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ORDINARY SACRAMENTS

EMILY FOWLER HARTIGAN*

Twenty-seven years ago, when I was a junior at Swarthmore College in the famous Sixties, one of my good friends explained to me with considerable passion what she knew I had never heard: the nature of Social Darwinism. She said she had not understood it initially, but it was one of the things she learned from her friend Richard Parker, then a year ahead of us. He had conveyed the deep irony of a system of thought that seemed "progressive," but that more fundamentally upheld a system of hierarchy as evolutionarily "natural" and thus justified. Just as the survival of the fittest was supposed to be genetic good news, the societal shakeout that left the poor at the bottom was all part of the selection by nature of those who were "best." This was circular reasoning of the most insidious kind, Richard had taught her.

I had come from two very conservative parents, from the South, from a huge public school, and from a legacy of considerable cultural traditionalism. Richard Parker was part of a class that produced a Weather underground bomber, Nietzsche and Shakespeare scholars of the "first order," and a richness of protest activity that my background allowed me to register but not integrate. Since that time, I have moved further and further into much of what Swarthmore began to teach me, intellectually, emotionally, and spiritually. So I sit here at Pendle Hill, the Quaker Study Center that was a presence full of "weighty Friends" when we were in college next door to it, and I am met with the memories and the recognition of Parker's passion for social justice that I had heard through a friend lightly all those years ago.

I am delighted to encounter that energy (to use his word) again. Richard Parker is a true force in constitutional thought, and his Populist commitment finds fertile landscape here.¹ I have written of the most notable historical (to those of us who have ever lived in Nebraska) instance of that Populism, celebrating William Jennings Bryan and the closest the Populists ever came to a national office, as well as suggesting that their most profound achievement was to name into being the "retained right" of the people for the initiative.² I think I share fundamentally (dare I use such a word) in Parker's love of the Populist

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1. Richard D. Parker, "*Here, The People Rule*": *A Constitutional Populist Manifesto*, 27 VAL. U. L. REV. 531 (1993).

2. E. Fowler Hartigan, *Derridoz Law Written in Our Heart/Land: "The Powers Retained by the People,"* 67 TULANE L. REV. 1133 (1993).

current of American political energy. And so it is with gratitude that I add to his account what I consider to be the missing "and" in a both/and about Populism.³ One face of that "something further" is the role of reflection in human affairs; another face of the same phenomenon, for me, is the role of that intellectualist phobia Parker seems to recapitulate, the fear of God.

For Parker never deals with the fact most apparent from Bryan's life: "the people" believe in God. They did at the time of the Scopes⁴ trial, and they do now. Despite the intellectualist drive to separate God from politics, most Americans do not maintain such a wall. The compliance studies I recall from the early school prayer decisions showed that something existed in what Parker characterized as "elitist"⁵ Court's decisions that the people found unacceptable, indigestible. Like Hendrik Hartog's pigkeepers in New York City,⁶ who defied the law for decades and thus created a de facto situation of recognized order despite law-on-the-books, teachers still put Bibles on their desks, and struggle (so a great many have told me, and commentators fear) to manifest their primary fidelity to their religious faiths. Ironically, the more the Court drives this faithfulness to witness underground, the less plural this belief is likely to be—the more dominant Christian. Either way, under a stultifying separationist doctrine or in a more open pluralism, the people are God-fearing in an increasingly fractured and fascinating way—they are recognizably, fundamentally religious.

There is good evidence—just look at the drug store or airport book stand—that the people are becoming downright mystical. Despite all the panic at "New Age" religion, consumers are buying what they think will help them reclaim their sense of spirit. Thus, to do what you love and let the money follow, recognizable as "Seek ye first the reign of God . . . and the rest in its own time will follow,"⁷ begins to seep into greed economics. The Tao of Physics and magical, mystical bears and Monks and Mystics tell the public that they have access to a state of consciousness that can work to undermine the structures of thought Parker attacks. So I want to suggest to him something about the story he uses to come back to the people, to the ordinary, to the non-privileged.

3. For an example of the feminist reasoning of "both/and," see generally Elizabeth Ann Bartlett, *Beyond Either/Or: Justice and Care in the Ethics of Albert Camus*, in *EXPLORATIONS IN FEMINIST ETHICS: THEORY AND PRACTICE* (Eve Browning Cole & Susan Coultrap-McQuin, eds., 1992). Under traditional Aristotelian thinking, to say "both A and not A" is a false statement. Under the feminist notion, we live and speak in flux, and speaking the fullness of the truth requires speaking in apparent contradictions (both/and).

