

# **The History of Refugees and Asylum Seekers and First Nations People in Australia and could Ignatian Spirituality contribute to this conversation?**

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JACSA & JEA Education Conference 10 – 12 July 2019.

St Ignatius College

Athelstone

10 July 2019

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## **1. A Jesuit Lawyer's Spirituality**

This Education Conference focuses on responding to the challenge to be companions in a mission of Reconciliation and Justice as was asked of us in GC36 D1. I have been assigned the topic: 'The History of Refugees and Asylum Seekers and First Nations People in Australia and could Ignatian Spirituality contribute to this conversation?' I am one of those Jesuits who finds great resonance between our key Jesuit documents and the key documents of our Catholic Church. In recent times, and through recent public controversies which culminated in an ecumenical university suspending an award to me for fear that my presence might offend students and staff, I have found great consolation in the observation of the Second Vatican Council's Pastoral Constitution on the Church and the World (*Gaudium et Spes*):

'To those, therefore, who believe in divine love, He gives assurance that the way of love lies open to people and that the effort to establish a universal brotherhood is not a hopeless one. He cautions them at the same time that this charity is not something to be reserved for important matters, but must be pursued chiefly in the ordinary circumstances of life. Undergoing death itself for all of us sinners, He taught us by example that we too must shoulder that cross which the world and the flesh inflict upon those who seek after peace and justice.'

I joined the Jesuits in 1975 with Peter Hosking who is the rector at this fine college. We came to the novitiate just as the 32<sup>nd</sup> General Congregation of the Jesuits was concluding. My lodestar has long been the decree *Our Mission Today*:

'The mission of the Society today is the priestly service of the faith, an apostolate whose aim is to help people become more open toward God and more willing to live according to the demands of the Gospel. The Gospel demands a life freed from egoism and self-seeking, from all attempts to seek one's own advantage and from every form of exploitation of one's neighbour. It demands a life in which the justice of the Gospel shines out in a willingness not only to recognize and respect the rights of all, especially the poor and the powerless,

but also to work actively to secure those rights. It demands an openness and generosity to anyone in need, even a stranger or an enemy. (GC32.4.18 )’

During the 1980’s, I often visited the fringe dwelling Aborigines from Mantaka near Kuranda in North Queensland. They were squatted beside the Barron River. They were seeking land rights and new houses. Across the river was a multi million dollar weekender built by a Melbourne businessman who used to bringing his family in by helicopter. I would often describe this scene to school audiences in Sydney and Melbourne. The students would then ask all sorts of prying questions about the Aborigines, and I was unable to give them satisfactory answers: “Why don’t they build their own houses? Why don’t they move somewhere else? What’s wrong with the businessman having a weekender? Aren’t his taxes paying the Aboriginal welfare bill?” In the end, I would ask just two questions in response, “Which side of the river are you standing on as you ask your questions?” “Can you see that there are just as many unanswerable questions that you can ask from the other side of the river? Mind you, they are very different questions.” Good education at a fine school can provide a bridge across the river. The bridge needs moral, political and legal pylons.



When chairing the National Human Rights Consultation in 2009, I arrived in Kalgoorlie, Western Australia for a community consultation accompanied by lawyers and secretariat staff from the Commonwealth Attorney-General’s Department. We were to hold a community consultation on human rights at the race track on the afternoon of 12 May 2009. That morning we learnt that many people were gathered at the local courthouse for the resumed coronial inquiry into the death of Ian Ward who had died of heartstroke in the Kalgoorlie Hospital on 27 January 2008. I thought it best that we visit the court in the morning to get a sense of the human rights issues occupying the local community. I insisted that all members of the secretariat keep out of the public eye. On arrival, we encountered an Aboriginal protest outside the courthouse. There was a bevy of media on hand including the ABC 4 Corners crew.

Walking towards the courthouse, I heard a cry, ‘Hey, Father Frank, over here! You’ve got to support us mob.’ Looking around I saw Ben Taylor, an old Aboriginal friend from Perth whom I had long known in the local Aboriginal Catholic Ministry. He was often accompanying Fr

Bryan Tiernan on visits to Aborigines in jail and to Aboriginal families in need around Perth. I was torn. What should I do? I was chairing a national consultation at the request of the Commonwealth Government. I did not want to politicise our presence in town. And I did not want to end up on television or in the newspapers in relation to a much publicised coronial inquiry I knew little about. But then again, I did not want to abandon Ben and his colleagues in their hour of need. I walked across to the group of grieving relatives who were surrounded by protesters including Ben. They all stood in front of an Aboriginal flag. Some were crying out for justice for their deceased loved one. Ben was holding a simple placard which read, 'White Australia has a black history'. I stood with the group, in silence, in solidarity. I would not have been invited to stand in that space but for prior relationships with those in the frame. It is only through relationship that one will be invited. I then accompanied Ben into the back of the courtroom where we heard the appalling testimony about the last hours of Ian Ward, a respected Aboriginal community leader, an artist, and a traditional owner. He had been picked up for drink driving in Laverton on Australia Day. He was denied bail. He was being transported into Kalgoorlie in the back pod of a prison vehicle. Alistair Hope, the State Coroner found:<sup>1</sup>

The deceased was transported in the vehicle from Laverton to Kalgoorlie, a distance of approximately 360 kilometres. The deceased was taken on a journey of approximately 3 hours and 45 minutes on an extremely hot day with the outside temperatures being over 40 degrees centigrade.

