

The Father Charles Jerger Case and the Domestic Political Context of the Great War in Australia.

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The big theme of this presentation is: war is the pasture of bigots, and the solvent of principle. Sadly, all liberal democratic societies are prone to wilt in their devotion to liberal principle in war. Liberalism at war often proves to be an anaemic thing. The pattern of politics is common: the cry is raised ‘the enemy is at the gate’ and immediately the rabid ‘ultra-patriots’ begin to search for ‘the enemy within’ and demand their persecution, incarceration, and deportation. Hostility to aliens is boosted in every war – unless the political leadership guides the people and resists the impulse to harness the hatred. But the pressures upon that leadership in war are very great. A ‘who hates the enemy more’ auction often begins in the political contest. We are all familiar with the rapid descent into this facile politics, in which the most authoritarian and least principled politician will always win. Those who pride themselves with being in touch with ‘popular opinion’ seem to run scared in the face of the question they apparently put to themselves daily: ‘Mirror, mirror on the wall – who is the toughest on the enemy of them all?’ In fact it is the weakest of them who lust after the title of toughest persecutor – of whatever minority can be placed under a cloud of suspicion, as inherently disloyal. And those of the opposition who refuse to persecute whole communities on the suspicion of some apprehended act of disloyalty are declared to be ‘soft’ on the enemy. This kind of politics, in contemporary Australia, as in the Australia of 1914, reflects long-running but always despicable political trends: the search for political advantage by whipping up the politics of division.

The case of Father Charles Jerger is a classic case of a government exploiting the politics of division. The governments that persecuted Jerger were playing the politics of exclusion, offering a scapegoat to a frightened 'patriotic' community, and feeding the perception that all the members of the priest's community, both Catholics and those of German descent, were disloyal. This was to deploy the poisonous politics of loyalty versus disloyalty, which already had a long history in Australia, where the Labor Party, the party of working-class Catholics, was frequently accused of being lukewarm on Empire because it was the party of the disloyal Irish. In the context of the Great War, the 'traitor' catcall was roared at anyone with principled objections to the prolonged war. Government spokesmen incited this. The Jerger case is also an example of an unprincipled government exploiting emergency power for cheap political advantage.

Civil Liberties

At its heart, the Jerger case, which climaxed in the priest's internment in February 1918 and his deportation in July 1920, concerns essential principles of civil liberty. It is worth pausing to reflect on where these principles come from, that is, the ideals of the Enlightenment and the British tradition of civic freedoms. What are the key civil liberties or civic freedoms? The list includes such essential freedoms as freedom of speech, freedom of assembly, freedom of conscience, freedom of the press, and, most relevant here, freedom from arbitrary arrest. These essential freedoms were the lights that many Liberal and social democratic politicians claimed to live by, across Britain, Europe, America and Australia, by 1914. They drew on the great French path-breakers such as Montesquieu, Voltaire, and Rousseau, and others, who imagined a

new status for mankind, where people were no longer mere ‘subjects’ but ‘citizens’, with certain rights that could never be infringed. The British dissenting Whig and Liberal traditions carried this legacy forward, and here the contributions of Locke, Hume, Bentham, Cobden, Bright, James and John Stuart Mill, and Gladstone loomed large. The great Liberal catchcries by 1914 therefore were ‘free trade’, ‘free speech’, ‘a free church in a free state’, and – most relevant to the conscription debate in Australia – ‘free service.’ This last implied the great liberal tradition of voluntarism in military service, because it was thought to be always wrong to dragoon a man to take the life of another in a conflict to which he had no conscientious commitment. British Liberals of the nineteenth century routinely denounced the ‘slavery’ of conscription.

Thus, in Australia and in Britain, the great Liberal principles were often thought to be imperishable, sacred, a cherished inheritance for all. The Americans, participating in this tradition, would call their rights ‘inalienable.’ British judges and politicians would often invoke ‘British freedoms’ as ‘indefeasible rights.’ It is worth recalling how deeply embedded they were thought to be. Listing the freedoms of Englishmen wrung from King John in 1215, Magna Carta itself included Article 39: ‘No freeman shall be taken or imprisoned...**save by the lawful judgement of his peers or by the law of the land.**’ In later centuries, the Habeas Corpus Act of 1679, the ‘**act for the better securing the liberty of the subject**’, was believed to have achieved for all the end of arbitrary imprisonment at the whim of ‘sheriff or sheriffs, gaoler, [or] minister’. The ‘Rule of Law’, ‘due process’, and the ‘separation of powers’ were frequently invoked, as guarantees that no citizen could be deprived of his or her liberty by some arbitrary act on the part of the executive. It is important to remember that the ‘Rule of Law’ was invoked against its opposite – the rule of *persons*, that is,

‘ministerial discretion’, or a politician’s whim, free of appeal to the processes of the law. As we shall see, as the Great War escalated, all these great Liberal principles came under threat.

Australia’s Leap into the Great War

It is often forgotten that when the Great War erupted in Europe, Australia was in the throes of a federal election. Joseph Cook, Prime Minister and leader of the Commonwealth Liberal Party, was fighting to prolong his one year-old government against the challenge from Andrew Fisher, leader of the federal Labor Party, and Prime Minister 1910 to 1913. As news arrived in late July 1914 of an international crisis in Europe in which Britain might be involved, a ‘love-of-empire’ auction began on the hustings in Australia. There was the whiff of a ‘khaki election’ in the air, in which both sides compete to establish their nationalist credentials and their hatred of the enemy.

