



2014 City of Sydney Peace Prize Lecture

Without justice there will not be peace.

Julian Burnside AO QC

Speech delivered at Sydney Town Hall on Wednesday 5 November 2014

Despite the wealth of this country there are many injustices – needless, pointless injustices.

The point of my talk tonight – my plea to you all - is simple: do not tolerate injustice – speak against injustice – do not collaborate with those who inflict injustice.

It will not surprise anyone to know that I will focus tonight on injustice to refugees. It is one of the great, wilful injustices which runs like a poison in the Australian body politic. Not all refugees. Just a select group: the boat people.

But injustice to boat people is not the only available example. Most marginalised groups in Australian society will experience injustice in ways most of us are spared: the homeless, the elderly, those with a mental disability, the original inhabitants of this vast country.

The reason for injustices like these is not hard to find, but it is a paradox. Most Australians, if asked, would say that human rights are important. But we knew about the Stolen Generations for decades, and accepted the facts without protest.

We knew for years that two Australians, David Hicks and Mamdouh Habib, were being held in shocking conditions in Guantanamo Bay by our ally, the USA, without charge and without trial. For years very few Australians seemed concerned by this.

We know – or perhaps we choose not to know – that there are about 100,000 homeless people in Australia. Most of us do not pause to wonder what that is like.

In early 2010 Prime Minister Kevin Rudd announced, peremptorily, that Australia would not have a Bill of Rights. This, notwithstanding that the Brennan enquiry had recommended that we should have one. Rudd's rejection of a Bill of Rights caused very little concern in the community. Not only is Australia the only Western democracy not to have coherent human rights protection, we are the only country in the world which has turned its mind to a Bill of Rights in the 21st century and decided *not* to have one.

We have known for years that people fleeing persecution, who risk their lives at sea to get here and ask for protection, are locked up for months or years despite the fact that they have committed no offence.

The low-point of our attitude to asylum seekers (so far, at least) was reached during the 2013 Federal election. Both major parties courted political favour by promising cruelty to boat people. It is a measure of our times that promising cruelty to a group of human



beings could attract political support: it is a fair bet that promising cruelty to animals would not have worked in quite the same way.

All these things are impossible to square with a genuine belief that human rights matter. The truth, I suspect, is this: when most Australians say that human rights matter, what they really mean is that *their* human rights matter; that the human rights of their family and friends and neighbours matter. But when it comes to those seen as “other”: those who are feared or despised or otherwise too different from us – their human rights do not matter in the same way.

Ultimately, our attitude to all these people – our ability to be indifferent to their plight – rests on a belief that their humanity is not of the same quality as our own. The ease with which this position is adopted is apt to conceal how profoundly wrong and dangerous it is.

What many Australians, and most of our politicians, apparently do not understand is that you do not have human rights because you are white or Christian or pleasant or rich, but because you are human. This inability to understand the true foundation of human rights probably explains Australia’s incoherent response to human rights abuses.

It probably explains Australia’s ambivalent attitude to the equal treatment of women. Until recently, women were an underclass: a group whose humanity was not quite equal to men’s. It is a matter of living memory when married women could not hold jobs in some government instrumentalities and could not get a home loan. Things have improved since the 1960s but, despite the efforts of the feminists since then, women are still not accorded the equal status to which they are undoubtedly entitled. In July this year Joy McCann and Janet Wilson reported that:

- Across Australia, women are still significantly under-represented in parliament and executive government, comprising less than one-third of all parliamentarians and one-fifth of all ministers.
- Internationally, Australia’s ranking for women in national government continues to decline when compared with other countries.

If the position were reversed, the cries of “injustice” would be deafening. But look at the make-up of the current Federal Cabinet, and note how it is defended against criticism.

