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**The Case for God:
Carbeth Hutterers' Feudal Defence against Eviction**

Alastair McIntosh

The Fire that Never Goes Out

In 1999 a bizarre series of special sittings of Stirling Sheriff Court were convened under feudal law in order to bring eviction proceedings against up to 90 low income or unemployed Glasgow families. Each of these owned a holiday hut on the Carbeth Estate in Stirlingshire. They rented their tiny plots from the landlord, Allan Barns-Graham, whose grandfather had allowed ex-servicemen to have 'an affordable place in the country'.

Writing of the importance of Carbeth to low-income people whose only window on nature might otherwise be a TV set in a high-rise tower block, Jimmy MacGregor said:

As a lad, my idea of Shangri La was a wooden hut in Carbeth... [Our parents] came out, partly to attempt to live off the land, partly to ease the financial burden on their families, and partly to escape the crushing hopelessness and boredom of unemployment. They lived really rough; great friendships were formed...there were great sing-songs, and men signed on there to fight fascism in the Spanish Civil War. The story now is that the fire was never allowed to go out.

In his will, the original landlord made clear his wishes that the fire was not to go out. He said, 'my Estate of Carbeth shall not be feued or leased in such a manner as to interfere with the tenancies or rights of the traditional hutterers', and furthermore, that his heir should look after the Estate and the hutterers without remuneration.

That heir died recently and was succeeded in turn by his son. Last year this grandson of the original benefactor took rents of some £100,000 from an area of land estimated by residents at about 80 acres. Even the Scottish Landowners Federation have agreed that this is exorbitant. In May 1997 rent increases said to represent rises of up to 40 per cent were imposed, with new leases being issued that undercut the hutterers' rights. In consequence, about half of them—estimated to be nearly 90 families—commenced a rent strike. Mr Barns-Graham

initially refused meetings and proceeded with the eviction measures which, at the time of writing, are being advanced through specially convened court sessions.

Because the terms of their leases are so draconian, the hutterers have failed, even with the help of an advocate who voluntarily gave his time, to defend themselves against the power of feudal law. These evictions are taking place against a background whereby the Scottish Executive have produced a White Paper on land reform, and the Scottish Law Commission have proposed the abolition of feudalism. Until such measures pass through the new Scottish Parliament that commenced in July 1999, however, the law, as it stands, appears unable to offer the hutterers any protection. Government ministers and even a newly PR-conscious Scottish Landowners Federation have all tried to reason with Mr Barns-Graham, but without success.

From theological testimony that I organized in the Isle of Harris's proposed superquarry public inquiry in 1994 and from my role as a founding trustee of the Isle of Eigg Trust, the hutterers knew of my interest in law and religion.¹ Accordingly, after a period of using me as a campaign adviser, they asked if I would go further and attempt to provide them with expert witness on theological grounds in the self-defence, in court, of their Secretary, Chris Ballance.

I agreed to this for the following reasons:

1. Liberation theology requires exercise. God needs to be drawn out of the Scriptures, churches and introspection, and placed into the heart of daily life—into our newspapers, courts of law, the pub, and so on—if God's justice is to be heard, debated, and allowed to loosen the stonework around the heart.
2. The effect of so doing is to legitimize people's struggles for social and/or ecological justice. The landlord may claim that his property rights are sacred, but the tenant can find courage in arguments that affirm the land as being sacred only to God.
3. Such legitimization is important politically, especially at a time in Scotland where national identity is reasserting itself and land reform, including debate over the legitimacy for undertaking it in a country where nearly two-thirds of the

1. See, for example, my chapter 'Liberation Theology in Scottish Community Empowerment', in J. Crowther, I. Martin and M. Shaw (eds.), *Popular Education and Social Movements in Scotland Today* (Leicester: National Institute of Adult Continuing Education, 1999), pp. 205-13.

land is owned by just 1000 owners, is high up on the political agenda.

4. In a struggle, those who cannot afford to pay for legal help must employ the 'weapons of the weak'. Humour, irony and redefinition of the paradigms within which a narrative is conducted all serve to 'keep the spirit alive'. As the press were quick to see, the 'Case for God' is rich in these qualities.

When first presented, the testimony was slung out of court by the Sheriff, Kenneth Pritchard. It was half way through the afternoon and Mr Colin Pettigrew, the solicitor for the evicting landlord, protested that, if it was heard, 'we'd be here all day'. The Sheriff agreed, saying, 'I'm not prepared to listen to evidence with regard to the effect of Divine law as it relates to the land law of Scotland'.² In so forcing the evidence to go unheard, the Sheriff ruled that its author was not an expert witness. However, he did point out that Mr Ballance could introduce what he wanted (without the benefit of a witness or the robust testimony of cross-examination) in his final summing up at the end of the case.

Subsequently, after receiving legal opinion, I pointed out in a letter to a national newspaper that this marginalization of evidence might provide the basis for an appeal on the grounds that an error was made in law.³ It was perhaps for this reason that when Mr Ballance finally came to give the summing up for his case on 11 May 1999, the visibly irate Sheriff did, in fact, allow him to spend much of the afternoon presenting passages from the 'Case for God'. This was helped by the fact that during the morning he had permitted Mr Pettigrew to include in his summing up a dismissal of the relevance of a theological argument.

Pettigrew, ignorant of the details of what our case held, attempted to do this by arguing that the case for God was 'wholly and utterly irrelevant on two accounts—on the status of divine law and the content of it'.

On the matter of status, Pettigrew said, 'I am sure I do not have to advise my Lord [the Sheriff] of the authority of [Lord] Stair'. He then proceeded to quote from 1.1.15 of Stair's *Institutions of the Law of Scotland* which authorizes the making of human laws. However, he undertook this so selectively and so injuriously out of context that informed observers could only ponder at his motives for having previously

2. *The Herald*, 31 March 1999, p. 12.

3. *The Herald*, 6 April 1999, p. 14.

avoided the cross-examination of an expert witness. Whereas Stair argued that humankind may make law from within the framework established by divine law, Pettigrew neglected to mention such a framework.

Moving secondly to content, Pettigrew dismissed the biblical redistributive principle of Jubilee saying, 'I am not aware where that comes from'. He said that if divine law had any content of relevance to this case, it lay in the implication that contracts should be honoured. He concluded that the 'Parable of the Vineyard' (the 'Parable of the Wicked Tenants' in Mt. 21.33-45) would be the most telling scriptural passage. Cross-examination of this point, had it been permitted, would have drawn out the consideration that the parable in question was precisely what it claims to be—a parable—and one in which the 'tenants' are considered by scholars to have been the hypocritical Jewish leaders, the 'vineyard' was Israel and the 'landowner', God, whose currency of expected rental 'payment' was justice.

