

Seventh Manning Clark Lecture

5 Rs for the Enlargers: Race, Religion, Respect, Rights and the Republic

Delivered by Father Frank Brennan

On Thursday March 2 2006, at the National Library of Australia

Ladies and gentlemen, I acknowledge the members of the Clark family with us honouring the memory of Manning and of course Dymphna. Manning's erstwhile colleague and my fellow Jesuit John Eddy assures me that Manning would be delighted that a Jesuit was asked to honour him by delivering the seventh Manning Clark Lecture, seven of course being a very biblical number.

I never met Manning though I did ask him a question at the Melbourne launch of his sixth volume. We were all gearing up for 26 January 1988 and I asked him how he would spend the day. He mused about his property down on the south coast and how he had often looked out to sea, recalling Cook's passage there in 1770 when he looked to shore, saw smoke, and surely surmised the presence of a human society in this great south land. I only saw him in the flesh one other time. I spotted the large Akubra hat ahead of me as we queued to enter the Sydney Cricket Ground for the New Year test. In the epilogue of his sixth volume, Manning asserted: "In the second half of the twentieth century Australians lived in a country where neither the historians, the prophets, the poets nor the priests had drawn the maps." [1]

From my conversation with John Eddy, I glean that Manning would want us this evening to recall his sense of drama (which went beyond the grave), his pre-occupation with the numinous, his reverence, awe and respect for others, his insistence on the need for higher standards, his call to order, his call to the higher instincts (not to higher culture) and his acute insight into human suffering and failure. He would want us to reflect on how we could be better enlargers rather than pointing the finger at those who happen to hold elected office at this time because they are the straighteners who appeal to our baser instincts at times of uncertainty, isolation and material acquisitiveness.

He would want us to tap our sense of hope. When reflecting on his six volume history he once said, "And I suppose running through those volumes is the hope - no more - of some sort of fusion between that Christ figure and the best teaching of the Enlightenment." [2] He would see this lecture as an opportunity to offer assurance to those flagging or in doubt about salvation and redemption. For him, secular optimism was never enough. He always had a keen eye for the difficulties of the common man in choosing the right path, and a deep concern for the underdog. He would wonder if there is still any place for the religious enlarger. He would not necessarily agree with me or you but he would always react with sympathy, given his generous and searching spirit. He would urge us to clear away the thickets for a republic, bearing in mind that it was the atavistic colonisers, and not the benign officials of the Colonial Office, who dispossessed the Aborigines.

Whatever our politics, race or religion, we come together this evening as enlargers sustaining the hope, not deterred by the realisation that the straighteners will mock us and pontificate afresh about the unreality of our dreams, the impracticality of our suggestions, and our irrelevance to the outcomes of contemporary politics and economics.

I will consider the 5R's of race, religion, respect, rights, and the Republic.'Ed Campion warned me that any cleric honouring Manning would undoubtedly fall into preacher mode as Manning, the son of the preacher, was always most at ease in that mode following the cadences of the Book of Common Prayer.'I pray that I can avoid the temptation!

1. RACE

Together we acknowledge the traditional owners of this place - the Ngunnawal people.'Just walking distance from this National Library are Aboriginal Australians still living in a tent embassy convinced that their voice has not yet been heard.'There is also a Reconciliation Place which has not yet been owned by Aboriginal Australia. Next year marks the 40th anniversary of the 1967 referendum and there is still unfinished business.'Aboriginal voices are not often heard in our national parliament or before its committees these days.'Gone, for the moment, are the heady days of 1993 when they had a place at the table negotiating native title laws face to face with the prime minister.

Two weeks ago I travelled to Bourke.'The last couple of kilometres of the road are now called the Fred Hollows Vision Way.'In the 40 degree heat, a group of us stood under a Coolabah tree in the Bourke cemetery, while the television eyes of the nation were fixed on the Opera House for the state memorial service honouring Kerry Packer.'Thirteen years before, to the very day, Fred Hollows was laid to rest in the Bourke cemetery following his state funeral in St Mary's Cathedral.'In the following months, five local aboriginal artists, some of whom had not previously worked with stone, carved an imposing sculpture beside Fred's grave.'Andreas Buisman, an Austrian sculptor who never met Fred, has now completed the fine polishing of an eight tonne granite headstone brought from Tumut.'Badger Bates, one of the original Aboriginal artists, spoke with good humour recalling the process for the original sculpture, and expressing appreciation for the complementarity of the new sculpture.'Often when the art of the first Australians and of our most recent immigrants is juxtaposed, there is a fresh energy and dynamism,'as with the stone mosaic by Michael Nelson Tjakamarra in front of Parliament House - the stonework having been completed by William McIntosh, Franco Colussi, and Aldo Rossi.

