



2003 Jessie Street Trust Annual Luncheon Address

Seeking International Truth Rather Than Domestic Repose After the Iraq War

Fr Frank Brennan SJ AO¹

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What a joy it is to be welcomed to country and to be welcomed to the mother of all Australian parliaments by an Aboriginal woman member of this parliament. Thank you, Linda Burney. Your presence and your role bespeak the maturing of a nation.

Jessie Street's entitled her biography *Truth or Repose*, recalling Emerson's words, "God offers to every mind its choice between truth or repose. Take which you please. You can never have both."²

I am honoured to join the galaxy of women social justice campaigners and the ubiquitous Justice Marcus Einfeld who have previously delivered the Jessie Street Lecture. Even Jessie who had such a capacity for socialising at all levels and with all types would have been a little surprised that a Jesuit priest would be asked to honour her memory. I understand that her jokes with Dr Evatt were not always based on an admiration and acceptance of the

¹ Father Frank Brennan SJ AO, a Jesuit priest and lawyer, is the Associate Director of Uniya, the Jesuit Social Justice Centre in Sydney. 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 latest book *Tampering with Asylum* will be published later this year.

He is an Officer of the Order of Australia (AO) for services to Aboriginal Australians, particularly as an advocate in the areas of law, social justice and reconciliation. In 1996, he and Pat Dodson shared the inaugural ACFOA Human Rights Award. In 1997, he was Rapporteur at the Australian Reconciliation Convention.

In 2002, he returned from 18 months in East Timor where he was the Director of the Jesuit Refugee Service. He was awarded the Humanitarian Overseas Service Medal for his work in East Timor and was a recipient of the Australian Centenary Medal in 2003 for his service with refugees and human rights work in the Asia Pacific region.

² Ralph Waldo Emerson, "Intellect" Essay XI, *Essays: First Series* (1841): "God offers to every mind its choice between truth and repose. Take which you please, – you can never have both. Between these, as a pendulum, man oscillates. He in whom the love of repose predominates, will accept the first creed, the first philosophy, the first political party he meets, – most likely, his father's. He gets rest, commodity, and reputation; but he shuts the door of truth. He in whom the love of truth predominates, will keep himself aloof from all moorings and afloat. He will abstain from dogmatism, and recognize all the opposite negations between which, as walls, his being is swung. He submits to the inconvenience of suspense and imperfect opinion, but he is a candidate for truth, as the other is not, and respects the highest law of his being."

papacy and Roman ways. But having officially witnessed the marriage of her charming and astute grand-daughter Sarah and even having participated in the baptism of a great grandchild at St Marks Darling Point with bronze Street plaques adorning the walls above the baptismal font, I am confident that Jessie would applaud the warming of ecumenical relations that have occurred even in Sydney. She may even take some pleasure in my presence on this podium today, musing on the state of a world that has brought Jessie and the Jesuits together in common cause.

The other night, I was taking in one of those delightful “Street views” of Sydney Harbour from Wolsley Road and Susie Rankine spoke to me with great enthusiasm, delight and affection about Jessie, the ever tolerant mother in law who always looked at the big picture, having indefatigable energy to send wool to Russia or to prepare for a delegation to the United States, while always assuring family members that all would be well and their domestic concerns would be readily resolved.

Jessie’s spirit lives not just amongst her extended family. Occasions such as this allow us to celebrate her spirit amongst us, inspiring us to appropriate her insights and passions to our contemporary situation. Given her commitment to peace and disarmament and the elimination of discrimination, she would have been working tirelessly at this time to agitate for a return to multilateralism in international relations and to call for a basic decency in the treatment of asylum seekers, at least ensuring that we do not discriminate against those who come without a visa, and measuring up to the principles and practices of other first world countries.

