

4th

Maurice Blackburn
oration

02

Julian Burnside QC

Hypocrisy and Human Rights

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14th Maurice Blackburn Oration

Introduction

Cr Joe Caputo, Mayor - Moreland City Council

It is a great privilege for me to introduce the 14th Annual Blackburn Oration, being delivered tonight by one of this country's great champions of human rights, Julian Burnside QC.

The origins of this lecture series are found in the generosity and spirit of two great Australians, Maurice and Doris Blackburn.

These two prominent individuals shaped strong political lives, which were motivated by a desire and commitment to defend and promote the public interest.

Maurice was a Labor member of the Victorian Parliament for 11 years between the Great War and the Depression of the 1930s. He then served as the Federal Member for Burke, which then covered large parts of Moreland, between 1934 and 1943.

Maurice was passionately outspoken on the significant issues of the times including conscription, the rights of trade unions, social justice, peace and individual civil liberties.

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Doris Blackburn became one of Australia's first women parliamentarians, being Federal Member for Burke from 1946 to 1949. Doris was a pioneer advocate of Aboriginal rights in the Federal Parliament and a strong promoter of women's rights and pre-school education. Throughout her life, she upheld a lasting commitment to the peace movement.

Julian Burnside joins a distinguished group of people who have contributed to the Annual Blackburn Oration. This group features last year's orator, East Timorese leader and first President of the world's newest nation, Xanana Gusmão, former ATSIC Head Dr Lowitja O'Donoghue, Prime Minister Bob Hawke back in 1987, and a range of other prominent Australians including state premiers, bishops, historians and social commentators.

This oration, which is a tribute to the Blackburns' commitment to ideals, their generosity, passion and determination, has a fitting speaker tonight in Julian Burnside QC who will speak on *'Hypocrisy and Human Rights'*.

Julian has such a depth of experience on such a diverse range of issues that I am quite sure we will be simply skimming the surface in this introduction.

While Julian will be well known to many of you for his outspoken advocacy and support of human rights, most recently on the rights of refugees, he has extensive experience and involvement in other issues.

Anyone who visits Julian Burnside's web site will see at the top of the page - Julian Burnside - Language, Arts, Law - with links to information about these three areas.

In learning about Julian's life involvement, it's quite clear that his passions, in some way, relate back to one of these three fields.

As a strong supporter of music and the arts, Julian is an active member of a variety of arts related societies and organisations. He has been a member of the National Board of Musica Viva Australia since 1993 and, for the last six years, the President of its Victorian branch.

He is well known for his experience in intellectual property and has contributed much to the debate about the adequacy of our laws in the age of new technology.

In fact, Julian founded the Victorian Society for Computers and Law, and was its chairman from 1981 to 1987.

Julian is the author of numerous articles on language and etymology, famous historical court cases, computers and law, and, for something a little different, is the author of the children's book *Matilda and the Dragon*.

In 1989, Julian was appointed Queen's Counsel and, in this capacity, Julian has been directly involved in a number of high profile cases.

He acted for the Ok Tedi community against BHP; the MUA in the waterfront dispute against Patrick Stevedores; the National Gallery in relation to the Andres Serrano exhibition; and was Counsel assisting the Broadcasting Authority in the Cash for Comment enquiry.

There is often an ambiguous distinction between Julian's personal involvement and passion for a cause, and his professional association.

It is in this union that we often witness the values and zeal that drive Julian Burnside.

He is certainly not afraid to put his personal convictions on the line and defend them with passion and sincerity.

This commitment came to the fore most recently when Julian took on the responsibility of senior counsel for Liberty Victoria in the Tampa asylum seekers case and then as Counsel for Woomera escapees.

During this time and since, Julian has proved an inspiring and passionate commentator on human rights, on the legal, social and moral dimension relating to refugees and the current detention system.

Recently, Julian and his partner Kate Durham, instigated the Spare Rooms for Refugees initiative designed to encourage practical support for refugees in Australia. This has led to hundreds of Australians

providing offers of accommodation and letters of support to refugees in detention centres. Detainees have been delighted to hear from someone outside who wants to make them feel welcome.

