

# Conscience, Justice and the Law

*There is a higher court than courts of justice and that is the court of conscience. It supersedes all other courts.*

Gandhi

My earliest memory is of having a sense of outrage at the age of three when my mother did something – I can't remember what – that seemed to me manifestly unfair. I felt fully justified and righteous in my anger, a feeling that was probably entirely unjustified and self-centred, but what is noteworthy about it is how that feeling welled up in me and how the memory of it stayed with me for the intervening 75 years.

I thought of this when reading Antara Haldar's article in this issue of *HP* on "Intrinsic Goodness," when she argues:

We appear to be predisposed to feeling good about behaving well to others. We resent bad behaviour in others. We make and, perhaps surprisingly often, keep promises. We care (deeply) about fairness.

Although I am sure my moral instincts were primitive at the age of three, still there was a glimmering of a sense of fairness that, I think, is not uncommon in children. It was not simply that something did not go my way, but that it was wrong, unjust. This sense grows more sophisticated as we mature: our moral outrage extends beyond ourselves to a discomfort whenever we see unfairness.

I should finish the story about my ancient memory. Because I was so upset at some wrong being inflicted upon me, my infantile sense of morality called for retribution. I still remember finding a box of tacks and self-righteously going about our apartment placing one of the sharp little objects, pointy side up, on each of the chairs in the house. My mother was normally a gentle per-

son, but she was less so that day when she found out what I had done. I think she sat on one of the tacks.

Do we have a conscience? Although I had some rudimentary sense of fairness, I certainly did not have much of a conscience (or sense of proportion) at the age of three, but as Antara's article shows, there is strong reason to believe that we do develop an inner voice that tells us what is right and what is wrong and, though we might not always listen to it, it is always there. James Alcock describes in his article how children's sense of morality becomes more sophisticated as they begin to realize the importance of social conventions and rules for the orderly functioning of society.

The idea of intrinsic goodness is central to the notion that we have a conscience. If there is no fundamental human decency and compassion, if we are simply out for ourselves, then how can there be such a thing as conscience? But every act of human kindness – unforced acts of helping and supporting others – demonstrates that there is indeed a quality of intrinsic goodness in humans, and that we have an inner voice that tells what we ought to do.

The law, however, muddies the waters. It is crucial to a well-functioning society that we have rule by law. We necessarily have a criminal code that defines what we cannot legally do, and it prescribes punishment for transgressors. The articles of the code represent the voice of the people, because they are formulated and passed by our elected representatives. It is difficult to think of a better way of setting limits on our behaviour.

So which is it, conscience or the law? Gandhi (see opening quote) is quite clear about this:

conscience rules. But that is an ideal that requires some examination. We cannot simply have every person deciding, on their own, what to do. Conscience can be invented or misconstrued for malign purposes. The law, on the other hand, is consistent and (we hope) equally applied to all. So it's the law? Is the law our overarching rule book?

But then what do we do when the law clearly seems unjust? A law can be written with built-in injustices, as in Canada's recent legislation on medically assisted death. Thousands of Canadians are forced to continue suffering years of indignity and pain as a direct result of inadequacies in the legislation. Philosopher Alister Browne reviews this situation in his article "MAID ReMade," explaining the flawed logic behind the legislation, on one hand, and political constraints working against better legislation on the other.

I have long supported medically assisted death and, like Alister, was disappointed by the inadequacy of the legislation that the Liberals passed on the issue. Of particular concern to me was the infamous "reasonably foreseeable" clause, requiring that death be imminent in order for a person to be eligible for assisted death. This requirement has resulted in unnecessary and untold suffering for hundreds, perhaps thousands, of Canadians.

I have a friend who has lived with debilitating MS for many years and can take it no more. But she can provide no compelling evidence that she is about to die a natural death. She is planning what will be a very difficult trip to Switzerland in the fall, because she cannot get the help she so desperately needs in Canada.

