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LOUIS BRANDEIS'S VISION OF LIGHT AND JUSTICE AS ARTICULATED ON THE SIDE OF A COFFEE MUG

*By Randy Lee**

As a larger-than-life figure, Louis Brandeis can be found in many places. Some find him in biographies; some find him in lectures; some find him in law review articles. Some find him in Supreme Court briefs; some find him in Supreme Court opinions.

Some find him as the people's lawyer; some find him representing wealthy and powerful interests. Some find him at the heart of the American Zionist Movement; some find him in a canoe paddling against the currents of the Charles River.

I found him, slightly paraphrased, on the side of a coffee mug.

“Light,” the mug said, quoting Louis Brandeis, “is the best disinfectant.” But what does that even mean?¹

During the 1990s, Stephen Baker, a religious brother in the Franciscan Order, allegedly abused 99 students while working at John F. Kennedy High School in Warren, Ohio and Bishop McCort High School in Johnstown, Pennsylvania.² The victims of this abuse received roughly nine-million dollars in compensation for their injuries from Baker's Franciscan Order and from the two dioceses where Baker had worked.³ Two days after knowledge of the abuse came to light, Stephen Baker stabbed himself to death.⁴

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¹ See LOUIS D. BRANDEIS, *OTHER PEOPLE'S MONEY AND HOW BANKERS USE IT* 92 (1914).

² Joe Mandak, *88 Former Students Settle Molestation Claims Against Friar at Johnstown School for \$8M*, TRIBLIVE.COM (Oct. 21, 2014), <http://triblive.com/news/adminpage/7005236-74/students-former-abuse>.

³ *Id.*; see also Ann Rogers, *Friar commits suicide in wake of abuse claims: Former Pa. students allege sex assaults; Ohio case settled*, PITTSBURGH POST GAZETTE (Jan. 27, 2013),

What does a disinfectant do: a disinfectant kills germs. “Light,” the mug said, “is the best disinfectant.”⁵

As eleven-year-old Maria Goretti was sitting on a step in front of her home mending a shirt, nineteen-year-old Alessandro Serenelli forced Maria into the home, threatened her with a knife,⁶ and attempted to rape her.⁷ When Maria resisted, Serenelli stabbed her eight times and left her for dead.⁸ As Serenelli subsequently sought to hide himself, Maria managed to drag herself to the front door of the home and cry for help.⁹ When Serenelli heard Maria’s cries, he rushed back and stabbed Maria six more times.¹⁰

When neighbors discovered Maria still clinging to life and learned who had attacked her, they sought to lynch Serenelli immediately but were prevented from doing so.¹¹ As Maria Goretti died, her last words were, “I forgive Alessandro Serenelli, and I want him with me in Heaven forever.”¹²

At his trial, Serenelli insisted he had stabbed Maria “in self-defense while trying to fend off a sexual attack that she [had] initiated.”¹³ Because Serenelli was a minor at the time of the murder and attempted rape, he could only be sentenced to thirty years in

<http://www.post-gazette.com/local/region/2013/01/27/Friar-commits-suicide-in-wake-of-abuse-claims/stories/201301270166>.

⁴ Rogers, *supra* note 3.

⁵ *Sunlight Is The Best Disinfectant - Louis D. Brandeis Coffee Tea Mug Cup - 11 Ounces*, AMAZON, <https://www.amazon.com/sunlight-best-disinfectant-brandeis-coffee/dp/b013ug390o> (last visited Jan. 2, 2017) [hereinafter *Sunlight Is The Best Disinfectant*].

⁶ Some reports indicate Serenelli’s weapon was an awl, a sharp tool used to punch holes in leather, rather than a knife. Tom Casey S.J., *Forgiveness in Saints Maria Goretti and Ignatius*, JESUITS IN IRELAND <http://www.jesuit.ie/blog/forgiveness-saints-maria-goretti-ignatius-loyola> (last visited Jan. 2, 2017).

⁷ Kimberly Cook, *Mercy is Falling-The Maria Goretti Story*, CATHOLICMOM.COM (Nov. 19, 2015), <http://catholicmom.com/2015/11/19/mercy-is-falling-the-maria-goretti-story/>.