After the ceremony, I went for a walk around town with an Australian journalist recently returned from a couple of years assignment in East Timor.'It was close to dusk.'I happened to be telling him the story of my first visit to Bourke back in the 1980's.'The parish priest had invited me to meet with the teachers and teacher aides at St Ignatius primary school.'The Parish priest picked me up at the airport and drove me straight to the school yard.'He introduced me to one teacher, giving a glowing account of my academic achievements.'The teacher looked at me with a slight squint and said, "So you're a blow in?"'We then went into the staff room where the parish priest gave me an even more fulsome introduction.'I could feel the chasm widening.'I thanked my host for his introduction and added, "Father forgot to tell you that I am a blow in.'I don't know much about Bourke.'I've never been here before, and as far as I know I will never come again.'I will fly out tomorrow.'From

what I have heard, it doesn't matter whether you are black or white, an adult walking down the main street or a kid in the convent playground, life is often hell here in Bourke.'We Australians are very good at passing the buck - blaming the past, Canberra or Sydney.'But the buck has to stop somewhere.'It has to stop in this room when it comes to behaviour in the convent playground."

My retelling of the story came to an abrupt halt.'We were walking past the Bourke Bowls Club.'The lawn was in beautiful condition despite the summer heat. I and my journalist mate were both transfixed.'Aborigines and whites were playing bowls on the same green in the cool of the evening.'Next morning, I rose before sunrise and took a stroll by the Darling River musing that the signs of hope are often still, fleeting and unexpected.'That morning we drove out of Bourke.'I travelled in a car with Jilpia Jones who had been one of the Aboriginal nurses on Fred's trachoma team.'Jilpia is one of two dozen Aboriginal nurses whose stories now appear in Sally Goold's and Kerryne Liddle's edited work *In our Own Right: Black Australian Nurses' Stories*.'With her usual modesty Jilpia retold the story of her first meeting with Prof at Redfern when she arrived dressed to the nines and Fred asked "Have yer ever been in a blacks' camp?" "She shot straight back, "I was born in one." "Immediately, Fred took her on to the team.'Years later, they arrived one night in Fitzroy Crossing.'As ever, the locals asked them where their country was.'Jilpia said it was here, around Fitzroy Crossing.'Next day, an old man Charlie Brooking came and said to her, "Come little girl you come to meet your mother." "And she did.'This was a great story to share on the Vision Way out of Bourke.

I was privileged to work for many years as a non-indigenous advocate for Aboriginal rights.'It was a job with its perils as well as delights.'At times I gave offence.'By 1998 Paul Keating had labelled me the meddling priest.'My introduction to the complexity of Aboriginal life came in 1981 when I was junior counsel in the Alwyn Peter case in Queensland.'Alwyn was the 15th Aboriginal male in three years to have killed another Aboriginal person on an Aboriginal reserve.'In these cases, the victim was usually the accused's woman partner.'Senior Counsel, Des Sturgess, told the court that the homicide rate was the highest recorded among any ghetto group in the western world.'In each case, the accused and the victim were shaped by life on a reserve; and each in their own way was destroyed by it.'To be a member of such a group, one did not have to be bad or mad; one had only to be Aboriginal.'We defence lawyers had a good win in the Peter case.'Having pleaded a defence of diminished responsibility, Alwyn walked free within weeks of the completion of the court proceedings.'A woman anthropologist here in Canberra, Penny Taylor, left me with the chilling observation that our forensic win had removed the one inadequate protection for defenceless women in remote Aboriginal communities - the minimal deterrence of the whitefella legal system.

I have long been preoccupied with the interrelatedness of Aboriginal dispossession, disadvantage and marginalisation and I have sought to articulate a publicly coherent policy of reconciliation, justice and recognition for indigenous Australians.'In all of this, there are many questions unresolved.'Noel Pearson has opined that it was the 'symptom theory' that underpinned our approach to the Alwyn Peter case.'Pearson says: [3]

The criminal justice system may have tried to accommodate an understanding of the factors which Brennan and those who followed him had illuminated in the Alwyn Peter case, but it did nothing to abate offending and the resultant 'over representation' of indigenous people in the criminal justice system. In fact I would say that it made this problem worse.

These are troubling conclusions for any lawyer committed to justice according to law for all persons, including indigenous Australians who are more likely than any other group to be appearing in court for a custodial sentence.

Nowadays it is fashionable to decry the granting of land rights and self determination for indigenous Australians.'I readily concede that man does not live on land alone.'The easy work was advocating for those rights and entitlements which had long been denied to Aborigines by the colonisers and their successors in title.'With the granting of land rights and some modest local attempts at self-determination, the hard work commences.'The place of the non-indigenous advocate is less assured in this space, and as ever one only enters when asked.

2. RELIGION

One aspect of the land rights debate that worried me over the years was the conviction that we needed to respect the religious beliefs of Aborigines who had a spiritual relationship with land and country.'That was the chief rationale for insisting on their right to veto mining on their lands and for legislating to protect sacred sites.'Yet, some of the most eloquent defenders of land rights have also been those most strident in dismissing mainstream religion as an irrational irrelevance wreaking devastation in the world.

In his epilogue of Volume VI, Manning says: [4]

This generation has a chance to be wiser than previous generations. They can make their own history. With the end of the domination by the straighteners, the enlargers of life now have their chance. They have the chance to lavish on each other the love the previous generations had given to God, and to bestow on the here and now the hopes and dreams they had once entertained for some future human harmony.

