

From England

JUSTICE FOR ALL

by **Dr. Jonathan Burnside**

INTRODUCTION

It's remarkable, when you think about it, that every human being has an innate sense of justice. Every man, woman, boy and girl knows what justice is. As Philip Allott writes, we know what justice and injustice is with a certainty and a directness comparable only to our knowledge of love.¹ "To be human is to know justice".² The reported case in which a child rapist was himself so appalled by the lightness of his sentence that he shouted at the judge: "What sort of justice is that? I've ruined a girl's life" reflects the belief that the knowledge of justice and injustice is central to who we are, even though it is often easier in practice to identify acts of injustice than acts of justice.³

Where does this sense of justice and injustice come from? The Book of Genesis, which presents itself as a book of Origins, is highly suggestive in this regard, especially its early chapters. Unfortunately despite, or because of, their great antiquity, these chapters are virgin territory for most people. This is a great loss because these texts are foundational to the understanding of Western civilization. Even the small minority of law students who read Roman Law reach only the half-way mark in total documented legal history, which stretches back to the time of Abraham in the early second millennium BC and beyond. We shut the door on the first - and arguably the most important - half of legal history. As far as our understanding of justice is concerned, it's like imagining sugar began with Tate & Lyle!

THE ORIGINS OF OUR SENSE OF JUSTICE

Yet the opening chapters of the book of Genesis have much to say about law and justice. God's creation and divine ordering of the universe by means of a series of distinctions in Genesis 1 (e.g. the separation of light and darkness, land and water and so on) can be seen as acts of justice because they are instances of intervening power that triumph over the forces of chaos to bring order. They also create categories of existence within which life can

flourish. Humanity is said to be made in the "image" and "likeness" of God (Genesis 1:26) and although the meaning of this has given rise to much discussion,⁴ Genesis 1:28 implies that it lies in "a co-operative sharing in dominion".⁵ This is reflected in Genesis 1:26 which states:

"And God said, 'Let us make man in our image (*tselem*), after our likeness (*demut*). They shall rule (*weyirdu*) the fish of the sea, the birds of the sky, the cattle, the whole earth, and all the creeping things that creep on earth'". (Genesis 1:26)

It is because humanity is made in the "image" and "likeness" of God that its vocation is to 'rule' or have 'dominion' as some translations put it. Some have pejoratively equated the meaning of 'rule' with 'subjugation'⁶ and 'dominion' with 'domination'.⁷ However this is wrong because the kind of rule which humanity is meant to exercise is based on God's exercise of dominion in the preceding 25 verses. Here we see that God creates life in all its amazing complexity, variety and abundance. It follows from this that humanity's exercise of dominion must be compatible with the life-giving and life-enhancing work God has been doing. It's for this reason we find that the images of political power in the Bible, which of course include a responsibility for justice, are pictures of serving others. Thus Adam and Eve are "placed" in the Forest of Eden to tend it and to be its gardeners (Genesis 2:8) whilst later on in Israel's history we find that the picture of the good leader is the shepherd who cares for his sheep. It follows straightforwardly from this that the person who abuses their power, and who perpetrates injustice, is not fulfilling their call to exercise 'dominion'. The shepherd who tyrannizes his flock will lose all of his sheep whilst the gardener who tears up his plants and lays down concrete stops being a gardener.⁸ Dominion is life-enhancing, because there is nothing more life-enhancing than the Creation!

Genesis 1, then, provides us with the origin of our sense of justice. We have a shared sense of justice because God is a good and loving Creator who wants His world to be ordered properly. Humanity is created in the image of God to have dominion, that is, to exercise authority under God in ways that bring life and fullness. Strikingly, the opening chapter of *Genesis* sees justice in terms of 'wise order' and not, say, as some idea of 'equality'. In addition, the call to justice is something that is invested in the entire human race, not just a single individual. We all know what justice is.

THE PRIMEVAL HISTORY

Of course, there is much more that can be said about law and justice as we move through the opening chapters of Genesis including, obviously, the fact that humanity receives divine commands (e.g. Genesis 2:16-17) and is subject to divine judgement and punishment throughout the primeval history (Genesis 1-9). This story is told with such artistry and skill that biblical scholars find all kinds of patterns in the narrative.