Before I turn to my major theme, let me make one thing clear: the views I express tonight are not – emphatically not – a reflection of political partisanship. I do not adhere to any political party (despite what some of my critics seem to think). While I hesitate to say it on the day of Gough Whitlam’s memorial service, I did not vote for him. But I admired him, and my admiration has grown over the years as the memory of his administrative shortcomings is overshadowed by the scope of his vision. I can say, without the burden of partisan connection, that Whitlam was a Colossus, but a survey of today’s political landscape shows that we are led by midgets. “Led” may not be the right word. We have not seen a political leader in Australia for decades.

After Malcolm Fraser engineered the dismissal of the Whitlam government, he faced the problem of refugees fleeing Vietnam and Cambodia. He thought that, as Australia had



been part of the problem which caused them to flee, it should be part of the solution. He wanted to bring them to Australia. But they were fleeing a Communist regime, and Whitlam was at first not inclined to agree: he was famously blunt on the question. After all, Labor was a party of the Left back then, and people fleeing Communism would not be inclined to support a party of the Left. But he eventually agreed on a bi-partisan response and Australia resettled about 100,000 Indo-Chinese boat people over the course of a few years. We benefitted; they benefitted; the sky did not fall in.

These days, there are three streams of refugees who come to Australia.

First, those who come in the off-shore resettlement programme. Each year we select people held in refugee camps in other countries and bring them to Australia. It is a fine and noble thing. Not every country does it. It is something we can be proud of.

Second, there are people who come here by aeroplane. To be a “plane person” you have to be able to get a passport from your own country and a visa to Australia. This is easier said than done. A stateless person can’t get a passport at all, because no country recognizes them as its citizen. Persecuted minorities often can’t get a passport: just another aspect of government persecution. But if you are lucky, if you can get a passport and a visa to Australia (for tourism, business or study etc.) then you will be able to board a plane. And when you clear passport control in Australia you can apply for protection. When your initial visa runs out, you will get a bridging visa to tide you over until your refugee claim is eventually decided.

But if you can’t get a passport, or if you can’t get a visa to come to Australia, then you have no means of escape except by getting on a people-smuggler’s boat.

Australia’s response to these groups is interesting – but also puzzling. Many people are unaware of our off-shore resettlement program. Most people are entirely untroubled by the aeroplane people – thousands of them – living quietly in the community on bridging visas. Most people seem deeply concerned about boat people. They have been induced to see boat people as a threat.

Australians have a deep concern about boat people: a concern which stands trembling at the frontier which paranoia shares with delusion. Boat people who manage to get to Australia are mistreated in every possible way.

It started in August 2001. John Howard was looking for an opportunity to take a stand against the arrival of boat people. By the middle of 2001, the arrival rate of boat people was about 4,000 people per year. This is a trivial number by any measure. Our migration intake is something like 200,000 people each year.

But Howard was aware that Pauline Hanson’s One Nation Party was poaching Liberal supporters and he realized that a tough response to boat people could work politically.

****On the 26th August, 2001 The Palapa (a small, dilapidated boat carrying Afghan Hazara asylum seekers) was heading across the Indian Ocean from Indonesia towards Christmas Island. The boat began to disintegrate. A Norwegian cargo vessel, the Tampa, was asked by Australia to go to the aid of the Palapa. It did. Captain Arne Rinnan thought that the boat might be carrying 40 or 50 people. In fact, 438 people**



clambered up the rope ladder from the disintegrating Palapa onto the steel deck of the Tampa.

A number of the people rescued by Tampa were in weakened states of health and the Tampa was licensed to carry just 50 people. It headed in the direction of Christmas Island so it could put the asylum seekers ashore.

The Howard Government ordered the Tampa not to enter Australian waters. The Captain of the Tampa defied the order and steamed into Australian territorial waters off Christmas Island, and into Australian history. The Howard Government sent out the SAS, who took command of the bridge at gunpoint. The “Tampa episode” had begun.**

When John Howard went into the House of Representatives to give a speech explaining his stance on Tampa he was approached in the lobby by Jackie Kelly, the Liberal MP for Lindsay in Western Sydney. She explained to him that she was losing supporters to One Nation. Howard is reported to have waved his Tampa speech at her and said “Don’t worry, this will fix it”.