Finally, Sheriff Pritchard pointed out to Mr Pettigrew that there were other points in the outline case submission that he had not addressed. Pettigrew replied that he did not wish to take these up.

In his own summing up, the Sheriff acknowledged that the case had raised a number of 'interesting and complex arguments'. It was unclear whether this referred to the theological points, or to some of Mr Ballance's other defences. However, speaking specifically of the theology, Sheriff Pritchard said, 'From the 'biblical' passages you've quoted, God's got a big job on his hands in Kosovo'. Seemingly doubting the veracity of the scriptural passages that Mr Ballance had read out earlier in the afternoon, he rather astonishingly concluded:

If your quotations are correct, Mr Barns-Graham may well have a bad time when he goes to meet his maker, but we are in the business of trying to decide whether a contract has been followed.⁴

Bringing God into Disrepute?

Journalists covering the case asked if I did not think it was 'bringing God into disrepute'. In my view it was about bringing God back into repute. While the arguments might have been refused a hearing in a court of law, they nonetheless hit a powerful popular chord. Media coverage included nearly a full page in Scotland's best-selling tabloid, *The Daily Record* (31 March 1999), in *The Daily Mail* (30 September

4. Quoted in the *Press and Journal*, 12 May 1999.

1998), *The Herald* (30 September 1998, for example), several local papers, the *Scottish Catholic Observer* and popular radio stations. Support was forthcoming from the Revd Graham Blount, Scottish Churches' Parliamentary Officer, senior officials in Action of Churches Together in Scotland, and a number of leading Scots theologians. Press headlines included: 'Rent-row Hutterers Call on Divine Intervention'; 'Only Almighty Can Evict Us'; 'God's Position on Land Tenure'; 'Almighty Blow'; and 'Holy War'. Chris Ballance, the Carbeth Hutterers' secretary was widely quoted with such statements as:

This eviction attempt is entirely contrary to God's law from which the landlord claims to derive his power. It is quite clear from the Bible that God is a highly radical land reformer. We are delighted to have Him, or Her, on our side.

Such coverage gets through at a grassroots level. In subtle ways it contributes to the legitimacy of both oppressed people's aspirations and the efforts of law reformers who might, in the end, be the Carbeth Hutterers' best hope for reprieve. It fortifies the spirit and so builds courage. It therefore articulates a liberation theology that is contextualized, if not in tablets of stone, then certainly in ways relevant to these, our tabloid times.

The Cross-Examination of God's Case

To gain the media coverage and support which it did, we had to have a convincing case. What follows is the case that would have been put in court had the Sheriff allowed it. It is presented here as we developed it—in the form of a cross-examination. A draft was circulated to the media before the case so that they could see that we were raising serious points of principle. It is hoped that these points may be of value to others engaged in the application of ecotheology in states that recognize the place of the Judaeo-Christian God in their constructs of nationhood.

It is important to recognize that the arguments being made here are not intended to justify feudalism, or to presume that feudalism in general is a good thing. Indeed, I am grateful for an erudite letter from Mr Frank Gillingham, resident in HM Prison Shotts, who in response to a letter of mine in *The Herald* (20 February 1999) quoted Deuteronomy 17, 1 Samuel 8 and Josephus in pointing out that:

in the original political settlement God did not give Israel a king [and that] in choosing a king the people were in fact rejecting God as their king... From having God as their feudal superior the people went to

having a king as their feudal superior and this enabled the feudal lords to do what you refer to in Isaiah 5, Nehemiah 5 and Micah 2.⁵

Arguably, the early Scots partly got round this by making their land subject not to the king, but to God—as revealed by the Scots emphasis upon having a 'King of Scots' rather than a 'King of Scotland'. However, this is an argument that falls outwith the immediate concern of the Carbeth Hutterers. Their concern was to show, within the existing feudal laws and constitutional constructs of Scotland, that they were victims of injustice. Accordingly, within those parameters, the following case can be unfolded.

1. **Alastair McIntosh, you have been invited as a Quaker theological witness in my defence because of your claim in a previous legal context—the Isle of Harris's proposed superquarry public inquiry of 1994 as documented in the *Journal of Law and Religion* (XI.2, 1995)—that the Judaeo-Christian 'God' is concerned with land tenure. By way of introduction prior to anchoring this claim in Scots law, could you briefly tell us what evidence there is that God has such a concern?**

Yes. There is overwhelming evidence. The authoritative *Anchor Bible Dictionary* states, 'The land theme is so ubiquitous that it may have greater claim to be the central motif in the Old Testament than any other, including "covenant" (IV, p. 146). God created the land and promises to sustain its life-support systems 'for as long as the Earth endures' (Gen. 8.22, WCC trans.).

Land provides the gift of 'rest' from warfare and wandering. God says that a people 'that do err in their heart' because 'they have not known my ways' are a people who 'should not enter into my rest' (Ps. 95). This refers to the land as both God's rest and as a divinely-appointed resting place. Time and again in Scripture we see that the gift of land is the reward for justice. As Isaiah puts it, 'Whoever takes refuge in me shall possess the land' (57.13). Holding on to the land is therefore contingent upon living in accordance with principles of justice and faithfulness.

From a biblical point of view, God is concerned with the 'allotment' of land—that is to say, with its division, normally equitable, according to lots. The land is provided by God as an inalienable 'inheritance', but always this is contingent upon recognizing God as the ultimate landowner. 'The land shall not be sold for ever', says God in Lev.

5. Personal communication, 14 March 1999.

25.23, 'for the land is mine'. Here we see God asserting paramount superiority at the apex of what, in the Scots system, is sometimes referred to as the 'feudal pyramid'. The status of all vassals and other subordinates is, God goes on to say, one of being 'strangers and sojourners with me'.

The anchoring of such Old Testament theology in New Testament Christian principles is found pre-eminently in Lk. 4.19. Christ's proclamation of 'the acceptable year of the Lord' is considered by theologians to refer to the Old Testament's land ethic. I shall expand on these points later if wished.

2. What place does the Judaeo-Christian God have in Scots law?

My understanding is, first, that God's place is at the very heart of British constitutional structure and the Scots construct of nationhood. Secondly, God's place is at the root of jurisprudence in Scots law. And thirdly, God's place is central in a highly specific way to our existing feudal land law.

This triple reinforcement arguably shapes the implied terms of any contract concerning land tenure in Scotland.

3. Can we, then, explore these three points one by one and then ascertain their potential implications for my tenancy. What, first, is the constitutional place of God in Scotland?