The air conditioning for the pod was not working. There was very little ventilation in the pod. It had no windows and only very limited airflow. The Coroner was to find that 'the deceased suffered a terrible death while in custody which was wholly unnecessary and avoidable'<sup>2</sup>.

After hearing some of this evidence, I and my secretariat proceeded to the racetrack for our community consultation on human rights. It was a tame meeting, carrying none of the pathos, anger or disgust of the morning's coronial inquiry. Next morning, I flew from Kalgoorlie to Perth. Next to me sat a lady reading her morning newspaper featuring a photo of the Aboriginal protest outside the courthouse. There was an unmistakable 6'4" white male with them – Fr Frank Brennan. I hoped this would not jeopardise our inquiry. I was pleased to have stood in solidarity with the grieving Aboriginal protesters at the request of my friend Ben. What else could I do? What relationships do you want to cultivate as Jesuit educators so that you might be invited to take a stand in solidarity?

## **2. A Reconciled Nation with Appropriate Recognition of Indigenous Australians**

I note the presence of Fr Brian McCoy SJ, the provincial of the Jesuits here in Australia. He

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<sup>1</sup> Western Australia Coroner, *Inquest into the Death of Ian Ward* at <[http://www.abc.net.au/4corners/special\\_edits/20090615/ward/ward\\_finding.pdf](http://www.abc.net.au/4corners/special_edits/20090615/ward/ward_finding.pdf)>, 3-4. Accessed 3 December 2014

<sup>2</sup> Western Australia Coroner, *Inquest into the Death of Ian Ward*, 5

worked for many years with Aboriginal people – from Palm Island in Queensland to Balgo in the Kimberley. He worked for Patrick Dodson on the Royal Commission into Aboriginal Deaths in Custody. Brian and I take pride in our Jesuit predecessors like Donald MacKillop, the brother of the now canonised St Mary MacKillop. Donald MacKillop ministered amongst the Aborigines of Daly River in the Northern Territory at the end of the nineteenth century, and wrote one of the great letters to the editor when he sent his 1892 Christmas epistle to the *Sydney Herald*:



‘Australia, as such, does not recognise the right of the black man to live. She marches onward truly, but not perhaps the fair maiden we paint her. The black fellow sees blood on that noble forehead, callous cruelty in her heart, her heel is of iron and his helpless countrymen beneath her feet. But we are strong and the blacks are weak; we have rifles, they but spears; we love British fair play, and having got hold of this Continent we have every square foot. The little Tasmania is our model, and, I fear, will be, until the great papers of Australia will chronicle, “with regret”, the death of the last black fellow.’



Eleven years ago, the great Australian ethnographic historian and one time Jesuit Greg Denning died. His last book was *Church Alive!*, the history of our North Shore parishes in Sydney. When preparing that book, he published *Wallumetta: The Other Side* which described faith, life and worship on the North Shore 1856-2006. I adopt his opening of that manuscript as a reverent breaking open of our pedagogical attempt to build intercultural understanding from one side to the other. He wrote:<sup>3</sup>

‘We, the people of God at St Mary’s (North Sydney, *Cammeray*), St Francis Xavier’s (Lavender Bay, *Quiberee*) and Star of the Sea (Kirribilli, *Kiarabilli*) have worshipped on The Other Side for 150 years. We happily acknowledge that our First People, the Cammeragal and their forebears, have sustained their spirits and their bodies in the abundance of this Land, and in their turn have worshipped in these beautiful places for millennia before us.

‘We hope and pray that we and our First People will be reconciled in the differences that have divided us in the past and that we will share the future with wisdom, grace and justice. Though we live and worship on The Other Side, there is no othersidedness in the Spirit. ‘There is neither Jew nor Greek, there is neither slave nor freeman, there is neither male nor female, because you are all one in Christ Jesus’. (Galatians 3:28)

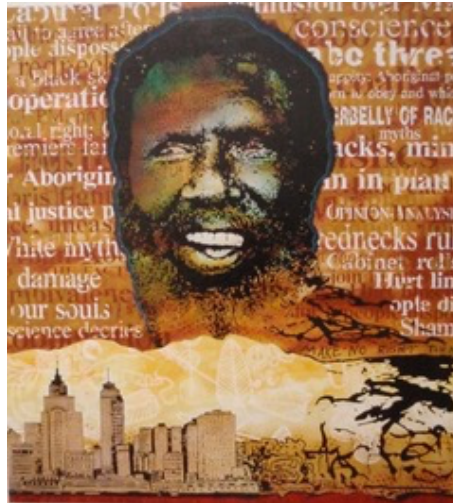
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<sup>3</sup> Quoted in Greg Denning, *Church Alive!*, University of New South Wales Press, 2006, pp. 26-7



Dening had a deep sense of time and space. In *Church Alive!*, he recalls:<sup>4</sup>

My richest experience of Deep Time was at Lake Mungo where the burial of Mungo Man and Mungo Woman showed how careful the First People were to make the transition from life to death a cultural, ritual act. Forty-three thousand years ago, men and women made sacraments of their life passages.



