

**RED MASS – 1/22/97 IN MEMORY OF HON. THOMAS TANG**  
St. Mary's Basilica, Phoenix, AZ

I am deeply privileged and grateful for this opportunity to address so distinguished an audience. I am doubly grateful that it is my brother, Judge Thomas, whose memory we honor, who provides us this opportunity to face some serious issues in the name of your patron, St. Thomas More. Also, I must forewarn you that this is not your garden variety 10-minute Sunday homily. It's about the length of your legal briefs, so you should feel no pain.

We begin with the dramatic gospel scene in John, Ch. 8, of a woman caught in flagrante delicto—in the act of adultery. The law would have her be stoned to death. Jesus is put on the horns of a dilemma: observe the law or show mercy? The mob of harassers keep pressing and taunting him to make a decision. If he pardons her, there would be grounds for his own conviction. He dawdles and doodles on the ground, driving the mob to a frenzy. At last, standing tall, he throws down the gauntlet: "Whoever has never sinned, be the first to throw a stone." Slowly they slink away, starting with the eldest. Finally, only Jesus and the woman remain. "Isn't there anyone left to condemn you?" Jesus asks. "I don't see anyone, sir," she replies meekly. "I don't condemn you, either," Jesus says and dismisses her. (1)

What's going on here? Why didn't Christ accuse and condemn her, clearly guilty?

Let me answer with a personal experience. While director of Serra Retreat in the early '80's I was summoned to jury duty. I reported to the Santa Monica courthouse where a notorious civil trial is currently underway. It was a sabbatical year and I truly relished the chance to experience jury service. Because clergy and religious were easily excused formerly, I dressed in mufti lest my clothes identify me. Sure enough, a nun in habit was summarily dismissed, along with a UCLA professor. (How much more qualified can candidates be, I wondered?)

Suddenly I heard: "Reverend Emery Tang" called out. The bailiff blew my cover! I approached the bench in my plain clothes. The Chinese judge was puzzled, "He called you Reverend; what kind of Reverend are you?" I fought the urge to reply, "'Very', your honor." Instead I answered prudently, "I'm the Franciscan priest director at Serra Retreat in Malibu." "Yes, I've heard of you," the judge went on. "Well, why aren't you in uniform?" "I didn't want my garb and collar to prejudice my chances of serving on a jury, sir."

The trial involved three youths accused of assault and rape. The prosecutor was actually a retreatant serving as a deputy D.A. and knew me. Yet he accepted me without objection. "I figured you'd be honest," he told me later.

A defense attorney interrogated me, "Do you have anyone in your family who is in law enforcement?" "No," I said, "but, oh, I do have a brother who is a judge." "Will that hinder you from making an objective judgment in this case?" he asked. "Oh, I don't think so." "Why not? Explain yourself," he pressed.

"Well, first of all, my brother and I rarely talk about each other's professional work. But as I gather, his task is not to make laws but to determine whether, in a given case, an accused has violated a certain law and, if so, to what degree, and then to apply a sanction he judges fitting. Whereas, in my role as a priest, I think my task is to get people off the hook."

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At this, the defense attorney turned to the judge and said, "We'll take him. We'll take him, your honor!"

To satisfy your curiosity, we the jury did in fact convict the three, based on incriminating evidence not explained away—and the judge concurred.

But back to my descriptive definition of a priest's role. Every Catholic makes a confession with the presumption that he will receive absolution or forgiveness of sins, no matter how heinous. And there are even those who, if they are refused absolution by an intransigent, usually grouchy, priest, will never set foot in a Catholic church again.

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In the Scripture we read about a lawyer who was trying to trip Jesus up. He asked, "Master, what must I do to inherit eternal life?" Jesus said, "What is written in the Law? What do you read there?" The lawyer replied, "You must love the Lord your God with all your heart and soul, your strength and mind—and your neighbor as yourself." "That's right," Jesus said. "Do this and you will live." (2)

The term "law" is used equivocally here. The lawyer was a scholar versed in the 613 legal prescriptions in the Torah, considered to be revealed and promulgated by God himself. They were divided into 248 positive and 365 prohibitive prescriptions of the law, each binding with equal force. Their violation incurred divine punishment in the form of personal and national misfortune. The lawyer was suggesting that one specific law ranked above all others.

Jesus affirms that there is but one central law governing all reality—"On this principle of love rest the Law (Torah) and the prophets" (3) This is the law of Love. It is not a juridical law, such as you attorneys deal with. Rather, it is the law of our very nature, the intrinsic law of our being.

Love is God or God is love. And all persons are made by God out of love, in order to love and to be loved. This is to be made in the image of God. This is the ultimate truth or reality; it is the law of our being. Furthermore, all of creation is a manifestation of the love of God and is designed for our pleasure and happiness. This universal law of love is immutable and absolute.

To love means to choose to do only what is good for oneself or another. It brings with it happiness. The power and beauty of love lie in its pure gratuity and total voluntariness. It cannot be coerced or legislated. And while love is the most challenging of all motives it is the most rewarding.

Freedom is a door that swings in two directions. And we humans, motivated by arrogance and pride, anger and jealousy and other forms of selfishness, will often choose to harm and make miserable oneself or another. We actually choose to be criminals or, in a religious context, sinners. In so doing we become an enemy by inflicting pain and destroying happiness. And are we not sometimes our own worst enemy?

