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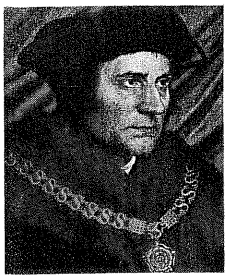


HOMILY FOR THE RED MASS

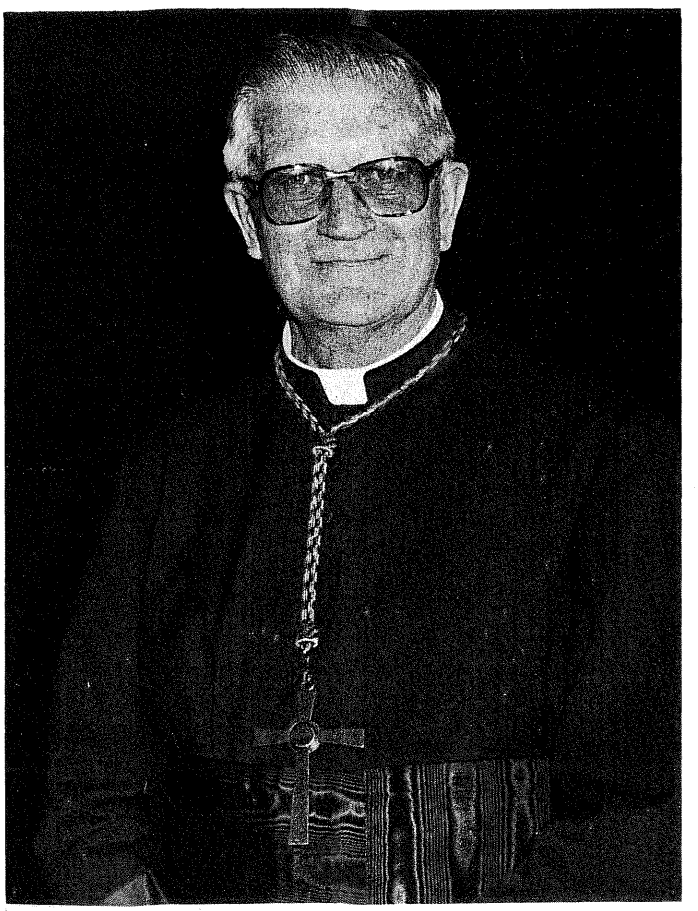
Delivered by His Eminence Edward Cardinal Clancy AC, KGCHS
Archbishop of Sydney and Patron of the St Thomas More Society,
on 1 February 1999 at St Mary's Cathedral, Sydney

God dominates the writings of the Old and New Testaments as a God who judges as much as a God who saves, because the two divine activities become as one. Divine judgement is itself a work of salvation. In the New Testaments the Death and Resurrection are at one and the same time a judgment on the world and the redemption of the world.

"The Lord is our judge", Isaiah proclaims, "the Lord our lawgiver, the Lord our king and our saviour" (33,22). Indeed, judging is God's prerogative, and St. Paul has little patience with those people who presume on their own authority to judge their fellows.

Writing to the Romans, he says: "So, no matter who you are, if you pass judgement you have no excuse. In judging others you condemn yourself,, since you behave no differently from those you judge. We know that God condemns that sort of behaviour impartially; and when you condemn those who behave like this while you are doing exactly the same, do you think you will escape God's judgement?" (2,1-3) And the Apostle James writes, "There is only one lawgiver and He is the only judge and has the power to acquit or to sentence. Who are you to give a verdict on your neighbour?" (4,12)

God, however, who through the centuries exercised judgement on His people, in New Testament times passed the office of judgement to His Son Jesus Christ as the logical concomitant of His work of redemption. In disputing with his adversaries Jesus said, "...the Father judges no one; he has entrusted all judgement to the Son, so that all may honour the Son as they honour the Father... and because he is the Son of Man, has appointed him supreme judge." (5,22-27). Peter, after his vision in the house of Cornelius, announces to the disciples, "He has ordered us to proclaim this to his people and to tell them that God has appointed him to judge everyone alive or dead. It is to him that all the prophets bear this witness: that all who believe in Jesus will have their sins forgiven in this name." And Jesus' parting words in returning to the Father were, "All authority in heaven and on earth have been given to me. Go therefore, make disciples of all the nations...." (Mt 28,19)



His Eminence Edward Cardinal Clancy

The concept of judgment carries with it several correlatives, like good and evil, right and wrong, law, truth, justice, and mercy. God judges according to the divine law, and His judgements, of course, are at all times characterised by truth and justice, and tempered by mercy. The biblical writings are filled with testimonies to this effect. The psalmist proclaims: "The Lord is enthroned forever, He sets up his throne for judgment; He is going to judge the world with justice, and pronounce a true

verdict on the nations (9,7-8) ... He comes to judge the earth, to judge the world with justice and the nations with his truth (95,13)" And from the Letter to the Hebrews: "God would not be so unjust as to forget all you have done, the love that you have for His name, and the services that you have done, and are still doing, for the saints" (6,10). God's judging, like His creating, and like his providing – like His being – is active always and at all times. But the New Testament writings, echoing Old Testament prophets such as Daniel, Joel, and Malachi, speak frequently, and usually in apocalyptic terms, of a universal judgment at the end of time. In St Matthew's Gospel we read: "When the Son of Man comes in His glory, escorted by all the angels, then He will take His seat on the throne of glory. All the nations will be assembled before Him and He will separate men one from another as the shepherd separates sheep from goats" (25,31). And St Paul to the Corinthians: "There must be no passing of premature judgement. Leave that until the Lord comes; He will light up all that is hidden in the dark and reveal the secret intentions of men's hearts. Then will be the time for each one to have whatever praise He deserves from God" (4,5).

To judge is indeed the prerogative of God. All lawful authority on earth comes from God. Those men and women who are formally invested with the authority to administer justice in the human affairs of our civil polity, do so by special delegation from the supreme divine judge. They administer justice according to human laws. Theirs is a special dignity and a heavy responsibility, for the ultimate source of their authority is also the model and exemplar that they are called upon to imitate. Their administration should reflect something of the truth and justice and mercy of God Himself. Truth, justice and mercy should inform the actions of the human judge for the same reason that they inform the actions of the divine judge, namely, respect for the personal dignity of the accused.

The dignity of the human person – of every human person – is one of the critical realities largely forgotten, or, if not forgotten, ignored, by so many, and especially by the powerful and the influential, in our world today. That dignity is a dignity bestowed by God Himself, and is the basis of our human rights. It is conveyed to us in the first chapter of the Book of Genesis: "God created Man in the image of Himself, in the image of God He created him, male and female He created Them" (1,27). This dignity is spectacularly confirmed in the New Testament in that Christ died for all – for every individual – none excepted. No matter what the circumstances of the individual, however miserable they might be, and however far he or she may have fallen from grace, their inherent dignity is inalienable and demands respect. Much that is lamentable and shameful in our world today is attributable to our failure to acknowledge and respect the dignity of every human person. Be it in government or in law or in commerce or in the media, or in our daily human intercourse, every person has a claim on that respect. Those of the judiciary might well recall the words of Moses in the Book of Deuteronmony, "You must be impartial in judgement and give an equal hearing to small and great alike. Do not be afraid of any man, for (he adds significantly) the judgement is God's" (1,17). And we have the words of Jesus himself in St John's Gospel, "do not keep judging according to appearances; let your judgement be according to what is right" (7,24). All truth that is relevant may be enlisted to achieve justice, but nothing, not even that which is true, should ever be used simply to humiliate and demean, for that is to violate the God-given dignity of the accused. While all of this may have a particular bearing on those who are involved professionally in the administration of justice, it commands us all in our dealings with one another, and especially in the exercise of any sort of authority. And we should never forget that on the Last Day we shall all find ourselves standing in the dock of the great and universal Assize. Then, I think, we shall find comfort in the knowledge that our Judge is no fellow human being – not even the most honourable, nor even our best friend – but none other than God himself, whose rigorous justice is tempered by his love and mercy, who knows the innermost secrets of every human heart, and who, if He knows our every transgression and failing, knows also, and understands, the human condition that makes us what we are.

AUSTRALIA, WIK AND THE FUTURE

An address given by the Rev. Fr. Frank Brennan SJ AO on 30 October 1997.