She was the only woman member of the Australian delegation to “the international conference of government representatives to consider postwar policies and plans”.³ Jessie enjoyed a correspondence with Eleanor Roosevelt and she was devastated by the death of FDR on April 12, 1945. She hailed him as “the guiding spirit and the driving force behind the conception of the United Nations”. She was filled with foreboding that the Truman presidency would not fulfil the international Roosevelt dream. In her biography *Truth or Repose* she wrote, “The basic principle” of the UN Charter “was the sovereign equality of all member nations, and the settlement of all disputes by peaceful means”. Though she had many friends in the United States, she was very critical of the post-Roosevelt administrations. Recalling her participation in the United Nations Conference of International Organisations in San Francisco, she wrote twenty years later:

Although the United States delegation solemnly pledged to honour the purposes and principles of the United Nations Charter when it became a member, three successive Governments have cynically betrayed these pledges. The postwar policies and performances of the United States is a grave reflection not only on their government, but on other governments impressed into following its policies. In spite of the United States pledge to respect the ‘independence of member nations’, practically every country of the world except the socialist countries is under United States pressure and is linked with the United States by some form of military treaty or monetary agreement. New maps as they are produced show a spreading rash of United States bases. It would appear as if the United States and their satellite governments have come to consider the United Nations charter as no more than a “scrap of paper”.⁴

The present state of our world after the war in Iraq, with Australia having been a member of the Coalition of the Willing, provides immediate challenges to us who seek a

³ Jessie Street, *Truth or Repose*, Australasian Book Society, Sydney 1966, p. 265

⁴ *Ibid*, p. 271

better life in an ordered world. The post-World War II world order is now up for renegotiation. Jessie would urge us to seek international truth rather than domestic repose.

In Washington and Baghdad, political leaders spent much of the last few months invoking the name "God" as if their actions were pre-ordained and justified. Such utterances confirm the prejudices of Australian humanitarian skeptics and call religious persons to a deeper reflectiveness about the relationship between divine presence and human action. Jessie's poetry reveals an abiding faith in God but she was not one to invoke God's name in defence of her political claims or allegiances.

Just 14 years since the end of the Cold War and 18 months since the destruction of the World Trade Centre, we are only beginning to find ways for building and keeping the peace in a New World order. We are citizens in a democratic nation that seeks to play its part beyond its own territorial borders. After 8 years of the Clinton presidency, this is the first time that the Republican Hawks have been in the ascendancy in Washington since the first Gulf War. These are very early days in the shaping of the New World order and institutions. There has been no equivalent moment since the death of Roosevelt. Back then, Australia had an unequivocal commitment to multilateralism and diplomacy. Dr Evatt was elected to preside over the UN General Assembly. Richard Woolcott, our last representative on the UN Security Council, has recently predicted that it will be a very long time before Australia takes a seat again at that table.

Sadly, Australia has been party to a rash new theory based on militarism and unilateralism. War is no longer the last resort. The UN is no longer the arbiter of justified force in the absence of direct aggression on a member state. Compelling evidence of threat and overwhelming prospect of better outcomes are no longer necessary preconditions for war when the national interest of the world's only superpower is equated with the common good of all. We need to discern new paths to peace honouring the ancient humane principle that the child on the Baghdad school bus and the woman in the Nauru detention centre be accorded the same dignity and place in the balance of events as the child on the Rose Bay School Bus and the woman in the Parramatta shopping centre. There can be no peace while the innocent, powerless Other is sacrificed for the sake of those privileged to be nationals or loved ones of the powerful.

Though there was spirited debate and cabinet resignations in the UK because of Mr Blair's ready membership of the Coalition of the Willing, Canberra compliance with prime ministerial directives was complete. It was very troubling to hear the mixed messages from Prime Minister John Howard and Mr Tony Abbott about the increased risks of terrorism to Australian citizens. Abbott, the Leader of the Government in the House, told Parliament, "There is the increased risk of terrorist attack here in Australia". Next day, the Prime Minister told us, "We haven't received any intelligence in recent times suggesting that there should be an increase in the level of security or threat alert." Regardless of who was right, their contradictory statements provided incontrovertible evidence that there had been minimal debate, discussion and discernment within our Cabinet and political party processes prior to making a commitment to war in such novel political circumstances. The thinking was done in Washington. We signed on, presuming that our national interest and the international common good would be served by Alliance compliance.

