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HENRY FIELDING AND THE LAW

F. Y. ST. CLAIR*

Lawyers and the law itself have from time immemorial been the targets of satire, but ordinarily the attacks have come from laymen. Not so in the case of Henry Fielding: he was both a novelist and a lawyer, and could satirize the profession from the inside.

Born in 1707, the eldest child of Colonel Edmund Fielding, Henry came of aristocratic lineage and received the education of a gentleman. After some years of private tutelage, he entered Eton College, where he remained till he was eighteen or nineteen years old. He never attended Oxford or Cambridge, but subsequently spent a year and a half at the University of Leyden. Both at Eton and at Leyden, his studies were largely confined to the Greek and Roman classics; his legal education came much later.

The law first impinged upon his life while he was still at Eton. His mother having died, his father had remarried; and because the second wife was a Roman Catholic, Henry's grandmother, Lady Gould, sued in Chancery to have her grandchildren removed from their father's custody. The suit was finally decided in Lady Gould's favor, but not before it had made its impression upon the boy's mind. After he left Eton, he may have considered studying the law, in accord with his grandmother's wishes; perhaps he even made a start in that direction, for during the next three years he picked up a fairly extensive vocabulary of legal terms and a familiarity with court proceedings.¹

But to a full-blooded, virile young man with a love of literature and a talent for writing, the drama must have seemed more exciting than the law. So it had seemed to many a young man before Fielding's day. As far back as the sixteenth century, in fact, law students at the Inns of Court had dabbled in literature, and more than one had abandoned the study of law for the writing of poems and plays.

At any rate, Fielding entered the literary profession in 1728 with a play entitled *Love in Several Masques*. This comedy,

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1. 1 CROSS, THE HISTORY OF HENRY FIELDING 53 (1918).

which achieved moderate success, is of interest to the present study because it dwells on the costliness and tediousness of suits in Chancery. It was followed in 1730 (Fielding was at Leyden in the interim) by *The Coffee-House Politician; or, the Justice Caught in His Own Trap*, a satirical comedy which foreshadows the author's later work in this field, and also indicates his deep interest in the administration of justice. The play attacks venal judges ("trading justices," as they were then called), who accepted bribes, extorted money from brothels and gambling houses, suborned witnesses, and packed juries. To show that not all judges are corrupt, however, Fielding introduces the good Justice Worthy as a foil to the evil Justice Squeezum.²

Between 1730 and 1736 he achieved success as a playwright, specializing in farces and satirical comedies. His hatred of corruption caused him to choose a bigger and at the same time more dangerous target for his satires: namely, Sir Robert Walpole and his government, already satirized by John Gay in *The Beggar's Opera* (1728). The Walpole regime came to recognize Fielding as a very dangerous opponent, not only effective in his own attacks, but also the leader and inspirer of other assailants. In retaliation, the government secured passage of the notorious Licensing Act, disastrous to the English drama for more than a hundred years to come; the Act imposed a rigid censorship on plays and limited production to two theaters—of which Fielding's was not one. At a single blow, Fielding's theatrical career was ended.

The Licensing Act became effective June 24, 1737; on November 1, Fielding enrolled as a student at the Middle Temple. With his usual vigor, he plunged into his studies, began to accumulate a law library,³ and spent long hours in annotating his books. When we consider that between 1737 and 1740 he had to support himself and his family by journalistic writing, the completion of his legal studies in less than three years is an impressive achievement.

On June 20, 1740, he was called to the bar at the Middle Temple, and in the same year he became a lawyer on the Western Circuit. From then on, though he engaged in journalism

2. *Id.* at 90.

3. At his death, he left a law library of above 220 volumes, including 75 reports and 153 textbooks "ranging from jurisprudence to practical guides for pleaders and justices of the peace." 3 Cross, *supra* note 1, at 77.

from time to time and wrote novels, his profession was the law, and in that profession he toiled ably, diligently, and conscientiously to the end of his life. He loved the law. If he satirized its weaknesses and the faults of some of its practitioners, he did so in order to reform, not to destroy.

