

## A BOOK THAT SHAPED YOUR WORLD — INTRODUCTION

KIMBERLY PRECHT  
BOOK REVIEW CO-EDITOR

T.S. Eliot wrote that the “end of all our exploring will be to arrive where we started and know the place for the first time,” and this is never more true than when we immerse ourselves in a book. A book is a journey that resides in stillness. If we are lucky, when we emerge from the stillness of reading, the world around us has shifted.

The legal profession imposes a heavy burden of strictly necessary reading and offers a healthy complement of supplementary reading besides. To celebrate the *Alberta Law Review*’s fiftieth volume, the book review editors invited friends and alumni to put aside for a moment their required reading and reflect briefly on the books that have shaped their approaches to life and the law. Aside from encouraging brevity, we set no guidelines as to the subject or style of these reflections. Also, we loosened the fetters of our usually strict citation practices and did not impose footnotes on contributors who chose not to include them. If you want to know exactly where a quote can be found, you will simply have to read the book and find it.

The reflections are arranged in alphabetical order by the contributors’ names, and what a varied lot it is! We were delighted to receive submissions from members of the bench, the bar, the academy, and the legislature. Contributors ranged from recent graduates to seasoned counsel, including more than one individual who graduated from law school *before* the *Alberta Law Review* published its first volume in 1955.

Choosing a single book proved a formidable task for many of our contributors, and indeed several individuals ended up writing about two, three, or four books. No doubt several would-be contributors are still mulling over which book they should have chosen. But we can take heart in this, for as Daniel Mol writes in his reflection, we do well to fear the man of a single book. As you read these reflections, we hope it affirms for you that the legal profession is not a profession of a single book, but one shaped by an abundance of books that bear out beautiful thinking, stories galore, truthful wit, even truth laid bare, and courses for our imaginations and intellects to follow and grow.

Thank you to all who contributed and encouraged others to do so, and may you always have time to read good books.

WILLIAM IAN MILLER, *THE ANATOMY OF DISGUST* (CAMBRIDGE: HARVARD UNIVERSITY PRESS, 1997)

ANNALISE ACORN\*

It was a late summer afternoon in the year 2000 (perfect timing to encounter a life-changing book). I was at a table for one on the patio of Sinclairs restaurant in Canmore. But I had company in my bag. While waiting to order a beer, I turned my attention, I thought momentarily, away from *The Three Sisters* to page one.

“Hi, I’m Tracy, I’ll be your server today. Can I bring you a beverage?”

“Listen to this,” I replied.

““The nausea of a hangover, however, is more complex, accompanied as it often is by feelings of contamination, poisoning, and self-disgust, as well as shame and embarrassment.””

“What *is* that?”

“William Ian Miller, *Anatomy of Disgust*.”

“Wow. The guy knows a lot about hangovers.... Did you want a drink?”

“I think maybe a Perrier, please.”

By then I was mesmerized by Miller’s introduction: a microscopic, comic, and acutely perceptive critique of Charles Darwin’s analysis of disgust as an evolutionarily adaptive rejection of bad-tasting, unfamiliar and therefore potentially poisonous food. With an intellectual mastery and playful agility I had never before encountered in an academic text, Miller uncovered the profoundly social and moral elements of disgust latent in the examples Darwin himself used to illustrate his theory.

“Here’s your water,” said Tracy. “Have you had a chance to look at the menu?”

“Thanks, just a second though — let me just show you this. So this guy quotes Darwin talking about a naked savage he met in Tierra del Fuego who poked Darwin’s dinner of cold preserved meat (something like spam, I’m guessing) with his (admittedly clean) finger. And then here’s what Miller says:

Food plays a role here, to be sure, and both actors share a deep belief that you pretty much are what you eat. The native recoils at the idea of what manner of man could eat such stuff; whereas Darwin fears ingesting some essence of savagery that has been magically imparted to his food by the finger of the naked savage. But

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\* Professor, Faculty of Law, University of Alberta. Professor Acorn was a faculty advisor for the *Alberta Law Review* between 1998 and 2007.

oral ingestion is only put in play here because food is acting as one of any number of possible media by which pollution could be transferred.

“Wow. Interesting. Can I borrow that from you when you’re done? And um...do you still want to order?”

“Yes, sure. The buffalo burger, I guess.”

“Excellent choice.”

One of the many privileges of being an academic is the susceptibility to having one’s life turned upside down by a book. My training was in analytical legal theory and I had (and still have) profound respect for its method, patience, and precision. But like many who try to find a voice within that tradition I was troubled by questions like: Who cares? And why so boring? Miller’s book changed my life because it opened up new and lively worlds of possibility for legal theory. Worlds that were every bit as intellectually rigorous and yet were vastly more sensitive to what it is to be an embodied human being awash with emotion and trying to make sense of conflict, morality, and justice.

Miller, the Thomas G. Long Professor of Law at University of Michigan, is trained in Old Norse, the Icelandic Sagas, and honour and revenge cultures. While he draws expertly on these texts, his range of sources is wonderfully broad and learned, and yet unfailingly entertaining. His writing is an endlessly lively conversation with so many different sources of insight. Yet he writes in a way that is not just accessible, but is actually of interest to ordinary people. As he puts it in *Anatomy of Disgust*, “I intend this book to reach across disciplines and even to make some small breaches in the monstrously thick wall that divides the academic and non-academic worlds.”

Miller’s work makes vital connections between intellect, humour, and experience. In part, his choice to focus on micro rather than macro analysis of human morality and conflict keeps the comic range accessible to him. His use of autobiography in almost all his work is invariably conceptually illuminating. His nuanced discussion of “upward contempt” for example, is woven into a description of his encounter with a bricklayer working on his Ann Arbor house. Here’s a line from that chapter that I have often had occasion to quote and that has given pause even to the most defiant of my young friends on their way to the tattoo parlour: “Still the classbound significance of tattoos is likely to survive the recent middle-class attraction to them for some time. There is not much difficulty in discerning the difference between tattoos designed to shock one’s parents and those designed to identify with them.” (Come to think of it, I probably misquoted Miller and said that the former type of tattoo might easily be mistaken for the latter!)

Like all Miller’s books, *Anatomy of Disgust* opens doors to fascinating other worlds. His animated conversations with so many classics reintroduces them to us as charming new friends. *Anatomy of Disgust* brought me to an appreciation, now bordering on obsession, with *The Theory of Moral Sentiment*, where Adam Smith’s genius about emotion dazzles on every page. Miller engages with people like Aristotle, Charles Darwin, George Orwell, Erving

Goffman, and Samuel Johnson in ways that connect you to them not just as fascinating fellow human beings, but as total livewires.

In watching the ways *Anatomy of Disgust* has been taken up by scholars in the past decade, however, I've observed something troubling about academic culture. While analytical legal philosophers will give vigilant attention to the minutia of what they and each other mean, and while "equality seeking" legal theorists seem more or less content to have their meaning broadly caught under the umbrella of "the progressive," it seems well nigh impossible for someone like Miller who is neither "analytical" in the strict sense nor particularly political, to get scholars to pay close attention to his meaning.

Miller is subtle about everything, including the normative. He doesn't preach. His primary aim is perhaps just to be a shrewd observer. But one central idea that I take from the book is this. Disgust is a core moral emotion and yet it is prone to significant and sometimes imperceptible moral slippage. Our moral response to the most heinous offence or vice is incomplete without disgust. Yet at the same time we are often disgusted by things that are (or should be) morally irrelevant. The moral punch behind disgust is good when it targets the hypocrite, the child molester or the racist. But it is also dangerous because it can accidentally hit the person with a big mole on his nose, bad breath or a clicking jaw. The mole, the stink, and the noise are disgusting — there's no point in denying it. But what we need to do is to be perceptive and careful about when disgust has moral force and when it doesn't. The task is to scrutinize disgust and to be aware of when it is doing crucial work as a moral emotion and when it is just acting like a grossed-out juvenile. Perhaps most importantly we need to observe what disgust is doing when it pops up between these two extremes.

Most commentators on Miller, however, have read him as flatly pro-disgust. Martha Nussbaum and Elizabeth Bangs for example both attribute to Miller an enthusiasm for disgust in places he would never tread. Bangs suggests Miller would enlist disgust in response to the infanticides committed by Andrea Yates to support a death sentence. There is, I think, nothing in Miller that warrants attributing that conclusion to him. But these misreadings are instructive. They show us, sadly, that people's association with scholarship and gravitas is so ingrained they don't pay as careful attention to intellectual insight delivered with a lightness of touch. But those who believe that vitality should be the soul of scholarship owe a great debt to Miller for daring to write the way he does and having the brains and learning to carry it off. I can't begin to count the ways that my life is better because Miller wrote this book, and I'll never forget that buffalo burger.

