

DIGNITAS HUMANA

Catholic Commission for Justice and Peace

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The Foreshore and Seabed Question

Introduction

The controversy over the seabed and foreshore has been, and continues to be, one of the most divisive issues in recent New Zealand history. It goes to the very heart of how Maori and Pakeha live together in this land and raises once again the place and meaning of the Treaty of Waitangi within our constitutional structure. Although the debate over the issues involved has polarised opinion, the matters involved are immensely complex. The role of the Church's social teaching in this area is to provide Catholics with the tools by which they can impose some moral order on the issues underpinning the various arguments. The purpose of this short article is to examine the way in which Catholic social teaching can help illuminate our thinking on these matters. Catholic social teaching is not a static, fixed canon, but a dynamic application of Christ's teaching to the changing realities and circumstances of human society. Clearly, the basic principles do not change, because they are deeply rooted in human nature. But its application does change according to historical circumstances. It does not tell us what the answer is — that lies within the realm of conscience — but it does provide some moral guidance.

The Common Good

This is one of the central elements of Catholic social teaching and is understood to be the obligation imposed on secular powers (the government) to organise society in a way that allows all people to reach their full human potential and to realize their human dignity. The human person is essentially social, relational and interpersonal. The common good is also necessary for one's own fulfilment. Each person develops and reaches fulfilment within society and through society. Therefore, the common good is separate from but not in conflict with each individual's particular good. The common good does however oppose utilitarianism, which says we should pursue the greatest possible happiness (pleasure) for the highest possible number of people. This idea invariably leads to the minority being subordinated to the majority. The Church teaches that the inviolability of the individual human person rules out the possibility of subordinating the good of one to that of others - otherwise the individual is converted into a means for the happiness of others. In order to allow individuals to maximise their potential, it is essential that they should have access to God's creation for their recreation and spiritual refreshment and that anything which interferes with this possibility is not conducive to the common good.

Subsidiarity and Culture

The common good is not, however, a monolithic structure. The doctrine of subsidiarity states that a community of a higher order should not interfere in the internal life of a community of a lower order. Similarly, the Church teaches that the cultural rights of communities must be respected. Iwi and hapu as communities of a lower order to that of the central government might arguably have the right to own and use the foreshore and seabed which they have customarily used according to their culture.

Private Property and the Universal Destination of All Material Goods

Ownership of private property is recognised and supported by the Church, but the right to private property is subordinated to the common good of society. It is also part of the Church's teaching that all material goods have a universal destination, that is, goods must not be hoarded but used for the benefit of all. It is difficult to achieve balance here, but there seems little doubt that reconciling ownership and use to maximise the benefit of all in accordance with the common good is the most appropriate response. Whether this can help us resolve the tensions between Maori ownership of the foreshore and seabed and the enjoyment of these resources by all other New Zealanders is debatable, but at least it highlights the tensions inherent in any kind of balancing act in this area.

The Treaty of Waitangi and Pacta Sunt Servanda

Article II of the Treaty of Waitangi guarantees Maori property ownership, so there can be little doubt that they are the true original owners of the foreshore and seabed. Deprivation of this property right without appropriate compensation would seem to work against the right to private ownership and to be an interference with genuine cultural rights. It also violates the principle of pacta sunt servanda — a Latin term which means that promises must be observed. This is a moral obligation, so whether or not the Treaty of Waitangi is a treaty under international law, the government is still under a moral obligation to give effect to its terms and recognise rights of Maori ownership.

Stewardship

To focus exclusively on ownership might be to miss the point. The Church teaches that people have a specific responsibility towards the environment in which they live and towards the creation which God has put at their service, not only for the present but also for future generations. It might well be that it is the protection and preservation of the foreshore for present and future generations which should dominate thinking in this area. The management of the seabed and foreshore by the Treaty partners in a way which preserves it for all New Zealanders and saves it from injurious exploitation, commercial or otherwise, should perhaps be the guiding principle. The government, in fact, argues that its ability to make Ancestral Protection Orders and involve Maori in making planning decisions regarding the foreshore and seabed protect Maori interests while maximising the access and enjoyment of others.

