Fraternity and Equality

10:45-12:30, Saturday May 21, New Chancellor Day Hall, Maxwell Cohen Moot Court
Chair: The Honourable Claire L'Heureux-Dubé, Quebec City

Introduction

Former Justice l'Heureux-Dubé opened the session by situating the concepts of fraternity and equality within their broader historical context in the history of political and legal thought. Defining equality is a challenge, to say the least. The Equal Rights Trust, a UK-based international organization based in the UK whose purpose is to combat discrimination, defines equality in its Declaration of Principles on Equality as "the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life, [and] all human beings are equal before the law and have the right to equal protection and benefit of the law." Alexis de Tocqueville maintained that equality is the foundation of all other rights. Article 1 of the Universal Declaration of Human Rights of 1948 declares not only that "all human beings are born free and equal in dignity and rights," but also that they "should act towards one another in a spirit of brotherhood," or *fraternité* in the French version. While this is perhaps not the exact relationship that Justice Gonthier saw between liberty, equality and fraternity, it is an apt note upon which to consider the nature of the relationship between fraternity and equality.

La conception du droit à l'égalité de Charles D. Gonthier

Justice Nicole Duval-Hesler, Quebec Court of Appeal, Montreal

Judge Duval-Hester surveyed Justice Gonthier's contributions to the *Charter* jurisprudence on equality in the key period during which Justice Gonthier sat, from 1989 – 2003. For Justice Gonthier, the right to equality must necessarily go beyond individual and group claims; solidarity with one's neighbor, as well as all segments of society, is an equally essential value, albeit an often forgotten one. While some such as Michael Lusztig criticize the Charter's explicit protections for certain named groups is a "stalking horse for communitarian value disguised as liberal ones," this reductive view of the Charter's role was not shared by Justice Gonthier. He deferred to the right of the legislature to treat certain individuals or groups differently when evidence indicated a deliberate distinction was made not on the basis of prejudice, but upon seriously weighed social or political considerations. In *Nova Scotia Worker's Compensation Board v. Martin*, Justice Gonthier ruled in a unanimous decision that the legislature essentially treated sufferers of chronic pain syndrome as lesser members of Canadian society by refusing even the possibility of benefit eligibility and individual review of simply because a conclusive diagnosis was not possible. He declared that the regime in place, rather than undermining the negative hypotheses that contribute to systemic discrimination, reinforced these by finding that the conditions from which they suffered were not "real" and not deserving of individual consideration, which sends the message that the sufferers of these conditions do not have the same value as members of Canadian society.

However in *Re Therrien*, another unanimous ruling, he presumed (without deciding) that denying a judicial appointment on the basis of prior convictions constituted an analogous ground for discrimination, but concluded that it was not discriminatory as such in light of applicable contextual factors including the need to uphold the highest level of integrity, impartiality, and independence for the members of the judiciary whom the government entrusts with that responsibility. In *Thibaudeau v. Canada*, Justice Gonthier held that the *Income Tax Act* was not discriminatory because "it is of the very essence of the ITA to make distinctions, so as to generate revenue for the government while equitably reconciling a range of necessarily divergent interests," and "one should not confuse the concept of fiscal equity, which is concerned with the best distribution of the tax burden in light of the need for revenue, the taxpayers' ability to pay and the economic and social policies of the government, with the concept of the right to equality." However in *Vancouver Society of Immigrant and Visible Minority Women*, he dissented strongly from the majority of his colleagues regarding Revenue Canada's refusal to extend charity status to an immigrant women's support group.

