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The Fount of Law

Throughout Christian history until comparatively modern times, it was believed that mankind lived under a universal moral law, known by reason and confirmed by revelation, objective and unchanging, binding upon them in spite of their failure to observe it. Thus at the beginning of the 17th century Chief Justice Coke was able to say in *Bonham's case*¹:

When an Act of Parliament is against common right and reason, the common law will control it, and adjudge such Act to be void.

Similarly, in the middle of the 18th century the celebrated jurist Blackstone, in his *Analysis of the Laws of England*,² wrote:

- (1) Law is a Rule of Action prescribed by a superior power.
- (2) Natural Law is the Rule of Human action, prescribed by the Creator, and discoverable by the Light of Reason.
- (3) The Divine, or Revealed, Law (considered as a Rule of Action) is also the Law of Nature, imparted by God himself.

This was still the orthodox teaching of the Church as

expounded by Thomas Aquinas. It is only during the last hundred years or so that the idea of Natural Law has fallen into disfavour and Divine Law has been forgotten. During that time politicians and lawyers came more and more to accept the power of the modern state as absolute, and concentrated on the elaboration of "positive law", as they call it, rather than on its ideological basis. This trend can easily be recognised in the laws emanating from the European Community. When these laws do not fit the facts in the locality where they have to be applied, they give rise to deep feelings of injustice. Legislators remote from the scene rarely have the experience to know what is needed in practice.

Natural Law and Natural Justice are now entirely out of fashion. The whole trend of philosophy has for long been against such concepts. It is taken for granted that government is under no higher law - that so long as those currently in power keep strictly to the rules of procedure in legislating, their fiat cannot be challenged, however unreasonable it may be. *Ultra vires* has almost entirely come to mean not in accordance with the powers conferred by statute. The word 'law' has thus come to mean little more than 'the will of the powerful'. Even the courts now regard statute law as overriding common law absolutely. In effect, our judges are there to implement the will of those in power in Westminster, or in appropriate cases, in Brussels. This is the principle of Roman Law underlying the legal systems of continental Europe, namely, *Quod principi placet legis habet valorem* - what pleases the prince (i.e. the government) has the force of law. The English Common Law by contrast harks back to the

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thirteenth century Justiciar, Bracton, who declared:

The king must not be under any man but under God and under the law, because law made the king;

to which Lord Denning in recent times has added:

To every subject in this land, no matter how powerful, I would use Thomas Fuller's words over 300 years ago. 'Be you never so high the law is above you'.³

This may have been wishful thinking. We talk of democracy. But we live under an oligarchy of legislators and administrators who are called to order periodically at election time, when the people are offered a choice of the same or a different oligarchy with but slightly different aims, to rule unrestrained by traditional laws and customs. Only a very few have any idea of an overriding natural law, much less a supreme divine law: and these few have little or no influence. At best our system of government could be called democratic tyranny.

Education.

The Church and the Scriptures

Even more remarkable is the inability of the Christian Church to guide the politicians, economists, teachers and others who mould and influence public opinion, by appealing to scripture in search of the divine law from which natural law could be deduced. When Church leaders descend into the realm of politics and economics today it is often either to take sides between the political parties, or to urge that more government funds be made available for inner city development or the like. In April 1997, for example, in anticipation of the general election,

the Church [↓]our so much at the inner city?

the Council of Churches published a report on unemployment which highlighted the shocking prevalence of poverty and unemployment in Britain. This was very welcome, indeed overdue. They point out that with poverty comes social exclusion and despair, but they do not refer to Christ's having said exactly that in Mt. 5; 3. They refer to 9.8 million people dependent on income support as being intolerable, as indeed it is. They conclude that the only satisfactory solution is to reduce the numbers dependent on benefit. They are right. The remedy is to get rid of poverty instead of supporting poverty by trying to relieve it. This needed saying, and one can only hope their message will be learnt. But when the report suggested remedies, there was no reference to the remedy taught by Christ. Instead the report took refuge in the outworn doctrines of economics - a dismal and atheistic science - by recommending many of its failed nostrums: higher taxation, and public spending (on jobs 'created' at the taxpayer's expense), a national minimum wage, workers' rights, and even a subsidy for employers taking on the long term unemployed. Yet the founder of the Christian faith had much to say on the subject of the poor, the meek, and the oppressed, and how by observance of the Torah (the divine law) they would be liberated from their plight. Those who heard him at the time rejected his teaching and attempted to kill him. That teaching is scarcely to be heard today; although faint glimmerings of it appear in South American 'liberation theology'.⁴

