

"The Church's Voice and State Power for Justice and Peace"

DELIVERED BY

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Ozanam Lecture 2004

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The lecture is held annually in honour of the
St Vincent de Paul Society's founder,

Frederic Ozanam

1813-1854



St Vincent de Paul Society
Helping Australians since 1854



Fr Frank Brennan SJ AO

SHORT BIOGRAPHY

Fr Frank Brennan SJ AO, a Jesuit priest and lawyer is the Associate Director of Uniya, the social justice centre in Sydney and an Adjunct Fellow of the Research School of Asian and Pacific Studies at the Australian National University.

His books on Aboriginal issues include: *The Wik Debate*, *One Land One Nation*, *Sharing the Country* and *Land Rights Queensland Style*.

His books on civil liberties are: *Too Much Order With Too Little Law* and *Legislating Liberty*. His most recent book is *Tampering with Asylum*.

He received the Order of Australia (AO) for services to Aboriginal Australians.

In 1996, he and Pat Dodson shared the inaugural ACFOA Human Rights Award.

In 1997 he was rapporteur at the Australian Reconciliation Convention.

In 2003 he was a recipient of the Australian Centenary medal for his services to refugees and for his Human Rights work.

Syd Tutton, State President – Victoria

A message from the State President

Dear Friends,

I am honoured to be able to share with the wider community this the seventh Ozanam Lecture. The lecture was delivered by Fr Frank Brennan a Jesuit father and the respondent was Sr Libby Rogerson of the Loreto Order.

Over seven hundred persons crowded into St Francis' Church, the first Catholic church in Melbourne, to hear the lecture as part of the St Vincent de Paul Society's celebration of its Australian founding 150 years ago.

The lecture is not designed as an academic exercise; it is a device to raise community consciousness on a contemporary social justice issue.

I invite people of all beliefs and political views to read and contemplate this lecture and provide critical discussion that perhaps will contribute to this important social issue.

God bless you all.

Syd Tutton
State President – Victoria
St Vincent de Paul Society



The Church's Voice and State Powers for Justice and Peace:

SEEKING DECENCY, HARMONY AND EQUALITY FOR ALL

Fr Frank Brennan SJ AO

On Saturday many of you will gather in this church to mark the 150th anniversary of the first meeting of the St Vincent de Paul Society to take place in this country, and in the very place where that first meeting took place. As we gather tonight, let's honour the people whose traditional land this is. Let's recall all who have worshipped here before the Blessed Sacrament in the heart of this city for so long. And let's praise all those who have gathered here and throughout this land in their small St Vincent de Paul Conferences, faithfully week in and week out, on the coldest winter nights and on the hottest of outback days.

You can imagine my delight and honour, being a lawyer as well as a Jesuit priest, in being asked to speak on this occasion. After all, Frederic Ozanam was one of the great, compassionate Catholic lawyers who dedicated his life to legal scholarship and application together with good works for his needy fellow man observing, "We see God with the eyes of faith alone; and our faith is weak. But the poor we can see with the eyes of flesh. We can put our fingers and our hands into their wounds." And Vincent de Paul was a reforming and inspiring priest whose piety (according to the *Catholic Encyclopedia* was "simple, non-mystical, Christocentric and oriented toward action".

I will not be with you on Saturday for the best of family reasons. I will be celebrating my father's 76th birthday in Sydney. I mention this because even during his many years on the High Court Bench in Canberra, he retained his membership and involvement in his local St Vincent de Paul chapter. I recall visiting my parents at home in Canberra just before Christmas one year. Dad returned from doing his rounds, delivering Christmas hampers to needy facilities. He came in the front door, still laughing. He had been given a wrong address. There he was at the door with a box of groceries, and a very dashing woman came to the door asking, "What are you doing, darling? Selling mushrooms?" I told him that he should have answered, "No I am a High Court judge just completing his St Vincent de Paul round!"

It is not only the 150th anniversary of the establishment of the St Vincent de Paul Society in Australia. We are still within the year marking the 150th anniversary of the death of Frederic Ozanam. Tonight we well recall his words:

God gave me the grace to be born in the Faith. Later the confusion of an unbelieving world surrounded me. I knew all



the horror of the doubts that torment the soul. It was then that the instructions of a priest and philosopher (Abbé Noïrot) saved me. I believed thenceforth with an assured faith, and touched by so rare a goodness. I promised God to devote my life to the services of the truth which had given me peace.

Ozanam would be pleased that on this 150th anniversary in Australia, I have been asked to address the question of Aboriginal rights and aspirations in contemporary Australia, pondering the role of church and state in mitigating the effects of past dispossession and disadvantage.

I have just returned from Western Australia where I had cause to reflect on "The Church's Voice and State Powers for Justice and Peace" in the matter of Aboriginal rights and aspirations. At times, we despair and think that little has changed or that we have gone backwards. But in the far southwest of the continent at Albany I found hope. There at the place where our ANZACS finally departed these shores for Gallipoli, and in the heart of Wilson Tuckey's electorate, I met a community who have extended their welcome to Hazara asylum seekers from Afghanistan. At the public meeting, an Aboriginal elder extended the welcome to country to them and all visitors. She spoke in language and was then presented with a token of appreciation by the leader of the Afghan community. None of this is now judged to be out of place even in the presence of the shire councillors and the state member of parliament, regardless of what political party might claim their allegiance. All it needs is a big heart and some imagination. Though of course some old prejudices die hard. I was struck by the huge statue of Attaturk at the entrance to the Albany harbour with the inscribed words he uttered to comfort the parents of those ANZACS who now lay buried in his land. Just up the hill is another first world war monument and etched in the marble is the reminder to the locals that this monument could have ended up in Canberra but for the labours of the local Apex Club in building the road up the hill.

On Tuesday, I was in Roebourne, the town etched on the national consciousness by the death of John Pat which led to the royal commission into Aboriginal deaths in custody. Half an hour's drive away is the thriving town of Karratha, home to the miners and families from the Pilbara. Just up the road from there is the vast natural gas plant on the Burrup Peninsula producing LNG from the North West Shelf, turning out 3% of our foreign earnings each year. On a Saturday night shift, that entire plant can be manned by only 11 persons. Meanwhile in Roebourne there are the usual endemic problems with Aboriginal unemployment and the despair and frustration of those providing education and training for persons with little job prospects. But now all major companies are on board, co-operating with TAFE and looking for answers in co-operation with the local Aboriginal community.