DALE CARNEGIE, *HOW TO WIN FRIENDS AND INFLUENCE PEOPLE* (NEW YORK: SIMON AND SCHUSTER, 1936)

GLEN ACORN, Q.C.\*

In 1941, at the age of 13 in Regina, I purchased out of my paper route income a paperback copy of Dale Carnegie's *How to Win Friends and Influence People*, perhaps because of its worldwide fame but more likely out of a desire to be more popular at school. The girls at Central Collegiate did not count me as a "dream boat," what with my less than robust physique and unremarkable facial features, replete, of course, with zits. The book intrigued me; I ate it up. Some 20 years later I started to re-read it but soon quit, appalled by the writing style, tone and approach being so hokey and cornball, to the point where *How to Sell Stuff to People* seemed a more apt title. (There was no hope the book would make a salesman of me; I could not sell a can of spinach to Popeye if the price was two cents a case.) In view of this reaction to the re-reading it is surprising that the book should be my choice here. However, the initial reading left a lasting impression. In retrospect, the book impressed on me the enormous value of learning how to befriend people, win them over, understand them, and appreciate their worth, traits required for success no matter what professional skills and knowledge one has. The usefulness of the book to me can be illustrated by the example following.

My law career has been devoted primarily to drafting legislation, 24 years with the Government of Alberta and 34 years and counting in private practice. Some draft Bills are quite long and involve myriad drafting problems and policy issues. A particularly difficult Bill can involve the preparation of over 12 drafts, followed in each case by a meeting with the client's representatives, who can number from one to 12 or so, with the meeting often lasting a full working day. By mid-afternoon, attention flags and eyes glaze over. I tried from the outset of my career to counteract this *ennui* by developing the ploy of lightening up the discussion with humorous quips. In 1990, a major law firm hired me to assist its client, the Alberta Government Telephones Commission, in the drafting of a very problematic Bill for the Commission's reorganization. The negotiations were difficult and involved many meetings. After the Bill was enacted, the firm's senior partner for the file wrote me a letter containing the professional compliment I have treasured most: "I never thought legislative drafting could be fun!" Surely, much of the credit for that compliment belongs to you, Mr. Carnegie.

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\* Mr. Acorn received his LLB from the University of Saskatchewan in 1950, was admitted to the Alberta Bar in 1954, and is still drafting Yukon's oil and gas legislation.

R.C.B. RISK, *A HISTORY OF CANADIAN LEGAL THOUGHT: COLLECTED ESSAYS*, ED. BY G. BLAINE BAKER & JIM PHILLIPS (TORONTO: THE OSGOODE SOCIETY FOR CANADIAN LEGAL HISTORY, 2006)

ERIC M. ADAMS\*

R.C.B. Risk's *A History of Canadian Legal Thought: Collected Essays* has one of the worst covers I have ever seen. Set against a monochromatic grey background and a fuzzy image of the interior of the Supreme Court of Canada float three disembodied heads: Bora Laskin, Frank Scott, and Edward Blake. With a deadly serious countenance and a steely gaze, three great legal minds from Canada's past seem united in a common purpose: to keep you from wanting to open this book. And what a shame it would be if they succeeded.

In 1973, Risk, an administrative law scholar at the University of Toronto, Faculty of Law, surveyed the field of Canadian legal history and offered a bleak assessment. "[W]e know almost nothing about our legal past," he surmised.<sup>1</sup> Today, thanks in part to Risk's pioneering work and his mentoring and inspiring of many others, the vibrant field of Canadian legal history is thriving. Initially influenced by American legal historian Willard Hurst, Risk's early work explored the law and economy of nineteenth-century Ontario. But in stepping from Hurst's shadow into the world of intellectual legal history, Risk truly left his scholarly mark. Americans have their Oliver Wendell Holmes Jr. and Roscoe Pound, the British their Frederick Pollock and A.V. Dicey, and Canadians assumed, in our reflexive modesty, that we had no one. One of Risk's singular accomplishments has been resurrecting the foundational legal thinkers and their ideas from Canada's past: Edward Blake's pairing of constitutional liberty and provincial rights; A.H.F. Lefroy's blending of British rule of law constitutionalism and federalism; W.P.M. Kennedy's legal nationalism; and John Willis's legal realism, among many others. Risk pays tribute to Canada's great legal minds of the late nineteenth century and early twentieth century by taking their ideas and contributions seriously, revealing the contours of Canadian legal thought and culture that scholars, lawyers, and judges crafted, and exposing the ways in which legal ideas are necessarily embedded in the broader social forces which surround them.

I knew none of these names — and certainly not Dick Risk's — when I began my graduate work in law. My application for graduate school boldly declaimed that Canadian legal historians had never turned their minds to Canada's constitutional history. I hadn't the faintest idea of what I was talking about. Early on, my supervisor nudged me in the direction of Risk's work and I was devastated by what I found. What was the point of producing inferior versions of articles Risk had already written? Risk had already tackled the forging of a distinctly Canadian constitutional law and profiled its intellectual architects and critics, and worse still he had done so in lively, engaging, and ever-clear prose. Despite my despair, Risk's scholarly enthusiasm sent me back to the constitutional scholars and lawyers he wrote about, to day-long parliamentary debates, to out-of-print constitutional texts, to law journals fraying at the seams, and to neglected archives. And in those distant words and worlds I

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\* Associate Professor, Faculty of Law, University of Alberta. Professor Adams has been a faculty advisor for the *Alberta Law Review* since 2010.

<sup>1</sup> RCB Risk, "A Prospectus for Canadian Legal History" (1973) 1 Dal LJ 227 at 227.

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discovered countless untold stories, mistaken assumptions, and forgotten characters. I discovered a dissertation worth writing and a career worth pursuing.

In 2006, the Osgoode Society for Canadian Legal History collected and published twelve of Risk's best essays introduced and edited by G. Blaine Baker and Jim Phillips. The book appeared just as I was preparing to join the University of Alberta, Faculty of Law. The first thing I wrote in my new job was a glowing review of this important and fascinating book. Trust me and not the cover.

STEPHEN COVEY, *THE 7 HABITS OF HIGHLY EFFECTIVE PEOPLE* (NEW YORK: SIMON & SCHUSTER, 1989)

**ROB ANDERSON\***

Stephen Covey's *7 Habits of Highly Effective People* is a must read for any aspiring lawyer, politician, or frankly, anyone seeking success in life. The advice given in the book may appear somewhat simplistic at first, but when the habits are applied in real life scenarios, I have found them to be effective in almost every circumstance.

The idea of self-mastery — taking responsibility for one's own successes and failures, ensuring goals are worthwhile and the path to achieving them is clearly outlined, and then prioritizing time in accordance with those goals — influenced my decision to leave the practice of law and enter politics. I decided that my interest in the law was really to help shape the laws governing our society in order to make them more just while allowing for more economic and individual freedoms. I have outlined and pursued a plan to achieve that aim.

Covey's concept of fostering interdependence, the idea of pursuing win-win solutions to problems, seeking first to understand then to be understood, and to achieve amplified successes through synergizing the strengths of a team, has been invaluable in the realm of politics. I find that when I apply these principles, amazing results are achieved; when I fail to do so, success is slowed and sometimes severely damaged.

And, of course, the idea of living this life to its fullest by "sharpening the saw" has reminded me consistently to develop myself physically, spiritually, and mentally and to focus on the relationships that, in the end, matter most.

My advice to my fellow U of A Law grads is to foster an abundance mindset rather than one of scarcity. Celebrate the strengths and successes of others by learning from and growing with them. There is no need to bring others down to succeed. Instead, one should focus on leading the way and blazing a trail, always inviting others to follow and be a part of it. Lasting and rewarding friendships and achievements await those who do.

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\* Member of the Legislative Assembly of Alberta (Airdrie), Official Opposition House Leader, Wildrose Finance and Treasury Board Critic. Mr. Anderson received an LLB from the Faculty of Law, University of Alberta, in 2006.



ERNEST WEINRIB, *THE IDEA OF PRIVATE LAW* (CAMBRIDGE, MASS: HARVARD UNIVERSITY PRESS, 1995)

JUSTICE RUSSELL BROWN\*

Consistent with the prevailing trends of the time, I had been schooled in tort law as a purely functional device. There were, to be sure, debates about what function it served — the loudest cheerleading was divided between (1) economic imperatives, and (2) a temporary prelude to, and poor substitute for, a public insurance scheme. That tort law served external, non-legal functions of some kind was, however, widely accepted and even assumed in the contemporary Canadian and Commonwealth scholarship. Its purposes could only be understood with reference to some non-legal, instrumentalist concern.

