

TOM STODDARD, MARRIAGE EQUALITY, AND THE STODDARD FELLOWSHIPS: A HUSBAND'S REMEMBRANCE

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Three months after my husband Tom Stoddard died in February 1997, the author of *Angels in America* wrote an article telling us what happened next. Tom, “champion of lesbian and gay and human rights, legal luminary, and now a tutelary divinity of progressive people everywhere, arrived in Paradise: cocktails with James Madison and Ida Lupino, testimonial dinners, epic sex parties, day trips to hell to witness the agonies of slow-roasting homophobes.”¹ In that article, Tom’s friend Tony Kushner spoke of Tom’s life and work as having shown “the majestic power of reason—in the hands of a brilliant, courageous, indefatigable practitioner—to move mountains.”² Tony remembered “Stoddard’s impossible energy and his large-spirited politics, which anticipated goodness forthcoming from even the flintiest places, if one were willing to work for it.”³ Another friend, Edmund White, described seeing Tom for the first time at a Lambda Legal reception and thinking that he looked like “the young Kennedy.”⁴ Rich Meislin, who was a very close friend of Tom’s, remembered him as “brilliant, well-spoken, thoughtful, handsome, media-savvy and utterly charming.”⁵

Tom would have been grateful for those tributes, and he might even have managed not to squirm too much at the praise. Over the time I knew him, Tom became progressively more able to accept the gratitude of others. When the NYU School of Law established the

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1. Tony Kushner, *Last Word: The Lawyer, the Poet*, THE ADVOCATE, May 27, 1997, at 104.

2. *Id.*

3. *Id.*

4. Robert Murphy, *Fear of Disclosure*, POZ (Oct. 1, 1995), <https://www.poz.com/article/Fear-of-Disclosure-1851-5172>.

5. Rich Meislin, *Legacy—Tom Stoddard*, POZ (May 1, 1997), <https://www.poz.com/article/Legacy-Tom-Stoddard-12283-6968>.

Tom Stoddard Fellowship in the Rights of Lesbians and Gay Men, for instance, the New York Times asked Tom what he thought. "I grew up in the Midwest, in Glenville, Illinois, but I have lived in New York for 25 years," Tom responded. "The Midwestern side of me is slightly embarrassed; the New York side of me is thrilled."⁶

Tom would have been more than thrilled, I know, at the achievement of marriage equality in the United States, and the symposium recorded in this issue would have been an occasion of joy for him. Marriage equality was a major part of his work. In these few pages, I would like to remember some aspects of Tom's work and his life that bear on the subject of marriage. I would then like to comment, very briefly, on some related themes of his work and life.

I.

Tom became the executive director of Lambda Legal Defense and Education Fund in 1986. In March 1988, Tom published an op-ed article for the New York Times titled *Gay Marriages: Make Them Legal*.⁷ The occasion for that article was a controversy involving Sharon Kowalski, a lesbian who sustained severe injuries in an automobile accident. Kowalski had exchanged vows and rings with Karen Thompson; as Tom wrote, they were "spouses in every respect except the legal."⁸ For a protracted time following Kowalski's accident, Thompson was denied access to her and any ability to participate in making medical decisions affecting her.

Tom's article argued that for both practical reasons and reasons of basic justice, Kowalski and Thompson should have been permitted to marry. Marriage, Tom wrote, "can be the key to survival, emotional and financial," in part because "marriage triggers a universe of rights, privileges, and presumptions." "Marriage creates families and promotes social stability. In an increasingly loveless world, those who wish to commit themselves to a relationship founded upon devotion should be encouraged, not scorned. Government has no legitimate interest in how that love is exposed."

The following year, Tom wrote a longer article explaining at greater length, as the title stated, *Why Gay People Should Seek the*

6. Nadine Brozan, N.Y. Times: Chronicle (Feb. 22, 1995), <http://www.nytimes.com/1995/02/22/style/chronicle-870395.html>.