Julian is also a patron of A Just Australia – a campaign of Australians for just refugee programs.

There is a profound quote by James Thurber that Julian has placed on his web site which, I believe, has significant meaning to the current debate facing our nation on refugees: "All people should strive to learn before they die, what they are running from, and to, and why".

At this crucial time in our nation's history, where the true value of our diversity and compassion as a country is under threat, the experiences and interests of Julian Burnside QC make him a timely choice for this oration.

It is in recognition of his advocacy and articulate contribution to the debate on refugees and human rights that Julian Burnside was chosen to present the 14th Maurice Blackburn Oration.

Can we all warmly welcome Julian Burnside QC for the oration tonight.

Cr Joe Caputo
Mayor – Moreland City Council

4th *Maurice Blackburn*



Maurice Blackburn
(1880 - 1944)



Doris Blackburn
(1889 - 1970)

Maurice and Doris

Blackburn

Maurice McCrae Blackburn (1880 - 1944) was born to middle class family. However, in 1886 his father died of typhoid, leaving his widow and four children with very little means of support. Although Maurice matriculated in 1896, due to financial constraints he had to wait ten years before he graduated in Arts and a further three before he earned a Law degree.

Maurice Blackburn was a clever man who, despite his financial circumstances, was sufficiently well-connected to have succeeded in a comfortable, conventional legal career. Instead, he chose to throw in his lot with the exploited and the under-privileged. He took from his middle class background the notion of public service and transformed it into service to the labour movement.

Maurice Blackburn did not move to the centre stage of political activity until his studies were completed. In 1911, he joined the Victorian Socialist Party. However, when the Party decided not to stand candidates at elections, Maurice, along with a number of others, chose to join the Labour Party. In 1914, against the odds, Blackburn won the seat of Essendon and so began his time as a Labor member of the Victorian Parliament. His opposition to conscription placed him completely beyond the pale of a patriotic society. Conversely, it elevated him immediately to the status of labor hero. Maurice lost his seat in a campaign marked by vicious personal attacks.

In the following four years as the labour movement throughout Australia was struggling to clarify and re-define its aims and practices, Maurice played a major role in the Labor Party's development. After winning the seat of Fitzroy, he re-entered the Victorian Parliament in 1925 and remained there until 1933. In 1934, he served as the Federal Member for Burke, which then covered large parts of the Moreland area. In the Federal Parliament, Blackburn relished the opportunity to speak on war and peace, industrial and civil rights issues. He remained in Federal politics until 1943.

Throughout his political life, Maurice devoted his considerable intellectual abilities to the cause of social justice, civil liberties and international peace. In many ways he served as a conscience for the Australian Labor Party. Maurice Blackburn always stood firm in defence of democratic values both in society at large and within the party. Tolerant, cheerful and unambitious for high office, he was admired inside and outside the labour movement for his integrity and commitment.

Doris Amelia Blackburn (1889 - 1970) shared her husband's values and principles and led an active political career of her own, beginning with the early campaign for women's rights. She went on to promote pre-school education in conjunction with an enduring involvement in the peace movement. She was the Federal Member for Burke from 1946 to 1949. Doris played a central role in the establishment of organisations for the advancement of indigenous Australians.

Derived from *Maurice Blackburn - the man and the legend* by Carolyn Rasmussen Ph.D.

4th *Maurice Blackburn*

Hypocrisy and

Human Rights

Julian Burnside QC. 5 September, 2002.



Human Rights

The record of human rights is stained with hypocrisy. High ideals are voiced and approved, but they are frequently not matched by performance.

The origin of recognisable human rights discourse can be found in the second half of the 18th Century. Tom Paine published *The Rights of Man* (and was prosecuted for sedition); the American colonies declared their independence from Britain; and the French rose up against the aristocracy. The French Revolution proclaimed the ideals of 'Liberty, Equality and Fraternity', but those ideals were not evident in the Terror which settled in blood the accounts of ages. One hundred years later, Captain Dreyfus was prosecuted for alleged espionage, but the prosecution was a monstrous fraud, driven by the deeply ingrained anti-Semitism in the Army and the Church.