**In the meantime, litigation had begun in the Federal Court of Australia to try and resolve the impasse. Here were 438 rescued Afghans being held hostage on the steel deck of a ship in the tropical sun. Litigation began on the evening of Friday, 30th August, 2001. Counsel for the Government asked that the trial of the action begin the next day. The trial started on Saturday and ran five days. Justice North reserved his decision on Wednesday 5 September.

He delivered judgment at 2.15 pm (Melbourne time) on the 11th September, 2001. Just hours later, the attack on America happened and the world changed.

Suddenly there were no Muslims, just Muslim terrorists. Suddenly, there were not boat people but Muslim boat people; suddenly, there were not terrified Hazaras fleeing the Taliban but suspected Muslim terrorists.

This raises a question about the unintended consequences of some of our anti-terror legislation. In short, is the price worth the cost?

Talk of terrorism is now always talk of Islamic terrorism. The careless public, worried by ambiguous government messages, inflamed by talkback radio hosts, think all terrorists are Muslims therefore all Muslims are terrorists. The premise is wrong – remember Northern Ireland; remember the Red Brigade in Germany, remember Gujarat Province in India, remember the Gunpowder Plot.

The message is profoundly foolish and it is profoundly dangerous. Almost all Muslims deplore terrorism, nevertheless the threat of terrorism – statistically minimal though it is – has been used by Governments here and overseas to justify dramatic restrictions of basic democratic freedoms.

What the public overlook is that most refugees are fleeing the same extremists we fear.

But the politicians recognise that you can gain political support by making the public think you are protecting them from a great threat. The fear of terrorism can be a vote-winner; exaggerating the risk of terrorism generates political advantage.**



In response to Tampa and September 11, the Howard Government PR machine started describing boat people as “illegals” and “queue-jumpers”. Later that year, the false suggestion was put forward that one group of boat people had thrown their children overboard.

Australia had entered a new stage of demonising boat people. In the wake of the Tampa episode, Australia reached an arrangement with the Government of Nauru to warehouse boat people there, with the promise that they would “never be settled in Australia”.

The history of the Pacific Solution is well-known. By the time Kevin Rudd’s Labor Party was elected to office in late 2007, there were virtually no refugee boats arriving in Australia. While it is true that the Rudd Government introduced sweeping reforms to the treatment of asylum seekers in July 2008, in retrospect it is difficult not to see it as a cynical nod to that group of Australians who thought that mistreating asylum seekers was a bad idea: at the time of the Rudd reforms, in which he promised to treat boat people decently, the fact is that there were no boat people coming. The promise amounted to nothing more than saying that “as long as you aren’t coming here we’ll promise to treat you decently”.

Some time later, Tony Abbott took over leadership of the Coalition, and started criticising the Rudd government for the fact that refugee boats were reaching Australia. Rudd changed his stance and launched a ferocious attack on people smugglers. He seems to have forgotten that his moral hero, Dietrich Bonhoeffer, was also a people smuggler (albeit a goodhearted one).

It is true that refugee boats had started arriving again; it is true that boat people arrived during the Rudd-Gillard-Rudd Prime Ministership. It is a quite separate question whether we should be concerned about the arrival of boat people: more than 90% of them turn out, on assessment by us, to be refugees legally entitled to protection.

It is not hard to make the argument that we are improved as a country if we treat people decently who have the courage and the initiative to risk their lives escaping persecution. It is very difficult to make the argument that we are improved as a country if we are deliberately cruel to innocent people.

“Stop the boats” has become the mantra by which our government would be judged. Of course, the boats have not stopped setting out, so “stop the boats” came to mean “stop the boats arriving”. Morrison and Abbott are thrilled to be able to tell us that they have stopped the boats. But even if it is gratifying to say that you have achieved a three word slogan, it is not self-evident that the endeavour should be hailed a success.

