

The Common Good and Special Interests in the Legislative Process

Reverend Ladislav M. Orsy, S.J.

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Legislation Commons](#)

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

THE COMMON GOOD AND SPECIAL INTERESTS IN THE LEGISLATIVE PROCESS

REVEREND LADISLAS M. ORSY, S.J.*

INTRODUCTION

Case #1. *There is* the special interest of the trucking industry to increase their efficiency and their profit. They are pressing the members of Congress to vote for a law accepting wider trucks and double trailers. But *there is also* the common good of all who have the right and liberty to drive safely and reasonably comfortably on the nation's highways. How can the two seemingly conflicting interests be reconciled?

Lots of other causes could be substituted for the interest of the trucking industry, all representing a special interest, such as more plants for nuclear energy, or the banning of nuclear energy; also aid for parochial schools, special help for the aged or handicapped, and so forth.

In each one of these cases, the legislature is under pressure to support actively and promote a cause which, in itself, *does* represent a particular value. But the question arises if that particular value can be obtained without upsetting, disturbing, or, at times, destroying the whole complex structure of values that the whole community is pursuing.

Case #2, now in the Church. *There is* the particular interest of the American dioceses to keep the privilege of using a simplified procedure for deciding marriage cases, an important issue for them. But *there is also* the common good of dispensing justice in a uniform way in the universal Church. How should the two demands be balanced?

The questions that our inquiry is called to answer emerge quite naturally from the cases mentioned: Can the legislator respond to the postulates of special interests and to the demands of the common good at the same time? How should he reconcile them? What kind of guidelines

* Professor of Canon Law, Catholic University of America, Washington D.C.

should he use?

Our aim is not to get lost in technicalities—how, in the concrete, the weighing and pondering, the maneuvering and the politicking should go on—but to go to a deeper level and to find some guidelines which can, precisely, inspire the legislator to find the correct balance.

Right from the beginning, one-sided answers in black or white should be excluded. We are in a realm where the shades change continuously. Each case is different. Even if we shall be able to find a reasonably clear answer in the abstract, it should still be qualified by saying that every issue is an individual one and requires individual attention and adjustment. We are speaking about balancing living forces in a social body, and social bodies are not all that different from physical bodies of living beings.

PART I

Let us begin by asking: *how should we understand what the common good is?*

An elusive concept! It is not an object that we can see and touch and feel. It is something behind all the tangible things that a community or society may possess.

The late Pope John XXIII, in his encyclical *Mater et Magistra*, proposed a good definition or description, quite serviceable for us. The common good is not a single object. It consists, rather, in all the conditions and circumstances which create the opportunity and freedom for human persons to grow and to reach their own perfection.

This definition or description may sound unduly philosophical and abstract. As a matter of fact, it is amazingly practical and leads to down-to-earth consequences. Let me just draw your attention to some of them.

It is an integrated understanding of common good. It says that the *totality* of all conditions and circumstances in the community should be in the service of the whole, not just of a part. No individual persons or special interest groups must appropriate the common good for themselves.

Please note the purpose (goal, finality) of the common good. While it is the totality of all conditions and circumstances of living, it is there *for the sake of individual persons!* It does not exist for the sake of the corporate body as such (state, city, etc.).

Classical Christian philosophers liked to express this in a different way by saying that the state exists for the sake of the persons, not the persons for the sake of the state. There is the radical difference between Christian social philosophy and (let us say) Marxist theory. The consequences for understanding human rights are far-reaching; e.g., Christian tradition understands human rights as belonging to the person, being

inalienable, to be respected by the political community; Marxist theory sees human rights as belonging to the group as such, hence any individual suspect of "anti-social" behavior can be, even must be eliminated; after all he creates danger for the social body.

The proposed understanding of the common good looks to the future, in the best sense of the term, but is not futuristic. That is, it demands the right conditions and circumstances for the future so that the persons can grow and develop. (It is *there* that a person develops.) It follows that the artificial preservation of past traditions and usages is not part of the common good.

While the definition may be abstract, it postulates very concrete structures because unless those conditions and circumstances really exist, they help no one.

Finally, this notion of common good is not something static, made and enacted once and for all. Precisely because the persons in the future may have new needs, the common good may change—indeed, it must change. As the notion is dynamic, flexible, it speaks of a developing reality.

PART II

We have some idea of what is the common good. Let us reflect now on *what is a particular interest*.

Needless to say, in this inquiry, I restrict myself to reflecting on legitimate interests as opposed to illegitimate ones, such as the interests of organized crime.