Though most Australians will want to support our troops when they are committed to battle, many of us feel manipulated when we are told for months that their engagement is hypothetical and the reason for their engagement is the destruction of weapons of mass destruction which could be unleashed within 45 minutes but which most probably do not exist. At a time of such flux when issues of such moment are being decided, Jessie Street stands as a beacon for us, reminding us that the resolution of these issues does not come down simply to supporting a Howard or a Crean.

We tend more to repose than to truth by committing ourselves to war without a clear rationale when all service chiefs who held the key command positions during the first Gulf War had questioned the wisdom of Australia's course. The Army's General Peter Gration had reconfirmed, "My fundamental judgment that it's wrong remains." Before the war began, he had said, "I have strong objections to the coming war as both unnecessary and likely to produce unpredictable and potentially disastrous consequences. The real threat from Iraq's weapons of mass destruction is much exaggerated and that threat can continue to be contained and deterred." The Air Force's Ray Funnell (who continues to serve on the government's Immigration Detention Advisory Group) said, "It's strategic stupidity on a monumental scale." He said the rationale for war was "weak" and the timing "inappropriate". The Navy's Admiral Mike Hudson said, "It's almost immoral." The day after President Bush proclaimed war, Hudson said, "I am deeply concerned that the aggressive manner of the United States, coercing others to join them in the coalition of the willing could irreparably damage the unity of the UN."

Before the war, RSL President, Major General Peter Phillips said, "We, like most Australians, are not yet entirely convinced that we have enough to justify a ground invasion. We're trying to look to the future and just the terrible aftermath that could come from a ground invasion. We'd be looking for some reassurance that this had been thought through and was manageable." After the war, Phillips repeated, "The reason we opposed the involvement of Australian troops was entirely about what would happen after this war." The time for hard thinking and hard work about a just peace for the world has barely begun. This is a noble and pressing task for those who find Jessie Street an inspiration.

Richard Woolcott who was Secretary of the Department of Foreign Affairs and Trade during the first Gulf War predicted before this most recent engagement that "The US policy of removing or destroying Saddam Hussein and replacing his government with a pro-American democratic administration ...is not a policy that is likely to attract support throughout South East Asia". He was right. He doubted "whether it would be in Australia's long-term interests, one of which is our standing in our part of the world, to commit Australian ground forces far from our soil".⁵ Just this week, he was telling the Australian Institute of International Affairs that Australia needs to strike a more appropriate balance between the US alliance and engagement in the region. He has seen Australia go from being the odd man out in the region to the odd man in during the early 1990s to once again being the odd man out. But the situation is now more grave. Unlike the US and the UK, we have immediate neighbours, Indonesia, Malaysia and Brunei who have Muslim majorities. We have portrayed ourselves as the deputy sheriff to the great western Christian superpower that invokes God in Christian dress whenever the stars and stripes are unfurled on the battlefield. Our deputy sheriff status in the region is no longer a matter of semantics.

⁵ R Woolcott, *The Hot Seat*, HarperCollins, 2003, pp 300-1

I have just returned from the Thai-Burma border. I would like to be in a position to offer inquirers in Asia a truthful explanation as to why we went to war. Was it because of weapons of mass destruction? After all that is what we were told before the war. Now Washington tells us it was only the “bureaucratic reason”, not one of the substantive reasons, let alone the primary justification. Was it to liberate the people of Iraq? That is what the troops were told on their return. Was it to set down a new game plan for the Middle East? That is what we are now hearing from Washington. No doubt, there was a mixture of reasons, and we are always told not to mention the oil. But for Australia to commit troops so far outside its region, without UN endorsement, and in response to a novel US theory of pre-emptive strike makes us appear a confused, uncritical deputy sheriff in the region.

Jessie Street would have insisted that we have a greater capacity for civil discourse, regardless of domestic party politics, about what is in the national interest and about what is the correct international political morality for armed intervention. One could be forgiven for thinking that the real debate and discernment now goes on inside the US administration. It is simply assumed that Australia’s national interest and the new international political morality are fulfilled jointly and effortlessly by simply signing up to any Coalition of the Willing when the phone call comes. Until the call comes, the Australian public is to be assured that the matter is hypothetical and there is no need for engaged discussion at the Australian end. The need for detailed consideration is so modest that Cabinet members of good will cannot even agree whether participation in the war will increase the risks to our own security.