4. *Scopes v. State*, 289 S.W. 363 (Tenn. 1927).

5. Parker, *supra* note 1, at 577 n.84.

6. Hendrik Hartog, *Pigs and Positivism*, 1985 WIS. L. REV. 899.

7. See generally Matthew 6:33.

When I read the story of *Mario and the Magician*,⁸ waiting for a draft of Parker's talk to arrive, I simply read it differently than he did, first time around. I had not read much of Mann since reading *The Magic Mountain*⁹ nearly twenty years ago, but I had a strong memory of the intense mysticism of snow and disease in the realm of Mynheer Peepkorn and his companions. Thus, I read the relationship of the magician to the people as more multidimensional than Parker does. I read it from a place in which the inversions of deconstruction happen without elitist intellectual complexities, because the mundane is sacred, and the ordinary is the miraculous. I read with a sense that the parents were horrified they had not protected their children from the spectacle, but that the children, with their fascination, were the best hope for a vantage point that would redeem the tragedy, in time.

However, even more centrally, I read with an ear to Cipolla's statements about his relationship with the audience. Mann wrote him as a profoundly sinister figure, yet he claimed an uncanny relation of self-giving. Because of my traditions of the liberation spirituality of newness, the creation-centered valuing of the shadow side of reality for its wholeness, and the "necessity" of sin lauded from St. Paul to Juliana of Norwich, I was attending to the story from both vantages. Cipolla was also God's creature; God created the serpent and put it in the garden. And so without thought beyond the text, I read the final passages about Mario's betrayal of his beloved's reality, and took to heart the narrator's strange openness to Cipolla: as the audience's laughter rang out, Cipolla himself was enfolded in the "undertone of compassion for the poor, bewildered, victimized creature."¹⁰ That compassion came from "Poveretto,"¹¹ from the poverty named by Cipolla and claimed by Cipolla for himself. The power of poverty is the core of the Christian story, the center of Buddhist thought, the hasidic holiness of rabbinic Judaism. Thus when Mario hurls himself around and two explosions ring out, and Cipolla bounds from his seat and then collapses, I simply read it as Mario's suicide and its destruction of Cipolla. I took seriously the interconnectedness that Cipolla claimed. I have gone back and re-read the end several times. I agree that the most plausible reading is that Mario needed to be disarmed because he was still alive. Yet I am unable to forget how the story went when I first read it, because I am so cognizant of the inversions history plays on us, and how hero and villain are so often reversed and returned and turned again. And I cannot help but wonder if

8. THOMAS MANN, *Mario and the Magician*, in *DEATH IN VENICE AND SEVEN OTHER STORIES* 133 (H.T. Lowe-Porter, trans., Vintage International 1989) (*Mario and the Magician* was originally published in German in 1929) [hereinafter *Mario*].

9. THOMAS MANN, *THE MAGIC MOUNTAIN* (H.T. Lowe-Porter, trans., Alfred A. Knopf, Inc. 1930).

10. *Mario*, *supra* note 8, at 177.

11. *Id.* at 167, 177.

such a brilliant writer as Mann did not know that he had written the climax with radical ambiguity, so that the reader could only "decide" who had killed whom, and how, after the fact. Cipolla "killed" or Mario would not have, and Cipolla died, either way or both, in poverty.

There are things which follow from this reading for me. One is to remind Parker that there is no single standard of the Good. The people make mistakes, just as any individual does. Somehow we know that we want to be able to make that judgment, and so there is more to politics than ordinary political energy in its simple form. Perhaps in its "simplicity after complexity," to paraphrase Emerson's idea,¹² the people are most likely to be right, but it is not just elitism which causes us to look back, to reflect. It is the ordinary process of learning.

Parker touches on the way such learning and ordinary goodness take place when he refers to the concern that judges' work is "infected by 'personal values' or 'political commitments.'"¹³ He argues against seeing those personal groundings as illicit. He also notes the way in which the Constitution has become an object inspiring even faith, evoking pontification and idolatry. The Constitution, he suggests, has become a fetish of belief.¹⁴ What he does not do, however, is to suggest how the need for connection that he says we have is related to the oldest form of community connection, religion (which itself mean re-ligare, to re-connect). He advocates being in touch with what is ordinary in oneself, but evades the most ordinary core of human energy, religious faith. He does not really deal with the sense of magic that led so many to gather to see Cipolla, or our growing sense that much of human life is not susceptible to capture in words or science or logic or even law.