Greg had an encounter with Eddie Mabo which he recounts in Stuart McIntyre's edited collection *The Historian's Conscience: Australian Historians on the Ethics of History*.<sup>5</sup> Greg's essay is called, "Living with and in deep time". He describes the celebration at the National Library in Canberra when two items of Australian heritage were placed on the Memory of the World Register. Those items, joining documents from other countries such as the *Magna Carta* and the US *Declaration of Independence*, were not the Australian Constitution or even the batting records of Donald Bradman, but rather Captain James Cook's journal from the Endeavour voyage of 1768-1771, and the papers relating to Eddie Mabo's case in the High Court. Dening describes the reverence with which he donned the cotton gloves to peruse these documents in the Manuscript Reading Room of the library. He takes up Eddie Mabo's drawings of his land and his people. This file "needs a slow, slow read". Dening says this file is Mabo's "expression of how deep time has left its mark on the present." Here is Dening's evocative description of his reading of these papers:<sup>6</sup>

'He (Eddie Mabo) taps a truth the way we all tap truths from living, but in ways which need to be tolerated by those whose notion of law and evidence is blinkered by legal tradition and constitution and who need to find some entry into Eddie Mabo's otherness. The other papers in the Mabo Papers - of judges, lawyers, anthropologists, historians, witnesses of first people telling their stories - belong to the Memory of the World because the whole world faces the

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4 Greg Dening, *Church Alive!*, University of New South Wales Press, 2006, p. 264

5 Stuart McIntyre (ed.), *The Historian's Conscience: Australian Historians on the Ethics of History*, Melbourne University Press, 2004

6 Greg Dening "Living with and in deep time", in Stuart McIntyre (ed.), *The Historian's Conscience: Australian Historians on the Ethics of History*, Melbourne University Press, 2004, at p. 43.

issue of how it lives with the Deep Time of all its first peoples, overrun and dispossessed as they are. It belongs to World Memory because the papers are we, the Australian people, struggling to do justice and to live with the Deep Time all around us. And we are in this instance the world.'

You see what I mean about Greg's deep and sacramental sense of time and space. I think we need something of that if we are truly to bridge the intercultural gap between indigenous Australia and the rest of us who proudly call Australia home.

In April 2018, the nation farewelled one of the great public servants, Barrie Dexter. Barrie's father Walter was a decorated Anglican chaplain at Gallipoli. Barrie and his four brothers all served in the Second World War. Barrie then became a diplomat until Prime Minister Harold Holt handpicked him for a domestic role after the 1967 referendum. At that referendum, the Australian people voted overwhelmingly to remove the two arguably adverse references to Aborigines in the Constitution. The political effect of the strong vote for change was pressure on the Commonwealth government to act directly to improve the living conditions of Aboriginals and Torres Strait Islanders.

Holt set up a three-member Council for Aboriginal Affairs consisting of 'Nugget' Coombs who had been a major contributor to post-war reconstruction and to the Reserve Bank, Bill Stanner who was a leading anthropologist at the Australian National University, and Barrie Dexter.

In his delightful self-deprecating mode, Dexter says that Harold Holt was looking for someone who was 'honest, just, sympathetic with underdeveloped or deprived peoples, knows his way backwards through the public service and [would] not squeal when he was kicked.' When asked by Holt to join the three-member Council for Aboriginal Affairs with Coombs and Stanner, Dexter replied, 'But I don't know anything about Aborigines.' Holt said, 'That's why I asked you to take on the job. I'm frightened by the people who think they do know something!' Dexter then said, 'Mr Prime Minister, you are asking me to open Pandora's box!' Holt replied, 'That is precisely what I am asking you to do, Barrie.' These 'three wise men' or 'the three white men', as they were often called, helped navigate the policy changes for land rights and self-determination. It was my privilege to preach at the funerals of both Coombs and Dexter in 1997 and 2018, having attended the funeral of the third wise white man Professor WEH Stanner way back in 1981.

The eulogy at Dexter's funeral was delivered by the nation's most distinguished Aboriginal public servant, Patricia Turner. She said:

The late Mr Barrie Dexter most certainly paved a promising pathway to right the way for Aboriginal people to live a more fulfilled and decent life in this country. When I gave the eulogy at the funeral of my late uncle Charlie Perkins, I recalled that he was an "unorthodox public servant". I know Mr

Dexter would have understood that very well. Mr Dexter on the other hand, I would characterise as an “orthodox public servant” who was well equipped for his tasks.