⁸ Nichole, *St. Maria Goretti*, CATHOLIC KIDS JOURNAL (May 27, 2015), <http://catholickidsjournal.weebly.com/blogs/stmaria-gorreti>.

⁹ *Saint Maria Goretti: The Story of Maria Goretti*, OUR LADY OF THE ROSARY LIBRARY, <https://www.olrl.org/lives/goretti.shtml> (last visited Jan. 2, 2017).

¹⁰ *Id.*

¹¹ *Id.*

¹² Mitch Dudek, *Remains of Youngest Catholic Saint Brought to Chicago*, CHICAGO SUN TIMES (Oct. 12, 2015), <http://chicago.suntimes.com/news/remains-of-youngest-catholic-saint-brought-to-chicago/>.

¹³ *Id.*

prison for his crimes.¹⁴ In prison, Serenelli was unrepentant.¹⁵ He was so angry and violent during his first six years of prison that he had to be kept in solitary confinement.¹⁶

One night, however, according to Alessandro Serenelli, himself, Maria Goretti appeared to him in prison and brought him fourteen lilies, one for every time he had stabbed her.¹⁷ Maria handed these lilies to Serenelli one at a time.¹⁸

The vision changed everything in Serenelli's life. As Serenelli described it, Maria Goretti became his "light."¹⁹ He confessed to his crime and became a model prisoner.²⁰ He was released from prison three years early for good behavior, and his first act upon his release was to go to the home of Maria Goretti's mother and beg her forgiveness.²¹ Mrs. Goretti responded, "Alessandro, God has forgiven you. Maria has forgiven you. How can I not forgive you?"²²

Not only did Maria's mother forgive Serenelli, but she, in fact, adopted him as her own son.²³ That night, Christmas Eve, Alessandro Serenelli took his new mother to midnight Mass, and the two of them received Holy Communion together.²⁴ In fact, when Maria Goretti's mother attended her daughter's Canonization Mass at the Vatican sixteen years later, her adopted son Alessandro Serenelli was at her side.²⁵

After his release from prison, Alessandro Serenelli became a lay brother with the Capuchin Franciscans and served within the order as a gardener.²⁶ The local school children would come to play

¹⁴ *Alessandro Serenelli: A Miraculous Conversion*, MARIA GORETTI (July 7, 2002), <http://www.mariagoretti.org/alessandrobio.htm> [hereinafter *Alessandro Serenelli*].

¹⁵ Dudek, *supra* note 12.

¹⁶ Gretchen Filz, *Get Fed-Feed Your Faith: Church & Faith: A Story of Great Mercy: Saint Maria Goretti & Alessandro Serenelli*, CATHOLIC COMPANY (July 6, 2016), <https://www.catholiccompany.com/getfed/st-maria-goretti-alessandro-serenelli/>.

¹⁷ Dudek, *supra* note 12.

¹⁸ Dudek, *supra* note 12.

¹⁹ *Alessandro Serenelli*, *supra* note 14.

²⁰ Dudek, *supra* note 12.

²¹ Dudek, *supra* note 12.

²² Dudek, *supra* note 12.

²³ Dudek, *supra* note 12.

²⁴ Dudek, *supra* note 12.

²⁵ *Saint Maria Goretti Biography*, MARIA GORETTI, <http://www.mariagoretti.org/mariabio.htm> (last visited July 27, 2016).

²⁶ Dudek, *supra* note 12.

in the garden of the brother they described as “gentle and beloved,” and they would call him “Uncle Alessandro.”²⁷

What does a disinfectant do: a disinfectant wipes clean; a disinfectant restores. A disinfectant makes something healthful and useful again. “Light,” the mug said, “is the best disinfectant.”²⁸

Stephen Baker and Alessandro Serenelli both committed horrific acts against children. The lives of both men were ultimately exposed to light. There were those in each of these two men’s communities who thought that each man deserved to die. Indeed, there are those who would insist that Stephen Baker got what he deserved. There are also those who would insist that Alessandro Serenelli did not get what he deserved, that he got better than he deserved.

What Alessandro Serenelli got, however, was his life back. In the words of the prophet Isaiah, though his sins may have been “red like crimson,” Alessandro Serenelli was made “white as snow.”²⁹

The American Bar Association proclaims in the preamble to its *Model Rules of Professional Conduct* that lawyers are citizens with a “special responsibility for the quality of justice.”³⁰ Lawyers are participants in a search for truth. They are officers of the law.³¹ Lawyers do light. So do we kill germs, or do we restore and wipe clean?