Let us begin by a contrast. I said that the common good is the totality of conditions favoring the movement of human persons toward perfecting themselves, toward achieving their destiny in the best sense. In contrast, special interest groups intend to create conditions and circumstances which will facilitate, for them, the obtaining of values which are dear to them *only* (such as bigger trucks, nuclear plants, special subsidies for schools, special care for the sick, and so forth).

It would be quite easy to react by voicing an extreme opinion. Either by saying that "since the special value pursued by a given interest group is attractive, they should be granted what they ask for," or by saying that "since the value is a particular one they are destroying the harmony of the whole, hence their request should be rejected." Neither of these extremes will do. There is much more to the whole truth.

When special interest groups are pressing for new conditions and new circumstances of life which should enable them to reach for and obtain the values they cherish, they can truly represent valid requests; their movement is like "surges of energy" in the social body, like forces of life trying to break to the surface. Therefore, they should be treated with re-

spect. They have a right to be heard. They have a right to enter into a dialogue, a controversy, or even a battle. But they have a duty, also. They have a strict duty to listen to the postulates of the common good, balance it against their own desires, and if necessary to submit themselves to the demands of the greater good, which is precisely the common good.

It follows that in a healthy social body, the emergence of special interest groups is not a sickness, is not an aberration, is not even a nuisance, but it is manifestation of life. Without the ongoing pressure of special interest groups, the common good could become atrophied, stale and static, and be reduced to a kind of deadly formality. But the pursuit of a special interest has value and meaning *only* in the context of the common good. Not otherwise.

It follows also, in a very concrete way, that the citizens have the right and duty to initiate processes to create favorable conditions and circumstances for obtaining goods and values cherished by particular groups. So do special interest groups have a right and duty to go only as far as the common good permits.

PART III

The task of the legislators now emerges with some clarity. They must support the common structures which best enable all citizens to grow and work for their own betterment, physically, socially, and spiritually. But they must also keep themselves open to those "surges of energy" which come from particular interest groups. And, they must balance the two, perhaps in a new way, in every single particular case.

On the abstract level of philosophical reflection, we can state quite forcefully that the legislator should determine the right hierarchy of values and let the more important prevail. That is, he should weigh and ponder the values the community can obtain through the conditions of freedom which the common good has created. Then, he should weigh and ponder, equally, the values represented by a special interest group and see what happens if he, the legislator, creates new channels in the community, meaning new conditions, new circumstances, new freedoms, for obtaining these particular values. What kind of conflicts are likely to arise? What kind of new harmonies are likely to come into existence? He must reach his judgment accordingly.

Now all this sounds very clear and simple in the abstract, but no nation, no authority, no legislator exists in the abstract.

On the practical level of political action, the natural conflict between the demands of the common good and the postulates of special interest groups will be resolved through the operation of the traditional structures of our own democracy as we know it. There, often enough, the ideal which can be determined abstractly cannot be obtained concretely. Therefore, a

compromise must be made. And here a new principle comes into operation. A need for compromise can be, and indeed is often, part of the common good. It is not a denial of the ideal but its adaptation to the real.

It is here, in this concrete world, that the *importance of persons* comes into the fore. Persons are the ones entrusted with the task of weighing, pondering, and balancing the values to be obtained. And, it is at this point that we must say there is simply no substitute for legislators of common sense, sound judgment, and moral integrity. Ultimately, the struggle between the common good and special interests in a democratic country is in the hands of those persons who are empowered by the citizenry to make laws for them.

If you have persons so qualified, of common sense, of sound judgment, of moral integrity, democracy will work. Balances will be found, not always absolutely the best, but nearly always, the best obtainable and suitable in the circumstances, which is a remarkable achievement.

CONCLUSION

The philosopher's task is to show the rules of play in the world of values, honest rules, good rules, but not always immediately applicable to the real world. As you may remember, Plato rejoiced in such exercise.

The statesman's task is to see how much of the ideal can be planted in this real world so that it really takes root and bears fruit hundredfold. His solution may fall short of the very best, but it may still be the best possible among the citizens, who come in all shapes and sizes with their strengths and weaknesses. This is the realism of Aristotle.

So the real solution to the conflict between the common good and special interests will be as good as the persons who construe these solutions. It follows that the common good itself postulates an intelligent, ongoing, and unrelenting effort to educate the citizens to be creative and to pursue particular interests but always in harmony with the demands of the common good.