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STANDING UP FOR JUSTICE IN THE WORLD

Award Ceremony for the Gruber Justice Prize 2010

George Washington School of Law,
Washington, DC
11 October 2010

The Hon. Michael Kirby AC CMG

GRUBER FOUNDATION

AWARD CEREMONY FOR THE GRUBER JUSTICE PRIZE 2010

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Remarks on the award of the Gruber Justice Prize 2010

The Hon. Michael Kirby AC CMG*

ACKNOWLEDGEMENTS TO THOSE PRESENT

I acknowledge the presence of Patricia Gruber. It is a source of great regret that Peter Gruber cannot be here with us on this occasion. I was looking forward with anticipation to meeting him. After he and his family fled Hungary as refugees, they came eventually, via India, to Melbourne, Australia before he came to the United States. I am proud to share an Australian link with him. I hope that his health will strengthen. I thank him for his initiative in establishing these Prizes. It is a privilege to be the first Australian laureate of the Gruber Justice Prize.

I thank the officers of the Gruber Foundation for their unfailing efficiency and courtesy, leading up to this award ceremony. I thank Ramon Mullerat of Spain, representing the Advisory Board, who has presented me for the conferral of the Gruber Justice Prize. It is a privilege to be

* Past Justice of the High Court of Australia (1996-2009); Past President of the International Commission of Jurists (1995-8); Laureate of the UNESCO Prize for Teaching Human Rights 1998.

presented with the support of words from a great French philosopher and a brilliant Spanish poet. I acknowledge the hospitality of the George Washington School of Law and I thank Associate Dean Maggs for his gracious words of welcome.

I am proud to record his attendance at this ceremony of a number special friends: His Excellency Judge Thomas Buergenthal, now concluding his service as a Judge of the International Court of Justice in The Hague. Later he will honour me in a lunchtime toast. It is penned in part by a predecessor, His Excellency Judge Stephen Schwebel, past judge and President of the World Court. These two international judges do me a great honour by being associated with this occasion.

I am grateful for the attendance of the Honourable Claire L'Heureux-Dubé, past Justice of the Supreme Court of Canada. She was my successor as President of the International Commission of Jurists – the other 'ICJ'.

I acknowledge the attendance of Professor Robert Post who is Dean of the famous Yale Law School. Every year, that School holds a seminar on global constitutionalism. It is attended by leading judges of regional and national apex courts. Attending the seminar was a special privilege of my service as a Justice of the High Court of Australia. By dialogue with great judges from other lands, including Justices Kennedy and Breyer (of the United States), Lord Woolf and Baroness Brenda Hale (of the United Kingdom), Justice Rosalie Abella (Canada) (Gruber Justice Prize 2003), Carmen Argibay (Argentina) (Gruber Justice Prize 2003), Ahron Barak (Israel) (Gruber Justice Prize 2006) and others, I came to appreciate more fully the lessons we can learn from each other in

seeking to promote justice under law throughout the world. Justices Abella, Argibay and Barak are all winners of the Gruber Justice Prize. As are Dató Param Cumaraswamy and Mr. Jerry Shestack, past colleagues in the executive of the ICJ.

I congratulate and thank the Yale Law School for its initiative to promote a dialogue between international and domestic law. Now that Judge Buergenthal is returning to the George Washington School of Law, I hope that it will initiate complementary programmes to unsettle chavistic and nationalistic outlooks in the law. They are so out of date in the age of informatics, satellites, the genome and universal human rights.

I acknowledge also the presence of Professor George Smith of the Catholic University of America, Columbus School of Law. A regular visitor to Australia, it was he who introduced to me to his *alma mater*, Indiana University, the home of the great scientist Alfred Kinsey. I am also pleased that Betsy Anderson of the American Society of International Law is here. I am proud to be an Honorary Counsellor of that Society. I hope to renew and strengthen those links.

ACKNOWLEDGING TEACHERS

I would not be here but for the marvellous education I received in public schools in faraway Australia. We should praise public education and strengthen it in every land. We should ensure that every child receives a full chance to develop and flourish. I can remember every one of my teachers, starting with Miss Pontifex. She taught me the alphabet in my primary school in 1945. With her, I began the journey of opening my mind to the wonders and perils of the world. Those were days when war was still raging, when it was only concluded by the detonation of atomic

weapons over Hiroshima and Nagasaki and when, in consequence, the world created the United Nations Organisation and endorsed the *Universal Declaration of Human Rights*. A new world legal order was established to which we must all contribute.

I honour my fine law teachers at the University of Sydney, including Professor Julius Stone, who taught me public international law and jurisprudence. He alerted me to the choices that lawyers have in discharging their professional functions. Those choices must be made according to identified principles. And this is where the universal rules of human rights come in.

I acknowledge my colleagues in the Australian judiciary: hard-working and uncorrupted. They too are worthy of a prize for devotion to law and justice. The proudest boast I could make, on laying down the robes of judicial office in my country, was that, in 35 years of service, I had never even been approached to divert me from my duties to the law and to the justice of the law in our parliamentary democracy.

