



## **The Church as a Tolerant and Inclusive Employer, Teacher and Community vs. The Church as an Exclusive, Counter-Cultural Witness, Practitioner and Community**

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Celebrating Inclusive Practices In Catholic Schools Conference

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I am delighted to join in your celebration of inclusive practices in Catholic Schools in Australia. Several people have already warned me that you are in holiday mode here on the Gold Coast, and you are not in the mood for too much doom and gloom from a social justice perspective. Justifiably, you would like to hear some words of encouragement and congratulations for all that you do with such limited resources to be inclusive in your service as educators.

It is a tribute to the inclusiveness of the Archdiocese of Brisbane that you are able to host such a conference at the Jupiters Casino here on the Gold Coast with 400 Catholic teachers and educational administrators. This shows just how inclusive we can be. I never thought I would address a Conference here at Jupiters. As I drove out of the Baxter Immigration Detention Centre at lunch time yesterday, I mused that this conference was also a tribute to the universal catholicity of our church - that we can be equally at home and equally estranged in a remote detention centre and in a casino, separated by only a day.

Last night, Michael Traynor put at risk the opportunity to see Mark Philippoussis in the Wimbledon Tennis Final by coming to meet me on my delayed flight. On the way to the hotel, he then quizzed me about my own Catholic schooling. Being almost 50, I have forgotten much of the detail but I do know that Downlands College, Toowoomba, being all boarding and all male back in the 1960's, did not claim inclusiveness as one of its long suits. I neither noticed nor was I troubled.

I got into serious trouble with one of my former Jesuit provincials when I had honestly told a reporter that I could not recall any of my previous teachers who taught me much about justice. I was a sufficiently precocious student that I would have told any teacher proclaiming a social message to stop pushing his political agenda down my throat. On reflection, I told the reporter that there were a couple of teachers who were demonstrably unjust in their actions.

They taught me much about justice. I appreciated Downlands because it was a school which provided the space for us to get a hearing and to reflect upon unjust practices within the school. Perhaps this was the first step towards heightening my sense of inclusiveness and social justice.

At school I was never much good at football with the result that I was always playing in the Cs or the Ds. The Ds always had to play on a sloping field. I once suggested that the As should play on the sloping field because they were more fit and had better ball skills. They would profit more from the variety of challenges on the sloping field. Those of us who were less fit and less able would profit more from the level playing field. Needless to say, there was no change.

It never occurred to me to put the same argument about teachers. Being in the A stream, I expected to have the best teachers. A compelling case could have been made for making the better teachers available to the C stream. Those of us in the A stream would have got by fairly well anyway. This did become an issue when Bruce Dawe, the leading national poet, came on the school staff in 1969. He was not allocated to the A stream for Senior English because it was thought best that we have the tried and tested A stream teacher who delivered the best results in the public exam.

Arriving at the hotel last night after being quizzed by Michael Traynor, I ran into the Qantas crew in the lift. One of the hostesses greeted me as "Mr One Delta". Indeed I had been sitting in seat 1D. Lest you think the Catholic Education Office was on a splurge, I should point out that this Qantas flight was an all economy service. Leg room is at a premium when you are 6' 4". She said she recognised me by my big feet in the aisle. She then said it could have been more cramped for me if I had been in seat 1C. Indeed it would have been as there was a very overweight woman in 1B. We both recalled this fact, I because I had been impressed by the way the hostess had graciously received the woman's request for a seat belt extension. And here is a little parable about inclusiveness. Twenty years ago, there would not have been the institutional procedures in place to provide the seat belt extension. Now there are. And the passenger had no embarrassment about asking. The passenger was put at ease by the hostess who received the request without attracting attention and with good grace. The hostess in the lift appreciated my compliment offered in the presence of the captain. This morning coming down in the lift, another woman greeted me and announced that she too was a Qantas hostess. I then told her the story of her gracious colleague. She assured me that she recognised me by my face and not by the size of my feet. Here may be another lesson of inclusiveness for us. We recognise the other, including the one who has been traditionally excluded, not by their distinctive impediments or differences. We recognise them as persons in the image and likeness of God.

Though I will try to be positive, upbeat, congratulatory and joyful, I should point out that Michael Traynor has asked me in this opening keynote address to "explore a range of observations and challenges that face the Australian Catholic Church as it responds to disadvantaged groups such as those groups who are marginalised on the basis of disability, social and/or emotional issues, race or culture and those affected by abuse and neglect." I have been asked to present "case studies of the 'lives of lived experience' as a way to consider, on a personal level, the responses that may lead to a more inclusive and just society." Don't blame me if it is not all beer and skittles. We don't want an attack of the

Catholic guilts, but neither do we want to be swept away by the unreality and plastic joyfulness of Jupiters Casino.

As Catholic educators with limited resources, we need to admit the tension that exists between wanting to be as inclusive and tolerant as all other educators given that we live in a pluralistic, multicultural democratic society, while at the same time wanting to be exclusive and distinctive in our endorsement of Catholic values and in our celebration and expression of our Catholic identity. There is no neat answer to this tension. It is irresolvable and it is messy. If we are to celebrate inclusive practices, we have to admit the tension between being the Church as a tolerant and inclusive employer, teacher and community and being the Church as an exclusive, counter-cultural witness, practitioner and community.