What is striking about the election of 1914 in Australia is how easily the politicians succumbed to the temptations to indulge in hyperbole – even before war was declared. Joseph Cook, speaking at Horsham, on Friday 31 July, told an applauding audience that ‘if it is to be war, if the Armageddon is to come, you and I shall be in it.’ (Loud applause). Sir William Irvine, at a political rally at the Protestant Hall in Crows Nest on Saturday 1 August declared: ‘What I say is that when England is at war we are at war. (Applause.)’ Irvine promised that the Cook government would back up the statesmen of Britain, ‘*whatever* course they may adopt.’ Andrew Fisher, seeking political safety for Labor from the usual charge that the party of Catholics was not the party of the 100-percent patriots, added a sweeping promise to the end of his hour-long address at Colac on Friday 31 July: he told his audience that, if war

came, Australians would ‘stand behind our own to our last man and our last shilling.’ He repeated this promise three times over the next few days. His shadow Attorney-General, William Morris Hughes, issued a statement on Sunday 2 August, on behalf of the Labor Party: ‘Whatever needs to be done to defend the interests of the Commonwealth and of the Empire must be done.’¹ ‘Whatever’ – the cheque was blank.

Cook’s response to Fisher’s hyperbole came on Monday 3 August. A rump of the Cook Cabinet authorised the despatch of a cable to Britain offering the transfer of the whole of the Royal Australian Navy to the British Admiralty, and an offer of 20,000 men, in an expeditionary force, for any objective, in any composition, under British command, with the whole cost of despatch and maintenance borne by Australia. This cable was sent some 40 hours in real time before the British leadership finally decided upon a declaration of war against Germany.² The political gain aimed at in this cable was clear: here were 20,000 points on the political scoreboard to counter Fisher’s vague ‘last man, last shilling.’

Cook lost the election to Fisher on 5 September 1914. But Labor had vowed to redeem Cook’s promise. The Australian Imperial Force left Albany in convoy on 1 November 1914. Yet even after its departure, the cascade of hyperbole could be heard in Australia. Speaking at Mosman on 5 November, Cook, the defeated Prime Minister, was still competing with his Labor rivals. He told the crowd that Australians did not realise the nation was involved in a ‘war of extinction’ and that Australia

¹ Quotations from the election campaign are taken from Douglas Newton, *Hell-bent: Australia’s Leap into the Great War* (Melbourne: Scribe, 2014), 107, 129, 176-7.

² Newton, *Hell-bent*, 168.

should be sending not a mere 20,000 men but 100,000 men to help Sir John French, the British commander, in France.³

Australian Catholicism in the Domestic Political Context

As we meet today in a Catholic parish, it is important to say a little more about the Catholic context of these events. Labor had won the election in Australia, and had very largely embraced the war as a righteous cause. From the outset, Catholics were not significantly under-represented in the ranks; they enlisted in the Australian Imperial Force roughly in proportion to their numbers in the population as a whole, about 20% – perhaps suggesting that the great recruiting sergeant among the working classes, unemployment, was at work. Owing to class stratification, they were over-represented in the ranks and under-represented in the officer corps.⁴ But the potential for a sectarian attack on Labor as insufficiently ‘patriotic’ lay just under the surface. For, in the months leading up to war, sectarian issues had been raised in Australia, and with great vehemence. The ‘Home Rule for Ireland’ debate in Britain, which had threatened to erupt into civil war in Ireland in July 1914, had been followed closely in Australia. Something approaching a quarter of the Australian population in 1914 was Catholic in religious affiliation, and a great many of these Catholics were of Irish descent (although only a small percentage Irish-born). Because many Catholics were of the working class, Catholic influence in the Labor Party was very significant.

³ Cook quoted in Newton, *Hell-bent*, 246.

⁴ L. L. Robson, ‘The Origin and Character of the First A. I. F., 1914-18. Some Statistical Evidence’, *Historical Studies*, 15, 61 (1973), 737-49, and Robert Bollard, ‘Economic Conscriptioin and Irish Discontent: the Possible Resolution of a Conundrum’, in Phillip Deery and Julie Kimber, eds., *Fighting Against War: Peace Activism in the Twentieth Century* (Melbourne: Australian Society for the Study of Labour History, 2015), 139-56.

In the early months of 1914, there had been big ‘Orange’ and ‘Green’ public meetings, for and against Home Rule, and labor politicians had been prominent at Green meetings. The last business of the Australian Senate before it was prorogued in late June 1914 had been to debate a Labor resolution in support of Home Rule for Ireland. As a mark of how divisive this was in Australian political terms, it is no surprise to record that 24 Labor Senators supported the resolution and only one Liberal.⁵ Therefore, quite clearly, trouble in Ireland over the delay in achieving Home Rule, climaxing in the Easter Rising in April 1916, would spell political trouble for Labor and for all Catholics in Australia. As the Loyalists’ analysis put it, ‘England’s difficulty is Ireland’s opportunity’ – so every Irishman was potentially a friend of England’s enemies.

Another Catholic perspective is important: the perspective from Rome. Benedict XV had been elected Pope soon after the outbreak of the Great War. On 1 November 1914, the same day Catholic soldiers of the AIF (about one quarter of the force) departed Albany, their Pope issued his first encyclical *Ad Beatissimi Apostolorum*. As the Pope of Catholics across Europe and the world, all caught up in the disaster of war, Catholic Frenchmen, Germans, Belgians and Australians, the Pope remained ‘neutral’. He did not endorse the claims of any belligerent. Rather, in his encyclical he stressed that the Vatican from the outset had

implored Kings and rulers to consider the floods of tears and of blood already poured out, and **to hasten to restore to the nations the blessings of peace**. God grant by His mercy and blessing, that the glad tidings the Angels brought at the birth of the divine redeemer of mankind may soon echo forth as we his vicar enter upon his work: “on earth peace to men of good will” (Luke 2:14). We implore

⁵ Newton, *Hell-bent*, 110.

those in whose hands are placed the fortunes of nations to hearken to our voice.

