

Justice & Natural Law

Kenneth Jupp

JUSTICE is an all embracing and overriding concept of the natural order established by appropriate Laws. Its only limit is the realm within which a sovereign has power to make law. Within that realm it cannot properly be sub-divided, or cut up into bits – such as procedural justice, distributive justice, remedial justice and so on, argues Kenneth Jupp. When justice prevails the land is at peace. Only then can individuals achieve personal fulfilment, and classes live together in harmony.

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Today's societies continue to be riven by poverty and internal conflict. Might the explanation be found, in part, by the modern adoption of an impoverished concept of justice? Scholars and policy-makers approach their diagnoses in terms of the concept of *social* justice. This, argues the author, imposes artificial restrictions on the realm of discourse. It

compromises the investigations by social scientists and the formulation of remedies by governments.

Natural law, which was inextricably bound up in the original sense of justice that shaped humanity, has fallen out of fashion in politics and jurisprudence. Would we be better equipped to address the great injustices of the age by rehabilitating our sense of natural rights?

BLACKSTONE defined Law as “a rule of action prescribed by some superior, which the inferior is bound to obey”.¹ There are different levels of law, international, national, local, and institutional. The ultimate superior at the highest level is the Creator – the undefinable, unimaginable Absolute, who in the sense that he is outside time and space and cannot be grasped by the human mind, does not exist. Yet the beautiful design displayed in the mechanism of the world, the regular order manifested in the preservation, renewal and destruction of things, forbids us to regard it as the offspring of chance, and constrains us to recognise therein an intelligible design, and to regard the Absolute as the creator of the world. The authority for Law can thus be viewed from either a theological, or a scientific point of view – from above through revelation, or from below through history, anthropology, archaeology and the like.

The laws of the universe – the laws of motion, of gravitation, of optics, of mechanics, of electricity and much else – when discovered by Man, enabled him to make increasing use of the natural world surrounding him. He could predict the times, and tides and seasons, and give the precise date and time of the next eclipses of the Sun or Moon. He made heavier-than-air machines travel through the atmosphere faster than the speed of sound, and constructed all the other marvels of science and technology; but only through obedience to the laws of the universe, guided by his innate sense of justice.

MAN HAD also to accommodate to the rapidly expanding **Natural Law** population of his fellow human beings as, by nature gregarious, they gathered into ever larger and denser communities. Here again an intuitive sense of justice was his guide. There is order in the natural universe. Surely it must be natural for mankind, by resort to reason and/or inspiration, to exhibit the same order? There is beauty in that order. Surely reason must make it possible for Man to display the same natural beauty in the societies that he forms? But the reality is very different. It can hardly be doubted that the world is in an appalling disorder of war, rebellion, and corrupt government, with abject poverty, sometimes even starvation, standing side by side with immense riches. Surely there is a basic flaw in the laws which produce such a state of affairs? There is little justice and much downright injustice. Is this what the Creator has ordained? Or is it perhaps that Man through lack of understanding has failed to obey the Natural Law of his Creator? Is injustice the result of disobedience?

When injustice arises, human beings are quick to recognise it, and to demand that it be put right. But this is not always helpful. Unless the cause of the injustice is found and rooted out, any other remedy often entails the creation of a further injustice. It would take a very high order of human

being to see the whole picture in such a way as to establish a measure of justice which does not produce adverse side effects. History abounds with efforts which, intended to eliminate injustice suffered by some, have resulted in gross injustice to others. The welfare state is an example in our time. While it undoubtedly relieves the poverty of large numbers of people, it does so only by imposing an intolerable burden of taxation upon others. Furthermore, when taxation is concealed and passed on in the price of the things poor people buy, a heavy burden is imposed on the very people whose poverty it is designed to relieve.

Social Justice IN THE last decades of the 20th century, the phrase "Social Justice" was coined to represent a political goal for action by government.

It sounds good. But it was an unfortunate conjunction of words. The word "social" limits justice to the relationship between individuals and classes in society: rich and poor, educated and uneducated, jobless and employed, able and disabled, healthy and sick, and so on. It emphasises conflict rather than harmony, and implies that these distinctions are natural, and require arbitrary intervention to minimise their negative consequences. It attempts to establish a compulsory equality, which, given the natural diversity of the human race, in which no two individuals are alike, is impossible. Dualistic thinking inevitably leads to error. It disregards the omnipresent, although often invisible, third factor. Much of the injustice which "social" justice hopes to cure is outside its scope because it stems from the way the planet earth is used or abused. We all depend on what the land produces. How is each to have his or her proper share? Only by establishing the natural use of the earth's resources can justice between individuals or between classes be achieved.

