

## **WHY SHEEP WON'T CROSS BRIDGES: THE POLITICS OF FEAR**

Inaugural Megan Sassi Lecture

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### **BEGINNINGS**

I acknowledge the traditional owners of this land, the Nyoongar people, and their ancestors, traditions and living culture. I am conscious of the fact that I have not asked for their permission to be here, as I would do in the land I was born in, New Zealand.

New Zealand was not settled by force, as Australia was, but on a treaty that recognised the rights of its inhabitants to their land, seas, flora and fauna, their customs and culture. This has made a very great difference between the political and legal cultures of our two nations. I am a citizen of both.

It has taken courage and tenacity, of ordinary people like Eddie Mabo and those who went before, to take and defeat Australia's absence of acknowledgement of the moral and legal obligations arising out of our occupation of this land.

I'm greatly honoured in being allowed to give the first Megan Sassi lecture. It is easy to appreciate the courage of activists like Megan Sassi, once they have left us. We tend not to acknowledge them while their lives are hard, and they are hard. It is an activist's role to speak unpopular truths and to take up unpopular causes because they must be taken up: to brave disapproval, ridicule and exclusion from the society of those who benefit from the status quo. The most basic of all fears is the fear of being rejected by your own 'mob'. None of us loses it. The first and deepest lesson for an activist is to feel that fear – and do it anyway.

### **FEAR OF FALLING**

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Ten years ago I first took a cable car then climbed another 200 metres up what New Zealanders call a 'mount' or even 'a bit of a hill' but Western Australians might call a mountain; strapped on a parachute, and walked off a cliff. You have to walk, not jump, which is an act of faith in the laws of physics when your screeching mind tells you that you are completely mad. It is a sphincter-focused moment, when the ground disappears beneath your feet. The next was indescribable, when I experienced the equilibrium of 'flight' and learned that those laws of gravity and physics and mathematics have a personal reality, and that the parachute is open and you are, if not flying, then at least not falling. It was a moment of no-mind, epiphany, utter non-self awareness – or terror, you can choose. I had a life-long, irrational fear of heights – towers, tall buildings, even orchard ladders – and I wanted to know whether it would go if I looked it in the face. It did not go: it was transformed into exhilaration.

Ten minutes later, I made a clumsy landing. It was clumsy, because that landing should not have been a 'no-mind' moment. I actually forgot that I had a man on my back, I hadn't made my space-walk alone, and I needed to listen to him telling me when to use my legs again. I had taken my risk, stepped onto the invisible bridge and found it, but I had been shown the way.

I was the Victorian Commissioner for Equal Opportunity at the time. I went back to an election that led, as we knew it would, to a new and very different State government, committed to a wholesale restructuring of State business and a pitiless political agenda, whose strategies were to include the politicisation of the senior public service (the Premier personally appointed and controlled them all, which is a bad idea), abolishing courts and sacking judges, getting rid of statutory offices and institutions the amending the Constitution and sidestepping its arrangements to limit the power of the executive.

The Commissioner for Equal Opportunity was to receive complaints by two Aboriginal children that the Kennett government's pursuit of the bottom line had shut down the only school in which Aboriginal children had ever

succeeded educationally, and was to complete an investigation into whether housing women prisoners in jails designed for men breached the Equal Opportunity Act's underlying principle that everyone, including 'bad' women in prison and troubled Aboriginal children, is entitled to substantive equality.

The children's suit – which succeeded, after two years of litigation, the Premier committing enormous resources to 'beating them' as a test of his "right to govern" - and the Commissioner's later decision to act to protect the rights of women prisoners – women were never transferred, as threatened, to Pentridge Prison's 'K Division' - were both necessary and right, and unpopular with administrators, ministers and the premier, and so was the Commissioner too. But I had already walked off my cliff, so I did not fall.

### **THE POLITICS OF FEAR**

The 'politics of fear' is a hackneyed phrase used by newspaper editors and orators looking for a hook for a political speech, I'm sorry to say. For this lecture I will define 'fear' as the overwhelming effect of anticipating personal disaster that may affect decisions, influence judgments and choices, interfere with rational thought, and paralyse the capacity to empathise. Empathy is a quality essential for any animal that lives in groups – well, if it wants to live for long in the group.