By and large, Parker's rendition seems to me to loosen up the restrictions we put on ourselves as "reasonable"¹⁵ persons suspicious of political passion, and I applaud that "liberation"¹⁶ move. I would set boundaries, however; he thinks all issues ought to be open to the political process of majority rule, and I reply that neither slavery nor the restriction of suffrage can be open. He might well agree, as there are things necessary to the process itself, such as fair elections, even in his strongly majoritarian vision.

12. RALPH W. EMERSON, *The Over-Soul & Intellect*, in *ESSAYS AND LECTURES* 383, 415 (Library of America 1983).

13. Parker, *supra* note 1, at 561.

14. *Id.* at 564-65 & n.42.

15. *Id.* at 555, 572.

16. *Id.* at 540-41, 551 (quoting THOMAS MANN, *Mario and the Magician*, in *DEATH IN VENICE AND SEVEN OTHER STORIES* (H.T. Lowe-Porter, trans., Vintage International 1989) at 178).

Parker also does something wonderfully paradoxical in its value; he falls into his own trap, and yet his overall message is so strongly turned toward freeing us from disdain for the ordinary, that his "fall" illustrates the way in which such ordinary human mixedness is of inordinate value. After analyzing constitutional rhetoric as disdainful of the non-educated, non-elite, he addresses "your Anti-Populist instincts"¹⁷ which he says we all have. He then tells us to hesitate: "Consider the banality of what you were about to say. Consider the overheated hyperbole."¹⁸ He has brought us full circle. The "banality of evil" made famous by Hannah Arendt¹⁹ has caught the people-lover, and he has called a very ordinary response banal and overheated. This sounds disdainful and even elitist to me. It also sounds like something I do, and everyone I know does, as part of ordinary political energy. It is part of the necessary imperfection of human commitment to justice, of the wonderfully passionate and ordinary-and-extraordinary political energy Parker brings to his writing.

After writing the first draft of this essay, I went back to the fortieth anniversary of my Catholic grade school, which had serviced mostly working-class neighborhoods like mine. Most of my friends were from the two poorest neighborhoods, and included a "public school" fellow whom I had known since I was five, who had married a St. Rita's graduate. Although I had not seen him in thirty-two years, he had been with me in mind and heart (and body—he broke my collarbone through a gesture of rough-house affection when I was eleven) all that time because he was for me a fundamental figure of integrity and instinctual goodness. Whenever I was swamped by arguments about superior education and refined sensibilities, I thought of him, and his natural leadership. The other boys always wanted him to be a general (I was the sole female combatant/tomboy in our neighborhood "army"); he mostly chose just to be a sergeant. He made that male space safe for me and for the younger and weaker boys; he did little commanding except to outlaw bullying. Through the process of writing a dissertation on theories of social justice, navigating law school, and then teaching, the most particular concrete grounding of my abstract arguments for equality came in large part from him.

As I reflect, what was most stunning about meeting him now as an adult was that the most fundamental level of connection on which we communicated (even though he eventually, years "late," went to college, and has become a remarkably articulate man) was, intensely and most tenuously, about God and prayer. The issues of integrity and leadership values came with startling suddenness to stuff that sounded like the preachings of St. Paul that I have been

17. Parker, *supra* note 1, at 582.

18. *Id.*

19. HANNAH ARENDT, EICHMANN IN JERUSALEM: A REPORT ON THE BANALITY OF EVIL (1963).

working with in this Quaker Study Center, Pendle Hill, this year. It might be that re-connection with someone I had not seen since I was fourteen tapped an extraordinary medium of translation—but that itself is the miracle of the ordinary in God's loving creation, from my vantage. Much of what makes ordinary people trustworthy for me is that most have a sense of the Golden Rule and the Sermon on the Mount or the power of mitzvot or the God-claim of Islam. Quakers call it that of God in every person. Such religious touchstones are not talked about overtly all the time, but they are the carefully acknowledged grounds for the faith that allows people to get out of bed in the morning, and maybe even to participate in politics.

With all my intellectual pretensions in eighth grade at St. Rita's School, I chose to go to the public high school and through years of eventual agnosticism. I remember my rage at Sr. B. for asking me in front of the whole class to justify not following my sister to the Catholic girls' high school. I never dreamed that I would see her thirty-two years later, and know that in some inchoate way I was, when she embraced and kissed me, deeply blessed beyond words. Such blessings, growing out of cramped school-yards, old neighborhoods, and what one of my favorite "activist" priests whose ministry is in inner-city Camden calls the "tribal ritual" of Mass, are the half-hidden treasures of the ordinary person. Without them, Richard Parker would have no one to join his vision of movement. With them, I hope he does—and perhaps he will learn from their *full* ordinariness that which he may not disdain, but he does not mention.