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GLOBAL DIGNITY

PARLIAMENT OF NEW SOUTH WALES

MONDAY, 14 OCTOBER 2013

HUMAN DIGNITY - BEDROCK OF
UNIVERSAL HUMAN RIGHTS

The Hon. Michael Kirby AC CMG

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The designation of 16 October as Dignity Day was inaugurated in 2006. It grew out of non-political organisation led by Crown Prince Haakon of Norway. The notion is that every human being has the right to lead a dignified life. This means an opportunity to fulfil one's potential and to be free to make decisions about one's own life that will be treated with respect by others, whose lives may be somewhat different. At the heart of this project is a recognition that everyone's dignity is interdependent with the dignity of others.

It is fitting that Dignity Day this year should be celebrated in the New South Wales Parliament. Here it was, after 1856, that the Australian colonists established a form of self-government that would spread, within 50 years, across the length and breadth of the Australian continent. It is also fitting that the day is celebrated by senior school students who will shortly be finishing their school studies and entering in a world that too often denies dignity to others. Specially welcome is the fact

that such a diverse range of schools have elected to send along some of their best and brightest. Many come, as I did, from secular public high schools. My old school, founded in 1849, Fort Street High, is one of these. Others come from private schools many of which were established on Christian principles. Roman Catholic and Assyrian Christian Schools are represented. So is an Islamic college. This is therefore truly a collection of Australia's multicultural traditions searching for the common ground behind the universal principles of human rights that we all share, simply because we are human.

We did not have a Dignity Day when I was at school. But even at my primary school at Summer Hill in Sydney, we received an inkling of the values that should bind us together. Early in 1949, I received, along with all students at the school, a copy of the *Universal Declaration of Human Rights*. That document had been adopted in December 1948 by the General Assembly of the newly minted United Nations. In the chair at that time was Dr H.V. Evatt, Australia's foreign minister and earlier a High Court Judge. Present on the occasion was Eleanor Roosevelt, widow of the wartime president of the United States, who had chaired the committee that drafted the Declaration. Its preamble proclaimed the importance of "teaching and education to promote respect for these rights and freedoms...

among the peoples of Member States...”. The first article in this great instrument declared:

“All human beings are born free and equal in *dignity* and rights. They are endowed with reason and conscience and should act towards one another in [that] spirit...”

Article 2 of the *Universal Declaration* made the basic principles even clearer. It stated that:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth *or other status*.”

So here was the list of universal rights necessary for true human dignity, accompanied by the categories of potential inequality that often prevented the attainment of human rights. The list of those categories was not closed. It extended to “any other status” that divided humanity and conspired to put some people into a second class, so far as their dignity was concerned.

It would be a good thing if Australian school students today were again to receive personal copies of the *Universal Declaration of Human Rights*. And if they were taught about

these core principles and values, as the students of my day were taught.

For us, these were not theoretical ideas. Although we were young, we knew that our country, and the world, had just come through the tremendous ordeal of the Second World War. We knew of the horrible sufferings that tyrannical leaders had inflicted on unpopular minorities. We knew of the awful cruelties imposed on Jews, communists, Jehovah's Witnesses, and others in the concentration camps in Nazi Europe. And we knew of the fearful potential of the atomic bombs that had brought that war to a conclusion in 1945. Unless humanity could prevent a repetition of such horrors, life on our planet would go on being brutish. Our species seemed unlikely to survive.

All this explains the tremendous push after 1948 to express and declare the ingredients essential to the attainment by every human being of dignity and rights essential to lasting peace and justice in the world. Out of the bold promises in Eleanor Roosevelt's *Universal Declaration* have come the great treaties of the United Nations which address the impediments to human rights and freedoms. Treaties forbidding racial discrimination, discrimination against women, discrimination against people on the ground of their religion or social origin or political opinions.

And lately new attention to discrimination based on physical and mental disabilities and on sexual orientation. The fundamental principle binding all of these moves together remains as stated in the first article of the *Universal Declaration*. We are all born free and equal in dignity and rights. Of course, our national laws and attitudes do not always reflect this equality. But to these principles we are committed as a species. Without the attainment of equal rights and dignity, human beings will remain hostage to widespread wars, insecurity, poverty and misery. In an age of nuclear and chemical weapons that could be fatal.

Looking back, I can see how insidious were these ideas of liberty and equality to some of the values that we cherished back in 1949. Values that led to Aboriginal disempowerment, the White Australia Policy, denominational prejudice amongst Christians, and animosity towards 'wogs' and 'reffos' and those of unorthodox political beliefs.

