

Max Beerbohm's *Dulcedo Judiciorum*

If the first qualification of a commentator is a misanthropic or vicious streak, Max Beerbohm fails. He is too self-deprecating, his barbs too gentle, altogether, he takes a view that the role of the critic is not to criticise, but to inform and to humour.

Among his essays is 'Dulcedo Judiciorum', found in a collection first published in 1909, *Yet Again*. Its interest lies in the author's perception of the court as theatre, including his comparison of the styles of Sir Charles Russell and Sir Rufus Isaacs. At a century's distance, we may be inclined to think that all advocates prior to television tended either to Thomas Erskine or to Edward Marshall Hall.

Beerbohm was a noted critic, and had the impresario Henry Beerbohm Tree as an elder half-brother. The latter counted among his achievements the natural fathering of Carol Reed, director of *Oliver!* and *The Third Man* and the stepfather of the holder of the only female role in *Dr Strangelove*, and of Peter Reed, in turn father of Oliver.

The following is the essay as was, but for some section heading and paragraphing to soothe the televisual reader. As a semi-literate barrister of the twenty-first century, my Latin is of the canine variety, but I think '*Dulcedo Judiciorum*' means something like 'The sweetness of judges'. He was a wit.

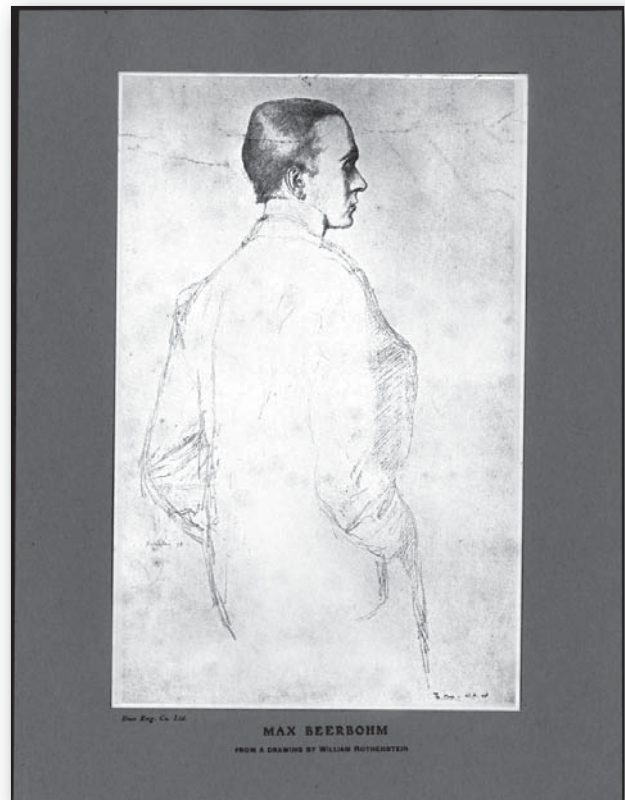
David Ash

The study of fellow creatures

When a 'sensational' case is being tried, the court is well filled by lay persons in need of a thrill. Their presence seems to be rather resented as a note of frivolity, a discord in the solemnity of the function, even a possible distraction for the judge and jury. I am not a lawyer, nor a professionally solemn person, and I cannot work myself up into a state of indignation against the interlopers. I am, indeed, one of them myself. And I am worse than one of them. I do not merely go to this or that court on this or that special occasion. I frequent the courts whenever I have nothing better to do. And it is rarely that, as one who cares to study his fellow-creatures, I have anything better to do. I greatly wonder that the courts are frequented by so few other people who have no special business there.

I can understand the glamour of the theatre. You find yourself in a queerly-shaped place, cut off from the world, with plenty of gilding and red velvet or blue satin. An orchestra plays tunes calculated to promote suppressed excitement. Presently up goes a curtain, revealing to you a mimic world, with ladies and gentlemen painted and padded to appear different from what they are. It is precisely the people most susceptible to the glamour of the theatre who are the greatest hindrances to serious dramatic art. They will stand anything, no matter how silly, in a theatre.