President, Ladies and Gentlemen,

Thank you very much for your welcome.

I would be so bold as to make the observation that it would have been unimaginable some years ago for the St Thomas More Society to have an address on native title. It would have been even more unimaginable that at the main table would have been two barristers involved in the first native title determination – John McCarthy and Jeff Kildea. So much has changed in the context of native title, particularly for those of you who are lawyers.

I am reminded a little of an incident in 1993 when some solicitors of a small firm here in Sydney (I think its name is Allen Allen & Hemsley) invited me to their annual retreat down on the New South Wales south coast. It was after the Mabo decision and by way of introduction some gratuitous observations

were made that there had been this Mabo decision but as far as we know it has not really changed anything. I made the observation that I dared to be involved on Aboriginal land rights and had at that stage been so for about a decade. I thought that prior to the Mabo decision it was unimaginable that I as a Jesuit would have been invited to address the senior partners of Allen Allen & Hemsley on Aboriginal land rights. I thought that the work I was doing was much the same as it had been for many years. Prior to Mabo, it used to be called politics and now it is called law. I think that there have been some significant changes.

In terms of those changes I have been asked tonight to speak a little about the future. Eighteen months ago I was privileged to spend six months on a Fulbright scholarship in the United States. I was there at the salubrious Georgetown University which fortunately is owned and run by the Society of Jesus. The law school there is walking distance to the Supreme Court. Being fortunate to have the name Brennan, I had made the acquaintance previously of the late William Brennan, one of the most respected justices of that esteemed institution and he and I had become firm friends. As a result I lunched with him in chambers once a fortnight and he was able to organise for me to be present at the key cases that were heard in the US Supreme Court during that term.

One day I was sitting there and I found myself sitting next to a very sociable person who happened to be the Attorney-General for Alabama. When he introduced himself he explained to me that he was involved in the next case to be heard, namely the case of The Seminole Tribe v Florida. That the case was similar to the many other cases that now come to the US Supreme Court relating to the right of their indigenous people. It was about the rights of the Seminole Tribe. In the US Supreme Court, you have only thirty minutes in which to present your oral argument. So the Florida Attorney for the Seminole tribe got to his feet and said, "Mr Chief Justice, may it please the Court, this case involves three sovereigns. The Tribe, the congress and the State. If any sovereign does not negotiate in good faith there is recourse to this court for relief".

As you can imagine I as an Australian lawyer took a sideways glance at the Attorney-General for Alabama thinking that at least he might have the decency to flinch. We in Australia are used to hearing this from people like Michael Mansell. But for most lawyers it seems to be some sort of heresy which might in some way be undermining the legitimacy of the nation state. I can see by the pleasure on Janet Coombs' face that this rhetoric is something of a tradition to which Nugget had devoted his later years and it is something that still haunts us in the future as we come to terms with it in Australia.

For us here in Australia at the moment the major issue of national concern is said to be native title. That is not to say that it is an abiding daily concern of the majority of indigenous Australians. It is the one indigenous issue which is causing ongoing agitation and perhaps some lack of convenience for the rest of us. Therefore it is the one political point of leverage where the indigenous community can make their presence felt and that presence is going to be felt for some time to come.

Tonight I can offer a few reflections on that in the context of recent happenings. Ten days ago I was privileged to preside at the funeral rites of a very respected Aboriginal elder in the Kimberleys who since his death can be referred to simply by the name of Mowaljarlai. You may have seen his picture in "The Australian" and "The Sydney Morning Herald". He was an extraordinary man. He had only recently returned from Paris where he had met some archaeologists who had displayed to him recently discovered cave paintings there in France. During the term of that visit I was told that he, in his own dignified way, was able to point out to the archaeologists some of the techniques which Aboriginal Australians have for utilising the resources which were not familiar to the archaeologists in France. And so, at his funeral there were many tributes read from all parts of the world and as far away as Paris, France. Mind you, for us it was an ecumenically eclectic funeral. We had a reading from the gospels, we had a pig running through the assembled masses and there were dogs doing their business from time to time. The locals were very touched with the fact that at the end of the funeral the elaborate black hearse of the Derby funeral proprietor had broken down. There was a need to transfer the coffin to a Toyota Utility so that the coffin could be taken off into the dust. But with any funeral that occurs in that part of Australia, it of course takes some days to get there and you do not rush away, so during the days there is always time for a few barbecues and a few reflections.

My favourite story that I come away with from one of those barbecues about Mowaljarlai runs along these lines... He was a Ngarinyen man up there in the Kimberleys. Western Australia, unlike New South Wales, for example, had never legislated for land rights and never legislated for land claims. In fact if Brian Burke and people like Bob Hawke had done the right thing in 1985 Mabo might not have been such a big deal. They did not, with the result that it was up to the High Court in the end to do something about it and our politicians have been responding. The situation that confronted Mowaljarlai a while ago was that there was a miner from Melbourne. His name was Joseph Gutnick. He wanted to come and explore on Mowaljarlai's traditional country. Mowaljarlai was informed by his lawyers that this Mr Gutnick wanted to engage in what was called 'an expedited procedure under the Native Title Act 1993'. Mowaljarlai did not pretend to be up on much of this language about expedited procedures for the right of negotiation under the exploration regime of the Native Title Act. But he was informed by this lawyers that he probably would have no choice but to go along with this sort of proposal.

So one night around the camp fire Mowaljarlai asked some people about this Mr Gutnick.

"Is he a religious man?"

He was informed that indeed Mr Gutnick was a religious man. So he sought details about the religion of this religious man. When he was given

details he was informed that some of the practices, particularly in relation to the male of the species, were the same as were practiced by his traditional religion.

So Mowaljarlai said, "I think I will go and see this Mr Gutnick.

Where does he live?"

The answer was "Melbourne".

He said, "I will go to Melbourne to see him."

Mowaljarlai had the good fortune to be accompanied by an SBS television crew on his visit to Mr Gutnick. According to the barbecue story, he went into the office of Mr Gutnick and said, "I would like to see Mr Gutnick".

Question: "Do you have an appointment?"

"No".

"Well, an appointment is necessary."

Mowaljarlai said, "Well I understand that, but Mr Gutnick, I understand, wants to come and mine on my land and so an appointment is necessary."

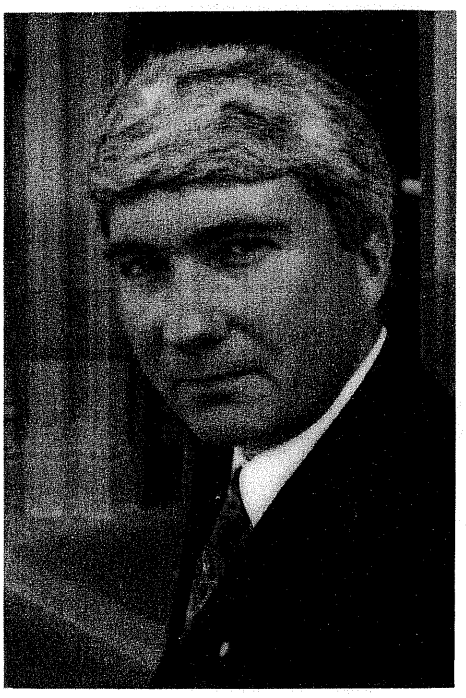
After some discussion it was agreed that an appointment would be arranged. The end of the story was that no expedited procedure was undertaken and no exploration bases were issued. Mowaljarlai died satisfied that at least he had some say about what was to happen upon his traditional country. Mind you, he died a broken man, his son having died in a police lock up a few weeks before.

The right to negotiate with mining companies is one issue relating to the Native Title Act. Out there in the bush no one understands the legal 'gooblie gook' of it and there are people like John McCarthy and Jeff Kildea who can explain to people if they need it but even if it is explained eyes tend to glaze over.

I remember a while ago talking to your esteemed politician in this State, Johnno Johnson, about other things and at the end of the conversation, I said, "And how are we going on Wik?" He said, "Father, no one understands it. The first rule of politics is: if you need to explain it, forget it."

Mowaljarlai also had that in mind but he knew that there was a need for some element of respect and some element of an equality of power relationships and that was the desired outcome. We might view that as the good news of native title and reconciliation.