Many people argued against this cruel "reasonably foreseeable" clause – which was not supported by the Supreme Court – in the legislation. I travelled to Ottawa to speak to a parliamentary committee about it. Many others tried to persuade then Justice Minister Jody Wilson-Raybould that this was wrong. But, apparently, she had her mind made up.

Another obviously unjust legal circumstance is written about by Kathy Kenzora in her article "Cannabis Amnesty." Thousands of Canadians carry with them a criminal conviction for marijuana possession, something that is now legal. Kathy explains why the pardon process to fix this is in-

adequate and why the criminal records of these victims of a bad law need to be expunged.

There will always be unjust aspects of any system of laws. We need to urge politicians to try to correct these, and we also need flexibility in the application of laws, in order to ensure that our justice system is, in fact, dedicated to justice. Janet Keeping writes about conscientious objection as a means of protesting unjust laws.

Trudy Govier, in "A Troubling Case," looks at the complexity of a legal issue that offers no obvious satisfactory resolution. Ian Johnston examines revenge as a theme in literature; revenge is a form, not a good one, of the expression of conscience and of the primitive need to get even. He discusses how the Greeks wrestled with this idea. Gwyneth Evans writes about the theme of conscience in *Huckleberry Finn* and how Huck believes he has an obligation to follow the law, which he calls conscience, but instead acts upon his instinct to save his black friend Jim, an instinct which is his true conscience.

Like every theme we choose for *HP*, "Conscience, Justice and the Law" is complicated and does not admit of many universal answers. But I think there is one: regardless of what our laws say, we ought to respect, as Huck ultimately did, the inner voice that reminds us of what we know, in our hearts, is wrong. I think I had glimmerings of this even at three, although not strongly enough to stop me from seeking revenge by tacks. •

– Gary Bauslaugh



## Letters

Thank you for the excellent Issue 207 of *Humanist Perspectives*. As a secular humanist, I treasure the information and perspectives I receive in HP and even more so in this Freedom of Speech issue, as I have found my humanist values to be in conflict with the authorities in one of Canada's biggest cities.

In 2014, I decided that I would like to use the historic opening of the Canadian Museum for Human Rights to leverage public attention to one of Canada's most egregious affronts to human rights – the discriminatory public funding of the Catholic school system in Ontario (for details, see HP, Issue 191). The lingering religious discrimination in Ontario's education sector is a symptom of systemic faithism.

In brief, my Winnipeg bus ads (opposing religious discrimination) were blocked at the last minute, I was not told which words or phrases were found to be unacceptable and was informed, flatly, "We consider this matter closed."

Were they serious? Shutting down a human rights-oriented ad campaign during the launch of a national museum for human rights? This had to be a joke! But they were not kidding. I was being censored by Winnipeg and the advertising company they hired. My fundamental freedom of expression was being denied.

This brought an important question into sharp focus: what recourse does a citizen have when facing up against a municipal government and Pattison Outdoor Advertising – itself part of a multi-billion dollar corporation?

And this is where the authorities and the powerful have us. They have us on our self-doubts, our financial limitations, our ignorance of how to defend ourselves, our willingness to let it go. But giving in to complacency is all wrong. I am inspired by the countless brave people who, in extremely difficult situations, persevere and speak out for our rights – from media workers around the world, to Malala Yousafzai, who could have stopped speaking out about the need for education for girls – but didn't, and to the secular bloggers in Bangladesh who could – but don't – keep their unpopular views to themselves and thereby avoid the risk of being cut down with machetes in the street.


I cannot let the censorship of my bus ads go unchallenged. Even a modest human rights violation of one citizen is an affront and attack on all citizens.

The fact that I am a single individual with something to say is the whole point of the Canadian Charter of Rights and Freedoms. Why have a Charter if we are not prepared to demand our rights?

The best recourse is to seek a legal remedy, so I have retained a Winnipeg law firm; the statement of claim has been served, and the statement of defense has been received. A freedom of expression lawsuit, "a Charter challenge" is now underway.

This matter is not closed.

—Richard G.L. Thain, DDS  
*Embrun, Ontario*



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