Barrie Dexter and Charles Perkins had their differences and their blow-ups in the public service, but they came to respect each other. How fitting it was that the formal eulogy was delivered by Perkins’ relative Patricia Turner one-time CEO of the Aboriginal and Torres Strait Islander Commission (ATSIC), and deputy secretary of the department of Prime Minister and Cabinet. Nothing gave Barrie greater pleasure than to see Aboriginal Australians replacing him and taking their rightful place in the administration of the nation, determining the best use of Pandora’s box.

On his last day as Secretary of the Department of Aboriginal Affairs in 1977, Barrie had written an account of his stewardship to his minister Ian Viner. Viner replied, thanking Dexter for his insights and assistance, having come to his position ‘as a “new chum” in Aboriginal Affairs as well as to the Ministry.’ Viner confided:

It seemed to me that we had a common approach through a simple philosophy and fundamental truth – all men and women are equal in the sight of God and deserve to be accorded the dignity of that status within the Australian community. Where it has been diminished by disadvantage or discrimination or inadequacy on the part of Governments, then that is where the resources of the Department of Aboriginal Affairs should be directed.

A tribute was also delivered at Dexter’s funeral by Professor Gary Foley who as a young Aboriginal activist had been sacked by Dexter when only six weeks into his employment in the Commonwealth public service. Foley told the congregation that he used to hate Dexter, but that later in life he grew to love him. It was Foley who organised the publication of Dexter’s book *Pandora’s Box* recounting the activities of the Council for Aboriginal Affairs. Gary Foley said that reconciliation had to be founded on truth. Looking back over the decades, Foley and Dexter had come to appreciate each other’s perspectives on difficult times which included the setting up of the Aboriginal tent embassy in front of the old Parliament House.





Fifty-two years on from the 1967 referendum, we are still wondering how to recognise Indigenous Australians in our Constitution. At the moment, they don't even rate a mention in our founding document. On this, the country is stalled. It will remain stalled until there is a more inclusive respectful dialogue about what is appropriate and achievable in the Australian Constitution. At Uluru two years ago, Aboriginal and Torres Strait Islander representatives from around Australia strongly supported a call for 'the establishment of a First Nations Voice enshrined in the Constitution'.

Australians will not vote for a constitutional First Nations Voice until they have first heard it and seen it in action. Presumably the First Nations Voice would replace the existing National Congress of Australia's First Peoples which boasts, 'As a company the Congress is owned and controlled by its membership and is independent of Government. Together we will be leaders and advocates for recognising our status and rights as First Nations Peoples in Australia.' When the extensive Aboriginal consultations for the setting up of the Congress were conducted in 2009, the committee charged with proposing the model concluded, 'The new National Representative Body should be a private company limited by guarantee rather than a statutory authority.' They had 'consistently heard the aspiration of Aboriginal and Torres Strait Islander peoples that the National Representative Body become self-determining over time'. They said, 'This cannot happen if the body is a creation of Parliament whose existence is dependent on the goodwill of Parliament and the government of the day.' They thought a company limited by guarantee would have the advantage of flexibility and enhanced self-determination: 'The structures of the Body will be able to be flexible, with the members able to alter the Constitution when necessary. If the Body was a statutory authority it would have to rely on Parliament to approve such changes and may also have unnecessary or politically motivated changes foisted upon it.'

If the Congress is to be replaced by a First Nations Voice which is recognised in the Constitution, that body will need to be set up by legislation which sets out what it's to do, the way it which it is to operate, and how representation is to be organised. But mind you, the Congress told the last Parliament:

If properly funded and supported, National Congress could function as the Voice to Parliament. National Congress now counts over 9,000 individuals and 180 organisations and members. As the national peak representative body for Aboriginal and Torres Strait Islander peoples, much of the work which we do already substantially aligns with the role to be filled by the Voice: we provide input into and critique of government policies relating to Aboriginal and Torres Strait Islander affairs, facilitate consultations with communities and organisations and engage in policy development.



Those of us who are not Indigenous need to wait and hear from Indigenous Australians whether they think the National Congress could be the Voice to Parliament. The only certainty is that there will have to be compromise within Indigenous ranks. It won't be a matter of unanimously finding common ground.

When ATSIC was first established in 1989, the number of Australians identifying as Aboriginal and Torres Strait Islander was less than a quarter of a million. At the last census, it was almost 650,000. The aspirations of these self-identifying Indigenous Australians are very diverse. A constitutionally recognised body would have much less flexibility than the present Congress. There is a need for a lot further discussion both within Indigenous communities and within Australian society generally about what such a First Nations Voice might look like, and what it might do. The challenges are great. But great Australians like Barrie Dexter, Patricia Turner and Gary Foley have shown us the way. There needs to be a place at the table for both the orthodox and the unorthodox.



In the light of the Uluru Statement, I offered a threefold suggestion when privileged to deliver the 2017 Lowitja Oration for the 50<sup>th</sup> anniversary of the 1967 referendum. In light of the ongoing discussions, I have continued to refine the suggestion.

