

A Trial Lawyer Sings Psalms

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Save this one for later. Pick it up again in that idle, restless hour at the end of the day, in that place where trial lawyers find themselves too often.

You are out of town, again. Another unfamiliar hotel room dominated by the oversized bed and, just opposite, the mini-bar/entertainment console. Your dinner was sumptuous, the wine silken, the phone call to home satisfactory, and now the empty night stretches ahead. A perfect time to dictate a deposition digest, or watch a bit of TV. If you're highbrow enough, you could flick the channels for a few minutes and curse the mindless babble of modern culture.

Or you could try this instead. Slide open the drawer of the bedside nightstand. In it, alone, you will find the Gideon Bible. (If you're in certain hotels in Cleveland, you will also find a copy of the Koran, but that's another story.) Take out the Gideon and crack it open precisely in the middle. There you will see the Book of Psalms.

Now read one or two, from start to end straight through. Note the poetry, the music, in these ancient words. But there is nothing delicate here. The psalms seeth with passions that almost leap off the Gideon's onion-skin paper. "Tears drench my bed." (Psalm 6). Enemies "fill their mouths with proud roaring." (17) Traitors "prowl the city, growling like dogs." (59) In the end, things work out for the best: The wicked grind their teeth at the just (Psalm 37), enemies are made into footstools for the righteous (109), crooked paths become straight (139), "the hills are robed with joy." (65).

If much of this sounds familiar, even to the non-religious, it is for the same reason that Garrison Keilor waggishly complained that Shakespeare's plays had "too many cliches."

Most of the 150 poems in the Book of Psalms were written three thousand years ago, in the time of King David; about half were authored, tradition has it, by David himself. No Psalm is more recent than around 500 B.C. They are believed to have been set to music and formed part of the religious services of the ancient Israelites, accompanied by the lyre, the harp and the occasional trumpet blast. To this day, the Psalms have a special place in both Christian and Jewish liturgies.

Trial lawyers can read psalms for succor, delight and even amusement. They were written by a warrior culture, one that tasted defeat all too often. The psalms speak still to the modern gladiator.

One feels the presence of enemies in almost every psalm. They are "like young lions lurking in ambush" (17). "Lying foes smirk" and "wink knowingly at the righteous." (35). The Psalmists were obsessed with their foes, but managed to turn their preoccupation into high art. Those of us who fret -- and who worry that we

fret too much -- about craven judges and boorish opposing counsel, should turn immediately to Psalm 27, which opens:

The Lord is my light and my salvation; whom shall I fear? The Lord is the strength of my life; of whom shall I be afraid?

When the wicked, even mine enemies and my foes, came upon me to eat up my flesh, they stumbled and fell.

Though an host should encamp against me, my heart shall not fear; though war should rise against me, in this will I be confident.

One thing have I desired of the Lord, that will I seek after; that I may dwell in the house of the Lord all the days of my life, to behold the beauty of the Lord, and to inquire in his temple.

For in the time of trouble he shall hide me in his pavilion: in the secret of his tabernacle shall he hide me; he shall set me up upon a rock.

And now shall mine head be lifted up above mine enemies round about me:

therefore will I offer in his tabernacle sacrifices of joy; I will sing, yea, I will sing praises unto the Lord. (Psalm 27, verses 1-6.)

The writer of the famous 23rd Psalm similarly has one eye on his adversaries even as he rejoices in the Lord: "Thou preparest a table before me in the presence ["sight," some translations have it] of mine enemies: thou anointest my head with oil; my cup runneth over."

The Psalmists were adept at fashioning the bitterest cursing into a strange lyricism. Few trial lawyers have ever fantasized a fate for their adversaries as horrific as the writer of Psalm 109 sought for the unnamed slanderer who had "spoken against me with a lying tongue." He wrote:

Let his days be few; and let another take his office.

Let his children be fatherless, and his wife a widow.

Let his children be continually vagabonds, and beg: let them seek their bread also out of their desolate places.

Let the extortioner catch all that he hath; and let the strangers spoil his labor.

Let there be none to extend mercy unto him; neither let there be any to favour his fatherless children. (Psalm 109 v. 8-12.)