The Commission on Social Justice *SOCIAL JUSTICE* was the title of a report in July 1994 by The Commission on Social Justice set up at the instigation of the then leader of the Labour Party to mark the fiftieth anniversary of the Beveridge Report. The Commission covered a wide range of expertise, and was composed of a most distinguished team of individuals. Unfortunately their terms of reference set a limit on the timespan they were to survey. They were "to probe the changes in social and economic life *over the last fifty years*", and "to survey the changes that are likely in the foreseeable future".²

This is no doubt why the team did not include a historian. Its narrow remit precluded historical investigation into the evolution of the numerous injustices which are ably and accurately documented. Accordingly what had caused these injustices was never discovered. As just one example, the report took for granted that the welfare state was a splendid modern invention, necessary even though flawed. Its origin in late 15th century

England, when rogues and vagabonds first began to appear in large numbers, and crime became a serious threat to the state, was not investigated. This was the time when imprisonment for serious offences against the King's peace became part of English law for the first time. The report did not enquire why a population of sixty million is considered by some to be excessive today, when three centuries ago in Elizabethan England a population of two and a half million seemed equally excessive; nor why in the seventeenth and eighteenth centuries imprisonment had to be replaced by transportation.³ Yet these were the birth pangs of Tudor Poor Relief from which the welfare state gradually evolved. A study of them would indicate the underlying causes of poverty, and the reforms necessary to abolish it.

Something was wrong with our man-made laws then, and something is still wrong today. Poverty amongst the able-bodied is unnatural. A just system would not need "welfare" except for the incapacitated. The welfare state is an incubus brought about by injustice, and is itself an injustice, both to those who pay for it, and to those whom it degrades into dependence on its benefits. Fraud by some claimants has added to the injustice. So has Legal Aid which puts into the hands of plaintiffs a means of blackmailing defendants who, having no legal aid, make large unmerited payments in settlement so as to avoid legal costs which are irrecoverable even if they defeat the claim. Taxation wrung from the law-abiding to fund all this is the greatest injustice of all. It is stealing. Yet "Social" Justice by contrast is proud of the welfare state and its adjuncts, and is set to preserve them.

In reading the report one wonders whether Social Justice was intended to mean Marxist Justice: for nearly all the suggested remedies include setting up expensive regulatory bodies to oversee more and more of the detail of human life. People are to be made equal, no matter how unequal they may be in reality. Wealth is to be taken from some to support institutions run for the benefit of others. Those without jobs are to be trained so that they can compete with those who have jobs – a recipe for keeping wages down. It is a bonanza of bureaucracy. The Commissioners would have been more successful if they could have drawn upon history, philosophy, and scripture for their conclusions. "Social Justice" is an attempt by secular society to look at itself. It could never be objective. If society is to be the object of study, the subject making the observation must be standing outside it. In this the inspiration recorded in scripture (not just the Judaeo-Christian scriptures) can be of considerable assistance. Marxism was the result of Reason untempered by Humility, and unassisted by any kind of belief in divine justice. Indeed it was avowedly atheistic, and its plans were therefore destined to disappoint.

Other systems THERE HAVE been other attempts to treat injustice from which society is clearly suffering by improving the look of the spots that so disfigure it, without discovering the disease that causes them.

The *Stakeholder Society* is in essence a scheme to endow each child on reaching maturity with a sum of money raised from the richer members of society.⁴ It sounds well. The title stirs a feeling of charitable righteousness. There are echoes of it in papers by the Institute for Public Policy Research and the Fabian Society.⁵ The detail – amounts and times and safeguards – seem well thought out. It would certainly improve the lot of many young people about to face the world, through no fault of their own, with inadequate means. But where is the justice of it? What right have the youngsters in question to have other people compelled to surrender part of their earnings for this purpose? True, the youngsters are deprived. True, they live under a cloud of injustice, and this ought to be put right. But to force others to give up their earnings is theft. One wrong does not excuse the commission of another wrong. Or as the old saying has it, two wrongs do not make a right. The youngster, having done whatever he decides to do with his patrimony, as this sum is called, is to repay it at death. What a range of injustices this conjures up! What is to be done to prevent him from squandering the whole of it? If he dies young, are his baby children to be robbed of whatever he has managed to save for them? All sorts of compulsions are needed to deal with the large variety of possible circumstances: more government intervention and direction, more interference with the individual to try and achieve some sort of fairness. But fairness is not the same as justice.

The trouble with these and many other systems of reform being put forward in these days is that they are *not radical*. They scratch the surface, when they should dig down to the root of injustice, which lies deep in history. In attempting to right wrongs, of which there are a multitude, they tend at the same time to create wrongs which go some way towards restoring a balance; but it is a balance of injustices. It is not Justice. In a secular society this may be the best that can be achieved. But there is much to be learned from scripture:

And further, by these, my son, be admonished: of the making of many books there is no end; and much study is a weariness of the flesh. Let us hear the conclusion of the whole matter: Fear God, and keep his commandments: for this is the whole duty of man. For God will bring every work into judgement with every secret thing, whether it be good, or whether it be evil.⁶

The case for natural law THE MEDIAEVAL notion of Natural Law was propounded for Roman Catholic Europe in the *Summa Theologica* of St Thomas Aquinas (1225-1274). It was restated by Blackstone (1723-1780) for the Age of Enlightenment.⁷ His review is masterly, but has

fallen so far into oblivion in the modern age that it deserves to be set out as far as possible in his own words.

