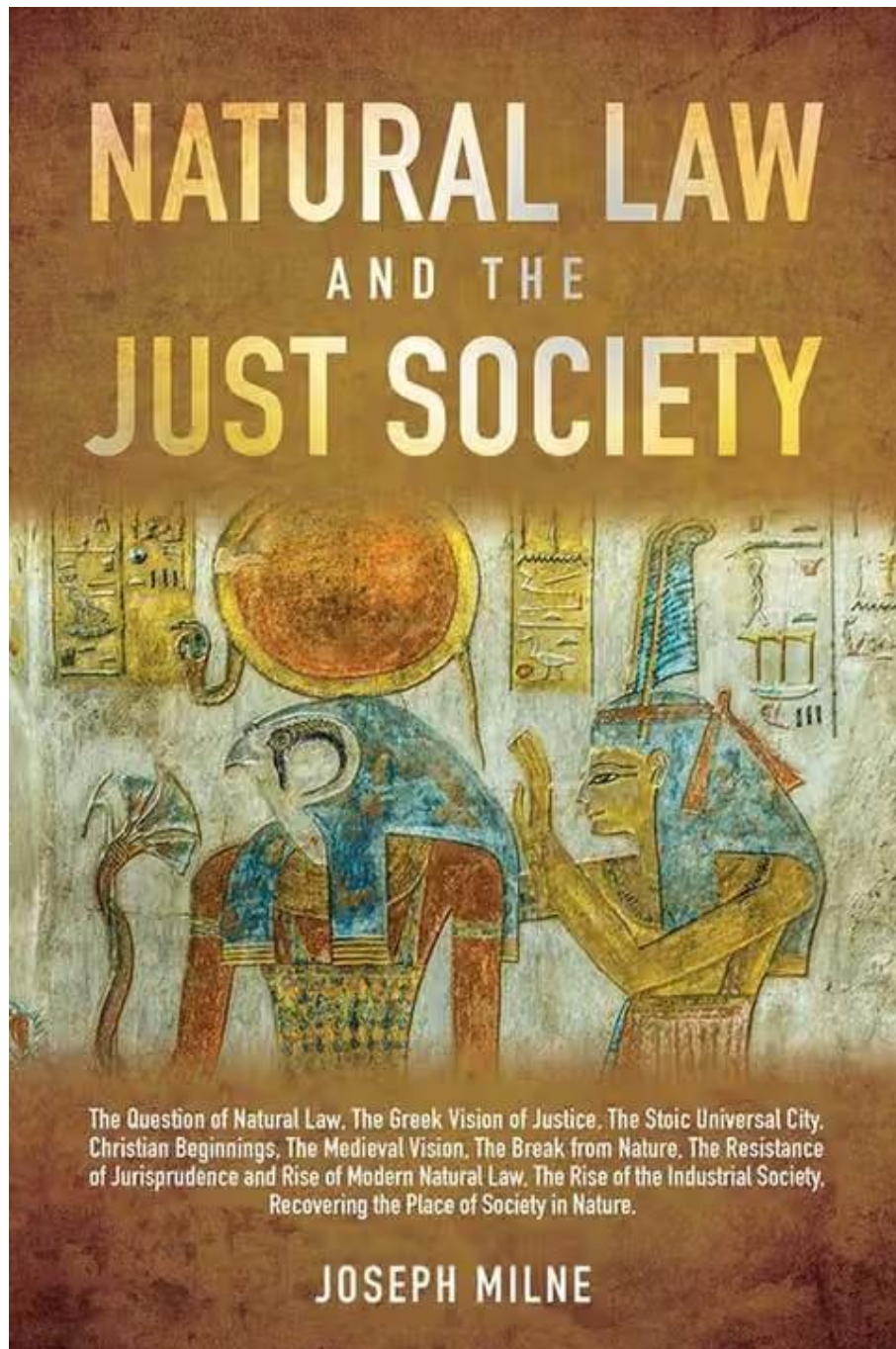


Book Launch Talk for *Natural Law and the Just Society*

Joseph Milne



Good morning everyone. It is very kind of the School of Philosophy and Economic Science and the Henry George Foundation to invite me to launch my new book. And I would like to offer special thanks to Ian Mason for suggesting I write a book on natural law after I gave a couple

of talks on the subject to the Saturday economics group here some years ago. I had been gathering material for a book for some time, but it was only when Ian made his suggestion that an outline for the book suddenly presented itself to me. The aim became to trace the history of the concept of natural law in the West from ancient Egypt right up to its decline in the sixteenth century.