Conclusions

Is it possible to come to any conclusions on this fraught and complex matter? There can be little doubt that all New Zealanders of whatever ethnic background have an interest in the most favourable resolution of the seabed and foreshore dispute. Under Article II of the Treaty Maori ownership of the foreshore and seabed is guaranteed, despite the fact that the Crown thought it owned these areas previously. The Crown is under a moral, if not a legal, obligation to respect these property rights. Any deprivation of property rights without appropriate recompense — not necessarily financial — would be a breach of moral obligation by the government. On the other hand, while Maori might be the owners of the foreshore and seabed, they are also arguably under an obligation according to the principle of the universal destination of all material goods to give the benefit of these to society as a whole. The principle of the common good also requires the government to organise society so that all individuals are able to maximise their human potential and to live a life of dignity to its fullest extent. The principle of stewardship places an obligation on all to nurture God's creation for the benefit of present and future generations. In that sense none of us own the earth, but are simply temporary stewards for those who come after us. Perhaps the arguments centred upon ownership and private property are misconceived and that it is the protection and enjoyment of God's creation we should all be concerned with. Perhaps if Maori and the Crown were to work in true partnership under the Treaty, this objective might be met.

The green teaching of the Church

What's happening to the environment?

Lengthy hearings, and disputed viewpoints have accompanied the preparations to establish a new regional landfill in the Kate Valley, north of Christchurch and east of Waipara. Concern to prevent the degradation of the environment has been stressed by those who favour this location, as well as those who oppose it.

Another hot environmental topic is that of water. Canterbury and Christchurch until now have seemed to possess unlimited supplies of fresh and uncontaminated water, both for drinking and irrigation. Questions are now being asked about whether supplies are now threatened, both in quality and quantity, by the increasing pressure being caused by the rapid expansion of dairying and the accompanying irrigation and leaching.

The Christchurch City Council is now working hard to bring the discharge of treated sewage effluent into the estuary of the Avon and Heathcote rivers to an end and to build an off-shore pipeline that will take effluent to an off-shore discharge point. This major and expensive modification of an essential utility is being driven by concern for the ecology of the estuary.

What does the Church offer?

Church teaching sheds light on environmental issues. It does not show us how to solve particular environmental problems such as these, which require specialised scientific knowledge, but it offers values and principles that help us to analyse the moral issues involved and to evaluate some of the practical solutions being proposed.

Faith in Jesus implicates believers in concern for the environment. Sometimes, Christianity has been blamed for the uncaring exploitation of the natural world because of the Creator's command to our first parents to "Be fruitful, multiply, fill the earth and subdue it.." In fact, scientific knowledge and technology became a threat to the natural world precisely when its link with God the Creator began to be set aside, or ignored.

Elements of the crisis of ecology

As well as many benefits, modern discoveries and technological advances have also produced long-term harmful effects on the environment. Industrial waste, the burning of fossil fuels and unrestricted deforestation are just some of the factors harming the atmosphere and environment. Certain herbicides, coolants and propellants have also caused damage. We have come to realise that interference in one area of the ecosystem brings consequences in other areas and perhaps for future generations.

Consumerism is now a major cause of ecological harm. Resources are consumed in an excessive and disordered way by societies dominated by the desire to have and to enjoy rather than to be and to grow. A false view of the human person underlies this consumerism. Persons, blessed with the capacity to transform the world through human work and ingenuity, so much so that they in a sense create the world, forget that the world itself is given to all people by God. When people so forget, they subject the natural world to arbitrary uses, without the restraint of the divine will. Instead of harnessing nature, persons tyrannise it.

The key to caring for the environment

Paradoxically, the way to care for the environment is to contemplate the human person. While it is true that it is the impact of humans that has brought environmental degradation and the growing list of extinct and threatened fauna and flora, it is also true that only humans can alleviate the harmful patterns of consumption and manufacture and remedy the damage already done.

Placing human beings at the centre of concern for the environment is actually the surest way of safeguarding creation because of the endless interdependence between human beings and their environment. The gifts of the earth are destined for all, including the unborn generations. Our concern to protect, and hand on, the natural resources of land and sea to the future generations means that ecological care is to be a basic ingredient of all our planning and decisionmaking, at home, in the school, in towns and cities, everywhere.

