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Preface

It has been my honour and privilege to be a part of The Pierre Elliott Trudeau Foundation since its inception. At its best, good public policy can transform opportunities for individuals and broader communities, but only if it is built upon a sound foundation of critical research and analysis. I am convinced that there are few worthier goals than to make a substantive contribution to the dialogue between outstanding scholars in the humanities and social sciences and public policy makers across Canada and beyond.

The central themes of the Foundation's work—Human Rights and Dignity, Responsible Citizenship, Canada in the World and People in Their Natural Environment—encompass the critical challenges facing modern societies and help us to formulate answers to the questions *What is right? What is for the public good? What is just?*

Each year, the Foundation selects up-to five Fellows who have demonstrated both their ability to make original contributions to these questions and the courage to engage in public debate. Our hope is that, with our support, they will be able to devote themselves more freely to original, fair, and critical thinking. Since 2003, 38 Fellows have received awards, and the evidence is clear: these exceptional researchers, thinkers, writers and professors are creating a wealth of knowledge and insight.

In 2008, the Foundation decided to initiate the Trudeau Lectures so that the ideas generated by the Trudeau Fellows might become more accessible to Canadian scholars and policy makers. Each year, distinguished lecturers offer a series of original and thought-provoking presentations across the country linked to the themes of the Foundation. As we work in collaboration with host universities, and through the publication of the lectures, we hope to accelerate the dissemination of the Trudeau Fellows' research, observations and proposals for sound and progressive public policies.

I am delighted that through this publication series, the thoughtful reflections contained in these lectures will have the opportunity to find the wider audience they so clearly deserve.

ROY L. HEENAN, OC
Chairman, November 2010

Consciousness and Lucidity

“Consciousness and lucidity are not clear landscapes. They are constantly changing expanses, filled with the confrontation of light and shadow, and nothing found there exists in a single manner, but in hundreds and thousands of possible ways.”

J.M.G. Le Clézio, *L'Extase matérielle* (1967)

There is no better time to reflect on our country's future. I am not thinking here of the political or economic situation, even if either of them may give us cause for concern, for they are mere moments in history which will merit only a footnote in the chronicles of the new century. What I really want to discuss is our keen awareness that upheavals of profound power and intensity are in the process of permanently reshaping the moral landscape in which our institutions have been built.

We are not the first society to live through such changes. Such is the nature of all societies, as soon as they are seen through the lens of history. But despite the advantages of hindsight, the tools in our possession today provide no more help than those our ancestors had at their disposal when they had to face invasions, epidemics, or even simply new developments in science and technology.

The 20th century placed its trust in the language and dynamics of the political. Struggles for power and authority dominated social life, subsuming all the other dimensions of the human condition: work, ideologies, religions, economic interests, the creation of art, and the pursuit of science. The international system completely abandoned itself to the pursuit of power. Over time, our predilection for political tools rendered them the dominant intellectual instruments every time we were confronted with a crisis or puzzled by a new challenge, whether financial market turbulence or the conquest of space. I suspect that our present efforts to control economic cycles or ease tensions among nations will appear as strange to future generations as the incantations and sacrifices prescribed by the sorcerers and wise men of old now appear to us.

The major threats facing our societies today are not being mitigated by the well-worn paths recommended by conventional wisdom. The national and territorial framework, where we are accustomed to exercising the privileges of our citizenship, simply cannot react to the strength of transnational forces. The current degradation of our environment calls for radical solutions that our political culture cannot even begin to articulate. Under the strain of unprecedented inequalities, declarations of human rights are becoming whispers at precisely the moment when one would expect them to be loudly affirmed. What can we conclude, based on our collective inability to bring peace or progress to different regions, countries or continents?

When the incantations and sacrifices of the magi failed to calm storms or make rain fall, they uttered more incantations or sacrificed more victims. When doctors failed to heal their patients, they increased bloodlettings and purges. Could it be we are doing the same thing now with politics? The problems we face call for new solutions, not just more of the same medicine, even if administered with all the conviction in the world.

An organization such as the Pierre Elliott Trudeau Foundation can play a role in the quest for new responses. We have two obvious and unique advantages: the freedom we enjoy to choose the major themes for our reflection—which obviously encompass the big questions alluded to here—and our ability to attract the most brilliant and most original minds. Our third asset is less apparent, but no less important. It emerges from our strong commitment to pluralism and interdisciplinarity: the insights resulting from the profusion of viewpoints and the peaceful co-existence among scholars in a number of disciplines.

To put it another way, we rapidly concluded that the answers which we seek cannot come only from the disciplines that are specifically and fundamentally “political”: law, political science, philosophy, or economics. To paraphrase Le Clézio, we recognize that no single approach, no single methodology has a monopoly over “consciousness and lucidity.” What if we can succeed in distancing ourselves from outdated knowledge hierarchies and eliminate the traditional oppositions between hard sciences and the humanities, between theory and practice, between abstraction and experience? Only then will the desired insights emerge from the strength of understanding to be found in the hybridization and integration of different sorts of knowledge.

Clearly, this does not rule out making fine lines of distinction, measuring gaps, or recognizing differences. Guy Vanderhaeghe’s remarkable essay, found in this second edition of the *Trudeau Foundation Papers*, speaks very eloquently to this issue. The author, a novelist, is interested in the historian’s approach and attempts to understand what a work of fiction adds to or subtracts from our knowledge of the past. In an arresting passage, where he raises the issue of outrage or even horror—after all, a gang rape has occurred Vanderhaeghe manages to show how his own work of re-creating the facts makes it possible to move from an intellectual contemplation

of a scandal toward moral engagement. No lengthy explanation is needed to understand that this empathic mechanism—to move us toward moral engagement—is precisely what must underpin the radical reform of many of our institutions.

The return of Rosemary Sullivan to her work as a biographer has a similar goal. As a specialist in Elizabeth Smart, Gwendolyn MacEwen, and Margaret Atwood, she explores their texts to discover, through characters and circumstances, what makes a journey from oblivion or darkness toward hope possible. Her description of that struggle becomes a sort of intellectual autobiography. It is a world in perpetual motion, wherein each character discovers the threat of the conditions of their birth, and embarks on a struggle to escape at any cost. I am struck by this idea of flight—whether from family, country, class, or gender—as the source of revolt.

The world that François Crépeau depicts in his Trudeau lecture is also marked by flight and departure. But here, the driving forces are misery, fear, and humiliation more often than rebellion. In contrast to the so-called global village that the world economy would have built, Crépeau's legal training helps him to illustrate a universe closed in everywhere by borders, controls, and restrictions. Migrants upset and disturb the status quo. In some circles, the discussion focuses on driving them out rather than welcoming them or protecting them, as if a beleaguered state could redeem itself by bringing the last remnants of its power into play against those not blessed with our good fortune. The need and aspiration of migrants is a universal human phenomenon that law and power lack the compassion to grasp, but it is one which we must understand and face without delay.

The task that Kathleen Mahoney has taken on is no less pressing. In a text infused with the rhythms of a musical composition, this exceptional lawyer shows how certain concepts of justice develop and become institutionalized in society. I am struck by the entirely

dialectic importance she attaches to the tools of intuition and language, which for her play just as vital a role in representing justice as in the way it is codified through institutions. The text also suggests that anger and trust are two flying buttresses of equal strength here, the first pitting the excluded and subordinate against the established order, and the second suggesting that progress is, nevertheless, possible and even sustainable.

These emotions are also laid bar—albeit with a robust sense of iron—in the multi-faceted explorations of John B. Robinson. Environmental crises cannot be discussed without some categorization—this is not new. Neither is it certain that they will ever be managed, and one gets the feeling that even this objective of success has become suspect—in itself a collective problem that also demands collective knowledge. Robinson, who knows all that, takes another path which leads him to promote bold methods oriented around what I might call, for lack of a better name, the *cognitive* mobilization of the public. He also suggests that we get as far away as possible from traditional modes of political action prescribed by established hierarchie, and, on the contrary, focus on increasing multiple channels of communication and influence.

I am struck by the convergence of perspectives within the five essays found here. It is impossible not to be provoked by the humility with which the author—all experts in their own right—approach the complexity of the topics they explore. Consequently, they recognize that no simplistic solution or single formula could apply. And they suggest that if the complexity of these new and intersecting paths is embraced, there are the possibilities of renewing our trust in public institutions and finding opportunity for collective action.

This convergence is not the result of collusion nor does it reflect a common agenda. In truth, many factors should conspire to separate our authors, who work in very different disciplines and who often never cross each other's paths before being chosen for a

Trudeau award. Yet their thought processes are imbued with a similar spirit of responsibility and solidarity, one that has no desire to exist apart from the social world and its requirements.

I also believe that the Trudeau Foundation is doing everything possible to broaden its community's field of vision. Everyone who is asked to participate in our activities experiences the benefits and richness of interdisciplinary exchange, direct contact, and experience with others who bring very different perspectives. However, I am increasingly finding that what unites Trudeau Fellows is their common hope to see their intellectual adventure take on more diverse forms and then to reverberate in other fields of activity. There are "hundred, and thousands of possible ways," as Le Clézio has said. I also think they are united by a similar desire to place their talent, their eloquence, and their intelligence at the service of humanity, far from the spirit of competition. I invite you to read their lectures and experience this for yourself.

PIERRE-GERLIER FOREST

President, The Pierre Elliott Trudeau Foundation

November 2010

FRANÇOIS CRÉPEAU

2008 *Trudeau Fellow*, McGill University

BIOGRAPHY

François Crépeau is a full professor, holds the Hans and Tamar Oppenheimer Chair in Public International Law, and is scientific director of the Centre for Human Rights and Legal Pluralism at the Faculty of Law of McGill University. He is a 2008-2011 Fellow of the Pierre Elliott Trudeau Foundation.

His current research focuses on migration control mechanisms, the rights of foreigners, the interface between security and migration, and the interface between the rule of law and globalization.

He has given many conferences, published numerous articles, and written or edited five books: *Les migrations internationales contemporaines – Une dynamique complexe au cœur de la globalisation* (2009), *Penser l'international, Perspectives et contributions des sciences sociales* (2007), *Forced Migration and Global Processes—A View from Forced Migration Studies* (2006), *Mondialisation des échanges et fonctions de l'État* (1997), and *Droit d'asile: De l'hospitalité aux contrôles migratoires* (1995). He heads the “Mondialisation et droit international” collection at Éditions Bruylant (Brussels) and is a member of the Canadian Commission for UNESCO and a Fellow of the Institute for Research on Public Policy (IRPP). He is a member of the editorial committees of the *International Journal of Refugee Law* and the *Refugee Law Reader*. He also sits on the Quebec Law Society's Committee on Human Rights and Committee on Citizenship and Immigration. He has been guest professor at the following institutions: Université catholique de Louvain (2010-2013); Institut international des droits de l'homme (Strasbourg) (2001, 2002, 2007, 2008); Graduate Institute for International Studies (IUHEI-Genève,

2007); Institut des hautes études internationales, Université de Paris II (2002); and Université d'Auvergne-Clermont 1 (1997).

From 2001 to 2008, he was a professor at the Université de Montréal, holder of the Canada Research Chair in International Migration Law, and founding scientific director of the Centre d'études et de recherches internationales de l'Université de Montréal (CÉRIUM). From 1990 to 2001, he was a professor at the Université du Québec à Montréal. He also served as vice-president of the Canadian Human Rights Foundation (now Equitas) (1992-2004) and editor of the *Revue québécoise de droit international* (1996-2004). He participated in observer missions in the occupied Palestinian territories (2002) and in El Salvador (1991).

François Crépeau holds diplomas from McGill University (BCL and LLB, 1982), Bordeaux University (licence in law, 1981; master's degree in private law, 1982), Université de Paris II (DEA in legal sociology, 1985), and Université de Paris I (DEA in business law, 1984; LLD, 1990).

ABSTRACT

We are all migrants, have always been, and will always be, François Crépeau convincingly tells us. Historically, mobility is the rule, not the exception, and, in any case, borders have rarely prevented people from moving. Our complex societies are made stronger through immigration: our cultures and collective narratives are deeply influenced by it, though they do not necessarily recognize this. In this Trudeau Lecture, François Crépeau addresses the universal nature of migrants' rights. Migrants have fundamental rights, the same rights as anyone else, except for political rights and the right to enter into and stay in the territory. Of course, since 9/11, controlling migration at the border has been made central to all security policies. Professor Crépeau points out that this focus is misplaced and aims essentially to create a political discourse that designates a scapegoat for our fears, and to justify restrictive measures against foreigners in the name of "our" security. Can we imagine a citizenship that would be compatible with the free movement of persons through international borders? As a constant of civilization, should not mobility become a right?

LECTURE

Dealing with Migration: A Test for Democracies

University of Winnipeg

OCTOBER 20, 2009

Introduction¹

Migration is a complex phenomenon.² It is a constant of civilization: the history of humanity is that of an endless journey on the various continents of our planet. Migration has always existed, and it will always exist. While some people stay home for several generations, most people move. Sometimes not far, sometimes across oceans.

1. The author thanks Louis-Philippe Jannard, coordinator at the Hans & Tamar Oppenheimer Chair in Public International Law, for the preliminary research and the transcription of the conference, as well as the Pierre Elliott Trudeau Foundation for the financial and technical support necessary for the preparation of this conference, and specifically its president, Dr. Pierre-Gerlier Forest, and its program director, Dr. Bettina Cenerelli. This conference also benefited from being used as the basis for the Valedictory Lecture of the Seventh Winter Course on Forced Migration organized by the Calcutta Research Group, in Kolkata (India), on December 15, 2009. A shortened version of this conference will also appear in *Inroads* magazine in 2010.

2. See François Crépeau, Delphine Nakache, and Idil Atak, "Introduction," in *Les migrations internationales contemporaines – Une dynamique complexe au cœur de la globalisation*, eds. François Crépeau, Delphine Nakache, and Idil Atak (Montreal: Presses de l'Université de Montréal, 2009), 8-12.

Time wise, migration is also a generational phenomenon, triggered by a huge array of political, economic, and social factors that cannot meaningfully be influenced by short-term politics. At the individual level, it is a personal trajectory through several social spaces; we should never forget to listen to the individual voices, with their hopes and fears, beyond the coded language describing “waves” and “flows” of migrants.

Globally, migration can be seen as an economic transfer—of either funds or skills—that responds to push and pull factors, or a development issue, especially through “brain drain” and “brain gain.” Migration is sometimes used to fulfill demographic objectives, for example, in Canada, Australia, or the United States, where increasing the population is linked to an international strategic positioning: a search for a more robust economy, stronger clout in international affairs, and therefore an increase in global power.

As a vector of social transformation, migration is often a focus of the political discourse on identity, with all the imaginable demagogical outpourings of hatred about the “others”; very often, this discourse is shaping political agendas. Migration may pose challenges to territorial sovereignty: it may be a security concern, about which the state security agencies often refuse to share information, and is often a clandestine phenomenon, creating pockets of social invisibility.

It is also a key to cultural pluralism, at the same time creating here vibrant multicultural societies, attracting there waves of communal violence, or developing elsewhere into barely coexisting ghettoized communities. Although rife with human rights issues, migration, as a social phenomenon, is not yet a human right in itself; one has the right to exit any country but does not have the right, save for refugees, to enter any country other than one’s country of citizenship. On this particular point, Europe stands as a unique experience, as European citizens can move freely across the internal

borders of the European Union and establish themselves wherever they wish in the common territory.

Migration is, therefore, a complex multifaceted phenomenon that should be apprehended in many ways, through multidisciplinary approaches, with methodological caution, and with the constant concern of not losing the connection to the individual narratives at stake.

The five points of this presentation summarize my intellectual trajectory. My background idea is that, as migration is a constant of civilization, we are all migrants (1). My doctoral thesis was on the progressive devaluation of asylum (2). At first an immemorial tradition, asylum has recently been construed as a potential threat to national security, and we are moving towards a securitized control of migration movements, which was the object of my early research (3). The subject of my present research is the respect, fulfilment, protection, and promotion of the rights of migrants, as they relate to the rights of citizens (4). A potential research agenda would be a reconceptualization of citizenship, in order to recognize the presence of all “foreigners” in terms of their administrative statuses (5).

We Are All Migrants

Humanity is on an ongoing endless journey. We have always been migrants, since our species appeared around 200,000 years ago in Africa and then colonized other continents. Migration is at the heart of many civilizations, as exemplified by the Exodus in the Bible, the Kadesh treaty (1275 BCE) between Ramses II of Egypt and Hatusiliš III of the Hittite empire, Homer’s *Odyssey*, and Greek tragedies by Aeschylus, Sophocles, and Euripides, as well as the Hegira in Islam.³

3. François Crépeau, *Droit d'asile : de l'hospitalité aux contrôles migratoires* (Brussels: Éditions Bruylant and Éditions de l'Université de Bruxelles, 1995), 29-38.

Our settling on the land is recent and unstable. Nomadic populations still exist, such as the Romas and some Aboriginal peoples. Pilgrimages remain important traditions, as exemplified by the importance of Mecca or Santiago de Compostela. The rural exodus, the urbanization process, and the seasonal agricultural workers' programs, among others, all include elements of migration. Many individuals migrate for work, studies, retirement, or tourism. "Expats" and "snowbirds" are all migrants. Moreover, we dream of outer space, as many novels, movies, and TV series show.

Migrants represented approximately 3 percent of the world population throughout the last century, although the number of persons involved has vastly increased. Today, it corresponds to some 214 million migrants worldwide. Migration has always existed from areas of poverty and violence towards regions of prosperity and stability; the first create push factors, the second, pull factors. We can slow migration in the short term but cannot stop it in the long term, as it responds to a basic human need, that is, the ability to imagine a future for oneself and one's children. Most of us would also try to migrate if faced with the choices those millions of migrants face. Irregular migration results, therefore, from the interplay of three factors: our hidden, low-skilled labour migration needs, the needs of people seeking to emigrate from countries in the south, and our repressive border policies which interfere with the effective interplay of push and pull factors. Indeed, the tightening of migration policies in many destination countries has led to a decrease in the legal opportunities for international migration. When stricter border controls are imposed, more people turn to irregular means of migrating, including resorting to smuggling organizations, because they find no other alternative.⁴

4. François Crépeau and Delphine Nakache, "Controlling Irregular Migration in Canada: Reconciling Security Concerns with Human Rights Protection," *IRPP Choices* 1, no. 12 (2006), 4-5.

States from the Global North design policies intended to control migrations in various ways. In countries like Canada, Australia, and the United States, immigration policies are used to fulfill demographic objectives: governments create socioeconomic integration policies and cultural diversity is celebrated. In contrast, continental European states' policies have been designed to manage unskilled foreign populations, often considered as cheap labour; there were few integration measures and multiculturalism has not been considered a founding principle, when it was not rejected outright. However, migrants do integrate somehow in both sets of countries, and they experience common successes and difficulties with the coexistence of various communities.

Both groups of countries also share common policies, such as the repression of irregular migration and resurgent temporary migrant workers' schemes.⁵ Temporary migrant workers and irregular migrants are often left at the mercy of employers who can trigger their deportation. This is the case, for example, in Canada, for migrants who come with the seasonal agricultural workers' program or the live-in caregivers program. In the latter case, caregivers are allowed to work for only one employer at a time, they are obliged to live on the employer's premises, and changing employer is a complicated process. Such policies trap migrants in subaltern statuses and create spaces of vulnerability as the power over the migrants' lives generally silences them and creates a huge potential for exploitation: modern slavery, sexual exploitation, forced labour, debt bondage, servitude, and so on. The European Court of Human Rights' decision in *Siliadin v. France*⁶ exemplifies this vulnerability. In this case, the court concluded that a young woman of Togolese origin, who had worked as a maid from her arrival in France at age 15, unpaid for more than four years, was subjected to forced labour and held

5. Ibid., 18.

6. *Siliadin v. France*, no. 73316/01, ECHR, 2005-VII.

in servitude. Unlawfully present in France, the young woman was afraid of being arrested if she went to the police.

The migrant thus illustrates the conflict between the territorial sovereignty and human rights paradigms in international law. In the former, old and partly dated, the host state decides who enters and stays, who is a member of the political community, who is a citizen. According to the sovereignty paradigm, the foreigner has no rights a priori in the host state; he enjoys rights only in the home state, or state of citizenship. Traditionally, the host state treats foreigners as it wishes and has administrative discretion over them, subject only to the rule of reciprocity. The human rights paradigm, however, more recent and universal, posits that anyone has inherent rights opposable to any form of power, public or private. States must respect the rights of all persons within their power, everywhere, at any time. Therefore, migrants are entitled to the respect, fulfilment, protection, and promotion of all their fundamental rights, including the right to equality and the prohibition of discrimination. The migrant is, therefore, the case in point in the conflict between the sovereignty and human rights paradigms as basic principles structuring international law and policy.⁷

The Progressive Devaluation of Asylum

Asylum is an immemorial tradition of most civilizations, found in the Bible and Greek tragedies, among others. Many Greek tragedies (e.g., *The Suppliants*, by Aeschylus; *Oedipus at Colona*, by Euripides) expose very clear principles about asylum. Asylum is linked to the notion of justice, as the violation of asylum is considered an unbearable act of violence against the god-made law that protects the weak from the arrogance of the powerful. Granting asylum is also seen as the sovereign right of the one who gives his protection in the name of the gods.⁸

7. Crépeau and Nakache, "Controlling Irregular Migration in Canada," 5.

8. Crépeau, *Droit d'asile*, 32.

In the Bible, the traditional law of hospitality urges us: “Welcome the stranger, because you were a stranger in the land of Egypt.”⁹ Related to this antique tradition, asylum was probably first justified by religious beliefs: it was the divine protection of the criminal in a sanctuary. It was part of Catholic code of canon law until 1984. It evolved, from the 16th to the 18th century, to become the personal protection offered by a prince or a state, for political reasons, against the wrath of another prince or state.¹⁰

Notwithstanding this ancient tradition, the concept of “asylum seeker” is a recent construct, dating back only to the early ’80s. In 1973, the oil crisis justified the closure of Global North borders to low-skilled foreign migrant workers. Combined with an increased accessibility to international travel and communications, the number of asylum claims soared. In Canada, it jumped from 600 in 1976 to 60,000 in 1986. States reacted to the increasing number of asylum claims and irregular entries into their territory with a strong anti-asylum discourse and with repressive deterrence measures against irregular migration.¹¹

Stripped from its ideological dimension with the collapse of the Soviet bloc in 1989, asylum became more and more construed as a threat. Asylum seekers are often presented as “bogus” refugees, whose claims are fictitious, or as irregular migrants trying to “jump the queue” of the numerous honest and worthy applicants in the legal immigration system. The *public discourse* frequently associates asylum with other forms of “international criminality,” such as irregular migration, fraud, crime, trafficking in persons, migrant smuggling, and terrorism, thus justifying deterrence and preventive measures against all “unlawful aliens,” including asylum seekers.

Deterrence measures attempt to discourage asylum seekers or irregular migrants entering the country by raising the costs and

9. Exodus, 23:9.

10. Crépeau, *Droit d’asile*, 29-45.

11. *Ibid.*, 312-316.

diminishing the benefits of migration. Such measures focus on reducing the entitlements offered to migrants, such as the elimination of appeals in the refugee determination process and the reduction of access to legal aid, the labour market, and social protection.¹² Migrants also face increased detention. Map 1 shows migrant detention facilities in Europe and Mediterranean countries.¹³

In Canada, immigration detention has increased considerably in the last few years. The Immigration and Refugee Protection Act (IRPA)¹⁴ and its regulations provide the Citizenship and Immigration minister with stronger powers to arrest and detain migrants. In addition, the government is making more use of its detention power.