Stopping refugee boats arriving is not a self-evident good. It might stop people drowning inconveniently in view of Australians at Christmas Island. But if they do not get on a boat and are, instead, killed by the Taliban, they are just as dead as if they drowned. The real difference is that our conscience is not troubled by their un-noted death somewhere else.

It is worth remembering that boat people are, by definition, people with enough initiative to take steps to escape persecution, and enough courage to risk their lives at



sea. And they are fleeing the same extremists we are fighting in the Middle East. So what's not to like about them? Stopping the boats prevents our society from receiving people who are brave and determined.

The largest number of boat people ever to arrive in Australia in modern times came in 2012, when a total of just over 24,000 people arrived on our shores seeking asylum. No matter how you look at it, it's hard to see this as a big number. Our average annual intake of permanent new migrants is about 200,000 a year; the average number of people who arrive in Australia carrying passports and visas is between four and five million per year – mostly for tourism, business or study.

These comparisons are important. Initially, the politicians spoke of boat people as a problem of "border control". If five million people come into Australia each year with visas, the arrival of 24,000 people without visas represents a "failure" of border control of less than one-half of 1%.

When I was at school, a score of 99.5% was quite a good result. But the Coalition repeatedly criticised it as a "failure of border control".

The Coalition persisted in calling boat people "illegals" and "queue-jumpers". When it won office in September 2013, the Department was renamed the "Department of Immigration and Border Protection". The obvious dog-whistle message was that these people are criminals from whom we need to be protected.

Labor never denounced these things as false: neither in opposition nor in government has Labor stated authoritatively that boat people are not "illegal"; that they commit no offence by coming here the way they do to seek protection for persecution; that they are not a danger to us; that they are escaping the same extremists we are fighting in the Middle-East and that there is no queue.

It is perhaps the greatest failure of democracy in Australian history that Labor has never contradicted the Coalition's dishonest message about asylum seekers.

The Coalition call them illegal: it is a lie.

The Coalition call them queue-jumpers: it is a lie.

The Coalition suggest that we need to be protected from them: it is a lie.

When he became Minister for Immigration, Scott Morrison ordered the Department to refer to Irregular Maritime Arrivals as "Illegal Maritime Arrivals". It is a lie.

I was recently given a copy of a letter signed by Tony Abbott, written to a voter in his constituency. It referred to boat people as "illegal" no fewer than 6 times in one page. Six lies.

The most depressing thing is that the Coalition's lies have seduced more than half the country to see boat people as criminals we need to be protected from, and Labor has collaborated in the lies: it has never stepped forward publicly and contradicted the Coalition's lies about boat people.

When boat people arrive at Christmas Island, they have typically spent eight or 10 days on a rickety boat. They have typically come from landlocked countries and have



typically never spent time on the ocean. Typically, they have had not enough to eat and not enough to drink. Typically, they have had no opportunity to wash or to change their clothes. Typically, they arrive distressed, frightened and wearing clothes caked in their own excrement.

They are not allowed to shower or to change their clothes before they are interviewed by a member of the Immigration Department. It is difficult to think of any decent justification for subjecting them to that humiliation.

When they arrive, any medical appliances they have will be confiscated and not returned: spectacles, hearing aids, false teeth, prosthetic limbs, are all confiscated. If they have any medications with them, those medications are confiscated and not returned. According to doctors on Christmas Island, one person has a fulltime job of sitting in front of a bin popping pills out of blister packs for later destruction.

