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# *The Fervent Imagination and the School of Hard Knocks*

Thomas M. Franck

*I am certain of nothing but the holiness of the heart's affection and  
the truth of imagination – what the imagination seizes as beauty  
must be truth – whether it existed before or not.*

John Keats

Letter to Benjamin Bailey

22 November 1817

John Keats' lovely epigram, in a letter to Benjamin Bailey, seems to me to capture perfectly the quest of Philip Allott, one that long precedes and will, I am sure, long postdate his so-called retirement.

Of the holiness of his heart's affection many of us have our own validating stories, drawn from many years of our collegiality and friendship with Philip. There will be other times and places to speak of that. But, the heart's affection is but one of Keats' two sources of absolute truth. The other I will now speak about: 'the truth of imagination'.

Philip lives in the imagining of another world, and he insists that, if we are to be with him in truth, we must follow him into that world. He will cohabit with us in no other. Those have been his terms for as long as I have known and collaborated with him. I have always found them pretty stiff terms.

The imagining Philip inhabits is of another world, a world that is not, but was meant to be; a world in which is realized humanity's undoubted and amply demonstrated capacity for beauty, truth, and the perfection of the human potential.

But, I would say, that is not the world *I* inhabit; not the *real* world. Come, I would plead. Come and work with me in the truth of palpable reality. But Philip would not, insisting, instead, on the reality of what he calls 'the reality-made-by-consciousness'. This, I am sure, is what Keats meant when he wrote that 'what the imagination seizes as beauty must be truth.'

Well, you know, in a sense he is right. I mean, he is right in Keats' sense, which is a very big sense. That imagined world is not everything, but it is that essential part of everything of which we tend too readily to take leave, the part we misplace or jettison for speed or clarity or dexterity, the world of small triumphs and mean retreats. It is the part of everything of which we need reminding, as Philip has kept reminding us.

If truth, or, if you prefer, perfection can be imagined, then it exists in consciousness; and, once spoken, it tends to be greeted with a startled 'yes, but of course' – whether,

in Keats' phrase, it ever 'existed before or not'. The act of imagining it, with a mind bleary and blurred with all the real world's impediments, is a kind of willed act of creation which, like all creation, cannot ever have happened, even if *it need never have happened* and will never happen again.

So, Philip says, a truth may come into being in the act of imagining it. No one who has been a part of that procreation, and even those who have not, can be unchanged by an act of imagining perfectability and thereby challenging imperfection's truth, necessity or perpetuity. The idea that startles social consciousness also thereby summons an aspiration to perfection into contingent existence, 'whether it existed before or not'.

And imperfect our international system, our world of nations, of international crises and conferences, surely is. Philip has disdained tinkering with that surly reality: adding a secretariat here, lifting a quota there, electing another tribunal to interpret a vague set of rules to achieve who-knows-what.

In *Eunomia*, imagining 'a new order for a new world', Philip calls us, and challenges his students, to reinvent the fundamental underpinnings of – if not human perfection, then, at least – humanity's perfectibility. Dressed in clamorous white, the book jostles, among row upon row of dull brownish-green jackets clothing erudite tomes about arms control and countervailing duties, to establish its own contingent existence in a self-realized space, a place on the shelf and in the mind that had not previously been there, or had not been noticed. It demands that, with Philip, we see 'human consciousness as containing, at last, the possibility of its own self-redeeming through self-surpassing'.

Quite a feat for one book, or, even, one life! Philip proclaims the coming of 'a pure theory of social idealism which humanity has the opportunity to adopt . . . as it reconceives human existence. It is a theory which necessity now demands as a practical theory of social idealism on which humanity must base its willing and acting if it is to survive and to prosper in its self-creating future. And the theory of social idealism, pure and practical, must become the basis for a new international law which humanity will construct as the law of a new international society' (italics omitted).

Well, yes. But, *meanwhile*, should there be a set of rules for humanitarian intervention, or debt forgiveness, or tropical tariff preferences, or for the development of outer space? And, if so, what should those rules say? And who should apply them? And should there be penalties for non-compliance and what should they be? And how shall we reform the Security Council, or the World Bank, or the International Committee of the Red Cross?