In particular, recent literary 'detective work' by the biblical scholar Devorah Steinmetz has uncovered striking parallels between the stories of Adam and Eve (Genesis 3), Cain and Abel (Genesis 4) and Noah and Ham (Genesis 9).⁹ Each of these stories begins with mankind inhabiting a 'new world'. In Genesis 3 this world is the Garden of Eden, in Genesis 4 it is the world outside Eden (which is later said to be destroyed by the Flood) whilst in Genesis 9 the 'new world' is the world that Noah steps out onto, after the Flood (the so-called 'post-diluvian' world). The Bible presents this world as being the world we are still living in today. The stories are also similar because they each describe how "the three beginnings of humankind is characterised by a sin or fall".¹⁰ Adam and Eve eat the fruit in the Garden of Eden (Genesis 3:6), Cain murders Abel in the world outside Eden (Genesis 4:8) and no sooner do Noah and his family step from the Ark onto the third world than we have the strange story of Noah's violation by his son, Ham (Genesis 9:22).

There's certainly a great deal of what we could call 'thematic repetition' between the Adam, Cain and Noah cycles. In broad terms they can each be read as cycles of failure which, in the wider context of Genesis as a whole point forward to the line of Shem in Genesis 11:10 and the call of Abraham in Genesis 12:1, which is somehow going to be God's answer to the problem of humanity in the primeval history. Much can of course be said about the interplay of the Adam, Cain and Noah cycles but all I want to do here is to highlight a difference between how justice is administered in the world before, and in the world after, the Flood.¹¹

In the Garden of Eden story, God is personally manifest in the garden, He puts questions to Adam and Eve, He accuses them of sinning, and subsequently He pronounces punishment and banishes them (Genesis 3:9-24). Again, in the world outside Eden, there is a similar pattern after Cain murders Abel. God questions and accuses Cain and subsequently pronounces punishment (Genesis 4:9-16). However, in the post-deluvian

world, things are different. In the story of Noah and Ham there is apparently no direct intervention by God at all. God does not question, or accuse, or pronounce punishment. When Noah finds out what Ham has done to him, it is Noah who punishes Ham by cursing him. For the first time, the one who utters the curse is a human being (Genesis 9:25). This may be significant. In the Garden of Eden, God punishes Adam and Eve. Again, in the world outside Eden, God punishes Cain. But here, in the world after the Flood, we see that judgment is exercised by Noah. Similarly, in the Garden of Eden, God curses the ground and the serpent, but not Adam and Eve. Outside the Garden, it is God who passes the first curse on a human being (Cain, in Genesis 4:11). But in the new world order it is Noah who utters the curse on another human being (Ham, in Genesis 9:25). In this respect, and in contrast to the preceding stories, Noah appears to exercise God's role in giving judgement.¹² He orders the world by discriminating between good and evil and this is reflected in Noah's words of curse and blessing (Genesis 9:25-27). It's a reminder that, even in a fallen and post-diluvian world, we are called to imitate God by seeking to bring wise order. Doing justice is a divine activity and when we do it as God intends we preserve and express the Imago Dei within us.

OUR HUMAN RESPONSIBILITY TO SEEK JUSTICE

The idea that doing justice is part of humanity's divinely-devolved responsibility to order the world is confirmed in the homicide laws of Genesis 9:6, which specifically address the question of who is authorised to respond to homicide. The classic statement of accountability is found in Genesis 9:5-6:

"But for your own life-blood I will require a reckoning: I will require it of every beast; of man, too, will I require a reckoning for human life, of every man for that of his fellow man!
Whoever sheds the blood of man,
By man (*ba'adam*) shall his blood be shed;
For in His image
Did God make man" (God speaking to Noah and his sons).

It is a rather ambiguous declaration. Verse 5 states that God will hold animals and humanity accountable for human bloodshed ("I require a reckoning") whilst verse 6 apparently states that *humankind* will hold killers to account ("By man shall his blood be shed"). On this reading, both God and humanity are involved in the 'reckoning for human life' (9:5). Alternatively, we could

resolve the ambiguity by noting that the word *ba'adam* in verse 6 – which is usually translated 'by man' – can mean 'in exchange for that man'. On this view, verse 6 does not explicitly require any human involvement. The ambiguity is resolved because both verses 5 and 6 can be taken to refer to divine punishment.