Blackstone compared the universe to a watch, which has to work according to the laws laid down for it by the watchmaker. But he observed that Man is not only bound by these laws, but, because he has been given freewill, is, unlike other creatures, bound by a part of the Laws of Nature which we call Natural Law or Ethics. Such among others are these principles: that we should *live honestly*; should *hurt nobody*; and should *render to everyone his due*; to which three general precepts Justinian has reduced the whole doctrine of the law.⁸

Man has the faculty of reason to discover the purport of those laws. But because his reason is corrupt, and his understanding full of ignorance and error, the Creator has at sundry times given immediate and direct revelation of them; and this is to be found recorded in scripture. "The revealed law", says Blackstone, "is (humanly speaking) of infinitely more authority than what we generally call the natural law. Because one is the law of nature expressly declared so by God himself; the other is only what, by the assistance of human reason, we imagine to be that law".⁹

Towards the end of Blackstone's life his ideas came under violent attack by Jeremy Bentham. But his book went through fifteen editions before, and at least eight more after, his death in 1780. Only nine years later, the French revolution ending in the Terror, the guillotine, the despotic rule of Napoleon, and his wars which ravaged Europe, turned English minds away from the idea of a sovereign Creator and Natural Law. Agnosticism and atheism took over. There was a lurch to the right in political thinking, and a hardening of the theory of positive law, whereby the State quelled all opposition. Blackstone's influence declined in England, although it continued to increase and flourish for over sixty more years in North America, which was isolated from the Napoleonic tyranny.

IT WAS at this time also that new technology was beginning to put into practical effect the discoveries of the scientific age. When in the eighteenth century scientists and technicians devised rams to make water run uphill; in the nineteenth century made trains, and then motor cars, to run at unbelievable speeds; and in the twentieth century produced aeroplanes which apparently defied gravity by lifting and carrying many tons weight into the skies; Man's belief in divine providence was replaced by the belief that Man can fashion the universe for his own ends. He said "I am the master of my soul; I am the captain of my fate", taking the Holy Name in vain to mean himself. Herein lay his illusion. Scientists and lawyers found little room for religious thinking. Shakespeare by contrast had described:

Science and Technology

Man, proud man,
 Drest in a little brief authority,
 Most ignorant of what he's most assured,
 His glassy essence, like an angry ape,
 Plays such fantastic tricks before high heaven,
 As make the angels weep.¹⁰

Religious decline WRITING IN 1966, Professor G.W. Keeton has described the effect of this on English law:

For nearly a century, Christian usages and Christian doctrine have been steadily legislated out of English law. As the late Richard O'Sullivan pointed out, the Common Law had owed many of its noblest concepts to Christian theology. The soul of man was acknowledged to have an individual relation with God, which transcended the claims of society, and, in consequence, jurisprudence was founded upon moral principles directly derived from Christian theology. From this there emerged the concept of equality of all men as bearers of rights and duties before the law, exactly as they were equal in the sight of God.¹¹

A standard contemporary text-book on Jurisprudence shows how much the approach to Natural Law has changed:

Hence while there is some repetition of natural law learning in the English books, the English judge prefers to use more humble tests. Bracton, Coke, and Blackstone use the doctrine of natural law as a rhetorical figment, but do not incorporate it into their theories of law. The English jurist pins his faith to "common sense", "natural justice", "reason", "convenience", "practical considerations", "public policy", or "humanity".¹²

Natural Law is more reliable, but only in so far as it reflects the Law of God filtered through Man's natural power of Reason. Yet it must be kept in order by the discipline of established law. As a modern judge put it, when asked by counsel to decide the case before him by Natural Justice:

I hope that the law of this country and natural justice will always approximate as closely as possible, but all claims and legal defences have to be grounded in law, and not according to somebody's idea of natural justice, not even that of the judge who may hear the evidence.¹³

Without its spiritual base, any idea of natural law is dangerous. To allow human nature to choose what is right, and what may be resisted by disobedience of the law, leads to chaos. As Blackstone pointed out, human nature is flawed. The hunt saboteur resorts to violence to stop field sports, when his real motive may simply be hatred of what he regards as privilege, supported by ignorance of country ways. The conscientious objector in wartime may be merely giving himself an excuse for his cowardice. There is no end of "causes" which our flawed natures are ready to promote by

disobedience. Law must derive from a sovereign power, to which the subject must bow. Yet very few human beings can be trusted as sovereign. For Natural Law to be obeyed, as it must be, the sovereign has to be the Absolute.