Is it possible to define Justice Gonthier's concept of the right to equality? In *Thibaudeau*, Justice Gonthier carefully considered the court's prior jurisprudence proper legal analysis for scrutiny under s. 15(1) of the Charter in light of the Court's prior jurisprudence in his concurring opinion, ruling that the "purpose of the analysis under s. 15(1) of the Charter is solely to determine whether a provision is discriminatory on account of a prejudicial distinction, based on an irrelevant personal characteristic, which it makes in respect of a group [of which the complainant is a member, and] in this regard, there must be a contextual analysis which allows for some consideration of the legislation referred to by this provision and the rules of law, if any, to which it refers." Bearing in mind its immediate legislative context and the competing spheres of provincial and federal competence that can affect the same legal subjects in a variety of ways, if the distinction is discriminatory, "it will then be necessary to examine the justification for the objectives pursued by the legislation in a free and democratic society, as required by s. 1 of the Charter." The analysis thus clearly separates the determination of a provision's discriminatory nature from the legitimacy of the objective it pursued. Justice Gonthier believed it was not for the courts to interfere with legislative distinctions so long as the evidence indicated that the distinctions responded to particular objectives, met precise needs, and concluded in a deliberate fashion on the basis of seriously weighed social and political considerations, rather than on the basis of prejudice or any arbitrary basis. Justice Gonthier's dissent in *Vancouver Society of Immigrant and Visible Minority Women* diverged from his normal deference to the discretion accorded by the legislature. Whereas his colleagues had a more strict reading of the rules of common law, Gonthier proposed a more flexible approach that would favor the inclusion of organizations promoting a wide variety of interests, recognizing the social importance and benefit these had for Canadian society. It demonstrated how the goals of solidarity and fraternity were dear to Justice Gonthier, who seems to have regarded them as essential corollaries of equality.

Gonthier did not choose which "equalities" were more acceptable on a case-by-case basis. Rather, always mindful of the essential importance of respect for legislative choice as well as solidarity in

social relations, he sought to make our society a more just place only to the extent to which he felt his intervention as a judge was justifiable. However, the Charter's inclusion of equality also reflects legislative choice, a choice that, according to Justice Gonthier, favored individual claims. In his eyes, individual equality is less inclusive a concept than solidarity, and the pursuit of collective goals, more important. That this discussion still takes place proves the continuity of his concerns. However, Justice Gonthier invites us to dream of a free and egalitarian society that is also in solidarity with itself, without which the Charter, in his view, cannot deliver useful or concrete results. While the ideology of individual rights against the group remains attractive, we can only applaud Justice Gonthier's efforts to identify both the spirit and the letter of the Charter through his rigorous yet flexible analysis.

Justice Gonthier considered solidarity to be a fundamental value. Defining fraternity in relationship with the other principles of the famous trilogy, he remarked that, "liberty and equality depend on fraternity to flourish [while] at the same time, fraternity may be seen to depend on liberty and equality for the fullness of its expression." For individuals to have a right to equality, it is essential to adopt empathetic and fraternal mechanism for their inclusion to create a just society. Everyone has the right to equality, but also the duty to include, to cooperate, and to trust one another. Justice Gonthier noted that the goal of fraternity is to work together to achieve the highest quality of individual existence. As stated in *Oakes*, Charter rights can be limited in order for "the realization of common goals of fundamental importance." As his friend Professor Morin noted of Justice Gonthier, in his eyes rights and duties are indivisible, which leads us to consider fraternity as a means of social cohesion. It is clear that for Justice Gonthier, the larger concept of fraternity, sometimes lost in the individual claims to equality, cannot be satisfied with the constant expansion of these claims in court. As such, the concept of fraternity or solidarity is indistinguishable from the right to equality as he understood it. It takes more to create a just society. The writings and opinions that he devoted to understanding how fraternity informs that ambitious goal are part of the legacy that he leaves to us: the result of his patient pursuit of common values and solidarity in a complex society.

Réflexions critiques sur les implications de la "fraternité"

Ms. Nathalie Desrosiers, General Counsel Canadian Civil Liberties Association, Toronto

Of the famous trilogy, liberty was the primary concern of the 18th century and 19th centuries, equality that of the late 20th century, so it is perhaps now that fraternity (or solidarity, as it might be more commonly referred to today) is now before us in the 21st. Ms. Desrosiers explored the concept of fraternity through different conceptual frameworks to understand to what extent it can be said to have legal effect. Is fraternity a legal principle that imposes enforceable obligations, or is it simply a framework for reflection or explanation for legislative choices as perhaps Justice Gonthier understood it to be? In understanding fraternity, it is helpful to consider fraternity in its historic sense – the fraternity of justification and of exclusion, as well as in a more ambitious future sense – the fraternity of compassion and redistribution, and the fraternity of participation.

The "fraternity of justification" is that which legislatures invoke through the operation of section 1 of the Charter to justify limits on constitutional protections. While its passive operation has not prevented governments from enacting policy, its reversal of the burden of proof does require rational justification, which has promise for more democratic and transparent, even "scientific" public policy and decision-making based on study and evidence—what could be described as a "fraternity of reason." While the quality of social science evidence is often contested and controversial, these criticisms ignore the role of objectivity in analyzing social science proof. Submitting this evidence to judicial scrutiny gives courts a greater public service to play and frees citizens from the obligation of proving the legitimacy of their claims vis-à-vis society's, which can be especially difficult when the impugned legislation marginalizes certain persons or groups.

