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The Natural Law of Justice

By FRANCIS NEILSON

THE STUDY OF JUSTICE, which inspired the greatest minds of the classical period and also those of the early Middle Ages, is sadly neglected by our economists and philosophers today. This is strange, for at no other time have the politicians been so ready with the term and so loud in their demands to seek justice and to inaugurate a new world based upon this fundamental. The sociologists, too, in their works employ the term as if they were sure it would act as a talisman to protect man from the evils he engenders—to his own suffering. Yet, neither politician nor sociologist seems to think it worth while to tell us what is meant by the term justice, nor do they make an attempt at defining it.

Definition, to the old masters of philosophy, was an essential part of discussion, and most of them spared no pains in explaining clearly the meaning of the terms they used. Roger Bacon, the friend of Edmund Rich and Robert Grosseteste—all three mathematicians and scientists—pointed out the necessity of understanding the words employed so that each would readily comprehend the right meaning of the other's statements. Bacon said: "The mixture of those things by speech which are by nature divided is the mother of all error."

The Roman jurist laid it down: "He is just who gives to each what belongs to him."¹ Whether or not this interpretation of the term would suit the politicians and sociologists of our time is hard to say, but one can very well imagine, from the way they employ it, that they are not seeking the justice referred to by the ancient jurists and philosophers. To these latter the matter was so important that they devoted

¹ A translation of the *Institutes of Justinian*, 1: 1: "*Justitia est constans et perpetua voluntas iis suum cuique tribuens.*"

more thought to the question of what it was and was not than to any other abstract term. Indeed, Plato made it the plot of his most famous work, "The Republic." The search for justice is its leading motif. And the inquiry conducted by Socrates led the controversialists to definitions which I have set in the following composite form:

Justice is the institution of a natural order in which a man can produce food, buildings, and clothing for himself, removing not a neighbour's landmark, practising one thing only, the thing to which his nature is best adapted, doing his own business, not being a busybody, not taking what is another's, nor being deprived of what is his own, having what is his own, and belongs to him, interfering not with another, so that he may set in order his own inner life, and be his own master, his own law, and at peace with himself.²

Socrates and his friends agreed that some divine power must have conducted them through the inquiry to a primary form of justice.

I

THIS TERM WAS REGARDED by the ancients as a fundamental so precious in its relationship to the happiness of man that they crowned it with such words as "eternal" and "divine." Aristotle himself tells us:

God, then, as the old story has it, holding the beginning and the end and the middle of all things that exist, proceeding by a straight path in the course of nature, brings them to accomplishment; and with him ever follows justice, the avenger of all that falls short of the Divine Law—justice, in whom may he that is to be happy be from the first a blessed and happy partaker.³

Chrysippus, who, we are told by Diogenes Laertius, excelled in logic, the theory of knowledge, ethics and physics, said:

You cannot find any other beginning of justice than that from Zeus and from common nature; for from this source all such must have its beginning, if we are to take any ground on boons and evils.

² Cf. Francis Neilson, "The Eleventh Commandment," New York, 1933, p. 82.

³ "De Mundo."

When one browses through the classics in search of what the ancients thought of this term, one finds references to it so abundant that it is difficult to know where to stop, and the impression one gains from this lavish expenditure of thought upon justice is that they considered it the vital matter to be solved before proceeding to discuss questions of economics, the State, politics or society. Perhaps in this we may imagine how widely our thought of today separates us from that of classical times.

Two generations ago, in the heyday of the pseudo-rationalists, when State Socialism was discussed by hard-headed thinkers, it was the fashion to sneer at abstract terms, such as "justice," "right," and "God." John Robertson and Charles Bradlaugh questioned the usefulness of young scholars bothering about the terms upon which the classical scholars wasted so much time. It was said that they had no utilitarian value and were never transmuted into practice, remaining always in the realm of philosophical controversy. Such views were never supported by historical facts, but they were swallowed whole by superficial people. Strange as it might appear to many loose thinkers of this day, the pseudo-rationalists were wrong, for justice was the basis of the ancient economic systems, and the literature of the beginnings of different peoples proves conclusively that justice—economic justice, eternal justice, divine justice—was the foundation of every settlement and was held in veneration until it was overthrown by the State.