This young man who had entered upon a legal career at the rather late age of thirty-three was unusually gifted. Superbly endowed in body and mind, elegantly educated and well trained in the law, he was above all a man of high principles and strong character: a gentleman by birth and breeding, well-mannered, honorable, brave, chivalrous towards women, sensitive to the wrongs and sufferings of the poor and distressed. He hated effeminacy, cowardice, cruelty, hypocrisy, and corruption. In a better age he would have enjoyed a brilliant and opulent career in the law. In the sordid world of law in the eighteenth century, it was not very profitable to be an honest lawyer.

For that reason, Fielding soon turned to the writing of fiction. Samuel Richardson's prudish and prurient novel *Pamela; or, Virtue Rewarded*, a bestseller of 1740, inspired Fielding to write *Joseph Andrews* (1742). Beginning as a parody of *Pamela*, the book soon took on a life of its own and developed into a new type of fiction, proudly christened by Fielding "the comic Epos in Prose." The new *genre* had possibilities for satire, and satirical realism or pure satire marks all of Fielding's major prose narratives. In addition to *Joseph Andrews*, there are the novels *Jonathan Wild* (1743), *Tom Jones* (1749), and *Amelia* (1751). Each contains satire—on human nature in general, on types of human beings in particular, and, among other things, on the law and its followers. Fielding satirizes country lawyers in *Joseph Andrews* and *Tom Jones*; rural justices of the peace in *Joseph Andrews*; prison officials in *Jonathan Wild* and *Amelia*; clerks, bailiffs, lawyers, magistrates, and the law itself, in *Amelia*.

Besides practicing law and writing novels, Fielding was engaged in journalistic work which involved him in political controversy. The fall of Walpole's graft-riddled government in 1742 ended Fielding's activities for the Opposition, and from 1745 to 1748 he was active in his support of the new government. He edited the newspapers *The True Patriot* (1745-1746) and *The Jacobite's Journal* (1747-1748), the former de-

signed to rally patriotic opposition to the uprising of 1745, and the latter to defend the government against critical attacks arising from its harsh treatment of the Jacobites after the uprising had been quelled.

Partly in recompense for Fielding's services, he was appointed a Commissioner of the Peace for the County of Middlesex on June 20, 1747. Because of his editorial activities, however, it was the end of October before he took up his duties as Justice of the Peace for Westminster.⁴

There, as it has been said, he "presided over the busiest police court in London."⁵ He heard his first case on November 2, 1748, and between the October and the January sessions he committed sixty-four criminals to the Gatehouse Prison. In his court, apparently, the law's delays were few, and justice was meted out on the basis of law, common sense, and shrewd insight into human nature. A contemporary report (probably written or dictated by Fielding himself⁶) gives a vivid and authentic picture of his methods:

"CASE OF ELIZABETH SCOTT

"Yesterday one Elizabeth Scott swore the Peace against her Husband before Justice Fielding, and gave the following Reasons which were transcribed verbatim. 'Sir, he has mortified me all over, and I goes in Danger of my Life, Night and Day. I have bore him nine Children, whereof I am with Child of the tenth, and whereof, I am sure, I would not make my Afferdavy to any thing that was false for the whole World; but I can safely take my Afferdavy, that he has mortified me from Head to Foot, and so he has my Child too. Whereof I could show your Worship, if your Worship was a Woman; but to be sure our Sexes Modesty can't go as far this is, whereby before Men, to be sure your Worship however understand me very well; and I hopes you will do me Justice and send him to Gaol'; which, however, as every Word of the foregoing appeared to be false, was not done; but they were both dismissed; and the Accuser severely reprimanded. One of the Neighbours, a very credible Person, swore, that he believed there was not a better Husband nor a worse Wife in the King's Dominions."⁷

4. Shepperson, *Additions and Corrections to Facts About Fielding*, 51 *Modern Philology* 217 (1954).

5. Sherburn, *Fielding's Social Outlook*, 35 *Philological Quarterly* 1 (1956).

6. Shepperson, *supra* note 4, at 220.

7. As reported in the *Whitehall Evening Post* for May 16-19, 1752; *Middlesex County Records, Session Roll*, No. 2983, quoted by Shepperson, *supra* note 4, at 222.