I have just returned from the most harrowing week I have ever spent on the native title land rights business. I have met with probably 100 or 150 pastoralists throughout the Western Lands Division of New South Wales. There, there are many non-indigenous Australians who are very angry, very upset people who feel very powerless. The most extraordinary thing which I discovered in my days there was if I think for example of the time in 1993 when the Native Title Act was



Rev. Fr. Frank Brennan SJ AO

negotiated, Aboriginal Australians in 1993 thought that they had a foot in the door within the Cabinet room. For the first time they were able to sit down and play a meaningful role in the Australian political process and there were negotiating compromises which were thought to work for the benefit of all people. For example, the so called right to negotiate. Mr Howard was appearing on television with maps which say that basically 78% of Australia could be under claim and subject to a veto. Aborigines are very fond of the idea of a veto, namely a veto over the development on their land. They invoke it almost in a mantra style fashion because in 1974 Sir Eric Woodward, not an Aboriginal, but a respected lawyer from that other place, Melbourne, conducted a Royal Commission and concluded that to deny Aborigines a veto over the development on their land was to deny the reality of their land rights. In July 1993 Aborigines requested that veto for native title holders. Prime Minister Keating told them they could not have it. He told them they could not have it because the big money end of town told him that they could not have it. The mining industry said that a veto over development was something that was too adverse to economic development and so they were offered 'the right to negotiate.' that is the right to talk for six months with a mining company, and if they did not reach an agreement the matter would go to an independent arbitration. If the arbitrator happens to agree with the Aborigines, the State Minister for Mines would have the power to overrule the decision of the arbitrator on the basis that it was in the State's interest.

Aboriginal Australia said that they would wear that – they would buy that – that was basically a decent compromise. So that was the so-called right to negotiate which was the additional statutory right which was offered to common law native title holders in order to lure them into a regime for the registration of native title. You see when you think of the Mabo decision and about native title, you are confronted with the reality that basically after the High Court decision there were Aboriginal people often out there in the desert who had common law rights to land. Since 1975 these rights had been protected by the Racial Discrimination Act. Why is there a need for a Native Title Act? Was it the need or the desire of Aboriginal Australia?

The need and the desire came from the mining industry. Why? Because prior to Mabo decision, if a miner wanted to mine or have access for exploration to a desert area like vacant crown land, all he needed was a permit from the State Government. But after the Mabo decision because you had to deal with native title holders in a non-discriminatory way, you had first of all to know who the native title holders were. If you did not have a system of registration you had no idea with whom to deal. If you were a small mining company with only $50,000 for exploration, you did not particularly want to spend it on anthropologists in

finding out who to speak to. You wanted to spend it digging holes in the ground.

Now to lure Aborigines into a registration system it had to be a carrot because you could not use a stick anymore because of the Racial Discrimination Act. The carrot was the so called *right to negotiate*. So it was in the light of that we were then confronted with the Wik decision. Now Wik does change the game quite substantially.

Why? Basically with Mabo the idea was that if there were lands which had never been dealt with by a State Government prior to 1975 then Aborigines may have a continuing right on interest in that land. Forty-two percent of the Australian continent is covered by pastoral leases. There are no pastoral leases in the Torres Strait. It was the subject of the Mabo decision. Despite some of the more eloquent statements by people like Tim Fischer and Rob Borbidge, the High Court usually manages to confine itself to resolving any issues which are presented to it by the parties who are in a dispute. So in the Mabo decision, the High Court considered the question of the existence of native title of the Torres Strait Islands and had no cause to consider the question of whether or not native title may have existed on a pastoral lease.

In 1993 when the Native Title Act was being negotiated there was a question remaining as to whether or not native title could exist on a pastoral lease. This was a live in question because it was known that at least in some jurisdictions pastoral leases did not grant a range of exclusive possession. It was known that particularly in Western Australia, the Northern Territory and South Australia there were terms and conditions in those leases which always guaranteed continued Aboriginal access to land. Now it was a self-evident question. If a lease is granted but which provides a continued Aboriginal access to the land, can native title continue to exist? That would have remained a purely academic question except that an additional statutory right had been given to native title holders namely a right to negotiate with mining companies. But for that it would have been an irrelevant question.

Given that native title could have existed on a pastoral lease and in relation to any new mining activity on pastoral lease areas it would be necessary for mining companies to determine first whether or not there were any native title holders and then to engage in a negotiation process.

The High Court as constituted in 1992 to 1993, it was thought by many lawyers, myself included, that the High Court then if asked, would have determined the question about the existence of native title on a pastoral lease against the Aborigines by a majority of four to three. The National Farmers' Federation and others were insistent at the time that Paul Keating should legislate to guarantee the extinguishment of native title on pastoral leases. Keating did the only decent thing that could be done.

He said, "We in Australia take property rights seriously. We do not extinguish property rights except for some public purposes. The question of whether or not native title rights might exist on a pastoral lease is properly a question for the courts; so if Aborigines want to take their chances and go to the High Court, good luck to them".

He heeded the concern of pastoralists particularly in Queensland who were on fixed term leases who said that if native title did exist on their leases there could be doubt about their capacity to renew their leases once they had run out without having to negotiate with Aborigines. So another part of the deal in 1993 was that all pastoralists, no matter how short the term of their leases would be allowed to renew their leases, on identical terms and conditions without ever having to negotiate with an Aborigine. That was another part of the deal to which Aboriginal Australia, through their negotiators, agreed in 1993.

Meantime, there were some changes to the High Court. There were two retirements – one from the 'four sides' and another from the 'three sides'. They were replaced by Justices Gummow and Kirby. I was fortunate that on the way here this evening, walking down the street, I ran into Justice Gummow and I told him I would be repeating this story tonight. He told me that it was a story that he had already heard and that it is something that brings him daily consolation. So it is with added pleasure that I tell you the story.

Some months ago, it was in the wee hours of the morning in the office of one Gareth Evans in Parliament House in Canberra. I was there at the end of a parliamentary session and various of the Senators were gathered in discussion with some other members of the Parliament. And in the wee hours of the morning as often happens in that place, there was some very convivial discussion and, bear in mind, that the Wik decision went four/three the other way, in favour of the Aborigines. It was not only Justice Kirby who sided with the Aborigines, so too did Justice Gummow. That was a surprise for many of us. In the course of this early morning conversation in the office of Gareth Evans, one Daryl Melham made the observation that the Wik decision had reconfirmed his belief in God. Gareth Evans quickly retorted, "Yes, Daryl, but you didn't know his name was Gummow!"

So Australia is now in the wake of the Wik decision, a four/three decision, with which we were surprised, but is was a win for Aboriginal Australians. The question in the wake of the Wik decision was whether or not native title in fact existed on particular pastoral leases.

Why has this now become an issue of such controversy? There are two reasons. The first is in relation to the top end of town, the mining industry. Basically the mining industry says we can wear native title on pastoral leases provided there is no right to negotiate enjoyed by Aborigines who are proven native title holders. That is very much the position that the Premier, Richard Court, from Western Australia holds. So what we now have is a highly unprincipled position proposed by the Federal Government to the Parliament, saying, "If we have native title holders whose lands have always been vacant crown land, we'll happily give them a right to negotiate with mining companies. But if they happen to have suffered the disadvantages that their land was made subject to a pastoral lease years ago without their consent, we will now take away the right to negotiate." Now I think anyone has to

agree that that is highly unprincipled and that is one of the problems.

The second problem is one of more human dimensions and it is the problem particularly with the pastoralists in Queensland and in New South Wales who have never lived with the notion over the last three or four generations of Aborigines having access to their lands. So there is a question about what is an appropriate threshold test for proving native title or even for lodging a claim. How does one come to accommodate what is said to be these co-existing rights? This is taking place like outback New South Wales where it is said that the main street of country towns is now the domain of young Aboriginal delinquents who are said to be unaccountable even to the police. This at least is the perspective of white pastoralists.

They say, "We can't even co-exist in the towns anymore, how do you expect co-existence of title to work on our leases?" Another concern of these pastoralists is to say that, "Our property, our land, is not only our business, it's our home and it's our superannuation for the future, and if there is even a theoretical possibility that native title exists, people are no longer interested in purchasing our properties".