Migrant smuggling is sometimes heavily criminalized and involves excessive penalties: in Canada, helping a group of 10 individuals or more to cross the border irregularly is an offence punishable by life imprisonment. Canadian legislation does not distinguish between persons who are motivated by humanitarian concerns and others. In a recent decision, the Court of Quebec sentenced a woman to a prison term of three months for having helped another person gain entry to Canada without the appropriate documentation, despite the facts that no financial gain was made and that the person she helped received refugee status.¹⁵ This is in violation of at least two Canadian obligations under international law. On the one hand, the Protocol against the Smuggling of Migrants by Land, Sea and Air defines “migrant smuggling” as “the procurement, *in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person*

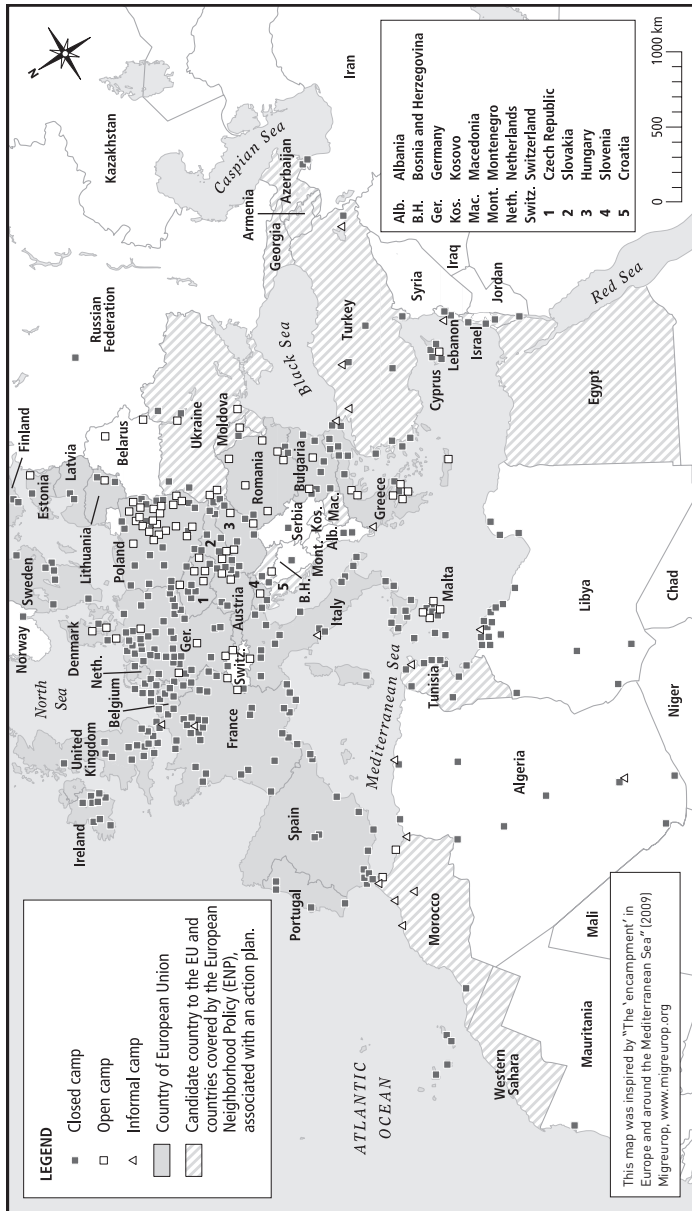
12. Crépeau and Nakache, “Controlling Irregular Migration in Canada,” 14.

13. This map was inspired by “‘The encampment’ in Europe and around the Mediterranean Sea,” Mireurop, www.mirgreurope.org.

14. Immigration and Refugee Protection Act, 2001, c. 27.

15. *R. v. Bejashvili*, [2007] J.Q. no. 16210.

Map 1 "The encampment" in Europe and around the Mediterranean Sea



is not a national or a permanent resident.”¹⁶ On the other hand, the Convention Relating to the Status of Refugees prohibits State Parties from imposing penalties on refugees on account of their illegal entry.¹⁷ How could one be the accomplice of someone who did not commit any infraction?

Furthermore, states resort to bilateral and multilateral agreements to facilitate the return of undesirable migrants, such as the 2007 readmission agreement between Europe and Russia or the safe third country agreements in Europe (1990 Dublin Convention) and North America (2002 Canada–United States Safe Third Country Agreement).¹⁸

Preventive measures, on the other hand, are designed to impede the arrival of asylum seekers and irregular migrants: in order to avoid the intervention of nongovernmental organizations (NGOs), lawyers, politicians, or the media who can try to fight the deportations of migrants who have arrived in the country, it is much easier to prevent migrants from setting foot on “our” territory altogether.¹⁹ None of these “annoying” actors will intervene in favour of someone who is maintained abroad.

This type of measure includes visa regimes, of which the visa obligation for Mexican and Czech nationals is the most recent example in Canada, an obligation directly triggered by the rise in the number of asylum claims from these two countries. States also apply carrier sanctions (fines imposed on transportation companies for bringing foreigners without the appropriate documentation), leading to a partial privatization of migration controls. In Canada, the

16. Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, November 15, 2000, art. 3, <http://www.unhcr.org/refworld/docid/479deeo62.html> (emphasis added).

17. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150, entered into force 22 April 1954, art. 31(1).

18. Crépeau and Nakache, “Controlling Irregular Migration in Canada,” 17.

19. *Ibid.*, 12.

IRPA contains several provisions making carriers responsible for the removal costs of foreigners who arrive in Canada by irregular means.

Countries also resort to interception mechanisms abroad in order to prevent irregular migration; to that end, Canada has deployed “immigration integrity officers” in many key origin and transit countries. Some states have created “international zones” in their airports, a practice based on the fiction that the foreigner who has not yet been admitted into the country is considered—for legal purposes—not to be in the territory and finds herself in an international no man’s land where the legal guarantees provided by local law are not available to her. Though courts everywhere have rejected the fiction as fallacious (if the police can intervene, the legal guarantees against abusive behaviour by the authorities must also apply), many administrative practices in such restricted areas remain without effective checks. As well, immigration intelligence is widely shared without meaningful control on the transfer of personal information found in intelligence databases.

Nowadays, international economic cooperation arrangements—such as the Barcelona Process in the Mediterranean, the Puebla Process for Central America, or the African, Caribbean and Pacific Group of States–European Community Partnership Agreement—all contain conditions related to migration controls by countries of the Global South.²⁰ Countries in the Global North thus delegate the “dirty work” of stopping migrants and asylum seekers to other states, regardless of the fact that many of these states do not have a good human rights record.

Borders and seas are militarized with institutions like the Guantanamo military base, used during the ’90s by the United States

20. Delphine Nakache and François Crépeau, “Le contrôle des migrations et l’intégration économique : entre ouverture et fermeture,” in *Mondialisation, migration et droits de l’homme : le droit international en question*, ed. Vincent Chetail (Brussels: Éditions Bruylant, 2007), 214; Derek Lutterbeck, “Policing Migration in the Mediterranean,” *Mediterranean Politics* 59, no. 11 (2006), 69.

to detain Haitian boat people trying to reach Florida, before sending them back to Port-au-Prince; the enduring “Pacific Solution,” whereby the Australian authorities intercept boats coming from Indonesia and detain the migrants on isolated Christmas Island; and the European Union Frontex agency, which patrols the Mediterranean near Lampedusa, Malta, the Canary Islands, or Gibraltar to prevent boats from reaching the European mainland. European countries are even discussing the idea of an “externalization” of asylum policies, meaning that asylum procedures would take place only abroad, in such countries as Libya, Morocco, Albania, and Mauritania.²¹

All in all, states are progressively reinforcing, into a coherently articulated strategy, their arsenal of measures for preventing irregular movements of persons, including asylum seekers and refugees, and reducing the “burden” of such migration.

The Securitized Control of Migrations

These measures proceed from a change of political paradigm, reflected by changes in the public discourse on migrants. Especially since the attacks of 9/11, as well as the 2004 Madrid and 2005 London bombings, migrants are considered suspect and dangerous. They are even more associated with economic woes (unemployment, welfare state crisis, etc.), security threats (inner cities, petty violence, organized crime, terrorism, etc.), and identity anxiety (demographic changes, identity markers). The “us and them” mentality is at work, creating discrimination that is easily manipulated into hatred.²²

But migration was part of a new international security paradigm even before the attacks of the '90s. In the past two decades a phenomenon of securitization of the public space has emerged,

21. See, for example, Sophie Huguenet, *Droit de l'asile : le projet britannique d'externalisation* (Paris : L'Harmattan, 2004).

22. Crépeau and Nakache, “Controlling Irregular Migration in Canada,” 4-5.

which identifies the process by which a policy issue (such as international migration) becomes a security issue.²³ This phenomenon also includes other domains, such as water security, food security, energy security, communication security, environmental security, human security, and urban security, to name only a few.

Since 9/11, however, this process has quickened.²⁴ Domestic developments include new legislation against terrorism, policies to fight irregular labour, and institutions like the US Department of Homeland Security. Administrative practices, such as the privatization of detention, are extended, and new ones, such as discriminatory practices at the border and abroad, often go undetected.

In the meantime, international and constitutional human rights guarantees remained unchanged. The events of 9/11 did not affect this legal framework, except for some interpretation reworking. It did not change because it is the legacy of the eyewitnesses to the atrocities of World War II and was designed to provide a framework for shocks even greater than 9/11.

Certainly, some states feel “trapped” by their human rights commitments when the time comes to apply them to migrants, as they never envisaged that migrants would use them. Canada was incensed to be condemned by the UN Committee against Torture, in the *Khan* case, in 1994, for its intention to return a Kashmiri militant to Pakistan, as Canada considered that the 1984 UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had not been intended for such cases.²⁵

23. Thomas Faist, “The Migration-Security Nexus. International Migration and Security before and after 9/11,” Malmö University School of International Migration and Ethnic Relations, *Willy Brandt Working Papers*, 2004, <http://dspace.mah.se:8080/bitstream/2043/686/1/Willy%20Brandt%202003-4.pdf>.

24. Crépeau and Nakache, “Controlling Irregular Migration in Canada,” 4.

25. *Tahir Hussain Khan v. Canada*, CAT/C/13/D/15/1994, UN Committee Against Torture (CAT), December 18, 1994.

Securitizing immigration allows states to invoke a “state of exception” against migrants.²⁶ For example, British prime minister Tony Blair suggested that his country could withdraw from the 1950 European Convention on Human Rights with regard to asylum seekers if their number did not diminish; this necessarily implied that such persons were not worthy of human rights guarantees, that they were second-class human beings of sorts. Canadian authorities recently rejected the conclusion of a communication from the UN Committee against Torture and deported to Iran Mostafa Dadar, an individual whom this treaty body had declared as in need of protection.²⁷ Dadar had fled his country of origin after being imprisoned and severely tortured because of his loyalty to the Shah, but then committed a crime in Canada; Canadian authorities considered that they have no obligation to comply with the decision of the committee.

The securitization process thus reframed the status of migrants. Irregular migration is now considered part of “international criminality”; the implication is that irregular migrants should not be recognized as having any rights. Indeed, very few states (and not one state in the Global North) signed or ratified the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,²⁸ which details the rights of all migrants; its “flaw” is to extend many of these rights to irregular migrants.

26. Giorgio Agamben, “State of Exception,” *New Serbian Political Thought* 1-4 (2005), 135.

27. *Mostafa Dadar c. Canada*, CAT/C/35/D258/2004, UN Committee Against Torture (CAT), December 5, 2005; Radio-Canada.ca, “Mostafa Dadar expulsé,” (March 27, 2006), <http://www.radio-canada.ca/regions/atlantique/2006/03/26/001-NB-dadar.shtml>.

28. On December 8, 2009, 42 states ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (December 18, 1990): United Nations Treaty Collection, “Chapter IV: Human Rights,” 13, International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,” <http://www2.ohchr.org/english/law/cmw.htm>.

Actually, irregular entry is not a crime against persons or against property; it is essentially the crossing of a virtual line in the sand, which in itself hurts no one. Moreover, the use of smuggling rings is often essential, when all other avenues towards protection are closed. Human smuggling has always existed and, despite being a nasty business, rife with possibilities of exploitation, examples abound of it saving lives: German Jews (in the movie *Casablanca*, the false travel documents were hidden in the piano), Spanish Republicans, Indochinese boat people, Haitian boat people, and many others who escaped to safety by means of migrant smuggling.

The large majority of irregular migrants pose no security risk, and the 9/11 terrorists were not irregular migrants. Although framed as a fight against international criminality, the migration control mechanisms are more used to create a reassuring discourse about appropriate government action than to effectively increase the security of citizens. Moreover, some of these mechanisms have direct adverse impacts on migrants' security. For example, the wall being erected on the border between the United States and Mexico forces migrants to cross the Arizona desert, a long journey through extreme conditions which have caused hundreds of deaths. Migrants trying to reach the coasts of Europe from Africa or of Australia from Indonesia risk their lives on unseaworthy vessels, seeking Eldorado; hundreds have drowned.

Furthermore, irregular migrants do work and pay at least direct taxes, and their exploitation in specific sectors of the economy (e.g., construction; agriculture; domestic, cleaning, or catering services) enhances the competitiveness of Global North economies.²⁹ Such migrants are badly needed; without them, those sectors would risk

29. International Labour Office, *Towards a Fair Deal for Migrant Workers in the Global Economy, Report VI* (International Labour Conference, 92nd Session), Geneva, International Labour Office, 2004, at 48, <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/meetingdocument/kd00096.pdf>.

being wiped out. This essential pull factor is systematically forgotten in government discourse regarding irregular migration; the fact that “we” are co-responsible for their coming in the first place is never mentioned.

Finally, measures against irregular migration are inefficient, as they never address the root causes for migration, which are, at a macro level, the need for exploited labour in the economies of the Global North, and, at a micro level, the personal inability to imagine a future for oneself and one’s children in the country of origin due to the persistent failure of international development policies.³⁰

Migrants Have Rights

States benefit from territorial sovereignty and may exclude any foreigner from their territory, with due respect for international obligations; this traditional principle of international law remains valid. But we have added a new principle to it: everyone generally benefits from the same fundamental rights, citizens and foreigners alike.

Two rights are exclusive to the citizen: the right to political participation, which means the right to vote and be elected, and the right to enter and remain in the territory. This is the situation in international law and in Canadian constitutional law.³¹

All other rights apply equally to the foreigner and the citizen, by virtue of their common humanity. This means, *inter alia*, that the foreigner has the right to equality and to not be discriminated against on the grounds of nationality, and that she is protected

30. Global Commission on International Migration, *Migration in an Interconnected World: New Directions for Action, Report of the Global Commission on International Migration*, 2005, at 32-40, Global Commission on International Migration, <http://www.gcim.org/attachements/gcim-complete-report-2005.pdf>.

31. See *International Covenant on Civil and Political Rights*, (1976) 999 U.N.T.S. 107; *Canadian Charter of Rights and Freedoms*, part I of the Constitution Act, 1982 [Schedule B to Canada Act 1982 (1982, U.K., c. 11)], art. 1-15.

against return to torture and arbitrary detention. The foreigner must have access to recourses and due process. She benefits from guarantees even in cases of national security. Furthermore, a foreign child enjoys specific protections: among others, the Convention on the Rights of the Child clearly states that states “shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind” and that the “child is protected against all forms of discrimination or punishment on the basis of the status[...]of the child’s parent.”³²

States must respect those rights. The non-discrimination standard, based on the right to equality, forbids in principle the differential treatment based on citizenship or immigration status in the implementation of fundamental rights. In Canada, according to article 1 of the Canadian Charter of Rights and Freedoms, a differentiation between citizens and non-citizens must be “reasonable and justifiable in a free and democratic society.”³³ The same criteria are used in European law, as interpreted and applied by the European Court of Human Rights.

This is what, still with many caveats, several tribunals have already started to affirm. The Supreme Court of Canada has curtailed the discretionary elements and the secrecy of long-term detention without charges of persons subject to a security certificate signed by cabinet members.³⁴ The United States Supreme Court has progressively imposed a due process framework on the detention in Guantanamo Bay of suspects caught in the “war against terror,” when it had not done so for the Haitian irregular migrants detained

32. *Convention on the Rights of the Child*, November 20, 1989, 1577 U.N.T.S. 3 (entry into force, September 2, 1990), art. 2.

33. *Canadian Charter of Rights and Freedoms*, part I of the Constitution Act, 1982 [Schedule B to Canada Act 1982 (1982, U.K., c. 11)], art. 1.

34. *Charkaoui v. Canada (Citizenship and Immigration)*, [2007] 1 S.C.R. 350.

in Guantanamo Bay during the '90s.³⁵ The European Court of Human Rights has affirmed that so-called international zones in airports are actually national territory where all human rights guarantees apply.³⁶ The British House of Lords has decided that indefinite detention and discriminatory practices in a foreign airport are not compatible with a proper interpretation of the human rights framework that governs the country and the continent.³⁷

In the end, past the moral panic that followed 9/11, normal legal frameworks reassert themselves progressively. Our common universal human rights framework was established by the generation that had lived through the horrors of World War II. The legacy of that generation was that law must always prevail over executive power. This had been threatened by the *modus operandi* established for the “war on terror.” It is heartening to see that courts are slowly reasserting their control over laws and policies that expanded executive powers against individual freedoms. Their point is that the political legitimacy at the base of such policies is not to be found in the objectives pursued but in the procedures followed. Unless public authorities submit to the normal rules of procedure and evidence, their decisions will come out as arbitrary, thus undermining the legitimacy of their action and threatening the political support needed for long-term action against terrorism.

Furthermore, even with regard to the role of borders, exceptions exist that show that it is possible to imagine another regime: citizens of European Union countries can move freely across internal

35. *Boudemiene v. Bush*, 553 U.S. (2008); *Sale v. Haitian Centers Council*, 113 S. Ct. 2549, 113 S. Ct. 2549, 125 L. (92-344), 509 U.S. 155 (1993).

36. *Amuur v. France*, 17/1995/523/609, Council of Europe: European Court of Human Rights, June 25, 1996.

37. *A and Others v. Secretary of State for the Home Department*, [2004] UKHL 56; *Regina v. Immigration Officer at Prague Airport*, [2004] UKHL 55.

borders of the European territory and may vote in local elections in their country of residence.³⁸

Conclusion: Changing Our Conception of Citizenship?

Throughout history, marginalized or vulnerable categories of population have always had to fight for their rights. In modern times, they also fought through the courts, against the executive, against Parliament, and often against the majority public opinion. Among others, they include, in recent times, industrial workers, women, Aboriginal people, national minorities, and detainees, as well as gays and lesbians. Migrants are the latest of such vulnerable groups.

For many reasons, one cannot generally expect the executive or the legislative powers to protect the rights of migrants. They are too convenient scapegoats for some woes of our societies, such as unemployment or criminality. Migrants rarely complain and are thus legally insignificant. Because they do not vote, they are also politically insignificant. Therefore, politicians are unlikely to consider their preferences.³⁹ As host states' authorities manipulate information and nationalist populist discourses go uncontradicted, the public is easily persuaded not to support migrants and frankly does not care much. It comes down to NGOs, churches, pro bono lawyers, and other concerned citizens to carry the sole burden of the respect, fulfilment, protection, or promotion of their rights; the burden is much too heavy for their meagre resources. We cannot overcome the difficulties of the situation unless we take a different view on migrants.

Our proposal would be that, as they are an integral part of the city, despite not being nationals, migrants should be considered citizens, although with a small "c." They all work and contribute to the

38. See Jean-Yves Carlier and Elspeth Guild, *The Future of Free Movement of Persons in the EU* (Brussels: Éditions Bruylant, 2006).

39. Crépeau and Nakache, "Controlling Irregular Migration in Canada," 4.

economy of the host state. Their irregular work—and exploitation—contributes to the competitiveness of its economy in several sectors, such as agriculture, construction, or catering. Migrants pay taxes on everything they buy or rent, and use public services sparingly. The absence of an administrative status that recognizes the whole range of their rights is the cause of their vulnerability. Creating coherent legal statuses for such persons would go a long way towards empowering them to fight exploitation.

Here are some examples of how we already adopt a different attitude on vulnerable migrants. In many cities in the United States, the police have decided not to control immigration status in encounters with fellow citizens so as to be able to implement their “law and order” agenda with the confidence of all segments of the population; fighting violence becomes impossible when victims do not call the police for fear of deportation. In Toronto, all children have the right to go to school whatever the status of their parents, according to a “don’t ask, don’t tell” policy. In Massachusetts, the state hands out driver’s licences without checking the licensee’s immigration status, thus allowing irregular migrants to establish an identity and giving them access to many services. In many European countries, resident European citizens can now vote in local elections. Several other jurisdictions also allow resident aliens to vote in local elections: six townships in Maryland; two towns in Massachusetts (Amherst and Cambridge); New York, Chicago, and Arlington (Virginia) for school board elections; and New Zealand for all elections.⁴⁰ In Quebec, the AH1N1 flu vaccination campaign in the fall of 2009 was available to all, irrespective of immigration status; public health measures are

40. See David C. Earnest, *Noncitizen Voting Rights: A Survey of an Emerging Democratic Norm*, American Political Science Association, 2003, http://www.odu.edu/~dearnest/pdfs/Earnest_APSA_2003.pdf; Jamin B. Raskin, “Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage,” *University of Pennsylvania Law Review* 141 (1993), 1391.

partially ineffective if they exclude entire segments of the population. In Paris, since the '80s, 21 medical dispensaries for irregular migrants have been established by an NGO (Médecins du Monde), and they benefit from a cooperation agreement with the authorities that prevents police raids.

These are all examples that show that a different conception of the place of vulnerable migrants in many host societies is possible. If immigration status is still an important factor at a national level, local governments (regional or municipal) can adopt a different stand. Any person who participates in the economic and social workings of any society should enjoy a status that allows her to benefit from services commensurate to her contribution and participate in political decision making, at least at the local level.

Democracy is a complex relationship between political representation, protection of human rights, and the rule of law (understood as the normal access to recourse against unfair decisions, to tribunals or other national human rights institutions). Political mobilization and legal guarantees must be combined to achieve true democracy; the history of the 20th century has demonstrated that majorities can be wrong and that individuals and minorities must be able to defend their rights against any majority. The protection of human rights is always a political struggle in which law is a tool to be used by individuals and groups, a tool that enhances and furthers political mobilization, a tool that is generally useless without political mobilization. The question, therefore, is, in the absence of political mobilization, how, and who, can we mobilize in favour of migrants? Being the ultimate outsider, effectively unable to use political representation, the migrant has become the ultimate test for our democracies.

ROSEMARY SULLIVAN

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BIOGRAPHY

Rosemary Sullivan is an award-winning writer, a journalist, a Canada Research Chair at the University of Toronto in creative non-fiction and biographical studies, and the founding director of the MA program in English in the field of creative writing, who has taught at universities in France, India and Canada. Her recent book, *Villa Air-Bel: World War II, Escape and a House in Marseille* (HarperCollins) won the Canadian Jewish Books Yad Vashem Award in Holocaust History/Scholarship in 2007. It was published in Canada, the United States, England, Spain, Brazil, the Czech Republic and Italy.

She is the author of 12 books, including *The Guthrie Road* (2009); *Cuba: Grace Under Pressure*, with photographs by Malcolm David Batty (2003); *Labyrinth of Desire: Women, Passion, and Romantic Obsession* (2001), published in Canada, the United States, England, Spain, and Latin America; and the national bestseller *The Red Shoes: Margaret Atwood Starting Out* (1998). Her 1995 biography *Shadow Maker: The Life of Gwendolyn MacEwen* won the Governor General's Award for Non-Fiction, the Canadian Author's Association Literary Award for Non-Fiction, the University of British Columbia's Medal for Canadian Biography, and the City of Toronto Book Award and was nominated for the Trillium Book Award. It became the basis for Brenda Longfellow's award-winning documentary *Shadow Maker* (1998). Sullivan's first biography, *By Heart: Elizabeth Smart/A Life* (1991), was nominated for the Governor General's Award for Non-Fiction. Her first poetry collection *The Space a Name Makes* (1986) won the Gerald Lampert Memorial Award. In 2001, Black Moss Press released *Memory-Making: The Selected Essays of Rosemary Sullivan*,

which included essays published in Canadian and international magazines. Her journalistic pieces have won her a National Magazine Awards silver medal and a Western Journalism Awards first prize for travelogue. She is the recipient of Guggenheim, Killam, Camargo, Connaught, and Jackman fellowships. In 2008, she was the recipient of the Lorne Pierce Medal from the Royal Society of Canada for her distinguished contribution to Canadian literature and culture. She was nominated a Trudeau Fellow in 2008.

A Montrealer by birth, Rosemary Sullivan received her BA from McGill University, her MA from the University of Connecticut, and her PhD from the University of Sussex.

ABSTRACT

An exciting conflation or mixing of genres has occurred in contemporary writing. We no longer insist on the comfortable demarcation between fiction and non-fiction. Novels come with bibliographical references. Works of non-fiction include fictionalized dialogue and anecdotal references. Even in journalism we have come to be interested in the autobiographical. In the old days, the *sine qua non* of journalism was that it had to be objective. Now much of the best journalism is *I* centred. Why this interest in *Intimate* revelation? I believe this insistence on intimacy has to do with the postmodern dismantling of the old orthodoxies: in an age when all ideologies have been called into doubt, the only ground left for public statement is, paradoxically, personal experience. As I look back over my writing career and the 12 books I have published, I ask myself why I have been committed to the art of creative non-fiction, that art that is centred in the potency of bearing witness, where the author records what has actually happened, tethered to history, context, time, and place, while being candid about the motives and experience of the person doing the recording, namely him- or herself. This lecture will be about the subtext to a number of my books, about the factual stories I encountered in my research, which are as compelling and complex as any fiction.

LECTURE

Confessions of a Biographer: Is Truth Stranger Than Fiction?

Sherbrooke University

JANUARY 27, 2010

The Biographer and Her Subject

To offer a retrospective glance at one's intellectual career is a daunting task! However, for me this means my career as a writer. My principal interest as a writer has been in a genre we now call creative non-fiction. I find this is a rather misleading rubric, since I do not believe there is a category of serious writing that is not creative. I prefer to speak of narrative non-fiction. I am fascinated, in particular, by biography. My imagination is drawn to that conjunction where the narrative impulse and actual events, the facts of a life, meet.

