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SPEECH

SYDNEY UNIVERSITY LAW SCHOOL

**‘AUSTRALIAN HUMAN RIGHTS AND INTERNATIONAL LAW:
AT THE CROSSROADS’**

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I'd like to acknowledge the Gadigal people as the traditional owners of the land we meet on. And thank the organisers of today's forum.

Thank you for inviting me to speak today – this is a topic of such significance to Australia today, especially in the current political climate.

In fact, with an election only days away, I believe that we are at a very clear crossroads in this country – on many issues, but in particular, on human rights, and our respect for international law and the international community.

What the Howard government has done to the rule of law, and the respect of international law has been not only illegal and wrong, but incredibly destructive to many individuals and groups within the Australian community. The concept of human rights, and the international instruments that enshrine human rights in law are not just abstract ideals – they exist for a reason, and I believe they can have very real effects on the lives of people.

I have been looking through some old speeches that I have given over the last 3 or 4 years. Many of which have been on Human Rights in Australia. Many of them are saying exactly what I am saying today – we are at a crossroads – now more than ever we must do something to put Australia back on track as a nation we can all be proud of.

I am both saddened and glad to say that although I am still saying this today, I don't feel our chance has passed. Those crossroads didn't represent the last exit. And perhaps this one doesn't either. But I believe this weekend must be the changing point – that too much damage has been done already to individual people's lives.

There are three aspects to my discussion today:

1. Australia's record of treatment of Indigenous Australians and refugees in Australia;
2. Our responsibilities under international law to developing countries as well as Indigenous Australians; and
3. Where I see the concept of human rights is able to take our nation.

Australia's recent record on Human Rights – Indigenous Australians and Refugees

Australia has no shortage of opportunities to demonstrate our commitment to international law and to the idea of universal human rights. We have an Indigenous population that has been the subject of constant government policies in breach of basic human rights since 1788, and we have hundreds of people every year who make it to our shores asking for protection.

We could be a bastion for the advancement of human rights and a source of pride for all Australians.

Unfortunately, we know this is not exactly how Australia stands up on human rights.

As I have said on numerous occasions over the last few years, Australia's First Peoples and our last peoples receive treatment that would be completely unacceptable if it were given to anyone else.

It is treatment that has been internationally condemned and that is undeniably in breach of basic human rights – including the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). That is not to mention all the other international conventions that it directly breaches – against racial discrimination, on the Rights of the Child, and on the right not to be tortured, as a few obvious examples.

The Human Rights and Equal Opportunity Commission on Children in Detention made it very clear that children in immigration detention for long periods of time are at high risk of serious mental harm. There are currently still 85 children in places of detention in Australia today. There are 75 in locked facilities with guards.

This is not the first time that the Howard government has been internationally chastised on our treatment of children – mandatory detention was condemned outright for its racially discriminatory effects on Aboriginal children in NT and WA.

Refugees and Indigenous affairs are two areas that highlight the government's rapid retreat from human rights, since 1996.

Repeatedly we have seen the race card used to justify this government's dismissal of serious United Nations condemnation. When they are caught out, this government seeks to dehumanise vulnerable groups, on the basis of different racial and cultural backgrounds, and foster indifference to their situations.

The children overboard is an clear example of such tactics.

I urge all of you to go to Villawood – it is happening right here in the middle of Sydney. I have visited many times over the last few years and have developed good friendships with families, like the Jezans, who I am pleased to say were released after 3 years a month or so ago. Please visit if you can – it is a transformative experience, even if you are already convinced the Government policies are disgusting.

The government attempts – unsuccessfully – to be more subtle when dehumanising Indigenous people. After all, they can't just send us back to our own country and forget about us.

Instead of accusing us of trying to abuse our children – although we know Australian government's have already been there – the Howard government wastes 85% of funding for Indigenous people and then appeals to stereotypes of devious, untrustworthy black people as an explanation.