This might suggest resorting to religion to discover Natural Justice. Yet religion in the last two millennia has been notoriously guilty of outrageous injustice. On Ash Wednesday AD 2000 the Pope made a humble confession in public asking forgiveness of the sins committed "by the sons and daughters of the Church" during the last two millennia. It brought to mind the Popes and saints, all ardent churchmen, whose preaching had inspired the infamous massacre of Muslims and Jews in the crusades, the Inquisition, the burning of Cranmer, Ridley, and Latimer at the stake, the persecution, including torture and massacre, of Jews in twelfth and thirteenth century England, and much else. Nor are other religions by any means innocent of similar behaviour. The truth was stated very plainly by Blackstone. "Man's reason is corrupt, and leads him to ignorance and error". Hence the greater authority of natural law revealed in scripture. Unfortunately, scripture is now more often studied as a means of personal salvation than as a source of natural law for the peaceable governance of the world. In the Bible, for example, the Greek word for Justice ($\delta\iota\kappa\alpha\iota\omicron\sigma\upsilon\nu\eta$) is translated as "righteousness", the beggars and the oppressed are translated as "the meek". This negates much useful political and economic teaching to be found in the original text.

THE WHITE Rabbit asked the King where he should begin. "Begin **Justice and Law** at the beginning," said the King gravely, "and go on till you come to the end: then stop". This is in fact very important. Too much has been written since the Age of Enlightenment which, because it is secular, detaches a subject from its source, and then treats of it with a logic so abstruse that ordinary people are bemused and think they had better "leave it to the experts". It is like studying the human being by dissecting a corpse without taking into account the power of thoughts and feelings that once enlivened it. This is often the case with Politics, Philosophy and Economics, all three of which have a bearing on how man came to make laws. Their practitioners like to call them "disciplines" and treat them as separate. They tend to guard them with an esoteric language of their own which outsiders cannot understand. But Law and Justice cannot be dealt with in this way. Common Law must be married to common sense in plain language. The passionate defence of the jury system which is now under threat of curtailment in England demonstrates that Justice and law are of vital concern to all. They cannot be left to experts. Throughout life, from birth to death, and thereafter, every mortal being is under law, and has to face Justice.

In every nation laws are made by a sovereign power ruling a large number of people of mainly common descent, language, history and culture, inhabiting a territory bounded by defined limits. The laws govern both the people and their territory. We have to ask how Natural Law, by matching the diversity of the people to the diversity of the lands they inhabit could establish both justice and economic efficiency? To answer the question we must go back to the beginning.

The genesis of man-made law: history IN THE beginning the earth was formed with its Mineral, Vegetable, and Animal species, its Hydrosphere, Atmosphere, and Outer Space. Man was then formed out of the earth, (*Adamah* means "earth-born") and according to the scriptures, blessed to "be fruitful and multiply and replenish the earth and subdue it, and have dominion over it".¹⁴ Man has certainly multiplied. The world's population is now around six billion. Man has also subdued a great deal of the planet's resources on, under, and above the ground.

He began as a food gatherer who could only know, inhabit, and use those areas of the globe where the climate was so warm, and the natural vegetation so prolific that throughout the seasons he never lacked food or water, and needed little or no clothing.¹⁵ Over millennia since that time man's earth has enlarged enormously. He now makes use not only of all kinds of mineral wealth lying deep below the earth's surface, but also of the sky for his aeroplanes, and of the Ionosphere, together with satellites in Outer Space, to deflect and direct his radio-waves. The process has been slow and erratic. Food gatherers first, then progressively hunters, keepers of sheep, cattle breeders, herdsmen; and then, in a major revolution, tillers of the soil. And that was not the end. Trade and the use of money brought about another revolution; the industrial age another; and commerce yet another. In recent years all these have been topped by financial and other services, not least communication, which now tend to yield the richest rewards of all. The total bids for the right to buy slices of the electromagnetic spectrum over Britain recently exceeded £20 billion.¹⁶ At each of these revolutionary stages in the development of mankind, laws were needed to govern not only the relationship between individuals in the growing population, but also the use they made of the earth and its resources.

Mankind has access to these resources from the land to which his animal nature confines him for his habitat and place of work. When sailing, flying, or orbiting in space, if he loses touch with his mother earth, he dies. Accordingly, Land Law is of vital importance. The legal historian Sir William Holdsworth commented:

The rules which regulate the manner in which land can be owned, and used, and

disposed of, must always be of the very greatest importance to the state. The stability of the state and the well-being of its citizens at all times depend, to no small extent, on its land law. This is as true today as it was in the earlier period of our history.¹⁷

THE DETAIL of land tenure changes, but the underlying rules, which conformed to justice do not. So, for example, adaptation to agriculture fundamentally changed Man's relationship to the earth. It made the earth vastly more productive. But if the tiller of the soil is to reap the harvest of what he sows, he must of necessity fence in his cattle, and enclose his fields so as to exclude all others from the soil he tends. Enclosure in these circumstances is a practice dictated by Nature. But it gives rise to difficulties, as is vividly illustrated by the biblical story of Cain, the tiller of the soil, and his brother Abel, the keeper of sheep. The brothers talked, "and it came to pass, when they were in the field, that Cain rose up and slew his brother".