Just yesterday, I was with the monks at New Norcia. The previous Abbott Bernard has recently completed his doctorate on the culture and language of the Yoat people. His research could not have proceeded except with the assistance of a local Aboriginal reference committee. The monks now provide an Aboriginal educational centre. At the centenary celebration of the girls orphanage, an Aboriginal woman who had been a girl at the orphanage insisted on paying the fares of six of the Spanish sisters who had worked at the orphanage. They were able to return to New Norcia from Spain and reconnect with those who were grateful that their lives had been given hope and purpose by the labours of missionaries who had ventured so far from home. The museum at New Norcia is now testimony to the many complexities of those times. But together, Aborigines and missionaries have been able to own the past and to look forward together in hope. I have returned east

confident that we can find new imagination, energy and focus in seeking decency, harmony and equality for all.

1. DARE I SPEAK ON INDIGENOUS ISSUES AGAIN?

Last November I was very honoured to have Lowitja O'Donoghue launch my book *Tampering with Asylum*. On that occasion she said:

It gives me very great pleasure to launch this latest book by Father Frank Brennan – because Frank and I go back a long way – to the days of the Keating Government and the introduction of the *Native Title* legislation, and then later the *Wik* debates during the Howard government.

I have many fond memories of those heady days and late nights of plotting and lobbying. Many memories of success and some of frustration too! One thing I particularly remember about Frank was Paul Keating calling him the "meddling priest".

I suspect (this was a compliment) delivered, of course, as only Paul could! I suspect too that Frank is rather proud of his meddling. And I say "long may he continue to meddle!" Keating was of course referring to Frank's interventions in the *Wik* debates. Maybe he saw Frank crossing a few lines drawn in the sands of Lake Burley Griffin, treading on a few sensitive political toes.

Of course, I was flattered by Lowitja's remarks. But they were a signal to me that it might be time after six years of silence to offer a few comments about the contemporary state of indigenous affairs in Australia. The Redfern riots and the scrapping of ATSIC provide all of us, and not just Aboriginal Australians, with fresh challenges in the search for harmony, decency and equality. In this search, each of us has to decide where we put our energies. Since my return from East Timor just over two years ago, I have been mainly focused on our treatment of asylum seekers. I am always edified to see Lowitja's involvement in any Adelaide based initiative for asylum seekers. But the two of us have often pondered how it is that people are now so involved in refugees rather than reconciliation. It is wonderful and humbling to see indigenous leaders involved in advocacy for those most recent arrivals in Australia, wronged by the government of the day, while there is still so much that needs to be done to accord justice to indigenous Australians.

It is for others to judge whether I have transgressed the limits in the past, having earned Paul Keating's description as the "meddling priest". In politics as it is played in Australia, there has been a presumption that it is only the stakeholders such as Aborigines, miners and pastoralists who should be heard in the fray of political debate. There is a place for the person who is not a stakeholder, who represents no constituency, who pushes no partisan barrow, who is professionally disinterested in which party is in power, and who is committed to finding a just resolution of conflicting claims holding in right balance the conflicting claims of the stakeholders and finessing the balance between individual rights and the common good or public interest. I am especially grateful to the pastoralist who urged me during the *Wik* debate to return to my church and say prayers. He clarified my thinking. An issue as complex as *Wik* could not be left only to the stakeholders. It could not be resolved by prayer alone. There is a place for honest brokers. Being neither a native titleholder, miner nor pastoralist, I was very privileged to participate in that debate.

“The Redfern riots and the scrapping of ATSIC provide all of us, and not just Aboriginal Australians, with fresh challenges in the search for harmony, decency and equality. In this search, each of us has to decide where we put our energies.”

If we political actors are to act in the name of a church or to act in such a way that we are likely to be perceived as acting in the name of a church, we need to transcend party politics and the self-interest of the politicians. We need to take seriously our role in the political processes of a free, pluralistic democratic society. We need to put ourselves forward not just as Australians but also as citizens of the world who have a practical, informed concern for our neighbour.

There is often insufficient consideration by those of us speaking and acting in the name of churches about matters of political morality. Brian Howe recently warned of “the danger for any political commentator (e.g. Tim Costello, Frank Brennan)”:¹

While they often speak on behalf of Christians and the church they are not facing the church when they do so. The danger is that they may speak in the name of principles or attitudes which are not subject to any theological rigour, which may not be owned by the same churches which they claim to represent.

Of course there will always be Christians who seek elected office as members of political parties; other Christians will act as public advocates for a particular just cause. But those of us publicly identified as Church people active in the political process of the State have to be principled pragmatists who are always prepared to articulate the moral principles on which our preferred outcome is premised, professionally disinterested in which party is in power, consistent in our articulation of the parameters on power to be exercised by the various cogs in the machinery of State, calculating in our assessment of what is achievable, and unstinting and impartial in our efforts to achieve the outcome. If social conscience is an expression of the believer's right to participate fully in society, the believer must be prepared to have dialogue with anyone and to welcome any intervention made in good faith.

2. ABORIGINAL AUSTRALIA POST-ATSIC AND POST-REDFERN RIOT

It has been six years since I offered any substantive comment on Aboriginal issues in Australia. In part, my silence followed the request of some Aboriginal leaders that I butt out during the latter part of the 1998 *Wik* debate; in part, because there has not been any significant Aboriginal issue on the national law reform agenda; in part because I have been otherwise engaged on refugee and human rights issues here and in East Timor; and in part because most indigenous leaders see little role for the churches in addressing their problems. For example, even Noel Pearson who sees a greater role presently for the right than for the left observes, “What we seem to need is assistance by people from ‘hard schools’ like the financial sector. The public institutions that have been created in order to find solutions to our problems seem to have little to offer.”² That may be so, but I dare to suggest that it will be some time before Westpac and AMP are in the position to deliver as did the Lutheran Church in the case of Noel's upbringing and private schooling or the Catholic Church as in the case of the education of the Dodson brothers. The Redfern riots and the Howard government's decision to abolish ATSIC, having labelled it an experiment and having compared it with apartheid, have prompted me to return to some consideration of indigenous



(l to r): The Society's National President (England & Wales), Jim McDaid; the Society's State President – Western Australia, Brian Bull; Fr Frank Brennan; the Society's International Vice President, Michael Thio and the Society's State President – Queensland, Michael McKeown.

issues on the urging of some of my Aboriginal friends. For this reason, I was delighted to receive the request from the St Vincent de Paul Society to speak about indigenous issues tonight, and in company with Lowitja O'Donoghue, the nation's most distinguished indigenous leaders who has taken such resolute action against the Howard government's refugee policy. We are all disappointed by Lowitja's absence tonight but delighted that Libby Rogerson IBVM has stepped into the breach.