"Fraternity of exclusion" speaks to the darker side of its character in 1793—the need to purge society of foreign elements and eliminate heterogeneity. We cannot have equality without fraternity unless we impose homogeneity. Pushed to its limits, *la fraternité juridique* could justify the exclusion of non-citizens or groups that do not share the same "values and identity," exemplified by the discrimination to which they are subjected. As Justice Gonthier said, the question of "who is my neighbor" is as relevant for the concept of fraternity as it is for the law of negligence. As jurists, our central question should not be whether there are opposing values, but whether this opposition engenders legal consequences: can fraternity accept the exclusion of certain persons?

Justice Gonthier spoke of fraternity as a forgotten ideal, however some lost ideas of fraternity nonetheless hold extraordinary possibilities that the concept can offer to Canadian democracy. A fraternity "of sharing", or solidarity, aims to identify and eliminate cultural, psychological, and economic marginalization in all its forms, and here we must speak of socio-economic rights that are not explicitly addressed by the *Charter*. As Yannick Bosc noted, "individuals form a single society if and only if the right of existence of the weakest among them is guaranteed: for to be free one must not only survive but exist, and carry out a dignified existence. If this condition is not guaranteed, there is not a state of sociability among men, but a state of war – that is to say, "right" of the strongest, the dominant, the conquering"[translated].

Minimum protections of society's most vulnerable find support in the operation of section 1 but also section 7, however the state's obligation with respect to the right to life is defined in negative terms and socioeconomic rights are not guaranteed in the Charter. However, consumer and health law provide examples of how even though the Charter does not guarantee a right to health, any health services provided must conform to the Charter. A "fraternity of compassion" can be found in criminal law through restorative justice can help balance the rights of victims and offenders through alternative sentencing. Finally, a "fraternity of participation," would be a modest guarantee of participation in democratic governance. Through the framework of Section 1, we could envision mechanisms of consultation that democratize decision-making through increased citizen participation not unlike those which already exist with respect to some aboriginal rights. A fraternity of participation would promote engagement through democratic processes, evaluating those already

in place and include appropriate guarantees for access to information and democratic spaces in the workplace through adequate protection of the freedom of association, for example.

Within the Canadian legal system, Justice Gonthier specified that it is the nature of the interest that helps define the extent of fraternal relations. For Justice Gonthier, institutional limitations on the role of the judiciary require a reserved approach towards elaborating any theory of positive socio-economic rights on the basis of fraternity. It is important to differentiate the source of the obligation—fraternity—from the obligation itself as prescribed by law. Taking the example of children, duties imposed on parents to act in the best interests of their children may arise from values universally shared but not universally applied. However while parents, and not strangers, are responsible for their children, children are also given special protection against all people; thus the concept or value underlying a particular duty may be widely shared, but as applied in law may only be imposed on a limited class of people. We must remember the judiciary's crucial role in a democratic society in affirming the fundamental values of liberty, equality, and fraternity, whose implied foundation in Canadian constitutional law must be reinforced to ensure the creation of discursive spaces that ensure the actualization of the freedom and equality that the Charter seeks to protect. Critical reflection on fraternity may achieve not only the promises of Liberty and Equality, but also Peace, Order, and perhaps even Good Government..

Justice Gonthier and Disability Rights : The Case of Nova Scotia (Workers' Compensation Board) v. Martin

Professor Ravi Malhotra and Ms. Morgan Rowe, Faculty of Law (Common Law section), University of Ottawa, Ottawa

Prof. Malhotra used the *Martin* case as a starting point for examining fraternity in the context of critical disability theory and the long-term implications of Justice Gonthier's decision for the rights of persons with disabilities. Justice Gonthier's unanimous decision in *Martin* established important principles for fairly compensating individuals on the basis of the impact of workplace injury on one's ability to do his or her job, rather than through formalistic mechanisms that subject disabled claimants to arbitrary outcomes. First, *Martin* established that the wholesale disregard for the actual needs and circumstances of individuals with a specific condition (in this case, chronic pain) is discriminatory, not only through denial of long-term benefits but also with respect to vocational rehabilitation and social inclusion. Second, *Martin* was notable for re-emphasizing the principle of constitutional supremacy (*Constitution Act* s. 52(1)) and citizens' ability to assert their constitutional rights "in the most accessible forum available," namely administrative tribunals. Tempered by sufficient protections against duplicative jurisdiction and practical limitations of tribunals, this has expanded the constitutional jurisdiction of commissions, administrative tribunals, appeal boards and workplace arbitration in a wide variety of contexts. Third, Justice Gonthier's section 1 analysis established that budget constraints alone are an insufficiently compelling objective to justify limitations on Charter rights, although budgetary objectives were recently upheld as justified in response to an "exceptional financial crisis" (*Newfoundland Treasury Board v. N.A.P.E.*).