There should be no difficulty in discovering that this was the case, for every library of any worth contains works which prove that justice was a practical system which lay at the basis of the economy of the people. I admit it is not easy for the untrained student to find the data he desires. He will have to spend many years in reading the literature of ancient

peoples before he can gather the material upon which he must form a judgment. Still, suiting the modern methods, there are short cuts to much information of great value.

When we turn to the Mosaic laws and the early laws of England, and pursue the study of the term justice, we find that these two separate peoples—one monotheistic, the other pagan—grasped the same truth about the word. This is one of the most striking coincidences to be found in the laws of different peoples. But is it as strange as some of the historians of the last generation imagine? Elsewhere I have given instances of similar coincidences concerning the term justice in the old laws of China, India, Persia, and Egypt.⁴ It seems that the boundary stone, the landmark, was the symbol of economic justice, and that Egypt, Greece, and Rome used this symbol in the same way as the Israelites did to mark the limit of the land of a tiller against a possible aggressor.

When we look into the Pentateuch, we find that nothing could have been clearer than the injunctions given to the Jews. There were really only two economic conditions upon which they should enjoy the Promised Land; these were: fundamental justice to be rigidly kept, and "Thou shalt not remove thy neighbor's landmark."⁵ Nothing could be simpler. For the fulfillment of these conditions the people were given "a land wherein thou shalt eat bread without scarceness, thou shalt not lack anything in it."⁶ So long as the Israelites adhered strictly to these injunctions, things went fairly well with them, but such an economic beginning, a springtime of a people, is not rare.

It is, however, in something more fundamental than the similarity of the statutory laws that we must look for the economic fundamental with which separate and very differ-

⁴ Cf. "The Eleventh Commandment," Ch. III, and the passages of "The Sacred Books of the East," ed. by F. Max Müller, Oxford, 1885 (49 vols.), cited therein.

⁵ Deuteronomy 19: 14.

⁶ Deuteronomy 8: 9.

ent peoples made their beginnings. The clew to be found has been somewhat neglected by the widely-read historians of the nineteenth century. Few of them discovered it, and even then they did not pursue it far enough to understand that it led to the basis of existence before the State came into being. Perhaps this is the reason why more careful scholars have accused the historians of a want of thoroughness. They take too much for granted, seldom explaining the true causes of the rise and fall of civilizations and why, after a certain political and social zenith has been reached, there enters a decline that nothing can stop; the end, like a monstrous epitaph, signifies the vanity of political action.

Sir Henry Maine has devoted many pages to this rather slipshod procedure of investigating and recording. What he says of the "widespread dissatisfaction with existing theories of jurisprudence," may be said of many historians. Writing of the method which should be followed in an inquiry upon the economic and social beginnings of man's activities, he says:

It would seem antecedently that we ought to commence with the simplest social forms in a state as near as possible to their rudimentary condition. In other words, if we follow the course usual in such inquiries, we should penetrate as far up as we could in the history of primitive societies.⁷

The missing link in the chain of history of a people—from its known inception to the coming of the State, as that system is understood by us (for it is only in a backward glance that we see the State as it really is)—is no new discovery. It is not as if documents were found today that no one in our era knew existed. The information is set down in the works of classical writers and in the Bible itself which was better known and understood in the Middle Ages than it is today.

Let us see if we cannot present this clew once more and, at the same time, show that it was to be discovered not only in

⁷ "Ancient Law," London, 1861, reprinted in Everyman's Library, 1931, p. 70.

the history of one people but in the records of all the classical nations and even in the lands of people so far removed from the eastern Mediterranean as India and China.

