

Jesus Was a Refugee

The debate concerning the treatment of asylum seekers is one that many feel will have an important role in defining our national character, and one that is likely to be studied by generations of Australian students to come. Recent events including the tragic loss of life of asylum seekers in a shipwreck on the shores of Christmas Island and the torching of the Villawood detention centre appear to have only intensified already polarized positions on this contentious issue. In this article the author will briefly overview recent judicial pronouncements in the area and offer his personal reflections on the role the church may play at this critical time in the development of the Australian story.

Many pivotal junctures within this debate have been played out in the theatre of the courts. Our response to asylum seekers raises fundamental legal issues that have entranced lawyers, such as myself, for millennia. These include the right to challenge indefinite detention (a right recognised by the British common law in 1215 care of the Magna Carta), the right to have the case against oneself put to enable the formulation of a defence and the ability of the courts to set limits on the power of government. In 2004 the High Court of Australia ruled that mandatory detention of a stateless person for an indefinite period of time was lawful under the Migration Act and did not offend the Australian Constitution.¹ Australia had become the first developed nation to have a policy of mandatory detention for all ‘unauthorised’ arrivals for an indefinite period of time. To many this seemed an extraordinary conclusion and out of step with other Western jurisdictions, many of which employed a system of post arrival security checks and, where appropriate, release into the community pending an asylum determination. In 2005 the UK House of Lords ruled that mandatory detention infringed human rights. Lord Hoffman also declared that such was contrary to the British common law, on which Australian jurisprudence is based: ‘Freedom from arbitrary arrest and detention is a quintessentially British liberty enjoyed by the inhabitants of this country when most of the population of Europe could be thrown into prison at the whim of their rulers’.²

In November 2010 the High Court of Australia again created controversy, this time by granting rights to asylum seekers.³ The Court ruled that, as the assessment process “prolonged the plaintiff [asylum seeker’s] detention, the rights and interests of the plaintiff’s to freedom from detention at the behest of the Australian Executive were directly affected, and those who made the inquiries were bound to act according to law, affording procedural fairness to the plaintiff’s whose liberty was thus constrained.”⁴Procedural fairness requires, on its most elemental application, that a person subject to a decision that affects their rights have the opportunity to both hear the case against them and to put their own case before an unbiased decision maker.

Having painted this background of the issues at stake, what contribution are we, both as Christians and as members of the polity, to make to this debate? We, as Christians, can seek to offer another perspective on this contentious issue by viewing the boat arrivals through the eyes of a refugee who lived on earth a little over two thousand years ago. Under the reign of Herod Antipas, the infant Jesus and His immediate family were forced to flee Palestine to the safer shores of Egypt. They fled from political persecution, their lives threatened by a middle-eastern despot willing to act brutally in order to extinguish challenges to his authority, even to the extent of ordering the massacre of young children.

¹ *Al Kateb v Godwin* (2004) 219 CLR 562;

² *A & Others v Secretary of State for the Home Department* [2005] 2 AC 68;

³ *Plaintiff M61/2010E of 2010 v Commonwealth of Australia; Plaintiff M69 of 2010 v Commonwealth of Australia* [2010] HCA 41 (11 November 2010).

⁴ *Ibid*, at paragraph 9.

The phenomenon of the seeking of asylum is as old as man's capacity for war. In the time of Isaiah, refugees were recorded fleeing from Moab, which had been invaded by an ancient middle-eastern power. Isaiah records God's concern for these people, saying, "on the roofs and in the public squares they all wail, prostrate with weeping ... My heart cries out over Moab; her fugitives flee as far as Zoar" (Isaiah 15: 3-5).

If God cried so earnestly over this suffering almost four thousand years ago, might we not reasonably assume that He continues to cry over similar suffering today? If we accept this proposition, might we not also be entitled to ask, why doesn't He do something practical to stop suffering caused by war, instead of just crying?

The Bible demonstrates the truly wonderful fact that God has responded, in the form of the man Jesus Christ. The response God chose was to assume the life of a man, to encounter first hand its longings, its brutality, to feel its brokenness, to taste its hopes and to meet its satisfactions. The experience of the refugee was an experience that God, in the form of Christ, particularly encountered. In taking the form of a man, God showed that His character is not to be aloof.

Jesus, as a small boy knew the pain of fleeing a bloody land. Perhaps He saw the terror in His mother's eye as they fled at night, hurried and quietened under the cover of darkness for fear of discovery. Perhaps He felt His father's fear in the urgency of the flight, fear thinly veiled under the veneer of his resolve to ensure the survival of his young wife and child. Yet by some eternal working, by some upwelling of a miraculous power of forgiveness, this same small boy, having attained to the age of thirty-three, gave His own life to grant the promise of eternal life to those who had persecuted His family.

As a humanity, Christ calls us to a new sense of commonality. Under the hand of our Creator we share a common humanity, and therefore a common dignity. In giving His life, He demonstrated that we were all worth dying for. By His death, Jesus opened a new way of embracing a relationship with God, and in so doing, imbibing His concerns. His actions also anticipate the most pure presentation of His love in eternity, where truly the saying, "Blessed are those who mourn, for they will be comforted" (Matt 5:4) will be fully known.

Yet, that comfort is not the exclusive domain of that coming day. It is also on offer in our contemporary society. For those of us who have known that gentle hand of comfort in this day, might we now turn, and present that same healing love to others in this time in our history? Might we also express some of the cry He expressed over the suffering of the people from Moab so many years ago?

The perspective He offers is not of this world. However, it was always intended to be so, outlandishly so. It is perhaps therefore not a perspective that can be wholly adopted as policy by a Government. However it is a perspective whose expression has a place within the marketplace of ideas that comprise our modern Australia. His perspective speaks of sacrifice, compassion, justice, humility and equality. It can find expression today in the responses of individuals and groups within our community, persons who draw upon the motivations of Christ as their inspiration. Christ doesn't have a monopoly on compassion amongst the religions, but He is I believe unique in declaring His place of residence to be the human heart. Inhabiting the human heart, God's borders are greater than our national boundaries.

Late last year Minister Bowen announced a new policy that in part entailed the release certain asylum seekers into community residences with the assistance of church and community groups.

If appropriately implemented with pre-release security and flight risk screening it may help to avert the kind of tensions that led to the recent events at Villawood and possibly address the alarming rates of self-harm among detainees in Australian centres. Whilst we are yet to see the full implementation of that policy, perhaps the Minister's announcement was made in recognition of the role Christians have traditionally played in creating a more humane and compassionate society, from their treatment of widows and orphaned children during the days of the Roman Empire, to the formulation of schools and orphanages in the early days of the Australian story.

There will continue to be a diversity of opinion within the Australian community on the question of how we are to respond to the boat people, and that diversity will be reflected within the Christian community. However the sharing of the motivations of Christ is the unique contribution His church may make to this debate, and to the lives of the asylum seekers. The Christ who was a refugee, is the Christ who offers compassion and healing for refugees today. May they see His perspective alive in contemporary Australia and find His hand extended here through our sincere friendship and through our compassion.

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