The scriptures make it clear that the land is our inheritance; that the inheritance has to be shared; and that the law has to sustain this position, and by constant review

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and updating, prevent it from degenerating because of changing circumstances into wealth and poverty existing side by side - Dives with Lazarus at his gate⁵.

To become free the children of Israel working under hard task masters in Egypt had to have a land of their own. So God promised them the Holy Land. This had to be obtained by conquest, and Joshua was ordered to conquer Canaan. But the land belongs only to God, and after conquest must be divided fairly between all families that constitute the nation:

The Lord said to Moses: "... 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. (Numbers 33: 53 - 54. Similarly in Num. 26: 55, 56).

The Lord said to Joshua: "All the inhabitants [of the land that yet remaineth] ... will I drive out from before the children of Israel: only divide thou it by lot unto the Israelites for an inheritance, as I have commanded thee." (Joshua 13: 6).

The Torah also ensured that families would never lose their right to land. It therefore ordained periodical review and reinstatement to prevent the land falling into the hands of those who can thereby enrich themselves and oppress the poor, with the result that the rich man clothed in fine linen and faring sumptuously has Lazarus laid at his gate full of sores, seeking to be fed on the crumbs which fell from the rich man's table (Lk. 16: 19-21). Jesus in the

synagogue at Nazareth⁶ preached "the gospel to the poor ... the acceptable year of the Lord". This was the jubilee year which the Torah enjoined as the means of preserving the equitable division of land. In the jubilee year, all debts were to be cancelled; all debtors who had been enslaved for default in payment had to be released; and all land taken as security, or otherwise bought or sold had to revert to the families whose inheritance it was.

The Christian Church is silent upon this teaching. Yet this description of how land is obtained, and how it should be dealt with fits what has happened the world over, including our own experience in the invasions of Celt, Saxon, Dane, Viking, and Norman. Land is sometimes obtained by discovery of empty regions, but almost always by conquest in greater or less degree. That it has to be divided fairly is understood as Natural Law by aboriginal peoples. But the more separated they become from Nature, the more they forget the justice of land-division. When religion declines in modern society, Mammon is worshipped not least in the speculative buying and selling of the nation's inheritance. Those who have lost their inheritance perish unless looked after, as they ultimately are in European countries, by charity or the state. This degrading dependency on state support is no proper substitute for being given the opportunity to support their families by their own honest labour.

The Seeds of Revolution

Bernard Shaw begins his *Revolutionist's Handbook* with a quotation from Sir Robert Giffen's *Essays in Finance*:

No-one can contemplate the present condition of the masses of the people without desiring something like a revolution.⁷

Sir Robert was Assistant Editor of the *Economist* from 1868 to 1876. His observation is relevant to the world today. The parlous condition of Third World countries, usually desperately poor, and often oppressed by tyrannical and corrupt government, is obvious enough. Russia, ravaged by war, has been ruined by seventy years of Marxist socialism shaped by Stalin's tyrannical rule. In the United States of America - perhaps the richest country in the world - the media have portrayed slum-districts plagued by crime, drug abuse, and street violence. The ghettos of the poor blacks have been seen close to on our television screens. The absurdities of race relations meant to help the ex-slave population is beginning to be seen as doing injustice through positive discrimination against whites. In the developed countries of the world, the remarkable advances in science and technology have led to wealthy billionaires living alongside poverty relieved by welfare expenditure on such a scale that the taxpayer cannot meet its cost. Governments in consequence are compelled to borrow to an extent that endangers the economy by setting up inflation.

This would seem to justify Shaw's desire for revolution. AND YET (his capitals):

Revolutions never lightened the burden of tyranny: they have only shifted it to another shoulder.⁸

And the reason? Shaw cites Hegel's well-known pronouncement on the Philosophy of History:

What experience and history teach is this - that people and governments never have learnt from history, or acted on principles deduced from it.