In Louis Brandeis’s time, as in all times, there were people who insisted that there are germs in the world and that the world is a better place when the force of light, the force of truth, and justice and law, is used to rid the world of these germs. In 1894, William Howard Taft, who was destined to be President of the United States and would serve on the Supreme Court with Louis Brandeis, considered organized labor as populated by such germs.³² Indeed, when Taft heard on July 7th of that year that federal troops had killed thirty Pullman strikers, he observed, ““Though it is a bloody business, everybody hopes that it is true,”” and when he subsequently learned a

²⁷ Dudek, *supra* note 12.

²⁸ *Sunlight Is The Best Disinfectant*, *supra* note 5.

²⁹ *Isaiah* 1:18.

³⁰ MODEL RULES OF PROF’L CONDUCT Pmb1. 1 (AM. BAR ASS’N 2016).

³¹ *Id.*

³² ALPHEUS THOMAS MASON, *BRANDEIS: A FREE MAN’S LIFE* 102 (William S. Hein & Co. eds., 1946).

day later that the actual number of strikers killed had only been six, a disappointed Taft offered this assessment: “The Chicago Situation is not much improved. They have only killed six of the mob as yet. This is hardly enough to make an impression”³³

Still, if we want to be certain exactly what meaning Brandeis, himself, hoped people would take from his words on the mug or whether Brandeis was one to share Taft’s understanding of the role of light and justice, we might do well to look beyond the social context of those words. We might, instead, seek out their origin or original form.

Some trace the quote “Light is said to be the best of disinfectants” back to a 1913 *Harper’s Weekly* article Louis Brandeis authored titled *What Publicity Can Do*.³⁴ There, Brandeis wrote, “sunlight is said to be the best of disinfectants.”³⁵ Others insist that the seeds of that article and the quote itself originated in a letter Brandeis wrote to his future wife, Alice Goldmark, twenty years earlier.³⁶ At the time Brandeis was considering writing a companion piece to his article *The Right to Privacy*.³⁷ The article would champion a “duty of publicity.”³⁸ Brandeis was troubled by “the wickedness of people shielding wrongdoers and passing them off (or at least allowing them to pass themselves off) as honest men.”³⁹ Brandeis planned to offer as a solution that “[i]f the broad light of day could be let in upon men’s actions, it would purify them as the sun disinfects.”⁴⁰

One might argue that the purification that Brandeis anticipated here from exposure to the “light of day” was the ruination of wicked men by the revelation of their wicked acts. Such a view might be seen as consistent with, although perhaps somewhat gentler than, the view of William Howard Taft. Yet, it might also be the case that the origins of the words on the mug are also deceiving. Indeed, a different and perhaps more accurate sense of how Brandeis would

³³ *Id.*

³⁴ BRANDEIS, *supra* note 1.

³⁵ Andrew Berger, *Brandeis and the History of Transparency*, SUNLIGHT FOUNDATION (May 26, 2009), <https://sunlightfoundation.com/blog/2009/05/26/brandeis-and-the-history-of-transparency/>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ MASON, *supra*, note 32, at 94-95.

want us to comprehend the quote might be found in Brandeis's own life and actions and, thus, for example, in his efforts in 1894 to reform Boston's "poor-laws."⁴¹

At the time Brandeis set out to reform Boston's poor-laws, many insisted that the problems associated with those laws could be traced to those who administered Boston's poor-laws. Brandeis, however, insisted that the real problem was in the focus of the laws themselves. Brandeis believed that the efforts of Boston to combat pauperism failed because the poor-laws and their administration had "not been directed to the prevention and cure of pauperism, but merely to its care."⁴² For Brandeis, laws to combat pauperism should not seek to hide, eliminate, nor support the poor; instead, such laws should seek to facilitate the poor working. Brandeis believed giving men work "will improve the character of those who work, making them self-supporting and giving them self-respect."⁴³ Indeed, the point of law, according to Brandeis, should be to raise the people up and help them to achieve their better selves.⁴⁴ "These people," Brandeis began, referring to those who had previously been swept up in the poor-laws,

are not machines, these are human beings . . . they . . . have emotions, feelings, and interests. . . . They should have entertainments, they may be literary, they may be musical, they may perhaps be of a class hardly worthy to be called either. . . . But each one of them, and all of them, can be raised and raised only by holding up before them that which is higher and that which is better than they.⁴⁵