When Amanda Vanstone and the Minister for Finance and Administration decided to take ultimate control of Indigenous assets held by ATSIC, they justified it by calling ATSIC 'an unpredictable group of people', who might sell off the assets at 'bargain basement prices'. ATSIC, and the individuals within ATSIC, and the bodies before ATSIC have had control of some of those assets for about 3 decades with no problems. The subtlety is in the

description of Aboriginal people not as outright barbarians, but as people who aren't as sophisticated, capable or deserving.

But even this couldn't justify the inapplicability of human rights to Indigenous Australians. After all, we know that rights are not something you have to earn.

Unfortunately, in today's Australia, there is little understanding of what human rights actually are. Despite most Australian's rightfully taking for granted the right to health and housing and employment and education, it seems that under this government these have been turned into things for individuals to attain, not things that government's are obliged to provide.

'Practical reconciliation' agenda a breach of human rights

The debate between 'practical reconciliation' and what John Howard persists in calling 'symbolic reconciliation' is not only a diversion from genuine reconciliation in this country, but it is also a denial of human rights of Indigenous Australians.

Recognising the importance of 'symbolic' things, such as an apology to the stolen generations, land rights and self-determination, were never espoused as a solution *separate* to making practical improvements such as increased school retention rates and improved health.

In fact, it has long been acknowledged that improved 'practical' outcomes will *only* come about through holistic approaches which focus on an acknowledgement of Australia's history of dispossession, and recognition of the basic human right of all people to self-determination.

The persistence on avoiding a rights-based focus does not recognise that there is a step in between the current situation and the achievement of better health. It doesn't just happen when the Prime Minister says that we want it to.

Despite some well-intentioned programs and funding, there has been extraordinarily slow progress in addressing the chronic inequalities in well-being and life opportunities. If this lack of progress occurred in any other programs or services, or the prudent operation of any business, the question would be asked: "What are we doing wrong?"

There is no recognition that the programs and the money will not succeed without the essentials: respect and recognition.

Instead, Australia stood alone at the United Nations Working Group on the Draft Declaration on the Rights of Indigenous Peoples and insisted that self-determination was a distraction.

Our international aid responsibilities

The Howard government has demonstrated its retreat from human rights principles and the rule of law in our overseas Aid programs too.

Our International Aid budget falls far below the target set by the UN in 1969 of 0.7% of Gross National Product. In fact, at 0.25% of GNP, our overseas aid budget is the lowest it has been in 30 years. And it is far below other first world countries like Belgium, Switzerland, France, Finland, Ireland, the UK, Spain and Germany.

In addition to the minimal monetary contribution, the report on our overseas aid program entitled *Australian aid: investing in growth, stability and prosperity* betrays the government's ideological opposition to human rights principles. I spoke in the Senate in September 2002 and again at the end of 2003 on this policy shift and expressed my serious concerns with it.

The new policy position relies on economic growth and 'good governance' to drive development and reduce poverty. But experience has actually shown us that economic growth is insufficient on its own to reduce poverty and oppressive circumstances.

There is no mention of the integral role that human rights and the rule of law play in achieving real and sustainable development, reducing poverty and most importantly, reducing suffering. We do need to focus overseas aid on ensuring strong human rights principles are enforced in recipient countries.

Democracy is our only check – we need rights too.

Democracy is Australia's only check on our government's actions – since we have no constitutionally enshrined human rights and International law is scoffed at as an imposition on our sovereignty. But when democracy is undermined by persistent dishonesty, and when apathy, ignorance, and

racism are actively encouraged by the government of the day, their discriminatory policies are left unchecked.

When people are too busy fearing their own lives, and their own children's future, they are too subsumed to exercise their democratic right for the purpose of protecting vulnerable groups too.

I believe that our democracy is sick.

It is these times in our nation's history when it becomes very clear why we need better modes of not only protecting, but also advancing the human rights of all individuals and groups.

Where do I see the potential of human rights taking Australia?

I have already talked a little about the need for recognition of Indigenous self-determination, as enshrined in numerous key international instruments.

