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Catholic Institutions and Justice Obligations

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The response of Catholics to teaching and nursing the poor has become, over the centuries, a vast institutionalized educational system and a highly technological delivery system for health care. With the Church's emphasis on social justice today, many of us wonder what aspects of justice we can and must handle, especially as regards justice toward the poor, when so much of our effort must of necessity be used to keep our institutions viable.

There is no question that Catholic institutions are deeply implicated in many dimensions of justice and are called to profound attention to these dimensions. But we want in this paper to descend from such rather formal imperatives and reflect on a specific practice that causes many consciences trouble today: Do Catholic institutions have an obligation under justice to provide education and health care to the poor? In statements of the role and mission or of the meaning of sponsorship of Catholic educational or health care institutions, such

obligations are increasingly taken to be self-evidently matters of justice.

But most basic statements are general, or formal, and are attitudinal imperatives ("matters of justice need major attention today"). As such, they either lack directives with content or have directives with content that are not reconciled with other morally important demands. Thereby such statements often bring anxiety, confusion, or division.

It is the purpose of this paper to show that providing education and health care to the poor might fall under the rubric of charity for private religious educational and health institutions, but it most likely is not a matter of justice.

If we define justice formally as "giving to each one his/her due," the definition remains as a first level principle, i.e., one that cannot directly be used to specify action in concrete matters. What counts as "due" cannot be discovered by inspection of the formal definition itself. Content directives for justice (second-level principles) come rather by induction from decisions by individuals in similar situations and therefore correlate with cultural and historical contexts. Today we often appeal to the social context of "having rights" in order to fill in the first level principle and to delineate "what is due" and "who is to give it."

Consequently, we must address the question of the rights of the poor to education and health care and specifically ask if the private religious institution's purported responsibilities to the poor in justice more correctly stand as obligations in charity.

Let us assume that there are rights, that persons must "have" certain items in order to act as rational self-orderers in a society where others can supply, deny, or lay claims to the same items. And let us confine ourselves to the specific virtue of justice. "General" justice covers all activities between persons. Specific justice concentrates on how actions by the agent respect what is due to those affected. Theories of specific justice traditionally have contained four dimensions: "commutative," which specifies what is due between individual persons in private transactions; "contributive," which specifies those actions due from individuals or groups which converge to the common social good; "retributive," which specifies the assertions of society's common values against anti-social actions; and finally, "distributive," which specifies the allocation of public social products (both benefits and burdens) to individuals and groups. As Iris Young maintains (*Social Theory and Practice*, 7 [1981], pp. 281, 282), theories of specific justice fail if they focus, as most contemporary theories do, exclusively or primarily on questions of distribution. A major point of her critique is that concentration on distributive justice tends to emphasize who is to receive what and not what processes are themselves just. In this paper, we argue that someone's having a right does

not always settle who is obligated to act in justice in response to that right.

Let us stipulate also that there are at least four kinds of rights: (1) contract rights, which come from any sort of agreement on the part of those involved and which are conditioned by the partial fulfillment of the contract by any of the parties; (2) merit rights, which accrue to those who have performed actions which "deserve" some "reward" or who have displayed a characteristic which "deserves" some "reward" according to some presupposed "practice" in the social group; (3) positive or legal rights, which arise through legislative, judicial, and executive action and are predictions of society's willingness to enforce claims of its members by governmental action; and (4) dignity or human rights, which belong to persons simply because they are persons in the temporal world. Our focus in this paper will be primarily on dignity rights.

Right Must Be Examined

Granted that a right of some kind exists, it still must be examined whether the right is a "right to pursue" or an "entitlement right." If it is the former, the one obligated cannot justly interfere in the pursuit or enjoyment of a value or a goal. If it is the latter, the one obligated must do what is necessary for the right-holder to be able to actualize the acquisition of the value or the goal.

If it is a matter of a contract right, a merit right, or a positive right, it usually is not difficult to distinguish between a "right to pursue" and an "entitlement right" because the required actions or omissions are expressed in contract specifics, rules or laws. The difficulty comes in reference to dignity rights (which today government often tries to settle peremptorily by means of legislation or court decisions).

