

From charity to politics: Reflections on the pursuit of social justice

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As a schoolboy at St Aloysius College, I was standing one day in what we called the covered play area, having a debate with Father Connolly, better known to my generation as Butch Connolly. He wanted me to understand that God could see all things at all times in the same place at the same time. In my argumentative and literal way I protested that that meant that God would see both me and a tree standing in the same place. I don't recall Father Connolly's response, but it was probably justifiably impatient.

What neither he nor I thought of was that if God was indeed seeing at once all that had stood where I was standing, God was seeing thousands of years of Aboriginal civilisation, just as we can think now of thousands of years of Aboriginal civilisation in this place, of people long dispossessed and disbanded, and of a civilisation lost to us.

At any time, but particularly when we are talking about social justice, we recall we are on Cammeraygal land. Nearby is Kiarabilli meaning 'good fishing spot',¹ Gooveebah-ree, which we call Lavender Bay, Warunga-reeyuh which we call Blues Point, and Weeyuh Weeyuh which we call Careening Cove.²

In 1794 an ex-convict, Samuel Lightfoot, was told by the colonial authorities that the land we are now standing on was his. This theft of land was quickly normalised; Lightfoot sold the land to Thomas Muir, who sold it to Robert Ryan, who leased it to James Milson. So it is Milson's Point on which we stand.

1 North Sydney Heritage Centre, *North Sydney Heritage Leaflet 1*, 2009.

2 Dr Ian Hoskins, *Aboriginal North Sydney*, North Sydney Council, 2019.

Ian Hoskins, in his book *Aboriginal North Sydney*, says that by 1822, just 34 years after the colonists arrived, more than half of the Cammeraygal's land had been deeded to Englishmen. The rest of the land followed soon after.

There are records of aboriginal workers on colonial estates on Cammeraygal land, but the Metropolitan Local Aboriginal Land Council doesn't recognise any contemporary descendants of the original people of North Sydney.³

You may have visited nearby vestiges of a lost civilisation; hand stencils, drawings, engravings and hollowed out rock. You may not know that, more recently, this land has hosted struggles for Aboriginal rights and recognition. In 1956 in Kirribilli, a meeting was held of what became the Federal Council for the Advancement of Aboriginals and Torres Strait Islanders, active in seeking what became the 1967 Constitutional amendments. Faith and Hans Bandler's flat, just up from Milson's Point station, became a meeting place for Aboriginal rights activists.

With this brief, local, account of what I see as the most profound issue of social justice in Australia, I acknowledge and pay respect to the traditional owners of this land, taken but never ceded.

One of the great privileges of being an academic is that part of my job is to sit and think. Of course this is not what our current government wants to hear; it would rather I spent my time standing at a whiteboard teaching maths or in a lab instructing in industrial chemistry.

The poverty of imagination, aspiration and vision for tertiary education in Australia is a topic for another day, although I commend to you Judith Brett's lead article, 'The bin fire of the humanities', in the current issue of *The Monthly*. For tonight's purpose, my point is that after a career in 'doing' social justice I've had

³ Hoskins, note 2 above.

the opportunity, in a second career, to think about what it *means* to be doing social justice.

Writing in the *Journal of Jesuit Studies*,⁴ Dr Daniel Cosacchi said that 'It would be challenging to identify a topic more fraught with controversy in Jesuit studies than the issue of social justice'. 'Merely defining the term', he said, 'would be problematic in the company of even a small group of Jesuits'. Cosacchi seems to suggest that the more Jesuits there are in the room, the harder it is to resolve a definitional debate; a daunting thought for me tonight.

Social justice is, of course, an aspiration; we seek it only because what we see or realise, is social *injustice*. My starting point this evening is the immediacy of social justice practice, what confronts us in the day-to-day. I reflect on how we see and respond to those instances of social injustice, and I suggest that we can see a person in need as requiring both our help in the moment, and a larger, more systemic response.

Looking past a person's misfortune, poor judgement or even just desserts, to the causes and origins of their situation, necessarily goes to our social system, structures, and institutions. Put simply, we can lift a homeless person out of the gutter, or we can change the policies and practices that put them there. Less starkly, one of us can lift a homeless person out of the gutter, while another of us tries change the policies and practices that put them there.

To respond systemically to social injustice is thus a political act, and to prevent future injustices, and achieve social justice, demands political action.

In saying this, I will have to deal with the very legitimacy of the idea of social justice. I will as well have to confront the reality of social justice advocacy, to give real meaning, beyond the rhetoric, to what it actually means to pursue systemic change.