Louis Brandeis understood that if the law is to do such raising up of a person above some condition, the law had to understand more than the nature of the condition.⁴⁶ It also had to appreciate the uniqueness of the person. Thus, as Brandeis sought to chart a legal course by which Boston could raise up its people who were poor, "[h]e emphasized the necessity of research into each applicant's

⁴¹ MASON, *supra*, note 32, at 90-91.

⁴² MASON, *supra*, note 32, at 90.

⁴³ MASON, *supra*, note 32, at 91.

⁴⁴ MASON, *supra*, note 32, at 91.

⁴⁵ MASON, *supra*, note 32, at 91.

⁴⁶ MASON, *supra*, note 32, at 91.

history.”⁴⁷ Brandeis also insisted that, in addition to appreciating the uniqueness of each person, the law needed to appreciate the unalienable value of each person.⁴⁸ The law needed to appreciate that there are no people who can never contribute to society; there are no men who are germs:

Men are not bad, men are not degraded, because they desire to be so; they are degraded largely through circumstances, and it is the duty of every man and the main duty of those who are dealing with these unfortunates to help them up and let them feel in one way or another that there is some hope for them in life, and some distinction between them and the worse.⁴⁹

Ultimately drawing on the image of sunlight, Brandeis concluded, “Unless you bring the outer life, the outer sunshine, into the darkness of the lives of these unfortunates, you can never expect to get that moral growth to which this institution should ever strive to bring its inmates.”⁵⁰ Such light, such “sunshine,” thus, served as a disinfectant because it promised the potential of restoring and raising up those it touched.

Louis Brandeis’s friend and law partner Samuel Warren once sent Brandeis a passage from Euripides’s tragic play *The Bacchae*.⁵¹ The passage recognizes that in our world, there are “twilight cities” populated by men whose eyes “[f]lash” with “fire” even as “no light” can be found in those eyes.⁵² The passage acknowledges that there are men who “scorn” such cities and callously cast off their inhabitants as “wild [o]f counsel, mad.”⁵³ The passage, however, exhorts its hearer, instead, to “toil on toil” and “[g]o forth, my son, and help,” for only this response can make such cities and their inhabitants “grand.”⁵⁴ Brandeis preserved this passage and “drew enduring inspiration” from it⁵⁵ because, as Brandeis saw it, the best of

⁴⁷ MASON, *supra*, note 32, at 91.

⁴⁸ MASON, *supra*, note 32, at 91.

⁴⁹ MASON, *supra*, note 32, at 91.

⁵⁰ MASON, *supra*, note 32, at 91.

⁵¹ MELVIN I. UROFSKY, LOUIS D. BRANDEIS: A LIFE 359 (Schocken eds., 2009).

⁵² GILBERT MURRAY, EURIPIDES AND HIS AGE 93 (Kessinger Publishing, LLC. eds., 1913).

⁵³ *Id.*

⁵⁴ *Id.* (emphasis added).

⁵⁵ MASON, *supra* note 32, at 95.

disinfectants should not scorn nor reject people at their worst; it should raise people to the best that they can be.⁵⁶

This vision of Louis Brandeis's of the role of law and light as up-lifter and restorer arose from a deeply Jewish side of Brandeis, the credit for which, Brandeis insisted, was "due most of all to his parents," particularly his mother Frederika.⁵⁷ Frederika instilled in her son Louis a belief that "religion had nothing to do with dogma or ceremony" and everything to do with "genuine and humane impulses" and "the basic moral virtues,"⁵⁸ and out of that belief came Brandeis's "high sense of social obligation," and "zealous interest in the general welfare."⁵⁹

Frederika emphasized for her children that behavior, rather than ritual, is the appropriate response to God because she was convinced that only through such a response to God could one's faith be enduring.⁶⁰ As Frederika described her approach to raising her children:

I do not believe that sins can be expiated by going to divine service and observing this or that formula; I believe that only goodness and truth and conduct that is humane and self-sacrificing towards those who need us can bring God nearer to us, and that our errors can only be atoned for by acting in a more kindly spirit. Love, virtue and truth are the foundation upon which the education of the child must be based. They endure forever. . . . And this is my justification for bringing up my children without any definite religious belief: I wanted to give them something that neither could be argued away nor would have to be given up as untenable, namely, a pure spirit and the highest ideals as to morals and love. God has blessed my endeavors.⁶¹

If Frederika's understanding of Judaism may seem to some unconventional, her "endeavors" did profoundly impact her son

⁵⁶ MASON, *supra* note 32, at 94.

⁵⁷ MASON, *supra* note 32, at 28.

⁵⁸ MASON, *supra* note 32, at 28.

⁵⁹ MASON, *supra* note 32, at 28.

⁶⁰ FREDERIKA DEMBITZ BRANDEIS, REMINISCENCES OF FREDERIKA BRANDEIS: WRITTEN FOR HER SON LOUIS, IN 1880 TO 1886 33 (Alice G. Brandeis trans., 1943).

⁶¹ *Id.* at 32-34.

Louis; in fact, they did so to such a degree that the mother saw in her son all her ““dreams of high ideals and purity united.””⁶²

No less than President Franklin Delano Roosevelt was known to refer to Brandeis as “Isaiah,”⁶³ and other observers have since been heard to echo this comparison⁶⁴ to the prophet who insisted that all who were “crimson” could still be made “white as snow.”⁶⁵ Yet, at least in Brandeis’s conviction that it is through acts of kindness that we are brought most closely in contact with God,⁶⁶ Brandeis may more accurately be associated with the words of the Jewish prophet Micah who said:

With what shall I come before the LORD, and bow myself before God on high? Shall I come before him with burnt offerings, with calves a year old?

Will the LORD be pleased with thousands of rams, with ten thousands of rivers of oil? Shall I give my first-born for my transgression, the fruit of my body for the sin of my soul?

He has showed you, O man, what is good; and what does the LORD require of you but to do justice, and to love kindness, and to walk humbly with your God?⁶⁷

Not only did Brandeis’s view of faith emphasize, consistent with the words of Micah, works over ritual, but that view of faith also instilled in Brandeis a sense of humility before God and a perspective that

⁶² *Id.* at 34; MASON, *supra* note 32, at 28.

⁶³ Nelson L. Dawson, *Brandeis and the New Deal*, in *BRANDEIS AND AMERICA* 38 (Nelson L. Dawson ed., 1989).

⁶⁴ *See, e.g.*, Jonathan D. Sarna, *Louis D. Brandeis: Zionist Leader*, *BRANDEIS REVIEW* (Winter 1992), <http://www.brandeis.edu/hornstein/sarna/americanjewishcultureandscholarship/Archive4/LouisD.BrandeisZionistLeader.pdf>.

Half-a-century later, we may reasonably wonder whether Brandeis was quite as perfect as his followers professed him to be, and we may smile indulgently at some of the more extravagant tributes paid to his memory. But professional skepticism, in this case, mingles with feelings of regret, even yearning. For would that such an Isaiah stood among us today.

⁶⁵ *See supra* text accompanying note 26.

⁶⁶ *See supra* text accompanying note 45.

⁶⁷ *Micah* 6:6-8.

emphasized motivation and effort over accomplishment.⁶⁸ Once after encountering on the fly-leaf of Alice’s diary these words by Matthew Arnold,

Life is not a having and a getting;
but a being and a becoming,

he wrote to Alice how those words reflected his own beliefs as well:

Of course results are not to be despised. They are evidence of what produces them. But they are not the only evidence. They are often deceptive –and their absence is by no means conclusive. It is only in the Latin sense that talents are to be ‘admired’; they are to be wondered at. But character only is to be ‘admired’ as we use that word. It is the effort—the attempt—that tells. Man’s work is, at best, so insignificant compared with that of the Creator—it is all so Lilliputian, one cannot bow before it.⁶⁹

It is not uncommon to see Brandeis described as “not particularly religious”⁷⁰ or even as a “secular Jew,”⁷¹ because his sense of faith did emphasize compassionate behavior over ritualistic practice.⁷² Yet, there have also always been those who embraced Brandeis as a spiritual leader precisely because of his over-arching commitment to acts reflecting “love, virtue, and truth.”⁷³ As Jonathan Sarna described the response of many of Brandeis’s Jewish contemporaries to Brandeis:

Brandeis in his day filled a spiritual void in the lives of those who honored him. Young Jewish idealists felt particularly drawn to his majestic aura for they saw in him, as one put it, a leader of gigantic spiritual proportions and genuine moral qualities . . . a

⁶⁸ See Mason, *supra* note 32, at 94.

