

**SPEECH TO THE COUNCIL OF CHRISTIANS AND JEWS,
WESTERN AUSTRALIA,
75TH ANNIVERSARY OF KRISTALLNACHT
"MORAL RELATIVISM"
GOVERNMENT HOUSE, SUNDAY, 10 NOVEMBER 2013**

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Your Excellency and distinguished guests, I am proud to speak this evening because I think this commemoration and reflection is an extremely important occasion.

We have heard at the outset of this commemoration the powerful commentary from the Governor concerning the history and context of Kristallnacht. I propose to address the reflection this evening from a different perspective. I will consider a philosophical issue which arises from our remembrance of Kristallnacht. I will suggest that we should reject the dominant philosophical theory that all morals are relative. For some scholars this theory is embedded in core tenets of Judeo-Christian belief. But I will explain why I consider that it need not be seen in this way.

This philosophical issue arises as we consider the events leading up to Kristallnacht almost exactly 75 years ago, and as we remember the horrific events of those days and the shocking apathy of much of the international community. We reflect now upon the physical destruction, the mass arrests and deportation to concentration camps, the murder and the trial of unfathomable horror left by the physical and mental destruction. For many people, the unfathomable is also the unspeakable. The father of one of my closest friends lived through these events. He is, understandably but sadly, unable to speak about them.

As we know, the events of Kristallnacht were not isolated occurrences. Kristallnacht is regarded by some historians as a clear sign of the transformation of the Nazi's war against the Jews from a racist political and social movement to a violent program of extermination. A recent book which traces the build up of tension, and the decay of German society is Erik Larson's meticulously written, *In the Garden of Beasts*. Throughout this book, the reader watches the deterioration of German society through the eyes of the family of the American ambassador to Berlin between 1933 and 1937. The reader watches, from within, the very slow awakening of one man's consciousness during the fall of an entire society. By 1938, the world had a window into this decayed and

corrupted society, but as the Governor has explained, for a long time the world sat by and failed to act.

As the Nazi regime tightened its grip on German society following Kristallnacht, two extraordinary scholars were reflecting on grand theses which would have a profound impact on the way we understand morality and the way we reflect on the world around us.

The first scholar was a young philosopher, who was then a prize fellow of All Souls College, Oxford. In 1938 he was developing the ideas which led to one of the most famous philosophical expositions of the last century. The man's name was Isaiah Berlin. His Jewish family had immigrated to England from Russia the previous decade in fear of life under Bolshevik rule. Berlin had been accepted to Oxford as a student. He would remain there all his life.

Two popular philosophical theories with which Berlin was confronted, and which remain popular today, were utilitarianism and Kantian ethics. Each of those theories permitted, at least as a philosophical possibility, the idea that any moral conundrum has a unique and correct solution. Perhaps the most brilliant modern defender of this concept of innate moral and ethical truth is Ronald Dworkin. At the core of Dworkin's philosophy was the concept of human dignity. The last time that I saw Professor Dworkin before his death I spoke with him and others, over his steak meal, about dignity and his notion of humanity as a limit to that concept. One observation he made to me, which became more apparent to me when I returned to Australia to become a judge, is that whatever the limits to dignity there are rules in our law, in substance and in practice, which still fall short of the ideal.

I digress for a moment to say that when I walked in to this ballroom 20 minutes ago, I saw a person I have not met for more than 20 years. Ken Arkwright, the translator of the prose we heard this evening, was a childhood mentor and inspiration for me. He is one of the most learned men I have ever met. In the few moments we spoke, Ken told me the story of how he owes his life to his decision to ignore the German law on a transfer from a concentration camp. For a philosopher like Ronald Dworkin, the further a rule falls short of dignity the less claim the rule has to be law. So, Dworkin remarks of 'laws' like those that Ken ignored, that 'we might deny that the Nazis had a legal system, but we can

nevertheless answer the question what rights and duties the putative Nazi law recognised'.¹

I turn back to Isaiah Berlin. Despite the philosophical support for a concept of intrinsic moral truth, Berlin rejected it. In John Gray's book of reflections on Berlin, he tells a story that Berlin had relayed to him about why Berlin considered Kantian and utilitarian theories to be flawed. Shortly after World War 2 had broken out, a government official discovered that there was a leak of information in his office. He could not identify the person leaking the information. So he did something which he acknowledged was unjust. He fired every person in his department. He knew that this would mean that every individual would have a stain on his or her reputation for the rest of that person's life. But the alternative was to threaten the war effort. Berlin thought that the decision was right. But he also thought that it would have also have been right for the opposite decision to have been made. There was no intrinsically correct or true answer.