Although I loved tort law as a student, as a civil litigator I quickly became struck by the sapping effect of this impoverished view of tort law (indeed, of “law”) on my sense of professional vocation. Instead of focusing on rights and wrongs and on justice and injustice, I was evidently supposed to view my work as an exercise in achieving economic efficiency or in cobbling together a second-rate compensation package at the expense of insurers. But, who needs three years (or even three minutes) of law school to learn how to do that? Why even call it tort *law*?

Then, about 15 years ago, a friend lent me his copy of Ernest Weinrib’s *The Idea of Private Law*. I read it three times over before returning it and ordering my own copy. Professor Weinrib espoused a theory of private law (really, tort law) that was, as its fundamental characteristic, internal to private law. He understood and justified tort law with reference to its own concepts and principles, which, being internally intelligible, could not be explained with reference to the alien language of other disciplines such as the social sciences. Even trying to do so is futile, Professor Weinrib cautioned. We might as well try to explain the purpose of love as being to maximize efficiency by allowing for the experience of certain satisfactions without the transaction costs of repeated negotiations between the parties. Just like love, tort law serves only its own ends.

For a junior lawyer grinding out pleadings and scrapping it out in chambers, this was both revelation and relief. Admittedly, Professor Weinrib’s theory was, and is, controversial. The internality he identifies has been criticized as being not so much a characteristic as a value-laden goal, or at least based upon as a set of peremptory assumptions that does not account for much of the caselaw. For my purposes here, I don’t care. *The Idea of Private Law* restored my sense of vocation as a lawyer who seeks to do justice, and it influenced the course of my later career as no other book has.

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\* Court of Queen’s Bench of Alberta. Before joining the Court, Justice Brown was an Associate Professor of Law, Faculty of Law, University of Alberta. He has published several articles and book reviews for the *Alberta Law Review*.

H.L.A. HART, *THE CONCEPT OF LAW* (OXFORD: CLARENDON PRESS, 1961)

**F.C. DECOSTE\***

When, in my mid-thirties, I finally made good on my long-held desire and intention to attend law school, I was moved — the LSAT having been sat, the applications made, and the letters of admission received — to prepare myself for my new station by reading about law over the summer prior to the commencement of my first year in September. So off I went to the University Bookstore at the University of Saskatchewan and there I found, to my immediate delight, a book entitled *The Concept of Law* by one H.L.A. Hart. (I also picked up a student edition of Blackstone's *Commentaries on the Laws of England* but my affair with that text will not figure in the tale I'll tell here.)

My delight was short lived. Upon reading Hart, I found not the easy explanation of the very notion of law that I had hoped for, but instead an arduous and lengthy discourse that appeared to me part of some conversation of which I was very much not a part. I was flabbergasted with it. So having read it, I put it aside, I thought for good. However, in my third year, I took a jurisprudence course in which Hart's *Concept* figured prominently. And though Hart did not there become fully alive to me, by the course's conclusion, I did feel a lot less jilted than I had during the period of our summer romance.

Since that time, I have taught *Concept* numerous times (and shall again in Winter 2014), and I have read it countless times. His, it has turned out, is the book that more than any other has nourished me as an academic lawyer and in diverse and circuitous ways, set the course of my 26 years in the legal academy. Now, for anyone who has read Hart, this may appear a curious claim. For Hart does indeed remain dry, and his is a book that, in tone and style, remains very much a part of the arid analytical jurisprudence of his day. But here the substance of my tale really begins.

Hart has had this impact on my lawyerly life, and his book has become for me an intellectual desk reference of first resort, because it made the law come alive for me: it made sense, beautiful sense, of the substance of legal practice, and it made sense, necessary and critical sense, of the law's limits. This it did on account of four of Hart's monumental insights. First, there is the matter of his notion of the internal point of view that law, as such, requires of its practitioners, judicial, practicing and, as I never tire of saying, academic. For the law to do what law must, its officials, as Hart calls them, must be critically committed to it, they must not only think it makes sense but as well that it is normatively attractive and right. Second is his notion of the rule of recognition that renders the law as a communal practice that is everything and anything but a set of commands by some sovereign. Third is his notion of the minimal moral content of law as such and according to which through its necessary protection of persons, property, and promises, the law as such is a cognate of security and liberty. Finally there is his call for the law's subjects not to be mystified by the

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\* Professor, Faculty of Law, University of Alberta. Professor DeCoste has published numerous book reviews and articles in the *Alberta Law Review*.

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law but instead to judge it and predicate their obedience to it by standards of their own private making, lest otherwise they become “deplorably sheeplike” and, like the sheep, “end in the slaughter-house.” These four revelations have indeed served as the rudders of my intellectual and moral life in the law.

JACQUES MARITAIN, *MAN AND THE STATE* (CHICAGO: UNIVERSITY OF CHICAGO PRESS, 1951)

KEVIN FEEHAN, Q.C.\*

One of the most significant books in the development of my personal political philosophy, and therefore my philosophy of law, was Jacques Maritain's political philosophical treatise *Man and the State*, an assigned reading in my undergraduate degree.

Maritain, a French liberal philosopher, metaphysician, and Thomist theologian, was a central drafter of the 1948 United Nations Declaration of Human Rights and its advocate before UNESCO. He was an advocate of the philosophical schools of "critical realism" and "natural law ethics," and the political theory of "integral humanism."

In *Man and the State*, Maritain attempts to tackle, define, segregate, and differentiate the concepts of community, society, nationhood, the body politic, and the state, and argues that confusion between these concepts had serious ramifications for the history of the twentieth-century and in particular the loss of "the sense of the objective order of justice and law" (p. 7).

Maritain's commentary on the rule of law is instructive. He describes four types of law: the eternal, the natural, the common law of civilization, and the positive law. The natural law recognizes that "there is, by the very virtue of human nature, an order or a disposition which human reason can discover and according to which the human will must act" (p. 86), which he calls the "normality of functioning" (p. 88). Maritain argues that law and the knowledge of law are different things; "the law has force of law when it is promulgated ... only insofar as it is known and expressed in assertions of practical reason" (p. 91). Additionally, natural law is only law "because it is a participation in eternal law" (p. 96). The common law of civilization is an extension of natural law, arising from the circumstances of life in society, concerned with humanity as social beings (pp. 98-99).

Positive law, or the body of law as lawyers would study it, arises out of natural law "in a contingent manner" and "it is by virtue of natural law that ... positive law take[s] on the force of law" (p. 99). Human rights, entrenched by positive law, as "man's right to existence, to personal freedom and to the pursuit of the perfection of moral life, [belong], strictly speaking, to natural law" (p. 100). Human rights are therefore "inalienable since they are grounded on the very nature of man" and "have an intrinsic relation to the common good" (p. 101).

As a result, the rule of law as we practice it, written as positive law, grows out of, is founded upon, and may only be evaluated as against natural law and eternal law. If it is properly grounded in eternal law and natural law, it results in common good. If it is improperly founded, it may constitute order, but not justice.

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\* Partner, Dentons Canada LLP, Edmonton. Mr. Feehan received his LLB from the Faculty of Law, University of Alberta in 1978. He has taught Constitutional Litigation at the University of Alberta since 2000.

CHAIM POTOK, *THE CHOSEN* (NEW YORK: RANDOM HOUSE PUBLISHING GROUP, 1967, 1995)

THE EYE THAT BLINKS

HADLEY FRIEDLAND\*

I first read *The Chosen* by Chaim Potok when I was an adolescent. It is a book about adolescence, about friendship, about baseball, about Judaism, and about America in the 1940s. But it is also a book that grapples with our most unanswerable questions about human suffering, about pain, and about the value of human knowledge and compassion. These questions are set in the personal lives of two unlikely friends, against the backdrop of the horrors of the concentration camps and the formation of Israel. Knowledge is valued, sought after, even revered throughout the book, but a “mind without a soul” is considered worse than anything else, a point made in silence by the father of one of the main characters, and reinforced by the discovery of the scope and scale of the efficient, industrialized murder of six million European Jews.