The Agricultural Revolution

When land hunger produced by enclosure in Europe drove the European sons of Cain to seek land to till in the newly discovered continents of Africa, America, and Australasia, they too had to enclose land for their agriculture. But they were unable to convince the native sons of Abel of their need to have permanent possession of it. Laws fit for foodgatherers, herdsman and hunters were not suitable for farmers. In all three continents the immigrant Europeans resorted to force, making war on the natives. The aftermath of this conflict remains to this day. American Indians, Australian Aborigines, New Zealand Maoris, and African tribes, are even now claiming compensation for their lost lands.

In Zimbabwe this has recently given rise to serious violence, which, although probably deliberately engendered by the government for their own political purposes, has behind it a genuine sense of injustice, which lies beneath the surface in other parts of Africa, to which the violence may spread. The absurdity of the situation should have been apparent from the beginning. The native tribes undoubtedly benefited from the abundant increase of production by the enclosers, with the provision of schools, hospitals *et cetera*, but Justice required that they and their progeny after them should continue to be compensated for the loss of their tribal lands. If the invaders had only paid rent for the land they occupied, all would have been well. But if they paid at-all, they made a once-for-all payment which inflation rendered derisory within a very few years.

FURTHER ADVANCES amongst agricultural communities also needed new legal provisions. Successful production depends very much on fertility of the soil, climate, availability of water, natural drainage, shelter, aspect, and access to society in village, or town. Some lands are distinctly better situated than others. It would appear that the old

Competing lands

open field system of early mediaeval times took into account these differences. In each of the open fields the *gebur* had a number of strips in different parts of the field, with the result that the good and the bad were shared.¹⁸ However, enclosure put a stop to this. In the nature of things when fields are enclosed, some fields are better than others. The different enclosures fall to be graded in order of excellence. Thus enclosure gave to the tiller of better land an advantage due not to his greater strength or skill or intelligence, or his harder work, but simply to his monopoly of a better position. Differences in physique, intellect, endurance, thrift and other human abilities bring about a *natural* division of wealth, making some better off than others. But enclosure constituted the beginning of an *unnatural* extension of that division by reason of better position.

This gap between rich and poor increases with time unless the law provides against it – as it did to some extent under the feudal system. Each landholder rendered dues in service, produce, or money to his lord (or *seigneur*), who in return protected his tenants, meted out justice in his court, and kept the peace in his domain. The dues naturally varied to take account of the quality and extent of the land, and so acted as an equaliser. The *seigneur* in turn paid his Lord and so on up the pyramid of subinfeudation to the tenants in chief who rendered military or other service to the Crown. Ultimately almost all dues were changed into money rents. So long as land could not be freely alienated, and the tenants in chief continued to pay their dues to the Crown, the feudal system maintained a considerable degree of justice in the distribution of land.

Enclosures IN ENGLAND, however, soon after the Norman conquest, greed overcame honest custom, and land began to be enclosed for the purpose of enrichment. The process was accelerated by the Black Death (1348), when peasants took over lands vacated in the plague; and by the French wars when discharged soldiers came back after long absence to find their land expropriated. It was intensified when production and trade in wool and cloth began to change the almost entirely agricultural nature of England. The production of wool became so lucrative that much of the old common field system was turned over to sheep, and the villagers evicted to make room for grazing. Piers Plowman castigated the Church for this in the 14th century; and a century later the Warwickshire historian John Rous counted 58 depopulated villages in his county alone; while Thomas Rous, condemning the enclosures at Baggrave and Ingarsby, wrote “The profit of the enclosures the monks enjoy, but the voice of the blood of those slain and mutilated there cries every year to God for vengeance”.¹⁹ Thomas More in a famous passage in *Utopia* complained of the sheep, gentle by nature, pulling down houses and eating up and swallowing down the men themselves!

Moreover the restrictions on the sale of land were gradually being removed by parliament and the courts.

The plight of the dispossessed was grim. The Inclosure Acts of the early Tudors were an attempt to stop enclosure. But although Wolsey appointed 15 commissions of enquiry into their working, they failed lamentably. How were the peasant proprietors, now landless, to live? They were forced into crime to feed their families. To deal with the evicted families, the government at first resorted to whipping, imprisonment, and hanging, before beginning to distinguish between the Deserving Poor, and the Rogues and Vagabonds, who infested the country and the towns of Merrie England.²⁰ Only gradually was a rough and ready Poor Relief substituted in Tudor times for the lost lands from which these unfortunates had formerly made an honest living. The burden of supporting them with poor relief was placed by law on the parish which brought them to birth. Accordingly the courts regularly heard litigation between parishes trying to pass responsibility for the pauper to the parish in which he was born. It was a trade in slaves. The background to it was the buying and selling of land for the purpose of enrichment.

