

“It’s a Crime to Report a Crime”: An Interview With Lawyer Bernard Collaery

Sydney Criminal Lawyers blog, by Paul Gregoire. 1 April 2020

During the Second World War, Australia deployed more than [1,400 troops](#) to the island of Timor to curb the approaching Japanese forces in the region. And our nation’s guerrilla operations would not have been so successful without the support of the people of East Timor.

This history is why Australia’s actions towards the newly independent and impoverished nation of Timor-Leste at the turn of the century constitute a betrayal.

In 2008, a former ASIS officer, now referred to as Witness K, approached the Inspector General of Intelligence and Security, claiming that in 2004 they were involved in bugging the East Timorese cabinet offices to ensure Australia had the upper hand in oil and gas negotiations.

The IGIS told Witness K that they could speak to an ASIS-approved lawyer about the allegations. That lawyer was Bernard Collaery, who’d been a long-term legal advisor to the East Timorese resistance. Indeed, the barrister had been a key supporter as the young nation moved towards independence.

“The ethics of petroleum diplomacy”

In 2013, Mr Collaery [was at the Hague](#) to represent Timor-Leste in the international court in a case brought against the Australian government over the underhanded measures it had allegedly taken when negotiating a Timor Gap oil and gas treaty.

It was [at this time](#) that the then Canberra-based lawyer learnt that his office had been raided by ASIO and the AFP in relation to the case, while a similar raid on the home of Witness K had resulted in their passport being taken away, so they couldn’t appear in the Netherlands to testify.

However, it wasn’t for another five years – and the appointment of attorney general Christian Porter – that the [Commonwealth DPP](#) Sarah McNaughton moved to prosecute both Collaery and K over alleged conspiracy to breach the provisions of [section 39](#) of the Intelligence Services Act 2001 (Cth).

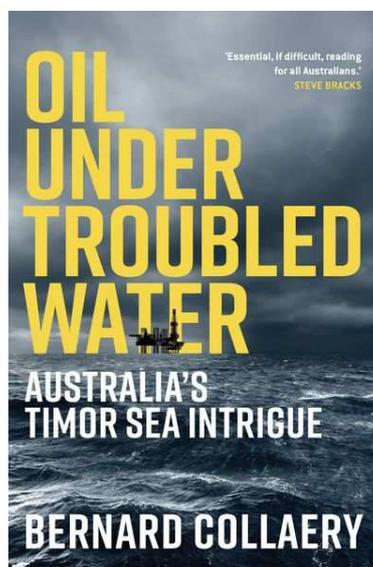
Witness K told the ACT Supreme Court [last August](#) that they’d be pleading guilty. However, Collaery will continue to challenge his charges. And at present, the barrister has to travel to Sydney to engage with his lawyers, where they meet in a government-approved room.

Betrayals exposed

Melbourne University Press has just released [Oil Under Troubled Water](#), which is Mr Collaery’s account of our nation’s foreign affairs history in relation to East Timor. And as he’s not permitted to discuss his case, he’s seamlessly skirted around that issue.

However, the former ACT attorney general manages to uncover a number of previously hidden facts regarding the fate of five murdered Australia-based journalists known as the Balibo Five, as well as some little known details involving helium.

Sydney Criminal Lawyers spoke to Mr Collaery about his fight to appear in an open court, the significance of burying the knowledge of helium deposits in the Timor Gap, and his warnings to legal professionals regarding the state of the nation.



Firstly, Mr Collaery, you've just released [Oil Under Troubled Water](#). It tracks Australia's foreign policy regarding East Timor from the early 1940s onwards. And as many others have, you assert that the way Australia approached Timor-Leste represents a betrayal.

So, what occurred in the relationship between the two nations that makes the politicking our government engaged in constitute acts of bad faith?

The essential act of bad faith – the very serious one – was in later years, when Australia, as a joint venture partner in the Joint Petroleum Development Authority for the Timor Sea, breached its fiduciary duty in its relationship with East Timor.

I'm not allowed to tell you the details of that breach. I'm waiting to be able to tell that in open court. But, your readers will know what this very serious breach was by a venture partner.

My book deals with the failed foreign policy that led to our prime minister John Howard shaking hands in front of the world media and signing a memorandum of understanding in good faith to negotiate a revenue agreement.

How's that? If you're filmed by the world media, you've promised to act in good faith.

As you point out, during the Second World War, Australia was interested in establishing a presence on what was then Portuguese Timor for strategic reasons.

There was also talk of Australia administering the country during its transition to independence, in much the same way as happened with Papua New Guinea.

But, in the mid-1970s, Indonesia invaded East Timor and so began 25 years of brutal rule. Why did our government simply stand by as Suharto claimed the impoverished nation?

Portugal was the colonial power. And the Australian lawyers involved – and the politicians of the day, like Sir Garfield Barwick – knew full well that Portugal would be quite a power to fight over the boundary lines between the two countries.

And one of the Australian ambassadors wrote that it would be easier to deal with the Indonesians if they took over, in terms of petroleum resources.

We're supposed to be a modern democracy and in the new world. And our World War Two leaders followed Roosevelt's ideas about self-governance and self-determination, particularly with the colonial powers in our region.

We supported that until the early 50s, and we moved away from it for self-interest.

Now, Timor's always been an important place for us strategically. Darwin has monstrous 40 foot tides, and there's no way you can effectively have a naval base there, and certainly, not a submarine base.

Timor sits next to a 4,000-metre-deep trench. And there were many more strategic reasons why we should have got Timor on side. And we didn't.

There's one popular misconception, which is that Australians all benefited from the stolen wealth of the Timor Sea. But, that's nonsense.