On 3 May 2004, some of us in Sydney were able to respond to the invitation from Aboriginal Church members who were convening an ecumenical service at the Block in Eveleigh Street, Redfern, commemorating the death of young TJ and praying for justice and peace. One of the local Aboriginal pastors recalled the verse chosen by the Reverend Johnstone for the first church service in Australia back in 1788: “What shall I render to the Lord for all his benefits to me?” (Psalm 116:12). He thought it more appropriate that the nation reflect on Psalm 12:6: “Because they rob the afflicted, and the needy sigh, now will I arise,” says the Lord; “I will grant safety to him who longs for it.” We all gathered to reaffirm our support for Indigenous Australia and especially those in the area of Redfern by joining with the community in prayer. The well known song was adapted for the celebration:

All over Redfern/The Spirit is moving/
All over Redfern/As the prophet said it would be/
All over Redfern/There's a mighty revelation/
Of the glory of the Lord/As the waters cover the sea.

In this year's Jessie Street Lecture, Sir William Deane spoke of the need for a renewed “quest for national decency and harmony and real equality”. Some commentators immediately interpreted this as a thinly disguised attack on the Howard government when it was nothing of the sort. This is the problem in contemporary Australia. Any contribution to the quest for decency, harmony and equality is interpreted as being first and

¹ Brian Howe, “Politics and Faith: Living in Truth”, in *Church and Civil Society*, (ed.) F Sullivan and S Leppert, ATF Press, Adelaide, 2004, pp 39-51 at p 45.

² N Pearson, “Land rights and Progressive Wrongs”, in *Dreams of Land*, Griffith Review, pp 155-162 at p 162

foremost either pro- or anti-Howard. Decency, harmony and equality are ideals which are to be espoused by civil society no matter who the Prime Minister of the day, and no matter what the present government's policies. The dumbing down of public debate has been achieved by a parodying of the "twilight of the elites" when it has now been made clear that there is indeed a very privileged elite who pride themselves on their exclusive access to the prime minister and who are united in their condemnation of those they regard as the intellectual elites. An elite of John Laws, Alan Jones, David Flint et al is still an elite even if they purport to trade in the populist will of the people and the personal favour of the prime minister.

In Australia today, we need more open, informed and robust debate, apart from the contingencies of the electoral cycle, about the morality of war, the equitable distribution of resources for the health, education and well-being of all citizens, the rights of asylum seekers and the aspirations of indigenous Australians. Whenever the poor are affected, we hope to hear the voice of St Vincent de Paul and to see the helping hand of St Vincent de Paul.

We are in a situation of great flux, and we need to take stock of first principles. On 25 March 2004, I was sitting in Parliament listening to Question Time and I had a sense that an historic moment was playing out in front of me. There was a Labor Leader of the Opposition in a popular way wanting to demonstrate that he was ahead of the government's play in putting an end to the leadership of ATSIC. Mind you Gerry Hand as minister had done the same thing with Shirley McPherson when she headed the ADC and when Hand was anxious to set up ATSIC. Just as leaders like the Dodson brothers have enjoyed some preferment by the Labor Party, those like Shirley McPherson have enjoyed preferment by the Liberal Party. McPherson is once more in the ascendancy, being Chair of the Indigenous Land Corporation and the government's chosen indigenous representative at last week's United Nations Permanent Forum in New York. At 2.25pm on 25 March 2004, Latham asked:

My question is to the Prime Minister. I refer him to my public statements declaring no confidence in Geoff Clark's leadership of ATSIC. Why has it taken the government so long to sack Mr Clark and enable Indigenous Australians to have the leadership they need for a better future?

The Prime Minister rightly answered:³

The proper legal processes will be followed, and I am not going to make statements that might undermine the efficacy of those procedures.

The Prime Minister waited another three weeks before deciding to use the abuses of Geoff Clark and his fellow commissioners as the Trojan Horse to dump ATSIC and any prospect of an ongoing elected Aboriginal body charged with service delivery and representation to government of indigenous perspectives. NSW Premier Bob Carr suggested this was simply the latest example of the Prime Minister playing catch up with Mark Latham.

Meanwhile Bill Jonas, the indigenous social justice commissioner with the Human Rights and Equal Opportunity Commission, had released his last Social Justice Report a month before. He pointed out that there has been a lot going on at government level, as well as the review of ATSIC. He said:

There is not sufficient commitment by governments at any level to do whatever it takes to progressively improve the life chances and opportunities for Indigenous people, in terms

of both absolute improvement in socio-economic conditions and in terms of reducing the level of inequality that exists compared to the life chances and opportunities for non-Indigenous Australians.

On the day he released the report, he said:

Time and time again the government has emphasised that the key focus of reconciliation should be on practical and effective measures which address the legacy of profound economic and social disadvantage that is experienced by many Indigenous Australians. While I have problems with how reductive and limited this approach to reconciliation is, it is crystal clear that the government is failing on its own measures of success. The absence of government accountability for service delivery against mutually agreed targets is the most serious failing of practical reconciliation.

It is in the light of this undoubted failure of government that we must consider the politics surrounding the abolition of ATSIC. On 15 April 2004, John Howard announced the end of ATSIC in these terms:

We believe very strongly that the experiment in separate representation, elected representation, for indigenous people has been a failure. We will not replace ATSIC with an alternative body. We will appoint a group of distinguished indigenous people to advise the Government on a purely advisory basis in relation to aboriginal affairs.