We Australians are used to political leaders who have little time for religion in their own lives or in the public forum.'Mark Latham put such views on public display when he published his diaries detailing his "first law of the church": "the greater the degree of fanaticism in so-called faith, the greater the degree of escapism either from addiction (alcohol, drugs, gambling or sex) or from personal tragedy'..Organised religion: just another form of conservative command and control in our society." [5]

There is a poignant rendition of the public intellectual's view of religion in Karen Armstrong's recent biography *The Spiral Staircase*. 'When a student at Oxford, she was the live-in nanny for Jacob Hart, the epileptic son of Herbert and Jenifer Hart, Herbert being the esteemed professor of jurisprudence who wrote the highly influential *The Concept of Law*.'Jenifer Hart asked Karen Armstrong to take Jacob to mass regularly at Blackfriars in Oxford: [6]

"I know it must sound perfectly mad.'Herbert and I, of all people!'Can't you imagine what our friends are going to say? I know it seems illogical, inconsistent.'But I've often thought that Jacob ought to have some kind of religion.'All that ritual for example - he'd simply love that.'And religion is supposed to give some form of comfort, isn't it?"

Armstrong then describes the conversation with Jenifer Hart:[7]

'You see, it's all very well for people like Herbert and me to reject religion. But Jacob - he needs something - he needs some kind of support.'

'What you mean is,' I said caustically, 'that religion is really just for idiots, weaklings and defectives'.

'Oh dear' Jennifer grinned rather nervously at me. How awful. But yes, yes, if I'm honest, I suppose that is what I think'.

There will always be citizens, including some who are healthy and intelligent, who see a need for "something - some kind of support". Contemplating life and death, suffering and love, they will be convinced that a religious perspective is essential for human flourishing in community. There will also be citizens who have no need for religious support or belief. Neither perspective is trumps in a democracy under the rule of law. Each perspective provides those citizens of the alternative persuasion with challenges for living and acting respectfully.

Some religious persons claim to have a comprehensive world view, confident that their religious tradition provides them with insights and moral clarity about all social questions. These citizens need to be cautious lest they disrespectfully foist their views on other citizens who see the world differently and in good faith. Whereas secular humanists and religious citizens will often be ad idem in questioning the morality of war and in urging greater protection of vulnerable citizens, they will often take contrary positions on laws and policies affecting sexual relationships and the beginning and end of life.

Unlike the Americans, we Australians have done little to articulate the place of religion in the public forum nor to give a coherent public account of our religious yearnings. Manning Clark should serve as a model for us all as we try to accommodate those of all religious faiths and none in our contemporary Australia. When asked about his writing, Manning once said, "I found it helpful always to ask for strength - that's when you get the blank sheet out - and ask for faith in what one was doing, faith in one's powers to do it, and also the eye of pity and love for all the people you were going to describe'. Although I hasten to add that I'm not too sure whom I was asking." [8]

He constantly quoted Dostoevsky's line: "I want to be there when everyone suddenly understands what it has all been for. All the religions of the world are built on this longing, and I am a believer." [9] In his *The Quest for Grace*, he confessed, "I have not reached that level of understanding, but during the long quest I experienced moments of grace." [10] Then at a conference on John Henry Newman on 11 August 1990, he added, "That's what I wanted to find out, and the whole of my life was a pilgrimage to find out what it's all been for." [11] His reverence and respect for the religious views of others should inspire all of us as we relate across religious lines making sense of it all and reconciling differences from Cronulla Beach to the streets of Baghdad.

3. RESPECT FOR MORAL SENSITIVITY AND HUMANE SENTIMENTS

It is easy for all of us to be critical of our governments and of our media. But in a democracy we elect our governments and the media feeds us what we like to consume. When we elect leaders without pity, when our judges fail to show pity, when our civil servants act without pity, or when our media pursues ratings by

denying pity and love, there is every chance that they are reflecting us back to ourselves.'When there is a major failing by government to live up to our public morality, there is every chance that we have all been infected to some extent, adopting the utilitarian calculus that the ends justifies the means, that nothing is good or bad in itself.'It depends only on the political or economic consequences.'A senator can change parties after election pleading that there is no real difference between the party policies.'If that is so, surely political morality dictates that you stay with the party to which you were elected until the next election when you seek to make the move.'But self-interest is equated with common sense, and the attempted move is justified if it succeeds.'Paul Keating once advised that in any race you should always back self-interest because you know it is trying.'In the corporate sector, middle order managers wonder why they should be honest when directors misuse company property for their own personal benefit.

When retiring as a teacher at ANU in 1975, Manning asked if it had all been worthwhile.'He recalled attending the requiem mass here at St Christopher's Cathedral in Canberra the previous year for his friend Eris O'Brien:[12]

The procession after the service reminded me of the Catholic, Protestant, and the Enlightenment - symbolising what one had thought our history was about, in part.'But there was a sequel.'Outside the church, as that bell tolled its melancholy dirge for the dead, I was seized with that dread which has never been far from me in the last ten or so years:'that the bell was tolling a requiem for the only vision of life with which I had any bond.'I feared that all these three ways of looking at the world, and the men who believed in them, were about to be replaced by men who believed in nothing; men with the appetites of the sybarite and the morals of the Pharisee; men who were not touched by the story of the prodigal son, or Schiller's great 'Hymn to Joy', or Mozart's Magic Flute, or Karl Marx's point about moral infamy, or the teachers of the Enlightenment on tenderness, or Steele Rudd's Dad, or Henry Lawson's Christ figure - men without pity, with that great hell in the heart, of not being able to love or be loved.