Surely there are other ways and means whereby violated rights can be rectified. Let them be tried honestly and with good will, and let arms meanwhile be laid aside.

The Pope lamented and denounced the war, and clearly put himself on the side of those seeking a negotiated peace and those seeking to limit rather than escalate the war. In the Pope's words, the war was an outrage on our common humanity:

Who would imagine as we see them thus filled with hatred of one another, that they are **all of one common stock, all of the same nature, all members of the same human society?** Who would recognize brothers, whose father is in heaven? Our lord Jesus Christ came down from heaven for the very purpose of **restoring amongst men the kingdom of peace**, which the envy of the devil had destroyed, and it was his will that it should rest on no other foundation than that of brotherly love.⁶

Over the next few months, Pope Benedict XV again emphatically endorsed the peacemakers. On 7 December 1914 he suggested a Christmas truce, which some soldiers on both sides initiated in the trenches of the Western Front on Christmas Eve, to the chagrin of many of their officers and commanders.⁷ On 10 January 1915 Rome despatched a special Papal prayer for peace to be read before all masses from March 1915. Next came Benedict's *Allorchè Fummo*, an Apostolic Exhortation, issued on 28 July 1915, unmistakably calling for an end to the 'horrible butchery' of the war

⁶ 'Ad Beatissimi Apostolorum' (1 November 1914), http://w2.vatican.va/content/benedict-xv/en/encyclicals/documents/hf_ben-xv_enc_01111914_ad-beatissimi-apostolorum.html (accessed 24 November 2015).

⁷ Malcolm Brown and Shirley Seaton, *Christmas Truce: The Western Front, December 1914* (London, 1984), 37.

through a negotiated peace, a diplomatic settlement.⁸ The Pope would not be forgiven for these acts in many ultra-patriotic circles.

Emergency Legislation

By this time, the architecture of emergency rule was in place in both Britain and Australia. The *Defence of the Realm Act* of 1914 in Britain was clearly the ‘parent act’ of Australia’s own *War Precautions Act*, which was passed in late October 1914. In essence, the act gave emergency powers to the government by granting the Governor-General the authority to proclaim ‘Regulations’ under the act. The wording was always sufficiently vague so that the Governor-General (but in reality the Cabinet or even a single minister advising him) could exercise the very widest powers. For example, Section 4 gave the Governor-General the power to ‘make regulations for securing the public safety and the defence of the commonwealth’. In addition, it authorised ‘trial by courts-martial and punishment of persons’ who might seek to ‘jeopardize the success of operations’, and granted powers to ‘prevent the spread of reports likely to cause disaffection or alarm.’ Under Section 5 it was specified that the Governor-General may publish orders on ‘any matters which appear necessary or expedient with a view to public safety and defence of the commonwealth’ including orders for the prohibition, deporting, or detaining of ‘aliens’ and even ‘naturalized persons.’⁹ Under revisions to the *War Precautions Act* passed in 1915, the Governor-General also gained powers under Section 4 (d) to ‘prevent the spread of false reports

⁸ Youssef Taouk, ‘The Roman Catholic Church in Britain during the First World War: A Study in Political Leadership’, (unpublished PhD dissertation, University of Western Sydney, 2003), 223, 226, accessible on-line at <http://researchdirect.uws.edu.au/islandora/object/uws:758> (Accessed 23 November 2015)

⁹ *War Precautions Act* 1914, http://www5.austlii.edu.au/au/legis/cth/num_act/wpa1914101914217/ (Accessed 23 November 2015).

or reports likely to cause disaffection to His Majesty or public alarm, or to interfere with the success of His Majesty's forces by land or sea, or to prejudice His Majesty's relations with foreign powers.'¹⁰

The word 'disaffection' set the bar very low. Could one be critical of the escalating war at all, if one was forbidden to promote 'disaffection'? If one could not 'prejudice' Britain's relations with her allies, could one voice criticism of the Russian Tsar and his forces, whose anti-Semitic excesses behind the lines were notorious? Could one lament the explosion of war into the Middle East? Could one suggest that the war aims of Britain, France, Italy or Russia were less than pure? Could one attack British martial law in Ireland in the aftermath of the Easter Uprising of 1916?

The Regulations, hundreds of them, that were proclaimed under the act, were more and more restrictive. The Regulation that entangled Father Charles Jerger deserves special mention, namely, Regulation Number 28, issued in May 1915:

No person shall, **by word of mouth** or in writing, or in any newspaper, periodical, book, circular, or other printed publication ... Spread reports or make **statements likely to prejudice the recruiting**, training, discipline, or administration of any of His Majesty's forces...¹¹

If one was forbidden from making any statement that might be construed as likely to 'prejudice recruiting', could a critic of the great orgy of mass killing make any criticism at all of the administration of the war, or of the escalating war aims of the Entente Powers, or of the prospect of conscription? It was a very tight line that the

¹⁰ *War Precautions Act 1915*, http://www5.austlii.edu.au/au/legis/cth/num_act/wpa191521915217/ (Accessed 23 November 2015).

