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EDDIE KOIKI MABO

LECTURE SERIES

People, Identity and Place: A Fair Go in an Age of Terror:
Countering the Terrorist Threat to Human Rights and the
Australian Identity (2004)

Fr. Frank Brennan SJ AO

James Cook University (JCU) celebrates the history-making Mabo decision with the long established **Eddie Koiki Mabo Lecture Series**, an annual public commemorative presentation by a prominent person who has made a significant contribution to contemporary Australian society.

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The Eddie Koiki Mabo Lecture 2004

People, identity & place

A fair go in an age of terror: Countering the terrorist threat to human rights and the Australian identity

Fr Frank Brennan SJ AO

We are gathered on the eve of National Sorry Day. On Thursday we will mark the anniversary of the 1967 referendum; and next week we will celebrate the twelfth anniversary of the Mabo decision. On Friday, at Reconciliation Place in Canberra Minister Amanda Vanstone will unveil a monument to the stolen generation, though the government will not acknowledge that term and they were not prepared to unveil the monument on Sorry Day itself. The inscription will read:

For 150 years until the 1970s, many thousands of Aboriginal and Torres Strait Islander children were removed from their families, with the authorisation of Australian governments, to be raised in institutions, or fostered or adopted by non-indigenous families. Some were given up by parents seeking a better life for their children. Many were forcibly removed and see themselves as 'the stolen generations'.

Many of these children experienced overwhelming grief, and the loss of childhood and innocence, family and family relationships, identity, language and culture, country and spirituality. Their elders, parents and communities have experienced fear and trauma, emptiness, disempowerment, endless grieving, shame and failure. Most who looked after the removed children believed they were offering them a better future, and did all they could to provide loving care. Some abused and exploited the children.

This place honours the people who have suffered under these policies and practices. It also honours those Indigenous and non-Indigenous people whose genuine care softened the tragic impact of what are now recognised as cruel and misguided policies.

I am tremendously honoured to deliver this inaugural Eddie Koiki Mabo lecture in the presence of Bonita Mabo, and here in Townsville. It was in this city in 1982 that I first met Eddie and he explained to me the basis of his case. And he was proved right.

Eddie had read Justice Blackburn's decision in *Milirrpum v Nabalco*. He thought Blackburn got it wrong. But then he argued that even if the High Court agreed with Blackburn, the case of the Torres Strait Islanders was distinguishable for two reasons.

First, Torres Strait Islanders were not traditionally hunters and gatherers. They cultivated vegetable gardens and lived in huts in settled villages, thereby having individual interests in discrete blocks of land rather than communal interests in vast tracts of country. Second, the Queensland crown as sovereign had continued to recognise Torres Strait interests in land. The Queensland government had even set up courts to determine land disputes between islanders even though no land titles had been granted by the crown.

I remember Eddie nursing the grievance that public servants in Brisbane or Thursday Island had asserted the power to deny him access to his island home even on the occasion of the death of a close relative. He had a passion for putting right an ancient wrong and the imagination and bold vision to see it through to the highest court in the land.

It is one of the tragic ironies of the law that Eddie did not establish his own native title claim in the end but he did provide the vehicle for a declaration of native title by the nation's highest court. Tonight I salute Bonita and the Mabo children as they keep alive the memory of one of the great Australian reformers.

Tonight, just a week off the twelfth anniversary, we are justified in celebrating the Mabo decision that recognised native title for the first time in Australia. This groundbreaking decision was the cause of much public debate a decade ago. Now it is simply accepted as part of the nation's legal landscape though it did change the fundamental law of the land, discarding the two hundred year old *terra nullius* mindset. The decision has withstood the test of time because it is in accordance with contemporary Australian values. Universal respect for property and the principle of non-discrimination might even be thought to be "the vibe of the constitution" to quote the defining movie of contemporary cultural norms *The Castle*.