Reconciliation

I believe that genuine reconciliation is dependant on a recognition of Indigenous peoples' rights – those rights that other Australians take for granted as well as those that are unique to Indigenous people by virtue of our place as the first peoples of this country.

- Aboriginal and Torres Strait Islander Australians have a life expectancy 20 years less than non-Indigenous Australians;
- The year 12 retention rate is half that of non-Indigenous Australians;
- The Indigenous unemployment rate is 40%;
- The proportion of Indigenous University students has dropped over the last 8 years;
- Indigenous people are 15 times more likely to be imprisoned than non-Indigenous people and Indigenous juveniles make up 43% of those in juvenile detention, while only comprising 4 % of the total juvenile population;

Until our government recognises that these figures represent the fact that Indigenous peoples are actually being denied their human rights, reconciliation is a long way off.

The first volume of the largest ever study of Indigenous health came out of Western Australia only 3 months ago. Although it has left the details for a

later report, it highlighted the connection between the health of a new Indigenous baby and the mother being a member of the stolen generations, or having a parent or grandparent who was a member of the stolen generations.

Rights, or lack of rights has a significant and direct impact on the things John Howard considers isolated practical elements.

Treaty

Recently, I attended a conference on the potential for a treaty between Indigenous and non-Indigenous Australia to make a positive impact on the health of Indigenous people.

I argued, as many of the experts in both health and international law also argued, that a treaty may seem abstract but that the respect that it signifies would be an empowering and enabling force. One of the main impacts that a treaty has the potential to make, is that of making the governance structures of this country relevant and meaningful to Indigenous Australians.

Australia is very behind in this respect. Other comparable countries, such as New Zealand, the US and Canada have demonstrated a certain level of respect and the intention to place their Indigenous peoples in an equal position by signing treaties. It doesn't automatically fix everything, but it does indicate a willingness to relinquish some power and to trust Indigenous people in the management of our own lives.

It also establishes a framework within which governments have to work, and through which citizens can judge their government's performance and hold them to account. It is very hard to hold a government to account, as we have seen in Australia, when the benchmarks keep shifting – when some human rights are applicable, but others are not. It needs to be clear that universal human rights are *all* applicable. A treaty would be a domestic acknowledgement of the relevance of at least some international law.

Constitutional Guarantee of Rights?

We also can't overlook the fact that Australia has no constitutional guarantee of rights, for any Australians. This has been one of the pressing problems in this country.

There is no defining document that informs how we respond to the circumstances of inequality that Australians have found ourselves in regarding Indigenous affairs.

Our constitution makes no direct acknowledgement of Indigenous Australians and our place in the Australian community. We remain as invisible in this document as we did prior to the overturning of the legal fiction of *terra nullius* in 1992 through the *Mabo* decision.

In this sense, Indigenous Australians remain very much at the whim of the Commonwealth Parliament in terms of what rights we are granted under national legislation, and how policies that impact on our daily lives are developed and implemented.

I do not believe that a constitutional or a legislative bill of rights would represent a comprehensive policy document to solve all our problems. But it has never been hailed as such. It would be a framework, as a treaty would be, to guide governments.

I believe that some form of constitutional rights are necessary because International law has been shown by this government to be so selectively relevant – at Australia's convenience.

This is really a whole other debate – constitutional reform to include some guarantee of rights, and specifically rights of Indigenous Australians. But I do believe it is one we need to have in the context of human rights.

At a crossroads?

From a political perspective, as the only Indigenous person in federal parliament, I believe we are at a crossroads in the way we deal with human rights in Australia. Australians are ready, despite the complete lack of trust that John Howard has shown in his fellow people, to embrace Indigenous culture and respect Indigenous culture and Indigenous people's human rights.

I believe that part of the Australian culture will have to die in order for the Indigenous cultures to live, and be a respected and valued as part of the broader Australia culture. We need to be engaging with people as people – the more we do this, the more similarities overtake the differences. I don't

think we do this at the moment. And we are not being led in that direction of mutual respect.