My interest coincides with an exciting conflation or mixing of genres that has occurred in contemporary writing. We no longer insist on the comfortable demarcation between fiction and non-fiction. Novels like Michael Ondaatje's *The English Patient* or, more recently, Lawrence Hill's *The Book of Negroes* come with an acknowledgements page filled with bibliographical references that locate the novelist's research. Biographies sometimes include fictionalized dialogue. And memoirs require the narrative energy of fiction if they are to find an audience.

The question in all of this is who is speaking? As someone who writes not only biography, but also memoir, journalism, travelogues, and poetry, I am fascinated by the slipperiness of that most unmanageable of pronouns: the authorial “I.”

Even in journalism we have come to be interested in the autobiographical. In the old days, the *sine qua non* of journalism was that it had to be objective. Now much of the best journalism is *I* centred. Why this interest in personal revelation?

I believe this insistence on intimacy has to do with the post-modern dismantling of the old orthodoxies: in an age when all ideologies have been called into doubt, the only ground left for public statement is, paradoxically, personal experience. Those who write non-fiction believe in the potency of bearing witness, of recording what has happened, tethered to persons, history, context, time, and place. They are attached to the fact that something *happened* that needs recording, something that they have not invented. But they want to be candid about the motives and experience of the person who is doing the recording, namely, themselves.

I find rather puerile the old game of fighting over which is more accurate, in terms of truth value: fiction or non-fiction. It's not a competition. I would insist only that the biographer has a special contract with the reader: there must be documentary sources for everything the biographer records.

Biography is an exacting art, fraught with responsibilities: responsibility to the living, responsibility to the dead, responsibility to the facts. The ethics of biography are ruthlessly straightforward. Implicitly the biographer makes a pact—with the subject and with the reader: To accord the subject the respect one would demand of others if one's own life were examined. To assure the reader that nothing will be made up.

The assumption is often made that the biographer's task is to dig up secrets. During a symposium on biography at Concordia University I was asked by a young woman: “Was there a deep, dark

secret that the writer Elizabeth Smart told you, a secret she begged you never to tell? And if so, what was it?"

But as a biographer begins to tell the story of a life, offering a hypothesis about how that life was lived, the complexity of the life takes over. A biography is not about secrets. Rather, it is about the strange symbiosis between biographer and subject as the biographer undertakes her search. What is not evident in the finished book is the process itself, what the biographer experiences in the course of the research and writing. This is quite different from the record of the life that appears between the covers of the book, since it is the strange and sometimes disconcerting confluence of the biographer's and the subject's lives.

Elizabeth Smart—"Is Ego a Prick to the Muse?"

In 1987, 23 years ago, I was commissioned by Penguin Books Canada to write a biography of Elizabeth Smart.¹ Smart was the Canadian author of the novel *By Grand Central Station I Sat Down and Wept*,² which has been called one of the half dozen masterpieces of poetic prose in the English language.³

Like a kind of female D.H. Lawrence, Smart was as famous for the story of her life as for her books. She always claimed to have lived a great love affair. The primary story, which she delighted in recounting in interviews, was that in 1937 at the age of 24, she walked into a bookstore on Charing Cross Road in London, picked up a book of poetry, and began to read. She was immediately overwhelmed. She checked the biographical blurb. The poet's name was

1. Rosemary Sullivan, *By Heart: Elizabeth Smart/A Life* (Toronto: Viking Penguin Group, 1991); (Barcelona: Circe, 1996).

2. Elizabeth Smart, *By Grand Central Station I Sat Down and Wept* (London: Editions Poetry, 1945); (London: Panther Books, 1966); (New York: Popular Library, 1975); (London: Polytantric Press, 1977); (Ottawa: Deneau Publishers, 1981).

3. Brigid Brophy, foreword to *By Grand Central Station I Sat Down and Wept* (London: Panther Books, 1966).

George Barker and he was the same age as she was. She instantly knew he was the “HE,” the catalytic experience she needed to get her life as a writer started. Without seeing a photograph of him, she let it be known that she wanted to meet and marry George Barker. She wanted to have his children. She set out on her hunt. In the course of my research, I actually met people who recalled Elizabeth Smart tearing around London asking how to meet George Barker. The masterpiece she came to write was based on her love affair with Barker, whom she finally met in California in 1940.

The question is why did she find this autobiographical anecdote so compelling that she continued to tell it to most interviewers even 40 years after the fact? This is where an act of historical imagination is required of the biographer. This was 1937, a time when women were still heavily constrained by conventional expectations, particularly regarding relationships between the sexes. In Smart’s anecdote, she was the initiator and the romantic. I would say that, to her, this flinging of herself into romantic extremis, what she might have called “leaping into the arms of the infinite,” was an act of courage. “To really live,” Elizabeth Smart always said, “you had to have a large appetite.”⁴ And she had models. Falling in love with the muse and writing love poetry had always been the male writer’s first assignment.

I knew Elizabeth Smart as a friend. In 1979 I had searched her down when I was living in London and her name appeared in the *Guardian*, under the heading “Come Back of the Year Award.” After 34 years she had finally published her second novel: *The Assumption of the Rogues and Rascals*.⁵ I wrote to her as a fellow Canadian and was invited to visit her at her remote cottage, The Dell, in Suffolk. It certainly did not occur to me then that one day I would write her

4. Comment to author.

5. Elizabeth Smart, *The Assumption of the Rogues and Rascals* (London: Jonathan Cape and Polytantric Press, 1978).

biography. At that time, I had, in a sense, wanted her to write mine. I had fled to London, blown across the Atlantic by the fatal winds of a romantic obsession. I needed to know how she had survived her book, for *Grand Central Station* seemed to me so potent, so flayed, that I presumed she had lived its story of loss.

It was winter, and I can still remember how desolate her cottage seemed, adjacent to an empty gravel pit. The landscape was strewn with frozen pools of water and interrupted by huge cranes rising like pterodactyls. Elizabeth Smart stood at her gate waiting for my taxi. She was dishevelled in mackinaw and gum boots. She would have been 65 then. My first impression was that she was incredibly lonely, but I would soon discover that her home was open to everyone, like Grand Central Station itself—the taxi driver was invited in with the passenger.

Though I was in pursuit of answers for my life, I cannot remember talking about myself that afternoon. Perhaps I had just wanted to see Elizabeth Smart. One among many details that sit in my mind is her answer to my question about her book. I asked her why the man in her novel with whom the narrator was in love hardly seemed to have an identity. He seemed to me faceless. “Of course he has no face,” she replied. “He is a love object.”

I was too young then to realize that Elizabeth Smart was telling me she understood the nature of her romantic obsession. She had come to recognize her collusion in what she called “all that pricy pain.” She had stranded herself in obsession. Romantic obsession is auto-erotic, a projection onto the other of all that is most valuable in the self and which one longs to claim. Such passion serves as a catalyst to get one’s life started or to kick-start it again when it stalls. When the romantic projection is ripped away or dissolves, the other standing there is almost always a stranger. “Every love story is a ghost story,” as the great Australian novelist Christina Stead once said. Still, the story of romantic obsession now feels like it comes from another

age. It is hard today to think of romantic love without irony. No man can easily live the persona of the romantic artist. No woman writer could ever be so alone. There are new narratives.

But the story of Elizabeth's life as a writer interested me deeply. It was a story of *silence*. Smart had experienced a painful writer's block of 30 years between books. How had she lost her sense of herself as a writer—that obsessive compulsion the artist feels to write? Once she had hoped to be as good as Emily Brontë. What had happened to the writer's necessary ego, which she had had in large enough measure to write a masterpiece like *Grand Central Station*? Puzzled by her own paralysis, she asked in a poem: Is there a difference between the "muse, his & hers?" "Is ego a prick to the muse?"⁶

In one of our conversations she told me that when she was young she had felt the "maestro of the masculine sitting on my shoulder, telling me I would never be good enough." Smart left Canada in 1943 and did not return for 40 years. "At the London literary table," she said, "the male writers allowed me a seat at the table, but they would never talk to me one on one."

The central issue for the pioneer female writer in the 1930s and 1940s was one of confidence. Where was it to be found? When *Grand Central Station* was published in England in 1945, it was issued on war-rationed paper and was printed in such small type that it was only 45 pages long. It got good reviews, including one by Cyril Connolly. Then it sank like a stone. Elizabeth Smart had no one telling her just how good a writer she really was.

When six copies of *Grand Central Station* were shipped to Canada and showed up in an Ottawa bookstore, her mother bought them up and burned them. She asked her neighbour, then Prime Minister Mackenzie King, to prevent the book's importation into Canada under the laws of wartime censorship. The book was too

6. Elizabeth Smart, "The Muse: His & Hers" in *A Bonus* (London: Polytantric Press, 1977).

intimate and revealed family secrets. Smart was by then the mother of three “bastard” children by George Barker and Mrs. Smart needed to protect the family reputation from her daughter’s hysterical excesses. Needless to say, Elizabeth was devastated.

After her death in 1986, I wrote a memorial article about Elizabeth Smart titled “Muse in a Female Ghetto” for *This Magazine*, as a consequence of which Penguin Books approached me to write her biography. Had the idea been my own, it would have felt like trading on a friendship, but a commission was another matter. As a biographer does, I followed her story, a process that took several years of research.

My first task was to visit Elizabeth Smart’s family in London to ensure that I would have their permission to write a biography, but that I would be free to offer my own interpretation of her life. Her son Sebastian Barker told me that his only demand was that the book be well written. Her daughter Georgina said: “Write about my mother, but don’t romanticize her. She would not have wanted that.” Then I headed to the National Library in Ottawa to read the Elizabeth Smart papers, a collection of more than 90 boxes of material.

Archival research is fascinating. To quote only one example, it had always puzzled me that the lovers in *Grand Central Station* are arrested at the Arizona border. The novel was largely autobiographical. I wondered if this had actually happen to Elizabeth Smart and George Barker?

I wrote to the FBI. Yes, they had a file on Elizabeth Smart, but it could not be released in the interests of national security. Elizabeth Smart who had been the most a-political of creatures! When I demanded an explanation, the FBI replied that she was cross-referenced with a person whose name was still a threat to public security. Were there political refugees from the Spanish Civil War under FBI surveillance on the west coast of the U.S. in 1940? Were Smart and Barker, then living at a writers’ colony in Big Sur,

inadvertently caught in their net? Could Elizabeth Smart's friend Henry Miller have been of interest to the FBI? Despite repeated efforts, I never managed to obtain Smart's FBI file.

I had many extraordinary experiences while I was researching and writing Smart's biography. One encounter in particular sums up the impact the writing of biography can have on the biographer.

George Barker had taken the notion of the priapic, bardic poet—womanizer, drinker, and agonized romantic—that his society offered as mandatory for the authentic poet and lived it to the hilt. When Elizabeth Smart met him he was married, though this was not recorded in the biographical blurbs in his books. After his relationship with Smart ended, he had another three "wives." In all, he had five wives and 15 children. I needed to meet the children from his first marriage who had been lost to him 50 years ago. I needed their permission to quote from the letters their mother, Jessica Barker, had written to Elizabeth Smart. Jessica had been the woman whose place Smart usurped in George Barker's life.

After a long and circuitous search I finally found the daughter I was looking for. She was called Anastasia Barker and lived in Kentucky. I phoned to ask if we could meet.

I found myself travelling to a remote farm district in the blue hills of Kentucky to meet a complete stranger, carrying to her the stories of a father she had never known. Her mother had told her in her childhood: "Your father was a poet. He went to a poetry reading at Harvard and never came back." "It was said in such a way that you knew the conversation was over," Anastasia told me. "You weren't allowed to ask anything more." She and her twin brother had grown up in Greenwich Village. Though they lived in England for a year when she was a teenager, it had never occurred to her to look up her father. George Barker was only a poet they had read in school.

I gave Anastasia photographs I had brought of her father—she had never seen them. It was astonishing. I, an outsider, was the carrier of her family history, at the moment the only one who could,

however awkwardly, pull the threads together. Had I come to visit a few years earlier, she told me she probably would not have been willing to meet me. But her mother was dead—she had nursed her through several years of Alzheimer’s. Giving in a way that you must to someone so sick had been the most transformative experience of her life.

“I’m tired of secrets. Secrets destroyed my mother’s life,” she said. Her mother had remained embittered about George Barker, locking that bitterness in her heart. She never spoke of him but her children all lived under the weight of his unspoken existence. And their lives became a geography of lost and missing pieces. “Publish anything you need to tell the story.” What she was saying to me, I understood, was profound. It is the secrets that keep us locked inside private agonies. But the secrets turn out to be ordinary lived experience. George Barker’s mistress, as Anastasia called Elizabeth Smart, had been freer than her mother. She had spread her life generously.

The biographer does not own her own book until the hurdle of permissions has been crossed. When I sent the galleys of *By Heart* to George Barker to get his permission to quote from his diaries, he said my book was rubbish. He then published a brief notice in the *London Times* warning that this execrable book was about to appear. He would not bother suing, but he would do something spectacular when it came out. I removed his diary entries.

I travelled to London for the publication of *By Heart*. I remember picking up the *Times* and looking at the title of the review of my book: “Writer Without a Clue.” I thought, I might as well go home now, but the review was, in fact, favourable. The writer without a clue turned out to be Elizabeth Smart, clueless for being in love with someone as mercurial as George Barker. Then I glanced at the adjacent page. There was Barker’s gesture. He had died the day before. Astonishingly, the Barker/Smart family still came to my book launch; they were able to celebrate their mother at the same time as they mourned their father.

Gwendolyn MacEwen—Elusive Secrets

I went on to write two other biographies of women writers. They completed my story of the female writer's struggle for confidence, a story about how you find the courage to believe in yourself as an artist. As my second subject, I chose the Canadian poet Gwendolyn MacEwen because she had been so productive, writing over 20 books in 30 years. But I wrote this biography differently. Sabotaging the illusions of the magisterial biographer who claims to know, I included my own voice as a biographer searching for the narrative of MacEwen's life, a strategy even more essential, since MacEwen lived her life secretly, separating her friends into different pockets of her life. I also included the voices of the people to whom I spoke as they tried to recover for me the Gwendolyn MacEwen they had once known. I wrote in my preface to *Shadow Maker*:

I decided to follow the clues as they came, recording the voices that surrounded Gwendolyn MacEwen, all those versions of her life she had left behind. It would mean that I would not be able to pretend, as biographers sometimes do, that one can turn a childhood into a seamless narrative when one is following forty years after the fact, and constructing a childhood from the multiple versions of the survivors who are left behind. I would have to track down her lost lovers, from whom there would be no letters and whom friends remembered only as a shadow or a name. Even then who was to say that the man I would meet and the man Gwendolyn had loved bore even the slightest resemblance to each other. What debris had gathered in the pockets of memory? To be faithful to the mystery that was Gwendolyn, I would have to lay bare the bones of my search for her, with little of the biographer's illusions of omniscience or objectivity.⁷

Gwendolyn MacEwen was a great poet who died at the age of 46 in mysterious circumstances. Some people suspected suicide. How was I to write about her? Above my desk I kept an extract from a

7. Rosemary Sullivan, *Shadow Maker: The Life of Gwendolyn MacEwen* (Toronto: HarperCollins Publishers, 1995), xiii-xiv.

poem by the German poet Nelly Sachs to remind me of the complexity of what I was doing:

When someone lifts us
He lifts in his hand millions of memories
Which do not dissolve in blood
Like evening.⁸

We believe the roots of a lifetime are hidden and entwined in childhood. A biography begins its archaeology there. In my first chapter “Thirty-eight Keele Street,” the address of MacEwen’s childhood home, I offered a meditation on the very notion of a house.

The houses we are born into are always more than domestic architecture. They are mental spaces that define the power dynamic of the world we enter unwittingly; those houses will surface repeatedly in our dreams and we will reconstruct them throughout a lifetime. Thirty-eight Keele was the first universe fate offered Gwendolyn. It was complex and full of secrets.⁹

The essential secret at the core of MacEwen’s childhood was that her mother suffered periodic bouts of mental illness. Neither her father nor her aunt and uncle, with whom the MacEwens lived, would speak of this shameful secret. Gwendolyn and her sister Carol only knew that from time to time their mother disappeared from home. When they asked why, they were told: “You are too young to understand.”

In order to encounter Elsie MacEwen, I needed to visit the Queen Street Mental Health Centre where she would check herself in when life became unbearable. I obtained permission to read the extensive files kept by her doctors recording the details of her breakdowns. But I felt it was essential for the reader to confront,

8. Nelly Sachs, “Chorus of the Stones,” in *The Seeker and Other Poems*, trans. Ruth and Matthew Mead and Michael Hamburger (New York: Farrar, Straus and Giroux, 1970).

9. Sullivan, *Shadow Maker*, 3.

along with me, the mystery of madness. And so in my biography I wrote:

We are terrified by madness, perhaps because we feel it nascent in ourselves, ready to spring. Perhaps it is a biological fear—our genes are coded for madness. Yet I must attempt to know this woman. As I head to the records room of the hospital in search of Elsie MacEwen, I watch her confraternity. A man paces the huge reception hall where patients gather for coffee...¹⁰

In writing *Shadow Maker*, I was deeply aware that I was entering the lives of *real* people. The first person with whom I spoke was MacEwen's sister Carol Wilson. On our first encounter, I sat across from her in her small-town Ontario kitchen and examined her face. Eight years older than her sister, she looked exactly like Gwendolyn would have looked at that age. Carol described how, in 1950, when her family moved to Winnipeg, she had witnessed her mother's attempts to commit suicide by slashing her throat with a razor. Carol recounted the story to me in a halting voice full of pain. "This is not easy for me," she said. She had tried to close the door to prevent her sister from seeing. She still wondered whether Gwendolyn, nine years old at the time, had seen what had happened in the bathroom that night.

On one of my visits, Carol handed me a sealed envelope, on the back of which Gwendolyn had scrawled her name in large childish letters. Carol told me it contained a pencil. Gwendolyn had saved it because it was the pencil with which she had written her first poem when she was 10. She also told me that Gwendolyn changed her name. The family had always called her Wendy, but at age 12, she insisted that her name henceforth would be Gwendolyn. She said she thought one day she might be important and Wendy was not the name of somebody important.

10. *Ibid.*, 7.

The astonishing thing is that, out of the pain of this childhood, Gwendolyn MacEwen was able to construct such a powerful life for herself. For her, it seems that art was a way to make sense of life. It required training, discipline, love. And she had a remarkable mind, perpetually in gear.

I went to libraries and searched through city directories to locate the many places MacEwen had lived. I found her letters in writers' archives across the country, echoes of her lost voice. I consulted the Mormons in Salt Lake City to trace her genealogy. I phoned Edinburgh searching for details about her father's life. I wrote to hospitals for files. And I tracked down many of the witnesses who shared, however peripherally, in her life.

The story grew. After quitting high school just one month shy of her graduation, she wandered the streets of *High Park* [in Toronto] until she found a small *chaidar*, or Hebrew school, and walked in asking them to teach her Hebrew. She was a brilliant autodidact. If she was to know the Bible, the *Zoar*, the Gnostics, she must read them in the original language. Unsupervised by parents whose lives were disintegrating, she roamed the back streets of Toronto late at night. Once, when she was at the Wah Mai Café on Queen Street, the police raided. As they hauled in the prostitutes, they inquired about the kid in the brown corduroy jumper. Gwendolyn told them she was there because she was training to be a writer: "I'm just a page now but one day I'll be a book."¹¹

I found letters to and from her father, whose life had begun with such promise, though it degenerated into alcoholism. Margaret Atwood, who had been Gwendolyn's friend, gave me copies of their correspondence, which amounted to almost a 100 letters. These offered a portrait of two young female mavericks, poets confronting the world together at a club called the Bohemian Embassy. I began to watch

11. Gwendolyn MacEwen, "The Wah Mai Café," *Afterworlds* (Toronto: McClelland & Stewart, 1987), 34.

magic shows. Gwendolyn loved magicians. “Poets are magicians without quick wrists,” she said.

In dialogue with the multiple voices swirling through my biography, I created my version of Gwendolyn MacEwen. It is the portrait of a poet, of a woman of creative depth whose very mystery leaves one breathless.

Margaret Atwood—a Biography of an Era

After I published *Shadow Maker: The Life of Gwendolyn MacEwen*, much to my surprise I received an extraordinary number of letters. Many people identified with the tragic life of Gwendolyn MacEwen. I was moved that they would take the time to write, and that so many told me they had gone out and bought her poetry and were reading her entire work. But there was something disturbing me. Some people began to ask why I identified with dark, self-destructive, romantic female extremists. But that was not how I saw either Gwendolyn MacEwen or Elizabeth Smart. They were writers of remarkable courage who had succeeded against the odds, as all writers must, and the difficulties of their lives had come from where most difficulties do: in large measure from the patterns scripted in childhood. Theirs were individual stories and it was risky to use their lives to generalize about the Ur-pattern of the artistic life.

I remembered Margaret Atwood once commenting that there is no common pattern to artists' lives. The only thing that writers have in common is that they write. I found myself thinking of writing a book about Margaret Atwood. Would that be possible? And why would I presume? I had two motives. First, this would be another kind of story, a narrative about a woman who had managed to take control of her artistry *and* her life. And, secondly, she would be there to talk back. This intrigued me. I was skeptical about the way many biographers claim to know the motives of their subjects after they are dead.

I decided to write a portrait of Margaret Atwood's early career. My book would be about confidence, about how you find the courage to believe in yourself as an artist. It would be a cultural history. It would also be about the creative process itself.

In my head I thought of this book as a not-biography. There would be no intimate journals or letters as sources. These were still in private hands, though Margaret Atwood allowed me to read her restricted files in the Thomas Fisher Library that houses her papers. I interviewed her and we had a lively e-mail correspondence. I also knew that people would be guarded and protective of her. Why, then, write the book? I wanted the third version of the female artist's life. Elizabeth Smart had been trapped in silence—after her masterpiece she had lost her nerve as a writer. Gwendolyn MacEwen had been deeply damaged by the secrets behind which she hid. Margaret Atwood had produced a brilliant and extensive body of work and was content in her life.

I knew this would be as much a biography of an era as it would be the record of an individual writer's life. Margaret Atwood came of age as a writer at a time when the currents of feminism and Canadian nationalism met. She was central to that period in the late sixties and early seventies when Canadian writers established themselves in the national imagination. Compelled by Northrop Frye's suggestion that the Canadian writer was not so much engaged in the pursuit of personal identity "Who am I?" but rather cultural identity, "Where is here?," they were engaged in articulating the myths and landscapes that have shaped our culture.¹²

In the course of writing my previous biographies, I had experienced the nostalgic, elegiac feeling of following after. Writing about Margaret Atwood was, of course, completely different. I was driven

12. Northrop Frye, *The Bush Garden: Essays on the Canadian Imagination* (Toronto: Anansi, 1971), 220.

by curiosity and intrigue, and found myself saying: “Ah, so that’s what it was like.”

On one of my many journeys, I trekked down to Harvard, where Atwood had gone to graduate school, and visited the Lamont Library, where, as a female student, she was not allowed to work. Apparently it was felt that the presence of females would distract the young male students. And I saw where Founder’s House, her graduate residence at Radcliffe, had once stood. I thought of her description of the sexual perverts who, like aphids, had scaled its walls. In Boston, she would later say, she learned about urban violence. And I thought of the costume party she and her friend Jim Polk had organized at Founder’s House.

According to Polk, they announced it as a Roman orgy: she went as Cleopatra’s breast, wearing a birdcage covered in a flesh-coloured towel, and he went as the asp. Later, however, she would stage a more significant rebellion. As I walked through Harvard, I saw what Margaret Atwood would come to make of that intimidating institution. It would provide the locus for the fundamentalist dictatorship in her novel *The Handmaid’s Tale*.

Villa Air-Bel—a Collective Biography

In my recent book, *Villa Air-Bel: World War II, Escape, and a House in Marseille*,¹³ I undertook an experiment in a collective biography. Though I narrate multiple stories, the book centres on a man named Varian Fry, a young American journalist of 33. When the German

13. Rosemary Sullivan, *Villa Air-Bel: World War II, Escape, and a House in Marseille* (Toronto: HarperCollins Canada, 2006); (New York: HarperCollins, 2006); (London: John Murray, 2006); (Barcelona: Debate, 2008); (Prague: Mladá fronta, 2008); (Rio de Janeiro: Editora Rocco Ltda., 2008); (Rome: Edizioni dell’Altana, 2008). For the 15-minute documentary film *The Road Out*, based on *Villa Air-Bel*, see Rosemary Sullivan Online, <http://www.rosemarysullivan.com>.

army was poised to invade France in the spring of 1940, it was apparent that there were thousands of political refugees on the Nazis' most wanted list who were trapped in France. They had to be rescued. A civilian committee called "Emergency Rescue Committee" was immediately formed in New York. At a fundraising dinner at the Commodore Hotel, Erika Mann, Thomas Mann's daughter, stood up and said that it was all very well to send money, but someone had to go to France to get the refugees out. Varian Fry immediately volunteered.