At first, the mining industry led by Hugh Morgan was very concerned that the combined effect of the judgment and the *Racial Discrimination Act* could be a massive slowdown in mining and exploration. Western Australian Premier Richard Court joined the mining chorus because over half the State was unalienated land which could be subject to native title claim and much of it was thought to be rich in minerals. Ian McLachlan, the federal coalition's most trenchant critic of the Mabo decision, after travelling to the Torres Strait said, *"It is perfectly obvious to me that those people have owned that land forever as history has been recorded. But it is different to say that all over Australia we should have a feast for lawyers."*

By Christmas 1993, Prime Minister Paul Keating had cut a deal with the key Aboriginal leaders and the Senate, having failed to cut any deal with the opposition coalition parties nor with the State governments. Keating appreciated four significant effects of Mabo:

- The decision was basically a judicious realignment of the common law developed by judges to match the historical reality with the historic land grievance which for the first time had come before the highest court in the land. The decision posed no threat to sovereignty nor to the Treasury coffers
- The decision was an honest acknowledgement that most Aborigines had been long dispossessed of their lands and any restitution or compensation was a matter for parliaments rather than the courts

- The decision provided an historic opportunity to put right those wrongs of the past which could be put right and to acknowledge those wrongs which forever stained the nation's identity. This could be done without any threat to any other person's land rights or legitimate economic interests
- The decision, combined with the make-up of the senate, provided a unique opportunity for a negotiated settlement of the nation's longstanding land rights question with Aborigines at the negotiating table in the cabinet room and holding some of their own trump cards

Noel Pearson, one of the key Aboriginal negotiators, summed up the effect of the decision in light of the negotiations that followed: *"There could be no more peaceful a proposition for peace than the one put forward by the High Court."*

The Parliament set up a land fund for the purchase of lands on the open market for the benefit of those Aborigines who had lost their traditional lands. By the end of this year, that fund will be self-perpetuating, allowing purchases of \$45 million each year. There is now a National Native Title Tribunal with almost 600 applications in the pipeline, half of which are going through mediation. And the government funds Aboriginal representative bodies which have their own advisers. Marcia Langton, another of the original Aboriginal negotiators says, *"What's become clear is that whereas litigation is costly and time consuming, agreement-making costs less and is more timely."*

Both the Howard and Keating governments have tried their hands at legislative responses to the High Court's native title decisions. Early in his term as Prime Minister, John Howard told Parliament that Mabo *"now with the passage of time, seems completely unexceptionable to me. It appears to have been based on a good deal of logic and fairness and proper principle."*

The dust has settled. The decision is not seen as a revolution but as a belated common sense piece of legal reasoning. Hugh Morgan's 1994 declaration now seems a little melodramatic: *"In Mabo, and all that followed from it, we are engaged in a struggle for the political and territorial future of Australia."* On the tenth anniversary, Tim Shanahan, CEO, Chamber of Minerals and Energy (WA) said, *"Mining companies in the early days weren't as sanguine or accepting of native title. These days it's seen as part of the normal business of mining."*

Native title is here to stay, helping to put right what Justices Deane and Gaudron described as our *"national legacy of unutterable shame"*. The High Court still has its work cut out interpreting the fine print of the excessively amended *Native Title Act* and filling in the detail of common law native title, no doubt providing some feasting for lawyers. Justice Brennan, who wrote the lead judgment in Mabo, told an international judges' conference in 1995, *"The post-colonial relationship of the indigenous population with their traditional land is not only, or even chiefly, a problem for the courts. But the courts, sensitive to the demands of justice for minorities and the disadvantaged in society, are likely to remain a forum in which indigenous peoples will seek to right what are now perceived to be historic wrongs."*

Indigenous communities still have their problems and we still have a national problem in reconciling ourselves. The denial of land rights and the failure to accord equal protection and respect under the law

are no longer part of the Australian solution. That is a better starting point than the *terra nullius* mindset which preceded Mabo.

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

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

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

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

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

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

“To leave the consequences of these policies to litigation in private actions based on existing rights, in courts designed to settle legal rights by an adversary system within a relatively homogeneous community, is at once an insult to the indigenous people and a prostitution of the courts. It is an insult to indigenous people because what is at stake is not the vindication of rights that they possessed, but redress for what happened to them when they were accorded no rights.

(Litigation such as Mabo and Wik) developed as a result of a failure of political nerve, which left what should have been a legislative policy issue to resolution in the courts as an issue of existing rights. In Mabo the High Court eloquently and bravely confronted the fiction of terra nullius and its consequences, but could only rule on legal rights, and then only in a way that did not fracture the skeletal structure of the invader’s law.