The whisper of an answer to these questions, incomplete and tenuous, is our ability to make meaning out of our suffering and that of others. The passage in the book I return to again and again throughout my own life is the point where the narrator’s (Reuven) father tells him:

Human beings do not live forever, Reuven. We live less than the time it takes to blink an eye, if we measure our lives against eternity. So it may be asked what value is there to a human life. There is so much pain in the world. What does it mean to have to suffer so much if our lives are nothing more than the blink of an eye?” He paused again, his eyes misty now, then went on. “I learned a long time ago, Reuven, that a blink of an eye in itself is nothing. But the eye that blinks, *that* is something. A span of life is nothing. But the man who lives that span, *he* is something. He can fill that tiny span with meaning, so its quality is immeasurable though its quantity may be insignificant. Do you understand what I am saying? A man must fill his life with meaning, meaning is not automatically given to life. It is hard work to fill one’s life with meaning.

This is not the tired platitude of “everything happens for a reason,” but rather, an assertion of the human capacity to make meaning out of everything, from the most personal and mundane to the most heinous and atrocious suffering, and thus, in some small ways, transform it for ourselves and others.

Some of my favorite legal theorists, Robert Cover, James Boyd Whyte, Louis Wolcher, have made the same point about law — that at its core, law is about making meaning. At its best, it is about creating a tolerable meaning about the senseless suffering life is full of. At its worst, or perhaps in just the majority of day-to-day practice through human and corporate demands and a labyrinth of technical and procedural requirements, law can easily seduce us into becoming a mind without a soul. It is hard work to resist this, yet we can. I was

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\* PhD candidate and Vanier Scholar, Faculty of Law, University of Alberta. Ms Friedland received her LLB from the University of Victoria in 2008 and her LLM from the University of Alberta in 2009.

reminded of this recently when I watched a provincial court judge ruling on a child welfare matter he could have disposed of in seconds, take a few extra minutes to talk compassionately and meaningfully to the sad, nervous teenage girl at the centre of the matter. I was heartened to recognize, once again, in that moment, the power of the eye that blinks.

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MICHAEL ONDAATJE, *THE ENGLISH PATIENT* (TORONTO: MCCLELLAND & STEWART, 1992)

**TAMI FRIESEN\***

She had always wanted words, she loved them, grew up on them. Words gave her clarity,  
brought reason, shape. Whereas I thought words bent emotions like sticks in water.

– *The English Patient* by Michael Ondaatje

Born to a farmer and an elementary school teacher in southern Alberta, and raised up in the Mennonite Church, I was not exactly worldly when I started my Arts degree at the University of Alberta. My first year English class was a revelation.

I had always been a voracious reader: a lover of words. I moved easily between my mother's collection of Canadiana — Margaret Atwood, Mordecai Richler and the like — and my own collection of fantasy novels — J.R.R. Tolkien, David Eddings and anything depicting epic battles between good and evil. But university changed the way that I read, the way I thought about words.

In my second year of university, I received a copy of *The English Patient* for Christmas. I inhaled it. I read it cover to cover. I swallowed it whole. And it proved to be the full course turkey dinner of books, with extra helpings of mashed potatoes, gravy, and pie. If I could have crawled into it and lived there forever with Hana, Kip, Caravaggio, and Almasy in the villa, I would have. No other book before or after has satisfied me more.

*The English Patient* shaped my life in a very tangible way in that it took me to Ontario, where I obtained a graduate degree in Canadian Literature. I studied Ondaatje's work with great focus and intensity, and I learned how to use large and weighty works like "historiography" and "metafiction" with a straight face, and in context. Eventually I found that while I still loved words, I no longer trusted them. If history was a type of fiction shaped by the teller, then so was any claim to truth.

I've been a lawyer now for over ten years. I still love words. I spend my days analyzing, choosing, bending, and shaping them. And I've learned to trust them even less.

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\* Ms Friesen received her law degree from the University of Alberta in 2001. She served on the Editorial Board of the *Alberta Law Review* during her degree.

JEROME FRANK, *LAW AND THE MODERN MIND* (NEW YORK: COWARD MCCANN, 1930)

JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE* (PRINCETON: PRINCETON UNIVERSITY PRESS, 1949)

HENRY HART AND ALBERT SACKS, CASEBOOK FOR “**THE LEGAL PROCESS**” AT HARVARD LAW SCHOOL (1958-59)

### DALE GIBSON\*

When I was a law student, between 1954 and 1959, most Canadian law schools preached legal positivism. Law was presented as a body of precise and immutable norms from which those well enough versed in juridical algebra could calculate invariable solutions to legal problems. Even practicing lawyers mouthed positivist platitudes that they knew were nonsense.

Early on, I encountered Jerome Frank’s “American realist” classics, *Law and the Modern Mind* (1930) and *Courts on Trial* (1949). A New Deal lawyer, administrator, and judge, Frank explained in psychological terms the legal schizophrenia that had puzzled me, and argued for a “realist” approach to the factors that actually influence judicial decisions, including judges’ personal biases and digestive upsets. Then, as a graduate student at Harvard Law School in 1958-59, I enrolled in an experimental course called “The Legal Process” being offered for the first time by Professor Henry Hart, another former “FDR Brain Trust” lawyer, and his colleague Albert Sacks. Their messy multigraphed “tentative edition” course book described a great variety of actual and hypothetical legal scenarios, which their notes and class interrogations nudged students to analyze by an approach midway between positivism and realism. Their approach acknowledged that adjudication must involve human discretion, but asserted that it is usually informed by historically-developed and broadly-shared community values rather than idiosyncratic prejudices and impulses.

Although Hart and Sacks’ casebook never evolved beyond a “tentative edition” during their lifetimes, a hardcover edition was published by Foundation Press in 1994. Their Legal Process course eventually influenced thousands of lawyers and law professors — to the extent that the direction it pointed is now considered the “third way” of Anglo-American jurisprudence.<sup>1</sup> Their modified realism nourished my entire academic and practicing career.<sup>2</sup>

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\* Former Belzberg Professor of Constitutional Law, University of Alberta; Distinguished Professor Emeritus, University of Manitoba. Mr Gibson has written many articles for the *Alberta Law Review*.

<sup>1</sup> See WN Eskridge & PP Frickey, “The Making of the ‘Legal Process,’” (1994) 107 Harv L Rev 2031.

<sup>2</sup> See e.g. Dale Gibson: “Blind Justice and Other Legal Myths: The Lies That Law Lives By,” (1987) Dalhousie Review 431; Dale Gibson, “The Real Laws of the Constitution” (1990) 28 Alta L Rev 358.



A.P. HERBERT, *UNCOMMON LAW* (LONDON: METHUEN, 1935)

WILLIAM H. HURLBURT, Q.C.\*

This is a review of *Uncommon Law* by A.P. Herbert, a book which helped to shape my view of the law even before I went to law school. It was published in 1935 in a country far away, and consists of some 66 specific pieces, most of which appeared first in *Punch* magazine, and which are characterized by their satirical approach to life, and in particular by their satirical approach to the law, lawyers, and judges.

The underlying message communicated by the book is that people, particularly lawyers and judges, should not take themselves too seriously.

Many of the pieces feature the adventures of Albert P. Haddock, an *enfant terrible* who is impudent, funny, and able to penetrate the absurdity of much that humans do. The coincidence of initials between the author's name and Haddock's name suggests that one identifies with the other.

Each of the 66 pieces raises a legal problem and purports to show how the problem is dealt with, or not dealt with, by a court. The nature of the problems ranges from the constitutional to the apparently trivial. I will mention a few examples. Unfortunately it is not possible to include in this note the facts and reasoning on which the decisions, or in a few cases non-decisions, were made, but it is safe for the reader to assume, as is the case, that high standards of reasoning and literary art inform the whole book.

Cases reported by Herbert show that Magna Carta is not the law of England, that the House of Lords will be bound by common sense, not by the common law or statute law; that England is not a free country, and "it will be an evil day for the legal profession when it is," that there is no right of free speech recognized by the British Constitution, that in matrimonial transactions there is little skill and much chance, so that marriage is a form of gaming and the Court cannot give relief, that classics about pagan gods and their amorous adventures are obscene and corrupting and must be destroyed, that a snail is *ferae naturae* and an owner of property may therefore throw snails onto their neighbour's property, and that a cheque written on the back and sides of a cow is a negotiable instrument.

But to turn, as any reviewer must ultimately return (to paraphrase one of APH's judges), to the question of why *Uncommon Law* might affect views of life and the law, I will now appeal to precedent.

