

Thumb-Biting

"Do you bite your thumb at us sir?"

Who knows what to make of such a question? The ones to whom this interrogatory is actually directed, however, know just how to respond. Indeed, if we could, like them, inhabit the fair Verona of Shakespeare's imagination, we would know that thumb biting was an attempt to pick a quarrel, the bardic equivalent of the well-armed Capulet or Montague's thrown gauntlet. Translated into more-or-less modern lingo, it would come out something like, "Whadda you lookin' at?" accompanied by certain digital signals.

I am not biting my thumb at anyone. I am not so much interested in starting things as I am in how things get started. In a roundabout way, this is my claim to seasonality. Whether pagan, Christian, or Jew, whether celebrated as Yule, Saturnalia, solstice, the festival of light, Christ's mass, or the season of recovery or disaster for anxious merchants, thoughtful people are apt to recognize in the dying of the year the promise of new beginnings. 'Tis the season when we

practice the wonderful hodgepodge of customs, both mono and polytheistic, with which Americans are pleased to enliven the days when the sun shines least. Tannebaume, holly wreaths, menorahs, herald angels and babes in mangers are all fodder for the process of dealing with the dying of the light. Among the many pagan practices that survive is the world-turned-upside-down aspect of the Saturnalia, during which celebration in ages past the lowly were raised up, the high-born made low, the normal rules of modest behavior temporarily suspended, and the wise suffered themselves to give heed to the foolish. Long live the Lord of Misrule! At least let us honor him for a little while yet. About ten minutes should do it. This is not, by the way, a reference to Cincinnati city politics.

"I do bite my thumb, sir!" this from Sampson, strutting swain of the house of Capulet. "Do you bite your thumb at us, sir?" The Montague partisan, Abraham, knew the sign and countersign. He knew that if you want to start something properly you must observe the forms and delicacies so as not to lose the chance for righteous, manly conflict. He also carefully denies biting his thumb at anyone so he can still pick his quarrel and avoid the law. He wants to fight but not to be punished for it. As anyone who has watched the Three Musketeers, or any good sword flick, might observe, testosterone and sharp steel mixed make a prickly cocktail indeed.

But I am getting ahead of my story, and my aim tonight is not to praise violence. Rather, in this season of peace on earth, I wish to do the opposite. Let me ask you to give up your prejudices and show kindness of heart and generosity of spirit to that group of people who, next to public school teachers, are the most despised in the country. Yet like old-fashioned medicines, difficult and bitter to take, they are essential to society's well being. And what, you may be asking yourselves, is that human resource, the more of which we have the less we have of violence? I

ask you, in the spirit of the season to unhardened your hearts and say a prayer of thanksgiving that we have lawyers. I don't so much mean individual lawyers who, when one counts their progeny and other earthly treasures seem to be well enough loved as things already stand. Rather I offer praise for the glacially swift grinding of the wheels and gears of the legal process that allows the contentious to vent spleen and seek the ruin of rivals with only metaphoric bloodshed.

"But why can't we have both violence and lawyers?" you may be asking. It is, after all, in the spirit of American December holidays to wish for more than is good for us. And wish we might. Who has not longed at some moment in a legal proceeding to have, say, Johnny Cochran and Marcia Clark just put on the gloves and settle things? We might not be persuaded whether O.J. did it, but at least things would be sooner finished. If lawyers came to the courtroom armed with more than writs and precedents there would be less dilly-dallying and justice might be truly swift. Don't you imagine that even the most liberal district attorney has wished at times for a return to those thrilling days of yesteryear when perps were simply thrown in the river to see if they would sink or swim? Just let Bill Gates and the current mouthpiece for whatever administration strap on armor, pick up battle-axes, and get this Microsoft business finished. How many of you believe that that would be at least as rational as the process we now have?

But we can't have both. There seems to be an inverse proportionality between the legitimacy of personal violence and the number of lawyers. This tale goes back to Tudor England, and is perhaps instructive regarding the recent history of Cincinnati and the nation as well. It goes like this.

According to Lawrence Stone in his study of 16<sup>th</sup> and 17<sup>th</sup> century England, the greatest legacy of the house of Tudor was the establishment of a royal monopoly on violence. Early in the 16<sup>th</sup> century, the

mighty of England employed many young men whose chief function was to accompany their lord on public outings and protect him from the young men employed by his enemy lords. These liveried retainers, tall fellows armed and dangerous, were hired to walk in attendance on their great men and fall upon the unprotected as opportunity allowed. According to the chronicles of the day, it was not unusual for melees involving fifty to a hundred men to break out during the London court season. Two lords and their young men might chance upon one another while abroad in the twisting ways of London. After the appropriate amount of thumb biting, out would come the broad swords followed by general hacking and hewing until the constabulary showed up or their arms got tired. And because the combatants were mailed, jerkined, gauntleted and helmeted, these encounters were not usually fatal. One might lose the odd bit of flesh from face or limb, but one rarely died. Lords were free to gang around the English landscape, thumb biting and broad-swording to their hearts' content without risking anything more than mild disfigurement.

The Tudors, from the Henrys on down, understandably looked askance on all this display of manly belligerence. Tudor rule was made precarious by questions of legitimacy and ecclesiastical controversy, and the crown did not rest easy with the thought that every nobleman in the realm had at his command the nucleus of an army. Heaven forbid that the nobility should band together to express dissatisfaction with the course of the kingdom. So the Tudors, by encouraging rivalries among the nobility, offering former church lands as inducements to good behavior, and attainting the ones they couldn't outmaneuver, gradually whittled away at the propensity for private violence.