Fortunately, there seems to be a decline in the number of people who are acutely susceptible to the theatre's glamour. I rather think



Portrait of Max Beerbohm, from a drawing by William Rothenstein, National Library of Australia

the reason for this is that the theatre has been over-exploited by the press. Quite old people will describe to you their early playgoings with a sense of wonder, an enthusiasm, which – leaving a wide margin for the charm that past things must always have – will not be possible to us when we babble to our grandchildren. Quite young people, people ranging between the ages of four and five, who have seen but one or two pantomimes, still seem to have the glamour of the theatre full on them. But adolescents, and people in the prime of life, do merely, for the most part, grumble about the quality of the plays. Yet the plays of our time are somewhat better than the plays that were written for our elders. Certainly the glamour of the theatre has waned. And so much the better for the drama's future.

Business and pleasure

It is a matter of concern, that future, to me who have for so long a time been a dramatic critic. A man soon comes to care, quite unselfishly, about the welfare of the thing in which he has specialised. Of course, I care selfishly too. For, though it is just as easy for a critic to write interestingly about bad things as about good things, he would rather, for choice, be in contact with good things. It is always nice to combine business and pleasure. But one regrets, even then, the business.

If I were a forensic critic, my delight in attending the courts would still be great; but less than it is in my irresponsibility. In the courts I find satisfied in me just those senses which in the theatre, nearly always,

are starved. Nay, I find them satisfied more fully than they ever could be, at best, in any theatre. I do not merely fall back on the courts, in disgust of the theatre as it is. I love the courts better than the theatre as it ideally might be. And, I say again, I marvel that you leave me so much elbow-room there.

The best type of cases

No artificial light is needed, no scraping of fiddles, to excite or charm me as I pass from the echoing corridor, through the swing-doors, into the well of this or that court. It matters not much to me what case I shall hear, so it be of the human kind, with a jury and with witnesses.

The equity acrobat

I care little for Chancery cases. There is a certain intellectual pleasure in hearing a mass of facts subtly wrangled over. The mind derives therefrom something of the satisfaction that the eye has in watching acrobats in a music-hall. One wonders at the ingenuity, the agility, the perfect training.

Like acrobats, these Chancery lawyers are a relief from the average troupe of actors and actresses, by reason of their exquisite alertness, their thorough mastery (seemingly exquisite and thorough, at any rate, to the dazzled layman). And they have a further advantage in their material. The facts they deal with are usually dull, but seldom so dull as facts become through the fancies of the average playwright. It is seldom that an evening in a theatre can be so pleasantly and profitably spent as a day in a Chancery court. But it is ever into one or another of the courts of King's Bench that I betake myself, for choice.

The prisoner in the dock

Criminal trials, of which I have seen a few, I now eschew absolutely. I cannot stomach them. I know that it is necessary for the good of the community that such persons as infringe that community's laws should be punished. But, even were the mode of punishment less barbarous than it is, I should still prefer not to be brought in sight of a prisoner in the dock. Perhaps because I have not a strongly developed imagination, I have little or no public spirit. I cannot see the commonweal. On the other hand, I have plenty of personal feeling. And I have enough knowledge of men and women to know that very often the best people are guilty of the worst things. Is the prisoner in the dock guilty or not guilty of the offence with which he is charged? That is the question in the mind of the court. What sort of man is he? That is the question in my own mind. And the answer to the other question has no bearing whatsoever on the answer to this one.

The English law assumes the prisoner innocent until he shall have been proved guilty. And, seeing him there a prisoner, a man who happens to have been caught, while others (myself included) are pleasantly at large after doing, unbeknown, innumerable deeds worse in the eyes of heaven than the deed with which this man is charged – deeds that do not prevent us from regarding our characters as quite fine really

– I cannot but follow in my heart the example of the English law and assume (pending proof, which cannot be forthcoming) that the prisoner in the dock has a character at any rate as fine as my own. The war that this assumption wages in my breast against the fact that the man will perhaps be sentenced is too violent a war not to discommode me. Let justice be done. Or rather, let our rough-and-ready, well-meant endeavours towards justice go on being made. But I won't be there to see, thank you very much.