This quote haunted me over the summer after I spent an afternoon watching the Cole Commission on the Oil for Food Program.'As the historian and preacher, Manning would have no interest in publicly pursuing the government on this matter, and that is not my role.'Rather we need to reflect on how we as a society allowed this state of affairs to develop.'Unlike the Bush administration, our government joined the Coalition of the Willing in Iraq with a restricted purpose: to rid Iraq from weapons of mass destruction and to remove the threat to international security, especially the threat to our ally, the United States.'Regime change was an additional item on Mr Bush's agenda.'As a people we permitted our government to do the moral handstands signing up to the Coalition without signing up to all the objectives given for war by the leader of the Coalition.'While Bush, Cheney and Rumsfeld wanted regime change in Iraq at any cost, Mr Howard told us, "I couldn't justify on its own a military invasion of Iraq to change the regime.'I've never advocated that." [13]'We signed on, in part, paying our dues for our alliance with the US.'At the same time, our government (with the support of the Opposition and the nonchalance of most of us) wanted to maintain high wheat sales to the Iraqi regime when everyone knew that to do business in that part of the world you had to pay kickbacks.

Our collective moral torpor and national irresponsibility were reflected in the nonchalant acceptance of assurances from our government that all would be well with our wheat sales to Iraq even though we were gearing up for war with Iraq.'In

return for our government's strong language against Iraq following its failure to permit thorough weapons inspections, the Iraqi government expressed concerns about the contamination of our wheat.'We said they had WMD; they said there were iron filings in our wheat.'There was neither. The Australian Wheat Board was able to put the sales back on track with the government telling us the "issue has been resolved, which is excellent news for the Australian Wheat Board and for Australian wheat farmers and their families." [14]'Mr Mark Vaile told Parliament that this "certainly vindicated the federal government's faith in the AWB and its ability to successfully manage its commercial dealings with the Iraqi Grains Board". [15]

In hindsight were we not all asleep at the wheel while the ship of state sailed through these precarious amoral waters?'Commissioner Terrence Cole and Opposition Foreign Affairs Spokesman Kevin Rudd will presumably get to the bottom of particular ministers' blame.'But what about the blame on all of us?'Barnaby Joyce tells us that even backpackers knew that you had to pay bribes to do business in that part of the world.'Commercial reality accommodates some level of such payments.'But this was not just any regime in receipt of kickbacks.'Our government was convinced that this government was developing weapons of mass destruction.'Our government was adamant that there was a need for strict sanctions or war.'Our government and anyone else watching were convinced that the Iraqi regime was rorting the oil for food program.'But we all turned a blind eye when the Australian Wheat Board told us that all was well.'Mysteriously our sales were restored to normal. Not one member of our parliament, and not one of us as far as I am aware, not one straightener and not even one enlarger, stood up and asked, "How can this be?'Is Mr Hussein na've?'"We were all consoled back in September 2002 when Mr Vaile told Parliament:[16]

The way the dispute about quality which had delayed the unloading of several Australian wheat shipments to Iraq was resolved demonstrates the sound commercial relationship between AWB Ltd and the Iraqi grains board. We will continue to work closely with AWB Ltd to help maintain and increase its existing market share in Iraq.

When it comes to our national interest and the prospect of increased wheat sales for our farmers and their families, alas we all stand condemned like "those men who believed in nothing; men with the appetites of the sybarite and the morals of the Pharisee". 'It is not that we lack pity or love.'Our pity and love were extended by invitation of our leaders to our wheat farmers and their families, but to them alone.'In so doing we all turned a blind eye to the processes needed to maintain sanctions in place and to ensure that one thought to be a murderous dictator intent on destruction beyond his national borders was deprived the resources needed for his exploits.'While we pursue those government ministers asleep at the wheel of the ship of state, let's also castigate ourselves and remind ourselves that it is only a materialistic, utilitarian people which is collectively able to work the public conscience into such a state of submission so that the nation is able to trade successfully with a despot while convincing itself that necessary and justified sanctions are honoured and all is in readiness for war. Even before the war is over, our prime minister is able to tell us that 'the oil for food program has been immorally and shamefully rorted by Saddam Hussein, who has used the proceeds of it to acquire his weapons capacity and support it.' [31] Our money, our neglect; Saddam's immorality, and Saddam's shame. Our disjunction between political and commercial reality on the one hand and public morality on the other ultimately reveals a great disrespect of ourselves.'We forfeit the civic virtues when we embrace

the credal "Whatever it takes". Our pragmatism finally starts to work violence on us, as well as on others.

At the 1988 Yale Conference on Australian Literature Manning lamented:[17]

A turbulent emptiness has seized the inhabitants of the ancient continent. No one has anything to say. Like other European societies, Australians once had a faith and a morality. Then they had a morality without a faith - the decades of the creedless puritans. Now most of the legal restraints of the old morality have been taken off the statute book. Everything is up for examination.

