

# BOISI CENTER INTERVIEWS



NO. 104: FEBRUARY 25, 2015



**FRANK BRENNAN, S.J.**, is the 2014–2015 Gasson Chair at the Boston College Law School and a professor of law at Australian Catholic University. He spoke with Boisi Center associate director **Erik Owens** before his presentation at the Boisi Center on being a priest in the public square in Australia.

**OWENS:** What is the religious landscape of Australia, and where do Catholics sit in that space?

**BRENNAN:** Australia was founded originally as six British colonies, and though we didn't have an established Anglican church as such, there was definitely a sense that the Anglicans or Episcopalians and the Presbyterians were the establishment. Often in the early days, Catholics were rebellious Irish who tended to be convicts rather than officers; the Catholics were, if you like, the lower classes.

The story is nicely told if you look at the history of the Jesuits in Australia. The first Jesuits to come to Australia were Austrians. They came, they planted the vineyards, they started ministering in the country areas, and they went on ministry to the Aboriginal peoples. Some years later, the Irish Jesuits turned up. It's no disrespect to my Irish forebears to say they weren't much interested in ministering to the Aborigines, but were instead interested in trying to improve the lot of the Irish. So increasingly the Catholics became upwardly socially mobile. At the same time, with increased migration since World War II, it got to the stage probably a generation ago where Catholics were actually the largest grouping in the Australian community: about 25 percent. In 1995, the chief justice—who happened to be my father—was swearing

in the new governor general in the presence of the prime minister, and all three were Catholic. Now, that would have been completely unimaginable in earlier times.



So it's your classic Irish Catholic story, supplemented with that of Catholics coming from countries like Italy. Now Catholicism is very much mainstream in Australia. But I think for Americans, the biggest surprise about Australia would be just how thematically and dramatically secular we are in our public square. As a result, particularly when an issue has come up like child sexual abuse within churches, there's been a lot of antagonism towards the churches and partic-

ularly towards the Catholic Church in terms of its handling of that situation—understandably, because of the clericalism and the numbers.

**OWENS:** Can you explain a bit about the legal provisions for religious freedom in Australia?

**BRENNAN:** For Americans, it's important to understand that Australia is a bit like the Westminster parliamentary system. We don't have your robust presidency, but neither do we have a Bill of Rights in our constitution. Our constitution is a very bland legal document which basically sets out the separation of powers between the commonwealth and the states.

There is a provision—section 116 of our constitution—which provides some modest religious freedom, but it's nothing like what you have here in the United States in terms of constitutional protection. In general terms, the establishment of any church is constitutionally prohibited, and the need for religious freedom is respected.

Where Americans would find Australia very different is that there is ready cooperation between church and state in the delivery of services, particularly in relation to Catholic education. There is a whole raft of Catholic primary and secondary schools throughout Australia,

all of which receive robust government funding—and, but for the government funding, wouldn't be able to exist. The Catholic Church is also one of the major healthcare providers. It's generally accepted in the Australian community that it's appropriate that there be that closeness of government relations with churches such as you would not see here in the United States.

**OWENS:** In terms of education, are all religious traditions that effectively provide education given the opportunity to receive state funding?

**BRENNAN:** They are. In recent times, Muslim schools have been set up, and they receive government funding. Like all schools, of course, they have to comply with a fairly strict regulative regime, and that can cause problems with some new religious groups getting established. But what we have seen over the last twenty years is where, for example, the Anglican Church in the past was involved mainly with elite private schools, they have expanded enormously, and the government funding is readily available.

**OWENS:** How would you describe the relationship of religious leaders to the broader Australian society?

**BRENNAN:** In Australia there's an increasing appreciation that we have multiple affiliations. Church members see themselves also as being citizens in a robust, pluralistic, democratic society. And church leaders know that they have a role in terms of trying to articulate their religious message in the public square, though they're very careful not to go too far buying into the political process.

Those of us in the Catholic Church in Australia have a distinctive history about this. In the 1950s, when there was a fear about the rise of communism, there was fear that the Labor Party might be infected by communist elements. As such, many Catholics split from the Labor Party and set up the Democratic Labor Party. Some bishops were strong backers of

those involved with this party and the divisive Catholic layman, B.A. Santamaria. Other bishops, though, objected—saying that it was not the place of the bishops to be backing that sort of Catholic action—and those bishops ultimately won out. Ever since, Australian bishops don't put their heads up very often, with regard to the public square. This has been compounded by the church leaders' loss of morale in the wake of the child sexual abuse crisis.

