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ST. THOMAS MORE SOCIETY— RED MASS HOMILY

FR. DEXTER BREWER*

In the world of literature, one finds both favorable and unfavorable depictions of the legal process. Charles Dickens' *Bleak House*,¹ for example, sketches a picture of the chancery of 19th century London that makes the home of Mrs. Haversham seem neat and tidy. He sketches a picture that is truly bleak—a picture of cumbersome processes and procedures, dark rooms without windows with papers strewn about everywhere and thick dust covering every inch of space—a legal system in which cases drag on for years, to the point where not even the lawyers know what the cases are about any more. Dickens writes:

Jarndyce and Jarndyce drones on. This scarecrow of a suit has, in course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce without knowing how or why²

A more favorable image is found in Shakespeare's comedy *The Merchant of Venice*.³ In Act Four, Scene One, Shakespeare

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¹ CHARLES DICKENS, *BLEAK HOUSE* (George Ford & Sylvere Monod eds., W.W. Norton & Co. 1977) (1853).

² *Id.* at 7–8.

³ WILLIAM SHAKESPEARE, *THE MERCHANT OF VENICE* (A.W. Verity ed.,

craftily directs a courtroom drama that would make Perry Mason and Ben Matlock proud. Portia, a young woman dressed as a lawyer, defends a merchant, Antonio, against the excessive penalties for breach of contract which would allow Shylock, the plaintiff, to cut away a pound of Antonio's flesh from the place nearest his heart. In her celebrated discourse on mercy, Portia argues that earthly power shows itself to be most like God's power "[w]hen mercy seasons justice," and that in the course of justice, without mercy no one could hope to see salvation.⁴ In the end, by careful attention to the words of the contract, and by her astuteness, Portia saves Antonio's life,⁵ which is the business of lawyers.

Finally, in the play *A Man for All Seasons*,⁶ Robert Bolt gives us a glimpse of the depth of Thomas More's legal mind as he makes his way through a political quagmire arising from Henry VIII's marital problems. The play illustrates that the result of the process of law—that is, whether justice or injustice obtains—depends greatly on the people who are participating in the process. Thomas More, a lawyer himself, unwilling to violate his conscience by taking an oath which he finds repugnant, is beheaded, at least in part, because of the deceit of other members

Cambridge Univ. Press 1962) (1898).

⁴ *Id.* at act 4, sc. 1, lines 182–200:

Portia: The quality of mercy is not strain'd,
 It droppeth as the gentle rain from heaven
 Upon the place beneath: it is twice blessed;
 It blesseth him that gives and him that takes:
 'Tis mightiest in the mightiest: it becomes
 The throned monarch better than his crown;
 His sceptre shows the force of temporal power,
 The attribute to awe and majesty,
 Wherein doth sit the dread and fear of kings;
 But mercy is above this sceptred sway;
 It is enthroned in the hearts of kings,
 It is an attribute to God himself;
 And earthly power doth then show likest God's
 When mercy seasons justice. Therefore, Jew,
 Though justice be thy plea, consider this,
 That, in the course of justice, none of us
 Should see salvation: we do pray for mercy;
 And that same prayer doth teach us all to render
 The deeds of mercy.

Id.

⁵ *Id.* at act 4, sc. 1.

⁶ ROBERT BOLT, *A MAN FOR ALL SEASONS* (Random House 1962) (1960).

of the bar.⁷

The legal system is first and foremost about people—both the people who are parties to the actions and the people who are officers of the court. This is the point, among others, that all these works of literature make. The legal process reflects the character of the lawyers and judges who participate in it. To the extent that lawyers and judges abuse the process, the system will be seen as abusive, as in *Bleak House*. To the extent lawyers and judges are dishonest, the system will be seen as dishonest, as in *A Man for all Seasons*. To the extent lawyers and judges are honest, right thinking, and zealous, the system will be seen as just. The system is only as good as the people who work within it.