'Politics' is, like economics, a body of knowledge about how fear and its counter-part greed, influence human behaviour; and the art of manipulating them.

I am sure politics is, as Gough Whitlam said on the 27<sup>th</sup> anniversary of 11<sup>th</sup> November 1975, the date his government was dismissed by the Governor General, an honourable profession, at least in principle and in his case. It is not much in evidence in the two-party system today, though there are honourable exceptions and some of them are present here tonight. It is perhaps easier to be ethical when we do not have the power to effect change (it's not easy being Green). Perhaps that is why human rights advocates seem 'impossibly' pure: hang onto that thought.

We make rules to manage both political activity and economic activity, in spite of a philosophical belief in the perfectibility of mankind and the 'invisible hand', because it has to be predictable.

People have a unique capacity to imagine a future with themselves in it: they like to be able to plan. Australians do not like change, much. It was a combination of the fear of change and robust dislike of politicians that killed off the republican referendum in 1999, after all: it was a clever campaign.

Yet Australians have embraced the only form of 'human rights' protection we have in this country, anti-discrimination law, very thoroughly since 1975 when the first race discrimination laws were enacted, first in South Australia (this is often forgotten) and then, federally, in the Racial Discrimination Act. They have blossomed since, to protect other vulnerable minorities from discrimination.

### **RACISM, IMMIGRATION AND PLAGUE**

Racial fear is a profound part of the Australian national psyche. In the 1890s Australians feared the 'yellow peril', just as in 1992 the then Labor government introduced mandatory detention to address its fear of 'floods' of asylum seekers. The only flood was of adrenaline. Our deepest fears were exposed during the 2001 election campaign, when we were so quick to believe that asylum-seekers would throw their 'children overboard' – which was a lie – and to accept the 'unfortunate' loss of the SIEV X, in international waters, and the drowning of more than 350 asylum-seeking passengers, as something we could not have prevented. We could have prevented it.

I am going to highlight our racism, our fear of refugees and terrorism, which we have linked though they are not connected, because it would be simply impossible to ignore the effects of both the September 11 outrage and the bombing of Kuta nightclubs, on our national state of mind. I am acutely aware that more than half of those killed, maimed or missing were Western

Australians, and the effect of this outrage in “our” holiday island, our second Rottnest.

But let me also acknowledge the many other occasions for fear mongering by politicians.

Our first colonists were, as if we could forget, outcasts, convicts and their keepers, mostly men. Women did not play much of a part initially other than as involuntary sexual partners on that Fatal Shore. We seem to have retained a core of fear of emancipated women, especially in political life, when powerful political women have tended to be targets – witness Cheryl Kernot’s political crucifixion after the revelation of her affair with Gareth Evans.

Our exaggerated fear of homosexuality may date from those repressed memories of the brutal monasteries of the convict settlements, too. It may be that our fear of lawlessness of children and the ‘gangs’ of young people in public space also dates from those early years of control and segregation. It is remarkable how quickly a dialogue on the human rights of children turns, in Australia, into an angry (if one-sided) discussion on the rights of adults to hit them. Veronica Brady has suggested that Australian society is profoundly affected today by early colonists’ fear of the vast and ancient inland deserts: they perched on its coasts and water-courses, because they did not know how to survive in its arid heart: ‘the lost child’ is an enduring icon of Australian settlement.

We fear contagion, especially from AIDS. We fear drugs, and mental illness. We fear crime, and especially the older of us are ready to expect violence and the loss of our property at the dark hands of Aborigines; we fear “Aboriginality” too. When our founding fathers were designing our Constitution it was the people’s fear of ‘the yellow peril’ and our wish to preserve racially discriminatory state laws that voted down any constitutional guarantee of equality before the law, let alone a US-style ‘bill of rights’.

We used to fear Catholics, then Jews, then Seventh Day Adventists (remember Lindy Chamberlain?) Today we still fear the alien, immigrants and, now, we hate, misunderstand and fear Islam.