First, Lord Atkin, in his introduction to *Uncommon Law* said "[t]o many lawyers it will seem that it is all to the good that legal principles and procedure should be discussed in public in any guise," and "criticism in the guise of amendment is always valuable," and "Let

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\* Professor Emeritus, Faculty of Law, University of Alberta. Mr. Hurlburt received an LLB from the Faculty of Law, University of Alberta in 1949 and an honorary LLD in 1997. He is currently counsel at Reynolds, Mirth, Richards and Farmer LLP, Edmonton. Over the years, he has contributed a wealth of articles to the *Alberta Law Review*.

us be grateful to our famous social reformer ‘Mr. Punch’ to whom we are indebted for the privilege of enjoying these fine products of a witty and learned lawyer.” Next, Lord Hewart, in an introduction to an earlier edition: “if perchance the book should come to the hands of a lawyer ... he may recall the words of that Master of Balliol who said that there is no road to moral or intellectual improvement like the knowledge of our own defects.” And finally Lord Buckmaster, who in yet another introduction to another edition said “many ... questions are tried out in the following pages with excellent humour, but in every case the jest is barbed with truth.”

I concur with Their Lordships. However, I would put it this way: a reading of the book will help the reader to preserve a healthy irreverence in assessing legal writings and speech, it will help the reader to remember to evaluate what is said by reference to content and context rather than to source, and it will do all this while allowing the reader to enjoy brilliant legal writing and humour.

JOHN MORTIMER, *RUMPOLE OF THE BAILEY* (NEW YORK: PENGUIN BOOKS, 1978)

**E. JAMES KINDRAKE\***

When Marie returned from her first exploration of the area around our hotel in New Delhi shortly before New Year's Day, 1983, she told me she had found a used book seller with his books spread out upon the sidewalk. In rummaging through his stock, she had found a used Penguin paperback copy of *Rumpole of the Bailey* by John Mortimer, published in 1978. It dealt with legal matters and seemed like a "light read," she thought, so she bought it and brought it back to our hotel. After travelling through Thailand and Burma and trekking in Nepal, we were desperate for English reading material. We inhaled Rumpole like a breath of fresh air, and have been hooked on him ever since, eventually acquiring all the books, as well as all the DVDs of the TV series starring the wonderful Leo McKern as Rumpole.

Horace Rumpole is a character in every sense of the word. He loves quoting poetry by heart and, *sotto voce*, refers to his long-suffering wife, Hilda, as "She who must be obeyed." He frequently fights his cases (he never pleads his clients guilty) before the "Raging Bull," a.k.a. Judge Bullingham in the Old Bailey, and he shares offices with other quaint barristers at Equity Court. In the books and TV episodes that followed, the irascible yet genial and somewhat dishevelled Rumpole, fond of smoking cheroots, drinking cheap claret "on the tab" at Pommeroy's wine bar, and poking holes in pomposity wherever he encountered it, showed Marie and I that we weren't the only lawyers to experience the bizarre peculiarities of fellow practitioners, bellicose and unyielding judges ("often wrong, but never in doubt"), petty or difficult clients, over-zealous police officers, and the potentially corrosive interaction between our practice and our home lives. In "the best tradition of the British Bar," as he liked to say, he gave Marie and me the strength conveyed by another British slogan from the Second World War, which was to "stay calm and carry on" in our chosen profession.

A few months after Marie bought the first of the many *Rumpole* books, we returned to Edmonton where I joined the (then) firm of "Lucas, Edwards and Bishop." It was there that I met, practiced, and then became partners with Norman ("Norm") Pollock, Q.C., whose sharp mind and legal skills I came to respect tremendously. In 1998 I left the firm, as did Norm shortly thereafter. By then we had become good colleagues, as well as good friends, and we kept in touch.

Several years later Norm was diagnosed with ALS (a.k.a. "Lou Gehrig's Disease"). At the time Norm was still in his 50s, married to a wonderful woman, Janet, together with whom he had two children, one of whom was mentally challenged with Fragile X Syndrome. Eventually, as he succumbed to the ravages of this horrible disease, Norm was confined to a wheelchair at home. Amongst many of his other friends, I would often go to visit him and Janet. I never, ever heard Norm pity himself or bemoan his fate. He was undoubtedly the bravest person I have ever met in my life.

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\* Mr Kindrake received his LLB from the University of Alberta in 1978 and, following many years of private practice, joined the Federal Department of Justice in 2002, where he is currently a Senior Counsel. He has been a sessional lecturer at the University of Alberta and has volunteered with the Bar Admission Course and the Canadian Centre for Professional Legal Education (CPLED) for many years.

As conversation began to get more difficult for Norm, I asked him if he would like me to bring my *Rumpole* DVDs over next time, and we could watch one episode per visit. He agreed, and this became our tradition. Initially we could have a bit of a conversation after each episode, but this became more and more difficult. Finally, we were down to nods, and then, winks. Nevertheless, *Rumpole* was such a soothing balm for Norm, that regardless of what he might be watching on TV when I came over (he loved sports and there was inevitably a hockey, football, baseball, or golf game on), he would always insist we interrupt the game, no matter how important or dramatic, to watch the next *Rumpole* episode.

Norm passed away this last summer, and we never got to finish watching the series. Then again, John Mortimer never really finished writing the series either. I miss both of them, but am grateful for the wonderful memories they each left behind.

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OCTAVE AUBRY, *NAPOLEON, SOLDIER AND EMPEROR* (PHILADELPHIA: LIPPINCOTT, 1938)

**J.M. LAW\***

I have found the invitation to write about the book that influenced my life very difficult. In part, this is because I have read a large number of books in my life and I have lived a fairly long time. But in the main, the difficulty stems from identifying one book that has substantially influenced the course of my life out of the many books that have given me a great deal of joy, and at times, insight and understanding.

After considerable thought, I have chosen an odd book for a person who has spent the last 40 years as either a lawyer or a law teacher. The book is Octave Aubry's *Napoleon, Soldier and Emperor*, published in English from the French edition in 1938. This book started me on my lifelong interest in history, particularly military and political history.

The book was given to me by a family friend when I was nine to keep me busy and out of adult conversations during a visit to my place of birth in the Saguenay region of Quebec. Until that point, I had read the usual children's books and comics but this book with its rich red cover, gold print, and historic plates captured my interest. I had never experienced anything like it and I could not put it down on our four day train trip back to Medicine Hat.

As the title of the book suggests, it is concerned with Napoleon's career as the leading soldier of his day and as Emperor of France. It details his early life in Corsica and then military school, his early career as a soldier under the republic and the Directory and his ascent to power as First Counsel and then Emperor of France. Much of the book is concerned with his military successes against a succession of coalitions mounted against France by other European monarchies, including Great Britain. In this time, he established himself as the first soldier of Europe, a military genius in the eyes of his contemporaries, the head of a formidable military machine, and a skilled political leader and administrator. The book then addresses the events that marked the decline and end of his empire: the costly peninsular campaign, the disastrous invasion and retreat from Russia, his abdication and exile to Elba, and the storied Hundred Days culminating in his final defeat at Waterloo. It ends with his banishment to St. Helena and death. Throughout, Napoleon occupies central stage, a person certain of his destiny and place in history.

In essence the book is a narrative history of Napoleon's life with an emphasis on the political and military events that marked his career as a soldier and Emperor. It is not particularly exceptional given the hundreds of thousands of books and articles that have been written about Napoleon and his times. It is a descriptive and celebratory, rather than a critical, work and while well written its prose is not especially notable. Nevertheless it ignited in me a love of history which remains to this day. Over the years, I have read a large number of works on Napoleon and his times ranging from detailed studies of particular events, biographies of his political and military contemporaries (allies and adversaries), and studies of particular battles and campaigns, to works on his army, the storied Imperial Guard,

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\* Thomas Lawlor Professor of Law and Ethics and Vice Dean, Faculty of Law, University of Alberta. His writing has appeared in the *Alberta Law Review* on several occasions.

and unit histories. Through these I have been transported to a different time and place, I have been troubled and inspired by the horror and nobility of war, and I have sought to better understand how one person can dominate the course of human events for good or evil and at times both.

All told, the reading and study of history has been a constant in my life. With rare exception, every day ends with a few minutes reading one of a number of histories and biographies on the go. While sometimes I find myself focused on a particular period, person, or event, my reading is widely based, or indiscriminate if you like. This reading is largely undertaken for recreation, to provide a place or moment of refuge from the demands of my career and personal life, but it has never failed to deepen my understanding of past events and societies.

That apart, my love of history has also found expression in my career as a law teacher. Over 25 years ago, I began teaching legal history, which allowed me to integrate my passion for history with my interest in law. Through this subject, I have learned that the study of the historical development of legal doctrine, principles, and institutions by themselves, while valuable, is a fairly dry and sterile endeavour. However, our understanding of these developments and the role of law in society is significantly enriched and engaged when considered from a historical perspective. The study of legal history shows us that continuity and change in law is not the product of a natural evolution but is often highly contingent on the political struggles, values, beliefs, economy, or society of a particular place and time. It demonstrates that law is not an autonomous force in society but both shapes and is shaped by the society in which it exists. And regrettably it reveals that law can be used for evil purposes, as a tool of oppression and discrimination as well as an instrument of progress.