In the world in which we live, apart from the world of literature, our legal system reflects the character of the lawyers and judges who participate in that system. It is important, therefore, that we are faith-filled people—from different faiths and traditions to be sure, but faith-filled all the same. Our faith in God came long before our admission to the bar, making us believers first. And it is this character—the character of the Lord as compassionate lawgiver,⁸ the Lord as the anointed one sent to bring glad tidings to those who suffer,⁹ the Lord as herald of liberty for captives and prisoners¹⁰—that we must reflect by our presence, by our words and by our actions in the bars of our respective states.

In our greatest moments, we are instruments of God's justice and mercy, not just legal technicians moving papers, signing documents, and arguing minute points of law. These things are certainly necessary; however, whatever we do must be closely related to the God we serve, as all justice is God's justice. The work we do in our practice must bear in mind the people we serve

⁷ IX NEW CATHOLIC ENCYCLOPEDIA 1136, 1139 (1967).

⁸ See *Sirach* 18:9–10, 13 (New American) (“[T]he Lord is patient with men and showers upon them his mercy. He sees and understands that their death is grievous, and so he forgives them all the more. . . . [He is] [m]erciful to those who accept his guidance, who are diligent in his precepts.”); *Isaiah* 33:22 (New American) (“Indeed, the Lord will be there with us, majestic; yes, the Lord our judge, the Lord our lawgiver, the Lord our king, he it is who will save us.”).

⁹ See *Luke* 4:18 (New American) (“The Spirit of the Lord is upon me, because he has anointed me to bring glad tidings to the poor. He has sent me to proclaim liberty to captives and recovery of sight to the blind, to let the oppressed go free, and to proclaim a year acceptable to the Lord.”).

¹⁰ See *id.*

who come to us from every corner of our society seeking justice. They come to us because the legal system is unfamiliar and frightening and perhaps *because* we are faithful. Those who have suffered look to us to help to heal their broken hearts and their broken worlds. The healing begins when lawyers listen and hear the pain which an unkind world has inflicted on so many who are helpless and who have no one to speak for them, and on some who are not helpless, but whose private or business worlds have fallen apart. The healing begins when lawyers make use of the available legal arts to help bring about resolutions in people's lives.

But the use of our legal arts is not always celebrated by our society. When people are frightened, the law and we who practice it sometimes appear to be enemies rather than friends. In the wake of the September 11th attacks, there has arisen a legitimate interest among our people in the security of our nation and its citizens and in the protection of all those of good will who live among us. There is a great fear in times like these. It is a fear that may after some time no longer appear on the surface of our daily lives but that will surely remain within us. This fear creates a tendency, perhaps even an understandable one, to short circuit the rights of persons who seem suspicious to us. Consequently, fear is the main obstacle to providing justice for all people.

Shortly after the terrorist attacks on our nation, the fear within us raised its head in ugly ways. Mosques were damaged.¹¹ Airline passengers refused to travel with persons of Middle Eastern appearance.¹² In April, a group of Middle Eastern travelers were placed on separate flights to their destination

¹¹ See Beth Gorczyca, *America Has Come Together, but Can it Last?*, HERALD DISPATCH, Sept. 12, 2002, at 5; Peter Slevin & Dan Eggen, *FBI Director Links Some Hijacking Suspects to Al Qaeda*, WASH. POST, Sept. 28, 2001, at A18 (reporting that in Seattle a man was charged with starting a fire at the Idriss Mosque, and in Salt Lake City a man was arrested for setting fire to a restaurant owned by a Pakistani American).

¹² See Dan Eggen & Katherine Shaver, *In Aftermath of Hijackings, Air Travel Jitters Remain; Several Groups Investigated, then Cleared, over Weekend*, WASH. POST, Apr. 30, 2002, at A2 (reporting that a Pakistani musical group traveling to Los Angeles was removed from three different flights almost eight months after the September 11th terrorist attacks); Courtland Milloy, *Human Kindness Must Outweigh our Suspicions*, WASH. POST, Sept. 23, 2001, at C1 ("Were the people who refused to fly with a group of Arab Americans being vigilant—or vigilantes?").