Historically we can reliably trace it back to at least the twelfth century when feudal tenure is believed to have been introduced into Scotland from the Continent around the time of David I. The 'Kelso Seal' of 1159, made by David's successor, is considered to reveal this French influence. In *Scotland: A New History*,⁶ Michael Lynch states that the seal represents 'a king who still holds a sword, the traditional symbol of kingly power, upright in his right hand and an orb, a novel emblem of the sacred nature of kingship, firmly grasped in his left'.⁷

The 1320 Declaration of Arbroath, which was endorsed by the Supreme Pontiff on behalf of 'the community of Scotland', placed Christian identity at the core of national sovereignty—and to successful political effect. I have discussed this in my St Andrew's Day essay,⁸ a copy of which has been tabled for this Court. But briefly,

6. London: Pimlico, 1992.

7. Lynch, *Scotland*, p. 80 (my emphasis).

8. *The Herald*, 30 November 1998, p. 13.

Scotland is portrayed as being confirmed in the Christian faith by St Andrew and remaining under his 'special charge'. King Robert the Bruce is likened to 'Maccabaeus or Joshua' in defending what the Declaration portrays as that most important of all Scottish national attributes—freedom. Furthermore, we might note in passing that the king in Scotland was 'King of Scots', not 'King of Scotland'. In other words, political sovereignty applied over people but not place. To state otherwise would have been heretical, since, as we have seen, only God has sovereignty over the land. In this respect Scotland traditionally differed from our southern neighbour where the sovereign was 'King of England' and its dominions.

Next, and this is of direct relevance to modern law, God is enshrined in the 1707 Treaty of Union. In the view of many legal authorities, this is effectively our national constitution. Article II and Appendix I of the Treaty requires that 'Her Most Sacred Majesty' and heirs shall adhere to what it calls the 'True Protestant Religion'. This means pre-eminently (though not exclusively) the Judaeo-Christian construct of God as expressed in the Westminster Confession, using the 1611 'Authorized' translation of the Bible. Article IV of the 1647 *Westminster Shorter Catechism* defines this God in terms which would remain broadly acceptable to most mainstream Scottish Christian denominations (possibly with deletion of the third word), as follows:

God is a Spirit—infinite, eternal, and unchangeable—in His being, wisdom, power, holiness, justice, goodness, and truth.

The 1707 Treaty finds subsequent expression in the Church of Scotland Act 1921. The Schedule to this Act contains the Articles Declaratory of the Constitution of the Church of Scotland in Matters Spiritual, which were adopted by Barrier Act procedure in 1926.⁹ Article VI of these acknowledges that 'the Church and State owe mutual duties to each other'. This includes recognition of 'the divine appointment and authority of the civil magistrate' and

the duty of the nation acting in its corporate capacity to render homage to God, to acknowledge the Lord Jesus Christ to be King over the nations, to obey His laws, to reverence His ordinances, to honour His Church, and to promote in all appropriate ways the Kingdom of God.

Of course, in England we see this spirit expressed in the sovereign's role as 'Defender of the Faith'. Whether we agree with them or not,

⁹ James Weatherhead (ed.), *The Constitution and Laws of the Church of Scotland* (Edinburgh: Board of Practice and Procedure, 1997).

Christian principles are therefore central to the existing construct of the British state and therefore to its legislature and courts of law.

4. Secondly, then, what is the jurisprudential place of this God in the underlying construct of Scots law?

To answer this I shall turn to the so-called 'Father of Scots Law'—the institutional writer, James Dalrymple, Viscount of Stair. I refer to his seminal 1681 *Institutions of the Law of Scotland*, using the 1693 edition.¹⁰

Stair's position is uncompromising. His work opens by famously declaring the position of God as the source of law to be such as to 'make the absolute sovereign divine law' (1.1.1). Stair looks to the law of Moses as 'the prime positive law of God' (1.1.9). It is on this basis, for example, that he justifies the fact that:

For the most part the heritage, and succession in the whole land-rights, belongs to the eldest son, as the stem and line of the family, and the parents are presumed to provide the rest of their children with competent portions; though by the law of nature the right of succession doth belong to all. And, even this positive law, altering the course of the law of nature, hath its example from the judicial law of God, by which the males exclude the females, and the eldest hath a double portion (1.1.15).

Given the contents of, say, parts of Deuteronomy 20–25, Stair thankfully acknowledges that the Mosaic law must be re-cast in Christian context. As he puts it in discussing one example, 'Christ did expressly abrogate that law' (1.1.9). Under such a framework further abrogation can, of course, be attempted. For example, the question of female rights of succession just mentioned could be addressed by feminist hermeneutical exegesis of Scripture. Where the biblical law of just relationship to the land is concerned, however, Christ leaves little room for doubt. To hold land must imply a range of responsibilities in how it is used. His reaffirmation of the land ethic in Lk. 4.19 militates against abrogation.

Commenting upon Stair's achievement in *Whose Justice? Which Rationality?*,¹¹ the great modern Scots philosopher, Alasdair MacIntyre, says that while theology became largely redundant in English law with its utilitarian, case-precedent approach, Scots law proceeds more from first principles and these are theological. MacIntyre remarks that:

10. Edinburgh: Edinburgh and Glasgow Universities' Press, 1981.

11. London: Gerald Duckworth, 1988.

Stair...makes the treatment and the status of obligations prior to the treatment and the status of property. So obligations are imposed upon and constrain the property owner... In Stair's *Institutions* theology cannot be excised without irreparable damage to the whole... The compatibility of Stair's *Institutions* with the *Confessions* and the *Catechisms* is much more than a matter of general principles. Stair on many particular points adduces scripture as confirmation of the moral law... It is important to notice that the appeal to scripture is essential to Stair's legal argument and not merely a piece of pious superstructure... To have provided such a structure of the laws of Scotland was in itself a considerable achievement; to have done so in such a way that not only the fundamental principles of Calvinist theology, but also what Stair took to be the truths of astronomy and physics could be incorporated into the same structure was a much greater one (pp. 230-33).

The significance, then, of Lord Stair to this case today, is the extent to which he roots Scots law in Scripture. It is to his jurisprudential metaphysics that we might look to find reaffirmation of the principle that the ultimate feudal superior in Scotland, the only true 'land-owner,' is God. Of course, it was on such a basis that Andrew Melville famously called James VI 'God's silly vassal'.

We would be misled, in a secular age, were we to dismiss concern for the Christian basis of Scots law as belonging only to the past. For example, in his foreword to *Christian Perspectives on Law Reform*,¹² the Right Honourable Lord MacKay of Clashfern, a former Lord Chancellor and President of the Lawyers' Christian Fellowship, says:

Secular law making and Christianity are not the most obvious companions... The chapters of this book...show how shallow that understanding is. Not only can the process of law reform in a modern secular democracy be said to be informed by biblical perspectives, but there is also a great deal to be gained by considering our laws in this light (p. xiii).