Yet even this restrictive reading of Genesis 9:5-6 does not exclude the possibility that human beings may be involved in the divine reckoning for human blood. This is because the motive clause in verse 6 ("for God made man in his own image") operates on several levels. On one level, it means that God has an interest in punishing the killer because humanity is made in God's image. But on another level, it means that humanity *also* has a stake in punishing homicide. This is because part of what it means for humanity to be made "in the image of God" (Genesis 1:27) is to judge as God judges which, according to Genesis 9:5, includes holding killers to account. The result is that, regardless of whether we recognise an ambiguity in Genesis 9:5-6 or not, humanity is supposed to be involved in the divine 'reckoning' of human life. This responsibility is set in the wider context of God's blessing upon Noah and his descendants, which includes all of humanity (Genesis 9:1-7). Of course Genesis 9:5-6 raises difficult questions about the role and legitimacy of capital punishment but the general point to be drawn here is that Genesis 9:5-6 represents a further stage in the development of humanity's responsibility for justice already present in the preceding cycles.

What is the reason for this development? It might be argued that, since the post-diluvian world was made possible because of Noah's faith in building the Ark, Noah and all his descendants are given mastery over the world he helped to recreate.¹³ On the other hand, Jo•e Krašovec sees the primeval history (like the rest of Scripture) as a story of salvation in which God's mercy predominates over the threat of punishment.¹⁴ "The stronger the human tendency to destroy creation, the more God's actions of recreating the world and mankind are necessary".¹⁵ Whatever the reason for the change in emphasis it remains the case that 'doing justice,' is part of our divinely-devolved responsibility to order the post-diluvian world, in keeping with the wider, redemptive, thrust of the primeval history as a whole. Noah's responsibilities - of governing, judging, blessing and cursing - can be seen in the light of God's redemptive purposes for fallen humanity. We are all the sons of Noah. Despite everything, we all have an intuitive sense of what justice is.

KNOWING GOD, KNOWING JUSTICE

But whilst all humanity, it seems, is blessed with an intuitive knowledge of justice and injustice, some people seem to have a better understanding than others. This is not surprising because knowledge of justice is said to flow from a relationship with God who alone is the sole source of justice:

"The Rock! - His deeds are perfect,
Yea, all His ways are just;
A faithful God, never false,
True and upright is He" (Deuteronomy 32:4, Moses speaking).

It is for this reason that proverbial wisdom avers:

"Evil men cannot discern judgement,
But those who seek the LORD discern all things" (Proverbs 25:5).

It is perhaps not surprising that this proverb is attributed to King Solomon whom the Bible presents as Israel's wisest judge (1 Kings 3:28). The idea that the knowledge of God's justice is not evenly distributed but varies according to one's relationship with God is in keeping with the broad themes of the Hebrew Bible. For example, in the patriarchal narratives God decides to involve Abraham in His divine judgment of Sodom, as a result of which Abraham receives a privileged insight into the nature of justice:

"... 'Shall I hide from Abraham what I am about to do...? No, for I have chosen him, that he may charge his children and his household after him to keep the way of the LORD by doing righteousness and justice...' (Genesis 18:17-19; God speaking, RSV).

Abraham's deeper understanding is related to his vocation which is said to include teaching 'the way of righteousness and justice' to his descendants (Genesis 18:19) so that, in turn, all the nations of the world would be blessed (Genesis 18:18):

A similar dynamic can be found in the relationship between God and Abraham's descendants, the people of Israel. The Israelites receive greater insight into the meaning of justice than other peoples of antiquity because they have experience of God's justice in the form of the Exodus. (This experience is directly personal for the Exodus generation itself; in the case of subsequent generations, it is personal to the extent of its recitation, appropriation and incorporation into one's personal history, for example, through the annual

observance of Passover). The Exodus is the greatest example of God's justice in the Hebrew Bible because it is the most powerful example of God's intervention to judge oppressors (here, the totalitarian rule of Pharaoh) and to liberate the weak (here, Abraham's enslaved descendants). Indeed, the purpose of this deliverance is said to be that Israel comes into a deeper knowledge and relationship with God. This is seen in God's command to Pharaoh, through Moses: "Let My people go that they may celebrate a festival for Me in the wilderness" (Exodus 5:1). The motif of the 'knowledge of God' runs throughout the Exodus story, with Pharaoh retorting: "Who is the LORD that I should heed Him and let Israel go? I do not know the LORD, nor will I let Israel go" (Exodus 5:2). As with Abraham, the purpose of Israel's increased understanding of God's justice is that Israel should both teach and model what it means to be a just society for the benefit of all the nations of the earth. As Moses commanded the people, in his farewell address:

"Observe [the laws] faithfully, for that will be proof of your wisdom and discernment to other peoples, who on hearing of all these laws, will say, 'Surely, that great nation is a wise and discerning people'. For what great nation is there that has a god so close at hand as is the LORD our God whenever we call upon Him? Or what great nation has laws and rules as perfect as all this Teaching that I set before you this day?" (Deuteronomy 4:6-8; Moses speaking)