Xenophobia is a hatred or fear of foreigners or strangers or their politics or culture. It comes from two Greek words: *xenos*, meaning strange and *phobos* meaning fear. Hatred often accompanies fear, most often from those who are the lowest on the socio-economic scale – the threat of economic competition from ‘outsiders’ is often felt most by those who feel their livelihood is most precarious. These days it certainly is, when the needs of our economy have reshaped employment into contracted, casual and “flexible” workforces required to possess ‘transferable skills’.

I believe that our social environment is saturated by fear, today, and it has made us hard.

The language of the xenophobe may be crude-asylum seekers are ‘rats’, ‘human sewage’, queue-jumpers’ – or naive - ‘I believe we are in danger of being swamped by Asians . . . I should have the right to have a say in who comes into my country [Pauline Hanson’s maiden speech 13 September 1996] – or measured, ‘We will decide who comes into this country, and the circumstances in which they come. [John Howard, election campaign 2001] but the message is clear enough. Build and defend your fences, and form your group behind them.

### **THE TERRORISM THREAT**

Terrorism has changed that: the threat from without is mirrored by a threat from within. Al Qaeda, and terrorist attacks, most recently in Bali, have destroyed our island confidence. Our inability to assess the nature and credibility of the threat that our leaders constantly reinforce is allowing government to do things that would have created a furore before the hijackings and the bombs. In the US, for example, a special system of ‘justice’ has been established for those who are accused of being enemies of the state. Actually it’s the old form of justice: arbitrary. Prisoners may be held

indefinitely without access to the courts or legal representation and without contact from their families, and without being charged or tried. Australians are among them. We have done nothing for them. It would be unpopular to defend their rights. They are accused of being terrorists. This is enough.

Terrorism is the use of violence to create acute fear and anxiety. It is a pejorative term, used to justify extreme 'defence' measures, and to delegitimise an opponent's purposes, methods, ethics and credibility.

Terrorism is also a drama: the commission of unspeakable acts to achieve the maximum psychological effect beyond the immediate, nearly always innocent, civilian victims, through the transmission of fear to a wider population. In every case, the media is a party to the deed: it is re-enacted on the news, then the current affairs program, the commentary, the aftermath, the funerals: The revenge.

In the hands of insurgents, terrorism changes the political environment through violent, disorienting behaviour. When governments do it, terrorism is designed to shore up power and enforce obedience.

Terrorism usually produces an anti-terrorist backlash: greater repression inside a country, and war against "the forces of evil", in other nations. Those who use the universal language of human rights to criticise the actions of their own sovereign governments, liberals, intellectuals, peace activists, environmentalists and others at home, those "soft on terrorism", are said to be co-conspirators, a part of the threat.

This is happening in Australia now. A critic is called, ignorant, a bleeding heart, a fool and a traitor. Once this is established, the diagnosis of the terrorist disease is complete - the collapse of moral authority – and its treatment becomes the preservation of national security; border protection; greater governmental authority; more secrecy, and special and broad exemptions from the usual standards of civilised conduct. When was it ever acceptable to punish unconvicted families of 'criminals' by destroying their

homes, as Israelis have done, or to murder suspects by remotely-controlled missiles, or to place a gun at the head of an Australian Muslim child? Random arrests, detention, and denial of access to the mechanisms of justice, meeting force with force rather than with creative thought on what causes terrorism, as the US has done, sets up a spiral of retaliation. It becomes necessary to take sides. This sets up a new moral order. Terrorism legitimates the violence of anti-terrorism, making fear truly systemic.

Those recent raids on Australian Muslim homes have helped to flood our social milieu with a general sense of anxiety and vulnerability. The public is willing to excuse extreme acts based on suspected connections. Men of 'middle-Eastern' appearance are searched at Customs, even if they have been Australian citizens for six years: women wearing the veil subjected to silent stares and snide remarks at best, threats and violence on the streets at worst. They are being intimidated into silence and retreat.

### **CIVIL SOCIETY**

It is our fear of 'the other' that has led to the popularity of the government's immigration policy. It is a harsh policy, an unheard-of punitive regime. Objectively there is no need for it. Our island status has protected us from the waves of desperate people in Africa, Indonesia and Europe. Yet Australians are told that the mandatory indefinite detention of child asylum seekers in jails with strangers is justified in terms of our national security, to deter people-smugglers, and to weed out the enemy.

