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HISTORY OF THE RED MASS

by Vincent Pike

THIS YEAR the Red Mass celebrated its Diamond Jubilee. The first Red Mass was celebrated at Saint Mary's Cathedral on Monday 19 February 1931. The Red Mass was the brainchild of Gerald O'Sullivan (later a District Court Judge).

O'Sullivan's Chambers were in a terrace house in Phillip Street. This terrace was occupied by barristers F R Jordan, D Maughan, R S Murray Prior, H S Nicholas and other members of the Equity Bar. O'Sullivan's neighbours were W J Dignam and John Gould. S A Thompson was on the ground floor. My office was in 48 Elizabeth Street, immediately behind O'Sullivans.

In 1929 a small group – Bill Dignam, John Gould, Frank Letters and myself – used to gather in O'Sullivan's room to drink tea and talk, sometimes it was coffee at Mockbell's. Our group widened to include Eric Miller, Frank Dwyer, Jock McClemens, Stan Taylor and Frank Hidden to campaign for Edward McTiernan's election for the Parkes electorate.

Gerald O'Sullivan had been reading the writings of Lister Drummond, an English barrister who successfully revived the Red Mass in London after it had been suppressed for 300 years. O'Sullivan argued that we could introduce this custom to Sydney. We expressed some doubts, pointing out the composition of the Bar Council and the Law Institute. Gerald persisted, and after consulting with Father Bartlett, Bill Dignam wrote to His Grace Archbishop Kelly.

An audience with His Grace was granted, and to add strength to our group we invited Mr S W M d'Apice, Mr Hollingdale, Mr J J Carroll and Mr M J O'Neill.

Gerald O'Sullivan outlined his plan in great detail. His Grace did not respond immediately, he told us a joke against lawyers, but shortly afterwards he returned Bill Dignam's letter with his approval.

Following the meeting with the Archbishop, a meeting of Catholic lawyers was held and well attended. No organising committee was elected, arrangements at the Cathedral were left to Father Bartlett and the Cathedral staff. Mr Andrew Watt called on the Chief Justice, Sir Phillip Street, and got his approval. He also saw the President of the Bar Council. The rest of the organisation was by way by personal contacts.

The first Red Mass was held on Monday 19 February 1931 at 8 am at Saint Mary's. His Grace Archbishop Sheehan presided at the Mass.

Two retired Supreme Court Judges, Hon C G Heydon and Hon Walter Edmunds, led the procession (there was no Catholic Supreme Court Judge for another 15 years), then followed His Honour Judge W T Coyle, the Deputy Chief Magistrate Mr W J Camphin and two colleagues. The Attorney General, Hon A A Lysaght (not robed) led three Silks in full bottomed wigs, Mr A R J Watt KC, Mr G E Flannery KC and Mr W J Curtis KC. About forty barristers, all robed, followed by a greater number of solicitors, proceeded from the South Door in orderly procession.

Unfortunately Mr Justice McTiernan could not attend. The High Court sat at Hobart at the beginning of term each year, and it was some years before His Honour could lead us.

The Red Mass attracted great interest in the press. Photos of the procession at the Cathedral graced the front pages of the Sydney Morning Herald and the Daily Telegraph.

Since 1931 the Red Mass has been celebrated each year at the opening of term. Gerald O'Sullivan's dream was realised.

There were other times when a Red Mass was celebrated; a most successful one on 6 July 1961 on the opening day of the Second Empire Law Convention in Sydney. Two Catholic Chief Justices, Superior Court Judges from other Dominions, and interstate and overseas delegates, including distinguished lawyers from Britain attended, well backed up by the local profession. ■

SHEEP AND GOATS

Address by Keith Mason QC, Solicitor General for New South Wales, at the Opening of the Law Term in Parramatta – Tuesday 29 January 1991

Readings: Ezekial 34:15-24
Matthew 25:31-46

IN THE City of Sydney there will be four Church services over the next ten days to mark the opening of the Law Term.

They will be held in St Mary's Cathedral, St James' Church, The Great Synagogue and The Orthodox Cathedral.

I am glad to see that the spirit of ecumenism blows more strongly here in Parramatta.

I enjoy attending these services with their differing liturgies. I must however confess that one of my reasons for that enjoyment is the opportunity to see Bench and Bar dressed in our finest and joining with our fellow practitioners from the Law Society in seeking a corporate blessing on our endeavours. There is a real sense of owning the service. And for once the clergy don't have a monopoly on fancy dress and parade.

Almost as soon as Bishop Peter Watson had extended his courageous invitation to me as a layman to speak at this inaugural service I started to wonder how I should be attired. My first thought was that it would be nice to drag out the full-bottomed wig and bring it to the ceremonies in Parramatta. Doubtless in any procession I could, with every appearance of humility, assert the seniority at the Bar which comes from my office. But what would happen when I came to give the address? Surely I couldn't mount the pulpit in all my legal robes? Perhaps I could discreetly remove the wig at that stage in the way that priests in some churches do a partial change at a critical point in the service. Or would I, like counsel who is called upon to give evidence, speak robed and unsworn from the well of the court?

When I raised this trivial matter with Justice Richard Gee we brought it to the sartorial resolution which you see before you. Whether my standing here in the pulpit, unrobed and unlicensed, satisfies the dress and preaching codes of the Sydney Anglican Diocese is a matter which I leave to the lawyers of this Anglican diocese. I think that there are one or two of them amongst our Evangelical laity and clergy.

Yet the fact that I thought, almost instinctively, about these ceremonial matters has continued to trouble me over the weeks in which I have been considering what I might say on this occasion.

As you know there have been lengthy debates over recent years about the Court dress of judges and barristers. As far as I know solicitors in this State are content to appear as advocates wearing street dress. It is not since the 18th century that attorneys wore an ink-horn slung from their waistcoats and carried a green bag as the recognisable marks of their profession.

But for judges and barristers it has been very different. We have always wanted to dress up. In 1635 the judges of the Kings Bench, Common Pleas and Exchequer met and agreed upon a most detailed dress code with appropriate variations dependent on season and occasion. There have been only minor changes in the judicial wardrobe since that time. The early Chief Justices of New South Wales abandoned the wig as unsuited to the conditions of a young community, but judges generally conformed to English Court dress in this colony from the 1820s onwards.

Counsel's dress has varied extensively in style and colour over the centuries. The distinctive black silk gown now worn by Queen's counsel (as well as by judges on non-festive occasions) only came into general use about the end of the 17th century. Sir Frederick Pollock has explained this by saying that "the Bench and Bar of England went into mourning at the death of Queen Anne and have remained so ever since".

