The Miscellanist

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Tributes

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Charles Black and I have known each other since he was about five and I about seven. We were in the same grade in school, because I didn’t start till I was seven, and Charles was very precocious and went at an early age to Mrs. Hubric’s private school before joining me in the second grade at Wooldridge Elementary. Charles’ precocity was sometimes a strain on his family. When his mother finally admitted that indeed there was no Santa Claus, he said to her, “I suppose you’ll soon be telling me the same thing about Jesus Christ.”

We were competitive, Charles and I, and always demanded of each other equal status. For example, we shared the generalship of the Great Southern Army, placing on the little shoulders of my five-year-old brother Joe the burden of being the entire enlisted service. We were then staunch supporters of the “Southern cause,” but, unlike most of our contemporaries in Austin, Texas, we soon grew out of it.

Charles and I have been the closest of friends, off and on, from those childhood days. “Off” for two years in which we did not speak to each other except in a tennis match we were forced to play, where we said only “Ready!” and “Serve.” The rift was over the editorial policy of our renegade publication, the Meatloaf Gazette—so named because it was distributed in the Austin High School lunchroom where the invariable fare was meatloaf (though it had brown gravy on Monday/Wednesday/Friday and red gravy on Tuesday and Thursday). Just as we had been co-generals, we were in this case co-editors. He had written the editorial and I had drawn the cartoon illustrating it. He wanted to title my cartoon.

At least that was the immediate cause, but underlying it was a fierce competition, mostly for the attention of young ladies on the staff. But

† Member of Congress from the 8th District of Texas, 1967–1980.
there was great significance in our rivalry for me. Nothing could be more of a spur to the intellect than to vie with one so brilliant as Charles Black, even if it caused tension.

As we grew older, the tension diminished. Our friendship was never again interrupted, though our contacts with each other were, particularly when Charles was in New York, teaching at Columbia and presiding at not altogether sober discussions in the bars of Greenwich Village, while I was practicing law in Texas.

But the unusual thing is that whenever we came together after long intervals, it was as if we had never been separated. We had travelled different paths, and had moved far from where we were when we had parted, but we had travelled in the same direction. So when I came to Congress and Charles held a chair at the Yale Law School, we met once again on common ground.

Congress was then dealing with many important constitutional issues: civil rights, the question of whether to seat Adam Clayton Powell, the Gulf of Tonkin Resolution, student riots and flag burning, and the like. I think Charles was in Iceland when the Pentagon Papers case came up, and I found later that on that subject we disagreed. But that, I think, is the only issue on which we ultimately came to different conclusions. Many other constitutional matters came up during my time in Congress, including busing, impoundment, impeachment, and extension of time for the ratification of the Equal Rights Amendment. Charles and I met and talked about all those subjects, and he greatly influenced my thinking and, subsequently, my votes.

Charles was fascinated by the legislative process, and my position gave him a window to look into it. He helped me formulate a federal open beaches bill and a consumer class-action bill. And when a three-judge court upset the Texas legislature's congressional redistricting, Texas congressmen needed a top constitutional authority to pursue their case. I called Charles. He came the next day. After a night of mulling over the question, which was a hard one because no such decision had been overturned at that time, he came to the breakfast table bleary-eyed and said: "We need as plaintiff someone who speaks for the polity of Texas. Who would that be? Why, Senator Bentsen. Can you get him?" I said I'd try, but I'd campaigned from Orange to El Paso for his opponent, Ralph Yarborough, and I had my doubts. But Bentsen thought it over for no more than two minutes and agreed. Charles argued the case in the Supreme Court and won, though not on the broader principled grounds he had urged the Court to adopt.

Of all the matters that Charles has helped me with, I think the most interesting and important was the War Powers Act. Both of us thought
the final bill was not positive enough in declaring Congress’ exclusive author-
ity to declare war or non-intervention, and I think recent events have
proved us right. I tried unsuccessfully to pass a substitute bill that Charles
and I had jointly formulated. The issue and the constitutional concepts
involved with it are matters of grave concern now, and his insight in this
field could be of real service today. I hope that from his new vantage point
at Columbia he will write on it.

All this interchange of ideas with Charles greatly enriched my time in
Congress, and we enjoyed it so much that we decided to put some of it in
writing. We recorded our informal talks on the “constitution of govern-
ment,” and an edited version was published by the Yale University Press
under the title *The Tides of Power*. Our reflections show, on Charles’s
part, more trust in Congress, and, on mine, more in the judiciary. We
each trusted least the institution we knew best. Perhaps this dichotomy is
what made Judge Gerhard Gesell say to us: “I enjoyed your mutual
monologues.”

Charles has always worked out his life so that he could do a great
number of things. As well as being preeminent in the fields of constitu-
tional law and admiralty, he is a poet, a painter, and an actor. He is also
a musician. When Celia and I were married in Judge Gesell’s office,
Charles was best man, played the wedding march on his harmonica, and
cought the bouquet. Charles likes to play all the parts, and it proved hard
not to be upstaged even at my own wedding.

To understand Charles, you should know his aim and direction, which
he articulated in response to a query of mine some 45 years ago. You see,
his father was an appellate lawyer, celebrated as one of the few who could
get a writ of error granted by the Texas Supreme Court, and it seemed
most natural and profitable for Charles to follow in his footsteps. His
father urged him in that direction, but Charles resisted. In the process
Charles wrote a poem that goes as follows:

    Give me a halter or a knife
    But do not make me spend my life
    Proving with reasons stout and strong
    That wrong is right and right is wrong.

When I heard that he had entered the Yale Law School as a student,
where he was leading his class with record high marks, I reminded him of
the poem and asked why he now wanted to be a lawyer. “Oh,” he said, “I
don’t care much about being a lawyer, but it’s the only respectable way to
be a miscellanist.” “What’s a miscellanist?,” I asked, and he answered:
“An expert in miscellany.”

There are few such experts today. This is the hey-day of the specialist.
Pundits, pollsters, and politicians are formulating policy. Men of narrow business and organizational experience are carrying it out. Such types will always be active in the process of government, but they need not, and should not, dominate its concepts and philosophy. They didn't in Jefferson's or Lincoln's time, nor during the era of the New Deal.

Give me the miscellanist!

Charles Black has achieved a high level in that calling. He once danced the role of second sedan chair bearer in a performance by the Ballet Russe de Monte Carlo, and more recently he was Big Daddy in Tennessee Williams' *Cat on a Hot Tin Roof*. But I think he is now in a position to go even higher. The talents of his kind of miscellanist were never more called for than today. He has a breadth and scope that may be even more important now, in the age of the specialist, than in those earlier periods in our intellectual history. We need to rethink the way our government is constituted, to examine its present faulty functioning, and to stop the dangerous drift away from constitutional process. No one is better qualified to do this than that distinguished miscellanist from Yale and Columbia, Charles L. Black, Jr.