---

**“The question for me always is how can we credibly bring the wealth of the Church tradition to bear to ensure that no group is left out as society discerns what law is most just and inclusive for all.”**

---

**OWENS:** How did the sex abuse crisis manifest within Australia? Were there similar cases in Australia as there were in the United States and Ireland?

**BRENNAN:** It was similar to what happened in the United States, though of course we are not the same sort of litigious society that you are. But it became quite clear through the 1990s that there were particular problems in the Catholic Church, and the rate of offending seemed to be quite high when compared with other churches. We took consolation in the fact that the Catholic Church had far more welfare services, far more educa-

tion services, than did other churches, and hoped that might explain the higher incidence. But increasingly, those of us in the Church have grown wary about that explanation.

At the state level, various inquiries were held into the matter. In 2012 the Australian government set up a Royal Commission to look into the sex abuse situation; the commission is now set to last at least five years. Definitely, the Catholic Church has been very much under the spotlight, and justifiably so.

I have the sense here in the United States that you've been through most of the angst, the rules are now clear, and that protocols are robustly enforced. I think protocols are robustly enforced in Australia now, too, but I think probably there's a far more schematized routine way of dealing with damages claims by victims here than there is in Australia. We're still coming to terms with what is an appropriate, just outcome in terms of compensation and restitution.

**OWENS:** I'd like to talk about a couple of the issues that I know you're deeply engaged in there. One is the matter of indigenous people's rights and cultural promise. Another is the question of immigration and asylum.

**BRENNAN:** Well, I see them very much as linked. One of your writers on philosophy and law of religion, Kent Greenawalt, had a line about the borderline status of various groups. In Australia, if you look at the more traditional areas, the Church is involved with those groups at that beginning and end of the life cycle as well as with those people who are suffering some form of disability, who tend to be marginalized within the mainstream society.

Americans find difficult to understand that Australia, alone among British colonies, gave no recognition to the title of the indigenous people to their lands, and no treaties were ever negotiated. Now, there's no self-respecting American who

would say that all treaties with Native Americans were honorably complied with, but to have a treaty, even if it's broken, is a better starting point than no treaty at all. So a lot of my work has been involved with issues to do with Aboriginal land rights and issues of self-determination. In 1992, the Australian High Court for the first time recognized the rights of Aboriginal people to their traditional lands. So there's been a need for a whole statutory structure for dealing with that.

One of the issues presently occupying us in Australia—and it's the topic of one of the books I've been working on while here at Boston College—is how do we best recognize Aborigines in the Australian constitution. We now do have an Aboriginal middle class, thank God. There are now Aboriginal law professors, there are now Aboriginal doctors, there are now senior Aboriginal civil servants. These educated, middle-class indigenous Australians look at our constitution and ask how can this be a self-respecting nation when the constitution doesn't even mention those people who are the proud inheritors of what, admittedly, is the oldest recorded culture in history?

One of the other problem areas for us is that, Australia being such a vast country, we still have Aboriginal communities in very remote areas. These isolated communities are living in situations where the delivery of services by government is still very problematic, and where the social conditions are still appalling. So there's still much work to be done there.

With regard to the issue of asylum and refugees: Australia, like the United States, has been a generous country in terms of cooperating with the UN High Commissioner on Refugees (UNHCR) for placement of people who are proven to be refugees. But as a country we have become increasingly unsympathetic to people who turn up in Australia by boat without a visa seeking asylum. I think for Australians, there's something about



the deep psychology of people who live on an island nation continent. There's always a fear about "the other" who's going to come across those waters. And so we've had increasingly restrictive policies imposed by government. The moral quandary has been this: The government has said, "we want to stop the boats coming from Indonesia, because if we do that, we can make more places available for the neediest people who are now in refugee camps in Africa, for example, where there are people who could never afford to employ the services of a people smuggler." So the moral calculus of that has been very difficult. The other thing is that Australia has engaged in wanton exceptionalism because we're one of the few signatories to the Refugee Convention in Southeast Asia. We do the special pleading of saying, "we've got to find unilateral solutions to us being a honey-pot for people from Iraq, Afghanistan, Iran, transiting countries like Malaysia and Indonesia." So we've contracted out to countries like Nauru and Papua New Guinea. And God help us, who'd have ever thought it possible that we would have engaged in the legal formalism of saying, "Cambodia is a signatory of the Refugee Convention, so maybe we can export some there?" The issue is vexed politically; both major political parties have been pragmatic and ruthless, with

the result that it's very difficult to get airplay in the Australian public air space for a more ethically coherent outcome.