Wigs were initially not part of the legal uniform, as robes are. Originally they were simply a fashion in head dress that was once universal for gentlemen, and was given up by all except bishops, judges and barristers towards the end of the 18th century. Bishops later abandoned them in 1832 with the permission of William IV. But they have hung on for Bench and Bar, with some exceptions. Sir Victor Windeyer has pointed out that barristers and judges originally took to wigs in order to be in fashion with other people, but have clung to them as a mark of distinction from other people. (48 ALJ p400)

Robes and uniforms separate the lay from the professional and stamp the wearers with authority that reflects their calling and their respective offices. Individuality is cloaked both physically and metaphorically. This indeed is a principal reason why robes were reintroduced in the Family Court of Australia in 1987. Robes and uniforms blur individual personal authority by treating all who wear similar garb as being in some way of similar status. And they accentuate the separation of all who are within the special group from the common laity outside it. They also reinforce hierarchical distinctions within the group. Crabbe the poet expressed a similar notion in the following couplet:

"Men are not equal, and 'tis meet and right,
that robes and titles our respect excite."

Common to both the Old Testament and New Testament readings we have heard today is the promise of judgment by our Sovereign Lord. We are told in the Old Testament that God will judge between one sheep and another. The New Testament passage tells us that God's judgment will be delivered by Christ, the Son of Man; and that all people will be separated into two groups according to a standard which, in the day of judgment, will be as clear as the difference between sheep and goats.

"Wigs were initially not part of the legal uniform . ."

When I suggested that the New Testament reading come from Matthew 25 I had in mind that it, together with the Ezekiel passage, would provide a suitable springboard for some general comments about our duties to those less fortunate than ourselves. Like someone who reads something superficially and thinks he or she understands it, it did not then strike me that Christ's message was so solemn and vexing. It was like accepting an undefended divorce brief only to find out that it included an intricate property dispute involving third party rights with an overlay of constitutional issues.

The New Testament passage we have heard today is open to varying interpretations as its truths are laid side by side with the great Pauline passages on the doctrine of justification by faith alone. For reasons that have more to do with my own ignorance than the ecumenical nature of this gathering you will be relieved to hear that I do not intend to expound the reconciliation. Whatever our understanding of the Lord's promise to judge between the sheep and the goats of all nations, it is an awful message to which an honest reply could only be, in the words of the versicle we have already prayed:

"If you, O Lord, kept a record of sins, who could stand?"

What is, or should be, so disturbing about our two readings is the proclamation of a judgment that is inevitable, final and personal. However theologians explain the criteria upon which the ultimate separation between the faithful and the lost will take place, we are told that the standing of our profession and the honours and advantages that flow from it will have no bearing at all. Needless to say, other barriers of distinction we in our sin have erected, such as those based on knowledge, wealth, race, denomination or sex will also count for nothing on that day. There will be no **ex officio** inheritors of the Kingdom. The ground at the foot of the Cross is level. I hope you can now see why my reflections on the passage in the light of my initial thoughts about my own status have been disturbing.

Notions of irreversible judgment and of ultimate separation based upon it are against the spirit of our modern egalitarian and lackadaisical age. When it comes to the crunch we, particularly in Australia, like to think of ourselves as having a common past and a common destiny, and likely to get to wherever it is one way or another. And in many senses that is of course true.

We find it easy to avoid **self**-judgement because of self-satisfaction in most areas and because of our readiness to see in others faults that we overlook in ourselves. In his **Miscellany at Law** Sir Robert Megarry writes of an incident that occurred when the Royal Courts of Justice in London were opened by Queen Victoria in 1882. The Lord Chancellor called a meeting of the judges at which a draft address to the Queen was considered. It contained the phrase "your Majesty's Judges are deeply sensible of their own many short comings". One judge strongly objected, saying "I am not conscious of 'many shortcomings', and if I were I should not be fit to sit on the Bench". After some wrangling, Lord Justice Bowen suggested a compromise by proposing that the address should say that the judges were "deeply sensible of the many shortcomings of each other".

I think it is also true that we in the late twentieth century tend to be fairly tolerant of each other, and of our respective beliefs and actions. This is as it should be. In many areas, just because something is wrong for

me doesn't mean it is wrong for you. And common attitudes may change. Often actions and thoughts that were once universally condemned as wrong have by common consent become matters for individual choice. The converse is also true: ask a smoker who wants to light up in most public places. Such changes in accepted norms will often be both natural and healthy.

But much of what now passes for tolerance is of an entirely different order. "Different strokes for different folks" is proclaimed as a universal rule. This is due to the prevailing belief that truth itself is relative. What a lie! Alan Bloom describes this phenomenon in his besting selling book **The Closing of the American Mind**. There he tells how "the recent education of openness" has taught that "there is no enemy other than the man who is not open to anything". Bloom tells of how he found himself trying "to teach many students prejudices, since nowadays . . . they have learned to doubt beliefs even before they believed in anything". He is surely correct when he writes that:

"the fact that there have been different opinions about good and bad in different times and places in no way proves that none is true or superior to others. To say that it does so prove is as absurd as to say that the diversity of points of view . . . proves there is no truth."

In our legal practices we work hard at avoiding judgment that is not of our own making. Indeed we are encouraged to do so, for the legal system would collapse entirely if it were otherwise. It simply depends on the 90% of civil claimants who compromise their claims rather than leaving them to the court. There are many differing motives that lead to settlement, but high amongst them is the notion that the parties should remain in control of the process. This is stressed in mediation.

Our Bible passages today are telling us that there will come a time when there will no longer be a chance to strike a deal and when a result of eternal significance will be stamped upon each member of the flock by a judge who makes no mistakes and who is not subject to a higher appeal. A bond to be of good behaviour will not be one of the sentencing options.

The message of our New Testament reading is stark and frightening. It takes all our powers of rationalisation **and more** to ignore the solemn reality it conveys. The faith we profess will be measured by what we do and not by what we say. "The only thing that counts is faith expressing itself through love" as St Paul puts it in Galatians 5:6. Both our Old Testament and New Testament passages are addressed in terms to disciples, to those who (like us present here today) profess membership of God's Kingdom. To us Christ's command is, as James paraphrased it, to show our faith by what we do (James 2:19). And it is by our **omissions,** in the true profession of our faith, that we stand to be judged.

In a way that I for one cannot fully comprehend Jesus shows himself to us as both the **source** and the **object** of the love which we are commanded to demonstrate in our lives as men and women of faith. These two notions (like opposite poles of a magnet) are emphasised in 1 John 4:19-21. There the apostle tells us: "We love because he first loved us". But he follows immediately with: "If anyone says, 'I love God', yet hates his brother, he is a liar . . . Whoever loves God must also love his brother".

