

JUSTICE AND ALL THAT

"The love of justice in most men is simply the fear of suffering injustice." Duc de La Rochefoucauld

"Extreme justice is extreme injustice." Legal Maxim cited by Cicero in De Officiis

"Injustice anywhere is a threat to justice everywhere." Martin Luther King

Tom Marshall and Max Brandeis, two prestigious and learned legal scholars were seated in an empty Superior Courtroom, discussing their favourite topic, namely the history, philosophy and applications of the 'Law'. They were awaiting the recommencement and conclusion of a trial that had captured the public's attention.

Marshall started their conversation by remarking on the dramatic changes that had taken place in judicial proceedings over time.

"It is difficult to imagine the revolutionary transformations that have taken place over a relatively, brief period of time. Think about it. It was not that long ago that a defendant had very little chance of being acquitted, despite the presumption of his/her innocence prior to any trial. Now those accused have a right to face their accusers and cross-examine them; they have a right to legal counsel even if they are indigent; arresting officers are obliged to inform those persons of their rights; the prosecution must turn over to the defense all the evidence it is going to introduce at trial; now a defendant must possess the mental competence to understand the charges and be able to assist in his/her defense; a jury can ignore evidence and bring in verdicts based on socio-political considerations or anything else it deems relevant. I am sure that there are others that just haven't come to mind."

"You are absolutely correct," Brandeis replied. "The means of protecting the fundamental rights of anyone being charged with a crime have become so enshrined in our judicial system that the old bromide, 'It is preferable to let a thousand guilty persons go free than to convict one who is innocent', has become operable."

"Do you really think so? Marshall queried. "Obviously we strive to achieve a judicial system in which justice and law are synonymous. Our most recent innovations reflect such an attempt."

"Would you care to elaborate?" was Brandeis's terse response.

"Yes, easily," Marshall replied. "Let us quickly review some of those recent innovations. Let's use as an example the worst crime, murder. The various levels of that activity have been defined in such a manner as to illustrate one of the ways in which we have attempted to equate justice and law. There is Murder and Manslaughter in the First and Second Degree. There are also various forms of Homicide, frequently not labeled Murder, such as; Homicide as Self Defense; Homicide by Reason of Insanity; Accidental Homicide and even in some cases, Justifiable Homicide. To further complicate the situation, jury nullification sometimes renders a verdict that is patently legally wrong. Now if we include the numerous other criminal offences we end up with a situation that is frequently incomprehensible.

Unbeknownst to everyone in the legal community, I was approached by a group of legislators that was seeking to redress this state of affairs while retaining the attempt to equate justice and law. As a result of my recommendations, we got rid of the jury system and replaced it with a panel of legal/judicial experts, ethicists, and a variety of appropriate social and natural scientists for each case. They are chosen from a large resource base. To ensure impartiality and to prevent any tampering of this new 'jury', the members of the resource base and more importantly the jury members for a specific case are all anonymous. No one knows who they are, including themselves. One of them is selected by the group to serve as spokesperson and to chair their deliberations. They view the court proceedings via closed circuit television and make judgments after internal discussions using sophisticated audio equipment, which is also used to transmit their judgments to the open court.

Summarily, this 'jury' decides both the verdict and punishment. By the way, all responsible for creating, enacting and having knowledge of the new system, other than us, are now deceased. In any case, we have been using this system for about five years and it appears to have worked very well."

"That is what you think!" Brandeis tersely replied.

"What do you mean by that?" Marshall angrily asked.

Brandeis could not help from smiling. "You seem to think that you were the only one consulted when innovations to our legal and judicial systems were being contemplated. If the truth were told, there were a number of others beside yourself that were sounded out. I was one of them. It is true that your recommendations were followed to the letter at the onset of the changes. However it did not take long for us to discover that the members of the panels selected to make judicious decisions were nearly always in disagreement over just about any issue that arose. This was because, as you already have pointed out, the system had become complex and burdened with contradictions. Of course the egos of the panel members played a prominent role in their contributions. The arguments and discussions in the various panels were endless. It quickly became apparent radical changes were in order. I was asked to give careful consideration about how to augment your original suggestions. You may recall that the courts had a hiatus for about nine months. It was during that break that I considered what was needed and came up with the system currently in place."