Those of us who opposed our nation’s involvement in the war feel a deep sense of shame that it came to this with such little public agitation. Democracy was reduced to the simplistic prime ministerial declaration to Parliament, “You have a right to protest, to dissent and to register your concern, but direct those protests to the government, to me, not to those who are overseas on our behalf”, followed by the contradictory declaration to the protesters who did just that next day outside the Lodge that they were entitled to their opinion while the Prime Minister was entitled to his, with the rider later in the day, “You have a right to protest but you have to understand that the stupidity or otherwise of individual acts of protest will be judged by your fellow Australians accordingly”.

Those who were uncertain about our involvement in the war are besieged by a profound ambiguity. Even some of those who supported the war effort have a regretful righteousness - a sense of powerlessness that we could do no other in the face of evil than to participate in evil, hoping that greater evil could be avoided.

The supporters were presumably convinced that there were weapons of mass destruction on hand to Saddam Hussein. Jessie Street reminds us that the control of weapons of mass destruction has been a concern of the UN from its inception. In *Truth or Repose*, she wrote, “The United Nations at its first General Assembly in 1946 and at later Assemblies, adopted unanimously resolutions for the banning of atomic bombs and all weapons of mass destruction. The United States, the United Kingdom and France supported this and subsequent resolutions, but on one pretext or another refuse to implement it, and those in control of the United States openly boast of the bigger and better bombs which they are proliferating.”⁶

⁶ Jessie Street, *Truth or Repose*, Australasian Book Society, Sydney 1966, p. 302

Absent such weapons in contemporary Iraq, it is now said that we wanted to liberate the Iraqis from an oppressive dictator. That claim would ring more true if we had not been committed to keeping those who fled the dictator in detention in remote mainland locations or out in the middle of the Pacific these last three years.

Over 4,000 Iraqis have arrived in Australia since 1999 by boat, without visas, seeking protection from persecution. 97% of them have been found to be refugees deserving our protection. 100% of them, whether they be adults or children, whatever the trauma they have fled, have been held in detention for months on end while their claims were processed. Those who have set out by boat from Indonesia seeking asylum since Tampa have been forcibly transported to Pacific locations. Iraqi women and children are still being held in detention in Nauru while their fathers and husbands are living lawfully in Australia as refugees. Our government which has transported them to such remote detention was party to the bombing of their relatives in Baghdad, all in the name of Australia's national interest and making the world a safer and better place.

For a year, I have been visiting immigration detention centres such as Woomera, Port Hedland and Baxter every month. Every two months I go to Parliament House Canberra and meet with the political architects of this policy, thinking there must be a better way than rhetorical stand-offs in the media. The politicians are as convinced of their decency in implementing the policy as am I in decrying it.

After the 2002 Christmas fires, one detainee who offered to assist police with their inquiries was given a guarantee by senior immigration officials in Canberra. He would not have to return to a detention centre. He was moved to a motel for nine days and provided information to the police. The guarantee from Canberra was then withdrawn. He had no legal remedy and no political leverage. I thought the treatment he received was unAustralian. But on reflection, I concluded in the wake of *Tampa* that the treatment was very Australian. Asylum seekers who have arrived in Australia without visas have been used by government as a means to an end. Their detention has been used to transmit a double signal - warning other asylum seekers to take a detour to any other country but ours and luring those voters who appreciate a government prepared to take a tough stand against the one who is "other".

This month, I met with a number of Iranians at Port Hedland who are adamant that they will not be accepting the government's offer of voluntary return to Iran. They agree with the government's own advice that though there be an Memorandum of Understanding with the Government of the Islamic Republic of Iran for the forcible return of detainees in Australia, "This consensus does not, however, automatically translate into cooperation by all the relevant ministries" in Iran. They quote not only the precedent of Switzerland, but also Poland. The Swiss were assured by the Iranian embassy that 100 forced returns would occur. Only one followed. Poland had a similar experience they tell me.

