

David Marr wrote his essay after the release of *Silencing Dissent*, and could take as given the documentation of the Howard government's excesses. His focus is closer and more personal. He describes with ferociously eloquent disdain the ongoing bastardry of the Australian government under Howard. He excoriates Howard, 'the Old Voltairean', and suggests there is something wrong in the relationship Australians have to their democracy — 'We aren't the larrikins of our imagination ... Australians are an orderly people who love authority ... subjects more than citizens'; 'It's a big part of our upbringing, learning to shut up, to listen, to wait until we're spoken to ... Limits other countries don't accept, we take for granted ... It's part of our deal with authority'. He notes Howard's ability to 'spin, block, prevaricate, sidestep, confound and just keep talking come what may', his 'genius for ambiguity', his lying 'without shame', and how '[f]or the last decade, Australia ... had a prime minister who [thought] it beneath him to admit mistakes'.

Like *Silencing Dissent*, Marr shows Howard, his government and its press cheerleaders controlling, censoring, or silencing public debate, scientific and other research, NGOs, the public service, and parliament; politicising the military, demonising and criminalising lawful protesters, and seducing us into the unedifying 'culture wars' — 'a party-political assault on Australia's liberal culture'. For examples Marr largely confines himself to events occurring as he writes (13 February –13 April 2007). Nevertheless, the list is long: the 'monstering' of Professor David Peetz's research on WorkChoices; Treasurer Peter Costello's threats against animal rights campaigners; the ban of Philip Nitschke's *Peaceful Pill* handbook; hiding of Commonwealth knowledge of the Balibo killings; dawn raids on G20 demonstrators; Allan Kessing's conviction for leaking the Customs report on Mascot airport; Attorney-General Ruddock's plans to ban material that 'advocates' terrorism. Asserting that 'the contest of conversations' is the heart of democracy, Marr contends that what Howard and his government depended on was the 'lazy, brutal assertion of power at the expense

of public debate', the bullying specification of the average and the mainstream. A mainstream that asserts 'we're just in business here [in Australia], a corner shop surviving on the say-so of the bigger chains up the road'.

The eloquence and power of Marr's writing is enjoyable, and I share his scorn for Howard and his government. But there is also scorn for Australians, and I'm not sure which Australians he's talking about. On the one hand, according to Marr, Australians are orderly, easily led, silent in the face of authority, and wedded to the mainstream. On the other, 'we' do not like the USA, think the rich too rich, the poor too poor, didn't agree with the decision to invade Iraq, trust the ABC, don't go to church, support euthanasia and abortion rights, and believe business has too much power. Perhaps 'we' don't speak up as much as Marr would like, but I remember significant protests against government decisions in relation to these issues. I can't help thinking that in some ways Marr's critique is of some other, older Australia, and that in a way he's recreating the same mythic 'mainstream' that Howard appealed to in his years in power. 'We' are now more than the white Anglo-Celtic, good Christian country that embraced stoic fortitude in the face of defeats in foreign countries (read ANZACs, read Iraq). But for all that, Marr's essay is an enjoyable corrective to the panegyrics of the loony Right.

Now that Howard and his government have gone, do these essays have anything to tell us? Definitely. They show us what happened. They show us how it happened. They point to what was lost, and what can be, must be, regained. Neither book has illusions that a Labor government will not similarly exploit its power, but each provides blueprints against which we may measure its progress, or otherwise. There are signs in Rudd's call for an Australia 2020 summit, in the measured tone of some of his speeches, and the collaborative talk of his ministers, that we are in for something at least a little more open, inclusive, and accountable. But 'we' must be wary. Those of 'us' whose country was seized by the force of an invading power and who were alienated from their land and culture, or who came here as

refugees from totalitarian regimes, know the ease with which governments can seize power. Other Australians may not. Most Australians are unaware that much of the legislation and processes for so doing already exist. The scenario I sketched at the beginning of this essay, whether or not you thought it paranoid or amusing, was, and is, not that far away. Reading these essays may help keep it distant.

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ODYSSEY TO FREEDOM: A memoir by the world- renowned human rights advocate, friend and lawyer to Nelson Mandela

George Bizos, Random House South Africa, 2007, 616 pp, available from www.kalahari.net and www.exclusivebooks.com.

In his foreword to *Odyssey to Freedom*, Nelson Mandela describes George Bizos SC as a close friend, an advocate of 'integrity, great dedication and complete commitment' and a man whose 'contribution towards entrenching the human rights that lie at the heart of South Africa's constitutional values is impossible to overrate'. Reading Bizos' autobiography, *Odyssey to Freedom*, one could also add that Bizos is clearly a man of humility, courage, legal acumen and incisive intellect.

George Bizos fled to South Africa from his native Greece as the Nazis occupied his homeland in 1940–41. Bizos and Mandela met while law students at the University of Witwatersrand and began a personal, professional and political relationship that has endured for over 60 years. During that time, Bizos has been involved in many of the most significant political and human rights trials of the period; involvements that have seen him conferred with the International Trial Lawyer of the Year Prize in 2001 and the Duma Nokwe Human Rights and Democracy Award in 2004.

