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"LAW, VALUES AND CHARITY"

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The Hon Sir Gerard Brennan AC KBE

LAW, VALUES AND CHARITY

The three subjects of this topic relate to our identity. Law, which creates our institutions and provides the framework for our relations with Government and with one another; values which are characteristic of the cultural group to which we belong; and charity, the virtue by which Christians are to be known. Perhaps values should have preceded law in the title for laws exist in order to express and protect those values which need expression and protection by the authority of the State.

Values are broad articles of faith. Some of our individual values come from, or are verified by, practical experience; some come from beliefs we have taken from others and, with or without qualifications, have made our own. As the good and the useful can depend on circumstances, no value can be stated in terms that are universal and absolute. Liberty and equality are estimable values, but absolute liberty can be the enemy of equality and absolute equality would demand the curtailing of liberty.

Values are expressed in broad terms, without the qualifications necessary to define the precise moral or legal precepts which they indicate. Although their content is imprecise, they are powerful influences on thought and conduct. We value what we believe to be good or at least useful. Our values influence what we think and do. They continually contribute to the formation of our attitudes to specific issues or problems.¹ We may not

¹ See M. Rokeach *"Beliefs, Attitudes and Values"* (1980) pp. 159-161.

always form our attitudes or act in harmony with our values but we assume that they tell us what is good or useful. Values give us our character, affect our conduct, inform our relationships, and mould our future. They define our identities.

It is a truism that social phenomena reflect the values of society, whether for good or ill. We know that the practices of fascism could not have flourished in a society that valued liberty and equality; equally, we know that the financial excesses of the 1980s were possible only because of a pervasive materialism that asserted greed to be good. No human society is value free; each society reveals and gives effect to its prevailing values in its laws and institutions, in its political and economic policies, in its art, literature and architecture and in the manner in which its people relate one to another. A people's values are the substance of their culture. Bernard Lonergan has said that –

*"A culture is a set of meanings and values informing [that is giving form to] a common way of life, and there are as many cultures as there are distinct sets of such meanings and values."*²

Civilisation is impossible without moral values and a community which does not share or accept a basic set of moral values is a community in chaos. Australians enjoy political stability because we share the basic values of liberty, equality and tolerance; we respect integrity, especially in public office, and we insist on the rule of law. Within those very broad parameters, we conduct our public affairs and frame our laws. Of course, the content of

² Bernard Lonergan, *Method in Theology*, University of Toronto Press, p.301.

these values is not universally agreed. Disagreements stimulate our controversies. The content which Christians give to these concepts is the Christian contribution to our social life.

Liberty is essential to the Christian. It is naturally possessed by everyone and without liberty virtue would be impossible. Any infringement or limitation of individual liberty must be justified. Liberty is not to be taken away by laws, pressures or inducements which are not needed to preserve ourselves from unintended harm or to secure and maintain the common good of our fellows. Therefore the coercion of the law should be kept to a minimum. Liberty is a value to be preserved not only because we like to live in a free society but because it maximises the opportunities for exercising the freedom of thought and action by which we achieve our own dignity and in which we may acknowledge and discharge our moral responsibilities to our fellow men and women. Liberty is the pre-condition of moral (as distinct from conforming) conduct. Fortunately for us, liberty is a value which is firmly protected by the law, as Sir Isaac Isaacs pointed out in *Ex parte Walsh & Johnson; In Re Yates*³:

"(1) primarily every free man has an inherent individual right to his life, liberty, property and citizenship; (2) his individual rights must always yield to the necessities of the general welfare at the will of the State; (3) the law of the land is the only mode by which the State can so declare its will. These principles taken together form one united conception for the necessary adjustment of the individual and social rights and duties of the members of the State. For their effective preservation and enforcement the Courts have evolved two great working corollaries in harmony with the main principles and without which these would soon pass into merely pious aspirations. The first corollary is that there is always an initial presumption in favour of liberty, so that whoever claims to imprison or deport another has cast upon him the obligation of justifying his claim by

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(1925) 37 CLR 36 at 79.

reference to the law. The second corollary is that the Courts themselves see that this obligation is strictly and completely fulfilled before they hold that liberty is lawfully restrained."

For the Christian, the value of equality is an acknowledgment that, before God, each individual is equally precious and is equally loved. Race or colour, class or creed, physical or mental perfection or defect afford no warrant for attributing varying degrees of worth and dignity to human kind. This consideration is relevant to debates on euthanasia. Every person possesses the same dignity as a child of God⁴ and is entitled to the same respect⁵. Of course there are differences in natural endowments and massive differences in the societies and environments in which people live. These differences account for or contribute to dissimilarity in the position, especially in the economic position, of individuals within society. Disparities between the rich and poor, between the hungry and the fed are constant thorns in the Christian conscience. "I was hungry and you gave me to eat". The achieving of economic equality has particular problems, and I shall return to that issue in a minute.

