

The Justice Quest

Abstract

The Hebrew Bible has much to say about what needs to happen in order for justice to be done. Attention must be paid to the plight of the poor and the vulnerable because they are especially exposed to the risk of injustice. The powerful must be held to account. Bribery must be eliminated from our legal systems and corruption must be challenged. The law must be made available to people in ways which they can understand, the courts must be accessible and decisions must be made without unreasonable delay. There must be those who are willing to speak as advocates for those whose voice will not otherwise be heard. These needs exist in every place around the world. Justice is a goal which must be constantly pursued.

Introduction

Legal systems purport to deal with the perpetrators of injustice, to defend the victims of oppression and to protect society. Over the last half century or more, the methods used to deal with those perpetrators who are accused of crime have been increasingly called into question. Serious questions have been asked about whether capital punishment can ever be justified, about whether prison works, and about the impact of the criminal justice process on both offender and victim.

Sadly today, however, most serious injustices around the world do not end up in court, or if they do, do not result in a positive outcome for the victim. In some cases, that is because the law itself is unjust. In innumerable other instances, on paper, the law is reasonably just. The injustice results from its (in)application in practice.

All around the world, the success of any reforms in the law, any initiatives to improve the lot of the destitute, the vulnerable and the poor depend on their implementation in practice. They depend on the effectiveness of mechanisms of accountability. As the British government has recognised in its development programmes, without good governance, lasting improvements in the conditions of people cannot be achieved. The impartial implementation of existing laws may not be perfect justice, but it is indispensable if the Millennium Development Goals and other targets in poverty reduction are to be attained.

Gary Haugen, President of International Justice Mission, has said: "The great human rights challenge of our day is to ensure that the poor can count on their own justice systems to protect them". Where the poor cannot count on the protections which the laws of their country are supposed to give them, the rule of law remains a mere ideal. If the poor cannot obtain justice in the courts, they

cannot assert their legal rights or force others to honour their legal obligations. The decisions of public and private bodies cannot be challenged and powerful individuals cannot be brought to account. The result is a two-tier society in which the powerful are able to buy security and the powerless are exposed to insecurity, deprivation and violence.

The problem is not a new one. However it is not often recognised that it is one which is addressed extensively in the Hebrew Scriptures which Christians and Jews both hold to be the Word of God and which are respected by Muslims and other faiths. The writer of *The Crucible*, the Jewish playwright Arthur Miller once said, “We are the people of the Book, and the Book means justice.”¹ It is undeniable that two of the principal concerns of the Hebrew Bible are the justice of God and the reflection of God’s justice on earth.

Throughout the Hebrew Bible there is a profound wrestling with the question: is God just? The unequivocal answer given is that, notwithstanding the injustice seen on earth, God is just, indeed justice is fundamental to God’s character. God’s love of justice and hatred of injustice are a recurrent theme. “Let him who boasts boast about this,” Jeremiah 9:24 declares, “that he understands and knows me, that I am the Lord, who exercises kindness, justice and righteousness on earth, for in these I delight.”² This belief that God is just leads the Psalmist to proclaim, “the Lord is a refuge for the oppressed... He does not ignore the cry of the afflicted.”³

The Hebrew Scriptures see the administration of justice as the most important responsibility of rulers in home affairs.⁴ Welfare and health care provision, such as it was, was left to the extended family. In the nations of Israel and Judah, central government’s role focused on justice and defence. Rulers are accountable to God for translating God’s concern for justice into practical action on behalf of the oppressed, the poor and the vulnerable.

The last half century has seen a proliferation of Christian engagement with the biblical teaching about what justice is, but far less reflection on what the Bible might have to say about what needs to happen in order for justice to be done. Yet there is reason to think that the Hebrew Bible might have something to say on this question too. In Hebrew thought justice is conceived of, not as a thing but as an action. Justice is, in the words of the prophet Amos, ‘a river’ and ‘a never-failing stream’

¹ Sarah Katz, ‘Arthur Miller calls for justice’, *Jerusalem Post*, 27 June 2003, available on-line at <http://www.freerepublic.com/focus/f-news/936820/posts>

² See also Isaiah 61:8.

³ Psalm 9:9, 12. See also Psalm 11; 12:5; Exodus 23:7; Deuteronomy 20:10; Proverbs 6:16-17; 1 Kings 20:31; 2 Kings 6:22; 24:4; Isaiah 59:7; James 5:4.

⁴ Blenkinsopp, *Wisdom and Law in the Old Testament: The Ordering of Life in Israel and Early Judaism* (revd edn.; Oxford: Oxford University Press, 2001), 2.