This lies close to the heart of Israel's vocation in Exodus 19:6 where Israel is called by God to be "a kingdom of priests and a holy nation". In other words, Israel's role in the purpose of God is to serve the nations by standing in the same relationship to them as a priest stands in relation to the people at the Tabernacle, or Temple, of Israel's God. In this way Israel is a conduit of blessing to the world, mediating the knowledge of God's justice in the same way that the Israelite priest was to be a conduit of God's blessing to the people (e.g. Numbers 6:22-27) and to teach God's justice, in the form of Torah (e.g. Jeremiah 18:18, where the teaching of the law is identified with the role of the priest).

Of course, at first glance, some of the biblical laws in the Bible appear to be more relevant to some people than others. Even the Ten Commandments, which many commentators would see as the most 'universal' of the biblical laws, contain specific rules about parents, spouses, false testimony and property which suggests that they were addressed, at least in the first

instance, to free adult males who belonged to the property-owning class, with a household and an extended family. But although some of the laws undoubtedly 'meant' more to some people than to others, this was not an excuse for anyone in Israel to be ignorant. Ultimately all Torah was relevant to everyone because it expressed the character of God. As such it was to be widely disseminated:

"Hear, O Israel ... these words which I command you this day shall be upon your heart; and you shall teach them diligently to your children, and shall talk of them when you sit in your house, and when you walk by the way, and when you lie down, and when you rise. And you shall bind them as a sign upon your hand, and they shall be as frontlets between your eyes. And you shall write them on the doorposts of your house and on your gates" (Deuteronomy 6:4-9, Moses speaking).

To sum up, although all humanity is presented as having some knowledge of justice, it is the vocation of the people of God, who are called into a relationship with the God of justice, to draw others into a deeper and more precise understanding of justice, based on the character of Israel's God.

THINKING DIFFERENTLY ABOUT LAW, JUSTICE AND LEGAL INSTITUTIONS

It follows from this that a society in which everyone is assumed to have special insight into the meaning of justice (thanks to the Exodus) and in which everyone is supposed to be acquainted with Torah is a society that has very different ideas to our own about the nature of law and justice and the kind of legal institutions that are necessary for society. Certainly, if the Israelites were supposed to be bound together by a common knowledge of justice this in turn creates a set of expectations that they would be empowered to apply the law among themselves. This is in fact what we do find. In contrast to the modern preference to 'see you in court', the biblical wisdom literature urges that problems should be sorted out by the parties concerned and not taken to court. This finds classic expression in Proverbs 25:7-10:

"...What your eyes have seen do not hastily bring into court; for what will you do in the end, when your neighbour puts you to shame? Argue your case with your neighbour himself, and do not disclose another's secret; lest he who hears you bring shame upon you, and your ill repute have no end" (Solomon speaking, RSV).

Here, dispute settlement is conceived as an essentially private (at least, within the family or clan), rather than a public matter. Shaming a neighbour in public is viewed as reprehensible and self-defeating.¹⁶ At its best, therefore, biblical society is supposed to be a world where people actively avoid having their disputes resolved by court adjudication. This is in keeping with the way in which biblical law promotes an attitude of forbearance towards enemies that makes litigation unlikely. Exodus 23:4-5, for example, enjoins proactive behaviour on behalf of one's enemy:

"When you encounter your enemy's ox or ass wandering, you must take it back to him. When you see the ass of your enemy lying under its burden and would refrain from raising it, you must nevertheless raise it with him" (Exodus 23:4-5; God speaking).

Such forbearance reflects something of God's character, which is revealed at Sinai to be "...merciful and gracious, slow to anger, and abounding in steadfast love and faithfulness keeping steadfast love for thousands, forgiving iniquity and transgression and sin" (Exodus 34:6-7; God speaking). The regulation about helping your enemy's animals is itself set in the context of a series of prohibitions relating to judicial proceedings (Exodus 23:1-8), including false rumours, false charges and bribery. At first sight this literary arrangement seems rather strange. However, it makes sense when we realise that there is a thematic connection between 'enmity' and litigation because litigation is itself the result of enmity.¹⁷ Enmity leads to adjudication: generosity avoids it.

Should people find themselves in conflict, there is a strong preference for private settlement and for avoiding third party intervention. There are a number of features of biblical society that make it easier for people to sort out their problems among themselves, rather than resort to court adjudication, and these include the use of 'self-executing' rules, the value placed on negotiation and the acceptance of a certain measure of 'rough justice'. We will consider, briefly, each of these in turn.

