

Humanus Nullius

Until 1992, Australia was unique among countries colonised by Britain for not recognising some form of common law land rights for Indigenous people based on their occupation of the land prior to colonisation and the acquisition of sovereignty. It was declared Terra Nullius

The High Court in its decision in *Mabo* On 3 June 1992, handed down its judgment, stating that:

- The doctrine of *terra nullius* should not have been applied to Australia;
- The doctrine of native title is part of the common law of Australia;
- The source of native title is traditional connection with or occupation of land;

Australia, as they say, has form in its harsh and at times inhumane treatment of some groups and individuals in our community. One such group is made up of those who arrive here and are stateless. Most are made so, through no fault of their own, very often as a result of some Geo-political decision taken by another nation or nations rendering them without a homeland they can call their own.

The following heartrending story is one such case. It is a story of Humanus Nullius. It is a true story of a man who was denied his dignity and humanity for nearly seven years as he languished first in our Detention Centres and then on the margins of the Australian Community denied the right to work, to access Medicare and Centrelink, to study I write it with his permission and as told to a third person because of his lack of English.

This is the story of Ibrahim. He was born in 1955 to Palestinian parents in the small strip on the Mediterranean coast known as Gaza, which had come under the control of Egypt at the time the State of Israel was set up in 1948. His father died when he was four leaving his mother, himself and two sisters.

After the 1967 Arab-Israeli war the Israelis occupied the West Bank and Gaza. Many Palestinians were forced out into Jordan, with families being deliberately separated, fathers and sons from mothers and daughters. Ibrahim aged 12 at the time was among them. On the 5th June 1967 men and boys of his town were ordered to report to the local school. About 400 gathered. On arrival they were forced to take their shirts off which were then used as blindfolds. They were not told why but loaded on to trucks and driven into Jordan. That day was the last time he ever saw his mother. It was two years before he was able to contact her to let her know he was safe.

In 1973 at age 17 Ibrahim left Jordan and went to Algeria where he worked part time and put himself through University. He graduated as a qualified Arabic language teacher, married an Algerian and settled down to teach and raise his family. Four daughters were born during the next twenty-two years.

Unfortunately beginning in 1988 there was a vicious surge of violence in Algeria carried out by some radical fundamentalist Islamists. Life for moderate Muslims in some parts became exceedingly dangerous especially for those outsiders like Ibrahim. Fearing for the safety of his daughters and wife he moved back to Gaza in 1995.

Life in Gaza had changed dramatically and Ibrahim and his family were not able to register making them illegal in the very place where Ibrahim was born.

From 1995 until 2001 the family struggled to survive on the small reserves Ibrahim had put aside.

Desperate once again for the safety and future of his family (now five children- a boy was born in Gaza) Ibrahim left Gaza in the hope and belief he could find a country, which would accept him and allow his family to join him. How wrong he was.

When he arrived in Australia in early 2001 he was immediately detained under the mandatory detention law which states that any one who arrives in Australia without appropriate documentation- a valid visa- must be detained until whatever claims for asylum he/she may have are validated or otherwise.

For the next three and a half years Ibrahim was incarcerated first in Woomera and then in Baxter as a stateless unauthorised entry into Australia. There were others in the same category also locked up in the camps.

It is worth mentioning here that the government and sections of the press referred to those arriving without documentation as “illegal” which is inaccurate and demonises the majority whose claims for refugee status were subsequently accepted by the Immigration Department. “Unauthorised” yes, “illegal” no, as stated in the UN Convention on Refugees.

The High Court, in response to a case brought against the Government for indefinite detention without charge, ruled in favour of the lead claimant under the ancient but still valid Habeas corpus right. (In [common law](#) countries, **habeas corpus** ([Latin](#): [We command that] you have the body) is the name of a legal action, or [writ](#), through which a person can seek [relief](#) from [unlawful detention](#) of themselves or another person. The writ of habeas corpus has historically been an important instrument for the safeguarding of individual freedom against arbitrary state action.

Ibrahim along with four others was released immediately but reluctantly by the Government. It indicated it would appeal the decision.

The High Court decision put the Government in a curious position- the government was forced to release into the community persons who were illegal non citizens an offense punishable by gaol. The Government was determined to make matters difficult for Ibrahim and his friends.