What our New Testament passage also brings out is that in some way Christ himself is also **identified with** the hungry, the thirsty, the stranger, the naked, the sick and the prisoner. What a challenge to the structured, ordered and hierarchical aspects of Law and the Church portrayed by the robes and processions seen today! We are not told that these badges of belonging are wrong or unhelpful, but simply that they are ultimately irrelevant. Christ is telling us that

"Whoever loves God must also love his brother"

we must be prepared to roll down the drawbridge of our comfortable achievements and roll up our sleeves if we are to truly touch him here on earth. In some mysterious way he is waiting to be found in our personal encounters with the underdogs, the no-copers and no-hopers of society. We cannot be expected to reach all who are hungry, thirsty, cut off etc but we are yet to see our attitude to all of these fellow men and women as significant.

Some commentators have suggested that the reference to doing things for "the least of these brothers of mine" focusses upon the need to show works of charity to fellow **Christians.** They cite Christ's statement that "whoever does God's will is my brother and sister and mother" (Mark 3:35) and the teaching, earlier in Matthew that whoever receives and helps a disciple does it to Christ (Matthew 10:40-42). With all due respect I find this approach to be reading something into the passage in Matthew 25 that is not there. Christ names all in need as his brothers and he is, after all, speaking of the judgment of all humanity, not just those who have encountered needy Christians. To construe our Lord's call to practical charity as some merely symbolic act which touches Christ because it touches those who are his pledged followers strikes me as a fanciful way of drawing the sting from the passage. In the Sermon on the Mount we are reminded that even pagans love their brothers: Christians are called to love their enemies too (Matthew 5:43-47). If I am right, then all people everywhere who are hungry, thirsty, outcast, destitute, sick or imprisoned are Christ's brothers and sisters the rejection of whose need is tantamount to the rejection of our Lord. Doubtless therefore we should include Iraqi soldiers and civilians as strangers who are worthy at some time and in some manner of this practical love because it is in our reactions towards the **least** of the Lord's brothers that our faith will be measured.

It may be that Christ is also showing us something about **how** we truly encounter him, and not just where and in whom. Common to all those to whom compassion is to be shown is helplessness and powerlessness. Yet, we are told that it is at that very point that we will truly find the Son of Man who is the mighty judge of all nations. The Christ who is hungry gives the bread of life; who is thirsty gives the living water; who is the rejected stranger welcomes all; who is sick is the great physician of souls; who is the captive is the one who sets all free. In his total vulnerability on the Cross he performed the most significant deed of all history. What does this say about our pride in our achievements? About our tendency to focus upon our own strengths rather than our infirmities and our neighbours' needs?

There will be different opportunities offered to each of us to respond in obedience to these solemn obligations. No doubt they include sacrificial giving to agencies who can effectively reach our many brothers and sisters with food, clothing, shelter and health care. And we can scarcely avoid being cheerful and scrupulous taxpayers when government has assumed the essential underpinning of many social welfare activities, even those that operate in the private domain but with help from public funds. And maybe we should put clothes in the Smith Family, Care Force and St Vincent de Paul bins **before** they are worn out: the discarded sartorial crumbs from our table may not be enough.

Amnesty International may provide a way in which we can reach out to the imprisoned in their need. Primarily, it seeks the release of prisoners of conscience.

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COMMERCIAL LAW AND COMMERCIAL MORALITY

This is an important topic. The President of the St Thomas More Society, Mr C. J. Bannon QC, and the Secretary, Miss Helen Reed, are to be congratulated for choosing it for discussion.

The Honourable Mr Justice Dennis Mahoney,

Court of Appeal, Supreme Court of New South Wales, Sydney
– 25 October, 1990

There is great public disquiet about the state of commercial morality and there is perhaps greater public disquiet as to whether the breaches of commercial morality which are occurring are being dealt with, under the law or otherwise. It is therefore important that these matters be discussed. And it is particularly appropriate that they be discussed by a Society such as this which is concerned with morality, not merely amongst its members and the members of the legal profession, but more generally.

When the President asked me to speak upon this subject, I was honoured and I was attracted by the opportunity. I felt it proper to accept, but with some hesitation. Views differ as to the propriety of judges speaking upon controversial matters of public interest which may come before them in their court. Particularly is this so when they are asked to speak extra judicially upon the law and the principles which inform the law which, in their judicial capacity, they may be called upon to apply to parties who come before them. Views differ, and legitimately so, as to what may be done. I would normally hesitate to speak upon this matter. But I am asked to speak generally about the law and the principles which inform it and I am asked to do this before a society of lawyers to whom this is of particular interest. I think I may legitimately do so. But it is therefore proper that I say that the views or opinions that I express do not relate to particular cases and nothing that I say should be taken to refer to a particular case or individual. Still less do I offer advice: *Hedley Byrne & Co Ltd v Heller & Partners Ltd* (1964) AC 465. In dealing with the questions of law which may come before my Court, what I shall say will be, I hope, appropriately imprecise and qualified: you will understand that I do this so that I may not appear to have pre-empted a decision on any of them.

In approaching the topic, I was tempted to undertake a philosophic examination of the nature of law and of morality. But I have resisted the temptation. If there were to be a purgatory for Aristotle, Thomas Aquinas or Immanuel Kant it would be one in which they were forced to listen to those who would be philosophers but are not, fumbling at matters which they themselves had long since settled. I shall not indulge myself by going back to my youthful ambition to be a philosopher, an ambition which I have long since put aside. I shall, to lay the parameters of the discussion, say only this. We know what commercial law is: it is set down in the books. Commercial morality is, at least on one view of it, the genus of which commercial law is a species. Commercial morality is concerned generally with what those in business should do. In the case of commercial law, the reason why they "should" – their categorical imperative – derives from the law: they "should" because the law says they should. Where there is no law, what they should do and the reason why they should do it depends upon – according to one's philosophical or moral position – the dictates of God, natural law, Kant's imperative or the kind of rational understanding of the nature of life to which some have referred: see Peter Singer "Practical Ethics" (Columbia U.P., 1979) Ch 10.

[For those who are interested in ethics and commercial morality, I have collected some references which may engage their interest: H. L. A. Hart "Law, Liberty and Morality" (Oxford U.P. 1963); P. Devlin

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These are people detained for their beliefs, colour, sex, ethnic origin, language or religion who have not used or advocated violence. In our so-called modern world, peaceful protestors in many countries are arbitarily arrested in vast numbers. Many are held for months without charge or trial. In countless cases State torture was the price citizens paid for being identified as sympathisers with ethnic, nationalist or democratic movements. Amnesty's work is impartial and specific. Those whom it helps are often "the **least** of these brothers" and sisters of Christ. Can we turn our back on the opportunities it offers to do something particular that goes beyond writing a cheque on the 30th of June?