5. And thirdly, in what ways does God have specific bearing upon Scots feudal law?

It is necessary to answer this question in historical context. I shall attempt to show, first, that the original European context of feudalism was theocratic; secondly, that such theocracy was wholly integrated into early Scots law; and thirdly, that these principles remain in place to this day and therefore have an implied bearing upon the tenancy between Mr Barnes-Graham and Mr Ballance.

12. Paul Beaumont (ed.), *Christian Perspectives on Law Reform* (Carlisle: Paternoster Press, 1998).

European feudal law, apart from areas of Spain where the more liberal Islamic influence gave greater succession rights to women, is rooted in law first laid down under the 'Holy Roman Empire'. Mediaeval Scots lawyers therefore relied heavily upon a twelfth-century text from Lombardy which preserved many of these principles, *The Books of the Feus*. A translation of this is provided in modern editions of Craig of Riccarton's *Jus Feudale*.¹³ The translator's preface refers to *The Books* as 'the oldest...collection of written feudal institutions'. It also points out that law and the church were, during the mediaeval period in Scotland, identified to the extent that, 'The Court of Session itself was (technically at least) composed of churchmen to the extent of one half until 1640' (pp. xxiv-xxv).

In his authoritative and extensive contribution on 'The Feudal System' in volume 18 of *The Laws of Scotland*,¹⁴ George Gretton gives the opinion that *The Books of the Feus* 'became accepted as the definitive statement of what may be called the common law of feudalism, which therefore must be presumed to apply everywhere, except in so far as derogated from by local custom or abrogated by municipal legislation'. He adds that the text is 'of persuasive rather than binding authority' and that 'after publication of Craig's *Jus Feudale* in 1655, Scots lawyers tended to take their feudal law from him, rather than looking behind him to *The Books of the Feus*. In a footnote, Gretton adds that 'this issue would perhaps merit further research' and presents evidence that 'as late as 1710 [that is, after the Act of Union] some lawyers at least were still reading *The Books of the Feus* themselves, and treating them as persuasive authority'.¹⁵

Reference to the said *Books* makes plain that the basis of feudal law was assumed to be the divine law of a Roman reading of the Judaeo-Christian Scriptures. For example, emphasis is placed upon the statutes of 'Fredrick, by the grace of God emperor of the Romans ever venerable...' Of Fredrick's statutes we are told that, 'Nothing could more clearly conduce to the honour and glory of the empire and to the credit of the Roman sovereign, than that...God's church should be enabled to flourish in perfect peace, and rejoice in well-founded liberty.' Accordingly, Fredrick enacted:

...by this our edict (which shall remain in force in perpetuity) that all powers, consuls, or governors, whatever the nature of their offices, shall take a public oath that they will defend the faith...our intention being

13. Edinburgh: William Hodge & Co., 1934.

14. Stair Memorial Encyclopaedia; Edinburgh: Butterworths, 1993.

15. Gretton, *The Laws of Scotland*, pp. 56-57.

that any person who is placed in power, whether permanently or temporarily, shall be bound by his oath to enforce this chapter of our law; and, if he fail, he shall no longer be deemed a power or consul, and his decisions shall, by this our present decree, be from thenceforth null and void (Article VI, *Books*, pp. 1173-74).

Article XI of the same statute concerns tenancy. It states in full:

Our will is that the tillers of the soil and all those who are engaged in the work of agriculture, while resident on their farms and labouring in the fields, shall be left in peaceful occupation of every part of their lands, so that no man may be found so bold as to dare to interfere with, swize, or carry away either them, or their cattle, or the instruments of their industry, or anything belonging to them: and, if any one shall rashly presume to attempt a contravention of this statute, he shall restore anything he has carried away four times over, besides incurring, *ipso jure*, the mark of infamy and becoming subject to imperial punishment as well (*Books*, p. 1175).

The Articles conclude by informing us that these laws of Fredrick are commended, approved and confirmed by Bishop Honorius, 'a servant of God's servants', this being:

for the benefit of all Christians, to remain in force for all time; and let any one who may be persuaded by the enemy of mankind to attempt in any manner or way to infringe them know that he will thereby incur the wrath of Almighty God and of the blessed apostles Peter and Paul (*Books*, p. 1175).

Craig of Riccarton makes no attempt either to refute or infringe such injunctions in the extensive use he makes of *The Books of the Feus* in his charter text on Scots feudal law, the *Jus Feudale*. Of course, ancient Roman statutes have minimal direct legal significance in modern Scotland. My point, however, is to suggest that the incorporation of such statutes in *The Books of the Feus* further emphasizes the implicit divine underpinnings of Scots land law.

Gretton¹⁶ remarks that Craig's study, completed around 1606 and published in 1655, 'is not only a leading work of Scots legal literature, but one of the most important studies of its subject from any country... Indeed, it has never been entirely superseded even by modern scholarship'. Lord Stair concurred, stating that he had nothing foundational to add that has not already been said by Craig of Riccarton.¹⁷

16. Gretton, *The Laws of Scotland*, p.57.

17. Stair, *Institutions*, 2.3.3.

I want to draw attention to two aspects of Craig's construct of feudalism. First, in discussing the 'Law of Nature' as a component of the Law of Scotland he acknowledges that 'the fear of God and the duty of reverence for his supreme Being, the love of well-doing, the hatred of wickedness...' are at the root of law.¹⁸ His discussion of Mosaic law¹⁹ underscores the biblical reference points that this implies.

Secondly, Craig says of feudalism:

Speaking generally but none the less accurately, the Feudal Law is reckoned a part of the native law of Scotland. In saying this, I am not unduly stretching the connotation of native law; for feudalism is the source and origin from which most of the law in daily use in our courts, and all our legal usages and practice, are derived. When difficulties occur we must always go back to original sources and seek the clue to a right solution there. I know that some of my readers will be disposed to take umbrage at this. But I would beg of them to keep open minds until they have considered all I have to say...²⁰

Now, in working through the implications of such 'local law' as he calls it, Craig discusses feudal homage and fealty. Gretton remarks that 'the precise difference between the two has been much debated', fealty being the lesser level of obligation. Gretton adds that, 'It does not appear that the obligation to swear fealty has ever been formally abolished, but must be deemed abrogated by desuetude'.²¹ This is a fair point, but it could also be suggested that what was once conducted explicitly, by oath, is now implicit to the principles by which land is governed. Such would certainly be the testimony of many Scots who have felt, whether by the payment of necessary rent or of expected respect, a relationship of fealty with their landlord. My purpose in raising this is to point out that, as Craig saw it, fealty, consistent with biblical tradition, involved a *two-way* set of rights and responsibilities. He says:

Once the fœde has been constituted by a completed act of sasine, the obligations inherent in the relation of superior and vassal spring into being and bind the parties in a community of mutual duty with respect to all that concerns their respective welfare and advantage. The vassal's duty to respect his superior and to study and advance his dignity and interest before those of all others finds its counterpart in the superior's

18. Craig, *Jus Feudale*, 1.8.6.

19. Craig, *Jus Feudale*, 1.1.13.

20. Craig, *Jus Feudale*, 1.8.16.

21. Gretton, *The Laws of Scotland*, p.65.

obligation to protect the vassal's person, property, possessions and good name, without regard to third parties.²²

Of course, Mr Ballance is not technically speaking a vassal to Mr Barns-Graham. His position carries far less status than that. Nevertheless, I think Craig's point illustrates a general implicit principle of Scots land law—that there is always a 'community of mutual duty' between links in the feudal chain. That duty is theologically determined.

Finally, what bearing does all this have on the status of God in modern feudal law? Here I shall refer again to the writings of George Gretton. The status of God in legal theory remains unchallenged. If I may quote Gretton in composite form, he states that:

In feudalism landownership and sovereignty coincided, so that the Crown's sovereignty over Scotland and its *dominium eminens*, its ultimate tenurial superiority, were the same thing, were identical concepts... We still have a relic of this in the rule that the Crown cannot dispose but only sue, for to dispose would, in the feudal scheme of things, be to alienate not only land but also sovereignty... Freedom of alienation is an anti-feudal conception.... The *dominium eminens* or ultimate superiority of the Crown is allodial [i.e. absolute ownership], because not held of a higher lord, except God... The term 'tenure' strictly implies feudality... The Crown has no feudal superior, except God alone... The Crown held Scotland as the vassal of God, and in prayer the act of holding the hands together was adopted from the feudal ceremony of homage, the *immixtio manuum*, so that the worshipper was binding himself as the vassal of God... Feudalism involves the absolute denial that land can be owned. Indeed, the very concept of a real right can hardly be said to exist under feudalism. Land rights are personal, not real. Land is not owned, but held in tenure, and tenure means a personal relationship with other people, the superior and the oversuperior, with the vassals and tenants. For the same reason land cannot, in the pure feudal conception, be sold or bequeathed. The power of sale and bequest goes close to the heart of ownership, but no one can sell or bequeath what he does not own, and no one could own the land... Only in one country in the world does feudalism survive in any real sense, albeit attenuated to an extreme degree. That country is Scotland.²³

6. If the place of God in law is as strong as you maintain it is, why do you think that these arguments have not previously, as far as I am aware, been mounted in a court of law?

22. Craig, *Jus Feudale*, 2.11.1.

23. Gretton, *The Laws of Scotland*, pp. 60-61, 59, 54, 59.

We should remember that the 'Authorized' or 'King James Version' of the English vernacular Bible became available only in 1611. In his books,²⁴ Christopher Hill has shown how the vernacular Bible ignited a spiritual revolution, giving birth to such non-conformist movements as the Diggers, Levellers, Ranters and early Quakers. Land rights in an era undergoing Enclosure played a major role in many of these movements. They were brutally suppressed—the Quaker, James Nayler, for example, being silenced by having his tongue bored through with a hot iron.

In Scotland the full Gaelic translation of the Bible did not appear until 1801—more than two centuries after the Reformation of 1560. Its effect was similar to what happened previously in England and found expression in the 1843 Disruption—the split of the Free Church from the Established Church of Scotland.²⁵

A principal complaint of *na daoine*, 'the men' who were the lay-prophets of the evangelical revival that laid the seeds of the Disruption, was that clergy in the Established church were often appointed under the terms of the 1712 Patronage Act, which allowed landowners to appoint the parish minister. In the opinion of the evangelicals, it too often resulted in the radical voice of the Gospels being smothered.

After 1843 rapid progress was made in the Highlands in addressing the worst excesses of the Clearances. Land reformers appealed frequently to their rights under God. For example, Norman 'Parnell' Stewart of the Skye Land League, is quoted as saying:

If the landlords consulted Moses or Joshua, they would find there substantial evidences as to who are the rightful owners of the soil. The Lord Advocate and Sheriff Ivory can quote Acts Georges and John, but we can quote the Act of God.²⁶

The passing of the 1886 Crofting Act addressed immediate concerns. Further land rights agitation immediately after the First World War led to government compulsory purchase measures to provide land for those in need. Thereafter, Scotland became so secularized that when land rights issues arose, nobody seemed to think of appealing to the divine origins of feudal law.

24. See, for example, *The English Bible and the Seventeenth-Century Revolution* (London: Penguin Books, 1993); and *The World Turned Upside-Down* (London: Penguin Books, 1975).

25. Professor Meek has explored this in his article, 'The Land Question Answered from the Bible: The Land Issue and the Development of a Highland Theology of Liberation', *Scottish Geographical Magazine* 103.2 (1987), pp. 84-89.

26. *The Oban Times*, 21 February 1885.

In summary then, up until 1611 and 1801 Scots were not theologically well informed unless they were part of the establishment. After this, their use of Scripture was limited by the control of landed power over clergy via the Patronage Act. Following the Disruption land reform made progress fuelled by a practical theology of liberation. After the hiatus of two world wars, it failed to occur to people in an increasingly secular age that God and law might be reconciled to powerful effect. In a manner unprecedented during the twentieth century, we therefore stand in this court today to test the power of that effect.

In so doing, I should like to cite some contemporary instances which should help to dispel any notion that raising this concern is an improper use of court procedure.

(a) In *The People Say Yes: The Making of Scotland's Parliament*,²⁷ Canon Kenyon Wright, Convener of the Executive of the Scottish Constitutional Convention, connects the relaunch of the Scottish Parliament to the spiritual principles that underlie the Scottish Nation. The 1989 Report of the Church of Scotland's Church and Nation Committee explores this in depth.

(b) Wright acknowledges the seminal importance of the Revd William Storrar's work, *Scottish Identity: A Christian Vision*.²⁸ Storrar makes many of the same arguments as are found in overlapping parts of this present testimony. He roots Scotland's constitutional status in the Declaration of Arbroath, the 1560 Reformation, the 1707 Treaty of Union and the Church of Scotland Act 1921. He concurs that 'The Scottish legal system is founded on the notion of underlying legal principles derived from the divine law' (p. 3).