After this announcement I rang Bob Collins to commiserate with him. Bob, an ex-Labor federal minister with an Aboriginal family had been prevailed upon by the Howard government to head a three member review panel on ATSIC. That panel which included prominent Aboriginal leader Jackie Huggins spent months putting together a very detailed report. In good faith they responded to government's request to review the novel ATSIC structure which had been in place for 13 years. The misdeeds of Aboriginal leaders such as Geoff Clark and Sugar Ray Robinson were to serve as a smokescreen and Trojan Horse for the complete abolition of representative Aboriginal participation in service delivery and national policy development. Bob Collins, Jackie Huggins and Hannaford suggested in November 2003:

- Control of ATSIC will be put directly into the hands of the existing 35 regional councils.
- The national body will comprise the 35 regional council chairs.

Let's not forget that John Howard was always implacably opposed to the establishment of ATSIC. As Opposition Leader, he led the charge against what he regarded as the "sheer national idiocy of creating one nation, separate and apart from the rest of the Australian nation". On 11 April 1989, Howard told Parliament:

I also say to the Government and to the Minister that they will never improve the lot of Aborigines in 1989 and beyond by empty symbolic gestures such as treaties. I take the opportunity of saying again that if the Government wants to divide Australian against Australian, if it wants to create a black nation within the Australian nation, it should go ahead with its Aboriginal and Torres Strait Islander Commission (ATSIC) legislation and its treaty. In the process it will be doing a monumental disservice to the Australian community.

The Government always gets into a lather of moral outrage in an endeavour to intimidate anybody who disagrees with it. But the concern about the sheer national idiocy of creating

³Hansard 26225

“...those of us publicly identified as Church people active in the political process of the State have to be principled pragmatists who are always prepared to articulate the moral principles on which our preferred outcome is premised...”

one nation, separate and apart from the rest of the Australian nation, is not a concern confined to the Opposition parties in this Parliament.

Fifteen years later, almost to the day, John Howard got his way and scrapped the ATSIC experiment. Senator Vanstone followed up the next day with the claim that ATSIC was like a system of apartheid. While she acknowledged apartheid was a “more separate” regime than ATSIC’s role in managing programs, she maintained it put indigenous Australians “into a different category”. “And they’re not,” she said. “They’re first Australians, they’re ours and they deserve to get the same treatment that everybody else gets.” It is not only the federal Howard government that has set about abolishing elected Aboriginal advisory bodies, preferring nominated advisers to assist with mainstream service delivery. Four days after Mr Howard’s announcement, Peter Guivarra, the chairman of the Queensland Aboriginal Co-ordinating Council issued a statement noting: “By early next year the government has told the ACC relevant sections of the Community Services (Aborigines) Act 1984 will be repealed and the ACC will be finished.”

As well as efficient service delivery and the minimisation of substance abuse, indigenous communities are entitled to the building blocks for the rejuvenation of their spirituality, the protection of their culture and the preservation of their indigenous identity. Sir William Deane in the Jessie Street Lecture said:

Even in the aftermath of all the wrongs and mistakes of the past including the unjustifiable taking of children, the search for reconciliation does not and cannot absolve governments of the responsibility to advance the education and welfare of all Australian children, be they indigenous or non-indigenous, and to protect them from exposure to alcohol and drug abuse, truancy and domestic violence.

In his considered attack on the left entitled “Land Rights and Progressive Wrongs”, Noel Pearson welcomes the decision by a community such as Aurukun to limit access to grog, observing that “the reduction in the violence alone is in itself precious.” It is, but then again I remember when Aurukun was dry back in the 1980s. I have no reason to be any more optimistic about regional Aboriginal alliances with the private sector than about the previous local alliances with church communities and public servants who actually resided in the Aboriginal communities. Without a secure economic base and without assured cultural and spiritual identity, Aborigines living in remote communities will continue to suffer acute alienation and despair. I had always thought that the work for land rights and self-determination was worthwhile because such laws and policies could provide the time and space for Aboriginal Australians to find and make their place in modern Australia, and on terms that were not dictated solely by the descendants of their colonisers. I have always regarded the next part of the task as the far more difficult. It is not political or national in character; it is spiritual and individual. The secularism, materialism and individualism of Australian society are now more the cause of the problems of identity and well-being rather than the wellsprings of any solution.

Peter Shergold who had been CEO of ATSIC and who is now head of the Prime Minister’s Department followed up John Howard’s announcement scrapping ATSIC, giving the first indication of what was really to take its place. He said:

‘Mainstreaming’, as it is now envisaged, may involve a step backwards – but it equally represents a bold step forward.

(Much) can be achieved through collegiate leadership, collaborative government and community partnerships. This collaboration will be reflected in a framework of co-operative structures that stretch from top to bottom.

Over time the object is to build a single shop front, Australian government indigenous co-ordination centres, in which all the services delivered by key departments – employment, education, community services, legal aid and health – will be represented.

In Queensland, Aborigines had the one-stop-shop for many years, even up to the early 1980’s. The shop was called the Department of Aboriginal and Islander Advancement, and the shopkeeper was the manager of the Aboriginal reserve. Fortunately Mr Shergold tells us that “the intention is to work with regional networks of elected and representative indigenous organisations in planning the delivery of government support to community endeavour.” It’s just a pity that the Prime Minister has already told us that there will be no more elected Aboriginal representatives but only government appointees. It should be high time in Australia that we admitted that government is incapable of delivering services to indigenous communities and of alleviating historic disadvantage without first forging a partnership with elected indigenous leaders who are the nation’s most precious resource in putting right the wrongs of the past, in working with government for the delivery of basic services, and in shaping a credible national identity for the future, based on the fullness of human history in this land.



(l to r): Society State Councillor, Benita De Vincentis; Ringwood Regional President, Tony Tome; Sr Libby Rogerson; State President – Victoria, Syd Tutton; Fr Frank Brennan and National President, John Meahan.

