

Introduction: The Disintegration of the Western Idea of Justice

The whole world is crying out for justice. All suffering is bitter, but unjust suffering is doubly bitter. The suffering which is fate unites men; unjust suffering breeds strife. There is a kind of suffering which belongs to the life of the creature as it were by nature, but unjust suffering is unnatural. Unjust suffering does not merely thwart man's desire for happiness; it also destroys an established order; it deprives me of my due. Unjust suffering rouses indignation; it affects the life of the spirit; it eats into the personality. It is the injustice which constitutes the real suffering, not the wrong which has been unjustly done. Only man knows this kind of suffering, because only man knows an order of things in virtue of which something is, or is not, his by right.

Injustice there has always been, but no age has yet witnessed such a measure of injustice as ours. Mankind has passed through epochs of cruelty, but not yet an epoch like this, when wrong is done in the name of right – indeed, when wrong has become systematic, when the reversal of the very principle of justice has become the order of the day and the system of the State. To violate the order of justice by disorderly passion is one thing; to set up disorder as a principle of order is a very different thing. Wrong as a setting aside of order is evil; wrong as a system, as an approved and permanent perversion of a just order, is intolerable. There have at all times been men of power who have called right wrong and wrong right, but it was reserved to our time to turn

that perversion into a political principle, a standard of public order. A perversion of such a kind cannot be explained merely by a peculiar degree of evil in individuals. It only becomes possible when the perversion has long been preparing in the depths of the spirit. The ulcer is not the disease; it is only the symptom and manifestation of the poison in the blood. The ideologies and principles of the totalitarian State – for that is the name given to systematic wrong in our time – are deeply rooted in the spiritual history of the Western world. The systematic perversion of wrong into right and right into wrong was prepared long beforehand by the break down of the ideal of justice in Christendom.

Every human being has a sense of right and wrong. Every schoolboy feels the wrong done to him by an unjust and partial teacher. Every coolie protests if he is cheated of just wages for his work. “There is no doubt that certain notions of right and justice are innate in the human mind, and that a light of justice shines in them.”^a We speak of justice as an instinct. The term is not apt. Instincts belong to the sphere of nature, but the sense of right and wrong belongs to the domain of the spirit, for it is a realization, however obscure, of an order of things, of something that is “right,” that ought to be, that must not be violated. This instinctive insight into right and wrong exists wherever men have awakened to human, personal existence. However various its forms, however restricted its domain, no human being is quite ignorant of justice, whatever race, whatever stage of civilization, whatever religious creed he may belong to. It is a constant factor in all human history.

What is not constant is the theory of justice, the way in which that blind sense of justice has emerged into the clear light of consciousness and has been interpreted in terms of philosophy or religion. A good deal of spiritual history consists of such interpretation – true or false. Human life, especially when it is concerned with the framing of social institutions, requires such interpretation. The vague sense of just and unjust must be transformed into clear thought, into the principle of justice, and

^a Calvin, “Works,” 49, 37.

comprehended as the idea of justice, if the institutions of human society are to express justice. This interpretation of right and wrong, this exegesis of justice, is a matter in which religion and philosophy must take a predominant part.

The Western theory of justice is derived from two main sources – classical philosophy, in which the Roman element should not be underrated, and Christianity. No writer has taught more clearly the nature of justice and more deeply influenced jurisprudence by his teaching than Aristotle; nowhere is the demand for justice so clearly and so powerfully expressed as in the Hebrew prophets. The primal, mythical notion of an order of law established by the gods found its philosophical expression in Aristotle's dictum that all human law is based on a primal divine law, the φύσει δίκαιον, the just by nature, which is the criterion and creative foundation of all human legalisation and jurisdiction.¹

In the Christian era, this idea was blended with the Scriptural doctrine of the order of creation and the commandment of justice laid upon men by the one holy and just God. The two coalesced in the conception of the Christian law of nature. This conception of justice as eternal, supernatural and absolutely valid, which was, in its Latin form, incorporated in Justinian's *corpus juris civilis* as the *jus naturale*, dominated the jurisprudence of the end of the classical world, the Middle Ages, Renaissance, Reformation and post-Reformation down to the Age of Reason. It was the Western conception of justice for two thousand years.

Its disintegration set in with the Age of Reason. Firstly, the divine law of nature, the objective, superhuman standard of justice, became the subjective law of human reason, its substance soon being narrowed down into the individualistic notion of subjective rights of man. Later, following the trend of the time, the element of "nature" in law was reinterpreted in a naturalistic sense. The historicism of the Romantic period then declared war on a timelessly valid justice, replacing it by the conception of justice as a historical growth. It was, however, the positivism of the nineteenth century, with its denial of the metaphysical and superhuman, which dissolved the idea of justice by proclaiming the relativity of all views of justice. Thereby the idea of justice was stripped of all divine dignity and law abandoned to the vagaries

of human will. The view that justice is of its nature relative became the dogma of the jurists, and the proof seemed to lie to hand in the concrete facts of history. Men ceased to believe in an eternal standard of justice transcending all human legislation; the difference between right and wrong became a convention, law was conceived as the mere product of the reigning power. Finally, the idea of justice was reduced to a mere husk by the complete codification of law at the beginning of the nineteenth century, after which it meant nothing more than the demand for a system of law without contradiction in form, but without any value as a criterion in substance.²

Hence it was only to be expected that one day a political power devoid of all religious scruples should discard the last vestiges of the traditional idea of justice and proclaim the will of the ruling power as the sole canon of appeal in matters of law. The totalitarian State is simply and solely legal positivism in political practice, the abrogation in actual fact of the classical and Christian idea of a divine "law of nature." If there is no divine standard of justice, there is no criterion for the legal system set up by a State. If there is no justice transcending the State, then the State can declare anything it likes to be law; there is no limit set to its arbitrariness save its actual power to give force to its will. If it does so in the form of a logically coherent system, it thereby fulfils the one condition to which the legality of law is bound in the formalistic view of law. The totalitarian State is the inevitable result of the slow disintegration of the idea of justice in the Western world.