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When we have been injured unjustly, our tendency is to strike back, of course, and inflict commensurate pain and suffering. In which case we become as evil as the one who has hurt us. This retaliatory reaction was actually sanctioned in the Old Testament as the Law of Talion: "An eye for an eye; a tooth for a tooth." (4) Even God was portrayed as an avenger: "Revenge is mine," saith the Lord. (5)

With his coming into our world, we believe that Jesus initiated the Christian era, marked by A.D. 1997. Jesus' role and mission were not as legislator, even as he abrogated the Talion of the Old Testament and instituted a new covenant between God and us, his people. "Until now you have heard it said, "An eye for an eye, a tooth for a tooth"—; from now on I am declaring, "Love one another, yes, but your enemy as well." (6)

This was not a new law. Jesus was simply revealing to us a magnificent truth: that God is our loving Abba (Papa) and we are his children who share his divine nature of goodness, love, peace and compassion. (7)

Jesus told us how foolish it is to put new wine into an old wineskin, since it will swell and burst and the good wine will be wasted. Or, using another homely example, he said it is foolish to sew a new cloth piece onto a shrunken old rag, since it will shrink and tear away. (8) By this he is describing how the rigid demands of justice in the Old Testament are incompatible with the mercy and compassion of his Gospel's New Covenant. You can't have it both ways. To put it plainly, you can't hang a person lovingly.

Listen some more. "Do good to those who hate you, bless those who curse you. Pray for those who treat you badly. If someone slaps you, turn the other cheek. If someone takes your shirt from you—sue the hell. . . pardon me—offer him your coat, too. If you love only those who love you, what thanks can you expect? Love your enemies and do good; lend without any hope of return. You will have a great reward and be as children of the Most High God, for he himself is kind to the ungrateful and the wicked. Do not judge and you will not be; grant pardon and you will be. Give, and there will be gifts for you. . ." (9)

Jesus is the Way and the Truth. (10) To ignore, circumvent or substitute his example and teaching is to invite sure disappointment and ultimate ruin.

These moral concepts are completely and painfully alien to our justice system—and we citizens with feet planted in both the secular and religious worlds cannot find balance in our thinking and peace in our hearts. We are alternately compassionate and vindictive in our attitudes and behavior.

What can we do? Are we ready for and even capable of a radical overhaul of the entire justice system of our country? Is it possible to reeducate and convert an entire citizenry to the values of Jesus' Gospel?

It's no secret about the growing skepticism and cynicism over courts, judges, lawyers and the jury system. My brother Tom once asked us over dinner, "What do you do when you find a lawyer up to his neck in sand?" We didn't know, so he gave us the answer, "You go get more sand." A defensive attorney friend said, "Yeah, you can make fun until you're in trouble."

I wonder if it's time to examine the value and the consequences of the "Innocent until proven guilty" principle? After all, if in fact I have committed a crime or sinned against someone, I am no longer innocent. A culprit once stood defiantly before the judge who asked, "Are you innocent or guilty?" The culprit muttered, "Now isn't that what we came here to find out, your honor?"

And then the cat and mouse game begins. Tons of money, mountains of briefs and hours and hours of labor later, followed by a solemn declaration of innocent or guilty, does not guarantee that, in fact, the accused is innocent or guilty.

When George Washington cut down the cherry tree, he couldn't tell a lie and deny it, so he told the truth. What was the consequence? He was made the first president of the United States! Whatever happened to honesty, accepting of responsibility and integrity?

Weren't we reared with the notion that, if we have been responsible for some wrongdoing, we should own up to it? Isn't this the first requisite in Alcoholics Anonymous and other addictions before rehabilitation is possible? The denial of truth and reality is the root cause of dysfunction in all human relationships.

In today's justice system, the last thing you ever do is to admit to the truth. Even we religious are instructed by our insurance carriers never to admit to responsibility in an accident. Honest Abe Lincoln, another president, declared, "I do the best I know how—the very best I can, and I mean to keep doing so until the end. If the end brings me out all right, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right won't make a difference." And St. Francis said, "I am what I am in the eyes of God, nothing more and nothing less."

There is a lovely Polish custom called Upwatek at Christmas when the family gathers around the table and, beginning with dad and mom, down to the littlest child, each one confesses his or her wrongs relating to the others through the year. They break a bit of communion bread, share it and consume it. Then they embrace and begin the new year totally reconciled. If done sincerely and honestly, imagine the bond of trust that grows between each member over the years.

Which brings us back to the priest who defines himself as one who gets people off the hook. The requirement is that the offender comes and admits his or her wrong and asks for pardon which, in the name of an all-compassionate God, is never refused. So maybe that part of the Fifth Amendment ought to be re-amended: "No person shall be compelled to be a witness against himself."

Judge Tang risked his career and experienced rude and vicious calumny when he tried to meld the two great contraries: the letter of the law and understanding compassion. In his practice he strove to preserve the notion that laws are made for the good of people, not people for the good of laws. How difficult and challenging the task.

If violators and offenders were assured that they would always be treated with understanding and fairness—that consequences incurred would not be retaliatory measures but means of correction, discipline and rehabilitation—that pardon and forgiveness were actually possible, many more crimes would be solved without the tedium of endless cat and mouse trials.

Is it only a pipe dream to consider this approach to human weakness and perversity a real possibility as we reach the Third Millennium? That means that in two thousand years we have tried everything but the way Jesus showed us to live at peace with one another in our broken humanity.

Isn't it time we finally learned?

—Emery R. Tang, O.F.M.

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- (1) Jn 8:3-11
  - (2) Dt 6:5; Lv 19:18; Lk 10:25
  - (3) Mt 22:40
  - (4) Ex 21:24
  - (5) Rom 12:19
  - (6) Mt 5:38 passim
  - (7) Lk 12:22
  - (8) Mt 9:16-17
  - (9) Lk 6:27-38
  - (10) Jn 14:6