

Justice : perspectives of faith, law and politics, with reference to Richard Hooker.

Speaking note for His Honour Judge Keith Cutler CBE at the Fourth Annual Richard Hooker lecture at St Andrew's Church, Boscombe, on 3rd November 2014.

1. Historical perspective – law.

Legal justice is very changeable – it may form a bridge between divine law which may be seen as immutable and unchangeable and the transient nature of the laws governing society and politics.

Thus justice does change – reflecting on how society sees an outcome as being “just”.

Today we have the calls:

“we want justice” = we want revenge – perhaps one of the uglier emotions

“there is no justice” = we have just lost our legal case or political argument.

800 yrs from 1215 – 2015 is neatly halved by Richard Hooker and a very succinct look at the three 1215 ; 1600; and 2015 highlights the nature of legal justice. If we go back 400 years before that we arrive at the times of Alfred the Great – himself an important legal figure; he even required all judges to be literate!

2. Magna Carta.

In fact not a well drafted document. It is the product of much bargaining. Most of its clauses deal with specific grievances existing between the barons and the king.

To me the clauses dealing with individual rights and justice are the most compelling.

40. “to no one will we sell, to no one deny or delay right or justice”

17. “ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place” Then 18 – county courts; 19 – assizes

39 sets out the basic terms of what evolved as “habeas corpus”. It also contains some odd clauses about intestacy, fines and feudal dues.

54. women not to be credible witness in murder trials unless it be her husband. “No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband”.

BUT it is clause 40 that resonates. In fact the Magna Carta did not last long – was further bargained and ignored by the king. YET we still regard it as a founding stone of rights and liberties.

Natural law to a lawyer = examples of what we call natural justice:

“audi alteram parte = hear both sides of the argument

“nemo iudex in sua causa” = no one must be the judge in their own cause

3. Subsequent developments.

Magna Carta's importance comes with its progeny. It became a basic document of our unwritten constitution. It influenced to high degree such statutes as the Bill of Rights Act 1688/9, Habeas Corpus Act 1679, Petition of Right – and has a wider impact in the constitutional declarations in the U.S.A. and in France.

Not yet any guarantee of a fair trial – it was to take until 1898 that a def had a right to speak in his own defence at a criminal trial.

Richard Hooker. Generally founder of Anglican theology of comprehensiveness and tolerance. Salvation available for all including the ignorant and wrongdoer. Middle way – via media.

Natural Law – from God's creation.

Laws from government

Laws of science – laws of physics; laws of gravity etc

Reason is the criteria for reading scripture. Scripture is part of ordinary experience – belief is assured greater by sense than word. Puritans took scripture as setting down absolute and eternal laws.

4. Justice – from law today.

Law is an imperfect way to secure justice – but perhaps it is as good as any.

1. It can set out clear rules of behaviour, expectations, regulate contractual and social relationships etc
2. It can enforce behaviour by imposing penalties and punishments – principally by creating crimes; the Rule of Law;
3. If the laws are created by a democratic body then they reflect the wishes of the people.

However need a person or a system to turn legal obligation and penalty – into a just result in each case – thus the role of judge, a tribunal or other judicial body. To me the role of a judge is encapsulated in the judicial oath:

Judicial oath

“I, _____, do swear by Almighty God that I will well and truly serve our Sovereign Lady Queen Elizabeth the Second in the office of _____, and I will do right to all manner of people after the laws and usages of this realm, without fear or favour, affection or ill will.”

4. Mercy? It is usual to hear a priest talking of divine justice – but tempered by mercy. Legal justice should be tempered by mercy – at the point of its delivery.

Old common laws of inheritance and land ownership became so rigid and unfair that the judiciary had to develop rules of Equity alongside them.

This is a form of mercy – softening the harshness of statute and regulation.

But in criminal law we deliver one sentence – in doing so we will pay notice to mitigation, remorse, plea of guilty and thus wrap up mercy in our desire to be just.

[Bishop John Cavell: Housekeeper - “I hope the portrait does you justice” – bishop - “ I was rather hoping for mercy”.]

5. Conclusion.

We live in a society beset by rules and regulations.

A society which enjoys being under the rule of law.

In crime – overriding objective of the criminal courts – for the “ case to be dealt with justly”!

Also we live in a society in which we talk of rights and freedoms.

Any sentence with the words “European” “human” “rights” in whatever order – is met with an explosion of indignation by some!!

Some sectors of society seem to act out of “righteous intolerance” – criminalise youth, punish the prisoner unfairly, reject the immigrant and asylum seeker.

Perhaps we need to reflect on how Richard Hooker found and promoted the “middle way”.

We should emulate his careful stratagem of grounding the Anglican church between the extremes of Catholicism and Calvinism.

Thus in our society we should in upholding and enforcing law – in balancing rights and duties - seek the middle way of applying mercy and humanity to achieve justice.

Keith Cutler

3rd November 2014.