I am sure some of us are familiar with natural law to some degree. For me, it has kept coming back as an enquiry since my teens. I recall one day when a question suddenly hit me: "Is there an order to the universe which, if lived by, all would be well?"

At that time I was studying music and was fascinated by the laws of harmony and counterpoint. It seemed to me that there was a hidden order informing everything, but the knowledge of it had been lost. What modern science called the 'laws of nature' were only an outward description of things, not principles that guided nature towards the good. I got hints of this hidden order in studying the early theories of music.

However, it was not until I studied medieval thought that I found a way of understanding the universe as governed at every level by a purposeful and intelligent end. One word for this order was 'providence', as elaborated by Plotinus and Boethius. Providence is the foresight in nature that guides all things to their proper ends.

But this philosophical way of seeing nature, society and the universe has been lost. Perhaps we all have an intuition of it, as we have an intuition of justice, but there seems to be no modern language for this intuition. We need to recover a way of seeing that grasps nature as intelligent and purposeful.

Why, then, should we seek to recover a lost understanding of natural law? The simple answer is because it belongs to human nature to enquire into the great order of things. Humanity is called to reflect on the truth of things. As Aristotle observes, this calling distinguishes the human species from all others. It is what makes us social beings. From this it follows that the way any society understands natural law will determine its way of life, and the degree to which it may flourish in justice. From this wide perspective, natural law belongs within the study of philosophy, theology, ethics, politics, jurisprudence and economics. Each branch of knowledge approaches natural law in a slightly different way. All, however, are rooted in a concern for living justly and in harmony with the lawful order of nature.

The human species is the only species that reflects on its own nature and its place within the universe. This unique capacity for reflection leads to an intuitive knowledge of a lawfulness that runs through everything. But this intuition has to be developed through study and reflection.

Fortunately there is a tradition of this reflection going right back to ancient Egypt, running through Greek philosophy, Stoicism, Roman jurisprudence, and through Christianity up to the High Middle Ages. But by the sixteenth century this tradition had fallen into decline, and this decline now presents an obstacle to understanding natural law. The conception or idea of 'law' had changed, and what was then called 'natural law' was now only positive law. Law had been reduced to mere power or the will of the ruler.

If we go back to the ancient Egyptian understanding of law, we find a key to our Western tradition of natural law. There we find a cosmic principle called *Maat*, seen as permeating every aspect of life. The recognition of *Maat* held Egyptian civilisation together for three thousand years. The word *Maat* means truth, wisdom, order, justice, and rightness. It guides all things in the heavens, the earth, and in human life. It is at once a goddess and a principle. The ancient Sanskrit word *ṛta* has the same meaning. It is related to the Zoroastrian word *Asha* which has an almost identical meaning. The Greek words *nomos*, meaning law, and *logos*, meaning reason, are rooted in the same principle. For example, the pre-Socratic Heraclitus says:

Wisdom is common to all . . . They who would speak with intelligence must hold fast to the [wisdom that is] common to all, as a city holds fast to its law, and even more strongly. For all human laws are fed by one divine law, which prevaieth as far as it listeth and suffices for all things and excels all things. For all human laws are fed by one divine law, which prevaieth as far as it listeth and suffices for all things and excels all things.¹

Our own English word 'law' has the ancient meaning of 'laying down'. In all these instances the meaning refers to a divine principle underlying and permeating everything. The conception of law as a

¹ Charles M. Bakewell, *Source Book in Ancient Philosophy* (Charles Scribner's Sons, New York, 1907) p. 34

divine principle is related to the ancient idea of providence I mentioned earlier.

Maat is the wisdom and goodness that Egyptian citizens experienced as the foundation of life. It is a living presence. We can see it in the ancient poetry and hymns to the gods, and running through Egyptian mythology. The ancient myths of creation represent the most primordial symbolic understanding of the great order of the cosmos. Mythic understanding precedes intellectual understanding because it apprehends everything as a whole and on all levels at once. I look at this in some detail in Chapter 1.