If they have any medical documentation with them, it is confiscated and not returned. The result of all of this is that people with chronic health problems find themselves denied any effective treatment. The results can be very distressing. For example: a doctor who worked on Christmas Island told me of a woman who had been detained there for some weeks and who was generally regarded as psychotic. Her behaviour was highly erratic for reasons that no-one understood. The consultation with this woman was very difficult because, although the doctor and the patient were sitting across a table from each other, the interpreter joined them by telephone from Sydney. Eventually, the doctor worked out that the problem was that the woman was incontinent of urine. She could not leave her cabin without urine running down her leg. It was driving her mad. When the doctor worked out that this was the cause of the problem, she asked the Department to provide incontinence pads. The Department's initial response was "we don't do those". The doctor insisted. The Department relented and provided four incontinence pads per day: not enough, so that the woman needs to queue for more but the incontinence pads made a profound difference to her mood and behaviour.

In February 2014 Reza Barati was killed on Manus Island. Initially, Australia said that he had escaped from the detention centre and was killed outside the detention centre. Soon it became clear that he was killed inside the detention centre. It took nearly five months before anyone was charged with the murder of Reza Barati. Nobody has yet been brought to court.

Just a couple of weeks after Reza Barati was killed, I received a sworn statement from an eyewitness. The statement included the following:

"J ... is a local who worked for the Salvation Army. ... He was holding a large wooden stick. It was about a metre and a half long ... it had two nails in the wood. The nails were sticking out ...

When Reza came up the stairs, J ... was at the top of the stairs waiting for him. J ... said 'fuck you motherfucker' J ... then swung back behind his shoulder with the stick and took a big swing at Raisa, hitting him on top of the head.



J ... screamed again at Reza and hit him again on the head. Reza then fell on the floor ...

I could see a lot of blood coming out of his head, on his forehead, running down his face. His blood is still there on the ground. He was still alive at this stage.

About 10 or 15 guards from G4S came up the stairs. Two of them were Australians. The rest were PNG locals. I know who they are. I can identify them by their face. They started kicking Reza in his head and stomach with their boots.

Reza was on the ground trying to defend himself. He put his arms up to cover his head but they were still kicking.

There was one local ... I recognized him ... he picked up a big rock ... he lifted the rock above his head and threw it down hard on top of Reza's head. At this time, Reza passed away.

One of the locals came and hit him in his leg very hard ... but Reza did not feel it. This is how I know he was dead.

After that, as the guards came past him, they kicked his dead body on the ground ...

It is difficult to understand why nobody has yet faced a court and been convicted of the murder of Reza Barati. I understand that various witnesses to the killing have been offered the opportunity of being removed from Manus and brought to Australia, on conditions that they withdraw any witness statements they have made.

Just as a person's character is judged by their conduct, so a country's character is judged by its conduct. Australia is now judged overseas by its behaviour as cruel and selfish. We treat frightened, innocent people as criminals. It is a profound injustice.

We are a nation struggling with its fears, and we will not find peace until we see past the lies of politicians and see the truth:

boat people are not illegal; they are not criminals;

we do not need to be protected from them;

we need to recognise that our politicians have persuaded us to tolerate – even to reward – cruelty which is utterly alien to our character: they have persuaded us to betray the true character of the country.

**Another, related, tranche of injustice currently disfigures our country. Politicians have set out to make us anxious about National Security. They have had generous assistance from the Press.

In the wake of the September 11 attack on America, Australia introduced some of the most draconian laws ever seen, supported by the idea that the laws would make us safer. Whether we are safer or not is difficult to judge. Since the laws were introduced substantially for their preventive effect, we can only speculate about what might have happened if the laws were not in place.



Our response to the threat of terrorism has been little short of hysterical. Injury or death in Australia as a result of a terrorist act is incredibly rare. The uprising at the Eureka Stockade in 1854 resulted in 27 deaths. By any standards, it was an act of terrorism. In the 160 years since Eureka, there have been just a handful of deaths from terrorist acts in Australia: nothing like 27. Nevertheless, we have passed a series of increasingly draconian laws for the avowed purpose of preventing terrorism. A person in Australia is more likely to die by falling off a ladder or being struck by lightning than by a terrorist act.