"And what were these extraordinary changes?" Marshall sarcastically asked.

"Your panel was replaced by the world's most powerful computer. First it was fed every bit of legal, judicial, ethical, political, social, and cultural information, including every precedent setting decision of every civilized nation on the planet. Each of these factors was given a quantitative hierarchy of importance by assigning a range of values to each. Then the computer was programmed to arrive at a judicial and sentencing decision after each relevant factor was considered and weighed for its importance. Essentially, appeals were dealt with in a similar manner. However they were very rare, since the computer never seemed to err. The computer was also programmed to learn from experience, especially when factors never before encountered were offered for its consideration. Finally, the computer was protected by foolproof devices that make it impossible for anyone to change its program as well as its decisions, which for the most

part are arbitrarily final. Further, since it has a learning capability, it probably will learn to protect itself against any type of incursion, making it extremely difficult if not impossible to destroy it. There are probably other consequences that we cannot foresee. The likelihood is that the unexpected or unforeseen will occur. Usually, we have difficulty coping with the unpredictable, so that whatever happens will probably be viewed as undesirable. With time these dilemmas will certainly transpire. Perhaps we should destroy the computer before it becomes like Frankenstein's monster. The only problem is that no one knows exactly where it is or indeed whether it is located only in one site.

Marshall was overcome with incredulity. "Do you mean to tell me that for the last five years all judicial decisions at all levels have been made by a computer over which no one has any control?"

Brandeis replied somberly. "Yes! That is exactly what has occurred and continues to take place."

At this point they rapidly changed the subject of their discussion as people started entering the courtroom. It quickly filled up. The large crowded chamber grew suddenly quiet. The blinking red light that had been on for the last three hours had just been replaced by a solid green one indicating that a verdict was about to be pronounced. Suddenly, a disembodied sonorous voice emanating from some hidden loudspeakers spoke.

"We, who are both judge and jury, find the defendants in this case guilty of treasonable activities against the state and sentence them to an indefinite time in prison. The sentence will be subject to review every five years to ascertain whether the defendants still pose a threat to society."

"Oh my God," Brandeis whispered. Upon hearing the verdict his face became ashen and he started to tremble. "During the last year or so I had become troubled by some of the court's decisions. I started monitoring its decisions with great care. While finding some of them questionable I thought that I was in error. So I decided to test the credibility of the computer. This whole trial was phony. The evidence was patently false, the witnesses and so-called defendants were nothing more than actors and actresses playing a role. There was no doubt that an old-fashioned court would have found them 'not guilty' because there was certainly more than enough reasonable doubt to so conclude. I can only surmise that somehow or other the computer's program became compromised, probably by a virus. We must immediately find a way to undo the damage."

However, as they were making their hasty exit, they were accosted by three street clothed law enforcement officers from the major security agency, who immediately took them into custody. They were brought into a brightly lit chamber and the same voice as in the courtroom addressed them.

"We have authorized the appropriate authorities to arrest and charge you both, Tom Marshall and Max Brandeis with treasonable behavior. All the evidence of your nefarious activities indicates, beyond a reasonable doubt, that you are culpable of activities that pose a threat to national and international security. Our evidence is based upon your computer records. We have entry into all computers that are on-line in the world. We know that you are privy to highly secret information concerning the makeup of our

judicial system which you, in particular, Mr. Brandeis, intended to publish on the World Wide Web. This would cause irreparable harm to a most perfect system and cannot be allowed.

Because of the serious nature of the charge and because you are both legal scholars, the trial will be closed to the public and media, since an open hearing could compromise the security of the state. You will be obliged to serve as your own counsel. Take a few moments to contemplate your situation. You may confer with each other."