Unlike many agencies we may support Amnesty calls upon members to **act** – to write letters of protest and representation. It is not a purely vicarious arm which enables us to show "comfortable compassion", to use the title of Charles Elliott's challenging book about poverty, power and the Church.

I can't help thinking that our Lord is also calling for some **direct** involvement in charitable works. To delegate the task of hospitality to strangers seems a contradiction in terms. We will all have different opportunities in life. Have you thought lately about your personal commitment to legal aid; about joining Prison Fellowship; about fostering a child in need; or offering respite care to the family of an intellectually disabled person? If our lifestyle commitments make this difficult, perhaps the problem is with our lifestyle commitments. Perhaps they involve a level of excessive consumption so that we effectively trample on the pasture we don't need or muddy the water we don't drink, to pick up the parables in the Ezekiel passage we heard today. Can we not try "to live more simply so that others may simply live"?

Finally we may ask ourselves as lawyers whether the requirement to see the needy, the outcast and the prisoner as Christ's brothers and sisters transforms our attitude to our clients. For most of our clients have real needs even if they are not necessarily those which present themselves. Can we continue to see the individuals whom we serve as cases, briefs or files when our Lord says that whatever we do for one of the **least** of these his brothers we do for him?

"The Enforcement of Morals" (Oxford U.P. 1965); L. L. Fuller "The Morality of Law" (Yale U.P. 1969); B. Mitchell "Law, Morality and Religion in a Secular Society" (Oxford U.P. 1970); T. Nagal "The Possibility of Altruism" (Oxford U.P. 1970); J. A. Rawls "A Theory of Justice" (Harvard U.P. 1977); the citation in B. N. Kaye "Ethics and the Lawyer" (Utopia, September 1990) p 12 et seq; J. Finnis "Fundamentals of Ethics" (Georgetown, 1983) and A. MacIntyre "Whose Justice, Whose Rationality" (Notre Dame, 1988)]

However, in dealing with the present state of commercial morality, it is not necessary to press to the edges of the topic. We need not concern ourselves with nice questions of what is or is not commercially immoral. The present disquiet is concerned with practices the morality, or immorality, of which is not much in doubt and the reasons why the morality of them is in question are obvious. I shall confine myself to matters about which philosophical discussion would be, though interesting, not necessary.

To say this is to risk being misunderstood. I do not mean that the definition of commercial morality or the dynamics of it are not important. Commercial morality is a topic of paramount importance for the economic future of this country. It is important that those in the commercial community should be able to act upon the basis that, by and large, those with whom they deal will act generally as they should. But it is sufficient for the matters that I wish to emphasize to say that no person asked to invest in a company – or a country – will do so if he cannot have confidence that those with whom he deals will not steal the moneys entrusted to them or that, if they do, they will not be promptly punished for it.

He will not invest if the managing director of the company may, without being called to account, pay himself exorbitant remuneration or indulge himself by having the company provide for the company's, and his, use, jet planes, luxury boats, and the like. And no person asked to act responsibly and with restraint in wage negotiations will be encouraged to do so if those responsible for the business are going beyond what is fair to what is indefensible. It is to such matters, and the implications of them, to which I wish to direct what I say.

I wish to examine an aspect of the function of the law in promoting commercial morality: I shall consider whether and to what extent the provisions of the commercial law are likely to result in businessmen doing what they should.

My views on this matter would cover more pages and take more time than you or I have to offer. What I say must therefore be said generally and without attaching to what I say all of the qualifications which I would wish to attach. And, of course, I am not able to detail all of the reasons why I say what I do. I shall therefore condense what I wish to say into four propositions:

1. There are already in the company law draconian provisions directed to preventing breaches of the commercial law and procuring that directors and the company officers will do what they should.

2. These provisions have not prevented (or even restrained) serious abuse of commercial law, much less of commercial morality.

3. Additional restrictions are unlikely to stop such abuse: they will produce further and different problems.

4. The reason for this lies, not in the inadequacies of the provisions themselves, but in:

(a) The nature of the law and of legal processes;

(b) The limitations inherent in the administration of the law by executive government; and

(c) The nature of public morality and the mechanisms by which it is enforced.

Let me attempt to vouch these propositions.

1. There are already draconian provisions:

It is often said that "the law does not provide sufficient sanctions against misconduct by directors and company officers". This, of course, is not true. The law provides, as I have described them, draconian sanctions for those who do not act as they should. The reasons why those sanctions have not prevented abuse lies, not in the provisions themselves, but in the inadequacy of legal sanctions alone to prevent commercial abuse.

I shall take only two examples of what the law provides to indicate how stringent the present sanctions are:

(a) The fiduciary duties of directors and company officers; and

(b) Section 556 of the Companies Code.

(a) **The fiduciary duties of directors and officers:**

(What I say applies, in general, both to directors and to the executive officers of companies. I shall for brevity refer only to directors.)

Directors do not, I think, fully appreciate the stringent nature of the duties imposed upon them in this regard and the penalties provided for the breach of them. A reference to some of the main aspects of these duties will illustrate the stringency of them.

(i) The fiduciary duty of a director involves two main principles: that he may not enter into an engagement where there is a conflict between his duty and his personal interests and he may not derive a benefit from his position; and he may be relieved from the effect of these restrictions only by the "fully informed consent" of those to whom the duty is owed.

(ii) The restrictions which are imposed by these principles are far-reaching. They do not depend upon whether, when the director derived a benefit, he acted bona fide or whether, by what he has done, the company to whom the duty is owed has suffered a detriment. It is sufficient that there is a conflict between the director's duty to the company and his own interests and that he has derived a benefit from his position: see *Regal (Hastings) Ltd v Gulliver* (1942) 1 All ER 378 at 390-1, 393, 395. See generally *Boardman v Phipps* (1967) 2 AC 46; *Consul Developments Pty Ltd v DPC Estates Pty Ltd* 132 CLR 373.

(iii)The duty does not depend upon the mere form of the engagement into which the director has entered: the court will have regard to the substance of the matter and, I think, may in a particular case see the fiduciary duty as continuing to exist notwithstanding that the director has retired from his position if he has done so for the purpose of securing an improper benefit.

"Commercial morality is concerned generally with what those in business should do."

(iv)The sanctions upon the breach of this duty are heavy. A director who takes a benefit from his position will be liable to refund it to those to whom he owed the duty ("the beneficiary"). If he makes a profit from it, he must return the profit to the beneficiary. And, in appropriate cases, other directors who have not been parties to the transaction or have not received the profit may be liable with him to return the profit to the beneficiary. This is an area of the law which has, perhaps, not been fully developed. But there are those who would take the view that, e.g., if a person joins with a fiduciary to enable the fiduciary to derive a profit from his position which he should not have, there are circumstances in which that person will be liable with the fiduciary for the replacement of the profit. On this basis, if the other directors of a company, with knowledge of what is occurring, provide assistance in the achievement of it, they may be liable equally with the director who has achieved the benefit.

