

For My Friend

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Auden wrote somewhere that a friend is simply someone of whom, in his absence, one thinks with pleasure. How do we measure that against Dante's famous observation that there is no greater pain than to remember happy days in days of sorrow?¹ They are both right, are they not? I cannot think of my first memory of Charles without smiling even though all afternoon my throat has ached with the strain of suppressed anguish at the loss of him. "Memory is all that the death of such a man leaves us."²

I met Charles early in my second year in law school. I was in Boris Bittker's office and he asked, "Where are you from?" "Austin, Texas." "Have you met Charles Black?" Of course Charles had many friends who were friends of my parents, and they had asked me to look him up, which, in the manner of young people, I had no intention of doing. Bittker insisted. I demurred, and so he forcibly took me by the shoulders and dragged me down the hall, frogmarched me into Charles's office, and, over my continuing objections, introduced me. It may be that this was just Bittker's desperate ploy to get me out of his office, but I choose to think it was an altogether characteristic act of that generous man; Bittker sat me down and my friendship with Charles began almost at once. Of that meeting Charles later wrote me, "You showed me it is never too late to make an old friend."

Charles grew up in Austin in a house that is only a few blocks from my own. The television and radio and who knows what else have largely effaced from my voice the unusual sounds of that city where the melodic sine curves of the low-lying Southern coastal fields meet the sharper, more angular tones of the hill country. Yet I can hear Charles's voice so clearly in my head—not as dry as Lyndon Johnson's, not as sweet as William Styron's or Robert Penn Warren's, but something blended like the Colorado that demarcates the change from East to West where our city is placed.

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1. And she to me: "There is no greater pain
than to remember, in our present grief,
past happiness (as well your teacher knows)!"

DANTE'S INFERNO, canto V, ll. 121-123 (Mark Musa trans., Indiana Univ. Press 1971).

2. Charles L. Black, Jr., *Remarks at a Memorial for Grant Gilmore, Oct. 3, 1982*, YALE L. REP., Fall/Winter 1982-83, at 9.

He and I liked to make fun of the Yankees among whom we found ourselves and their complacent assumptions of a certain superiority. One notable incident occurred when the distinguished director Robert Brustein cast Charles as Cicero in a production of Julius Caesar at the Yale Rep. Charles had a Roman face and manner and Cicero was a rhetorician of the kind that is only found in law schools today. But Brustein objected to Charles's accent, saying that such an accent was inappropriate to the role, implying perhaps that it was a little uncouth for an aristocratic Roman. Charles, whose family could aptly be called patrician, said he asked him, "Bob, why do you think a first century Roman would speak with a New York accent?"

Charles was an academic of rare distinction and yet he had also acquired a tragic quality of isolation. There was a nobility in this isolation from the various schools and intellectual movements that came and went during his day.

This nobility shone forth on the many occasions when he was out of step with the received opinions of right-thinking people, tending to disqualify him in the eyes of the sort of persons who make up committees and colloquia. I could give many examples—his commitment to civil rights at a time when few Southerners could see clearly the monstrosity of segregation in their midst,³ and few Northerners wanted to get involved,⁴ his support for the Nixon White House's position on executive privilege⁵ (we later used to say that in the Nixon proceedings the Congress had lynched a guilty man), his argument that the Fourteenth Amendment should be construed to assure a minimal level of economic security and decency in living conditions,⁶ a view most people today would find only a little more out of step than his crusade against capital punishment,⁷ nor should I omit the fact that he verged on calling me a war criminal when I worked for the government during the period of the Gulf War, or the courage it took to

3. See the NAACP Legal Defense Fund briefs in *Brown v. Board of Education*, 347 U.S. 483 (1954), and *Cooper v. Aaron*, 358 U.S. 1 (1958). See also CHARLES L. BLACK, JR., DECISION ACCORDING TO LAW 33 (1981); Charles L. Black, Jr., Untitled Essay (on "What can a lawyer do about racism?"), 68 COLUM. L. REV. 1014 (1968).

4. See, e.g., Charles L. Black, Jr., *Paths to Desegregation*, NEW REPUBLIC, Oct. 21, 1957, at 10.

5. Charles L. Black, Jr., *Why the Senate Shouldn't Get the Tapes*, L.A. TIMES, Aug. 5, 1973, § 9, at 1; see also Charles L. Black, Jr., *Mr. Nixon, the Tapes and Common Sense*, N.Y. TIMES, Aug. 3, 1973, at 31.

