



*Roatch Global Lecture Series on Social Policy and Practice*  
2001

*P*lanks, Splinters and  
*Human Rights:*  
*Judging Ourselves as We Judge Others*

Presented by  
Professor Chris Sidoti

April 27, 2001

*In Memory  
of John Roatch,*

*With gratitude  
to Mary Roatch*



John F. Roatch



Sidoti addresses an attentive audience.



The University Club of Phoenix.

Dear Friends and Colleagues:

The John F. Roatch Lectures on Social Policy and Practice have become an intrinsic part of our ASU, College of Extended Education scholarly discussions. John F. and Mary Roatch have been friends of the college and tremendous supporters of enhancing program offerings to the Arizona community. The Office of the John F. Roatch Distinguished Community Service Scholar, in collaboration with Extended Campus Programs, has hosted, through the years, a number of renowned international speakers. The subject of this year's John F. Roatch Lecture was of interest to all citizens and professionals who are concerned about issues of human rights in the world. The title of the lecture is quite striking and we know that our speaker, Chris Sidoti, will light a fire in each and every one of us for the cause of human rights.

While Chris Sidoti's lecture offered much needed global, historical and philosophic perspectives on this issue, our panel of distinguished respondents highlighted the relevance of the topic for the Arizona community. We are grateful to John Lewis, executive director, Inter Tribal Council of Arizona; Stephen Montoya, civil rights attorney; and Eddie Sissions, executive director, William E. Morris Institute for Justice, for their gracious contribution.

I want to acknowledge the very special efforts of my colleague in the College of Extended Education, Jim Patzer, director of Extended Campus Programs, who tirelessly worked to ensure the success of this event.

With Best Wishes,

Emilia E. Martinez-Brawley  
 Professor of Social Work and  
 John F. Roatch Distinguished Community Service Scholar  
 Arizona State University  
 College of Extended Education



The panel of respondents.



Emilia Martinez-Brawley introducing the lecturer.



Mary Roatch, Emilia Martinez-Brawley and Chris Sidoti during the plaque presentation.



The Roatch family at the reception.



Left: Panelist Eddie Sissions responds to a question.



Above: Exchanging views after the lecture.



The audience participated with thoughtful questions.



Left: Members of the audience talk with Chris Sidoti.



The Roatch lecture continues to attract a full house.



Above: The lecture generated many new insights.



Left: Bill Verdini thanking Professor Sidoti on behalf of the College of Extended Education.



*“Our engagement must be based on honesty, above all about ourselves. We have the benefit of a common standard for judgement that is not based on our individual religious, cultural, social, political or economic situations but on what we have in common with all peoples and nations. That standard for judgement is international human rights law. In advocating for that standard and in applying it we must be prepared to judge ourselves as we would judge others.”*

**Chris Sidoti**

Professor of Applied Social and Health Sciences at Western Sydney University

Former Human Rights Commissioner of the Australian Human Rights and Equal Opportunity Commission

Currently a professor at Western Sydney University, Chris Sidoti is a recognized leader in the field of human rights. A lawyer by training, Sidoti's career has been closely identified with social justice issues worldwide since 1978. He has played key roles in addressing issues related to unemployment, youth rights, Aboriginal rights, disarmament, poverty, mental illness, sex discrimination and international human rights.

Sidoti has served as national secretary for the Australian Catholic Commission for Justice and Peace, as deputy president of the Australian Council of Social Services, as commissioner of the Australian Law Reform Commission, and as human rights commissioner and disability discrimination commissioner of the Human Rights and Equal Opportunity Commission. Sidoti also was involved in the establishment of the Federal Privacy Act in Australia. He was a member of the Australian Human Rights Delegation to China in 1991 and 1992 and to Vietnam in 1995. In 1993, he served as a special adviser to the Australian delegation at the UN Second World Conference on Human Rights. He also visited Myanmar about the establishment of a national human rights institution and provision of human rights education in that country.

## *Planks, Splinters and Human Rights: Judging Ourselves as We Judge Others*

The Christian scriptures provide many accounts of Jesus confronting hypocrisy. In one of them, reported by Matthew and Luke, he is teaching a crowd of people, instructing on how to live righteous lives of integrity. He asks, “Why do you observe the splinter in your brother’s eye and never notice the plank in your own? How can you say to your brother, ‘Brother, let me take out the splinter that is in your eye’ when you cannot see the plank in your own? Hypocrite!”<sup>1</sup>

Today, I will discuss integrity and hypocrisy in promoting human rights but first I need to speak a little about what I mean by human rights.

### **WHAT ARE HUMAN RIGHTS?**

#### ***The Origins of Human Rights Law***

Human rights are relatively recent concepts. Their origins as a body of law lie in western cultures at the time of the Enlightenment, the 18th century. There had been earlier discussions of rights and earlier legal instruments dealing with rights, for example, the English Bill of Rights of 1689. These discussions and instruments did not seek to incorporate into law a comprehensive statement of the entitlements of each human being. That expression first came with the great revolutions of the late 18th century.

The Declaration of Independence that arose in 1776 from the American Revolution proclaimed

*... we take these truths to be self-evident, that all men are created equal and that they are endowed by their Creator with certain inalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.*

The new American nation then produced the Bill of Rights, enacted as the first ten amendments to the Constitution of the United States in 1791. The French Revolution, inspired by the American, produced the Declaration of the Rights of Man and the Citizen in 1789. These documents reflect systematic attempts to enshrine human rights as fundamental constituent and guiding principles in law. They were intended to provide citizens with basic guarantees against the arbitrary exercise of state power.

Although these were the first legal statements of the rights of citizens, their philosophical and ethical bases were ancient. Jewish and Christian scriptures spoke repeatedly of how rulers should act towards the ruled and of how each person should act towards others. Rulers are to act with justice and to have a special concern for the poor and the oppressed— widows, orphans and strangers.<sup>2</sup> Each person is to act with compassion towards others, especially towards poor people, and to treat others as they would want others to treat them.<sup>3</sup> Certainly, the Christian scriptures spoke of obligations rather than rights but their ethical precepts of righteous conduct clearly imply that those to whom an obligation is owed have a right to be treated properly.

The early legal expressions of rights after the American and French Revolutions were important break-throughs to a new way of thinking about the relationships between government and citizen and between citizen and citizen. They were as revolutionary, legally and philosophical-ly, as the revolutions themselves. Both these documents, however, were products of their age and their society. They did not include all humanity in their protection. Non-citizens, for example, were excluded in both cases. And slaves did not enjoy the benefits of the American Bill of Rights for well over half a century after its adoption. These first two codes were not drafted and adopted on the basis of a broad international consensus of what human rights were. They reflect, therefore, French society and politics and American society and politics of the late 18th century. They are mono-cultural and now quite dated.

#### ***World War II and the Impetus for Human Rights***

Real development of human rights as an international legal system did not come for another century and a half, until the horrors of World War II and the Holocaust generated a determination among nations and leaders that such appalling events should not be permitted to occur again. Other nations had stood by during the 1930s as the Nazi regime in Germany inflicted previously unimaginable cruelty on its own people. Until then, international law had been seen as governing only relations between states, not a government’s relations with its own people. The principles of

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#### Footnotes

<sup>1</sup> Luke 6.41-42.

<sup>2</sup> See for example Psalm 72.

<sup>3</sup> See for example Psalm 112, Matthew 7.12; 25.31-46.

*“The significance of the Universal Declaration is that it truly represents an international consensus, across all the social, economic, political, cultural, religious and historical differences that divide humanity, about what the fundamental entitlements of each human being are.”*

sovereignty and non-interference in the internal affairs of states prevented other nations from becoming involved. Other states could become involved only when international war began, with the Japanese Imperial Army's invasion of China and the German Army's invasion of neighbouring states in Europe. But even then they did little or nothing until they themselves were threatened or attacked.