The fact of the matter is – apart from some royalties and other revenues – we gave away the riches of the Timor Sea that we were effectively stealing from the Timorese.

We gave it away to enormously wealthy foreign owned corporations. That's the issue.

Many Australians look to the time that the Whitlam government was in power in the early 1970s, as a point when the nation had a truly egalitarian leadership, as that cabinet established universal healthcare and freed up education.

However, you're quite critical of the way Whitlam handled East Timor. Why was Gough perhaps not so "for the people" when it came to the Timorese?

In 1999, Gough described himself as an elder statesman. In that role, he said that during the Second World War as a navigator in the Royal Australian Air Force, he flew over Timor Island and the group of islands throughout that area, and he said they all belonged together.

Gough had an imperial idea – that the islands all belong together, and that Timor would be inevitably absorbed by Indonesia.

That's an imperial idea, because after 400 years of Christianised education, the Timorese may have had a different view from predominately Muslim Indonesia. But, there's no mention of that in Gough Whitham's words.

I don't think there's sufficient evidence to say Gough sold out the Portuguese Timorese for oil. That's another misconception. There is no subjective evidence.

Gough was driven by an imperialistic view that we should have the anti-Communist Indonesians in charge of the island, because they'll be easier to deal with. We had built a good relationship with Indonesia by then.

There are a number of revelations in your book, which include evidence that the Australian government was much more aware of the potential fate awaiting the five murdered journalists known as the Balibo Five.

You also point out that in 2006, when then foreign minister Alexander Downer sat down to sign the first treaty relating to the Timor Gap oil and gas reserves with the newly independent nation of Timor-Leste, the Australian government managed to hide the fact that it had located helium in the gas fields.

And you explain that the Howard government cut a deal involving the helium with US energy corporation ConocoPhillips that was not only detrimental to the East Timorese, but also Australians. Can you elaborate on why that's the case?

Helium is now a massively important, but limited, resource. So, Australia connived to hide the presence of the helium, and offered contractual documents that had small print items that are unchanged throughout the world, which they changed.

They deleted the words "inert gases" and connived to effectively transfer the helium to a predominantly United States corporation and other contracted parties.

We Australians lost it all, so did the Timorese.

Who gave that part of the Australian government the authority to give away tens of billions' worth of helium?

That's a question that needs to be answered in open court, when we subpoena the various actors: Alexander Downer, John Howard and others.

So, you're saying that since that time, Australia has been paying for the same helium it gave away?

We're buying that helium back. We gave it away and now we're buying it back for our health system.

Our nation lost credit particularly in the developing world, and the Asia-Pacific region. We lost the exemplary status that our Second World War leaders gave us.

We abandoned historic purpose to be a thief, to retard people's rights to self-determination, and to standby and tacitly allow a criminal occupation of a country by Indonesia.

To do those things was to disavow our historic purpose, and what our country stood for, particularly with the pioneers and ancestors – people like my father who died in the war fighting for democracy. We abandoned our historic purpose.

We are now one of the least rules-based westernised nations in the world. We have a closer arrangement now to oppressive regimes, both in Eastern Europe and in parts of Asia.

We are not the democracy we set out to be. And who caused this? You could count them on two hands. I can't name them for reasons of defamation. But, we need to have a full national soul search about what's going on.

The release of my book coming with the spread of this virus has been a godsend for those to who this is a reckoning.

Witness K and I have been put to trial. But, I hope your readers know that the real trial will be the trial of the government of the day: the handful of people who've been responsible for diverting our country from its moral and proper ethical purposes as a democracy.

The scope of your book is impressive. You present an in depth account of Australian political history spanning several generations. You went to Cambridge to write it, and much of your research was carried out in the UK National Archives.

Why did you head to the UK to write your book?

My barrister's chamber – my home – was raided and searched. The international court ordered the return of the papers, but the damage was done. I had to move my entire legal office and my staff to England.

Your readers may not believe it. But, it's no longer safe to work in this country if you're acting for another country lawfully on issues. It's no longer safe.

These repressive terrorist-inspired laws – and other changes to the Criminal Code – allow any attack on Australia's economic activities to be seen as potential sabotage and espionage.

So, I had to go to Cambridge to finish the book. That cost me my law practice. Then when the book was ready to be published, I received a letter from the Australian government solicitor threatening me with 10 years goal.

When I went ahead with the publication of the book, summonses were issued, which meant the book couldn't proceed until it was substantially revised, and that took another 18 months.

So, they've been playing for time. There have been 36 to 37 court appearances.

Although, the summonses against myself and Witness K were issued by the Commonwealth Director of Public Prosecutions, the representative of that office sits in court twiddling his thumbs most of the time

This is while two from attorney general Christian Porter's office go on and on about the right to have secret hearings, judge-only evidence and the rest of it. It's been going on for two years and I've been unable to practice.

That's where our country is going. It aligns us much closer to oppressive regimes than forms of democracy. This wouldn't happen in the United Kingdom. And believe it or not, it wouldn't happen in Trump's America.

This is a very repressive development. And it is particularly dangerous for lawyers.

Lastly, you're soon to stand trial in a closed court on some fairly serious charges that were put in place to deal with terrorists. And you're not permitted to discuss the details of this.

Are you still challenging the closed court arrangements?

We are challenging the closed court arrangements. And that challenge will happen at interim hearings before the substantive trial.

I'm charged with [conspiracy to breach](#) the Intelligence Act. I was acting for Witness K, who was approved to see me, as I was an approved lawyer to see members of the intelligence services.

I gave frank and fearless advice, and the response was I've been charged with conspiracy. That probably means I've been conspiring with clients for 40 years. That's what it amounts to.

As far as I am concerned, the charge against K means that it's a crime to report a crime. Think about it. That's Australia at present.