My life has been greatly enriched by the reading and study of history; it has fueled my imagination, inspired my thoughts, informed my actions and principles, shaped my values and beliefs, and offered me solace and hope in times of adversity. Above all it has connected me and my world to those who went before. For these reasons, a book on Napoleon which opened the eyes of a young boy to the promise and problems posed by history, has been the most influential in my life.

LUCY MAUD MONTGOMERY, *ANNE OF GREEN GABLES* (BOSTON: L.C. PAGE, 1908)

ANNA LUND\*

Lucy Maud Montgomery's *Anne of Green Gables* tells the story of an imaginative 11 year-old redhead who is adopted by Matthew and Marilla Cuthbert, elderly siblings leading a bucolic existence on a farm near the fictitious community of Avonlea, Prince Edward Island. The story follows the (mis)adventures of Anne as she navigates that tumultuous period between childhood and adulthood, learning pithy life lessons as she goes. More than just a series of parables set in Canada's smallest province at the turn of the twentieth century, *Anne of Green Gables* remains a timeless story because its protagonist's decidedly sunny outlook offers insight into how to live well. Re-reading the novel recently, I was struck by how many of Anne's life lessons continue to resonate with me. Kindred spirits abound. Shorter words are better. Where matters of fashion are concerned, it is preferable to "look ridiculous when everyone else does than to be plain and sensible all by [one]self." And tomorrow is another day with no mistakes in it, yet.

For entirely self-referential reasons, during my most recent reading I found Anne's model of optimism to be especially relevant to those of us who have yet to "grow up." Anne's adolescence lasts for five years: the common wisdom is that nowadays most people remain mired in this dynamic period of growth and questioning much longer. For many of us, adolescence stretches well into our twenties and beyond. This extended period of adolescence can be marked by a dizzying sense of flexibility, but also a distressing measure of uncertainty. When so much remains undecided, one can easily slip into bleak moments of impatience to have matters more settled or anxiety that one's life will not turn out okay, but if we rush to settle the parameters of our lives, we risk foreclosing ourselves from enriching experiences and exciting opportunities. We owe it to ourselves to cultivate a sense of comfort for living with uncertainty. But how?

Anne's abbreviated adolescence contains periods of uncertainty, but none more dramatic than when she first arrives in Avonlea from the orphanage in Nova Scotia. Marilla and Matthew had requested a boy orphan but, due to a miscommunication, Anne is sent to them. Marilla initially resolves to return Anne to the orphanage. Her resolve eventually crumbles in the face of Matthew's quick attachment to the girl and her own growing sense of compassion. Before Marilla's change of heart, she and Anne take a trip to visit Mrs. Spencer, who organized the adoption, to arrange for Anne's return. The night before the trip, when she first realizes that she is not wanted, Anne is devastated, but by the next morning, her outlook has improved considerably. She advises Marilla, "I've made up my mind to enjoy this drive. It's been my experience that you can nearly always enjoy things if you make up your mind firmly that you will."

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\* PhD student, Faculty of Law, University of British Columbia. Ms. Lund received her LLB from the Faculty of Law, University of Alberta in 2007. She is a former editor of the *Alberta Law Review*.

In this brief speech, Anne offers an antidote to the competing demons of anxiety and impatience: enjoy the drive. There is little to gain from worrying over outcomes, some will be bad, some will be good, many will be unexpected and few will be altered by roiling episodes of personal distress. While the narratives of our lives unfold, Anne urges us to climb out from underneath the gloomy shadow of uncertainty and to relish the beautiful moments along the way.



**JUSTICE LEONARD S. MANDAMIN\***

I have read many books, some again and again. They have all had some influence on my thinking and outlook, whether as a source of knowledge, insight or simple enjoyment. On reflection, I have chosen four in keeping with the Aboriginal perspective of looking to the four directions of the sacred medicine wheel.

HOLLING CLANCY HOLLING, *PADDLE TO THE SEA* (BOSTON: HOUGHTON MIFFLIN, 1941)

When I was quite young, I read *Paddle to the Sea*, a tale about an Indian canoe carved by an Indian boy in Nipigon country who had learned that waters from the spring snow melt around him flowed into Lake Nipigon, down to the Great Lakes, along the St. Lawrence River and out into the Atlantic Ocean. He inscribed on the little canoe its name, Paddle to the Sea, and a request that if found, the canoe was to be returned to the water. He set the canoe in the snow on a hill and left nature to take its course. The little canoe made the long journey eventually reaching the Grand Banks off Newfoundland.

A youth on a French fishing boat leaving the Grand Banks with its cargo of fish retrieved Paddle to the Sea from the waves and took the little canoe home to France. His find was reported in a newspaper that a French reader mailed to her cousin, a lumberjack in the Nipigon country. On reading the article, the lumberjack exclaimed to another that he had found the little canoe years before and put it back into the river. An Indian youth standing nearby overheard and said softly "You put him back in the river and sent him on? Good. I made that one," and walked away.

That young Indian was the first Indian character to inspire me. I took away lessons about learning, applying the knowledge acquired, and quiet achievement.

JOHN HOWARD SISSONS, *JUDGE OF THE FAR NORTH: THE MEMOIRS OF JACK SISSONS* (TORONTO: MCLELLAND & STUART, 1989)

During the years of my law practice in Alberta, I often represented treaty Indian hunters who were charged with violating hunting regulations despite their insistence that they had a treaty right to hunt for food. I had good success in provincial courts, usually on the facts, but much less success on appeal. Perhaps this was not surprising since there were only two favourable Alberta appellate court decisions on Indian hunting rights all the way back to the 1930s.

I came across *Judge of the Far North* in a used book store and was captivated by Justice Sissons' deep understanding of the northern Indian and Inuit people and his dedication to a just resolution of their issues that came before his court. His greatest disappointment was when the Supreme Court of Canada did not uphold his decision in *R. v. Sikeya* in which he had decided in favour of the Indian treaty right to hunt for ducks under 1922 Treaty No. 11 over the regulations of the 1916 *Migratory Birds Convention Act*.

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\* Federal Court, Ottawa. Justice Mandamin received his LLB from the Faculty of Law, University of Alberta in 1982.

I used to tuck the book into my briefcase as a private encouragement whenever I went to court to defend treaty Indian hunters. I cannot recall whether I had it with me when I represented the three treaty Indian hunters in *R. v. Badger* but I like to think Justice Sissons would have approved of the outcome when the Supreme Court of Canada recognized the sacred nature and the spirit and intent of Indian treaties and found the Treaty 8 right to hunt for food continued to be a right recognized in law.

RICHARD WAGAMESE, *FOR JOSHUA: AN OJIBWAY FATHER TEACHES HIS SON* (TORONTO: DOUBLEDAY CANADA, 2002)

*For Joshua* is a personal narrative by Richard Wagamese, a gifted Ojibway writer. He was born into a traditional Ahnishnawbe family in northwestern Ontario but became a ward of the Children's Aid Society because of marginalization and the negative influence of alcohol, reasons unintelligible to a toddler. He was moved from foster home to foster home to foster home. He became attached to caring foster families but repeatedly experienced the pain of separation as he was moved to another family. The only answer he had for why he was taken away was that there was something wrong with him. Eventually, he was adopted and on the ride to his new home, Richard wrote "I decided in the back seat of that car to say whatever they wanted me to say, to do whatever they wanted me to do, go where they wanted me to without question or fuss. That day, that moment, when I made that decision at nine years old, was when I lost myself." The adoption failed when he was a teenager and for a time he lived the life of a street person. Later, as his writing talent emerged, he wrote *For Joshua* recounting his life experiences for his son.

As an Alberta Provincial Court Judge I heard many cases involving Aboriginal people whose lives had become disordered as they lost their way. One concerned an Aboriginal mother whose children had been apprehended many times because of neglect as she prioritized the needs of her latest partner. She herself had been fostered, but was doing well until some crises occurred. She dropped out of high school and began on her troubled life path. After many temporary child protection interventions because of child neglect, the child protection agency reluctantly decided the only option was to seek permanent government guardianship of her young children. The proceedings were protracted and at the end of the trial, I reserved my decision to consider what to do in this difficult case.

One day, the lawyers came before me and jointly requested I not decide. Since the onset of the proceeding the mother had made significant changes in her life. All agreed she should regain full custody and care of her children. To my mind the most telling snippet of information was that she had resumed her schooling and had obtained her high school diploma. She had found herself.