The familiarity that spices

It is the natural wish of every writer to be liked by his readers. But how exasperating, how detestable, the writer who obviously touts for our affection, arranging himself for us in a mellow light, and inviting us, with gentle persistence, to note how lovable he is! Many essayists have made themselves quite impossible through their determination to remind us of Charles Lamb – 'St Charles,' as they invariably call him. And the foregoing paragraph, though not at all would-be-Lamb-like in expression, looks to me horribly like a blatant bid for your love.

I hasten to add, therefore, that no absolutely kind-hearted person could bear, as I rejoice, to go and hear cases even in the civil courts. If it be true that the instinct of cruelty is at the root of our pleasure in theatrical drama, how much more is there of savagery in our going to look on at the throes of actual litigation – real men and women struggling not in make-believe, but in dreadful earnest! I mention this aspect merely as a corrective to what I had written. I do not pretend that I am ever conscious, as I enter a court, that I am come to gratify an evil instinct. I am but conscious of being glad to be there, on tiptoe of anticipation, whether it be to hear tried some particular case of whose matter I know already something, or to hear at hazard whatever case happen to be down for hearing. I never tire of the aspect of a court, the ways of a court. Familiarity does but spice them. I love the cold comfort of the pale oak panelling, the scurrying-in-and-out of lawyers' clerks, the eagerness and ominousness of it all, the rustle of silk as a KC edges his way to his seat and twists his head round for a quick whispered parley with his junior, while his client, at the solicitors' table, twists his head round to watch feverishly the quick mechanical nods of the great man's wig – the wig that covers the skull that contains the brain that so awfully much depends on.

The mummy of some high tyrant

I love the mystery of those dark-green curtains behind the exalted bench. One of them will anon be plucked aside, with a stentorian 'Silence!' Thereat up we jump, all of us as though worked by one spring; and in shuffles swiftly My Lord, in a robe well-fashioned for sitting in, but not for walking in anywhere except to a bath-room. He bows, and we bow; subsides, and we subside; and up jumps some grizzled junior – 'My Lord, may I mention to your lordship the case of *Brown v Robinson and Another?*'

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It is music to me ever, the cadence of that formula. I watch the judge as he listens to the application, peering over his glasses with the lacklustre eyes that judges have, eyes that stare dimly out through the mask of wax or parchment that judges wear. My Lord might be the mummy of some high tyrant revitalised after centuries of death and resuming now his sway over men. Impassive he sits, aloof and aloft, ramparted by his desk, ensconced between curtains to keep out the draught – for might not a puff of wind scatter the animated dust that he consists of?

No creature of flesh and blood could impress us quite as he does, with a sense of puissance quite so dispassionate, so supernal. He crouches over us in such manner that we are all of us levelled one with another, shorn of aught that elsewhere differentiates us. The silk-gownsmen, as soon as he appears, fade to the semblance of juniors, of lawyers' clerks, of jurymen, of oneself. Always, indeed, in any public place devoted to some special purpose, one finds it hard to differentiate the visitors, hard to credit them with any private existence.

Some are young, others old, by the calendar. But the old ones have an air of physical incorruptibility – are 'well-preserved,' as by swathes and spices; and the young ones are just as mummified as they. Some of them are pleased to crack jokes; jokes of the sarcophagus, that twist our lips to obsequious laughter, but send a chill through our souls.

Cast your eye around the tables of a café: how subtly similar all the people seem! How like a swarm of gregarious insects, in their unity of purpose and of aspect! Above all, how homeless! Cast your eye around the tables of a casino's gambling-room. What an uniform and abject herd, huddled together with one despondent impulse! Here and there, maybe, a person whom we know to be vastly rich; yet we cannot conceive his calm as not the calm of inward desperation; cannot conceive that he has anything to bless himself with except the roll of bank-notes that he has just produced from his breast-pocket. One and all, the players are levelled by the invisible presence of the goddess they are courting.