Having set out a background, I will then articulate two challenges before considering two distinct benefits of diversity and preference. I will then describe the context for ensuring diversity and preference.

## **1. Background**

Disappearance and Manipulation of Religious Sentiment in Australia

## **2. The Challenges**

- Dealing with Abuse
- The Limits of Respecting the Privacy and the Lifestyle of the Individual. How does this relate to the desire to maintain public morality and decency? And to maintaining a Right to withhold endorsement of alternative life styles?

## **3. The Benefits of Diversity and Preference**

- Diversity and preference for the sake of educational excellence and opportunity for the group:
- Diversity and Preference for the Purpose of Showing Favour to the Poor and Disadvantaged – Preferential option for the poor. Schools as Places Wanting to Include the Disadvantaged and Marginalised, and then being able to be a credible advocate for the disadvantaged and marginalised.

## **4. The Context for Preference and Diversity**

- Finding the balance between scarce resources and special provision for those in need
- Including the One who is other at the table of the Eucharist

## **1. Background: Disappearance and Manipulation of Religious Sentiment in Australia**

I was privileged to be a concelebrant at a mass being celebrated by Bishop Belo in thanks for Australia's contribution to the liberation of East Timor. At the end of the mass, Major General Cosgrove spoke. This big Australian army officer in military dress was accompanied by a translator who was a petite Timorese Canossian sister in her pure white habit replete with veil. He recalled his first visit to the cathedral three months earlier when he was so moved by the singing that he realised two things: first, the people of East Timor had not abandoned their

God despite everything that had happened. Second, God had not abandoned the people of East Timor. As he spoke, I was certain that despite the presence of the usual media scrum, not one word of this speech would be reported back in Australia. It was unimaginable that an Australian soldier would give such a speech in Australia. If he were an American general, we would expect it. Here in Australia, the public silence about things spiritual does not mean that spirituality is not present animating and inspiring us. But it is only events like the aftermath of Bali that bring our transcendent faith and hope into the public gaze.

When our Prime Minister went to Bali after the bombing last October, he was accompanied by three chaplains. But how were they dressed? And how were they chosen? Do you remember that television image of our Prime Minister backed up by three military chaplains in military dress? I was stunned. I have spent some time in recent years visiting Indonesia aware that we Australians have been proclaiming a strong double message to Indonesia. First, it is good that government and the military be kept separate and not run together as they were in the time of President Suharto. Second, there should be some separation between religion and the State. It is desirable that Indonesia, our neighbour, not become an Islamic State.

Last October, we did not have any Australian military based in Indonesia. No military were killed in the Sari Club bombing. Why then were military chaplains accompanying the prime minister of Australia?

My concern about this issue was heightened when I discovered that the senior Anglican military chaplain was to be the religious leader to lead the prayers at the Commemoration Service in the Great Hall of the Parliament. Why? One member of the government explained to me that it could not be the Anglican Primate because he had expressed anti-government views about increased security threats in the light of our engagement in Afghanistan. And it could not be the local Canberra Anglican bishop because he generally had different views. So why not have the senior Anglican military man? You would think that we lived in a country with an established church despite the specific prohibition of same in our Constitution. How have we got to the stage that the face of the church can be so managed by the government of the day?

Religion is seen to be a private affair. When there is a public affair, it is now for government to determine the face of religion that will be presented to the people. This may be too harsh a judgment. But there is evidence of this trend. There are straws in the wind, signs of the times.

Religion and churches are being privatised and marginalised from the the public forum in Australia. Secular society makes increasing demands for transparency, accountability, tolerance and inclusiveness. The political elite who exercise real power in our society will use us at their convenience and disregard us when it suits them. It was interesting to see Peter Costello's first broad-ranging speech after John Howard announced his intention to stay on as Prime Minister. Costello, with a well known clergyman brother, took a swipe at the churches. Presumably, he thought this would not do his political future any great harm. A sign of the times. The military are now more respectable than the church. And I am talking about Australia, not Indonesia.

## 2. The Challenges

### *First Challenge: Dealing with Abuse*

In February this year, the High Court of Australia clarified the legal liability of school authorities for sexual abuse perpetrated by teachers without the knowledge of school authorities. Chief Justice Gleeson addressed the question:

If a teacher employed by a school authority sexually abuses a pupil, is the school authority liable in damages to the pupil?

The school authorities would be liable in two instances: if they were themselves at fault, or if they were vicariously liable for the actions of the offending teacher. In relation to the first instance, Chief Justice Gleeson said:

One potentially important matter is fault on the part of the school authority. The legal responsibilities of such an authority include a duty to take reasonable care for the safety of pupils. There may be cases in which sexual abuse is related to a failure to take such care. A school authority may have been negligent in employing a particular person, or in failing to make adequate arrangements for supervision of staff, or in failing to respond appropriately to complaints of previous misconduct, or in some other respect that can be identified as a cause of the harm to the pupil. The relationship between school authority and pupil is one of the exceptional relationships which give rise to a duty in one party to take reasonable care to protect the other from the wrongful behaviour of third parties even if such behaviour is criminal. Breach of that duty, and consequent harm, will result in liability for damages for negligence.

