

Gun law & the new Global Doctrine

BRITAIN'S Prime Minister is fond of the expression, "Doctrine of International Community". In his Chicago speech of April 22 last year he said: "Globalisation means that we cannot turn our backs on the violation of human rights in other countries if we want to be secure".

This is a dangerous policy, because for a small group of states to SELECT the country or countries in which to intervene on the basis of human rights violations makes nonsense of the principle in international law, shown by Article 2, paragraph 4, of the UN Charter that only the United Nations may decide to take steps towards armed intervention, if that is found necessary. The Kosovo bombardment was illegal, as I have sought to demonstrate elsewhere.¹

Indeed, the (now very fashionable) historian, Norman Davies, had this to say in *The Spectator* (13 November 1999): "... the smart way to wage wars these days is to declare one's own selective interpretation of ethics as superior to international law and then to bomb and blast one's adversary from heights where tanks cannot be distinguished from tractors..." There is never any fear that China might be invaded because of its wrongs perpetrated in Tibet! Ethics, seemingly, do not run that far.

ACCORDING to one lawyer² a key issue today is the relationship between the international law of force and the international law of human rights.

A good many people might question whether human rights can ever be regulated by law, the nature of them being political rather than judicial. One has only to see this in operation in the US, where the Supreme Court justices first of all fashioned a "right to privacy" from a constitution that doesn't mention it, and then extended that "right" to encompass abortion within certain defined limits. It is plain the decisions were "politically correct", rather than based in law and reason. Alexis de Toqueville observed in the nineteenth century³: "... there is hardly a political question in the United States which does not sooner or later turn into a judicial one".

So, we have on one side the selective use of force to achieve so-called "ethical" ends; and on the other side a selective choice of "human rights" to suit the political palate of the day. The law is meant to protect us and yet it can't do that when rendered uncertain and disregarded by the main players.

Leslie Blake



THAT THERE is an international community is undoubted. And that, hitherto, it has been governed by international law – what one writer called "the Common Law of Mankind"⁴ – is also true. "The duties and rights of States are only the duties and rights of the men that compose them"⁵. "The first general law that we discover in the very object of the society of nations," says the 18th century exponent, Vattel⁶, "is that each individual nation is bound to contribute everything in her power to the happiness and perfection of all the others".

Thus, we take for granted passage by air over most other countries. We do not pause to ask why postage is not charged by postal authorities in states through which our letters travel. Boundaries and continental shelves are settled by agreement; oceanic oil fields and other resources are determined international-ly; the laws of war prescribe the treatment of

prisoners, and so on. There is such a fine network of treaties and conventions which cannot be brushed aside by the thoughtless interventions of such leaders as Blair and Clinton.

BUT THERE is one human right about which there is universal agreement. It is there, in the UN Charter itself. Article 55 states: *The United Nations shall promote ... full employment ...* Article 56 provides: *All members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in article 55.* Article 23 of the Universal Declaration of Human Rights says: *Everyone has the right to work ...* (Although you won't find a replica of this in the European Convention on Human Rights and Freedoms – perhaps because, with current unemployment rates in France of 11.4% and Germany of 10.9%, the goal would seem dis-



Private Sean Barrett, 22, a British soldier, hands coins to a beggar in the streets of Lipljan during the conflict in Kosovo.

travelling unobtainable!) The International Covenant on Economic, Social and Cultural Rights includes the following, under Article 6: *The states parties to the present covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his livings by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.* Indeed, there is scriptural authority for the existence of such a right? "But thou hast only the right to work" – and then, disconcertingly, it adds: "but none to the fruit thereof."

Now, Georgists are brought up on the truth that full employment depends on two factors: access to land and its resources, and freedom from employment-based taxation on the marginal enterprise. What if the UN could be challenged to encourage the observance of these factors throughout the world?

C.W. Jenks wrote⁸: "The obligation to promote and maintain full employment is nevertheless a legal obligation from which legal consequences can be drawn; the full employment pledge does imply a willingness of each country to take action, as the need arises, designed to promote and maintain full and productive employment through measures appropriate to its political, economic and social institution"....employment policy has ceased to be a matter essentially within domestic jurisdiction"⁹ [emphasis added].