(An aside on Psalm 109 and on biblical translations: these and other quotations in this article use the King James Version, the text most widely distributed by the Gideons. Some find its medieval cadences haunting; to others it sounds archaic to the ear. More modern translations sometimes offer interpretations that radically change our understanding of the text, and Psalm 109 is a good example. The New American Bible published in 1991 a revised translation of the Psalms, based on the oldest available Hebrew text. In Psalm 109, the hexes that seem to stream from the Psalmist's own lips in the King James translation, aimed at his enemy, are instead placed into the enemy's mouth, aimed at the Psalmist. But just as we start to admire the Psalmist for effectively exposing his enemy's wickedness through the enemy's own too harsh words, the Psalmist concludes his long quotation of his enemy's curses by declaring: "May the Lord bring all this upon my accusers, upon those who speak evil against me." v. 20.)

What fuels these hot streams of poetic cursings is righteous indignation, the sense of being not merely wronged, but unjustly wronged. And so the psalmists cry out, not solely for vengeance, but for judgment from the highest tribunal.

Judgment is what trial lawyering is ultimately all about. But we tend to think of God's judgment as something to fear and as appropriate for a motion for a continuance, a lengthy one. After all, who wants to be on the wrong side when the Saved are separated from the Damned?

The Psalmists saw things differently. God's judgment was welcomed, even rejoiced at: "O let the nations be glad and sing for joy: for thou shalt judge the people righteously, and govern the nations upon earth." (Psalm 67, v. 4.) "Judge me, O Lord my God, according to thy righteousness." (Psalm 35, v. 24.) "The Lord loves justice and does not abandon the faithful." (Psalm 37, v. 28.)

The difference between these two concepts of the heavenly court of justice is simply that we moderns see ourselves as defendants in a criminal trial, while the ancient Israelites saw themselves as plaintiffs in a civil case. As C.S. Lewis put it in his masterful *Reflections on the Psalms* (1958):

"The one hopes for acquittal, or rather, pardon; the other hopes for a resounding triumph with heavy damages."

And so the psalmist counts up these damages, these "awesome deeds of justice:" "your paths drip with fruitful rain ... the pastures are clothed with flocks, the valleys blanketed with grain." Psalm 65, v. 6, 12, 14.

The Israelites were a much-oppressed people, and the idea of the ultimate class-action victory is a repeated theme in the Psalms:

The Lord shall endure forever: he hath prepared his throne for judgment.
And He shall judge the world in righteousness, he shall minister judgment to the people in uprightness.
The Lord also will be a refuge for the oppressed, a refuge in times of trouble.

...

For the needy shall not go away forgotten: the expectation of the poor shall not perish forever.
Arise, O Lord; let not man prevail; let the heathen be judged in thy sight. Psalm 9, verses 7-9, 18-19.

Occasionally the psalmist seeks to hire God both as chief counsel and as judge:

Awake, be vigilant in my defense, in my cause, my God and my Lord.
Defend me because you are just, Lord; my God, do not let them gloat over me. Psalm 35, v. 23-24.

With this confidence in the ultimate judgment (a confidence seen nowadays most often in the insufferably self-righteous client), there is twinned in the Psalms a faith in the law that, to the modern eye, is almost comical to behold. The writer of Psalm 19 says:

The law of the Lord is perfect, converting the soul: the testimony of the Lord is sure, making wise the simple.
The statutes of the Lord are right, rejoicing the heart: the commandment of the Lord is pure, enlightening the

eyes.

...

More to be desired are they than gold, yea, than much fine gold: sweeter also than honey and the honeycomb. Psalm 19, verses 7-8, 10.

With the possible exceptions of the tax lawyer contemplating Title 16 or the antitrust litigator reading the Sherman Act, most lawyers are unlikely to rhapsodize to quite this degree over the law. Even the rabbi or priest will seldom homilize about "divine law" with the rapture of the Psalmists. Indeed, the concept of finding "delight in the law" and "meditating on it day and night" (Psalm 1, v.2) is altogether foreign to the modern secular mind.

But think of the times in which the Psalmists lived. Israel was a tiny nation, besieged on all sides by pagan principalities that worshipped metallic deities and practiced human sacrifice and other barbarisms. They had been led out of Egypt by Moses. The Lord had "overthrown Pharaoh and his host in the Red Sea." (Psalm 136, v. 15.) They had fought the Canaanites and the Philistines. Later, they survived the Babylonian exile. (Some of the bitterest lines in the Psalms describe that exile and end in this way:

O daughter of Babylon, who art to be destroyed: happy shall he be, that rewardeth thee as thou hast served us.

Happy shall he be, that taketh and dasheth thy little ones against the stones. Psalm 137, v. 8-9.)

