

# The Catholic Lawyer

---

Volume 7  
Number 2 *Volume 7, Spring 1961, Number 2*

Article 4

---

June 2016

## Society Challenges the Lawyer

Theodore H. Husted, Jr.

Follow this and additional works at: <https://scholarship.law.stjohns.edu/tcl>



Part of the [Catholic Studies Commons](#), and the [Ethics and Political Philosophy Commons](#)

---

### Recommended Citation

Theodore H. Husted, Jr. (1961) "Society Challenges the Lawyer," *The Catholic Lawyer*. Vol. 7 : No. 2 , Article 4.

Available at: <https://scholarship.law.stjohns.edu/tcl/vol7/iss2/4>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

# SOCIETY CHALLENGES THE LAWYER

THEODORE H. HUSTED, JR.\*

THE YEAR 1960 MARKED the 425th anniversary of the death of St. Thomas More, the patron of Catholic lawyers. When our newspapers tell of corruption in government, it is timely to reflect upon the man who did not hesitate when put to the choice between conscience and life. In our efforts to expand the rule of law concept throughout the world, it is interesting to note that More is allied with us in the cause. For in his classic "Utopia" he vividly points up the distinction between, on the one hand, a concept of law as the whim of the sovereign and the duty of the citizen to obey that whim, and the proper view of law as embracing an ultimate standard of right and wrong — a standard which applies to man and king. When judges, lawyers and laymen bemoan the congestion in the courts and echo the cliché that "justice delayed is justice denied," it is encouraging to recall that when Sir Thomas More took over the duties of Lord Chancellor, he found a calendar so congested that delays were figured almost in generations rather than years, but that he left the office two and one-half years later with the docket clear.

Very recently we, as Americans, were exposed to the humiliating experience of seeing a \$30,000 a year employee of the federal government sit in a Moscow courtroom seeking safety in the guise of an ignorant and innocent pawn who had come too late to realize the aggressive, warmongering motives of his governmental superiors. In our shame over his performance we sought consolation in the thought that this was not a typical American: that he was not very bright, had thought only of how well his job paid, and had never reflected upon what he was doing and what the consequences would be if he were

---

\*B.S., Northwestern University; LL.B., University of Pennsylvania. Vice-Dean and Assistant Professor of Law, University of Pennsylvania Law School.

caught. By this sort of rationale we could save our sense of national pride because Francis Powers could then be viewed as the exception rather than the rule.

One difficulty with this rationale is the recently publicized report of the psychiatrists who studied the performance of the American troops who were imprisoned by the Communists during the Korean War. Contrary to what had been supposed, instances of physical abuse by their captors were found to have been relatively rare, and there was more than adequate food to sustain life. Yet thirty-two percent of the American P.O.W.'s died, largely because of "give-up-itis" — because they lacked the will to live. Another startling fact is that one out of every four was an informer — willing, even anxious to cooperate with his captors at the expense of betraying his fellow prisoners. In one camp where 600 Americans were guarded by six rookie guards behind a single strand of barbed wire, there was not one attempt to escape.

Let me contrast the sorry example of Francis Powers with the performance of Sir Thomas More, Lord Chancellor of England, who held his office, his title and his wealth at the whim of a powerful and vindictive king. Here was a man fifty-five years old with a family to support, a position to maintain, and no independent means. Although he had resigned his office rather than side with Henry VIII in his break with Rome, More was summoned to take the Oath of Succession. As he well knew, the authority for this oath was an Act of Parliament which required only that the affiant recognize the issue of Henry and Anne Boleyn as rightful heirs to the throne of England. More conceded Parliament's power to determine succession but the oath

itself went far beyond the statute. It not only recognized the line of succession but it repudiated the papal authority over the Catholic Church in England. More refused to sign and was imprisoned in the Tower of London. For fifteen months he was exposed to a sixteenth century brainwashing — the threats of his captors, the arguments of his friends, the pleas of his family.

Formal adherence to an oath unlawfully demanded would restore him to his office, his wealth and his family. Adherence to conscience could only mean death for himself and disgrace and poverty for his family. Weaker men might have rationalized. More bowed his neck to the executioner's axe with a jest on his lips and a prayer in his heart.

One might dwell a long time on the source of his courage and his faith but one thing can be stated with certainty. They did not descend upon him in a torrent at the moment when he was faced with this difficult decision. His courage and his faith were developed over an entire lifetime of study, of prayer, and of adherence to the right in little things. He had developed a sense of values and a standard of conduct upon which he could draw when the crisis came to him.

Let us return again to the twentieth century. The P. O. W. study points to one definite conclusion: namely, that many present day Americans lack genuine ethical principles, are ignorant of the ends for which they were created, fail to understand the concept of democracy, and have no appreciation of the threat which is posed by communism abroad or Godless materialism at home. This tendency must be reversed if our Christian faith and our great nation are to survive. While we seek to

win the technological race and strive to raise our standard of living, we stand to lose the ultimate struggle — the ideological war for the minds and loyalties of men.

