

MORALITY & LEGALITY

*Salus populi suprema lex*¹

Law is an ordinance of reason unto the common good promulgated by the one who has the care of the community.² Any human law, if it is to be valid, must reflect the law according to which man was made, the natural moral law, instilled into his being by God in the very moment of his creation.³

The necessary connection between a country's posited law and the moral law was clearly understood down all the centuries until the Sixteenth when Henry Tudor (Henry VIII), following the appalling example of his father, betrayed theological principle to satisfy his own will when he rejected the lawful bond of matrimony between him and his Queen and prevailed on Cranmer, Archbishop of Canterbury, and the English parliament to endorse the lie.

Yet morality is not the same as legality nor is legality identical with morality.

Confusing Legality with Morality

G. K. Chesterton remarks that you cannot refuse to obey the lawful direction of a traffic policeman simply because you know him to be living in sin. The traffic cop is acting for the good of the community and the state of his soul is irrelevant. A priest, even if he is in a state of mortal sin, is able validly to confect the Eucharist and to forgive sins. The powers of the priesthood are not given him for his own sake but for the welfare of his flock. The principle is reflected in an interchange between Sir Thomas More and his son in law, Will Roper, in Bolt's play *A Man for All Seasons*. More tells Roper he would give even the Devil the benefit of the law until he broke it (Act One). The point is confirmed by Dyson Heydon, former Justice of the High Court of Australia, in a celebrated Address in 2002 to the *Quadrant* Dinner prior to his elevation to that Court when he said of the rule of law: "All parties are treated as intrinsically important, however unequal in strength and however lacking in popularity or virtue they may be."⁴

In the course of his memoirs Sir Garfield Barwick, retired Chief Justice of the High Court, remarks a classic instance of confusing legality with morality in the case of *Ellis v Leeder* [(1951) 82 CLR 645].⁵ There the High Court under the leadership of Sir Owen Dixon abandoned the law's demands to penalize an executrix seeking to uphold the Will of a testator who might reasonably have been regarded—though it was neither charged nor proven—to have been her adulterous lover.

¹ 'The welfare of the people is the supreme law.' Cicero, *De Legibus*, Bk. III, Pt. III, sub. viii

² St Thomas Aquinas, *Summa Theologiae* I-II, q. 90, a. 4

³ *Ibid*, ad 1

⁴ *Judicial Activism and the Death of the Rule of Law*, *Quadrant*, January-February 2003: cf. <http://www.austlii.edu.au/au/journals/OtaLawRw/2004/2.html>

⁵ *A Radical Tory*, Sydney, 1995, pp.58 et seq.

The testator's widow claimed relief against the estate under the NSW *Testators Family Maintenance Act* (1916). The terms of the Will secured payment of extensive debts owed the executrix by the testator and payment of the debts would have exhausted the funds of the estate. The Court's judgement denied the executrix her entitlement to be repaid, effectively requiring her to provide for the widow; made her pay the costs of the original suit in the Supreme Court of NSW, the subsequent appeals to the Full Court and the High Court; and denied her an executrix's entitlement to be indemnified out of the estate for defending the Will. It was an appalling decision by an otherwise eminent High Court.⁶ Lawyers, both Australian and English, were so incensed at the decision that they provided their services free of charge to the executrix in the subsequent successful appeal to the Privy Council in England [*Leader v Ellis* (1953) 86 CLR 64].

Christ taught "God makes his sun to rise on the evil and the good and his rain to fall on just and unjust alike".⁷ The morally evil no less than the morally good are entitled to the protection of the law.

Confusing Morality with Legality

The opposite error, confusing morality with legality, works much greater harm.

When legislators pass laws that conflict with the moral law, as for instance when they 'legalize' induced abortion, they assert implicitly that the moral law must conform itself with what they have enacted. Not only do they subvert the law to their own ends they pervert its teaching function, leading into error the morally indifferent. Since the 'laws' so passed attack the common good of society they betray the principle contained in the Cicero's aphorism set forth above. Such 'laws' are not for the welfare of the people but for their enduring harm, *eo ipso* destructive of human society. Such 'laws' are not laws at all but species of violence.

Those responsible abandon the demands of the natural moral law summarised in the Decalogue, notably the deference due by every man to Almighty God his creator; the respect due to every human life; the right ordering of the sexual powers; the demands of justice in respect of the property and spouses of others; its prohibitions against covetousness; and adherence to the truth in language and in conduct.

Man cannot live without morality so they seek to impose a 'morality' of their own, grounded in ideology and appeals to irrational fears. And, since morality must be universal, they want to force this 'morality' on their fellows through legislation if not through collective moral pressure, to adopt their specious positions in matters such as evolutionary theory, 'global warming' (where, mindlessly, they condemn natural emissions), treating the brute animal on a par with the rational animal (the human), and interfering with the rights of parents to discipline their children.