Here is where the fervent imagination meets the school of hard knocks.

Shall we send Chris Colombo to discover the new route to the Indies, my dear Isabella, or shall we first try to resolve the problem we seem to be having with Torquemada and the Holy Father?

The answer, I venture to think, is 'neither' and, also, 'both'.

The pilot in Coleridge's *Ancient Mariner* wisely observes that 'the Devil knows how to row'. So do the angels, although it is probably not their favourite form of locomotion.

Have you noticed that among petty rhetoricians there is an approximately even split of usage between those who think that God, or the Devil, is in the details? There is nothing inherently good or bad, desirable or reprehensible, about a career of negotiating visa waiver agreements between inconsequential nations. If a judgment on the negotiator's merit is to be passed, it would have to depend. Depend on what? On the effectiveness of the way the agreement's details work out in practice? As measured by what? By the purpose the agreement seeks to advance? But, does it fulfil a good purpose? Well, that would depend upon the overall design of which the agreement imagines itself a part. To judge the part, it is necessary to know the design of the whole.

Of course, it is not necessary that every bit player, every set-carpenter, know the whole play; but, surely, somebody must. Someone must be the author, the producer, the director, the hero.

There is nothing inherently better about being possessed of 'the truth of imagination' or, on the other hand, being a practitioner of the school of hard knocks. One is great and good, or small and mean, according to the degree of skill with which one practises play-writing or the sewing of costumes. There are bad plays and ill-constructed sets and costumes. And, fortunately, there are excellent practitioners of each craft.

But while there is probably no inherent preference in heaven as between Beethoven and a really good plumber, there probably is a free-market value that affects what heaven thinks each is worth. That market value is an operational product of the economy of scarcity. One Beethoven, a thousand plumbers. It can't help but affect the comparative value of each.

Well, what is the market value – denominated in merits – of lawyers well versed in 'the truth of imagination' – I mean the ones who think about what ends of human perfectibility might, ultimately, be served by freedom of movement among persons free to move about, a freedom which, in turn, might be advanced by a visa waiver agreement? What is the merit-value of an excellent practitioner able to imagine the ideal truth which, eventually, becomes true because it has been imagined, whether it existed before or not? That lawyer's social value, surely, is determined by the ratio of people engaged proficiently in that particular form of creative activity as a ratio to those – diplomats working out the legal text of the visa-waiver, for example – who are busy with other forms of proficient craftsmanship, at any specific moment in the evolution of human progress.

What, then, should Isabella have replied to Ferdinand? Surely this: 'It all depends. How many great navigators are at our disposal just now who could discover the new world? And how many proficient theologian-diplomats do we have who could persuade the Holy Father to send Torquemada to start a monastery in Sweden instead of hunting Jews like Chris Colombo?' There is no contest in absolute merit between imagining the ideal and getting that little incremental thing done.

But, for better or worse, there is a competition in comparative merit-value, one created by the comparative scarcity of skills in a market-driven economy of personal worth. Happily, we live in an age of abundance when it comes to skilled lawyers

trained in the many schools of hard knocks through which pass the hard-nosed realists that grace our great law firms, our foreign offices and our tribunals. But, practitioners of law-as-the-art-of-creatively-imagining-our-perfectable-future: well, they are not exactly listed in the Yellow Pages!

That scarcity of the perfectionist's imagination cannot but drive up the price, perhaps even far beyond its inherent worth: if there were such a thing as anyone's inherent worth and it could be determined, which, of course, it cannot be.

So I cannot state with certainty that Philip Allott, the consummate practitioner-of-law-as-the-art-of-creatively-imagining-our-perfectable-future – oh, how he loves those invented, endlessly-hyphenated Germanic compound nouns – nor can I truly aver that he is the best international lawyer, that what he does is of greater value than what the rest of us do. I can say, however, with no fear of contradiction, that the vision at which he excels is so rare in our profession, in ministries, our chambers and our academies, that it makes him a counsel beyond price. May he be our teacher and counsel long enough, may he inspire enough of his students, as to begin to reverse the market economics that so outrageously inflate Philip's sky-high merit-value.