after two flight crews refused to fly with them on board.¹³ Persons have been detained against their will for long periods of time, ostensibly so that they might serve as witnesses in these horrible and unfortunate cases.¹⁴ In a climate of fear there is a risk of being tentative about other people's rights. We need only recall our treatment of Americans of Japanese descent during the Second World War.¹⁵

Given the horrible image of commercial airliners plowing into skyscrapers seared into our nation's consciousness for the foreseeable future, it is not a mystery that the flying public is extra sensitive and wary about other passengers on the aircraft with them. Nor is it a mystery that our government is doing anything and everything it can to ensure that those responsible for these heinous events are brought to justice and that such events never happen again. But while our people and government might be fearful of those who appear to belong to groups that might wish us harm, those of us in the legal profession must always keep our heads about us. We must put fear aside and invoke the spirit of truth. We must represent both the interests of those who are frightened and those who appear to pose a threat to our way of life. It is the lawyer's responsibility to make clear the issues involved in a conflict so that our courts might prudently distinguish between the rights of one group and the mere interests of another. Lawyers and judges must help to

¹³ See Eggen & Shaver, *supra* note 12 ("The passengers were cleared of suspicion in each case and allowed to resume their travels, officials said. The Pakistanis at Dulles—a touring musical group that was kicked off three flights over two days—will be divided into two groups and put on separate flights today.").

¹⁴ Steve Fainaru, *Judge: U.S. May Jail Material Witnesses; N.Y. Ruling Conflicts with Decision in Prior Case in Same Federal District*, WASH. POST, July 12, 2002, at A12 ("The government may forcibly detain witnesses to gather evidence in its nationwide terrorism investigation, a federal judge ruled today, rejecting as 'flawed' a previous federal ruling that the tactic is unconstitutional.").

¹⁵ See *Korematsu v. United States*, 323 U.S. 214, 214–24 (1944) (holding that race may be used as a criterion for curtailing civil rights in a time of grave threats to national security); Robert E. Pierre, *Fear and Anxiety Permeate Arab Enclave Near Detroit; Muslim Americans Feel They Are Targets in War on Terror*, WASH. POST, Aug. 4, 2002, at A3 (expressing the fear of some that another terrorist attack could lead to internment camps such as those which held Japanese during World War II); Jeffrey Rosen, *So Far; Bush Runs into Checks and Balances in Demanding New Powers*, WASH. POST, Sept. 15, 2002, at B1 (reporting civil libertarians' predictions of a repeat of the Japanese internment camps for other groups).

ensure that persons who have committed no crime under our laws are not treated as if they have. Systematic violations of the rights of any people weaken our system and compromise the security of our nation and our freedom. It is these violations that pose the most serious threat to our way of life.

The community does not always understand or praise the work of lawyers and judges in helping to secure justice for all peoples in our communities. This work is sometimes unpopular, but it is the work we promised in our oaths, and it is the work that a search for truth requires.

In recent times, the Catholic Church in the United States has been gripped by fear. Reports of sexual misconduct by some in the community are repeatedly placed before our eyes.¹⁶ Such reports disturb us and cause all of us, Catholic and non-Catholic alike, great concern, but also fear. The Catholic community is fearful that these events will damage its image as a champion of the rights of children, the poor, and the marginalized. The community is fearful that the office of priest, which for so long has enjoyed a deep respect in our civil society, may no longer enjoy that respect. The community is fearful of what the future holds, of what tomorrow's newspaper headlines will report.

In this climate of fear within the Catholic community, lawyers must be voices of reason and balance. We are trained to deal with the human condition and are not frightened by it because it is our business to find out precisely what that condition is, and to distinguish the actual condition from mere rumor. We, of all people, are acutely aware that many fears and injustices find their roots in the lack of accurate information.

