CHARLES FRIED AS FRIEND

RANDALL KENNEDY*

Eulogizing one of the other greats of Harvard Law School, Charles Fried remarked that "Phillip Areeda was a supremely intelligent man."[1] That is true of Charles as well. His magnificent intelligence showed itself in his books, his articles, his classes, his arguments on behalf of the United States as Solicitor General, his jurisprudence as an associate justice of the Supreme Judicial Court of Massachusetts, and his numberless contributions to the Harvard Law School faculty over the course of six decades. He was an extraordinarily nimble, wide-ranging, and probing lawyer, intellectual, and scholar who was deeply devoted to the betterment of the university. These are important features and they mattered to Charles; he worked hard at being at the top of his crafts. I am delighted to recall the strength of his mind; doing so prompts a vivid recollection of him. Such memories, however, albeit welcome, are not what most prompt my gratitude and admiration. Those sentiments are best elicited by recalling Charles Fried as friend.

I met Charles in the summer of 1984 when I joined the Harvard Law School faculty. We became friends quickly and remained friends until the end of his life. Two features especially endeared him to me. He was, emotionally, quite generous. Some may find this surprising because often Charles came off as stern, even forbidding. He was exacting as anyone knows who encountered him as a

* Michael R. Klein Professor of Law, Harvard Law School. The Harvard Law School Federalist Society bestowed upon Professor Kennedy the Charles Fried Intellectual Diversity Award in 2017 and 2024.

1. Justice Charles Fried, *In Memoriam: Phillip E. Areeda*, 109 HARV. L. REV. 889, 891 (1996).

teacher, judge, adversary, or reader. But he was also a person capable of exuding sympathy and offering comfort. I discovered this in tragic circumstances in 2005 when my wife of blessed memory, Dr. Yvedt L. Matory, passed away due to melanoma. Charles and his ever-present wife, Anne Summerscale whom he adored, were tremendously consoling to me. On one occasion, they invited me and my three children to their home for a Sunday supper that became legendary in my household. Twenty years later, my children recall fondly that delicious meal featuring a chicken dish that gave rise to requests for seconds and thirds. They also remember the way that Charles talked with them. Though they were quite young, ranging in age from six to eleven, he treated them with respect, posing questions and sharing agreements and disagreements. They appreciated being taken seriously. For me, though, the most memorable thing about the evening was Charles's straightforward, unreserved, empathetic embrace of my sorrow. He expressed his condolence with a quiet sincerity that provided much-needed solace.

The other deeply attractive feature of Charles's persona was a genuine pluralism that enabled him to entertain friendships with people who occupied all sorts of positions on various political, ideological, philosophical, aesthetic and religious spectrums. From the outset, Charles and I had sharp disagreements. He venerated Ronald Reagan and Margaret Thatcher while I cheered their opponents to the left. He believed that the union movement in the United States no longer served much of a useful purpose. I championed unionism. He scoffed at Judge J. Skelly Wright's invocation of the unconscionability doctrine in *Williams v. Walker-Thomas Furniture Company*.[2] I praised the efforts of the judge (my former boss) to do what he could to discipline an avaricious firm. Charles maintained that the racial justice movement had veered off course with affirmative action and related doctrines. I fervently defended affirmative action.

In 1990 Charles defended President George H. W. Bush's veto of legislation aimed at overriding several recent Supreme Court

2. 350 F.2d 445 (D.C. Cir. 1965).

rulings that had weakened civil rights laws enacted in the 1960s and broadened by courts in the 1970s. Charles maintained that Bush acted rightly in vetoing what the president sneeringly called "a 'quota bill.'"[3] I suggested that Charles was insufficiently attentive to persistent racial harms. He suggested that I was insufficiently attentive to the ways in which bureaucracies and professional reformers habitually over-reach. Our public debates became rather heated. On my part there was shouting, and attempted guilt-tripping, and the energetic deployment of all of the standard left-liberal arguments. On his part, there was a steely refusal to give an inch. Yet we remained friends throughout.

Politics mattered to Charles. But he always kept politics in its place. It was for him a major concern. But never an all-encompassing concern. A pluralist, he resisted any totalizing impulse. He enjoyed the complicated, paradoxical, mysterious particularity of individuals and thus eschewed assessments that depended excessively on generalizations. He was quite willing to acknowledge that while, in his view, a person had espoused an idea he found to be ill-advised, even abhorrent, he nonetheless *liked* that person and was unwilling to abandon them solely on ideological, philosophical, or partisan grounds.

In one of his most cited articles, *The Lawyer as Friend*,[4] Charles defends the virtue of attorneys who zealously represent unsavory clients. He bases his defense on analogizing attorneys to "special purpose friend[s]."[5] In the course of doing so, Charles writes strikingly that "[j]ustice is not all; we are entitled to reserve a portion of our concern and bestow it where we will. We may bestow it entirely at our discretion as in the case of friendship . . . ."[6] I do not claim that I was entitled to Charles's friendship or even that I deserved it. I do

3. Adam Clymer, *Bush Assails 'Quota Bill' at West Point Graduation*, N.Y. TIMES (June 2, 1991), https://www.nytimes.com/1991/06/02/us/bush-assails-quota-bill-at-west-point-graduation.html [https://perma.cc/5EXP-9RBY].

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

5. *Id.* at 1072.

6. *Id.* at 1078.

assert that I benefitted from his friendship tremendously, deriving solace, learning, inspiration, and delight. Charles was a great friend. I miss him.