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The Law, the Lawyers, and the Writers

L. Neille Shoemaker*

THE GREAT WRITERS have one thing in common—they castigate the human race, including themselves, the frailties of mankind, and his noble institutions. Law and the lawyers have suffered at the hands of the writers. The doctors have suffered even more. Most rulers, if they lived long enough, have been the subject of satire, caricatures, exposure, or castigation. The church and churchmen have also suffered. The principal subject matter of satire over the centuries has been the Church.

The most common subject of the authors has been mankind in general. He is exposed, or ridiculed, or attacked, largely because of his human frailty. To the authors over the centuries, mankind is corrupt, frail, flighty, deceitful, greedy, unbathed, bellicose, drunk, and lecherous. The virtues largely exist in the great books to serve as pawns for the vices. If virtue suffers one fall, it is no longer virtue, but vice. Thus, Hester, in Hawthorne's *Scarlet Letter* was a fallen woman because of one sin. Her long life of virtue and her life of great goodness after the sin do not avail, and thus she must wear the scarlet letter of a soiled woman. Much of the satire against the Church bespeaks of the sins of churchmen and ignores the virtues of the great mass of divines. Chaucer is not as interested in portraying the goodness as he is the sins of men of the cloth. The same is true of *Piers Plowman*.

Because of this general emphasis on soiled humanity, the legal profession need not feel alone as it finds itself the subject matter of the great writers over many centuries.

The writers have dealt with both the law and the lawyers. In the main, laws are unequal, harsh, subject to change where money is available, and are enforced by tyrants, crooks, and the blood thirsty.

John Galsworthy in his play, *The Silver Box*, deals with the subject very dear to the hearts of the writers, namely, there are two laws, not one. In *The Silver Box*, the man of wealth had no trouble escaping the crime of theft. The man of poverty discovered that theft of a silver box can only mean conviction and a harsh enforcement of the law.

The members of the establishment over most of man's history, have considered that harsh laws were necessary to insure the welfare of the State. The lawbreakers must be kept in line, and harsh laws were therefore necessary. By the time of the death of King George III in 1820, a number of capital offenses had grown to 160. Attempts to reduce the harshness of the laws generally brought a flood of opposition. An act of the British Parliament in 1752, which gave judges the power to stay

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executions, was viciously attacked as abetting crime and spreading lawlessness. For more than 30 years the battle raged against leniency and reached its climax in 1784 with the publication of one of the most vicious pamphlets in the history of the debate between harsh laws and leniency. In that year the Reverend Martin Madan published a pamphlet entitled *Thoughts on Executive Justice*. He deplored giving judges power to stay executions and urged the strictest enforcement and the most excessive punishments, delivered at once. He especially was anxious that horse stealers be given the absolute and maximum punishment. His pamphlet became a national sensation. A second edition was issued the next year. Whereas the year before the tract appeared there were only 51 executions in London, the next year after it appeared there were 97. A brutal account of the executions, in the wake of the national mania, was given by Boswell in his life of Johnson. On June 23, 1784, Boswell witnessed 15 executions at Newgate. Of the 15 executions, 12 were for burglary, two for street robberies, and one for an unlawful impersonation.

The above episode was a historical fact. The same situation exists in many famous plays, novels, and poems. The harshness of the law is brilliantly described by Shakespeare in his *Measure for Measure*. When Angelo becomes ruler of Vienna, he enforces laws which have been unenforced for years. These include the death sentence for any man who illegally gets woman with child. The harshness is augmented and the poor prisoner is shown no mercy. A new dimension is added to the situation because Angelo is not only a strict enforcer of harsh laws, he is also corrupt and dishonest. He offers not to enforce the law against the condemned brother of Elizabeth if she will sacrifice her chastity to him. The entire play, *Measure for Measure*, is an essay in law and law enforcement. It is one of the many pictures of the Renaissance dealing with laws and the men who enforce or don't enforce the laws. Machiavelli's *Prince* is also an essay in the harshness of laws.

The mention of Angelo in *Measure for Measure* and the *Prince* illustrate a point which appears in literature up to the past two or three centuries. The term lawyer as we know it today was not used so commonly. Even if Shakespeare used the term of lawyer, in the main the lawmaker or law giver in his plays was a king, a prince, a duke, or a general. They gave the laws, and there was no appeal. Many of the greatest books of the past twenty-five hundred years use the subject of regal law and its violation. There are many variations and mostly the theme is one of tragedy.

