher once said:

If you always do what you always did, you will always get what you always got.

We need major attitudinal change — by our leaders in government and the private sector alike — and by ourselves. And I can think of no better role for your very welcome National Coalition Against Poverty to add to its impressive agenda.

This essential task will begin with our recognising and embracing the equal worth of all people and providing everyone, especially the children, with the knowledge and understanding to combat the lies and distortions that currently tend to swamp this fundamental principle. The recent divisions in Australia over the Tampa asylum seekers have thrown up this challenge in a stark and disturbing way. And our education system and facilities are simply not addressing the matter at all.

Human rights are, as their most famous declaration says, universal. They are for all humankind. No one person is more of a human being than another. What we are looking for in Australia - and, presumably, elsewhere - is the emergence of a noble society which seeks national dignity for itself and grants personal dignity to everyone in it. We will fail this challenge at the peril of our nation's and our own souls. Instead of accepting without thinking the uncritical nonsense dished out by our leaders and a too lazy uninformed media, instead of being paralysed by fear or apathy into ditching our traditional morality and kindness, wake up Australia! We are too wonderful a country and too fine a people to contemplate allowing this tragedy to occur.

The Honourable Justice Marcus Einfeld AO QC PhD

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