Instead of rising to the challenge of creating a new indigenous policy that could deliver more just outcomes in contemporary conditions, parliament simply cemented the crippled structure of existing rights into the Native Title Act 1993. It left an avenue of escape from the strait jacket in the mediation process. However, instead of accepting the opportunity that mediation offers to go beyond existing rights to seek a mutually beneficial solution, governments refused to negotiate except about whether claimants could establish the existing rights they were forced to claim, and went to the courts to exploit every argument to defeat those rights. The shards of the Mabo aspiration lie around us in new case names that threaten to usurp its household status, at least in some Aboriginal communities – Yorta Yorta, de Rose, Ward, Wilson, Yarmirr.”

There have now been more than enough test cases in the courts, determining the extinguishment of native title on Western lands leases in New South Wales, but leaving open the possibility of native title on pastoral leases in Queensland, Northern Territory, Western Australia and South Australia; upholding the possibility of sea rights but rejecting all exclusive rights to sea and ensuring that the sea rights of all other persons are unaffected; and requiring an ongoing connection with the land despite the effects of dispossession and colonization. How many more test cases do we need before state and Commonwealth governments are prepared to sit down and negotiate sensible arrangements with traditional owners?

It is good that there has finally been a settlement of the Yorta Yorta claim in Victoria, despite the trauma and cost of the fruitless litigation. More than 25% of the Kimberly is now recognized as native title. But isn't it time there, and in Cape York, as in the Northern Territory to sit down with the traditional owners and negotiate more useful arrangements for employment, training and survival in these remote parts of the country?

It is timely to recall that the Keating response to Mabo was to be a threefold full-blooded recognition of continuing native title rights, establishment of a perpetual land fund for the purchase and management of properties for the benefit of those who had lost their native title rights prior to the passage of the *Racial Discrimination Act 1975*, and the negotiation of a social justice package. The third item has never materialized.

As of July last year, the Indigenous Land Corporation has purchased 162 properties involving 5.1 million hectares at a cost of \$136 million, of which 110 have been divested to Indigenous corporations. The ILC estimates that 60,000 indigenous Australians derive some benefit from these purchases. However only about one thousand persons are receiving a direct tangible benefit such as residence (474), full time employment (157) or part time CDEP type employment (383). While 68 per cent of properties were occupied, only 30 per cent of them were providing any employment. The issue now is not the legitimacy of land rights but matching the land rights with the real, rather than the imagined, Aboriginal and Torres Strait Islander aspirations.

Having honoured the memory of Eddie Koiki Mabo, might I now turn to the topic which I have been asked to address this evening, "A Fair Go in An Age of Terror: Countering the terrorist threat to human rights and the Australian identity".

When should we join with the United States in such preventive action, without endorsement from the United Nations?

The invasion of Iraq was consistent with the previously published neo-conservative agenda of Mr Bush's key advisers. Regime change in Iraq was a centrepiece of their agenda. Our own Defence Intelligence Organisation (DIO) told our parliamentary inquiry into the intelligence operations preceding the recent war: *"We made a judgment here in Australia that the United States was committed to military action against Iraq. We had the view that that was, in a sense, independent of the intelligence assessment."*

When tabling the unanimous, all-party report, the government member David Jull told Parliament of the Committee's conclusion *"that there was unlikely to be large stocks of weapons of mass destruction, certainly none readily deployable."*

We did not go to war because there was an imminent threat to our security. We went to war because the Americans asked us to. The reasons they asked us to go to war have become a movable feast. Before the war, Prime Minister Howard insisted, *"our goal is disarmament"*,

"I couldn't justify on its own a military invasion of Iraq to change the regime. I've never advocated that."

The problem was that George Bush's advisers had and that is what they got. Howard told parliament that Iraq's *"possession of chemical and biological weapons and its pursuit of a nuclear capability poses a real and unacceptable threat to the stability and security of our world"*. Walter Lewincamp, the head of DIO, said this *"was not a judgement that DIO would have made."* They just weren't asked!

Even if the United Nations Security Council be not considered formally to be the competent, relevant authority for deciding just cause for war, it remains a suitable sieve for processing the conflicting claims in determining whether there is "a real and unacceptable threat to the stability and security of our world" and whether or not war is the only realistic resort. The French and Germans would have a mixture of motives for their stand, just as the English and the Americans would have for theirs. Given the mix of motives, the elusiveness of truth, and the now admitted unreliability of the intelligence, it would be better

in future to have decisions made by a community of disparate nations united only by a common concern for international security against terrorism rather than a coalition of allies who either share or are neutral about the strategic objectives of the US administration.

