

PERSPECTIVE

THOUGHT ON TRIAL

Socrates, Sir Thomas More, and John T. Scopes¹ were tried by their contemporaries basically because of their unorthodoxy. Arguably, every criminal trial, at the core, rests on the belief that the defendant's actions were unorthodox or antisocial. One mark of a civilized society, however, is that it distinguishes between antisocial behavior that its law will punish and that which it should ignore. These three trials exemplify a headstrong society's indifference toward any such distinction. The unorthodoxy of Socrates, More, and Scopes was not their antisocial behavior, but rather their unusual thinking. In each case a man's right to think differently was on trial.

THE SETTINGS

Socrates was tried and convicted because he thought differently from The Athenian Establishment. Curiously, even the writers and poets, the very people who later would most need protection to think and speak as they wished, aligned themselves against Socrates in his trial. Their plays and poems caricatured him as a silly old man who mused about clouds and used sophistries to make the worse appear the better cause. Socrates had the temerity to question beliefs that his accusers said were and must remain incontrovertible, and he was condemned to death for his questions. Committed to the belief that man as man must probe life and test established principle, Socrates chose to die rather than sacrifice his belief.

The belief for which Thomas More was beheaded was similar to Socrates'. Like Socrates, More thought differently from those in power, but unlike many before and since, he declined to proselytize. More would have been fully content to keep his convictions private and, when his thinking required action inconsistent with others' beliefs, to retire discreetly from the public eye so as not to embarrass the majority. He did not journey throughout the countryside exhorting others to unite and resist King Henry VIII in his attempt to divorce Catherine of Spain. He was no savior of England, nor did he fancy himself one. To avoid a confrontation with Henry, he used all his wits and every wile that his mind and the law provided.

¹ John T. Scopes was fictionalized as Bertram Cates in the play by J. LAWRENCE & R. LEE, *INHERIT THE WIND* (Bantam Pathfinder ed. 1960).

Unlike many persecuted for their ideas, More possessed an abundance of the good things of this world. He accepted and enjoyed to the fullest the pleasures of life, insofar as his *self* would allow, and gave up a great deal when he left this world. Although More compromised and conceded much, he refused to part with his sense of selfhood, his sense of conviction. Because of this he died. More is appealing because of his quiet conviction, his pleasant and flexible—but ultimately unyielding—posture when asked to compromise even one part of his soul, which he could not abandon without losing his identity. Unlike Socrates before or Scopes afterwards, More maintained his individuality without making others uncomfortable by prodding them with questions or assailing their most sacred beliefs. He was the archetypal self-possessed man, content to quietly hold incongruous ideas in an alien world.

John T. Scopes, finally, was a man who felt that all was not yet known, and that he should have the right to think and teach what he believed to be true even though it might be false. He believed science could explain and implement some of the mysteries of life without violating the truths of revealed religion. This belief was in direct conflict with the fundamentalists' literal interpretation of the Bible. As a result, although Scopes kept his life—and his head—he suffered greatly.

The societies that tried these men—for it was contemporary standards and not individual men who prosecuted them—could tolerate no violation of their mores. On trial was the right to think, to question, to be different, to be wrong. Society rejected these rights.

Scopes, who searched for a new and different truth, which could have proved the old truth to be a lie, and More, who quietly dissented and would have been happy to be left alone with his convictions, were galling to their contemporaries. Socrates, in endless pursuit of “piety,” brought the wrath of the impious down upon himself. Their societies, weak and lacking confidence, could not endure respected, self-assured men who persisted in holding unpopular beliefs. When these superior men refused to surrender these beliefs, their societies were forced to condemn them.

THE TRIALS

The most flagrant injustice in these trials was that rumor tried and convicted the defendants: Established prejudices delivered the guilty verdicts.