7. Thomas B. Stoddard, Opinion, *Gay Marriages: Make Them Legal*, N.Y. Times, Mar. 4, 1988.

8. *Id.*

Right to Marry.⁹ That article acknowledged that “in its traditional form, marriage has been oppressive, especially (although not entirely) to women.”¹⁰ But Tom argued, as he had a year earlier, that for reasons of fundamental equality, if two lesbians or two gay men wanted to marry, the state could not appropriately deny them the economic and practical benefits that it conferred on married heterosexual couples. Tom suggested that laws enforcing marriage inequality were central to the political subjugation of lesbians and gay men: marriage, he said, was “the political issue that most fully tests the dedication of people who are *not* gay to full equality for gay people, and also the issue most likely to lead ultimately to a world free from discrimination against lesbians and gay men.”¹¹ Tom expressed doubt that he would ever want to get married (he changed his mind), but he insisted on the obligation of the state not to discriminate. And he suggested that recognition of marriage equality could be a means “through which the institution [of marriage] divests itself of the sexist trappings of the past.”¹²

Practical advocates like Tom tended to touch only lightly on the idea that allowing lesbians and gay men to marry could cause other changes in the nature and future of marriage. That was so because opponents of marriage equality regularly seized on any talk about transforming marriage as evidence that their opponents proposed to kidnap, rather than embrace, the institution of marriage. Tom’s writings, though, respected both the argument that marriage can be an anchoring and stabilizing force, and the argument that marriage equality could distance the institution of marriage from marriage as a means of subordinating a wife to her husband.

The context for Tom’s 1989 *Out/look* article is telling, and I’m grateful to have the chance here to explain it. Tom’s article was one of a pair: the other was written by Paula Ettelbrick, a colleague of Tom’s at Lambda. Her article was titled *Since When Is Marriage a Path to Liberation?*¹³, and it expressed the deep reservations implied by her title. Tom was exceedingly fond of Paula. Paula and Tom were both concerned about the increasing vehemence with which disagreements within the movement were expressed. Tom told me that they hoped, through the articles and through a series of joint appearances based on

9. Thomas B. Stoddard, *Why Gay People Should Seek the Right to Marry*, *OUT/LOOK: NAT’L GAY & LESBIAN Q.*, Fall 1989, at 9.

10. *Id.* at 10.

11. *Id.* at 12.

12. *Id.* at 13.

13. Paula L. Ettelbrick, *Since When Is Marriage a Path to Liberation?*, *OUT/LOOK: NAT’L GAY & LESBIAN Q.*, Fall 1989, at 9.

the articles, to model a civil and respectful way for colleagues to disagree.

It also seems worth recording how Tom's lived experience of marriage affected his sense of the political issue. Tom and I had our marriage ceremony in December 1993. It was fabulous: music composed by Fred Hersch, an extraordinary meal from David and Karen Waltuck at our favorite restaurant, Chanterelle, and so many of our family and friends. I can tell you that Tom loved getting married and being married, as I did. He spoke to me repeatedly of how unexpectedly moved he had been to have his relationship publicly embraced. Tom, as a gay man born in 1948, had grown up believing that he needed to conceal his sexual nature in order to protect his emotional and physical safety. Marriage was a celebration of the gifts Tom's intimate life had brought to him before our family and friends.

Earlier in 1993, Tom had spoken about the way our relationship had influenced his understanding that "our movement is based on a very simple notion, the right to love. It's also based, I think, upon a somewhat broader, more demanding notion: the duty to love."¹⁴ Tom's marriage and his work were both about that duty, and in that way, his marriage and his work reinforced one another. In speaking about the way work on lesbian and gay rights issues was connected to broader principles of equality and justice, Tom said that "we want a richer, more diverse, more compassionate culture, in which everyone feels the possibility of self-expression and self-actualization. And that is what it's about. I say that as a true believer because it was true for me."¹⁵