Well before the end of the war, leaders began discussing the nature of a post-war world. In stark contrast with the isolationist ideologies of the United States between the wars, President Franklin D. Roosevelt committed himself and his country to the construction of a new world order that would protect and promote what he called the Four Freedoms: freedom of speech and expression, freedom of religion and belief, freedom from fear and freedom from want. These Four Freedoms, he said, were to be a universally applicable set of standards. As a result, when discussion turned to the structure and functions of the proposed United Nations, human rights held a central position. The Covenant of the ill-fated League of Nations had made no mention of human rights. By contrast, the Charter of the United Nations included the promotion and protection of human rights among the principal purposes and objectives of the organisation. The Charter's Preamble affirmed

*faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women ...*

The Charter included among the purposes of the United Nations

*... promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.<sup>4</sup>*

However, the Charter did not define what human rights were and anticipated later work on the issue. The definition was completed soon afterwards in the Universal Declaration of Human Rights drafted by the UN Commission on Human Rights and adopted by the General Assembly on 10 December 1948. The United States and Australia both played important roles in drafting the Declaration. Both were among the eight members of the drafting committee. Both were represented by women who made significant contributions to the process, including Eleanor Roosevelt of the US and Jessie Street of Australia. An Australian, Dr. H.V. Evatt, was president of the General Assembly at the session that adopted the Declaration.

#### ***Differences Between Early Codes and the Universal Declaration***

There are three significant differences between the earlier human rights codes in the American and French documents and the Universal Declaration of 1948. The first is the process by which they were prepared. The U.S. and French documents, as I have said, were the products of national processes and so reflected only national perceptions of what human rights were. The Universal Declaration is the product of an international process. The eight members of the drafting committee came from all but one of the regions of the world at that time: western and eastern Europe, north and south America, east and west Asia and the Pacific. The only region not represented in the drafting process was Africa, but those African states that were members of the UN at the time, with the exception of South Africa, supported it. The General Assembly approved the Declaration without dissent, although in the end, eight members of the UN, all leading human rights violators at the time, abstained on the final vote.

The significance of the Universal Declaration is that it truly represents an international consensus, across all the social, economic, political, cultural, religious and historical differences that divide humanity, about what the fundamental entitlements of each human being are. It was and remains the basic expression of international human rights standards, in its own words “a common standard of achievement for all peoples and all nations”. Its continuing acceptance has been reaffirmed time and again, most significantly by the Second World Conference on Human Rights held in Vienna in June 1993. There, the international community of nations, almost 180 of them, declared,

*The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all ... The universal nature of these rights and freedoms is beyond question.<sup>5</sup>*

The international consensus on human rights proclaimed in the Universal Declaration was and remains possible because human rights have their foundation in all the world's major religious and ethical systems. The Judeo-Christian scriptures do not speak of rights but, along with secular

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#### Footnotes

<sup>4</sup> Charter of the United Nations Organisation, Article 1.3.

<sup>5</sup> Vienna Declaration and Program of Action 1993 para 1.



*“Today, then, we have both a body of law and a legal system of monitoring and enforcement to ensure that human rights are better protected and promoted. On the one hand, the body of law is good and comprehensive ... On the other hand, the system of enforcement is new, still developing and so not yet fully effective, but it represents a commitment and a determination on the part of the international community to ensure that human beings are treated properly by their governments and others.”*

western philosophy, they provided the moral and ethical basis for the development of western concepts of rights. The traditions and sacred texts of the other major religious and cultural systems also do not speak in terms of rights. But they too provide the foundation for human rights that transcends these differences among peoples.<sup>6</sup>

Buddhist scriptures often describe how rulers should act towards their subjects and speak continually about compassion as the basis of relationships. In Islam, the Koran provides an extensive moral code of mutual responsibility where again compassion is central. Indeed, compassion is seen as one of the greatest attributes of God, evident in the invocation that precedes most formal statements by Muslim speakers: “In the name of God, the compassionate, the merciful.” Confucianist writings deal extensively with the obligations of rulers and describe the “righteous official” who ensures justice for the subjects of the emperor. Hindu-Buddhist traditions speak about the “good king” who governs with justice and integrity. These traditions do not speak a specific language of rights any more than Judeo-Christian scriptures do, but they provide the foundations for the human rights legal system as much as Judeo-Christian scriptures and western philosophy do. For that reason, the international community developed and adopted a code of human rights relatively quickly and easily and was able to proclaim its universality with confidence.

The second important difference between the American and French codes of rights and the Universal Declaration is the scope of the statement of rights. The American and French codes dealt only with some rights, generally civil and political rights, such as the right to life and security of the person, freedom of speech, freedom of religion and belief, the right to participate in the political process, the right to due process and fair trial and so on. The Universal Declaration is a comprehensive statement of all human rights. It includes these and other civil and political rights but it also includes economic, social and cultural rights, rights that constitute what President Roosevelt meant by freedom from want. Among these are the right to an adequate standard of living, including food, water and shelter; the right to education; the right to health care; and the right to work. The earlier codes dealt only with the political person. The Universal Declaration incorporates the whole person, whose entitlements are defined in the legal terms of what it means to be human, what human beings require to live full human lives.

Similarly, the Universal Declaration extends human rights to all people, not only to citizens. That is the third difference from the original formulations of the earlier codes. One or two rights, for example, the right to vote, are restricted to citizens but almost all are entitlements of everyone within the jurisdiction of a state. The Universal Declaration of Human Rights then is a comprehensive statement of the entitlements of every human being without exception, applicable in every place. Fifty-three years after its adoption it stands as, in my view, the most astounding achievement of the 20th century, as relevant and significant today as it was in 1948.

#### **Later Development of Law and System**

The international human rights system has been built on the Universal Declaration of Human Rights and the Charter of the United Nations.

The Universal Declaration itself was not a binding treaty but a statement of principles. When it was adopted, there was a realisation that it would need to be supplemented by at least one binding treaty on human rights. And so the Universal Declaration was followed by a large number of human rights treaties and other instruments, such as other declarations, codes of rules and statements of principles, that now form an important body of international law. The first two of the treaties, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, contain more detailed provisions on the rights contained in the Universal Declaration. Other treaties deal with specific human rights issues, such as race and sex discrimination and torture. Others again deal with the rights of specific groups, such as the Convention on the Rights of the Child and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Three other treaties provide mechanisms for regional arrangements to protect and promote human rights, in Europe, Africa and the Americas. And a new treaty, the Statute of the International Criminal Court, will provide a permanent tribunal to punish the most extreme violations of human rights.

In addition to these treaties, the United Nations system itself provides specialised agencies and procedures, such as the UN Commission on Human Rights and its various mechanisms, to protect and promote human rights. This function is also part of the responsibility of the Security Council for international peace and security and of the General Assembly.

Today, then, we have both a body of law and a legal system of monitoring and enforcement to ensure that human rights are better protected and promoted. On the one hand, the body of law is good and comprehensive. It will need amendment and supplementation over time, as all law does, but it represents an international consensus on the entitlements of all human beings. On the other hand, the system of enforcement is new, still developing and so not yet fully effec-

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#### Footnotes

<sup>6</sup> See the extensive discussion in Bauer and Bell (eds) *The East Asia Challenge for Human Rights*, Cambridge University Press 1999.

tive, but it represents a commitment and a determination on the part of the international community to ensure that human beings are treated properly by their governments and others.

So, when I speak about human rights, I am referring to this well-developed body of international law. I am referring to human rights in their totality — civil, cultural, economic, political and social — as defined in the key international treaties.

## THE BATTLE LINES

The consensus on what human rights are has not been matched by a common commitment among nations and governments to respecting, protecting and promoting them. Certainly, human rights have moved to the centre of the world stage over the last three or four decades, becoming one of the essential planks of international relations, along with security and trade. The international community has recognised and endorsed this. The Second World Conference on Human Rights in 1993 declared,

*The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community.<sup>7</sup>*

But human rights have been debated as much in an atmosphere of confrontation as in one of cooperation.

For most of the post-war period, the confrontation was between west and east, between liberal democracy and Stalinist Communism. The end of the Cold War put an end to that division. Now the human rights confrontation occurs predominantly between northern industrialised and democratic nations, such as Europe, North America and Australia and New Zealand, and southern nations that are developing, pre-industrial or industrialising, democratising or locked in rigidly authoritarian structures. (The allocation of Australia and New Zealand to the north in this confrontation is slightly odd since they both lie south of the equator.)