¹¹ 'The War Precautions Act', *The Australian Worker*, 27 May 1915.

emergency Regulations drew, and a critic could easily step over it. Free speech was now a frail thing.

Part of emergency legislation was the power granted to the Minister of Defence, George Pearce in Fisher's government, to intern 'enemy aliens'. It has been estimated that there may have been up to 100,000 people of German descent scattered through a population of just under five million Australians in 1914. About 30,000 of these were German-born immigrants. Eventually, the total number of 'Germans' interned during the Great War was about 6,890, including 67 women and 84 children. About 800 of these were Australian-born people of German descent.¹² It bears mentioning at this point that Father Charles Jerger, born to an English father and a German mother in Baden, Germany, in 1869, spent only his pre-school toddler years in Germany, where he gained his step-father's German name, Jerger, before migrating to England where he spent his teenage years. His family migrated to Australia in the centennial year, 1888. When all the trouble erupted over a single sermon Jerger gave in September 1916, he had been in Australia for twenty-eight years.¹³

Australian Politics and the War: the fragmenting of public opinion

The political context in which the Jerger case emerged can be quickly sketched. In Australia the first months of the war saw considerable enthusiasm, and demonstrations of affection for departing troops – which is not the same thing, of course, as uncritical support for an all-consuming war. The Australian people were subjected to much propaganda about the spectacular military achievements of the

¹² Nadine Helmi and Gerhard Fischer, *The Enemy at Home: German Internees in World War I Australia* (Sydney, 2011), 24.

¹³ Gerard Henderson, 'The Deportation of Charles Jerger', *Labour History*, 31 (Nov. 1976), 61-78.

Anzacs upon landing at Gallipoli in April 1915, and even the claim that in the firing line at Shrapnel Gully ‘Here Australia became a nation’ by losing thousands of soldiers – a self-evidently dubious notion, even then, for those with cool heads.¹⁴

And there were many with cool heads at the time. Indeed, during 1915, the so-called party truce, and the alleged unity of domestic opinion in favour of the war, began to dissolve. One reason was the hardship visited upon ordinary Australians by unemployment and high prices. It was estimated that unemployment in Melbourne was 14% by the end of 1914, and retail prices of food and groceries had risen 28% after the first year of war.¹⁵ Labor had promised during the election campaign in 1914 that, to contain prices and ensure ‘equality of sacrifice’, an Economic Powers Referendum would be put to the people as soon as possible. A Bill to hold such a referendum was passed in June 1915 – but no referendum materialised. Instead, the government also imposed a Manpower Census in September, which raised fears in many minds that, just as in Britain, a plan was being promoted to prepare the ground for conscription. When Hughes replaced Fisher as Prime Minister in later October 1915, following Fisher’s apparent breakdown and his decision to take up an appointment as High Commissioner in London, power passed to a much more authoritarian and reckless figure. For example, soon after taking office, Hughes told the House of Representatives in Melbourne: **‘I do not pretend to understand the situation in the Dardanelles, but I know what the duty of this government is – to mind its own business, to provide that quota of men which the Imperial Government**

¹⁴ Postcard, ‘Gallipoli Peninsula: Here Australia Became a Nation’, Australian War Memorial, H00195A

¹⁵ Judith Smart, ‘A divided national capital: Melbourne in the Great War’, in *The La Trobe Journal*, 96 (September 2015), 42-44.

think necessary in the circumstances, and to see that those men are efficiently led, fed, and equipped. That we shall do.’¹⁶

Within days, Hughes announced the abandonment of the Economic Powers Referendum. This, over the long term, undermined the claim advanced by many in the pro-conscription camp that conscription of all able-bodied men – including so-called ‘shirkers’ – was necessary to ensure ‘equality of sacrifice’. The fact that price inflation was not contained, and no special taxation imposed to fund the war, exposed the failure to take seriously the idea of the ‘conscription of wealth’ as a parallel to any proposed ‘conscription of blood’. This inflamed opinion against conscription in Labor circles.

Yet, in light of the failure of the Gallipoli campaign by December 1915, Hughes appeared to rush forward with rhetoric suggesting that more and more men would resolve the problem of military failure. In his famous ‘Call to Arms’ issued in mid-December 1915, Hughes advanced the fanciful argument that ‘had the number of our forces been **doubled**, many brave lives would have been spared, **the Australian armies would long ago have been camping in Constantinople**, and the World War would have been practically over.’ He urged 16,000 men to step forward as volunteers every month.¹⁷

For what? To what war aims was Australia subscribed, as a Dominion of the British Empire? To what objectives had London committed Australia? It is important to note that the Australian people were never told at this time about the diplomatic deals underpinning the Gallipoli campaign. Australians knew nothing of the pressure

¹⁶ Hughes in response to James Catts, *Commonwealth Parliamentary Debates. Hansard*, House of Representatives, 7022 (29 Oct., 1915).