Are we morally entitled to build a community's sense of security, even its happiness, at the price of tormenting even one child?

The UN Convention on the Rights of the Child – signed by every world government though not ratified by the US – obliges Australia never to imprison a child except as a last resort, after a fair hearing, for a just reason, and then never with adults. Federal politicians dismiss those who say so.

State governments do not speak out on asylum-seekers' right to human treatment. Draconian refugee policy is as popular as mandatory sentencing in Western Australia.

We have been told that we are a part of the world 'War against terrorism' that may include an assault on a third country, Iraq; and that ours is a fight for national security and human rights. Yet fundamental rights are violated in the interrogation of suspects in Cuba by denying them the specificity of criminal charges, the discipline of establishing a prosecution case, the opportunity of a trial, as well as the human need for access to family, friends and advice. This is in breach of their and every one's rights under the International Covenant on Civil and Political Rights.

Under our Common Law system justice must be available to everyone, even drug dealers, paedophiles and convicted mass murderers, such as Ivan Milat: he, too, has limited rights of privacy and the right to complain to the NSW Privacy Commissioner if patient/doctor confidentiality was breached and his medical information is spread about on the Internet.

We have been assured that the loss of our freedoms, the opening up of greater powers of investigation and interception and the suppression of suspect organizations are all necessary to win that war against terrorism. There are those who say that even if our efforts to protect this country involve the violation of the rights of a few, they are justified.

But if this is war, ask yourself what you have been asked to do to help, other than to be quiet, while the government decides whose rights have to be sacrificed in the name of protecting us all?

Most of us are ready to give up some of our freedoms in return for more security. But security from what?

If we have fears about the other, we should fear – in the sense of at least ‘reverential awe’ - our own government. It has unimaginably vast power. We should expect that such power will be misused. That is the lesson of history.

That is why we have (however inadequate) constitutional arrangements designed, like a typist’s keyboard, to make it fiddly and difficult to use power fast and effectively. There are institutions to restrain its exercise capriciously or arbitrarily, checks and balances, and even governments must operate according to a set of ‘rulers’ rules’, the Rule of Law. Even the ‘rules’, the laws and procedural protections such as natural justice – remember that? - have to comply, by being equally applicable to everyone; not secret; not contradictory, retrospective or arcane; and capable of being used to predict outcomes. They cannot be guidelines to be applied at someone’s discretion.

These principles reassure us, as democracy does, that power rests ultimately in the hands of those who will be affected by its use. But judges are not elected and must be independent and uphold the rule of law but, ultimately, are controllable by nobody but themselves. This is the reason the federal Attorney General gives for his non-support for any bill of rights or an Australian Human Rights Act. It would give too much power to the courts. It takes away, rather, from the power of the executive.

What checks the misuse of judges’ power is their habit or culture of compliance with the Rule of Law – and in our representative democracy those roots are, if only 220 years or so old in Australia, a thousand years old in the tradition from which our legal system grew. These are habits of thought, reason, and tradition and ‘obedience’ to an ethical code among the judges (who have risen through a tradition of ethics, precedent, logic and justice).

We have to rely on the personal qualities and discipline and integrity of our judges, not ‘getting in the way’ of justice, because the law cannot be completely prescriptive. Decision-makers’ views of ethics, the public interest and the consequences of decisions can shape what they do, for example, in

family law decisions about children: their 'best interests' are at best pious or well-informed hopes about the likely outcome of a hard choice.

Judges applying the universal standards of our human rights obligations, too, have to apply their own judgment to the proper balance between individual rights and the greater good.

### **BRINGING HUMAN RIGHTS HOME**

Protecting individual human rights and preserving our faith that governments will respect the Rule of Law is a huge challenge in this age of uncertainty and insecurity, where waves of investment and the instability and corruption of modern regimes have created waves of people movement, too.

The Law has fallen far short of what is needed to protect human rights and freedoms, in this country.

Australia has not taken any step to make its own governments accountable for failure to implement the contractual legal responsibility to protect our rights under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, or the Convention on Social, Economic and Cultural Rights, nor even UN Convention on the Rights of the Child

It is time that we did.