Even if the school authority has not been negligent, it may still be liable for the wrongdoing of a teacher. But Chief justice Gleeson says, " On the assumption that there has been no fault on the part of the school authority, the question to be addressed is whether the authority is vicariously liable for the wrongdoing of its employee." He set out these considerations for vicarious liability:

It is the element of protection involved in the relationship between school authority and pupil that has given rise to difficulty in defining the circumstances in which an assault by a teacher upon a pupil will result in vicarious liability on the part of a school authority. The problem is complicated by the variety of circumstances in which pupil and teacher may have contact, the differing responsibilities of teachers, and the differing relationships that may exist between a teacher and a pupil. Some teachers may be employed simply to teach; and their level of responsibility for anything other than the educational needs of pupils may be relatively low. Others may be charged with responsibilities that involve them in intimate contact with children, and require concern for personal welfare and development. The ages of school children range from infancy to early adulthood. Although attendance at school is compulsory for children between certain ages, many secondary school students remain at school for several years after it has ceased to be obligatory.

Where acts of physical violence are concerned, the nature and seriousness of the criminal act may be relevant to a judgment as to whether it is to be regarded as a personal, independent act of the perpetrator, or whether it is within the scope of employment.

School authorities are by no means vicariously liable for all sexual abuse perpetrated by teachers on students, outside regular school activities. Justices Gummow and Hayne have said that when an employer is alleged to be vicariously liable for the intentional tort of an

employee, recovery against the employer on that basis should not be extended beyond two kinds of case:

first, where the conduct of which complaint is made was done in the intended pursuit of the employer's interests or in the intended performance of the contract of employment or, secondly, where the conduct of which complaint is made was done in the ostensible pursuit of the employer's business or the apparent execution of the authority which the employer held out the employee as having.

Legal liability is one issue; pastoral care, even years later, of the abused student is quite another matter. Where the courts are unlikely to grant relief, one can expect heightened attention to the issue in the media. Whether before the courts or in the glare of media publicity, we still need to extend pastoral care to the victim of abuse, seeking a relationship of reconciliation. Of course, the victim has every right to reject our care and our attempt at a reconciling relationship. But we must extend the welcoming hand and the listening ear without fear for our pockets.

We Australian Jesuits have been on a rapid learning curve these last couple of weeks coming to terms with public exposure of child abuse in school and of appropriate ways to deal with complaints decades after the wrongs have occurred. The ABC's *7.30 Report* has done two programs on the plight of Lucien Leech-Larkin who was abused by a teacher in one of our schools in 1968. From what was revealed on the television report, the abuse occurred at the teacher's residence and did not relate to school activities. Lucien approached the Jesuits for reconciliation in 1998. Now the matter is in the courts. In the second program, the reporter David Hardaker discussed the matter with our provincial Fr Mark Raper:

DAVID HARDAKER: You've said sorry to Lucien Leech-Larkin, but what does that sorry mean?  
Sorry for what?

FATHER MARK RAPER: That he came in 1998 with a complaint that was evidently a desire to meet with the Jesuits and that we didn't meet him and didn't enter into a relationship to resolve that.  
Now it seems a sheer folly, but we - supposedly the experts in the pastoral area - allowed the legal area to dominate.

Hardaker wondered how it could come to this with the Church preaching Christian values: "But when it comes to paying up use the sort of tactics which might make the tobacco industry blush". That line did hit home, and it hurt. After all we Jesuits dare to proclaim a faith that does justice. Not the sort of claim you hear from Benson and Hedges. Hardaker put it this way:

Well, the head of the Jesuits, Father Mark Raper, is saying enough is enough and tonight he's blowing the whistle on how his part of the church fights its legal battles.

FATHER MARK RAPER: That's a clear legal defence, to attempt to fight this matter at every point, if I understand it, to attempt to block it and until the point either that the complainant gives up from exhaustion or that we win the case or that we lose it.

DAVID HARDAKER: So do you, as the Provincial, endorse that approach?

FATHER MARK RAPER: No.

Not now.

I have for six months, while our protocol has been reviewed, but I'm not at all content with that approach at all.

DAVID HARDAKER: But what if your approach means the Jesuits might be taken to the cleaners in a financial sense?

FATHER MARK RAPER: Um ... well, this is the issue, isn't it?

And this is the risk that's presented to me and this is one of the, if you could say, strong arguments that were put to me, but as is evident by my talking to you now, I'm taking another approach.

DAVID HARDAKER: Do you think you'll get backing for that? What if the Church's assets come under threat?

FATHER MARK RAPER: Um ... well, the assets are not as important as the people that we seek to serve.

DAVID HARDAKER: That's something which I don't think I've heard a church leader say in Australia for quite some time.

FATHER MARK RAPER: Well, what's the point of doing what we're doing if that's not the case?

DAVID HARDAKER: This time, Mark Raper has been good to his word.

After 35 years, Lucien Leech-Larkin has received a letter of apology from the head of the Jesuits.

Lucien has now decided to release a copy of that letter to the media, as is his right. I will quote those sections quoted by Richard Ackland in the *Sydney Morning Herald*:

I'm deeply sorry for the treatment you received while you were a student at St Aloysius in the 1960s. In addition, I offer you a profound apology on behalf of the Australian Jesuits. I'm also deeply sorry that I didn't keep the appointment we had made to meet, and discuss the issues face-to-face last Saturday. It was my decision to accept the advice not to proceed with our planned get-together, and I am sorry for the further hurt this caused you.