Fielding had, of course, to deal with cases far more serious than that of Elizabeth Scott. When he took office, crimes of all kinds, including crimes of violence, were committed openly in the streets of London. Highwaymen rode through the city by daylight with impunity, and no citizen's life was safe out of doors after dark. The crime wave increased to the dimensions of a tidal wave, until in 1754, the last year of Fielding's tenure of office, and of his life, he organized a sort of local F.B.I., which effectively broke up the gangs of robbers and brought peace and security to the city.⁸

In addition to satirizing legal abuses in his novels, presiding as a judge, and initiating effective police action, Fielding wrote pamphlets designed to reform the law, to discourage crime, and to provide for the poor. Among these pamphlets, the following are noteworthy:

"A True State of the Case of Bosavern Penley, who suffered on account of the late Riot in the Strand. In which the Law regarding these Offenses and the Statute of George the First, commonly called the Riot Act, are fully considered." (1749)

"An Enquiry into the Causes of the late Increase of Robbers, etc. With some Proposals for Remediating this Growing Evil. In which the Present reigning Vices are impartially exposed; and the Laws that relate to the Provision for the Poor, and to the Punishment of Felons are eagerly and freely examined." (1751)

"Examples of the Interposition of Providence in the Detection and Punishment of Murder. Containing above thirty Cases in which this dreadful Crime has been brought to Light in the most extraordinary and miraculous manner; collected from various authors, ancient and modern." (1752)

"A Proposal for Making an Effectual Provision for the Poor, for Amending their morals, and for rendering them useful Members of the Society. To which is added, A Plan of the Buildings proposed, with proper Elevations . . ." (1753)

So much for Fielding's career and activities. It is now time to examine his views on the law and its followers.

Most of his satire on the law is contained in *Amelia*, which reflects his own experiences as a lawyer and a magistrate. The second chapter of the novel is ironically entitled, in part, "Ob-

8. 2 Cross, *supra* note 1, at 250-300.

servations on the Excellency of the English Constitution." Here the author remarks that no human institution is perfect, and that although Lord Coke and his successors have proclaimed the excellence of English law, the very men who have deemed it to be perfect have been mending it ever since. Fielding proposes to show that the law is by no means perfect.

"It will probably be objected," he says, "that the small imperfections which I am about to produce do not lie in the laws themselves, but in the ill execution of them; but, with submission, this appears to me to be no less an absurdity than to say of any machine that it is excellently made, though incapable of performing its functions. Good laws should execute themselves in a well-regulated state; at least, if the same legislature which provides the laws doth not provide for the execution of them, they act as Graham would do, if he should form all the parts of a clock in the most exquisite manner, and yet put them so together that the clock would not go. In this case, we might say that there was a small defect in the constitution of the clock."⁹

The "small imperfections" prove to be anything but small. English law, he declares, is designed as if to protect the guilty. There are, for instance, "those excellent rules called the law of evidence: a law very excellently calculated for the preservation of his majesty's roguish subjects, and most notably used for that purpose."¹⁰ The story provides a good illustration. A maid-servant steals some shifts (undergarments) belonging to Amelia Booth, pawns them, is arrested, and, with the pawnbroker, is brought before the magistrate (who, "by a very great accident," happens to be learned in the law). The magistrate asks Booth if the shifts are worthy forty shillings. Booth replies that they are not worth even thirty. Then, says the magistrate, the girl is not guilty of a felony, for the law provides that when stolen goods are under the care of the thief, the goods taken must be worth forty shillings or more, or the act is not a felony. Booth politely objects that this is a most extraordinary law.

"'Perhaps I think so too,' said the justice; 'but it belongs not to my office to make or mend laws. My business is only to

9. 7 THE WORKS OF HENRY FIELDING 3 (1903) (hereinafter cited as FIELDING).