It is even more difficult to discover who, in such matters, is obligated in justice to act. Take our examples of the right to minimum health care and the right to a culturally necessary education. Certainly these would be preconditions for reasonable efforts at a self-ordered life. Are these, then, entitlement rights? And if so, who is obligated? Traditionally, the "term" of a right designates the agent who is obligated to act or refrain from acting because of the ethical situation which results from a person having a right. Thus, if entitlement rights are at issue (and minimum health care and free education have come to be seen as entitlement rights), there must be decisions on the following questions:

- a) Who (what individual, what social organization, or what societal institution) has the obligation?
- b) What exactly is the obligation? (Is it to do an action or to refrain from doing an action? and
- c) Why?

To complicate matters, as Ruth Macklin notes (*Hastings Center Report*, Oct., 1976, pp. 31, 37, 38), there have been trends in our times to extend the field of rights and, therefore, of specific justice. Sometimes this has been done by asserting that certain items are rights of all persons which had not been claimed before (e.g., health care, free education). Sometimes this has been done by asserting that certain items are rights equally of all (e.g., the right to vote). Sometimes this has been done by asserting rights for special classes (e.g., patients, the handicapped, the mentally ill). Apparently these are all claimed as entitlement rights.

What is the term of obligation under specific justice correlative to such rights?

It is important to note as a prelude that obligations are not simply correlative with rights in justice. One may have the moral obligation to act out of other virtues, e.g., sympathy, friendship, charity. Likewise, there need not be a right correlative to every duty. Anyone who can act for authentic needs of others stands under the rubric of charity (today, "minimum altruism" or "benevolence"). An obligation in charity might be distinguished as follows: the recipient has no standing as a rights-holder to demand that the act be done by an assignable private individual, and so the private agent is not obligated because of being the term of some right; yet there is an obligation because what the agent could do would be of significant benefit to the recipient and would be of moderate cost to the agent. Thus it is reasonable to do it and unreasonable to omit it. (One might see anticipation of this in Aquinas's formulation of the maximum permissible and the minimum obligatory in alms in reference to "surplus" (*Summa Theologiae* II-II, q. 32, a. 5 and ad 3; q. 32, a. 6; q. 32, a. 10; q. 185, a. 7).

Most important for this paper, one might at least question if everyone has a duty under justice simply because someone has a right, especially if it is an entitlement right.

How, in a complex society, does one identify precisely who is the term of some entitlement right and who thereby is obligated to supply positive aid so that the right-holder can achieve some goal or value? This is the more complicated since in our society there are more candidates as possible terms than simply individuals or governmental agencies. There are private intermediate organizations which have moral independence from the governmental structure. Such private organizations include business corporations, not-for-profit organizations, volunteer groups, professional organizations, and the like, all of which have functions in the society in terms of the common good either directly as, for example, professional organizations, private hospitals and private schools or indirectly as, for example, business corporations.

If these intermediary organizations are recognized as legitimate in

society but as independent of the spectrum of governmental institutions, then our questions of justice would come to this: Are such private institutions the terms of entitlement rights?

Entitlement rights which refer primarily to minimum health care and education are expressions of dignity rights alone (and thereby lack contract, merit, or legal specification) and have different terms of obligation, depending on the situation. It could be a matter of "each other person is obligated to assist until enough do so," as with bystanders in an emergency lifesaving situation. But this would be tempered by the limit that no one is obligated in justice to be heroic.

Now the values of education and health care are rarely satisfied by single emergency acts. Moreover, the rights to these values only exist where they have become standardly available in the social cooperative context. To claim them as rights and as expressions of dignity rights alone, therefore, is to claim them from the social cooperative achievements in producing values, that is, to claim them from society. It is to claim them under the rubric of distributive justice. With entitlement rights under distributive justice, the right-holder has standing to claim actions be done by an assignable societal unit (according to subsidiarity). Governmental institutions are the ordinary instruments to assure the fair distribution of the socially produced benefits and burdens.

Instruments for Distributive Justice?

The question then is: Have private intermediate organizations also become such instruments for distributive justice?

One might suggest this. Entitlement rights arise in the historical, social and political situation, and the terms of these rights are a function of that situation. Thus, it is reasonable to judge that obligations to provide the pertinent goal or value exist along a social and political "subsidiarity" spectrum: one's family, one's neighbors, one's ward, district, city, county, state, and federal government. Insofar as a more proximate subsidiarity element can provide, the more remote element does not have an obligation to do so. Its obligation would be to refrain from interference.