I don't necessarily always agree with Germaine Greer, but I have been saying to a few audiences lately that I think it would be a great thing for every Australian to stand in front of the mirror every morning and say 'I am an Aborigine'. By this, I don't mean that anyone's going to change race overnight, or pretend to understand what the experience of being in third world conditions in the middle of a first world country. I mean that we need to find a new understanding of ourselves, and a new appreciation of our place in this country, a reverence for the land for example.

This would represent a shift in the security of our cultural identity. A shift I believe is absolutely necessary in order for the rights of all people in this country to be genuinely respected.

I believe many Australians want this

Our country is one of drastic inequalities – such privilege and such unimaginable poverty. Many Australians have been pursuing reconciliation at a community level despite the lack of federal leadership from our government. People are concerned about the terrible poverty and they want to do what they can. And for many people, this means recognising the human rights of Indigenous people to their land and to dignity and self-respect.

Many people do want to hear our government apologise. Australians were deeply moved when Cathy Freeman held both flags after her Olympic Gold. And many, despite the paranoia generated by people like John Howard, were very proud on the day of the *Mabo* decision.

These are the things that John Howard has taken from us as a nation. We have many opportunities to demonstrate that we believe everyone is equal and deserves equal, humane treatment. And it is a mistake to believe that our economic prosperity and our national security is threatened by acknowledging and enforcing human rights.

The opposite is the case. If we invested more time, and the target 0.7% in overseas aid, especially to our own region, we would not see the kind of hostility that is inevitably generated by massive gulfs in the standards of living.

Conclusion – same position as October 2001?

In October 2001, just before the last election, I spoke at an Equity, Social Justice and Human Rights Awards ceremony at UTS. I quoted Mr Thabo Mbeki, the President of South Africa, who said, at the opening of the NGO Forum at the World Conference Against Racism in Durban:

Everywhere and without exception, race and gender continue to define the actual living spaces that billions of human beings occupy. They dictate the boundaries that frustrate the translation into reality of the noble concept that people are born equal.

We should not allow ourselves to be diverted by those who are opposed to the sustained upliftment of those who continue to suffer from racism.

Everything must be done to address the gross racial imbalances that stare us in the face everyday. The first step towards the realisation of this objective is a firm commitment by governments and all of us that we will do everything necessary to work towards this outcome.

At the time I quoted Thabo Mbeki, the government and Labor has just passed 7 pieces of extremely regressive legislation, including the introduction of mandatory sentencing into Commonwealth law. The Refugee crisis was mid-strength for the Howard Government.

I am actually quite saddened to be in a very similar position three years later. John Howard was re-elected for his third term shortly after that speech.

Since then, we have seen the continued refusal to apologise to the Indigenous peoples of this country. Worse, we have seen John Howard victoriously announce that the issue of an apology has gone away because no one asks him about it anymore.

We have seen hundreds and hundreds of asylum seekers – 90% of whom are eventually found to be genuine refugees spend many years of their life in detention.

Only 8 weeks ago, like in 2001, the government, with the support of Labor, passed more regressive legislation. First, the Free Trade Agreement, which

after much research and consultation I strongly opposed during over a week's worth of debate. They then passed the anti-gay marriage bill, during which Senator Bartlett cried in the Senate through a passionate speech opposing the Bill. They then passed some more anti-terrorism laws which enable passports to be taken from people with no suspected connection to terrorists. Which of course we opposed, to no avail.

So although I may sound like a broken record, I do think that we *are* at a crucial time in our political history. Human rights evidently cannot progress through the courts alone, as we saw with the decision to allow indefinite detention.

I believe some structural change is necessary in our legal system – both legislative and constitutional. But I believe it is more than that – it requires real leadership, and genuine, far-reaching attitudinal change amongst the masses, indeed, in our national identity. I am hopeful that the support I continue to receive as the only Indigenous person in parliament reflects an Australian nation that is secure enough to embrace universal human rights standards which we helped to shape some years ago.