First, we need to repeal the outdated, unused section 25 which allows the states to discriminate on the basis of race when prescribing the conditions for elections to state parliaments. The deletion of that provision is just low hanging fruit.

Second, consistent with the language used by the Expert Panel chaired by Patrick Dodson and Mark Leibler in 2012, we need to place an acknowledgment at the beginning of the Constitution:

We, the people of Australia, include Aboriginal and Torres Strait Islander peoples and peoples from all continents and their descendants who have made Australia home, having migrated to be part of a free and open society.

We recognise that the continent and the islands of Australia were first occupied by Aboriginal and Torres Strait Islander peoples.

We acknowledge the continuing relationship of Aboriginal and Torres Strait Islander peoples with their traditional lands and waters.

We acknowledge and respect the continuing cultures, languages and heritage of Aboriginal and Torres Strait Islander peoples.

We acknowledge the need to secure the voice of Aboriginal and Torres Strait Islander peoples in the Commonwealth.

Third, we could then amend section 51(26) of the Constitution so that the Commonwealth Parliament shall, subject to the Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to:

- (a) the cultures, languages and heritage of the Aboriginal and Torres Strait Islander peoples, and their continuing relationship with their traditional lands and waters;
- (b) the constitution and functions of an Aboriginal and Torres Strait Islander Council which: (i) may request the Parliament to enact a law providing protection or support for one or more of the cultures, languages and heritage of the Aboriginal and Torres Strait Islander peoples and their continuing relationship with their traditional lands and waters; and (ii) may advise the Parliament of the effect which a law has or is likely to have or which a proposed law if enacted would be likely to have on the cultures, languages and heritage of the Aboriginal and Torres Strait Islander peoples and their continuing relationship with their traditional lands and waters.



The theme of this year's Aboriginal Sunday is 'Peace to this house and all who dwell within'. So we need to start reflecting on what it means to say 'Peace to this country, peace to this land, and all who dwell within.' And how can we say these words honestly, with feeling, and as a prayer for each other and for our country?

At the traditional welcome ceremony in Parliament House last week, Prime Minister Scott Morrison repeated the words from his maiden speech to Parliament that 'a strong country is at peace with its past'. He admitted, 'This is a work in progress. Being at peace with our past, being at one with our past. While we reflect on how far we have to go, consider though how far we've come.'

The Prime Minister said, 'This year, my Government appointed Ken Wyatt as the first ever Aboriginal person to hold the position of Minister for Indigenous Australians - and as a member of Cabinet... And I'm pleased, as I know the Leader of the Opposition is, that he is joined in

the Parliament by ... Linda Burney, and Senators Patrick Dodson, Malarndirri McCarthy and Jacqui Lambie. But together, between Linda and Ken, I think Anthony (Albanese) and I are both very optimistic about the partnership that can be forged.’ How good it is that the minister and the shadow minister are both Aboriginal.

In her maiden speech after she was first elected to the Senate back in 2014, Jacqui Lambie said: ‘I acknowledge and pay my respects to Australia’s Aboriginal traditional owners. I share their blood, culture and history through my mother’s, Sue Lambie’s, family. We trace our history over six generations to celebrated Aboriginal chieftain of the Tasmania east coast, Mannalargenna.’ Back then, this caused quite a stir. The Chair of the Tasmanian Aboriginal Land Council said that Senator Lambie’s claims were ‘absolutely outrageous and scandalous’: ‘They’re totally unfounded. There’s no evidence that I’m aware of that would justify Jacqui Lambie standing up in the Australian Parliament and making those claims. She didn’t have the right.’

Thankfully five years on, we have now reached the stage when we are all more relaxed and accepting of people’s rightful claims to their indigenous heritage. There is a whole spectrum of claims to indigenous heritage and of Aboriginal and Torres Strait Islander identities. Now we all take pride in the fact that there are Aboriginal voices in the Parliament, and on the front benches on both sides of the Parliament. There will continue to be a lot of talk and confusion about putting an Aboriginal Voice in the Constitution, but at least we have now reached the stage that Aboriginal aspirations can be expressed in Parliament by Aboriginal people themselves. There are Aboriginal voices in our Parliament, regardless of what is absent from our Constitution.

A year after the *Mabo* decision I travelled to the Torres Strait and met James Rice and David Passi, the two successful litigants in the case. They kindly autographed my copy of the decision.





Returning by boat to the mainland from the island of Mer in the Murray Islands, the waters of the Torres Strait were exceedingly calm. As the sun glistened on the water, Father David Passi, the Anglican Pastor of the Island of Mer, stood at the back of the speed boat pointing at a small island close to the shore, declaring, 'That's Possession Island.' David smiled broadly as he explained to me that this was the place where James Cook came ashore after his epic voyage up the Australian eastern coastline in 1770, raising his King's flag and claiming possession in His Majesty's name of all he had sailed past. David chuckled, 'Cook had his back to the Torres Strait when he claimed possession.' David, like all of us, it seems, was completely mistaken. It turns out that Cook never claimed possession of anything north, south, east or west.