Thirdly, tolerance: tolerance is both a value and a virtue, for Scripture forbids us to be judgmental of one another.⁶ Tolerance is an Australian value, characteristic of a people who wish to live in peace and who are conscious of the religious, ethnic and cultural diversity of the community and who are willing to celebrate that diversity. Our laws, notably the statutes which prohibit various forms of discrimination, give legal effect to the value of tolerance.

⁴ Romans 8:15; Gal 4:6.

⁵ Mt 6:29-30; Luke 12:7,25,28.

⁶ Mt 6:15; Luke 6:36,37.

Liberty, equality and tolerance are not optional for the Christian. They are Christian values.

Others in our community attribute a different content to the values which Christians hold dear. That does not require us to accept their values and forsake our own. No false modesty, no deference to non-Christian or anti-Christian values should deter the charitable exposition of the Gospel message. The Gospel calls us to be an example to others in our mutual love and in our lived and professed commitment to the values we find in Christ's life and teaching: "love one another as I have loved you".⁷

Of course, the Christian is bound to accept that others who, in good conscience, hold different views are free to advocate those views. The cultures of the western democracies, including our own, have become increasingly pluralistic. So we cannot expect that the law and policies of the State will always accord with Christian values. The law must be the product of the common values of society; not vice versa. If law did not reflect common values, we would lose either our freedom or the peace of our society. Either the law would be ignored, and civil unrest would follow or the law would be enforced by physical duress and freedom would be lost.

It is not universally accepted that law is the product of broadly accepted values; community values are regarded in some societies as the product of the law. I remember that, during a visit the People's Republic of China in 1983, five years after the end of the Cultural Revolution, a senior

Judge explained to me that it was important to get a body of laws enacted by the Supreme People's Congress, not only to create the necessary legal framework but also to instruct the people in socialist morality. In our own society, the influence of the law on values can be seen when morally questionable conduct is defended on the ground that "my QC said that what I did was lawful".

By contrast, Australia's Aboriginal peoples do not distinguish between traditional law and moral values. Law, religion, custom and right conduct are fully integrated in Aboriginal life. That culture was suitable for a stable, unchanging society. But Australian society is multicultural and multi-religious and we must live in peaceful community with those whose values differ from our own. Our laws must provide a cohesive framework for our society but they must be respectful of diverse values honestly held by the differing groups in our community.

In a notable speech to the University of Notre Dame, in September 1984, Governor Mario Cuomo, Governor of New York said:

"I protect my right to be a Catholic by preserving your right to believe as a Jew, a Protestant or non-believer, or as anything else you choose.

We know that the price of seeking to force our beliefs on others is that they might some day force theirs on us.

This freedom is the fundamental strength of our unique experiment in government. In the complex interplay of forces and considerations that go into the making of our laws and

policies, its preservation must be a pervasive and dominant concern."

So there are two restrictions on what the law should cover. First, it should not unnecessarily trespass upon individual freedom. Secondly, and consequentially, so far as is consistent with the public good, it should not offend the values of any religious or cultural group in the community.

The extent to which law should restrict economic freedom is a recurring question. Should we leave economic relations free of legal controls and allow market forces to be the untrammelled arbiter of economic activity? If it be right to own private property, it must be right to devote that property to the lawful accumulation of more wealth. That results, of course, in inequality of wealth. Should the State seek to equalise the possession of wealth? Could it do so without eliminating the private right of property? The present Pope addressed this question⁸ in terms which I quote for their eminent common sense:

"It should be noted that in today's world, among other rights, the right of economic initiative is often suppressed. Yet it is a right which is important not only for the individual but also for the common good. Experience shows us that the denial of this right, or its limitation in the name of an alleged 'equality' of everyone in society, diminishes, or in practice absolutely destroys the spirit of initiative, that is to say the creative subjectivity of the citizen. As a consequence, there arises, not so much a true equality as 'levelling down'. In the place of creative initiative there appears passivity, dependence and submission to the bureaucratic apparatus, which, as the only 'ordering' and 'decision-making' body – if not also the 'owner' – of the entire

⁸ Pope John Paul II in the Encyclical "*Sollicitudo Rei Socialis*", para 15.

totality of goods and the means of production, puts everyone in a position of almost absolute dependence, which is similar to the traditional dependence of the worker-proletarian in capitalism".