ACKNOWLEDGING THE CO-WINNERS

I also wish to acknowledge the fine laureates who accompany me today, and with whom I share the Gruber Justice Prize for 2010.

Professor John Dugard holds chairs in law both in his own country South Africa and in the famous University of Leiden in The Netherlands. He has been a teacher and example for international legality for decades. His work has gone beyond books and lectures. He played a vital part in the design of the post-apartheid constitution of South Africa. He made sure to include in the Constitution of the Rainbow Nation protection for

elements of human rights overlooked or ignored in other countries: protection for the rights of sexual minorities; and protection for economic and social rights that have proved most important in the fields of health care, housing and shelter.

I am glad to be here with Tim Coulter and co-workers in the Indian Law Resource Center here in the United States. This Center attempts to correct the injustices that have been inflicted on vulnerable indigenous people in the Americas. Sadly, in my own country, Australia, the settlers did not always respect and uphold the rights of the indigenous peoples. This was a common feature of settler communities. Although Australia is one of the longest established parliamentary democracies in the world, it took decisions of the High Court in the *Mabo* (1992) and *Wik* (1996) cases to uphold the rights to their traditional lands of the Aboriginal and Torres Strait Islander peoples in Australia. So I feel that it is symbolic that I receive my award in company with such fine champions of the rights of indigenous peoples.

ACKNOWLEDGING MY FAMILY

Most of us would not reach an occasion such as this kind without the loving support of our families. In my case, my mother Jean, who died in 1998, imparted her marvellous comprehension. She had the capacity to see problems in their context and to be open to new perspectives and to an outreach to strangers and to people of every race, creed and life's experiences.

My father, Donald, who is 94, is still alive. He is still driving. Every Sunday, he still prepares a large meal for his available children and their partners and offspring. He is still teaching us new ideas. At the

moment, he is very strong on vegetables. I have no doubt that a reduction in the slaughter of animals will be a factor in universal rights in the years immediately ahead.

I also thank my siblings – two brothers who became lawyers (one a judge); and a sister who nurses at one of the teaching hospitals in Sydney. They too are instructive and wonderful companions on my journey.

I have left to the last my partner. It is usual in these ceremonies to give long-suffering domestic companions heartfelt words of thanks. Gladly do I do so. My partner is Johan van Vloten. He, like Peter Gruber, came to Australia in search of fresh opportunities and a new life. It is a blessing for me that we have shared the last 41 years together. I have put it on record that the partners of Gruber Prize winners deserve a special prize for putting up with the type of people who tend to receive such awards. Johan has supported me throughout all of my public work. He is a perceptive witness to injustice in the world. And whenever lawyerly caution or excessive prudence have threatened to intervene, he has been a valiant proponent of action, clear speaking and reform.

Recent days in the United States have seen sad instances of cruelty and unkindness to young Americans simply because of their sexual orientation. Here and in every country, this has to stop. It will only stop when people like me stand up and insist on recognition of the scientific facts about variation in human sexuality. And who insist on equal justice under law for all people, including homosexuals, bi-sexuals and others of minority sexuality.

By chance, today, 11 October 2010, is “Coming Out Day” in the United States. So it is a suitable day on which I should make these remarks. I come to this ceremony direct from Sao Paulo, Brazil. There, I took part in a new enterprise for the United Nations Development Programme (UNDP), designed to bring justice to millions who are currently beyond the reach of justice. UNDP has created a new Global Commission on HIV and the Law. Its president is Fernando Henrique Cardoso. He was until recently the President of Brazil. A proud and strong country of great resources. Our task is to confront the impediments to effective strategies to combat the spread of HIV and to promote, by advocacy and law reform, the justice for all that will bring to the ready the available therapies and prevention against the spread of HIV.

This is where some of the most difficult contemporary efforts to promote justice are now being pressed forward. In the lands where gay men are still criminalised and where other sexual minorities are oppressed, we should help change those laws. We should do so because only this will prevent the spread of HIV. More fundamentally, we should do so because it is required by universal human rights. They will replace ignorance and superstition with science, rationality and truth.

So on this occasion, I acknowledge finally the people in every land who are living with HIV and AIDS. I acknowledge the minorities who are oppressed, in prison, shamed and burdened with stigma because of their sexual orientation. I recognise the strong steps that have been taken by rights champions including Justice Arthur Chaskalson and Professor John Dugard. They have helped to advance, in their countries, the protection and equality of such minorities. On Columbus Day, we are all reaching a new land. This time we must journey

together and in harmony. We can be guided by the fundamental principles of universal rights taught by Eleanor Roosevelt and her committee 60 years ago when I was young.

For all of us, this moment renews our commitment and determination to serve justice. In that way, the Gruber Justice Prize will strengthen the quest for justice as a universal value in our world. Available to all. Denied to none.
