

RECOLLECTIONS OF CHARLES FRIED

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Charles Fried was not literally larger than life, only because nobody is, but he came as close as anyone I have ever known. He was physically imposing, had a booming stentorian voice, and exuded dramatic flair. But other qualities contributed even more to Charles's aura. Among them, he was immensely learned across a range of disciplines, had a remarkably versatile mind, and perennially sought new challenges.

When I first met Charles in the summer of 1982, upon my arrival at Harvard Law School as an assistant professor, I already knew him by reputation. During law school, I had read Charles's philosophical manifesto, *Right and Wrong*,¹ and his celebrated article linking legal ethics to general ethics, *The Lawyer as Friend*.² While I was clerking, Charles had also published his paradigm-making book, *Contract as Promise*, which portrayed contract law as aspiring to enforce the moral obligation to keep promises in a messy world of sometimes unknowable intentions and good-faith misunderstandings.³ As it happens, Harvard Law School's Powers That Be had slated me to teach a section of Contracts during my first semester on the premises. My efforts to master contract law under the tutelage of *Contract as Promise* only enhanced my sense of Charles as operating on an intellectual plane inaccessible to ordinary mortals.

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1. CHARLES FRIED, *RIGHT AND WRONG* (1978).

2. Charles Fried, *The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relationship*, 85 *YALE L.J.* 1060 (1976).

3. CHARLES FRIED, *CONTRACT AS PROMISE: A THEORY OF CONTRACTUAL OBLIGATION* (1981).

Charles, however, was much more than an intimidating intellect. When I joined the Law School faculty, he and his wife Anne quickly invited my wife Jenny and me to dinner. At a time when senior faculty routinely tendered dinner invitations to new arrivals, Jenny noticed that a number of professors who had entertained us in their homes would fail even to recognize her in subsequent encounters. Not Charles. He regularly greeted Jenny in an exuberant tone of voice and with a delighted smile whenever he chanced to see her. That behavior was characteristic. Charles's unforced warmth brightened many a day for those who knew him. He had more friends, I would venture, than any other faculty colleague of his generation.

Although Charles was among the great, defining figures of Harvard Law School, his larger-than-life career also included highly consequential roles in other arenas. In 1985 the Reagan Administration tapped him to become Solicitor General of the United States. At the time of his appointment, Charles's academic work had nearly all involved private law, and he had little administrative experience. Yet Charles mastered his brief with alacrity and, I am told, developed warm relations with his deputies in the tightly-knit community of the Solicitor General's Office. After he left his post at the end of the Reagan Administration, Charles wrote a captivating memoir of his experience, *Arguing the Reagan Revolution*, in which he reflected on the challenges that he faced as a principled official serving in the politically charged environment of the Reagan Justice Department.⁴

Having already achieved distinction as a lawyer-philosopher and a Supreme Court advocate for the Reagan Administration, Charles made a foray into a different kind of public service when Governor William Weld nominated him to be an associate justice of the Massachusetts Supreme Judicial Court. Charles served with distinction in that post, but he reported privately that he felt "muzzled" when norms of judicial ethics, which he observed scrupulously,

4. CHARLES FRIED, *ORDER AND LAW: ARGUING THE REAGAN REVOLUTION — A FIRSTHAND ACCOUNT* (1991).

precluded him from speaking publicly on issues of law and public policy, including ones unrelated to the cases on his docket. When Charles let it be known that he would welcome reappointment to the Harvard Law School faculty, his colleagues' unanimous vote to invite him back was an occasion for celebration.

Upon returning to the Law School, Charles again made a distinctive mark. As a trusted counselor to and ally of then-Dean Elena Kagan, he helped heal a number of lingering divisions in the School that had impeded the hiring and recruitment of new faculty during the prior two decades. At the same time, Charles became a valued and inspiring mentor to conservative law school students and organizations.

He also, I think it fair to say, became a better teacher than he had been previously. Always warm and welcoming in relations with friends and colleagues, Charles began to engage more empathetically with his students, even in large classes. When I commented to him one day that his office hours routinely drew throngs to the corridor that we shared in Areeda Hall, he remarked with evident satisfaction, "Yes, I love it."

As the years wore on, I especially admired Charles's responses to two last professional challenges. At the time of his death, Charles was at work on a book about historical figures, including political leaders, who at some stage in their careers had radically rethought positions that once had appeared to define them. In a draft that I read, Charles signaled that he had embarked on a critical reappraisal of his own conservative political beliefs. By this time, he had long since become a public critic of Donald Trump. Going further, Charles now contemplated that a number of the philosophical premises to which he had long subscribed might not withstand the scrutiny to which he increasingly subjected them. I do not know where Charles's intellectual journey might have taken him if he had lived long enough to complete it. But I suspect he might have rejected the idea of completion as an illusion. For him, to be alive was to be engaged in a quest for truth that required a perpetual openness to new ideas.

While Charles's late-life willingness to reconsider his political commitments was intellectually brave, his stoic response to age-related physical decline modeled courage along a different dimension. The once-characteristic bounce having vanished from his step, Charles needed a walker to get about in his last years, and he came to his office later and left earlier. But if he was physically bent, he was temperamentally unbowed. Despite a series of hospitalizations, he continued to teach his classes, which he loved, ably and conscientiously until the very end. He remained among the most regular attendees at faculty workshops, for which he had always read the papers, and he often had witty and incisive comments. Charles's office hours were as crowded in his last semester of teaching as they had been a decade earlier. If he felt anything other than enthusiasm for the day's challenge as he wheeled his walker to the elevator and made his way to his last class only about a month before he died, he never let it show.

Charles's death occasioned immense sadness both at Harvard Law School and throughout Harvard University, where his intellect, warmth, courage, and charisma had won him innumerable admirers. In over forty years at Harvard Law School, I can recall no colleague whose death was felt by more people as a deeply personal loss.