Stock and station managers will give evidence of that sort of thing. They also say that banks and lending institutions are taking a dimmer view of their leases if they are subject to native title claims. So there are concerns about whether or not native title might exist on these leases. If so, what is the financial impact on the property interests of these pastoralists? What are their practical concerns about living with co-existence particularly in terms of access and use of the land? Many of these people are very afraid, in fact they are very angry. They are afraid and angry not only at politicians and lawyers but even at the churches. They are particularly angry with people like Frank Brennan who said to be 'do-gooders'. We live in the cities and basically are out there espousing what is said to be the rights of the Aborigines with no sense of the real harm that has been done to them and their interests.

So where Wik is fundamentally different from Mabo is that with Mabo, where the thought was that native title would exist primarily on vacant crown land, one could give a full blooded recognition of native title rights without causing any serious harm to other persons who had property interests. The concern of the pastoralists at the moment is that they will suffer adverse harm and those who do not harbour racist sentiment (of whom I think there are many) say, "Really, the Aborigines who are around here have not been on our properties for four or five generations. We can't see how they could possibly establish a native title claim anyway. And the claims seem to be lodged by people we have never heard of." So that sort of mistrust is something which is compounding very strongly.

It seems to me in the months ahead we have got a couple of challenges. The first is the relationship between Aborigines and pastoralists. Unfortunately, the pastoralists have been ill-served, particularly by their big organisations because they have over-reached themselves. Instead of going for a solution which is highly principled they have gone for something more, perhaps on the basis that the extra will be dropped out in the Senate. Let me give you one example.

In order to consolidate the relationship between Aborigines and pastoralists there has to be co-existence based on two principles. We can no longer as Australians extinguish common law, native title rights. Secondly, we have to treat those rights in a non-discriminatory way. One of the proposals in the legislation which remains there despite the strong protest by people like myself, works in this way. Pastoralists can go to the respective State Government in Queensland or Western Australia and say, "I would like voluntarily to surrender my pastoral lease. I would like you, the friendly State Premier, then to compulsory acquire the proven native title rights of the Aborigines and then to issue me with a freehold title or something which gives the right to exclusive possession". The assurance given to people like myself by government is that that is not discriminatory. If it is not discriminatory, I would say it must be equally possible for the native title holders to go to their friendly State Premiers and say, "We will voluntarily surrender our native title rights. We would now like you compulsorily to acquire the pastoral lease of the pastoralist and then to issue us with a freehold title for a right of exclusive possession." The government says, "Yes that's right". The response is, "Well, being a good Jesuit, I believe a government that would say these sorts of things but just to be legally sure why don't we put in a proviso there to say that this subdivision of the legislation is strictly to comply with the Racial Discrimination Act".

The answer, "Oh well that's not good for legislative drafting and it's contrary to policy given that the government's approach is that the legislation is consistent with the Racial Discrimination Act." My response: Why not do it? After all, you did it a year ago. You did it for the migrants under the Social Welfare legislation when the Opposition had concern that there were new measures may contravene the Racial Discrimination Act. You put such an identical provision in the legislation and said we have got no problems with that, it complies with the Racial Discrimination Act. You do it for the migrants on welfare measures. Why not for the Aborigines in relation to native title?

So the difficulty that confronts us in the couple of months ahead is to put through three hundred pages of legislation in terms of its relationship between Aborigines and pastoralists insisting on the twin principles of non-extinguishment and on-discrimination. Insofar as the legislation there offends, the government will have to agree with those amendments or if they don't they will have to come clean and admit that the principles of non-extinguishment and non-discrimination are no longer central to government policies. Then comes the difficult issue of policy change and whether or not native title holders should enjoy a right to negotiate with the mining companies. That is not a common law right. It is an additional right, a carrot which was designed to lure Aborigines into a registration system. On that one we may go to a double dissolution. But until Christmas it is going to be difficult times.

At the end of the process though and looking to the future my major concern is this. The native title process of this country presently costs $64 million a year to run. Some of it goes to people like John McCarthy and Jeff Kildea. Much of it goes to the lawyers and anthropologists. The native title holders do not have a lot to show for that $64 million per year to date. If we now engage in a political process and Aboriginal Australia is locked outside the door as compromises are effected, at the end of the day Aboriginal Australia will say, "There is not much in native title for us. You might not always want to spend $64 million a year. Good luck to you. But do not think it solves the problem." Then we are going to be caught in a financial situation. A native title system, from which we can never escape, but where the very native title holders themselves say, "It does not satisfy our aspirations. We were never a party to it and we are completely dissatisfied." So the real challenge to us in the months ahead is to try to get back to a process where Aboriginal Australia is at a table, where compromises can be effected which are fair and which they can own in order that we come down from the secure high ground of moral rhetoric to the political plains of fair dealing. After all, even Aboriginal Australians now days do not live on land alone. The social problems that exist in those country towns or out in those country areas are far greater than we would ever dare to image. If we simply stick to a legislative solution which at the moment is the Primate Minister's stated policy of reducing native title as far as possible and as far as the High Court and as far as the Constitution and as far as the Senate will permit, it will cost us all very dearly and that would be a great tragedy.

Thank you.

Rev. Fr. Frank Brennan SJ AO

30 October, 1997.

LAW, JUSTICE, PHILOSOPHY AND HUMAN RIGHTS

An address given by Alice Erh-Soon Tay President, Human Rights and Equal Opportunity Commission Challis Professor Jurisprudence, University of Sydney on 28 October 1998.

Professor Alice Erh-Soon Tay

I accepted your invitation to speak to you this evening without hesitation – Sir Thomas More has been a hero of mine from the earliest days of my legal life – but not without some anxiety as to the expectations of the august members of this learned society. My solution on the second count is to attempt to examine, in the context of contemporary Australian society, those values and principles that I believe guided Sir Thomas throughout his life and led him to an admirable martyr's death, more worthy than a compromised cowardly life.

I will thus speak of what I call The Four Pillars of Civil Community: Law, which was Sir Thomas's trusted tool; Justice, his chosen aim; Philosophy, his tested method; and Rights – or in our language of today – Human rights, his preoccupation. These are also what I believe to be the necessary preconditions for the recognition, protection and promotion of human rights. I believe that for human rights to be appreciated and maintained, for abuses of human rights to be properly resisted and fought, we must be able to plant them on as rich and cultivated soil as possible. That such soil is not necessarily soft and soggy, but may indeed be tough and testing, not ready to be used but needing preparation, tilling, watering, caring, I have no doubt. Both the carer and the cared must be willing to work for human rights, as Sir Thomas did.

We live, like most generations, in the best of times and in the worst of times, in an age of hope and despair, of protestations of humanity and respect for rights, liberty, equality, and fraternity, and an age of much terrible inhumanity, hatred, oppression, torture, poverty, and soul – and life-destroying deprivation. There are conflicts between our ideals and our realities and conflicts within and between our ideals themselves.

One of the West's greatest achievements in the last 150 years is the growing recognition and acceptance of the fact that slaves, Africans and Asians, then indigenous peoples, are people like ourselves, deserving of and entitled to David Hume's sort of sympathy – the fellow feeling that makes us wince when others are cut, cry when others suffer, because they are "ourselves once more", people as we are people. Our imagination has extended as basic need and insecurity have receded. The situation has been and is still less promising in the non-Western world precisely because basic need and insecurity have there receded less. Nevertheless, the primary motto of both culture and law – "nothing human is

alien to me" – makes headway, in recent decades certainly and over the last two centuries as well, if not in the middle term that included Hitler and Stalin, the Turkish massacres of Armenians and Kurds, Auschwitz and Buchenwald, Idi Amin and Pol Pot.

The 50th Anniversary of the UN Universal Declaration of Human Rights being celebrated this year is stimulating us to take stock of human rights achievements during this period. I will not trace the milestones of the United Nations' programs and actions one by one, but will rather sum up its achievements and disappointments: the initial hope that the United Nations might help to create, or even preside over, a world free of war, persecution and injustice has had some hard knocks: the murderous policies and campaigns of Idi Amin and Pol Pot in the 70s, of man-created famines and population displacements of Biafra, Euritrea, Somalia and many others, the racial explosions in Yugoslavia that followed the lifting of the lid with the ending of the Soviet Union. But there can be no doubt that the UN have played an enormous role since 1945 in publicising and promoting a conception of human rights as fundamental to social life and political government and in seeking to have them recognised in international covenants and conventions. New procedures for considering petitions or communications alleging violations of fundamental human rights or freedom together with the replies of the government concerned, have been introduced. There has been recourse to a wide range of expedients from fact finding, negotiation and conciliation to publicity, dissemination of information, education and the inspiration of national legislation. Subsequent major policy positions – such as President Carter's proclamation of human rights as a major US foreign policy goal, still ruling the United States' relations with other countries, and the Helsinki Accords, rendered redundant by the collapse of Communism in Eastern Europe or undermined by later events, would have been impossible without the consistent propaganda for human rights by the United Nations and its Human Rights Commission. They have helped to change the language of moral and political protest and justification and given new hope and new causes to many of the deprived and oppressed.