On June 22, 1940, the Vichy collaborationist government signed an armistice with Hitler, dividing France into the German-occupied and the so-called free zone. Marseille was the largest port city in unoccupied France.

In August, Fry travelled to Marseille, arriving at the Saint-Charles train station with \$3,000 taped to his leg, a summer suit, and a list of 200 people he was meant to save. Expecting to stay six weeks, he lasted 13 months before the Vichy government arrested and expelled him from France, shutting down his rescue mission. In that time, he saved 2,000 people and helped thousands more with food and shelter, finding them places to hide when the always-anticipated German occupation eventually occurred.

Much of that time Varian Fry lived at a large manse called the Villa Air-Bel in the suburbs of Marseille. Living with him were the Surrealist artist André Breton and his wife and daughter; the Belgian writer Victor Serge and his girlfriend and son; his primary assistants Danny Bénédite and his wife, Theo; and an American heiress named Mary Jane Gold. As people left, either legally with their numerous travel documents in order, or illegally by the secret escape routes Fry had set up, others joined the household, including Max Ernst, Peggy Guggenheim, Victor Brauner, Remedios Varo, and Benjamin Péret. Many visited, including Marc Chagall, Marcel Duchamp, and Jacques Lipchitz, each of whom Fry helped to get out of France.

Villa Air-Bel begins in 1932 and charts the rise of Fascism in France. It ends in 1942, with the beginning of the French Resistance. Counting the number of people whose experiences I recorded, one reviewer said there were at least 40 stories of dramatic escapes.

As I wrote *Villa Air-Bel* I discovered how much of my own experience informed its subtext. I have always been interested in totalitarian systems. Wanting to understand first-hand how a totalitarian regime functions, in 1979 I visited the Soviet Union and, with the help of a friend at the BBC, visited a number of dissidents. Through the connections of another friend, the novelist Josef Skvorecky, I also travelled to Czechoslovakia where I saw Joseph's work being passed around in samizdat.¹⁴ After returning to Canada I organized an international congress called "The Writer and Human Rights" in aid of Amnesty International. When the congress was finally launched in 1981, 70 authors from 30 countries attended. The congress gave me insight into just how many writers and artists around the world are censored, exiled, imprisoned, tortured, or killed.

But there was another experience that informed my thinking. As I was completing *Villa Air-Bel* and still struggling with the preface, my husband, Juan Opitz, thinking to help me, asked me where the idea for my book had started. I spontaneously said: "In Chile in 1985." I was surprised myself, but indeed this is what immediately came to my mind.

My husband worked as a theatre director in Chile in the early 1970s. Under the dictatorship of Augusto Pinochet, he was arrested

14. The term *samizdat* means "self-published." Before the dissolution of the Soviet Union, a crucial form of dissident activity was the circulation of samizdat literature. Across the Soviet Bloc, books that had been officially censored, such as Josef Skvorecky's novels, were printed by hand and circulated among friends. To be caught with samizdat books was, of course, a punishable offence.

for putting on a play that was condemned as defamatory of the military. He was jailed for three months. After his release, he fled from the country illegally, eventually making his way to Canada.

When we returned to Chile in 1985, I encountered the fear that military dictatorships create in order to control people. That year was still a few years before the end of Pinochet's dictatorship. My husband and I were in the town of Talca where he was born, a very conservative town. In the first days of the coup d'état, so many people were arrested that the only place large enough to confine the prisoners was the empty municipal swimming pool.

It was December, high summer, and Talca was under curfew. One night we went to a café. When the café closed at 1:00 a.m. and the doors were locked, a young guitarist came on stage to sing the illegal songs of Victor Jara. Twelve years earlier, Jara had been murdered in the national stadium in Santiago. There was a legend that the guards had cut off his hands to prevent him from playing his music to the other prisoners.

A group of young people at the café invited us home. They would have been as young as 12 when the coup happened. I remember slinking through the dark streets, watching soldiers shoving people caught out after curfew into the backs of paddy wagons. At the house we drank cheap wine, and as the atmosphere warmed, one young man suddenly left the room. He returned carrying some objects carefully bound in cloth. When he unwrapped them, I saw they were books. One was by Oriana Fallaci. I do not remember the title. Another was Eduardo Galeano's *Open Veins of Latin America*. These were banned books. To be caught with them would mean immediate imprisonment.

The young man turned to my husband: "We were kids at the time of the coup. We live in a dictatorship, but we don't know how it all happened. You are the first person we have met who has come back. What can you tell us?" There was silence. All my husband said

was: “Who do you think I am?” I remember how, at that moment, the air froze as solid as ice. Cold, cold fear. Terror. Suddenly the young people realized they had revealed themselves, given away their secrets, and they had no idea who they were talking to.

My husband immediately put them at ease, but he had delivered his lesson in the most dramatic way possible. He was saying that his generation had been too trusting, too innocent. In 1973, the government of Salvador Allende was a democratically elected government. The students were demanding reform, not revolution. After the coup they discovered that the watchman at the university was an informant for the DINA, the Chilean secret police, as was the woman in the cafeteria, and the student who sat beside them. For me, that moment, when the world turned from amicable comfort to terror, grafted itself onto my mind, permanently. That was the feeling I wanted to reproduce in *Villa Air-Bel*.

The ground research I undertook for my book made a lasting impact on me. I visited the Camp des Milles internment camp outside Aix-en-Provence, set up by the French government for “undocumented aliens” in September 1939. I traced the secret escape route of refugees crossing the Pyrenees from Banyuls-sur-Mer in France to Port Bou in Spain. But archival research also had a profound impact, particularly researching the life of Victor Serge.

Victor Serge was one of the people who had sat at the dinner table at Villa Air-Bel. His efforts to escape France were the most desperate. I had read his *Memoirs of a Revolutionary* and knew his story. He was born in Belgium and travelled to Russia as a young man to fight in the Russian Revolution. But it did not take him long to see that, under Stalin, Russia had turned into “the most terrifying state machine conceivable.” Serge was probably the first to call the Soviet Union a totalitarian state.¹⁵

15. Victor Serge, *Memoirs of a Revolutionary*, trans. Peter Sedgwick (London: Writers and Readers Publishing Cooperative Society, 1984), 281.

For his dedication to truth, Serge spent years in exile in Siberia before he was finally released and fled to France. Trapped in Marseille in 1940, he waited for Varian Fry to secure American Emergency Rescue Visas for him and his family. But he never received the visas. This fiercest of anti-Communists was never allowed into the United States on the grounds that he had *once* been a Communist.

I had written to Yale requesting copies of the correspondence between Serge and his American supporters Nancy and Dwight Macdonald. Macdonald was then editor of *Partisan Review* in New York. One day two huge padded envelopes arrived in the mail. They contained about 800 pages of correspondence between 1938 and 1942. I read avidly. Through these letters I felt more deeply than from any other source the desperation, fear, and hunger that was the life of a refugee in Marseille—not second-hand through books but from Serge’s own candid words to his friends.

Under the Freedom of Information Act, I had earlier applied to the FBI for the file on Victor Serge that I knew must exist. I had to wait a year, but finally a large manila envelope arrived at my door. The 331 pages of material it contained were shocking. There were copies of some of the private letters between Serge and the Macdonalds that I had just read. There were also surveillance reports by agents and copies of interviews they had done with Serge. The man had been hounded by the FBI from the moment he was brought to their attention by his first letters to the Macdonalds until the day he died in Mexico in 1947. I felt a terrible sadness for the sufferings of this extraordinary man.

I sought out Serge’s son Vlady who had been 20 years old when he resided with his father at the Villa Air-Bel. He was now one of Mexico’s most colourful artists. We corresponded and had several amusing phone conversations. I made arrangements to visit. The very evening I arrived in Cuernavaca and phoned Vlady’s residence, I was informed that he had just suffered a stroke and had been rushed

to hospital in Mexico City. I left Mexico shortly thereafter. I did not want to disturb the family's grief. Vlady died within weeks.

If you are lucky, the life of a book persists long after it is published. I continue to receive letters about *Villa Air-Bel* from people, or those close to them, who lived its tragic story. I encountered Walter Gruen in Mexico, where he had sought asylum in the early 1940s. In 1938, he had suddenly found himself a stateless refugee in his native Austria. As a Jew, his passport was confiscated and he was imprisoned in an internment camp. Through the intervention of the Swiss Red Cross, he was released in 1939. "I never knew why they let me out," he told me. He remembered two brothers in the camp. "One brother was released, one brother saved," he said. "I mean that exactly. My God, that was a parting."¹⁶

Walter Gruen made his way to Switzerland and then worked as a gardener in a vineyard in the south of France. Eventually he obtained an Emergency Rescue Visa for America, but the day he went to the US consulate in Marseille to collect his visa was the very day the Japanese bombed Pearl Harbor. The consulate was closed. He went into hiding in France and survived.

On one of my visits, Walter and his wife, Alexandra, invited me to dinner at an Argentinean restaurant in downtown Mexico City. As we emerged from the restaurant, we encountered a man with his dog, a Rottweiler, black, broad-shouldered, with brutal teeth. The dog was straining fiercely at its leash, as if about to pounce. Alexandra and Walter froze and Walter said: "Alexandra doesn't like those dogs. They used them in the camps." The terrible poignancy of his remark moved me deeply. *The Pianist* was playing in the local cinema. I asked him: "Can you see films like this?" With a catch in his breath, he said: "No." The memories were engrammed in their minds, still waiting to attack after 60 years.

16. Author's interview with Walter Gruen, Mexico City, 2003.

After reading *Villa Air-Bel*, Alfred Ament wrote to me with an inquiry.¹⁷ As a Jewish orphan hiding among a group of French orphans, he had lived at a villa outside Marseille from June to November 1942, at which point German soldiers occupied the villa, mounting machine guns on its terraces. Could that villa have been the Villa Air-Bel? It will take further research at the Bouches-du-Rhône Archives to know for sure, but it might well have been. The French representatives of the Emergency Rescue Committee had been forced to vacate the villa at precisely that time.

As our correspondence continued, Alfred sent me a 20-page autobiographical account of his experiences, titled “My Lost Childhood.”¹⁸ He had been born and brought up in Austria. In December of 1938, as his parents became aware of the Nazis’ murderous intent, they fled to Belgium with 10-year-old Alfred and his four-year-old brother Hans. After the German invasion of Belgium in the spring of 1940, they made it to Paris, but his father, Max Ament, was arrested and interned in a French detention camp. In the spring of 1941, hoping to be reunited with her husband, his mother arranged to get herself and the children to Marseille. Meanwhile Max Ament had requested a transfer to the Camp des Milles outside Aix-en-Provence. Freed briefly on a pass, he met their train. Then he returned to his camp.

By 1942, Alfred’s mother was suffering from tuberculosis and entered the sanatorium L’Espérance in Hauteville. Eight-year-old Hans was sent off to a children’s home and Alfred went to a home for teenagers. After a number of moves, including to the villa outside Marseille, Alfred came under the care of a French Jewish humanitarian organization, the OSE (Œuvre de Secours aux Enfants). In March 1944, the OSE secured trucks to take a convoy of about 30 children, including Alfred, to the French-Swiss border. With false

17. Alfred Ament, e-mail inquiry, September 20, 2009.

18. Alfred Ament, “My Lost Childhood,” typewritten manuscript.

identity papers, they were purportedly French children going to a spring camp. When their guides indicated that the coast was clear, the children ran to the border, scaled a 10-foot-high fence, and fell onto the free soil of neutral Switzerland.

Only later did Alfred learn the fate of his family. In early 1943, Max Ament had been transported from the Camp des Milles to Drancy. On March 4, he was deported to Germany and was murdered in either Sobibor or Maidanek. On August 7, 1944 Ernestina Ament, Alfred's mother, died in the prison section of the French hospital where she had been relocated because she was Jewish.

Alfred's brother, Hans, had been living in a farmhouse in Izieu, a remote village in the Rhône valley. The farmhouse was registered as a "Settlement for Refugee Children from the Hérault." The locals protected its disguise, including two Vichy officials who helped the director, Sabina Zlatin, by providing ration cards and false identification papers. The adults had improvised an alarm system, telling the children that they were to ring bells if any suspicious vehicles approached, at which point everyone would run to the woods. But April 6, 1944, was a holiday and vigilance was low. That morning the Gestapo raided the farm.

At 8:10 p.m. that night, SS First Lieutenant Klaus Barbie, commander of the Gestapo in Lyon, sent a telegram to his superiors in Paris: "This morning a Jewish children's home [...] in Izieu was cleaned out. In total 41 children, aged 3 to 13, were captured. In addition the arrest of the entire Jewish staff, or 10 individuals, including 5 women, has taken place [...]. Transport to Drancy will take place on April 7, 1944." One week later the children and their minders were deported to Auschwitz. None of the children, and only one adult, survived.¹⁹

19. Printed document provided by Alfred Ament.

Writing *Villa Air-Bel*, I lived in the past for years. But it did not feel like the past. It felt as real as anything gets. I learned about courage from the people whose stories I recounted.

The genre of biography is about the role of memory in our lives. “To be alive is to be made of memory,” as Philip Roth has put it.²⁰ We are shaped by the past. To submit to collective amnesia, effacing individual stories, inevitably distorts our humanity. I think of biography as a rebellion against the impossible fact that a life can so easily disappear—all that energy, passion, individuality that constitutes a person can one day simply stop, or be brutally ended. Biography is a form of revenge against effacement; the responsibility of the biographer to come as close to the truth as is humanly possible could not be higher.

20. Philip Roth, *Patrimony: A True Story* (New York: Simon and Schuster, 1991).

GUY VANDERHAEGHE

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BIOGRAPHY

Guy Vanderhaeghe is the author of four novels, three collections of short stories, and two plays. His first collection of short stories, *Man Descending*, won the Governor's General Award for fiction and the Faber Prize in Great Britain. His novel *Homesick* was a co-winner of the 1990 City of Toronto Book Award. In 1993, he received the Canadian Authors Association Award for Drama for *I Had a Job I Liked. Once*, and in 1996 his novel *The Englishman's Boy* won the Governor's General Award for Fiction and was short-listed for both the Giller Prize and the International IMPAC Dublin Literary Award. Published in 2002, Vanderhaeghe's novel *The Last Crossing* won CBC's Canada Reads, three Saskatchewan Books Awards, and the Canadian Booksellers Association Libris Prize for Fiction Book of the Year. It was also a selection of the British Broadcasting Corporation's television program "Page Turners." His latest work was a two-part dramatization of *The Englishman's Boy*, which appeared on CBC television in March of 2008.

Guy Vanderhaeghe has received both the Harbourfront Literary Prize and the Timothy Findley Prize, given as recognition for a body of work. He is an Officer of the Order of Canada, a Member of the Saskatchewan Order of Merit, and a Fellow of the Royal Society of Canada. He was nominated a Trudeau Fellow in 2008. In 2009, he received the Distinguished Canadian Award presented by the Seniors' University Group and the Seniors Education Centre of the University of Regina.

He has taught creative writing at the University of Ottawa and St. Thomas More College, as well as at a number of other writing

programs, among them the Humber School for Writers, Booming Ground, the Sage Hill Writing Experience, and the Writing Program of the Banff Centre for the Arts.

Guy Vanderhaeghe received an Honours BA and MA in history from the University of Saskatchewan, and a BEd from the University of Regina. Currently, he is the St. Thomas More Scholar at St. Thomas More College, University of Saskatchewan.

ABSTRACT

In the past 20 years, the historical novel has achieved popular success in English-speaking Canada and recognition by many prize-giving juries. Its prominence has sometimes caused consternation among academic historians who view it as “bad history,” a distortion and vulgarization of our knowledge of the past, while in some literary circles it is dismissed as mere nostalgic whimsy, a refusal to engage with, or even recognize, the present reality of Canada today. As someone who once aspired to be a professional historian and who now writes historical novels, I have found myself confronting some of these issues and trying to resolve them as a practitioner of the form. If the historical novel is an awkward centaur (both fiction and history), on what terms ought it be judged? Does the “subjectivity” of the historian differ from that of the novelist? Do fundamental and important distinctions exist in the way historians and novelists construct narratives? Is the historical novel really an examination of the past, or an oblique look at the present? What practical strategies do historical novelists pursue in an attempt to resolve these quandaries? Finally, if the historical novel has a role in the apprehension of the past, what is it?

LECTURE

Apprehending the Past: History Versus the Historical Novel

University of New Brunswick

FEBRUARY 16, 2010

To the scholars reading this text, I would like to begin with a disclaimer: I make no pretence of scholarship. Most of my adult life has been passed writing fiction and teaching creative writing—occupations not noted for their theoretical or analytical rigour. I am neither a literature nor a history specialist. In fact, this is the first time in 35 years that I have felt myself obliged to dangle a citation in a text.

Although there was a time when I harboured ambitions to become an academic historian, I soon learned I was no fit player for the game and consigned myself to the sidelines. Nevertheless, clear of the action, I did remain an interested observer of the writing of history in English-speaking Canada and, with time, I came to write historical novels. Much of what I have to say is informed by my experiences as a working writer, the uneasy compromises and accommodations involved in my attempts to apprehend the past in fiction. And I use the word “apprehend” in its several senses: to take into custody, to understand, and, at least in my case, to approach with anxiety. I am an amateur painting in broad strokes, wielding a brush on a canvas that is hotly contested ground.

In *The Uses and Abuses of History*, Margaret MacMillan remarks, “History, and not necessarily the sort that professional historians are

doing, is widely popular these days, even in North America where we have tended to look toward the future rather than the past.”¹ The current public appetite for popular histories, historical novels, historical films—even the existence of the History Channel, an entire television network devoted to the past—gives credence to this assertion. But this current enthusiasm appears to have disquieted academic historians, left them feeling that in the battle for hearts and minds they are losing ground. While attending historical conferences and in private conversations with historians, I have frequently heard uneasiness expressed about their declining influence and the invasion of their territory by unqualified interlopers.

The historian J.L. Granatstein, not a man inclined to mince words, attributes this failure to the profession itself. In his polemic *Who Killed Canadian History?* he savages his colleagues for preferring “to remain alone in their specialists’ cubbyholes, rather than to reach out and treat subjects that tell Canadian students and citizens who they are, where they have come from, and where they are going.”² It is his caustic judgment that

The vast majority of scholarly books are destined to remain unread on university library shelves. How long the university presses, which operate with the assistance of public funds, can keep on printing such dogs is unclear; if the subsidies disappear, as they probably will, these scholarly publishers will have to adapt or die. Whether academic writers can change enough to reach readers, whether they want to, is uncertain.

The point is not that scholarly publishing is unnecessary. It is vitally necessary that research into our past and present be undertaken in the universities. However, one may legitimately question the use of public funds to publish books whose only true value is to secure tenure or promotion in the universities for the authors. The

1. Margaret MacMillan, *The Uses and Abuses of History* (Toronto: Penguin Canada, 2008), 3.

2. J. L. Granatstein, *Who Killed Canadian History?* (Toronto: Harper-Collins Publishers, Ltd. 1998), 71-72.

unreadable sludge could be circulated to the three interested readers in *samizdat* form or made available on the Internet.³

Margaret MacMillan, in a gentler, softer tone, urges historians to strive to make their work intelligible to the general reader, because

Already much of the history that the public reads and enjoys is written by amateur historians. Some of it is very good, but much is not. Bad history tells only part of complex stories. It claims knowledge which it could not possibly have, as when, for example, it purports to give the unspoken thoughts of its characters. It makes sweeping generalizations for which there is not adequate evidence and ignores awkward facts which do not fit. It demands too much of its protagonists, as when it expects them to have had insights or made decisions they could not possibly have done. The lessons such history teaches are too simple or simply wrong.⁴

From the professional historian's viewpoint this is an instance of Gresham's Law at work: bad currency pushing out good coin of the realm. Like MacMillan, Granatstein too harbours misgivings about some popular history, fiercely attacking what he characterizes as gross distortions of the historical record. Brian and Terence McKenna's television documentary *The Valour and the Horror*, which outraged many veterans by its depiction of the Allied bombing campaign against Germany in World War II, prompted Granatstein to castigate the production as "a perversion of reality, a misreading of history through lenses tinted pink in the aftermath of Vietnam anti-war sentimentality."⁵

I do not mean to leave the impression that professional historians uniformly accept MacMillan's and Granatstein's views about what historical writing is, or should be. Many working in areas such as the history of women, gays and lesbians, ethnic minorities, Aboriginal peoples, organized labour and so on, a plethora of topics that were

3. *Ibid.*, 75.

4. MacMillan, *Uses et Abuses*, 36.

5. Granatstein, *Who killed Canadian History?*, 117.

scarcely studied in the history department from which I graduated nearly 40 years ago, would take issue with their positions. I have neither the time nor the expertise to outline or weigh the merits of the respective positions, only to note that if they agree on little else, historians do seem to agree that trespassers are overrunning the manor.

The usual suspects, journalists turned historians such as Pierre Berton, Peter C. Newman, Richard Gwynn, and Maggie Siggins, have lately been joined by a new wave of invaders. The last 20 years has seen an explosion of historical fiction that has both enjoyed a remarkable popular success and won many of English-speaking Canada's major literary prizes. Michael Ondaatje's *The Skin of the Lion* and *The English Patient*, Jane Urquhart's *Away*, Margaret Atwood's *Alias Grace*, Anne Michaels's *Fugitive Pieces*, Wayne Johnston's *The Colony of Unrequited Dreams*, Rudy Wiebe's *A Discovery of Strangers*, Michael Crummey's *River Thieves*, Fred Stenson's *The Trade*, Joseph Boyden's *Three Day Road*, Lawrence Hill's *The Book of Negroes* represent only the tip of a formidable iceberg.

And if popular historians transgress in the ways MacMillan charges, writers of fiction sin even more egregiously, blithely pronounce the unspoken thoughts of historical characters, and cavalierly ignore awkward facts or interpret them in ways a historian would never countenance. In the opinion of many historians, writers of historical fiction are nothing but magpies that pick up all the shiny, entertaining bits from the past, tart them up even more, and pass off their gaudy, cheap trinkets on an unsuspecting public. In prickly self-defence, historical novelists are likely to retort that the autopsies academic historians perform on the past drain all the blood from it; it's little wonder that the public recoils from the grey, grinning, lifeless corpse they lay out on the morgue slab to be admired.

Of Hedgehogs and Foxes

Admittedly, these are caricatures, but like editorial cartoons often do, they capture a little truth. What they do not reveal is that the

writing of history and the writing of historical fiction are different and distinct endeavours. Primarily, two things separate historians and historical novelists: the character of the gaze they turn upon the past, and the narrative methods they employ to express that gaze as it is constructed and represented by words.

In his famous essay on Tolstoy, “The Hedgehog and the Fox,” Isaiah Berlin uses the Greek poet Archilocus’ observation that “the fox knows many things, but the hedgehog knows one big thing”⁶ as his way of drawing a distinction between different sorts of writers and thinkers. Hedgehogs incline to “one system less or more coherent or articulate...,” while foxes “pursue many ends, often unrelated and contradictory, connected if at all, only in some *de facto* way...”⁷

I take licence here with Berlin’s formulation, since he also applies it to writers of fiction, but I would like to suggest that novelists, when compared to historians, are temperamentally more fox-like, more likely to be leery of systems coherent and articulate, more comfortable with *de facto* connections and less at ease with the analysis, synthesis, and interpretation that are the essential tools of historical writing. What initially drew me to the study of history was the wide-ranging and capacious nature of the discipline, how it touches on so many varieties of human experience. Initially, history looked to be the ideal match for someone like me, who had the temperament of a fox, or perhaps, more truthfully, that of a dilettante. History intrigued me because it traversed such a vast, far-flung territory. But what I failed to recognize as a student was that while the *reading* of history is fox-like, the *writing* of history is the province of the hedgehog.

Historical narrative and fictional narrative are polar opposites. The American novelist Wallace Stegner observed this, in speaking

6. Isaiah Berlin, “The Hedgehog and the Fox,” in *Russian Thinkers*, eds. Henry Hardy and Aileen Kelly (Harmondsworth: Penguin Books, 1982), 22.

7. *Ibid.*

of his mentor, Bernard DeVoto, a man who wrote both fiction and history,

A novelist these days is seldom judgmental or omniscient in the historical sense. Benny was much better at the historical judgment, holding a lot of facts in his head, seeing the whole picture, making these pieces fit the picture, and being a kind of god manipulating the machine, than he was at being a ventriloquist and speaking out of a single mouth, or, as he would have to if he were a real fictionist, speaking serially out of many mouths. Faulkner could speak out of any mouth and be absolutely right. That's a major difference between a Benny DeVoto and a Faulkner.⁸

Which is only to say that the tools of production—the narrative stance—inevitably result in different products. My first attempt to write historical fiction was defeated because I could not grasp this rather simple and obvious distinction. In 1982, I began a novel that would eventually appear under the title *The Englishman's Boy*, a book that only saw the light of day 14 years later, an elephantine gestation period. My problem in completing it was that the lingering residue of the historical training I had received as a graduate student was continually at war with my fox-like novelistic impulses. I was constantly interrogating my divided self: What are you up to? What should you be up to? Which master do you serve? History or the novel? It took me a long time to realize that in the case of the term “historical novel,” the noun was of greater importance than the adjective, and that a historical novel could never be history but only could be *about* history.