By focusing his analysis on the needs and capacities of those with disabilities and the elimination of the structural barriers to their reintegration, Justice Gonthier's decision was entirely consistent with critical disability theory and the "social model" that animates its discourse. In contrast to the "medical model" that diagnoses and classifies them as "disabled" people with physiological impairments, the social model identifies and seeks to remove the physical, conceptual, and attitudinal barriers whose marginalizing effect transforms the physiological impairment into a "disability"—an inability to function independently of those barriers. A robust critical disability theory must adopt a broad definition of disablement that focuses first on the political choices that marginalize people with disabilities. It is also imperative that legal analysis fully acknowledge, as Gonthier did, the human rights perspective of workplace claimants and challenge standard workplace norms that often disregard the legitimacy of these claims.

In workplace gender discrimination if not disability discrimination, the Supreme Court has advanced in this direction in the elimination of the arbitrary distinction between direct discrimination and adverse effect discrimination; previously, remedies for the latter were limited to accommodation to undue hardship, rather than negation of the statute by virtue of constitutional invalidity. The Court upheld a standard more consistent with human rights legislation by eliminating the "direct" / "adverse effect" distinction, crafting a three-part test for identifying *bona fide* occupational requirements from those that unnecessarily denied employment eligibility to women, and establishing six questions to guide decision-makers evaluating the legitimacy of workplace norms vis-à-vis legislative protections for the human rights of workers. Equal membership in society will only occur when we move away from formalistic rulings that universally apply a percentage of compensation based on the "degree of impairment" of the injury without regard to the injury's impact on the worker's life, as these will often consign affected workers to a life of poverty, indignity, and lesser status.

Face-covering, Fraternity, and the Veil Debate

Mr. Azim Hussain, Ogilvy Renault, Montreal

Mr. Hussain examined how fraternity as understood in Quebec versus its understanding in Europe helps explain the difference in legislative approaches with respect to the Muslim face-veil for women, or *niqab*. Moreso than a rights-based discourse predicated exclusively on gender equality, the concept of fraternity articulated by Justice Gonthier is useful for understanding the debate on the extent to which Canadian society should accommodate the veil. The fierce debate and legislative reaction that the use of the veil has engendered in Belgium, France, and Quebec is perhaps best explained by its most distinguishing feature, being the only form of clothing that interferes face-to-face interaction and its accompanying non-verbal cues. This is a basic aspect of human communication whose absence can be unnerving. In France, it was seen as contrary to the principles of a "free and democratic society," justifying an outright ban (*Loi n° 2010-1192 11 October 2010*). Among the principles identified in the legislative reasoning were the fraternal concept of "*vivre-ensemble*", as well as the principles of individual human dignity, gender equality, and public order. Similarly, the Belgian law (*DOC 53 0219/001, 1e session/53e légis.*) identified *vivre-ensemble*, and also discussed "interculturalism" as the preferred model of accommodation, wherein cultural diversity is

permitted only insofar as it conforms to the "common patrimony" of universal and fundamental values of the state including freedom of conscience, democracy, gender equality, and secularism. It contrasted "interculturalism" favourably as against "multiculturalism," the alternative social model which it characterized as too accepting of cultural relativism, social division and community segregation, and moral ambivalence towards gender equality. One could argue that these forms of "forced fraternity" are really not fraternal at all, as they are predicated on misguided assumptions that impose values in a way that echoes the Marxist notion of "false consciousness" – declared willingness of the state to "liberate" an individual (in this case, Muslim women) from the oppressive forces they fail to properly appreciate or resist. Mr. Hussain used the example of two young cousins in Pakistan who have adopted the *niqab* to disprove two common assumptions of disempowerment—neither were forced to adopt the veil by husbands or parents, nor were they uneducated and thus prey to proselytizing by religious leaders.