(c) In his column in the *West Highland Free Press* (5 February 1999), the Revd Professor Donald MacLeod of the Free Church College discusses the 1707 and 1921 Acts and concludes:

Scotland is not a secular nation any more than Britain is a secular state. There is a clearly recognised religion which the political power is sworn to protect and preserve... The constitution of the United Kingdom gives a special place to Christianity in general, and to the presbyterian and protestant traditions in particular... It may be, of course, that these legal provisions no longer reflect 'the settled will of the Scottish people'...but if that is the case the law itself must be changed. It is intolerable to govern in defiance of the law and in flagrant contradiction of the constitution. We cannot have the very legislature itself making the law an ass... The nation prays to the God of the Act of Union.

27. Argyll, 1997.

28. Edinburgh: Handsel, 1990.

(d) In *Who Owns Scotland*,²⁹ Andy Wightman illustrates his opening page with a diagram of the 'feudal pyramid', showing God at the top and tenants at the base (p. 5).

(e) In his book on feudal reform, *How Scotland is Owned*,³⁰ Robin Callander refers to the 'traditional feudal pyramid over the land of Scotland that runs down from God and the Paramount Superior at its apex, through superiors, to the vassals at its base in actual possession of the land...' (p. 10).

(f) Sir Kenneth Jupp, for 15 years an English High Court judge, points out in various writings,³¹ that:

Feudalism is now a term which carries connotations of privilege and oppression. It was indeed a system of unequal hereditary status. Yet its system of land tenure stood for a kind of justice, because no one was so high that his privileges were not conditional upon the discharge of obligations, and no one was so low that he was without certain rights. Although in practice it often fell short of this ideal, it was only when feudalism began to disintegrate that privilege became wholly divorced from obligation. Those holding immediately under the Crown had shrugged off their obligations, while feuars lower down the scale remained bound by their dues.

Sir Kenneth concludes by appealing to the biblical basis of land tenure as 'hallowed by history'. And he quotes Chief Rabbi J. Hertz as affirming that, "'The Earth is the Lord's'" (Psalms 24:1) and His people hold their lands in fee from Him. The ground itself, then, was not a proper object of sale, but only the result of man's labour on the ground.' Writing elsewhere (personal communication), Sir Kenneth notes that the case of *Donoghue v. Stevenson* 1932 (concerning liability where a snail had been found by a woman in a bottle of ginger beer which had allegedly sickened her) was decided by Lord Atkin with direct reference to the New Testament precedent of the Good Samaritan and its implication that we have a duty to our 'neighbour'.

(g) The General Assemblies of both the Church of Scotland and the Free Church of Scotland have recently affirmed the biblical basis of right relationship to the land. Following from this the Parliamentary Officer of the Church of Scotland, Revd Graham Blount, writing in *Theology in Scotland*, 1998, explores the implication that, as it might be uncomfortably expressed: 'Jesus is Laird'. He endorses what Professor Donald Meek has called 'a Highland theology of liberation'. In his

29. Edinburgh: Canongate, 1996.

30. Edinburgh: Canongate, 1998.

31. See, for example, an article in the Summer 1998 issue of *Land and Liberty*.

essay in *The Herald* of 5 December 1998 he uses biblical theology to argue for maintenance of the principle of conditionality in land tenure based upon 'a spirituality of the land'. He concludes:

We would be evading our pastoral responsibilities and denying the riches of our tradition if we fail to wrestle with today's land issues where they hurt. We have an opportunity to contribute as partners in a Scottish Land Convention, sharing with others in working towards a land in which we can all, as Calvin suggested, take 'pious delight!'

(h) Replying to the above, the historian, Michael Fry, writes in *The Herald* on 9 December 1998:

One of the conclusions Blount came to in his essay was that landownership is or ought to be conditional, since God created the land and gave it to us. His conclusion is sound. Absent from his consideration, though, is the fact that Scots land law is already a conditional system... We are describing feudalism as it actually is, at least in principle, though in practice it is marked with the blemishes produced by time in all laws, which may be remedied piecemeal without continually overthrowing the whole system.

7. That concludes what I want to ask you about grounding God in Scots law. I now want to turn to the implications of so doing. You have already outlined some of these. Could you please elaborate?

Yes. The understanding we have examined, that only God can own the land, renders all land use contingent. Scots feudal law reflects this in the principle of *conditionality*. It has massive implications bearing upon the tensions that we often see in the modern world between ethnic identity and incoming influences. God is very clear in this matter. You belong to a place—you find your resting place, your 'holy land'—only inasmuch as you make God your central reference point. For this reason Ezekiel declares that the second generation of the 'strangers' or 'alien' 'who sojourn among you' shall have their full share of land inheritance and thus be treated 'as Israelites' (Ezek. 47). In other words, God deals with the incomer-versus-insider question by saying that *we are all outsiders* but for rights that are God given... and God wants these to be shared. As God's servants we are custodians, not owners, of the land. Our duty to land is, as Genesis 2.15 has it, 'to till [or dress] it, and to keep it'—words which modern scholars point out are literally (and perhaps, better) translated as 'to serve and watch over'.³² The 'Sabbath' in each of its various theological

32. W. Janzen, 'Land', *ABD*, IV, pp. 143-54 (146).

meanings is not just for humankind; it is also to rest the land and animals so that fertility and the abundance of nature may be retained.

God recognizes that, from time to time, when the common people are pressed by hunger or oppression, worldly feudal overlordship might be a necessity. This recognizes not the overlordship of the oppressor, as with Ahab and Jezebel in the case of Naboth's vineyard (1 Kgs 21), but the role that worldly power can play in serving the poor. For example, Joseph plays this role in Genesis 47 and, of course, we are reminded by Paul's injunction in Romans 13 that all power comes from God...no matter how much it might nevertheless be necessary to challenge, and so call 'fallen power' repeatedly to redemption, in accordance with its underlying purpose. However, as we see very clearly with Joseph, his assumption of the role of feudal superior over the Israelites was justified only *in order to be of service to them*. Scripturally, this is the only principle that can legitimize structures such as feudal superiority and vassalage in the feudal pyramid that intermediate between God at the apex and the most humble tenant at the base. In other words, all power must be a service.

Scripture recognizes that, human nature being what it is, such a presumption of 'service' can get out of hand; it can become exploitative, unjust and disempowering. For this reason, Leviticus makes provision for the redemption of the land; in particular, through the 'jubilee' or 'acceptable year of the Lord'. This is a provision that returns the land to its original inhabitants and cancels all debts every 50 years (Lev. 25.10). In terms of the spiritual geography that contextualizes it, the 'original inhabitants' here must be considered figuratively as those whom God intends to be there rather than any narrowly ethnic definition. Ezek. 47.22-23 makes it quite clear that the right to belong to the land is not a racist's charter. The right to be present on the land is held, pre-eminently, by the poor, the widow, the orphan and the refugee—equally and alongside the great and the good who claim rights of heritage. We are talking here soil and *soul*; not Nazi 'blood and soil'. We are talking about understandings of fostership such as are captured in that Gaelic proverb which states, 'The bonds of milk (i.e. nurture) are stronger than the bonds of blood (i.e. lineage).' These aspects of Scottish culture concur admirably with the biblical land ethic.