Awareness of the Time Gap

Which raises the question of what makes a novel a historical novel? The simplest and most obvious answer would seem to be that it is a

8. Wallace Stegner and Richard W. Etulain, “The American Literary West,” in *Conversations with Wallace Stegner on Western History and Literature* (Salt Lake City: University of Utah Press, 1983), 134.

novel in which the events related are set in the past. But the passage of time renders all novels historical in that sense, even though they may have turned a relentlessly contemporary eye to the period in which they were composed. In an essay entitled “*The Great Gatsby? Yes, a Historical Novel*,” the American historian John Lukacs stated, “It is probably because of the peculiar American, and democratic, structure of history that certain novels tell us more about a certain time and certain people than even the best of histories.”⁹ True, but what Lukacs is talking about is how a fictional work written in a particular era can be used as a representative document of the mentality of a time, much the way a census roll can tell you something about demographics.

But Fitzgerald did not turn his gaze upon the past; he turned his eye upon the present he was living and observing. The historical novel does the opposite; it reflects, contemplates, and interrogates history from a temporal distance; the gap in time, and the awareness of it, is the significant factor. In some instances, such novels even presume to question the assumptions of the discipline of history itself. What some critics label historiographic metafiction is skeptical about master narratives, the so-called objectivity of history and the coherence of identities, often reconfiguring the past from the point of view of those they consider erased from the historical record or unconsciously neglected by it. The most radical metafictionists go one step further, disrupting chronology, introducing supernatural occurrences and obviously inaccurate elements to illustrate their conviction that history is a relative construct, riddled with subjectivity. Some even refuse to admit any real separation between fiction and history because they contend both are human-made

9. John Lukacs, “*The Great Gatsby? Yes, a Historical Novel*,” in *Remembered Past: John Lukacs on History, Historians, and Historical Knowledge. A Reader*, eds. Mark G. Malavasi and Jeffrey Nation (Wilmington: ISI Books, 2005), 721.

ways of “world-making.” As Martin Kuester notes in a discussion of George Bowering’s historical metafiction, “one might say that the writing of history is history, that history is text rather than facts.”¹⁰ Yes, but Kuester’s implication appears to be that facts play no role in the construction of the text itself. But facts are the bones and skeleton of historical narrative; everything else is the flesh hung upon them. Like evidence offered in a court of law, the facts presented by historians may be incomplete, flawed, or distorted. Differing interpretations may be drawn from them. But they are subject to inquiry, debate, and scrutiny in the ways novels seldom are or should be. I doubt that any historian would deny that history is in some sense subjective; if memory serves me right, the historian of the Renaissance, Jacob Burkhardt, conceded that point well over a hundred years ago. But to grant an element of subjectivity does not mean that *no* grounds exist for evaluating the “truthfulness” of a work of history; however flawed those tools of evaluation may be, they are essential and necessary. *Mein Kampf* too might be considered a kind of subjective “world-making,” but does that mean it is impossible to offer a considered judgment on the validity of its claims?

At the other end of the spectrum sit the more traditional historical novelists. Their ways of apprehending the past are, to a greater or lesser degree, mimetic; they strive to represent history as lived experience. They too, however, have been strongly influenced by many of the concerns of metafictionists, the fluidity of identity, post-colonialism, feminism, and an interest in the recovery of the ignored past. Although history is unlikely to be self-consciously foregrounded in the way metafictionists choose to do, it remains a presence, sometimes even achieves the status of a shadowy character, as it did in the work of 19th century historical novelists such as Leo Tolstoy, of whom the Marxist literary historian Georg Lukacs noted,

10. Martin Kuester, *Framing Truths: Parodic Structures in Contemporary English-Canadian Historical Novels* (Toronto: University of Toronto Press, 1992), 97.

At the heart of Tolstoy is the contradiction between the protagonists of history and the living forces of popular life. He shows that those who, despite the great events in the forefront of history, go on living their normal, private and egoistic lives are really furthering the true (unconscious, unknown development) while the consciously acting “heroes” of history are ludicrous and harmful puppets.¹¹

One can see the same kind of particular, some might say eccentric historical thinking underpinning the work of many historical novelists. The works of Stendhal, Pushkin, Gogol, Balzac, and James Fenimore Cooper all demonstrate highly personal conceptions of what history is and what its meaning is for the present. In the case of Gore Vidal, one of the most prolific American practitioners of the historical novel in the 20th century, his conviction that the United States turned its back on republican virtue for the blandishments of imperial glory is a frequently, almost obsessively reiterated theme, a cry of despair for, if not paradise lost, paradise as missed opportunity.

“The Fictive Dream” to Be Convincing

Nevertheless, what the traditional historical novelist does bears a stronger resemblance to the efforts of historians than the work of the metafictionists, if only because an attempt at mimesis will require research, enough acquaintance with a period to render it in a reasonably satisfying and convincing manner that does not disrupt what John Gardner called “the fictive dream” by committing some anachronistic howler that jolts the reader out of the willing suspension of disbelief. This is at odds with the metafictionists’ approach, which wishes to remind readers that they are encountering a text, not a supposed and specious “reality.”

The research of traditional historical novelists is often concerned with the texture of the past—what people wore and ate,

11. Georg Lukacs, *The Historical Novel*, trans. Hannah and Stanley Mitchell (Harmondsworth: Pelican Books, 1981), 98-99.

how they spoke, what assumptions they shared—but this material is meant to serve artistic aims, and those aims are paramount. To be convincing is more important than to be correct. Strangely enough, the distant past is often less problematic for the writer of historical fiction than a period nearer the present. To state the ludicrously obvious, no reader has any expectation that the characters in Scott's *Ivanhoe* will speak Saxon or French, even though it would be historically accurate if they did. However, the closer one edges to the present, the more likely readers are to expect verisimilitude, and to have opinions about what constitutes a believable representation of the past.

When I was writing *The Englishman's Boy*, part of which takes place in the year 1873, I assumed that by searching written accounts of the period I could find models for a language that would sound “authentic” in the mouths of rural, hardscrabble characters with, at best, a few years of schooling. But when I consulted accounts written by visitors to the West that purported to report the speech of the locals, or read the memoirs composed by traders and frontiersmen who had knocked about in the hinterlands, I grew increasingly dismayed. I offer a brief passage written by L.A. Huffman, who was the post photographer at Fort Keogh, Montana Territory, *circa* 1878, which he offers as an example of the vernacular:

“Looks like Old Satchel k'ain't have no fun,” Andy Williams used to say, “less'n he's sickin' somebody to ride Old Mokey or Zebra, and get k-i-l-l-e-d up. It ain't any of my fambly that's takin' risks that way. I shore have knowed fellers, though, to get a gun bent over their nut for less than loanin' such outlaws to parties with a yearn for this glad life.”¹²

Whether this is accurate reporting or whether it relies on the conventions of the dime novels of the Wild West is debatable, but other sources had a uniformly unfortunate tenor. To the

12. L.A. Huffman, “Last Busting at Bow-Gun,” in *The Last Best Place: A Montana Anthology*, eds. William Kittredge and Annick Smith (Seattle: University of Washington Press, 1988), 440.

contemporary ear this sounds like parody, Jed Clampett on *The Beverly Hillbillies*, or something lifted from Mel Brooks's movie *Blazing Saddles*. For a novelist to mimic such speech would raise the spectre of Gabby Hayes spouting comic gibberish on every page. As a literary language it defeats the *illusion* of mimesis, even if it may be more correct than the solution I adopted, which was to invent a language for the character I called The Englishman's Boy, a language owing something to *Huckleberry Finn*, something to the letters and memoirs I had read, with the rest left to pure invention on my part. I had to negotiate, not only with myself, but with the reader's ear. I played fast and loose with what evidence I had at my disposal, the greatest and most unforgiveable sin in a historian.

I grant this is a minor point; I offer it only to exemplify the gulf separating historical novelists and professional historians. For the novelist, what research reveals is not sacred; it is bent to an end. I have always been careful to dispel any notion that I am writing history and have been, perhaps, too eager to confess my sins of omission and commission when it comes to my finagling with the record. Here, I find it necessary to descend into the abyss of personal anecdote to demonstrate the consequences of that. In a talk to the Montana Historical Association I volunteered that while I was aware the latest historical literature puts the number of women raped by wolfers after the Cypress Hills Massacre at between two and four—an event central to my novel *The Englishman's Boy*—I volunteered that I had chosen to depict the rape as inflicted on a single very young girl. After I had finished speaking, a historian rose to charge me with diminishing the atrocity by minimizing the number of Aboriginal women raped.

I did my best to try to explain this was not my intention. The truth was that my novelist's intuition led me to focus all the violence and indignity inherent in an act of rape on one individual because I felt that in doing so, the scene would be more visceral, more repugnant, and more atrociously brutal. I had another motive. I wanted to

use the scene as a spur for *The Englishman's Boy* to *identify* with the girl's plight, an identification that would be the germ of a guilt that would dog him for the rest of his life, and launch him into action in the sections of the novel set in Hollywood 50 years later. Far from wishing to *diminish* the significance of what was done, I wanted to give it as much weight as I could to heighten the sense of a terrible violation.

For the historian, it was a question of the number of women raped, of quantity; for me, it was a question of the emotional quality of the event and how I could best convey the power it exerted in the life of my protagonist. Perhaps I made the wrong choice, but that was the choice my instincts pushed me towards. It felt right; it felt like what the novel needed and demanded.

The 19th century Italian writer Alessandro Manzoni spent over 20 years wrestling with just this quandary. He hoped to compose a treatise that would point the way to how history and literature could be reconciled in the form of the historical novel. Manzoni is best remembered for his own historical novel, *I promessi sposi*, which first appeared in Italy in 1827 to great acclaim, the publication of which occasioned Goethe to remark that Manzoni's novel suffered from his fastidious attachment to the historical record.¹³ This criticism prompted Manzoni to spend the next two decades composing *On the Historical Novel*—a compelling instance of what tender orchids writers are, and how easily they wilt when touched with critical frost.

To his credit, Manzoni's tizzy did not blind his incisive and unflinching mind from recognizing that the historical novel did indeed have a soft underbelly, that historically minded readers would wish to know what was "real" and what was invention, while readers of a literary bent would complain that the aesthetic unity of a work

13. Sandra Berman, introduction to *On the Historical Novel*, by Alessandro Manzoni, trans. and ed. Sandra Berman (Lincoln: University of Nebraska Press, 1984), 25.

was damaged if any such revelation was attempted. In Manzoni's words,

Summing up all these pros and cons, we can, I think, now conclude that both critics are right: both those who want historical reality always to be represented as such and those who want a narrative to produce in its reader a unified belief. But both are wrong in wanting both effects from the historical novel, which the first effect is incompatible with its form, which is narrative, and the second incompatible with its materials, which are heterogeneous. Both critics demand things that are reasonable, even indispensable; but they demand them where they cannot be had.¹⁴

In the end, Manzoni found the problem philosophically insoluble. The historical novel is an awkward, ungainly species of literature. It is centaur-like because it is neither completely one thing nor the other. For this reason, historians are apt to look at it and declare it is not history. On the other hand, literary scholars have long-harboured suspicions about its hybrid nature and have been reluctant to give it a pass because of its perceived aesthetic failures. A.S. Byatt has said

During my working life as a writer, the historical novel has been frowned on, and disapproved of, both by academic critics and by reviewers. In the 1950s the word "escapism" was enough to dismiss it, and the idea conjured up cloaks, daggers, crinolined ladies, ripped bodices, sailing ships in bloody battles. It can also be dismissed as "pastoral." My sister, Margaret Drabble, in an address to the American Academy of Arts and Letters, spoke out against the "nostalgia/heritage/fancy dress/costume drama industry." She believes passionately in the novelist's duty to write about the present, to confront an age which is "ugly, incomprehensible, and subject to rapid mutations."¹⁵

14. Manzoni, *On the Historical Novel*, 72.

15. A.S. Byatt, "Fathers," in *On Histories and Stories: Selected Essays* (London: Vintage, 2001), 9.

Historical Novel and National Identity

Which raises a perplexing question, why have so many English-speaking Canadian writers, many of them whose work once was rooted in contemporary experience, embraced a form likely to encounter criticism and disapproval on two fronts, to have their flanks nipped from two sides? Of course, it is impossible to identify any one reason; there are likely to be many. For instance, A.S. Byatt notes that in Britain,

The journalist Chris Peachman interviewed various novelists about ten years ago about why they were writing historical novels, expecting some answer about paradigms of contemporary reality, and got the same answer from all of them. They wanted to write in a more elaborate, more complex way, in longer sentences, and with more figurative language.¹⁶

The more pressing reason for the recent adoption of the form in this country may be that the historical novel has always been associated with the assertion and probing of national identity. One can think of Walter Scott's resurrection of Scottish culture and history, Manzoni's radical introduction of Italian peasantry as a subject in *I promessi sposi*, the Ukrainian Gogol's celebration of Cossack life in *Taras Bulba*, or James Fenimore Cooper's search for an essential Americanism in *The Leatherstocking Tales*. For English-speaking Canadians, the definition of identity is *the* perpetual question and anxiety, and the recent rise of the English-speaking historical novel may be just another revisiting of the perennial subject.

Stephen Henighan in his book *When Words Deny the World: The Reshaping of Canadian Writing* attaches this change in literary direction to a precise moment in Canadian political history:

In a political sense, the collective idea of Canada was demolished on November 21, 1988, when Canadians voted to subordinate our national project to the requirements of continental free trade.

16. Byatt, "True Stories and the Fact in Fiction," in *On Histories*, 95.

Though we were constantly assured that culture “was off the table”, it is obvious that in the absence of some shared national ethos endogenous literature—perhaps all endogenous culture—becomes unsustainable in a medium-sized country speaking two world languages. Richard Gwyn has made the extremely astute observation that while the countries in the 19th century were “nation states,” Canada is or was a “state-nation.” A state-nation erodes in a neo-liberal, free trade environment: dismantle the state and the nation washes away.¹⁷

Later in the same book Henighan maintains,

In retrospect, history seems likely to view the early 1990s as a time of wrenching cultural change, even of collective trauma.

How have our novelists responded to the annihilation of our intimate selves?

Primarily with averted eyes...our most prominent novelists have collaborated in rewriting history as a stately foreign pageant...¹⁸

This averting of eyes from contemporary events Henighan attributes to a number of factors, and I hope I do not misrepresent his argument by sketching and conflating them. Among the reasons he mentions are that economic globalization increased the cultural power of Toronto, lent even more heft to the influence wielded by its media and its publishing houses, giving rise to something he describes as “TorLit”, a phenomenon which supplanted the older regional configuration that produced CanLit. In Henighan’s view, Toronto publishers became the gatekeepers to success in the new global literary market, and access to that market was predicated on a number of things. Novelists of contemporary life had to suppress any overt engagement with Canadian social or political issues, which would bewilder foreign readers, and they had to ensure that their

17. Stephen Henighan, “Between Postcolonialism and Globalization,” in *When Words Deny the World: The Reshaping of Canadian Writing* (Erin: The Porcupine’s Quill, 2002), 99.

18. Henighan, “Free Trade Fiction,” in *When Words Deny the World*, 137.

depictions of Canadian life were not too “Canadian.” Faced with this choice, he suggests, many retreated, seeking refuge in more commercially viable historical fiction.

Here it is necessary to confess that Henighan uses my own work as providing “an exceptionally graphic chronicle of how one significant Canadian writer began to write more commercial ‘literary blockbuster fiction’ for the international market,” noting that the kind of stories I had published in a book called *Things As They Are?* “had become deeply unfashionable. TorLit critics slammed the book for being everything they no longer wished Canadian writing to be: white, male, rural”—dismissing it because “it was troublingly out of tune with globalized literary taste”.¹⁹

In examining what Henighan has to say, I run the risk of appearing whiny, petulant, and self-serving, but I think it useful to do so because I grant him his insights. With reservations, I agree that the cultural power wielded by Toronto tends to undervalue regional, rural literature, regarding it as an atavism, embarrassingly out of touch with Canada’s increasingly urban and multicultural society. And I do believe that for those English-speaking writers who experienced the heady cultural nationalism of the ’60s and ’70s, NAFTA was a disturbing and ominous sea change, which seemed to mark a profound alteration in the mood of the country, a step back from the cultural and political nationalism that was such a feature of my generation of writers and the slightly older group of novelists, poets, and short story writers in whose steps we walked.

I am sure that younger Canadian writers who have been exposed to Canadian literature in high school and university curricula can scarcely comprehend the excitement I felt reading Atwood, Munro, Richler, Davies, and so on for the first time. An identifiably Canadian setting came as a shock; it was entry into a world familiar but also strangely new, because I had never encountered it in literature. Of

19. Henighan, “Reshaping the Canadian Novel,” in *When Words Deny the World*, 192-193.

course, there were English-speaking Canadian writers who had been doing some of the same things before, but not many, and I hadn't been taught them, nor had I stumbled across them on my own. As Robert Kroetsch stated,

In a new place, and in its literature, the Adamic impulse to give name asserts itself, as it did in the New England of Emerson and Thoreau and Hawthorne. Writers in a new place conceive of themselves profoundly as namers. They name in order to give focus and definition. They name to create boundaries. They name to establish identity.²⁰

My feeling when I read these writers was Adamic, a sense of wonder, delight, and surprise that went beyond whatever literary judgment might come into play when I read a British, an American, a French, or a Russian writer. These writers were naming my country. My dim, seemingly unrealizable ambition to become a writer suddenly didn't appear as impossible as it had been before I read *Lives of Girls and Women*.

Creating a Canadian Historical Fiction

So my generation of writers took up the project of naming, of defining our identity as Canadians. This took on a regional and contemporary complexion. There was something naive, hopeful, and fervent, even earnestly and evangelically hortatory about it—fiction as backwoods camp meeting. And its gaze was firmly fixed on the present. Herb Wyile in his book *Speculative Fictions* writes,

Speaking of the lack of historical fiction during the flourishing of Canadian literature in the 1960s, Margaret Atwood recently observed that the writers of that generation “were instead taken up by the momentous discovery that we ourselves existed, in what was then the here and now, and we were busily exploring the implications of that.”²¹

20. Robert Kroetsch, “No Name Is My Name,” *The Lovely Treachery of Words: Essays Selected and New* (Toronto: Oxford University Press, 1989), 41.

21. Herb Wyile, *Speculative Fictions: Contemporary Canadian Novelists and the Writing of History* (Montreal and Kingston: McGill-Queen's University Press, 2002), xi.

NAFTA rattled the confidence of a generation of Canadian cultural nationalists. After all, we had teathed on George Grant's *Lament for a Nation*. Whatever NAFTA's merits and demerits as public policy, many writers of my generation were likely to feel it was a renunciation of the desire to frame an English-speaking Canadian identity. For those who saw themselves as contributors to that enterprise, it gave them pause, and, in that pause, I contend some came to see history as playing as large a role in the formation of a Canadian identity as did putting names on a contemporary map of the country. The Canadian past may even have begun to look more distinctly Canadian than the Canada of the present, which was embracing the globalization enterprise and seeming to fold itself more completely into the warm embrace of our neighbour to the south.

What I am talking about is a mood, nothing programmatic. I am speaking about a cohort of aging writers, a cohort more likely to be imbued with a stronger sense and appreciation of the past simply because their own pasts were now of greater extent than they could expect their futures to be, adrift in a present and facing a future they felt vaguely at odds with. This is a hunch, a suspicion. I have not canvassed or surveyed novelists as to their motives for taking up historical fiction; any such questions would likely be greeted with unrestrained hilarity.

Speaking for myself, I certainly did not wake up one morning and say, NAFTA is now a fact! how will I respond? Ah ha; the time has come to take out that historical novel which has been gathering dust in a drawer since 1982 and get back to work on *The Englishman's Boy*. Let me see, it is essential that book be about the birth of the Hollywood dream factory and its globalizing cultural influence, and one of the characters, who is a Canadian working in Beverly Hills in the 1920s, should make statements questioning Canadians' fragile grip on their own identity so as to draw an analogy with contemporary issues. I will have him say things like,

Canada isn't a country at all, it's simply geography. There's no emotion there, not the kind Chance is talking about. There are no Whitmans, no Twains, no Cranes. Half the English Canadians wish they were *really* English, and the other half wish they were Americans. If you're going to be anything you've got to choose. Even Catholics don't regard Limbo as a permanent state.²²

I also did not decide from the beginning that the novel had to deal with an obscure massacre of First Nations people that helped prompt the Macdonald government to form the North-West Mounted Police and march them west to lay claim to that part of Canada, or to choose to portray that as an act of imperial possession having inescapable consequences for the configuration of the country and for Aboriginal peoples, consequences with which we are still living. The book was not framed as an illustration of ideas; the ideas emerged in the writing of it. I assuredly did not say, I must write a historical novel; it is the duty of the moment. That is not the way writers of fiction work. But their convictions and beliefs do surface in their work, and the Canadian historical novel provides plenty of evidence that, if nothing else, an awareness exists among writers of fiction that Canadian history is an essential component of any formulation of Canadian identity, which is a radically different tactic from the approach of novelists who began to publish in the '60s, '70s, and '80s, but one which still circles the question of who we are as a people.

In the first half of the 20th century Canadian historians did the most to frame a sense of a provisional and hazardous English-speaking identity; the influence of Canadian fiction writers in that period was minimal, even negligible. In giving such weight to historical knowledge in creating a sense of ourselves, I am not invoking the dead hand of the past, or succumbing to a nostalgic yearning for

22. Guy Vanderhaeghe, *The Englishman's Boy* (Toronto: McClelland and Stewart, 1996), 181.

some *better time*. If nothing else, history is a reminder of change, fluidity, and mutability. When I entered grade 1, among the first educational tortures I was subjected to was creating a blueprint of the architecture of the Union Jack with a ruler and then colouring it with crayons. And God help anyone who got it wrong. As well, we six-year-olds were trooped off to the local movie theatre to see a film of the coronation of Queen Elizabeth II, a particularly bizarre school outing, since her ascension to the throne was not even a current event; her reign had begun four years before.

But things changed quickly. Within seven years the country was ensnared in the toils of the Great Flag Debate; soon the Canadian Red Ensign was consigned to the dustbin of history, and all my uncles who had fought under the old flag during World War II were in a rage because *their* flag had been taken from *them*. As a teenager, I regarded this as inexplicable behaviour. I wanted a new flag, a new logo. What I could not grasp was that my uncles felt their identity was being erased, an identity forged in battles in North Africa, Italy, and the Low Countries, an identity fashioned in exile from home and won at the cost of debilitating wounds and psychic shock. The past they had apprehended, taken custody of, was being wrenched out of their hands, and they were furious at having it torn from them.

But none of us, as much as we would like to, can own history. Nor can we fasten an English-speaking Canadian identity in one particular moment, immure it like a fly in amber. It is as changeable as quicksilver, mercurial. In my lifetime I have seen the institution of official bilingualism and multiculturalism, the patriation of the Constitution, the establishment of the Charter of Rights and Freedoms; all these renovations were once hotly debated, sometimes lamented, but now are, generally, accepted as cornerstones of the Canadian nation and Canadian identity.

But history also proclaims that earlier traces remain in these formulations, and that is why knowledge of the past is so important to

the life of the present. Every aspect of the work of historians takes on value seen in that light—the specialized studies that reveal bypassed incidents or aspirations that still glimmer faintly in the present, the overarching interpretations that touch on common experiences shared by Canadians of all kinds, and descriptions and that argue, maybe just maybe, amidst the welter of divisions there is a centre, and the centre just may hold. I pass over the complications in the relationship between English-speaking and French-speaking Canada because the subject is too vast for this talk and, frankly, beyond my limited knowledge to plumb—except to say that this is a fractious country, but not an entirely fractious country.

A Country of Ghosts

What role does the Canadian historical novel play in depicting English-speaking Canadian identity? It can do little of what the historian is capable of. Fiction writers have neither the command of facts nor the ambition necessary to attempt overarching interpretations. However, centuries ago, the Italian philosopher of history Giambattista Vico posited an idea earth-shaking for his time, a claim that history derived from humble human origins, not divine providence. Historical fiction, I believe, reinforces the sense that it *does* proceed from humble human origins. While the analytic, authoritative, omniscient voice of the historian can leave the impression that historical forces have the omnipotence of divine providence, Stegner's serial voices of fiction remind us that history is never as clear or simple for those who lived it as we might imagine. The lesson of the historical novel may be that the past was every bit as problematic as the present we are floundering through. The clamour of voices in the historical novel, all speaking their own brand of truth, may prompt in us the realization that our understanding of past and present is won by our own efforts, that these are subjects that we need to ponder and think through as individual citizens. *The*

Englishman's Boy contained a warning: Beware of anyone who hands you the past too neatly packaged in a history, in a documentary, in a historical movie, or perhaps most dangerously of all, in a historical novel. Test them all.