First, Bernard Jackson has highlighted the use of what he calls "self-executing rules"¹⁸ that enabled the Israelites to sort out their problems among themselves. These are rules that are so formulated as to obviate the need for third-party adjudication (for example, through the use of evidentiary tests and dispute-resolving mechanisms that are easy to administer). A good example of this is found in Exodus 21:18-19:

"When men quarrel and one strikes the other with a stone or with his fist and the man does not die but keeps his bed, then if the man rises again and walks abroad with his staff, he that struck him shall be clear; only he shall pay for the loss of his time, and shall have him thoroughly healed" (my italics; RSV).

The significance of the man's 'walking abroad with his staff' is that once he has made that degree of recovery, any subsequent death cannot be attributed to the original assailant.¹⁹ 'Walking abroad' is an observable test that, like the former 'year and a day' rule in relation to homicide, settles the issue of causation without the need for legal 'experts' and there are many more such examples.²⁰

Second, a system in which, ideally, everyone is supposed to know the law and apply it among themselves without the need for formal adjudication is a legal system that values negotiation. Negotiation itself bestows legal competence upon the parties to a case. It assumes that people are sufficiently well versed in the content of the law, and in the meaning of justice, that they can work out its application for themselves. A good example of this is found in Exodus 21:28-30:

"When an ox gores a man or a woman to death, the ox shall be stoned, and its flesh shall not be eaten; but the owner of the ox shall be clear. But if the ox has been accustomed to gore in the past, and its owner has been warned but has not kept it in, and it kills a man or a woman, the ox shall be stoned, and its owner also shall be put to death. If a ransom is laid on him, then he shall give for the redemption of his life *whatever* is laid upon him" (my italics).

This does not, of course, mean that the victim's family have *carte blanche*. In all likelihood, the open texture of the rule would give rise to discussion between the parties as to what would be an appropriate sum in a given case. As Jackson notes: "the owner is not in these circumstances allowed to try to bargain down the kin of the deceased... but nevertheless the kin of the deceased are expected not to abuse their rights."²¹ Again, there are other examples in biblical law.

The importance attached to negotiation between the parties and to the use of 'self-executing' rules inevitably means the acceptance of a certain measure of 'rough justice.' This is illustrated by Exodus 22:5, among other cases:

"When a man causes a field or vineyard to be grazed over, or lets his beast loose and it feeds in another man's field, he shall make restitution from the best in his own field and in his own vineyard".

There is no guarantee that the "best" of the culprit's field or vineyard is equal to, or greater than the produce eaten by the roaming ox. The claimant may receive full compensation or he may not. It all depends on the quality of the field next door. But whilst the results of this system of justice may not always be perfect, it has advantages. It avoids the problem of having to calculate the exact value of the produce to be restored; a matter that would involve the intervention of some adjudicatory agency.²² The parties are able to 'draw a line' under their dispute, put it behind them and to get on with the rest of their lives. In addition, the victim receives the material recompense that he needs - and quickly. This would have been of great value in an agricultural community where getting quick recompense may have been a matter of life and death. Even today the mode of dispute-resolution and the speed of compensation can adversely affect the fortunes of a business, or an individual.

"DO YOU NOT KNOW THAT THE SAINTS WILL JUDGE THE WORLD?"

This sort of approach to law, justice and legal institutions is also found in the New Testament. The Sermon on the Mount urges the avoidance of judicial proceedings in favour of out-of-court settlement (Matthew 5:25-26). Jesus refuses to act as an arbitrator when requested and instead criticises the complainant's desire for adjudication (Luke 12:13-15). At times, it seems as though settling 'out of court' is a paradigm of the gospel:

"And why do you not judge for yourselves what is right? As you go with your accuser before the magistrate, make an effort to settle with him on the way, lest he drag you to the judge, and the judge hand you over to the officer, and the officer put you in prison. I tell you, you will never get out till you have paid the very last copper" (Luke 12:57-59; Jesus speaking).

It is better to 'settle your account' with God before the Last Judgement than it is to put things off until that Day, when it will be too late.