After writing to Lucien, the Provincial then wrote an open Letter to the Parents, Students and Staff of all Jesuit Schools:

You will almost certainly have seen or heard about the 7.30 Report's coverage on 23 June of sexual abuse of a student at St Aloysius' College, Milsons Point, in 1968. The program contained serious criticism of the way in which the Jesuits have dealt with this matter.

I sincerely regret that Mr Leech-Larkin's complaint against the Jesuits has not been resolved after so many years.

I see it as important to clarify that the complaint related to the actions of a lay teacher, off school property, and out of school hours.

At the same time I am well aware of the limitations of a merely legalistic approach to complaints of abuse, and I believe that a more pastoral approach is in the best interests of all concerned, especially the victims of abuse. With this concern in mind I made contact with both

Mr Leech-Larkin and his mother last week, and we have agreed to meet as soon as possible to address these serious issues.

The case is currently in the NSW Supreme Court. Subjudice rules limit what kind of public comment I can make, especially about the events of 1968. Within these limits I had agreed to be interviewed by the 7.30 Report. With considerable reluctance, however, I accepted vigorous legal advice to the effect that any appearance on the program ran the risk of contempt of court.

I now regret that I did not agree to the interview. I believe that I could have corrected some misleading impressions that the program may have given. Moreover, my silence has given to the public, and above all to the Leech-Larkin family, the impression that we are taking refuge in legal technicalities. That is not my intention. I have now communicated again to Mr Leech-Larkin by letter and by phone my desire for dialogue with him.

Let me assure parents, staff and students that all Jesuit schools in Australia have for some years had in place procedures and a code of conduct to prevent the recurrence of any events like those of 1968.

I take this opportunity to offer a sincere apology for any hurt that has occurred to anyone at any time while in the care of the Jesuits in Australia. I promise that, whenever complaints of any nature are brought to my attention, I will ensure that the Jesuits respond personally, promptly, pastorally, and with compassion.

These are very difficult areas for all of us. As church we must get our own affairs in order if we are to celebrate inclusive practices, appreciating that our students may still have claims on our pastoral solicitude many years after they have left our classrooms if there be matters that remain unresolved. Quite rightly, even those outside our church communities insist that we deal with these matters with transparency and full accountability. These issues call not just for a legal approach, but also for a pastoral concern for the victim and the accused, and for a public accounting to the church community and the broader public. Lawyers have their role to play, especially if there be legal doubts about large-scale financial liability for wrongs committed by others outside the course of their employment. Lawyers are not necessarily expert in public relations or in community perceptions. And they are definitely not the ones expert in pastoral care. A victim is entitled to expect pastoral care from us whether or not he has legal entitlements to financial compensation. And we have to expect that our private attempts at reconciliation will be held up to public glare by a media and a public who no longer gives churches or charities like the Red Cross the benefit of the doubt. In celebrating our inclusiveness, we have to ask: Are we people with such a concern for pastoral care that we are even prepared to risk being seen as fools for Christ, or are we so concerned with our public image and financial security that we are prepared to overlook with regret the hurt caused to children in the past? On the *7.30 Report*, Lucien said:

It is a breakthrough.  
I mean, first comes contrition, then reparation.  
It's the beginning of the process.

DAVID HARDAKER: Lucien Leech-Larkin's decision to speak has transformed the lives of two men and changed how a religious order does business.  
But Lucien has been betrayed before.  
He now waits to see how sincere the Jesuits are about delivering justice.

LUCIEN LEECH-LARKIN: I'm pleased that he's said that and I hope that will be the case.

I hope that perhaps we can avoid a resumption of the hostilities in the Supreme Court, but basically I'm there, I'm telling the truth, and that's where I'm at.

It was heartening for all of us committed to including the victims of child abuse in our table of discourse and fellowship when Maxine McKew, the *7.30 Report* anchor woman said, "You don't always see a genuinely transforming moment on television, but I think that was it." For Lucien and for all of us, let's hope so.

*The Second Challenge: Tolerating Difference Without Having to Endorse All Difference and Without Having to Tolerate the Difference of others impacting on our lives as Catholics*

We Australians have a lot in common with our American brothers and sisters, regardless of whether we support the Howard foreign policy doctrine. Many social issues play out in both societies in much the same way. But in the US, acute social conflicts are more likely to turn up before the judges for resolution. The US Supreme Court has had a very busy couple of weeks. The most recent decision on gay rights raises profound questions for the future.

As a major national employer and educator, we who constitute the Catholic Church in Australia need to investigate the limits of respecting the privacy and the lifestyle of the individual. How does this relate to the desire to maintain public morality and decency? If required to tolerate the variant lifestyle of others, are there effects on our own lifestyles which are then not tolerated or endorsed by those demanding tolerance or endorsement from us?

