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THE GENTLEMAN WHO WAS THURSDAY

*Emily Fowler Hartigan**

When Marie Failinger and I began to play with metaphors as we talked about the scroll to honor Tom Shaffer, well, we did consider and discard some. From that heap of castoffs, I want to begin big and tell you the clearest discard, the biggest miss: Tom as a peach of a man. The positive side of the image is roundness as an indicator of wholeness, of even feminine circularity, of integrity. The down side of roundness need not be spelled out in detail (and we certainly do not want to suggest fuzziness). . . but there is that one lingering wild hare, the peach's suggestion of the *Southern* gentleman, that Atticus Finch or Walker Percy who never quite migrates into the contemporary scene. That Southern gentry anomaly is central to Tom, and the struggle with how he can almost redeem the notion of lawyer as gentleman is for me the story of Tom as round in the finest sense, like a magic circle cast by the best of the Spirit, gentle, true, deceptively radical, quietly if slowly revolutionary, and only just a little repetitious. (Consider the list of 274 of his publications we got in the conference materials—274! I certainly have not read all 274, but even within the ones I have, there is stuff I've seen more than once). Even that repetition becomes the mark of fidelity, however. For Tom is unwilling to leave even the anachronism, the gentleman lawyer, out of the circle into which he has invited a persistently motley crew of clients and friends and students and invisible rabbits (ask him about Elwood Dowd sometime).

It is important to let you know that I have not always been entirely kind about Tom. I have accused him of being sectarian, patriarchal, and downright dense. For those of you who may still be smarting over things I have said to you, let me just say that I have probably been meaner to Tom in his time, and he probably has encouraged such bad habits in me more than anyone else. Tom Shaffer has called himself most of those very things, and more—and that is part of why his writing is so disarming. Another reason is that once he has disarmed the reader, he does not cheat. He

* Adjunct Professor, University of Pennsylvania Law School. Based on remarks presented on a panel honoring the work of Thomas L. Shaffer at the Sixth Annual Symposium on Law, Religion and Ethics, held at Hamline University School of Law, October 14-15, 1993.

combines a brilliant intellectual grasp with a gentleness of approach that leaves the object of his analysis as a love object. Sandy Levinson, for example, has gotten Tom's attention over the years, and yet their mutual regard is unmistakable. Tom says that he thinks Sandy is talking about God, not epistemology, and names this speculation as violating the orthodoxy of the academic discourse. Tom says he risks being "intrusive" about opinions Sandy is "entitled to keep to himself" . . . but, Tom says, "still — that is what I think." Imagine accusing Sandy Levinson, in public, of working for the sake of heaven. Such is Tom Shaffer's obnoxiousness.¹ I have to ask if a gentleman lawyer would violate orthodoxies like that, so brazenly.

There are other orthodoxies that Tom has violated, however. He started pretty early making his wife Nancy visible in his texts. Then he started writing with his daughter Mary, treating her like a peer. He combined the use of story, literature, theology and personal address in his scholarship, with the practice of what Henri Nouwen calls "downward mobility." He went from being dean (and meandering off on principle for a while) to being the supervisee of two young female clinicians. He turned not to the perks of national stature, but to spending time watching two women cooperate instinctively as few men would (in Tom's estimation), and learning so profoundly from the experience that the depth of his receptivity was measured by Nancy's reported remark that it must really be hitting home because he wasn't writing about it. Tom was listening. That listening is increasingly visible in his writing, I think, and unmistakable in his friendships.

The relationship between Tom's friendships and his scholarship is multifaceted, but key to it is his notion that justice is something we give to one another. In *Slippered Feet Aboard the African Queen*², he talks about home, the place where one can put slippered feet in front of the fire, and about Kate and Humphrey. Tom is subversive, if you really look at it, in that *Journal of Law & Religion* article, because he accords Bogart all the room Bogart needs to own that bucket of bolts — and the reader is then left to deal with the subliminal remembrance that Bogart gave what he owned and loved up, sending her to sink a German ship. The lovability of God's material world organized in a property system is no vice in

1. 31 St Louis U Law J 73, 80 (1986).

2. 3 J Law & Relig 193 (1985).

this story, yet the unheralded other shoe is that the very goodness of Bogart's propertied world makes its sacrifice that much more powerful. Reading Tom's rendition reminds me of what Paul means for me in Romans 8, when he talks about all things turning to the good for those who are faithful. All things means even unshaven heathens like Bogart, and scruffy law professors and upper-class law students and indigent clients and most anyone rich or poor or strange or conventional who meets up with Tom. In that sense, justice is something Tom has been giving a lot of, to a lot of people.

To be complete, I should say that he has also given some of us real turns. A case in point is that very article, which takes on Milner Ball. Tom sees Milner as wanting too much law, and Tom says governments cannot give us justice. Here Tom resembles the anarchic strand in Martin Buber's thought; both tend to see evil as coming from communal conditions that pervert the natural goodness of humans. Making a classic Catholic state/society distinction, Tom is very leery of the state. The reduction of justice solely to its individual-to-individual face, however, negates the possibility that government is one of the human excellences; although in a persistently imperfect condition. If government and laws are seen as the ways humans attempt to use reflection and self-binding as correctives for initial imperfections, then they are the social correlatives of self-governance or self-consciousness. Our intentional legal attempts *as a community* to do good, to be more nearly just, are good if flawed. Tom's version in the African Queen piece does not acknowledge that. And then his friendship notion of justice, so long as it remains private, collapses into the sort of anarchic-conservative that reminds me of G.K. Chesterton's *The Man Who Was Thursday* (1936).

