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For Jack, Friend of the Bard and Noble Heart

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One never knew when Jack Hiller would refer to William Shakespeare in the middle of a class or a conversation. The Bard of Avon was not in his lecture notes, but would pop up spontaneously in reply to a statement in class. Sometimes Jack would just toss out an allusion to a text you either recognized or were puzzled by. Sometimes he would sigh and give a fuller citation. Even then, his citations were brief and deft. They were to the point of the legal issue before us in class, or at the heart of the human issue in an informal exchange. These allusions or citations were like salt or pepper, basic ways of adding seasoning to a meal. More about this idea of seasoning later. For now, it is enough to say that Jack’s colleagues and students admired him for his ability to quote Shakespeare’s lawyerly insights in a humble and quiet fashion. Jack wasn’t as flashy as Cole Porter, but from him we learned that it was a good thing to “brush up [our] Shakespeare” and “start quoting him now.”

I fell in love with Shakespeare long before I met Jack Hiller, but he probably was a subliminal influence on my decision to explore the deep connections between Shakespeare and the law. For several years I have led a third-year seminar on Shakespeare and the Law. And I have taught a class on this theme in our summer law study program in Cambridge, England, and taken our students to see productions at Stratford upon Avon by the Royal Shakespeare Company.

We lawyers have a kinsman in the Bard of Avon, who offers us great wisdom over the span of four hundred years. More than half of Shakespeare’s thirty-six plays develop legal themes. His tragedy, Othello, contains two mini-trials. The first mini-trial is found in Act II, where the character witness testimony of Desdemona absolves her husband, Othello, from the character-damning allegations of his accusers. The second mini-trial appears in Act IV, in which the evil schemer, Iago, plants the evidence of Desdemona’s strawberry-embroidered handkerchief to convince Othello of his beloved wife’s supposed infidelity, leading to her tragic death at her husband’s hands.

Shakespeare’s finest play for lawyers, The Merchant of Venice, has an entire trial in Act IV. Antonio, the merchant of Venice, has pledged a ‘pound of flesh’ as bond for the loan by Shylock of 3000 ducats, with which Antonio’s friend, Bassanio, will finance his wooing of Portia. When Antonio’s argosies fail to produce the monies to repay Shylock,
the trial on the contract ensues. At the start of the trial, Portia, disguised as the male lawyer, Balthazar, delivers Shakespeare’s famous admonition to lawyers and judges:

The quality of mercy is not strang’d,
It droppeth as the gentle rain from heaven
Upon the place beneath: it is twice blest;
It blesseth him that gives and him that takes:
‘Tis mightiest in the mightiest: it becomes
the throned monarch better than his crown;
His scepter shows the force of temporal power,
the attribute to awe and majesty,
Wherein doth sit the dread and fear of kings,
But mercy is above this sceptered sway;
It is enthroned in the hearts of kings,
It is an attribute to God himself;
And earthly power doth then show likest God’s
When mercy seasons justice.

— The Merchant of Venice (4.1.184-197)

Mercy seasoning justice—these high ideals of our profession were hallmarks of Jack Hiller’s life and career. Jack was deeply committed to justice as the core of his famous course on Jurisprudence. But he was never content to treat this core value as an abstract concept. Instead he probed with a fine mind the demands of justice on daily life and on the law itself. And at the end of the day—each day, not just the last day of his life—Jack understood that justice itself needed to be seasoned and tempered with something that matters more: mercy and compassion, qualities that surpass our best (but ineluctably inadequate) efforts to be just or even to understand the other.

Maybe one of the reasons why Jack was willing to season his passion for justice with the complementarity of mercy is that he understood deeply that not all contests are fair. Hamlet, for example, dies not of a fencing wound, but from poison that mocks the fairness of his final struggle.

Jack died not of venom. He never had venom in his veins. But the final scene of Hamlet enables me to pay tribute in the same breath both to the Bard and to Jack. As the prince lays dying, his loyal friend Horatio bids him farewell with words familiar to any great lover of Shakespeare. I repeat these words now with fondness for my teacher and friend: “Now cracks a noble heart! May flights of angels sing [him] to his rest.”