This, of course, still leaves the private intermediate organization in limbo with respect to obligations under justice toward entitlement rights.

To further our questioning we must sketch the form for any institutional ethic.

The rationale for the practices of any institution, public or private, would be in reference to the values that can be achieved only insofar as the institution runs well. Thus, if there is a public common good for

society, a common good that is part of the purpose of the society existing as a cooperative unity, then there could validly be formulated an ethic of societal purposes about governmental institutions and their included practices that would be at least different from a personal ethic in standards and in obligations.

In a scheme of social cooperation for a common good, citizens have entitlement rights to those items needed as necessary conditions to act as self-ordering beings. Thus society, in subsidiary stages, reasonably is obliged through institutions to supply such items, insofar as the common good is achieved and the trade-offs are reasonable.

An analogous rationale and ethic could be formulated for a private organization within society in terms of the practices requisite for its legitimate, important, or even necessary values. And those who held positions in such a private organization would have obligations in justice to those within and without the organization who supported it and who had standing to demand it be run well. With respect to general obligations toward society, private organizations vary with how each fits into the general social scheme. Certainly officials in such organizations are obligated to those they affect in the following ways: to exercise due care (e.g., check out details of operations); be reasonably well informed (e.g., keep up with field, know potential effects on the community of its own activities); be aware of alternatives to achieve goals, so as to reduce external costs to those affected (e.g., which alternative way to handle street repairs most reduces noise pollution).

To discern the special obligations that pertain to each kind of private intermediate organization in society, it is reasonable to ask: "What is the organization's concept of its purpose (its self-definition)?" This will be in some way an expression of a private or a public good. Since any private intermediate organization operates within a scheme of social cooperation, the purpose must involve either some public good directly or at least no public harm. Let us take two examples: a private business corporation and a private hospital or school.

The business corporation is formed by free association for the benefit of its members (stockholders, managers, workers). Its obligation to the rest of society combines contractual obligations (to customers), legal obligations (corporate law), and the obligation not to do harm (as well as the general obligations above as applicable). This last may reasonably be specified by society through its governmental institutions.

The private hospital or school is slightly different. Its self-definition of purpose is to serve some segment of society in respect to some values, to which values members of society may also have rights. This being so, do members of society have claims under justice on the private hospital or school, and to which members of society, if any, does the private hospital or school have obligations?

The following would seem to pertain. If the private organization is supported solely by private funds, its general obligation is to serve the purposes of those who support it, which purposes ideally will be identical with the self-definition purposes of the institution. The question will be, what are the obligations in terms of justice to all those in society who are included within the purpose in the self-definition? And is the question of justice in reference to those who support the institution, or in reference to those in the whole society who might be served by it?

It must be remembered that in the matter of entitlement rights where the individual cannot achieve the necessary items by personal effort, then the society, through subsidiarity stages (first the local, then the state, and finally the federal government), is obligated in terms of distributive justice to the general common good (e.g., to provide minimal health care and education as necessary to be self-orderer in one's activities). So the public has hospitals and schools in terms of distributive justice.

Place of the Private Intermediate Organization

Where does the private intermediate organization fit in? Certainly, if the organization "accepts" a person in a contract (as student, as patient), there are contractual obligations, whose limits are positively described in the individual contract, and negatively that the one party will not take advantage of the necessities of the other party. But are there any positive obligations to serve the values or goals of the individual in society beyond such contracts? How does the private intermediate organization stand toward entitlement rights of citizens? One might judge that there are obligations if (a) the situation pertains to the organization's ordinary competence, and (b) it is an emergency (e.g., a wounded individual shows up at a private hospital). But are there general obligations to set up practices of the private intermediate organization to respond to entitlement rights of citizens in general? Of course, as mentioned above, if the government legislates regulations, e.g., affirmative action hiring or admissions, then the private organization has the ordinary obligation to obey the law. Our question is whether the private organization has any obligations under justice without such governmental regulations.

According to a tradition of justice which distinguishes commutative (interpersonal), social (contributive), and distributive justice, the private intermediate organizations do not fall under distributive justice agents. But one might suggest that such a tradition can evolve with the contemporary experience of interdependence of individuals, government, and intermediate organizations.