But for now I would like to observe a fundamental key to understanding natural law. From earliest times we find a threefold expression of law manifest in the relation between the Divine, the Cosmic, and the Human. It is like a triangle that circulates between these three orders. In ancient thought it is expressed symbolically or through cosmic myth. In that ancient expression it forms a unity. It signifies that the human person cannot be separated from the divine and the cosmic aspects of existence. It is this threefold combination that creates human society and the sense of community at its heart. Ancient cities all have a sacred centre open to the transcendent. It lies at the heart of human language and speech. Seen from this holistic perspective, humanity lives in a common universe illumined by divine wisdom and goodness. That is the ancient understanding, found universally across different religious traditions, East and West.

So this threefold relation is a key. The way a society conceives itself manifests in how it understands the relation between the Divine, the Cosmic, and the Human. To put that in more familiar terms, a society conceives itself through the way it understands God, the universe, and human nature. The study of natural law involves all three together. And the way each of one of these three are conceived in any particular era will shape the way a society orders itself. This may not seem immediately obvious. One has to look into the fabric of the culture, at the underlying conceptions of reality. They may be present in purely negative terms, as in concepts of atheism, cosmic accident, or denial of a common human nature.

One way in which the threefold relation was understood in pre-modern times was through understanding the natural law as part of a hierarchy of different levels of law. At the highest level there is the eternal law in the mind of the Creator. Next there is that natural law through which human reason participates in the eternal law. Next

there is positive or human law, the particular laws each society lays down for itself. And after these three there is what is called 'revealed law', the law given in sacred Scriptures. Those familiar with William Blackstone's *Commentaries on the Laws of England* will recognise this hierarchy of levels of law.

The eternal law belongs to God's own nature. It is not merely a command He imposes upon the world or mankind. Human reason has an image of this eternal law imprinted within it, also implied in the Christian understanding of the soul being created in the image of God. What Blackstone says is rooted in the *Summa Theologiae* of Thomas Aquinas, while Aquinas himself has roots in Plato, Aristotle and the Bible. When Blackstone says the natural law "is binding over all the globe in all countries, and at all times: no human laws are of any validity, if contrary to this" he echoes Aristotle, Cicero and St Augustine who each declare this measure of what makes a law a law. No human law contrary to natural law can be called law. Or as Aquinas puts it: "every human law has just so much of the nature of law, as it is derived from the law of nature" (*ST I-II: 95:2 ad 2*). The English common law tradition has deep roots in the wider natural law tradition, as we see in Henry de Bracton and in John Fortescue.

Blackstone was following in the steps of Sir Edward Coke who wrote:

The Law of Nature is that which God at the time of creation of the nature of man infused into his heart, for his preservation and direction; and this is *lex aeterna*, the Moral Law, called also the Law of Nature. (Sir Edward Coke, *Selected Writings of Sir Edward Coke*, Volume 1)

The most elaborate work on natural law is given by Coke's contemporary, Sir Matthew Hale, in his *Of the Laws of Nature* written in the 1660s. In this work Matthew Hale specifically opposes the reductive social thought of Thomas Hobbes.

But apart from jurisprudence there is a philosophical tradition going back to the Heraclitus, Plato and Aristotle. In his last dialogue, the *Laws*, Plato gives us a myth of human beings as puppets of the gods, with the gods pulling cords of various metals in the human soul. But one cord Plato calls the 'golden cord of *logismos*' which is the rational part of the soul that may follow the natural law. *Logismos* means 'calculation' or 'judgement'. Human reason moves rightly when

it follows the divine pull of the golden cord. It then follows the law common to all. The symbol of gold comes from Hesiod's *Works and Days* in which he describes the first Golden Age, when all people lived in harmony and health, and the earth provided all without any need for labour. That age was ruled by Cronos.

What is most interesting in this particular dialogue of Plato is that the natural law which guides all political action justly and wisely is also the law of the human soul itself. The natural law brings the soul into harmony with itself, enabling it to act through the virtues of moderation, prudence, justice and courage. In other words, through the natural law in the soul, the individual citizen becomes sovereign over himself, and is therefore able to act for the common good. Self-rule and citizenship belong together, and so there is a direct correlation between each citizen being a ruler over himself and living for the common good of society. In Plato we see why an understanding of human nature is vital for an understanding of society. Each citizen is like a small city in themselves. This small city is itself an image of the cosmic city, the universe governed by the gods. So we have another threefold hierarchy here of cosmos, polis, and anthropos.