Bizos commenced practice at the Johannesburg Bar in 1954, a time when advocates of the rule of law and fundamental human rights were persistently harassed by the apartheid regime, accused of being 'fellow travellers' with 'communists' and 'terrorists'. Bizos received some of his earliest briefs from Mandela and Tambo, many of which involved defending Black Africans against violations of the oppressive pass-laws. When Mandela himself, together with nine other leaders of the African National Congress (ANC), was charged with offences including sabotage and terrorism in 1963 — offences punishable by death — Bizos was briefed together with Bram Fischer SC to appear for the defence. Infamously, the trial resulted in Mandela's conviction and sentence to life imprisonment on Robben Island, although the accused were all spared the death penalty. During the apartheid years, Bizos was also briefed to appear at the inquest into the death in custody of Steve Biko, the defence of leaders of the United Democratic Front against capital charges of treason, and the defence of leaders of the ANC's armed resistance movement, Umkhonto we Sizwe, against charges of sabotage, among many others.

As personal legal advisor to Mandela, Bizos played a critical role in South Africa's transformation to a constitutional democracy. In addition to acting as a 'conduit' between the ANC leaders imprisoned on Robben Island and those, such as Oliver Tambo and Joe Slovo, in exile, Bizos was appointed a member of the ANC's Legal and Constitutional Committee, playing what Mandela describes as an 'important role in our country's Bill of Rights as well as the shaping of its new constitution'. Critically, Bizos led the team which appeared before the newly formed Constitutional Court to argue, successfully, for the certification of what is regarded as one of the most progressive and transformative constitutions in the world.

Bizos has continued to contribute significantly to human rights and social justice in post-apartheid South and southern Africa, appearing for the families of many murdered ANC and

South African Communist Party activists before the Truth and Reconciliation Commission and also leading the team which successfully challenged the death penalty as incompatible with the rights to life and human dignity and the prohibition on cruel, inhuman or degrading treatment or punishment. Bizos describes the latter case as the 'most significant case I have ever argued'. It has been described by legal academics as 'the most substantial cornerstone of the Constitutional Court's jurisprudence', marking 'a powerful indication of the court's intention to part ways from the old order' and affirming the supremacy of 'the rights to dignity, equality and life'. In 2004, Bizos also led the team that successfully defended Morgan Tsvangiri, leader of the Zimbabwean opposition Movement for Democratic Change, against conspiring to assassinate President Robert Mugabe.

Bizos' life has, indeed, been an odyssey to freedom. This book is an extraordinary and compelling account of an extraordinary life. It is a book that speaks to the past, present and future. It is a warning against strict legal positivism and conservatism, an affirmation of the importance of agitation and dissent to progress, and, perhaps most critically to our times, affirms the importance of human rights as a bulwark against discrimination, oppression and executive excess.

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**ACTING ON CONSCIENCE:
how can we responsibly mix
law, religion and politics**

Frank Brennan, University of
Queensland Press, 2007, 280 pp,
\$23.95

Frank Brennan is a Jesuit priest, professor of law at two Catholic universities in Australia, and both a political activist and theorist. He has written several books on legal and political issues in Australia, served as adviser to the Australian Catholic bishops on matters relating to Aboriginal land rights and has been actively involved on numerous other political fronts (such as the rights of asylum seekers). Clearly, he is well-positioned and qualified to write on

the proper role of religion in the politics of a liberal democratic society like Australia. *Acting on Conscience* contains his reflections on the legitimate place of religious belief in the constitutional structure and political life of a pluralist democratic society. His discussion is far from being purely abstract and theoretical; it is practically anchored in the analysis of concrete issues from Australian and US politics (including, amongst others, abortion, stem cell research, same-sex marriage, the Iraq war, and Indigenous land rights).

Of course Brennan, being a Catholic, is mainly concerned with those issues that matter to the mainstream Christian churches, and with the actions and ideas of church leaders and members on these issues. Although he briefly mentions Muslim communities in Australia, he does not say much about their specific situation and concerns. Even his discussion of the Iraq war is mostly about criticisms and interventions by Christians on the basis of Christian just war theory. You will not find in this work any sustained and focused inquiry into how traditionally Christian polities like Australia should deal with Islamic and other non-Christian religious communities in their midst. It only superficially glances at what is, after all, a matter of major current concern to those western democracies, including Australia, still mired in the US-led 'global war on terror' in Iraq and elsewhere.

Brennan's main message, however, is of general application. It is that, in democracies, both church and state must recognise and respect the primacy of the individual conscience. He denies that the public forum of democratic debate and policymaking must be purged of religious beliefs and motivations. We have, he says, moved beyond the view that the public sphere must be free of religious interventions and influence. The religiously motivated are just as entitled as anyone else to argue their case on particular matters in the public sphere, and attempt to persuade their fellow citizens to agree with their views. What they are not entitled to do is to try to impose their conception of truth and goodness on their fellow citizens against their will, or in violation of their equal rights, human