(Amos 5:24) which flows. This paper seeks to draw from the Hebrew Bible insights into how justice on earth might be sought and to reflect on initiatives which are being taken in pursuit of this goal.

1. Justice requires us to be on a quest to ensure that the law applies to everyone

The poor can be oppressed by the uneven application of the law in more than one way. The poor are oppressed when those who make the laws and those who enforce the laws abuse their powers, ignoring the safeguards and limits which the law places on their powers and simply acting as they see fit without restraint or accountability. There are a number of countries in the world where brutality by the military, the police or government-backed militias jeopardise the security of the poor and the vulnerable.

The poor are oppressed when the laws only apply to them because those who have power and influence can ignore the law with impunity. For there to be justice, governments must be held accountable for their obligation to address law-breaking at whatever level of society it occurs, and whether the perpetrators are outcasts or members of the elite.

There is, however, another way in which the law can be implicated in the oppression of the poor. The poor are oppressed when only the rich can take advantage of the protection which the law is supposed to offer to all. The poor are disproportionately the victims of injustice. They are more likely to be threatened with the law by the rich than they are to be able to vindicate their legal rights against the rich. They are more likely to be the victims of crimes and other legal wrongs than the rich. They are also less likely to be able to obtain legal redress than the rich. Empirical research has recently established this to be the case in the UK and there are strong reasons to believe that this is likely to be the case elsewhere. Professor Dame Hazel Genn concluded: "Evidence shows that low-income groups tend to suffer more problems than higher income groups and are less likely to do anything about them. Further, it seems that many people are not sure where to go or whom to approach to obtain resolution or redress and that there is a clear, significant unmet need for accessible and affordable sources of information and advice. Access to legal advice and assistance is necessary not only to lift up the socially excluded but also to prevent a slide into social exclusion in the first place."⁵

⁵ Professor Dame Hazel Genn 'Back to Basics in Dispute Resolution: What do people want and what should we be offering?', paper given at Civil Justice Advisory Group Consultation Seminar 13 September 2010, available on-line at <http://www.consumerfocus.org.uk/scotland/files/2010/10/CJAG-Seminar-transcript.pdf>

Seeing justice done requires us to work constantly towards the goals of ensuring that power over the poor is exercised lawfully, that the law is not simply used against the poor, and also to use the law on behalf of the poor. To bring those aims within view requires us to overcome a number of obstacles, obstacles which have been blocking the flow of justice for all for thousands of years.

2. Justice requires us to be on a quest to eliminate bribery from our legal systems

The most obvious threat to even-handed justice is bribery. Bribery is effective⁶ and the book of Proverbs recognises this (Proverbs 21:14)⁷. The person who pays the largest bribe obtains a benefit, in the short term (Proverbs 17:8). The short term individual gain which a bribe secures for the payer is, however, more than outweighed by the damaging consequences to society of bribery (Proverbs 29:4). First, bribery distorts outcomes in the legal system by encouraging judges to accept false testimony. A judge who accepts bribes perverts the course of justice and renders unjust verdicts instead of just ones.⁸ Second, bribery changes the nature of a legal system: a legal system in which bribes are routinely taken is no longer one that is concerned about right and wrong; instead the answers given by the courts are available to the highest bidder. Law is no longer about justice; it is simply a reflection of pre-existing economic power. When judges can be bought, justice is up for sale and you'd better have enough money to be able to pay for it.

Bribery is an egregious example of the extent to which differentials in wealth and power can lead to injustice in hands of those willing to be corrupted. It leads to the situation described by the prophet Micah: "the *ruler* demands gifts, the *judge* accepts bribes, the *powerful* dictate what they desire – they all conspire together." (Micah 7:3).

In a system where the rich can buy their way out of liability for their wrongful and illegal actions, the poor no longer enjoy the effective protection of the rule of law. The writers of the book of Proverbs condemn such a situation because the result is that the poor are treated as being worth less than the rich. Since God is the loving creator of both the rich and the poor alike (Proverbs 22:2), oppression of the poor is nothing other than an expression of contempt for God himself.⁹

Many countries round the world suffer from corruption amongst their judges. In a number of places, judges take bribes because their official salaries do not pay them what is or what they regard as a

⁶ 'You get what you pay for: the economic case for bribery', *The Economist*, (June 2nd 2012), 79.

⁷ See also Exodus 23:8 and Deuteronomy 16:19.

⁸ Proverbs 17:23, 17:8 and 21:14

⁹ Proverbs 14:31; 17:5

living wage. It takes courage for a judge in such a situation to refuse to accept a bribe. It takes courage for a litigant in such a situation to refuse to pay a bribe.