When the soul abides in the natural law, following the pull of the divine golden cord, a natural hierarchy of values then follows. Due care is to be given to things in the following order: First, piety towards the gods, and after piety towards the gods, care for the soul. After care for the soul, care for the body and its health. And last comes external wealth. The proper purpose of wealth is health of the body. Health of the body serves the good of the soul, and the good of the soul brings it into harmony with the gods. Plato remarks that when this natural hierarchy gets changed, a society will fall into vice and chaos. In particular, if the accumulation of wealth gets put first, a society will become infected by greed, envy and civil strife, and its institutions will falter. This threefold hierarchy of soul, body and wealth forms the basis of political ethics. We find the same in Aristotle's *Politics*. It governs the internal life of each individual and the outward life of the community.

In Plato and Aristotle the natural law is connected with the virtues, especially the cardinal virtues of prudence, justice, courage and moderation. Our modern ethics has largely abandoned the virtues as the basis of good action. Instead we have either deontological ethics, ethics conceived as obligations or duties, regardless of consequences, as in Emanuel Kant, or utilitarianism, ethics based

solely on outward consequences, as in John Stuart Mill. The inner quality of the soul plays no part in these ethical theories. Nevertheless, regardless of any ethical theories, what we naturally admire is good character in people. Good character is grounded in the virtues, and the virtues are grounded in natural law. Another modern way of thinking of ethics is in terms of rights and duties. But this also only works well if grounded in the virtues, and the virtues in natural law. The virtues are *capacities* for action, not theories. I am sure some of us will be familiar with the revival of so-called 'virtue ethics', largely brought about by Alasdair MacIntyre's book *After Virtue*.

All these different ethical theories see citizenship in different ways, or have different implications for citizenship. But only ethics based on the cultivation of the virtues combine self-rule, citizenship and natural law together.

Aristotle draws an interesting distinction between the law-abiding citizen and one ruled by equity. The law-abiding citizen obeys the positive law simply because it is laid down, while the citizen of equity obeys the law because it is just. Such a citizen will do what is just whether or not it is laid down in positive law. He will act *from* justice itself, and hence *be* just in himself. Here is where the virtues are vital. For Aristotle, there we may be a just society only so far as there are just citizens. And this despite what kind of government it may have. For Aristotle, the aim of political society is the cultivation of the virtues. It is only through the cultivation of the virtues that every other aspect of human nature and society may flourish and the citizens may be happy.

These Greek ideas are expressed in Roman thought and in the Stoics. For the Stoic philosophers the proper human life is the life lived 'in accordance with nature'. By 'nature' the Stoics understand the whole order of the universe. The universe is itself seen as a divine order, governed by Zeus. Thus the Stoic seeks to live in harmony with the universe, and so to live without any inner turmoil or conflict within the soul. The outer and the inner are in harmony with one another.

Cicero, through whom we have much of our knowledge of Stoicism, saw a danger that the Stoic could retreat from civil life and its responsibilities in the pursuit of inner tranquillity. To live according to nature could include the universe but forget living in human society. For Cicero, as for Aristotle, a human being is by nature a citizen, a participant in the life and government of society. For him, anyone who puts self-interest before citizenship cannot be regarded as a human

being. According to the natural law, each citizen shares in responsibility for the common good. According to nature, each human being is born with particular gifts that may be realised only through contributing to the common good. And so, as Cicero puts it, what one lacks, another provides. This is the true basis of exchange in society, a principle that ought to govern everything all the way down to economics. Aristotle says the same, adding that nature does nothing unnecessary, and so provision is made for all through each following their particular calling. Those who take beyond their share take what nature has provided for another. There is a natural proportion in the provisions of nature. Poverty comes about through neglecting the natural distribution of nature and of the human gifts.

These ideas suggest that nature is purposeful. This again is a most ancient way of seeing nature. It is present in the ancient creation myths which contain a primordial apprehension of reality in its purposeful totality. As I suggested earlier, this symbolic or mythic understanding of reality should not be forgotten. Philosophy is born from it. Plato and Aristotle develop a philosophical understanding of the purposefulness of nature through the concept of *teleology*. Teleology means the tendency within things towards their natural ends. It is the purposefulness of nature.