Church lawyers, civil and canonical, must prudently advise dioceses, always keeping in mind the mission and laws of the Church and the rights they afford every member of the Christian faith. Civil lawyers who advise our bishops and church leaders ought to be intimately familiar with the mission of the Church and with the canon law of the Church. The Church is not just

¹⁶ See Don Lattin, *Fathers and Sins: Sex Scandals Rock the Catholic Church*, SAN FRAN. CHRON., Mar. 17, 2002, at D1 ("Across the country, Church leaders are going through their own records and taking action against priests accused of past abuse."); Cathleen Falsani, Annie Sweeney & Art Golab, *Clergy Sex Scandal Shakes Catholic Faithful*, CHI. SUN-TIMES, Mar. 31, 2002, at 8 (reporting that the reports of sex abuse by clergy "has angered many of the Catholic faithful, leaving them questioning the leadership—and integrity—of their church").

another corporate client, but it is, rather, a community of baptized people, all sinful, who are seeking the face of Christ with the help of the community. Crimes must be punished. But, as in the civil realm, the Church must seek out and find the truth so that punishment is not wrongly inflicted on members of the Christian faithful because of fear. Although bowing to the fears of the masses may seem to be a far easier road for the Church to follow, that road is not the road of Christ who gave his life that all might be saved.

I am asked from time to time whether the office of priest is incompatible with the practice of law. At the root of this issue, it seems, is the belief that lawyers, in the practice of their profession, are not directed or affected by any honorable principles. There is a widespread belief, alas, that lawyers are insensitive, uncaring, cold, calculating, and less than honest, characteristics which should have nothing to do with the priesthood. Even Shakespeare writes, "The first thing we do, let's kill all the lawyers."¹⁷

We need to help people to see that while some lawyers may be insensitive and less than honest, there are those of us who strive to follow the way of truth as best we can perceive it on any given day and desire to bear in our words and in our actions the character of God's spirit of truth and all it entails. We are diligent and zealous in our practice and representation, perhaps more diligent and more zealous than all other lawyers. More importantly, we adhere to the principles and values that insist all people are important and that it profits us nothing if we should gain the whole world but lose our souls.

Being both a faithful person and a lawyer is not impossible. The concepts are not mutually exclusive. We should instead question whether it is possible to be faithful without merging the values and principles of our faith into everything that we do. We must not leave those principles and values outside the doors of our offices and courtrooms. To act contrary to the Spirit of Truth within us is to risk losing our lives. It is to risk living a lie during the greater part of our day which cannot help but spill over into our private lives. None of us can have two faces which will not be revealed in due time.

¹⁷ WILLIAM SHAKESPEARE, *THE SECOND PART OF KING HENRY THE SIXTH* act 4, sc. 2, line 78 (Stanley Wells et al. eds., 1988) (1590).

The work that we do in this life is meant to help us to become fully human. When we champion the causes of our conscience and embrace those the world would rather forget, and when we put our fears aside and do what is just, we take leaps toward living the fullest life that can be lived. But when we compromise our consciences, denying the spirit of truth that dwells within us all, we begin the slow but certain walk toward the death of our spirits. Initially, it may not appear as death. The road might seem successful. But eventually our worlds fall apart. Our professional life falls apart because it does not have as a foundation those values that ultimately sustain the human spirit. Our private lives fall apart because we attempt to wear a different mask from the one we wear in our professional life. In one place or the other—or perhaps both—we live a lie. And the lie cannot be sustained.

Finally, we must not be afraid that our values and our principles will make us impotent, less persuasive, or less successful in the law. If seeking what is right for those who come to us requires that we be less than honest, then our legal system is in very bad shape, and we should wonder whether we ought to participate in it at all.

If it is the goal of our legal system to render justice to all peoples as best our human condition allows, that system must seek to participate in the justice of the God's kingdom. That system will participate in the justice of the kingdom to the extent that we who believe refuse to allow any fear to keep us from doing what we believe is right. That system will participate in God's justice to the extent that we practice within it with our full hearts, and minds, and voices. We pray that God will send the spirit of truth on those serving on the highest court of our land, on lawyers and judges in this place, and in every court throughout our country and the world. We pray that this spirit of truth will give us the courage to follow the Lord unreservedly. We pray that by seasoning justice with mercy in our practice lives as well as our private lives, we might one day see salvation, and perhaps, help another to see it as well.