In an age in which mammoth bureaucracies, faceless corporations, unfettered financial institutions, and vague concepts such as globalization assume the robes of divine providence and act increasingly on the assumption that human beings are powerless to influence their own destinies or to assert their own identities, history and historical fiction may help provide a sober second voice that reminds us we live with the consequences of our own choices, our own actions, that we are responsible for and deserve the country we get. In an age when political discourse has become increasingly Manichaeian, increasingly simplified and reductionist in outlook, to insist on the complexity of the past is to insist on the complexity of the present, a reminder that true cosmopolitanism not only recognizes and applauds difference in the present, but acknowledges it in the past.

Donald Creighton, the eminent and now distinctly unfashionable Canadian historian, once said, "History is the record of an encounter between character and circumstance... the encounter between character and circumstances is essentially a story."²³ History tells a different kind of story than fiction. The narrative of history emphasizes evidence, considered judgment, and measured interpretation. It speaks with a distant, reasoned, authoritative voice. Novelists speak a different language, more intimate and visceral. Alessandro Manzoni wrote that history gives us,

Events, which, so to speak, are known only from the outside; what men have performed: but not what they have thought, the feelings which have accompanied their deliberations and their plans, their

23. John Robert Colombo, ed., *Colombo's Canadian Quotations* (Edmonton: Hurtig Publishers, 1974), 129.

successes and their misfortunes: the conversations by which they have impressed or tried to impress their wills, by which they have expressed their anger, poured forth their grief, by which in a word, they have *revealed their individuality*: all this history passes by almost in silence; and all this is the domain of poetry.²⁴

I do not claim one voice is better or more valuable than the other. Like the fable of the six blind men each touching a part of the elephant and drawing conclusions about what the elephant is from whatever they lay hands on, neither history nor the historical novel alone can do justice to the elephant that is the past. We need many and complementary stories. As a people, we not only locate ourselves in stories, we discover ourselves in them. No one can apprehend the past in the sense of taking custody of it; it is a common heritage, and also a country of ghosts. These ghosts walk among us. The more ghost stories we tell ourselves, of every kind and variety, the better we may come to understand who we are, and the less strange we Canadians may come to seem to one another's eyes.

24. Quoted in Georg Lukacs, *The Historical Novel*, 129.

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BIOGRAPHY

John Robinson is executive director of the University of British Columbia (UBC) Sustainability Initiative and a professor at the university's Institute for Resources, Environment, and Sustainability, and the Department of Geography. In his role in the UBC Sustainability Initiative he is responsible for integrating academic and operational sustainability on UBC's Point Grey campus.

His own research focuses on the intersection of climate change mitigation, adaptation, and sustainability; the use of visualization, modelling and citizen engagement to explore sustainable futures; sustainable buildings and urban design; creating private/public/NGO and research sector partnerships for sustainability; and, generally, the intersection of sustainability, social and technological change, behaviour change, and community engagement processes. A major current project is the development of the research and partnerships programs relating to the new Centre for Interactive Research on Sustainability (CIRS), now under construction on the UBC campus.

Dr. Robinson is a member of the BC Hydro External Advisory Committee on Electricity Conservation and Efficiency, and the Program Committee of the Pacific Institute for Climate Solutions; on the board of the Sustainable Cities Foundation and the Pembina Institute; a member of the steering group of HELIO International; and on the editorial boards of the journals *Integrated Assessment*, *Ecology and Society*, *Building Research and Information*, and the *Journal of Industrial Ecology*. He is a Fellow of the Trudeau Foundation and has been a lead author of the last three reports of

the Intergovernmental Panel on Climate Change, which won the Nobel Peace Prize in 2007.

ABSTRACT

How do we, as researchers or practitioners, come to grips with daunting societal issues like sustainability? What kind of knowledge do we need, and how do we use it in the service of social change? Can we combine academic work with social engagement, theory with practice? This paper will explore some of these questions in the context of an academic career that has been driven by a felt need to contribute to an urgently required process of societal change in the direction of sustainability. This has led to a focus on what I call “issue-driven interdisciplinarity,” a sometimes uneasy, but always inspiring blend of research and community engagement, aimed at combining various kinds of “expert” knowledge with public values, attitudes, and practices in support of a transition towards sustainability. In reflecting on these issues, I will try to draw some lessons from many years of attempts to pursue issue-driven interdisciplinarity as it applies to energy, climate change, gaming and simulation, buildings, and urban sustainability, and conclude with some discussion of where we plan to take such work in the future.

LECTURE

On Beyond Zebra: Being Undisciplined in Support of Sustainability

Ryerson University

MARCH 3, 2010

Introduction

I would like to start with a brief quotation from one of my favourite authors:

Said Conrad Cornelius o'Donald o'Dell,
My very young friend who is learning to spell:
"The A is for Ape. And B is for Bear.
The C is for Camel. The H is for Hare
The M is for Mouse. And the R is for Rat."
"I know all the twenty-six letters like that...
... Through to Z is for Zebra. I know them all well."
Said Conrad Cornelius o'Donald o'Dell.
"So now I know everything anyone knows.
From beginning to end. From the start to the close.
Because Z is as far as the alphabet goes."
Then he almost fell flat on his face on the floor
When I picked up the chalk and drew one letter more!
A letter he never had dreamed of before!
And I said, "You can stop, if you want, with the Z.
Because most people stop with the Z.
But not me!!!
In the places I go, there are things that I see
That I never could spell if I stopped with the Z.
I'm telling you this 'cause you're one of my friends.
My alphabet starts where your alphabet ends!"¹

1. Dr. Seuss, *On Beyond Zebra* (New York: Random House, 1990).

I do not want to pretend that I can elevate my career to the sublime level of Marco, Dr. Seuss's protagonist in *On Beyond Zebra*, but I confess to a strong degree of sympathy with Marco's attempt to go beyond the conventional alphabet to try to find new ways of expressing our understanding of the world. So I take Marco as a kind of guide for what I have been trying to do in my career: help to create new forms of interdisciplinary understanding and practice in support of sustainability.

In this paper, I want to talk about four things:

1. The way we were: a brief overview of the intellectual climate of the 1970s
2. The meandering path: a potted history of attempts to apply the insights derived from that experience
3. Being undisciplined: some lessons learned from those attempts
4. Further on beyond zebra: fostering societal change in the service of sustainability.

The Way We Were

Though now somewhat lost in the mists of intellectual history and overtaken by more recent events, the 1970s was an exciting time to come to intellectual maturity. I want to reflect briefly on what were to me, as a graduate student struggling to come to grips with environmental issues, some of the key currents of thought that appeared to be highly relevant to my efforts. I believe that some of the questions raised at this time pose intellectual and practical challenges that are still very relevant today.

In painting this picture of the intellectual climate of the 1970s, as seen from a very particular and limited perspective, I want to start with the context. As some may recall, this decade was famously labelled as the "Me Decade" by Tom Wolfe in 1976.²

2. Tom Wolfe, "The 'Me' Decade and the Third Great Awakening," *New York Magazine*, August 23, 1976, 26-40.

Wolfe meant to mark a contrast between what he saw as an individualistic, narcissistic, and selfish turning away from the more socially concerned and communitarian 1960s. As a high school student in Ontario in the late 1960s, and then an undergraduate at the University of Toronto in the early 1970s, I had witnessed the late flowering and withering away of the view that inserting flowers in rifle barrels was a sign of the impending revolution,³ but had also been heavily influenced by what I saw as the underlying call for a more just, more egalitarian and progressive, and more environmentally benign world. It seemed clear to me at the time that this was the right goal to be striving for, and also that the world was then on a rather different trajectory.

A key component of this vision was its focus on environmental concern. In important ways, the modern environmental movement grew out of the social ferment and analysis of the 1960s, and wove together that social and cultural concern with earlier debates over the preservation and conservation of wilderness, and urban health and sanitation, that had their roots in the late 19th century. What emerged in the late 1960s and early 1970s, in the wake of Rachel Carson's path-breaking *Silent Spring* in 1962, was a series of critiques of modern industrial society, ranging over Lynn White's *The Historic Roots of our Ecologic Crisis* (1967), Garret Hardin's *Tragedy of the Commons* (1968), Ken Boulding's *Economics of the Coming Spaceship Earth* (1968), Paul Ehrlich's *Population Bomb* (1968), Barry Commoner's *The Closing Circle* (1971), *Ecologist* magazine's *Blueprint for Survival* (1972), the Club of Rome's *Limits to Growth* (1972), Barbara Ward and René Dubos' *Only One Earth* (1972), Schumacher's *Small Is Beautiful* (1973), and Herman Daly's *Towards a Steady State Economy* (1973), to name only a few of the most prominent.

3. For a strong critique of this approach and of the very idea of the counter culture, see Joseph Heath and Andrew Potter, *The Rebel Sell: Why the Culture Can't Be Jammed* (Toronto: HarperCollins, 2004).

While there are significant differences in the specific arguments put forward in these documents, what was common was a sense that humanity had reached or was fast approaching a watershed in its relationship with the natural world and coming up against natural constraints and limits that required major changes in human behaviour, technology, institutions, and policy.

These views were powerfully reinforced by the “Energy Crisis” of 1973-74, which seemed to confirm the view that the world was running out of oil, the most important and pervasive natural resource.⁴ At the end of the decade, large increases in the price of oil associated with the Iranian Revolution also triggered fears of shortages.

So the stage seemed set, by the end of the 1970s, for major changes in policy, behaviour, and institutions to reflect the emerging reality of a resource-constrained and -limited world.⁵ But meanwhile, a very different set of events was unfolding in the academy, events that seemed to call into question, at a fairly deep level, some of the underlying tenets of the environmental argument about the role and status of scientific understanding in society.

For me, the core arguments on this issue emerged in the history and philosophy of science, where Thomas Kuhn’s *The Structure*

4. In fact, while the energy crisis led to lineups, and a few deaths, at the gas pump in the United States, actual oil deliveries from the Middle East to North America did not decline following the embargo. However, a number of oil tankers developed mysterious engine troubles in mid-Atlantic, which delayed their arrival in North American ports, while oil prices rapidly rose on a daily basis (John Blair, *The Control of Oil* [New York: Pantheon Books, 1976]).

5. In the event, such changes did not transpire, in large part due to the emergence of a world oil glut in the mid-1980s, which took the wind out of the sails of the view that we were imminently running out of oil. The major drop in the real price of oil that ensued in the 1980s led to a massive drop in plans for and investments in energy efficiency and alternative energy supplies, and a corresponding evisceration of energy policies that promoted such approaches.

of *Scientific Revolutions* had burst on the scene in 1962. Building in part on arguments made by Stephen Toulmin, Norman Hanson, and Michael Polanyi, Kuhn presented a picture of the development of natural science that was shocking in its implications for those who had more or less subscribed to the empiricist idea of science as telling us true things about the real world, based on verifiable empirical observation. Kuhn introduced the term “paradigm” to convey his view that what he called “normal science” was based upon a combination of exemplary experiments and understandings, and underlying epistemological commitments and beliefs that were themselves incommensurable and not verifiable in any ultimate sense, and subject to being overthrown in scientific revolutions.

Kuhn’s work set off a firestorm, not only in the history and philosophy of science, but also across the social sciences. The term “paradigm” became one of the most common (and perhaps most misused) terms in many social science disciplines,⁶ and the epistemological implications of Kuhn’s work became the basis for a whole series of significant debates. A key challenge seemed to be one of reconciling the apparent relativism of Kuhn’s work with the view that scientific progress was possible and scientific knowledge was reliable.⁷

Across many fields, a form of anti-realist epistemology seemed to my impressionable eyes to loom into view. Whether it was Peter

6. Margaret Masterson famously found 44 ways in which the term “paradigm” was used in Kuhn’s own work (Margaret Masterson, “The Nature of a Paradigm,” in *Criticism and the Growth of Knowledge*, eds. I. Lakatos and A. Musgrave [London: Cambridge University Press, 1970], 91-196).

7. Ironically, Kuhn invented the concept of paradigm precisely in order to rescue science from the strong relativism implied in the work of authors like Hanson and Toulmin. This comes through very clearly in an early work of his: Thomas Kuhn, “The Function of Dogma in Scientific Research,” in *Readings in the Philosophy of Science*, ed. B. Brody (Englewood Cliffs, New Jersey: Prentice-Hall, 1970), 356-373.

Winch talking about understanding a primitive society, Isaiah Berlin talking about understanding political theory, Clifford Geertz taking an anti-anti-relativist stance, Karl-Otto Apel on the tri-lemma of epistemological justification, Ernst Gombrich on art and illusion, Leon Festinger on cognitive dissonance, Benjamin Whorf on language and meaning, Robert Ornstein on admitting other forms of knowledge to a new humanistic psychology, Lawrence Tribe on the limits of instrumental rationality, Piaget and Bruner on constructivist developmental psychology, Jürgen Habermas on science as a knowledge-constitutive interest, Thomas Berger and Thomas Luckmann's pioneering work on the social construction of reality, Merleau-Ponty on the phenomenology of perception, or George Steiner on language and translation, there was a sense that truth claims based on empirical observation now had to be relativized to some degree as a result of the active role of paradigms, schemata, frameworks, and other epistemological structures in shaping our perceptions and our interpretations.

Of course this is not to say that all of these very varied authors were in agreement with each other, or that their work presented a unified or consistent view of the many issues about which they were writing. On the contrary, major disagreements existed on key issues. But it seemed to me, as a graduate student struggling to find some theoretical or conceptual ground on which to stand, that these authors collectively reflected the emergence of a form of skepticism about truth claims that had to be taken very seriously in my own work.

This skepticism seemed to me to have particular force in a key arena of environmental discourse and debate: the idea that science and technology could provide objectively true and value-free understandings of the nature of the environmental challenge we faced. This idea was strongly rooted in much environmental literature, which was full of formulations that could in essence be reduced to the claim that "ecology proves" that we are running out, doing harm, or exceeding limits. At the same time, however, some environmental

discourse, reflecting in part its counter-cultural roots, was explicitly critical of scientism and the role of science and technology in creating and supporting modern industrial society. Sometimes these two rather different views about science were expressed in the same writings.

To me, as a budding graduate student in the late 1970s, what was exciting about all this was the sense that the developments I have been discussing might all come together. The links between environmentalism and the social, political, and cultural developments of the 1960s were of course explicit. Both suggested the need for some kind of transformation of modern industrial society towards more socially progressive and environmentally benign outcomes, though there was plenty of disagreement about what exactly had to change and how. But it was the more theoretical arguments in the social science literature that I found most exciting. The various epistemological challenges to conventional empiricist approaches to knowledge and understanding seemed to me to suggest that it would not be enough to marshal strong scientific arguments in favour of changes in behaviour and policy. Rather, what was at stake was the concept of rationality underpinning the whole modern enterprise. If we think of the course of the last few centuries of Western development as encompassing the progressive application in many fields of the implications of an essentially mechanistic and empiricist view of nature and society first clearly articulated in the natural sciences in the 17th century,⁸ then what the writers I have mentioned seemed to be offering was a critique of that enterprise. This critique sug-

8. On this point, see Morris Berman, *The Reenchantment of the World* (New York: Bantam Books, 1984) and Richard Tarnas, *The Passion of the Western Mind* (New York: Ballantine, 1991). I have explored this argument in about 25 years of teaching several courses on the history and philosophy of environmental thought. I am grateful to my colleague Bob Gibson, with whom I taught two versions of these courses for a number of years, and to many generations of students at the University of Waterloo and UBC from the mid-1980s to today, who helped me refine my thinking on these issues.

gested that we needed to replace our conventional conceptions of truth, objectivity, facticity, value neutrality, and so on with a new account that was more contextual, more culturally conditioned, and more focused on social processes of knowledge creation and understanding.

As a result of these considerations, I found myself on the side of the environmental argument that was skeptical of the views that environmental and social concerns could be unambiguously demonstrated by finding out the facts of the matter, or that truth and value-free objectivity were the most useful ideals in addressing complex issues. Instead, as I tried to argue in my dissertation, what were needed were processes by which we could collectively construct viable understandings of sustainability issues, guided more by criteria of coherence and fruitfulness than by consistency with reality or objective truth.⁹ In the words of Donald Michael, which provided the title of my dissertation,

What is needed here is a state of mind, a state of being, in which [we] see [ourselves] as creating viable and humane but temporary myths, rather than seeing [ourselves] as describing “objective reality.” Both feet planted firmly in mid-air. Because once one moves away from recognizing the need to live in a world of temporary myths, one runs the grave risk of coming to believe that the myths one creates are *the* reality.¹⁰

In retrospect, the twin desires to contribute something concrete to the kinds of changes that I felt were needed in the world, and simultaneously to better understand the underpinnings of the thinking that has given rise to that world, have shaped most of my

9. John Robinson, “Both Feet Planted Firmly in Mid-Air: An Investigation of Energy Policy and Conceptual Frameworks,” PhD thesis, Department of Geography, University of Toronto, 1981.

10. Donald Michael, “Planning’s Challenge to the Systems Approach,” in *Futures Research—New Directions*, eds. Harold A. Linstone and W.H. Clive Simmonds (Don Mills, Ontario: Addison-Wesley, 1977), 98.

subsequent activities in and out of the academy. And the tension between these two goals has been a fruitful source of motivation for me.

The Meandering Path

From one point of view, accepting the constructivist approach to sustainability¹¹ described above gives rise to very serious problems. How are we to make convincing claims about the need for significant societal change if we reject the authority of truth and objectivity? Both those who are skeptical of the need for such change and those who most passionately argue for it typically rely heavily on the use of scientific research to buttress their position. As Habermas has said, science is the epistemological arbiter of our age; there is no other comparable source of authority for our claims about the world around us. And integral to our concept of science are precisely the concepts of truth, value-free inquiry, and objectivity. What are the alternative bases for sustainability analysis and proposals if not those ideals?

One way to approach these issues is by redefining the question a little, and shifting the focus from the content of scientific work to the question of the social role of science and the technology to which it gives rise.¹² Work in fields such as the sociology of scientific knowledge, the social studies of science, science and technology studies, and the social control of technology has given rise to a rich body of theory and analysis of how scientific knowledge is created and validated, and how applied science and technology connect to

11. I shift here to “sustainability” from “environmental and social concern.” Since the term “sustainability” did not come into widespread use until the early 1990s, this language is a bit anachronistic in the early part of this section. However, it best captures the complex of environmental, social, and economic issues I will be talking about in this paper.

12. As Kuhn pointed out, this is a standard move in scientific revolutions. A new paradigm does not so much give new answers to old questions as it changes the questions that are seen to be of interest.

social processes. The picture they paint is of a very human process of knowledge constitution and application, in which certain values are deeply embedded and reinforced, and alternative frameworks of understanding and interpretation are developed, contested, and applied. The cultural context of such activities plays an important role in determining not only what gets studied, but also how, and with what results. In most such work, the focus shifts from questions of truth and objectivity to questions of coherence, fruitfulness, and relative consistency with the evidence.

In my view, such approaches provide a pragmatic way forward out of the apparent impasse presented by constructivist accounts of human knowledge production. Moreover, such accounts do not undermine but, rather ironically, reinforce two of the core methodological principles of modern science: peer review and replication. If what is going on in our attempts to understand the world is less about discovering objective truths and more about building a coherent body of understanding that is consistent with our other understandings of the world, and stands up to our various attempts to test it empirically (which to be sure are themselves to some degree theory-dependent), then the processes of peer review and replication become the major ways in which we can be sure these tests are met. Put another way, to the extent that our various understandings of the world are necessarily socially constructed,¹³ the social processes of peer review and replication offer a route to some kind of intersubjective agreement on what is the case. This formulation does not depend on any claims as to the “objective truth” of such agreements.

13. I do not address here the ongoing debate about *the degree to which* reality is socially constructed. While this is a very important question, it is enough for my argument in this paper to claim only that such social construction exists, and leave unanswered the question of how far it goes. I tried to provide one answer to that question in my dissertation, based on a strong form of epistemological relativism (see footnote 9); my position today would not be very different.

It acknowledges that such understandings are inherently provisional, and subject to being changed by the communities involved, but recognizes that they can nevertheless be very robust at any given time.

Guided by this kind of understanding, my own trajectory through the sustainability field focused initially on two questions: how do we best address future states of the socio-ecological systems we are interested in? and what do we mean by sustainability if we can no longer rely on science to tell us unambiguously what it is? My initial work in the 1970s on these issues focused on energy questions, as I had become convinced that energy was a key point of entry into the key questions at issue. The type of energy system we would have in the future would go a long way to determining the environmental and social consequences of our activities.

Backcasting

In the mid-1970s, Amory Lovins electrified the energy world with his argument that the world faced a choice between two approaches to energy futures. These were the hard energy path, characterized by continued rapid growth in energy demands, continued reliance on large-scale centralized energy supply systems, and an inevitable eventual switch to a fast breeder nuclear power-based energy system, and the soft energy path characterized by a strong commitment to energy efficiency and to energy supply sources that are diverse, renewable, flexible, and matched in scale and quality to end-use needs. Lovins's arguments laid the conceptual basis for the development of an alternative energy movement around the world, and strong echoes of his approach still inform the arguments of most advocates of renewable energy or climate change mitigation. Just as important as his substantive arguments, however, was a methodological argument he made about how to analyze energy futures. Building on the earlier work of Herman Daly, Lovins argued that instead of trying to predict the most likely energy future we

should articulate the outlines of our preferred future and then analyze how to get there from here. His first application of this approach was in Canada, in a study done for the Science Council of Canada in 1975, a year before his famous article in *Foreign Affairs*.¹⁴

In my opinion, this methodological argument of Lovins's, which was contemporary with the development of the celebrated Shell scenario approach but went beyond it, represented a fundamental challenge not only to the practice of predictive energy demand forecasting that was essentially universal at the time in the energy field, but also to the implicit epistemology underlying that practice. According to positivist philosophy of science, successful prediction is the fundamental goal of scientific explanation, and thus the measure of scientific understanding. Reflecting this approach, most scientific and economic modelling is explicitly intended to predict the future outcomes of the system being modelled.

Energy demand forecasting takes place in this same framework and is generally oriented toward providing governments, utilities, or other energy companies with the best scientific judgment of the most likely level of energy demand in the future. The models used for such analysis are thus explicitly predictive, intended to produce outcomes that converge on likelihood. Where policy alternatives are to be compared, much energy is spent on producing "base case" projections, representing the most likely future trajectory of energy demand, which can be altered to reflect the estimated impact of the policy measures under consideration.

The Lovins approach suggests we turn the question around and ask not where we are most likely to be in the future but where we would like to be, and then how to get there from here.

14. Amory Lovins, «Energy Strategy: The Road Not Taken?» *Foreign Affairs* (October 1976), 186-217. That article led to the most reprint requests in the history of that prestigious journal and to the commissioning of dozens of papers and books intended to rebut his arguments.

Methodologically, this seemed to me to be a very good basis for an alternative epistemology of futures studies, one that eschewed the idea of a most likely future in favour of a recognition that there are multiple possible futures, and that the most useful policy questions are often what kind of futures do we want? and how can we achieve them? These questions became a primary focus of my work. In 1977, I coined the term “backcasting” to describe this type of normative futures analysis and have since devoted myself to exploring how it could be done and where best it could be applied.

The social construction of sustainability

The second strand that has been woven through my research has been based on the view that we need to recognize the socially constructed nature of our understanding of sustainability issues, and go beyond approaches to analysis or policy response based solely on instrumental rationality. This suggests the need for approaches to analyzing sustainable futures which treat the concept of sustainability not as a set of scientific findings that need to be communicated to various audiences, such as the public or policy makers, but rather as a set of views, preferences, and understandings about preferred outcomes that is emergent from a process of examination of the trade-offs and higher order consequences associated with different choices about the future.¹⁵

One relatively uncontroversial way to express this insight is to say that sustainability is not essentially a scientific concept but rather a normative ethical principle about how we want to live in the world. This approach is of course highly consistent with the backcasting method, which itself is intended to explore normative visions of desirable futures. But it also has serious implications for the question

15. I have elaborated on this approach to sustainability in John Robinson, “Squaring the Circle: Some Thoughts on the Idea of Sustainable Development,” *Ecological Economics* 48, no. 4 (2004), 369-384.

of who participates in the analysis. To the extent that there are such normative dimensions to the problem, then the question of whose norms and values get represented is necessarily front and centre to a greater degree than seems to apply in more traditional analyses, where the purpose is, for example, to find out the cost and benefits of various technological options for climate change mitigation, the sustainable yield of a particular fishery, or the atmospheric chemistry of a particular air pollutant.¹⁶ In turn this implies the use of highly participatory processes of social learning, where the goal is to allow participants to act as active members of the research team, helping to define the questions being addressed, develop the tools of analysis, and participate both in the analysis itself and the interpretation of results.¹⁷

A social construction of sustainability approach also requires that we examine the role of the researcher or analyst in the mix. Ironically, to the extent that researchers define themselves as producing value-free, objective analysis, then they are by definition not an appropriate source of normative content (they can describe it but not provide it). Even if they eschew such a stance and acknowledge the degree to which their own analysis embeds a series of normative value judgments, their normative contribution has no special status and certainly cannot be assumed to be representative of the norms and values of the community or society being examined.