Much the same horror of lawsuits, especially among the people of God who ought to be capable of sorting out their own affairs, underlies Paul's rebuke of the Corinthian church:

"When one of you has a grievance against a brother, does he dare go to law before the ungodly instead of the saints? Do you not know that the saints will judge the world? And if the world is to be judged by you, are you incompetent to try trivial cases? Do you not know that we are to judge angels? How much more, matters pertaining to this life! ... Can it be that there is no man among you wise enough to decide between members of the brotherhood, but brother goes to law against brother, and that before unbelievers? To have lawsuits at all with one another is defeat for you. Why not rather suffer wrong? Why not rather be defrauded?" (1 Corinthians 6:1-7).

Lawsuits between members of the church were wrong because they promoted enmity (cf. the litigation section of Exodus 23:1-8, above). Civil litigation both expressed the existing personal enmity between the parties whilst also elevating it to a new, public, level. Further enmity would be created as a result of the court proceedings themselves. Bruce Winter cites a range of Roman sources to show that "proceedings were not conducted dispassionately but with great acrimony... No areas were immune from ferocious attacks... [and] defendants were subjected to muckracking and fabrication".²³ Not only would this create lasting discord between the parties it would also spread to the church as a whole who would be tempted to take sides. Winter summarises Paul's concerns by asking: "How could the Christian meetings achieve their purpose to edify, comfort and console with such enmity and divisions among them...?"²⁴ On top of all this was the fact that lawsuits were occurring within the Christian family, among brothers. Even Roman culture regarded the family as a haven from enmity and litigation with authorities such as Cicero forbidding brothers from engaging in intrafamily litigation.²⁵

'SELF-HELP' AND MODERN CIVIL JUSTICE

The biblical ideal of 'justice for all' - understood as a widespread knowledge of the norms and regulations governing society combined with empowering people with the capacity to sort out their disputes among themselves - presents a challenge to modern ideas about the nature of law, justice and legal institutions. Moreover, it does so at a time when the workings of the legal system in a modern society such as, say, England and Wales, are under greater scrutiny than ever before.

One of the largest surveys ever conducted of perceptions of the legal system in England and Wales (published by Hazel Genn in 1999) found that only a bare majority of the public were confident of a fair hearing in court. The study also found that people were reluctant to go to court to enforce or defend their rights for various reasons, including fears about costs, lack of confidence in the outcome and a belief that judges serve the interests of the wealthy. On the other hand, among the smaller number of respondents who had actual experience of attending a court or tribunal, 85% said they would definitely or probably go to court again if they found themselves in the same position. Moreover, the vast majority of this group also said that they believed the outcome was fair and it did not seem to matter whether the dispute was resolved by adjudication or by agreement. One-third reported that the experience had given them a sense of empowerment.²⁶ Clearly there was a great difference between people's (uninformed) perceptions of the legal system and actual experience.

Surprisingly, and contrary to tales of the 'litigation bug', Genn found that the overwhelming majority of respondents surveyed tried to resolve the problem directly themselves by contacting the other party. Only when direct action failed did the majority go on to obtain advice about resolving the problem. A significant minority (one-third) continued to pursue a self-help strategy which often demanded considerable determination and creativity. Many of these 'self-helpers' lacked access to good quality legal advice, but were also typified by a fear of legal bills, previous negative experiences of lawyers, a sense of powerlessness and, in some cases, a sense of alienation from the legal system.

Naturally, the popularity of self-help depended on the type of problem experienced. Whilst consumer problems were the most likely of all problem types to be handled directly by respondents, others such as employment, neighbour, divorce and property problems were more strongly associated with obtaining outside advice. The seriousness with which the problem was viewed by the parties and the relative intractability of the issues involved set real limits to self-help strategies, especially in the case of employment and family issues where the parties may still have been locked into a continuing relationship. Fewer than half of the self-helpers succeeded in achieving a resolution by agreement. Much depended on the nature of the problem, the abilities of the complainant and the intransigence of the other party. In the spirit of the book of Proverbs, Genn's study confirms the danger of going to court. Respondents whose problem led to a court or tribunal adjudication

were the most likely to say that the experience of sorting out the problem had been stressful. By contrast, those who resolved their problem by agreement were the least likely to say that they had found the experience stressful. Indeed, they were the most likely to say that the experience had made them feel in control of the situation. Moreover, the survey also found that agreements appear to bring disputes to an end more completely than court decisions.

BIBLICAL WISDOM AND THE CHANGING FACE OF CIVIL JUSTICE

There are some interesting convergences between the sort of practical wisdom that underlies Israelite legal praxis (that is, its accepted practices and customs, insofar as we can reconstruct them) and various recommendations for the reform of civil justice in England and Wales following the publication of the *Access to Justice* Report (1996) by Lord Woolf (then Master of the Rolls).²⁷ These recommendations led to the introduction of the Civil Procedure Rules 1998 (CPR) in England and Wales which consolidated and reformed the rules regarding the operation of civil justice in England and Wales.

