

A Challenge to Lawyers

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A CHALLENGE TO LAWYERS

ROBERT F. DRINAN, S.J.*

It is a very exciting and challenging time to be an attorney. Lawyers in America continue to have a moral influence far greater than their numbers. Indeed in many ways the nation's 800,000 attorneys are the moral architects of what America will become in the next century.¹

It is therefore appropriate that we come together to pray so that we will understand our commitments and ask for courage to carry them out. Let us therefore dialogue together about three things: one, the awesome legal moral problems that only lawyers can resolve; two, the prayer that alone can bring us the deep faith to comprehend and carry out our duties; and three, the sustained action that is imperative if we are to carry out our duties as people of faith who are officers of the administration of justice.

I. AMERICA'S LAW-RELATED PROBLEMS

Although there are many glories which we can celebrate in our nation's administration of justice, there are also incredible injustices. As

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The essay is based on a homily given at the Red Mass for judges and lawyers at the church of St. Catherine of Alexandria in Riverside, California, on Thursday, May 7, 1998.

¹ See BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1997, at 410 (1997) [hereinafter BUREAU OF THE CENSUS] (reporting that 880,000 lawyers were employed in the United States in 1996); see also Kenneth Lasson, *Lawyerling Askew: Excesses in the Pursuit of Fees and Justice*, 74 B.U.L. REV. 723, 724 (indicating the number of attorneys is 850,000, referencing the Bureau of Labor Statistics, U.S. Department of Labor, Unpublished Tabulations from the Current Population Survey 4 (third quarter 1994 averages)).

lawyers we must be especially chagrined at the fact that at least two-thirds of all lower income citizens who need legal assistance on the civil side do not receive the help they deserve. Despite the aid of the Legal Services Corporation and the ever increasing volume of pro bono work, the shameful fact is that several millions of our fellow Americans do not have the assistance of a lawyer when they have legal problems with their landlord, their employer, or their spouse. Dozens of surveys have confirmed this scandal. It would be even worse if Interest on Lawyer's Trust Accounts (IOLTA) funds become unavailable because of a Supreme Court decision.² When only one-third of indigent people obtain the legal assistance they need, is it any wonder that so many Americans have an unfavorable view of the legal profession?

There are other signs of a society that does not respect the rule of law. Every other marriage ends in divorce,³ every third pregnancy is terminated by abortion,⁴ violence carried out by guns is present everywhere and one-half of all black children live under the poverty line.⁵ The status of minorities has improved but there is still widespread discrimination in housing, and in other areas of life. The glass ceiling impedes the advancement of women and there is still a vast de facto denial of equality in schools attended by blacks and Hispanics.

Our country is also engaged in wrongful conduct in its relations with the ninety-six percent of the world who do not live in the United States. The United States ranks twenty-first among the twenty-one nations that give aid to developing countries.⁶ Moreover, the United States is the top merchant of arms and guns to nations that do not need and cannot afford

² Subsequent to this homily, the Supreme Court held in a 5 to 4 decision that "the interest income generated by funds in IOLTA accounts is the 'private property' of the owner of principal"; but the Court "express[ed] no view as to whether these funds [had] been 'taken' by the State." *Phillips v. Washington Legal Found.*, 118 S. Ct. 1925, 1934 (1998).

³ See BUREAU OF THE CENSUS, *supra* note 1, at 105 (reporting that there were 2,336,000 marriages and 1,169,000 divorces and annulments in the United States in 1995).

⁴ See Lisa M. Koonin, et al., *Abortion Surveillance-United States, 1995 (Part 2)*, MORBIDITY AND MORTALITY WKLY. REP., July 3, 1998, at 31B, available in 1998 WL 10376653 (reporting the abortion-to-live-birth ratio in the United States in 1995 as 321 to 1,000).

⁵ See BUREAU OF THE CENSUS, *supra* note 1, at 476 (reporting that 41.9 percent of blacks under 18 years old lived below poverty level in 1995).