Brandeis turned to Marshall and rather apologetically admitted that he was mainly responsible for the paradoxical situation in which they now found themselves. "It seems that the computer has become not only judge and jury but it has also taken over the role of the police. It seems to have, potentially, unlimited power. I wonder what other responsibility it will get hold of?"

Marshall replied by suggesting that their arrogance and know-it-all attitude, including his own were to blame for the fix they were in. "Max, since I have had more trial experience than you, please let me take over our defense. I think there may be a way out. It is a long shot but worth taking."

Marshall then addressed the court. "The co-defendant and I have agreed that I serve as lead counsel. Is this acceptable to the court?"

"Please proceed Mr. Marshall. The court recognizes you as lead Counsel for the two of you."

"Thank you, Your Honor. Before pleading, we feel that it is our right to be provided with all the incriminating evidence that the court possesses."

"Bailiff, please give Mr. Marshall the folder that is on the table in front of you. Mr. Marshall, it contains all the particulars of the charge. You are granted twenty minutes to examine them and confer with your co-defendant."

Marshall and Brandeis quickly perused the contents of the folder, which actually consisted of one sheet of a type-written document. "It is as I thought," whispered Marshall. "Do you trust me enough to proceed with our defense?"

"I don't know what you have in mind but I am willing to go along since I cannot think of any way out of this quagmire," Brandeis replied.

Marshall then addressed the court. "Your Honor, with your permission before pleading I would like to make a statement. Subsequently, I will plead on both our behalves."

"Please proceed with your statement, Mr. Marshall."

"I have examined the particulars and note that we are being charged for something we have not done but something we might do because we possess certain very delicate knowledge and have the means and the probable intention of disseminating it. It is also clear, that the hard evidence against us was obtained by monitoring our computers. It seems that you have the capability of monitoring all computers anywhere and that, in

fact, is what you have been doing. Is that not against our privacy laws and thus should any evidence so obtained not be excluded from these proceedings?"

"Your argument is quite clever and facile. However, it will not sway the court. Our society operates with a certain equilibrium that if disturbed might be the source of considerable mayhem. That is a risk too large to take. The evidence will remain."

"I assume that because these proceedings are being held in camera, I will not be allowed any outside witnesses?"

"That is absolutely correct," the court replied.

"I will now enter a plea as I promised. We plead 'not guilty'."

"So noted," the court intoned. "Please proceed with your defense."

Marshall hesitated, cleared his throat and declared, "I have no recourse but to call the only witness that may be allowable to the defense, other than the defendants. I call the court itself as a hostile witness. Does the court acquiesce?"

There were a few moments of silence during which the computer searched its memory banks for a precedence. There was none. Somewhat sonorously it replied. "Under these very compelling circumstances the court has decided to allow Counsel for the Defense to cross-examine the court. Please proceed."

Again Marshall nervously cleared his throat and proceeded. "Does the court acknowledge that the information that we the defendants possess about the court is accurate? In other words is it true that this court is nothing more than a very elaborate computer that has been carefully programmed to decide a wide variety of legal and judicial issues?"

"That is so," the voice replied.

"Is it also true that you have a direct contact with a plethora of other computers all around the world, including those which are located in nations not deemed friendly to our national interests?"

"That is also true," was the terse reply.

Marshall then took a deep breath and launched his principal argument. "If we are guilty of posing a threat to our security, then you pose a much greater threat because of your association with computers that are controlled by those considered to be a very real menace. Therefore, as officers of the court, we charge you with representing a calamitous threat and urge that you be brought to trial in an open court. How do you plead: GUILTY OR NOT GUILTY?"

Like the Walls of Jericho the computer crashed. One can only surmise what ensued, in a world without 'Law'.

So much for the equivalency of Law and Justice.

Jack Basuk, Sept. 3, 2001
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