In 1776 the American colonists signed the Declaration of Independence. Its opening words are as memorable as they are noble:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness"

Almost 100 years later, the US Supreme Court had to interpret those words, in a suit brought by Dred Scott. He was a slave, but he had lived 13 years in a non slave state. Relying on English precedents, he sued for a declaration that he was a free citizen of the United States. The Court held, by a 7:2 majority, that the words "all men are created equal" did not refer to African Americans. The language of the judgment is shocking to modern ears:

"The question before us is whether (African American slaves) compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for ...citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority ...

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect ... (they were) bought and sold, and treated as an ordinary article of merchandise and traffic whenever a profit could be made by it." (emphasis added)

In his closing address at the first Nuremberg trial, Robert Jackson, chief prosecutor for the US, said:

"It is common to think of our own time as standing at the apex of civilisation, from which the deficiencies of preceding ages may patronisingly be viewed in the light of what is assumed to be "progress". The reality is that in the long perspective of history the present century will not hold an admirable position, unless its second half is to redeem its first."

In the aftermath of World War 2, it looked as though the second half of the 20th Century might, indeed, redeem the first. In 1948, the Universal Declaration of Human Rights set the style for human rights thinking. Its prefatory words set the tone:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world..."

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Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people...

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law ..."

The Declaration articulated in high prose the essential values of a dignified humanity. Subsequently the International Covenant on Civil and Political Rights embodied as binding commitments most of the ideals of the Universal Declaration of Human Rights. It makes great promises. Its signatories – almost every country in the world – promise each other to secure for their citizens the essentials of a dignified human existence.

The rhetoric did not prevent the genocide in Rwanda, the terrible ethnic cleansing in former Yugoslavia. It was powerless to prevent the stain of Apartheid in South Africa, the widespread disappearances and torture in Chile arranged by General Pinochet or the killing fields of Pol Pot's Cambodia.

And at the same time that the resounding phrases of the Universal Declaration were being crafted and polished, America was making a secret deal with Japanese war criminals. These men, scientists, had run the notorious Unit 731 in Harbin. There they performed medical experiments on untold thousands of Chinese civilians. These experiments, including vivisection of pregnant women, were as bad as anything done by Mengele in Auschwitz but they are less well known: the Americans granted the scientists privacy and immunity in exchange for their research results.

In Australia, we pride ourselves for our human rights record. Here is a prominent Australian speaking in November 2000:

"I want to talk about the centrality of human rights to our foreign policy objectives, and our decision to make effectiveness the guiding principle of our actions..."

The second reason for our distinctive approach to human rights has more to do with an Australian way of doing things. Our approach is pragmatic but it is also firmly rooted in an ideological commitment to liberal democratic ideals. I believe this blend of the practical and the idealistic very much reflects the character of Australia. A separate public forum could no doubt be dedicated to discussing what core Australian values are - or if they even exist - in the year 2000.

Personally, I have no qualms in saying that one of our abiding values is that of a fair go for all.

Australians care about human rights because they believe strongly in a fair go, they support the underdog and they take particular exception to abuses of power. They see justice and human dignity as the self-evident right of all people. They also prefer to cut through the rhetoric and do something useful...."

A fair go for all is probably as close as we, in Australia, get to a shared core value.

Legal Rights

Let us consider the legal rights of refugees against that core value. First, a couple of important facts: It is not an offence to come to Australia and seek refugee status. We have an obligation under the Refugees Convention to consider all claims to refugee status. If a person establishes their refugee status, we have a legal obligation to protect them.

Shortly stated, a refugee is a person who does not wish to return to their country of origin owing to a well-founded fear of persecution on racial, religious or political grounds.

When a person arrives in Australia and seeks asylum, they tell their story to an officer of the Department. The officer decides whether to believe the story and, if so, whether the story makes out a valid claim for refugee status. If the applicant is knocked back, they can go to the Refugee Review Tribunal (RRT). The quality of "justice" dispensed by the RRT is quite distinctive. The RRT members do not have to be lawyers. They are appointed for a short term (a maximum of five years) but can be re-appointed. If their decisions please the government, their chances of re-appointment appear to improve. Applicants are not entitled to be legally represented at RRT hearings. The decisions of the RRT are often a matter of life and death, literally, and yet the decisions of the Tribunal are almost completely immune to correction by a Court.