THE FAILURE of man-made law to maintain justice by ensuring that everyone had access to land might have been avoided if the Church had preached the Natural Law revealed by scripture. But landowners, of whom the Church was one of the biggest, ignored the *Torah* (law) set out in the Judaeo-Christian scriptures: **Law in the Scriptures**

The land shall not be sold in perpetuity; for the land is Mine; for ye are strangers and settlers with Me.

Chief Rabbi J.H.Hertz in a note on this verse writes:

This verse enunciates the principle upon which all these enactments [of the *Torah*] rest. "The earth is the Lord's" (Ps. 24: 1), and His people hold their land in fee from Him. The ground itself, then, was not a proper object for sale, but only the result of man's labour on the ground.²¹

The title to land is usually by conquest.²² In the *Torah*, the LORD through Moses instructed the children of Israel to divide the promised land between their families as a common inheritance:

Ye shall dispossess the inhabitants of the land, and dwell therein: for I have given you the land to possess it. And ye shall divide the land by lot for an inheritance among your families: and to the more ye shall give the more inheritance, and to the fewer ye shall give the less inheritance.²³

The important point is that land is every family's *inheritance*. Land is

the third element which is so lamentably missing from the consideration of "Social" Justice.

Town and country A FURTHER refinement of land tenure was needed when men began to trade. Each was then able to increase his harvest from the earth by producing only those things which suited his land best. Each producer then obtained the whole variety of other things he needed by exchanging his products with the products of others. Families gathered into villages, where the farrier, the blacksmith, the wheelright, took over time-consuming tasks which as specialists they could perform more swiftly, more skilfully, and more cheaply than could farmers doing it themselves. The miller ground corn into flour for them all, while the grocer shopped collectively for the whole village. These specialists were regarded with envy. Unlike those who worked on the land, they grew steadily richer as the number of their customers increased, without a corresponding increase in expenditure of labour and capital.

Money THE GROWTH of trade was inevitably accompanied by the use of money. Locke observed that hitherto Nature, by limiting the amount of labour a man can perform, and the length of time the products of the land can be used before they decay, restrained landowners from enclosing more land than they could use. Thus restricted "it was lawful to take as much as a man could make use of to any advantage in life before it spoils, and make it his property. Anything beyond this is more than his share, and belongs to others". Now, however, the use of money enabled them to produce more than they needed, and, uninhibited by its perishable nature, exchange the surplus for virtually imperishable gold or silver, and so amass wealth in land which others could only use with the landowner's permission, for which he exacted payment.

In time villages grew into towns, where shops were more specialised, and a few towns enlarged into even more specialised cities. At once a new antagonism made its appearance. The miller, the shopkeeper, and other village or town specialists were usually richer than the farmers. The city dwellers, if they owned their land, were wealthiest of all. Unlike the countryman, each in his own way was making less and less *direct* use of the earth's bounty in animal, vegetable, and mineral products, and increasingly making use of contact with the most potent source of earth's energy created by the Almighty – their fellow human creatures. Social contact brings an abundant increase in wealth. Moreover as the concentration of population increases, the wealth comes from the use of smaller and smaller amounts of land. The countryman needs hundreds of acres. The city man can earn a hundred times as much from a few square feet of land space. The word "land" tends to be used only to mean rural

acres. When land disappears under buildings it is lost sight of and forgotten, with the result that, when a land tax was imposed, countrymen paid, while townsmen did not.

THE DIFFERENCE in productivity of land affects enterprises of every kind; whether agricultural, industrial, commercial or other. However much the least advantageously placed undertaking can produce, every undertaking on better sited land can produce more. How much more, depends on the extent of the superior advantages they enjoy – in density of population giving a greater number of customers, in better means of transport bringing suppliers nearer, and so on. Thus there accrues to each undertaking a surplus revenue graded according to the excellence of its position. As one goes from agricultural, through residential, industrial, retail trading, merchanting, to financial services and communications, the revenue from the land on which the undertakings are carried on increases to reach staggering figures. Land comes to be rented or sold by the square foot; and in the centre of London the revenue from the most lucrative sites is such that its capitalised price for sale would be tens of millions of pounds per acre. On such land, a fortunate few are employed at handsome salaries, with Christmas bonuses nowadays reaching a million pounds for each individual.