Thursday is the protagonist in a short novel about the anarchist conspiracy at the heart of law. Each of those on the Council of Anarchists is named for a day of the week; each has a (hidden) dual role as anarchist and police officer. Both Thursday and Sunday, who is President of the Anarchist Council and chief detective both, are poets for the law. In their poetic lives, they live the paradoxes of secret police and secret Council-member, known to their fellows only in each acknowledged, shared role that seems secondary or incomplete. Yet they turn out to be in uneasy community in both roles.

I have already acknowledged Tom as Thursday, and I think you will find in his writing both the most resolute officer of the law, secretly affirming the system as he advocates for the indigent and affirms gentleman lawyers, and the wildest rebel, resisting in his sectarian commitment to the Church any sovereignty of the secular law. Sunday is somehow the most powerful man in Europe, and the least known. Thursday and Sunday and Tom are tricksters, turning in both permanent discomfort and true dance (which may be two names for the same thing).

Thus, Tom's sense of the lawyer settles into a permanent discomfort with the lawyer role. However, he gives away to the dominant culture of law, a true vocation's name. That is, a lawyer is a *true lawyer* (in the sense Socrates refers to the true healer in the *Crito*) whether the bar lets her keep practicing or not; I want to retain the aspirational sense of lawyer, while Tom sets the word on the worldly side of a dividing line between the community of faith and the state. I think he gives away the difficult goodness of the word lawyer too easily. But in doing so, he gives us new, unfamiliar words to play with, such as one he called me a while back and which he now explains in places like the *Stringfellow festschrift* that Uncas McThenia has put together³—that word is "Erastian". Tom has gone back with his colleague Robert Rodes to identify from historical figures like Erasmus (16th century) possible stances of the faithful in relation to the state. This one seems to have a sense of responsibility on the part of the church for the wider society, and the possibility of holding public office without inherent personal corruption. Tom thinks Erastian theology is thin stuff, however. Here, he does at least two things I find typical of his work. First, he says, despite my considerable ragging at him about it, that we lawyers are Anglophiles all. He has not let my dissent stand, has not let me as a feminist speak for myself as not an Anglophile until I have exhausted all the other loves I have that have been suppressed by the dominant Anglo-European culture. This is Tom the gentleman lawyer. But then he makes that paradoxical redemptive move that is increasingly explicit in his work — he affirms as perhaps most fundamental, the need to be able to be prophets. And he does not mean someone very polite by his notion of prophet. So he is somehow a gentleman prophet.

3. Andrew W. McThenia, Jr., ed, *Radical Christian and Exemplary Lawyer: A Festschrift Honoring William Stringfellow* (Eerdmans, forthcoming 1995).

I think Tom is a gentleman prophet who is reaching the end of his cultural and political rope. The increasing sensitivity to economic injustice that eats at the edges of his "slipperd feet" betrays that he is letting closer and closer to the center of his work the fact that private property is held in place by the system of legitimized violence known as law. In the Stringfellow piece, he claims states are *always* in need of such radical critique—this is the anarchist suspicion of the entire enterprise of government. I must admit that I see something more particular to our times, in this ungentlemanly Anabaptist-loving Tom. There was a time when a sixteenth century figure like Erasmus could give us a good model for church-state relations, but I think it is now untimely. We now live in the unprecedented time of explicit arguments for fragmented truth, for multiple images of one God, for plural prophetic churches. Such multiplicity's potential for incoherence is, for me, made safe and even holy by my understanding of what is in my tradition called the Holy Spirit, or Sophia. That is, the ground of interfaith talk is one I trust because of the Unknowable God who created us in our differences, and then gave the sly promise that to love our enemy is to be free. That interfaith, shared public space, is where the lawyer must work. No one church is going to take over North America, and at the same time, we must all be responsible to prevent a religious Darwinism invited by Neuhaus and the U.S. Supreme Court, in that space. To keep that shared space *safe*, we need to recall the sort of being un-alone that Tom taps (from Barth, of all people, reminding me that Barth has a cuddlier side than Milner Ball tends to portray) in noting that we must not tell ourselves we are alone in invoking God. Knowing ourselves to be in ill-defined, overlapping, plural gatherings suggests the potential for the sort of "church" that makes paradoxical sense to me. Quaker Thomas Kelly called it the Fellowship of the Spirit: the unseen gathering in which we are most truly connected, not by our own lights but by God's mysterious web of incarnation. We find in the chaotic "public", the strangest fellows among all sorts of faiths and unfaiths. And, ironically, we are often resident aliens in our *own* churches most of all—as a Catholic woman, I testify to that mystery. In such mystery, we are gathered according to some coherence we cannot know. Always, the Scripture promises and Tom's Barth reminds us, we are in a community constellated by God's unknowable wisdom, and sometimes that community is our church, sometimes the church or synagogue or mosque of the Other. For some like me,

we are indelibly marked by more than one identifiable community, as I am both baptized Catholic and imprinted by the Quakers' Holy Silence. We are, in our churches, more plural and ambiguous (to borrow from David Tracy) than Tom directly acknowledges.

But he still tells and retells wonderful stories, about crazy and drunken priests and lawyers, even if his lexicon is disproportionately male. In fact, that's key to Tom's fidelity for me. He will not leave behind white males as he discovers the depth of difference. And he is the last of that breed that I would want to leave behind. So he will keep me engaged with his sense of the particular gathered people he has converted to and I have returned to, and I will continue to invite him to challenge its ignorance. I may even begin to invite him to come to Quaker Meeting sometimes, to mix as I do Mass and Meeting, so that he may *be* one of those anabaptist sort he lauds (though his faithfulness to the Hebraic suggests itself here as a parallel). The "anabaptists", too, have their deep limitations, reminding me that no one church is sufficient, in my view. Thank God S/He gathers us in all sorts and times and spaces of community, very much including this particular one, drawn together to ponder Word and Law and the gift who is Tom Shaffer.