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THE TEXAS RAIDS: THE ALAMO DEFENDERS, CIRCLED AROUND SARAH, SHOOTING AT A METAPHOR

Let me simply say that we are now exactly in a perfect storm, where United States v. Reynolds meet Loving v. Virginia meet Lawrence v. Texas meet "Sarah" v. ...well, we're not quite sure who. Sarah v. Texas? Sarah v. United States? If Lawrence is to gay and lesbian brothers and sisters; and to polygamists, what Brown v. the Board was to people of color and ethnicity, as I believe it to be, this indeed is a time of legal revolution. Not to put too fine a point on it, as Dickens would say in Jarndyce v. Jarndyce, the eternal feeding trough for lawyers through generations, gays and polygamists are in bed together. Along with those of us who are serial monogamists or anyone like me, and Douglas and Black, who don't want the state, the police, under the marital or any conjugal bed.

Please colleagues, don't forget procedural due process. I stated this circumstance as best I could, in much better days, in the Reynolds Lecture, Ends and Means in Conflict. This was published in several law reviews and religious journals, circa 1987. Our fellow citizens hate us for these laws that seem to them to be trivia: protecting a murderer by having taxpayers pay the fees of defense counsel. And protecting whatever is left of the Fourth Amendment, in this manic lawlessness of this administration, and their lackeys on the bench.

If Texas police can invade an FLDS Temple, have absolutely no doubt that they can do the same thing in Salt Lake City. Or New York. Or Los Angeles. Any of you who give a tinker's damn about your own synagogue, mosque, temple, chapel, parish or ward, take notice. As W.H. Auden warned in the opening days of World War Two, writing as I recall in New York as Hitler's armies swept into Poland, you're next. If you don't protest when the state comes for the Roman Catholics. And you don't care much for Protestants. And you're really not interested in the aristocracy in the military. And you never liked big industrialists either, then don't be shocked as the shock troops knock on your door. We know this is next. It always has been. Insanity is defined as doing the same thing many times and still you expect a different result.

St. Thomas More lost his head. (As Rudyard Kipling, who died as I was born, noted, if you can keep your head when all around you are losing theirs, you'll be taller than they are.) He had been sheriff, like our Texas brother; but More was sheriff of London and later Lord Chancellor, circa. fifteenth and sixteenth century, when Cardinal Woolsey introduced him, fatefuly and fatally to Henry V!!!. A young rogue, a varlet, an opportunist, was seeking position with St. Thomas More. More, of course, was Roman Catholic and remained so, in all faith and fervor, to the end. He finished the race, as St. Paul so often analogized to the Olympics. Roper, a good man and close to More, told him that he should do for the royal toad or he would surely have More's head. St. Thomas said that no harm had yet been done. Thomas didn't believe in pre-emptive war. More said that procedural law, like large oaks, peopled Great Britain, Ireland and Wales from stem to stern. "Would you have me tear asunder the great forests of procedural protections?"
"Yes, I would tear down every tree in England to get" the toad. "Then where would you be, Roper, when the winds roar, where would you hide?" Well, this was St. Thomas More.

A warning about metaphors. We kill each other for and by metaphors. We launch Crusades with entire civilizations in murderous self-slaughter. We excommunicate over a creed that has god in a bottle. From the tenth through the next several centuries, Crusaders slaughtered Roman and Greek, Catholic and Orthodox. And millions died, between civil war in Christianity and holy war (what a oxymoron) between Muslim and Christian. What a waste. Our local version was called the Mountain Meadows Massacre.

So the Judge in Texas says "Sarah" is a metaphor, even though she likely doesn't exist. Good God, have we all gone nuts? Is it something in the Water in Texas? We have Bush in the White House and a very able woman trying her best in a very difficult case. But Due Process of Law hasn't been repealed by this administration, just ignored. I hope for the resurrection: the resurrection of the Fourth Amendment searches and seizures protections. In the First Amendment and freedom of speech, including religious speech--like prayer anywhere and anytime we wish and without guards of any faith monitoring them, to see if we lie to God. I believe in freedom of religion. Don't assume we are all brain dead, judiciary, telling us this "isn't about religion." Again, it must be the alkali in the Texas water. I truly pity this able judge in this Solomon-like cutting of the babies in half. And then quartering them, cutting them off from their mothers, not to mention their fathers. Nursing mothers denied their babies. This sounds to me like the slaughtering of the innocents. And of course I recognize that the innocents are being terribly hurt and surely permanently damaged by people on both sides of this slaughter.