¹⁷ ‘The Call to Arms’, AWM Leaflet 5/5/1, dated 15 December 1915. Reproduced in Richard Pelvin, *Anzac: An Illustrated History 1914-1918* (South Yarra, 2004), 281.

that Russia had applied upon Britain and France to concede gains to Russia at Turkey's expense, climaxing in the Straits Agreement of March 1915, between Britain, France and Russia. This diplomatic deal divided the fruits of the Gallipoli campaign. If the military effort was successful, Constantinople and both shores of the Straits were promised to Tsarist Russia. Britain compensated herself with an increased share of Persia. Had the Anzacs been victorious at Gallipoli, the fruits of their heroism would have been scooped up by Tsar Nicholas's government. A Russian commissioner would have been installed at Constantinople. Similarly, Australians knew nothing of the Treaty of London that was negotiated during April 1915 and signed the day after the Anzacs landed. Under the terms of this treaty, Italy was induced to enter the war, with a clutch of promises, including a promise of a share in the spoils of a partitioned Ottoman Empire. Australian military efforts at Gallipoli were part of the argument over the final days of diplomacy between Italy and Britain, and Italy was bribed into entering the war. These were *all* secret diplomatic deals.¹⁸

The fragmenting of public opinion on the war, evident already in 1915, grew steadily worse during 1916, especially in the aftermath of the disastrous British offensive at the Somme beginning in July 1916. For the first six months of 1916 leading up to the Somme, Prime Minister Hughes was absent from Australia. In Britain from March, Hughes witnessed the Liberal-led Coalition government of Herbert Asquith impose conscription, departing from the strong Liberal tradition of voluntarism. Conscription was imposed by legislation, first upon unmarried men in January 1916 and then upon married men only four months later.

¹⁸ On the escalation of British and Entente war aims, see David Stevenson, *The First World War and International Politics* (Oxford, 1988), V. H. Rothwell, *British War Aims and Peace Diplomacy, 1914-1918* (Oxford, 1971), and William Roger Louis, *Great Britain and Germany's Lost Colonies, 1914-1919* (Oxford, 1967).

Hughes mixed in pro-conscription and reactionary circles, and was scarcely in touch with the Labour Party in Britain. His political drift to the Right was accelerating. He joined those extreme forces seeking an economic war against Germany even after peace. Asquith appointed Hughes as a delegate to the Inter-Allied Paris Economic Conference in June 1916. In Paris, Hughes became the darling of the reactionary economic warriors. Hughes promoted the protectionist vision: a post-war boycott of German commerce, and a shutting out of all German enterprise from the victorious empires of Britain, France, Russia, Belgium and Italy, when peace was restored. Having become a poster-boy for British reactionaries, Hughes returned home in mid-August 1916.¹⁹

Authoritarian trends in Australia were also clear. In a famous case, *Farey v Burvett* in June 1916, testing price controls, the High Court of Australia buttressed a sweeping interpretation of the ‘defence power’ given to ministers under the War Precautions Act.²⁰ In his judgement, Chief Justice Sir Samuel Griffith argued that the government’s emergency powers to secure the ‘defence’ of Australia rightly included ‘any such action in time of war as may conduce to the successful prosecution of the war and defeat of the enemy’. Mr Justice Barton commented that ‘one is safer from a burglar if he can grapple with him at the gate without waiting until he has entered the house.’ Therefore, Barton argued that ‘attack may be, and often is, the best defence. This needs no proof.’ Thus, the powers of the government to make war and defend Australia were quite properly very wide-ranging. Mr Justice Isaacs was also unrestrained. He argued that ‘it is manifest that to make defence adequate and successful, full power must be within the grasp of one hand.’ The war, he argued, was

¹⁹ L. F. Fitzhardinge, *The Little Digger, 1914-1952: William Morris Hughes, A Political Biography*, Vol. II (Sydney, 1979), Chs. IV and V.

²⁰ *Farey v Burvett* [1916] HCA 36; (1916) 21 CLR 433 (8 June 1916)
<http://www.austlii.edu.au/au/cases/cth/HCA/1916/36.html> (Accessed 23 November 2015)

‘a war imperilling our very existence’. Therefore, he suggested, ‘the array of the whole community in mortal combat with the common enemy, is a fact of such transcendent and dominating character as to take precedence over every other facet of life’. Incredibly, he suggested that the government could not tolerate ‘checks and balances’ that would cripple ‘the ultimate power’ to defend Australia – ‘a power commensurate with the peril it is designed to encounter.’ He quoted approvingly the remarks of Lord Parker in a famous English case, *The Zamora* case:

Those who are responsible for the national security must be the sole judges of what the national security requires. It would obviously be undesirable that such matters should be made the subject of evidence in a court of Law or otherwise discussed in public.

In this way, Australia’s leading judges appeared to step back and give government the most sweeping powers to regulate via emergency legislation. The ‘Rule of Law’ was severely dented.

The First Conscription Referendum, October 1916

In this context, Hughes was tempted to impose conscription, as Britain had done in early 1916 and New Zealand did also in June 1916. But so strong was opinion against this in the Labor Party that the most he could secure was agreement to hold a ‘referendum’ on the subject – really a plebiscite, for no change to the constitution was required to get such legislation on the books. Hughes wanted an unambiguous demonstration of a public demand for conscription in order to overawe opponents in the Labor Party. He announced a referendum on the issue for late October 1916.