Justice Kennedy wrote the majority opinion of the US Supreme Court in last month's decision in *Lawrence v Texas*. The question was whether a Texas law criminalising sodomy was a breach of the constitutional guarantee of equal protection for all. Back in 1976, the majority of the Supreme Court said, "The issue presented is whether the Federal Constitution confers a fundamental right upon homosexuals to engage in sodomy and hence invalidates the laws of the many States that still make such conduct illegal and have done so for a very long time." Justice Kennedy said that to simply reduce the issue to a consideration of the right to engage in certain sexual conduct "demeans the claim the individual put forward, just as it would demean a married couple were it to be said marriage is simply about the right to have sexual intercourse." Kennedy conceded that anti-sodomy laws "purport to do no more than prohibit a particular sexual act." He went on to say:

Their penalties and purposes, though, have more far-reaching consequences, touching upon the most private human conduct, sexual behavior, and in the most private of places, the home. The statutes do seek to control a personal relationship that, whether or not entitled to formal recognition in the law, is within the liberty of persons to choose without being punished as criminals.

This, as a general rule, should counsel against attempts by the State, or a court, to define the meaning of the relationship or to set its boundaries absent injury to a person or abuse of an institution the law protects. It suffices for us to acknowledge that adults may choose to enter upon this relationship in the confines of their homes and their own private lives and still retain their dignity as free persons. When sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring. The liberty protected by the Constitution allows homosexual persons the right to make this choice.

This was all too much for the conservative and Catholic Justice Scalia who wrote a very vigorous dissent. He warned that the court's controversial decisions upholding a constitutional right of abortion arose by extending the reasoning of the court when it first struck down state laws that banned the sale of contraceptives to married couples. He foresees a similar trajectory of constitutional jurisprudence that will now extend equal rights to gay partners seeking recognition of their "marriage" and seeking equal access to employment and adoption, regardless of the moral scruples of other citizens. Justice Scalia observed:

Many Americans do not want persons who openly engage in homosexual conduct as partners in their business, as scoutmasters for their children, as teachers in their children's schools, or as boarders in their home. They view this as protecting themselves and their families from a lifestyle that they believe to be immoral and destructive.

Let me be clear that I have nothing against homosexuals, or any other group, promoting their agenda through normal democratic means. Social perceptions of sexual and other morality change over time, and every group has the right to persuade its fellow citizens that its view of such matters is the best. That homosexuals have achieved some success in that enterprise is attested to by the fact that Texas is one of the few remaining States that criminalize private, consensual homosexual acts. But persuading one's fellow citizens is one thing, and imposing one's views in absence of democratic majority will is something else. I would no more *require* a State to criminalize homosexual acts—or, for that matter, display *any* moral disapprobation of them—than I would *forbid* it to do so.

Later he said:

One of the benefits of leaving regulation of this matter to the people rather than to the courts is that the people, unlike judges, need not carry things to their logical conclusion. The people may feel that their disapprobation of homosexual conduct is strong enough to disallow homosexual marriage, but not strong enough to criminalize private homosexual acts—and may legislate accordingly. The Court today pretends that it possesses a similar freedom of action, so that that we need not fear judicial imposition of homosexual marriage, as has recently occurred in Canada.

At the end of its opinion—after having laid waste the foundations of our rational-basis jurisprudence—the Court says that the present case “does not involve whether the government must give formal recognition to any relationship that homosexual persons seek to enter.” Do not believe it. More illuminating than this bald, unreasoned disclaimer is the progression of thought displayed by an earlier passage in the Court's opinion, which notes the constitutional protections afforded to “personal decisions relating to *marriage*, procreation, contraception, family relationships, child rearing, and education,” and then declares that “[p]ersons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.” Today's opinion dismantles the structure of constitutional law that has permitted a distinction to be made between heterosexual and homosexual unions, insofar as formal recognition in marriage is concerned. If moral disapprobation of homosexual conduct is “no legitimate state interest” for purposes of proscribing that conduct; and if, as the Court coos (casting aside all pretense of neutrality), “[w]hen sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a personal bond that is more enduring”; what justification could there possibly be for denying the benefits of marriage to homosexual couples exercising “[t]he liberty protected by the Constitution”. Surely not the encouragement of procreation, since the sterile and the elderly are allowed to marry. This case “does not involve” the issue of homosexual marriage only if one entertains

the belief that principle and logic have nothing to do with the decisions of this Court. Many will hope that, as the Court comfortingly assures us, this is so.

In the name of tolerance and inclusion, we Australians will be asked to accord equal recognition of homosexual marriages within a decade or two. But this will not answer the question about what unions, whether homosexual or heterosexual, we should endorse as the Catholic community. Neither will it set the appropriate limits on the tolerance to be extended to others in their personal relationships when the public recognition of such relationships then impacts on the lifestyles and values we may want to continue to espouse as the Christian community. Should those who in future have contracted a faithful homosexual "marriage" be given equal access to employment in Catholic schools? Should their children be welcomed into the Catholic school in significant numbers? Even to raise these questions is to risk the ready public label that one is anti-homosexual. While there may be a case for equal legal tolerance in a pluralistic, democratic society, there may be good reason for the Catholic community to maintain its exclusive endorsement of the marriage of man and woman who are open to the bearing and nurture of each other's children.