The liberty to employ initiative carries the right to garner its fruits. We therefore admit the legitimacy of the accumulation of wealth. When wealth is accumulated, there is a surplus beyond what is needed for the bare sustenance of life. The legal right of the owner is to apply the surplus to any lawful purpose including the accumulation of more wealth and the consequent acquisition of economic power. Economic power can be used to oppress others – employees, competitors, creditors – or to operate against the common good. What is the Christian response to the problem of the misuse of economic power when the right to private ownership of property is acknowledged? The answer is not to abolish private property but to regulate the exercise of economic power. That is a legitimate field of legal regulation. But how far should law go in seeking to control economic power? The right balance of legal control is hard to strike and unlikely to be struck without controversy between the parties on either end of the political and industrial spectrum. Poverty will not be eliminated by law but its incidence and severity can be reduced by appropriate legal controls. We know that the poor will be with us always⁹ but that is no warrant for denying to the law and policies of the State the function of protecting the entitlement of everyone, especially the poor, to a life of dignity. The content which Christians attribute to the value of equality demands some protection of the underprivileged.

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Mark 14:7.

In practical terms, that protection requires some control of capital and of the relationship between capital and labour and some provision for social security. Within certain limits, the extent of control and of social security is properly the subject of political debate rather than moral precept. The Christian contributes to that debate by insisting the individual should neither have his or her initiative destroyed nor be treated as a mere economic integer. The law should protect the unique dignity of each individual and maintain social structures which do not alienate men and women from their fellows. Nor should social structures (including industrial laws) impede the essential relationship between the individual and God Who is the Creator and End of human existence. Each Christian must determine for herself or himself the morality of concrete proposals and the steps which should be taken to protect the life, the dignity, the autonomy and the religious freedom of the individual within his or her society.

Legal controls can regulate the economy but are too blunt an instrument to alleviate poverty and suffering in individual cases. Individual poverty and suffering can be alleviated only by private assistance. This raises a further question. Should corporations, as the principal repositories of disposable funds, bear the chief responsibility of providing the money needed for the relief of individual poverty and suffering?

Nowadays, an individual's surplus is often invested in corporations or funds under the control of managers. By reason of the accumulation of wealth in corporations or funds, director or managers possess considerable economic power. But the law does not permit the application of corporate or fund assets to *purely* charitable objects.

When investors place their assets and their confidence in corporations under the control of directors or in funds under the control of managers, the primary duty of directors and managers is owed to the shareholders or investors whose assets are under their control. Generally speaking, these shareholders or investors do not control the deployment of the assets in which they have invested. The initiative of the directors or managers is exercised to secure the maximum benefit for the corporation or fund and thereby to secure the maximum benefit for their shareholders or investors. The primary duty of the directors or managers is not owed to non-shareholders or non-investors nor to the wider community nor to nations or peoples elsewhere. For over a century, the general doctrine governing the application of a corporation's assets by directors has been this¹⁰:

"They can only spend money which is not theirs but the company's if they are spending it for the purposes which are reasonably incidental to the carrying on of the business of the company.

...

The test must be what is reasonably incidental to, and within the reasonable scope of carrying on, the business of the company."

The benefit of the company was understood, in the case of a solvent company, as the benefit of the general body of the shareholders.¹¹ It was said that "charity has no business to sit at boards of directors *qua* charity". However, modern legal writers suggest, and corporate practice accords with

¹⁰ *Hutton v West Cork Railway Co* (1883) 23 Ch. D. 654 at 671 per Bowen LJ.

¹¹ *Greenhalgh v Arderne Cinemas Ltd* (1951) Ch. 286; *Ngurli Ltd v McCann* (1953) 90 CLR 425; *Gambotto v W.C.P. Ltd.* (1995) 182 CLR 432 at pp 443-444.

the suggestion, that it is permissible to donate corporate assets if the donation is likely to redound to the benefit of the corporation, but donations without the prospect of financial return are not authorized¹². The legal justification explains such expenditure as "seed corn" sown in the surrounding ground with a long-term view to profit.¹³ Perhaps the distinction is between philanthropy, which is justifiable because it improves the profit-making capacity of the donor, and charity which improves merely the position of the donee. Corporate image could not be improved if, when giving alms, the right hand of the corporation's treasurer could not let the left-hand publicity department know what the right hand was doing¹⁴. The limited authority of directors to donate the corporations assets means that the chief accumulations of wealth are not likely to be the primary source of funds for the alleviation of individual material poverty, although donations to charitable institutions which work for the alleviation of individual material poverty may be permissible as philanthropic "seed corn".