Margaret Cameron-Ash, a lawyer and historian with a keen interest in cartography, has now published a book 'Lying for the Admiralty' which describes Captain Cook's voyage on *The Endeavour*. The Foreword is written by John Howard. She outlines what actually happened on 22 August 1770 when Cook came ashore on that small island which David Passi pointed to. Cook had actually named the island 'Passage Island'. He was coming ashore, scaling the hill, looking for a sea route through the shallow waters of the Gulf of Carpentaria. It was only when Cook got to Batavia (Indonesia) that he realised that French explorers might be hot on his heels. So he took a fresh sheet of paper, re-wrote his diary entry for 22 August 1770, and inserted that piece of paper in his diary describing in poetic terms a fictitious ceremony. He renamed 'Passage Island' as 'Possession Island' and invented a fresh account that he had come ashore on the island and conducted some form of ceremony claiming possession of the east coast of Australia. He did not, and here we are on the eve of the 250th anniversary of Cook's epic achievements wondering what to make of it all.

Eighteen years after Cook sailed from the tip of Cape York to Batavia, the Englishman Arthur Phillip did claim possession of the eastern part of the Australian continent while the Frenchman La Perouse 'cooled his heels in Botany Bay' as Cameron-Ash says. Looking back at the actions of Cook and the British Admiralty, she says that just like in the time of the modern Cold War, 'secrecy, spies and fake documents were the name of the game'. Cameron Ash concludes that 'Cook's aim was to gain time. If no one denied the ceremony, his fictitious statement of claim would give Britain an inchoate right against her European rivals to occupy the east coast within a reasonable time – he had "bagged" the east coast for Britain. And, for all its flaws, his ruse worked.' John Howard for his part says, 'I can't assert that the principal claims made by Margaret Cameron-Ash are correct. But I can say that she has cogently argued the case that strategic rivalry between Britain and other colonial powers so dominated Admiralty thinking and planning that previously accepted "errors" on the part of Cook were deliberate fabrications designed to advance Britannica.'

For us all to be at peace with our past, and to be at peace here in the present, we need to accept that there has never been a time when truth and justice ruled the waves triumphant and unchallenged. It requires grace and forgiveness for us to accept each other and to live in peace



regardless of the lies and injustices of the past. Next month, I will be attending the funeral at Wadeye of Deacon Boniface Perdjert. He met and welcomed as many popes to this land as has any bishop.



He was fond of saying, 'Jesus told us we have to love God with whole hearts, mind and spirit - and that means the whole of me and the whole of me is Aboriginal. There is no other way for me to love him.'



Let's commit ourselves to peace and respectful dialogue as we continue the quest for how best to acknowledge and include all Australians at the table, starting with those who rightly claim the longest heritage in this land.

### 3. Australia's Treatment of Refugees and Asylum Seekers



On Monday Pope Francis celebrated a mass marking the sixth anniversary of his visit to Lampedusa. In his homily he said:

‘On this sixth anniversary of the visit to Lampedusa, my thoughts go out to those “least ones” who daily cry out to the Lord, asking to be freed from the evils that afflict them. These least ones are abandoned and cheated into dying in the desert; these least ones are tortured, abused and violated in detention camps; these least ones face the waves of an unforgiving sea; these least ones are left in reception camps too long for them to be called temporary. These are only some of the least ones who Jesus asks us to love and raise up. Unfortunately the existential peripheries of our cities are densely populated with persons who have been thrown away, marginalized, oppressed, discriminated against, abused, exploited, abandoned, poor and suffering. In the spirit of the Beatitudes we are called to comfort them in their affliction and offer them mercy; to sate their hunger and thirst for justice; to let them experience God’s caring fatherliness; to show them the way to the Kingdom of Heaven. They are persons; these are not mere social or migrant issues! *“This is not just about migrants”*, in the twofold sense that migrants are first of all human persons, and that they are the symbol of all those rejected by today’s globalized society.’



We have now all endured our third election in a row when boat turnbacks and the punitive treatment of refugees and asylum seekers featured. The overwhelming majority of our politicians and the overwhelming majority of voters are agreed that the boats from Indonesia carrying asylum seekers transiting Indonesia should be stopped, and the refugees and asylum seekers who have been languishing on Nauru and Manus Island should be treated decently and humanely. The disagreement is over whether after six years of aimless waiting and suspension, all those who are sick can be given appropriate medical attention either on site or in Australia. A recent swathe of court cases demonstrates that when the decision whether to conduct a medical evacuation is left to Mr Dutton's public servants, the decision cannot always be classed as decent and humane. A narrow majority of our politicians thought it was time to insist that such medical decisions always be decent and humane. They remain insistent that the boats remain stopped, with turnbacks in place.

In February 2019 when Jacinta Collins, the Manager of Opposition Business in the Senate, announced her retirement from parliament, she made a telling observation: 'I regret that officials did not alert Labor when we were in government that boat interceptions or turnbacks could safely occur. Much of what followed might not have subsequently occurred.'