Until late 2001, the Migration Act contained a provision to the effect that a decision of the RRT could not be overturned by a court merely because it contained an error of law, or because it was so unreasonable that no reasonable person could have made it. Reflect on that for a moment: the decision maker is not a lawyer; his or her re-appointment depends on the government's good opinion; the applicant probably speaks little English and cannot be represented by a lawyer; the decision will determine whether that person is sent back to the threat of torture or death: but if the decision is wrong in law or so unreasonable that no reasonable person could reach it, then there is no legal remedy.

So much for a fair go.

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In October 2001, the government decided the scope for judicial review of RRT decisions should be reduced. And in June 2002 it reduced the scope even further: the Migration Act now provides specifically that the RRT does not have to afford natural justice to applicants.

Anyone who says that the RRT gives all asylum seekers a fair go is a liar or a fool.

Incidentally, the prominent Australian who uttered those fine words about a fair go was the Minister for Foreign Affairs, Alexander Downer.

Refugees

Let me turn to the way we treat people who seek asylum in Australia. The Howard government has introduced two policies which are an affront to decency. One a policy of deflection, and the other a policy of detention. We try to stop them from getting here, by taking them from the high seas and locking them up in Nauru, or on Manus Island. If they get here, we lock them up in the Australian desert.

Alexander Downer, in the speech I just referred to, went on to say this:

"... human rights are central to the maintenance of a peaceful world and our nation's security...."

It follows that it is very much in Australia's interests for government to work out how best to deliver an effective human rights policy. It is also, of course, in the interests of the ordinary people of the world who just want to live their lives free from the fear of poverty, war and tyranny. But I want to emphasise the word effective because this is the litmus test for everything this government does in the human rights field...."

This audience will be well acquainted with my view that you do not measure a government's interest in human rights by the decibel reading of its public criticism of others. You measure it by what it actually does..."

The government's recent hard-line stance on the refugee issue is officially justified in the name of our sovereignty. To guard our sovereignty, the government calls boat people "illegals", and it locks them up.

It is the great lie on which government policy rests. People who come here informally are not illegal. They commit no offence by arriving without papers, without an invitation, seeking protection. They may be locked up for months or years, but our moral

conscience is lulled to sleep because we are told they are "illegals".

So why is it, I wonder, why is it that refugees are so unpopular and why is it that a majority of decent Australians are prepared to see refugees' human rights ignored? I suspect that it is a result of a couple of things, principally it comes from ignorance of the most important facts. So I want to start by dealing with the facts of the refugee situation.

The government likes to call it a crisis. It is foolish to call it a crisis because it is not a crisis at all. The refugees we are talking about are the 4000 or so who - until the Pacific Solution - arrived informally in the country each year. 4000 is to be compared with the orthodox migration stream of about 100,000 per year. So, on any view of things an additional 4000 in a year did not constitute a crisis.

The second fact, which is not only overlooked but is being distorted by the government, is that immigration policy and refugee policy are entirely different things. Immigration policy is a reflection of demographic and social, economic considerations which cause a country to say they would like this many people, of this or that skill base, this or that ethnic origin. And it is perfectly reasonable, when referring to immigration policy, to say "we will decide who comes to this country and the circumstances in which they come". As an expression of immigration policy, that is impeccable. You may disagree with the policy

settings, but the principle is perfectly good as a statement of immigration policy.

Refugees have a quite different claim on our hospitality. Refugees are fleeing persecution, torture or death in a place which is unsafe; and they seek protection. If they manage to get to Australia, we have an obligation under international conventions to offer them the protection they are seeking. One of the reasons we didn't have a crisis in terms of numbers is that our geography insulates us from most of the world's refugee problems. It is quite difficult to get here in a small leaking boat. By contrast, countries adjacent to the trouble spots in the world have millions of refugees coming across their borders. For us to complain about 4000 is seen as somewhat petty when you consider that Africa has a total of five and a half million refugees; Asia has about eight and a half million.