3. THE QUAGMIRE OF STATUTORY LAND RIGHTS

In August 2002, ten years after *Mabo*, the High Court of Australia gave judgment in *Ward v Commonwealth*, the case dealing with the claim by the Miriuwung and Gajerrong People to lands in the Kimberly including part of the Ord River scheme. Justice McHugh who is the only judge who decided the *Mabo* case still sitting on the High Court had cause to look back over the history of native title litigation as it has unfolded since *Wik* in 1996. He upset Aboriginal leaders like Noel Pearson when he said:

Wik is one of the most controversial decisions given by this Court. It subjected the Court to unprecedented criticism and abuse, though the criticism and abuse were mild compared to that directed to the United States Supreme Court after its two decisions in *Brown v Board of Education of Topeka*.

The current state of the law of native title "can hardly be described as satisfactory". The present case took 83 days to hear at first instance and 15 days on appeal to the Full Court of the Federal Court. The orders of the majority Justices in these appeals now send the case back to the Federal Court for further hearing. Further evidence may be taken, and further litigation in this Court is a possibility. The *Yorta Yorta* case took even longer to hear at first instance – 114 days.

The dispossession of the Aboriginal peoples from their lands was a great wrong. Many people believe that those of us who are the beneficiaries of that wrong have a moral responsibility to redress it to the extent that it can be redressed. But it is becoming increasingly clear – to me, at all events – that redress cannot be achieved by a system that depends on evaluating the competing legal rights of landholders and native-title holders. The deck is stacked against the native-title holders whose fragile rights must give way to the superior rights of the landholders whenever the two classes of rights conflict. And it is a system that is costly and time-consuming. At present the chief beneficiaries of the system are the legal representatives of the parties. It may be that the time has come to think of abandoning the present system, a system that simply seeks to declare and enforce the legal rights of the parties, irrespective of their merits. A better system may be an arbitral system that declares what the rights of the parties ought to be according to the justice and circumstances of the individual case.

Now Justice McHugh was one of the majority in the original *Mabo* decision in which the court by 6 to 1 recognised native title. Since then a newly constituted court and governments of both political persuasions have had the opportunity to rule and legislate on native title.

It may be just too convenient to be able to dismiss McHugh's remarks as if he were a disillusioned judge growing more conservative. Similar sentiments are expressed by Hal Wootten who enjoys the finest reputation amongst the nation's indigenous leaders. He has surveyed the way that land rights and stolen generation questions were left for determination in the courts and concludes:

To leave the consequences of these policies to litigation in private actions based on existing rights, in courts designed to settle legal rights by an adversary system within a relatively homogeneous community, is at once an insult to the indigenous people and a prostitution of the courts. It is an insult to indigenous people because what is at stake is

not the vindication of rights that they possessed, but redress for what happened to them when they were accorded no rights.

(Litigation such as *Mabo* and *Wik*) developed as a result of a failure of political nerve, which left what should have been a legislative policy issue to resolution in the courts as an issue of existing rights. In *Mabo* the High Court eloquently and bravely confronted the fiction of terra nullius and its consequences, but could only rule on legal rights, and then only in a way that did not fracture the skeletal structure of the invader's law. Instead of rising to the challenge of creating a new indigenous policy that could deliver more just outcomes in contemporary conditions, parliament simply cemented the crippled structure of existing rights into the *Native Title Act 1993*. It left an avenue of escape from the strait jacket in the mediation process. However, instead of accepting the opportunity that mediation offers to go beyond existing rights to seek a mutually beneficial solution, governments refused to negotiate except about whether claimants could establish the existing rights they were forced to claim, and went to the courts to exploit every argument to defeat those rights. The shards of the *Mabo* aspiration lie around us in new case names that threaten to usurp its household status, at least in some Aboriginal communities – *Yorta Yorta*, *de Rose*, *Ward*, *Wilson*, *Yarmirr*."

There have now been more than enough test cases in the courts, determining the extinguishment of native title on Western lands leases in Western New South Wales, but leaving open the possibility of native title on pastoral leases in Queensland, Northern Territory, Western Australia and South Australia; upholding the possibility of sea rights but rejecting all exclusive rights to sea and ensuring that the sea rights of all other persons are unaffected; and requiring an ongoing connection with the land despite the effects of dispossession and colonisation. How many more test cases do there need to be before state and Commonwealth governments are prepared to sit down and negotiate sensible arrangements with traditional owners. It is good that there has finally been a settlement of the *Yorta Yorta* claim here in Victoria, despite the trauma and cost of the fruitless litigation. More than 25% of the Kimberly is now recognised as native title. But isn't it time there, and in Cape York, as in the Northern Territory to sit down with the traditional owners and negotiate more useful arrangements for employment, training and survival in these remote parts of the country?

It is timely to recall that the Keating response to *Mabo* was to be a threefold full-blooded recognition of continuing native title rights, establishment of a perpetual land fund for the purchase and management of properties for the benefit of those who had lost their native title rights prior to the passage of the Racial Discrimination Act 1975, and the negotiation of a social justice package. The third item has never materialised. But this year the Indigenous Land Fund will receive its final payment from Consolidated Revenue. It is now a self-sustaining fund able to expend up to \$45m per annum. As of July last year, the Indigenous Land Corporation has purchased 162 properties involving 5.1 million hectares at a cost of \$136 million, of which 110 have been divested to Indigenous corporations. The ILC estimates that 60,000 indigenous Australians derive some benefit from these purchases. However only about one thousand persons are receiving a direct tangible benefit such as residence (474), full time employment (157) or part time CDEP type employment (383). While 68% of properties were occupied, only 30% of them were providing any employment. The issue now is not the legitimacy of land rights but matching the land rights with the real, rather than the imagined, Aboriginal aspirations.



Fr Frank Brennan addresses the audience of over 700 at St Francis' Church, Melbourne.

4. CONCLUSION

Let's remember the simplest message of social justice: Where you stand depends on where you sit. Many years ago now, I attended a meeting of Aborigines living in a fringe camp at Mantaka on the outskirts of Kuranda by the Barron River in North Queensland. The Aborigines had lived on a reserve which was run by a church and which had since closed. Some of the people moved to government housing in Cairns but they did not like it much and the neighbours liked it even less. Eventually they ended up as fringe dwellers on land they regarded as their traditional country. They were seeking land title and money for houses from governments in Brisbane and Canberra. At the end of the meeting, the convenor pointed across the river and said, "See that house that is Mr X's weekend. They don't come very often but when they do they come by helicopter. See that helipad on the roof. It cost \$3/4 million." That was almost twice the amount they were seeking for basic permanent housing.