There are sound reasons of policy for imposing a limitation on directors' powers to donate corporate assets. Investors, whose charitable inclinations are diverse, do not authorise directors to dispose of corporate assets to charitable objects of the directors' choice. The choice should remain with the individual investor when he or she obtains his or her share of the distributed profits. From the moral viewpoint, there is no virtue in a directors' resolution to dispose of corporate assets to a charitable object. Virtue consists in the giving of what is one's own, not in the giving of assets

¹² See Gower's *Principles of Modern Company Law* (5th edn) p. 555 fn 32.

¹³ Lord Wedderburn of Charlton "The Social Responsibility of Companies" (1989) 15 Melbourne University Law Review 4 at p. 15. I am indebted to Professor Paul Redmond, Dean of Law at the University of New South Wales for this and other references.

that belong to another. And so, the kind of beneficence which seeks and yields no return ordinarily finds no place in the structures of capitalism. Individual poverty must be alleviated, if at all, by the State or by the charity of individuals.

The legal right of the individual to accumulate and to dispose of wealth brings with it the moral responsibility of determining what disposition should be made. The moral decision may not be an easy one for the Christian to make. But we start with Genesis, the Book which tells us that, when God created humankind, he said:

"Behold, I have given you every plant yielding seed which is upon the face of all the earth, and every tree with seed in its fruit; you shall have them for food."

So we know that the goods of this world were intended by God for the benefit of all. The notion that the earth's goods are intended for all presents a radical challenge to the national and international order as well as a massive disturbance to complacency about our own possessions.

As all humankind has an equal right to live unless it is forfeited in order to protect another person, States and individuals are under the basic duty of doing what they can to ensure the supply of goods and services needed to sustain human life in dignity whenever and wherever it is threatened, whether by natural disaster, mismanagement or sheer poverty.

Where gainful employment is not available or where age or infirmity prevent the earning of a livelihood, it is the function of the State to support in cash and kind a life of dignity for those who are unable otherwise to support themselves. Social security is not a mere budgetary item to be adjusted according to political exigencies; it is not reducible merely to secure an economically satisfactory bottom line; it is a mandatory safety net to prevent fellow citizens from suffering a degrading loss of dignity – a loss of dignity that would be a reproach to society and ultimately a threat to its stability. In a society of increasing complexity and technological sophistication, when education to secondary level is the minimum required to open opportunities for employment, I should think the State is under a further duty to provide that education for those who cannot otherwise acquire it. If the State does provide more extensive educational or other benefits to its citizens, they should be provided without discrimination on the basis of race or colour, class or creed, or (except where special services are needed) physical or mental perfection or defect.

The Christian has a political obligation to see that the State performs its proper function in maintaining the dignity of our fellow citizens. And the duty of personal charity must be to give to those in need what remains after providing for what is required to maintain a person and his or her dependants in his or her station in life becomingly and decently. Our conscience is likely to interpret this duty generously, especially in estimating what must be accumulated to preserve our life style for the future. But conscience may be troubled by the words of St Basil the Great:

"The bread which you do not use is the bread of the hungry; the garment hanging in the wardrobe is the garment of the one who is naked; the shoes you do not wear are the shoes of the one who is barefoot; the money you keep locked away is the money of the poor; the acts of charity you do not perform are so many injustices that you commit."

That is not a cry for legal reform or for public policy improvements. It is a personal challenge to charity, and one which many of us find daunting. But the just God has given due warning of the consequences if we do not heed the cry of the poor:¹⁵

"Then he will say to those at his left hand, 'Depart from me, you are cursed, into the eternal fire prepared for the devil and his angels; for I was hungry and you gave me no food, I was thirsty and you gave me no drink, I was a stranger and you did not welcome me, naked and you did not cloth me, sick and in prison and you did not visit me.' Then they also will answer, 'Lord, when did we see thee hungry or thirsty or a stranger or naked or sick or in prison, and did not minister to thee?' Then he will answer them, 'Truly, I say to you, as you did it not to one of the least of these, you did it not to me.' And they will go away into eternal punishment, but the righteous into eternal life."

These are terrible words and they are unequivocal. Of particular concern to lawyers are the prisoners whom we did not visit. For most of my professional life, lawyers have paid little attention to the state of our prisons although many of us have had a part to play in the incarceration of the prison population. Yet prisoners, no less than the free, are our brothers and sisters

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Mt 25:41-46.

and we have been silent too often when their human dignity has been diminished.

Charity is the virtue by which Christ wished His disciples to be known. Lawyers, who understand the mechanisms of society and professionally meet the rich and the poor, the comfortable and the desperate, the secure and the fragile, have opportunities to practise charity that are given to few. To practise that virtue, the skills and knowledge of the expert are needed but they are not in themselves sufficient. Those who need the lawyer's skills and knowledge but are unable to obtain them have a moral claim on the services of the profession. And when that claim is met, professional work becomes a stimulus to living and, please God, the source of riches in the life to come.