The general concept of the law was that even if it were harsh, it is the law of the hierarchy and should be obeyed. Tragedy was inherent in the disobedience. In *Antigone*, by Sophocles, the law of Creon the king of Thebes is that Polynices will not be buried, but will be allowed to rot upon the earth as a warning to the people. Antigone, the sister

of Polynices, flouts the law in order to bury her brother. It is the story of personal decision versus the will of the state. The state must win even though the event will prescribe the decline of the state and tragedy for the rulers.

Another violation of a law provided Shakespeare with material for his most tragical play. It was the law of the Middle Ages and the Renaissance that God appointed the princely representatives upon earth. Since God had called the king, the king could not resign or give up the throne until God called him to heaven. Thus when King Lear decided to retire from the throne, he had committed a sin against God, according to the accepted thought of the time, and so must be punished.

Not content with one sin, Lear committed three. A second law prevalent at the time was that there could be only one ruler. There cannot be two kings or even a king and a queen who rule at the same time. Thus, when Lear decided to have three rulers, he had committed another sin. In some countries, women were permitted to occupy the throne; such was not the case with the source materials with King Lear. Only men could rule; thus when Lear made his daughters rulers of the land, he had committed another sin. Tragedy was thus inherent in the nature of the play and only death can follow.

Another common subject matter of the law in high places has to do with the game of winners and losers, or it may be called the game of purgatory. It is the old human play of castigating the other side; thus, Dante in the *Divine Comedy* painted a picture of the vilification of his political opponents. He had been exiled because he was on the losing side. Being a writer, he had the last laugh because he could list the sins of his enemies and give them special punishment. This punishment which was suffering after death was different from the usual punishment dealt out. In the game of high political stakes, a common theme was for the ruler and his opponent to engage in mortal combat, and for one of them to be defeated. Shakespeare made much use of this technique. Richard III, who is king of England but who is portrayed by Shakespeare as being an evil monster, is engaged in combat with an opponent who wins and makes himself Henry VII, king of England. There is no more common theme in literature than that the victor is a man of virtue, and that his victim was a man of evil.

One of the common attacks upon the law and the rulers is that the ruler is engaged in a policy which is harmful to the state and cruelly involves the innocent. An example of this is currently being seen in the United States in the debate over Viet Nam. While war is a common theme throughout man's history, the great volume of world's literature portrays war as being cruel and unnecessary and rulers as being unwise, corrupt, and cruel. Much of the world's literature seems to imply that

rulers make the wrong decisions and pursue improper courses. This is true even when the human characteristic being presented is one of virtue. Thus, in Shakespeare's *Macbeth*, the subject of ambition is discussed. Ambition is praised in many famous books. Likewise, the opposite of ambition is the subject of much literature, and those who are lazy and shiftless and have no ambition are generally attacked. In the case of *Macbeth*, however, the virtue becomes a vice because he is overly ambitious. His qualities are bravery and leadership, which were praised in the first act of the play. They become over extended and personalized, and the general, devoted to the state, becomes a tyrant devoted to himself. Since most of the world's great literature, at least up until the present time, was based on accepted morality, Macbeth must fall. Since he pursued a course of evil, he cannot be permitted to be victorious.

Another exposition of the theme of improper decisions by the state is brilliantly discussed in *The Trojan Women* by Euripides. It is one of the great documents of all time on the subject of the evils of war and the necessity for peace. In much of the literature of the world his attitude would have been called one of being traitor to the state. The position of the state was that the victims of the Trojan war should be slaughtered if they were men and should be carried off as mistresses if they were women. Euripides suggested that such policy is inhumane and is the cause for yet another war. Euripides received no greater punishment than exile from Athens. Through the centuries the punishment for such a position as Euripides had taken has been death. The point here is not the punishment Euripides received, but rather that the author attacked the ruler of the state. It is interesting to note, however, that the attack was not upon the king, but rather upon the king's policy. Likewise, *Antigone*, as mentioned previously, was not attacking Creon the king personally, but rather was opposing his policy.

It is easy to see that as time goes on, and as the legal profession develops its own independent members who are not kings or rulers but who are practicing attorneys, the theme of the writers will change from the attack of policy, to an attack of persons. This is likely due to the fact that in the main lawyers have not made policy, but have represented those who do. And secondly, that it is easier and safer for writers to attack lawyers personally, than to attack the king on a personal basis.

Even though there were not many lawyers in Shakespeare's day, Shakespeare still has much to say about them. No exact number of lawyers in Shakespeare's time has ever been determined. The number must have been very few. The Law List of 1783 indicates there were only 350 lawyers in England. A century and three quarters earlier, the number must have been very small. Still, Shakespeare's plays have many references to lawyers. As was indicated previously, most of the references are unfavorable. This is in keeping with the psychological knowledge

of Shakespeare and other writers, namely that sinners are more interesting as subject matter than saints, and that vice is more interesting than virtue. A few samples will indicate Shakespeare's comments about the lawyers, and the law.