First, Woolf saw that there was a need for greater education among ordinary people about law and the legal system and that citizens needed to be informed about their rights and obligations to become responsible members of society. This need was also highlighted in Genn's research which concluded that "it is...bizarre that although members of the public will have been taught to distinguish between, say, different varieties of trees, they are unable as adults to distinguish between the criminal and civil courts"²⁸. Woolf thought that one way of promoting a better understanding of the law lay in demystifying the court system and its procedures and so, under Woolf's reforms, 'pleadings' become 'statements of case' and 'Mareva injunctions' become 'freezing orders.'

Second, there is a convergence between biblical law and Woolf's reforms on the value of 'out of court' settlement. Woolf wanted to increase the emphasis on resolution other than by trial, objecting to the fact that, at present, legal rules are mainly directed towards preparation for trial even though the majority of disputes end in a settlement. Woolf proposed a new system of offers to settle cases as a way of enlarging the scope for settling disputes.

Third, there is a convergence between biblical law and Woolf's reforms on the value of an early settlement. Genn's research on compensation for the Law Commission found that the majority of cases took between four and six

years to settle and that larger cases tended to take longer. For Woolf, this was a serious matter, citing with approval the judgement in *Rastin v British Steel Plc* (1994) 1 *Weekly Law Reports*, 739f, which characterised delay as "the enemy of justice". For example, delay can often make it more difficult to establish the facts in a case because memories fade and witnesses cannot be traced. Delay may also force parties to settle for inadequate compensation because they are 'worn down' by litigation, or cannot afford to continue. In addition, the late settlement of cases is a waste of judicial time. Woolf argued that the philosophy of litigation should be primarily to encourage the reasonable and early settlement of proceedings.

Fourth, there is an emphasis in both biblical law and in Woolf's reforms that legal 'experts' are not always needed to resolve problems. Lord Woolf noted that at every level of the civil justice system litigants were bringing cases without any form of legal representation, sometimes because of the high cost of legal representation. Such 'litigants in person' faced formidable obstacles, especially in the High Court and on appeal to the Court of Appeal where the normal procedure is designed primarily for parties who are represented. Woolf made a number of important recommendations to ease the problems for both 'litigants in person' and the courts, including raising the ceiling of the small claims procedure and so increasing access to justice for ordinary people.

Finally, and in keeping with the analysis of biblical law outlined above, Woolf's proposals include an explicit acceptance of the value of 'rough justice.' Attacking the long-held belief that, when it comes to justice, "time and money are no object" Woolf cited, with approval, Lord Devlin in *What's Wrong With the Law*: "We refuse to associate [British justice] with ... such homely maxims as that half a loaf is better than no bread. But is it right to cling to a system that offers perfection for the few and nothing at all for the many?"²⁹ Nor is there any guarantee that our present system offers 'perfection to the few.' Every system of justice contains a percentage of error. This being so, "...if by slightly increasing the percentage of error, we can substantially reduce the percentage of cost, it is only the idealist who will revolt".³⁰

To sum up, the Bible attests to the belief that there is such a thing as a common sense of justice because humanity has a shared vocation to secure justice. In this task the people of God have a special role to play in mediating an understanding of justice that flows from what it means to know the

character of God. The biblical ideal of 'justice for all' - understood as a widespread knowledge of the norms and regulations governing society combined with empowering people with the capacity to sort out disputes among themselves - resulted in a society with different ideas to our own about the nature of law and justice and the kind of legal institutions that are necessary for society. Among other things, it included a strong preference for private settlement and for avoiding third party intervention. A number of features of biblical society made it easier for people to sort out their problems among themselves, rather than resort to court adjudication, and these included the use of 'self-executing' rules, the value placed on negotiation and the acceptance of a certain measure of 'rough justice'. Interestingly, recent reforms to the rules of civil justice in England and Wales find various points of convergence with the received wisdom of biblical Israel.

Dr. Burnside is Reader in Biblical Law at the School of Law, University of Bristol. His work explores the relationship between law, theology and criminology from theoretical and applied perspectives, beginning with Relational Justice: Repairing the Breach (1994, Waterside Press). His doctoral thesis in biblical law was published as The Signs of Sin: Seriousness of offence in biblical law (2003, Continuum). In 2000, he was appointed by the Home Office and the Prison Service England and Wales to head an evaluation of faith-based units in England and Wales, which was subsequently published as part of a wider study of faith-based units around the world (My Brother's Keeper: Faith-based units in prisons, 2005, Willan Publishing). His most recent book, God, Justice and Society is due to be published next year (www.biblical-law.org).