There are still compelling common good or public interest arguments which can be put to distinguish a traditional marriage from a long-term relationship whether it be homosexual or heterosexual. Sensitivity, compassion and non-discrimination do not necessarily displace arguments which distinguish marriage and same sex relationships or other relationships where there is not both lifetime commitment and openness to bearing and nurturing each other's offspring. Any recognition of same sex relationships should not undervalue the uniqueness of marriage as an ideal union with a profound social purpose. A relationship which is not "until death us do part" and which is not open to the bearing and nurture of each other's offspring is qualitatively different from a marriage. Espousing the uniqueness and the ideal of marriage does not necessarily entail the undervaluing of the worth and dignity of one involved in another type of relationship.

Were the church to depart from the "celibacy in singleness and faithfulness in marriage" ideal within its own organisation, we would have no grounds for discriminating between homosexual and heterosexual persons outside marriage when it came to consideration of their suitability for participation in church life, provided such persons remained discreet about their sexual lives, not seeking to advocate to children a lifestyle at variance from church teaching. The inclusive challenge for all of us is to accord respect and acceptance to the loving, faithful homosexual couple (with no more focus on, or prurient interest in, their sexual activity than we would have on the activity of any heterosexual couple) while at the same time continuing to give exclusive endorsement and sacramental expression to the marriage of a heterosexual couple, acknowledging that the institution of marriage is a sacrament and a sacred institution for us Catholics precisely because it is the institutional crucible within which children of the couple can best be created, nurtured and initiated as members of the church. It is for this reason that the institution of marriage is especially deserving of recognition, protection and support. While understanding the hurt that some homosexuals will continue to feel until we give the same endorsement and sacramental expression to their intended lifetime commitment, I would need to insist that theirs is no more a marriage than the union of the young heterosexual couple who intend not to bear their own children. In response some homosexuals will claim that the church recognises the marriage of an elderly or infertile couple. The paradigm of marriage remains the man and woman committed to each other for life, and open to bearing each other's children. Even if the social institution of marriage be waning, the sacramental expression of marriage remains constant.

### 3. The Benefits of Diversity and Preference

*The First Benefit: Diversity and preference for the sake of educational excellence and opportunity for the group*

One of my abiding concerns about Catholic schools, especially the wealthier ones, has been the prospect that the students are exposed to a very limited cross-section of the community. How can we educate young people for life when they are not exposed to a broad cross-section of those who constitute the society of which they are a part? It is even more concerning that those schools with the greatest educational cache are having to spend more and more money to keep up with the Joneses or the Grammars in offering a wider range of curriculum options and even more extra-curricular activities without being able to broaden the economic base of their student population and without being able to give special preference to those with disabilities or special needs.

If you are running a very good school, there is a strong demand for places. One of the greatest tests of our inclusivity is our selection criteria and selection process. In the US, the most sought after places in the tertiary sector are the law schools of the Ivy League universities. There will be ten times the number of applicants to places. Who is chosen? For 50 years, race has been a big issue. 25 years ago, the US Supreme Court struck down any system of racial quotas for admission to medical school. But the court said there was some basis for preferential treatment in order to make up for the abuses of history and to allow catch up to occur. There was some constitutional tolerance of affirmative action. Now the Supreme Court has revisited the issue, looking at the admissions policy of the University of Michigan Law School. A whole new argument has now been put forward and approved by the Court. No longer do we look to the past. We look to the future, seeking the best possible educational opportunities for those privileged to enter the institution. To set up the best learning environment, so the argument goes, you need a critical mass of students from the various racial and ethnic backgrounds from which students come and among which they will work when they graduate. Also it is expected that a disproportionate number of these graduates will end up as community leaders and it is for the well being of society that they enjoy exposure to colleagues from across racial and ethnic divides. The university outlined these benefits of a critical mass of students from diverse backgrounds: "To ensure that these minority students do not feel isolated or like spokespersons for their race; to provide adequate opportunities for the type of interaction upon which the educational benefits of diversity depend; and to challenge all students to think critically and reexamine stereotypes".

Writing for the majority of the court in *Grutter v Bollinger*, Justice O'Connor said:

Today, we hold that the Law School has a compelling interest in attaining a diverse student body. The Law School's educational judgment that such diversity is essential to its educational mission is one to which we defer. The Law School's assessment that diversity will, in fact, yield educational benefits is substantiated by respondents and their amici. Our scrutiny of the interest asserted by the Law School is no less strict for taking into account complex educational judgments in an area that lies primarily within the expertise of the university.

There are examples of admittees who have lived or traveled widely abroad, are fluent in several languages, have overcome personal adversity and family hardship, have exceptional records of

extensive community service, and have had successful careers in other fields. The Law School seriously considers each applicant's promise of making a notable contribution to the class by way of a particular strength, attainment, or characteristic - e.g., an unusual intellectual achievement, employment experience, nonacademic performance, or personal background. All applicants have the opportunity to highlight their own potential diversity contributions through the submission of a personal statement, letters of recommendation, and an essay describing the ways in which the applicant will contribute to the life and diversity of the Law School. What is more, the Law School actually gives substantial weight to diversity factors besides race. The Law School frequently accepts nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected. This shows that the Law School seriously weighs many other diversity factors besides race that can make a real and dispositive difference for nonminority

Acknowledging that the court's jurisprudence on the issue 25 years ago had reached its use-by date, she unashamedly concluded with the observation that "25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today". I daresay in 25 years time there will still be a scheme for authorising racial preferences. It is just that there will be a whole new rationale once again.