In the past, the then-Soviet bloc portrayed international concern for human rights as an ideological weapon against it, a Cold War tactic. Now the governments of many developing countries portray western criticism, by governments and nongovernment organisations, of their human rights records as an attempt to keep them in positions of political and economic subordination. Most (but not all) of these governments are hard-line governments with appalling human rights records. Most (but not all) ruthlessly oppress their own people, protecting neither their political rights nor their economic and social rights.

The Iraqi regime is but one example of that. Its dictator, Saddam Hussein, crushes every small sign of political opposition; he also continues to divert to his military and intelligence machine scarce resources needed for the economic and social well-being of the Iraqi people. India, by contrast, another of the states critical of western advocacy of human rights, has a long and relatively democratic tradition of government and has been relatively effective on the whole in promoting economic and social development, although it too has diverted needed resources to military purposes in its nuclear weapons program.

These states deeply resent western criticism of their human rights performance. They see it as unjustified interference in their internal affairs and so a breach of their right to national sovereignty. They deny that it is well-intended, that it is motivated only by concern for the peoples of these states. Rather, they portray it in their propaganda as an economic and political weapon deployed to keep them weak, vulnerable and dependent on the west. Often, by this form of counter-attack on the west's human rights credibility authoritarian regimes succeed in misleading people and uniting them behind their rulers. So the west's advocacy for human rights has the directly opposite effect from that intended and sought.

The most serious counter-charge against the west is hypocrisy. Authoritarian governments argue that, while western governments harp on the human rights performance of other governments, they ignore the deficiencies in their own human rights records, past and present. They point to, among other things, the human rights report published early each year by the U.S. State Department. That report provides a commentary and assessment of the human rights performance of every country in the world except one, the United States itself. The State Department can rightly reply that its responsibility is international, not national. That response would be acceptable if another official agency of the U.S. government had responsibility for an annual domestic

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### Footnotes

<sup>7</sup> Vienna Declaration and Program of Action 1993 para 4.

*“Poverty in a rich country, therefore, is a far more serious violation of human rights than poverty in a country that is poor and has few resources and little economic development. The persistence of poverty in countries like Australia and the United States, therefore, is a far more serious human rights violation than its existence in countries like China and India. In this respect we are the graver human rights violators.”*

human rights audit but none does. So each year the effectiveness of the State Department’s very comprehensive and generally credible report is undermined by the notable omission of any honest self-assessment of the U.S.

I do not like the charges of hypocrisy. However, I have to admit that there is much truth in them. Although the human rights performance of most western countries is far better than that of many other countries, none is perfect, none holds the prize for having constructed and maintained a human rights paradise. Western governments do not talk about their own shortcomings. When others do and criticise them, they can be as hyper-sensitive as the most authoritarian state. It is time that we started to judge ourselves, honestly and openly, by the human rights standards by which we judge others. If we did, we would find our own countries and governments running large human rights deficits. We who criticise, regularly and rightly, the planks in other people’s eyes would find considerably-sized planks in our own eyes. What are some of them? I will look at my country, Australia, and, to the extent to which I am able and permitted to do so, at yours, the United States.

## THE PLANKS IN OUR OWN EYES

### Poverty

First, we would find widespread endemic poverty. The Universal Declaration of Human Rights proclaims,

*Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.<sup>8</sup>*

No country, including any western country, is free of poverty. Although many countries of both north and south have made significant progress in reducing poverty, none has eradicated it. Indeed, while poverty reduction programs may be reducing the numbers in poverty, they often also seem to be reducing those who remain poor to a state of permanent, entrenched inter-generational poverty. Where poverty reduction programs are combined with social security reduction programs, as they usually have been in western countries over the last two decades, the state of those left poor is worsened rather than alleviated, in violation of their human rights.

In both our countries, Australia and the United States, we can see this situation. Australia has a relatively small population, around 19 million people, but some 2.7 million of them, over 14% of the population, were considered likely to be living in poverty in 2000.<sup>9</sup> In the United States there were 32.3 million people in poverty in 1999, 11.8% of the population.<sup>10</sup> According to internationally standardised data the rate is even worse — 17.3% of the U.S. population. Most disturbing in both countries was the number of children under 15 years in poverty — almost 800,000 children, or about 21% of the child population, in Australia and almost 10 million children, or 16.9% of child population, in the United States.

In examining poverty we can see that wealth does not equate with good human rights performance. As the United Nations Development Program’s Human Development Report 2000 points out,

*There is no automatic link between resources and rights. High incomes do not guarantee that rich countries are free of serious human rights violations any more than low incomes do not prevent poor countries from making impressive progress.<sup>11</sup>*

The United States is by far the richest country in the world. Its people have the second highest per capita income, after only Luxembourg.<sup>12</sup> Yet, of the 18 richest countries it has the highest index of poverty.<sup>13</sup> It also has the third highest level of income inequality of the richest 48 countries, only New Zealand and Russia having worse.<sup>14</sup> Among all countries it ranks only 23rd in life expectancy and only 27th (equal with Cuba) in infant mortality.

Poverty is difficult to eradicate but its reduction is possible. That is evident from the success of many poverty reduction strategies in the United States that, according to the U.S. Census Bureau, have brought poverty down to the lowest levels since 1979. It is even more evident in many European countries. In all the Nordic countries and the Netherlands the poverty rate has been reduced to under 10%. Poverty is not inevitable and its persistence is not acceptable.

The existence of poverty in wealthy countries is particularly serious under human rights law.

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### Footnotes

<sup>8</sup> Universal Declaration of Human Rights article 25; see also International Covenant on Economic, Social and Cultural Rights articles 9, 11 and 12.

<sup>9</sup> Geoff Winter *Measuring the Numbers of People in Poverty* Research Note 31 1999-2000, Australian Parliamentary Library, Canberra.

<sup>10</sup> U.S. Census Bureau *Poverty: 1999 Highlights*.

<sup>11</sup> UNDP *Human Development Report 2000* Oxford University Press, New York, 2000, p 9.

<sup>12</sup> *ibid* p 157.

<sup>13</sup> *ibid* p 172.

<sup>14</sup> *ibid* p 172. The top 20% of the population have 8.9 times the income of the bottom 20%.

*“Next, we must admit to continuing racism and to the legacy of racism in our countries. Racism and racial discrimination are among the most serious human rights violations. They are among the few violations that are subject to prohibition at all times and in all places, without qualification. Yet both persist in most western countries.”*

The United States is the world's richest country. Although far less wealthy than the U.S., Australia remains comparatively very wealthy in global terms. The International Covenant on Economic, Social and Cultural Rights recognises that the level of development and wealth in a country will affect its capacity to ensure the economic, social and cultural rights of its people. It makes allowance for the fact that poor countries will have difficulty in ensuring these rights immediately and so the obligation on states is one of “achieving progressively the full realisation of the rights recognised” in it.<sup>15</sup> Poverty in a rich country, therefore, is a far more serious violation of human rights than poverty in a country that is poor and has few resources and little economic development. The persistence of poverty in countries like Australia and the United States, therefore, is a far more serious human rights violation than its existence in countries like China and India. In this respect we are the graver human rights violators.

#### **Racism**

Next, we must admit to continuing racism and to the legacy of racism in our countries. Racism and racial discrimination are among the most serious human rights violations. They are among the few violations that are subject to prohibition at all times and in all places, without qualification. Yet both persist in most western countries. They are apparent in the activities and propaganda of far right racist movements like the National Front and National Action in parts of Europe and similar groups in the United States and in the populist politics of some right-wing political parties like Pauline Hanson's One Nation in Australia, the Freedom Party in Austria and the People's Party in Denmark. These are direct expressions of racist ideology.