We need a formal link between Australia's human rights obligations, the ethical foundations of the Common Law system and the protection of the interests of vulnerable people, and the honour of politicians that takes the debate onto a new stratum.

We can learn from what the UK has done. Britain enacted a Human Rights Act in 1998. It has been fully operative since 2000. Ministers responsible for new laws must now make a statement on the compatibility of their Bill with the European Convention on Human Rights when they introduce it into Parliament. Public servants must, not may, act in accordance with its guarantees. British

Courts must interpret UK statute law so it is, if at all possible, consistent with the European Convention on Human Rights and look at the human rights jurisprudence in other courts in similar Treaties in other nations in doing so. If primary legislation is simply incompatible with Convention rights, a higher court can make a 'declaration of incompatibility.' If they do, and if the Government accepts the declaration a Minister may – not must – fast-track amendments to incompatible legislation by a speedy 'remedial order' without need to take an amendment in a Bill through Parliament. The Human Rights Act regime thus preserves parliamentary sovereignty.

Some of these human rights are absolute, such as the right to life and prohibition of torture or inhuman or degrading treatment or punishment. Others are limited in their definition in the Act and the Convention - the right to liberty and security and the right to participate in a fair, public and impartial tribunal (Articles 5 and 6), for example.

A third, broad group contains 'qualified' rights – those that must be balanced against the wider public interest. These include the right to respect for private and family life and freedom of thought, conscience and religion. All of it is subject to the 'margin of appreciation' – that is, the doctrine that the clear words of international human rights instruments will have slightly different applications, to take into account local conditions and cultural nuances. These rights fall to be interpreted having regard to four questions:

- Is the interference in accordance with the law?
- Is the interference in pursuance of a legitimate aim?
- Is it necessary in a democratic society? and
- Is it a proportionate response?

We in Australia have no way of raising these questions except through the political process: infested by fear, these institutions are not having these debates.

These new principles of the Human Rights Act are clearly invigorating the Common Law tradition in British courts and heightening public awareness about human rights. The new process invites public scrutiny and debate on crucial issues of trust and responsibility.

Let me give you an example. On 7th September 2001 a single judge in the Administrative Court in England ruled that it was unlawful for government automatically to detain asylum-seekers upon entry to the UK pending 'fast-track' determination of their claim. The right to liberty of the person is a qualified right under the Convention. The Secretary of State for the Home Office appealed, and won. The appeal court assessed the lawfulness of the initial detention; and the legitimacy of its purpose (border protection); its necessity (in a democratic society) and the proportionality of a policy of detaining asylum seekers for up to 10 days to expedite decisions on their applications for asylum (Article.5 (1)(f) of the *European Convention on Human Rights* recognises the right of states to detain those who sought entry to those states. Proportionality arose in terms of how long the detention was to be for). It considered the likelihood of their absconding and the effect on efficiency of the border control program, and that detention conditions were appropriate for asylum seekers rather than convicted prisoners. The court considered it all and concluded that a (very short) period of detention was not an unreasonable price to pay for speedy resolution of asylum claims.

We cannot even have this discussion, in Australia.

Because Australia has no Human Rights Act there is no way, either, to challenge the legitimacy of laws that are intended to be harsh. One such instance was the Family Court order in Nevsky v Scott and DIMIA made in Sydney on 10<sup>th</sup> October 2002, that the Family Court could not prevent the mother of a 9 month old baby from being deported to a country where she

fears she will be killed, because our immigration laws were designed to protect our sovereignty and to triumph over laws designed to protect the best interests of Australian children. She must leave her baby behind.

According to the UN Convention on the Rights of the Child, children are entitled not to be separated from their parents without their consent and only if it is in the child's best interests. The judge could only look at what Parliament meant when it made the 'best interests of the child' the paramount consideration under the Family Law Act, but not even relevant to a Migration Act decision, because the Act is a clear, detailed code for the efficient removal of unsuccessful migration applicants from Australia,

## **CONCLUSION**

A bomb in Bali does not have the power to destroy our moralnet – the ties of warmth and empathy that make us include as stakeholders the women and men and children who are not 'our' family but who have an interest in what we do, and fail to do.