Back in those days there was a denial of full dignity to Aboriginal Australians. There were discriminatory provisions in our Constitution, not repaired until 1967 and then not fully. We had strict controls on immigration based on the principle of excluding non-caucasians. Even citizens who married an Asian spouse, for example, were not allowed to bring them home to

Australia. In 1950 our Federal Parliament tried to ban the Communist Party. It was the High Court that twice had to come to the rescue on these denials of equality and dignity. In 1951 it held that the attempt to wind up the Communist Party was unconstitutional. And in 1992 it did what no elected parliament had done. It recognised Aboriginal title to their traditional lands. Our parliaments moved on to correct many affronts to equality and dignity in Australia. As citizens, we can be proud of these achievements.

Australians like to think of their country as a land of the 'fair-go'. In many ways it is. But for minorities, equal dignity is not guaranteed by any over-riding constitutional provision. We are now virtually alone in being a nation that does not have a constitutional charter of rights, embracing the basic principle of equality and rights of the kind expressed in the 1948 *Universal Declaration*. Moreover, in the hurley burley of political life there are sometimes votes to be won by denying equality and just treatment to minorities. It is then that the dignity of human beings is put at risk.

When I was a judge of the High Court of Australia, many cases were concerned with challenges to the treatment of people who claimed refugee status. This is still a significant part of the court's work as demonstrated when it overturned the so-called

“Malaysia solution”: legislation that effectively attempted to hand over boat people seeking asylum in Australia to Malaysia, a country that is not a party to the international *Refugees Convention*. Refugee applicants are born free and equal in dignity and in rights. But have we always, as Australians, accorded them equality and dignity?

And just to show that the “other status” category in the *Universal Declaration* is never closed, our country must now face the dignity and rights of its homosexual citizens. When Eleanor Roosevelt penned the *Universal Declaration*, there were few champions of gay rights in the world. And there were many hostile forces, most of them in religious organisations. Yet those who drafted the *Universal Declaration* did not presume to close the categories where rights and dignity were at risk. They knew, and history teaches, that narrow mindedness and ignorance can sometimes blind one generation to the injustices and inequalities that seem so clear to the generations that follow.

This, I believe, is the journey towards dignity and rights that gay people are now engaged in, not only in Australia but everywhere. In earlier times, armed with misunderstandings of ancient religious texts, hatred and animosity was preached against gay people. They were accorded no dignity. They

were sneered at and imprisoned and even executed. These attitudes still prevail in 77 countries of our world.

Even where, as in Australia, attitudes improve and laws are reformed, inequality and denial of equal dignity is all too common. The way gay people are told they have an “inclination to evil”. Or that they are “disordered”. Or that they are not entitled to equality of marriage rights although this involves a legal status created by a secular parliament. To that extent, gay fellow citizens are denied the right to lead a dignified life in full equality with their neighbours. They are refused an opportunity to fulfil their potential. Their freedom to make decisions about their lives are denied to this respect. Their wishes for respect for their rights are refused. To the extent that this happens, because the dignity of all of us is interdependent, all of us as citizens are diminished. Our dignity as a nation, mutual respect and basic kindness to one another is reduced.

At this time, I am fulfilling a role for the United Nations to examine the infringements of human rights in North Korea. That duty obliges me to report to the Human Rights Council in Geneva and later this month to the UN General Assembly in New York. This is the world we now live in. Cultural and religious differences must be of course respected. But so must

the universal principles of dignity and rights declared in the *Universal Declaration* and the global laws and treaties that have followed. National sovereignty must now be reconciled with the universal principles of human rights. No country today is an island complete and immune from the universal principles laid down after 1948.

It is a long journey since these global principles were first expressed. There had been many trials and not a few failures. But there have been successes and achievements as well. Some of them have been secured with the aid of the UN blue helmets. Others have been secured by force of arms. Most have been attained by the power of the simple idea proclaimed by Eleanor Roosevelt and brought into force by the voice of Australia's H.V. Evatt in 1948. That simple idea is that all humans have basic dignity and rights just because they are human. It is the duty of every state to guarantee and uphold those values. No state can indefinitely deny those values to its citizens. It is the duty of us, the citizens, to insist. We must all raise our voices where those values are denied or endangered. And the place for the demand for global dignity to start, is in our homes and in our schools.

Michael Kirby was a Justice of the High Court of Australia 1996-2009. He is presently chair of the UN Commission of Inquiry on North Korea