16. Normative considerations also apply in all of these examples, such as the weighting or degree of monetization of costs and benefits, what is meant by sustainable yield, and even the types of pollution that are important and should be studied.

17. See John Robinson and James Tansey, "Co-Production, Emergent Properties and Strong Interactive Social Research: The Georgia Basin Futures Project," *Science and Public Policy* 33, no. 2 (2006), 151-160.

Putting it all together

The result of engaging with the foregoing considerations has been a 35-year trajectory of studies intended to explore desirable futures in increasingly participatory ways. Focusing initially on energy systems at the national level,¹⁸ the work expanded in the 1980s, while I was at the University of Waterloo, to sustainability more generally (achieving a soft energy path in a hard energy path economy was clearly problematic), with a team of researchers constructing quite detailed national scenarios of a transition to a sustainable society in Canada by 2025.¹⁹

This early work was based on a very traditional model of research dissemination, where the role of the research was seen as seeding a process of public discussion through publications. But a key lesson learned in this work was that the real learning about future options and possibilities came in the actual process of scenario construction and testing. This learning was hard to convey in the publications we produced, which focused on the outcomes of the analysis. This led one of my colleagues, Sally Lerner, to pose the question, what if we built a kind of computer game-like version of our model, so that anyone could reproduce the learning we went through in constructing and evaluating our scenarios? At the time (1991), the modelling system we were using took six hours to compute a scenario, so this idea did not immediately come to fruition. By 1994, however, I was located at the University of British Columbia and involved in a study of the future of the Lower Fraser basin in that province. Blessed with two graduate students—Dave Biggs

18. Friends of the Earth Canada, 2025: *Soft Energy Futures for Canada* (Federal Departments of Energy, Mines and Resources; Environment; and Supply and Services: Ottawa, 1984).

19. John Robinson, Dave Biggs, George Francis, Russell Legge, Sally Lerner, Scott Slocombe, and Caroline Van Bers, *Life in 2030: Exploring a Sustainable Future in Canada* (Vancouver: UBC Press, 1996).

and Mike Walsh—with expertise in modelling and computer science, and heartened by the advances in computing technology and platforms, we constructed what turned out to be the prototype of a series of computer game–like simulations of sustainable futures at the regional and then municipal scale.²⁰ The simulation engine we constructed, called QUEST,²¹ allows anyone to construct their own scenarios in an iterative process in which the initial scenario choices may lead to undesirable consequences, leading in turn to changes in those choices until a satisfactory set of outcomes is reached. In this way, scenario creation workshops can be the locus of a process of social learning, in which the final scenarios that emerge reflect the learning that has gone on in earlier iterations.

A key characteristic of the QUEST approach was an attempt to combine quantitative modelling to express our best understanding of the trade-offs and consequences associated with different choices about the future, with an entirely qualitative interface based on

20. For the first version, Lower Fraser Basin QUEST, see Dale Rothman, John Robinson, and Dave Biggs, “Signs of Life: Linking Indicators and Models in the Context of QUEST,” in *Implementing Sustainable Development: Integrated Assessment and Participatory Decision-Making Processes*, eds. Hussein Abaza and Andrea Baranzini (Cheltenham, United Kingdom: Edward Elgar, 2002). The subsequent version, Georgia Basin QUEST, is described in Jeff Carmichael, James Tansey, and John Robinson, “An Integrated Assessment Modeling Tool,” *Global Environmental Change* 14 (2004), 171-183. For some of the lessons learned in using GB-QUEST, see John Robinson, Jeff Carmichael, James Tansey, and Rob VanWynsberghe, “Sustainability as a Problem of Design: Interactive Science in the Georgia Basin,” *Integrated Assessment Journal* 6, no. 4 (2006), 165-192. In 1997 Dave Biggs and Mike Wash created Envision Sustainability Tools to commercialize the QUEST software. Various municipal-scale versions of QUEST have now been sold to 18 cities across North America. See MetroQuest, <http://www.metroquest.com>.

21. QUEST was an acronym, standing originally for Quasi-Understandable Ecosystem Scenario Tool, and later (we hoped) for Quite Useful Ecosystem Scenario Tool. In its later incarnations with Envision Sustainability Tools, Inc., it has become MetroQuest, with no acronym.

narrative and metaphor. Another key characteristic was the explicit involvement of partners and stakeholders in the model development process, the creation of scenarios, and the interpretation of results. It turned out that involving users in the creation of the scenarios was critically important in creating a level of engagement and buy-in for those scenarios that was very hard to achieve when the scenarios were created and presented by the research team.

QUEST itself was only one tool used in the research projects in which it was developed. A suite of other tools, including a digital library, a website of resources of NGOs, a personal climate change calculator, and several exhibits at our local science museum, Science World, were developed, as were a series of processes through which these tools could be used, including a short-lived web-based process, three municipal case studies, extensive workshop-based sessions, and classroom pilots at the secondary school level. We also did some preliminary work on testing the effect of using QUEST on the mental models of participants in QUEST workshops.²²

Subsequent work has seen a developing partnership with UBC researchers on exploring landscape visualization as a technique to communicate scenario results, studying the effect of different modes of delivery of scenario information, and a series of regional applications in British Columbia in partnership with colleagues in the federal government. In all these projects we used a backcasting approach to explore desirable futures.

While this work has been rewarding and fruitful, it has become clear that it has had very limited ability to effect change at the scale that is required to achieve sustainability. Individual projects, no

22. Jeff Carmichael, Sonia Talwar, James Tansey, and John Robinson, "Where Do We Want To Be? Making Sustainability Indicators Integrated, Dynamic and Participatory," in *Community Indicators Measuring Systems*, ed. R. Philips (London: Ashgate Publishing, 2005); John Robinson, Jeff Carmichael, James Tansey, and Rob VanWynsberghe, "Sustainability as a Problem of Design: Interactive Science in the Georgia Basin."

matter how participatory, are constrained in scope and participation. What was needed, we began to believe in the late 1990s, was a way to institutionalize the approach we were developing and create a highly visible home and showcase for sustainability that would reach new audiences, provide a test-bed for new ideas and approaches, and address in a more detailed way the implementation approaches and strategies required to move sustainability from the fringes to the mainstream. The result of these thoughts was the development of a proposal, initially articulated in 1999, to create a living laboratory and showcase of sustainability, called the Centre for Interactive Research on Sustainability (CIRS), which will open its doors in the spring of 2011.

The CIRS concept was for a three-part program, each of which would have research and applications dimensions. Part 1 was to build the most sustainable building in North America, where everything in the building—the paint, the furniture, the cladding, the structure, the energy and water systems, and so on—would be an ongoing test-bed and research project in sustainable design, construction, and operation. The research program would extend over the lifetime of the building, which would be designed in a modular, plug-and-play fashion, with systems being unplugged and replaced with new ones as technology improves. Part 2 would be an active community engagement program, with a large number of displays, exhibits, and interactive technology, including an immersion-equipped decision theatre. Part 3 would be an active program of consultation and interaction with private, public, and NGO sector partners, aimed at developing the policy approaches and commercialization strategies needed to take sustainable technologies, services, and behaviours to the political and economic marketplace.

The trajectory of research and engagement described in this section has given rise to a varied set of research findings about modelling, backcasting, community engagement processes, and

the policy and behavioural preferences of project participants.²³ Here I would like to step back from these more specific findings and focus on the lessons learned about academic engagement with societal problems at a more general level. This will be done by focusing on two issues: (i) the characteristics of the kind of issue-driven interdisciplinarity we have been practising and (ii) how to achieve societal change in support of sustainability.

Being Undisciplined²⁴

Sustainability is by its very nature an interdisciplinary field. Our experience in participatory backcasting projects, in developing the QUEST system, and in getting CIRS started have led to a particular

23. See Alison Shaw, Stephen Sheppard, Sarah Burch, Dave Flanders, Arnim Wiek, Jeff Carmichael, John Robinson, and Stewart Cohen, "Making Local Futures Tangible—Synthesizing, Downscaling, and Visualizing Climate Change Scenarios for Participatory Capacity Building", *Global Environmental Change* 19 (2009), 447–463; John Robinson, "Being Undisciplined: Transgressions and Intersections in Academia and Beyond", *Futures* 40, no. 1 (2008), 70–86; Livia Bizikova, Sarah Burch, Stewart Cohen, and John Robinson, "A Participatory Integrated Assessment Approach to Local Climate Change Responses: Linking Sustainable Development with Climate Change Adaptation and Mitigation," in *Climate Change, Ethics and Human Security*, eds. Karen O'Brien, Asuncion Lera St. Clair, and Berit Kristoffersen (Cambridge University Press, 2010); Livia Bizikova, Sarah Burch, John Robinson, Alison Shaw, and Stephen Sheppard, "Utilizing Participatory Scenario-Based Approaches to Design Proactive Responses to Climate Change in the Face of Uncertainties," in *Climate Change and Policy: The Calculability of Climate Change and the Challenge of Uncertainty*, eds. Johann Feichter and Gabriele Gramelsberger (Springer-Verlag, forthcoming); John Robinson, Sarah Burch, Mike Walsh, Sonia Talwar, and Meg O'Shea, "Envisioning Sustainable Development Paths: Recent Progress in the Use of Participatory Scenario-Based Approaches for Sustainability Research," *Technological Forecasting and Social Change*, special issue on backcasting (forthcoming).

24. The arguments in this section draw on the discussion in John Robinson, "Being Undisciplined: Transgressions and Intersections in Academia and Beyond".

approach to interdisciplinarity. This approach is driven primarily by a desire to engage with issues in the non-academic world, issues that do not primarily emerge in disciplinary journals or in academic discourse alone, but often have to do with fundamental dilemmas or crises in society that do not seem to lend themselves to easy solution by traditional approaches or methods of analysis. Practitioners of this style of interdisciplinarity do not find themselves at the margins between disciplines, but in the sometimes uncomfortable borderlands between the academy and the larger world. We tend to start from real world issues and move from there into the arena of scholarly knowledge. This means that the criteria with which we select from among the various forms and types of knowledge differ from those that would be suggested if the starting point was the problems and puzzles emerging from within the academic enterprise itself.

Since the real world issues this type of interdisciplinarity is trying to address are not easily expressed in terms of disciplinary knowledge (life tends to present itself as a seamless whole), this approach tends to be critical of disciplinarity itself and is typically more interested in creating forms of knowledge that are inherently useful, rather than in creating new disciplines.

An important characteristic of this style of interdisciplinarity is a very strong focus on partnerships with the external world, partnerships which go beyond treating partners primarily as audience and instead involve these partners as co-producers of new hybrid forms of knowledge. We might call this type of interdisciplinarity “*issue-driven interdisciplinarity*.”²⁵

25. Some scholars argue that such a problem-based focus is a defining characteristic of transdisciplinarity, while others argue that transdisciplinarity is not necessarily problem based but focuses on new forms of integrative understanding. I use the term “interdisciplinarity” partly in order to avoid engaging in that debate.

Based on the experiences described above, I would like to suggest the following as key characteristics of issue-driven interdisciplinarity (Table 1).

- | |
|--|
| <ul style="list-style-type: none"> ■ Problem-based ■ Integrated ■ Interactive and emergent ■ Reflexive ■ Based on strong forms of partnership |
|--|

Table 1 Key Characteristics of Issue-Driven Interdisciplinarity

Problem-based

Being problem-based is a defining characteristic of interdisciplinarity of the kind being described in this paper. Such an approach identifies issue-driven interdisciplinarity with the influential concept of “Mode 2” knowledge production, the first attribute of which is its problem-driven nature.²⁶ This emphasis on problems is also a defining characteristic of what has been called “post normal science,” which focuses on problems that are introduced through policy issues where facts are uncertain, values are in dispute, stakes are high, and decisions are urgent.²⁷

In other words, issue-driven interdisciplinarity must be a hybrid activity, in which academic participants work in tandem with partners in the community to bring different forms of knowledge to bear on societal problems. In this sense the partners are not just an audience for the findings of the research but are in some way directly involved in the definition of the research problems; the design and implementation of the research; and the interpretation, as well as the use, of the results.

26. Michael Gibbons, et al., *The New Production of Knowledge: The Dynamics of Science and Research in Contemporary Societies* (London: Sage Books, 1994).

27. S.O. Funtowicz and J. R. Ravetz, *Uncertainty and Quality in Science for Policy* (Dordrecht, Netherlands: Kluwer Academic Publishers, 1990).

Integrated

By its nature issue-driven interdisciplinarity involves reaching across different disciplinary, theoretical, and methodological boundaries. In turn this raises questions about conceptual and procedural coherence.

The roots of the approach to interdisciplinary integration proposed here lie in an interpretive approach to interdisciplinarity, which is cautious, if not suspicious, about the utility and meaning of overarching theories and conceptual frameworks. Instead, such an approach emphasizes the inherently local and place-based nature of such concepts as sustainability, and the need for meaning to emerge from within the interplay between theoretical knowledge and local circumstance.

We have found that approaches based on complex systems thinking can illuminate the interplay between local and more global knowledge and concepts and between different forms of understanding. In the sustainability field, such approaches emerged out of the analysis of ecosystem dynamics but have increasingly come to be applied to the interaction between human and natural systems. Key characteristics of such approaches are a recognition of the inherently non-deterministic nature of the systems under consideration; an emphasis upon interactions across temporal, spatial, and functional scales; a resultant focus on feedbacks and dynamics (including thresholds and irreversibilities); and recognition of the emergent nature of many social and biophysical phenomena.

Interactive and emergent

Both the approach to integration and the concept of problem-based research proposed in this paper necessarily imply that the research is highly interactive and participatory. In the projects described above, we developed an approach to interactivity that was based on the principle that participants in the projects should be directly involved in all aspects of the research.

In order to live up to this principle we needed to build modelling and information tools that did not present scenarios or information to our research partners for them to respond to, but instead allowed them to generate their own information or scenarios and, in the latter case, to make changes in those scenarios, based on consequences and trade-offs, until they were happy with the outcome. In that way, their own preferences, values, and attitudes were part of the information or scenario creation and evaluation process, giving rise to processes of social learning.²⁸

We also needed to involve the partners in all stages of the process, including problem definition, research design, the research itself, and the interpretation and use of results. As noted above, we started our attempt to follow these principles by involving our community partners directly in the design of the modelling framework we developed so that it would address issues of interest to non-expert users. In principle, we worked back from those issues to the question of what the interface should look like, to the design of the sub-models themselves, though in practice the process was more iterative than that. In the end, quite a lot of effort went into interface design, not normally a strong point of academic models.

Reflexive

A defining characteristic of interdisciplinarity is the existence of multiple knowledge domains, in the forms of disciplines, sub-disciplines, interdisciplines, fields of study, and so on. Of course many of these different domains have inconsistent or even contradictory positions on specific issues. A key question for interdisciplinary scholarship then is how to acknowledge and adjudicate among contradictory or competing claims, especially given a constructivist

28. I call this approach “second-order” backcasting. See John Robinson, “Future Subjunctive: Backcasting as Social Learning,” *Futures* 35, no. 8 (2003), 839-856.

epistemology of the kind suggested above. This implies a form of reflexivity that is self-aware about the conceptual and methodological assumptions embedded in different forms of understanding, and open to creative ways to respond to these differences, consistent with Funtowicz and Ravetz's argument about post-normal science, and the arguments of Gibbons and colleagues about Mode 2 science. It amounts to another argument against any attempt to develop and impose a single over-arching conceptual framework, and provides support for a more practice-based approach.

In the case of our work, we have attempted to apply this type of reflexivity in the way in which we developed and applied our modeling tools. Recognizing the difference between "models" and "stories" as representing two historically different approaches to analyzing the future, and in keeping with a growing trend in futures studies work, we tried to locate the design and use of our QUEST model somewhere between quantitative modelling and qualitative storytelling, and to reveal the critical importance of underlying assumptions in the model. For example, we asked users of the model to identify their "worldview" by specifying what they thought was true with respect to human adaptability, ecological fragility, and technological innovation. These settings changed the outcomes of the scenarios, thus demonstrating the dependence of scenario outcome on worldview assumptions. In addition we asked users to specify their values. These settings then changed the way that the (unchanged) scenario outcomes were displayed, thus demonstrating the dependence of the interpretation of the scenarios on values. We also developed qualitative storylines that connected scenario inputs and outputs and used these to guide workshop facilitation.

Perhaps the most important manifestation of reflexivity in our projects has been the engagement of our community partners in the creation and evaluation of preferred scenarios, as described above. This permitted the interpenetration of our judgments, as embedded in the modelling or digital library system, and the values

and preferences of the users. It also allowed the final decision as to what was a preferred scenario to be made by the community partners involved, not the research team, reducing the degree to which the latter imposed their own view on the process.

The approaches described here were intended to bring some of the underlying assumptions of participants to the surface and allow them to be examined. However, this did not resolve tensions within the research team itself about the very idea of using a model-based approach for certain kinds of research, or about the possibility that our community partners would choose the “wrong” scenario. These tensions indicated a deeper level of concern about what assumptions were embedded in the tools and approaches we used in our work. This in turn led to much discussion among research team members and various attempts to reach consensus on our approach, but the issues remained contentious. It may well be that some differences in underlying perspectives are sufficiently divisive that choices need to be made as to what position is to be taken as the proposal is developed and the research team assembled. Again this suggests the importance of considering such issues and engaging in significant ongoing discussion among the research team early in the process.

Based on strong forms of partnerships

The four characteristics discussed above necessarily imply a degree of collaborative exchange among the members of the research team and between the research team and community partners that goes well beyond that required in disciplinary and discipline-based inter-disciplinarity research.

In general, our experience in the projects described above was that collaboration among the members of the research team and partnership with non-academic organizations at the level required for strong issue-driven interdisciplinarity to occur presented significant problems but offered significant rewards. Perhaps the most general lesson was the need to devote significant project resources to

support such collaboration and partnerships, on an ongoing basis over the life of the project.

The five characteristics of issue-driven interdisciplinarity outlined here represent a model of doing research that attempts to reflect the tension I described above: the need to respond to the urgency of sustainability issues, while respecting the socially constructed nature of our understanding of the world, and the multiplicity of claims and preferences about desired outcomes. The point is not that anything goes and any claim is as valid as any other one. Instead, the approach underlying these characteristics is based on the following argument:

- our best understandings of the world are necessarily provisional, and subject to change
- however, at any given time there may be more or less consensus about such understandings, on the part of those recognized as having expertise in the fields in question
- such recognition, and the measure of consensus on any particular topic, are based on the collaborative processes of peer review and replication, which are our best ways to achieve inter-subjective agreement on complex questions on the part of those who study such issues
- insofar as the social practice of scholarship is explicitly based on attempts to exclude the subjective preferences and values of the scholars themselves from the field of analysis, then such analysis cannot address the normative issues integral to decisions about issues like sustainability
- moreover, the ways in which expertise is certified and recognized in society excludes forms of “lay” understanding, knowledge and expertise that are extremely relevant to decision-making on sustainability
- we therefore need tools for, and processes of social deliberation that embody our best research and scholarship on the way the world works but also encompass the normative values and preferences excluded from that scholarship and the also the

“unlicensed” perspectives found outside the halls of professional scholarship

- and expertise the goal of such work is to combine scholarship with “public” values, attitudes, beliefs and preferences in such a way as to give rise to emergent understandings of what sustainable futures may be available and desirable.

Put another way, we find ourselves at the intersection of choice, uncertainty, and constraint. Uncertainty, from this perspective, is not a matter of estimating probabilities, but of exploring the feasibility and desirability of alternative possibilities. Human choice, based on intentionality, is a fundamental feature of the very systems we are studying. Yet not all possible futures are available: our best understandings of outcomes and system interactions suggest the existence of important constraints on our choices. Various kinds of models can embed these understandings and illustrate the trade-offs and consequences associated, with different choice. One of the key roles of issue-based interdisciplinary research of the kind proposed here, then, is to explore the space and account for the pressures generated by the interplay of uncertainty, choice, and constraints.

Further on Beyond Zebra

While issue-based interdisciplinarity offers what seems to me to be a very fruitful approach to engaged research on sustainability, it is by its nature a research activity and is therefore limited in terms of contributing to the kinds of changes it examines. Here I would like to move outside the academy and paint a very rough picture of the kind of approach to societal change more generally that emerges directly out of the work I have described above. This approach is embedded in the CIRS program and in the work we are doing as part of the new UBC Sustainability Initiative.²⁹

29. UBC Vancouver Sustainability Initiative, <http://www.publicaffairs.ubc.ca/2010/01/27/ubc-vancouver-sustainability-initiative/>; see also UBC Sustainability, <http://www.sustain.ubc.ca/>.

The goal of contributing to positive social change in the direction of increased sustainability is of course not a new one. Two routes of intervention have been commonly pursued. The first is the well-established process of policy analysis aimed at providing useful advice to decision makers. This is a major focus for academic contributions to public policy issues. The second is the development of information and education programs aimed at the public, which have the purpose of changing individual consumer behaviour. This is the preferred route for much environmental education and also NGO activism.

These two approaches to intervention are well established (and not just in the sustainability field) and are likely to continue to be popular. However, I believe that alone they are not likely to lead to transformative societal change. In the interests of broadening the scope of intervention, the CIRS program will build on the work described above and focus on three additional routes for contributing to the sustainability transition.

The first route focuses on community engagement tools and processes. Rather than changing individual behaviour, the emphasis is upon social mobilization processes intended to inform stakeholders about the trade-offs and consequences associated with different collective decisions. The bases of this approach are twofold. First, many of the decisions that will strongly affect future sustainability for a given region do not happen at the level of individual consumption but instead at the level of collective decisions about such issues as land use, urban form, density, transportation infrastructure, and energy and water systems. And second, the policy makers responsible for such collective decisions, are not able to change easily the existing trajectory of such decisions if there is not a political constituency for such changes. They can more easily continue in the same direction since the political interests and constituencies for such decisions are already in place. Non-incremental change requires challenging well-

established interests and is difficult to accomplish without the existence of strong political constituency for such change.

The second route has to do with institutional and organizational change. Though a strong focus of much sustainability research and intervention is on contributing to policy change, there are many changes that can have powerful effects on the achievement of sustainability that do not require changes in policy. The institutional rules that govern how organizations act in the world can usually be changed endogenously, that is, without change in the enabling policy or legislation that created those institutions. A good example in the sustainable building field is the existence of building codes, which can usually be changed without any necessary change in the underlying policy context. More generally, there exists a set of institutional rules, including codes, standards, job descriptions, performance evaluation criteria, assessment metrics, and so on, which have a large effect on what decisions get made by organizations. Institutional change aimed at changing these rules can therefore be an important method of contributing to transformative social change. Indeed, as with social mobilization, such institutional change is likely a prerequisite to the kinds of changes required.

The third and final route for intervention shifts from a sole focus on the realm of public policy and institutions to include a major emphasis on the marketplace. It is clear that the private sector is the locus of much of the behaviour that transforms our world, for good or ill. It is therefore critical that a strong emphasis be given to making private sector investment and behaviour more sustainable. While government policy and regulation are one way of influencing such behaviour, the focus needs to extend to also include processes of commercialization and market transformation. In essence, the argument is that to the extent that it is in the economic interest of private sector organizations to invest in, produce, and market more sustainable products and services, then the market itself can become an

engine of change in the direction of greater sustainability. Moreover, if this can be accomplished, it can work together with policy change to set up self-perpetuating and self-amplifying processes that have the potential for transformative effect.

These three more novel routes of intervention interact with each other, and with policy analysis and individual behaviour change strategies. Clearly, successful social mobilization or agency in support of changes in collective decisions will lead to policy changes, many of which in turn will contribute to institutional and perhaps individual behaviour changes. Institutional changes themselves can occur in the private as well as the public sector, and in so doing contribute to commercialization and market transformation. And successful processes of policy change and commercialization of sustainability technologies and services will give rise to products that will make possible individual behaviour change and also support changes in collective decisions.

The conceptual framework outlined here is not intended to be exhaustive. No doubt there are other possible routes to supplement policy analysis and education programs aimed at individual behaviour change. However, these routes seem to offer a fruitful way to think about transformative social change.³⁰

Conclusion

I began this paper with a quote from that well-known social theorist Dr. Seuss. The point of that quotation was to suggest that the challenges of sustainability indicate the need to go beyond the conventional alphabet of academic responses in order to draft some new letters that will help us describe and engage with new approaches. That old

30. They also connect to the rather extensive literature on socio-technical change, for example , which suggests that significant institutional and organizational changes are required to have any chance of fostering transformative societal change.

alphabet can be described as a view of scholarship, rationality, and truth that is based on an Enlightenment ideal of value-free, objective and disengaged academic inquiry, leading to the production of verified truthful knowledge, which can then be used in any number of ways to improve our world. I do not want to disparage the power of that approach. In many ways it has brought us the incredibly rich and powerful set of tools and understandings that characterize our modern condition. Yet my own understanding, both of the current state of the world and of the frameworks of rationality and understanding that underlie that world, is that we need to find ways of collectively making our way in the world that are different in both these dimensions. That is, we need to develop tools and processes of collective engagement and institutional change that are not based on any transcendent understanding of the nature of truth or reality, but are instead the emergent consequence of imminent processes.³¹

31. I owe this use of the concepts of immanence and transcendence in this context to David Maggs, who is currently doing a PhD under my supervision on arts, culture, and sustainability.