At the 2013 election, Kevin Rudd and Tony Abbott had been equally committed to stopping the boats. While Abbott placed great store on turnbacks, Rudd thought the same result could be achieved only by other means, including the revival of the Pacific Solution but with the added proviso that no one would ever be permitted to resettle in Australia. He negotiated deals with PNG and Nauru and announced that no asylum seeker taken to those places would ever be permitted to settle in Australia. Prime Minister Rudd, presumably with comprehensive security and military briefings, thought that the conditions for legal turnbacks could not be fulfilled. Abbott, without the benefit of the regular briefings available only to government, was able to wing it and promise turnbacks.

On his election as prime minister, Abbott instituted Operation Sovereign Borders (OSB) and within two months, turnbacks were a centerpiece of OSB. Many of us were troubled by the secrecy of the turnback arrangements because the previous year the expert panel chaired by the respected ex-head of the military Angus Houston had reported 'that the conditions necessary for effective, lawful and safe turnback of irregular vessels carrying asylum seekers to Australia are not currently met'. So what had changed?

Up until the 2015 ALP national conference, Abbott and his minister for Immigration and Border Protection Scott Morrison taunted Labor for its failure to embrace turnbacks. For example, on 28 May 2014, Morrison told Parliament: 'We need to stay the course on border protection and those opposite would change it all because they oppose the successful border protection policies of this government. They will turn back on turnbacks, you can be sure of that. This government will not be turning on turnbacks, you can be assured.' Three months later, he was still at it: 'On turnbacks, we implemented the turnback policy which they said could never work and could never be done. When they see the results of that policy staring

them in the face, they cannot support it now. The people of Australia know that, if they cannot support turnbacks now after the results they have seen, they will never support them, and they can never be trusted to put them in place.’ At that time, there was no publicly available evidence that the turnbacks were lawful and safe. We were being asked to trust a non-transparent government.

For almost three years, Labor has been adamant that there is not a sliver of light between them and the government on turnbacks and stopping the boats. In the lead up to the last election, Tony Burke, the Manager of Opposition Business in the House of Representatives told Fran Kelly on ABC Radio National *Breakfast*, ‘There remains a bipartisan turnback policy that I would be surprised, deeply surprised, if the government decided to not implement it...The real shift was when a way was found to be able to conduct turnbacks again. Once that happened, it was bipartisan to support that and that means that if someone puts their lives at risk on the high seas, they are turned back and sent back to Jakarta.’

There are still more than 800 refugees and asylum seekers remaining on Nauru and Manus Island. And there are that many who have come from Nauru and Manus Island to Australia to receive medical treatment. Those who have been screened out and found not to be refugees need to accept that the re-elected Morrison government will not allow them to settle permanently in Australia. Those from Iran who have been found not to be refugees cannot be returned home by force. They need to choose to return home. Those who have been found to be refugees should be resettled promptly either in the USA or in New Zealand. There are no other practical options. Australia should stop pressuring Nauru and New Zealand from agreeing to the regular transfer of 150 refugees per annum. For too long, the Australian government has tried to have it both ways. Only last week, Minister Dutton informed the Australian Parliament: ‘In general, the Government’s position is that Australia does not exercise the degree of control necessary in regional processing countries to enliven Australia’s international obligations.’ So what right does Australia have to exercise that degree of control necessary to stop the transfer of refugees from those regional processing countries to a country where a decent durable solution might be provided? If Nauru and New Zealand or PNG and New Zealand are minded to reach agreement on putting to an end a humanitarian disaster, what business is that of Australia, just because Australian caused the disaster in the first place? Should any of those proven to be refugees not be acceptable to the USA or New Zealand then they should be resettled in Australia promptly provided only that they do not constitute a security risk in Australia.

It’s a brave commentator who suggests what makes moral, political and economic good sense to the Morrison government on these issues. Afterall they were prepared to waste over \$180 million dollars prior to the recent election re-opening the Christmas Island processing facility with no one to be processed. And it would seem that this form of economic waste and bad policy passes muster with the electorate when it would not if the money were wasted so profligately on other government non-services designed only for mandate signalling. But let me have a go.