The growth of industry and commerce

This escalation in productivity of land as it becomes urbanised is an entirely natural phenomenon stemming from the nature of society. But since its first humble appearance in the middle ages, the law has never until recent times taken it into account. As a result the gap has widened to absurd proportions. In the twentieth century, governments, instead of acting upon the causes from which it arises, resorted to subsidising the poorer types of industry, such as farming, forestry, fishing, and quarrying, and to giving direct relief in doles to the poor. To provide the necessary funds, huge amounts of taxation have had to be raised by various means. This merely makes matters worse. It is robbing Peter to pay Paul, and attempting to remedy one injustice by creating another.

THE WHOLE system of the public revenue which has been vastly extended in recent years in order to achieve “social” justice is itself riddled with injustice. High taxation of incomes has driven the rich to resort to avoidance by various carefully devised, and costly off-shore trusts and the like, leaving the brunt of income tax to be paid by wage and salary earners through PAYE, from which there is no escape. At the same time the poor have a much greater proportion of their available income expropriated by excise duty on fuel, tobacco, alcohol, and other “hidden” taxes, than do the rich. Evasion by smuggling and other means has become worth while. The labyrinthine system of taxation makes those who receive

Public revenue

welfare payments pay a great deal of them back to the government as tax hidden in the things they buy. Such is the absurdity of it.

The system is tolerated because the "haves" feel guilty when they see the plight of the "have nots". Appreciating the injustice of it, they want more aid to be given, and many are even prepared to face higher taxes to fund it. That way madness lies. Far more effective would be to find, realise and put into effect the Natural Law concerning the funding of government.

Suum cuique tribuere WHEN FACED by an attempt to entrap him on this question, Jesus made the enigmatic reply: "render unto Caesar the things that are Caesar's, and unto God the things that are God's".²⁴ This in Blackstone's quotation from Justinian becomes – *Render to everyone his due*. The amenities of a town or city provided by government are Caesar's. The resources of the earth are the gift of God to mankind. They are the natural sources of public revenue.

Gleams of hope AFTER THE second world war, under the influence of Marxist doctrine, the British government nationalised a number of industries. Following a change of policy in part as a result of their inefficiency, some were later sold to private investors. British Telecom was sold for nearly £4 billion; British Petroleum raised £6 billion; British Airways £850 million; the Electricity industry £15 billion; 50 % of British Aerospace £43 million; and many smaller sums. In particular North Sea oil was recognised as being owned by the Crown, and brought in considerable revenue. Recently these sums have paled into insignificance after an unexpected "windfall" of £22 billion from the sale of licences in the form of 20-year leases to use the airwaves for mobile telephones. It is quite wrong to call this a windfall. It arises from recognition of the truth that the airwaves, like the sea bed, are public property belonging to the Crown, and a suitable source of public revenue. This could be a dawning realisation that the planet earth and its bounteous gifts are by Natural Law the God-given property of all. Since they cannot be used by all, those who are privileged to use them should pay for the privilege. To *sell* them outright, however, is far from satisfactory.

Rent not sale AFTER THE recent *sale* of mobile phone licences a spokesman for the highest bidder, told a journalist who suggested that his company's bid seemed very high: "In absolute terms it is expensive; in a year's time it won't be". He may be right. In that case the whole of society has lost out, and suffered injustice. On the other hand, his bid may in a year's time turn out to have been reckless, in which case the company will be in trouble. Either way an injustice will have been perpetrated on one or other. This could have been avoided by *leasing* out

the licences at maximum starting rents with regular rent reviews at which to raise or lower the rent in line with the upturn or downturn of the economy. Moreover paying rent would have relieved the bidder from having to raise the whole capital sum in advance at crippling cost in interest payments, from which only the banks profit.

Most of the gifts of nature, and the benefits afforded by public expenditure on services²⁵ are available only from particular positions on land. Rent is therefore due by Natural Law from every tenant for the monopoly of his position. The land does not have to be nationalised for this purpose. It is already public property. The standard textbook on Real Property states:

The basis of English land law is that all land in England is owned by the Crown. A small part is in the Crown's actual occupation; the rest is occupied by tenants²⁶ holding either directly or indirectly from the Crown (1 P & M 232, 233). "*Nulle terre sans seigneur*" (no land without a lord): there is no allodial land in England, (Co. Lit. 1b.) i.e. no land owned by a subject and not held of some lord.²⁷

Yet no rent is paid to the Crown even for land yielding immense revenues. Herein ignorance stands in the way of Justice. As in the case of oil reserves, coal reserves, radio frequencies, and all other natural resources, rent should be paid to the Crown which, under the Almighty, is the supreme lord of the nation's territory, which it holds in trust (1) to defend it, (2) to keep the peace within it, and (3) to ensure that all have their due share in it. At the present time the first two of these duties are neglected because of the vast expenditure made necessary by failure of government to carry out their third duty. In fact the land, the importance of which to every human being cannot be overestimated, is the gift of God to mankind in common.²⁸

THE SECOND limb of Blackstone's quotation from Justinian²⁹ is ***Honeste vivere***. This all could do, if only access to land were associated with payment of rent to its owner the Crown. Taxation could then be reduced pound for pound by the rent coming into the exchequer. No-one would need the banks to advance a lump sum on loan to enable him or her to buy land. Today's poor, hungry for land to live and work on, would be able to rent land, and retrieve the sense of pride which made earlier generations ashamed to live on government hand-outs. The rich would not need to avoid, evade, or fiddle their taxes, and rich and poor alike would have some inducement to relinquish crime on being allowed to retain intact all the rewards of earning an honest living.