That war is being fought right now. It is being fought in the halls of the United Nations and in legislative chambers throughout the world. It is being fought in every courtroom where the liberties of man are challenged. It is being fought on the long-subjugated continent of Africa and in Asia where the edifice of colonialism was destroyed before the people were prepared to erect another structure in its place. It is being fought in the United States of America where we still insist on ostracizing the Negro despite the fact that for almost 200 years we have given lip service to a proposition, proclaimed to be self-evident, that all men are created equal — and despite the fact that for almost 2,000 years the Catholic Church has been teaching that all men, regardless of color, are possessed of the same immortal soul, are children of God, and have descended from the same first parents. It is being fought in our educational institutions, most of which are not permitted to develop any awareness of the purpose of creation, where emphasis upon technology and commerce is crowding out the cultural courses which are the core of any true education. It is being fought within our political parties with appeals to prejudice, bigotry and self-interest. It is being fought within the area of labor-management relations, where petty men on both sides of the bargaining table persist in perpetuating the class conflict instead of seeking to work out matters of common interest.

If ever there was an apocalyptic era — a time when the forces of good and evil

were locked in combat truly mortal — that time is now. At stake is dominion over the minds and souls of men. Political and social issues are involved, of course, but the all important question is whether men are to be left free to worship God and to work out their individual salvations, or whether they are to be slaves to a totalitarian state. This is a battle in which lawyers are uniquely qualified to take the lead.

Members of our profession are largely responsible for our political and constitutional heritage based upon the existence of a rational order of truth and justice which man did not create, but which he could discover. From this tradition the founding fathers drew the concepts of freedom under law, of justice, of human equality, of representation and of consent. The legal profession can be justly proud of this contribution, but pride in this genesis does not excuse us from the obligation of stewardship. If our profession sired our constitutional system, we have all the more obligation to see to it that it works — that our nation does not lose sight of those self-evident principles upon which it was founded. In carrying out our obligations of client loyalty, we must not ignore the fact that there is a law beyond the letter of a statute, beyond the doctrine of *stare decisis*, to which we and they are subject. If our loyalty to our clients and our pride in our technical skills cause us to lose sight of justice and social responsibility, we breed contempt for law. We ask the public to show respect for law and lawyers while we depreciate our currency or peddle shoddy merchandise under the label of law. We cause the layman to view the law as a game of skill in which victory goes to the man who has hired the shrewdest lawyer. If

respect for law is lost at home, our hope to extend the rule of law to the international community is a hollow one indeed.

We must also accept our share of the responsibility for the government of our local communities, our state and our nation. Every four years there is a presidential campaign with a number of other local, state and national offices at stake. Both political parties call for volunteers to get out the vote. We can answer that call; we can reduce the number of Americans who will remain at home on election day. And we can each play our small part in pointing up the issues to be sure that the votes which are cast are intelligently cast. Supposedly educated people often cry about corruption in government, but do nothing to make government better, criticize our courts and our judges but do nothing to improve the administration of justice, and scoff at the calibre of our state legislators, but do nothing to make the state legislative institution meaningful.

As responsible Catholics, we can and must address ourselves to the problem of pluralism in America. Amid the discord of our religious creeds, Americans have done a pretty good job of living together. However, the current happenstance that a Catholic is president has served to emphasize the great misconceptions which many Americans of good will have about the Catholic Church, its teachings and its aims, as they relate to our constitutional system. It has also pointed up how a hard core of malicious bigots are ready to fan into flame these smoldering misconceptions and doubts. Let us then begin to undertake a mass educational campaign to impress upon our fellow citizens the commitment of the Catholic Church in America — both

at the hierarchial and lay levels — to the religion clauses of the United States Constitution. But while we teach, let us also learn — so that we can be more understanding and more tolerant of our non-Catholic neighbors, as we expect them to be of us.

Our nation must do a better job of reconciling the legal demands of separation of Church and State with the moral and social needs of a people whose religious heritage and ideals are in need of nurture. To take but one example, consider the paradox posed by the following combination of facts. *First:* an educational system is less than complete which lacks the means to impart an awareness of the purpose of creation; which offers no answer to the question: “why am I here?” — the question to which the catechism gives the answer: to know, love and serve God in this world, and to be happy with Him in Heaven. *Second:* education has become increasingly dependent upon governmental support. *Third:* the establishment of religion clause of the First Amendment, made applicable to the states by the Fourteenth, has been interpreted to mean not only that government may not prefer one religion over another, but that government must remain completely aloof from all religion. When the crying need of our time is for higher ethical standards and for deeper knowledge of the purpose in life, how can we take God out of education? And if we leave God in, how can we reconcile the increasing need for governmental support with a constitutional concept which keeps government aloof from the whole area of belief or non-belief in a Supreme Being?

This is not primarily a Catholic problem. Though non-Catholics are slow to come to

*(Continued on page 111)*