Compared to legislative reactions in France and Belgium, Quebec's Bill 94 strikes an appropriate balance between the constitutional requirements to accommodate the religious practice of wearing the face-veil and the need to give effect to the societal interest of seeing others' faces. The same values of fraternity and a "free and democratic society" in Quebec are moderated by the *Charter*, particularly, as Justice Gonthier observed, in section 1's mechanism of limitation on constitutional guarantees of liberty and equality in favour of (as Dickson CJ described in *R v Oakes*) "the realization of collective goals of fundamental importance." These goals include not only "respect for the inherent dignity of the human person," but also "commitment to social justice and equality, accommodation of a wide variety of beliefs, respect for cultural and group identity, and faith in social and political institutions which enhance individual and group participation." Bill 94 achieves this balance by affirming the rights of women to choose the veil, subject to limitations in s. 5 (for undue hardship on cost of operations and the rights of others) and identifiable criteria in s. 6 necessary, for example, in obtaining government documents or the need to identify parents of children at school.

Instead of using the law as a blunt instrument to enforce majoritarian values, Bill 94's case-by-case approach distinguishes what is socially desirable from what is legally obligatory. This more nuanced approach is consistent with Justice Gonthier's view that fraternity guides the expression of democratic values, and must allow for some community variation from prevailing social norms out of respect for cultural identity and group participation. Rather than subjecting Muslim women to a choice between their religious values and the right to participate in the public sphere, Bill 94 safeguards the religious right of Muslim women to wear the face-veil, circumscribed only when necessary for the collective goals of security and public safety.

Fraternity and Global Community

Ms. Sandrina Antohi, CISDL & Faculty of law, McGill University, Montreal

Ms. Antohi spoke to the importance of fraternity for the transnational challenges we face in the 21st century in an interdependent but still-unequal world. Based on Justice Gonthier's theory of fraternity, she set out why the formation of a global community requires this value to act as a vector

of liberty and equality. Fraternity completed the French Revolution's historic trilogy by invoking the sphere of duties in a community. When it finally emerged in a legal instrument, however, it was simply as a restatement of the ethic of reciprocity, or the "Golden Rule," in Article 2 of the *Constitution of the Year III* (22 August 1795) of the First Republic. John Stuart Mill believed the Golden Rule encapsulated the philosophy of utilitarianism, but John Rawls saw that a just society required something further. While the first principle of his theory of justice embraces liberty and equality (an equal right for all to the most extensive basic liberty compatible with similar liberty for others), the second principle adds that any social inequality is justified only to the extent that it is attached to offices and positions open to all under conditions of fair equality of opportunity, and that it be to the greatest benefit of the least advantaged. This latter aspect, the "difference principle," Rawls noted, is a principle of justice "[that] does seem to correspond to a natural meaning of fraternity; namely, to the idea of not wanting to have greater advantages unless this is for the benefit of others who are less well off." This difference principle would be a useful guide to global extensions of fraternity, in that they must signal an unwillingness to further prosper domestically at the cost of breaches of liberty and equality beyond borders.

In interweaving liberty, equality, and fraternity in a vision of a just society, Justice Gonthier's approach echoes that of Rawls. Further, Justice Gonthier linked fraternity to respect for human dignity, agreeing with Ralph Barton Perry that "[t]he full spirit of fraternity acknowledges the just pride of others, and gives in advance that which the other's self-respect demands." Justice Gonthier best understood fraternity in a community-building role, advancing core values of empathy, cooperation, fairness, trust and equality, and believed fraternity was as indispensable as liberty and equality in forming a true community. The transnational nature of the global challenges that all States face in the 21st century—climate change and terrorism among them—requires a community project to import these core values into the relationships between human beings across the world. Only a global community based on trust and cooperation can address these issues meaningfully, in the interest of all States.

For Justice Gonthier, a community must have a common identity and shared values. Both exist at the global level. Increased mobility and the development of information and communication technologies, including social media, are allowing persons across the world to become conscious of their basic human identity. Shared values, on their part, find expression in international human rights instruments. However, in thinking about the role of fraternity in the emerging global community, one must make certain adjustments to Gonthier's theory, largely inspired by the established function of this value within our mature Canadian society. These are discussed at some length in the paper.