Far more effective, however, in perpetuating racially-based disadvantage are the entrenched patterns of inequality that have sentenced so many people of colour to poverty and keep them poor. Again the experiences in the United States and Australia reveal historic and continuing human rights violation. In the U.S., the poverty rate for African Americans and Hispanic Americans is about three times that of Americans of European descent (called non-Hispanic whites by the U.S. Census Bureau) — 23.6% for African Americans, 22.8% for Hispanic Americans and 7.7% for non-Hispanic white Americans.<sup>16</sup> Of those aged 25 and over, 7.1% of African Americans have less than a ninth grade education compared with 4.2% of non-Hispanic white Americans. And 21.5% of African Americans have less than a high school diploma compared with only 11.6% of non-Hispanic white Americans. Looking at household incomes, 18.4% of African American households have incomes under \$10,000 while only 7.3% of non-Hispanic white American households have such low income.<sup>17</sup>

In Australia, Aborigines and Torres Strait Islanders, Australia's indigenous peoples, have an unemployment rate four times the national average and an average household income around half the national average. They experience by far the worst discrimination and disadvantage of all Australians. I will speak more of their situation a little later in this address.

Discrimination based on race and ethnicity is found in one form or another in every country. Only communities descended from Europe, however, sought to turn it into a quasi-scientific ideology of racial superiority and inferiority that founded and then sought to rationalise and justify the practices of slavery, colonialism, apartheid and segregation. We rightly condemn racial or ethnic discrimination wherever it occurs. But we must recognise our western society's responsibility for the development and propagation of racist ideologies far more insidious and de-humanising than the ethnically-based discrimination found in developing countries.

#### **Indigenous Peoples**

I referred to Australia's indigenous peoples, the Aborigines and Torres Strait Islanders. Their situation and that of other indigenous peoples in western countries require particular attention. Their experience of racism has been the most profound and destructive. In the past, it threatened their very survival as peoples. Today, it continues to undermine their well-being.

Indigenous peoples had similar experiences in countries of European settlement — Australian Aboriginal leaders now quite accurately call it European invasion. In Australia, Canada, New Zealand and the United States, they were killed in very large numbers directly in frontier wars and through poisoned food and water and indirectly through introduced European diseases. They were dispossessed of their lands. Because of the profound links between people and land, their dispossession undermined their spirituality and culture.

In Australia, there were two unique features. First, our continent was considered terra nullius, no one's land, when the Europeans arrived and so there was no need to make treaties, even unjust treaties, with the original inhabitants. As a result, uniquely among these four settled colonies, Australia's indigenous peoples had no rights recognised in Australian law until 1992

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#### Footnotes

<sup>15</sup> Article 2.1.

<sup>16</sup> U.S. Census Bureau *Poverty: 1999 Highlights*.

<sup>17</sup> U.S. Census Bureau *Census 2000*.

when the legal lie of terra nullius was overturned finally by our highest court. Second, for almost a century, until as recently as the 1960s, indigenous children were removed in large numbers from their families and communities in an attempt to sever all links with their peoples and cultures, a practice rightly identified by the Australia Human Rights Commission as falling within the internationally accepted definition of genocide.

In all western countries with indigenous peoples, including Australia and the United States, indigenous people are by far the most disadvantaged of all. Australia, however, has the worst record by far. The descendants of Australia's original inhabitants have

- life expectancy twenty years less than other Australians
- death from diabetes at five times the national average
- an infant mortality rate five times higher than other Australians
- 30% of all maternal deaths though they make up only 2% of the population
- a one-in-three chance of having some form of trachoma by the time a child is nine years old
- a one-in-four chance of being undernourished
- 16 times the likelihood of being homeless compared with other Australians
- chronic overcrowding due to lack of housing supply
- a lack of safe water, basic sewerage and roads in remoter communities
- no formal educational qualification for nearly half of all Aborigines over 15
- a school retention rate to year 12 of 33%, compared with the national rate of 75%
- a one-in-eight chance of not even going to school between the ages of five and nine
- an unemployment rate four times the national average
- household income around half the national average
- police custody rates 27 times the national rate
- children placed in institutional care at 19 times the national rate
- children detained in a juvenile justice institution at 20 times the national rate.<sup>18</sup>

*“The condition of the first peoples of our countries is one of the touchstones of our human rights performance. Both Australia and the United States have far to go before we can be satisfied with ourselves.”*

The inequality between Native Americans and other Americans is not as great as this but here too there is significantly greater disadvantage than that experienced by other Americans, even African and Hispanic Americans. Proportionally more Native Americans live in poverty than any other group in the United States. Their poverty rate is 25.9%, more than one in four. Their median household income is \$30,784, higher than that of African Americans (\$26,608) and not statistically different from Hispanics (\$29,110), but around 70% of that of non-Hispanic white Americans (\$43,287). Over 27% of Native Americans lack health insurance coverage, more than twice the rate of non-Hispanic white Americans (11.6 percent).

The condition of the first peoples of our countries is one of the touchstones of our human rights performance. Both Australia and the United States have far to go before we can be satisfied with ourselves.

### **Gays and Lesbians**

Another minority group whose human rights have been and continue to be violated are gay men and lesbians. They alone of the groups I have discussed today have been, and in some places may continue to be, gaoled simply because of who they are.

Violence based on sexual orientation was brought into international focus with the torture and murder of young Matthew Shepard near Laramie, Wyoming, in 1998. That terrible crime, in a state not too far from Arizona, demonstrated the persistence of irrational hatred of gay and lesbian people. Although its brutality was especially shocking, unfortunately it was not an isolated occurrence and it was not the responsibility solely of the young people convicted of the murder. It was the product of a long history of laws that punish homosexuals and of religious traditions that are hostile towards them.

Regrettably, the situation in the United States seems to have been far worse than that in other western countries, perhaps because alongside its commendable tradition of tolerance there have been strong elements of sectarianism and fundamentalism in Christianity here that have

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### Footnotes

<sup>18</sup> All statistics concerning the situation of Australian Aboriginal and Torres Strait Islander peoples are drawn from official data of the Australian Bureau of Statistics, whose Web site address is [www.abs.gov.au](http://www.abs.gov.au)

*“Increasing numbers of countries have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights which commits them to the permanent abolition of the death penalty.”*

been as extremist as religious fundamentalism is anywhere. I stumbled recently on the Web site of a Christian church that contains a photo of the murdered young man’s face bobbing around surrounded by flames accompanied by “Matthew Shepard’s message from hell.” It says, “Matthew Shepard has been in hell for 925 days.” It conveniently ignores the Christian gospel injunction “Judge not lest you be judged.”<sup>19</sup> As a result of this kind of religious extremism, gay men and lesbians continue to face discrimination, vilification and even violence. They do not enjoy the equal protection of the law or of their human rights. For example, consenting adult male homosexual activity remains a criminal offense in 18 U.S. states. They include Arizona, although I was pleased to learn this week that the Arizona legislature is in the process of enacting a new law that will decriminalise this form of sexual activity.<sup>20</sup> Further, 40 states provide no laws to prohibit workplace discrimination based on sexual orientation. Arizona is among these, too, and I know of no proposed law to make good this deficiency here.

In Australia, too, we have had our Matthew Shepards, gay men beaten and some killed for no reason other than their sexual orientation. Police services in some states have responded positively with special gay liaison units and even associations for gay and lesbian officers. But in other states the response has been more restrained and so less effective in ensuring the right to personal security for all regardless of sexual orientation. Courts have had to grapple with defendants alleging their violent actions were natural reactions to various kinds of sexual advances from their victims. They did so very poorly at first, acquitting many defendants on the basis of quite ridiculous assertions, but now they are more robust and less accepting that violence against gays is natural or justifiable. Discrimination, however, continues.

The law in all Australian states criminalised consenting sexual relationships between adult males until well into the 1970s. The last of these laws, in the state of Tasmania, was repealed only in 1997 after the Human Rights Committee established under the International Covenant on Civil and Political Rights found Australia in breach of human rights because of this law. All states but one have now enacted good antidiscrimination laws and the last, Western Australia, is expected to do so this year. These laws did not at first extend to ensuring equal rights to same-sex couples and in many states they still do not. Federally, Australia’s antidiscrimination laws are totally inadequate to deal with discrimination based on sexual orientation. As a result, a person in a same-sex relationship can face discrimination in the terms and conditions of employment, in insurance and superannuation and in being recognised as next of kin. The challenge now is to extend the coverage of antidiscrimination protections in all areas of Australia to ensure protection for members of same-sex relationships.

These practices cannot be justified on religious or any other grounds. It is now quite clear in international law that discrimination, vilification and violence against gay men and lesbians and same-sex couples, including criminalisation of their consenting adult sexual activity and condoning of hate speech and propaganda, are violations of human rights. It is as simple as that.