Although the report of his trial is sketchy indeed, at the outset Socrates complained that he could not cross-examine his accusers

because he did not know their names. Apparently there was an accusatory affidavit² alleging that Socrates corrupted the youth by teaching them to believe in gods other than those already recognized. When initially no one appeared to testify against him, he protested, "I must simply fight with shadows in my own defense, and argue when there is no one who answers."³ Socrates was constrained to prove a negative by the strength of his own testimony. His jurors were so perverse that they apparently were more eager to condemn him on the basis of unsupported rumor than to acquit him after his rational and unrebutted argument. Socrates found it difficult to defend himself when there were no witnesses to testify against him. The general impression undoubtedly remained that if the state had expended so much effort to prosecute, the accused must be guilty.⁴ Because the older and respected citizens, according to Socrates, were ready to testify for rather than against him, Meletus and Anytus—Socrates' two accusers—refused to call witnesses.⁵ The jury, presented with nothing but rumors, was left to conjure offenses far graver than those which would have come to light through the testimony of witnesses. Thus, Socrates, unable to confront and cross-examine his accusers, was convicted.

Similarly, Sir Thomas More, on trial for treason against Henry, had no accusers testify against him, save Richard Rich, who perjured himself in positing rumor as fact.⁶ Cromwell, his prosecutor, simply intimated that More was guilty by using More's own silence as a damning admission. There was no evidence that More did not believe the King to be the Supreme Head of the Church. More remained resolutely silent, and his silence which did not betoken consent, should not have been deemed a denial. He carefully remained uncommitted so that no one, family, friends, or enemies, could appear before any judge and honestly swear to facts indicating More's lack of fealty. Today the prosecution's case would be dismissed for lack of evidence.

Scopes, on trial for violating a Tennessee statute which forbade the teaching of evolutionist theory, was convicted by a fundamentalist jury. The only evidence against him was that his concept of truth conflicted with other supposedly irrefutable Truths. As the play, *Inherit the Wind*, reveals, no one was adversely affected by Scopes' teaching. Scopes was convicted of a "thought crime" with no evidence of any resultant antisocial behavior.

² PLATO, *DIALOGUES* 15 (Washington Square Press ed. 1951).

³ *Id.* at 6.

⁴ *Id.* at 23.

⁵ "For all these are ready to witness on behalf of the corrupter, of the injurer of their kindred, as Meletus and Anytus call me." *Id.* at 29.

⁶ R. BOLT, *A MAN FOR ALL SEASONS* 43 (Vintage Books ed. 1962).

The convictions of these men in the absence of any concrete evidence that they had committed crimes were patently unjust. Socrates and More were convicted by juries who thought them guilty because it was rumored they had violated laws. Scopes was found guilty because his counsel was prohibited from introducing expert testimony that might have shown the Bible and the physical sciences to be compatible. Because of the lack of evidence, these men could not protect themselves from the unsupported biases of the community. These trials demonstrate the absurdity of prosecuting men for crimes of thought, when there is no proof of a deleterious effect on any other person. John Stuart Mill's principle of liberty⁷ was here most obviously ignored.

The envy and jealousy of the prosecutors was markedly present in each trial, demonstrating that quiet, confident men can be a great affliction to others who are weaker in spirit. Socrates, more than merely a gadfly to the State, as he styled himself, was a threat to the regime's self image. Representing values that his accusers looked upon with disdain, he was ultimately resented by men who knew they lacked his nobleness of spirit.

More, like Socrates, stirred the indignation of his contemporaries for much the same reason. Henry certainly did not need More's blessing to divorce Catherine and to marry Anne. However, badly needing the respect of the respectable,⁸ Henry felt he had to win More's assent. Henry truly admired More, but could not permit More to live unless his admiration was reciprocated. The great but weak must have the support of the lowly but strong. The truly great will not be denied honor by those whom they feel compelled to honor. In effect, Henry had to either convert or destroy his nagging conscience. Many times

⁷ See J.S. MILL, *ON LIBERTY* (Penguin Books, ed. 1977). Mill would impose limitations on liberty only as a means of protecting society:

That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.

Id. at 9.

⁸ MORE (Eagerly): Then why does your Grace need my poor support?

HENRY: Because you are honest. What's more to the purpose, you're known to be honest. . . . There are those like Norfolk who follow me because I wear the crown, and there are those like Master Cromwell who follow me because they are jackals with sharp teeth and I am their lion, and there is a mass that follows me because it follows anything that moves—and there is you.