RENÉ FUMOLEAU, *HERE I SIT* (OTTAWA: NOVALIS, 1996)

René Fumoleau was born in France in 1926 and came to the Canadian North in 1953 as an Oblate of Mary Immaculate Heart. He spent 40 years among the Dene, living in Denendeh (the Northwest Territories), sharing their lives, speaking their language, and writing. He wrote the important work on Treaties 8 and 11, *As Long As This Land Shall Last*, which he dedicated to the youngest Indian child in the Northwest Territories.

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René Fumoleau wrote about many varied subjects, including beautiful prayers friends shared with him: “Mom, the stars are smiling at me”; “Daddy, look at the other side of the lake. All the trees stand exactly in the right place”; “Gill and I looked at our first baby. Everything we had before is nothing.”

Father Fumoleau’s poetry and narratives are a deep well to which I return again and again to read, reflect, and enjoy. He writes about the extraordinary, which are but the ordinary elements of life in the Denendeh, elements that are infused with a manifestation of the Great Spirit. Truly, it is a book of many reflections.

RAYMOND CHANDLER, *FAREWELL MY LOVELY* (NEW YORK: A.A. KNOPF, 1940)

EUGENE MEEHAN, Q.C.\*

I needed a drink, I needed life insurance, I needed a vacation, I needed a home in the country.

What I had was a coat, a hat, and a gun. I put them on and went out of the room.<sup>1</sup>

That's from a bedtime book my dad read to me at about age eight — at my specific request. Wasn't interested in *Hardy Boys*, *Famous Five*, *Biggles*, whatever. More interested in good versus evil, people dying prematurely (some deservedly, some not), and sometimes evil *did* triumph over good. I'd ask my dad to read me whatever he was reading, and to start reading at whatever part of the book he was at. So, the above line was the first line of one of my bedtime stories.

The above line still sticks with me the last 50 years. My dad would read all sorts of books to me when I was a kid, but my favourite was Raymond Chandler. I would be tucked into bed. Dad would sit on the bedside and start up where we'd left off the night before. Sometimes he'd try to skip parts that included huggin' or kissin' but I would catch him and make him go back.

The language created vivid images for a child. The stories brought out a kaleidoscope of emotions, from passion to palliative, from paradox to paradichlorobenzene (for some silly reason I remember that cleaning chemical being in one of the stories, C<sub>2</sub>H<sub>5</sub>OH being in another). For a young lad, it was a potent lesson on the power of words. Words could shape my world, engage others, and persuade them to share a point of view.

*Farewell My Lovely* teaches me the world is not cut and dried, life is not fair, bad things happen to good people, good things happen to bad people. Living though the tortured moral dilemmas of private eye Philip Marlowe makes it absurd to look at the world in anything but grey. You can't control right and wrong; but maybe you can control the point of view. When you're the narrator telling the story, the reader comes along for the ride and sees the world the way you cast it.

In law, there are always two sides, two different ways of telling the story. Ever since listening to my dad read Chandler, I try to be the side that writes the better story, tells the better tale. The words bring the reader in. In a world of grey, the story will decide between right or not so right — or if you wish, between more right or more wrong.

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\* Supreme Advocacy LLP, Ottawa. Mr. Meehan was a Professor at the Faculty of Law, University of Alberta from 1978 to 1986, during which time he published several articles in the *Alberta Law Review*.  
<sup>1</sup> The quote is still in the original at chapter 34, para. 5.

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Does Chandler help me (and lawyer-clients I work with) in my SCC work? Absolutely. Helps me refine down to what's essential. A Response factum I recently wrote with a client ended with this: "[The] Court of Appeal called it the way it is, the Respondent [simply] doesn't like the way it is/was."

Did the client win? What do you think?

Thank you, Chandler. Thank you, Dad, too.

WILLIAM STRINGFELLOW, *INSTEAD OF DEATH* (NEW YORK: SEABURY PRESS, 1963), REPRINTED (EUGENE, OR: WIPF & STOCK, 2004)

WILLIAM STRINGFELLOW, *MY PEOPLE IS THE ENEMY* (NEW YORK: HOLT, RHINEHART AND WINSTON, 1964), REPRINTED (EUGENE, OR: WIPF & STOCK, 2005)

DANIEL J. MOL\*

As a general rule in life we are all well advised to fear, as Aquinas did, the man of a single book. I hope my credibility is enhanced then by introducing you to several books. First, their author: William Stringfellow graduated Harvard Law School in 1956 with every chance to chase lucre on Wall Street. Instead this northeastern Wasp chose to make his home and practice among the blacks and hispanics of the East Harlem ghetto. “Poverty law” in today’s law school speak, Stringfellow described the choice as a simple manifestation of his Christian calling: “I am called in the Word of God — as is *everyone else* — to the vocation of being human, nothing more and nothing less.” Not one to let career interfere with vocation, Stringfellow became known in the 1960s as a liberal Protestant theologian and supporter of such anti-Vietnam activists as Father Daniel Berrigan, famously arrested by the FBI at the home of Stringfellow and partner Anthony Towne. Yet of all Stringfellow’s pursuits — theology, writing, speaking, and his many academic, ecclesial and political involvements — the Harlem law practice remained central. The small-time landlord-tenant, children’s aid, and criminal defence cases were principle in action. Stringfellow describes his Harlem experience ministering to the urban underclass in *My People is the Enemy*, a book that reportedly moved Attorney General Robert Kennedy. Kennedy next called Stringfellow a radical. For a lawyer, certainly, Stringfellow was radical — he lamented the “overwhelming subservience” of the legal profession “to the commercial powers and the principalities of property,” concerning himself instead “with clients who are people, not institutions.” “The constant concern of my practice has been the values of the constitutional system, due process of law, and the rule of law. What is radical about that?”

Plenty, we might say. Stringfellow crossed my desk in a period of great angst as I moved between small rural and city practices in the first years after graduation. The excitement of tackling “whatever walks in the door” of these people-centred practices had given way to a restless frustration, on one hand with systemic ills witnessed up close; on the other with the disconnect between the ideals I harboured and the reality I was living. Stringfellow spoke directly to these in one passage in particular:

Humanitarian idealism is pretentious in Harlem and turns out to be irrelevant. It is, rather, more important to experience the vulnerability of daily life. It is necessary to enter into and live within the ambiguity and risk the attrition of human existence.

And so a law practice might be untidy, but it is better understood by engaging clients in

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\* Barrister and Solicitor, Mol Advocates. Mr Mol received an LLB from the Faculty of Law, University of Alberta in 2005. The books above are excerpted in Bill Wylie Kellerman, ed, *A Keeper of the Word: Selected Writings of William Stringfellow* (Grand Rapids, MI: Eerdmans, 1994). All quotations are from this volume. See also Andrew W McThenia, Jr, ed, *Radical Christian and Exemplary Lawyer* (Eugene, OR: Wipf & Stock, 2007).

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their humanity. In their triumphs, yes, but mainly in their suffering: as they shuffle in and out of courts and jails, discoveries and bad deals. Stringfellow understood the practice of law for what it ought to be: a civilizational undertaking. These books underline that for lawyers the human imperative is primary, and we are more worthy of our calling when we advance it if need be ahead of those of “the principalities and powers,” to wit, the imperatives of commerce, of institutional clients, and even (or especially) those of the state.

ROBERT GREENE, *THE 48 LAWS OF POWER* (NEW YORK: VIKING PRESS, 1998)

GLENN SOLOMON, Q.C.\*

Litigation lawyers are in the business of confrontation. We deal with difficult people in tense circumstances, and wrestle with them for control and advantages. *The 48 Laws of Power* is the cynical and practical “better mousetrap” to Machiavelli’s *The Prince*, Sun Tzu’s *The Art of War*, and Clausewitz’s *On War*. Using 3,000 years of historical examples, the author provides a practical guide for those who want power and who want to be armed against power. The conclusions are simple, but profound, for those doing the mercenary work that is litigation, and for those running a business. Upon recognizing the soundness of each “lesson,” one is left with the sense that an eternity in Hell beckons merely for seeing the wisdom in the author’s conclusions.

Some “Laws” that assist in court include: “Never outshine the master,” “Always say less than necessary,” “Crush your enemy totally,” “Know who you’re dealing with; do not offend the wrong person,” “Use the surrender tactic: transform weakness into power,” “Concentrate your forces,” “Enter action with boldness,” “Plan all the way to the end,” “Control the options: get others to play with the cards you deal,” “Master the art of timing,” “Disdain things you cannot have: ignoring them is the best revenge,” “Work on the hearts and minds of others,” “Disarm and infuriate with the mirror effect,” “Preach the need for change, but never reform too much at once,” and “Do not go past the mark you aimed for; in victory, learn when to stop.”