The pragmatic, consequentialist ethic in contemporary Australia has long wreaked havoc on outsiders not meriting our respect, but now it is turning on us. We are losing respect even for ourselves. Take the situation of parents who at the last minute feel helpless that their son or daughter may be caught up in a drug ring operating out of Indonesia. They or an intermediary contact the Australian Federal Police and seek assistance, wanting their child stopped at the airport or at least given a warning. We now know that the Australian Federal Police are instructed to co-operate with the Indonesian police up until the time that charges are laid even if there be a real risk that the death penalty will be imposed. Being a civil law country and not a common law country, Indonesia does not lay charges until the end of the investigation process. In common law countries like Australia, charges are laid much earlier in the investigation and prosecution process. If Indonesia were a common law country like Australia, the AFP would be much more restricted in their capacity to co-operate with the Indonesian police when an Australian citizen could be facing death.

But there is something even more troubling than our police pursuing the forensic advantage of delayed charging of suspects in countries like Indonesia. In the recent case of the Bali Nine, a judge of the Federal Court of Australia commenced his judgment suggesting there was a need for the Minister "to address the procedures and protocols followed by members of the Australian Federal Police ('AFP') when providing information to the police forces of another country in circumstances which predictably could result in the charging of a person with an offence that would expose that person to the risk of the death penalty in that country." [18]

The minister and the commissioner have said that they see no need for a review of the protocol and processes. The Commissioner has gone one step further and said that there is nothing the police can or ought to do in response to a parental request for assistance. According to Mr. Keelty, if anyone connected with the police did respond positively to the parental request, that person would be acting "dishonourably" and "corruptly". Mr. Keelty has told Parliament: "What does that say to the parents of the other children who did travel - that because someone had a mate in the police, they got rescued but their children are subject to the circumstances of the Indonesian judicial system? It is simply a nonsense to even project that as being a way that the AFP should operate." [19] Bob Myers, the barrister and family friend, who had contacted the police on behalf of the parents of Scott Rush laments, "Certainly I know with hindsight now you can't rely on our agencies, Australian agencies, to help us out in a crisis of that sort." [20] All right thinking people applaud the efforts of law enforcement authorities taking a strong stand against those who exploit and profit from others' addiction to illegal and harmful drugs. But some of the most honourable and non-corrupt law enforcement officers are those who can take the young person aside and warn them off. This cannot be done in every circumstance when an anxious parent seeks assistance as a

last resort.'But our sense of legalism is too stretched when the police commissioner can proclaim that any such instance of this would be dishonourable and corrupt.

We can maintain a respect for the noblest human aspirations including parents' desire to protect their child, a friend's desire to help a mate, a free and confident nation's desire to spare even their foolish, selfish citizens from the firing squad.'The federal police should be empowered to do their job but their desire to track down criminals and their willingness to sacrifice the life of our citizens should not permit co-operation with other police beyond what would be permitted were the other police in a common law country where charges would be laid earlier than they are in countries like Indonesia.

The distinguished Victorian Supreme Court judge Murray McInerney told me when I was admitted to the Bar 30 years ago that there was no finer citizen than the good police sergeant in a country town who was able to keep the peace, not primarily by enforcing the law but by having a quiet word to the young fellows around town.'There must be a place even in our federal police for co-operation with parents and citizens of good standing wanting to avoid the firing squad for their children and their friends' children.

In "Trying to Tell the Story", Manning Clark confided, "I wanted to tell a story of hope - that those who had the courage and the strength to face the truth about the human situation had a chance to be kind and tender with each other.'Australia need not always belong to the tough.'Australia could and should belong to lovers and believers." [21]

4. RIGHTS

There was a time when the Australian government was committed to honouring the decisions of international tribunals which heard complaints from Australian citizens who had exhausted all domestic remedies, claiming an infringement of their rights set down in various international treaties to which Australia was a party.'The Howard government reversed this commitment and has made a habit of disregarding the findings of international bodies which comment adversely on Australia's human rights record.

At that time, the High Court of Australia had demonstrated a willingness to be guided by international human rights instruments to which Australia was a party, especially when there was an ambiguity in a statute or there was a need to develop the common law.'Where there was a choice available to the judges, some of them were willing to exercise the choice consistent with the developing international jurisprudence.'Since then, all equivalent countries including the United Kingdom have subscribed to their own bills of rights.'The Australian judiciary is left isolated with the High Court being less assisted by other final courts of appeal which resolve difficult political challenges through the interpretation of their own bills of rights.'In 2004, the High Court reached the stage of authorising the indefinite detention of a stateless person without judicial review or supervision.'Such detention could possibly be for life.'One of the four judges in the majority said the result was tragic, but without a bill of rights he could do no other.

A government which is less constrained by the Senate, the High Court and international tribunals is a government which risks thwarting more readily the rights and entitlements of minorities and those who hold an unpopular view of the true and

the good.'With party machines that enforce tighter discipline than in other countries such as the United States and the UK, we Australians then become more dependent on the magnanimity and vision of the prime minister and his advisers.'In the long term, this is dangerous for democracy.'John Howard rejects the need for a bill of rights in any form, pledging: [22]

This Government will do what is necessary to protect the Australian community, but we will do it in a way that does not diminish us as a community or as a nation. This means finding the right balance between the legitimate interests of the community on the one hand and individual civil rights on the other.

But why leave it to the legislature or the executive to decide in every instance if the treatment of the person accords with the basic rights and liberties which should be accorded by the state to all persons?'Should the popular legislators be able to reserve to themselves the opportunity to demonise a particular minority of person for popular reasons or for policy objectives not necessarily related to the common good even if they be popular?