Complying with the injunction to *live honestly*, the concern of those seeking *social justice* would be allayed within a general framework of justice which delivers much, much more, than mere social justice. Justice,

pure and simple, emancipates people to fulfil their expectations in peace and harmony with each other and with nature, without the necessity of any direct remedial action from government.

- References**
- 1 Blackstone, *Commentaries on the Laws of England*, Bk. 1, Sec. 2.
 - 2 *Social Justice; Strategies for National Renewal*, London, Vintage, Random House, 1994, p. 412.
 - 3 See the author's *Stealing Our Land*, London: Othila Press, 1997, pp. 25-7.
 - 4 Bruce Ackerman and Anne Alscot, *The Stakeholder Society*, Yale University Press, 1999. The sum suggested is \$60,000.
 - 5 *Financial Times*, 16 March, 2000, p.19. The sum suggested in Britain is £10,000.
 - 6 Eccl. 12, 12-14.
 - 7 Blackstone, *Commentaries*, under title *Of the Nature of Laws Generally*, pp. 38-41 in Vol. 1 of the Facsimile 1st edn. (1765-9). Chicago University Press (1979).
 - 8 Blackstone cites in a footnote the Latin of Justinian, which is world famous and beautifully concise: *Honeste vivere, alterum non laedere, suum cuique tribuere*.
 - 9 This inadequate summary hardly does justice to the original text, which would repay study.
 - 10 Shakespeare, *Measure for Measure*, II: ii: 117.
 - 11 George Williams Keeton, *The Norman Conquest and the Common Law*, London: Ernest Benn, 1966, p.219.
 - 12 George Whitecross Paton, *A Textbook of Jurisprudence*, Oxford University Press, 4th edn., 1972, p. 119. References are cited for the seven cases in which each of these expressions was used.
 - 13 Fimmimore J in an unreported case in the late 20th century.
 - 14 Gen. 1: 28. As one writer put it: "the secret of all modern science is in the first chapter of Genesis".
 - 15 The Pentateuch cites Eden, the land between Tigris and Euphrates, as one such area of this idyllic work-free existence.
 - 16 *Daily Telegraph*, 15 April 2000, Business Section, p. 29.
 - 17 *Historical Introduction to the Land Law*, Oxford University Press, 1927, p. 3.
 - 18 It is a matter of controversy whether this was deliberate sharing, or merely arose because, when the land was first cleared to make it suitable for cultivation, each year's clearance had been divided up at the end of the season.
 - 19 Peter Ramsey, *Tudor Economic Problems*, London: Gollancz, 1972, pp. 26-8.
 - 20 For a more detailed account, see *Stealing Our Land*, Ch. 9.
 - 21 Leviticus 25: 23 in *The Pentateuch and the Haftorahs*, London: Soncino Press, 1970, 2nd edn. p. 543.
 - 22 After the fall of the Roman Empire, tribes from the East conquered most of Europe. Franks conquered Gaul. Norsemen subdued the Northern Franks to create Normandy, from whence a century and a half later they invaded England, and overcame the Saxons. The younger sons of Norman families fought their way North to make their fortunes and took over much of lowland Scotland. One such ascended the Scottish throne and founded the royal line which some generations later inherited the English throne; James VI becoming James I of England. There are scores of other examples.
 - 23 Numbers 33: 53-54, 26: 55-56, 34: 13, and Josh. 13: 6, and other references.
 - 24 Mk. 12: 17, extended by St Paul in Rom. 13: 7, whence the Justinian precept cited by Blackstone.

- 25 E.g. on roads, railways, and airports; libraries, museums, schools, art galleries, swimming baths, theatres; sports grounds, etc.
- 26 I.e. freehold tenants. Unfree tenancies were abolished by the Law of Property Act 1922. They had by that time largely been enfranchised by legislation in the nineteenth century.
- 27 *Megarry's Manual of the Law of Real Property*, London: Stevens. Introduction, Sec. 6; p. 23, in 6th edn. 1982. See also *Halsbury's Laws of England*, Vol. 39, para. 304, and notes thereto.
- 28 See Lord Stair, *The Institutions of the Law of Scotland*, Bk. II, Title I, Edinburgh: Bell & Bradfute, new edn. 1832, p. 235. See also, John Locke, *Second Treatise of Government*, Sec. 25 *et seq.*
- 29 See p. 6, footnote 5 *supra*.