Catholic opinion in Labor ranks was particularly excited by this issue. The brutal suppression of the Easter Uprising in April 1916, and the imposition of martial law, had undermined the claim that Britain was fighting the war for pure motives, such as ‘the rights of small nations’ like Belgium. The tendency of ‘loyalists’ in Australia to seize on the ‘terrorism’ in Dublin as a chance to turn on local Catholics as ‘disloyal’ also intensified sectarian tensions during 1916.²¹ At this point Archbishop Daniel Mannix of Melbourne emerged as a major political player. At Clifton Hill, Melbourne, on 16 September 1916, just after the announcement of the coming referendum on conscription, Mannix declared: ‘I still retain the conviction that Australia has done her fair share...’ In his speech there were also echoes of the intensifying class feeling in Labor circles, evident since Hughes’s abandonment of the Economic Powers Referendum. ‘If conscription were adopted, I should expect to find later that many of those who are now its loudest advocates would be the first to rise up against the taxation necessary to redeem our obligations to the returned soldiers.’²²

This was the immediate context of the Jerger affair. For it was just a week later, on Sunday 24 September, that Father Charles Jerger gave his controversial sermon at Marrickville, suggesting that ‘Australia has done her share’ – a sentiment exactly in line with the speech of Mannix at Clifton Hill.²³

In the weeks leading up to the referendum, there were increasing signs that the government was determined to silence critics of the war, not just opponents of conscription. For example, in September and October 1916, twelve leading members of the anti-war ginger group, the International Workers of the World (IWW), were

²¹ Brenda Niall, *Mannix* (Melbourne, 2015), 74-9.

²² Quoted in Val Noone, ‘Class Factors in the Radicalisation of Archbishop Daniel Mannix, 1913-17,’ in F. Bongiorno, R. Frances and B. Scates, eds., *Labour and the Great War: The Australian Working Class and the Making of Anzac*, special edition of *Labour History*, 106 (May 2014), 195.

²³ Henderson, ‘Charles Jerger’, 61.

arrested and charged with treason, a charge only later downgraded to ‘seditious conspiracy.’ Eventually, after what amounted to a show trial, the IWW leaders were sentenced to terms of imprisonment ranging from fifteen to five years.²⁴

There was intense political debate over that first conscription referendum. Even the terms of the question were controversial. It appeared to be a loaded question:

Are you in favour of the Government having, in this grave emergency, the same compulsory powers over citizens in regard to requiring their military service, for the term of this war, outside the Commonwealth, as it now has in regard to military service within the Commonwealth?

Had Australia voted YES, the government would have argued it had a mandate to overturn the requirement under the *Defence Act* of 1903 that Australian soldiers going beyond Australia and its territories *had* to be volunteers – a provision reflecting the suspicion in Labor and Radical circles of imperial expeditions for dubious causes, a suspicion widely held in the immediate aftermath of the Boer War. But the proposition was rejected. The NO vote was 51.6%. Because Hughes and others had argued that conscripted reinforcements should be sent in order to rest the troops and thus save life, it was significant also that the soldiers of the AIF did not vote overwhelmingly for conscription. The soldiers did vote YES – but by a margin of 72,000 to 58,000.²⁵ Many clearly did not believe that others should be coerced to join them in battle, under the conditions they experienced, and for the cause such as they could understand it – or could not – at the time.

²⁴ Verity Burgmann, *Revolutionary Industrial Unionism: The Industrial Workers of the World in Australia* (Cambridge, 1995), 207-15.

²⁵ Jane Beaumont, *Broken Nation: Australians in the Great War* (Crows Nest, 2013), 243.

In the immediate wake of the referendum result, there was a political sensation: Hughes and a minority of his colleagues walked out of the federal Labor caucus. Labor was split! Labor had tolerated the referendum, while many of the party's leading figures had campaigned against the proposition, but now the revulsion against Hughes set in. By February 1917, Hughes had formed a new majority administration in company with his Labor rebels and the anti-Labor MPs – a 'Nationalist' government. He would go on to lead that government to victory in a federal election in May 1917, indicating that a majority of Australians were in favour of prosecuting the war, but were also opposed to conscription.

1917: war to 'bitter end' versus the rising demand for a 'negotiated peace'

1917 brought huge changes to the face of the war. A revolution in Russia in March swept away the Tsarist regime and brought a socialist-liberal coalition to power. The new Russia promised to wage war, but disavowed imperialism and promised to exert pressure to secure the revision of the imperialist war aims of both sets of belligerents, including the Entente powers. The United States entered the war in April, also disavowing imperialism and promising to wage war only to 'make the world safe for democracy.' In virtually all belligerent nations, so far as free speech remained, a great debate broke out between advocates of 'seeing the war through' to 'the bitter end', and advocates of the revision of war aims and a negotiated peace. In Australia, as in many places, including Germany, there were big strikes during the year, as organised labour revolted against the prolonged war.²⁶

²⁶ Beaumont, *Broken Society*, 329-35.

At this point in Australia, however, free speech was under constant threat. Defenders of supposedly indefeasible rights and liberal principles tended to argue that all the precious freedoms were dispensable – because the war was being fought for still greater freedom. For example, one Liberal celebrity of the future, Robert Menzies, wrote a prize-winning essay in 1917, which was published, entitled ‘The Rule of Law During the War’.²⁷ It serves to show how weak a thing Australian Liberalism had become by 1917. Menzies acknowledged how precious was the ‘rule of law’ and included tributes to it. But he was willing to concede a great deal to emergency power. ‘However much we may cherish the Rule of Law as one of our most precious possessions, we must recognize that permanent liberty is often best achieved only by a temporary sacrifice of individual freedom,’ he argued. He was perfectly content to witness ‘the temporary triumph of emergency powers over the Rule of law.’ Menzies praised the judges who had buttressed the government’s emergency powers under *Farey v Burvett*. He quoted Justice Isaacs approvingly:

If there were no war, and no sign of war, the position would be entirely different. But when we see before us a mighty and unexampled struggle in which we as a people, as an indivisible people, are not spectators but actors, when we, as a judicial tribunal, can see beyond controversy that co-ordinated effort in every department of our life may be needed to ensure success and maintain our freedom, the court has then reached the limit of its jurisdiction. If the measure questioned may conceivably in such circumstances even incidentally aid the effectuation of the power of defence, the court must hold its hand and leave the rest to the judgment and wisdom and discretion of the parliament and the executive it controls—for they alone have the information, the knowledge and the experience

²⁷ Robert Gordon Menzies, *The Rule of Law During the War* (Bowen Prize Essay, University of Melbourne, 1917) (Sydney, 1917), 15, 18, 22, 24.

and also, by the constitution, the authority to judge of the situation and lead the nation to the desired end.