By any measure, we have a small number of people who come here seeking help and protection because of a legitimate fear of persecution, torture or death in the place from whence they have fled. Our reaction to them in the last few years has been little short of astonishing.

The Pacific Solution was introduced in the course of the Tampa case. It was on the second day of the Tampa case, on the Sunday morning, that the Commonwealth Solicitor General announced the formation of an agreement with Nauru to take the people who were on board the Tampa.

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The Pacific Solution

The Pacific Solution debauches the Constitution of Nauru. That Constitution, being a modern instrument, contains in it a guarantee that you will not be detained except after a proper trial. In other words you can't be imprisoned except by being found guilty of an offence. There are some limited exceptions to that principle. The only one presently relevant is that you can be detained without trial if you have entered the country unlawfully and you are being held either for deportation or for extradition.

Now that exception simply can't operate in the case of the people who are intercepted on the high seas and are dumped on Nauru. Take the Tampa people for instance. I have seen their visa application form. It's a fairly slack piece of work: it is a bulk application - an application for visas for the "people on the attached sheet". 480 names are listed on the attached sheet. It is signed by a member of Nauru's own Immigration Department. So, far from being unlawful entrants, they were entered on the request of their own Immigration Department pursuant to an agreement with our government: an agreement under which they get stupendous amounts of money. But it cannot be said they were entering the country unlawfully.

The website of Australia's Immigration Department for some time boasted proudly of how many people were being "detained on Nauru". Then someone pointed out this minor embarrassment that the Constitution of Nauru forbids detention without trial. The website was quickly changed. Now Mr Ruddock says that in fact they are not detained, they are held pursuant to the conditions of their visa. And their visa, as it turns out, requires them to stay within Topside Camp or Statehouse Camp. In other words, the visa condition requires them to be detained.

It's obvious nonsense because you cannot validly force a person to remain in detention merely by imposition it as a condition on their visa, and especially where the person did not want to go to Nauru in the first place. In any event, it is quite apparent that none of them knew what sort of visa was being applied for on their behalf and in addition, none of them would be allowed to leave the country even if they asked to. So there they are: on a visa which requires them to stay locked up, but if they don't like the visa conditions they can't leave the country anyway. Complete nonsense.

This is the Cargo Cult theory of constitutional reform, which does no credit to either country. Australia has suborned a poverty stricken neighbour into doing whatever suits Australia's policy. This in the name of national Sovereignty! That Mr Howard got an electoral advantage out of this shabby arrangement makes it even worse. I won't deal separately with

Manus Island, because exactly the same argument applies: its constitution enshrines a similar guarantee against arbitrary detention.

In the speech I mentioned earlier, Mr Downer said:

"Bit by bit, leaders of governments that suppress human rights are being made to feel uncomfortable, however much they bluster and hide behind sovereignty arguments...."

Perhaps Mr Howard should listen to his Foreign Minister's speeches.

The Mandatory Detention Policy

Now let me turn to our policy of indefinite mandatory detention; what we do to people who actually get to Australia. Before going into the details, I think it is interesting to look at the matter as a question of ethics or morality. It is said by all sorts of commentators that the policy of harsh treatment in detention centres is part of the government's deterrence strategy. The deterrence aspect of the policy is rarely acknowledged by the Minister.

The reason is not hard to see: the people who come here are innocent of any offence but we lock them up. The government calls them "illegals" but not one of them is ever charged of any offence by virtue of having arrived without documentation or without an invitation. It is not an offence under Australian law to enter the way they do. So they're not illegals, and yet they're locked up. Locked up, according to the received view, in order to deter others.

We know that about 85% of them end up being accepted as genuine refugees, although they may be locked up for months or years before their claims to refugee status are accepted. In the few years before the Tampa affair, we received about 3500 informal arrivals a year who were genuine refugees: they had a legitimate claim for our protection. In the nature of these things, they were profoundly traumatised when they arrived, but we locked them up and treated them harshly. This was done, it seems, in order to dissuade other people from following them. That is the psychology of hostage-taking although the hostages in this instance are already traumatised.