I am grateful to the Rev. Dr. Cecil Grant for his comments on an earlier draft of this article. Quotations from the Hebrew Bible are taken from the Jewish Publication Society translation whilst those from the New Testament are drawn from the Revised Standard Version, unless otherwise noted.

REFERENCES

- 1 Philip Allott, *Eunomia: New Order for a New World*. (Oxford: Oxford University Press, 1990), pp. 87-88.
- 2 *Ibid.*, p. 88.
- 3 The heart of J R Lucas' contention that justice is an asymmetric concept; *On Justice* (Oxford: Clarendon Press, 1980).
- 4 Summarised in Claus Westermann, *Genesis 1-11*, translated John J. Scullion, *Continental Commentary* (Minneapolis: Fortress Press, 1994), pp. 147-158.
- 5 H. D. Preuss, 'Damah', in *Theological Dictionary of the Old Testament*, eds. G. Johannes Botterweck and Helmer Ringgren (Grand Rapids: Eerdmans 1978), vol. 3, pp. 250-260, p. 259.
- 6 E.g. Norman C. Habel, 'Geophany: The Earth story in Genesis 1', in *The Earth Story in Genesis*, eds. Norman C. Habel and Shirley Wurst (Sheffield: Sheffield Academic Press, 2000), pp. 34-48, p. 47.
- 7 E.g. in 2009 the popular broadcaster and naturalist Sir David Attenborough singled out the influence of the book of Genesis as being the root cause of attitudes that have led to humanity's exploitation and devastation of the planet. See http://blogs.nature.com/news/thegreatbeyond/2009/01/david_attenborough_on_darwin_e.html, accessed 4 April 2009.
- 8 This illustration is taken from Tom Wright, Bishop of Durham. *God in Public?: Reflections on Faith and Society*. Lectures given at the London School of Economics, February 14 2008. <http://www.fulcrum-anglican.org.uk/page.cfm?ID=279>, accessed 4 April 2009.
- 9 Devora Steinmetz, 'Vineyard, farm and garden: The drunkenness of Noah in the context of primeval history', *Journal of Biblical Literature* 113 (1994), 193-207.
- 10 Steinmetz, *op. cit.*, p. 194.
- 11 *Ibid.*, *passim*.
- 12 *Ibid.*, p. 206.
- 13 *Ibid.*, p. 196.
- 14 Jo·e Krašovec, 'Punishment and mercy in the primeval history', *Ephemerides Theologicae Lovanienses* 70 (1994), 5-33.
- 15 *Ibid.*, p. 33.
- 16 Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1-22:16* (Oxford: Oxford University Press, 2006), p. 30.
- 17 *Ibid.*, pp. 403-405.
- 18 *Ibid.*, p. 29.
- 19 *Ibid.*, pp. 173ff.

- 20 E.g. Exodus 21:35 which concerns a bovicidal ox. The owner of the dead ox will only be compensated for his loss if the value of the live ox is equal to or greater in value to that of the dead ox. However, any 'rough justice' is outweighed by the fact that the parties can resolve the matter quickly between themselves without the need to have recourse to arbitration by third parties or formal institutions (Jackson, *ibid.*, p. 27). For further examples see Jackson *ibid.*, pp. 3-39.
- 21 *Ibid.*, p. 72, n. 196.
- 22 See generally Jackson, *ibid.*, pp. 389 - 395.
- 23 Bruce W. Winter. *After Paul Left Corinth: The influence of secular ethics and social change* (Grand Rapids: Eerdmans, 2001), p. 66.
- 24 *Ibid.*, p. 68.
- 25 *Ibid.*, p. 71.
- 26 Hazel Genn. *Paths to Justice: What people do and think about going to law* (Oxford: Hart, 1999).
- 27 The Right Honourable the Lord Woolf, Master of the Rolls. July 1996. *Access to Justice - Final Report to the Lord Chancellor on the civil justice system in England and Wales*. <http://www.dca.gov.uk/civil/final/index.htm> (accessed 3 April 2009).
- 28 Genn, *op. cit.*, p. 257.
- 29 Cited in Lord Woolf, *Interim Report on Access to Justice* (June 1995), ch. 3, para. 19.
- 30 *Ibid.*