I also want to record, briefly but with all the sincerity and fervor I've got, that Tom was absolutely the best and most loving husband ever. I don't know quite how to convey how good he was. I could tell you that our first date was on August 13, 1989, and that ever after, on the 13th of every second or third month until his final illness, Tom sent me flowers and a card. He didn't send flowers every month, he said, because he wanted them to come as a bit of a surprise. I could tell you that he never gave a speech in my presence—and I attended scores of them—in which he didn't thank me. I could tell you that during the terrible six months before he died, when Tom was suffering physically in ghastly ways I don't want to describe, Tom was constantly concerned about what my experience of his illness was, and

14. Robert Murphy, *The Personal Is the Pedagogical: A Very Brief Life of Professor Stoddard*, 72 N.Y.U. L. REV. 1027, 1032 (1997).

15. CHARLES KAISER, *THE GAY METROPOLIS: THE LANDMARK HISTORY OF GAY LIFE IN AMERICA SINCE WORLD WAR II* 346 (Grove Press ed. 2007).

about what my experience of his death and the aftermath of his death was likely to be. While I was trying to take care of him, he was taking care of me. But those are just markers of an affection that was too profound and oceanic for me to describe in any remotely adequate way, even if I had the eloquence and the capacity for self-disclosure to make the attempt. You'll just have to take my word for it.

II.

Tom ended *Why Gay People Should Seek the Right to Marry* by writing that he believed gay people would earn the right to marry "sooner than most of us imagine."¹⁶ Because this issue of the Journal of Legislation and Public Policy is primarily about what that victory might mean for the future—and because I want to stay focused on Tom—I would like to say a few words of hope for the future as an animating force in Tom's politics and in his life.

Tom believed in a visionary and joyous politics. When Tom was one of the grand marshals of the Gay and Lesbian Pride March on a rainy day in June 1996—and at a time he was seriously debilitated by illness—he cheerfully informed a reporter that "the rain is not a metaphor. The future of the movement is full of sun."¹⁷ Tom had an instinct for the sentence that might help him to shape a reporter's story. He didn't want a lead in the New York Times about a gloomy day and gloomy times, and he knew how to forestall a lead like that by giving the reporter a better one.

Tom's insistence on hope, I think, was partly prediction and partly prophecy. During the last years of his career, which coincided with the darkest days of the epidemic, Tom often spoke to friends, colleagues, and audiences who were spiritually exhausted by our losses and discouraged by political defeat. Tom invariably urged those listeners to consider the extraordinary velocity of the progress that lesbians and gay men had already achieved. Tom, as someone who had intently observed cultural change and had helped to make it, believed that progress for gay people had achieved a momentum that the forces of reaction would be unable to stop.

But Tom's optimism was part prophecy, too, in the sense that he sought to imagine, for himself and for his colleagues, a more just world, whether or not that world was inevitable or even, at least in the immediate future, likely. The imagining was the beginning of an effort to bring that world into being. When Annie Leibovitz photographed

16. Stoddard, *supra* note 9, at 13.

17. Metro Digest, *March Steps Off in the Rain*, N.Y. TIMES, July 1, 1996, at B3.

Tom in a classroom at NYU, she asked him to write a sentence that was meaningful to him on the blackboard. He wrote a famous sentence that Martin Luther King, Jr. had adapted from the writings of Theodore Parker: "The arc of the moral universe is long, but it bends towards justice."¹⁸ Annie, a wise and canny artist, then rearranged Tom in the photograph so that he was leaning slightly to one side, with his right arm extended. She didn't tell him what she was doing, but the photograph makes it unmistakable: Annie was composing her photograph so that the shapes of Tom's torso and arm formed two arcs, in order to suggest visually that Tom himself was part of the arc described in the quotation.

When Tom spoke at an event marking the inauguration of the Stoddard Fellowship, he ended with a paraphrase of Emerson: "I am defeated every day, yet to victory I am born."¹⁹ The sentences from King and Emerson both sound the prophetic note: Tom insisted on seeing injustice as aberrational and transient, and justice as fundamental and permanent. Tom always wanted to win, but Tom also believed that working for social justice, independent of the immediate outcome, had inherent value for the laborers and for the world.