Moral proclamation is easier than social or political transformation and even the worthiest of moral sentiments have what Engels called their concealed and later – developing false side – in given situations, they will cause harm as well as good. The central message of the UN's and UNESCO's human rights campaign – that other people are ourselves once more, entitled to sympathy, compassion and respect, expressed in practical terms – is one on which there can be no compromise. There are no subhumans.

Australia has played an important part in this historic movement in the late wartime and early postwar ascendancy of Labour. Australia was a founding member of the UN and its then Foreign Minister, Dr H V Evatt. served as President of the General Assembly. Australia took a prominent and distinguished part, in those early years, in the promotion, formulation and signing of the UN declaration, conventions and protocols on civil, religious, social, cultural and economic rights and freedoms, as well as those associated with criminal procedure.

Its subsequent record of ratification of such UN documents had not been so good, until the 1970s, but difficulties had arisen out of federalism and common law conceptions rather than doubts about human rights. In the past two decades, much repairs have been effected on that record. Since the 1970s, public debate over human rights in Australia has taken on a more urgent and more directly and openly international character, while "action" has acquired more clearly Australian features and concerns. The present and the past Ministers of Foreign Affairs and Trade, Mr Alexander Downer and Mr Gareth Evans have broken new grounds on human rights in the international and especially in the Asia/Pacific arena – we have shown ourselves as a member of the region by taking on responsibilities, giving support and sharing our experiences, without waiting to be asked. I believe the concept of Australia being a part of Asia is being cemented by Australian human rights involvement there.

Until recently, Australian perceptions of human rights was part of the wider perception: Americanising, bifurcating, internationalising. In the last decade, Australian features have predominated. In the last few years, with Australianisation, a polarisational of views has appeared. It is in the light of this historical development that I want to examine some preconditions of the civil community that I believe are essential to the development of an Australian conception and program of human rights.

There are three preconditions and I venture to call them the Pillars of Human Rights. They are: Law as a sound and reliable legal system which supports and protects human action; Justice as the intellectual activity and process which determines the place of human rights in the civil community; and Philosophy as the critical analysis of the human condition that prepares the mind for social action. Between these, they establish the legal culture or the social milieu in which human rights action and thinking and social institutions protecting these takes place. Together with human rights as a conscious and self-conscious principle of social action, they form the foundations for civil community.

1. LAW: in recent years, Law has been having a bad press. Seen as depersonalised, remote, out of touch, insensitive and unpredictable, as the handmaiden of the rich and powerful and indifferent to the poor, among many other things; it has carried blame from all sides. Let me come to the defence of law, not law that is simply the will of the state or the decree of a legislator, but of a systematic law and judicial practice that are rooted in the peaceful pursuits and perceptions of men and women, in

traditions of social stability and individual development, in moral values and in the realities of actual life – law that treats human beings and human activities as ends, not means, and sees itself as part of the community, not standing above it.

Law in this sense, especially the Common Law, has been the defender of the week against oppression from other citizens and from the State. It does this or has done this – here, the history of the development of the Common Law has been a history of gains in human rights protection – through the procedural principle of treating equals equally and unequals unequally in proportion to their inequality, a principle the Common Law took from Aristotle and made its own. Under this principle, canons of a fair trial, of the role of the judge as an impartial umpire, of rules of evidence that impose stringent tests of veracity (not verification, but falsification as Karl Popper saw the role of social science), of balancing of facts, interest and principles (the individual against other individuals and society, social against the individual), are worked out. In the ways worked out and constantly tested and re-tested, ideals of justice and realities of the age are kept in check with each other. Extremes of immediate emotions and moral censure are avoided. The Scale of Justice is not an empty metaphor: "The law measures" is both a concept and a judicial principle of action. As Benjamin Cardozo said: "We are balancing and compromising and adjusting every moment that we judge". Today, balancing, compromising and adjusting are not very fashionable; we are everywhere impatient to do "justice" and to "correct wrongs". The Law has also been a constant reminder that there are always two sides to a claim and they are always, when they get to Law, equally persuasive. To reach a fair decision, Lord Greene reminds us: "Justice is best done by a judge who holds the balance between the contending parties without himself taking part in their disputations". Thus a judge should not descend into the arena [of dispute, to examine witnesses himself] for if he does, he is liable to have his vision clouded by the dust of conflict. It is this non-Cartesian, indeed anti-Cartesian, conception of truth and justice as emerging from conflict rather than formal analysis, as requiring the balancing of claims and interests that are best urged in the first instance by those present and affected, that is distinctive of the Common law. It constitutes, I believe, its greatest contribution to the theory of Freedom and of Justice. It is pluralist, empirical, conscious of human error and human limitations. It treats neither human beings nor the principles of law as abstractions under which real people and events, real claims and conflicts are to be subsumed. It does not suffer from the illusion that enlightened self-interest, or the moral law, or the principle of utility establish directly and by themselves what either human beings or judges ought to do in the complex situations of the real world in which one decision constantly affects myriad others. Its does not formulate as a regular procedure hypothetical cases or play thought games with "original positions" and unhistorical humans.

But a judge who sits apart from the parties and their counsel is not thereby remote and removed. Professor Bernard Rudden of Oxford has argued that the Common law trial can be characterised as consisting of the three interwoven dialogues: there is the dialogue between the judge and his predecessors as he turns to and examines the precedents; there is the dialogue between the judge and counsel who set out the case before the judge by presenting argument and the evidence of witnesses and urge the judge in various directions; there is the dialogue between judge and the jury (or himself or herself if sitting alone) in which he or she must sum up the evidence and explain the law in terms that bring it into relation with the understanding and the experience of the ordinary person. Professor Zippelius, a German constitutional lawyer and political theorist, surveying our legal system from another perspective and giving us the advantage, says: "This process is based on and embodies the empirical belief that truth is reached by a process of trial and error".

2. JUSTICE: Justice, say the Institutes of Justinian with the economy and sense of the systematic characteristic of the lawyer, "is the set and constant purpose to give every man his due". The concept of Justice or "doing justice" that lies behind this is not obvious and simple. There are several and an infinite number of ways the term can be and has been used, and they do not refer necessarily to the same thing; indeed, some refer logically to different things. But let me, as a lawyer, speak of the legally based judgment of justice: justice as that which judges do.

Let me first of all declare that I do not consider Solomon either a judge or even a good psychologist. Appeals to the heart of others or tests to ascertain its condition are fine; but that is not the way of judges. Nor are they substitutes for the doing of justice. They may be excellent supplements.