Without a bill of rights, it is easier for our political leaders to make policy and conduct public debate as if rights are simply a convenient political construct to be cast aside at will by government enjoying popular support from an electorate not immediately attuned to the complexity of rights claims.

On 18 January 2006, the Minister for Immigration and Multicultural and Indigenous Affairs, Senator Amanda Vanstone, announced that "a vessel missing in the Torres Strait for several days, had been located in Cape York in Australia's far north." "The 43 West Papuans on the outrigger canoe came ashore at Mapoon, the community where Alwyn Peter had lived.'The minister's announcement reminded me of my first visit to Mapoon in 1985.'I came along the beach and saw the largest mango tree I had ever seen.'Mapoon had been established as a Presbyterian mission in the nineteenth century.'Under the tree I saw Jean Jimmy who had just become a great great grandmother.'As ever she was rolling a cigarette.'I admired the tree and asked if the missionaries had planted it." "No", she replied, "I planted this tree.'I am very blessed to sit under the shade of this tree and to see it bearing fruit."

The day after Minister Vanstone's announcement, the 43 were flown by RAAF Hercules across Australia and the Indian Ocean to Christmas Island where they were to be held in detention for processing.

Australia claims to honour the 1951 Convention Relating to Refugees.'In recent times Afghan and Iraqi asylum seekers arriving on boats were held in detention while their claims for refugee status were processed.'The government justified such long term detention, not just for health and security checks, on the basis that these people spent time in other countries en route where they could have obtained asylum.'The government also wanted to send a signal to people smugglers and those who would employ them.

The West Papuans now being detained on Christmas Island are a different case.'They have no access to people smugglers.'They have fled here directly.'Once their health and security status is established, we have no right to detain them further while their claims are processed.'Under Article 31 of the Refugee Convention, our government cannot impose penalties on these people for their arrival in Australia nor can it apply restrictions on their movements unless such restrictions are necessary. They should be treated in the same way as onshore asylum seekers who arrived with a visa.'Once they are known to be not a health or security risk and once

their identities are established, they should be released into the Australian community, regardless of their gender or age.'They should not be kept on Christmas Island.

In the public discussion about asylum seekers post-Tampa, we as a nation abandoned all talk of the rights of those arriving without a visa.'We had dulled our collective conscience to the extent that we accepted the utility and even the necessity of using unvisaed persons, even children, as a means to an end.'Our government detained them in places like Woomera in order to send a double signal - warning other asylum seekers to flee anywhere but here, and telling voters that the government was prepared to do whatever it took.

After my first visit to the Woomera Detention Centre in 2002, I went to Canberra to meet with Minister Ruddock.'One of my government contacts warned me that they were sick of the moral outrage from the churches and other advocacy groups.'I was urged to keep cool.'I kept cool until Easter that year.'I then wrote to the minister:[23]

My three hours in the detention centre on the evening of Good Friday convinced me that it was time to put the message to you very plainly despite its public unpopularity and despite your government's immunity to moral outrage: "Minister, this is no place for kids." When children end up in the sterile zone against the razor wire with tear gas and batons around them in Australia, it is time for all parties including the Commonwealth government to stop blaming others and to effect policy changes so that it can never happen again.

In the end, the government did apologise to the mother of the seven year old boy whose bruises I had seen after he had been hit with a baton and tear gas.'Finally government decided that a detention centre is no place for kids.

There was a broad coalition of community groups that contributed to this belated change of government policy.'When the rights of a despised minority are being trampled by government implementing a popular policy driven by fear, the enlargers are well placed to contribute to social and political change because their motivations are not purely political and because they see the contemporary political issues in a broader, even transcendental perspective.

5. REPUBLIC

Manning Clark loved Henry Lawson's poem *Sons of the South (A song of the Republic)*:[24]

Sons of the South, make choice between

(Sons of the South, choose true)

The Land of Morn, and the Land of E'en,

The Old Dead Tree and the Young Green Tree,

The Land that belongs to the lord and Queen,

And the Land that belongs to you.

I had the good fortune to be in Boston at Christmas time 2004 when our Governor General and Attorney General both made statements indicating their understanding that the Queen was our head of state.'Sir David Smith attempted to clarify the matter.'Some things become clearer from a distance.'Only in Australia could we seriously discuss whether someone was head of state when even he thought he was not.'The Governor General's website now carries the transcript of an interview with Greg Turnbull, including the chuckles:[25]

GT -Are you in fact our Head of State or in fact a representative of our Head of State?

MJ - (chuckles) Well, The Queen is the Monarch and I represent her, and I carry out all the functions of Head of State.

The identity of our head of state should be no chuckling matter.'After all Sir David will not be with us forever.'The 1999 referendum result showed that we are a nation of diverse groupings: monarchists, those who favour the status quo simply because "If it ain't broke, don't fix it", and republicans of all shapes and sizes.'The republicans cover a spectrum of views but can be placed in three camps: McGarvie minimalists, Malcolm Turnbull pragmatists, and Cleary/Mack direct electionists.'There is no shortcut to a republican consensus.'The received wisdom prior to the 1999 referendum was that it was not possible, politically or constitutionally, to graft an elected presidency on to the existing Australian system of government.'The Turnbull model with the resultant bells and whistles added by the 1998 Constitutional Convention was a compromise between involving the public in the mode of selection and maintaining the existing power relations between Prime Minister and Governor-General.'But this compromise fell between two stools.'It appealed neither to the direct electionists like Ted Mack and Phil Cleary nor to the minimal republicans like Richard McGarvie.