#### **Death Penalty**

The issues I have discussed so far have been human rights issues common to both Australia and the United States and to many, perhaps all, other western countries, too. I have to raise, however, two issues that are unique to the United States among western liberal democracies. The first is the death penalty.

The death penalty is provided under U.S. federal military and civilian law and the laws of 38 of the 50 states, including Arizona. The United States is the only western nation that still imposes the death penalty. Perhaps this too is a consequence of the strength of sectarian and fundamentalist Christianity in this country. Whatever the reason, however, it places the United States outside the community of western nations that seek to promote international respect for all human rights.

In 1999, 85% of all known executions took place in China, Iran, Saudi Arabia, the Democratic Republic of the Congo and the U.S.A.<sup>21</sup> In addition, hundreds of executions were reported in Iraq but many of them may have been extrajudicial. Is this the kind of company the United States wants to keep? Ninety-eight people were executed in the United States in 1999 and 85 in 2000, bringing to 683 the total number executed since the death penalty was restored in 1977. On 1 January 2000 over 3,700 prisoners were under sentence of death.

International law does not prohibit the death penalty absolutely, although there is increasing movement of international opinion in that direction. Over half the world’s nations have abolished the death penalty in law or practice, including all western democracies except the United States. Increasing numbers of countries have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights which commits them to the permanent abolition of the death penalty. Abolition was a prerequisite before the Russian Federation and all its former satellites were permitted to enter the Council of Europe, that being seen as a necessary condition for

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#### Footnotes

<sup>19</sup> Matthew 7.1.

<sup>20</sup> On 30 April, the law completed its passage through the state legislature and was forwarded to the Governor for her signature.

<sup>21</sup> All statistics in relation to the death penalty are drawn from Amnesty International’s excellent database on executions.

*“The country which carried out the greatest number of known executions of child offenders was the United States — 13 since 1990. The U.S. Supreme Court has upheld the constitutional validity of executing offenders who committed their offences as 16 and 17 year olds. Validity under the U.S. constitution, however, does not make it lawful under international law.”*

acceptance as a civilised nation. At present, however, international law reluctantly tolerates its continuance for the most serious adult offenders unless its application amounts to cruel, inhuman or degrading punishment.

Execution is never permitted in relation to offences committed as a juvenile. That is now considered a serious human rights violation under customary international law. Since 1990, only six countries are known to have executed prisoners who were under 18 years old at the time of the crime — Iran, Nigeria, Pakistan, Saudi Arabia, the United States and Yemen. Again, is this the kind of company the United States wants to keep? The country which carried out the greatest number of known executions of child offenders was the United States — 13 since 1990. The U.S. Supreme Court has upheld the constitutional validity of executing offenders who committed their offences as 16 and 17 year olds. Validity under the U.S. constitution, however, does not make it lawful under international law.

International law also prohibits the execution of a person who committed an offence while under an intellectual disability or other form of mental impairment. The U.S. Supreme Court is now considering this issue. On March 27, it heard oral arguments in the constitutional appeal of Johnny Paul Penry, who awaits execution even though he has the mental skills of a six-and-a-half year old. This is a pressing issue for the United States.

During the first nine days of March nine persons were to be executed. Of the nine,

- one had an IQ of 68
- the second had borderline intellectual disability and a history of mental illness
- the third an IQ of 67
- the fourth, who committed his offence at the age of 16, had an IQ of 70
- the fifth had been diagnosed with serious mental illness
- the sixth had severe depression and other health problems
- the seventh was illiterate until he was imprisoned.<sup>22</sup>

I would hope that the Supreme Court would rule, consistently with international law, that the execution of persons with a severe intellectual disability or mental impairment is unconstitutional. It seems obscene that this should even be an issue.<sup>23</sup>

I am very pleased, therefore, that the Arizona legislature this week passed legislation to remove the death penalty for persons with intellectual disability.<sup>24</sup>

Even for adults with full intellectual capacity the death penalty raises two fundamental human rights issues. The first is a practical one. Court verdicts are not infallible. Innocent people have been and still are executed. Since 1973, more than 90 prisoners in the United States have been released after evidence emerged of their innocence of the crimes for which they were sentenced to death. Some had come close to execution after spending many years awaiting execution. Other U.S. prisoners have gone to their deaths despite serious doubts over their guilt. The uncertainty has become so great that the governor of Illinois, a supporter of the death penalty, has suspended all executions in that state. There is no doubt that in the United States, as elsewhere, innocent persons have been executed. There can be no more serious violation of an individual's human rights.

The second issue is an even more fundamental one. It goes to the nature of the right to life itself.<sup>25</sup> Let me state clearly that I am not arguing that the intentional murder of an innocent person (although some murder victims are far from innocent) is the moral equivalent of the judicially-ordered execution of a guilty one (although, as I have pointed out, some executed persons are innocent). They are morally different killings. Yet both take human life. On 16 May, Timothy McVeigh will be executed for the brutal murders of 168 people, including many children.<sup>26</sup> Coincidentally, the President who will permit this first federal execution in almost 40 years, George W. Bush, during his five years as governor of Texas, was responsible for the execution of almost the same number of people, 152 men and women. The two sets of killings are worlds apart in moral terms but both reflect a fundamentally-flawed attitude towards human life. Indeed, I am convinced that a legal system that executes people encourages fanatical ideological terrorists like McVeigh precisely because it validates the taking of human life.

### **Democracy**

The second issue unique to the United States that I need to raise concerns the democratic process itself. Here human rights law is quite specific.

*The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage ...<sup>27</sup>*

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### Footnotes

<sup>22</sup> Amnesty International Media Release 1 March 2001.

<sup>23</sup> In June 2001 the Supreme Court decided the Penry case. It did not find the execution of a person with intellectual disability a cruel or unusual punishment. However, it referred the case for re-trial on the basis that in imposing the death penalty the jury had not received evidence of the accused's disability.

<sup>24</sup> The legislation was signed by the Governor on 27 April 2001 as this lecture was being delivered.

<sup>25</sup> The term “right to life” is associated in political debate with abortion but here I am using it in its international law sense.

<sup>26</sup> McVeigh's execution was postponed due to the discovery of evidence withheld from the defence by the FBI.

<sup>27</sup> Universal Declaration of Human Rights article 21.3; see also International Covenant on Civil and Political Rights article 25(b).

*“In fourteen states of the United States, ex-offenders who have served their sentences in full ... remain disenfranchised. Ten of these states disenfranchise all ex-offenders for life: Alabama, Delaware, Florida, Iowa, Kentucky, Mississippi, Nevada, New Mexico, Virginia and Wyoming. Arizona and Maryland disenfranchise permanently those convicted of a second felony ... ”*

The extensive discussions that followed the last presidential election have given rise to many questions for outsiders about the nature of American democracy. Although media attention seemed to focus on the length of time taken to decide the poll in Florida, that should be the least concern. Many countries with well-established democracies take weeks or at times even months to determine election results and form their governments. Three of the questions asked are quite fundamental.

The first is the lack of independence in the electoral process itself. In most U.S. states, electoral boundaries are decided by politicians and elections themselves are conducted by politicians. In most other western democracies this would be inconceivable. It would be considered a serious risk to the democratic process itself. In these countries electoral boundaries are drawn by independent boundary commissions. Certainly political parties and the public are invited to make submissions and there may even be public hearings, but the boundaries are determined, ultimately, by the boundary commissioners. Arizona recently established an electoral boundaries commission, following a citizens' referendum, making it one of only three states attempting to provide a more independent process of reviewing and setting boundaries.

Then in most countries, when an election is held, it is conducted by an independent electoral commission free of partisan interference and influence. It would be considered unacceptable for the brother of a leading candidate and his party colleagues to be responsible for the electoral process in a key region. I wondered, back in November, what the American reaction would have been at the time of the last Russian election if President Putin's brother had been in charge of the vote in the decisive region of Russia. There can be no "genuine elections" that express the "will of the people" unless the electoral process is completely independent.