Justice, I agree with Eugene Kamenka, is not so much an idea or an ideal as an activity and a tradition – a way of doing things, not an end state. To say this is not to say, narrowly, that justice is simply a set of procedures, a question of form and not of substance. This is neither my point nor my belief. Nor is it enough to say that justice is simply action according to law, the recognition of rules and the framing of rules of recognition. Justice involves and must involve concrete evaluation, consideration of factual situations, belief and disbelief of testimony, selection of principles and descriptions, ordering of preferences and interests. It would be nonsense to call such activity purely formal, not concerned with substance, or to say that it can be exhaustively covered by pre-existing rules. But justice as an activity, I believe, derives is special nature as a means of evaluating and resolving conflicts from its intellectual character. Justice is the intellectual consideration and resolution of conflict by an impartial and disinterested third party

whose judgement the parties in principle accept. As an intellectual activity, the activity and judgment of justice carry with them the ethic of discourse and enquiry – the careful, impartial, disinterested examination and of claims of the nature of the matter; the consideration of consequences, in the situation, for the parties and for the society around them and the rules by which it lives; the assessment of the strength and authenticity of competing interests and demands, of public interest, moral sentiment and customary expectations; and the relation of all this to a systemic, coherent and comparatively predicable set of social rules capable of accommodating the existing complexity of interests and the likelihood of significant social change. Because in this, as in all serious intellectual enquiry, there are so many issues at stake, so many interests and consideration to be weighed, there is no general set of principles, no brief handbook of justice any more than there is a set of principles or handbook for writing a biography or the history of a revolution. There are, of course, canons, stated or implied in considerable complexity in sophisticated legal systems and exemplified in the operation of such systems. But in the end, the doing of justice, like all intellectual activity, is an art in the sense that it calls for judgment, for creative imagination, for the ability to see or forge unsuspected connections. This is why I would use the phrase my predecessor in the Challis Chair of Jurisprudence, Professor Julius Stone, has used, "the judgement of justice", to explain the end result of the doing of justice, and why I agree with him that there is, in most judgments, a creative leap. This is not because, in my view at least, a judgment can never be deduced from premises. Sound judgments can be so deduced from or furnished with, suitable premises. It is in the construction of those complex chains of premises, in choosing at a particular point to introduce one premise rather than another, and doing this over and over again by redescribing, redefining, making new connections, that the creativity of the judgement of justice lies. Creativity does not need to be exercised all the time: much of justice, after all, is and needs to be routinely predicable. But just as I believe that some countries have greater literatures than others, or greater literatures at one time than another, so it seems to me that some countries have better justice and a better tradition of justice than others or at one time than another.

There is another sense in which there is a leap to justice, and here justice, where not based on the application of existing legal norms, is no longer a purely intellectual activity in the sense of being grounded only in the ethic of enquiry and argument. Analysis reveals in every evaluation an ultimate pro (and con attitude), an evaluative standard. This is socially produced and is in that sense not merely arbitrary subjectivity; it is also normally backed by reasons, which take into account of facts, including the calculation of consequences, and which may deduce a particular pro attitude from other pro attitudes or strive to give it a place in a system of pro attitudes by analogy, contrariety and all sorts of other looser logical relations. But in the end there is no way of showing a pro attitude which is ultimate for the purposes of a particular argument to be wrong or mistaken; one can only counter it with a different attitude. No competent judge is for one moment unaware of the fact that he/she cannot derive all the pro attitudes necessary for judgment from justice itself, from the internal logic of justice as an activity and its intellectual requirements. The machinery of justice is an amoral machinery which gets its moral inputs from outside – from the norm elevated by the legislator, from the moral sentiments, expectations and demands of the community, or the sections of community, that are especially relevant or weigh especially heavily with the judge; from public policy, convenience, the judge's conception of social interests, and so on. The manner in which these norms are fed into the machinery is not mechanical: there is constant interaction, balancing of criteria for selection, mixing of internal and external requirements.

Many writers have argued that justice as the actual handing down of formal justice requires both reason and emotion, both a tradition of formal justice and a pro attitude. Some have sought a systematised pro attitude in the sense of justice, allegedly common to all humankind. Some (like Edmund Cahn) give primacy to a sense of injustice. But I believe that all such beliefs are, in the end, historical products, complex and shifting, not the foundation of justice and morality, but the products of whole foundation for justice and morality, but the products of whole systems of moral and legal attitudes and beliefs. They may be necessary for the successful operation of a tradition of justice in a society and the machinery associated with it, but they grow up together with it and in interaction with it and a wider social climate. Thus, I would say that the (socially shaped) concept of justice precedes and shapes the allegedly "primitive" concept of fairness – a concept that differs in different periods and societies and reflects more general views about justice. What is true is that outrage produces legislative reforms more frequently than the reception of new philosophical principles.

In recent years, as the powers of the state and the demands made upon it increase, many see law more and more as an instrument for social control and social change, not as a tradition. They want to substitute social policies and administrative direction for law and legal values and procedures. They elevate purposes over tradition, the forward looking over the backward looking, the dynamic over the static. In fact we need both parts of each alleged dichotomy. Judicial determinations have become "purposive" (Unger), directed to achieving certain ends, usually seen as urgent, demanding of special attention. Balancing has been replaced by cost-accounting, by the utilitarian calculus of pain and pleasure for the greatest number, and by

consequentialist considerations that go beyond justice and responsibility.

3. PHILOSOPHY: Traditionally, philos-ophy in Australia has been an academic rather than a public or political or consciously ideological activity. A nineteenth-century Premier of the State of Victoria did write to John Stuart Mill for advice when he was faced with a problem of conscience in his political career, but no Australian philosopher has been a figure of really major public or political importance, with an influence outside the circles of university intellectuals. The standard of philosophy in Australia as an academic discipline, overwhelmingly in the British analytical tradition, is high and many Australians – such as S.I. Benn, L. C. Holborow, J. Kleinig, H. J. McCloskey, J. A. Passmore, Eugene Kamenka, Peter Singer and Julius Stone – are well known as participants in the international philosophical and legal discussion of human rights. But their contributions are part of a wider international, or at least English-language, philosophical and legal discussion and they cannot be said to represent either a common view or to bear a specifically Australian stamp. Generally speaking, philosphers writing from Australia, in keeping with the analytical traditions, have seen rights claim as ascriptive and not descriptive and as part of more general moral questions, grounded in such values as autonomy, the full development of personality, respect for persons, and cultural or utilitarian considerations. They have been less ready than some American philosophers to see rights as totally overriding, or unhistorical, and they are not so much given to using the language of public law. They are conscious of the claims of the moral values that might stand in tension with the over-abstract and over-strident proclamation of rights and the total neglect of duties. They recognise conflicts and tensions among and within rights and the need to adjudicate, to choose between them. H. J. McCloskey, one of the most prolific contributions to the debate, has this consciousness, and he has been sharply critical of the detailed UN formulations, though he does see human rights as morally cental, objective, and not reducible to other moral values. Peter Singer speaks of, and supports, the rights of animals, though he is a utilitarian who regards the term 'rights' as merely a convenient shorthand for more complex moral claims.

Public political discussion of these matters in Australia, however, like political life generally, is dominated by lawyers, not philosophers. This both expresses and encourages the Australian emphasis on practicality and the suspicion of over-abstract ideas, unless they can be expressed as symbols or simple slogans. Australian perspectives or human rights thus derive their specific character from Australia's legal and political traditions and institutions and are best understood through these, even if the latter are now under fire.

Yet, those of us who are engaged today as watchdogs of human rights "system" will have been much weakened in our functioning, much more at sea, without the intellectual anchorage, understandings, testing of claims, that philosophy provides. For 13 years I lived in Canberra, where the best of Australian and other international visiting philosophers thought, wrote, talked; for 20 more years I worked in Sydney – and elsewhere – where other philosophers lived and lawyers sport. In the process, I struggled to keep principles clear and pure and seek solutions that are pragmatic and realistic but not compromised. It has been hard.

4. HUMAN RIGHTS: What has all this to do with human rights today? A lot and yet not everything.

"Human rights" has become easily the most popular coinage in the second half of this the 20th century. In the hands of politicians and citizens alike, it is freely circulated in some societies, both in true and false metal; in others, it remains a secret dream, longed for, promised but never delivered by man or God. But true or false, in possession or in hope, human rights as a guide to social action, as a moral or legal entitlement of all human beings to dignified living, have marked the path of some progress in moral sensitivities and produced improvements in social institutions.

Yet the term has often been loosely understood and carelessly handled, leading to much wasteful confusion and misunderstanding among both promisors and promisees as well as between them. Misunderstandings over what is at stake in human rights have resulted in a proliferation of what could be terms "human wrongs". Let me use a Milan Kundera passage from his Immortality to illustrate:

"I don't know a single politician who doesn't mention ten times a day 'the fight for human rights' or 'violation of human rights'. But because people in the West are not threatened by concentration camps and are free to say and write what they want, the more the fight for human rights gains in popularity the more it loses any concrete content, becoming a kind of universal stance of everyone towards everything, a kind of energy that turns all human desires into rights. The world has become man's rights and everything in it has become a right; the desire for love ,the right to love; the desire for rest, the right to rest; the desire for friendship, the right to friendship; the desire to exceed the speed limit the right to exceed the speed limit; the desire for happiness, the right to happiness."

I have already hinted at the type of intellectual tools one needs to help one keep a clear and yet sensitive mind and perception on human rights, as on any other complex notions. To go into even summaries of them would require another talk. Other than philosophical tools would also be helpful: sociological, and political theoretical.