Well, the visible presence of the judge in a court of law oppresses us with a yet keener sense of lowliness and obliteration. He crouches over us, visible symbol of the majesty of the law, and we wilt to nothingness beneath him. And when I say 'him' I include the whole judicial bench. Judges vary, no doubt. Some are young, others old, by the calendar. But the old ones have an air of physical incorruptibility – are 'well-preserved,' as by swathes and spices; and the young ones are just as mummified as they. Some of them are pleased to crack jokes; jokes of the sarcophagus, that twist our lips to obsequious laughter, but send a chill through our souls.

There are 'strong' judges and weak ones (so barristers will tell you). Perhaps – who knows? – Minos was a strong judge, and Aeacus and Rhadamanthus were weak ones. But all three seem equally terrible to us. And so seem, in virtue of their position, and of the manner and aspect it invests them with, all the judges of our own high courts.

I hearken in awe to the toneless murmur in which My Lord comments on the application in the case of '*Brown v Robinson and Another.*' He says something about the Court of Crown Cases Reserved... Ah, what place on this earth bears a name so mystically majestic? Even in the commonest forensic phrases there is often this solemnity of cadence, always a quaintness, that stirs the imagination... The grizzled junior dares interject something 'with submission,' and is finally advised to see 'my learned brother in chambers.' 'As your lordship pleases.'... We pass to the business of the day. I settle myself to enjoy the keenest form of aesthetic pleasure that is known to me.

The aesthetic of it all

Aesthetic, yes. In the law-courts one finds an art-form, as surely as in the theatre. What is drama? Its theme is the actions of certain opposed persons, historical or imagined, within a certain period of time; and these actions, these characters, must be shown to us in a succinct manner, must be so arranged that we know just what in them is essential to our understanding of them. Very similar is the

art-form practised in the law-courts. The theme of a law-suit is the actions of certain actual opposed persons within a certain period of time; and these actions, these characters, must be set forth succinctly, in such-wise that we shall know just as much as is essential to our understanding of them. In drama, the presentment is, in a sense, more vivid. It is not – not usually, at least – retrospective. We see the actions being committed, hear the words as they are uttered. But how often do we have an illusion of their reality? Seldom. It is seldom that a masterpiece in drama is performed perfectly by an ideal cast.

In a law-court, on the other hand, it is always in perfect form that the matter is presented to us. First the outline of the story, in the speech for the plaintiff; then this outline filled in by the examination of the plaintiff himself; then the other side of the story adumbrated by his cross-examination. Think of the various further stages of a law suit, culminating in the judge's summing up; and you will agree with me that the whole thing is a perfect art form.

Drama, at its best, is clumsy, arbitrary, unsatisfying, by comparison. But what makes a law-suit the most fascinating, to me, of all art-forms, is that not merely its material, but the chief means of its expression, is life itself. Here, cited before us, are the actual figures in the actual story that has been told to us. Here they are, not as images to be evoked through the medium of printed page, or of painted canvas, or of disinterested ladies and gentlemen behind footlights. Actual, authentic, they stand before us, one by one, in the harsh light of day, to be made to reveal all that we need to know of them.

The most interesting witnesses

The most interesting witnesses, I admit, are they who are determined not to accommodate us – not to reveal themselves as they are, but to make us suppose them something quite different. All witnesses are more or less interesting. As I have suggested, there is no such thing as a dull law-suit. Nothing that has happened is negligible. And, even so, every human being repays attention – especially so when he stands forth on his oath. The strangeness of his position, and his consciousness of it, suffice in themselves to make him interesting. But it is disingenuousness that makes him delightful. And the greatest of all delights that a law-court can give us is a disingenuous witness who is quick-minded, resourceful, thoroughly master of himself and his story, pitted against a counsel as well endowed as himself.

The most vivid and precious of my memories is of a case in which a gentleman, now dead, was sued for breach of promise, and was cross-examined throughout a whole hot day in midsummer by the late Mr Candy. The lady had averred that she had known him for many years. She called various witnesses, who testified to having seen him repeatedly in her company. She produced stacks of letters in a handwriting which no expert could distinguish from his. The defence was that these letters were written by the defendant's secretary, a man who was able to imitate exactly his employer's handwriting, and who was, moreover, physically a replica of his employer. He was dead now; and the defendant, though he was a very well-known man, with many friends, was unable to adduce any one who had seen that secretary dead or alive. Not a soul in court believed the story. As it was a complicated story, extending over many years, to demolish it seemed child's play. Mr. Candy was no child. His performance was masterly. But it was not so masterly as the defendant's; and the suit was dismissed. In the light of common sense, the defendant hadn't a leg to stand on. Technically, his case was proved. I doubt whether I shall ever have a day of such acute mental enjoyment as was the day of that cross-examination.