Our politicians have a difficult call to make when assessing intelligence about the likelihood of weapons of mass destruction being developed and handed on to terrorist organisations that have no respect for western nations. In times of crisis, we need to trust our leaders. But it becomes more difficult to grant that trust when the rationale for war is changed after the event. The belated emphasis on the humanitarian concern for the Iraqi people was rank hypocrisy coming from the United States which had first given Saddam Hussein his WMD capacity for countering Iran and from an Australian government which had punished Iraqi asylum seekers who had the temerity to seek asylum within our borders. Trust in government would be better maintained if Mr Howard simply admitted that his public rationale for war was the honouring of the US alliance no matter what the doubts about the wisdom of seeking Iraqi regime change without UN endorsement, and the concern about readily deployable weapons of mass destruction no matter what the shortcomings in the intelligence.

Prior to the Madrid bombings, many Australians thought our participation in the war was justified because the world was now a safer place, we had won without any Australian loss of life, and the murderous Saddam Hussein had lost power. Post-Madrid, we have to question whether the world is now a safer place and whether Australia is at no greater risk of being a special target of terrorist groups.

What now are the criteria for our participation in a just war in this Age of Terror?

A post World War II settlement of the UN Security Council configuration, including allocated seats enjoying a permanent veto cannot be determinative of any moral assessment about war. However, when prudential assessments of threats have to be made on intelligence against a backdrop of continual breaches of solemn undertakings by a rogue state, the Security Council does provide a useful sieve for getting willing combatants over the threshold of their own self-interest and ideology to a publicly reasoned rationale for military engagement. If western democratic members of the Security Council cannot be convinced of the need for war, there are good grounds for citizens to suspect that the conditions for a just war have not been fulfilled. If such members voted for war, there would still be a need to scrutinise the conditions for a just war.

There was a surprising unanimity of views amongst church leaders opposing the Iraq invasion on the grounds that it did not comply with the just war criteria. On the eve of war, Bishop Gregory, the head of the US Catholic Bishops Conference said:

“Our bishops’ conference continues to question the moral legitimacy of any preemptive, unilateral use of military force to overthrow the government of Iraq. To permit preemptive or preventive uses of military force to overthrow threatening or hostile regimes would create deeply troubling moral and legal precedents. Based on the facts that are known, it is difficult to justify resort to war against Iraq, lacking clear and adequate evidence of an imminent attack of a grave nature or Iraq’s

involvement in the terrorist attacks of September 11. With the Holy See and many religious leaders throughout the world, we believe that resort to war would not meet the strict conditions in Catholic teaching for the use of military force."

As early as September 2002, the US bishops had told the President, *"we fear that resort to force, under these circumstances, would not meet the strict conditions in Catholic teaching for overriding the strong presumption against the use of military force. Of particular concern are the traditional just war criteria of just cause, right authority, probability of success, proportionality and noncombatant immunity."* The bishops maintained that view both in the United States and here in Australia. So too did most church leaders and many community leaders.

The suspected capacity to produce weapons of mass destruction is not itself just cause for an attack. Even if a state or a coalition of states is able to claim that it is the right authority to make a decision about war, that authority must be able to produce credible evidence about the possession of such weapons and the distinctive threat they pose to those states wanting to launch an attack. If you cannot convince the western democratic members of the UN Security Council that there is a real threat to world peace or a real and unacceptable threat to particular states, it is very likely that you are not engaged in war for a just cause. Even if the coalition of willing states are the appropriate authority, they still need to demonstrate that all other avenues have been tried to disarm the rogue state. If the coalition of willing states has provided the incentive for renewed inspections by pre-deploying troops, the coalition is entitled to put a reasonable limit on the terms of pre-deployment or to demand that other states opposed to war provide assistance with the pre-deployment simply to maintain the pressure for verifiable inspections. Even if the US had established that it was a competent authority to determine that there was a just cause for war, which was a last resort, there would still have been a need to consider the consequences of such an engagement.