10. 9 FIELDING 175.

execute them. If therefore the case be as you say, I must discharge the girl.' ”

Booth says he hopes the pawnbroker, at least, will be punished, but the judge replies that if the girl is not guilty of a felony, the pawnbroker cannot be guilty of receiving the fruits of the nonexistent crime. “ ‘And, besides, as to this offence, to say the truth, I am almost weary of prosecuting it; for such are the difficulties laid in the way of this prosecution that it is almost impossible to convict anyone on it. And, to speak my opinion plainly, such are the laws, and such the method of proceeding, that one would almost think our laws were rather made for the protection of rogues than for the punishment of them.’ ”¹¹

Later in the story, when the dishonest lawyer Murphy is arraigned before another well-meaning judge, the latter says he has no power to issue a warrant to have Murphy's house searched for papers bearing on the alleged crime. When the informer Robinson swears that Murphy has in his home some stolen title-deeds, the justice still hesitates. “He said title-deeds savoured of the Realty, and it was not felony to steal them. If, indeed, they were taken away in a box, then it would be a felony to steal the box.” Fortunately, Robinson recalls that Murphy has in his home a silver cup belonging to Booth.

“ ‘That will do,’ cries the justice with great pleasure. ‘That will do; and if you will charge him on oath with that, I will instantly grant my warrant to search his house for it.’ ”¹²

If the laws made it difficult to prosecute the guilty, they did little to protect the innocent. Fielding has much to say of the brutal treatment accorded the weak and harmless when they were arrested. Often they were committed to prison on false testimony or on flimsy pretexts, as was the young woman in *Amelia*, imprisoned because “her father-in-law, who was in the grenadier guards, had sworn that he was afraid of his life, or of some bodily harm which she would do him, and she could get no sureties for keeping the peace. . . .” In the same prison there were an old man and his daughter: he had stolen a loaf of bread, and she had received the stolen goods.¹³ Once in pri-

11. 9 FIELDING 203-05. The forty-schilling minimum appears elsewhere in the law of those times. For a debtor to be imprisoned by mesne process, which was the usual procedure, the debt must be of forty shillings or more. See Stephens, *The Verge of the Court and the Arrest for Debt in Fielding's AMELIA*, 63 *Modern Language Notes* 107 (1948).

12. 9 FIELDING 266.

13. *Id.* vol. 7, at 20.

son, the weak had no protection against the brutality and rapacity of the other prisoners and of the keeper and "governor" of the prison, who were always looking for tips or bribes.

Fielding attacks the law providing imprisonment for debt, and the way in which the law is executed. In *Amelia*, Captain Booth spends much of his time in dodging the officers who would arrest him for debt. He is captured at length and confined in the bailiff's house. Only through the most strenuous efforts of his friends is he saved from imprisonment.¹⁴

The English legal system, according to Fielding, suffers not only because of faults in the laws, but also because of improper selection of officers.

The police system, even in London, is ludicrously inadequate. The city is guarded at night by watchmen many of whom are so old and feeble that they have scarcely strength enough to carry their staffs, much less to cope with the young toughs who love to beat them and break their lanterns.¹⁵ As for constables, they are so corrupt that they accept and even solicit bribes to let guilty prisoners escape.

The bailiffs, whose houses serve as jails, are typified by Bondum, a brutal and muddle-headed fellow who specializes in imprisonments for debt. He judges men by their clothes and their money. Of one poor gentleman in his charge, he is especially contemptuous, because the fellow has drunk only a part of a bottle of wine (sold, of course, by Bondum) in a whole week. If he cannot put up bail, as is likely, Bondum will commit him to Newgate: "He hath run out of all he hath by losses in business, and one way or other; and he hath a wife and seven children. Here was the whole family here the other day, all howling together. I never saw such a beggarly crew; I was almost ashamed to see them in my house. I thought they seemed fitter for Bridewell than any other place."¹⁶

As for Booth, Bondum declares his eagerness to see him out of his difficulties, but thoughtfully has the porter call on two or three other bailiffs and an equal number of attorneys, to try to load Booth with as many additional suits as possible. This is not done out of enmity, Fielding explains: "His desire was no more than to accumulate bail-bonds; for the bailiff was reckoned an honest and good sort of man in his way, and had

14. Stephens, *supra* note 11, at 104-09.

15. 7 FIELDING 5 *et. seq.*

16. *Id.* vol. 8, at 208.

no more malice against the bodies in his custody than a butcher hath to those in his. . . . As to the life of the animal or the liberty of the man, they are thoughts which never obtrude themselves on either."¹⁷