In a democratic society where liberty and equality are protected and enforced through law, the role of fraternity is, as Justice Gonthier noted, to maintain and enhance those values. In his view, "liberty and equality cannot be maintained in a society where fraternity does not find its place." At the global level, where a lack of freedom and inequality are pervasive, a community project requires fraternity to act as a vector for liberty and equality by taking steps to strengthen and protect them beyond borders through firm domestic laws. These efforts to promote liberty and equality are the *sine qua*

non condition of fraternity allowing States to build a global community. All elements of the triad must be present for the community project to thrive. Acts of international solidarity such as development aid cannot bring people together if their beneficiaries know that, in parallel, their "benefactors" disregard their human rights and dignity. While the fraternity-based obligation incumbent on States to cease participating in human rights abuses may only be one of means, not of ends, these means must be substantial and sincere. Only then will they generate the goodwill necessary to build trust and cooperation.

While this may seem difficult, the recognition of common problems and a growing awareness of the need to respect human rights and adopt collaborative approaches in resolving them have created opportunities for global initiatives that embody the duty of fraternity. One example of the type of law that expressed Gonthier's vision of fraternity manifested globally was the defeated Bill C-300, *An Act respecting Corporate Accountability for the Activities of Mining, Oil or Gas in Developing Countries*, whose purpose was to ensure that Canada's natural resource extraction industries receiving government support acted in a manner consistent with corporate social responsibility best practices and Canada's commitments to international human rights standards. Having failed by only six votes, it nonetheless remains an example of how the legislative implementation of global fraternity is not an unrealistic notion, but an eminently feasible goal.

Conclusions

There is consensus that the unanimous decision Justice Gonthier authored in *Nova Scotia v. Martin* is a foundational equality case both for its emphasis on inclusion and proper consideration for the needs and capacities of marginalized individuals, but also for advancing access to justice by empowering subsidiary tribunals to adjudicate constitutional rights questions. Justice Gonthier's enthusiasm for fraternity as a legal paradigm was tempered by his recognition of the proper role of the judiciary being limited in nature, and thus used as a guide for interpretation only when necessary, rather than an excuse for judicial intervention. Nonetheless, in the context of section 1 of the Charter, it is difficult to avoid considerations similar to those of fraternity. Specifically, which communal objectives sufficiently justify limitations on individual liberties, and are these limitations rationally connected and proportional to these larger objectives? Discrimination is, in a sense, the very antithesis of fraternity, thus as a concept, fraternity also provides guidance to interpreting Charter mechanisms meant to prevent discrimination and guarantee equality, whether through section 15, or section 7. There remains unrealized potential in *Charter* interpretations for the recognition of minimum socio-economic rights necessary for the preservation of human dignity, minimum guarantees of citizen participation and freedom of association necessary for the preservation of democracy, and a form of analysis that "subjectifies" rather than objectifies the most vulnerable members of society that the *Charter* seeks to protect.

In the context of equality for women and those with disabilities, fraternity serves as a moderating force in the workplace, as well as in society more broadly. In the contentious debate over the face-veil, it serves as a helpful paradigm through which to locate the appropriate balance of individualist

Western conceptions of women's rights with women's religious freedom, non-Western social norms, and the need in a multicultural society for sufficient inclusion. Fraternity also has clear implications for equality concerns in the interpretation and application of tax law, consumer law, health law, family law, criminal law, and international law—particularly in the context of sustainable development and climate change. Without the values of inclusion, equity, empathy, and mutual respect that fraternity invokes, our public debates around these issues run serious risk of resulting in inequitable or inhumane solutions that do not take the most vulnerable into account.

Inclusive fraternity puts those lacking in equality at the forefront of the debate, which may be more consistent with idealized notions of justice such as those expressed by Rawls. However, history has also shown us a "fraternity of exclusion," wherein cultural homogeneity is justified by the fraternal value of social cohesion and a unitary public order. Both of these notions of fraternity are recognizably present today. In both cases, whether judged against the concept of "fraternity" or as "justified in a free and democratic society", we ask: "Are the values of our society such that it is acceptable to disregard the concerns of [these] equality rights-seekers? To what extent can we fail to accommodate the concerns they raise and still be considered a society that is "free and equal," or democratic?" These are the questions that Justice Gonthier calls upon us to ask and to answer as jurists and as citizens. With the example of his own extensive and careful research on the subject that was the culmination of his understanding after serving for decades as a judge, let us hope that they are questions we will have less difficulty answering.

Responsibility, Fraternity, and Sustainability in Law

A Symposium in honour of Charles D. Gonthier

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