But establishing the state's ownership of deadly force might have taken many years longer except that male fashions in hardware underwent a profound shift. Sometime during the reign of Elizabeth, in place of the

broad sword the well-turned-out man of means began to sport the latest in continental accouterments, the rapier. One imagines a great man of England, in London for the season, preparing to go out. He gathers his thirty or so retainers and buckles on, not his trusty broad sword, but one of those new-fangled things that was more like a wand than a proper sword. During the previous fracas or two, our bold lord, his wits perhaps dulled by too much beef and sack, had laid about himself right manfully without doing any more bloodshed than a schoolmaster with a hazel switch. Raising welts was just not as satisfying as lopping off some minor body part.

And then the moment of enlightenment arrived! Instead of hacking and slicing, these little springy things, he discovered, were for sticking. And so stick he did, and in that instant rendered protective clothing obsolete and forever changed the nature of English brawling. He also made dueling too costly a way to uphold the family name. In the good old pre-rapier days, satisfaction of noble English honor must have resembled those conflicts seen in black-and-white Britannica Films showing the natives of Papua New Guinea carrying on tribal warfare. As I remember those grainy images, the members of opposing villages would line up facing each other just beyond throwing range and shout taunts and defiance back and forth. Every so often, to prove his manhood, one or another warrior would run into throwing range and heave something at the enemy, giving them opportunity to heave stuff back. This could go on for days until every one felt their manliness had been vindicated and then all would proceed home to sing songs. On rare occasions, one of the thrown objects would accidentally hit someone causing fatal injury, and then both sides would withdraw to consider the gravity of what had just occurred.

So it must have been in the by-gone streets and fields of England, and might be still except for the introduction of weaponry that made such bellicosity

truly dangerous. Like the breastplate against the musket ball or the moated castle the cannon's blast, the mailed and padded leather gear worn in that day offered little resistance to the thrust of the needle-pointed rapier. A well-aimed or even lucky thrust to eye or vital organ and the fight was over, permanently. What had been satisfying rituals of thumb-biting followed by virile weapon-waving and then, most rewarding of all, visits to ale houses or mead halls to brag about who had bitten their thumbs or waived their weapons most impressively were replaced by short, bitter clashes followed more often by funerals than celebrations. Think of Tybalt and Mercutio in Act III. By the time several noble houses had brawled themselves to the point of extinction, it dawned on the rest that thumb-biting had gotten too costly and some other means of feuding had to be found, one less likely to be fatal.

So the English nobility turned to the courts of law, grumbling no doubt about French fashion spoiling perfectly good English customs. The younger sons of English lords were given motivation to learn their grammars and spend a season at the Inns of Court, since church and military careers were no longer so appealing. We begin to find, in the letters of Earls to their sons, advice on the best ways to preserve family prerogatives and how many lawsuits are too many and how many are too few. With this infusion of talent and attention, the legal eagles of England began the process, which we have followed to this day, of gathering more and more power into the channels of the judicial process. No longer does real power exist in the strong sword arms of bold men. Now it belongs to the master of mere words.

That the state's monopoly on violence is a work-in-progress should be obvious to all. We have only to reflect on the Second Amendment, the Klan, the events in Over-the-Rhine last April, or those of September 11<sup>th</sup> to grasp just how troubling privately originated violence can be. The World War II veterans among us

can witness that state-managed violence is not an unmixed blessing. But it can be regularized, and that offers at least the hope, perhaps the illusion, that right-thinking people such as you and I can get together and keep the wolf of mayhem at bay.

In puzzling out the events that led up to the disturbances of last April it is sobering to acknowledge that state-controlled violence misapplied creates rather than quells the very private violence it is designed to manage. But we can hew to the ideal that the police work for us, or at least give lip service. And if we can't fire miscreant officers we can at least hire others who didn't go to Elder if we want to. I lay this on the alter of illusion.

As a final example, consider that perhaps the most terrifying aspect of the attacks on September 11<sup>th</sup> is that they came not from an enemy nation but from private sources. Since no nation had attacked us we directed our wrath at the friends of our enemies and attacked the Taliban. Our response in Afghanistan illustrates both the importance and the limitations of state-managed violence. As I write this, the practice of using million-dollar weapons to blow up ten-dollar tents has the Taliban everywhere on the run. It has given the American public some sense of power in what is clearly a difficult time. But it is instructive to remember that the Taliban came to power at all because the Mujahadeen could not get their private violence under control and the Taliban could.

If twentieth-century history still serves as a guide, once we have blown our opponents to manageable smithereens, we will inflict peace on the Afghan people. And if we truly want peace in what has been for centuries one of the most contentious regions of the world, we should not send the marines, we should send lawyers. Rather than loosing the dogs of war and wreaking vengeance, we should wreak attorneys on the Afghans. Let them represent everybody against everybody else. Appeal to the ABA's patriotism and

offer them unlimited billable hours. The response would no doubt be overwhelming. Dressed in pinstriped fatigues and dropped into war-torn Kabul, our air-born attorneys would make a sight sure to strike terror in the heart of the most hardened warlord. In no time active combat would be replaced by waiting around for an appointment, plea-bargaining, out-of-court settling, and post-verdict news conferencing. Before long, posters of Alan Dershowitz and Greta van Sesterin will outsell those of Osama bin Laden and Mullah Omar. BMWs full of lawyers will become as ubiquitous as the Toyota pick-ups bristling with AK-47s. Barrages of legal verbiage will replace, well, barrages. I even feel the possibility of an all-Afghani Court TV channel, which would give everyone over there something to watch while they were waiting for their attorneys to get back to them.

So gentlemen, in this season of renewal and hope, of peace and love, when we put our faith in flying fat men and believe, if only fleetingly, that next year we will be better people, let us lay aside our long-held convictions to the contrary and say thanks that the legal profession stands stalwart guard against random violence. I ask you to raise your glasses and drink a toast to mankind's best hope for peace, in this world at least. I give you the lawyers!

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