The nonchalance and belated show of humanitarian concern by the Coalition of the Willing after they had failed to uncover large stockpiles of weapons of mass destruction confirms the suspicion that the Coalition's leader, the United States, had an alternative agenda, namely regime change in Iraq, an attempted re-ordering of the Middle East, and an experiment with a new American project premised on preventive intervention. Those who oppose such ideological experiments in the future will do better if they are able to articulate more clearly the margin of appreciation afforded governments, which are privy to sensitive intelligence material. Even if such opponents fail to agree on whether the UN Security Council is the competent authority to determine the legitimacy of war, they ought put forward a united view that the Security Council is the most appropriate sieve for sorting the conflicting claims made by nation states that may be the appropriate authority. The UN Security Council is well qualified to sift out those claims of nation states based only on ideology or national self-interest.

The Coalition of the Willing's failure to find any weapons of mass destruction and its inability without UN endorsement and Arab acceptance to impose secular democracy on factionalised Iraq give us good grounds to return to the orthodox theory of just war, adapting the application of the criteria to the contemporary situation.

What are the checks and balances we need to maintain our human rights and Australian identity in an Age of Terror?

Confronted with terrorist threats reaching our shores, government has a responsibility to arm police, defence and intelligence personnel with the powers to protect us while respecting the civil liberties of all persons. We Australians are now on our own with no Bill of Rights to guide our judges or restrict our governments. But for the government's incapacity to control the Senate, it would be able to ram all sorts of legislation through the parliament. Checks and balances are often time consuming, and they often provide opportunities for minor parties and sectional interest groups to engage in petty point scoring. The senate and the parliamentary committee system worked well when the government tried to bluff the parliament into passing amendments to the ASIO legislation that would have entrenched very draconian measures on our statute books in 2002. Originally the government proposed that ASIO would be able to detain any person incommunicado, including a child. ASIO would have been able to detain indefinitely any person without charge or even suspicion. While detained, any person could have been strip searched, questioned for unlimited periods and prevented from contacting family members, their employer or even a lawyer. They would not even be able to inform loved ones that they had been detained. They could have been denied legal advice.

Senator John Faulkner said that *"the original ASIO bill was perhaps the worst drafted bill ever introduced into the Australian parliament."* Thanks to the Senate, the legislation is now more protective of human rights, more in the Australian way, while being adapted to the present terrorist threat. There was a lengthy standoff between the government and the Senate over this legislation. Before Christmas 2002 when the legislation was deadlocked John Howard warned, *"If this bill does not go through and we are not able to clothe our intelligence agencies with this additional authority over the summer months it will be on the head of the Australian Labor Party and on nobody else's head."* The government then further delayed the legislation so it could be added to the mix of a double dissolution election, if need be. Having been introduced in March 2002, the legislation was passed in highly amended form in June 2003. The legislation now contains a three-year sunset clause so it has to be reviewed again by our parliamentarians after the next election.

Sir Harry Gibbs provided an assessment of the final product in his 2004 Australia Day address to the Samuel Griffith Society. He notes that the powers given to ASIO are *"drastic"* and *"only experience will show whether (the) safeguards are sufficient"*. Gibbs says the law goes too far in prohibiting lawyers and others publishing information about the questioning of any person. This could *"prevent publication of the fact that an abuse of power or a serious error of judgment had occurred."* The government likes to portray the senate as obstructionist but the senate has modified national security legislation to better protect civil liberties.

When we go through a down in the political cycle with government encountering little opposition in the House of Representatives or on John Laws and Alan Jones' radio programs, it is difficult to conduct robust public dialogue about policies related to minorities and national security. Fear and flabbiness take over. There is an ongoing deficit in public honesty and rigorous inquiry when it comes to debate about the

morality of our engagement in war, about the limits of ASIO's powers, about our treatment of asylum seekers and the identification of their deprivations with national security and border protection needs. There is an important democratic role for unelected citizens, including church leaders, to question government's public rationale and private purpose, to correct the misperceptions, and to espouse rational and coherent policies that do less harm to vulnerable people and to our peace and security. We would all profit from more respectful and rigorous dialogue between elected politicians and unelected community leaders, including between church and state.