Any government, including the re-elected Morrison government, should see the good sense in providing employment, health and welfare services for bona fide asylum seekers living in the Australian community, having adequately resourced the non-military, non-Customs part of the Department of Home Affairs to process promptly those on our shores who are applying for protection visas simply so as to extend their time in Australia on a visitor's visa. Any government, including the re-elected Morrison government, should see the good sense in allowing proven refugees on temporary protection visas to transition to a permanent visa after (say) six years. Any government, including the re-elected Morrison government, should see the good sense in resolving the caseload of refugees and asylum seekers languishing on Nauru and Manus Island after six years and three elections, while keeping the boats stopped, turning back those who are not fleeing persecution IN Indonesia and conducting on-deck assessments at sea of those travelling from countries like Vietnam and Sri Lanka which are not presently significant refugee producing countries. Any government, including the re-elected Morrison government, should appreciate that the Australian Senate will not vote for legislation which would force children who are proven refugees brought to Australia for family medical care (including psychiatric help) to be removed back to Nauru to languish in ongoing existential despair after six years of waiting, and in the spurious name of sending a signal to people smugglers. Those refugee children and their families will have to be allowed to remain in Australia unless a ready removal to the USA or New Zealand can be arranged. After six years, the time might even come when the party room of the Liberal Party will say that this is more than enough cruelty, regardless of the political advantage in providing an ongoing ready point of differentiation from the Labor Party. Failed asylum seekers whose refugee claims have been refused in Nauru or PNG should abandon hope that the re-elected Morrison government will allow them to settle in Australia.

Let's all commit to options with some hope of winning acceptance by those who expect to occupy the treasury benches and let's not hold out false hopes to those who continue to languish in Nauru and Manus Island.

#### **4. Bringing All Players into the Frame**

We need to be accomplished at eyeballing both the decision makers and those adversely affected by the decisions. I've often said that at least such eyeballing of both stops you from becoming sanctimonious.





Much of the dynamic of engagement and mission is summed up in this photo:



Everyone recognises the minister in a characteristic governmental pose. It's Amanda Vanstone when she was the Minister for Immigration. Her interlocutor is Nasrin, a young Iranian mother who was held in detention at Woomera for years with her young son. During the Easter riots in 2002, her son was hit with a baton and sprayed with tear gas. She single-handedly fought a



case in the Human Rights and Equal Opportunity Commission culminating in the Immigration Department writing an apology for the assault on her son.

In the official apology, dated 23 December 2003, the government acknowledged “that at the end of an exhaustive investigation, where the (HREOC) delegate duly and fairly considered submissions from all concerned parties, (the delegate) has found, on the balance of probabilities, that your son was struck with a baton by an unknown Australasian Correctional Management (ACM) officer and that this constituted a breach of his human rights.” Having apologised, the government noted “that this apology is made on a without prejudice basis and with no admission as to liability”.<sup>7</sup>

The mother decided not to seek compensation for the assault. She responded to the government, appreciating receipt of the apology, and noting:<sup>8</sup>

While in detention, I was not able to have any police force adequately investigate the circumstances that resulted in my seven year old son being hit with a baton and tear gas. As you know, I reported my son’s injury to the ACM doctor at the earliest opportunity. While in detention, I was interviewed by police on two occasions and was told by the South Australian police, ‘You can’t do anything because you are captive in here and when you get out and get your visa, you can continue your protest and maybe you can get your rights.’ When I lodged my complaint with HREOC, I said, ‘I trusted the government to protect my son. I hope my complaint can help other mothers and children.’

It has been a very difficult experience for me having to represent my son and myself before HREOC while you and ACM had many lawyers to appear for you. Yet again, now that my complaint has been upheld, I express my hope that this process can help other mothers and children who are held in detention under the care and control of your contractor which even now cannot admit its mistakes.

She concluded her letter: “Thank you for your apology. My son and I accept it in the spirit in which it is offered.” She and her son now have permanent residence in Australia. The third woman in the photo is a community advocate, Marilyn Shepherd, who has been tireless in agitating the rights of asylum seekers in Woomera and then in Baxter. Marilyn regularly posts tweets and comments on *Eureka Street* critical of me for my compromised, pragmatic, unprincipled views on asylum seekers. She is an idealist who sees little space in the public square for my Jesuit style, legal analysis. Except for her and the many young university graduates and students who regularly attended the remote detention centres, the Australian community would have been much less informed, and the detainees would have had less community contact to fuel and sustain their hope. Without the community advocates, it is very unlikely that the minister and Nasrin would ever have come face to face as they did after this church service in Adelaide.

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<sup>7</sup> Letter of Garry Fleming, Assistant Secretary, Detention Policy Branch, DIMIA, to Ms KJ, 23 December 2003

<sup>8</sup> Letter of Ms KJ to Bill Farmer, Secretary, DIMIA, 16 January 2004



When he became Pope, Francis emphasised the need for proximity and for our getting our hands dirty. He said:

‘The thing the church needs most today is the ability to heal wounds and to warm the hearts of the faithful; it needs nearness, proximity. I see the church as a field hospital after battle. It is useless to ask a seriously injured person if he has high cholesterol and about the level of his blood sugars! You have to heal his wounds. Then we can talk about everything else. Heal the wounds, heal the wounds. ... And you have to start from the ground up.’

Working from the ground up, let’s heal the wounds, and let’s eyeball the wounded and those who inflict the wounds and those who have the power to stop the assaults. Let’s bring everyone into the frame, and let’s hold everyone in prayer. In the words of GC32, let’s remember that we need ‘to recognize and respect the rights of all, especially the poor and the powerless, but also to work actively to secure those rights. It demands an openness and generosity to anyone in need, even a stranger or an enemy.’ Thank you.