6. Charles L. Black, Jr., *The Unfinished Business of the Warren Court*, 46 WASH. L. REV. 3, 31-45 (1970); see also Charles L. Black, Jr., *Further Reflections on the Constitutional Justice of Livelihood*, 86 COLUM. L. REV. 1103 (1986).

7. CHARLES L. BLACK, JR., CAPITAL PUNISHMENT: THE INEVITABILITY OF CAPRICE AND MISTAKE (1974).

write a monograph reacting to the suppression of the Intifada entitled *Let Us Rethink Our "Special Relationship" with Israel*.⁸

Charles's opinions were called abrasive and idiosyncratic, two things you don't want to be called if you hold reputation dear. He was not a leader but rather a prophet with a voice as visionary as a Skald's in an Icelandic saga. He was in no sense a public intellectual, and he never wanted to found a school or start an intellectual movement or issue a group manifesto. He was a private man who took up public causes, which is to say he was a lawyer. He was Ulysses, not Achilles. He was quite happy to have spent the Second World War out of combat, a man whose journeys were as important as his homecoming, but like Ulysses he could be fierce in battle; I would not repeat in this venue his words regarding those who ignored my work or who withheld the praise justly due Barbara's. And like Ulysses he was strong—so strong that only he could draw his bow. No one sounds like Charles; no one can. Who else could write, "We talk about the protection of our fellows from the suffering and indignity of want as though it were a matter of taking Mount Rainier under one's arm and jumping over the Pacific Ocean, when in fact it is a matter of deciding whether or not to help a frail person lift something that we can ourselves lift."⁹ Yet Charles insisted that his ideas be accepted because they were right, not because they were gracefully written. He referred many times to my assessment that his arguments were beautiful because they were powerful and not, as was so often said, the other way around.¹⁰

Charles's isolation was limned by happiness, and he took joy in his life. His warm gratitude for his own good fortune infused him even when he was disparaged by lesser men. He was grateful to be who he was, Charles L. Black, Jr. (he always kept the "junior" in his law writing out of a filial piety toward his brilliant, but difficult, lawyer father).

Charles was not self-effacing and he did believe he had been "gifted" with uncommon talents and creativity. But he was also aware that, until his marriage to Barbara, he was only a promising young man, and not so young anymore; and he believed that, but for her love (and it must be said, sacrifice) he would have become only a promising middle-aged man. And although one occasionally heard a malicious person say that Charles was vain, this was not true: Indeed his insensitivity to stylish dress would have fitted him for a role as an Oxford don. Rather he was simply handsome and he knew it, and he was neither unaware nor ashamed of this knowledge.

8. Charles L. Black, Jr., *Let Us Rethink Our "Special Relationship" with Israel* (1989), available at <http://www.middleeast.org/black/> (on file with the *Columbia Law Review*).

9. CHARLES L. BLACK, JR., *The Humane Imagination in the Great Society*, in *THE HUMANE IMAGINATION* 1, 10 (1986).

10. Philip Chase Bobbitt, *Foreword to CHARLES L. BLACK, JR., A NEW BIRTH OF FREEDOM: HUMAN RIGHTS, NAMED AND UNNAMED* (1998).

Charles had the sort of Southern face that is usually borne by someone named Lucius or someone with a surname for a Christian name, like Douglass with two s's. His almost Wellingtonian profile sat below large, dark eyes across a high cheek-boned, broad face over a smaller, almost delicate chin. An oval face rather than a square, Yankee one. There may be faces like this elsewhere, but I associate them almost wholly with the South and that struggle between Ashley and Rhett that goes on inside any Southerner with the slightest romantic nature. In Charles it was an innate classicism that overlay his romantic taste. One hears this in many of his poems, and it is not surprising that his senior thesis was entitled *Shelley as a Translator of Classical Verse*.¹¹

At Yale, Charles's office was at the beginning of a hall next to the main stairway. One afternoon I stopped by and sat in my accustomed place, across the desk from him. It was 1974 and a dean's race was underway. Charles observed that, in his time at the Law School, he had witnessed several such competitions. Because, he said, his office was by the stairs, professors coming from the faculty lounge to their offices would often stop by and inevitably the subject of the deanship would come up. And you know, he said, in all those years no one ever suddenly stopped during such a conversation, looked at me and said, "Why Charles, you'd make a good dean!"

And then he would laugh, that loud staccato laugh like the prop of a biplane getting started, and instead of dropping his gaze, his eyes would look straight at you to see that you laughed too.