III.

In his last years, perhaps more than before, the integration of Tom's personal life and his work took on a new depth. In December 1988 Tom learned that his T-cell count was worrisomely low, and in October 1989 he learned with certainty that he was HIV-positive when his doctor found lesions caused by Kaposi's sarcoma in his mouth. Tom stayed reasonably healthy for a long time. But his illness became another occasion for him to reflect on the connections between his interior life, his life among his family and friends, and his public life.

Tom, as he said, had to cope first with himself. When Tom told his mother that he was HIV-positive, she implored him not to tell his father, who had cancer. Tom's wonderful mother had only the kindest intentions, but her response renewed what might have been called a domestic version of don't ask, don't tell. Tom later took his father to Paris and told him over lunch on the Champs-Élysées. Both of his parents were supportive, as were Tom's beloved siblings John, who ultimately died of AIDS himself, and Linda. Disclosure to Tom's friends was sometimes difficult. "Sometimes they were stunned.

18. See Rev. Theodore Parker, Sermon: Of Justice and the Conscience (1857).

19. See David W. Dunlap, *Thomas B. Stoddard*, 48, *Legal Advocate of Gay Rights*, N.Y. TIMES (Feb. 13, 1997), <http://www.nytimes.com/1997/02/13/nyregion/thomas-b-stoddard-48-legal-advocate-of-gay-rights.html>.

Sometimes they cried. Sometimes they talked like I was going to die immediately. The thing that keeps me going is optimism for survival. They were stripping that away.”²⁰ In words that might also have been applied to his political work, Tom said that “the central issue is hope. . . . You have to believe there is a possibility of a real future, and then you have to work every day to try to achieve that future. It won’t come about by hope alone, but it won’t come about at all without hope.”²¹

Tom’s illness influenced his public work, and that public work, in turn, helped him to carry on for as long as he did. In addition to his work as a lawyer and freelance activist, Tom became the Vice Chairman of the American Foundation for AIDS Research. “I became the client as well as the lawyer,” he told a reporter. “The ‘they’ became ‘we.’”²² Tom believed that what he described as “a clear sense of mission and commitment” was helping to keep him alive.²³ As he said, “I wouldn’t wish this experience on anyone, but I find it absolutely fascinating. It’s rich, it’s complex, it’s filled with paradoxes. I’m very glad to be living this.”²⁴

Tom spoke often of the connections between the lesbian and gay rights movement and other anti-discrimination movements, particularly those struggling against racial and gender-based inequalities. And during his last years, Tom also spoke often of what he had inherited as an activist from his forebears and teachers, and what he hoped to help to bequeath to his successors. In the pages of this journal, it’s particularly appropriate to remember Tom’s deep gratitude to his teachers and colleagues at NYU School of Law, such as Professors Norman Dorsen, Sylvia Law, and Burt Neuborne; the unalloyed joy he found in working with the students in his classes at the law school; and the successes he anticipated for Stoddard Fellows and activists to come, though he wouldn’t know them personally.

Tom hoped for survival until only a short time before his death, but of course he had known what might happen for many years. “I feel as though I’m on a precipice,” he said in 1993. “I worry that I might

20. Jeffrey Schmalz, *Holidays and the Bad Tidings of H.I.V.*, N.Y. TIMES (Dec. 31, 1992), <http://www.nytimes.com/1992/12/31/us/holidays-and-the-bad-tidings-of-hiv.html>.

21. Murphy, *supra* note 4.

22. Dunlap, *supra* note 19.

23. David Margolick, *At the Bar: For a crusader whose time of glory has come, even AIDS fails to dampen the spirit*, N.Y. TIMES (Feb. 5, 1993), <http://www.nytimes.com/1993/02/05/news/bar-for-crusader-whose-time-glory-has-come-even-aids-fails-dampen-spirit.html>.

24. *Id.*

fall, but my perspective is now broader and deeper. I see an all-encompassing vista, one that connects the past to the future, one that ties me to all other people who have suffered.”²⁵

25. *Id.*