(v) There are, of course, circumstances in which a director may be relieved of the effect of these restrictions. He will not be liable for benefits derived if he has "the fully informed consent" of the beneficiary. This is not the occasion to pursue the question whether, in the context of company law, the only beneficiary to whom a director owes a fiduciary duty is the company or whether, generally or in some circumstances, that duty is owed to individual shareholders. The conventional view is that the duty is owed only to the company: *Percival v Wright* (1902) 2 Ch 421; but, at least, in the context of the present takeover provisions and the duties imposed on directors, the duty may be owed also to individual shareholders.

To be relieved of the duty and to retain the benefit, the director must show "the fully informed consent" of the beneficiary. This is less easily shown than, perhaps, is sometimes believed. What is required will depend, of course, upon the individual case. But in deciding what is required in the individual case, it will, I think, be useful, or prudent, to consider what has been said in the context of trustee and beneficiary. In that context, the "fully informed consent" involves: that there be a full disclosure of all information apt to affect the judgment of the beneficiary in giving the consent; that the disclosure be not merely full but fair and frank and therefore such as indicates the significance of the facts disclosed or the consequences of them; that the matter be dealt with "at arm's length"; and that, in cases where the beneficiary would be affected by the judgment of the fiduciary as to the significance of what is proposed, that that judgment be placed before the beneficiary; see generally *Jordan's Chapters on Equity* (6th ed) p.121-3.

I have outlined these matters because, I believe, they bear upon two at least of the matters in respect of which abuse of commercial morality has been said to occur. These are: the level of remuneration of directors and management buyouts. The principles are, in form, reasonably clear. In obtaining and retaining the services necessary for the company's purposes, it is permissible for the company, and so for the board of directors, to be not merely fair but generous: sufficiently generous, that is, to obtain the best results from the directors and executives concerned and to build up, if that be appropriate, a proper reputation so as to attract directors and executives in the future. And it is accepted that, in general, what is necessary for this purpose is a matter for the commercial judgment of the directors: see generally *Mills v Mills* 60 CLR 150. And the directors and executives are entitled to be provided with facilities to enable them to carry out their duties: they may have jet planes, boats and cars for the purpose. But the overriding principle is that, though directors are entitled to have "cakes and ale" they are entitled to have them only for the purposes of the company. And there is, I believe, a point at which a board decision as to remuneration, though appropriate in form, may be held by the courts to be inappropriate in substance. Thus, the remuneration agreed upon or the benefits provided may not be the result of a bona fide assessment of what is appropriate for the company to provide in order to obtain or retain the executive services in question; the benefits may be beyond what any reasonable mind would see as being appropriate for that purpose; or the decision may be made without the benefit of the judgment of those concerned as to what in reality is required for the purpose.

A management buyout ordinarily involves that those who are directors or senior executives of a company offer to buy the shares of the company from the existing shareholders. They do this, presumably, because, having from their position particular knowledge of the affairs of the company, the true value of the assets, and the potential for improvement of the use of them to produce profits, they believe they can do better for the company than presently is being done by it. At least, that is one view of such transactions. The fact that those who believe they can make better use of the company and its assets than the present managers of it offer to buy the shares so that they can do so is in general beneficial. It is apt to discourage the management of a company for the benefit of the managers rather than of the shareholders.

But management takeovers pose peculiar problems. Directors and at least certain senior executives, e.g., a managing director, owe fiduciary duties and have, in addition, obligations in respect of the information which they acquire in the course of their duties with the company. And it might be expected by the layman (particularly if he is a shareholder) that those duties will be operative if a director or senior executive seeks to buy his shares. He might expect that he should be told, e.g., of the information which they have as to the assets of the company, their true value, and the potential for their use which such persons have acquired as the result of their positions in the company. And he might expect to have the benefit of the judgment of those on whom he has relied and whom he has paid to manage the company for him. Nice questions arise as to whether such duties are owed only to the company: cf *Percival v Wright* (1902) 2 Ch 421; or whether some at least of them are owed also to the shareholders: cf *Darvall v North Sydney Brick & Tile Co Ltd* (1989) 16 NSWLR 260 at 325. On whatever view is taken, the duty of disclosure imposed upon directors and executives involved in a management buyout transaction, and the penalties for non-discharge of them, are apt to be held substantial.

I have instanced these matters because they raise for consideration the extent to which directors must – and whether they habitually do – give to their company the full benefit of the advice and assistance which their fiduciary duties require them to give. In times of increasing financial stringency, the procedures followed, and the substance behind those procedures, may become the subject of closer scrutiny than heretofore.

(b) **Section 556 of the Companies Code:**

This section provides a weighty reason why directors and executives of a company should concern themselves directly and continuously with the conduct of the company's affairs. It provides, in substance, that where a company incurs a debt and, when it does, there are reasonable grounds to expect that the company will not be able to pay all of its debts as and when they become due and the company is wound up or unable to pay its debts, "any person who was a director of the company or took part in the management of the company at the time when the debt was incurred" is guilty of an offence and liable for the payment of the debt. The criminal penalty is: $5,000 or imprisonment for one year or both: s 556(1). The director or executive may avoid the liability only if he proves "that the debt was incurred without his express or implied authority or consent" or that he did not have reasonable cause to expect that the company

would not be able to pay its debts as and when they became due: s 556(2).

The liability imposed by sub-section (1) is drastic: all directors and managers are liable for debts contracted while they were such. It is therefore important that they be able to establish the defence provided by sub-section (2). I mention the section because it was recently considered by my Court: *Metal Manufacturers Pty Ltd v Lewis* (1988) 13 NSWLR 315. It was a husband and wife company. The husband was the managing director, his wife was the only other director. She left the management of the company to him and did not know what he was doing. But the creditors sought to make her liable for the debts. One of the members of the Court held that she was because, as it was said, she had provided her authority and consent to his contracting any debts for the company because she had washed her hands of the company's affairs and left it to her co-director to attend to them and incur debts accordingly. I concluded that, being managing director, he did not need her authority or consent for what he did and therefore she had not given it. McHugh JA took, perhaps, a broader view of "authority or consent". And it remains to be seen what degree of supervision over, e.g., the incurring of debts by directors or executives in a company must be exercised by the directors or senior executives in order to establish that they did not give the relevant authority or consent. And it may remain for them to consider whether, in such a case, they can prove that they did not have reasonable cause to expect that the company would not be able to pay all of its debts as and when they became due: s 556 (2)(b).

