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A

SYMPOSIUM

ON

THE LAND QUESTION.

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VII.—BY J. C. SPENCE.

MR. WORDSWORTH DONISTHORPE'S very clever contribution to the Symposium on the Land Question shows that the solution of the land question involves the solution of the fundamental problem which underlies every political question when reduced to its lowest terms. This problem is:—Should laws be framed in accordance with our ideas of expediency or our ideas of justice? Like all who adopt the expediency theory, Mr. Donisthorpe quotes and endorses the dictum of Austin—that where law is supreme the people have, as a matter of fact, no rights, except such as the law will enforce; that is, that our rights are not natural and absolute, but legal and limited. This proposition appears to be impregnable, and a necessary consequence of the supremacy of the law; but to infer that, because all our rights are legal, therefore all our laws are right, is such a manifest *non-sequitur* that one could hardly believe it possible that such an acute reasoner as Mr. Donisthorpe could seriously propound it. But, however incredible it may be, it is a fact, that this feeble pun—it is not an argument—is, time and again, gravely brought forward by such men as Lord Coleridge, Professor Huxley, and others too numerous to mention, among whom are many of the ablest writers on the philosophy of politics.

Except as an instance of the perverting influence of power worship, I can see no force in the argument at all. Let it be granted that our rights depend absolutely on the will of the sovereign power, whether that power is a person, a class, or the majority. Does that throw any light on what it would be best for the sovereign will to enforce? Under a representative Government, the citizens have a double function to perform; as subjects the law is supreme over them; as electors they are supreme over the laws. Now all arguments on such subjects as this appeal to the citizen in his character of an elector. The question discussed in this JOURNAL is not whether we will obey the laws or break them, but what we as legislators or fractional parts of legislators think to be good or bad laws. An elector having to determine whether to vote for, or against, a certain measure,

receives, from the theories of Austin—the valuable information that, whichever way the question is decided will be right. Surely then, in discussing what the law *ought* to be we can get no guidance from these theories. And we must be guided either by our ideas of expediency, or by our ideas justice.

Mr. Donisthorpe says that he can no more define Natural Rights than he can Abracadabra, but appears to think it is a simple and easy thing to define what is advantageous or injurious to the majority. Yet, in the vast majority of cases, when the question asked is: What is fair and just between man and man?—you can get a jury of twelve men to give a unanimous verdict; but when the question is: What is beneficial for the majority?—it is difficult, if not impossible, to get two men to agree exactly. To estimate all the consequences, good and bad, direct and indirect, present and future, of confiscating the landed property of the country, and to strike a balance between the good and the bad effects of this confiscation, is not a difficult task, it is an impossible one. On the other hand, the intelligence and sense of justice of the ordinary elector is quite sufficient to tell him that it would be unjust to take from a man (by force and without compensation, because of some fancied benefit to be conferred on the majority, and some specious arguments that property in land differs from property in other products of nature, such as horses, cattle, gold or silver) a farm which he had honestly and legally bought.

Unquestionably, expediency has always been the guide accepted by the sovereign power in the past; but the result is not such as to encourage us in continuing the same guidance. Governments have always hitherto attempted to regulate the production and distribution of wealth according to their ever-changing views of expediency. The tenure of land has been altered again and again; at one time to encourage the growth of large estates, at another to break them down, to benefit the owner at the expense of the occupier, or the occupier at the expense of the owner, or both at the expense of the general public.

The law has fixed maximum wages, minimum wages, levied rates in aid of wages, enacted and enforced poor laws, laws of settlements and allotments, has forbidden trades unions in some cases and enforced them in others. It has constantly interfered with manufactures and commerce, encouraging this trade and repressing that, fixing rates of interest, prices of goods, hours of work, &c., &c. All this has been accompanied by grinding and unjust taxation, a large part of which always has been and still is, raised from the necessaries of

the poor, their food, drink, and houses, and has been spent in enriching the rich, in waste and corruption, in sinecures and pensions. The result of this interference is not encouraging. The distribution of wealth in this country, where one man may own a county and another be indebted to charity for the rags that cover him, is neither just nor expedient. We have neglected justice to follow after expediency, and we have obtained neither.

Had our legislators limited their interference with the distribution of property to administering justice in any disputed case brought before them, it is not possible that the distribution could have been worse than it is at present. There is considerable difference between men in size of body, in mind and in character. The difference between a giant and a dwarf is very great ; but such cases are rare enough to be exhibited in a show, whilst the vast majority of men vary but little either above or below the average. Were the distribution of wealth allowed to follow its natural course, it would, judging from all analogies in nature, most probably have the same result. In the vast majority of cases, wealth would differ but slightly either above or below the general average ; in exceptional cases the difference might be as great as that between the giant and dwarf. But, for such monstrous contrasts as the prince and the pauper we must thank our law makers, who have been constantly interfering with the equalizing effects of natural law. To attempt to put matters right by further interference based on the expediency theory is absurd. The only benefit the sovereign power can confer upon the subject people is the one that seems least likely for them to do—namely sweep away all their innumerable restrictions on free trade, especially in land, and leave us to work out our own welfare of ourselves.

To sum up these arguments. I have endeavoured to show that Austin's theory of the supremacy of the law does not and cannot give us the slightest guidance as to what the laws should be—that the theory that we should do what is advantageous to the majority, does not and cannot give us the slightest guidance as to what *is* advantageous ; that a true estimate of expediency is impossible, an untrue estimate is certain to be erroneous ; and, finally, that by reasoning from what is fair between man and man we can pass to what is fair between one man and several, and from several to all ; that this method, which is the method of all science of reasoning from the particular to the general, from the simple to the complex, does give us reliable information as to what should be law.

Applying this method to the land question, we find that it would not be in accordance with strict justice to confiscate property in land to obtain some imaginary or real public good ; and that the duty of the State is not to regulate the tenure of the land but merely to administer justice in cases of disputed right.