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The Genius of Charles Black

Anthony T. Kronman[†]

Before he was a lawyer, and after he became one, Charles Black was a reader of the classics. As a student at the University of Texas in the 1930s, he studied Greek and Latin and read the ancient authors. In later years he reread them, with profit and delight, happy in their company as one is happy with old friends.

I remember Charles telling me, not too long before he and Barbara moved back to New York, that he'd been reading Homer again, as he did every year, and found himself more moved than ever by the stately passion of the poetry—a point he underscored by quoting a long passage in Greek with his rich Texas drawl. Charles's own sense of style, his view of law, with its emphasis on the architectural, even his estimate of human nature, which combined warmth and generosity with a certain Olympian coolness of judgment, were surely shaped by his engagement with the classics, which remained for Charles his whole life a source of pleasure and inspiration.

As a student of the classics, Charles understood the original Roman meaning of the word "genius," a word that derives from the older Greek word *genos*, meaning kind or type. In Latin, the word *genius* refers to the specialness of a person or place, its distinctive presiding spirit, the thing that makes it different from all others—its own unique self, which the Romans sometimes thought of as a god, the resident divinity that gives a person or place what we might call its special character.

There can be no doubt that Charles possessed a genius in this sense. In an age of colorless conformity and deference to conventional taste, Charles was one of a kind. He was a real character, in the exact and literal meaning of that phrase, hovering between originality and eccentricity. I can still see Charles, as vividly as I can see all of you, dressed in a pair of shorts and a T-shirt for the Law School's annual five-mile run—called (what else?) the Race Judicata—looking like all the other entrants except for the pipe that he smoked from the start of the race to its finish, replenished from time to time with tobacco that Charles carried in a pouch around his waist. I can see

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Charles in the faculty lounge, surrounded by a pile of 78s and a group of truly amazed students, talking about Louis Armstrong with the same appreciation with which he talked about John Marshall. And I can hear Charles practicing his Icelandic—a language he took up late in life and studied mostly by listening to records while he slept—in the main hallway of the Yale Law School, oblivious to the stares of his uncomprehending colleagues. Even on a faculty of vivid personalities, with more than their fair share of quirks and eccentricities, Charles Black stood out as someone very special. No one who spent five minutes with Charles could ever confuse him with anyone else. He was unforgettably different, possessed of that uniqueness of spirit the Romans called genius.

Today, the word genius means something more, or at least different, than it meant for the Romans. The word has undergone an expansion of meaning, first in philosophy and poetry, and now in the wider culture. For us “genius” signifies, above all else, a tremendous surplus of creativity, a superabundance of those human powers of observation and discovery that we all possess, to some degree, but which in a few rare individuals reach a level of potency whose effects are able, in an instant, to transform the way we think and feel about the world, and which, like works of art, demand attention and command respect, though for reasons we often do not comprehend. Genius is the name we give to this mysterious wellspring of creativity. Wherever it appears and whatever form its products take, genius is a kind of artistry, and the original source of much that is beautiful and true in the world of human culture.

Today, philosophically speaking, we are all democrats, whatever our party affiliation. We all believe in the equal dignity of every human soul, and in the moral imperative to respect this equality in our laws and institutions. But we also believe in the power of genius, and revere it as the highest expression of the spirit of individual creativity that is the moral foundation of our democracy. Charles Black was a genius in this modern sense as well as the ancient one. He possessed a power of creativity that could be neither satisfied nor exhausted, a power that overflowed the cup of all his works, of all his writing and painting and poetry, and in its presence those who knew Charles felt the amazement and mystery one always feels in the neighborhood of genius. Charles not only had a character, a distinctive genius in the older Roman sense of the word. He also possessed a great gift that set him apart from the rest of us, a gift that was, I suspect, to Charles himself at times a burden as well as a joy. It was a gift of vision and expression, a genius amazing to us all, beyond our power to imitate or even fully understand.

To attempt to analyze Charles's gift, to dissect it into its component parts, would be futile. Charles's genius can no more be defined than it can be denied. Certainly intelligence was part of it. But the greater part, I think,

was love—the great master passion the Greeks called *eros*, which according to Plato is the source of our attachment to everything beautiful and good, in this world and beyond. Charles possessed this passion to an exceptional degree. He not only knew the law and understood it with the calm power of reason. He loved the law, and his love for it carried his mind farther than a mind can go by reason alone. Charles's judgments were passionate judgments. His curiosities were passionate curiosities. His disagreements were passionate disagreements. He was a man in love with the law and in love with the world, and the more he thought about the world the deeper his love for it grew.