Modern science has largely abandoned recognition of teleology in nature, and this has consequences for the understanding of natural law. Aristotle, however, closely observed how everything in nature has an end or purpose. For example, all living things strive towards maturity and completeness. This is directly observable. But Aristotle adds that we can only know the nature of anything when it arrives at its completion. For example, we can understand human nature only through the mature adult, but not in the child where its nature lies in potential. Knowing the nature of anything depends on knowing its purpose or completion.

The *telos* or purposefulness of things may be seen in the integral order of nature, where everything is related to everything. For example, nature provides a remedy for an ailment. Even the animals know this. It follows that human society itself has a natural development and end. By nature society strives to flourish in completeness in justice and happiness. It is this natural end that brings a society into being in the first place, as Aristotle observes in the *Politics*. Its completeness in natural size lies in it being self-sufficient. A household or a village cannot be self-sufficient and so by nature they

tend towards the form of the *polis*, the self-sufficient city. As noted a moment ago, the natural human gifts and talents can flourish best in the self-sufficient society. The individual has an innate tendency towards completion in society. Each individual is a citizen by nature, with a purposefulness that may be realised only in society. It is the exact opposite of the “state of nature” proposed by Hobbes and others, where the natural state is “war of all against all”. But nature is not at war with itself, nor is it ruled by accident. In the ancient view, everything comes into being according to its purpose within the order of nature as a whole. Everything *seeks* to fulfil its purpose within the order of nature as a whole. Everything in some way belongs to everything.

In the writings on Roman law we see how the natural law also includes the animals who flourish through nurturing their young and caring for their whole species. Although they do this by instinct, instinct itself was understood as a form of reason in nature. Nature is intelligent and self-directing. Those familiar with Plato will recall that everyone by nature seeks the good. This is the natural *telos* of all things, the universal end all things seek beyond their particular ends. It is an understanding highly developed in the Middle Ages. For example, the twelfth century scholar Hugh of St Victor says, “There is nothing in the universe that does not participate in the Highest Good”. This principle of ‘the highest good’ is the ordering principle of nature. All things reach out towards the divine transcendent source of their being, and in that sense already participate in it. This *telos* towards the highest good is the basis for discerning the common good of society. The common good is in principle a shared good which cannot be made private. The most precious things we have are those held in common: family, language, culture, knowledge, friendship, cooperation.

All this may sound like beautiful theory. It is not exactly the modern materialist view of nature! But there lies behind it a most important idea of the relation of human intelligence with nature. It is understood that since nature is intelligible, there is a correlation between human intelligence and nature. Aristotle observes in the opening of his *Metaphysics* that the mind is naturally oriented towards truth, just as the eye is oriented towards perception. It follows from this that the mind has some kind of innate knowledge of, or participation in, the primary principles of things. This understanding of innate knowledge runs through early Christian thought and into the high middle ages. We find it in Thomas Aquinas, where he says:

Man in a certain sense contains all things; and so according as he is master of what is within himself, in the same way he can have mastership over other things. Now we may consider four things in man: his “reason”, which makes him like to the angels; his “sensitive powers”, whereby he is like the animals; his “natural forces”, which liken him to the plants; and “the body itself”, wherein he is like to inanimate things. Now in man reason has the position of a master and not of a subject. (*Summa Theologica* 1, q.96, a.2.)

The human being in a certain sense contains all of nature, including the different levels of its natural hierarchy. I mentioned earlier that the human being is like a ‘little cosmos’, an image of the universe. In this passage from Aquinas it is because all things are contained in human nature that man is at once sovereign over himself and may have knowledge of and mastery over other things. This idea is expressed differently in the notion of *macro-cosmos* and *micro-cosmos* being images of one another, where it is found in the twelfth century revival of Platonism at Chartres. It assumes a correspondence between the intelligible order of the universe and the order of human nature, especially of the soul which is connected with the universe through its intelligence. But beyond this, the intellect in some way contains the eternal principles of all things which it can directly contemplate.