“Laws” that assist in the profession generally include: “So much depends on reputation — guard it with your life,” “Play the perfect courtier,” “Keep your hands clean,” “Make your accomplishments seem effortless,” “Think as you like but behave like others,” “Never appear perfect,” and “Assume formlessness.”

In terms of running a business, some helpful “Laws” are: “Court attention at all costs,” “Make other people come to you; use bait if necessary,” “Infection: avoid the unhappy and unlucky,” “When asking for help, appeal to people’s self-interests, never to their mercy or gratitude,” “Do not build fortresses to protect yourself. Isolation is dangerous,” “Re-create yourself,” “Create compelling spectacles,” “Stir up waters to catch fish,” “Despise the free lunch,” and “Avoid stepping into a great man’s shoes.”

Some “Laws” also provide guidance in understanding opposing counsel, judges, witnesses and opposing parties, such as: “Never put too much trust in friends; learn how to use enemies,” “Conceal your intentions,” “Get others to do the work for you, but always take the credit,” “Win through your actions, never through argument,” “Learn to keep people dependent on you,” “Use selective honesty and generosity to disarm your victim,” “Pose as a friend, work as a spy,” “Use absence to increase respect and honor,” “Keep others in suspended terror: cultivate an air of unpredictability,” “Do not commit to anyone,” “Play on

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\* Partner, Jensen Shawa Solomon Duguid Hawkes LLP (JSS Barristers). Mr. Solomon received an LLB from the Faculty of Law, University of Alberta in 1990. He is a former Co-Editor-in-Chief and currently the Practitioner Consultant of the *Alberta Law Review*.



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people's need to believe to create a cultlike following," "Play to people's fantasies," "Discover each man's thumbscrew," "Be royal in your fashion: act like a king to be treated like one," and "Strike the shepherd and the sheep will scatter."

The danger in this book is the risk of confusing which chapters are most properly used to understand other people (and which people), and which are best used to govern oneself. Read with caution. Understand the human condition. Conceal your glee.

CHARLES DICKENS, *A CHRISTMAS CAROL* (LONDON: CHAPMAN & HALL, 1843)

**BARRY SULLIVAN\***

The Victorians still have much to say to us. After all, apart from Shakespeare and the Greeks, who has written so insightfully as Trollope about the moral complexity and ambiguities of political life, with its competing claims of conscience and compromise, altruism and self-interest, idealism and corruption? But Dickens also merits our patronage. Dickens is the great moralist. His brief sounds in equity; his interest is fairness. Sentimental and didactic, he does not speak to our intellects in the way that Trollope does. Dickens shamelessly plays on our emotions. He speaks to our hearts. He manipulates us. He points us to the deepest truths about what it means to be human. And nowhere does he do that more effectively or with greater economy than in *A Christmas Carol*.

*A Christmas Carol*, as everyone knows, is the redemption story of Ebenezer Scrooge, “a tight-fisted hand at the grindstone,” “a squeezing, wrenching, grasping, scraping, clutching, covetous old sinner,” and a man so cold that “[t]he cold within him froze his old features, nipped his pointed nose, shriveled his cheek, stiffened his gait, made his eyes red, [and] his thin lips blue.” Early on, Scrooge’s nephew suggests an alternative way of life, where “men and women ... open their shut-up hearts freely, and ... think of people below them as if they really were fellow-passengers to the grave, and not another race of creatures bound on other journeys.” Scrooge, of course, replies with scorn.

But Scrooge is redeemed in one night’s time through the intercession of Jacob Marley, his deceased partner, and three other spirits. It takes much effort, and Scrooge must finally encounter the “wolfish” twin children, “Ignorance” and “Want,” symbolizing the need for thorough-going social reform, before the conversion is complete. The possibility of redemption already seems palpable, however, by the time Scrooge enters the shop where he was apprenticed. It is Christmas Eve and Old Fezziwig, Scrooge’s employer, presides over a glorious feast. When the first spirit makes light of Fezziwig’s generosity, Scrooge heatedly responds: “He has the power to render us happy or unhappy; to make our service light or burdensome; a pleasure or a toil. Say that his power lies in words and looks; in things so slight and insignificant that it is impossible to add and count ‘em up, what then? The happiness he gives, is quite as great as if it cost a fortune.”

Like Dickens, we live in an age when many businesses search for ways to minimize the obligations they owe to those who do their work.<sup>1</sup> It is tempting, therefore, to read Scrooge’s words as simply a commentary on justice in the workplace. But it is Fezziwig’s humanity that matters, not the venue in which it happens to be manifested. The “power” that Scrooge attributes to Fezziwig is one that belongs to all of us. It is the power to act for good, and lawyers have that power in abundance.

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\* Cooney & Conway Chair in Advocacy and Professor of Law, Loyola University Chicago; Arthur Cox Visiting Research Fellow and Visiting Professor, Trinity College Dublin, Hilary Term 2013; Fulbright Canada Visiting Research Chair in Legal Studies, University of Alberta, Fall Semester 2011.

<sup>1</sup> See, e.g., Robert Kuttner, *Everything for Sale: The Virtues and Limits of Markets* (New York: Alfred A Knopf, 1997) at 75.

Like others, I have worked on projects of law reform, relishing the chance to cheat “Ignorance” and “Want.” I have represented clients on death row, with whom I’ve had little in common, but for the need we each felt to have our dignity respected. I have endeavored to treat juniors with empathy and opponents as friends. Yet, I have been haunted by fears that I may resemble more the Scrooge we meet at first than the man he has become. Such is Dickens’ hold on us.

We do have the power to act for good, and some of that power undoubtedly “lies in words and looks; in things so slight and insignificant that it is impossible to add and count ‘em up.” That may seem sentimental, but it is a truth worth recalling. When so much seems to be measured in other terms, it is, perhaps, a reason to read *A Christmas Carol* more often than once a year.

*MAD* (NEW YORK: E.C. PUBLICATIONS, 1958 - PRESENT )

GETTING TO KNOW BY MADNESS

JUSTICE JACK WATSON\*

Everything consciously written down is meant to be read and understood. The writer wishes to reveal something, believing the reader knows it only imperfectly, if at all. The aim of good writing is to improve imperfect knowledge and to instill a desire to know.

Much literature influenced my perception of law, society, freedom, and democracy. But what first touched my mind as a child and created the interest in everything else was *Mad Magazine*. New Yorkers created this skeptics' tract in 1952. It was a family of humourously skilled social analysts when, by my age of five, I was reading it regularly.

*Mad* mixed trail blazing social commentary and brilliant parodies with a sentimental fondness and tender respect for the shapes and colours of western democratic cultures. Well before I read Shakespeare for the first time, *Mad* introduced the subtleties of metaphors, allusions and even iambic pentameter. *Mad* took great works of art, literature, and cinema and great achievements of science, study, and historicism and rendered them all comically, but without a hard or nasty edge. You were left wanting to know more about the "real thing."

*Mad* punctured the pomposity of all aspects of social class and political order. It also shone bright lights into the dark corners of the world, but without insisting on despair and fear as the price of looking there. The absurdist content still re-affirmed the value of hard work, the legitimacy of reasonable expectations, and the morality of fairness and equality. And it told you to never take yourself too seriously, but to take what you do seriously.

Often I did not get all of it. But it made me want to find out. Journalist Robert Boyd said *Mad* revealed "a world rife with false fronts, small print, deceptive ads, booby traps, treacherous language, double standards, half truths, subliminal pitches and product placements." *Mad* prompted him to "mistrust authority, to read between the lines, to take nothing at face value, to see patterns in the often shoddy construction of movies and TV shows" and to "think critically in a way that few actual humans charged with my care ever bothered to."

But while *Mad* was taken by causeless rebels and cynics to justify resistance, snideness, arrogance or personal irresponsibility, its larger effect was different. *Mad's* very existence showed that common understanding, consensus, and progress was still within reach when all voices are allowed. *Mad* verified the profundity of paying attention, the benefit of looking past form to substance, and the improved morale that comes with confidence in the educated young.

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\* Court of Appeal of Alberta.

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The remarkable continuity over decades of its familial cadre of writers and its quality of cartooning and writing demonstrated commitment, loyalty, quality and hard work. At some point I put down my copy of *Mad Magazine* for the last time. Both I, and it, had moved on. But its impact on western attitudes, aspirations and intellects, should not be underestimated.

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