In any event, Article 14 of the UN Charter can achieve useful objectives through publicity, fact-finding machinery and "other measures". What do you think? Is it worthwhile making a submission to Mary Robinson, the UN Human Rights Commissioner, explaining the paramount importance of this one right, the right to work, and how it might be achieved through access to land and the proper incidence of taxation? After all, the South African

Constitution now asserts⁹: *The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.*

The "Doctrine of International Community" can take one of two paths: towards the objective of "might is right"; or towards an increasingly benign international lawfulness which appreciates the importance of the individual and seeks to realise his fundamental "right to work".

- 1 *The Economic Monitor*, Autumn 1999.
- 2 Alan Griffiths, quoted in *The Times Law Section*, 19 October 1999.
- 3 *Democracy in America* (Meyer ed., p. 270).
- 4 *The Common Law of Mankind*, C. W. Jenks (Stevens 1958).
- 5 *Ibid.*, p.14.
- 6 *The Law of Nations*, lxi.
- 7 *The Geeta* (Faber 1935), p.16.
- 8 'Common Law of Mankind' *op.cit.*, p. 298.
- 9 Section 25 (5) of the 1996 Constitution.

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PERSONALLY SPEAKING

Revenue – A word for the spin doctors

KENNETH JUPP



TURGOT, the great 18th century French writer on economics, was in charge on behalf of the Crown of a province of the Midi when he wrote:

In Picardy, Normandy, the country around Paris, and in most of the provinces of northern France the land is cultivated by farmers; in the provinces of the midi it is cultivated by share-croppers. The provinces of northern France are incomparably richer and better cultivated than those of the midi.¹

Turgot reserved the word *revenue* to describe the surplus which labour and capital inevitably produce on these richer lands. It arises from the work which is done upon the land, but is the property of the landowner because only with his consent can the land be used.

When land lies idle there is no revenue from it. But the anticipation of its being worked gives it a price which varies according to the degree of certainty that it will be worked, and the time which will elapse before it is worked. To leave the revenue in the hands of the workers, would be monstrous. It is not due to them but to the superior quality of the land that this surplus is produced. It is equally monstrous to let the landowner keep it, when, as landowner, all he has done is to give his permission for the work to be carried on there.

ADAM SMITH knew and admired Turgot. In *The Wealth of Nations*, with his usual felicity of expression, Smith reproduced Turgot's reflections on revenue in one sentence, and then compared it to the management of a great estate:

The subjects of every state ought to contribute to the support of government, as nearly as possible in proportion to their respective abilities; that is, in proportion to the revenue they enjoy under the protection of the state. The expense of government to the individuals of a great nation is like the expense of management to the joint tenants of a great estate, who are all obliged to contribute in proportion to their interest in the estate. In the observation or neglect of this maxim consists what is called the equality or inequality of taxation.²

If Smith was using the word *revenue* in the same sense as did Turgot, this would

have been an excellent way of expressing the case for justice in the distribution of wealth. Unfortunately, however, Smith uses *revenue* in several different meanings elsewhere in his book. The word *revenue* is nevertheless an admirable tool for presenting the case for unburdening labour and capital of the oppressive taxation they have to bear. "The Inland Revenue should be concerned with the collection of the revenue", or "Revenue should be the public revenue" are worthy of consideration by spin doctors.

Adam Smith did, however, demonstrate that land used only for residence produces no revenue. Its amenities are for the personal enjoyment of the householder. He has to pay for these amenities out of money he has made elsewhere:

The rent of houses, though it in some respects resembles the rent of land, is in one respect essentially different from it. The rent of land is paid for the use of a productive subject, the land which pays it produces it. The rent of houses is paid for an unproductive subject. Neither the house nor the ground which it stands upon produce anything. The person who pays the rent, therefore, must draw it from some other source of revenue distinct from and independent of this subject.³

The amenities provided by natural surroundings, society, and government, make some places so obviously more congenial than others. Justice demands that those who enjoy these amenities should pay for the privilege according to the degree of benefit accruing to the position they occupy. But the arguments supporting this, although they do overlap, are not the same as those for taking the rent of productive land. This has become a very important consideration now that the renting of houses has declined and home ownership spread over all classes of the community.

Notes:

- 1 *Réflexions sur la Formation et Distribution des Richesses*, para. 27.
- 2 *The Wealth of Nations* Bk V, Ch 2, Pt. ii, p. 307 (italics added).
- 3 *Ibid.*, Part V, Chapter 2, Pt II, Article 1 (Everyman, Vol.2, p.324).

□ Kenneth Jupp's translation of, and commentary on, Turgot's essay, has just been published by Othilia Press, London, £15.