I have referred to these examples to indicate that the restrictions imposed upon directors, in various of the areas in which abuse has been seen to occur, are far reaching. The potential in them for deterrence if, or when, they become better understood must be significant.

2. These sanctions have not prevented abuses of commercial morality:

They have not stopped what – if the information contained in media reports be reasonably accurate – are gross breaches of commercial morality. And those breaches appear to have occurred, not on the fringe of commercial activity, but close to the centre.

You will understand that I do not comment upon suggested breaches of commercial morality in Australia and, as I must emphasize, what I say is not to be read as referring to particular cases in this country. But it is permissible to take examples from what, according to media reports, has happened elsewhere.

The **Guinness** case involved two organisations of significant standing: the Guinness group and the Distillers group. If the reports here be accurate, the abuse was blatant. Guinness made an offer to buy Distillers shares for a price which included some Guinness shares. It was therefore important that the price of the Guinness shares be kept high while the offer was pending. Those involved with the offer used millions of pounds to support the price: they arranged for third parties to buy Guinness shares on the market and arranged to reimburse them for the cost of doing so. They were convicted and sentenced either to gaol or to fines involving very large sums.

The next case is still pending but the nature of the allegations is relevant. It is suggested that when shares in a newly floated company, the Blue Arrow Company, were offered for sale, they did not attract buyers as it had hoped that they would. Those who had floated the company were left with Blue Arrow shares on their hands. In order to ensure a market for the sale of them, they, it was said, represented that that float had been successful when it had not. Whether the allegations are true remains to be determined and, as I have said, I do not suggest that they are. The point is that the allegations are made in respect of those concerned with one of the largest clearing banks in the United Kingdom. The fact that allegations can be and are being made of that kind in respect of persons of this kind indicates that the existing sanctions have not been successful in maintaining the appropriate level of commercial morality.

It is not necessary to examine in detail the abuses currently being disclosed in the United States of America in relation to "junk bonds". The amounts reported to be involved in the case involving Boesky extend to hundreds of millions of dollars. And they have involved one of the largest broking houses in that country.

It is proper that I record again that what I say must not be taken as extending beyond the fact of the report of these matters in the media. My point in referring to them is that the fact that such matters can be reported and discussed as they are indicates that the kinds of restrictions presently imposed upon directors have not been seen as successfully in maintaining the appropriate level of commercial morality.

3. The reason why these abuses of company law and company morality have occurred notwithstanding the existence of draconian restrictions lies in a failure to understand the nature of legal sanctions and what is involved in them:

There has, as I have suggested, been a misunderstanding of: the nature of law and legal processes; the nature of the executive processes upon which legal sanctions are based; and the nature of commercial morality and how it is enforced.

(a) Law and legal processes: Law is an instrument of social control. But, at least in this area, the existence of the law does not mean that it will be obeyed. Something more is needed. Let me suggest why this is so. I must do this in a way which is, of course, a gross over-simplification of the factors that are involved. But an occasional address before the Society's dinner does not permit of detailed sociological analysis.

When I was in practice in this area of the law, I believed that a working assessment of those involved was: that 80 per cent of persons would do what they should; that 10 per cent would (if they desire to do something other than they should) find a lawyer who would show them a way in which they could do it, notwithstanding the law; and the remaining 10 per cent would do what they wanted to do, whatever the law was. I believe an analysis of this kind is basically sound. There may be differences in the percentages but the essential point is, I believe, good. Most people will do what they should and therefore the sanctions imposed by company law and morality are directed to procuring that the rest of them ("the 20 percent") will do what they should do.

"The Guinness case involved two organisations of significant standing . . ."

What are the factors that operate when, in this context, a decision is made whether to obey the dictates of law and morality or not? The jurisprudence or the sociologist will attempt a detailed answer in terms of his speciality. But in the case of persons to whom sanctions are at all relevant, essentially they will, I think, look to: whether they can obtain legal advice to support doing what they want to do; if they must breach the law, whether they will be found out; if they will be found out, whether they are likely to be prosecuted; and if they are likely to be prosecuted, whether the prosecution is likely to be successful.

In the case of abuse in this area my experience was that these factors were sometimes inarticulate but often articulated. And many would nowadays think that what they do is not likely to be (successfully) challenged. If that is believed, then legal and other sanctions on commercial morality are hardly likely to be effective.

(b) The nature of the administrative processes:

It must constantly be said that, before the courts can operate to impose legal sanctions, the administrative processes by which matters are brought before the courts must work. Abuses must be discovered, the evidence assembled, and the prosecutions commenced and pressed. Unless this is done, legal sanctions will not, of course, operate.

To a large extent these administrative processes have not worked. And unless they not merely work in fact but are seen by those involved as likely to work, sanctions will not deter the abuse of commercial morality.

The reason why the administrative processes behind the company law have not resulted in abuses being dealt with is beyond the scope of this paper. And it is important that I not be seen as directing criticism to any individual or organisation involved in those processes: that is not my role nor do I have a detailed knowledge of all of the facts and circumstances involved in particular cases. I suspect that it is true, as has been publicly said, that those in the administrative processes have been provided neither with the resources necessary to carry them through nor the personnel, of such number and expertise, essential for the purpose. But the number of cases in which matters of great dimensions have been successfully dealt with through the imposition of legal sanctions seems less than would have been justified by what administrative authorities have said.

An interesting illustration of the problems and, it may be, of the deficiencies of the administrative processes is provided by the *Cambridge Credot* case: see *Cooke v Purcell; Cooke v Whitbread & Ors; Attorney General v Purcell & Ors* (1988) 14 NSWLR 51.

(c) The operation of commercial morality:

If legal sanctions are not likely to lead to the successful prosecution of those who abuse them, is it likely that those ("the 20 per cent") will do what they should because of the dictates of commercial morality?

The enforcement of commercial morality depends upon peer pressure and the opinion of those in society to whom such persons would be apt to defer and if that be the sanction of commercial morality in its non-legal form, is there, in our existing society, any reason why commercial morality should be observed? That leads me to my final point.

4. Does anyone care?

In my opinion, the enforcement of commercial morality, whether embodied in the law or otherwise, depends upon whether the community cares.

If there are to be effective legal sanctions, the proper laws must be made and the necessary administrative processes must be put into effect. But the legislators are unlikely to pass the appropriate laws, the resources for the enforcement of them are unlikely to be provided, and – most important of all – the will to do what is necessary will not exist unless those in our society whose opinion affects these matters care sufficiently to ensure that something is done. I have seen the matter put shortly but accurately in the following way. Without public pressure the law will not be enforced and public morality will not be observed. For public pressure, there must be public agitation: it is only by agitation that those who must do what is necessary for this purpose will do it. But there will be no public agitation without public indignation: unless people feel strongly about the abuses, there will be no agitation and so no enforcement. And there will be no indignation unless people care: if breaches of commercial morality are not seen as important by sufficient persons in the community, nothing will be done. Or, at least, unless bodies such as our own Society feel about the matter sufficiently to indicate that they care, the position is unlikely to improve.