But by the sixteenth century this understanding of knowledge was lost, where mind and nature became entirely divorced from one another. Man was no longer regarded as a participant in the great order of things. Indeed, there was no longer a great order of things, and man was no longer seen as naturally social, as in Hobbes and Locke, or in writers on natural law such as Pufendorf. For Locke the human mind is a *tabula rasa*, a blank slate with no innate knowledge of any kind. So the question of human nature and the question of knowledge of nature are bound together, or in this case, severed from one another. Modern debates on theories of knowledge, or epistemology, are generally still caught in this divorce of mind from nature. This has huge implications for understanding natural law.

But to return to the earlier view of the mind and knowledge of things. Knowledge was divided into two kinds, called theoretical and practical, corresponding with two parts of the human intellect:

theoretical reason and practical reason. Theoretical reason has an innate knowledge of eternal principles, while the practical reason has an innate knowledge of the good. The theoretical reason is the contemplative aspect of the intellect, from the word *theoria* which means to contemplate. It enquires into universals which govern particulars. The practical reason, on the other hand, discerns that the good should always be followed and evil always avoided. It is the practical reason that is informed by the natural law, discriminating through prudence what is just or beneficial in any particular situation. It relates the universal good to the particular good, and guides the will to action.

We do not need to get too technical here. The point I wish to stress is that if we wish to understand the tradition of natural law, we need to see it in the light of an understanding of human nature that belongs with it. Every human being by nature aspires to truth and goodness. This is as true now as ever it was. Truth and goodness are already *valued* before we even have any clear understanding of them. No argument is needed to decide if being or existence are precious. For Plato and Aquinas, truth and being are interchangeable terms. Likewise, existence and goodness are interchangeable terms. Therefore Aquinas says: “insofar as anything exists, it is good”. It is from an innate knowledge of these primary things that we by nature are committed to existence. Through such innate knowledge we distinguish between universals, such as between ‘mankind’ as a universal and each individual who participates in the nature mankind.

These are metaphysical principles expressed in one way or another from the earliest philosophy until called into doubt through the rise of nominalism in the early fourteenth century. Nominalism is the theory that universals exist in name only, simply as categories or classifications of human thought. It holds that only particular things exist, each independently from another. It is an atomistic view of nature. But if we ask ourselves about the nature of justice we find we intuit a universal. Justice is not one thing on Monday and another thing on Tuesday. Yet every particular just action is unique though measured by justice. So when a society calls for justice, it acts from an intuition of universal justice. Children have a clear sense of justice and call any injustice unfair.

The sense of justice springs from an innate knowledge of natural law. It is there in the ancient prayers of the Egyptians. It is the earnest desire of the Hebrew Bible. It is a constant measure in Plato. It runs

through Roman jurisprudence, and it shines through medieval theology and philosophy. But in our times, even though the intuition remains, we have lost a general philosophical framework and language through which to articulate it. It is in an effort to recover something of this lost understanding that I have written this book.

In chapters 9 to 11 I trace how the breakdown in the tradition occurred through changes in the threefold understanding of God, the universe, and human nature. As mentioned earlier, how the divine, the cosmic, and the human are conceived in any historical era determines the self- understanding of society and the form it will adopt. The understanding of each of these three became diminished; the divine became reduced to an external cause, the universe to the play of mechanical forces, and human nature to arbitrary free will. Tracing how this diminishment occurred is illuminating in itself. What has been lost is a sense of participation in a meaningful universe open toward divine perfection. All earlier forms of flourishing society are marked by an awareness of universal participation. But having become alienated from the intelligent and harmonious order of nature, human nature becomes alienated from itself. From this it follows that no natural order of society arises or can be recognised.

In this situation, the natural law still remains in force, but with unforeseen consequences. For example, the contemporary concern in economics for the pursuit of wealth leads to bondage in the material world and distortion of human vocations. Plato's natural hierarchy of values, where wealth serves health of the body, and health of the body serves the harmony of the soul, has been entirely forgotten. When divorced from its proper end, the pursuit of wealth becomes infected with avarice and envy and all kinds of injustices follow. That is a lawful consequence of following a desire that is out of harmony with the order of nature. If the true aim of society for the common good is pursued, then the material realm of necessity becomes measured, rather than enslaving. The highest purpose of lawmaking, grounded in natural law, is to point a society towards its proper end where the natural human vocations may flourish in mutual benefit. There is nothing in the nature of things that prevents this from being realised, save lack of enquiry into the natural order of things or disregard of the intuitive knowledge of the good that ought to be pursued.