⁶ See Bob Deans, *Marshall Plan: 50 Years Later, Once the World's Savior, the Nation that Pulled Europe from the Rubble Now Limits Its Aid and Maybe Its Own Future*, AUSTIN AM.-STATESMAN, May 25, 1997, at J1, available in 1997 WL 2824840 (listing the United States as providing the lowest economic aid to poor countries as a percentage of gross national product among the twenty-one members of the Organization of Economic Cooperation and Development).

these weapons.⁷

These are problems which cry out for action by people of faith and by lawyers. These issues call for sustained intellectual, moral and religious consideration and action which cannot be avoided or evaded by Catholic attorneys in America. Any rightful resolution of these problems cannot be resolved or even understood except by sustained prayer.

II. PRAYER, THE INDISPENSABLE SOURCE OF CONVICTIONS AND COURAGE

Lawyers who are persons of faith know about the problems of racism, militarism and sexism. But they do not take action because they have not conversed with God about their deep moral concerns regarding the nation's awful mistakes. Prayer illuminates our minds and strengthens our will. Prayer will change the way we think and act. Prayer will teach us that the harm and injustice being inflicted on minorities, children and women constitute an injury to Christ himself. Our redeemer made it clear that whatsoever we do to the least of his brethren we do to him.

When we accept this Christo-centric view of God's world we acquire a deep sense of justice which transforms the way we look on and treat all human beings. We realize that the sisters and brothers of Christ himself are being victimized and mistreated because they are being denied equality and fairness. Christ in his earthly existence suffered for all of the slings and arrows that would be afflicted on those who would come after him.

When we pray—patiently and persistently—we learn to appreciate that our indifference to injustice is a rejection of Christ's basic teaching that we must be our brothers' keepers. We should pray in a particular way at this moment in the church's liturgical year for the Holy Spirit. On the first Pentecost,⁸ fifty days after the Resurrection, the church was formally born and the Holy Spirit began to indwell the hearts of all of those who believe in Jesus Christ. The Holy Spirit abides within us. The third person of the Trinity indwells our souls where he educates us and pleads on our behalf to the Father and the Son.

The presence of the Holy Spirit in our souls is one of the greatest treasures of our faith, which unfortunately has been overlooked in the modern age. Christ told the Apostles at the Last Supper that he would

⁷ See Robert F. Drinan, *USA Isn't World Gun Capital for Nothing*, NAT'L CATH. REP., Feb. 6, 1998, at 16, available in 1998 WL 10326375 (discussing the United States' arms and weapons industry).

⁸ Pentecost, from the Greek word for "fifty," commemorates the descent of the Holy Spirit upon the disciples. Pentecost is celebrated on the seventh Sunday after Easter.

send the Holy Spirit and that the Spirit would remind the Apostles of all of the truths with which the Son of God himself had instructed them.

Let us listen therefore to the Holy Spirit within us. He is our teacher, our advocate, our lawyer, if you will. To listen to this divine guest we must be silent, we must listen, we must offer ourselves to follow the road the Spirit will suggest. We must set aside all of our preoccupations with the world and ask like St. Paul on the road to Damascus: "Lord, what will you have me to do?"⁹

Perhaps God in his overwhelming love for us has brought us to this lovely scene with great hopes that finally we will quiet our souls and tell God that we will generously follow the directives which will come from the inspirations of the Holy Spirit. Our universe is filled with injustice, inequality and selfishness. This unfairness offends us as lawyers and outrages us as Christians.

Let us promise and pledge to understand the injustices that surround us and let us pray for the grace and fortitude to overcome them. We should beg in a special way for inspiration from the Holy Spirit whose feast on Pentecost we anticipate in a very special way.

III. A PLAN FOR ACTION

If we understand the pervasive injustice in our world and if we pray for the spiritual power to correct injustices it would seem that constructive action would be almost inevitable. But even those who are vividly aware of injustice and who pray regularly fail to act to correct the wrongs that are so numerous.