⁴ Daniel Cosacchi, 'Jesuits and Social Justice', *Journal of Jesuit Studies* 6 (2019) 651-675.

Please excuse me if, in the time available, I touch on these issues lightly; I hope your questions will explore them in more depth.

For some years I was rostered on to be the duty lawyer at Waverley Local Court. On a Monday morning I would go in to the cells of the Police Station – at a time when it was a Police ‘Service’, and not a ‘Force’ – and in a small booth, though a glass panel, I would interview people, almost invariably men, who had been arrested and refused bail over the weekend.

I would listen to their stories, craft those stories into narratives most likely to engage the attention and sympathy of the magistrate, and then I would spend the day attempting to get bail, or a light sentence, or a long adjournment, or a pre-sentence report and so on.

I have colleagues from those days in Waverley Court who are still doing that; who still draw on all their energy and wit and guile and knowledge to persuade a court to treat their client fairly. I’m in awe of those lawyers. Their commitment to a fair result for each person in the system is extraordinary.

It is the same commitment that we celebrate when we acknowledge the work of nurses, teachers, social workers, priests, nuns, community workers, counsellors, and health professionals, helping those in need.

But after a few years at Waverley Local Court, I retired from the fray. I didn’t have it in me to keep going back, week after week, to explain, again, to the court the reasons why my client of the moment was in the situation he was. I redirected my efforts instead to addressing those reasons.

I could have kept getting those clients out of custody, but I wanted to stop them going into custody in the first place. I saw that their misfortune, poor judgement and even just desserts could also be explained by the relentless way in which much larger forces bear on an individual’s circumstances. I saw that a systemic context re-characterises misfortune as injustice, and demands a response that

looks beyond a charitable act towards sustained advocacy. This continuum – from individual circumstance to systemic injustice – is what is behind the title of this talk, ‘from charity to politics’.

In this account I don’t mean at all to disparage the selfless, invaluable work that is done by good people every day to help those less fortunate than themselves. Nor do I mean to say the choice is to work either individually or systemically; many do both, where their systemic advocacy is informed by their frontline work.

As with most things in life, there is no simple binary; I am not suggesting what is good and bad, or right and wrong. I am exploring, not judging, the different ways we respond to others’ hardships.

The term ‘social justice’ has a long history.⁵ It’s associated with the teaching of the Roman Catholic Church since the early 19th century,⁶ and with the organised labour movement since later in the same century.⁷

It was a term in repeated use in the early days of the Australian Parliament, in the context of debating the *Conciliation and Arbitration Act* to guarantee workers’ minimum wages and conditions.

Alfred Deakin spoke in the Parliament in 1903 with particular passion:⁸

The attainment in some measure ... of social justice is as absolutely essential as material prosperity. Permanent prosperity can only be based

5 See Brendan Edgeworth, ‘From Plato to NATO: Law and Social Justice in Historical Context’, (2012) 35(2) *UNSW Law Journal*, 417, 417.

6 See, eg, Thomas Patrick Burke, ‘The Origins of Social Justice: Taparelli d’Azeglio’, *First Principles Journal*, 1 January 2008; J. J. Ziegler, ‘What Is Social Justice? From Taparelli to John XXIII, parts 1, 2 and 3’, *The Catholic World Report*, April 10, May 23, July 7, 2013. Edgeworth’s history (above note 2) does not refer at all to either Roman Catholic or labour origins.

7 See, eg Janelle M. Diller, ‘Social justice, rights, and labour’, in Dinah Shelton (ed) *The Oxford Handbook of International Human Rights Law*, Oxford : Oxford University Press, 2013. 295; Lisa Rodgers, ‘Vulnerable Workers, Precarious Work and Justifications for Labour Law: a Comparative Study’, (2012) 1(3-4) *E-Journal of International and Comparative Labour Studies*, 87.

8 *Hansard, House of Representatives*, Thursday, 30 July 1903 Page: 2858.

upon institutions which are cemented by social justice. Under the influence of a sense of injustice, of inequality, unfairness, and helplessness, the working population of the world cannot be expected to submit to their lot. There must be held out to them the prospect of betterment and advancement for the individual, the family, and the class, as well as for the nation as a whole ...

These are not sentiments I associate with recent parliaments.