It is little wonder, then, that a people besieged on all sides would take the law of the Lord (a law that promised victorious judgment one day) and enshrine it as a beacon. As C.S. Lewis said, writing shortly after the horrors of World War II:

We who not so long ago waited daily for invasion by enemies, like the Assyrians, skilled and constant in systematic cruelty, know how they may have felt. They were tempted, since the Lord seemed deaf, to try those appalling deities who demanded so much more and might therefore perhaps give more in return. But when a Jew in some happier hour, or a better Jew even in that hour, looked at those worshipers -- when he thought of sacred prostitution, sacred sodomy, and the babies thrown into the fire for Moloch -- his own "Law" as he turned back to it must have shone with an extraordinary radiance.

Reflections on the Psalms p. 62.

Or as the writer of Psalm 19 put it: "By [these laws] your servant is instructed; obeying them brings much reward." (v. 12, New American Bible translation.)

The Psalms are rich in other ways, of course, beyond the image of Israelite jurisprudence that they reveal. Where is there more elegant writing about affliction than in Psalm 102:

I have eaten ashes like bread, and mingled my drink with weeping. (verse 9)

Or Psalm 22:

I am poured out like water, and all my bones are out of joint; my heart is like wax; it is melted in the midst of my bowels.

My strength is dried up like a potsherd; and my tongue cleaveth to my jaws; and thou has brought me into the dust of death.

For dogs have compassed me; the assembly of the wicked have inclosed me: they pierced my hands and my feet. Psalm 22, verses 14-16.

This is the same Psalm that opens with the shattering cry that Jesus is said to have made at the moment of his death on the cross: "My God, my God, why hast thou forsaken me?"

Over and over, this and other Psalms move with what Biblical scholars call "lamentation turning to praise," an art form in which lines of anguished despair crowd against verses of pure joy in a dizzying volley from the depths to the heights and back:

Deliver me out of the mire, and let me not sink; let me be delivered from them that hate me, and out of the deep waters.

Let not the waterflood overflow me, neither let the deep swallow me up, and let not the pit shut her mouth upon me.

Hear me, O Lord; for thy loving kindness is good: turn unto me according to the multitude of thy tender mercies.

And hide not thy face from thy servant; for I am in trouble: hear me speedily. Psalm 69, v. 14-17.

I rock with grief; I groan at the uproar of the enemy, the clamor of the wicked. They heap trouble upon me, savagely accuse me.

My heart pounds within me; death's terrors fall upon me.

Fear and trembling overwhelm me; shuddering sweeps over me. Psalm 55, v. 3-6.

The palpitations we feel when standing before a stony jury or a furrow-browed judge seem a bit less momentous in comparison.

But do not be quick to regard the ancient world of the Psalmists as a foreign land. To those of us who gnash our teeth at an adversary's unctuous half-truths, who mutter at her soothing flattery aimed at the black-robed bench, who gape as the velvet tongue turns suddenly savage in our direction -- the Psalmists have seen all that many, many times. And their sharpest condemnations were directed at just such foes.

* "Break their teeth, O God, in their mouth." (Psalm 58, v. 6)

* "The Lord shall cut off all flattering lips, and the tongue that speaketh proud things." (Psalm 12, v. 3)

* [Addressing an adversary as "O mighty man"] "Thy tongue deviseth mischiefs; like a sharp razor, working deceitfully." (Psalm 52, v.2)

* "Softer than butter is their speech, but war is in their hearts. Smoother than oil are their words, but they are unsheathed swords." (Psalm 55, v. 22)

The writer of Psalm 5, asking God to destroy his enemies and to "let them fall by their own counsels," (v. 10) calls up this as the ultimate condemnation of the wicked foe:

There is no faithfulness in their mouth; their inward part is very wickedness; their throat is an open sepulchre; they flatter with their tongue.(Psalm 5, v. 9.)

Over and over, the Psalms reserve their harshest words for those who sin with their tongues. And, lest in our condemnation of such sins we become smug and thus fall into the same pit of self-flattery, Psalm 19 offers this earnest prayer:

Keep back thy servant also from presumptuous sins; let them not have dominion over me: then shall I be upright, and I shall be innocent from the great transgression.

Let the words of my mouth, and the meditations of my heart, be acceptable in thy sight, O Lord, my strength, and my redeemer. (Psalm 19, v.13-14.)

It is a cry of the heart, and a fitting one for any trial lawyer going forth into battle.