In *Hamlet* (III, 1, 72), Hamlet speaks of the "law's delay." In *Measure for Measure* (III, 1, 208), the words "angry law" are used. In *Timon of Athens* (III, 5, 4) the line occurs "the law hath ta'en revenge on them." In the same play (IV, 3, 60) Shakespeare uses the statement "civil laws are cruel." In *Midsummer Night's Dream*, it is brought out that the law gives the father the complete control of his daughter. The father, Egeus, brings his daughter, Hermia, to the Duke of Athens. Hermia has refused to marry the man her father has selected for her. Shakespeare has done a shocking thing. It is one of the chief characteristics of his comedies; namely, he has caused the youth to disobey the aged. Thus, Hermia is not punished by the Duke, and all ends happily. Throughout the comedies, the traditional laws of church and adulthood are violated, but since the comedies deal mostly with young lovers, the point is made that love is more important than law.

In the tragedies, however, this cannot happen. In *Romeo and Juliet*, the same situation exists, but Juliet is forbidden by her father to marry Romeo, and when she violates her father's wishes she must suffer. In the tragedies, death is the only answer for those who violate the laws. Thus, we have seen three instances in Shakespeare's comedies and tragedies, instances which illustrate three different types of law. In *Lear*, a heavenly law was violated. In *Macbeth*, a law of the state was violated. In *Romeo and Juliet* a law of the authority of the parent was violated.

In turning from the law to lawyers, we have some samples of Shakespeare's attitude toward the latter. His lawyers have several characteristics. One is that they are interested in nothing but money. Another is that they are corrupt. Another is that they talk too much. This line by Dick in the second part of *Henry VI* is not exactly typical. He says "The first thing we do, let's kill all the lawyers." (IV, 2, 83). A more common statement has to do with money. In *Romeo and Juliet*, this line occurs: "lawyers . . . who straight dream on fees" (I, 4, 73). In *King Lear*, the same idea is stated: "'Tis like the breath of an unfee'd lawyer." (I, 4, 142). Hamlet, picking up what may be the skull of a lawyer, engages in conversation with the gravedigger on the subject of the dead lawyer. Among other things he asks is, where are his "tricks" now. Hamlet (V, 1, 106). In *Richard III*, Shakespeare speaks of "windy attornies" (IV, 4, 127). Shakespeare has larger discourses on the law than these sample lines may indicate. In two other plays there are two different attitudes toward the law, one somewhat optimistic and sympathetic, and the other quite pessimistic. In *The Tempest*, Prospero is pictured as being a tyrant and a magician. He was

the victim of usurpation in the first place. His brother had usurped his throne in Italy and had set him adrift in a boat. He landed on an island in the West Indies. Here we have two traditional events in the history of law. That of the forceful taking of a throne, and the punishment of the defeated. A third attitude toward the law is seen in Prospero who takes on supernatural powers. The fourth movement in this quartet of ideas about the law is Prospero's decision to give up his power and set his captives free. This is not a common theme in the world's literature. Occasionally, the idea appears that a ruler may be better off to give up his power and to pursue the pleasures of reading or living among the glories of nature. The latter theme appears in *As You Like It*, with a slight modification; the deposed king did not willingly give up the throne, but having been forced from it, he moved from the traditional theme of revenge and attempt to recapture his throne, to one of complete happiness at the opportunity to read and think among the wonders of nature.

In *The Merchant of Venice*, the attitudes toward the law are very pessimistic. First, the law may be filled with trickery. Shylock seemed to have a perfect case regarding the bond. As it was interpreted by Portia, a clever lawyer, he did not have a closed case and indeed was about to be the victim of the law. That is if he took one ounce above the one pound of flesh to which he was entitled according to the bond, he would be violating the law. In the next place, he was the victim of old laws which were based upon religion. Shylock, being a Jew, must give up his fortune to the Christians in an attempt to save his soul. This latter idea is very common as the authors interpret the law; namely, that there are several laws and that they are applied to particular races, colors, and conditions of wealth or social position.

Other writers have also had their say about lawyers and the law. Mostly, they have made about the same points which Shakespeare made, namely, that lawyers are greedy and shift. In the *Beggar's Opera*, Gay makes much of the corruption of the law, and the necessity of bribery if one wishes to remove himself from prison. In a famous song in the play, (1, 9) these lines occur: "if Lawyer's Hand is fee'd, Sir, he steals your whole Estate." After the words in the song, these lines appear:

The Lawyers are bitter Enemies to those in our Way. They don't care that Any Body should get a Clandestine Livelihood but themselves.

