



Lawyers' Christian Fellowship

NEWSLETTER

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November 2002

OUR SENSE OF JUSTICE: EVOLUTIONARY ACCIDENT OR HARD WIRED?

Part one

Justice Ken Handley AO, Judge of the
Court of Appeal the Supreme Court of
New South Wales,

I expect you have all asked yourselves some ultimate questions. Why am I here? Is this all that there is? How did life start? What is the origin of the Cosmos? Many don't bother to follow up these questions. Like Scarlett O'Hara in "Gone with the Wind" they won't think about that today. They will think about it tomorrow. Many live as though the answers don't matter, others on the basis that there are no answers. One of those questions is how did we get our sense of justice and our sense of right and wrong.

All functioning human societies, however primitive, have a legal system to maintain law and order. There can be law and order without justice as the history of Nazi Germany, Stalin's Russia and apartheid South Africa demonstrates. We don't get our understanding of justice from our legal systems. That exists outside any legal system and we use it to evaluate a legal system or its decisions in particular cases.

Litigants and their supporters tend to equate justice with winning, but not always. When I was a young lawyer the story, or perhaps urban myth, was told of a client who received a telegram

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The call to Kyrghastan - a spiritual journey

At a time of life when most practitioners are looking forward to retirement **Syd Hume**, a long time member of the Fellowship, will address how God has been moving in his life this year calling he and his wife Sue to minister in Kyrghastan

- Date:** December 7th
- Venue :** The home of Neil and Marcia Cameron at 36 Elva Avenue Killara
- Time:** 7pm for 7.30pm.
- Cost:** \$35 per person, (\$30.00 students)
- RSVP :** 28th November 2002 to Naomi Stafford, Level 5, 580 George St, Sydney
- Phone: 02 9267 9800

NOEL HALLELUJAH MERRY CHRISTMAS HAPPY NEW YEAR
Noel Hallelujah Merry Christmas Happy New Year

from his solicitor which said: "Justice has prevailed". The client immediately replied: "Appeal at once".

There is of course no universal consensus about moral values and these differ from society to society and from time to time. There is nevertheless a broad measure of agreement about basic things like murder, violence, rape and theft. An understanding of justice and injustice appears to emerge spontaneously in our children at quite an early age. If we discipline one for what he or she did to a sibling we may be told in no uncertain terms that this was unfair because the other started it.

Not all legal rules have intrinsic moral force. In the abstract it is neither right nor wrong to drive on the left hand side of the road but if we want orderly traffic we need some rule. The rule we adopt may acquire moral force because it is our rule. Thus it may become morally wrong to drive on the incorrect side of the road if this endangers the lives of others. The rules of rugby union which are not directed to player safety have no intrinsic moral force. There is nothing morally wrong about a knock on. However we regard some rule breaches as cheating and we apply concepts of justice to decisions of the referee. We think it's unjust if a player is penalised for something he did not do or is not penalised when he should have been. We also think it is unjust if the referee is biased, and that his biased decisions are unjust.

We don't apply our standards of justice to the physical world. Gravity, electricity and arsenic can kill but we don't think of them as unjust or morally wrong. If someone dies from a fall or from an electric shock we don't think that gravity or electricity were morally responsible for the death because we know that those forces could not act in any other way. We don't apply our standards of morality and justice to animals either. Lions eat other animals and sharks eat fish but there is no such thing in moral terms as a good or bad lion or a good or bad shark. They cannot act any differently.

On the other hand we think it is morally wrong for a human being to mistreat a pet. In this and other ways we regard ourselves as different from animals. We take it for granted that we are special. Why is this so? I suggest it is because we have free will and the capacity to make choices. We can act differently and we do have moral standards.

For the same reasons our concept of rights is really confined to human beings or their legal entities. In recent years we have heard about animal rights and even the rights of the environment but they cannot demand recognition or respect for anything and they can't sue anyone. Men and women interested in those matters make demands about them on society and on others and bodies like the RSPCA can prosecute cases

of cruelty to animals. It is really meaningless to speak or think of animals or the environment as having rights.

Where then did our moral standards come from? Education of course, but who wrote the text book? Some modern thinkers have developed the concept of evolutionary ethics to explain our moral values. Human societies are said to be based on social compacts supported by live and let live patterns of behaviour. Moral values, it is said, have evolved to discourage antisocial behaviour and encourage the opposite. They are said to be merely the product of enlightened self-interest. Ethical values generated in this way can have no intrinsic validity. They are no different in moral terms from the rule which requires us to drive on the left hand side of the road. They are valid for one society but not necessarily for another.