⁶ One commentator has remarked how the case demonstrated Dixon's repugnance for divorce. See Julian Leeser in his review, *Phillip Ayers, Owen Dixon*, [2003] UNSW Law Journal 335

⁷ Matthew 5: 45

Every position they take treats a half truth as if it was the whole and refuses acknowledgement of any principle but the simplistically material. Each is grounded ultimately in the failure to conform to the first of the Ten Commandments, the absolute deference due to Almighty God. That is, each is grounded in the irrational belief system of the atheist.

Of a piece with the mindset they embrace is the ethos that defers, at the expense of principle, to 'political correctness'. A good illustration is found in the corruption, out of deference to Feminist theory, of language in person and number that afflicts us. Peter Connolly QC, former Justice of the Queensland Supreme Court, highlighted its effects in the course of condemning interference by Australia's Commonwealth Parliament in the Australian States' rightful province of education:

"[T]he net result has been an increasingly illiterate society for whom it is now perceived by those on high that the very statute book should be rewritten in ungrammatical language, giving currency to sociological fads and shibboleths, the end product being excruciating to read and totally lacking in precision..."⁸

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The philosophical error at the heart of the 'morality' modern atheists seek to impose on society arises out of the confusion of two realities, *the voluntary* and *the natural*. *The voluntary* delineates what is subject to human will, *the natural* what is beyond human will because established by another and greater will; another and greater intellect. Since they deny the existence of this greater intellect, they must deny what it has established, *the natural* and its intricate order. They cannot, of course, deny nature's material reality (which is all about them) but they treat it as no more than matter on which the human will (insofar as it is able) is free to operate. They insist, against reason, that there can be only one limit on everything that exists, human will free of any constraint but the constraints they mandate.⁹

This denial of the natural order and its moral demands, and the insistence that no order save that imposed by man is licit, is found in the—

- folly of refusing to admit that men are bound to seek an adequate cause of their own essence and existence;
- loss of sense of an objective standard to which men and women should conform;
- loss of sense of human dignity in dress and in conduct;
- systematic indulgence in fornication and contraception;
- indulgence by the perverted in sexually deviant behaviour coupled with a refusal to condemn such behaviour as abnormal;

⁸ In the Appendix to Joan Priest, *Sir Harry Gibbs; Without Fear or Favour*, Brisbane, 1995, p. 158

⁹ In this they resemble the caricature of the action of King Canute in trying to hold back the tide. In the account of Henry of Huntingdon, the King, having enthroned himself on the littoral, commanded the tide to advance no further to demonstrate to his fawning courtiers how empty and worthless is the power of earthly kings. Huntingdon reports him to have said, "There is none worthy of the name, but He whom heaven, earth, and sea obey by eternal laws". https://en.wikipedia.org/wiki/King_Canute_and_the_tide

- acceptance of abortion of the innocent unborn;
 - acceptance of euthanasia and assisted suicide;
 - over indulgence in food and drink;
 - preoccupation with tattooing and bodily mutilation—
- whose effects are demonstrated in the degradation of modern society.

There is a sort of schizophrenia at work; a failure to perceive the holding of logically contradictory positions. Atheists deny the fixity of the natural order, yet accept that the disciplines of science depend upon such a fixity. They insist a woman should be free to kill her innocent unborn, and rail against imposing the death penalty on the guilty. They assert the brute animal should be raised to the level of the rational, and reduce the rational animal to the level of the brute in abortion and euthanasia. Chesterton foresaw the madness at work 100 years ago:

“The peril is that the human intellect is free to destroy itself. Just as one generation could prevent the very existence of the next generation by all entering a monastery or jumping into the sea, so one set of thinkers can in some degree prevent further thinking by teaching the next generation that there is no validity in any human thought... There is a thought that stops thought. That is the only thought that ought to be stopped.

...

“I can see the inevitable smash of the philosophies of Schopenhauer and Tolstoy, Nietzsche and Shaw, as clearly as an inevitable railway smash could be seen from a balloon. They are all on the road to the emptiness of the asylum. For madness may be defined as using mental activity so as to reach mental helplessness.”¹⁰

Yet the contradiction and hypocrisy do not trouble modern atheists. They are part of the price to be paid to the god in which they believe, the god of human will.

Michael Baker

November 21, 2019—*Presentation of the Blessed Virgin*

¹⁰ G K Chesterton, *Orthodoxy*, London, 1908; my edition Fontana Books, 1963, pp. 33, 43