"Human rights" perceptions have expanded and extended enormously the last two decades. With growing affluence, new needs have been created, new rights constituencies and new demands appeared. Good in itself, this

phenomenon also makes for misfits between current developed human rights systems and as-yet-unrecognised human rights claims. It opens up possibilities of attempts to innovate means of establishing human rights claims. It seeks to explain the partial departures courts have been making in some of their decisions; the difficulties we are experiencing in identifying social concerns and therefore the problems we are having in balancing them; and the new paths being forged by our courts in the doing of justice. But the evaluation of these remains to be made.

Human rights itself is a complex term, embracing a variety of relations, not all of them legal. So any evaluation must await a sorting out of the various natures of those relations. To go into even the most superficial examination of these requires yet another talk. In the meantime, there will be demands that "human rights" be satisfied, that new means be found to meet new needs, that injustice be remedied.

Let me end with a quote from Cicero which I believe Sir Thomas More would agree with: Accipere quam facere praestat iniuriam. It is better to suffer injustice than to do wrong.

FAITH AND PUBLIC LIFE

An Address by Senator Brian Harradine
The St Thomas More Society and Lawyers' Christian Fellowship Law Week Dinner
Monday, 11 May, 1998

Christian faith summed up in the Kerygma at John 3:16 says: "God so loved the world that He gave His only Son that whoever believes in Him may not perish but may have eternal life".

As Cantalamessa, in his book *Life in the Lordship of Christ,* points out the Pauline teaching on justification by faith and this free gift from God has 3 integral parts – historical, sacramental and moral.

FIRST: the historical refers to the event of Christ's suffering and death on the cross when our redemption was accomplished.

SECOND: the sacramental refers to Baptism when the Christian is washed, sanctified and justified in the name of the Lord Jesus Christ and in the Spirit of our God (1 Cor. 6:11).

THIRD: the moral refers to the actual decision of Christians to acknowledge the call: – now is the acceptable time – now is the day of salvation (2 Cor. 6:2).

Each day as Christians prayerfully recall that Divine act of Sacrificial Love on Calvary, there is a gracefilled surge of gratitude for this saving act and a renewed conversion and confident commitment to following Him.

And we can do so joyfully because He is the risen Lord and has poured out His Holy Spirit upon us to inspire and encourage us to follow Him each day in our personal and public life.

To follow Him we need to hear and recognise His voice. How many of us put aside prime time each day to really listen to His voice? Don't you feel the difference on the days you spend this time with Him? Praying, listening, praising, thanking, asking for help and forgiveness and contemplating the Scripture readings for the day.

What a help this is for us to step out freely in faith to meet the day knowing we are not on our own. The greatest foul-ups in my own public life have occurred when I've said, "How am I going to get out of this? And what am I going to do about this problem?" Instead I should have said, "Jesus, how are we going to turn this into an opportunity for good? How are we to meet this challenge?"

Public life presents numerous challenges for each of us. Each serious challenge needs a response. An adequate public response needs spiritual motivation and intellectual formation. It needs both values and organisation. Values without organisation in this context are academic; organisation without values downright dangerous. Most of all it needs obedience and faith in the power of the risen Lord.

Notice I mentioned obedience – hardly politically correct. But the derivation of the word obedience is manifest in the ancient ideograph depicting one's ear pressed close up to the lips of another – in this case our beloved Creator.

Only in faithfulness to those precious words is our Divinely given gift of free will fully empowered. Only in faith is our freedom fully exercised. Only then do we become fully human.

Why? Because we are working in harmony with Our Maker's revealed guidelines on the meaning of life to reach the goal of perfect happiness, peace and union.

By those guidelines we can discern right from wrong, good from evil, light from dark, truth from deceit, justice from injustice, life from death.

Of course such guidelines are also in the law which is built into our very human nature. We know it as the Natural Law which is all to do with how human nature works and provides an objective standard of right and wrong.

Natural Law Philosophy has, as you well know, a long and distinguished history of adherents. Socrates, Plato Aristotle, the Stoics, St Thomas Aquinas, Grotius, Pufendorf, Loche, Montesqueux, Jefferson, Adams, Abraham Lincoln, Martin Luther King, Jacques Maratain and the list goes on.

Natural Law philosophers had a significant influence in framing the Universal Declaration of Human Rights whose 50th anniversary we celebrate on 10 December this year (1998).

The Declaration recognises the inherent dignity and equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world. It declares that all human beings are born free and equal in dignity and rights and that they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Everyone is entitled to all the rights and freedoms in the Declaration without distinction such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Everyone has the right to life, liberty and security of person. No one shall be subjected to torture or cruel, inhumane or degrading treatment or punishment. All are equal before the law and are entitled without any discrimination to equal protection of the law.

The Declaration makes a particular point that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state. That men and women of full age have the right to marry and to found the family. Marriage of course shall be entered into only with the free and full consent of the intending spouses.

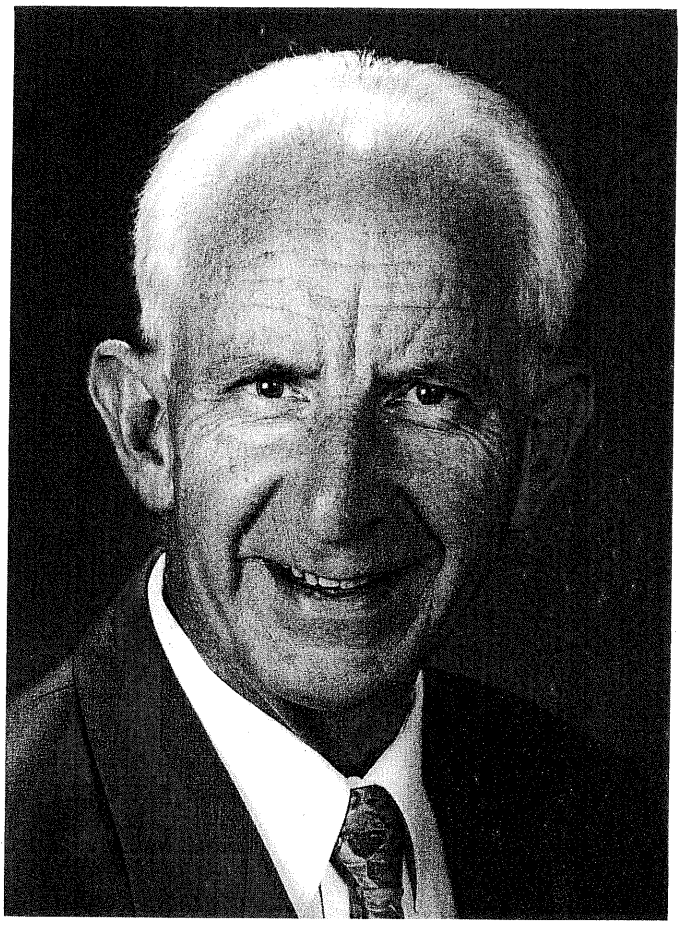
The Declaration says everyone has the right to freedom of thought conscience and religion and to manifest his religion or belief in teaching, practice and worship and observance.

Freedom of expression and freedom of peaceful assembly and association are upheld as is the right to take part in the Government of the country directly or through freely chosen representatives.

The right to education.

The right to work and freedom to choose employment; to just and favourable conditions of work and to protection against unemployment.

The right to a standard of living adequate for the health and wellbeing of worker and family, including food, clothing, housing, medical care and necessary social services and security in old age and widowhood.



Senator Brian Harradine

The Declaration says that motherhood and childhood are entitled to special care and assistance.

The reasonable adult person can know the principles of the Natural Law and, by the intelligent assessment, discern what is in accord with the good of human nature in particular cases.

Therefore Christians, nourished by revealed truth who have stepped out in faith can, indeed should, join with others of goodwill in public life working for the common good.

I lack competence to advise this distinguished audience how faith should guide your public life. Or indeed how the Natural Law should shape your dealings in public life. As Charles Rice said, "Just ask Clarence Thomas". You will recall that during the 1991 confirmation hearings on his nomination to the U.S. Supreme Court he expressed tentative esteem for the Natural Law. This brought howls of protest from the liberal enlightenment, the establishment and a rag bag of utilitarians and self interest groups.