The second concern is the failure to ensure that all valid votes were counted. Clearly, appropriate rules can and need to be imposed on when and how votes are cast. But, once votes are cast voters are entitled to have all their valid votes counted. The imposition of some arbitrary deadline by which votes must be counted can cause some voters to have their votes discarded, breaching their right to "universal and equal suffrage." The disturbing event in the Florida count was not the time it took but that the result was declared before all votes had been reviewed and all valid votes included. It seems from later media reports that this may not have affected the ultimate result in Florida but that does not make the process any less a breach of the human rights of those who were entitled to have their vote counted. And it enabled notorious anti-democratic rulers like Zimbabwe's President Mugabe to grandstand by calling for independent international monitors to observe the next U.S. election as they had the last election in his country and elections in other countries with dubious democratic records.

More serious still is the third concern. Here the result in Florida, and by extension the result of the presidential election itself, was probably affected. This concern is the lifetime disenfranchisement of convicted offenders. Florida is one of 13 states, including Arizona, where state laws deprive convicted felons of their right to vote not merely if and while they are in prison but for life. Voting is the most basic right of citizenship and so these laws, in effect, deprive those affected of their basic citizenship entitlement. But voting is also a human right. International practice indicates some acceptance of temporary deprivation of voting rights for a criminal offender while serving a prison sentence but even that is controversial and occurs only in a small minority of countries. I know of no other democracy where the right to vote is lost for life, including after the sentence imposed by the court is served in full.

In fourteen states of the United States, ex-offenders who have served their sentences in full nonetheless remain disenfranchised. Ten of these states disenfranchise all ex-offenders for life: Alabama, Delaware, Florida, Iowa, Kentucky, Mississippi, Nevada, New Mexico, Virginia and Wyoming. Arizona and Maryland disenfranchise permanently those convicted of a second felony and Tennessee and Washington disenfranchise permanently those convicted prior to 1986 and 1984, respectively. In addition, in Texas, a convicted felon's right to vote is not restored until two years after discharge from prison, probation or parole.<sup>28</sup>

State disenfranchisement laws have a dramatically disproportionate racial impact. Thirteen percent of all adult black men, 1.4 million, are disenfranchised, representing one-third of the total disenfranchised population and reflecting a rate of disenfranchisement that is seven times the national average.<sup>29</sup> Here in Arizona, around 75,000 people are disenfranchised, 2.3% of the adult population. Among them are 6,600 African Americans, 12.1% of the adult African American population of the state. I do not know how many are Hispanic Americans or Native Americans but their rates of disenfranchisement may be even higher.

In Florida, almost 650,000 convicted felons, almost 6% of the total adult population, have been deprived of their right to vote. Almost a third of them are African Americans, comprising 31.2% of the adult male African American population of Florida.<sup>30</sup> In the 2000 presidential elec-

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#### Footnotes

<sup>28</sup> Human Rights Watch *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States* Human Rights Watch Report October 1998.

<sup>29</sup> *ibid.*

<sup>30</sup> *ibid.* See also Human Rights Watch Media Release 8 November 2000.



tion these citizens were deprived of their human right “to vote ... by universal and equal suffrage ... guaranteeing the free expression of the will of the electors”.<sup>31</sup> Had these more than 200,000 African American citizens not been denied their human right to vote and had they exercised their human right to vote in the same proportion as other African American males in Florida and had they voted for the principal candidates in the same proportion as other African American males in Florida, both quite reasonable assumptions, then the Florida result would not have been a cliff-hanger ultimately falling for Mr. Bush. It would have been a large and clear-cut majority for Mr. Gore. And the United States would have a different president.

President Bush is firmly in the White House and I realise and understand the desire of the United States and its people to put the difficulties of the 2000 election behind them and rally around the president and his administration. But to say, as the American media did, that the process was a triumph of democracy is a gross misstatement. For the rest of the world, the democratic nature of the process and of the result is very much in doubt.

### **Participation in the International Human Rights System**

The final issue I wish to discuss concerns both Australia and the United States. It concerns the extent and the nature of our participation in the international human rights legal system. I described that system earlier — how it has been a great breakthrough in legal thinking and in international relations, how it seeks to provide universal protection and promotion of the human rights and fundamental freedoms of all peoples in all places, how it has been developed so slowly and with such difficulty over the last half century. The United States and Australia were at the forefront of states advocating for this system and working for its development in scope and effectiveness. Regrettably, neither of our countries maintains that leading role today.

Australia has certainly been an active participant in the system. It has ratified six of the eight major international human rights treaties. It has also ratified the two additional treaties, called Optional Protocols, to the International Covenant on Civil and Political Rights. It was one of the leading states in the successful negotiation of the Rome Statute to establish a permanent International Criminal Court. It has accepted the jurisdiction of four international treaty committees to receive and determine individual complaints against Australia. Early last year, during a visit to Australia, the United Nations Secretary General, Mr. Kofi Annan, quite rightly described Australia as a model member of the UN. Over the last two or three years, however, Australia has been moving away from that important leadership role.

The six key human rights treaties establish committees to monitor and encourage implementation of the treaties and to cooperate with states to improve their human rights performance. These committees are made up of independent experts elected by those countries that have ratified the relevant treaty. Committee members are not representatives of the countries they come from and committee deliberations are not political exercises like the deliberations of the various political organs of the UN.

Over the last two years, the Australian Government has been criticised repeatedly by every one of these six human rights treaty committees for shortcomings in its performance. Rather than responding by seeking the committees' assistance to rectify the problems identified, Australian ministers, including the most senior, indulged in intemperate attacks on the committees themselves and their members. The real problem, it seems, is that, while every government is sensitive to criticism, the present Australian government is more sensitive than any of its predecessors. So Australia has joined the ranks of the staunchest critics of the very mechanisms we have been so instrumental in establishing, the ranks of those with quite appalling human rights records who would tear down what has been so carefully and arduously constructed. Australia does not belong in that company.

At the same time, Australia has withdrawn from the leadership role it played in international human rights forums on many important issues, including issues of women's rights, children's rights and the rights of indigenous peoples. It is no longer making the positive contribution it has made in the past to improving the international legal system in these areas and improving the protection of the human rights of the groups concerned.

Fortunately our government is pulling back from the brink before it is too late. It has re-committed itself to the treaty committee system, while taking a more balanced approach to the acknowledged deficiencies in the system and offering to lead a reform process through the appropriate international forums. However, it has still not ratified the Statute of the International Criminal Court and it has decided not to ratify the new Optional Protocol to the women's convention to allow individual complaints to the treaty committee.

I hope that Australia's relationship with the international human rights system has passed its low water mark and that we are on our way back to becoming “a model member” of the inter-

*“President Bush is firmly in the White House and I realise and understand the desire of the United States and its people to put the difficulties of the 2000 election behind them and rally around the president and his administration. But to say, as the American media did, that the process was a triumph of democracy is a gross misstatement. For the rest of the world, the democratic nature of the process and of the result is very much in doubt.”*

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#### Footnotes

<sup>31</sup> *International Covenant on Civil and Political Rights* Article 25(b).

*“When I began, I referred to the Christian scriptures’ account of Jesus’ words on planks and splinters and to his condemnation of hypocrisy . . . .  
 . . . I would suggest that a more immediately applicable lesson is found in Paul’s instruction to the early Christian community to engage in mutual encouragement and mutual correction, not forgetting our own failings . . . .”*

national community. We certainly should be. The challenge is to undo the damage that has been done and regain our rightful place as a world leader in promoting human rights through the United Nations system.

The position of the United States, I regret to say, is even more problematic. The United States is an active participant in the political forums of the United Nations but a very poor participant in the international human rights legal system itself. It has ratified only three of the eight principal human rights treaties and those only many years or even decades after they were drafted. It finally ratified one of the two foundational treaties, the International Covenant on Civil and Political Rights, in 1992, more than 25 years after it was drafted, but its ratification was accompanied by so many and such wide reservations and qualifications that even many of its western allies argued that its ratification was virtually worthless. It has not ratified the other foundational treaty, the International Covenant on Economic, Social and Cultural Rights. It has ratified the treaties on torture and on race discrimination but it has not ratified that on discrimination against women. The United States is one of only two countries that have not ratified the Convention on the Rights of the Child; the other is Somalia, which has no effective government. The United States has not accepted any of the optional procedures to enable the treaty committees to receive and determine individual complaints. It opposed the final draft of the Rome Statute to establish a permanent International Criminal Court to try genocide, war crimes and crimes against humanity and, although then President Clinton signed the Statute among his last acts in his last month in office, there is no expectation that the United States will ratify it.