Bondum is Fielding's conception not of a bad bailiff but of a representative one. Nor is Fielding's opinion of attorneys' clerks much higher; in his novels they range from mediocre to bad. There is, for instance, Mr. Trent, who at fifteen breaks off his apprenticeship, steals fifty pounds from his mother, and runs away to sea.¹⁸ There is, also, the rural "petty-fogger" in *Tom Jones*, who possesses no "sense or knowledge of any kind; one of those who may be termed train-bearers to the law; a sort of supernumeraries in the profession, who are the hackneys of attorneys, and will ride more miles for half-a-crown than a postboy."¹⁹

Similar to the petty-fogger is Scout, "one of those fellows, who, without any knowledge of the law, or being bred to it, take upon them, in defiance of an act of Parliament, to act as lawyers in the country, and are called so. They are the pests of society, and a scandal to a profession, to which indeed they do not belong, and which owes to such kind of rascallions the ill-will which weak persons bear towards it."²⁰

Some lawyers, Fielding indicates, are properly educated, and a few (such as the two who were briefly the employers of Partridge in *Tom Jones*) are actually gentlemen, with hearts and principles. Too many, however, are given to pompous wordiness, legal quibbling, and unfair courtroom tactics. Selfish prudence, callousness, and rapacity too often govern their conduct, and some are brazenly dishonest.

Selfish prudence and callousness are exemplified by the young lawyer in *Joseph Andrews*. The title character, after being robbed, beaten, and stripped, is discovered by the postilion of a coach in which the lawyer is riding with some gentlefolk. Learning that the man is naked, the genteel passengers want to drive on and leave him, but the lawyer insists that they take him in and carry him to the nearest hostelry—not for humane reasons, but because if the man dies they

17. *Id.* at 204-05.

18. *Id.* at 173.

19. *Id.* vol. 4, at 232.

20. *Id.* vol. 2, at 178.

may all be called to account for his murder, and especially because harm may come to the lawyer himself.²¹

Lawyer Scout, in the same novel, is equally callous, and in addition has only a smattering of law and hardly brains enough to apply properly the little that he knows. On the question whether Joseph may or may not be considered to be settled in the parish (where he has been a servant for a year), Scout argues that " 'there is a material difference between being settled in law and settled in fact; and as I affirmed generally he was settled, and law is preferable to fact, my settlement must be understood in law and not in fact, and suppose, madam, we admit he was settled in law, what will they make of it? How doth that relate to fact? He is not settled in fact; and if he be not settled in fact, he is not an inhabitant; and if he is not an inhabitant he is not of this parish.' " ²²

A more representative lawyer, one feels, is Dowling in *Tom Jones*. Fielding says that "he had not divested himself of humanity by being an attorney," and takes this opportunity to warn the reader that "nothing is more unjust than to carry our prejudices against a profession into private life, and to borrow our idea of a man from our opinion of his calling."²³ Just as butchers are not cruel except to the animals they slaughter, and fierce soldiers may be gentle in peace-time, so "an attorney may feel all the miseries and distresses of his fellow-creatures, provided he happens not to be concerned against them."²⁴ Hardly an enthusiastic testimonial!

Though not inhumane, Dowling is by no means a gentleman, either in his manners or in his ethics. In conversation, he grins, nods, winks, sneers, grimaces, bites his fingers. In his dealings, he is mercenary himself and fancies that all others are so, " 'for certainly all men are for getting as much as they can, and they are not to be blamed on that account.' " ²⁵ And he is capable of tactics that come dangerously close to overstepping the bounds of legality. " 'I would not have your worship think I would, on any account, be guilty of subornation of perjury,' " he says to Squire Allworthy, " 'but there are two ways of delivering evidence. I told them, therefore, that if any offers should be made them on the other side, they

21. *Id.* vol 1, at 58-61.

22. *Id.* vol. 2, at 175-76.