These wise words come from Pope John Paul II and Patriarch Bartholomew of Constantinople. "First, we must regain humility and recognize the limits of our powers, and most importantly, the limits of our knowledge and judgement. We have been making decisions, taking actions, and assigning values that are leading us away from the world as it should be, away from the design of God for creation, away from all that is essential for a healthy planet and a healthy commonwealth of people. A new approach and a new culture are needed, based on the centrality of the human person with creation and inspired by environmentally ethical behaviour stemming from our triple relationship to God, to self, and to creation. Such an ethics fosters interdependence and stresses the principles of universal solidarity, social justice and responsibility, in order to promote a true culture of life.

Secondly, we must frankly admit that humankind is entitled to something better than what we see around us. We and much more, our children and future generations are entitled to a better world, a world free from degradation, violence and bloodshed, a world of generosity and love. Thirdly, aware of the value of prayer, we must implore God the Creator to enlighten people everywhere regarding the duty to respect and carefully guard creation." Venice Declaration on the Environment 2002.

On Migrants and Refugees

Recent events in Christchurch have raised the spectre of racism in our city. The anti-racism rally which was organized by a local lawyer, himself a victim of racial abuse, attracted a crowd of 2000 people and made the national headlines. Whether racist attitudes are worse in Christchurch than elsewhere in New Zealand is a matter for conjecture. What is certain however is that there are in the community people who have been racially abused, either verbally or physically. Though not widespread, the number of incidents is increasing. One of the more disturbing features of the attacks on migrants is the number of attacks perpetrated by young people. Racism is a cancer that eats away at the soul of society. The medicine is love.

As the world gets smaller, we need to be more Christian than ever in the welcome we give to one another and in the spirit of sharing all the good things we have with our neighbours. We are called not only to practice racial justice but also to love our neighbour as ourselves. The structural sin of racism is quite contrary to the Gospel. As one human family we are committed to the Common Good. It is only when we truly recognise our common humanity, whatever our colour, creed or culture that barriers will come down and we will live in a world, free, both of racism and of every form of intolerance and discrimination.

Racism regards the racial origins of an individual or a community as the factor, which determines ability, behaviour and appearance. It classifies all people into 'superior' or 'inferior' races. Indeed, not only does it categorise people because of their race, but also because of their language, gender or religion. New Zealand's demographic profile has changed and is changing due to immigration and resettlement together with the high birth rate of Maori and Pacific Islanders. Society therefore will become more susceptible to racial tension. Demographers predict that by the year 2030 A.D. 20 percent of New Zealanders will be Maori, 60 per cent will be European descent, while the remainder will have ties with the Pacific, Asia, the Middle East and Africa.

In other words international immigration is an important component in the social, economic and political reality of the world today. Globalisation, demographic changes, information technology and the comparative ease of travel have all contributed to the greatest movement of people of all time. Indeed the modern phenomenon of human mobility is considered by some to be the new 'credo' of contemporary man. As a result many countries including our own are witnessing the transformation of mono or bi-cultural into multicultural societies.

The Church has consistently been solicitous for the plight of migrants and refugees. The Pontifical Council for the Pastoral Care of Migrants and Itinerant People has recently released an instruction document. 'The love of Christ towards migrants' sets out clearly and unambiguously the rights and duties of migrant people. It challenges us also to consider immigrants not as a burden or as a threat or even regard them with suspicion, as this attitude often provokes intolerance, xenophobia and racism. Rather, we are to see the migrant through the eyes of faith, not simply as a neighbour but the face of Christ Himself, 'who was born in a manger and fled into Egypt where he was a foreigner' (Mt 2:13). Mary the mother of Jesus can be equally contemplated as a living symbol of a woman emigrant. 'She gave birth to her son away from home' (Lk 2:17). Thus the followers of Christ should promote an authentic culture of welcome, based on the love of the Master, and certain in the knowledge that good done to our neighbour, especially the most needy, is done to Him. 'I was a stranger and you welcomed me' (Mt 25:35).

The challenge facing us in today's migrations is not an easy one. Nevertheless, as the forces of globalisation transform New Zealand into a multi-cultural society. Catholic Social Teaching calls upon the laity to promote and work for the rights of minorities in a spirit of hospitality, solidarity and sharing. Thus the dignity of each person, created in the image of God, will be upheld, and in the words of Martin Luther King 'a man will not be judged by the colour of his skin, but by the content of his character'.

