

Spiritual roots of the rule of law

THE rule of law has human and supernatural sources. There are traces of it in early Eastern societies. Ancient Greek philosophers distinguished between government under law, and tyranny in which the government makes what laws it pleases. This notion guided European thought until the end of the 18th century.

In the 3rd Century BC, Platonic philosophy met Judaic Old Testament learning in Alexandria when scholars translated the Jewish scriptures into the Greek version (the Septuagint). The union of the two traditions worked well. Roman writers such as Cicero imitated the Greeks.

Christianity absorbed much of the Greek and Roman learning. As the Western Roman Empire declined, the Church became the depository of all the ancient learning of the West. Here was the ideal opportunity for a rule of law deriving from a supernatural source, to be linked with man-made law through the conjunction of the *Torah*, Neo-Platonism, and the teaching of Christ. But the Church, having become the official religion, failed to conform to the teaching of the scriptures. Historian A.H.M. Jones records:

There was waste and corruption. The Church imposed a number of idle mouths on the resources of the empire. By the sixth century the bishops and clergy had become far more numerous than the civil service of the empire. A large number of hermits and monks lived on the alms of the peasantry. These unproductive classes lived better (mostly) than the peasantry, and all drew the bulk of their income from the land by way of rent, taxes and first fruits. The burden was too much. The peasants had too little left to rear children. The number of producers gradually shrank.*

Asceticism and poverty were coming to be regarded as a religious virtue, with many – the desert fathers – retiring into solitude in Egypt. Meanwhile:

The peasantry had not enough left to rear sufficient children to counterbalance the high death rate. The sale of new born infants was common. There were laws in Constantine's time 'to withhold parents' hands from murder'. In times of famine the peasantry flocked to the towns for bread. The condition of the urban poor was no better. They too were driven to sell their children. They had to be supplied with cheap bread by the city authorities. There was not enough employment even for a shrinking number of workers.

In a situation not unlike that of today,

The codes are full of laws to combat the veniality of provincial governors and officials and to curb the inordinate growth of bureaucracy. The emperors and their officials were so snowed under with papers that they signed without reading them, and the clerks of the central ministries could thus put through for those prepared to pay for them illegal grants of land, privileges, titles and immunities.

What then of the metaphysical inspiration to support the rule of law on the lines of Moses, Plato and Christ? Where could one find any law deriving from a universal natural law that reflected the cosmic order? By the 18th century Gibbon was able to argue that Christianity had sapped the morale of the empire and deadened its intellectual life.

IN SETTLED tribes it was an essential requirement that the family units should have homes and a means of livelihood. To this end a proper distribution of land was essential. Otherwise, those left out must either perish, or be an incubus on the rest of society, supported by charity, or by the state.

Earlier forms of society were not troubled with this problem, because all families were provided with land. This was the law (*Torah*) of the Old Testament. The injunctions of God to Moses, and later to Joshua, were that the promised land had to be divided amongst the families by lot. After every seven Sabbaths of years the land had to be redistributed in the jubilee year, in order to set right the inequalities which had crept in during that time. Christ affirmed that he had come to fulfil the *Torah*, and in the beatitudes spelt out the dependence on the earth of the poor and oppressed.

Sir Henry Maine, writing in *Ancient Law* (1861), refers to Russian villages (*mirs*), which were naturally organised communities where private rights were only theoretically complete:

After the expiration of a given...period, separate ownerships are extinguished, the land of the village is thrown into a mass, and then it is redistributed among the families composing the community, according to their number.

Maine also referred to "Servia, in Croatia, and the Austrian Slavonia, [where] the villages are also brotherhoods of persons who are at once co-owners and kinsmen".

The Church in the early middle ages could hardly be expected to take the *Torah*, the teaching of Christ, or the co-ownership of land seriously. At that time literate people were to be found only in the Church, and kings recruited them to serve in public administration. Consequently, churchmen were responsible for the finances of nations; they acted as ministers; they were civil servants, lawyers, professors, writers, and schoolmasters. Accordingly much of the Church consisted of worldly men, often wealthy, some of whom owned immense estates. The record of many of the popes and bishops was at times sordid. Many were corrupt. The one institution which might have provided the metaphysical background to the law from the study of scripture, was found wanting. So far as equal sharing of the access to the earth's resources is concerned, it is still wanting, except for a dim realization of the necessity for all to have land in the "liberation theology" in South America, of which Rome has expressed disapproval.

*A.H.M. Jones (1973), *The Later Roman Empire 284-602. Vol. II The Decline of the Empire*, London: Basil Blackwell.

peculiar and valuable benefit, and upon them in proportion to the benefit they receive. It is the taking by the community, for the use of the community of that value which is the creation of the community...When all rent is taken by taxation for the needs of the community...no citizen will have an advantage over any other citizen save as is given by his industry, skill, and intelligence; and each will obtain what he fairly earns. Then, but not till then, will labour get its full reward, and capital its full return.... "It is not enough that men should vote; it is not enough that they should be theo-

retically equal before the law. They must have liberty to avail themselves of the opportunities and means of life; they must stand on equal terms with reference to the bounty of nature...This is the universal law."

Such a philosophy originally informed at least one modern constitution, that of the USA. The Articles of Confederation (1777), Article VIII, stated that "a common treasury...shall be supplied by the several states, in proportion to the value of all land within each state..."

Unfortunately, the USA – in common with other countries that honour the rule of law – has succeeded in deviating from the rules that would deliver justice. It seems, therefore, that countries which are reconstituting themselves for a new future in the new millennium need to view with suspicion the advice that they ought to adopt the West's version of the rule of law.

Sources

A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (1885), and *Law & Public Opinion in England* (1917), London: Macmillan.