Apparently, the emergency of war forgave all departures from the rule of law. In war, governments must do as they must. In Menzies' estimation, all the civil liberties could be suspended, and the judges should stand back. As this famous Liberal of the future argued the case, so long as parliament could theoretically still step in to control the executive (by denying confidence to a government), and as long as the emergency legislation was temporary, all was well. These ideas – that the nation was involved in a life and death struggle, and the law must bend to that reality, because 'necessity knows no law' – were exactly the ideas advanced by the Prussian power elite in its justification of its own authoritarian warfare state.

Menzies did stress that 'the only fear that we may have for the rule of law is that, through the usages of war, its authority may come to be menaced in peace also.' If the emergency rule were prolonged, this would be 'a very great disaster', Menzies warned. This last proved to be a prescient remark, when one considers that the eventual deportation of Jerger was rammed through in July 1920 owing to the Hughes government's refusal to suspend the emergency powers it enjoyed under the War Precautions Act until December that year.

During 1917, Catholics came under increasing accusations that they were disloyal from the King and Empire 'loyalists'. Archbishop Mannix became a special target of their hatred when he asserted at a school opening ceremony in Brunswick in January 1917 that the war had little to do with 'the rights of little nations.' 'People could believe as much of this as they liked,' he remarked, 'but as a matter of fact this was a trade war – simply an ordinary, sordid trade war.' He repeated the word 'sordid'

twice.²⁸ Mannix clearly had in mind the plan to boycott all German commerce after the war, championed by Hughes at the Inter-Allied Economic Conference in 1916, and he was well aware of the trade rivalry that had preceded the war between declining British industry and rising German industry. But in rejecting the claim to moral superiority on the part of the British Empire, he invited a rain of vitriol upon his head. Hughes routinely denounced all critics of the war as ‘agents of Germany.’²⁹ Catholic families and Protestant families, even those with sons fighting together at the front, were increasingly divided over the necessity for the long war and the motives of those guiding the British Empire.³⁰

Just as the war entered its fourth year of bloodshed, in August 1917, life became still more complicated for Australian Catholics. Pope Benedict XV issued a famous plea for a negotiated peace, the ‘Papal Peace Note’, released on 10 August 1917. He urged a compromise peace on a liberal internationalist basis, anticipating many of the principles that were to become President Wilson’s Fourteen Points of January 1918. Owing to the censorship, it was difficult for Australian Catholics to get the full text of the Pope’s Note. More than a month passed before the Catholic newspapers published complete accounts.³¹ On 28 September 1917, Cardinal Gasparri, the Pope’s Secretary of State, released a follow-up letter explaining that the Pope favoured ‘the suppression of conscription.’ The Pope called for ‘the simultaneous and mutual abolition of compulsory military service’, because all nations should adopt the principle of the international arbitration of all international disputes. In his letter Cardinal Gasparri denounced conscription as ‘the cause of innumerable evils.’ Britain issued no reply at

²⁸ ‘Cause of the War: Archbishop’s Remarkable Utterance: “And Ordinary, Sordid Trade War”’, *The Age*, 29 January 1917.

²⁹ ‘An Appeal for Loyalty. Proclamation by Mr. Hughes’, *The Argus*, 15 August 1917.

³⁰ John Lack, ‘The great madness of 1914-18’: families at war on Melbourne’s eastern and western fronts’, in *The La Trobe Journal*, 96 (September 2015), 77.

³¹ ‘Full Text of the Pope’s Peace Note to Warring Powers’, *The Catholic Press* [Sydney], 27 September 1917, and ‘Benedict Suggests Peace Terms to Nations’, *The Advocate* [Melbourne], 13 October 1917.

all to the Pope's peace note, preferring to hide behind President Wilson's extraordinary bitter-end reply, which argued that there was no alternative to prolonging the war because the German government was untrustworthy. Instead of a negotiated peace, Wilson called upon the German people to rise up in revolt.³² Although the Australian press did much to suppress knowledge of the Pope's latest peace notes, for those Australian Catholics who could find out the detail, the Pope's opposition to conscription was now clear.

The Second Conscription Referendum, December 1917

However, in November 1917, Hughes suddenly announced a second conscription referendum to be held on 20 December. Hughes was worried about the steady fading of voluntary enlistments, and still insisting that more and more men were the indispensable requirement for victory. He was vehemently opposed to any notion of a negotiated settlement, appalled that Britain might trade the restoration of German colonies for a German withdrawal from France and Belgium, and increasingly hostile toward all criticism of the protracted war at home.