This despondent conclusion is certainly brought out by the history of public finance over the last nine or ten centuries which is the subject of this book. But the proper deduction from it is that although we do not learn from history, it is only because of our ignorance of history. Most people are interested in the past. They like to know about their forebears; about the place where they live; about the country, or county, or town from which their family hailed. Family trees are made. Old Bibles which record all the weddings and funerals are carefully preserved. The Public Record Office is crowded during the lunch-time break. But comparatively few look at the origins and growth of the nation and its institutions: at the contributions made to it by Celt, Roman, Saxon, Dane, Viking, Norman, and others. Moreover for some time now the tendency in our schools and universities has been for education in history to be limited to the recent past. As a result, a whole generation now knows very little about the origins of Britain, its people, and its institutions. The result is that argument on important issues is frequently ill-informed through lack of long-term historical perspective.

We believe that history, if only it is taken back far enough, can be of great assistance in righting the wrongs from which we are suffering today. There is no need for revolution. What is needed is enlightenment as to how our troubles originated, resulting in an informed desire to

change them. It is the desire without the knowledge that is so dangerous to society. We need to know the origin of the ills we wish to cure. A proper and more optimistic view of the value of history is one expressed in *Chambers' Encyclopaedia*.⁹

It seems logical to assume that if political action is to be successful it must be based on the complete understanding of a given situation, and nothing can be understood without a knowledge of how it came to be. On the analogy between the human organism and organic society, it is assumed that to cure the diseases of society, it is necessary to know its case history.

The unwholesome state of affairs we are concerned with is, of course, to be found worldwide. But it is more easily dealt with by confining our attention to the history of one country. Nevertheless, reference to other cultures at other times and in other places will, *mutatis mutandis*, demonstrate a remarkable similarity to our island story.

The Burden of Taxation

Society today is sick: in body, mind and spirit. In Britain as in other rich nations there is a huge burden of taxation, and of public and private debt. Yet there is constant pressure from all quarters for more public money to fund all manner of causes, worthy and unworthy. The economy is under constant strain. Law-abiding people, laden with debt, devote a large proportion of what is left of their earnings after tax to servicing mortgage of their houses, and hire-purchase or leasing of their more valuable possessions such as cars, furniture, etc. These

arrangements result in ownership of their houses and some of their possessions being vested in bankers and financiers, while the addition of interest to the purchase price makes them pay for things twice. Financiers grow rich on high interest rates; while their customers remain poor.

The purpose of this enquiry is to discover how this extraordinary state of affairs came about: how the economy came to be so distorted; how taxation in peacetime came into being; and how it grew to its present high level. Why over the last three centuries or so, have the remarkable advances in science and technology, which should have increased the prosperity of all, impoverished many, and considerably widened the gap between the rich and the poor to such an extent as to inflame class hatred? How is it possible for a £1m Christmas bonus to be announced for some workers in Lombard Street, while an agricultural worker is fortunate if he gets a bonus in hundreds of pounds?

Behind the strictly financial history with which we shall be dealing lies the political history of wars, rebellions and treachery. One can read of these with feelings of excitement, and at times with pride. But the social history of dire poverty - a catalogue of cruelty, injustice, and suffering - can only make one shudder.

Jane Austen, at the very beginning of the nineteenth century, introduces us to a wonderful world where nothing was known of slums, workhouses, prisons, convicts held in hulks on the Thames to await transportation or hanging; nothing of flogging or press gangs (although two of her brothers were naval officers), and much else of the social

history of her time. Yet transportation went on until the middle of the nineteenth century. In 1790, when Jane was fifteen years old, Captain Arthur Phillip, the first Governor of New South Wales, was reporting that out of 930 male convicts sent out to his penal settlement, 311 had died on the journey, and 450 were sick, many of them hopelessly so. Many who were physically capable were incurably idle.¹⁰ In 1810, the year before her first novel was published, the Archbishop of Canterbury, the Bishop of London, and five other bishops voted with a majority in the House of Lords to throw out the repeal of a statute which made stealing five shillings from a shop a capital offence.¹¹ One is naturally moved to ask: Who is to blame for this state of affairs? And how could it go unnoticed by so many people? The story is a long one, and the answer has to be found in developments which have taken place over nearly ten centuries.