I have often told this story in schools. Especially in the better off schools, there are many questions: Why don't the Aborigines build their own houses if they want them? What are they complaining about? If the white man didn't come, they wouldn't even have a water supply. If it weren't for Mr X paying his taxes, there would be no money to pay these people welfare. After many years, I gave up trying to answer these questions or to refute these comments. In response, I ask only one question: Which side of the river are you standing on as you ask your questions? Ozanam had the capacity to be present on both sides of the river.

There is never any doubt about which side of the river people are standing on. Can you see that there are just as many questions that can be asked from the other side of the river? They are just as unanswerable. They are likely to make you just as upset and powerless and confused. On which side of the river does Jesus prefer to stand? Where would we choose to stand, all things being equal, if our concern was fearless Christian leadership? Crossing the river, we cross between faith and fear. Take a stand and be prepared to give an account of your hope thereby entering that sacred domain

between fear and faith, the most grounded covenanting space in our hearts and in our land.

In February this year, the New Zealand Anglican and Catholic Bishops issued a statement on the Treaty of Waitangi:

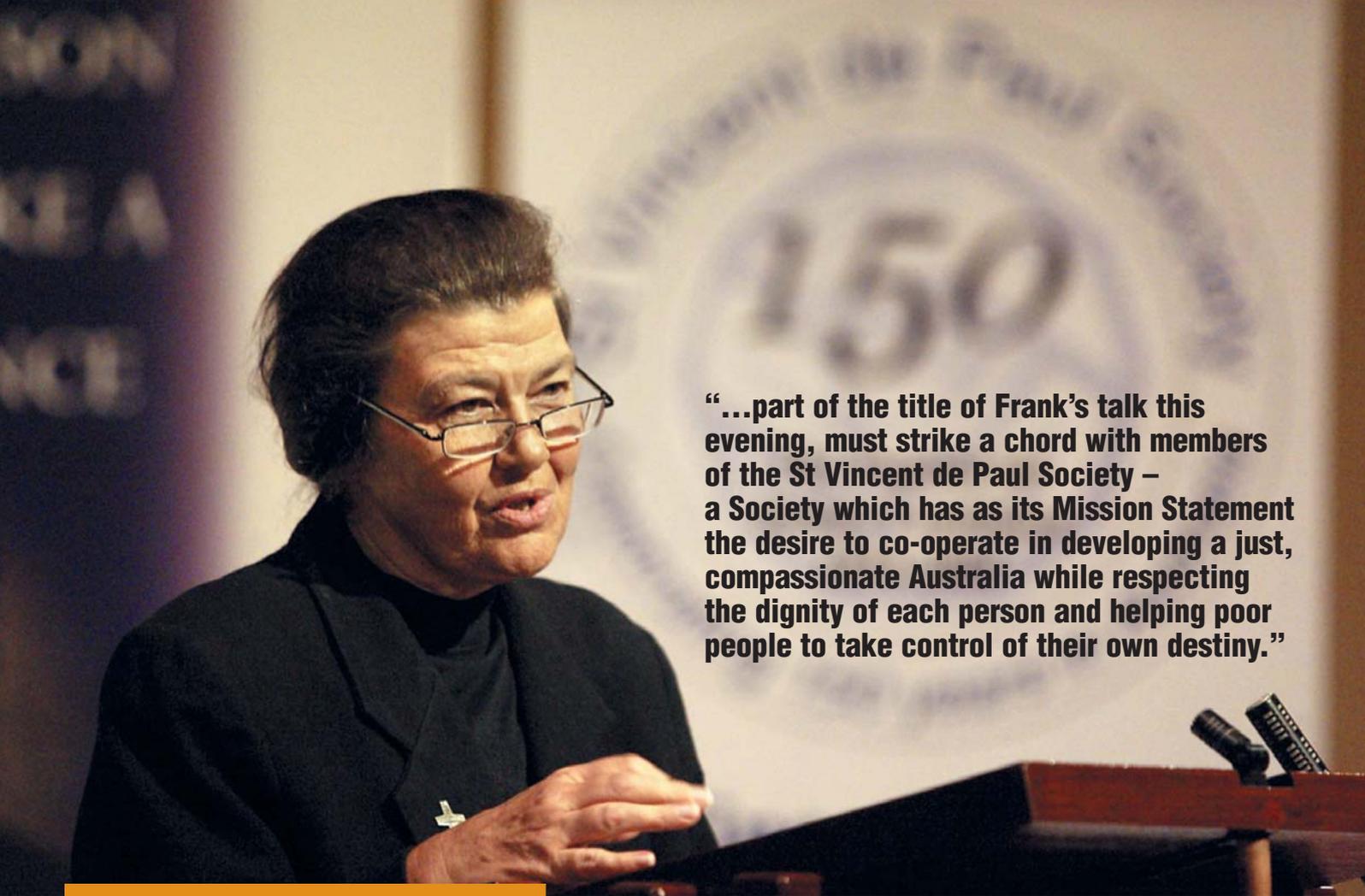
The recent debates reveal the volatile state of popular feeling about race and ethnicity. We believe the Treaty covenant provides the best way of addressing that volatility. We call for a Treaty debate rather than a race debate.

The Treaty can't be ignored or made to disappear, enshrined as it is in the law, very clearly since the 1975 Act and in at least 32 subsequent pieces of legislation. Equally important for us, the document forms a spiritual covenant through promises made by our forebears and never forgotten by Maori. To break those long standing promises is to erode the moral foundation of the nation and undermine the ethical basis of Pakeha settlement in New Zealand, along with all sorts of other agreements, covenants and contracts. The Treaty properly honoured provides us all with a cornerstone that is the envy of other nations.

