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TOM EMERSON: LAW IN THE SERVICE OF JUSTICE

*Guido Calabresi**

THERE IS nothing flashy about Tom Emerson. A person from a distance who sees him talking to students or friends, might think, "A typical, rather traditional, perhaps a bit old-fashioned professor." Similarly, the first impression of someone visiting one of his classes or looking at a syllabus for one of his courses might be, "A teacher who is very concerned with covering the material." They would only have these impressions, however, until they looked at the faces of those to whom Tom was speaking, whom Tom was teaching. For then they would see an excitement, a commitment, a loyalty, and a love that would be more powerful in its depth and intensity than any that the greatest spellbinder could evoke.

How can this be? The answer lies in the fact that Tom has always lived—both completely and calmly—the ideals that others only preach. For some, craftsmanship and scholarly excellence are all too readily abandoned when they get in the way of the goal to be served. For others, a commitment to freedom, to the poor, to the outcasts, to *justice*, lasts only so long as it does not get in the way of scholarly or political advancement, and only so long as it doesn't threaten one's own comfortable life. Even worse, for many, if the scholarly model leads to a result that does violence to justice, then "justice" must be wrong. For Tom, however, craftsmanship and scholarly excellence can *never* conflict with justice and decency. If scholarship seems to lead to unfairness, it must mean that the scholar has not worked hard enough or has not been sophisticated enough. Where the self-indulgent (most of us) would be inclined to

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abandon either scholarliness or fairness, Tom would say “dig more deeply, be less lazy, be intellectually more daring, and you will see that the conflict disappears.” He would not only *say* it, he would demonstrate it; for that is the way he has lived his whole scholarly life!

Tom’s view is not based on a naive faith that all must work out for the best. It stems, rather, from a complex and highly sophisticated notion of what legal scholarship *is*. I suspect that he came to his view by watching the self-destruction achieved by many well-meaning but naive “realists,” and the social destruction wreaked by many well-meaning and equally naive “legal scientists.” Wherever it came from, it is as refreshing and as needed today as it ever was. The faithful model-builders and the cynics still abound, and that is fine, so long as one doesn’t take either their models or their nihilism too seriously. For scholarship (both model-building and model-destroying) in law can have only one justification, and that *is* to help us to achieve a more just society.

Tom knows this. Tom has lived with this knowledge, in a calm, unshowy fashion, even when it put his career and his own freedom at risk. Small wonder that he is an inspiration to all who commit themselves to law in the service of “Justice.” Small wonder that we wish him, at 80, many, many more years of continuing to inspire us by his writings and by his life.