⁶⁹ Mason, *supra* note 33, at 94.

⁷⁰ Elliot Klayman, *The Life of the First Jewish U.S. Supreme Court Justice, Louis Brandeis: Exploring “Privacy Issues” and Ancestral Cultic Connections*, 24 KESHER: A J. OF MESSIANIC JUDAISM 53 (2010).

⁷¹ Maron L. Waxman, *Jewish Book Council* (2016) (reviewing JEFFREY ROSEN, LOUIS D. BRANDEIS: AMERICAN PROPHET).

⁷² *Id.*

⁷³ See *supra* text accompanying note 45.

prototype of the unblemished character and an exemplar of the prophetic tradition.⁷⁴

All of this, however, comes down to nothing more than a coffee mug and a man who has been dead for three-quarters of a century. Why should any of this, one might ask, matter, and the answer is, it probably shouldn't. If Louis Brandeis is simply an old, dead guy, who happens to be a piece of legal memorabilia, then we shouldn't waste our time worrying about the meaning of the words he happened to place on the side of a coffee mug. And, yet, if it were to turn out that Louis Brandeis was more than that, that Louis Brandeis was words or ideas or even light that could change our lives, who we are, how we do our work, how we will leave our world, then maybe there would be a point in studying the words he left us, even those on coffee mugs.

Jim Atwood, the moderator for this panel, originally got into legal ethics because he figured if he was going to give his professional life to the law, he ought to try to better understand what we do and why we do it. Jim's efforts to understand that ultimately led him to a familiarity with the life of Louis Brandeis and to a term on the New York Disciplinary Council. In that latter role, I suspect, Jim drove some of his colleagues on the Council a little nuts. Entrusted with the responsibility of determining which lawyers should get their licenses back, Jim recognized, as had Brandeis before him, that what he did went "beyond the law into life itself,"⁷⁵ and that recognition required Jim, as it had once required Brandeis, to approach his work with "relentless curiosity" and an "ardor for seeing things whole."⁷⁶ Fueled by a recognition that not only each case but each person who came before the Council was unique, Jim sought to bring to light, "Who is this person; who was this person; how did they end up doing what they did; why did this happen?" Confronted with claims of rehabilitation, Jim sought to understand from what the person had been rehabilitated and to determine what had changed both inside and outside.

As I have come to understand it, Jim's work on the Disciplinary Council was not about killing germs; it was about restoring and protecting lives. As our moderator, Jim chose to say

⁷⁴ Sarna, *supra* note 64, at 27.

⁷⁵ Mason, *supra* note 32, at 3.

⁷⁶ Mason, *supra* note 32, at 3.

very little on the day of the program about Louis Brandeis, but in the way Jim has chosen to live out his calling as a lawyer, he has done much to keep Louis Brandeis alive.

As the life of Alessandro Serreneli demonstrates, there is a light in this world that can overcome even the shadow of death, that can lift a man out of a concrete box and make him a gardener, that can take the heart of a predator and make it the heart of a son. Louis Brandeis called this light “the best disinfectant.”⁷⁷ The Prophet Isaiah called it the “victory of justice.”⁷⁸ Lawyers, as the ABA has insisted, have “a special responsibility for the quality of justice.”⁷⁹ As we pursue that responsibility, we each must decide, as did Louis Brandeis before us, whether we will also pursue that light.

⁷⁷ Louis D. Brandeis, *What Publicity Can Do*, HARPER’S WEEKLY, Dec. 20, 1913, at 10.

⁷⁸ *Isaiah* 46:12.

⁷⁹ MODEL RULES OF PROF’L CONDUCT Pmb1. 1 (AM. BAR ASS’N 2016).