Charles thought his wife very beautiful and very sexy. He was especially proud of showing me a painting of Barbara in a bathing suit at Barton Springs, a natural pond in Austin. He was frankly besotted with her. And he openly adored his children. He spoke of a visit he and Barbara had paid to one of Gavin's teachers at the Hopkins School who exclaimed on Gavin's exceptional precocity, to which Charles had said, "Yes" (of course they already knew that), "but what you don't know is that Gavin is a very loving boy—warm and kind." His relation with his sons seems very different from the one he had with his own father—without the struggles of will and pride. And he delighted in telling stories about Robin who, when reproached, "looked at me through hot tears of injustice and said, 'Yes I promised Daddy, but that was a lie.'"

He called me once and began by saying, "Do you know what I am doing? I am teaching my grandchild to smile." And it was true. He was leaning over her crib (it was Rebekah, I believe), catching her eye and saying something at which he would smile and she would respond in kind.

11. I have changed this slightly from its true title, *Percy Bysshe Shelley as a Translator of Verse*, to convey the substance of the thesis.

And he often spoke tenderly of Tom and Betty.

Charles was a Christian, and this may have slightly contributed to his professional isolation because his generation and the life of a law school faculty are not notably spiritual, much less Christian. In his conversations with me, Christianity appeared as “a literally believed-in mythical interpretation of life which reveals more truth about human nature than that provided by”¹² Freud and social scientists. Christianity offered man a chance to redeem himself and his society while also allowing him to see himself as he truly was with all the limitations of his nature.¹³

When I say that Charles was a Christian I don't mean that he was especially meek or even patient or that he thought the Bible was a license to clothe one's views in God's voice. I mean that he believed in Christ's life, his teaching about the primacy of love, the conviction that we are reborn in life when we accept God's love for us, and that this love will be manifested in an afterlife. Throughout the whole of his astonishingly varied work his theme was love—love as an interpretive method, love as a catalyst for the humane imagination¹⁴ that gives others the dignity we cannot thrive without, love as the instrument of self-knowledge (as in Charles's poem “The Flower Woman”¹⁵), love as the epistemology of human need, including the need for law.

Charles gave me permission to be a law professor, something I did not set out to become. When I finished Princeton I intended to write novels and plays, befitting the former chairman of the Nassau Lit. Law school was for me, as for so many, simply an acceptable period of study following a year in New York talking and drinking, but not writing, as Charles himself had had at Chumley's in the Village. Law school was meant to be a hangover cure, not a lifetime diet. Charles showed me, by example—the only way anything can really be shown—that one could live in the law greatly; that law need not sharpen the mind by narrowing it, as Holmes had said, but could make the mind more supple by forcing the abstract insight into the impress of the real. I knew that law comprehended philosophy, politics, economics, and ethics. Charles showed me it encompassed art as well,¹⁶ that law's categorizing disciplines, its insistence on routines and subject boundaries, its hostility to dilettantism, actually made possible, indeed invited ever-fresh aspiration and vision.

One day Charles asked me to sit in on a conference with a student who had come to him for advice as to whether he should leave law school to

12. STEPHEN SPENDER, *W.H. Auden Memorial Address*, in *THE THIRTIES AND AFTER: POETRY, POLITICS, PEOPLE 1933-1975*, at 268, 272 (1978).

13. *Id.* at 273.

14. See CHARLES L. BLACK, JR., *THE HUMANE IMAGINATION* (1986).

15. CHARLES BLACK, *The Flower Woman*, in *THE WAKING PASSENGER 16* (1983).

16. See Charles L. Black, Jr., *Law as an Art*, *YALE L. REP.*, Winter 1979-80, at 12.

write poetry. I was not very comfortable as by now I had come to love the study of the law and I felt an intruder on such a personal decision. Charles was very frank with this man, almost coldly so. After hearing the student present the problem Charles said simply, "If there is any poetry in you, it will come out." Harsh advice, particularly with a classmate looking on, but how true and thus how valuable, how unpatronizing.

Robertson Davies says in one of his novels, "Feed your bear and your bear will tend your fire." Charles learned that his creativity needed nurturing and though he was profligate with his talents and time (he once taught my classes at Yale College for six weeks while I was in the infirmary) he was also ruthless in protecting his inner fire. Once I sent him a book of a promising young man and I quizzed Charles when I next saw him. It was plain that he had not finished the book and did not intend to. "I read enough to see he's the real thing," he said, which entailed also that he wasn't going to read any more for fear of being influenced. It was more important for Charles to get his own thoughts straight than to be a part of the academic debate that depends upon reading and commenting.