But haven't I detected interpretations based on Natural Law Principles in a significant number of judgements of the Australian High Court. Not least of which I would have thought the Mabo Decision which declared Terra Nullius to be a legal fiction.

At the commencement of my talk tonight I intended to begin with the Lord's prayer. I can assure you that it was not for the reason some suggest the Presiding Officers of the Parliament do at the commencement of each Parliamentary day. That is, they enter the chambers in procession preceded by the Clerks, take one look at the assembled politicians and pray for the country. The public's perception of politicians is indeed poor.

Two grave Irish stories illustrate the point. Two Irishmen visited a cemetery and came across the 19th century grave of an absentee landlord/politician. The inscription read: "Here lie the mortal remains of George William Mountjoy, who died on 18 April 1842, strangled by his Butler". This was followed immediately by the Scriptural text, "Well done thou good and faithful servant". The two moved to the next grave, the inscription on the headstone

of which read, "Here lie the mortal remains of a gentleman and politician." Mick said to Pat: "Wouldn't you have thought they'd have done the decent thing and buried them in separate graves?"

Nevertheless politicians are obviously a necessary part of any political system. We are often tempted to taste, if not swallow, the potion described by your august Patron, St Thomas More, as "the sweet poison of smooth flatterers".

Can a politician be humble? Thomas More, the politician, the jurist, the statesman walked humbly with our God. He recognised humility as truth but also as acknowledging with thanks gifts and talents and using them in the service of others. Above all he recognised humility in the person of Jesus who humbled himself becoming obedient even unto death. More's own words resound down the centuries. "I die the King's good servant but God's first". "Rex est sub Deo et sub lege" (Henry of Bracton – 13th century).

As we approach the second millennium, are we politicians in danger of losing sight of the purpose of politics? The purpose of politics as part of government, is the administration of the common good.

It is about the harmonious arrangement of the civil order with a view to establishing a more human civilisation. Do we see natural law principles and moral values as guidelines towards a fully free, equal and life affirming society?

For too long now this essential purpose of politics notably in the English speaking world has been under siege, largely from secular humanism, utilitarianism, economic rationalism, crass materialism and the politics of relativism painted as a political positive.

Marshal McLuhan, with some of whose views I have difficulty, made a valid point when he said, "Today our science and methods strive not towards a point of view, but to discover how not to have a point of view, the method not of closure and perspective but of the open field and the suspended judgement".

My great friend James McAuley, put it somewhat better in his poem –

Liberal or Innocent by Definition

"This is the solid looking quagmire the bright green ground that tempt the tread and lets you down into despond enough consistence to conform enough form to yield to pressure enough force to wink at fraud.
Unbiased between good and evil the slander is only what they've been told.
The harm something they did not mean.
They only breath what's in the air They have certified pure motives so pure as to be quite transparent.
They are immune are innocent they can never be convicted they have no record of conviction."

That sort of value-free approach, unbiased between good and evil is manifested in attempts to exclude consideration of natural law principles and moral values from the formation of public policy. It results in the danger of fundamental laws degenerating from a cohesive whole based on moral values and generations of Christian civilisation to a series of ad hoc decisions based on some form of primitive pragmatism.

All done in a most dogmatic way without even the courtesy of examining the philosophical basis for our laws including the Christian perceptions of the dignity and destiny of human beings and the traditional understanding of the common good.

Clearly this attempt is not only a denial of the democracy of the living but a denial of the democracy of the dead. Since it refuses to listen to what our mothers and our fathers are saying to us through tradition.

New laws based on the technological imperative, on greed and on a primitive pragmatism will be put under the microscope of succeeding generations and those generations will search in vain for a cohesive or truthful spirit in those laws.

Should we as Christians be concerned about that? After all salvation is to be had in the most unchristian of societies and of course you can lose your soul in the most Christian of societies. Should we feel challenged if laws are enacted and political decisions made which undermine the essential dignity of the human person created by God? The clear response to that question is a resounding yes. The educative role of a bad law as well as its specific detrimental provisions can serve to undermine both the proximate and ultimate good of the people. This is not to fall for the fallacy of Rousseau that our ills lie in our structures and systems rather than within ourselves. It is an acknowledgement that politics and political pressure can influence an individual's decision on fundamental issues, particularly the decisions made by the immature – I use that word deliberately – and the naive.

Aren't we as Christians called to serve God whom we cannot see by serving our neighbour whom we can see? Can we idly stand by when our youth are betrayed and misled? If we do, are we placing a millstone around our own necks?

Like us in all things but sin, Jesus knew poverty, pain, suffering, negative discrimination and death. A Galilean – can anything good come out of Nazareth? (JN 1:46) He knew mental anguish. He knew what people were suffering and He suffered with and for them. His was not a political mission. He showed that the liberating salve from our human ills cannot essentially or completely be found in political action.

Social welfare with all of its benefits is no substitute for salvation. He became like us, but what was his mission? Picture in your mind the synagogue in Nazareth when they handed him the scroll of the prophet Isaiah and un-rolling the scroll he found the place where it is written:

"The spirit of the Lord is upon me for he has anointed me to bring the good news to the afflicted. He has sent me to proclaim liberty to captives, sight to the blind, to let the oppressed go free, to proclaim a year of favour from the Lord." (Lk 4:17-19)

He came to preach the good news of salvation. He also built up a solidarity amongst the apostles which would flow on to the rest of the church through the ages and that they too would bring the good news to the afflicted and the poor and thus proclaim liberty. Liberty for people to love. He established the church and gave the church his guiding Holy Spirit.

He wants us to know there is a social aspect to the existence of a Christian in society and a most important message. His was an individual message, primary, but also a social message. Mica was inspired to declare our social duties: "To do justice, to love kindness and to walk humbly with your God".

Christ calls us to follow him, to take up our cross to spread the good news. With its beneficial social consequences, the Church is concerned with people and therefore it is also concerned with the right ordering of the civil order. We Christians are entitled and indeed obliged to be involved with and serve our neighbour. Indeed to go further and to see Him in our neighbour.

"For I was hungry and you gave me food; I was thirsty and you gave me drink; a stranger and you welcomed me; naked and you clothed me; ill and you cared for me; in prison and you visited me .... Whatever you did for the least (most vulnerable) of these you did it for me" (Matt 25).

Christianity properly expressed has been a liberating force in political society and its teachings an influential factor providing cohesion for society's just laws.

If politics is the harmonious arrangement of the civil order, what then is the ideal system of politics? And by politics I don't only mean Federal Parliament or State Parliament or Local Government. I include institutions, legal, unions, business, educational, other social institutions.

In 1964, when I became Secretary of the Tasmanian Trades & Labor Council its objective was the "socialisation of the means of production, distribution and exchange". In 1976 we succeeded in changing the objectives rule to read: "To contribute to the establishment of a social and economic order in which persons can live with freedom and dignity and pursue both their spiritual development and material well-being in conditions of equal opportunity and economic security." That's a mouthful. But it was an ILO objective.

The ideal social group or institution or agency or the complex of all of these called society, is one in which the love and practice of good, that is to say the love of God and of our neighbour is made easy but free. It is therefore one in which the individual is left physically and economically free to choose what is morally good or morally better and the individual is encouraged to choose what is morally good or morally better.

What is Good? What is Truth? An unfortunate characteristic of our time is secular humanism. The belief that human actions have neither a supernatural significance nor a divine relevance. Self assured pragmatism really means the substitution of self-assertion for self-restraint. The mere calculation of ones own self interest does not provide a coherent reason for self-restraint either in ones personal life or in politics. It's a narrow view of society which so pervasively permeates political practices and policies.

What we need in Public Life is a renewed commitment to foundational principles; to basic human rights and freedom; to the family as the fundamental group unit of society which predates the state; to the promotion of peace order and good government which involves also the protection of the minority rights; to the equitable share and distribution of the world's goods and to the principle of subsidiary function. Power should reside with the smallest group capable of efficiently performing the functions for which the power is required so that those over who exercise the power enabling greater human initiative in economic and civil matters.

Above all we need Faith. Let us observe the meditative writings of you great patron in the tower of London as he awaited his trial and certain death. With his astute mind and inspired vision he foresaw state persecution of those loyal to the Church. He reminds them of the agony of Jesus in the garden and of His two words to his followers in the face of danger: "WATCH and PRAY".