23. FIELDING, *TOM JONES*, bk. XII, ch. x.

24. *Ibid.*

25. *Ibid.*

should refuse them, and that they might be assured they should lose nothing by being honest men, and telling the truth. I said, we were told that Mr. Jones had assaulted the gentleman first, and that, if that was the truth, they should declare it; and I did give them some hints that they should be no losers.'"²⁶

Dowling and Scout seem models of propriety when compared to the two attorneys whom Fielding satirizes in *Amelia*. The first of these, the lawyer to whom young Trent had been apprenticed and whose daughter Trent later married, had an accident which led to his death: "This was nothing but making a mistake, pretty common at this day, of writing another man's name to a deed instead of his own. In truth, this matter was no less than what the law calls forgery, and was just then made capital by an act of parliament. From this offence indeed, the attorney was acquitted, by not admitting the proof of the party, who was to avoid his own deed by his evidence, and therefore not witness, according to those excellent rules called the law of evidence. . . ." Being acquitted by law, however, was of little avail to the lawyer, for everyone knew that he was guilty; in consequence, his reputation was ruined, his business fell off, and he died of a broken heart. Furthermore, the expenses of the defence had been extremely great, "for, besides the ordinary costs of avoiding the gallows by the help of the law, there was a very high article, of no less than a thousand pounds, paid down to remove out of the way a witness against whom there was no legal exception."²⁷

The case of Lawyer Murphy was even worse, and so was the punishment awarded to him in the end. After serving an apprenticeship as the clerk to a country lawyer, he set up his own practice, and did very well, "till he happened to make an unfortunate slip, in which he was detected by a brother of the same calling." The "slip" was perjury and subornation of perjury.

The other attorney told Murphy that he would keep his knowledge of the crime to himself if Murphy would leave the county, and hinted that Murphy might show his gratitude by turning over as much as possible of his local business to him. Murphy of course agreed, and as the story of *Amelia* opens,

26. *Ibid.*

27. 9 FIELDING 175.

he is well established in London, with a reputation for great skill in getting criminals acquitted.

Called upon to defend a young woman who has stabbed her lover, he exposes to the reader his own nature and his approach to his profession. " 'Come, madam,' he says, 'do not be discouraged; a bit of manslaughter and cold iron, I hope, will be the worst; or perhaps we may come off better with a slice of chance-medley, or *se defendendo*.' "

The lady declares that she knows nothing about law.

" 'Yes, madam,' answered Murphy, 'it can't be expected you should understand it. There are very few of us that understand the whole, nor is it necessary we should. There is a great deal of rubbish of little use, about indictments, and abatements, and bars, and ejectments, and trovers, and such stuff, with which people cram their heads to little purpose. The chapter of evidence is the main business; that is the rudder, which brings the vessel safe *in portum*. Evidence is, indeed, the whole, the *summa totidis*, for *de non apparentibus et non insistentibus eandem est ratio*.' "

The lady retorts that she cannot understand all this.

" '*Tace*, madam,' said Murphy, 'is Latin for a candle: I commend your prudence.' "²⁸

On learning that she had carried her drawn penknife into the room in which she had stabbed her lover, Murphy says that this was unfortunate, in that it seems to show "malice prepensive," and he urges her to let him offer the sole witness a bribe of fifty pounds.

The lady refuses to save herself by causing another person to perjure himself. Murphy can see no harm in that: " 'for where is the fault, admitting there is some fault in perjury, as you call it? and, to be sure, it is such a matter as every man would rather wish to avoid than not: and yet, as it may be managed, there is not so much as some people are apt to imagine in it; for he need not kiss the book, and then pray where's the perjury? but if the crier is sharper than ordinary, what is it he kisses? Is it anything but a bit of calf's-skin? I am sure a man must be a very bad Christian himself who would not do so much as that to save the life of any Christian whatever, much more of so pretty a lady. Indeed, madam, if

28. *Id.* vol. 7, at 62-63.

we can make out but a tolerable case, so much beauty will go a great way with the judge and the jury too.'"²⁹

Fortunately for the lady, her lover does not die, and the case never goes to trial. Unfortunately for Murphy, an earlier bit of villainy of his comes to light, and this causes his undoing. While he was still living in the country, he forged a will that cut Amelia Booth off from her inheritance and gave all but ten pounds to her sister. Revelation of this act leads to his arrest, conviction, and hanging at Tyburn.