Conclusion

As the sun rose over the tip of Cape York on 12 October 1993, the waters of the Torres Strait were exceedingly calm. As the sun glistened on the water, Father David Passi, the Anglican Pastor of the Island of Mer in the Murray Islands group, stood at the back of the speed boat pointing at a small island close to the shore, "That's Possession Island." David, a reserved man who has never been very political, had succeeded the previous year in moving the foundations of the Australian legal system. He and James Rice were the two Murray Island residents who joined with Eddie Mabo and succeeded on behalf of their people in claiming native title to their Island of Mer.

David smiled broadly as he showed me Possession Island where James Cook came ashore after his epic voyage up the Australian eastern coastline, raising his King's flag and claiming possession in His Majesty's name of all he had sailed passed. David chuckled, "Cook had his back to the Torres Strait when he claimed possession."

Next day at Bamaga on the tip of Cape York, David explained the significance of the *Mabo* decision. His people believe that in ancient times a figure named Malo set down the law for relations between islanders regarding their lands and waters. All islanders speak of the myth of Malo-Bomai. Malo and his maternal uncle made a long sea journey from West New Guinea across to Mer in the east. These mythical heroes, Malo resembling an octopus, brought the eight peoples or clans into one, "strengthening them with the qualities of a diversity of sea creatures, so giving the power to match the sea and make long journeys across Malo, the deep seas, for canoes and for battle." In this part of Australia, the indigenous people define themselves in relation to land, sea, each other and seasonal time or prevailing wind.

Fr Passi, known also as Kebi Bala, explains Malo's law: *"For thousands of years we have owned the land and Malo who was the Meriam centre of it made sure that members of the society were given land. They are our laws. We have Malo ra Gelar. It says that Malo keeps to his own place, Malo does not trespass in another man's property. Malo keeps his hands to himself. He does not touch what is not his. He does not permit his feet to carry him towards other men's property. His hands are not grasping. He holds them back. He does not wander from his path. He walks on tip-toe, silent and careful, leaving no signs to tell that this is the way he took"*. David explains that since colonisation there have been two laws, *"the white man's law and Malo's law"*. Malo's law is respectful of people's history and connection with the land. The white man's law is strong. It believes might is right. Those who believe in Malo's law have to convince those who practise the white man's law that Malo's law is right. Might alone is not right.

In this age of terror, there are some political leaders who believe that the will of the United States is supreme. There are others who urge a return to multi-lateralism. The law and will of the Coalition of the Willing has to be brought into line with the law and will of the international community, co-operating through the strengthening of the United Nations and the international law criteria justifying humanitarian intervention and preemptive strikes against terrorist threats.

Church leaders, responsible civil servants, the courts, the senate, an independent media, and a robust civil society are entitled to express a contrary view to the executive government of the day, when that government enlists all of us with a coalition of the willing, without our consent, even if the majority are satisfied that the government will do and say whatever it takes to protect "us" against "them" in tough times. The morality of our engagement in the Iraq war cannot be left contingent only on two self-interested outcomes: one, whether our special relationship with the US bears fruit, and two, whether we are more immune from onshore terrorist attack. And even if it were so contingent, the jury is still out on both fronts. Truth and a more coherent morality of war may yet be even in our own short-term national interest in an Age of Terror.

Jim Wolfenson, President of the World Bank, in an address in February on a return visit to Australia, his home country, gave us an inspiring spur to action and reflection for a fair go for all people. He said:

"I was fascinated today in my discussions with civil society to learn that, in a poll of Australian society, 85 per cent of people were prepared to support development assistance, and some 53 per cent of them supporting it strongly. But when asked the reasons why they supported it, it was not enlightened self-interest, it was not protection against terror, it was because it was morally and ethically right. I found that a remarkable statistic and a great tribute to the Australian people, in terms of what drives this country, in terms of its sense of equity and social justice."

We shouldn't be afraid to say that a 'fair go' or a 'fair share' or a sense of equity is something that drives us. Too few people in the world are doing that today.

Let's take heart from Jim Wolfenson's homecoming observation that there are so many Australians concerned to assist with development, and presumably peace, not because of enlightened self-interest nor for protection against terror, but because it is morally and ethically right. This is our hope. We honour the memory of Eddie Mabo when we espouse this hope of justice and peace for our nation and our world - justice and peace for all under the rule of law which recognises the dignity and equality of all, even in an Age of Terror.

ITEM INFORMATION

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