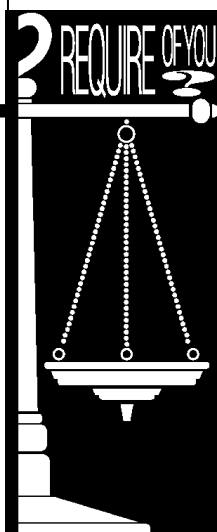
I find the idea horrifying. Are those thinkers really saying that what happened at Auschwitz was only driving on the wrong side of the road taken to an ultimate and obscene extreme? Evolutionary ethics show the lengths to which people will go who deny a divine source for our sense of right and wrong. Evolution is said to involve the survival of the fittest. In social terms this will be the strongest and thus we arrive at might is right. Auschwitz itself was a by-product of the anti-Christian and atheistic views of the 19th century German philosopher Nietzsche, who thought that the triumph of the strong was the only ethic for mankind. Hence the Master Race.

A pragmatic ethical system can produce what most of us would regard as morally acceptable results on a micro level in families and other small groups where there is reasonable transparency and power is shared more or less equally. Such systems will not work well and their rules will not command general acceptance on moral grounds where there is no transparency and persons or groups are in positions of power. Power elites who act without regard for external moral values act selfishly. Their ethic tends to be to do what you can get away with and don't be found out. Enron, World Com and HIH are recent examples.

It is hard to see why social and other structures could generate ethical values that could command acceptance outside those structures, or which could be used to judge them, and act as a catalyst for change. Those in positions of disadvantage in such societies appeal to external moral values from outside their structures. The slogan of the French Revolution: "Liberty, equality, fraternity" is in point.

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**AND WHAT
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GOD.**



MICAH 6:8

History records some remarkable examples of long established institutions which were dismantled on moral grounds. I will mention one from the East, and one from the West. Hinduism sanctioned, indeed required, the practice of suttee, or widow burning. On the death of the husband his wife or wives were burnt alive on the funeral pyre when his body was cremated. The practice reduced the claims on the deceased's property and was supported by the self interest of male heirs. It also reflected the subordinate status of women in Hindu society.

When the British began to consolidate their power in India they made the practice illegal and backed up the prohibition by force and moral persuasion. The practice was suppressed, although isolated cases still occur and one was reported in the Herald only last week. The British found support for its suppression on moral grounds from all levels in Hindu society. On the other hand their attempts to improve the lot of the small minority of untouchables made little progress against the opposition of the rest of Hindu society. Untouchables are thought by Hindus to have done terrible things in a former life.

The institution of slavery had been part of otherwise civilised societies for thousands of years. In 1800 there were immense vested interests in both slavery and the West African slave trade in Britain, France, Spain, Portugal and in their colonies. The slaves themselves were utterly powerless. Slavery had existed in Greece and Rome in classical times and was mentioned in the Old and New Testaments without explicit criticism. However in the last decades of the 18th century a group emerged within Christian circles in Britain which claimed that slavery was contrary to Christian standards and should be abolished. Moral arguments persuaded the British Parliament to abolish the West African slave trade in about 1806 and its abolition was enforced on other countries by the Royal Navy.

The slaves in the British Empire were emancipated by an Act of the British Parliament in the 1830's on payment of compensation of £30 million to the slave owners, an immense sum for those days. Thus an institution, which had survived in Christendom for over 1,700 years, and was supported by immense vested interests, crumbled in Britain and its Empire within 50 years when challenged on purely moral grounds.

How could moral values, from outside the structures and social compacts of those societies, change the way they viewed entrenched practices and act as a catalyst to bring about or help to bring about change? Why do some moral values appear to be intrinsically superior to others? Where do we get the yardstick we use when we make such comparisons?

Two broad world views are competing for acceptance. One is that the Cosmos is a closed system and is all there is. There is no one out there and no absolute moral values. The other is that it is an open system and God its creator is out there and is the

source of absolute moral values

The above paper was presented at the 2002 Smith Lecture. A copy will be published in the forthcoming issue of *Kategoria*

Part two will be published in the next newsletter

HAVE YOU TALKED TO GOD TODAY?

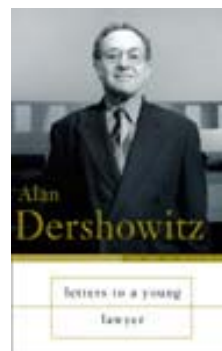
Lesson one in Prayer

"The major obstacle in most of our lives to just saying yes to prayer, the most popular and powerful excuse we give for not praying, or not praying more, or not praying regularly, is that we have no time.

The only effective answer to that excuse, I find, is a kind of murder. You have to kill something, you have to say no to something else, in order to make time to pray. Of course, you never find time to pray, you have to make time to pray. And that means unmaking something else. The only way to install the tenant of prayer in the apartment building of your life is to evict some other tenant from those premises that prayer will occupy. Few of us have any empty rooms available.