They are bemused that a member of the Coalition of the Willing is offering special work and holiday visas to a country which now heads the list of the Axis of Evil. They doubt that such a restrictive bonus will be sufficient to interest Teheran in a special deal for Australia, given the thousands of disaffected Iranians in Europe.

Our government has said that "the key to ensuring voluntary departure lies in the creation of a credible threat of involuntary removal". Before our government forcibly removes

people to Iran, it will be necessary to deal with all complaints which could now be laid with the UN Committee Against Torture under Article 3 of the Convention Against Torture precluding refoulement for those facing a risk of torture or death on return.

Unfortunately the government has failed to act on the 2001 Senate recommendation:

That the Attorney-General's Department, in conjunction with DIMA, examine the most appropriate means by which Australia's laws could be amended so as to explicitly incorporate the non-refoulement obligations of CAT and ICCPR in domestic law.

This Senate recommendation reflects the earlier recommendation of the UN Committee Against Torture that Australia "consider the desirability of providing a mechanism for independent review of ministerial decisions in respect of cases coming under Article 3 of the Convention". In the continuing absence of any independent review at the domestic level, it would be unconscionable for Australia forcibly to return persons to a country which is a member of the Axis of Evil until all international procedures have been exhausted once complaints are lodged against refoulement under the relevant international instruments. I am confident that Jessie Street would insist that any "credible threat of involuntary removal" would have to accommodate these concerns.

Last year, the UN Working Group on Mandatory Detention completed a visit to Australian immigration detention facilities and in their report they stated:

During talks conducted with government officials it became obvious that one of the goals of the system of mandatory detention and the way it is implemented is to discourage would-be immigrants from entering Australia without a valid visa.

The government responded immediately:

This is an incorrect assumption. Detention is for the purpose of ensuring unauthorised arrivals are available for the processing of any claims to stay in Australia, for their identity to be established and for appropriate clearances for health, character and security to be obtained. In addition, detention ensures that people are available for removal if they have no grounds to remain in Australia.

Detention during processing of claims has been shown not to be a deterrent to unlawful arrivals. During the last ten years, boat people have still come in waves despite the existence of mandatory detention. Detention, though dreadful, is still better than the depredations of Saddam Hussein. Given that the government for constitutional reasons insists that detention is not punitive nor designed as a deterrent, why have it after the initial health, security and identity phase?

The government continues to claim it is needed so that those denied refugee status or humanitarian residence can be available for removal if they fail in their refugee claim. But detention is not imposed on those persons who apply for asylum in Australia once their short term visitor visas have expired. And those in detention are far more likely to be found to be refugees because more of them in fact are refugees. The detention regime for unlawful entrants has impacted most on Afghans, Iraqis and Iranians these last two years. And the overwhelming proportion of the Afghans and Iraqis have been proved to be refugees.

So then is there any justification for the automatic detention of unlawful non-citizens arriving in Australia claiming asylum?

The existence of a comprehensive visa regime, carrier liability for the carriage of undocumented passengers, and airline liaison officers posted at major airports together with Australia's geographic isolation combine to guarantee that no bona fide asylum seeker could turn up in Australia legally and honestly primarily for the purpose of seeking asylum. A lawful asylum seeker would have to come here for another purpose and then make the claim for asylum. If the applicant did not come with that other purpose, it would be necessary to fabricate some other purpose. There is only one conceivable case of the totally honest, legal asylum seeker - the person who came to Australia with a visa for a lawful and bona fide purpose, with no intention of claiming asylum, but who while in Australia learnt of a change in circumstances back home necessitating the lodgment of an asylum claim. Putting this one case to the side, we need to consider the morality or utility (and not just the political popularity) of treating so differently the unlawful non-citizen who comes transparently claiming that the motivation for the travel was the claim of asylum, over against the lawful non-citizen who claims asylum having gained admission as a tourist, a student, or a business migrant.