Suppose there were a call for a private organization to "become involved in justice." As we have seen, there are many dimensions of

obligation that pertain and to which the organization could attend and should attend already. But obviously, something more is called for in the "becoming involved in justice." For example, the call could be made "to give free tuition to the poor" or "to set up special practices to search out and treat the very poor with no charge or with lower charges." Would such a practice be a response "in terms of justice"?

Certainly it could not be so, if such a practice entailed a tradeoff with some practice already required in terms of justice obligations (for example, the costs in time taken from specific contract obligations or general professional in-service programs).

But what if such a tradeoff is not obviously entailed? For example, teachers have been heard to say, "It doesn't matter if I have 25 or 28 students; why don't we fill up the extra chairs?" To evaluate any such apparent non-tradeoff suggestion, it might be proper to examine the self-definition of the private intermediate organization and the purpose of the organization in the mind of its supporters. This examination might conclude that the matter indeed is vague since, in the organization's original thought, such contemplated practices were neither embraced nor rejected. So, some discussion and self-education could be reasonable.

But this would seem to indicate that taking on the new practice could be, at most, an ethical obligation under charity that did not violate justice in respect to the already acknowledged obligations. It would not establish that the new practice would itself be a matter of justice and hence obligatory in that way.

Could it indeed be obligatory in justice and simply a matter of heretofore not recognizing it? This might be argued under the form: "S is required in society because P_n have rights to s ; but we can supply s ; therefore, justice demands that we supply s to P_n ."

This argument has two major problems: it is abstract, and it begs the original question. First, it is abstract for it does not establish that "to supply s to P_n " is a higher obligation than the organization's present practices. Ought implies can, but can does not imply ought. One must further establish that what can be done (a) is proportionately reasonable, given the obligations one already has, and (b) is an obligation under justice and not rather an obligation under some other virtue, or even an option. This opens to the second problem. The argument begs the question whether a private intermediate organization is the proper term of entitlement rights in a society, especially when subsidiary governmental institutions (e.g., public hospitals, public schools) arguably are adequate to be the term of the entitlement rights.

As we said at the outset of this paper, our Catholic institutions have fruitful areas for working for justice: employer-employee relationships, wages and working conditions, opportunities for minorities, the handicapped and women in the work force, inservice education, etc.

As Thomas C. Kelly, O.P., said (*Hospital Progress*, May, 1979, p. 39): "The Catholic community will be hampered in efforts to advocate social justice and to advance its Gospel mission to the world unless all its institutions are themselves models of justice."

So when the calls for justice ring out, religious congregations have many places to apply their efforts. Their institutions, rather than an albatross around their necks, are more a corporate eagle to do what they were established to do and to do it justly. But calls "to serve the poor in justice" too often cause only anguish in the consciences that years of religious training have sensitized.

We suggest that many of the "calls to justice" are consciousness-raising exercises. As such, they are formal, first level expressions of ethical attitudes which must be specified before they can articulate obligations. And it may turn out that the obligations actually are under charity rather than under justice.

Let us imagine the following scenario: The operating board of Catholic High, in view of its role and mission statement, agrees that two percent of its net income will be set aside solely for free scholarships to the deserving poor. That is a laudable step and one may hope it represents the sentiments of the entire community which supports the school. It must be remembered that the allocated money is not the board's to dispose of without constraint. To see the response in this scenario as one of justice is wrong. Rather, the action is one of charity, and the supporting community must have a voice in the allocation of the funds or else the *failure* here might be a failure in justice to the tuition-payers and contributors.

Scholarships may be used as businesses use advertising; namely, to raise the overall academic level of the school and thus to make it more attractive, or to bring on campus an outstanding athlete who will serve to do the same. But scholarships offered to the poor simply because they are poor are a matter of charity, not justice, for the private intermediate organization that is the Catholic school.

So, too, with Catholic hospitals. Health care costs are escalating at an alarming rate. If the religious communities sponsoring those hospitals want to respond with free health care for the poor, where will the money come from? If the congregation has a fund and makes it available to the sick poor in the community, one cannot say that any one of these sick poor has a *right* to that fund. The money supplied could be to satisfy an obligation in charity and would be applied on a first-come, first-served basis. The case would be the same if the hospital developed a charitable fund, seeking donations for the same end.

As we advance in the knowledge and appreciation of rights, responsibilities, and obligations, it becomes more evident that we cannot lay all our contemporary problems at the threshold of justice; charity still has its place.