There was, however, a dark side, so to speak, of this invocation of social justice. In the same Parliament debates, the White Australia policy was promoted as securing so-called 'social justice' by protecting against 'the under-paid labour of other lands' and maintaining 'conditions of life fit for a white man and a white woman'.⁹

Now, especially after Rawls's seminal *A Theory of Justice*,¹⁰ a general, contemporary, idea of social justice has a human rights dimension. It usually entails the provision to all people of basic human needs such as income, housing, education and health care; equal enjoyment of human rights such as non-discrimination, freedom of expression and the right to liberty; and some social redistribution of resources.

A generally accepted, simple meaning of social justice is a state of fairness, equity, and inclusion.¹¹

This idea of social justice occurs in many disciplines – from economics to health, political science to engineering, social work to architecture. Research suggests that although there are 'differences among and within the various disciplines

⁹ Mr Spence, *Hansard, House of Representatives*, Thursday, 8 September 1904.

¹⁰ John Rawls, *A Theory of Justice*, Harvard University Press, 1971.

¹¹ See, eg Belinda Carpenter and Matthew Ball, *Justice in Society*, The Federation Press, Sydney, 2012; Edgeworth, above note 2, 417.

about the uses of social justice ... the goal of obtaining [it], *that is, attaining fairness and equity*, appear[] to be similar in each discipline'.¹²

In law, I think of social justice as a measure of whether and how law regulates power and wealth, so that there is fair access for people whose ability to compete is compromised – people whose circumstances marginalise them in the market economy that governs our lives.

Bringing the two ideas of law and social justice together raises challenging questions; Does law (or a particular law) promote or hinder social justice? Whose interests are promoted by a law, and whose are overlooked? When, can and should a law limit or redistribute power and wealth?

Guided by those watchwords of fairness, equity, and inclusion, a social justice question in landscape architecture might be: is the effect of design for this public space to exclude anyone? Should it, and how can we design it otherwise?

A social justice question in healthcare might be: do some people have less access than others have because of their age, their language, their culture or where they live? Should they, and how can ensure this is not the case?

A social justice question in banking and finance might be: what environmental harms are our investments causing? Should they cause such harms, and how can we avoid it?

Similar questions can be asked of every discipline. The questions arise sometimes because of an absence, a gap, a failure, an immediate need. But sometimes the questions arise only if time is taken to reflect, think and interrogate. Either way, to ask social justice questions, to explore the answers, and to trace a social injustice back to its cause, and so to a solution, is often more than we want to do, or feel we can. It is hard, it takes time, and it introduces considerations that threaten our getting done what we want to get done.

¹² K Buettner-Schmidt and M L Lobo, 'Social justice: A concept analysis', (2012) 68(4) *Journal of Advanced Nursing* 948, 953.

I did think of law and social justice questions from time to time when I was working in the field, without ever really interrogating them. I was too immersed in the daily cut and thrust of community legal work, and I was simply not aware of the discipline of reflective practice, to take time out to think deeply about the larger context of my work. Had I been in private practice, where time is money, I'd have had another strong reason to not take the time to ask, let alone to try and answer, the social justice questions.

Back at Waverley Court, many of the men I represented were poor, poorly educated, alone, unloved, and addicted. Beyond their immediate need, I saw their repeated incarceration, and the conditions of their lives, as social injustice.

In the same way, in my years of legal practice, I saw as instances of social injustice that suggested larger systemic problems: families evicted from their homes, old people left alone to die, women owned and abused by men, migrants disparaged, gay people humiliated, children neglected, the homeless abandoned, the mentally ill stigmatised, and Aboriginal people all of the above.

In the moment, when a person in need was there in front of me, I did what I could for them. How could I not? But over time, my work increasingly addressed the system not the individual, and I moved away from frontline work.

My emerging awareness of the complexity of the causes of social injustice was moved along by a discussion I had with a colleague about a tenancy matter. My client had a legal problem: she was being evicted. I knew how to deal with that; I was pretty good working with the tenancy law and process, and I knew I could keep her in the house long enough for her to find alternative accommodation. But using the legal system to keep her in her house for a while was not very different from using the legal system to keep my Waverley Court clients out of gaol for a while.

My client's real problem was much deeper and more extensive than the eviction notice. Working from an instance of need out to the larger context, the line of causal inquiry can lead us from the situation of a person who is homeless back to a myriad of causes: from illness, abuse, and discrimination, to tax policy, employment regulation, and land development decisions; if I were relating the same situation today, somewhere in that causal chain would be the cruel and miserable level of the dole, to be increased now to an amount that remains below the poverty line.