The overwhelming majority of Australians want to sever all links with the British crown.'In that sense, we are a nation of republicans.'Only 9% of those intending to vote "No" in the 1999 referendum said they liked having the Queen as our head of state when they were polled by AC Nielsen.'70 per cent of Australians want us to be a republic.

We need to revisit 1975 and see if changes can be made to the Australian constitutional arrangements so that we could safely advocate a directly elected president should that be the public's preferred option.'One theoretical possibility would be to take away the Senate's power to block supply, making the Senate in that regard more like the House of Lords and the Irish upper house.'But can you imagine trying to run a referendum campaign on the need to take away the Senate's power?'It would be turned into a referendum about the propriety of John Kerr's and Malcolm Fraser's actions in 1975.'State righters would run rampant exclaiming, "How dare you attempt to wind back the powers of the States house."

If the President is directly elected by the people, there has to be some symmetry between the mode of appointment and the mode of dismissal.'A directly elected President could be removable only for proven misbehaviour or incapacity established either before a court or else determined by impeachment proceedings involving both houses of parliament.'Given the mix of politics and law in any decision to sack a head of state, it makes sense to vest the power of termination in the Parliament with each house being required to play a role in the impeachment process.'One consequence of this constitutional symmetry would be that an elected John Kerr in a re-run of 1975 would be guaranteed absolute security of tenure throughout the

crisis.'There is no way that the Senate would vote to sack him.'He would be in a stronger position against the Prime Minister than if the Prime Minister were still able to contact the Palace and order dismissal.

If there were increased security of tenure for the President, there would be a need for better safeguards to avoid the questionable practices of Kerr in 1975 or to render those practices beyond reproach.'Three matters would need reform before there could be consideration of a directly elected president.'In 1975, Kerr consulted the Chief Justice despite the Prime Minister's expressed desire that he not do so.'He dismissed the Prime Minister without notice, having, of necessity, made the Leader of the Opposition more aware of his intended course of action than the Prime Minister.'He decided to grant a double dissolution of the Parliament on the advice of the new Prime Minister, Malcolm Fraser, who had no intention of proceeding with the Whitlam bills which had been blocked by the Senate.'These 21 bills related to issues such as health levies and State electoral redistributions to which the Coalition parties were opposed.'Sir David Smith has put a benign spin on this inclusion of the 21 bills claiming:[26]

[T]he Governor General had insisted that Fraser should list these twenty-one Whitlam bills in the dissolution proclamation. That was unprecedented, but it was done in fairness to Whitlam so that, should he win the election, he would be able to use the provisions of section 57 of the Constitution to hold a joint sitting to pass all of his government's blocked legislation.

If none of these bills had been listed, there is no way that any Prime Minister could have advised a double dissolution.'Kerr had already decided that the appropriate way to resolve the deadlock over supply was the dissolution of both houses with elections to follow for all positions.

If the reserve powers (including the power to dismiss a Prime Minister and commission a new Prime Minister, and of necessity without the advice and the consent of any Minister) are to be retained without being codified, the President needs to be able to consult with advisers who are not serving High Court judges.'There could be a Constitutional Council to advise the President or to certify his compliance with the terms of the Constitution.

The two most unsatisfactory aspects of Kerr's actions in 1975 were the privileged access Fraser had to Kerr's thinking while Whitlam was still Prime Minister, and Kerr's pre-emptive and unaccountable decision to act before supply ran out.'Kerr claimed he needed to keep Whitlam in the dark for fear that the Palace would become involved with Whitlam providing advice to the Queen for the termination of Kerr's commission.'That would not be a fear with an elected presidency subject to removal only by impeachment.'The perception of subterfuge could be overcome if the Constitution provided, "The president may exercise a power that was a reserve power of the Governor-General in accordance with the constitutional conventions relating to the exercise of that power, provided the President first publishes a proclamation of intention to exercise such a power after a period of at least two days."This way there would be no risk of a Prime Minister being ambushed and reduced risk that the Leader of the Opposition would be better informed than the Prime Minister.

Kerr's political strategy was posited on finding what he described as "a democratic and constitutional solution to the current crisis which will permit the people of Australia to decide as soon as possible what should be the outcome of the deadlock which developed over supply between the two Houses"[27].He could always

dissolve the House of Representatives on advice from a willing Prime Minister.'The Senate was a different matter.'Senators are elected for fixed six year terms.'The regular election for half the Senators can be held up to a year before the Senators' terms expire.'But the Senate can be dissolved only under the double dissolution procedure.'A double dissolution cannot occur within six months of the scheduled dissolution of the House of Representatives.'It can occur only if the House of Representatives has twice presented legislation to the Senate which has then twice failed to pass it.'In 1975, Fraser and Kerr used the coincidence that the Senate had rejected 21 bills unrelated to supply (bills unacceptable to the Coalition) as a pretext for dissolving the Senate when there was no intention or expectation that Fraser would proceed with those bills.'This improper use of the double dissolution procedure could be precluded if the President could grant the dissolution only on receipt of a request from the House of Representatives.'Such a request would never have been forthcoming in 1975.