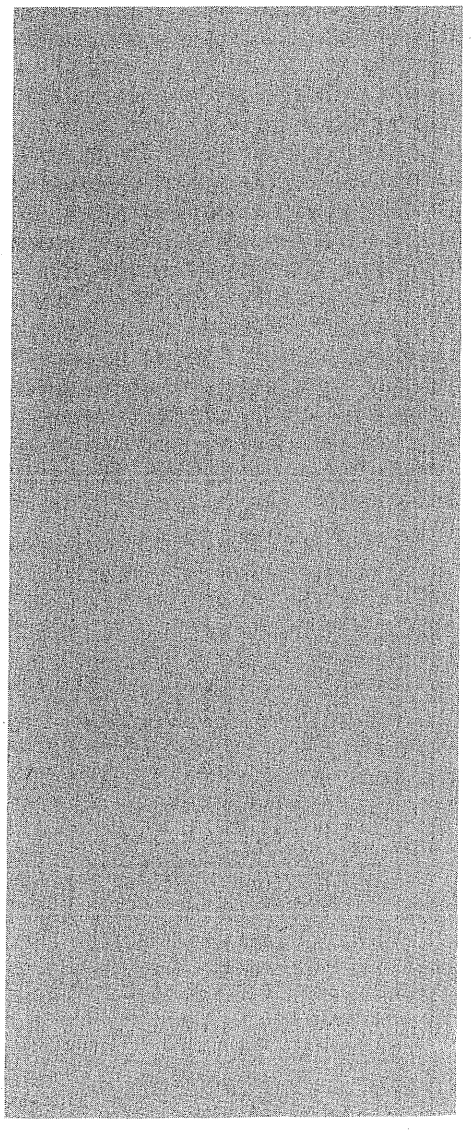
There is advantage in apathy, at least for me as a judge of my Court. It means that I will have less work to do in this area. And should anyone care?

As lawyers, I think we should. Something will be done about the present abuses. If we do not do it, it will be done to us and to the legal system in which we work. And if it is done, not with our expertise, but by those who are outside the law, the result will be less efficient and not to our liking. At least, as lawyers, we are apt to think so. It is therefore not merely in the public interest but in our interests that something be done.

The difficulties involved are no doubt great. But that cannot be a reason for not doing something. There is great truth in the saying: The best drives out the good. We should not delay doing what is good until we have worked out what is best.

But the ultimate question remains: Does anyone care?

My presentation has been longer than I am justified in imposing on you. I saw recently that it was said of Wagner that his music goes on forever, but it seems longer. I apologise if my enthusiasm for this topic has resulted in my imposing too heavily upon your patience. ■



"COMMON WEALTH AND COMMON GOOD" AND THE CATHOLIC TRADITION OF SOCIAL DOCTRINE

Thank you ladies and gentlemen for the invitation to speak to you this evening. I realise that the originating motive may have been the release in January of *Common Wealth and Common Good*, the draft report into the distribution of wealth in Australia, prepared by the Bishops' Committee for Justice Development and Peace. As you are no doubt aware as well, this is the centenary year of Pope Leo XIII's encyclical *Rerum Novarum* which is commonly held to be first social encyclical of modern times, so it is appropriate in this year that you should have someone to speak about the Church's social doctrine.

Rerum Novarum, dealing with the rights of workers in a time when the rights of the proprietor seemed absolute and unquestionable was the first in a series of social encyclicals. Subsequent popes have used it as a marker and its significant anniversaries as occasions to publish an encyclical or other document on social questions.

It was forty years before the next was written – *Quadragesimo Anno* by Pius XI. This letter was written in the era of burgeoning fascism in Italy, national socialism in Germany and communist socialism in the Soviet Union.

Pius XII wrote no social encyclicals – but did develop the Church's social teaching in his discourses and radio messages. The topics he touched on include the universal destination and use of goods, the State's function in economic activities, the need for international collaboration to effect justice and guarantee peace, the minimum income for the family and so on.

Since John XXIII social documents have been coming apace: *Mater et Magistra*, (1961) which introduced the international aspects of the social question, especially the inequalities between countries and regions. *Pacem in Terris*, (1963) addressed the problem of peace based on the respect that is due between individuals and nations. From the time of John XXIII, the bases of the encyclicals tend to be as much in the areas of empirical and sociological research as in theological and the traditional philosophical argumentation from the principles of natural law.

Then came the Second Vatican Council and its pastoral constitution on the Church in the Modern World: *Gaudium et Spes*. In 1967 Paul VI published *Populorum Progressio* which dealt largely with the economic problems of the developing world, filling out the chapter in *Gaudium et Spes* which dealt with this particular issue. To mark the eightieth anniversary of Rerum Novarum, Paul VI produced a letter, not an encyclical, but an important letter called *Octogesima Adveniens* which was a critique of the political ideologies underlying the world's socio-economic systems. This is one of the most undervalued documents in the collection and I hope that this year more Catholics will come to know it.

Ten years later the present Pope produced his first social encyclical entitled *Laborem Exercens* which looked at the world's economic situation again, beginning from the perspective of work as a dimension of human life. It sees the possibility of employment growth and a more equitable distribution of wealth, income and work as being dependent upon moderation in consumption and a re-discovery of the virtues of sobriety and solidarity.

On December 30, 1987, on the twenthieth anniversary of Pope Paul VI's great encyclical on development, *Populorum Progressio*, John Paul II published the encyclical *Sollicitudo Rei Socialis (SRS)*. Among the causes of lack of development are mentioned the persistent gap, often even widening, between North and South, and the East-West confrontation with its attendant arms race and arms trade. Further the encyclical seeks to identify what is true development and repeats that true development is not to be limited to the multiplication of good and services, but must contribute to the fullness of being human.

All of these documents are historically conditioned and arose out of the need to respond to a situation that had developed in the world or in a part of the world for which the Pope in question felt a special responsibility. In each one of them there is an effort to present to all who would listen, but especially to the Catholic community, the fundamental principles and universal criteria and guidelines which would suggest coherent practice and consistent basic choices in concrete situations.

In SRS the Pope denies explicitly that what he is on about is finding a third way between liberal capitalism and Marxist collectivism or even, as he says, "a possible alternative to other solutions less radically opposed to each other". What is suggested is that the Church in its social doctrine is offering a disinterested service to humanity, a service that consists in proclaiming essential principles drawn from the teaching of the Gospel and the Church's 2000 year experience, and their application to the changing economic, social, political, technological and cultural processes of the modern world.