The decrees of Vatican II made clear that the promotion of faith cannot be separated from the advancement of justice.¹⁰ The love of God and the love of humanity cannot be separated.¹¹ This is a compelling reason why Catholic lawyers must link their knowledge and their prayer with a deep involvement in the projects designed to create a system of justice that is deeply grounded on human dignity.

⁹ See *Acts of the Apostles* 9:6 (King James) ("And [St. Paul] trembling and astonished said, Lord, what wilt thou have me do?").

¹⁰ See SECOND VATICAN COUNCIL, PASTORAL CONSTITUTION OF THE CHURCH IN THE MODERN WORLD 21, 41 (1965) [hereinafter SECOND VATICAN COUNCIL] ("They are mistaken . . . who imagine they can plunge themselves into earthly affairs in such a way as to imply that these are altogether divorced from the religious life."); Marjorie Hyer, 'Bleeding Hearts' in *Unlikely Setting*, WASH. POST, July 29, 1989, at C11 (stating that "faith and justice" are "incomplete without the other").

¹¹ See SECOND VATICAN COUNCIL, *supra* note 10, at 23 ("[L]ove of God cannot be separated from love of neighbor."); see also *Romans* 13: 9-10 (stating that "the one who loves another has fulfilled the law").

These lofty objectives must be made concrete. Your parish needs teachers, your local government needs activists, and your diocese needs legal counsel. Even more fundamentally, your family needs the abiding help of your companionship and your love.

One has to doubt the basic sincerity of Catholics who are well-educated and who love the church when they are not in some concrete way fighting against injustice or working for the institutional church. Study and prayer are not enough. The world and the church have daunting tasks for educated Catholics—especially Catholic attorneys.

The legal profession has recently been partaking in a golden era of legal ethics. But lawyers who are persons of faith have countless opportunities to improve the administration of justice, strengthen the public morality of our nation and enhance the rule of law.

The appalling fact that two-thirds of all Americans cannot afford the legal assistance they need should impel attorneys to initiate a peaceful revolution to make legal aid available to everyone who needs it. If the estimated 300,000 Catholic attorneys in America resolve to make legal assistance available, they could transform the way that Americans view the legal profession and the administration of justice. Perhaps in God's providence the grace to achieve this transformation could enter the hearts of all of us here today.

There are other crises for which lawyers have a special aptitude. The United States has now almost 1.5 million persons in prison—the largest number of any nation in the world.¹² There is vast evidence that this is not the best way to handle the problem of crime. There is also abundant evidence that many inmates have not received satisfactory legal representation and are not assisted in rehabilitation.¹³ The high rate of recidivism demonstrates that there is something missing in the correctional system. Evidence accumulates that the vast majority of the legal profession has quietly walked away from the administration of criminal justice and the

¹² See *Packing the Prisons; a Foolish Fondness for Locking 'Em Up*, STAR TRIB. (Minneapolis-St. Paul), Aug. 7, 1998, at 20A, available in 1998 WL 6363503 (citing a Justice Department report indicating that by 1997, "the number of state and federal prisoners had moved beyond 1.2 million").

¹³ See BUREAU OF THE CENSUS, *supra* note 1, at 220 (reporting a total of 1,085,363 federal and state prisoners in the United States in 1995); FRANCIS A. ALLEN, *THE DECLINE OF THE REHABILITATIVE IDEAL* 8 (1981) (asserting that support for rehabilitation through the justice system is declining as evidenced by legislatures passing laws that emphasize punishment and retribution); Robyn Blumner, *Justice Impoverished by Lack of Funding*, CHIC. SUN TIMES, June 22, 1998, at 25, available in 1998 WL 5586194 (stating that overworked public defenders find difficulty in providing their clients with adequate representation and that low funding and low staffing contribute to the degradation of the public defender system).

way in which America operates its prisons.¹⁴

On a global issue, the United States in collaboration with the United Nations, could eliminate world hunger in a few years. There are presently 800 million chronically malnourished people.¹⁵ Today and every day 35,000 children will die needlessly.¹⁶

If a DC-10 crashed today in Los Angeles with 200 children aboard returning from a vacation the whole world would be in tears. But that tragedy happens dozens of times each day, I repeat, 35,000 children will die today and every day.