Up until the early Middle Ages, under the feudal system, land paid all the costs of government. Feudalism has come to carry connotations of privilege on the one hand and oppression on the other. Indeed it was a system of unequal hereditary status. Yet it stood for a kind of rough justice, where no one was so high that his privileges were not conditional upon the discharge of obligations, and no one was so low that he was without certain rights. Although in practice it often fell short of this ideal, it was only when feudalism began to disintegrate that privilege became wholly divorced from obligation, and rights went by the board. This disintegration was inextricably tied to the increasing treatment of land as unconditionally owned private property (in fact, but *not* in law), and of the

increasing dependence of government upon other sources for its revenue. Who, then, can be blamed?

The kings? Yes. From the Norman conquest onwards the dynastic pride and avarice of the kings led them constantly to seek additions to their landed possessions, and their wars impoverished the nation. Richard I, Edward I, Edward III, fought glorious wars, which brought nothing about. The large areas of land they had so successfully fought for were all lost. Richard, an absentee King, burdened the nation with his outrageously high ransom, raised in part through a subsidy which all had to pay. The Edwards left hundreds of discharged soldiers unable to keep themselves once the booty and ransom money won in the wars had been used up.

One who has been chiefly blamed for the financial instability of the country which led to the signing of Magna Carta is King John. But it was not his fault that as the youngest of four sons his grandfather tellingly nicknamed him 'Lackland'. It was his misfortune to be left penniless in charge of the country while his brother won glory and popularity in expensive, useless wars, leaving John to extort money from the people to pay for it all. But John was certainly not blameless. His own wars were both costly and ineffective, and ended in a French invasion.

The Barons? Yes. They were refusing to pay proper dues for their land as tenants-in-chief, but that did not stop them from insisting on payment to them of their under-tenants' dues. Their own dues of knight service having been commuted into a money payment called scutage (shield-money), they not only forced the king in Magna

Carta at Runnymede to keep scutage at the ridiculously outdated level of John's grandfather's time, they revealed their pettiness and arrogance by refusing to observe the Concord of Runnymede.¹²

The Church? Yes. The ecclesiastical landlords were some of the richest in the land. They bore a fair share of the guilt of land enclosure which played a significant role in transforming good honest men into landless rogues and vagabonds. Their indictment was well set out in the 14th century in Langland's *Piers Plowman*. They never taught the people the true doctrine of Christ. With many pious exceptions whom Langland praises, they became rich at the expense of their flocks.

The petty gentry of the shires and the yeomen? Yes. They were among the enclosers whom the early Tudors tried to restrain with Inclosure Acts - i.e. Acts designed to *prevent* Inclosure. "The class mainly responsible was that loosely but conveniently described as the 'squirearchy'. In Leicestershire this class carried out nearly 60 per cent of the enclosures made in the years 1485-1550, and over 70 per cent of those in 1551-1607".¹³

The judges? Yes. They went along with the harsh treatment of those who were unable to get a living because they could only do so by finding a master from whom they could get wages: and all too frequently there was no such master. Many of the harsh penalties for minor offences were within the jurisdiction of the justices of the peace, who were usually local landowners. There were honourable exceptions, when in the cause of justice some judges found ways of circumventing the law by inviting juries to bring in false verdicts of acquittal.

The common people? Yes. They applauded the ruinously expensive exploits of the most popular kings, and contributed to Richard's ransom money with a good grace. When the Black Death struck in 1348, they were happy enough to move their stricken neighbour's landmark and add his land to their own. It may be that the only ones to escape censure were those who suffered most from the rapacious behaviour of so many - the very small peasant farmer who lost his land. These unholy desires could hardly have had free reign if it had not been for ignorance of the consequences of their actions. "Forgive them, Lord, for they know not what they do." Blameworthiness helps to identify the source of our collective problems, but our objective is to ask what should be done to redress the balance.