This policy simply uses refugees as an instrument by which to shape the conduct of others. Locking up innocent people and harming them, as an instrument of government policy, is an appalling thing to do. It is shocking to think that our government is instrumentalising innocent, traumatised people in order to force other people to change their conduct.

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Conditions in Detention

Indefinite mandatory detention needs to be understood in its details to appreciate just how terrible it is.

First, it is mandatory: the Parliament has legislated that people who arrive without a visa will be locked up. No court says they must be locked up, and no court has the power to say they should be released. Refugees are the only group in our society who can be locked up indefinitely without a judicial order; and the Act has a specific provision that says no Judge can order the release of a person detained in this way.

Unlike a prison sentence imposed on a convicted criminal, immigration detention is indefinite. The worst criminal, when convicted of a crime, will receive a sentence with a head sentence (a maximum) of X years and a non-parole period of Y years. When the iron door closes behind him he can begin to count the days until he will be free again. Absent misbehaviour in prison, he will be released when the non-parole period is up.

But these people can't do that. Try to imagine being locked up in a jail in a foreign country, in hideous conditions, with no idea when, if ever, you will be released. How is it possible for anyone to retain hope

for the future in those circumstances? How surprising is it that people held like this gradually disintegrate as people and regress to modes of behaviour Mr Ruddock pleases to call "inappropriate": trying to kill themselves, mutilating themselves, and so on. It adds insult to injury that Mr Ruddock is prepared to suggest that such behaviour – utterly predictable in the circumstances – is nothing but an attempt to manipulate the Government. It betrays his utter lack of humanity.

The conditions are characterised both by the hopelessness of not knowing how long they will be there, and desperate uncertainty. This affects children especially. People held in detention centres get moved around arbitrarily, without warning. So that someone who is in Woomera today may be moved overnight to Curtin which is 2000 km away. Children wake up and find that yesterday's playmate has gone; and when they ask their parents "where has my friend gone" their parents truly cannot answer. People simply disappear from their lives with no explanation, and other people appear in their lives, likewise with no explanation.

These are shocking places. 80% of our asylum seekers are held in the desert camps, Woomera, Curtin and Port Hedland. We have several camps in the cities: Villawood in Sydney, Maribyrnong in Melbourne and there is a small detention centre at the Perth airport. But the metropolitan camps hold at most 20% of the people. So most of them are hidden

away in the desert behind tall palisade steel fences topped with razor wire. When the Baxter camp at Port Augusta comes on-stream it will not only have the palisade fences and two rows of razor wire, it will have an electrified fence as well. According to an Assistant Secretary of the Department of Immigration, speaking recently, it is wrong to call it an electrified fence: it is an “energised fence”. The use of double speak in this realm of discourse is disturbingly common.

These are desperate places. In the camps the food is frightful; the accommodation is terrible, Woomera had no trees until very recently. It has now got a lot of trees because a UN working group have recently come out to inspect it: in the last three months they have planted 1500 trees and painted every building inside and out. There are only one or two trees at Curtin. One of them is a suicide tree: desperate detainees jump from it in an attempt to die.

These are miserable places. The Government’s own advisory group in January described Woomera as a ‘cage in the desert’. What a condemnation of the Government policy that is. If you go to Maribyrnong the detainees can tell you there will be an official visit in the next couple of days because the common areas have been painted. They know it. They know that if there is any maintenance it means there is an important visitor coming.

Although the detention camps are physically terrible, the psychological conditions are much worse.

Detainees are highly dependent on the goodwill of the guards, and the guards, like guards in most institutions, very often show signs of sadism because they are all-powerful and their victims are entirely without power. Some of them are good people. But good people can do bad things, and the stories you hear about them mirror what we know about the psychology of prison guard behaviour.

Voices from Detention Centres

What are we doing to these people? Early this year, with my wife Kate Durham, I started a campaign to encourage people to write letters to asylum seekers in detention centres. The idea worked. Now thousands of Australians are writing to detainees. We started getting replies. The replies are probably the best way of understanding what is going on in these places and what consequences they have.