8. You speak here citing Old Testament authorities. Given the relative paucity of direct references to 'the land' in the New Testament, does this translate through into New Testament theology such as we might count as being 'Christian'?

Yes, in a number of ways, but I need focus on only three. First, in Lk. 4.18-19 Jesus launches his mission statement and proclaims the 'acceptable year of the Lord'. Via Isa. 61.1-2 from which he is reading, he thereby anchors his 'Kingdom' in the Jubilee or Sabbath land ethic of Leviticus 25, for example. This makes the authority of the Old Testament passages in question central to Christianity. Jesus presumably understood that it was unnecessary for him to carry on repeating beyond this pivotal reference what the Old Testament prophets had already adequately stated. He was, after all, a Jew who venerated their authority. If he had wanted to overturn their land ethic he could have done so in the manner to which we earlier saw Lord Stair attest. However, far from abrogating the Mosaic land ethic, Jesus chose to affirm it.

Secondly, earlier in Luke 4, the devil places before Jesus three temptations: elemental power—power over nature; landed power—power over people through control of place; and spiritual power—power to abuse the forces of God. In response to the second temptation, Jesus replies, 'Get thee behind me, Satan'. That is to say, in the second temptation of Christ Jesus refused to become a laird.

Thirdly, Jesus replaces a static notion of 'holy places' or 'holy land' with an understanding of incarnation in which concepts of space are incorporated into the 'Body of Christ'. We see this very clearly in John where, for example, it is He, not Jacob's well, that is the source of life-giving water (4.7-15); He, not the Pool of Bethesda, that offers healing (5.2-9). Subject to God's election, then, the whole of the creation is thereby rendered holy on account of the synonymy of life and incarnation (Jn 1.1-9, cf. Prov. 8.22-36, Rom. 8.19-23). This confirms our relationship with the Earth as being a *providential* one. It invites an attitude of *reverence* towards the land as being, in part, an expression of the majesty of God that suffers under the burden of human sin but awaits humankind's redemption.

This imperative of *reverence* has massive implications for how we treat our tenancy of the land and others who relate to that land. These implications must be seen as part of the implicit terms of any land contract entered into under Scotland's existing feudal system.

9. Might these arguments not be dismissed as the abuse of religion to score a point in law?

No. They are central to the expression of a lived spirituality. They represent the use and not the abuse of religion, and one that accords with the constitution of the nation. The fact is that any legal system

which rests upon Judaeo-Christian theology for primal legitimacy is, by implication or otherwise, a theocratic system. In the specific case of land tenure, God's theocracy gives rights to land users—the 'fatness of the land' (Gen. 27.28). The intimacy of this bond extends to a level that is even sensual as indicated, for example, by the passages in the preceding verse from Genesis, where Isaac remarks that the very 'smell of my son is as the smell of a field which the Lord hath blessed'.

However, these God-given rights are absolutely balanced by obligations, as we saw in our discussion of fealty. The central concern of biblical land theology is that the 'fatness of the land' should be justly distributed. As Eccl. 5.9 has it in the Authorized translation, '*The profit of the earth is for all*', and nobody is above depending upon nature's divinely ordained providence because even, 'the king himself is served by the field'.

This is no marginal aside to Judaeo-Christian theology. It is, as I have suggested earlier, absolutely central. There are a great many Scripture proofs to back it up. These are concerned with both social and ecological justice. The seven-year cycle of 'Jubilee' or 'Sabbath' in Leviticus rests the land for a year—a provision of ecological significance, but something which falls outwith the scope of this Court today. The longer-cycle 50-year Jubilee allows for restitution of the land to the landless, the release of slaves and the cancellation of all debts—that is to say, social justice.

Usually the words of Scripture are totally uncompromising. In the case of land use we are dealing here with justice as a non-negotiable contractual condition. Thus God in Amos (8.4) hails the miscreant landlord: 'Hear this, O ye that swallow up the needy, even to make the poor of the land to fail.'

'Woe to them', God continues in Mic. 2.1-3:

Woe to them that devise iniquity, and work evil upon their beds! When the morning is light, they practise it, because it is in the power of their hand. And they covet fields, and take them by violence; and houses, and take them away: so they oppress a man and his house, even a man and his heritage.

The reason for God's warning of 'woe' is clear. God has it in for the miscreant landlord. Micah concludes:

Therefore thus saith the Lord; Behold, against this family do I devise an evil, from which ye shall not remove your necks; neither shall ye go haughtily: for this time is evil.

Isaiah repeatedly condemns the abuse of landed power:

Ah, you who join house to house, who add field to field, until there is room for no one but you, and you are left to live alone in the midst of the land! (5.8)

He looks towards an era where the poor:

Shall build houses and inhabit them; they shall plant vineyards and eat their fruit. They shall not build and another inhabit; they shall not plant and another eat; for like the days of a tree shall the days of my people be, and my chosen shall long enjoy the work of their hands. They shall not labour in vain (65.21-23).

As for the oppressors, Isaiah warns that:

The Lord of hosts has sworn in my hearing: Surely many houses shall be desolate, large and beautiful houses, without inhabitant (5.9).

Isaiah (49.8) recognizes that a people's relationship with the land is a right established by divine covenant. It seeks: 'to establish the land, to apportion the desolate heritages.' Repeated in these texts is the warning that points to the gravity with which God views these issues: 'There is no peace, saith the Lord, unto the wicked' (48.22).

Ezekiel 28.16 attributes a metaphorical fall from Eden to those of whom the prophet says:

In the abundance of your trade you were filled with violence, and you sinned.

The chapter concludes that the remnant of scattered people shall be gathered again:

Then they shall settle on their own soil...and they shall build houses... They shall live in safety, when I execute judgements upon all their neighbours who have treated them with contempt (Ezek. 28.25-26).