It will be for you to assess which group of students would need to be represented in your school with a critical mass so that they and all others in the student body might profit educationally from their presence. Not all different or disadvantaged groups could be so represented, but a school that does include a critical mass of some disadvantaged group is often a more lively educational environment for all.

Since my return from East Timor 18 months ago, I have spent much time with asylum seekers in the detention centres and proclaiming the unpopular message about the injustice of their plight. In some schools, my message is seen to be a political one coming from outside. But it is a very different message in a school like St Ignatius College in Adelaide where three Afghan unaccompanied minors were accepted as students with the school being gazetted as an authorised detention facility and the headmaster, Fr Greg O'Kelly SJ, being registered as an authorised detention officer. The issue of Australia's refugee policy has taken on a life of its own in that school. The students have come to know firsthand the human face of the issue. The school is alive and educationally more robust because this critical mass of Afghan students is part of the student body.

I have had similar experiences over the years visiting schools like St Augustines in Cairns and St Scholastica's in Glebe where there has been a sustained policy of including some Aboriginal students and of focusing on reconciliation in the curriculum. When a non-indigenous advocate like myself visits some other schools advocating Aboriginal land rights, I am received as an outsider who deserves a hearing but maybe not much more. But in these schools it is possible to slot in to an established program and ethos where the educational outcomes are for the benefit of all students.

It is for you as the educational experts to determine how inclusive you can afford to be. But it is essential that Catholic schools not have a narrower base when compared with state schools that have to take all comers. Surely the Catholic school should be the privileged place where everyone can find a place at the table. But then again it should also be the selective place where the believer can find a haven for the expression and living out of Christian values. Tolerance and inclusion are not the only values, though they are the ones by which we are so

often judged by the secular media and society who have no time or interest in what they regard as our quaint outdated religious belief systems.

*The Second Benefit: Diversity and Preference for the Purpose of Showing Favour to the Poor and Disadvantaged - Preferential option for the poor. Schools as Places Wanting to Include the Disadvantaged and Marginalised*

Last year, I was walking around the perimeter of the new Baxter Immigration Detention Centre outside Port Augusta in the diocese of Port Pirie. I was with a couple of local priests. We were counting the stranding of electric fence wire and checking out the microwave detectors in the sterile zone. These facilities have been set up in remote locations in the hope that the detainees will be out of sight and out of mind. We priests were reflecting that no matter where these facilities might be, the church is always there. Maybe in small numbers. But the church is always there - with the fragile, overstretched local community and the national network of church.

In celebrating the inclusive practices of Catholic schools, I have nothing but unqualified praise for the Catholic schools in the remote dioceses of Geraldton and Port Pirie. They have provided a wonderful service to the kids behind the razor wire in Port Hedland and Woomera and they are now offering the service at Baxter. They have provided not only basic education but also the Australian human face offsetting the barbarity of the popular, immoral mandatory detention policy. Only yesterday, I was with a family in Baxter whose younger daughter will turn six next month. She has spent almost half her life in a detention facility in outback Australia. Why? To send a double message - to deter other asylum seekers and to assure Australian voters that we the government are strong and resolute. Unlike the other mob, we've got the ticker to put the kids behind the razor wire so you can be assured that you are safe and that no one reaches our shores without our permission. No matter that this obsession with border protection could never play itself out except on an island nation continent nestled down under as the last stop before Antarctica. No matter that refugee flows are determined more by push factors like Saddam Hussein or the Taliban. We will send a clear message that refugees should flee anywhere on earth except here. Because we are special, and the only downside is the kids behind the razor wire. I am, you are, we are Australian. In the midst of this political imbroglio is the Catholic school in the remote country town opening its doors to the child who is allowed through the razor wire for a few hours each day, receiving the benefits of an Australian Catholic education.

With such presence and such service, the local dioceses have real credibility in advocating the cause of the detainees. Bishop Hurley from Port Pirie speaks with far more authority than a cardinal or an archbishop when he declares: "This policy is toxic. Everyone who comes into contact with it gets sick." Responding to the recent Four Corners program, he said, "It shows again that this policy makes prisoners of everyone. I am afraid that we will look back at this chapter in the history of our nation with the same sadness, shame and regret as the White Australia policy." Fr Paul Bourke, the parish priest of Whyalla, has recently written in the diocesan newspaper: "Baxter appears to me to be becoming increasingly punitive with self harm, sedatives and mental illness as daily realities of the system's blind perseverance with such a flawed and destructive model. From where I stand it has become a big lie and will not be lessened by 'out of sight, out of mind' which allows it to survive. We need to speak out." When I told him that I might quote him today, he urged me to communicate his anger.

At 5am on Monday 11 March 2003, the police raided the Sisters of Mercy residence in Port Augusta, a small town in outback South Australia. During the night, 2 detainees had escaped from Baxter. The 2 Sisters of Mercy are regular visitors to Baxter. They were on the list of suspect harbourers because they were known to have given some detainees the name and telephone number of another Sister of Mercy thousands of kilometres away at Port Hedland in Western Australia, the site of Australia's oldest reception and processing centre. The sisters had no involvement in the escapes and were permitted to return to bed. But such is the present Australian obsession with unauthorised boat people making their way to Australia's shores without a visa.