When we were students we used to say that Charles was the only certified genius at the Law School, but this didn't mean he was invulnerable.

I knew that Charles smarted over a dismissive and petty review by Philip Kurland that quoted a paragraph of Charles's as exemplary of the sort of nonsense Black was writing. And so when Charles asked me what I wanted for graduation I asked him to copy out that paragraph, saying only that I had run across it in his book and loved it. He did write it out for me (though I got a painting too).

Charles was a lawyer with an *anima naturaliter juristica*. This was the source of his unique greatness, what kept his iconoclasm from being marginalized. He was not, as was often said, a poet disguised as a law professor. In fact the passage cited for this claim cuts the other way: In it, Charles warns of the "deadly peril of loss of the poetry of law [which is] the motive for solving problems, the sacred stir toward justice, our priceless discontent at the remoteness of perfect law."¹⁷

I once wrote that of the current generation of constitutional lawyers and law professors, only Charles ranked with the great figures of previous eras.¹⁸ That didn't do me any good with several of my colleagues in the field who felt that at least they had a right to think of themselves, as G.H. Hardy put it, in the Bradman class. I am sure that, at the time, my remarks were dismissed by some as the understandable but absurd views of a

17. CHARLES L. BLACK, JR., *The Two Cities of the Law*, in THE OCCASIONS OF JUSTICE 17, 31 (1963), reprinted in BLACK, *supra* note 14, at 48.

18. PHILIP C. BOBBITT, CONSTITUTIONAL INTERPRETATION 86 (1991).

worshipful student. Except that I didn't worship Charles, though I loved him dearly, and I was never his student, except in the important sense that I will always be his student. And—in retrospect even from so short a distance as today—wasn't I right? The great names of the 1950s, 60s, 70s—all these are unread today and so I will not name them. Charles's star continues to climb. *The Lawfulness of the Segregation Decisions*¹⁹ has now entered the canon of constitutional law as securely as the *Brown* case it justified. Structural argument is so much a part of the litany of history, text, and structure that strict constructionists can't even remember who identified and defined it.

Spender wrote:

I think continually of those who were truly great.
 Who, from the womb, remembered the soul's history
 Through corridors of light where the hours are suns,
 Endless and singing. Whose lovely ambition
 Was that their lips, still touched with fire,
 Should tell of the Spirit, clothed from head to foot in song.

....

The names of those who in their lives fought for life,
 Who wore at their hearts the fire's centre.
 Born of the sun, they traveled a short while toward the sun
 And left the vivid air signed with their honour.²⁰

Charles died eight months ago now. How long it seems. In the course of these months much has happened that makes me feel he may be glad to be rid of this world.²¹ Still I'd like to talk it over with him, for he was one who recognized, with Montaigne, that the greatest art is conversation, and I look forward to meeting him again someday, though he is hardly absent from my life now, even at this moment. We will embrace again in the old Texas way, loud and hardy at the *embrazo*, a little shy and correct just afterward, emphatic but slightly reserved, emotional and standoffish at the same time, holding within us the "sacred arrows of our friendship," the two of us bound tightly as they are bound.

And perhaps I will recite to him that paragraph that was once so disparaged and with which I close. He wrote:

19. Charles L. Black, Jr., *The Lawfulness of the Segregation Decisions*, 69 YALE L.J. 421 (1960).

20. STEPHEN SPENDER, *The Truly Great*, in STEPHEN SPENDER SELECTED POEMS 19, 19 (1964).

21. This Memorial Service was originally scheduled for late September, 2001. Cf. SPENDER, *supra* note 12, at 274.

One afternoon last fall I was on my way to my class in constitutional law. I was going to lead a discussion of certain technicalities having to do with the application of the Fourteenth Amendment as implemented by acts of Congress to voting and other rights. . . .

I happened to look up—all the way up, over the tops of the red stone buildings, into the sky as the Indians of Connecticut must have seen it before the white settlers came, with the great autumnal castles of clouds as far as the imagination could reach. And somehow very suddenly all this illimitable expansiveness and lofty freedom connected within me with the words I was tracing from the Fourteenth Amendment through the statute books—"privileges or immunities of citizens," "due process of law," "equal protection of the laws." And I was caught for a moment by the feeling of a commonwealth in which these words had not the narrow, culture-bound, relative meaning we are able to give them in the "real" world but were grown to the vastness that is germinal within them.²²

22. CHARLES L. BLACK, JR., *The Two Cities of Law*, in *THE OCCASIONS OF JUSTICE* 17, 29-30 (1963), reprinted in BLACK, *supra* note 14, at 47.