Neither were these protestations hollow aspirations. For example, Nehemiah (5.1-13) successfully demands that the powerful restore to the poor, 'this very day, their fields, their vineyards, their olive orchards, and their houses'. Jeremiah (1.18-19) fortifies the common people against 'the people of the land' as he calls the 'country set' of his time. 'They will fight against you; but they shall not prevail against you, for I am with you, says the Lord, to deliver you.' And Moses, of course, successfully led the Exodus, though it was fraught with difficulties and raises questions about the use of violence (e.g. Num. 31) such as would be uncountenanceable given the understandings of God revealed by the Christian epoch. Here, however, is not the place to explore the evolution through history of human interaction with, and understanding of, the divine. Here my sole aim is to establish that if the biblical God is accepted as being the ultimate 'owner' of Scottish

land, obligations attach themselves to land use which are consistent with 'God's preferential option for the poor' (e.g. Lk. 6, Mt. 5.5; 23.23).

We should recall that the New Testament draws to a close by making textual references to the great vision of Ezekiel—an ethnically inclusive picture of land rights and ecological restoration. It thereby sets the central mandate of church and nation as being to engage in Ezekiel's 'healing of the Nations' (Ezek. 2.47; Rev. 22.1-2). These concerns, then, are not a peripheral 'use' of Christian faith and practice to score points in a legal case: rather, they are central to both that faith's mission and to Scotland's constitutional and legal foundations.

10. Having expanded on the theological implications of Scots feudalism, could you finally root this back into modern Scots law and its implications for my case?

In his 1757 work, *An Essay Towards a General History of Feudal Property in Great Britain*,³³ John Dalrymple wrote:

When the feudal branches are lopped off, or even when the trunk is cut down, it still takes a very long time, before roots from whence they sprung, can decay (p. 222).

In this, the last year of the twentieth century, the Scottish Law Commission has proposed the abolition of feudal tenure. This has come about, not least, because, as George Gretton describes it, Scotland's few remaining feudal structures are merely principles of commercial tenure 'engrafted on to the stock of feudalism'.³⁴ However, the issues to which I have testified today might serve to alert the Court that this 'stock' is in point of principle a vital taproot. To collude in its decay would be to violate the central ancient legal principle upon which most other Scots law has, according to Craig of Riccarton and Lord Stair, been based. We might summarize this as being the principle that *this land is God's own land*.

Theologically, it would seem to me from what I know of the Carbeth hutters that you have a right to be on that land. Even if your usage of it is only recreational, I have shown in this testimony that 'rest' is a central theological function of the land. Indeed, we might recall that in Matthew's Gospel alone Jesus goes eight times to the mountains for 'rest', and on other occasions he goes to the wilderness or down by the sea. Psalm 23 reminds us:

33. Colorado: Fred B. Rothman & Co., 1979.

34. Gretton, *The Laws of Scotland*, p.59.

He maketh me to lie down in green pastures: he leadeth me beside the still waters. He restoreth my soul...

According to the evidence that I have presented, your eviction from these 'green pastures', then, would bring about two great wrongs.

First, it would wrong God. Under the terms by which God has provided the land, the eviction of a tenant without theologically just cause would exceed the mandate of feudal power. Eviction in the present case would therefore be *ultra vires*. It would, as Psalms 95 has it, violate both God's own 'rest' in the land and God's desire that tenants should be protected by having a resting place.

Secondly, since the time when the first trunk and branches sprang from the twelfth-century feudal taproot under David I, Scotland has become a full democracy. The so-called 'seedbed of modern democracy' can, according to authorities like the Revd Ian Fraser (personal communication), be traced in Scotland to Calvin's *Institutes of the Christian Religion* (IV.XX.8):

Men's fault or failing causes it to be safer and more bearable for a number to exercise government, so that they may help one another, teach and admonish one another; and if one asserts himself unfairly, there may be a number of censors and masters to restrain his wilfulness.

The legal implications of this post-Reformation cutting down of the original aristocratic trunk of feudalism are considerable and perhaps unexplored. Grafting the democratic scion to the spiritual stock means that the Crown, or *regalia*, as the Paramount Superior, now has a vassal who is fully accountable to the *Community of the Realm* in its Prime Minister, with power devolved from him to the future Scottish First Minister.

This implies that the true lairds of Scotland under God are therefore the common people. Recognition of this implication of democracy must constitute part of the *implied terms of contract* of Scots land tenure. Anyone claiming otherwise—anyone claiming to be above the community interest in a matter of land tenure; anyone impersonating as a 'Lord' of the land above God—misrepresents their constitutional status and so acts, in principle, against the interests of the Crown itself as God's vassal.

Accordingly, it is my view that if this Court allows Mr Barnes-Graham to proceed with carrying out this and similar proposed evictions, it would allow him to occupy a most compromised and compromising position. This, surely, ought not be permitted. At least, not without reference to a higher court.

Theologically speaking, in violating the express wishes of God, the

abuse of landed power threatens the very integrity of the State. The issue at stake is, theologically, nothing less than *sovereignty*. This was the dominant theme of Jeremiah as indeed it ought to be a theme of consequence in our constitutional debate today.

I hereby rest my evidence. Within the theological construct of Scots jurisprudence, this Court might consider that the eviction of the Carbeth Hutters would break implied terms of contract. In so doing, it might be considered tantamount to treason.

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Alastair McIntosh is a fellow of Edinburgh's Centre for Human Ecology and an honorary fellow of the Schumacher Society.

Religious Responses to Fisheries Decline in Irish Coastal Communities with a Comparison to the Pacific Northwest Region, USA*

Shawn Hinz and Susan Power Bratton

Introduction

Worldwide, there is great concern for the depletion of commercial fish stocks (FAO 1997; Le Sann 1998). Much academic ethical analysis of fisheries has been based on Garrett Hardin's 'tragedy of the commons'—a simple model of human behavior that concludes: 'individuals locked into the logic of the commons are free only to bring universal ruin' (Hardin 1968; de Steiguer 1997; Baden and Noonan 1998). Fishing management has integrated Hardin's presuppositions into policy design, thereby assuming all fishers are self-profit maximizers, who are inveterate free riders, unaware of conservation. Recently, anthropologists have drawn attention to the dynamics of small, traditional fishing communities, many of which have existed for centuries without collapsing the populations of harvested species, and all of which have some form of indigenous environmental regulation (McGoodwin 1990; Cordell 1989; Dyer and McGoodwin 1994; Pinkerton and Weinstein 1995). This work points to two important deficiencies in the religious environmental ethics literature—relatively little is known about: (1) how specific communities or trades develop an 'environmental ethic'; and (2) how religious practice and belief respond to changing environmental concerns in industrialized cultures.

The purpose of this study is to document the impact of fisheries decline on religious beliefs, superstition and concepts of animal protection in coastal communities in the Republic of Ireland. Fisheries in the North Atlantic, North Sea and the Irish Sea have suffered major collapses in the last two decades (FAO 1997; MacGarvin 1990; Kennedy 1995; Charles 1996; Berrill 1997; Kurlansky 1997; Soares 1998;

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