Human rights are only respected when they are mainstream and 'normal': when the ethical claims that underlie them are internalized, and supported by a general desire to comply; and when those principles are understood not only by judges and courts but by school-children and politicians. That is what it means to grow a human rights culture. We lift our gaze to the value of life here and now, and beyond our white picket fence.

And now, the moment some of you have been waiting for: why I chose title of this lecture.

When I was a child in New Zealand I spent rather a lot of time in the company of rather a lot of sheep. I observed that a single sheep can be resourceful, intelligent and willing to take initiatives but in a mob a kind of groupthink took over. Sheep would not cross even a natural bridge over a river or a gangplank unless they were led, when they would walk into an abattoir or a live sheep transport.

I was reminded of this when reading recently about wildlife overpasses created to preserve animals and people from unfortunate time-space continuum coincidences on the trans-Canada highway. Researchers had established that of the many underpasses, culverts and overpasses used by large and small animals, the Bighorn sheep, uniquely, eschewed the bridges completely and crossed underground. It may have been coincidental that the vast majority of wolves went underground, too.

We need to rise above our fears. We need to feel secure, and then we will be willing to take risks. We need to be led, not fed upon.

What we do not need is more rules, checklists, forms or greater power in government to make discretionary assessments about our safety that cannot be challenged. These increase our sense of fear. We need reason to have faith in our system of government and in ourselves, fair rules and a decent quality of life and properly functioning democratic institutions. These are the necessities for survival.

We can work towards the universal 'standards' of civilised behaviour, as child protection workers do better when they are able to exercise their professional judgment, knowing that it is subject to the evaluation of their peers, rather than fill out long documents seeking merely to standardise and 'make the same' decisions about vulnerable children – and minimise the risk of legal challenge.

Our Common Law system can withstand and thrive in a human rights culture. It has always had an ethical heart. Consider what the High Court did in Mabo. It overturned the terra nullius principle, but not because a new set of judges disagreed with another's opinions. They looked at the social circumstances of the time when the principle was devised, the clear historical evidence that the land was occupied by Aboriginal nations with laws and customs about the possession and transmission of 'ownership' of land, and they grew the principle of 'native title' from the rich soil of the Common Law.

## AN ACTION PLAN

I leave you with some suggestions.

**One** is, that we might stop having meetings and rallies about 'rights', and think through the strategic decisions and alliances that may lead one or other and preferably all major political alliances to create a regime such as the UK's Human Rights Act in the UK, to make us 'safe' and able to chance our ethical neck. We have seen what happens when fundamental rights, such as the rights of children not to be detained with adults, indefinitely, because of their status, and the rights of 'terrorist' subjects are left exclusively to the executive will. We need a long-term plan.

**The second** is to ask you to recommit to being unpopular through asserting the fundamental values of civilisation.

I'm sure most of you at least recognise this poem:

### **First They Came for the Jews**

First they came for the Jews  
and I did not speak out  
because I was not a Jew.  
Then they came for the Communists  
and I did not speak out  
because I was not a Communist.  
Then they came for the trade unionists  
and I did not speak out  
because I was not a trade unionist.  
Then they came for me  
and there was no one left  
to speak out for me.

*Pastor Martin Niemöller*

There are many version of this poem, and the one I have cited is not necessarily the original one. The one I learned started, 'First they came for the Communists'. The point is the same. We must stand up for the rights of those who are reviled. There is no fence to sit on.

I have said before that being 'nice' doesn't change anything. Human rights, under pressure these days, need to continue to be claimed by advocates, without fear of disapproval, failure, or marginalisation. Human rights are a-political because they are part of a moral code that refuses to accept any political justification for the denial of basic rights in the 'rules' of civil society. As Mary Robinson said in her Human Rights Oration at Melbourne University on 8<sup>th</sup> November 2002, human rights are not claimed by some body in Geneva pointing a finger and shouting 'shame'. They are not a set of moral trump cards. They are claimed by advocates exerting influence in a world of power and injustice. Governments must be made accountable for their performance of their legal obligations.

Reconciling the moral argument with the difficulties of getting heard in a 'free' nation that sees itself as a victim, defending itself from the most inexplicable agents of terror puts human rights advocacy under serious strain.