Thus the history of the interpretation of the idea of justice in the Western world has culminated in its total dissolution; it has been annulled, both in theory and practice. The long road has led into the void. The totalitarian State, and the positivistic theory which prepared the way for it, have room neither for the rights of man nor for any eternal standard of justice whatever. They consist solely in the system of power actually existing and enforcing its own absolutism by its own will and its own means. No wonder that the era of the totalitarian State should be the era of an unprecedented lawlessness and of systematic injustice.

It is only now, when Western humanity is faced with the appalling result of its work of destruction, that it is beginning to

realize what has happened and to look back on the road it has travelled. It is overwhelmed with the horror of a terrible reality, which it sees taking shape in the totalitarian State. Yet it has not reached the point of admitting that this totalitarian State is not the invention of a handful of criminals in the grand style, but its own product, the ineluctable consequence of its own positivism, a positivism void of faith and inimical to metaphysics and religion. It will not yet believe that this is the inevitable result of man's loss of faith in a divine law, in an eternal justice. Yet the alternative stands clearly revealed. Either there is a valid criterion, a justice which stands above us all, a challenge presented to us, not by us, a standard rule of justice binding on every State and every system of law, or there is no justice, but only power organized in one fashion or another and setting itself up as law. Either there exist eternal, indefeasible rights of man, or there are merely the opportunities of the lucky and the lack of opportunity of the unlucky. Either there is a sacred law, which can be appealed to against every inhuman, unjust social order, against any caprice or cruelty on the part of the State, or that sacred law is a mere dream and law is nothing but another name for the chance products of the actual elements of power in a political field of force.

But if there is no sacred, eternal, divine, absolute law, there is no possibility of denouncing any form of law or polity or national act as unjust. If the positivistic theory of law is right, there is no possibility of waging war against the totalitarian State as a monster of injustice, Nor can we even say, "It is unjust"; but only, "It does not suit me, I do not like such things."

The crisis in law and order which bears the name of the totalitarian State is the outward manifestation of the crisis in the conception of law. Humanity to-day is faced with the necessity of finding an issue from that crisis both in its inward and its outward aspects. One way, popular up to the present, is barred; we can no longer appeal to history. The totalitarian State has squandered the heritage of history. Now that its bankruptcy is declared, the question of the foundations on which a new world can be built can no longer be evaded. On what basis can reconstruction begin? Where is the idea of justice which alone renders such reconstruction possible? This question is not only one of those

confronting us to-day. It is the question of the day. One thing is obvious. No reconstruction can be based on the maxim that justice is a relative thing. Nothing can be measured with an elastic yardstick. It is true that all social systems which we human beings create are only relatively just. But even such a relatively just system is only possible if we are guided by an idea of absolute justice, if we align what we build by the plummet of divine justice.

For nearly two thousand years the classical and Christian idea of justice, the “Christian law of nature,” sustained and directed Occidental jurisprudence, and was conceived to provide an adequate expression in philosophic terms for man’s innate, underived sense of right. What would be simpler, therefore, than to return to it? Yet that is no easy matter for us, if only because the “Christian law of nature” is not an unequivocal standard. From the outset, a certain ambiguity has clung to the idea, whether in its classical or its Christian form. What is meant by the “nature” in which the principle of “divine” justice is contained? The polemic against the law of nature has by no means only been carried on by men who were prepared to surrender the idea of justice to relativism or formalism, but also by men who were well aware of the imperishable values of the classical and Christian idea of justice.^b They felt the inadequacy of the term “law of nature.” They suspected some confusion in the blend of the Christian and classical elements which came about at the end of the ancient world. It will be one of the paramount tasks of future jurisprudence to clarify this connection.

It should be no matter for surprise if Christian theology also feels bound to grapple with the problem. The Scriptural and Christian idea of justice plays a preponderating part in the formation of the Occidental standard of justice; for instance, it can be shown that the conception of the rights of man arose and found expression in connection with Christian ideas.³ Hence it can hardly be contested that it is the right and the duty of the Christian theologian to take his share in the work of reconstruction. On

^b In particular the great jurist Gierke in his work, “Johannes Althusius” (English Translation: “Natural Law in the Middle Ages”).

the other hand, the Christian theologian can hardly fail to realize that this theme of secular justice – for our subject is the divine standard for the systems of this world – is merely incidental in the gospel. It is obvious that the central teaching of the divine gospel as “the righteousness of God,”^c the message of atonement for the sinner by Jesus Christ, is only indirectly connected with the question of just reward for labour, just punishment, a just polity, and so on. And vice versa, it cannot escape anyone living entirely in the world of Christian thought that, when questions of justice in the political or economic world arise, it is not with the theological expert in Scriptural matters that advice and authoritative information will be sought. These are questions in which even the most orthodox and exclusive Scripturalists among the Christian teachers have felt it incumbent upon them to sit at the feet of philosophers and jurists. Hence the question of justice in the systems of this world is clearly one which lies on the borderline between the faculties, and it is not mere chance that Christianity and classical antiquity should have co-operated in mastering the problem. But borders are not only the places where the most momentous decisions are arrived at in politics and war, but also in the history of the spirit. Only the man who can look beyond frontiers can be their watchman. It is high time that theologians, philosophers and jurists should unite in order to comprehend and clarify the meaning of this great idea, the idea of justice, of what is just, so that devastation may be checked and a reconstruction of just institutions begun on the ruins.

^c *Vide* Translator’s Note