Drawing a line from an eviction to tax policy helps to illustrate the political nature of systemic advocacy for social justice. While efforts to alleviate suffering are directed to those who suffer, efforts to prevent the relentless recurrence of suffering are directed to changing social structures, systems and institutions. This is what makes social justice necessarily a political issue.

The politics are less apparent on the frontline, where the consuming concern is a person's immediate welfare. But the less that we see persistent individual need as manifesting a larger political issue, the further we are from putting an end to that need, and the demand for one-off, frontline, reactive responses to personal circumstance will never end.

The causes of social injustice are not linear, and untangling its origins can be wickedly complex. But I'm prepared to go straight to one of the sources, capitalism; the economic system that is supported by our political system and, incidentally, by our legal system.

Poverty, inequality, marginalisation and exclusion are inevitable in a capitalist economy. Social justice advocacy is therefore directed towards the prevailing systems, institutions, values and beliefs that operate in and enable capitalism, and the perennial political issue is what type and degree of intervention in the market, if any, is tolerated to at least ameliorate social injustice.

I say 'if any intervention' in deference to the notorious view of the free-market economist Friedrich Hayek, who dismissed social justice as having 'no meaning whatsoever',¹³ because it is fundamentally incompatible with the free operation of capitalist markets. For those who are comfortable with and within capitalist systems and institutions, social justice may indeed have no meaning whatsoever; more usually it is, at least, an annoying consideration, and at worst, a threatening one.

The best non-threatening argument for social justice that can be made within the politics of a capitalist economy is a business case. An example is the *Disability Discrimination Act*.

The Act is a significant social justice statement, saying not only that we must treat people with disability as our equals, but that we must adapt our physical structures, our designed systems, our manner of life and practice, to ensure that equal treatment. What really entrenched the *Disability Discrimination Act* as a statement of social justice in Australian life, however, and cleared the way for the NDIS, was a positive report from the economists at the Productivity Commission.

Nothing is more central to capitalism than competition, and in a stunning endorsement of the *Disability Discrimination Act* as a social justice measure, the Productivity Commission found that it complies with the principles that underpin Australia's National Competition Policy. That's endorsement for a social justice measure from within the capitalist tent.

But, absent a tick from the economists, social justice is a hard sell. A 'fairness' case, let alone a rights-based case, gets very little traction in contemporary politics.

13 F. A. Hayek, *The Mirage of Social Justice. Vol. 2 of Law, Legislation and Liberty*, University of Chicago Press, Chicago 1976. xii, 33, cited in Andrew Lister, 'The "Mirage" of Social Justice: Hayek Against (and for) Rawls', (2013) 25(3-4) *Critical Review* 409, 410.

In Australia, as in other countries with a history of state responsibility for public welfare, social justice is both unremarkable as a progressive social policy goal, and a concept whose legitimacy is contested by conservative commentators.

Conservative values support the maintenance of prevailing systems, institutions and beliefs, which helps explain why recent federal governments in Australia have been determined to exclude advocacy from the scope of charitable work. Australian law and policy support helping people in need, but at the same time constrain challenges to the structural causes of that need.¹⁴ Political support for charitable work is conditional on not attempting to change the conditions that generate the charitable need. Why? Because the conditions that generate charitable need are the same that deliver profit and influence to people in power.

Illustrating the partisan political nature of social justice in Australia, former Australian prime minister John Howard only last week reportedly called for active opposition to what he called “woke culture” which, he said, is trying to “alter society” in Australia.¹⁵

Illustrating it further, writing for free market think tank the Institute of Public Affairs, Morgan Begg identifies a ‘social justice takeover’ of the Marvel comics franchise led by ‘modern progressive activists’.¹⁶ More seriously, Magnus O’Mallon, also writing for the Institute, identifies Maoism as a feature of contemporary social justice, and associates ‘the lawless depravity on display ... throughout the entire Western world’ with ‘philosophical premises shared between the Chinese Cultural Revolution and today’s social justice movement’.¹⁷

O’Mallon calls Maoism a strain of Marxism, and mention of Marxism is an opportunity for me to turn to social justice and – it should be no surprise – the Jesuits.

14 *Charities Act 2013* (Cth) s 11, s 12(1)(l) and s 12(2).

15 Elias Visontay and Paul Karp, ‘John Howard calls for religious schools to have anti-discrimination exemption’ *The Guardian* Wed 24 Feb 2021.

