

## IN MEMORIAM: THOMAS M. FRANCK (1931–2009)

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About thirty years ago, talking with Tom as we walked across Washington Square, I made a not-altogether-flattering comment about a Washington personality we both knew. “Well,” Tom replied, “there’s no perfect person.” That his remark has stuck with me all these years probably says as much about my own naïveté—the impossibility of human perfectibility struck me as something of an epiphany at the time—as it does about one of the qualities that most made Tom the person he was: his ability to accept imperfection. In his friends and in the institutions he studied, Tom saw the sparkle, not the flaws.

In him the flaws were few. The maelstrom of World War II produced, in Tom, a person of German courtliness, English wit, Canadian idealism, and American irreverence. His father, a lawyer, was an established member of the Weimar aristocracy. As life in Germany became harder, Tom and his parents fled Berlin and ended up in Vancouver—“Vancouver,” he said, “because that’s where the boat stopped.” He never betrayed the slightest bitterness about being forced to leave his home and everything he knew. When I suggested that the experience must have been frightening for a little boy, he said that no, it was a great adventure and he loved every minute of it, especially throwing paper airplanes into the Panama Canal.

Tom served in the Canadian armed forces (and allowed that he had become “a rather good shot”). This I would love to have seen: Tom was the last person on this planet that I can picture smearing on camouflage and yomping through the British Columbian rainforest with some forlorn, tick-infested training regiment. He was easily the most urban person I have ever known. No New Yorker breathed in the city’s cultural ether more deeply. Tom was in every sense of the word a cultivated man, enthralled by art, music, theater, and literature. Novels, symphonies, and paintings were woven into his life and his writing—and his friendships. Tom continually encountered books and plays that he thought a particular friend would especially appre-

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ciate. It was flattering for friends to think that they were constantly on Tom's mind, and they were: He had legions of them around the world. He drew energy from them, and they from him. An evening's conversation with Tom replayed long afterwards in one's mind. Intellectual disagreement did not affect friendship with Tom: He relished "steel on steel," as he put it, and believed that rigorous argument sharpened one's thinking. He and I disagreed about many international law issues (though few constitutional ones), but those differences never hurt our friendship. Through three editions of our casebook on foreign relations law, the only difficulty we encountered was deciphering our scrawled handwriting on the Villa Mosconi napkin that recorded the original table of contents.

Tom's redoubtable charm lay in the immediacy of his focus: He utterly occupied the moment. He was engrossed in the person he was with. Modern man is fragmented, split up in time and place, living in the past, present, and future all at once, with one slice of consciousness here, another there, sometimes continents away. Tom was unfragmented. He was *all here*. He was seldom bored or distracted or preoccupied by phone calls he had to make or email he had to check or dangling strands from some earlier meeting that he had to tie together. For Tom, inattentiveness would have been the ultimate *lèse-majesté*. It was easy to imagine Tom sipping brandy and spinning off *bon mots* in a nineteenth-century London salon, replete with pocket watch and bow tie and pince-nez spectacles. He had a whiff of *ancien régime* about him, an ethereal, bygone dignity that has all but vanished in this age of Twitter.

Tom was not indiscriminating. Popular music left him cold. Through sheer incongruity he could get a laugh from an audience merely by referring to "Snoop Doggy Dog." He was not big on sports (vaguely recalling the name of one famous quarterback as "Joe North Dakota"). He affectionately classified people as species of animals, especially as various breeds of dogs: So-and-so was a terrier, or a St. Bernard, or a sheepdog. Tom was not intellectually omnivorous and had no taste for tedium, especially numerical humdrum; the whole health care debate was, he declared, a "MEGO"—*my eyes glaze over*. Tom was ever on guard, in his own commentary, against any hint of banality. One of his favorite movie scenes was from Woody Allen's *Zelig*, in which Zelig traveled far to receive his father's final parting counsel and insight at his deathbed, only to be told, "Save string." A trite or pompous presentation that Tom was forced to sit through not infrequently yielded a whispered aside: "*Save string.*"

On the many public policy questions that did engage him, Tom's insight was profound—spontaneously profound, it often seemed. He

once agreed to deliver a lecture in one of my classes; as we walked in he said, “executive agreements—right?”

I said, “No, *Chadha*.”

He replied, with surprise and some annoyance, “I can’t do this. I can’t give a whole class without any preparation.”

I said, “Yes you can.” Tom proceeded to deliver the most lucid, witty, rigorous fifty-minute lecture on the *Chadha* case that I have ever heard. The class was awed. I told him afterward that he ought to prepare that way for every lecture.

Tom’s dry humor was unrehearsed. Years later, memories of his quips still make me smile; the season brings to mind one in particular. After class, on a Halloween, he and I walked through Greenwich Village with a guest who had just been posted to his nation’s United Nations mission. The fellow had never been to the United States, let alone the Village. With visible, growing trepidation, he looked at the surging mass of cone heads, werewolves, and zombies and finally turned to Tom and asked, sheepishly, “Is it always like this?” Tom replied, “Always like what?”

Tom’s views on international law were an extension of his own civility. Tom believed that everyone deserved to be treated with decency and respect. He believed that honor, courtesy, and thoughtfulness should govern interpersonal relations, and that the same graciousness should govern relations among states. Some things simply were not done, either in polite society or in a well-mannered community of nations. In the latter, it is the role of international law to say what those things are. I once asked Tom whether he was a Kantian, and he said that no, he was an empiricist. But I look back on our conversations and his writings, convinced that, deep down, his first principles were intuitionist. His entire oeuvre, from his earliest work, *The Structure of Impartiality*,<sup>1</sup> to his landmark commentary, *The Power of Legitimacy Among Nations*,<sup>2</sup> reflects the same continuing insistence that international law be grounded on neutral principles of general application: a priori principles that he believed mandate a minimal, universal code of decorum. It would have been easy for someone so high-minded to slip into sanctimony. Tom never did. Tom was too smart to be certain, too ironic to be pious, too kind to be zealous.

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<sup>1</sup> THOMAS M. FRANCK, *THE STRUCTURE OF IMPARTIALITY: EXAMINING THE RIDDLE OF ONE LAW IN A FRAGMENTED WORLD* (1968).

<sup>2</sup> THOMAS M. FRANCK, *THE POWER OF LEGITIMACY AMONG NATIONS* (1990).

There's no perfect person. But if perfection in this flawed world entails precisely the right mix of perfection and imperfection, Tom Franck came pretty close.