At Baxter, local Christians gather once a week for a prayer service that is attended by Muslims, Sabean Mandeans and Christians. Some days, Bishop Eugene Hurley presides at the service, pledging the church's support for the asylum seekers. He preaches a message of freedom for those who are in prison.

It is now more than a year since the Australian Catholic Bishops issued a pastoral letter taking strong exception to the government's treatment of boat people. The bishops said:

Sadly, despite Australia's traditional generosity, there appears to be, in our national community at the present time, and to our great shame, a considerable decline in that active spirit of generosity. An atmosphere of fear is developing. There are some people who seem to promote a feeling of the loss of security and well-being. This fear we do not share: it is without foundation, and must give way to a fearless approach to truth and charity.

But are we listening to our bishops on this issue? As the Catholic Church in Australia, we are more confident and true to ourselves knowing that detainees of all races and religions are included in our worship and prayer and that the children have been included in our classrooms.

#### **4. The Context for Preference and Diversity**

*The First Context: Finding the balance between scarce resources and special provision for those in need*

Educational administrators have the difficult task of trying to keep fees low while at the same time being inclusive and allowing those with great disabilities to have access to a Catholic education. Each system needs to pull its weight. Does the Catholic system want to be seen as one with a preferential option? When we cannot provide for the child in greatest need, should there be greater collaboration with the State? I well remember the case of Anthony Bartl in Melbourne. He was rendered quadriplegic when hit by a car near his home in 1986. His parents wanted him to receive his primary education at the local Catholic primary school. The church pleaded that it did not have the resources to outfit the school situated in one of the poorer neighbourhoods of Melbourne. Obviously not every school can be equipped for every child with a disability. But the system must provide specialist education and services for those children suffering the more common disabilities.

Anthony's parents fought a long battle trying to ensure that he could be educated in the local convent school. For the tenth anniversary, there was an interview with the parents in the *Melbourne Age*. I quote it not to ask the rights or the wrongs, but simply to see how we as a church are seen.

Asked whether they are still practising Catholics the parents laugh. They say they are but that the experience of the past 10 years has changed their idea of faith. Mr Bartl said he no longer believes the Catholic Church is the source of God's love and blames the rejection of Catholicism by Anthony's older brother on the battle with the school. Mrs Cantwell-Bartl says she has come to see the harshness and hardness of the organised Catholic church. Mr Bartl says, "People being aware of it will hopefully mean that the institutional Catholic Church is shamed not to perpetrate this kind of discrimination, or any discrimination on children with disabilities." The article concludes with these words: "The Catholic Education Office yesterday said there was nobody who could comment on the issue."

As the Catholic Church, we are the source of God's love for the faithful and we need to hear the victims and have them help us mitigate the effects of our perceived harshness and hardness. As we know, none of us is without sin. We as church often complain about how the media are not attentive to the things we have to say and yet so often when the media is wanting an answer we have no comment. Like us Jesuits in answering the media calls about the sexual abuse of Lucien Leech-Larkin, we are all well advised to admit publicly the problems we confront in wrestling with these difficult issues. There is no perfect answer to inclusive practices in education. But there is nothing to stop us being more inclusive in our processes as we discern the greater good for our educational enterprises.

*The Second Context: Including the One who is other at the table of the Eucharist*

We Catholics are at our best in celebrating when we come to the Eucharist with open hands and open hearts. In congratulating you and encouraging our inclusive practices, let me close with a reflection on a wonderful Eucharist we celebrated in the Baxter Visiting Centre on Saturday night. Louay is an Assyrian Christian from Iraq. He has spent a couple of years in detention, first at Woomera and now at Baxter. He has relatives living in Sydney but he is not allowed to move to the Villawood detention centre to be close to them or to the Assyrian Christian community. On Friday, his relatives drove the 18 hours from Sydney to be with him and to bring the news that his father had died three months ago in Baghdad. He was not hit by one of our bombs. But with a serious kidney complaint he had to be discharged from the hospital which was no longer operational thanks to the work of the Coalition of the Willing making the world a safer place for you and me, despite the objections of the UN and the Pope that this was not a war of last resort. We gathered for the funeral mass of George Kaiser Israel. We were Australians, Iraqis, Iranians, Palestinians, Afghans and Vietnamese. We were Catholic, Assyrian Christian, Sabeen Mandeian, and no religion at all. We were detainees, family, friends, DIMIA staff and ACM staff. We were bonded together in our shared humanity in solidarity with Louay numbed on the other side of the razor wire, on the other side of the world, mourning the death of his Dad, part of the collateral damage from our just war seeking out those elusive weapons of mass destruction. Roman authorities would have many theological questions about that Eucharist, but those questions will not be raised because Roman authorities do not often come inside the razor wire. Inside the wire, the theological questions seem to evaporate as you celebrate the Eucharist of the Cosmic Christ who came to include everyone at the banquet of salvation. May God continue to bless us all as we live the tension, own the mess, and celebrate being the Church as a tolerant and inclusive employer, teacher and community while also being the Church as an exclusive, counter-cultural witness, practitioner and community.