Back in 1993 it was none other than Philip Ruddock himself (while in Opposition) who highlighted the flimsiness of the distinction:

In relation to the difference between visa-ed entrants who breach our law by crossing our border and those who breach our law by ignoring the conditions of a visa - those minor distinctions - once you have identified a person and carried out a health check and a character check, how can we characterise them as being different?

Mr Ruddock did not receive a credible answer, except to be told the very obvious: "If people offshore walked into an Australian embassy and said, 'I want a visa to go to Australia to seek asylum' - they would not get it." Ten years later as minister, he has still not provided a credible answer himself.

Though mandatory detention of unlawful non-citizens had been on the statute books for a decade, it did not in fact deter the stream of boat people that came from Afghanistan and Iraq in 2001. Considering all other push and pull factors, detention for the period of processing claims is not in fact a deterrent.

The government used to claim that detention was helpful for the processing of claims. But the discrepancies in the appeal rates before the Refugee Review Tribunal indicate that the primary decision maker is more likely to get the decision wrong if the applicant is in detention, rather than living in the community. Also the decision maker is very likely to get the decision wrong if the applicant be an Afghan or Iraqi being held in detention. Detention in Woomera has been a disincentive rather than incentive to good decision making. Those in detention are six times more likely than others to have their rejection by DIMIA reversed by the Refugee Review Tribunal.

What then is the rationale for such detention, especially when it is so expensive? The only possible advantage is that this small cohort of unlawful non-citizens who are ultimately rejected as refugees are on hand for removal at the end of the process. But with 60,000 overstayers in the country each year and only 177 removals of boat people in 2000-1 and 308 removals in 2001-2, you have to wonder about the cost and the proportionality of the government's response. There were 10,894 removals of persons who had no authority to remain in Australia in 2001-2. If a handful of those 308 boat people had slipped through the

net because they were not held in detention from go to woe on arrival in Australia, there would not have been any appreciable dint made in the government's removal program.

Meanwhile we continue to hold people, including children, in these remote detention centres and there is not even agreement about which police force is to investigate complaints in these facilities. As recently as 8 May, Minister Ruddock reported:

My department continues to accord high priority to, and is actively involved in, the negotiations of Memoranda of Understanding (MOUs) with State and Federal police services for the provision of policing services to immigration detention centres. However progress has been delayed in relation to these negotiations due to jurisdictional issues. Negotiations during 2002 were largely with the AFP, New South Wales Police and South Australian Police. The continuation of these negotiations remains a high priority for 2003. Discussions with the Western Australian Police Service will also recommence.

He noted that "ongoing differences have made it difficult to finalise arrangements". In the meantime, "I would expect that...State police forces would undertake what might be described as normal community policing within detention centres."

Any country that keeps children in detention in remote facilities without a coherent rationale, having admitted that there is not even a clear line of authority for policing and child protection, will in time be found to be guilty of ongoing child abuse. Jessie Street would have protested loudly, saying, "Stop persecuting the children without cause. Design a policy that does not do so much damage to children."

Who would have thought we could live in an Australia where innocent children are held in detention, where discriminatory detention of unvisaed asylum seekers would be popular and without a coherent rationale, where it could be doubted that our leaders should first convince us that going to war was in our national interest and not just in the interests of the US alliance, and where it could be claimed that pre-emptive strikes were justified on the basis that weapons of mass destruction exist when there was no proof they did.

Whether you are satisfied or dissatisfied with Australia's present policy towards asylum seekers, the international order and the justification for war, you can take heart from Jessie's observation:

I do believe if people dedicate themselves to understanding the truth, if they courageously accept what they learn and keep their minds open, the scales will drop from their eyes and they will know the truth, and the path they must follow will show clearly before them. There is no truer saying than 'The Truth shall set you free', even if it does make you unpopular.⁷

In assessing our national interest and in designing a new political morality for a world order dominated by just one superpower, let's give greater emphasis to liberty, multilateralism and diplomacy rather than detention, US unilateralism and militarism. Jessie would agree that this is no time for repose.

⁷ Ibid., p. 36