Judicial integrity should be a matter of the highest priority in every country and not left to the scruples of individuals. It is achievable provided judges are paid enough that they do not need to take bribes and when those judges who do take bribes know that there is a high probability that they will be caught, dismissed, disgraced and punished. Just outcomes to cases might also be promoted by having effective appeal courts with powers to report judges whose decisions are suspected to be corrupt. An alternative might be to allow parties to use binding arbitration to resolve at least certain kinds of dispute.

3. Justice requires us to be on a quest to eliminate corruption from our legal systems

The Hebrew Bible strongly emphasises that judges are to judge fairly (Proverbs 31:8), i.e. they are to apply the law in fair and predictable ways. This requires more than just the elimination of bribery. The starting point in making equality before the law effective is to have laws which treat all people equally. In many ancient legal systems, it was common for different rules to apply to different categories of person. In contrast, the Law of Moses applied equally to persons of all classes: there was one standard for both the rich and poor. The same rules also applied both to Israelite citizens and to immigrants (Leviticus 24:22). Today, there are laws which on paper or in practice do not treat all people equally. In a number of countries including Romania and Kenya, Christian lawyers work to obtain identity cards for gypsies, street children and others who normally find it impossible to obtain the documents which will be a passport to accessing the benefits of citizenship.

However, even when the law treats everyone equally on paper, measures need to be taken to ensure that everyone is treated equally in practice. The poor remain vulnerable simply because they are poor. Rather than conniving in the oppression of the poor by the rich, the courts should act as a counter-balance to it (Proverbs 22:22-23). Therefore, in order to achieve impartial justice the judges must pay special attention to the claims of the poor (Proverbs 21:13). This concern for the poor does not reflect some sentimental view on behalf of ancient Hebrew writers that the rich are always wicked and that the poor are always in the right. To find for the poor woman simply because she is poor would be to distort justice just as much as to find against her because of her poverty.¹⁰

¹⁰ Christopher Wright *Living as the People of God: The Relevance of Old Testament Ethics* (Carlisle: Paternoster, 1990), 147.

Leviticus 19:15 warns, “do not pervert justice; do not show partiality to the poor or favouritism to the great, but judge your neighbour fairly.”¹¹

It is not only the poor but also the Other, the outsider, who is vulnerable to being excluded and exploited. In the Law of Moses, the injunction to judge fairly applied not only as between rich and poor but also as between kinsmen and stranger and between citizen and foreigner. In Deuteronomy 1:16 Moses is recorded as having told the judges he commissioned that they should “judge righteously whether the case is between brother Israelites or between one of them and a foreigner.”

There is hardly a country in the world today whose inhabitants all share the same ethnicity and religion. As we have seen in Syria, Yugoslavia and elsewhere, those who have lived peacefully together for generations can fracture into “them and us”. There is always the temptation to favour “people like us”, to prefer those with whom we feel we have a common bond. Yet the success of nation-building depends on the extent to which inhabitants believe that everyone, regardless of their language, religion, ethnicity, or tribe, enjoys the benefits of citizenship equally.

Justice is corrupted when the law is not applied equally, when the testimony of a Muslim is worth twice as much as the testimony of a Christian, or the word of a fellow tribesman is worth more than that of a stranger. Justice is corrupted when nepotism allows those with political connections to break the law with impunity. Justice is only effective when people are judged on their behaviour not their background, when the law is applied equally without fear or favour.

Christian providers of legal aid demonstrate a commitment to the fair and equal application of the law when they provide advice on family law to women of all different religions (as the Kenya Christian Lawyers Fellowship does in the mainly Muslim city of Mombasa) or when they work just as hard to secure the release of an unjustly accused Muslim man as they would do for a Christian (as the Uganda Christian Lawyers Fraternity has done).

4. Justice requires us to be on a quest to make the law understandable

Laws always seem to acquire a mystique. Their meaning and interpretation tends to require training in a particular kind of logic. Lawyers, judges and legal officials therefore become the priests of a mystery religion. This is all the more true in those nations where different languages are spoken and where the language of the law may be the language of a former colonial power. In order for justice

¹¹ See also Exodus 23:3 and Deuteronomy 1:17.

to occur, laws and what happens in court must be translated so that those subject to them can understand the words that are being used.

But understanding the words is not enough, if a subject wishes to understand the law, they need guidance. In many countries around the world, both victim and perpetrator are swept along by a legal process which they do not control, do not understand and into which they feel they can have little input.