II

FIRST, LET US TURN to the Bible, in which we shall find the story set out in full of how a system of economic justice came into being and how it passed into desuetude, thus destroying the people. In Deuteronomy we learn that the disposition of the land and the use of it by the tillers is the all-important matter which concerns the well-being of the people, and the command is laid down: "Thou shalt not remove thy neighbour's landmark, which they of old time have set in thine inheritance, which thou shalt inherit in the land that the Lord thy God giveth thee to possess it."⁸ This is what I call "the eleventh commandment."

The third curse reads: "Cursed be he that removeth his neighbour's landmark."⁹ And thereupon follows in chapter 28 the denunciation and penalties for transgressions. Not even the punishments laid down in the sacred books of the laws of India can compare in prophetic fearfulness and horror with its awful vengeance. There is no work to which we may turn which so clearly describes the basic economic law of the community.

It is the landmark which symbolizes the just economic system of the ancients, and this is the clew to be followed if we would study the similarities of economic settlement of early communities. In it we discover the necessity for the laws set down in the ancient books of people living far apart and with no known means of communicating with one another. The very severity of some of the laws affecting land and its tillage denote the sacredness of the trust imposed that it be used justly. We find in the history of the Hebrews

⁸ Deuteronomy 19: 14.

⁹ Deuteronomy 27: 17.

that, in periods of affliction, the Prophets cried out for the restoration of the landmark. In some of the times of greatest distress, this was the paramount question, and in Nehemiah there is the story of the restoration of the land to the people, when Ezra read the book with sense and understanding.

The importance of the law of the landmark is referred to by Josephus who says:

Let it not be esteemed lawful to remove boundaries, neither our own, nor of those with whom we are at peace. Have a care you do not take those landmarks away, which are, as it were, a divine and unshaken limitation of rights made by God himself, to last forever, since this going beyond limits, and gaining ground upon others, is the occasion of wars and seditions; for those that remove boundaries are not far off an attempt to subvert the laws.¹⁰

A few years ago when I was in Egypt, one of the new finds which interested archaeologists more than usual was that of some landmark stones. The discovery inspired Arthur Weigall, Inspector-General of Antiquities, to search the record for references in the laws, but with what result I never learned. That the landmark was an Egyptian institution has been accepted by Egyptologists, and Professor Edward Hull says:

. . . In Egypt the land had to be remeasured and allotted after each inundation of the Nile, and boundary-stones placed at the junction of two properties. . . .¹¹

Babylonia also had a similar system, and in the Oxford Bible is a picture of a Babylonian landmark. There is an inscription upon it calling down curses upon any official or other person who shall remove this "everlasting landmark," or attempt to interfere with the boundaries of the land described upon it. The gods are entreated to destroy any such offender and his children for ever and ever.¹²

¹⁰ "The Jewish Antiquities."

¹¹ Hastings' "Dictionary of the Bible," iii. 24.

¹² "The Oxford Bible," Plate L; *cf.* also "Oxford Helps to the Study of the Bible," p. 77 and Plate cxi.

The landmark, then, was a symbol of justice and, so long as it was maintained in its integrity, the people suffered none of the evils of poverty and slavery. Their afflictions followed the removal of the landmarks, and the Prophets—Daniel, Hosea, Micah, and Haggai—denounced the injustices and iniquities that fell upon the people, and demanded the restoration of the law of justice.

When we turn to Greece, we find that the same fundamental law was established. In Plato's "Laws" it is laid down:

. . . No man shall move boundary-marks of land, whether they be those of a neighbour who is a native citizen or those of a foreigner (in case he holds adjoining land on a frontier), realising that to do this is truly to be guilty of "moving the sacrosanct"; sooner let a man try to move the largest rock which is not a boundary-mark than a small stone which forms a boundary, sanctioned by Heaven, between friendly and hostile ground. For of the one kind Zeus the Clansmen's god is witness, of the other Zeus the Strangers' god; which gods, when aroused, bring wars most deadly. . . .¹³

In "The Republic" Socrates shows that a sure way of making war is to covet a slice of our neighbor's land. And he says to Glaucon:

Then, without determining as yet whether war does good or harm, this much we may affirm, that now we have discovered war to be derived from causes which are also the causes of almost all the evils in states, private as well as public.