Euthanasia

Euthanasia and assisted suicide are contrary to Catholic teaching as they are an affront to human dignity. The Gospel of God's love for man, the Gospel of the dignity of the human person and the Gospel of Life are a single and indivisible Gospel. The second Vatican Council declared "euthanasia and wilful suicide" are "offences against life itself" which "poison civilisation"; they 'debase the perpetrators more than the victims and militate against the honour of the Creator.'" In "The Gospel of Life" encyclical Pope John Paul II confirms that euthanasia is a grave violation of the law of God, since it is the deliberate and morally unacceptable killing of a human person.

On reflecting on the euthanasia question we need to define what some terms mean. Three words or phrases that are used often are physician assisted suicide and palliative care.

There is often confusion over what constitutes euthanasia. Withholding futile treatment is not euthanasia. Withdrawing futile treatment is not euthanasia. "Terminal sedation" which is the use of sedative medication to relieve intolerable suffering in the last days of life is not euthanasia.

Euthanasia is defined as a doctor intentionally killing a person by the administration of drugs, at that person's voluntary and competent request.

Physician assisted suicide is a doctor helping a person to commit suicide by providing drugs for self administration, at that person's voluntary and competent request.

Palliative care which is practiced by the hospice movement and others is an approach that involves the quality of life of patients and their families facing the problems associated with life threatening illness through the prevention and relief of suffering by means of early identification and impeccable assessment and treatment of pain and other problems, physical, psychosocial and spiritual.

The Gospel of Life tells us that even when not motivated by the selfish refusal to be burdened with the life of someone who is suffering, euthanasia must be called a "false mercy" and indeed a disturbing perversion of mercy. True compassion leads to sharing another's pain; it does not kill the person whose suffering we cannot bear. Moreover, the act of euthanasia appears all the more perverse if it is carried out by those, like relatives, who are supposed to treat a family member with love, or by those, such as doctors, who by virtue of their specific profession are supposed to care for the sick person even in the most painful terminal stages. The choice of euthanasia becomes more serious when it takes the form of murder committed by others on a person who has in no way requested it or has never consented to it. The height of arbitrariness and injustice is reached when certain people such as physicians or legislators arrogate the power to themselves to decide who ought to live and who ought to die.

Once again we find ourselves before the temptation of Eden to become like God "who knows good and evil." (cf Gen 3:5) God alone has power over life and death. He only exercises this power in accordance with a plan of wisdom and love. When man usurps this power, being enslaved by a foolish way of thinking, he inevitably uses it for injustice and death. Thus the life of a person who is weak is put into the hands of one who is strong; in society the sense of injustice is lost, and mutual trust, the basis of every authentic interpersonal relationship, is undermined at its root.

There are very real dangers to society with the legalisation of assisted suicide. This is evidenced by the fact that advocates for assisted suicide consistently highlight the need for clear guidelines to prevent potential abuse. The Netherlands and Oregon in the USA are places which have legislated to allow these practices. In a review of these places which the fact of assisting in principle has inevitably led to abuse of apparently strict criteria in practice. In the Netherlands reports show that people are euthanised without their consent despite these criteria. Reports indicate up to 1 in 5 cases of assisted suicide occurred without the patient's explicit request. Assisted suicide or euthanasia is frequently promoted as giving patients more choice in dying but the Netherlands experience has shown it has given doctors even more power. The practice of assisted suicide has blocked what can be termed basic palliative care and led to the under

development of the hospice movement in the Netherlands. While there has been considerable development of palliative medicine in recent decades these resources are simply not available in any coherent manner in the Netherlands. The practice of euthanasia and assisted suicide in the Netherlands illustrated the logical inconsistencies involved in allowing euthanasia in practice. The Netherlands is frequently cited as an example of what would happen with strict guidelines. This is not born out in reality. It is naïve to enact legislation in New Zealand with similar “safeguards” and to think that our experience of assisted suicide would be different.

In the hospice or palliative care movement, people are given choices to take part in their own care. It is part of giving them dignity — parts of their life are out of control and becoming more so. They are affirmed in what they can do. The hospice movement both here and world wide, is against euthanasia — so that is one choice they do not give people. It appears that when a good hospice service is available and is utilised then the demand for euthanasia declines. Legitimate concerns expressed by doctors include good people under pressure accepting voluntary euthanasia and bad people using it for their own ends. It will also lead to a growing mistrust of doctors’ and nurses’ good intentions. Energy should be put into hospice services, which encourage people to find a positive phase in their dying.