They were released with a small card with a red dot in the centre, a number in the dot specific to the holder and a phone number to call, but without funds, compelled to report to an Immigration office twice a week in person and phone in on the other three working days, were not permitted to work, refused access to Medicare and Centrelink.

They were de facto Humani nullius- non persons, with no rights, no nothing.

Ibrahim made his way to Sydney where a group of community based NGOs worked together to provide housing, a limited living allowance, advocacy and support for him and others in the same situation.

This situation is often referred to as “being in limbo”. However in theological terms this is not an apt description, because “limbo” if it exists, refers to a place with limited happiness. Whereas the reality of the life of these Habeas corpus cases is without happiness more akin to “the vestibule of hell” as described in Dante’s Inferno.

For the next three years Ibrahim lived this life of nothing. His mental state deteriorated even more, his anguish for his family increased daily, his isolation total, his sense of self worth rock bottom. Such has been his depression, he has been unable psychologically and emotionally to concentrate enough to study English. Seven years down the drain.

In a recent Sydney Morning Herald article written by Connie Levett, Zachary Steel a senior lecturer in psychiatry at the University of NSW speaking about the impact of detention on the mental health of the detainees is quoted: “People are fairly resilient, but those who spent more than six months in detention, that was the threshold, then they crumbled and three years later they were still disturbed, with no major improvement.” The trauma (PTS) experienced by those in long term detention was more severe and longer lasting than the trauma that caused them to flee their homeland.

If this is true of those who are released with a substantive visa such as a TPV or PPV what of those like Ibrahim released without anything?

Finally, in January 2007 nearly seven years after arriving in Australia the former Minister for Immigration Amanda Vanstone in one of her last acts before moving on

agreed to consider granting Ibrahim a Humanitarian visa 202 upon certain conditions being fulfilled. One condition was Assurance of Support-AOS a condition which is contrary to the regulations related to 202 visas but apparently not contrary to the unchallengeable and total discretion of the minister.

The AOS requires the client to place a bond (in Ibrahim's case \$3,500.00), to assume a debt to the Commonwealth for time spent in detention (in Ibrahim's case \$68,000.00) and be prevented from accessing any Centrelink benefits for two years or if he does his Assurer will have to repay the Government. All this for a man who was in detention for over three years, released without the right to work for more than three years. He has complied with all these conditions.

There were two further conditions attached. Both normal conditions. He needed a Police clearance- that is a check to see if he had committed any crime while in Australia. No problems there- he has been an exemplary member of the community. He also needed a security clearance- some proof from the countries in which he had lived that he had not committed any crime. Big problems there. Gaza is in shutdown. Getting access to any official representative for clearance in this cauldron of suffering and chaos next to impossible. Without the clearance the visa would not be granted. However in difficult or impossible cases the clearance can be waived.

The months passed, the waiting became intolerable, the despair profound, his mental health in tatters. Some well intentioned but ill advised advice was given to Ibrahim to see if he could contact his wife and children in Gaza to obtain some proof that he had a clear record. This has resulted in apparent tragedy. The wife is not registered in Gaza so by going to some authority there, to request a clearance she put herself and family at risk. She received a document of questionable value. Very soon after she and her family disappeared. Ibrahim has not been able to contact them since. Neighbours have not seen them since February or March.

After all these years and obstacles the letter granting the sub-class 202 Global Special Humanitarian visa finally arrived duly signed by the incumbent Minister for Immigration and Citizenship. Sadly the conditions still apply.

For the past few months he was regarded as a person of concern to the Department of Immigration because of the catastrophic conditions surrounding his life. The decision was taken to include him in the in the Community Care Pilot scheme. This provided him with a small survival living allowance. That will now cease. Even though he has the right to work it will be extremely difficult for him to find employment not having worked for more than seven years and with little English.

And what about his family? If they are still alive how will he be able to sponsor them?

A geo-political decision taken all those years ago continues to impact profoundly on the lives of men and women like Ibrahim. They are, through no fault of their own

thrown in the bottomless pit of powerlessness without the basic human rights of living free, free from coercion and punitive restrictions and without the capacity to make decisions about their lives and future.

Jim Carty

18.09.07

1. The government appeal was upheld by the High Court. It is now lawful to detain unauthorised arrivals including stateless people indefinitely for administrative purposes. Lawful, but hardly humane.