In broadest outline, the new laws gave extensive new powers to ASIO to limit people's rights by reference to Australia's national security interests, and allows for control orders and preventive detention.**

ASIO has power to perform security assessments. An adverse security assessment from ASIO can result in a person's passport being cancelled, or their job application being refused, or (for non-citizens) a visa being refused or cancelled. In those circumstances, getting access to the material which provided the foundation for ASIO's assessment may prove difficult or impossible.

Cancellation of a passport following an adverse ASIO security assessment may be challenged in the Administrative Appeals Tribunal (AAT). The AAT Act contains provisions enabling the Attorney-General to grant a certificate which, in substance, creates the conditions for serious injustice.

An Australian citizen discovered that his passport had been cancelled. The reason was that ASIO had assessed him adversely. He applied to the Administrative Appeals Tribunal for a review of the decision to adversely assess him. The Tribunal made the usual orders for ASIO to produce all documents relevant to their decision. Some of the documents were provided, but were heavily redacted: there were some headings and lots of black lines and blank space. Other relevant documents were not provided at all. The Applicant received a certificate from the then Attorney-General. Here is the text of the certificate:

I, ... hereby certify ... that disclosure of the contents of the documents ... would be contrary to the public interest because the disclosure would prejudice security.

I further certify ... that evidence proposed to be adduced and submissions proposed to be made ... on behalf of the Director-General of Security concerning the documents ... are of such a nature that the disclosure of the evidence or submissions would be contrary to the public interest because it would prejudice security.

As the responsible Minister ... I do not consent to a person representing the applicant being present when evidence [for ASIO] is adduced and such submissions are made ..."

The practical effect of that certificate was that the Applicant was not allowed to know the case against him. My junior and I went to the AAT to represent him, but we spent most of our time sitting outside the hearing room, wondering what was going on. When the AAT finally decided the matter, they delivered reasons in two parts. The open



reasons said that there was nothing in the material available to the Applicant to justify the adverse assessment. However they upheld the assessment on the basis of their secret reasons, which we are not allowed to see.

If a refugee is adversely assessed, they will be refused a visa. They do not have access to the AAT, but they can go to the Federal Court to challenge the decision to adversely assess. In one such case, the refugee swore that he had never done or said anything that would bring him within the reach of the (very wide) provisions of the ASIO legislation. That evidence was not challenged or contradicted. Instead, ASIO's argument was that, because the Court did not know what ASIO had taken into account in making its decision, the Court could not say they were wrong.

The Judge agreed.

As it happens, that refugee was accepted by Sweden as a permanent resident, after a one-hour interview. Whatever ASIO thought of him did not apparently trouble the Swedish authorities. He has lived peacefully in Sweden for the past 7 years.

Some refugees are not so lucky. At present in Australia there are about 50 refugees in immigration detention because, although they have been accepted as refugees, they have been adversely assessed by ASIO. They cannot be sent back to the country they have fled, because the central obligation under the Refugees Convention is not to “*refoule*” a person: that is, not to send them back to a place of persecution. The fact that they are a refugee makes it impossible to return them to their country of origin, but the ASIO assessment means that they are refused a visa. The Migration Act says that they must remain in detention until they get a visa or they are removed from Australia. Both doors are shut to them.

A High Court decision from 2004 means that a refugee can be held in detention for the rest of their life, without having committed any offence. If the reason for refusing a visa is an adverse assessment by ASIO, the refugee will not be allowed to know reason for the adverse assessment, so they will face the prospect of detention for years (or possibly for life) without being told why.

It is close to unbelievable that, in Australia today, an innocent person can be detained for life without being allowed to know why, and without any practical ability to challenge the basis for the detention. They have a legal right to challenge the adverse assessment, but it is very hard to win because the refugee does not know what case they have to meet.

It is a chilling thought that, in Australia in 2014, a person who is legally entitled to remain in the country can be jailed forever, without being allowed to know why, and with no practical means of legal challenge. This is truly the stuff of a Kafka nightmare.