R. BOLT, *supra* note 6, at 31-32.

when an exceptional man is persecuted by a community, a major motive is jealousy, regardless of how formal or pretentious the indictment may read.

All three men trusted that the legal system would produce a just result. Although it appears that their faith was misplaced, since all were convicted without any telling or substantive evidence, ultimately their views were vindicated by posterity. The portrayal of More in *A Man For All Seasons* is an excellent illustration of misplaced faith in a legal system. More refused to legitimize Henry's divorce by taking the King's oath, because this act would have violated his sense of dignity. To avoid conflict yet retain his integrity, More relied upon the letter of the law. Although he fully understood how frail a shelter the law could be, he knew that silence was a perfect defense;⁹ and indeed, it would have been had the law not been distorted. More thought that the Act, failing to be explicit on certain essentials, might be reconcilable with his own convictions. He used the law and its distinctions, its ambiguities, and its ellipses as far as he could to avoid a confrontation with Henry, his King. More felt at ease and not at all threatened by English justice. He trusted the law as he trusted society. But once the confrontation proved unavoidable and the law broke down, More accepted the court's judgment. Like Socrates, who declined to escape and break the laws of the State which nurtured him,¹⁰ More could escape only by violating the concept he held of himself, and this he would not do.

CONCLUSION

Men like Socrates, More, and Scopes truly benefit society. By their quiet conviction, their questioning, and their willingness to reexamine supposed eternal verities they unmask fictions and bring to light the truths that do exist. Ideas should be tested occasionally in an open and dispassionate forum. An enlightened society should welcome

⁹ MORE (to his wife): If we govern our tongues they will! Now listen, I have a word to say about that. I have made no statement. I've resigned, that's *all*. On the King's Supremacy, the King's divorce which he'll now grant himself, the marriage he'll then make—have you heard me make a statement?

R. BOLT, *supra* note 6, at 55.

¹⁰ But he who has experience of the manner in which we order justice and administer the State, and still remains, has entered into an implied contract that he will do as we (the State) command him. And he who disobeys us is, as we maintain, thrice wrong; first, because in disobeying us he is disobeying his parents; secondly, because we are the authors of his education; thirdly, because he had made an agreement with us that he will duly obey our commands.

PLATO, *supra* note 2, at 58.

opposition. But by killing men like Socrates and More, and by convicting men like Scopes, society unwittingly does more harm to itself than to the alleged offenders. Because although a majority's prejudice may eventually be proved correct, society should protect another's right to be wrong. Bad ideas, if allowed to be aired, usually die in time.¹¹ Moreover, men of principle who refuse to discard their beliefs, even in the face of personal danger, help the next person who otherwise might not have dared in defense of principle. In the fictionalized account of Scopes' trial, *Inherit the Wind*, Drummond said to Cates after the latter was convicted: "You don't suppose this kind of thing is ever finished, do you? Tomorrow it'll be something else—and another fella will have to stand up. And you've helped give him the guts to do it."¹²

All three men were tried and unjustly convicted. No probative evidence was adduced against them. Perjury, slander, and extreme bias convicted them. Socrates and More stood by their principles and refused to compromise—even to escape death—because this would have violated a more precious conviction. Scopes was convicted of a thought crime, but he refused to yield his belief that an individual may think and be different.

As the experience of these men testify, principles, which were for them more important than their personal security, long outlived their accusers' beliefs. Because of these men, and countless others like them who dared to examine and question prevailing wisdom, the freedom we now have to think, doubt, and challenge is virtually unlimited. But freedom rests on a precarious base: Its foundation stones are these men's principles; its mortar their life experience. Should we reject these principles and forget these experiences, the freedom of thought we cherish will be replaced by slavery of the mind.

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¹¹ J.S. Mill noted:

But the peculiar evil of silencing the expression of an opinion is that it is robbing the human race, posterity as well as the existing generation—those who dissent from the opinion, still more than those who hold it. If the opinion is right they are deprived of the opportunity of exchanging error for truth; if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth produced by its collision with error.

J.S. MILL, *supra* note 7, at 76.

¹² J. LAWRENCE & R. LEE, *supra* note 1, at 109.

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