It is hard to be neutral when your country and your friends and family have been killed, maimed and are hated; yet that is what we must do. Retaliation mode creates nothing but more terror.

It is hard to criticise your government when you will be denounced as unpatriotic, yet that is what is required.

It is hard to represent an Ivan Milat or to receive his complaint of breach of his human rights as he serves a prison sentence for serial killings, yet if we do not have laws that apply to all, whatever their status, the rights of all are at risk.

It is very hard to say that our laws must respect the right to be heard and to be treated humanely during the investigation of crimes, even if the accused is Adolf Eichmann, or Pol Pot, or Harold Shipley, or John Walker Lind or Bin Laden or the Al Qaeda fanatics who napalmed women and children and ordinary Australians in a night club, but without

the equal protection of the law, all those whose views are unpopular are unprotected.

**Third**, we need to use the language of ethics – of creating an environment where we want to obey the ‘laws’ in human rights treaties - rather than hair-splitting about responsibility or blame-casting.

**Fourth**, can't we refresh the language as well as the strategies of human rights? They have become tired. The human rights movement grew to challenge tyrants and strong states and to defend the individual rights of dissidents and non-conformists. It now works in a world where many of the most urgent rights come not from strong states, but from collapsing or rotten ones. Our greatest problems are not (as they were) just the repression of free speech and political or religious thought, but genocide and ethnic cleansing of cultural minorities: not so much war as such, as the collapse of the political order under the onslaught of HIV and other plagues, extreme poverty, ‘religious’ government where it is blasphemy to question; and battle strategies that require the destruction of crops and water supplies and civilian populations, or of public infrastructure as in East Timor. Human rights include social, economic and cultural rights. Without these and a decent quality of life, terrorism and religious fundamentalism flourish.

**Fifth**, though we have the right to feel ‘safe’, we have a responsibility to go out of our depth, sometimes out on a limb, and to test the unknown. How else do you learn to swim? Or dive? The desire for security does not create an ethical option of indulging in moral panic. Remember, the treatment of ‘Communists’ in the McCarthy years was an attack on fundamental rights and freedoms that is directly comparable to our treatment of Arabs and Muslims.

Security claims do not take precedence over human rights. They are predicated upon them. This is no time to keep quiet about human rights. The only war worth winning is one that respects rights.

Our problem is not tyranny and terrorism, but privileging power.

In 1941 Franklin Delano Roosevelt told the American people to look forward to a world founded upon four essential human freedoms: freedom of speech and expression; freedom to worship God in every one's own way; freedom from want, and freedom from fear.

As he said, *'That is no vision of a distant millennium. It is a definite basis for a kind of world attainable in our own time and generation. That kind of world is the very antithesis of the so-called new order of tyranny which the dictators seek to create with the crash of a bomb. To that new order we oppose the greater conception – the moral order. A good society is able to face schemes of world domination and foreign revolutions alike without fear.'*

**Sixth**, we must keep that faith. The human rights movement's strength, which makes it so irritating to governments, is its morality. It is 'pure'. There can be no relative value of a human life, whose value is always and ever, One.

There can be no pragmatic trade-off between, for example, the human rights of women, and the human right to freedom of religious belief and observance. A balance must be found. There can be no 'sale' of human freedoms in exchange for national sovereignty. The language of international human rights demands governments are accountable for the use of their power, and the performance by governments of their legal obligations. It does not allow trade offs between rights and expediency.

Non government human rights advocates can and must play a role in creating accountability for human rights protection.

But the human rights movement must **use** its voice. On Friday 8<sup>th</sup> November 2002 Mary Robinson, former President of Ireland and UN Human Rights High Commissioner, reported the words of the Chairman of the UN Human Rights Committee, the former Chief Justice of India, a mighty international jurist, Justice Baragwathi. You may remember that his views were dismissed by Mr Ruddock and Mr Howard as ill-founded, prejudiced and ignorant in part

because he misspelled Daryl Williams' first name. The great Judge had reported the outcome of his visit to this country to inspect our asylum-seekers' detention centres, and the conditions in which children, particularly, were detained. She said that he was personally and profoundly distressed at what he had seen: he said, 'The people of Australia couldn't know how bad it is.'

But we do know. Fear makes us unwilling to care.