Fielding is perhaps a little more lenient towards magistrates than towards lawyers: to counterbalance his three examples of bad judges, he gives three examples of good ones. To begin with, there is the judge before whom Booth lays charges against his wife's maid and the pawnbroker. This judge is learned in the law, conscientious in applying it to the cases brought before him, and sensible and sincere enough to confess that it is imperfect. The second good judge is the magistrate who finally sends Murphy off to Newgate. Though tired and hungry after a hard day's work, the justice postpones his dinner in order to hear the complaint against Murphy, and then goes with the prisoner and the plaintiff to the bailiff's house. He, too, keeps to the letter of the law in judging cases, as we have already noted. He is a gentleman, and when Booth and Amelia are finally delivered from all their difficulties, he and his wife entertain them at dinner till eleven o'clock at night.³⁰

Better than either of these judges is the justice in *Jonathan Wild*. "This magistrate, who did indeed no small honour to the commission he bore, duly considered the weighty charge committed to him, by which he was entrusted with decisions affecting the lives, liberties, and properties of his countrymen. He therefore examined always with the utmost diligence and caution into every minute circumstance." In the case of one Heartfree, unjustly condemned to death on false testimony, the judge does a fine bit of detective work, learns the truth, and gets a reprieve for the prisoner. Then he visits him in prison, informs him that the perjured witness has confessed, and prepares to take all necessary steps to have him pardoned and set free. His chief reward for this good work is "the

29. *Id.* at 64-65.

30. *Id.* vol. 9, at 263-71.

secret satisfaction he felt in his mind from reflecting on the preservation of innocence, as he soon after very clearly perceived was the case."³¹

Having rather briefly depicted the three good judges, Fielding devotes a good deal of attention to their three evil colleagues.

The first of these is the ignorant country judge before whom Parson Adams and Fanny are falsely accused in *Joseph Andrews*. The judge makes the prisoners wait till he has finished his dinner; then, flushed with wine and mirth, he tells his dinner guests that he will have some fun at the expense of the unfortunate pair. While the clerk is taking depositions from the witnesses, the judge and his guests make coarse jokes at poor Fanny's expense. When the clerk delivers the written depositions to the judge, the latter, without reading a word of them, orders him to make out the mittimus. Parson Adams requests to be heard in defence. " 'No, no,' cries the justice, 'you will be asked what you have to say for yourself when you come on your trial: if you can prove your innocence at 'size, you will be found ignoramus, and so no harm done.' 'Is it not punishment, sir, for an innocent man to lie several months in gaol?' cries Adams: 'I beg you would at least hear me before you sign the mittimus.' 'What signifies all you can say?' says the justice: 'is it not here in black and white against you? I must tell you, you are a very impertinent fellow to take up so much of my time. So make haste with his mittimus.' "

Luckily, the good Squire Booby, appearing at this time, testifies to Parson Adams's good reputation, and gets the prisoners released. When the judge perceives that "gentlemen" are involved in the case, he reverses his judgment, toadies to the Squire, and orders a search made for the rascal who gave false testimony against Fanny and the Parson—and who by now has stolen away.³²

The second bad judge, also found in *Joseph Andrews*, is Justice Frolick, another country magistrate. He fully deserves Lawyer Scout's tribute: " 'To say truth, it is a great blessing to the country that he is in the commission, for he hath taken several poor off our hands that the law would never lay hands

31. *Id.* vol. 10, at 230-32.

32. *Id.* vol. 1, at 210-15.

on. I know some justices who would think as much of committing a man to Bridewell as his lordship at 'size would of hanging him; but it would do a man good to see his worship, our justice, commit a fellow to Bridewell, he takes so much pleasure in it; and once we ha' um there, we seldom hear any more o' um. He's either starved or eat up by vermin in a month's time.' ”³³

At Lady Booby's instigation, Lawyer Scout has Fanny and Joseph arraigned before Frolick on the charge that Joseph has broken a twig off a tree on Scout's property and has given it to Fanny, who thus has become his accomplice. Squire Booby, whose house is only a mile away, learns of the arrest and appears at Frolick's house while the hearing is still in process. He asks what crime the young pair are charged with having committed. " 'No great crime,' answered the justice; 'I have only ordered them to Bridewell for a month.' 'But what is their crime?' repeated the squire. 'Larceny, an't please your honour,' said Scout. 'Ay,' says the justice, 'a kind of felonious larcenous thing. I believe I must order them a little correction too, a little stripping and whipping.' ” Upon the squire's further insistence, the justice produces a deposition which, in the absence of his clerk, he has written with his own hand. It deserves to be quoted in full:

“The deposition of James Scout, layer, and Thomas Trotter, yeoman, taken before mee, one of his magesty's justasses of the piece for Zumerstshire.