Decide to do that is the first thing. And you probably won't decide to do it, only wish to do it, unless you see prayer for what it is: a matter of life or death, your life-line to God to life itself. "

From *The Angel and the Ants—bringing heaven closer to your daily life*, by Peter Kreeft, Servant 1994 p.24



Letters to a Young Lawyer

Alan Dershowitz,

Basic Books, 2001

\$42.00 but cheaper (US\$5.00+ p&h) online from US book remainders

For some time I have had in the back of my mind the idea of writing a series of letters directed to a young Christian Lawyer hopefully drawing on the accumulated wisdom of a number of members of the Fellowship. I have also wondered whether such a book would be

more effectively written in the style of the Screwtape Letters—that is how to make sure a young Christian Lawyer doesn't remain that way. I was therefore attracted to this book by the famous American trial lawyer and Harvard Professor Alan Dershowitz.

I must confess to having a passing respect for the little I know about this lawyer having read his book the *Genesis of Justice*, which, if you can stomach the appalling exegesis of Scripture (from an evangelical perspective), contains a number of insights into the Book of Genesis that only someone with Dershowitz's Jewish background, sharp mind and passion for justice could make. Time magazine describes him as "the top lawyer of last resort in the country—a sort of judicial St Jude.

Not surprisingly it is a very American book and much of what is discussed will seem alien to the Australian legal experience—however there is much helpful and confronting advice.

The advice that I found most confronting was in the chapter titled "Have a good enemies list". The contention being that in our society "a lawyer without any enemies is likely to be a coward and a sycophant. A lawyer with the right enemies is often an advocate who has taken on powerful interests and stood up for the poor, the disenfranchised and the despised....You're a lawyer in an adversarial system. If everybody likes you, you're doing something wrong. You're not being tough enough. You're not taking on controversial cases. You're putting your friendship with other lawyers above the interests of your clients. You're sucking up" (p.19-20)

Other advice is perhaps more useful. He warns about the danger of doing what you are best at because that is not always what gives you the most gratification or what is most important. He warns about the danger of earning large sums of money and becoming dependent on the standard of living that comes with that income because it makes it more difficult for you to make choices and take your "dream job".

There is a certain degree of cynicism in Dershowitz's advice and some penetrating observations from having represented largely criminal defendants for many years. On those cases involving the wealthy and powerful he notes:

"Each of these defendants has virtually unlimited quantities of some things, such as money, power or access to sex or power. They, like everyone else, also had limited quantities of other things, such as life, health, duration of career, reputation, time with family, etc. They got into trouble by putting at risk what they had limited amounts of in order to increase the quantities of those things they had unlimited amounts of. Even if they were innocent of the crimes they were eventually convicted of, they came close enough to the line to provoke prosecution." (p.37)

The chapter titled "Is there an absolute morality?" is disappointing. The only question he really answers is that "the ethic of a defense advocate is to defend people accused of crime, whether I believe that they may be innocent

or guilty". He is not compromising his personal ethics because his ethic is determined by his role and in order to fulfil the role he must act in this way.

There is a very interesting chapter on how to tell an honest lawyer from a dishonest lawyer. He also warns of the dangers of making your clients your friends because they can compromise you and then trade their testimony against you for their freedom.

Relevant to our experience is his defense of the so called litigation explosion—he notes:

"But a knee-jerk, blanket condemnation of more litigation is not neutral; it favours the rich, the powerful and the exploiters of the poor, the powerless and the victims."

In advising his son, also a lawyer, with a difficult ethical decision he comments:

"Good lawyers remain obsessed with these conflicts between legal ethics (which requires zealous advocacy on behalf of clients—innocent or guilty) and personal morality (which requires decency and honesty in all dealings). There are no perfect solutions to these and other conflicts. An effective lawyer must do everything on behalf of his client that is not forbidden by the law or the rules of the legal profession. But a good person should always be uncomfortable about doing anything that does not meet his or her personal standards of morality. The process of debating, refining and revisiting is ongoing." (p.159).

This is a short punchy book which probably requires longer periods of reflection than it does concentration. It is one in a new series of mentoring books by a leader in a profession to a novice. While I do not think age should be an obstacle to reading this book I must admit that not being an American lawyer or a practitioner with a criminal practice meant that much of the advice was of theoretical rather than practical value.



The Power of Forgiveness - the story of Karla Faye Tucker

30min Vision Video

\$24.95

This video is a powerful testimony to the power of God's grace in two lives—that of Karla Faye Tucker and Ron, the brother of the woman she murdered. Both come to Christ and reconcile. In sharp contrast is the murdered woman's husband who wants nothing but revenge. As Karla Faye Tucker was on death row and ultimately executed it is also makes a moving case for the futility of the death sentence.

A useful tool for small group use but also for evangelism particularly if you are involved in prison ministry. Be prepared to have the tissues on hand.

The editor Steven Nicholson can be contacted at sjn@pnc.com.au or on 47511055.