It will be a long time before we hear any such statement from the Australian bishops. Maybe our attempts to enunciate gospel imperatives are too confined by the political wisdom and constraints of the day. As the St Vincent de Paul Society prepares for another 150 years of service in Australia, one of the most secular materialistic societies on earth, let's take heart from the Blessed Frederic Ozanam's observation:

Those who wish no religion introduced into a scientific work accuse me of a lack of independence. But I pride myself on such an accusation. ...I do not aspire to an independence, the result of which is to love and to believe nothing.

Loving and believing as much as we do, let us leave this church of St Francis tonight committed to decency, harmony and equality for all in our land, especially for those who have named this place home for tens of thousands of years. Let's emulate the exchange of gifts between the Aboriginal elder and the Afghan meatworker in Albany where Attaturk looks over the last Australian landfall seen by those fallen ANZACS.



“...part of the title of Frank’s talk this evening, must strike a chord with members of the St Vincent de Paul Society – a Society which has as its Mission Statement the desire to co-operate in developing a just, compassionate Australia while respecting the dignity of each person and helping poor people to take control of their own destiny.”

Sr Libby Rogerson IBVM

SHORT BIOGRAPHY

Sr Libby Rogerson IBVM is a Loreto sister, currently working as the Co-ordinator of Social Justice and the Director of Caritas in the Diocese of Parramatta. She is a member of the Catholic Leaders Religious Institute NSW Justice Committee, the Uniya Committee, the Board of the House of Welcome, (centre for refugees and asylum seekers), the Board of PolMin and an observer on the Bishops’ Committee for Justice, Development, Ecology and Peace.

From 1993-1998 Sr Libby served on the General Council of the Loreto Sisters, based in Rome and working in a number of countries.

In 1999 Sr Libby worked with Caritas in East Timor and was awarded the Humanitarian medal for her services. As a member of the Caritas Australia National Committee and Chair of the Loreto Sisters Justice Committee Sr Libby has, in recent years, visited projects in Bougainville and Vietnam and in July this year will spend a month in Southern Africa visiting HIV/AIDS programs run by Caritas and other organisations and reporting on these for Caritas Australia.

Response to Fr Frank Brennan’s Ozanam Lecture

Sr Libby Rogerson IBVM

Thank you Frank for your Ozanam Lecture this evening and thank you for the extraordinary clarity you bring to any discussion of issues contentious or otherwise. At the Melbourne launch of your book, *Tampering with Asylum*, I remember Robert Manne expressing some envy of your capacity for clear, measured and reasoned approaches to issues which arouse in many of us unbridled fury or incoherent passion. My approach is, I fear, more incoherent passion than calm clarity. It was, however, the example of Robert Manne and the rules espoused in your talk this evening, that you would talk to anyone; and... go where you were invited that gave me the impetus to come this evening and respond to your Ozanam Lecture. It is, also, a unique opportunity to respond to a man, both ‘meddling priest’ and Living National Treasure. I think I can say, Frank, for all of us here we are glad that you have been a clear and reasoned voice for the Church and that you did not take the advice of the pastoralist during the *Wik* debate to return to your church and say your prayers – although I am sure you have done some of that as well.

Thank you to the St Vincent de Paul Society for inviting me to respond to Frank’s talk. Although Frank is a Queenslander by birth it is something of a NSW invasion this evening, but how could I resist the invitation of a man not only called Sydney but who spells it as Sydney ought to be spelt! However, I do feel that I qualify as a partial Victorian, having won the Loreto Sisters AFL Footy Tips competition last year. In the wake of such intense competition I was the recipient of a very scathing email from a Ballarat-born Loreto sister, a one eyed Carlton fan, who doubted my capacity to know one end of a footy field from the other. I did not dare divulge my secret that each Friday morning

I read the predictions of the six tipsters in the *Sydney Morning Herald* and that in a very short time the clairvoyant tipster was in front and never looked back for the whole season. The experience did lead me to wonder whether, perhaps, I had a future as a clairvoyant.

Seeking Decency, Harmony and Equality for All, part of the title of Frank's talk this evening, must strike a chord with members of the St Vincent de Paul Society – a Society which has as its Mission Statement the desire to co-operate in developing a just, compassionate Australia while respecting the dignity of each person and helping poor people to take control of their own destiny. And I pay homage to the men and women of the St Vincent de Paul Society who, over the past 150 years, have spent countless hours in the love and service of others.

To celebrate the courage and the professionalism of Captain Arne Rinnan and the crew of the *Tampa*, the City of Port Phillip, held a concert called *Shine a Light on Decency*. For the next few minutes I too would like to shine a light on decency. "Decency" is not a word you hear so much of these days. As a child growing up in rural Australia I often heard the expression 'a really decent old bloke', 'a good and decent woman'. Decency was the benchmark for acceptable behaviour – tolerant, respectful of the other, kind, welcoming and non-judgemental. Sir William Deane's Jessie Street Lecture, *A Quest for National Decency*, to which Frank referred, called for a renewed quest for national decency and harmony and real equality. In his Boyer Lecture series Professor Martin Krygier, from Melbourne University, made frequent reference to Avishai Margaliti, a professor of Philosophy at the Hebrew University. Professor Margaliti defines a decent society as one that does not humiliate and indecency as the denial of common humanity. The photos of naked Iraqi prisoners, debased and humiliated, spattered across our newspapers and television sets gives us, all of us, pause to ponder how we can keep our institutions, structures and societies decent.

The decency of Australian society is taking a bit of a battering at the moment. Does a decent society intent on supporting its Indigenous people say: You lot are incapable of running your own affairs; we can't afford to let you make any mistakes so we are taking away your elected representatives and we will choose representatives for you? Does a decent society say to the asylum seeker – born in Syria, the son of Palestinian refugees, imprisoned, tortured, under constant surveillance and now schizophrenic and paranoid – We don't want you here; you are a liability; you are safe to go back now? Does a decent society free an asylum seeker and send him on his way with a temporary protection visa, assuring him of his right to work, but forgetting to tell anyone he has leukaemia? Does a decent society ignore the glue sniffing, health and education problems of Aboriginal children? All this in a society whose Government is currently wooing the voters under the banner of the Family.

Sitting at committee meetings for the House of Welcome, a drop-in centre and emergency accommodation for asylum seekers, hearing these stories of pain and suffering exacerbated by policies, which exclude any concept of decency and deny the common humanity of the asylum seeker, I could weep and at times I almost despair.