Lawyers have the expertise to arrange world trade routes so that every person can get the necessary 3000 calories each day. Would it not be magnificent if the lawyers of America helped to organize an international system by which every child in the universe receives the food, the medicine and inoculations that every American child receives routinely?

There are other challenges for which American lawyers could supply uniquely valuable responses. Since the demise of the Cold War in 1990 the United States must face agonizing issues as to how it should use its vast industrial power and its mighty military. Again, lawyers are in a unique position to develop a moral consensus on what America's foreign policy should be. The skilled craftsmanship of attorneys is needed in dealing with the creation of an international criminal court and the complicated problem of how to deal with nations that are engaged in the repression of religion and human rights.

Do you feel overwhelmed? Are you filled with guilt? Are you resisting the challenge to a world filled with complacency and compromise?

Let grace and the sword of the spirit enter your soul. God wants us to be born again. We have received an extended and superb education. To whom much is given much is expected.

¹⁴ See JAY S. ALBANESE, *MYTHS & REALITIES OF CRIME AND JUSTICE* 147 (3d. ed. 1990) (stating that the vast majority of lawyers do not practice criminal law because most defendants are poor); HUMAN RIGHTS WATCH, *PRISON CONDITIONS IN THE UNITED STATES* 8 (1991) ("The steep rise in the prison population, which in itself seriously affects prison conditions, has been accompanied by a hardening attitude of the courts and the legislatures with respect to prisoners' rights and the rights of criminal defendants."); see also Mark Tatge, *Employees Criticize Privately Run Prison Guards, Others Leaving, Calling Facility Unsafe*, PLAIN DEALER (Clev.), Aug. 30, 1998, at 18A, available in 1998 WL 4151504 (noting that the privatization of prisons leads to abuses in the criminal justice system).

¹⁵ See Charles J. Hanley, *Researchers are Predicting Apocalypse of Shortages*, STAR-LEDGER (Newark, N.J.), Dec. 28, 1997, at 4, available in 1997 WL 12592142 (reporting that the U.N. Food and Agriculture Organization estimates that over 800 million people are malnourished).

¹⁶ See N. Gunalan, *No End to Abuse of Human Rights*, NEW STRAITS TIMES, June 29, 1998, at 6, available in 1998 WL 13380900 (Amnesty International reports that 35,000 children die of malnutrition and preventable diseases on a daily basis).

St. Thomas More, the church's patron for lawyers, faced the same challenges in a different way.¹⁷ He was pressured to take a questionable oath and paper over some differences between Henry VIII and the Holy See. Thomas More refused. His loyalty to the church and his conscience resulted in his martyrdom.¹⁸

St. Thomas More went through the process we are discussing here today. He studied, he prayed and he acted. It is unlikely that we are being called to be martyrs. But we are certainly being called to be witnesses, advocates of justice, and yes, moral leaders.

What has God from all eternity hoped that we would resolve to do? He knew that we would be here led by a thousand graces extended to us by the Hound of Heaven.

Choose to fight for justice and equality. Live up to your loyalty to Christianity and your devotion to the rule of law. Resolve that nothing can ever be the same again. You have heard the voice of Vatican II and the appeal of America's legal institutions. Let me finish with the profound statement of Solon, the ancient Athenian jurist. Hundreds of years before Christ, Solon stated that "justice will not come until those who are not hurt feel just as indignant as those who are."

¹⁷ See William R. Buleigh, *Homily at Red Mass: St. Mary's Church, Evansville, Indiana May 5, 1994*, 36 CATH. LAW. 389, 391 n.3 (1996).

¹⁸ See generally E. E. REYNOLDS, *THE TRIAL OF ST. THOMAS MORE* 151 (1964).