In a fragment of one of his poems, Solon complains:

The ambition of the rich knows no bounds; the most wealthy wish to grow yet more so. Who may be able to assuage this insatiable greed! They respect neither sacred property nor public treasure; they plunder all, in defiance of the sacred laws of justice.

Aristotle describes how the people of Greece were reduced to penury and the poorer class "were in absolute slavery to the rich."¹⁴ He attributed the sufferings of the poor to the

¹³ 842E *et seq.*

¹⁴ Aristotle, "Athenian Constitution," Kenyon, London, 1892, p. 2; *cf.* also W. Romaine Paterson, "The Nemesis of Nations," London, 1907, p. 163.

fact that “the whole land was in the hands of a few persons.” The landmarks had been removed and in their place the debt pillar became the symbol of slavery.

The tutor of Alexander was not as thorough, however, in defining the term justice as his philosophical predecessors. He says:

Now this Justice is in fact perfect Virtue, yet not simply so but as exercised towards one’s neighbour: and for this reason Justice is thought oftentimes to be the best of the Virtues, and

“neither Hesper nor the Morning-star
So worthy of our admiration:”

and in a proverbial saying we express the same:

“All virtue is in Justice comprehended.”

And it is in a special sense perfect Virtue because it is the practice of perfect Virtue. . . .¹⁵

Although Aristotle found fault so often with the notions of Socrates, I think the Athenian sculptor had the advantage of the Stagirite.

I cannot refrain from mentioning a reference to the landmark to be found in the “Iliad.”¹⁶ When the gods fell into bitter strife, we are told

. . . they clashed together with a great noise, and the wide earth groaned, and the clarion of great Heaven rang around. Zeus heard as he sate upon Olympus, and his heart within him laughed pleasantly when he beheld that strife of gods. . . .

Then began the angry tumult between Ares, the god of war, and Athene. Ares struck her with his spear.

. . . But she, giving back, grasped with stout hand a stone that lay upon the plain, black, rugged, huge, which men of old time set to be the landmark of a field; this hurled she, and smote impetuous Ares on the neck, and unstrung his limbs. Seven roods he covered in his fall, and soiled his hair with dust, and his armour rang upon him. . . .

This, I think, is the only occasion when the landmark was used for such a purpose.

¹⁵ “The Nicomachean Ethics of Aristotle,” trans. by D. P. Chase, Book V, 1129b.

¹⁶ “The Iliad of Homer,” English prose version by Andrew Lang, Walter Leaf and Ernest Myers, Modern Library, Book XXI, pp. 393–4.

Turning to the history of Rome, we find that the god Terminus protected the boundary stone; for the removal of one, the culprit, together with his cattle, was forthwith put to death. It was Numa who commanded his people to mark the boundaries of their land by stones, and altars to Terminus were set up. This was the form in which they worshipped justice, and so firmly was this order established in the minds of the people that, when Tarquin wished to remove the altars of several deities in order to build a new temple, Terminus and Juventas alone objected to being displaced.

III

THIS SYSTEM—the basis of economic justice—was that of the village communities of India. The ancient laws make scarcely any mention of slaves, and the Rig-Veda does not refer to them. Moreover, the village communities had no written laws at first, and we learn that the Council of Elders was not called upon to give orders. Sir Henry Maine says: "It merely declares what has always been."¹⁷ And some of the commentators upon this system have said that it has endured so long, the impression remains ineffaceable in the minds of the people.

In Gautama's work, "Institutes of the Sacred Law," it is laid down that "Hell (is the punishment) for a theft of land."¹⁸ And the penalties for violating the sacred rules governing the work and chattels of agriculture are extremely severe.