Isaiah Berlin thus became the father of the modern philosophical theory now known as value pluralism. Broadly, value pluralism embodies the idea that human values are many and conflicting. There need not be any uniquely correct answer to moral dilemmas.

A small step from value pluralism is another popular thesis known as moral relativism. This is the view that because human beings are fundamentally the products of the society in which they live. Moral relativism suggests that there is no universal right and wrong. There may be some objective values which hold true across most societies but this is mere chance. It is because of social organisation not fundamental principle.

At the time of Kristallnacht, another philosopher was reflecting on similar ideas but reaching the opposite conclusion from an anthropological perspective. His name was Claude Levi-Strauss. Levi-Strauss was a French Jew, trained as a philosopher. He was engaged in anthropological study of tribes in the Amazonian rainforest. With very little formal training in anthropology, Levi-Strauss later wrote the extraordinary anthropology monograph: *Elementary Structures of Kinship*. Levi-Strauss ultimately came to argue in *La Pensée Sauvage* the structuralist thesis that there are forms of reason which are common to all persons capable of advanced thought.

¹ R Dworkin *Justice in Robes* (2006) 4.

The work of Levi-Strauss provides insight into the reasons why value pluralism is so fraught with difficulty. Value pluralism is ultimately a flawed theory because there are at least some circumstances in which there is a single correct answer to what might be perceived by some to be a conflict in values. There can be intrinsic moral truths which are natural and capable of being revealed by the application of reason which is common to all of those capable of advanced thought.

It is, for me, a belief in intrinsic moral truth which allows me to reflect upon, and condemn, events such as Kristallnacht, the horror, the destruction, the callous disregard that some humans can have for the liberty and humanity of others and say that no matter where we come from, no matter what our background, and no matter what the experiences which have shaped us or the people who have touched us - independently of all of those matters - there are some intrinsic moral truths. There are some events that can be universally condemned.

There are at least two objections to this thesis.

The first objection is that it is a matter of assertion. Even if Levi-Strauss is correct that there are forms of reason which are common to all people capable of advanced thought, how can we ever know that this reasoning will reveal a unique truth?

Further, how can we ever know that the reasoning we are employing towards what we believe to be a moral conclusion has not been tainted by our own background and culture? None of us can ever step outside of our experiences. None of us can leave behind our personalities and reason as though we were living behind a veil of ignorance. We might try to do that, but in the end it is our cultures and backgrounds that will dictate how we think.

There are also vast gulfs in the knowledge of any human being. With such huge gaps in what we know, how can we ever say that we have considered all basic values, all approaches and arguments before reaching a conclusion that there are intrinsic moral truths which allow us to say that some things can be universally condemned?

The answer to this first objection is to acknowledge that despite gaps in the knowledge and understanding of any human being, despite the inability for us ever to transcend fully our cultures and backgrounds, there are many cases where an individual does not need a Herculean mind to be able to grasp intrinsic truth. Some situations will be hard, and we may never be sure if our beliefs reflect moral truth. Other cases, like Kristallnacht, are not hard. We can reflect on the killing, the destruction, and the inhumanity, and say with confidence that it violates basic moral principle.

The second objection to a notion of intrinsic moral truth comes from a strain of Judeo-Christian scholarship. That Judeo-Christian approach is that morality must be guided by a clear yardstick, not an assertion of natural right. Various scripture is relied upon to assert that morality is not based on a conception of universal values. That is, some Judeo-Christian scholarship embraces, in part, moral relativism.

Two famous stories illustrate this. The first is Luke's parable of the Good Samaritan.² That story was, of course, of the good Samaritan who stopped to assist a wounded man after a priest and a Levite had walked past.

There is debate amongst New Testament scholars about what is meant by this parable. For instance, the very recently deceased brilliant scholar Geza Vermes, a former Catholic priest who converted to Judaism, argued that the parable is an explanation of the religious laws of ritual defilement which prevented the priest or Levite, who were 'going down' from Jerusalem, from dealing with a man who was apparently dead.³ The Samaritan, in contrast with the priest and the Levite, was not bound by these religious rules.

