

Concept of Civil Law (positive law) and Relation between Civil Law and Morality¹

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The purpose of civil law enacted by the State regulates our life in common and in the public square and thus to serve the common good. In this sense it is a servant of the common good. It shares in the ethics of the common good in so far it concerns the purpose of the State to serve justice and public order. Such law is based on and informed by the law or Constitution of the country concerned. Regarding the relationship between civil law and morality, we can say that civil law touches morality in so far as touches the fundamental values and rights of the citizens of the country which the State must serve with focus on justice and public order. The law and order mechanism is a tool to serve justice. Thus it is part of the common good and it should serve the common good. Morality of civil law falls within the ethical parameters of the common good and it is determined by and limited to the goal of the common good. On the other hand, civil law can never be detached from or devoid of morality. It can never be amoral or immoral in the sense it violates the fundamental values of humanity. At the same time civil law can never be coeval and coextensive with morality which touches the totality of human life and all spheres of human activity.

In pluralist societies, there are dilemmas and conflicts between civil law and morality. If civil law is a servant of the common good, how do we

1. Cf *The Law of Christ*, vol.1 by Bernard Haering, pp. 272-285.

develop the moral argument for the due and proper service of the common good in a pluralist society and world?

The objective of civil law is common welfare.²

It must be just and it should serve the furtherance of the wellbeing of all. It cannot impose unjust burdens on citizens and distribute benefits in a fair way according to the needs of people. It is a matter of distributive justice. It can never impose impossible obligations on people.³

Imperatives of law should be morally good or at least indifferent. Civil law can forbid good things or indifferent things if they hurt the common welfare under certain circumstances. Civil law as prohibitive law does not ban all evil action and impose punishment on those who commit them.

The question is: Is civil law coextensive with morality? We say no. Civil law is confined to the wellbeing of all members of society or citizens of the country and the demands that go with the common good. It defines our life in common, the wellbeing of all, their flourishing and development without exclusion. Civil law is related to the morality of the common good. But morality is broader than civil law in so far it touches all areas of human life.

Since civil law is not coextensive with the whole of morality, it may tolerate evils to prevent greater evil or harm. The important point is that civil law may never declare them as morally licit. There is no moral approval through civil law. Civil law does not legislate on morality but passes legislation for the common welfare, that is, the common good. We know that people may erroneously think and often do that what is legally tolerated is morally permissible.

A further comment: Civil society has responsibility for the common wellbeing in economic and cultural matters, especially tranquility of order

2. Ibidem.

3. Ibidem. p. 277.

and peace for life in common. Civil authority has further responsibility to combat and restrain evil and to protect and promote the moral culture of society, its interior peace, guarantee security for all, to work for social justice and the inalienable rights of people.⁴ In all this we accept that civil law has its own area of competence for the common good and our life in common.

However, we are faced with a situation in which many things we consider unethical are legalised. The Church should join all people of good will to protect the fundamental values of our humanity. Often this kind of legislation concern the areas of human reproduction and human sexuality putting them at risk in such processes of legalisation. The Church is called to exercise prophecy and function as conscience of the nation together with all those who share the same concerns with us. With access to modern means of communication, the Church should engage in advocacy culturally and politically for the fundamental values of our humanity threatened by contemporary liberalist culture that undergirds such legislations.⁵

Civil law though it serves the purpose of the common good, regulations derived from the civil law are relative in nature. If they are exaggerated, it leads to legalism that kills. Following the letter of the law and legalism bypass the value goals they are meant to serve. We remember the words of Jesus: "The sabbath is for man, not man for the sabbath" (Mk. 2:27).

Civil law belongs to our life in common. Civil society needs law to protect the wellbeing of all and regulate the rights and duties of its members or citizens of a country or a nation and its various demands touching the life of people. Civil law as a servant of the common good of all persons who make up the civil community will be subject to the limits of moral law. Thus if civil law violates basic human dignity or if it manifests racial or other discriminations in the name of culture, religion or language, it then imposes

4. Ibidem.

5. Cf "Civil Law and Morality" by Dr S.Arokiasamy in Box for Moral Questions in *Sathyadeepam*, May, 2010.

an act that is intrinsically evil (moral evil). If so, then the law becomes invalid. People or citizens rightly can not only protest against it but ought to disobey it.

It is interesting to note the distinction between to have right to do a thing and be right in doing a thing. Some would use a skewed argument to claim human rights in a fundamentalist sense for homosexual orientation. On this matter debate continues.

In our discussion on the ethics of the common good for life in common and relation of civil law to morality, we discover the basic foundations are in natural moral law.

The following remark points to an approach of morality to civil law that would not be conducive to the common good. We know that things we consider ethically impermissible have been legalised. We justifiably claim the right to dissent or to differ or even campaign against and freedom to hold our moral stance not only in our personal life as our conviction but also in our life in common under certain restraints of public order and peace. We also know and accept that everything immoral cannot be made illegal. The case in point is: I as a catholic cannot approve of adultery and personally and profoundly disapprove of it. The point is: Should I fight and campaign for law against adultery? In other words, should everything the Church believes as unethical be made a criminal offence in law? In our life in common, we do not follow this approach.⁶

In the context of pluralist societies, we have to consider secular nature of the State demanded by the nature of such societies. That the State in a pluralist society is to be secular means that it is free from any religious affiliation. It rejects theocracy based on a majority religion. There can be no State religion. We take for granted that modern democratic States are secular. We recognise the pluralist nature of civil societies of such States. At the

6. Cf Bernard Haering, *The Law of Christ*, vol.1. Pp.276-277.

same time, we have to recognise different expressions of secularism of the State. One may ask: how do we understand secularism in a religiously and culturally pluralist India?

In General, secularism is considered an element of modernity. It requires a non-discriminatory rejection of all religions and all religiosity from public manifestation as distinct from private affirmation. In this connection we can refer to the secularism of the Indian Constitution

The Indian Constitution has adopted a type of secularism suited to the people of the country who are religiously and culturally plural.

The Constitution of India and its secular nature are indeed a fine adaptation to a pluralist India. I would consider the common good in terms of the Indian Constitution a situational or contextual expansion and adaptation to the pluralist character of the people of India. In principle, it embodies liberative inclusion of all in their diversity without exclusion or discrimination. It is this constitutional principle that the Judiciary uses in its judgements and verdicts in cases of violations of the rights and duties of people brought to it for adjudication.

The plural character of the people of India embraces mainly the area of culture and religion. The common good in terms of the Constitution respects this pluralism of cultures and religions and rejects any sectarian or communal approach with regard to the politics of the State. Equal respect for all religions and cultures and non-hostility to them is a mark of the Constitution. It is open to respect and protect little traditions of culture and religions of the people of the country. Freedom of religion that goes with freedom of conscience and freedom of expression are important guarantees of the Constitution. A great thing about the Constitution of India is that Indian State is a republic that rejects theocratic politics and cultural hegemony of one dominant group.

In India the secularism of the State that respects the plural character of its people is something unique.⁷

But Gandhian approach to secularism follows equal respect for all religions in the public sphere. What this equal respect for religions means is a matter for further reflection in relation to the common good. This also calls for widening the understanding of the common good in a pluralist society.

7. Cf *The Constitution of India (As amended up to the Constitution (Fifty-sixth Amendment) Act, 1987)*, Preamble, p.1. Lucknow, Eastern Book Company, 1988.