**OWENS:** So the Australian Navy- or Coast Guard-equivalent is stopping boats along the way and taking them to Nauru or Papua New Guinea? Manus, in Papua New Guinea, has holding environments where people are in legal limbo, right?

**BRENNAN:** Yes, either they are directed to those places or sent back to Indonesia. In Manus, the refugees are held in detention. This includes children, who have been treated in an appalling fashion. One of the imbroglios that's just been raised in the last week or two in Australia is that our Australian Human Rights Commission has found that, not surprisingly, there have been instances of child sexual abuse occurring within commonwealth-run, -supervised or -funded detention centers, which gives a whole new poignancy to our Royal Commission on Child Abuse.

**OWENS:** Tell us about your own advocacy work on the part of both of these marginalized peoples. Is there anything Jesuit, or Catholic or Christian about that mode?

**BRENNAN:** This week marks my fortieth year as a Jesuit. The week after I entered the Jesuits, the thirty-second General

Congregation of the Jesuits concluded in Rome. One of the key documents out of that congregation was *Decree Four: Our Mission Today*, and paragraph two of that decree specified that for Jesuits, there's an inextricable link between the promotion of faith and justice. It linked the idea of faith and justice with the need to reconcile ourselves to God and to reconcile humanity.

For me, what is particularly Jesuit and therefore implicitly Catholic in all of this is that we cannot publicly or even privately profess a religious faith in a God whose Son we believe is amongst us, offering salvation for all, proclaiming a message of the fraternity of the whole of humanity, proclaiming a message of the prospect of reconciliation despite injustice—that cannot be done unless we take a stand. In a society like Australia, if you want to look at those who have been most marginalized, both historically and in our present situation, they're those who are indigenous or those who have come seeking asylum.

**OWENS:** As in most societies, I imagine that the cultural inertia is away from the marginalized and toward the more superficial or prosaic.

**BRENNAN:** Particularly in Australia where we escaped the global financial crisis—one of the few countries to do so—because we literally became the quarry of China and exported lots of minerals to China at the time and we made a large amount of money in the process. As a result Australians have become fairly lethargic but also expectant that our lifestyles will be maintained, despite our incapacity to develop new industries or to renew our economy sufficiently. The great sleeper in Australia at the moment is how major political parties can invest political energy in any political issue other than the economic bottom line.

**OWENS:** What is at the top of your agenda as an activist and a man of God seeking justice in Australia after you return from Boston College?

**BRENNAN:** I've had a wonderful year here. I've had the opportunity for, as I say, getting my theology over breakfast at Roberts House with people like Jim Keenan, David Hollenbach, Andrea Vicini, Ken Himes. At the Law School, I get some of the new thinking, what's going on in human rights and the intersection between law and theology, particularly with people like Cathy Kaveny.

As I go back to Australia, I think the essential questions for us as Church and as society are how do we extend dignity, transparency, and justice to all, particularly those who are most marginalized? The most immediate, exciting project for me is that I finished a book while I've been here called *No Small Change*, which is outlining a proposal for constitutional recognition of indigenous Australians in the hope that there might be a referendum of the Australian people supporting such an initiative on May 27, 2017—which will be the fiftieth anniversary of the first referendum we had in Australia, which took out some of the very obnoxious, racist provisions of our constitution.

I've also completed a book while here of some of my writings and public lectures, and I've been able to hone them somewhat in the light of the philosophy and theology I've been reading here and the mentors at whose feet I've been sitting, which I've entitled *Amplifying that Still Small Voice*. What I've set out there is an agenda for us as a Church to transform ourselves. Particularly, I focus on where Pope Francis has given us, if you like, the pastoral wiggle room to be more credible in the public square. I think we need to trade more on the Francis dividend while it lasts.

Another important issue, in terms of Australian society, is to try and get right the need for a negotiated regional settlement in relation to asylum seekers, and to do more in terms of the usual issues that pop up: questions like physician-assisted suicide and same-sex marriage. The

question for me always is how can we credibly bring the wealth of the Church tradition to bear to ensure that no group is left out as society discerns what law is most just and inclusive for all?

[END]

### The Boisi Center for Religion & American Public Life

24 Quincy Road  
Chestnut Hill, MA 02467

[www.bc.edu/boisi](http://www.bc.edu/boisi)  
617-552-1860  
[publife@bc.edu](mailto:publife@bc.edu)

 [boisicenter](https://www.facebook.com/boisicenter)

 [@boisi\\_center](https://twitter.com/boisi_center)

Visit [bc.edu/boisi-resources](http://bc.edu/boisi-resources) for a complete set of the Boisi Center Interviews and audio, video, photographs, and transcripts from our events.