16 Morgan Begg, *Super Justice Warriors*, 16 March 2019.

17 Magnus O’Mallon, *Modern Activism’s Maoist Roots*, 15 January 2021.

The world's most prominent Jesuit, Pope Francis, was reported to have 'sparked accusations that he is espousing Marxism' in his November 2013 *Evangelii Gaudium* (*The Joy of the Gospel*), because of his pointed attacks on economic liberalism.¹⁸ Pope Francis was invoking Jesuit doctrine when he said that 'none of us can think we are exempt from concern for the poor and for social justice'.

It is unsurprising that concern for the situation of the poor in a capitalist world can lead to a Marxist analysis of society, and to Marxist-inspired action, which is why some South American Jesuits found themselves working towards social justice goals in common with communist revolutionaries in South America in the 1960s and 70s.

A more formal and less overtly political source for the Jesuit's social justice mission are the Decrees of the Jesuits' General Congregations, or GCs, and I record my thanks to Father Mick Ryan and Father Frank Brennan for their help as I made my way through the Decrees.

Most significantly, the Fourth Decree of GC 32 was made in 1975 under the leadership of Pedro Arrupe, the Jesuit response to Vatican II.¹⁹ It set out for Jesuits the same thinking about social justice – individual need and systemic responses – that I described earlier, referring to both direct ministry for 'the victims of the injustice of social structures', and the 'struggle to transform' those structures.²⁰

The Third Decree of GC 34 in 1995 confirmed 'the need to work for structural changes in the socioeconomic and political orders,'²¹ and the First Decree of GC 35 restated Pope Benedict's observation that 'the injustice that breeds poverty has "structural causes"'.

18 Bruce Duncan, 'Pope Francis's Call for Social Justice in the Global Economy', (2014) 91(2) *The Australasian Catholic Record* 178.

19 Cosacchi, note 4 above, 658.

20 [40] Fourth Decree of General Congregation 32.

21 [5], [10] Third Decree of General Congregation 34.

This is strong stuff. This is what I think Mr Howard would call 'woke'. This is political. The 'need to work for structural changes in the socioeconomic and political orders' is the essential nature of social justice.

Were it not for the invitation to speak tonight, I am not sure whether or when I'd have found that my own thinking on social justice resonates with Jesuit teaching. It is of course possible that the resonance was instilled in my years of Jesuit education, though I am as likely to attribute my thinking on social justice to my late mother; not a Catholic, and a subscriber to Pravda.

There is another way in which Jesuitical thinking aligns with my work in law and social justice, and that is the idea of closely identifying with those with whom you work.

I came to legal education by way of legal practice. I arrived at Kingsford Legal Centre at UNSW as a community legal lawyer, and after six years of working there with law and social work students, I left the legal centre as much a law teacher as I was a practitioner.

Teaching students in the context of community legal practice takes young lawyers into the lives and homes of poor, marginalised, oppressed and struggling people. It confronts students with the reality of the world in which laws operate, laws that are designed elsewhere, by the wealthy, the powerful and privileged. It invites lawyers to reflect on what they have, and what they are trying to give others.

This is similar, in a modest way, to the Jesuit approach of understanding social justice through solidarity with the poor.²² An extract from the Fourth Decree of GC 32 could be said of lawyers as it was said of Jesuits:

²² Cosacchi, note 4 above, 660; Pedro Arrupe *Exposure to Poverty* (1979).

The personal backgrounds of most of us, the studies we make, and the circles in which we move often insulate us from poverty, and even from the simple life and its day-to-day concerns. We have access to skills and power which most people do not have. It will therefore be necessary for a larger number of us to share more closely the lot of families who are of modest means, who make up the majority of every country, and who are often poor and oppressed.

To be fair, the close identification with the poor that is ‘necessary’ for a Jesuit is perhaps not ‘necessary’ for a lawyer, and a camel is more likely to pass through the eye of a needle,²³ than are lawyers likely to embrace the radical exercise of poverty.²⁴

But for lawyers in pursuit of social justice, the Fourth Decree makes a slightly less demanding call, for ‘the patience and the humility and the courage to walk with the poor, [to] learn from what they have, to teach us what we can do to help them’.

In this, my second career – a teacher more than a practitioner of lawyering for social justice – I urge my students to be humble, and to wield their power with humility and in solidarity; to practice law for social justice on that continuum from charity to politics, not only to help those in need, but also to interrogate and challenge the structural causes of social injustice.

23 Matthew’s Gospel 19:24.

24 Ninth Decree of General Congregation 34.