Many famous writers have satirized lawyers as being "a bit shift." Among this literature, three samples may be given. In speaking of Utopia, Sir Thomas More says,

They have no lawyers among them, for they consider them as a sort of people whose Profession is to disguise matters.

Benjamin Franklin said in his *Autobiography*, that:

Persons of good sense, I have since observed, seldom fall into disputation, except lawyers, university men, and men of all sorts that have been bred at Edinborough.

William Cooper, has this statement:

Then, shifting his side, (as a lawyer knows how).

Report of an Adjudged Case

Running through many great books is the theme that the people are often the victims of the laws and the lawyers. Sometimes the latter two are not distinguished. Much emphasis has been on the subject of punishment and not upon freeing the innocent people from the harshness of the laws. A famous quotation on this subject is by Defoe. He says:

I hear much of people's calling out to punish the guilty, but very few are concerned to clear the innocent.

More shocking is a famous quotation by Chamfort:

Said a man ingeniously to one of his friends: 'This morning we condemned three men to death. Two of them definitely deserved it.'

Lord Halifax has a famous quote that relates the law and the lawyers. He says:

If the laws could speak for themselves, they would complain of the lawyers in the first place.

Sir Francis Bacon speaks of the "wisdom of a law maker is one, that of a lawyer is another."

Most of the quotations cited above about lawyers deal with them as members of a profession. A variant on this attitude of writers is that of considering lawyers as part of a larger segment of societies. This is particularly true in several Southern novelists of the twentieth century. A good instance is the novels of William Faulkner. Several lawyers in the novels of Faulkner represent more than just the profession. They are pictured as being part of a decadent and dying society. Horrace Benbow in *Sanctuary* represents more than himself. He is weak and is part of a dishonest legal system as represented by Judge Drake and others. Benbow is beaten down by the courtroom scene about him and if he is a part of the corrupted and corruptive court, it in turn is part of a decadent and fallen society.

In the novels of Faulkner, the Southern judge is a symbol of aged power and present weakness. His novels are full of references to the authority and preeminence the judges once had. All about them, the temples are falling and weak and beaten men are lying and drinking their ways to a final retribution. Even the off-spring of the judges are frail and temporary.

The same things can mostly be said about the novels of other Southern writers. A good instance is *All the King's Men* by Robert Penn Warren. Willie Stark is powerful, as all Southern politicians are, in the novels dealing with the South. He is likewise endowed with the eternal characteristic of tragic heroes who are destined to suffer and fall. Willie Stark is a very clever lawyer and a man of great energy and strong will. He knows the territory. He can manage people. He has all the characteristics to take him up the ladder. He also has all the characteristics to bring him down again. Humpty-Dumpty always falls, whether it be in a nursery rhyme or in a Greek tragedy. Willie Stark is ruthless—he makes enemies. He is greedy. He builds buildings, and in a sense he also builds the storm that will tear them down. Most of the points made above whether they deal with kings and princes or lawyers in general, are applicable to Willie Stark. And most of the things that are applicable to Willie Stark are applicable to fiction and plays in general.

Most of the quotations and ideas pertaining to the law and lawyers above are also applicable to doctors, ministers, bull fighters, and boot-blacks. According to the writers, all people are weak and have within themselves the ability to cause their downfall. If they do not fall from inherent and internal characteristics, they permit themselves to be taken down by outside forces. The formula is simple among the great writers of the world. Men rise up and attain some eminence and then they fall. What was true of Macbeth or Willie Stark is true of a Hemingway bull-fighter. As Hemingway sees him, he is on his way down—his days of glory are over. The bullfighter who once could have any woman in Madrid is now seen standing alone as the prostitute of the local bar walks away from him.

The legal profession would not wish to feel that it had been singled out for neglect by the writers. People of all of the professions have been lined up as sitting ducks by the writers and have received their fair share of attention. This is part of the heritage of the ideas which, with some exceptions, has been the heritage of the Western world from the time of the Greeks. The freedom which has permitted the great lawyers to have the freedom to attack the rulers of the land has permitted the writers to portray the lawyer. Many times the portrait has been done in acid. Much of the time, however, it has been done with satire, sometimes biting and sometimes gentle. The portraits of the lawyers may be a part of a continuing anti-intellectualism which always infests any society, and thus the lawyer, as a representative of the educated class, is subject to criticism. It may be that many lawyers over the centuries have deserved to be satirized by the authors. It may be nothing more than the author's way of getting a story. Being satirized is better than being neglected.