Archbishop Mannix of Melbourne again took a leading role in opposing conscription. On Wednesday 28 November, he addressed some 20,000 people at the famous Exhibition Building in Melbourne. He had never opposed a British military intervention on behalf of Belgium and France, he explained. But he accused Britain of prolonging the war in order 'to secure the economic domination of the world.' He explained his suspicion of the ever-escalating war aims of all those nations that had

³² John Pollard, *The Unknown Pope: Benedict XV (1914-1922) and the Pursuit of Peace* (London, 1999), 123-8, and Taouk, 'The Roman Catholic Church in Britain', 151-2, 246, 259-60, (and for the Pope's Note see Appendix B).

the power to conscript manpower. The war was a protracted horror, and no side had pure motives, he argued. He could speak like a rabble-rouser of the Left, as he mocked Hughes's central argument that conscription was an instrument for achieving 'equality of sacrifice':

I say that this cheap talk about equal sacrifice is galling, absurd, and ridiculous (Applause). The wealthy classes would be very glad to send the last man, and they have no notion of giving the last shilling, nor even the first. (Loud applause). I warn you not to be under the delusion that the capitalists will, in the end, pay for the war. You know that these people have a remarkable facility for passing these obligations on. (Laughter). In reality, the burthen in the end will be borne by the toiling masses of Australia (applause).³³

Mannix also attacked the 'petty juggling and trickery' of the Hughes government in making special arrangements for the second conscription referendum. It is often forgotten that on this occasion, the government did indeed try a number of transparent tricks to minimize the NO vote. This time the wording of the referendum was even more misleading, with the word 'conscription' not appearing in the question:

Are you in favour of the proposal of the Commonwealth Government for reinforcing the Commonwealth Forces overseas?

Unprecedentedly, this time the referendum was scheduled to be held on a Thursday rather than the normal Saturday. As Thursday was a working day, this placed a difficulty in front of working-class voters. In addition, it was announced that enrolment for the poll would close only two days after announcement of the referendum, and before news of it had spread in many areas. And, as a matter of

³³ 'The Archbishop at the Exhibition Building', *The Advocate* [Melbourne], 8 December 1917.

course, those men under twenty-one who would be subject to conscription – as in Australia in the 1960s – had no right to vote on the issue.

Once again, Hughes pulled out all stops. Life for those leading the NO campaign was made as difficult as possible. In spite of the pro-conscription stance of the bulk of the press, the heavy-handed interference of the government, and the denial of venues to those seeking to organise public meetings against conscription, the NO vote triumphed. This second time 53.8% voted NO. The soldiers did vote YES, but the figures are disputed. The margin was so small that the government found it intensely embarrassing and refused to release the figures.³⁴

The reaction in the Hughes government circles was to lose faith in democracy itself. Keith Murdoch, who had undertaken special work for Hughes in drumming up the YES vote in the ranks of the AIF, was devastated. In May 1918, he wrote to General Pompey Elliott: ‘I admit that democracy must be cast aside by all patriotic men if the labouring classes become selfish or indolent under the authority it gives them.’³⁵ Indeed, the despotic trend in Australia strengthened during 1918. For example, Regulations issued under the War Precautions Act were more and more limiting. In 1918, Regulation No. 86 threatened anyone who ‘advocates, incites or encourages disloyalty or hostility to the British Empire, or to the cause of the British Empire in the present war, or advocates the dismemberment of the British Empire.’³⁶ Thus, support for the cause of Irish independence was criminalized.

³⁴ Beaumont, *Broken Nation*, 387, Fitzhardinge, *Hughes*, 296-7, and Robert Bollard, *In the Shadow of Gallipoli: the Hidden History of Australia in World War I* (Sydney, 2013), 147.

³⁵ Quoted in Douglas Newton, *British Policy and the Weimar Republic, 1918-1919* (Oxford, 1997), 125.

³⁶ See ‘In Good Faith: Sedition Law in Australia’ at http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/archive/sedition (Accessed 23 November 2015)

In the weeks following the defeat of the second conscription referendum, the increasingly authoritarian Hughes government moved against Jerger. He was interned in February 1918. His deportation would follow in July 1920. His exile from Australia was ordered under the emergency procedures by which just a handful of men made the decisions. It was achieved more than a year after the signing of the peace treaty, the Versailles Treaty, in June 1919.

Conclusion

Some might say that Jerger was a victim of emergency legislation, but that making the world safe for democracy was a real emergency, and such emergencies demand emergency legislation. And the world was made safe for democracy – so all's well that ends well, which is another way of saying that the end justifies the means. Sadly, like so such emergency legislation, that of Australia's during the Great War was open to abuse and became an instrument for political vindictiveness and the politics of exclusion – deployed then, and still, by little men seeking to milk political advantage from great world tragedies.

One might ponder what kind of an Australian democracy was made safe by this prolonged war? One further case from the period is instructive on this point, the case of Hugh Mahon. He had a long history as a Labor minister. He was a former minister for external affairs in the first wartime Fisher Labor government of 1914-15, and had two sons who served in the war, one of whom was awarded the Military Cross. Mahon had sought to defend Jerger in late 1916 from those seeking to imprison him on the basis of one parishioner's testimony of 'disloyalty'. Mahon lost his seat in the federal election of May 1917. He then won it back in December 1919. As a Catholic

Labor man and passionate supporter of Home Rule and then independence for Ireland, Mahon formed the Irish League after the war, in September 1919. At a rally for Free Ireland, Mahon described the atrocious British Empire Policy in Ireland as ‘this bloody and accursed despotism.’ On Armistice Day, 11 November 1920, when all Australians remembered in sombre silence those who had died for essential freedoms, Prime Minister Hughes introduced a motion to expel Mahon from the Federal Parliament. Labor put forward an amendment that Mahon should be tried, if there was a case against him, by a judge and jury. The motion to expel was carried 34 to 17, on party lines.³⁷ Such was the fragile quality of Australian democracy supposedly made safe by war.

Douglas Newton

³⁷ Fitzhardinge, *Hughes*, 452-6.