I said "both sides" of this slaughter of the innocents. I misspeak. We must remember, daily and then again, that there are as many sides of this centuries-old story as there are people. The murderous slaughter of the truth by CNN and Fox, in their 24/7 repetition of their mangled onedimensional bit of truth with a thousand parts error, mirror their lethal progenitor, in one and only one respect. Joseph Goebbels, head of the Ministry of Public Enlightenment in Germany in the thirties and forties of the twentieth century, gave us the heart of the problem. Tell a lie often enough, long enough, and everyone, finally, accepts it as true. BY NO MEANS AM I EQUATING THIS STORY, THIS HUGE TRAGEDY, AS IF THIS NATION WAS ANALOGOUS TO NAZI GERMANY. I know as I state this disclaimer, that I will face a pasting in letters to the editor, not a few from the Bar. Nevertheless, the principle and the principle only, of telling a lie until it is the accepted truth lies at the heart of advertising and the political process that this year, is nastier than I have ever seen, in life and in history. In canon law and scriptural history leaders were chosen by casting lots. How much better than this utter debasement of American democracy.

We must realize that there are several major groups of Mormon polygamists, each hugely different from each other. All are based, really, upon a notion that surely possess a huge truth. Hundreds of millions of people on every continent practice polygamy. And monogamy and every variant and position known to humankind. Criminal law will never change this.

BUT criminal law can do what I believe every member of this panel believes, and insists: there must not be physical or mental abuse of anybody, particularly the innocents, our own children.
The abuses of patriarchy or for that matter, matriarchy, must cease now. Torture is forbidden by what was just said and must be said and said again. And this law must be enforced. At the same time, we all know that there will be offenses of the law, in civil and religious law, in every system known to humankind. The central issue here, of course, is whether any particular system fosters criminal conduct, offense, especially upon children, women and girls, and young men.

This is the crux of the matter. I don't know the answer. But I strongly suspect that isolation fosters incest. The most dangerous kinds, because it fosters every other kind, and the intellectual and spiritual incest that warps the minds and the souls of those who think they hear the voice of God in the desert and then act when they hear only their own sick minds. But here, too, we must be careful. For all the millennia of human experience, the human has sought God in the Desert. The numinosity of the burning bush.

Paul, some historians tell us, was manic. He fell off his ass and said he saw god. In another of his epistles, he says he only heard god, on the way to Damascus to persecute another hated sect. This story of Israel in the desert attempting to find or build or find Zion, or Shangri-La, echo down throughout time. But for the Mormons, Zion was a tangible sensuous place to be made in the here and now. Don't wait for Enoch or angels, build Zion where we stand. Mormons of the nineteenth century failed in their dream. They were simply swallowed up. Daniel Boorstin, one of America's great historians, from the University of Chicago and a graduate in law, wrote words that hit this then young Mormon bishop, on leave in New York and Geneva with the United Nations, like a punch in the belly. He said how different the story of New England, or America, would be if the Puritans had been located in some American Swiss-like city, in a valley encircled with American Alps. He said that the oceans opened Puritan minds and made them into Yankee traders, with each new idea from Europe and Asia and Africa opening our minds and forming our souls. If they had been in an American Geneva, where I served long ago, how different, how isolated and how insulated and how narrow our minds. This is the setting, unless we are very careful and very respectful of our own tendency toward insanity rather than spirituality in God's open spaces of the American West.

On a completely different scale I admit, remember the Japanese Relocation Cases, that blighted our human rights during the last just war, perhaps, World War Two. Tens of thousands of Japanese Americans, innocent all (no Japanese American was ever convicted of any crime against her country in World War Two. No national ethnic group can match this. Several German Americans spied. Not so the Japanese.) Now, I know the limited meaning of this comparison: crimes have been committed by polygamists, not to mention monogamists. But the land at issue, seized and dealt with by courts, is enormously valuable. Just how far will we go to eliminate communal ownership of land and wealth and the sources of production and supply, to protect our perfect version of selfless capitalism?