The record of the United States then is of a superpower that is enthusiastic about using international political forums to criticise the human rights performance of other states but is not prepared to accept and subject itself to the carefully crafted international human rights legal regime and system. It is in fact one of the poorest participants in the system.<sup>32</sup>

Again, as in the case of Australia, this simply should not be so. Whatever our human rights deficits, some of which I have discussed here, we have among the best human rights records in the world. We should be in the forefront of nations advocating for the development of this fragile international system, not among those taking cheap shots from the sidelines or, worse still, seeking to undermine and destroy what has been so painstakingly built. The status of the United States as the sole superpower places on it a weighty responsibility of leadership, not only in economic and military might but in human rights. Most regrettably, it is not discharging that leadership role.

## PLANKS, SPLINTERS AND MUTUAL CORRECTION

When I began, I referred to the Christian scriptures’ account of Jesus’ words on planks and splinters and to his condemnation of hypocrisy. Certainly hypocrisy is contemptible and unacceptable. But I am not so sure that this is the most applicable scriptural analogy for the way western countries handle human rights failings or that it is the most relevant lesson for us to learn. It may not be the most applicable analogy for two reasons, first, though the human rights performances of our countries are far short of what they should be, they are clearly and significantly better than those of most other states. Perhaps it would be more accurate to say that our eyes hold the splinters, not the planks. And the lesson might not be the most relevant because it urges the listener to remove the plank from his or her own eye before worrying about the splinter in the other’s eye. Standing back until we are perfect cannot be the way to advance human rights either in our own countries or globally. In fact we are our brothers’ and sisters’ keepers now and can and must act now to remove simultaneously both the splinter in our own eyes and the planks in others’ eyes.

If I may finish as I began with the Christian scriptures, I would suggest that a more immediately applicable lesson is found in Paul’s instruction to the early Christian community to engage in mutual encouragement and mutual correction, not forgetting our own failings because “everyone has his (or her) own burden to carry.”<sup>33</sup> I am not arguing today that we should walk away from criticising other countries for their poor human rights records. On the contrary, we must participate fully and effectively in the international work for human rights. We must engage both critically and cooperatively, both condemning where condemnation is warranted and praising where praise is due.

My argument is that our engagement must be based on honesty, above all about ourselves. We have the benefit of a common standard for judgement that is not based on our individual religious, cultural, social, political or economic situations but on what we have in common with all peoples and nations. That standard for judgement is international human rights law. In advocating for that standard and in applying it we must be prepared to judge ourselves as we would judge others.

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### Footnotes

<sup>32</sup> In May 2001 the poor US record resulted in its failing to be elected to the UN Commission on Human Rights for the first time since that Commission was established in 1947.

<sup>33</sup> Gal 6.1-5.

## Respondents



John Lewis

### John Lewis

*Executive Director, Inter Tribal Council of Arizona*

*The presentation by Professor Sidoti applies to the treatment of American Indians in this country.* For the American Indian, human rights has been an on-going issue. Take, for instance, the right to the franchise. Indian people in Arizona did not have the right to vote in state and federal elections until 1948 even though U.S. citizenship was granted to all American Indians in 1924. It took legal action by Indian World War II veterans to have their voting rights recognized at the time.

Another instance is our education system. At all levels it fails to address the legal-historical relations between American Indian tribes and the federal/state system. As a result, the understanding of tribal sovereignty and its implications are constantly being violated. Tribal sovereignty provides for the right of self-government and the need for intergovernmental cooperation. If the laws and policies of the United States Congress and the state governments are not consistent with the concepts of sovereignty of the tribal nations, the overall welfare of the citizens of these nations is affected.

Although the situation is changing for the positive, the effects of the past have been devastating to the Indian nations in areas such as education, health, family welfare and economic development. Indian nations have to work in all forums (the UN, the U.S. Congress and others) to address the continuing violations of their basic human rights.



Stephen G. Montoya

### Stephen G. Montoya

*Civil Rights Attorney, Phoenix*

*In my opinion, the most pressing problem with human rights advocacy in the United States is not hypocrisy, it is inaction.* The United States has chronically stood by while gross human rights violations are perpetrated throughout the world by our friends and enemies alike. The real challenge in human rights activism in the United States is devising standards by which we will intervene to prevent, stop, and remedy human rights violations abroad.

Although it is undeniable that hypocrisy should be avoided, it is equally undeniable that we cannot wait until we obtain moral perfection before we act to help others. We must therefore learn to combat human rights violations abroad in the face of our own human rights violations at home. While Professor Sidoti is correct in cataloging the multiple violations of fundamental human rights in the United States, these violations should not dampen our efforts to identify, condemn, and actively oppose human rights violations elsewhere in the world.

Of course, my comments are not meant to criticize Professor Sidoti. It is always healthy for a guest to remind his host of his failures to live up to his ideals. Such criticism can give rise to change. Nevertheless, what is really needed is a calculus for intervention in response to human rights abuses abroad.

Given the fact that Professor Sidoti has chosen to use a New Testament maxim as a prism by which to analyze the problem of international human rights advocacy in the United States, "first take the plank out of your eye, then you will see clearly to remove the speck from your brother's eye," I propose as an alternative, Jesus' admonition to "love thy neighbor as thyself." Of course, good neighbors do not intermeddle with each other's day-to-day affairs, unless a fundamental problem compels intervention. For example, we would not sit idly by while our neighbor's family was raped and brutalized. Similarly, the United States should not sit idly by when the population of another nation is raped and brutalized. If one is sincerely interested in applying New Testament principles to the field of international human rights, the obligation to intervene becomes pervasive. In my view, that problem is the one to which we should direct our efforts to resolving.

## Respondents (cont.)



Eddie Sissions

### Eddie Sissions

*Executive Director, William E. Morris Institute for Justice*

*Chris Sidoti's lecture reminds us that we far too often stand ready to judge others by strict standards without recognizing and acknowledging our own shortfalls, either personally or as a society.* Hopefully, strengthened by this opportunity to recognize our lapses, we as a community can begin to overcome the factors which prevent residents from securing their Four Freedoms — freedom of speech and expression, freedom of religion and belief, freedom from fear, and freedom from want.

As an advocate for low-income families in Arizona, my focus has been on the "freedom from want" that plagues far too many individuals and families, even in our modern industrialized community and nation. Being poor has often been synonymous with laziness, poor morale or other similar negative characterizations. As a community, we have failed to look at our own hypocrisy and at societal barriers that prevent many from working at their highest potential.

Sometimes, we think it is simply a matter of individual focus and application. We fail to examine public policy or the resources we are willing to devote to assuring equity of opportunity. For example, only three percent of Native American high school students passed the state's AIMS test last year. Have we, in setting this as a public policy, assured that there are sufficient resources for all students to pass? Have we made certain the curriculum taught both on and off the Indian reservations is aligned with the AIMS test? Too many questions remain about test measurements to simply ascribe failure to the individual student.

On another front, we believe that with the lowered welfare caseloads in Arizona and the nation we have ended welfare as we knew it. Yet, we are willing to deny benefits to welfare recipients who have a child after going on welfare because, in part, we believe that the recipient's behavior should not be rewarded. We don't consider how a parent must continue their struggle to feed, clothe and house her child.

We have seen a number of welfare recipients returning to work because of the current "hot economy." What we have not routinely seen is self-sufficiency for the former recipient, and, in the case of women, any assurance that their earnings will put the families above the poverty level. The ugly reality is that the average wage for welfare recipients is less than \$7 per hour, a passable wage if the worker had only one person to worry about, but not a manageable one when the individual has bills to pay, child care to arrange, and the other myriad of day-to-day costs of getting by.

Freedom from want is not being achieved with our current welfare reform efforts. We are hypocrites if we are claiming success. Freedom from want will be achieved when our community is willing and able to tackle the issue of a livable wage. Citizens cannot be frightened by assertions from the business community, among others, that the "sky is falling" on the economy when the dialogue begins.