As well as being the centenary of *Rerum Novarum* this year is also the centenary of the ALP and the co-incidence of the two centenaries is part of our history as a Church and as a nation. Perhaps the Pope was late in Europe, but he was right on time in Australia in dealing with the plight of the worker and his rights in the new industrialized world. Cardinal Moran in Sydney, like Cardinal Manning in London, had come out on the side of the worker and his rights and *Rerum Novarum* justified their stand. So began the close relationship in this country between the ALP and the Catholic Church most of whose members were naturally members of the political party that, like their Church, supported their rights.

The recently published draft *Common Wealth and Common Good* is to be understood in the context of the historic development of Catholic social teaching. When the Bishops in May 1987 decided not to renew the mandate of the Catholic Commission for Justice and peace and to take on themselves for the time being at least the task of speaking on social issues, they polled interested groups as to a suitable topic to be addressed and the distribution of wealth in Australia was a clear winner.

At the same time the Bishops had decided to try the method of preparing social justice statements that had been used with such effect in the Church in the USA, viz a process of wide consultation to enable the laity to make input in an area that is obviously of primary concern to them. This process also included the publication of a draft document for further discussion and consultation before the Bishops statement was eventually published.

The task was assigned to the Bishops

Committee for Justice, Development and Peace and for our sins I was appointed chairman of the drafting committee and Dr Michael Costigan, the executive secretary of that committee, the principal drafter of the document.

Although a final analysis of the process has not been made, I believe it was an extraordinary success. My own experience was that I placed small advertisements in the local press announcing that I would preside at public hearings in Wagga Wagga, Albury and Griffith to receive submissions on the topic, although people could if they preferred make written submissions only.

The result was totally unexpected. I half believed that no one would turn up apart from the loyal Catholics who can be relied on to support and defend the Bishop no matter what crazy scheme he embarks upon. Instead I found that the general interest was intense as was that of the local media. All sorts of people turned up with submissions, people one would not have expected to be there. They were certainly not all the caring professionals.

This local experience was paralleled at national and state level. Hearings were held in Sydney, Canberra and Melbourne by the Bishops Committee as well as by the local bishops. In all over 700 submissions were received, and from them all via various hands and minds the draft was produced and launched by Mrs Greiner on January 25 last. The draft stated that replies were to be received by April 30, but in response to many requests this deadline had been extended to May 31. The draft has just entered its third printing and those who have not yet been able to obtain a copy are naturally anxious to make some response.

Some of the issues that emerged from the submissions is the development of an underclass in Australia, especially in rural communities. This underclass includes about 500,000 children living below the poverty line and many of these are in the care of a sole parent, typically the mother. Many of these are kept in the poverty trap in the cities by the high cost of housing and the insufficiency of public housing. Their poor situation means that they are unlikely to succeed educationally, and given the present economic situation, unlikely to be ever employed.

The aboriginal problem is of course unique. On any indicator one chooses, the aboriginal Australians come off worst: health, housing, education, employment, life expectancy, child mortality rate of imprisonment etc. etc. The causes are complex and certainly Commonwealth initiatives since the sixties have achieved much good as has the land rights legislation in the various States. In any study of the distribution of wealth in Australia, however, special mention needs to be made of those who are still clearly at the bottom of the heap. All we could suggest in their regard is that we keep their situation in our cognizance as a continuing major social problem.

The suggestions that came to us have been included in the draft and it is these in particular that we wish to have discussion on and reaction to. As might have been anticipated the media focussed on the proposal for a wealth tax, perhaps via the reintroduction of death duties. This has created a severe reaction, especially in rural areas where families suffered for years because of the value of rural assets and the assessment of them for probate. Clearly, although only Australia and Canada of the developed nations do not have death duties, this proposal is not a political possibility without some provision for farms as is done in other countries that have death duties.

Even with such a provision, the proposal may be politically a dead duck. Even so, if the reintroduction of death duties is what comes through to us from the discussion on the draft and if we believe that it is a fair way of the wealthy helping the poor then we should say it. We are not in the business of scoring political goals, but of education. It is I think fair to ask whether James Packer should be allowed to become a billionaire overnight if the defribulator fails, or if Warwick Fairfax should have been allowed to squander his inheritance the way he did. Both fortunes were made in the wider society which surely has a right to tax them. It is difficult to see that taxing fortunes of that size would create hardship for the heirs, but it could bring relief to those who are genuinely suffering under the burdens of taxation, and make more money available to government to help the disadvantaged.

Similarly the proposal that the Government conduct an enquiry into the distribution of wealth in Australia drew much comment, mostly unfavourable, from Government spokespeople. It had been the policy of the present Government to conduct such an enquiry and they actually embarked on it before we began ours. Just one month before we announced that we were going to do one, the Government abandoned theirs on the grounds that it was too difficult and sadly most Federal Government departments were not of much help to us in our work.

It is probable then that neither side of politics is much interested in undertaking such a study, but as I said, we are in the business of education. If governments are prepared to accept and implement our suggestions, well and good; if not and we believe that the suggestions are still valid and are still supported by those who respond to the draft then their unpopularity is no reason to abandon them.

One can clearly make a case that Bishops who proclaim a crucified redeemer should more often than not find themselves swimming against the tide. This is not an expression of our indifference as to whether our opinion has an effect or not; nor is it as it were born from a self-confidence based on the fact that we do not have to face the electorate in the next twelve months or whenever. It is rather an assertion that the values found in the teaching of Christ and proclaimed by us in our role of teachers are inimical to the values of the world. If we were not to find ourselves at odds with the world on occasion, we should I believe have to examine our consciences very carefully.

I thank you for your attention and with the assistance of Dr Costigan will try to respond to any questions you may have. I would ask you to purchase *Common Wealth and Common Good* and let us have your reaction to it. If Cardinal Newman insisted that Bishops should consult the laity on matters of doctrine, and if this is the way doctrine develops, then surely we should do so on the application of the principles of Catholic social teaching to Australian society in the 1990s. In this way we are both making our contribution to the development of the Church's social doctrine.

Each country is different and each situation is different although the principles remain the same. By responding to our request for comment from the perspective that is uniquely yours, you assist in the fine tuning or even perhaps the gross tuning of the general principles in ways that assist their development with further understanding of the modern world which the Church must deal with and attempt to evangelise. Without input from the laity in this area Bishops statements run the risk of being so general as to be valid but of little use and the opportunity is missed to make our national contribution to the social understanding of the universal Church. That is why, here especially, we need your help.

Bishop William Brennan
Wagga Wagga