And now back to the beginning. Each polygamous person and every sect in the world, monogamous and polygamous, is marvelously different. Like everyone in the world. At least, stereotypes and stigmas are not ever to be taken literally. At worst they play a fundamental role in every holocaust ever endured. Our commonality as human beings is a huge truth. Parallel and always necessary in this life is the beauty of the utter originality of every human being and our
utterly subjective perception of truths, however objective or subjective they may be. Gerard Manley Hopkins, in his own person the truth of what I've so inadequately tried to explain, was a gay man in the most austere and monolithic religious Roman Catholic order in nineteenth century England, a Jesuit. He was quite possibly the greatest English writer who ever lived, except Shakespeare and the translators of the King James bible. In Pied Beauty, he said:

Glory be to God for dappled things--
For skies of couple-colour as a brinded cow;
For rose-moles all in stipple upon trout that swim;
Fresh fire-coal chestnut-falls; finches' wings,
Landscape plotted and pieced--fold, fallow, and plough;
And all trades, their gear and tackle and trim.
All things counter, original, spare, strange;
Whatever is fickle, freckled (who knows how?)
With swift, slow; sweet, sour; adazzle, dim;
He fathers-forth whose beauty is past change;
Praise Him.

Here is Brigham Young's, the theocrat of all would-be kings, we're told, own two-volume set of Blackstone's Commentaries of the Laws of England: in four books; with An Analysis of the work. By Sir William Blackstone, Knt. one of the justices of the court of common pleas. In Two Volumes. From the nineteenth London Edition. With a LIFE OF THE AUTHOR. AND NOTES: CHRISTIAN, CHITTY, LEE, HOVENDEN, AND RYLAND: AND ALSO REFERENCES TO AMERICAN CASES, BY A MEMBER OF THE NEW YORK BAR." Published in New York. Year? Why 1847. Year One for Utah's Mormons. Taken from tithing in kind, from the Presiding Bishop's Storehouse, in Utah's own Christian Socialist system. Brigham put in a Mormon scrip to honestly buy these volumes, for his own reading, and housed until his death in his office, obviously well read. Blackstone's Commentaries were very probably the only books, other than the King James Bible, had by most homes of the West. And for that matter, until very late in the day, in most homes in America Most surely, Blackstone contributed more than all but a handful of people, living or dead, to the democracy, and the rule of law, in our Republic. I was given these volumes personally, by the last granddaughter of Brother Brigham. So much for stereotypes.

I propose in conclusion that instead of seizing DNA we provide something that will really work. An amnesty open to all polygamists who are not guilty of a very specific non-metaphorical crimes: rape, torture, child-and spouse abuse, fraud other than that we force upon a people denied the protection of due process of law honestly to buy or make their bread for over two hundred years and counting. In all reality our polygamous sisters and brothers are immigrants, many of whom wish to come home. Why can't we do for these our fellow citizens what President Bush and John McCain, for a moment at least, until shot down by their own Party, proposed? So courageously and honestly? The clock and the law would start now. With the last and by far the largest and worst-led polygamist group, the Jeffs group, with Warren Jeffs now in jail? I believe all polygamist groups of Mormon descent, "get it." I have met personally, in my home or theirs, with all polygamist leaders of Mormon descent. Times have changed. Come home. To your churches, your cities, your government, your fellow-citizens.
The criminal law is far too brutal to bring this change. St. Paul knew the limits of the law. So does every lawyer and every criminal here or in jail. Only the civilizing communion of the secular (thank God) polis; and the parish the temple the mosque and the synagogue, can democratize us all. In the secular city, thank God and Sally Hemmings and Thomas Jefferson, and Abigail and John Adams, of the Village Square.

The Mormon Zion, like all that have gone before and will yet be birthed, cannot be made with our hands. We must always try and we will always fall short. Finally, with Joseph and Brigham, and St. Paul and St. Augustine; with the Dalai Lama and Sally Hemings and Fawn McKay Brodie and Thomas Jefferson, we wait for better times. My grandfathers, Joseph Smith by temple sealing, Brigham Young and my grandmother, Zina Diantha Huntington Smith Young by my particular DNA, as if that mattered, thought, like St. Paul in First Thessalonians, that the Second Coming would surely be in their lifetime.

It would seem that we must wait for angels, after all.

God bless us, every one.

Ed Firmage