

February 2017

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Repository Citation

Evan Tsen Lee, *Calvin Massey, Gentleman Farmer*, 15 U.N.H. L. Rev. 321 (2017), available at http://scholars.unh.edu/unh_lr/vol15/iss2/10

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Commentary

Calvin Massey, Gentleman Farmer

EVAN TSEN LEE*

I'm a little uncomfortable with the assignment of "Closing Remarks," because although I may be the last one speaking this morning, this is hardly the end of the discussion about Calvin and his ideas. Our ideas live on in the minds of others long after we are gone, and our admiration for certain people does too.

A long time ago, there was a tradition at Hastings called the "Trivia Bowl." (Modeled on the College Bowl of the 1950s and '60s.) The faculty and students would compete against each other, and there was an emcee to introduce the contestants and keep things going. One year they dragooned me to be the emcee, and part of the job was to write up and deliver these humorous little intros. Calvin was on the faculty team that year. So I drafted up the intros and sent them to the contestants to make sure they were okay with them.

I was going to introduce Calvin as, "From Walla Walla, Washington, a thoroughbred jockey, Calvin Massey!" Because you know, the average jockey is about 4'11" and like 95 pounds. So I thought that was funny. But Calvin came to my office and said, "Why do I have to be a jockey?" He obviously didn't see the humor in it. So I said, "Well, what do you want to be?" And he said, "How about if I'm a gentleman farmer." I didn't think it was all that funny, but I guess he didn't think it needed to be funny. So gentleman farmer it was.

And of course as soon as the thing was over I forgot about it, and I'm sure Calvin did too. But as the years went by, I found myself coming back to it over and over again. Many or most of the Framers were gentlemen farmers, and their philosophy of governance presupposed that voters would have their characteristics. I think "the land" was a special thing to Calvin (whether in British Columbia or Maine), just as it was to the Framers. If you owned land freehold, and you didn't have a mortgage, then you weren't beholden to anyone. There was no one to coerce you into espousing their political views. As far as governance was concerned, your economic self-sufficiency meant you didn't have a narrow view of your own self-interest (except taxation and protection of private property). For the most part, you

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would vote your conscience -- your view of what was right and just, or if morality and justice didn't enter into it, then you voted for what was what we now call "efficiency." You weren't beholden to "special interests." Economic self-sufficiency meant freedom and independence, and freedom and independence meant uncorrupted judgment in public affairs. [Of course, at this moment in history, you can't help but think of Hillary and Trump, and God only knows how it came to this, but if there's one thing Calvin *didn't* have to suffer through, it was that.]

So much of Calvin's work was intelligible as work about freedom and independence, preventing aggregations of government power that threatened individual freedom. Calvin didn't love federalism because he had a romanticized view of statehood, he believed in it because he thought centralized power in the federal government was a bigger threat to individual freedom than states were. In most states, a tin-pot governor and amateur-hour legislators just aren't going to be as effective at coercing beliefs as an Executive Branch that contains the U.S. Treasury, the Justice Department, the FBI, and the CIA, not to mention the Pentagon and the Department of Education to tell us all how to teach our classes. Some colleagues thought that Calvin was a libertarian, and I honestly can't remember whether he embraced that label or not, but he sure as hell didn't want the government telling people what to think or how to behave in their private lives.

Still, for Calvin, and for me, there's more to being a gentleman than economic self-sufficiency, private freedom, and public virtue. Being a gentleman is also more than knowing which fork to use at a formal dinner, or how to write a gracious thank you note. A gentleman quite simply is the opposite of a savage. In the Hobbesian state of nature, the biggest and strongest wins. If I can take that food from you, then I do, because I can. And I think it's noteworthy that, in the state of nature, Calvin would have come out on top, because there weren't a whole lot of people bigger or stronger. He was giving up quite a lot to live in a civilized world.

Beyond that, a gentleman acts honorably and modestly. He doesn't boast, and he doesn't call attention to himself unnecessarily. If he does something good or noteworthy, he relies on others to recognize and celebrate it. And if no one does, then he contents himself with the satisfaction that the posterity will reflect a job well done.

I don't have to tell you that I have just described a world long gone. Maybe it never existed, maybe it's a childish wish for some "Golden Age" that never really happened. But one thing is for sure: today's world is endlessly crass, with people literally and figuratively screaming "look at me!" at the top of their literal and figurative voices. In the private practice of law, client development is something in between used car sales and online dating ("It's Just Lunch," don't you know). In the law schools, professors now spend at least as much time tweeting self-congratulatory posts and inventing self-flattering metrics as they spend writing footnotes or getting to know students. The worst of it is frankly disgusting and tawdry. (I

remember once in the faculty lounge expressing to Calvin my aversion to someone and his response: “Yeah, he’s one of the more oleaginous people around here.” I chuckled, and then I went back to my office and looked up “oleaginous” and then laughed out loud.) But endless self-promotion is now an accepted norm; we teach it to our students and we model it in our own behavior. A professor -- or, for that matter, any professional -- who practices modesty and humility is considered clueless, or, much worse, a chump. And a chump who sits at or near the bottom of the compensation chart.

So were Calvin and I born in the wrong century and into the wrong culture? Martha, you'll correct me if I'm wrong, but I can't help but think that one of the reasons you and Calvin and Ellen wanted to be on the East Coast was the thought that California was just not quite civilized enough. I still live in California, but I'm guessing that the East Coast is now hardly bereft of the gauche and boastful. I haven't quite given up on the hope that somewhere there's a small corner of the world where “Ladies and Gentlemen” is something more than just what the emcee says at the beginning of an evening's program. But even if my hope is in vain, the ideals of integrity and gentility cannot be destroyed. As long as there are people who continue to admire these ideals, they live on.

The ideas and ideals of Calvin Massey live on. His constitutional and jurisprudential ideas live on because we legal scholars continue to think about and discuss them. Every bit as much as that, though, his ideals of integrity and gentility live on because there are a few of us (“the Few and the Proud”) who shared those ideals with him. There will always be a few like us -- to be a gentleman, you don't have to have a pedigree, you don't have to own land, you don't have to have a fancy education. You don't have to be white, you don't have to be a man, and your sexual orientation doesn't matter. You just have to believe that “civilization” must mean something, and I will always remember Calvin not only as a great scholar and teacher and friend, but as the epitome of what it means to be civilized.