Perhaps the most striking thing about Charles Black's love of the world was his love of the people in it. It is possible to love the world but be indifferent to people. Some geniuses are like that. But in Charles's case, just the opposite was true. His love of the law, which is merely an abstraction, began and ended with his love of the men and women for whom the law exists. I do not mean that he found every man and woman lovable. Of course he didn't. No one but a saint could, and I have my doubts even about the saints. What I mean is that Charles found every human being to be a subject of interest, a marvel even, worthy of sympathetic attention. About other people Charles had the novelist's or psychoanalyst's curiosity, and he saw in them—in each of them—the old familiar tapestry of hopes and dreams and fears of which every human life is compounded. He was, in this sense, a humanist, and his boundless interest in the people around him sprang from an enlarged sympathy for them, which in turn sprang from love.

Once, shortly after he had finished his book on capital punishment, Charles said to me that procedural arbitrariness, which he had attacked so powerfully in the book, was not the real heart of the matter. Can't we see, he said, quoting a line from James Baldwin, that the sun goes down on us all? And seeing that, he asked, his voice shaking with intensity, how can some ever appropriate to themselves the lordly power to put others to death? The heart of the matter, for Charles, was the denial of the human community that includes the murderer too, a view which those whose powers of imaginative sympathy are less than Charles's have found hard to accept. Presented with legal elegance and great intellectual force, Charles's plea for the abolition of capital punishment was at its core a brief for sympathy, a plea for love, whose reality Charles could no more have denied than he could have denied his whole experience of the world, which rested on it.

Charles's lifelong encounter with the question of race was shaped by love too. One might speculate that perhaps it was the other way around. Perhaps it was his experience of the color line, while a young boy growing up in Texas, that provided the nursery bed for that enlarged sympathy

which marked the adult. Perhaps the injustice of segregation stung him into love. Or perhaps he felt the sting, when others around him didn't, because he was already predisposed to love—because he was already in love with the world and the people in it. In the end, it makes little difference. What matters is that his encounter with the question of race was driven by love, which here, as elsewhere, permitted Charles to see things that others didn't because he felt what they could not. Read again Charles's passionate attack on Herbert Wechsler's neutral principles—a sharp debate between two first-class minds. But Charles gets the better of the argument and his view is the one that has prevailed. And that is because Charles never forgot the people behind the principles, and he never forgot them because he loved them intensely.

We don't often think of genius as a virtue in the law. Judges, lawyers, and law professors need other, cooler qualities: judgment, caution, and the disinterested sobriety we call fairness. These are, no doubt, law's everyday virtues. Genius, by comparison, has an incendiary quality that causes us to be, if anything, a little anxious when it enters the precincts of law. Genius belongs in the realms of art and literature, which are always reckless and experimental to a degree the law cannot afford to be.

But Charles Black's genius wasn't something foreign to the law. It wasn't a threat to law's orderly existence. It was, in fact, much more like a redemptive force, without which the law becomes hollow and pointless. For Charles's humanism, his love of the human world and its inhabitants, his passionate sympathy for our failings and ambitions, reminded us all of what the law is finally for, and why it is worth caring about, let alone caring about for a lifetime. This is surprisingly easy to forget. Once in a while we need a genius like Charles Black to remind us of these things.

I say a genius "like" Charles Black, but that is already to speak of him as a member of a group, an example of a type, when the truth is that Charles was one of a kind. Charles was *our* genius, never to be forgotten, never to be replaced, and his incandescent heart still lights the world, and will until the sun goes down on us too. Thinking about Charles, in this solemn place, on a winter afternoon when the world seems all asleep, I am reminded of the words of the German poet Hölderlin who said of Socrates, a lover of the world like Charles, "he who has thought most deeply loves that which is most alive."¹ It might serve to describe the special genius of our beloved and passionate friend.

1. FRIEDRICH HÖLDERLIN, *Socrates and Alcibiades*, in *POEMS AND FRAGMENTS* 66, 66 (Michael Hamburger trans., 1967) (author's translation).