The Uganda Christian Lawyers Fraternity and similar organisations in other East African countries address the need to make the law understandable by providing free legal advice to those held in police cells, in prison and at the time of their appearance in courts. The results can be dramatic. Practices in police stations where these legal advisors are present are reformed simply because the officers know that their actions are being monitored. Accused persons are given at least rudimentary tools to represent themselves and to avail themselves of their legal rights.

5. Justice requires us to be on a quest to make the courts accessible

The concerns of the Hebrew Scriptures about the legal system go beyond a condemnation of bribery and warnings that the poor should be treated fairly in the courtroom. The Hebrew Bible is concerned to a surprising extent with the *accessibility* of justice and the availability of means of accountability. We are not offered a one-size-fits-all solution but instead a variety of responses to changing social situations.

In order for justice to be effective, justice must be accessible. This means that courts must be local.

In the Law of Moses, the local courts which dealt with questions of whether a death was murder or manslaughter were to be found in the Cities of Refuge. If one person killed another, the killer was at risk of a revenge attack by the dead person's relatives (a practice which continued to occur in some parts of Albania into the twentieth century). The Law of Moses provided that the killer could flee to a City of Refuge where the killer's case would be tried and where the killer would be given asylum if the death was found to have been manslaughter rather than murder. However, because Israel occupied more territory than had originally been anticipated, the number of Cities of Refuge was increased from three to six so that there would always be a venue within easy range.

Justice delayed is justice denied. In order for justice to be effective, legal disputes must be resolved within a reasonable period of time. This means that there must be sufficient judges and court staff to enable cases to be heard without undue delay. In the Hebrew Bible both Moses (Exodus 18:14-

26) and King Jehoshaphat (2 Chronicles 19:5-11) were commended for appointing sufficient judges to enable justice to be effective.

6. Justice requires us to be on a quest to speak on behalf of those whose voice would not otherwise be heard

There is one final aspect of the legal process with which the Hebrew Bible is concerned, and that is advocacy. Advocacy is a skill. It requires the capacity to assimilate and organise information, to identify which features of a situation are important and which are not, and the ability to be able to tell a coherent story. A good advocate helps a judge to do justice because the advocate helps the judge to see the real issues in the case and so to discern who is in the right and who is in the wrong. An advocate represents someone. They present a case in a structured way so that those deciding can get the heart of the problem and can see the wood for the trees.

Abraham and Moses as advocates

The biblical story of advocacy begins in a surprising place, with the tale of the destruction of the cities of the plain, Sodom and Gomorrah. In Genesis 18, Abraham receives three mysterious visitors. Abraham is told that God is about to conduct an on-site inspection of Sodom and Gomorrah and that if it turns out that the state of the cities is as bad as has been reported, then they will be destroyed (Genesis 18:20-21). Abraham seeks to persuade God to withhold judgment if there are 50 just people within the cities. He then talks God down to 45, then 40, then 30, then 20 and finally ten. What we see in that story is an early example of the importance of advocacy, the way in which someone from outside the situation, who is entitled to speak to the decision-maker, can have a real effect on the criteria applied.

Another major figure in the Hebrew Bible who acted as an advocate was Moses. After his encounter at the burning bush, Moses returned to Egypt to negotiate with Pharaoh on behalf of the Hebrew slaves. Later, whilst Moses was on Mount Sinai the people disobeyed God. Moses interceded on behalf of the people, asking that God would forgive their sin and would not abandon them (Exodus 32:30-33).

The prophets as advocates, reminding the rulers and the powerful of their responsibilities towards the poor

Advocacy was also a central aspect of the calling of the prophets. A major part of the prophets' message was that rulers were both oppressing the people directly and failing to address injustices by

others which they ought to have redressed.¹² On occasion, this role involved the prophet confronting the king directly. Nathan confronted David over his adultery with Bathsheba and murder of her husband (2 Samuel 12:1-14). Elijah denounced Ahab for killing Naboth and seizing his land in defiance of the rules on landholding set down in the Law of Moses (1 Kings 21).

Later prophets continued to make injustice a priority even at times when it might be expected that they would have bigger fish to fry. In Jeremiah's time, Judah was invaded and the city of Jerusalem was besieged. Even in this context, Jeremiah's message to the royal house of Judah was: "this is what the Lord says: 'Administer justice every morning; rescue from the hand of his oppressor the one who has been robbed'" (Jeremiah 21:12). Jeremiah declares that God's judgment is coming on the nation of Judah because "their evil deeds have no limit; they do not plead the case of the fatherless to win it, they do not defend the rights of the poor." (Jeremiah 5:28-29). Lack of concern for the poor and the orphaned are presented as offensive to God and as leading to society's destruction.