This was written in March 2002 in Port Hedland:

“Thank you very much for your letter you sent to me. I got it the other day. I was thinking all Australians are heartless and racist but I am now thinking positive that there is people who cares to think about me. I’m 17 years old. I came in

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Australia when I'm 16. On June 23 I will turn 18. I have been in this centre for 22 months, almost two years, without any contact or hearing from my family. I know that you can't do anything but by just writing to me gives me hope."

And this was written in May 2002 in Maribyrnong:

"I'm thankful for your support and sympathy to give us hope and fresh spirits. Days and nights are very boring and we waste our time and our lives. We miss our spirits and only our bodies move without any spirit. With the best wishes to all people who struggle for human rights. They know human is human."

And this was written in Port Hedland in February:

"I saw this government what they say to people about us. They told us this people is criminal and terrorist. Boat people is not normal people. But we are just human like other people. In my country I was a wrestler and very famous and going to every country. But now I lost everything from my life. I lost my love, my life and I think if I stay in here maybe I will lose my mind. From two week ago I decided to go back to my land. Actually I don't know what happened to me in Iran but I just know to die in my country much better than to die in detention centre."

This man left Australia voluntarily two weeks after that letter was written. He was arrested at the airport in Iran when he arrived. He has not been heard of since.

The quality of the guards can also be judged from the letters. This was written in Curtin in May 2002:

"In Curtin on 19 April 02 Friday women and children and all other people are having dinner in mess of camp. Suddenly 12 person of ACM's guards arrived in the mess and closed the doors and turned over the tables and beat the people. Everybody was terrified, women and children were screaming loudly. They left the camps area and didn't come to camp until 5 days. During these five days same area was closed and they didn't serve food to people. People was using of food which was in the kitchen. After passing 5 days police and ACN party arrive in detention centre and collected the knives which were on the floor in the kitchen and they were serving just one meal in the day."

In the desert camps it is necessary to queue to get a bar of soap if you want to have a shower. According to reports we have heard it is common to get to the head of the queue and be turned away and told to come back in half an hour and get the soap then. In the first year and a half of Woomera's operation there were two working toilets for 700 people and even now, (except when the UN is visiting) the toilets are

splattered with blood from suicide attempts or self-mutilations. If a woman has her period she must write out an application form for sanitary pads and hand it to the nurse. She will then be given one pack. If she needs more than that she has to write another form and explain why it is she used more than one pack.

In Woomera, earlier this year, a friend of mine saw a 12 year old girl walking around wearing a nappy. It is a common sight in the desert camps. When asked why that was so she was told that the distress has made the child incontinent.

It has been observed frequently in the desert camps that children regress by years in their behaviour in every possible respect so that children of four or five regress to bedwetting every night. Even young adolescents are incontinent.

This is what we are doing to people; people who are innocent and who come here asking for our compassion and our help. It is a humanitarian catastrophe from which the government makes political capital; a humanitarian catastrophe which most Australians are prepared to ignore.

This was written in Maribyrnong in February:

“Today I had two visitors who came to my visit for the first time. One of them was journalist another was a girl 25 years old. They had not any information about detention centres and couldn’t believe and the girl was crying after we talked to her. But I believe we don’t must look at our situation like sentimental people and you must look very deeply to these circumstances so that what we are eating and that we have a lot of suffering are on the second level and firstly you must see why the people are coming here and why we are staying a long time in detention. I don’t must be sensitive and don’t must cry because the cry make happy the enemy and finally I write for you difference between camp and zoo. In the zoo the human care for animals. In detention centre the animals care for humans.”

Is it possible to do any worse by these people? As a matter of fact, the Government has a way to add salt to the wound. After the damage that is inflicted on these people, when they are released from detention, they get a bill for the cost of being held. I have in my Chambers one example of this in which the man is told the conditions of his release are that he must not work and he must make immediate arrangements to pay the sum of \$214,000 for his stay in Port Hedland and Woomera. The going rate is about \$120-\$140 per day per person. We do it presumably to make them feel even more hopeless than we have managed to make them feel in their months or years of detention.