A growing concern I have is the lack of community organizations and businesses willing to raise funds to achieve freedom from want. Important local businesses have consolidated into large national organizations with branches in numerous states. Locally, this may result in a loss of investment in Arizona problems. This type of loss makes it more difficult to find community business leaders who are willing to invest in being their brother's keepers and promote local responses to needs.

I believe that in America we fully understand, as Chris Sidoti has identified, the concept of civil rights and the legal framework upon which our constitution, laws and court decisions have been formed. But, we do not fully understand the broader definition of human rights and its implication for our personal and community behavior. If we strive toward actualizing the Four Freedoms for every citizen in our country, we will, I believe, learn to love our neighbors as ourselves. We may not be able to achieve the ideal righteous life of Matthew and Luke, but we will reduce our own hypocrisy. This is a difficult journey, but one worth embarking on as we recognize the inherent worth of each person.

## The Roatch 2001 Global Lecture Series Expands

The Roatch 2001 Global Lecture Series moved beyond the boundaries of Maricopa County to Yavapai County. In collaboration with ASU Extended Campus Programs and the Institute of Applied Gerontology at Yavapai College, a second 2001 lecture, "The Great Questions: Where After All Do Universal Human Rights Begin?," was held in Prescott on April 29th. The very special efforts of Anne McKinley, at the Institute, must be acknowledged. Her work ensured a successful partnership. A synopsis of the Prescott lecture and of the question and answer session moderated by Michael Bradburn-Ruster, are provided on the following page. We thank Bill Oriol for preparing the synopsis.

The Arizona State University  
College of Extended Education  
Office of the Distinguished Community Service Scholar  
in Collaboration with the  
Institute of Applied Gerontology  
Yavapai College

Proudly Presents

Chris Sidoti  
on  
"The Great Question: Where After All  
Do Universal  
Human Rights Begin?"  
— Eleanor Roosevelt, 1948

THE JOHN F. ROATCH  
GLOBAL  
LECTURE  
SERIES  
on Social Policy and Practice

Sunday, April 29, 2001  
2 p.m. to 4 p.m.  
The Ballroom of the St. Michael Hotel  
Prescott, Arizona

**Yavapai**  
COLLEGE

**ASU** EXTENDED  
CAMPUS  
ARIZONA STATE UNIVERSITY



Chris Sidoti at the Prescott lecture.



Ann McKinley and moderator.

**Program**

**Greetings**  
On Behalf of the College of Extended Education and  
the John F. Roatch Lecture Series  
Evelia Martinez-Braley, Professor of Social Work and  
Distinguished Community Service Scholar

**Welcome**  
On Behalf of the Board of Governors of Yavapai College  
Dean Cole Dean

On Behalf of the Institute of Applied Gerontology and  
Yavapai College  
Anne McKinley

**Speaker**  
Chris Sidoti

"The Great Question: Where After All  
Do Universal  
Human Rights Begin?"  
— Eleanor Roosevelt, 1948

**Audience Discussion**  
Michael Bradburn-Ruster, Moderator

**Reception**



Michael Bradburn-Ruster engages in conversation with a member of the audience.

## PROFESSOR SIDOTI'S LECTURE: A SYNOPSIS

*prepared by Bill Oriol*

The U.N. effort to define its responsibilities in the human rights arena provided the title for the lecture given in Prescott by Professor Sidoti. Its title was a query raised by Eleanor Roosevelt, a key supporter and contributing author of the U.N.'s Universal Declaration of Human Rights, adopted by the General Assembly in 1948.

"The great question," as posed by the former First Lady of the United States was, "Where after all, do universal rights begin?" Answers did not come easily in the early days of the U.N., and they may markedly vary today.



### ***Aspirations and Realities: A Summary of Progress Thus Far***

The gradual evolution of an international stance on human rights was the theme of the speaker at the Prescott lecture.

The global climate before and immediately after World War II, he told his audience, was far different than that of today. "In the 1930s," he said, "no one could tell Hitler, 'You can't kill your own people.'" The Holocaust had important postwar influence in turning worldwide attention to monumental rights violations. But other factors, including widespread imperialistic domination by "rich" nations, stood in the way of immediate attention to human rights quandaries.

Nations, in short, were still concerned primarily about the ways that governments dealt with other governments. It took decades for another

question to take prime importance: How do governments deal with the people governed?

Professor Sidoti traced the steps taken at the U.N. and elsewhere to build a body of international law and agreements grappling with the issues implicit in Mrs. Roosevelt's question.

An International Conference on Human Rights in 1993 seemed to approach universality of goals among the 190 nations agreeing to the fundamental principles. But nations still find ways to make rights secondary to other factors, including economic development.

Egregious as governmental persecution of its own citizens may be, human rights also may be violated by widespread negligence or unconcern. Professor Sidoti described field trips in his home nation which impressed him with inequalities in the economic and educational status of Australians residing in rural areas. Unequal access to health care is another factor that reduces the likelihood of full enjoyment of other human rights deemed to be universally essential.

"The challenge now," Professor Sidoti concluded, "is the challenge of implementation, requiring commitment by government at all levels." Another need is for informed citizens to recognize their own personal stake in recognizing and acting against any deprivation of rights, at home and elsewhere.

Michael Bradburn-Ruster, a member of the Yavapai Community College faculty and moderator for the afternoon, provided additional prologue for the discussion that was to take place later.

Widespread demonstrations the perceived negative consequences of economic "globalization," he suggested, may have their roots in a demand "not only for free trade, but fair trade."

The North American Free Trade Agreement, or NAFTA, was portrayed as soft on labor standards enforcement at a time when executives of major corporations may be receiving millions more in compensation because of NAFTA-generated profits.

Unilateral decisions by the United States, such as rejection of environmental issue incorporated in the Kyoto agreement, must also be considered. "You cannot separate environmental considerations and human rights from economic decisions," said Dr. Bradburn-Ruster.

His roster of issues also included bio-technical procedures that could become ethical issues with sharply disturbing results, a "culture of convenience" that may benefit higher-income consumers at the expense of the majority of consumers, the need for the best level of education for children, and the need to achieve an acceptable standard of health care for all.

Individual citizens, he added, need to press "a response button," when local or more widespread rights violations occur. "There is no excuse for not acting," he said, at a time when the Internet is widely available.



### **Question and Answer Session**

**Q: What points should be paramount in a public education program about the "globalization" of economies as they affect human rights?**

**A:** Creating an atmosphere that keeps the economy strong is a fundamental responsibility of government. But corporate policy must also reflect a concern about human rights and values. Consumers can influence business decisions by what they choose to buy or not to buy. Indeed, consumer decisions are "measures of our compassion."

**Q: How do treaties help protect human rights?**

**A:** One reason that some nations are hesitant to sign treaties is that their signature binds them to reporting on their progress in protecting human rights, or at least in avoiding violations of those rights. Governments, including Australia's, often protest vigorously when their commitment to human rights is questioned, but reporting "is the beginning of accountability."

**Q: Is the "best available standard" for health care, as a human rights goal, outdistancing available resources?**

**A:** Debates about health care often narrow down to discussions of where the health dollars are going. Two key indicators of true quality of the care provided are infant mortality and longevity. In the United States, infant mortality is higher than in some "third world" nations.

**Q: Barriers to equality of human rights sometimes arise when different definitions mean different things to different people. It may be claimed that if I grant a right to you, it must be taken from someone else. Is this right?**

**A:** Definitely not. They also agreed that definitions should be liberating, not narrowly restrictive.



*In recognition of the continued support and generosity of the Roatch family, Mary Roatch was presented The Campaign for Leadership Copper Award by Lonnie Ostrom, president of the ASU Foundation. The John F. Roatch Endowment was created by gifts made to the university by John and Mary Roatch. Mr. Roatch died in 1997. His widow, Mary, has provided numerous contributions to ASU in support of the John F. Roatch Global Endowment which provides support for the Global Lecture Series on Social Policy and Practice and resulted in the naming of the John F. Roatch Distinguished Community Scholar.*

*Thank You*