Esther as an advocate, intervening with King Xerxes

Esther was the Jewish wife of the volatile Persian emperor, Xerxes. Haman, Xerxes' chief minister, had managed to secure from the king an order that the Jews be annihilated (Esther 1:13). Esther risked her life by going to see King Xerxes and asking him to spare the life of her people (Esther 8:3), leading to a deliverance still celebrated today as the Jewish festival of Purim.

The need for advocacy in the courtroom

In the courtroom, the poor are particularly exposed to risk of injustice if they have no-one to act on their behalf, no-one who can tell their story for them in a way which is compelling and easy to grasp. The Hebrew Bible addresses this in two ways. As we have already seen, the Law of Moses specifically urges judges not to deny justice to poor people in their lawsuits (Exodus 23:6). Judges need to take the time and make the effort to listen to those who are forced to represent themselves. The book of Proverbs addresses this issue by calling those who have the necessary skills to speak on behalf of others. It commands them to: "Speak up for those who cannot speak for themselves, for the rights of all who are destitute," as the book of Proverbs puts it. "Speak up and judge fairly; defend the rights of the poor and needy." (Proverbs 31:8-9) Similarly, at the very beginning of the

¹² Christopher Wright *Living as the People of God: The Relevance of Old Testament Ethics* (Carlisle: Paternoster, 1990), 146.

book of Isaiah, the prophet says, “learn to do right; seek justice. Defend the oppressed. Take up the cause of the fatherless; plead the case of the widow.” (Isaiah 1:17).

7. Desiderata

No matter how impeccable the laws are on paper, if you don’t know how to assert your rights or tell your story, those laws may as well not exist.

The Hebrew Bible is resolutely opposed to a state of affairs in which favourable outcomes in the courtroom are available to the highest bidder and in which the rich are immune from being held accountable by the law. We also find a repeated insistence that rulers are responsible for ensuring that justice is accessible to all, and that justice is administered impartially. As a result, justice and the rule of law exist just as much for the protection of the poor and the vulnerable as they do for the rich and the powerful. This means holding everyone, rich and poor, well-connected or isolated, to account for complying with the law and for seeing that the law is complied with.

If, however, the courts are only available to a few, the result will ultimately be that ‘the powers that be’ become above legal challenge. Bribery, corruption, the unintelligibility of law and the inefficiencies and expense of litigation all deprive the weakest of the protection which the law purports to give them. When accountability through the courts diminishes, the gap between the laws that exist on paper and the way things work in practice tends to increase. Both the rights of individual subjects and the common good are diminished.

To be denied justice is to be prevented from participating in society as a valued and equal member. In its focus on the importance of justice, the Hebrew Bible reveals how a lack of access to justice is a key factor in the persistence of an underclass whose opportunities are limited and whose status is demeaned. Therefore, rulers are commanded to defend the afflicted, protect the children of the needy, and crush the oppressor (Psalm 72:4). But a concern that the poor get justice is not the sole preserve of the king, according to Proverbs 29:7 it is a dividing line between the just and the wicked.

No country on earth lives up to its promise of delivering effective justice for all its subjects all of the time. Those who acknowledge the Hebrew Bible as a source of instruction or inspiration therefore have work to do wherever they find themselves. We need to avoid the traps of cynicism and complacency. In places where there seems much to do in order to secure justice I have seen examples of judges known for their refusal to take bribes, I have met innocent men released from prison because someone was there to take on their case and I have seen the poor recover their land which had been stolen from them. We must not believe the lie that says that it is inevitable that the

law will be used against the poor. A recent study by the World Bank showed that when they are able to access the courts, the poor can benefit from the law.¹³ In places where the rule of law appears secure, we need to recognise that there are those within our society who are nonetheless excluded from its benefits and be vigilant to prevent that class being extended. In every place, improvements are possible. The quest for justice will transform us, our societies, and the lives of the poorest and the most vulnerable.

David McIlroy is a practising barrister in England and also has experience of the legal systems in France, Albania, Kyrgyzstan and Uganda. He is Associate Tutor in the Mission of Justice and the Theology of Law at Spurgeon's College, an approved partner of the University of Manchester. He has co-authored with Andrew Caplen a critique of the British government's recent reforms to the provision of legal aid in England and Wales in which the biblical material discussed in this paper is explored in further detail.

¹³ Brinks and Gauri, 'The Law's Majestic Equality? The Distributive Impact of Litigating Social and Economic Rights', World Bank Policy Research Working Paper 5999 (March 2012), available on-line at <http://www.iadb.org/intal/intalcdi/PE/2012/09791.pdf>. 'The law and the poor: Courts in emerging markets are better for the poor than many assume', *The Economist*, (March 31st 2012), p.83.