But, in the last weeks, I have had at least two experiences, which reassured me of the extraordinary decency of many people in our community. The first was *Molly and Mobarak* on SBS television – a documentary set in Young NSW where there are a group of young Afghani men working in the abattoirs. The documentary follows Mobarak and his interaction with one family. He falls in love with Molly and his love is not quite reciprocated in the way he wants. But Molly offers friendship and her mother gives Mobarak utterly gratuitous love. She spends hours listening to him, advising him, comforting him and loving him. An ordinary woman in a country town, reaching

out and recognising his common humanity. A few nights later I watched *Australian Story*. Ian Skiller and his mum, Shirley, from Tooleybuc near Swan Hill, good, decent people, who gave accommodation, then work, then support and then love and companionship to three Afghani men. Their sense of decency assaulted by the injustices heaped on these men, by the insecurity of their lives, by their isolation from their families and the prejudice they experience. Ian takes to the streets, the platforms and ultimately to the Palm Sunday Peace March asking for compassion and acceptance. At the end of the program he says: in the past I would have thought anybody that was doing what I'm doing now was a radical, and I just didn't think I'd do it. But now I can understand where they come from because I'm quite passionate about this cause and I'm sure they were about theirs. In neither case were these people alone, they were joined by other decent people who wanted to help and support the Afghans.

Last month I attended a public meeting in Bidwill one of the Western suburbs of Sydney, which make up the area known as Mt Druitt. Established in the 60's Mt Druitt was touted as a model approach to decentralisation, a satellite city and a new way of dealing with public housing. Today, Mt Druitt is one of the most disadvantaged areas in Sydney with high youth unemployment, a complex mix of ethnic and indigenous people, poor public transport, poverty, drug abuse and crime. It is, said one respondent to a recent survey, the end of the line. As soon as you say Mt Druitt, a young job seeker said, people think you won't know anything or you are likely to be a thief. (Remember the definition – a decent society does not humiliate.) The meeting was called by a local residents' group to protest to the Council about the lack of a shop. The Bidwill shopping centre is an urban graveyard – asphalted car park, no cars but grass and weeds flourish, the shops are boarded up, the entrances padlocked and chained, graffiti decorates every flat surface and to the right the newly refurbished pub urges all, with light and colour, to try its wares. The people at the meeting said all they wanted was a place to buy their bread and milk; to get the paper. I am old, said another, all I want is an ATM so I don't have to take the bus into Mt Druitt every time I need some money. Defeat hangs heavy in the air. Yesterday's model public housing village is today's sagging doors, broken fences and polluted stormwater channels. It didn't seem much to ask – a shop nearby for bread and milk and the paper. We've been at this for years, muttered one old timer. Their quest is decency, harmony and equality. Justice.

In Mt Druitt many people hide in their homes afraid of the hopelessness and violence, which stalk the streets. Daily they face the battle for survival, desperately searching for some harmony in their lives, they long, perhaps not for equality – something hardly to be dreamt of – but for a greater share, most try to live decently.

But it wouldn't be fair to Mt Druitt if I presented this as the full picture – it is only half the picture. Frank said in his talk that we need more open and robust debate about...the equitable distribution of resources for the health, education and well being of all citizens. He spoke of the need for political morality, for Church people to be principled pragmatists...prepared to have dialogue with anyone and to welcome any intervention made in good faith. At this time when we are digesting a budget which, in Fr Joe Caddy's words, shows that the votes of the poor are not worth buying it is, perhaps, worth dwelling on the morality, the principled pragmatism, the dialogue and the hope that come from the voice and the work of the Church in Mt Druitt – a work I might add which has considerable Jesuit involvement.

In a survey conducted by the Chain Reaction Foundation and financed by the Premier's Department, the people of Mt Druitt said of the local Holy Family Parish: there are celebrations for anyone and everyone, we are all welcome, white, black, old or



(l to r): Sr Libby Rogerson; Fr Frank Brennan and the Society's State President – Victoria, Syd Tutton.

young, religious or none. They do births and deaths and anything that happens in between. Holy Family Parish, said another, is like a rambling, comfortable home and it smells and feels good. We don't have our own place, said an Aboriginal Elder, but we have always been welcome at Holy Family. Of the Uniting Church Minister, they said Anne listens to everyone and speaks only when she has heard everyone. A client said, at St Vincent de Paul people talk with you there, not about you. In one sense this is as it should be. But the Church in Mt Druitt does not confine itself to good works only, the voice of the Church speaks fearlessly. The staff of Holy Family regularly engages with politicians and councillors of all persuasions. The Diocese of Parramatta and the Uniting Church collaborate in the funding of a community development project and part of this project has involved bringing politicians, councillors and candidates to meet the people of Mt Druitt – to let them hear the voices of the people. The community development worker is currently teaching kids how to lobby for a playground and a bike track. Popular participation in the political process is growing, albeit slowly. In Mt Druitt the Church champions the rights of the Indigenous, the Islander and the alienated. The local Church is recognised as a group of people who seek decency, harmony and equality for all. The challenge for all of us here and elsewhere is to spiral this upwards and outwards so that in the pews, the pastoral councils and our places of work our pastors, bishops and all of us who purport to have a social conscience work with others to make our society decent, harmonious and equitable.

Frank says that the simplest message of social justice is: Where you stand depends on where you sit. Perhaps another message, equally simple, is that you don't really get the message unless you have encountered the other, stood in her

shoes, confronted the indecencies she has suffered and been moved by the flawed, fragile but resilient humanity you both share. Judith Wright, in her poem *Age to Youth*, says:

*Whatever we repent
of the time that we live
it is never what we give
it is never that we love.*

St Vincent de Paul Society

The St Vincent de Paul Society Victoria Inc. consists of over 8,000 members and volunteers who assist more than 600,000 people in need each year. The Society's core work of home visitation receives little government funding, relying on the generosity of the wider community. The specialist arm of the Society, St Vincent de Paul Aged Care & Community Services, provides professional assistance to people with more complex needs in aged care, homeless and disability services. These services rely heavily on governments, yet also benefit from volunteers and donations from the community.



St Vincent de Paul Society
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