Of course, we need ASIO. Of course ASIO needs to be able to perform most of its functions under a cloak of secrecy. But ASIO's role is to protect Australia's security interests. With that in mind, it is worth looking for the matters which ASIO is able to take into account when determining to adversely assess a person. It is not easy to work out what ASIO takes into account, because the regulations setting them out are secret: we are not allowed to know them. While theoretically the person who has been



adversely assessed has a right to challenge the assessment, in practice it is a hollow right. The Applicant is not allowed to know the legal test which is relevant, nor are they allowed to know the facts which have been applied against that legal test.

Let's make no mistake about this: people are being jailed without charge and without trial, and they face the prospect of a much longer time in jail than if they had actually broken the law and had been convicted.

The problem is exemplified by the case of Ranjini. Shortly before Mothers' Day 2012, Ranjini and her two children, aged 6 and 9 years, were removed from the community and placed in detention at Villawood. Villawood is in Sydney; Ranjini's husband lives and works in Melbourne. We know that Ranjini was assessed as a refugee because her first husband had been a driver for the Tamil Tigers. He was killed by the Rajapaksa government. She would be at risk of persecution if she returned to Sri Lanka. So far as we can tell, Ranjini was adversely assessed by ASIO because she might be a risk to the security of Sri Lanka if she returned there – something she emphatically does not want to do. In short, the same facts which entitle her to protection also condemn her to a life in detention. She and her children have now been in detention for more than two years. They remain in detention to this day.

In another case, a refugee arrived in Australia. He was assessed as a refugee, but remained in detention while ASIO assessed him. They assessed him adversely. As best we can work out, the reason for the adverse assessment is that, at the time he arrived, his father was being held in Indonesia suspected of involvement in people smuggling. He is 18 years old. If he was convicted of people smuggling, he would be jailed for 5 years. But because his father is thought to be involved in people smuggling, he faces spending the rest of his life in detention. He is already suicidal, and has made several very serious attempts to kill himself.

It is hard to think that this sort of treatment of an innocent person can make any of us safer.

All these things happen within the protections of the Rule of Law. The Rule of Law requires diligent oversight of the executive by an independent judiciary; it requires that the law govern the rights of all people, regardless of their position in Society.

We are lucky in Australia to have an honest, independent judiciary. But a strong tradition of the Rule of Law creates problems when Parliament passes laws which are harsh or unjust or an expression of vindictiveness towards a particular group. The courts have a duty to uphold valid laws, no matter how unjust. That is the position we have reached in Australia now.

I believe that the Rule of Law is profoundly important: the alternative is corrupt cronyism or mob rule. But we should watch carefully what Parliament does in our name. When Parliament abandons generally shared standards of decency, the country is degraded and our values are betrayed.

In December 2004 the House of Lords decided a case concerning UK anti-terrorist laws which allow terror suspects to be held without trial for up to 12 months. By a majority of 8 to 1 they held that the law impermissibly breached the democratic right to liberty.



The essential point was covered by an exception in the UK Human Rights Act, which allows human rights to be infringed in order to avoid a “threat to the life of the nation”.

Lord Hoffman said:

“ ... The real threat to the life of the nation, in the sense of a people living in accordance with its traditional laws and political values, comes not from terrorism but from laws such as these. That is the true measure of what terrorism may achieve. It is for Parliament to decide whether to give the terrorists such a victory.”

When you leave tonight, remember: your government is inflicting cruelty and injustice on innocent people. Ask yourself: Is this the way Australia should be? If the answer is No, then use your vote to punish any party which supports it.

As a nation, we are not at peace with ourselves.

Fear and selfishness struggle with our sense of decency, and politicians who prefer power to honesty have led us into very dark places. Our conscience is stained, and so long as politicians mislead us into tolerating wilful cruelty and grave injustices, we will never find peace.

** Paragraphs enclosed by double asterisks indicate where delivery differed from written text. The speech was recorded by ABC Big Ideas and Australia’s Public Affairs Channel.