A more common view of the parable of the Good Samaritan is the Calvinist ethical conception of it. As an ethical conception it is commonly viewed as an illustration of the injunction in Leviticus to 'love your neighbour as yourself' or, in the modern language of the Golden Rule: we should do unto others as we would have them do unto us. Notice the words used. Not that we should do unto others according to universal moral norms. Rather, that we should act towards others as we, with our different personal background, belief systems and understandings, would have them act towards us.

² Luke Chapter 10 verse 25.

³ G Vermes *The Authentic Gospels of Jesus* (2004) at 153-154.

The Golden Rule has been criticised by philosophers who believe in intrinsic moral truth. For instance, Kant explained that if the Golden Rule were applied then many judges would not send convicted prisoners to jail because if the judge were in the position of the prisoner he or she would not want to be sent to jail.⁴ The Golden Rule would endorse the actions of the sado-masochist who walked into a bar looking for a fight. Without modification by intrinsic moral truth, it would endorse the actions of a community elder in a community in which all people are raised to accept as appropriate a community norm that a 10 year old bride or groom can be promised to an elder as part of a bargain between families.

I turn then to Jewish law. There is a famous story which, for some, also illustrates moral relativism in Jewish law. It concerns the interpretation of Deuteronomy 30:11-14. The dispute arose between members of the Sanhedrin and Rabbi Eliezer ben Hyrkanus, a sage so revered that his colleagues referred to him as Rabbi Eliezer *HaGadol* – the Great.

Rabbi Eliezer is arguing with his colleagues, about whether an oven made of coils, with sand between them, could be defiled. Eliezer said it could. His colleagues said it could not. Eliezer made every argument he could imagine. He made them eloquently. But he could not persuade his colleagues. Eventually he said that if Halakhah is with me then let this tree prove it. The tree uprooted itself and moved 100m. His colleagues were unmoved. No proof can come from a tree, they said. So he said to them: if the Halakhah agrees with me then let this channel of water prove it. The water then began to flow backwards. His colleagues were still unmoved. No proof can come from a channel of water they said. Finally he said that if the Halakhah agrees with me then let the walls of this house prove it. The walls then tilted outwards. His colleagues were unmoved. Then Rabbi Eliezer turned to heaven and said: if the Halakhah agrees with me then let it be proved from Heaven. A divine voice cried out: “Why do you dispute Rabbi Eliezer with whom the Halakhah always agrees?”

Rabbi Joshua stood up and protested *Torah lo baShomayim hi* “The Torah is not in Heaven” (Deut 30:12). In Exekiel 23:2 it is said ‘After the majority must one incline’. (Ex. 23:2)”

⁴ Kant *Groundwork of the Metaphysics of Morals*, footnote 13. Cambridge University Press (28 April 1998).

Rabbi Eliezer was, for some time, excommunicated. It is said that so much was the concern about this penalty for someone so learned that another Rabbi consulted the prophet Elijah and asked about the divine reaction when Rabbi Joshua over-ruled Rabbi Eliezer. He is said to have laughed with joy and said “My children have defeated me”.

For some scholars this story, like the parable of the Good Samaritan, supports the notion of moral relativism. The argument is that the moral acts of the Good Samaritan and the majority rule of the learned both involve a concession that intrinsic moral truth is never discoverable. Our ethical behaviour can only follow either the Code by which we would live our own lives or the rules of a learned majority.

But, it is possible to understand the parable of the Good Samaritan and the story of the oven of Akhnai in a different light which does not require use to subscribe to moral relativism. It might still be that there are intrinsic moral truths and moral certainty, even to every moral problem. The concession is only that, as human beings, we are limited and imperfect. We may never be capable of attaining certainty of knowledge of an intrinsic truth independently of our own culture, society and background. That is why we need some yardstick to guide our lives whether that yardstick be an internal moral code or the learned views of others, or both. As long as that yardstick is not understood as immutable; as long as we continue to question our own views as well as the views of others then the concept of natural right can co-exist with the Golden Rule.

So, as we reflect on the events of Kristallnacht, and as we remember that these were events happened only 75 years ago in the very lifetimes of some of us tonight, we can immediately see why it will always be important for us to question our own moral codes and why it is always essential to assess critically the views of others. And we might believe, as we recall the horror, the inhumanity and the grave injustice of the events 75 years ago, that there exists a notion of natural, or intrinsic moral truth, existing independently of everything that makes us who we are.