The most likely contenders in future for the office of prime minister on both sides of our parliament (with the exception of Tony Abbott) are republicans.'While favouring a minimalist change to a republic, I concede the need for a broad range of options to be considered including a directly elected president.'I agree with the 2004 Senate Committee report which recommended an initial plebiscite on whether Australians would like to become a republic.'Presumably such a plebiscite would result in a vote for a republic, especially if there were a united stance by the new prime minister and leader of the opposition.'But I am now wary about the suggestion of a second plebiscite offering a cocktail of options.'It makes more sense to elect a Constitutional Convention whose members could consider the cocktail of options, with assistance from constitutional lawyers.'Should one model then emerge from the Convention as a clear favourite, with support from the prime minister and the leader of the opposition, it could then be submitted to the voters at referendum.'Should no one model emerge as a clear favourite, there may be a case for an additional plebiscite listing two or at most three options.

6. CONCLUSION

Concluding his six volume history, Manning Clark looked ahead to the last half of the twentieth century and observed: [28]

Restraints on human behaviour were thrown aside. Men and women walked naked on the beaches, the stage and the screen and they were not ashamed. Men and women no longer conceded to politicians, priests, parsons, professor, or presidents of the Returned Services' League the right to draw up codes of behaviour, or prescribe what could or could not be read. The people broke the Tablets of the Law. The people killed their gods. The people turned to the worship of the Golden Calf.

At the Sydney launch of this last volume of the History, he said, "The whole point of writing a history is to present the past as a book of wisdom for those now living; to increase the number of mourners and decrease the number of mockers; to increase the number of lovers and believers." [29]'Contemplating the challenges of race, religion, rights and the republic, we need to show more respect for the moral sensitivity and humane sentiments of those in our midst who boast neither political nor economic power, confident that the enlargers are present both in the Opera House and under the Coolabah tree at Bourke when we come to honour our dead.'Though it be easy to mock, we return home mourning, loving and believing.'Like Fred and Kerry and all others who have gone before us, we must

decide for ourselves whether this is to be "the land of the dreaming, the land of the Holy Spirit, the New Britannia, the Millennial Eden, or the new demesne for Mammon to infest." [30]

[1] C.M.H. Clark, *A History of Australia, Volume VI*, Melbourne University Press, 1987, p. 499

[2] Caroline Jones, *The Search for Meaning*, ABC Books, 1992, p. 6

[3] N. Pearson, "A Fair Place In Our Own Country: Indigenous Australians, Land Rights And The Australian Economy", Castan Public Lecture, Castan Centre For Human Rights Law, Monash University, June 2004

[4] C.M.H. Clark, *A History of Australia, Volume VI*, Melbourne University Press, 1987, p. 500

[5] M. Latham, *The Latham Diaries*, Melbourne University Press, 2005, p. 114

[6] Karen Armstrong, *The Spiral Staircase: A Memoir*, Harper Perrenial, 2005, pp. 135-6

[7] *ibid.*, p. 137

[8] Caroline Jones, *The Search for Meaning*, ABC Books, 1992, p.8

[9] F. Dostoevsky, *The Brothers Karamazov*, Heinemann, London, 1955, p. 250

[10] M Clark, *The Quest for Grace*, Viking, 1990, p. 221

[11] M.Clark, *Speaking out of Turn*, Melbourne University Press, 1997, p. 199

[12] *ibid.*, p. 109

[13] J. Howard, *Speech to the National Press Club*, Canberra, 13 March 2003

[14] 2002 CPD (HofR) 4798; 19 August 2002

[15] *Ibid.*

[16] 2002 CPD (HofR) 6398; 17 September 2002

[17] M. Clark, *Speaking out of Turn*, Melbourne University Press, 1997, p. 143

[18] Justice Paul Finn , *Rush v Commissioner of Police*, [2006] FCA 12 (23 January 2006)

[19] Hansard, *Legal and Constitutional Affairs Committee*, Australian Senate, 17 February 2006, p. 41

[20] ABC, *Australian Story*, Interview with Bob Myers, Program Transcript, 13 February 2006

[21] M. Clark, *A Historian's Apprenticeship*, Melbourne University Press, 1992, p. 81

[22] J. Howard, "A Sense of Balance: The Australian Achievement in 2006", Address to National Press Club, 25 January 2006

[23] Letter to P Ruddock, 2 April 2002

[24] Quoted at p. 493, C.M.H. Clark, *A History of Australia, Volume VI*, Melbourne University Press, 1987

[25] Transcript of Governor-General on Meet the Press, 29 May 2005

[26] D. Smith, *Head of State*, Macleay Press, 2005, p.258

[27] Governor-General's Statement of Reasons, Government House, 11 November 1975, reproduced as Appendix E in P Kelly, *November 1975*, Allen & Unwin, 1995, p. 346

[28] C.M.H. Clark, *A History of Australia, Volume VI*, Melbourne University Press, 1987, p. 500

[29] M. Clark, *Speaking out of Turn*, Melbourne University Press, 1997, p. 137

[30] C.M.H. Clark, *A History of Australia, Volume VI*, Melbourne University Press, 1987, pp.494

[31] 2003 CPD (HofR) 13404; 25 March 2003