4th Maurice Blackburn

If I am critical of the Howard government in this moral disaster, I am no less critical of the Opposition.

This letter was written on 20 May 2002. It tells of an incident that happened on 24 April in Port Hedland:

“There was happened a sad incident on 24 April in this centre. In the morning of that day a group of Labour Party people had a visit from our centre but they didn’t talk with any one detainees. One of Afghan detainees (and he gives the number) requested to visit them but was rejected. This man 40 got to a very dangerous physical condition. He was crying and in treating but was not allowed to meet the group. Since several months ago this man had passport and visa for another country but Immigration Department did not accept to send him. This man wanted to leave camp and go away but they would not send him. He wanted to discuss this matter with that group. After the group left the centre the man threw himself from a tree. When we reached the place he was unconscious and bleeding from his ears and we thought he was dead. After about 30 minutes he was taken to hospital in Perth. Now it is about one month that he has been in a coma.”

I am glad to say that he later recovered consciousness.

I mention this letter because the Labor party's stance on refugees has been deeply disappointing. They were complicit in the Government's harshest measures at the 2001 election. They were complicit because they feared the electoral consequences of taking a principled stand. Maurice Blackburn would have been ashamed of them. He had sacrificed a parliamentary career to maintain a principle. He had a view of human rights which did not admit compromise for private advantage. It is a view which is maintained by the law firm which carries his name. His memory still shines, and we honour him today. Who will light a candle for the current Labor party? Who will point them once again towards the light on the hill?

Where to from here?

I want to finish by reading this letter which, I confess, I find profoundly moving and disturbing. It was written in February of this year in Port Hedland:

"I want to thank you for writing a letter. It is the first letter I have. I need to write someone outside because I don't have anyone outside I need to write some letter because I forget everything in these two years in detention. I am very happy this time because I see some good Australians support us. Please Catherine, we need freedom like every human. I have two years and I don't hear anything about my family in my country. Dear Catherine, I am very happy to write for you because it is the first time I write one letter. Please don't forget us we are humans."

Where has this country got to that, in a time of great prosperity, we can take a tiny fragment of damaged humanity and drive them to the point that they need to remind us - ever so gently and politely - that they, too, are humans?

This is a scandal which will haunt us for decades. The human misery we have inflicted on thousands who have arrived looking for help is incalculable. Our complete abdication of moral responsibility - leave aside legal responsibility under international conventions - is reprehensible beyond words. It is quite clear that, as a country, we have learnt nothing at all from the stolen generation. And whereas many people did not know of the stolen generation until years afterwards, in Australia today we do know what is happening. Knowing what we are doing to refugees, we voted back a Government on a promise to be even harsher. How anyone can justify such treatment of innocent human beings is a matter we must all wrestle with.

Be assured that in twenty years time your children or your grandchildren will say, "What did you do to try and change this". And if you do not have a good answer, you will show yourself to be complicit in the great crime of twenty-first century Australia.

YEAR	SPEAKER	TOPIC
1987	Bob Hawke	Speech by the Prime Minister Inaugural Maurice Blackburn Memorial Lecture
1988	John Bannon	The Relevance of Labor in Today's Australia
1989	Jean McCaughey, AO	Focus on Families
1990	Dr Jocelyne Scutt	In Praise of Dissent - Power, Politics and the Democratic Ideal
1991	Dr Carolyn Rasmussen	Maurice Blackburn - The Man and the Legend
1992	Jack Culpin, JP	Political Changes
1993	Dr Eric Willmot, AM	A New Dreaming
1994	Hon Chief Justice Alastair Nicholson, AO, RFD	The Australian Family - What is the Future?
1996	Right Reverend Michael Challen, AM	Person, Place and Power
1997	Dr Lowitja O'Donoghue, CBE, AM	Australians for Reconciliation
1998	Thomas Keneally	The Perils of Commonwealths
1999	Mary Crooks	Victoria 2000: Repairing the Social Democratic Fabric
2000	Xanana Gusmão	The Importance of Community Alliances in the Rebuilding of East Timor
2002	Julian Burnside, QC	Hypocrisy and Human Rights





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