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The stuff to stand up

I suppose that the most famous cross-examination in our day was Sir Charles Russell's of Pigott. It outstands by reason of the magnitude of the issue, and the flight and suicide of the witness. Had Pigott been of the stuff to stand up to Russell, and make a fight of it, I should regret far more keenly than I do that I was not in court. As it is, my regret is keen enough. I was reading again, only the other day, the verbatim report of Pigott's evidence, in one of the series of little paper volumes published by *The Times*; and I was revelling again in the large perfection with which Russell accomplished his too easy task.

Especially was I amazed to find how vividly Russell, as I remember him, lived again, and could be seen and heard, through the medium of that little paper volume. It was not merely as though I had been in court, and were now recalling the inflections of that deep, intimidating voice, the steadfast gaze of those dark, intimidating eyes, and were remembering just at what points the snuff-box was produced, and just how long the pause was before the pinch was taken and the

bandana came into play. It was almost as though these effects were proceeding before my very eyes – these sublime effects of the finest actor I have ever seen.

Expressed through a perfect technique, his personality was overwhelming. 'Come, Mr Pigott,' he is reported as saying, at a crucial moment, 'try to do yourself justice. Remember! You are face to face with My Lords.' How well do I hear, in that awful hortation, Russell's pause after the word 'remember,' and the lowered voice in which the subsequent words were uttered slowly, and the richness of solemnity that was given to the last word of all, ere the thin lips snapped together – those lips that were so small, yet so significant, a feature of that large, white, luminous and inauspicious face. It is an hortation which, by whomsoever delivered, would tend to dispirit the bravest and most honest of witnesses.

The presence of a judge is always, as I have said, oppressive. The presence of three is trebly so. Yet not a score of them serried along the bench could have outdone in oppressiveness Sir Charles Russell. He alone, among the counsel I have seen, was an exception to the rule that by a judge every one in court is levelled. On the bench, in his last years, he was not notably more predominant than he ever had been. And the reason of his predominance at the Bar was not so much in the fact that he had no rival in swiftness, in subtlety, in grasp, as in the passionate strength of his nature, the intensity that in him was at the root of the grand manner.

And the change of time

In the courts, as in parliament and in the theatre, the grand manner is a thing of the past. Mr Lloyd-George is not, in style and method, more remote from Gladstone, nor Mr George Alexander from Macready, than is Mr Rufus Isaacs, the type of modern advocate, from Russell. Strength, passion, sonorousness, magnificence of phrasing, are things which the present generation vaguely approves in retrospect; but it would titter at a contemporary demonstration of them.

While I was reading Pigott's cross-examination, an idea struck me; why do not the managers of our theatres, always querulous about the dearth of plays, fall back on scenes from famous trials? A trial-scene in a play, though usually absurd, is almost always popular. Why not give us actual trial-scenes? They could not, of course, be nearly so exciting as the originals, for the simple reason that they would not be real; but they would certainly be more exciting than the average play. Thus I mused, hopefully.

But I was brought up sharp by the reflection that it were hopeless to look for an actor who could impersonate Russell – could fit his manner to Russell's words, or indeed to the words of any of those orotund advocates. To reproduce recent trials would be a hardly warrantable thing. The actual participators in them would have a right to object (delighted though many of them would be).

Vain, then, is my dream of theatres invigorated by the leavings of the law-courts. On the other hand, for the profit of the law-courts, I have a quite practicable notion. They provide the finest amusement in London, for nothing. Why for nothing? Let some scale of prices for admission be drawn up – half-a-guinea, say, for a seat in the well of the court, a shilling for a seat in the gallery, five pounds for a seat on the bench. Then, I dare swear, people would begin to realise how fine the amusement is.