“ These deponants saith, and first Thomas Trotter for himself saith, that on the day of this instant October, being Sabbath-day, betwin the ours of 2 and 4 in the afternoon, he zeed Joseph Andrews and Frances Goodwill walk across a certane felde belonging to layer Scout, and out of the path which ledes thru the said felde, and there he zede Joseph Andrews with a nife cut one hassel twig, of the value, as he believes, of three half-pence, or thereabouts; and he saith that the said Frances Goodwill was likewise walking on the grass out of the said path in the said felde, and did receive and karry in her hand the said twig, and so was cumfarting, eading, and abating to the said Joseph therein. And the said James Scout for him-

33. *Id.* vol. 2, at 177-78.

self says that he verily believes the said twig to be his own proper twig,' &c."

On hearing this "deposition,"—" 'Jesu!' said the squire, 'would you commit two persons to Bridewell for a twig?' 'Yes,' said the lawyer, 'and with great lenity too; for if we had called it a young tree, they would have both been hanged.'"³⁴

If the two country judges in *Joseph Andrews* are bad, the city judge in *Amelia* is atrocious. Justice Thrasher is foolish, corrupt, unreasonable, unfair, and heartless; and he has never read "one syllable" of the hundred-odd legal volumes pertinent to the cases that he must pass upon. An Irishman who has obviously suffered a cruel beating is charged with assault by a man much larger than himself and completely unmarked. Hearing the Irishman's brogue, the justice condemns him—because all Irishmen are obviously guilty. A young woman servant, sent out at night to fetch a midwife, is arrested as a streetwalker. Thrasher will not allow her to call her neighbors as witnesses, but in most abusive language sends her off to Bridewell for a month. A serious-looking witness charges a well-dressed young couple with committing a most unusual misdemeanor. On receiving a wink from the clerk, Thrasher declares the alleged act to be impossible, and without any evidence is about to send the witness to prison for perjury, when the clerk dissuades him, saying that he believes a judge has no power to do this. The judge decides to discharge the witness. The woman, however, says she will swear the peace against the latter because he has several times called her a whore. The judge is glad to oblige her, and consigns the witness to prison.

Captain Booth has the bad luck to be arraigned before this foolish and wicked man, on the charge that he has beaten a night watchman and broken his lantern. Actually, he went to the assistance of a man who was being cruelly beaten by two well-dressed rascals. The latter, when arrested, got off by bribing the constable, but Booth had no money, and he and the beaten man were taken to Justice Thrasher's house. The judge will not accept Booth's testimony, allow him to call any witnesses, or question the watchmen to determine whether they are lying. His judgment against Booth is based solely on the fact that Booth is poorly dressed.

34. *Id.* at 182-84.

After disposing of him, Thrasher now hears the case against the man who was beaten. His trial took a very short time. A cause of battery and broken lanthorn was instituted against him, and proved in the same manner; nor would the justice hear one word in defence; but, though his patience was exhausted, his breath was not; for against this last wretch he poured forth a great many volleys of menaces and abuse.

“The delinquents were then all dispatched to prison under a guard of watchmen, and the justice and the constable adjourned to a neighbouring alehouse to take their morning repast.”³⁵

Such is Fielding’s horrifying picture of English law and justice in the middle of the eighteenth century. No doubt the picture is exaggerated; to satirize is to exaggerate. Fielding was not trying to present a balanced and objective survey of conditions. Though he might well have given more emphasis to what was good, even admirable, in the law and its practitioners, he preferred to emphasize what was bad in both. How else could he sufficiently overcome the vast inertia of the public and bring about needed reforms? The evils existed; they were monstrous; they needed correction. Fielding toiled manfully in every way he knew to correct them. By his efforts, he earned a place of honor in the history of the law, and incidentally wrote many a brilliant and unforgettable page without which English literature would be far poorer than it is.

35. *Id.* vol. 7, at 3-11.

“Historic continuity with the past is not a duty, it is only a necessity.”

OLIVER WENDELL HOLMES, JR. *Learning and Science* 68 (1913)

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