Maine notes:

. . . The Village Community is known to be of immense antiquity. In whatever direction research has been pushed into Indian history, general or local, it has always found the Community in existence at the farthest point of its progress. . . . Conquests and revolutions seem to have swept over it without disturbing or displacing it, and the most beneficent systems of

¹⁷ Sir Henry Maine, "Village Communities," p. 68; *cf.* also Ch. Letourneau, "Property: Its Origin and Development," New York and London, 1914, p. 225.

¹⁸ "Witnesses," Chap. XIII, 17.

government in India have always been those which have recognised it as the basis of administration.¹⁹

Mountstuart Elphinstone says:

The popular notion is that the Village landholders are all descended from one or more individuals who settled the village; and that the only exceptions are formed by persons who have derived their rights by purchase or otherwise from members of the original stock. The supposition is confirmed by the fact that, to this day, there are only single families of landholders in small villages and not many in large ones; but each has branched out into so many members that it is not uncommon for the whole agricultural labour to be done by the landholders, without the aid either of tenants or of labourers. The rights of the landholders are theirs collectively and, though they almost always have a more or less perfect partition of them, they never have an entire separation. A landholder, for instance, can sell or mortgage his rights; but he must first have the consent of the Village, and the purchaser steps exactly into his place and takes up all his obligations. If a family becomes extinct, its share returns to the common stock.²⁰

Maine, commenting upon the extreme antiquity discoverable in almost every single feature of the Indian Village Communities, remarks:

. . . We have so many independent reasons for suspecting that the infancy of law is distinguished by the prevalence of co-ownership by the intermixture of personal with proprietary rights, and by the confusion of public with private duties, that we should be justified in deducing many important conclusions from our observation of these proprietary brotherhoods, even if no similarly compounded societies could be detected in any other part of the world. . . .²¹

The whole ground of this ancient system is so wide that it is impossible to give any idea in a short essay of its extent and how far back it goes into the history of people. But a reference may be made to the economic law of some of the African tribes. Driberg, in his excellent essay, "The Savage as He Really Is," says:

. . . A clear distinction is made between the soil and the enjoyment of its products. The former is the possession of the clan or of the tribe: the

¹⁹ "Ancient Law," p. 153.

²⁰ "History of India," I, 126.

²¹ "Ancient Law," p. 156.

latter belongs to the individual farming the land. Ownership gives no rights of property in the soil, and only the use of the soil can be transmitted to an heir. The same principle holds good among pastoral tribes; for though they do not cultivate the soil, the tribal lands are divided into clan pasturages, the grazing rights of which are strictly preserved.

In no case can land be sold or alienated by gift, exchange or any other form of transfer. . . .²²

Why should the ancient philosophers and jurists deem it of vital importance to separate mundane justice from divine justice? The Roman jurisconsult, in considering the law of nature, realized the necessity of going back to a type of perfect law which ought gradually to absorb civil laws. Sir Henry Maine writes:

. . . It is important too to observe that this model system, unlike many of those which have mocked men's hopes in later days, was not entirely the product of imagination. It was never thought of as founded on quite untested principles. The notion was that it underlay existing law and must be looked for through it. Its functions were in short remedial, not revolutionary or anarchical. And this, unfortunately, is the exact point at which the modern view of a Law of Nature has often ceased to resemble the ancient.²³

Today this fascinating labor is calling for a fresh-minded young scholar who will give us the history of the term justice and collect examples of its practice by people from the earliest times. There is a voluminous literature on the subject, which might be explored, and the findings co-ordinated in a story the world might well read now with interest and profit. The neglect of this by our modern scholars is hard to understand, for justice is what the world stands so sorely in need of; not the mere justice of the courts, of the measures of legislators, of the codes of the lawyers, but economic justice—that justice the ancients called eternal and divine. To put it in a crystal: the justice which is the law of Providence inherent in nature; the justice that distinctly marks the difference between things created and things produced.

²² Cf. Adam Savage, "The Professor's Hotchpotch," 1934, p. 68.

²³ "Ancient Law," p. 45.