KATHLEEN MAHONEY

2008 *Trudeau Fellow*, University of Calgary

BIOGRAPHY

Kathleen Mahoney has been a professor of law at the University of Calgary since 1991. Having held many international fellowships and lectureships, she has dedicated much of her research, practice, and activism to internationally critical issues in human rights. She has published extensively and appeared as counsel in leading cases in the Supreme Court of Canada. She has also organized and participated in collaborative human rights and judicial education projects in Geneva, Australia, New Zealand, South Africa, Tanzania, Namibia, Spain, Israel, China, Vietnam, the United States, and the United Nations. She was a founder of the Women's Legal Education and Action Fund and a pioneer of the judicial education movement in Canada.

In 2004, Professor Mahoney spearheaded and authored a major research project and report examining the Canadian government's response to the claims of Aboriginal residential school survivors. This led to her appointment as the chief negotiator for the Assembly of First Nations and the subsequent historic settlement agreement with Canada for reparations and a truth and reconciliation process.

Professor Mahoney was elected a Fellow of the Royal Society of Canada and received the Canadian Bar Association Distinguished Service Award in 1997. In 1998, she was made a Fulbright Scholar to pursue her research work at Harvard University and was appointed by the federal Cabinet to chair the board of directors of the International Centre for Human Rights and Democratic Development. In 2000, she won the Bertha Wilson Touchstone Award, and in 2001 she was awarded the Governor General's Medal.

She was nominated a Trudeau Fellow in 2008.

She has law degrees from the University of British Columbia and Cambridge University, and a diploma from the Institute of Comparative Human Rights Law in Strasbourg, France.

ABSTRACT

Pierre Elliott Trudeau once won an election based on the slogan “The Just Society.” As a rhetorical device, it neatly illustrated his vision for the nation. Presumably those who were persuaded enough by it to vote for him understood that a Trudeau government would change their lives for the better by bringing them more justice. But what is justice? How does more justice improve people’s lives? How is it measured? Is it “just” to improve some lives at the expense of others? Does Canada have a distinct form of justice?

To answer these questions requires a journey through the world of moral philosophy—a journey Harvard professor Michael Sandal says “is a challenge to awaken the restlessness of reason and see where it may lead.” Testing and applying the foundational thinking of famous philosophers such as Aristotle, Locke, Kant, Mill, MacKinnon, and others helps us to understand that justice is a moving target. Different moral philosophies and principles result in different conceptions of justice, which in turn affect contemporary matters such as equality and inequality, free speech and hate speech, affirmative action and same-sex marriage. Therefore this philosophical inquiry into justice is not a “pretty toy” or a “petty quibble.” It is unavoidable because we live its answers every day. This lecture will attempt to show how moral philosophy provides a baseline from which justice can be better understood and evaluated.

LECTURE

What Is Justice?

Concordia University

JUNE 3, 2010

Organized in partnership with the Canadian
Federation for the Humanities
and Social Sciences and Congress 2010
(Big Thinking Lecture Series)

The topic I am addressing is justice. I have asked the question, What is justice? On reflection, perhaps a more accurate title for this presentation would be “How Should We Think About Justice?”¹

Understanding justice, and figuring out how to think about it, has challenged far more erudite and wise people than me. Believe me, I have had some regrets since I told the Foundation of my choice of topic for this paper.

Nonetheless, it is a question I have pondered and continue to ponder since I entered law school many, many years ago. Perhaps even before that.

Another reason I chose this topic is because the late prime minister, who influenced my life greatly, defined his political vision and ambition for Canada to be that of a “Just Society.”

What did he mean by a just society? And can his vision be fulfilled?

1. I would like to thank Concordia University, the Canadian Federation for Humanities and Social Sciences, and especially the Pierre Elliott Trudeau Foundation for hosting the Trudeau Lecture. It was a very special honour for me to be associated with the name of the Rt. Hon. Pierre Elliott Trudeau and the names of all the distinguished Fellows, Scholars, and Mentors in the Trudeau Foundation family.

In pursuit of answers, over the course of my career I have involved myself in the study of law; I have written and presented many scholarly papers and editorials; I have marched in protests and travelled throughout Canada, as well as to many foreign lands; I have taught and practised law; I have organized a number of national and international conferences, asking variants of these same questions.

I have helped to start a movement for the education of judges on social context; I had my own legal issues television show; I have argued cases in the highest courts on the definition of rights and freedoms; I have been an activist for women's rights and I have worked to establish restorative justice and reconciliation between First Nations and Canada.

And yet I still find myself asking the same questions.

This is because what I discovered early on was that while everyone is for justice, the content of justice is highly contested.

Moreover, it is not something that is handed to anyone on a silver platter. Obtaining justice usually requires a fight of one kind or another—in the courts, in political arenas, in back rooms, or even on the streets.

This is because there is resistance between old and new ideas of justice, between those whose life experience tells them they have it and want to keep it, and those who think it is denied them and want to find it.

One's view of justice depends very much on who you are and where you come from. It depends on your philosophical perspective, your gender, class, orientation, religion, ethnicity and race, and physical or mental ability. It depends on the times we are living in and the politics of the day.

It also, and very importantly, depends on the people who get to decide the outcomes of disputes—who they are and where they come from and whether they apply the rules consistently, fairly, and impartially.

Arguments about parliamentary procedure, separation of powers, judicial appointments, and rules of constitutional interpretation may seem boring and esoteric, but they are crucial elements of justice. This is because procedure helps define results—on everything from whether government can tap your phone to whether it can regulate polluters.

Then there is the branch of justice that responds to violations of the rules. Depending on the prevailing wisdom, justice in this context could be retributive, deterrent, rehabilitative, or restorative in nature.

Recently, reconciliation, transitional justice, truth telling, and forgiveness have become part of the justice lexicon of remedies.² As the chief negotiator for the Assembly of First Nations in the historic Indian Residential School Settlement Agreement between First Nations and Canada, which included these elements for the

2. This has become most noticeable in the context of the Indian Residential School Settlement Agreement of September 2007, which is largely based on restorative justice principles, as well as reconciliation and healing. Not only are several billions of dollars of compensatory damages for physical, sexual, and psychological abuse included in the settlement agreement, the court approved settlement includes collective remedies such as the Truth and Reconciliation Commission of Canada, healing funds, compensation for loss of language and culture, commemoration funds, and education credits which do not fit the traditional remedies provided either in the case law or in legislation for personal injuries and human rights violations. See the decision in *Larry Phillip Fontaine et al. v. Canada et al.* 2006 YKSC 63 that was brought in nine superior court jurisdictions across Canada. See also *Northwest v. Canada* (Attorney General), 2006 ABQB 902; *Quatell v. Attorney General of Canada*, 2006 BCSC 1840; *Semple et al. v. The Attorney General of Canada et al.*, 2006 MBQB 285; *Kuptana v. Attorney General of Canada* (CV 2005/243); *Ammaq et al. v. Canada* (Attorney General), 2006 NuCJ24; *Baxter v. Attorney General of Canada*, 2006 (CV 192059CP); *Bosum et al. v. Canada* (Attorney General) 500-06-000293-056; *Sparvier et al. v. Canada Attorney General of Canada*, 2006, 12, 5.

first time in our legal history, I can personally vouch for the fact that such fundamental shifts in understanding what justice requires are extremely difficult to achieve.³ But for the tremendous leverage of international embarrassment caused by the revelations of widespread systemic abuse and deaths of Indian children during the residential school era, the remedies of a truth commission, compensation for loss of language and culture, healing and commemoration funds, and an education trust likely would never have been considered. The prime minister's apology on the floor of the House of Commons on June 8, 2008, along with the apologies of all the leaders of opposition parties, was perhaps the most dramatic and poignant attempt at restorative justice the country has ever seen.⁴

The latest development in the concept of justice is transitional justice. It is probably closer to religion than other areas of the law in that it takes into account forgiveness, reconciliation and truth telling. Transitional justice is a concept that goes beyond normal legal responses to injustice, in that it requires positive engagement between both, the victim and the offender.

There are many different theories of justice, which drive the thinking of decision-makers—natural law, positivism, utilitarianism, liberation theology, feminist theory, social justice theory and indigenous theory, to name just a few. Because they all have different

3. Most lawyers and judges practising today have little if any familiarity or experience with restorative and transitional justice principles and collective remedies such as truth commissions for victims of mass human rights violations. Consequently the resistance and lack of participation by both plaintiff and defence lawyers, other than those on the AFN team during the Indian Residential School Settlement negotiations, was predictable.

4. The apology was not achieved without a struggle. The AFN used its considerable influence, exerting pressure on the Government to secure a complete apology by publishing a model apology in the *Toronto Star*, as well as securing the support of all the opposition parties in Parliament in advance of the apology on the floor of the House of Commons. See *Toronto Star*, April 22, 2008, "Apology to Native People Must End Denial of Truth."

critiques and perspectives, it is not surprising that there are few areas of agreement. As a result, the concept of justice has been subject to philosophical, theological, and legal debates throughout history.⁵ One thing that all justice theories do agree upon is that justice is overwhelmingly important for the proper ordering of people and things within a society.

Theorists usually start from the premise that justice is a social construct—purely a collection of ideas. Some schools of thought maintain that justice stems from God’s will, while others believe that justice is transcendental, consisting of rules common to all humanity. Still others distrust reason and theories about justice and believe that any discussion about justice must be grounded in the concrete, lived experience of the oppressed that experience injustice in their everyday lives.⁶

Some new studies tell us that justice is not only inherent in nature, it is a basic need.

In 2008, for example, researchers at the University of California at Los Angeles discovered that the human brain responds to being treated fairly the same way it responds to winning money and eating chocolate. Being treated fairly, researchers say, turns on the brain’s reward circuitry.⁷ Fairness activates the same region of the brain in

5. For example, see Karen Lebacqz’s overview in *Six Theories of Justice Perspectives from Philosophical and Theological Ethics* (Minneapolis: Augsburg Publishing, 1986).

6. See José Porfirio Miranda, *Marx and the Bible: A Critique of the Philosophy of Oppression* (Maryknoll, New York: Orbis, 1974); Gustavo Gutierrez, *The Power of the Poor in History* (Maryknoll, New York: Orbis, 1983). Gutierrez is credited with creating the theory of liberation theology.

7. “Receiving a fair offer activates the same brain circuitry as when we eat craved food, win money or see a beautiful face,” said Golnaz Tabibnia, a post-doctoral scholar at the Semel Institute for Neuroscience and Human Behavior at UCLA and lead author of the study, which appears in the April 2008 issue of the journal *Psychological Science*. See UCLA Newsroom, <http://newsroom.ucla.edu/portal/ucla/brain-reacts-to-fairness-as-it-49042.aspx>.

humans that is activated in mice, rats, and monkeys when presented with food. Conversely, unfair treatment activates a region of the brain previously linked to negative emotions, such as moral disgust.⁸

In addition, animals, like humans, have an innate sense of justice, according to researchers at Emory University in Atlanta. They rewarded two monkeys for a task by giving them pieces of cucumber. It is not their favourite food, but having received it they happily went on doing the task they were given. Then the researchers began giving grapes—a favourite food—to one of the monkeys for doing the same task the other monkey continued to receive cucumber for doing. At that point, the monkey that was only getting cucumber refused to continue the task, went off by himself, and exhibited signs of unhappiness and depression.

The monkey receiving the cucumber would be the equivalent of me finding out that a colleague, who works just as hard as I do, receives a salary twice as high as mine. My emotional reaction would be, according to these studies, as much biological as intellectual.

So, given that justice is not only essential for a well-functioning society, but also is apparently hardwired in the brain and inherent in every individual, a just society would seem to require not only that rules be impartially and fairly applied and that decision makers be unbiased and independent, but also that public assets be fairly shared.

After this brief introduction, I think it is obvious this lecture could go in many different directions. It seems that justice cannot be defined by one all-encompassing principle or set of a few principles. Consequently, I will limit my discussion here to justice in the context of democratic capitalism. This is because it generally recognizes equality of individuals' liberties in a broad sense, with different applications and specific adjustments when several liberties conflict or when everybody prefers a different outcome. More specifically, I

8. *Ibid.*

will focus on that aspect of justice that caused the one monkey to sulk in the corner when he received cucumber and his companion got grapes. In other words, I am going to talk to you about justice in the context of equality and freedom. It is these two values I see as the backbone of any justice system.

More than 2,500 years ago, Aristotle and Plato talked about justice. They concluded that a fundamental requirement for a just society was equality. Put simply, they believed that people who were equal should have equal things. This view is deeply embedded in Western thought and is known as “formal equality.”

Aristotle and Plato developed the formal equality principle in the context of a civil society composed of the ruling elites, common men, slaves, and women. Treating equals equally made clear distinctions between the noble and the common, slaves and non-slaves, men and women.

One of the central tenets of their theory was that distinctions between groups were based on merit, often expressed as “to each his due.” When it came to deciding what is “due,” the Greek philosophers measured merit as capacity to reason and to own property. That the measure was self-serving was obvious, as only elites had access to education and property ownership. Neither women, nor slaves, nor the poor could complain about inequality or discrimination when they were treated differently than privileged men because, according to the normative standard, they were not the same or equal to the privileged men. The standard they were measured against only allowed them to complain if they were treated unequally within their own group.

Somewhat later, liberal theorists such as Thomas Hobbes and John Locke, while not disagreeing with the Aristotelian approach to formal equality, attempted to go behind the social conventions of civil society and uncover universal and unchanging characteristics of human nature. If they could do this, they believed they could

determine the requirements of a just and legitimate society. Hobbes concluded that man, in his natural state, is naturally wicked and vicious, motivated purely by self-interest. Without the constraints of civil society, human beings would live in a constant state of war with each other.⁹ While a just society required freedom for individuals to do whatever they wanted to do within reason, it also required a sovereign power to establish laws to protect natural rights such as the rights to life, liberty, and property.

The relationship between the citizens and the state took the form of a social contract, whereby the governed agreed to surrender certain freedoms enjoyed in the natural state in exchange for order and protection. Hobbes said laws are only followed when people fear punishment, so the state must make penalties for breaking the law so onerous that lawbreakers would be deterred.

Protection of individual freedoms meant that individuals would be left alone to do such things as express themselves, to practise their religions, to associate with whomever they wanted without state interference.

This idea, combined with the formal equality principle, ensured that elites would be in the best position to protect and shape the content of their natural rights and freedoms in their own self-interest.

And that is exactly what they did.

So freedom of expression, for example, was shaped to maximize freedom of speech in an imagined marketplace of ideas on the assumption that all members of society had equal access to speak and be heard.

The same was true for freedom of association, religion, and so on. Because of the formal equality principle, women, the poor, slaves, and indigenous groups did not have the same or often any access to these freedoms or the ability to shape them to fit their needs.

9. A.P. Martinich, *The Two Gods of Leviathan: Thomas Hobbes on Religion and Politics* (Cambridge: Cambridge University Press, 1992).

A modern example of this principle in action in Canada is the treatment of Indians under the Indian Act.¹⁰ Until 1952, the Indian Act did not allow Indians to attend university unless they gave up their Indian status, they were not permitted to hire lawyers to protect their land, and they did not get the right to vote until 1961. As a result, Indians, like women and slaves in the time of Plato and Aristotle, had less access to rights and freedoms, such as land rights, freedom of expression, mobility freedom, self-government, or freedom to associate, than the elite, non-Native population did. Because of their race, Indians lacked the necessary “merit” to qualify for the same treatment under the formal equality principle as the white majority enjoyed and so could not complain.

In the 18th century, Jean-Jacques Rousseau took quite a different approach to understanding the requirements of a just society than his predecessors Locke and Hobbes.¹¹ Like them, he was interested in analyzing the question of morality and the just society from the starting point of the natural man, but he disagreed that life in the state of nature was “solitary, poor, nasty, brutish, and short.”¹² Unlike Hobbes, he believed self-interest was not the only principle motivating the natural man. He believed there was an equally important principle, that being compassion or an “innate repugnance to

10. Indian Act (“An Act Respecting Indians”) R.S., 1951 c. 1-5. See also Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: The Osgoode Society, 1999), 63.

11. See *Discourse on the Origin and Basis of Inequality Among Men* (*Discours sur l’origine et les fondements de l’inégalité parmi les hommes*), also commonly known as the “Second Discourse,” Jean-Jacques Rousseau, <http://en.wikipedia.org/w/index.php?oldid=373452035>. Jean-Jacques Rousseau wrote the Second Discourse in 1754 in response to a prize competition of the Academy of Dijon answering the question, What is the origin of inequality among men, and is it authorized by natural law?

12. See Hobbes, *Leviathan*, chap. XIII; reproduced at <http://oregonstate.edu/instruct/phl302/texts/hobbes/leviathan-c.html#CHAPTERXIII>.

see his fellow suffer.”¹³ He reasoned that because of these two traits combined, humans are by nature essentially peaceful, content, and equal, capable of enjoying a higher form of moral goodness. He also recognized that as history progressed, the corrupting influence of division of labour and the acquisition of property created social classes that in turn created conditions for perpetual inequality.¹⁴ He believed that unbridled material progress was inimical to the just society as it created jealousy, inequality, fear, and suspicion. A just society would therefore require government intervention to secure both freedom and especially equality for all of its citizens. He said the delicate balance between state intervention and the rights of individual citizens could be achieved as long as the exercise of sovereignty reflected the general will, not simply the will of those in power. If the balance was right, laws would be respected for their intrinsic value, even when they conflicted with individual wills. Equality was essential to his conception of the general will.

He saw the social contract espoused by Hobbes as deeply flawed—nothing more than a tool of the rich and powerful to trick the general population into surrendering their liberties and to institute inequality as a fundamental feature of the modern state.¹⁵ But as much as Rousseau was seen as a champion for equality for the oppressed,¹⁶ his vision of equality did not extend to women. He said

13. *Discourse*, vol. ii, 36.

14. When the natural man established property as his own, this was the “beginning of evil,” according to Rousseau. The natural man should have “pulled up the stakes” to prevent this evil from spreading. This property established divisions in the natural world. The first was the master–slave relationship. Property also led to the creation of families. The natural man was no longer alone. The subsequent divisions almost all stem from this division of land.

15. Jean-Jacques Rousseau, *The Social Contract*, trans. Maurice Canston (Penguin: Penguin Classics, various editions, 1968–2007).

16. Rousseau’s insistence on the importance of equality in a just society is often credited for inspiring the French Revolution.

the subjugation of women within the patriarchal family structure was necessary. A women's proper role was in the private, domestic sphere, taking responsibility for the household, childcare, and early education, while governed by her educated and self-governing husband who occupied the public, political sphere.¹⁷

Nonetheless, Rousseau's equality legacy was significant because he understood that law, justice, and equality were inextricably linked. This meant that no man was above the law—a good thing for a just society. But as long as the formal equality views of Aristotle and Plato remained unquestioned, the normative standards underlying the law would serve the interests, first and foremost, of the elites.

This inspired Anatole France to make his famous comment that: “the law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”¹⁸

By the end of the 19th century then, a just society was defined by formal equality, protection of individual freedoms from state interference, and equality before the law.¹⁹

After World War II, and the lessons it taught the world about what formal equality looked like in the hands of an evil and murderous regime, philosophers began to take issue with the formalists and their conception of the just society. The most famous of these was John Rawls, whose vision of equality called for redistributive

17. Jean-Jacques Rousseau, *Émile, or On Education*, trans. with an introduction by Allan Bloom (New York: Basic Books, 1979). Early feminists criticized Rousseau for his views on the role of women. See Mary Wollstonecraft, *A Vindication of the Rights of Women*, ed. Miriam Brody (Penguin Group, 1792).

18. Anatole France, *The Red Lily*, 1894, chapter 7, trans. Winifred Stephens (London: John Lane, 1930), 95.

19. Rousseau's ideas were very influential in providing inspiration for the French Revolution, informing those who demanded radical reforms, such as land redistribution and other measures designed to enhance equality. See Jonathan I. Israel, *Radical Enlightenment: Philosophy and the Making of Modernity* (Oxford University Press, 2002), 274.

justice. In trying to reconcile liberty and equality, he developed a theory of “justice as fairness.” He recognized that the formal equality model of treating people the same not only leads to the indefinite perpetuation of inequality; it can also justify the most egregious forms of discrimination. Rawls argued that the inequality of the least fortunate has to be considered in a just society, and it has to be kept to a minimum for justice to be achieved. He saw the solution in substantive, social and economic equality, which requires state involvement, not only to provide for the less fortunate, but also to promote equality as a fundamental value.

To help people think about morality and justice and what a just society needs, Rawls designed a thought-experiment. The idea goes something like this: Imagine that before you are born, you have to decide on what kind of a world you want to be born into. You stand behind a “veil of ignorance” not knowing where you will be born, what race or sex you will be, what kind of family you will be born into, what your sexual orientation will be. You might or might not be intelligent, healthy, strong, rich, poor, or born into a preferred class. He then asks, what kind of society would you create? What sort of rules would it have?²⁰

Rawls’s experiment forces us to think about the social contract of Locke, Hobbes, and Rousseau from the perspective of all members of society, but especially from the perspective of the least advantaged. Rawls believed that because humans are risk averse and could find themselves occupying any position in the society once the veil is lifted, the experiment would result in a new social contract that would benefit the least advantaged members of the society. His goal was to develop a social contract that would ensure that wherever one ends up in society, life should be worth living, with enough effective freedom to pursue personal goals. Rawls believed that these

20. John Rawls, *A Theory of Justice* (Cambridge: Belknap Press of Harvard University Press, 1971).

principles of justice should apply to the basic structures of society, including constitutions, the courts, markets, and so on.

Up until the time of the Canadian Charter of Rights and Freedoms in Canada, the predominant understanding of justice and equality was based on the formal equality model. While Rawls's views had some influence in post–World War II public administration and the recognition of basic liberties, court decisions with respect to equality showed a fidelity to the thinking of Aristotle and Plato. Until the late 1980s, treating likes alike, combined with equality before the law, were the twin principles underpinning our system of law and justice.

Depending on who you were and where you came from, this was a good or a bad thing. The normative standard for equal treatment for race equality was white; for sex equality was male; for sexual orientation was heterosexual; for religious equality, Christian; for ethnic equality, Anglo Saxon.

The consequences for women under this system were not very good. For example, pregnant women were fired from their jobs when they got pregnant. Because they were different from men who could not get pregnant, women had no legal basis under the Canadian Bill of Rights upon which they could argue they should be treated the same as men.²¹ The same applied to problems with the law of sexual harassment, rape, prostitution, obscenity, and other gender-specific activity, prompting the famous feminist theorist Catharine MacKinnon to remark, "If men don't need it, women don't get it."²²

21. See *Bliss v. Attorney General of Canada*, [1979] I.S.C.R. 183 where it was held that discrimination on the basis of pregnancy was permissible, thus resulting in women being penalized with respect to workplace benefits such as maternity leave and pension benefits. It was not until 1989 in the case of *Brooks v. Canada Safeway* (1989), 10 C.H.R.R. D/927 (S.C.C.) that the Supreme Court of Canada overruled their decision in *Bliss*.

22. Catharine MacKinnon, *Are Women Human? and Other International Dialogues* (Belknap Press of Harvard University Press, 2006).

Indians did very badly under the formal equality system. By law, namely the Indian Act, they were confined to their reserves, denied university education, denied the right to hire lawyers, and denied the right to vote—all justified as being consistent with formal equality because they were different than non-Indians. As long as all Indians were treated the same, the courts said, the laws met the standards justice required of them.

The formal equality theory even operated to advantage Indian men over Indian women. For example, Indian women who married non-Indian men lost their Indian status under the Indian Act, but Indian men who married non-Indian women did not. In the case of Indian men, their non-Indian wives became Indians under the act. When this law was challenged under the Canadian Bill of Rights, which guaranteed equality before the law, the Supreme Court of Canada, using the formal equality theory of Aristotle, decided that as long as all Indian women were treated the same, the Bill of Rights was not violated.²³

Other minorities, such as homosexuals, were denied shelter, jobs, and the right to marry. Even having intimate relations with their partners could be legitimately criminalized, because their difference from the norm of heterosexual people ensured that formal equality principles were not violated.²⁴

These cases teach us about the power of justice theories, as well as the danger of following decontextualized, abstract rules. When judges and other decision makers merely apply rules devoid of context, especially when backed up by the requirement of precedent

23. *Attorney General of Canada v. Lavell; Isaac v. Bédard*. [1973] S.C.R. 1349.

24. In 1965 the Supreme Court of Canada upheld a ruling that labelled Everett Klippert a “dangerous sexual offender” and sent him to prison for admitting he was gay and that he had sex with other men. *Klippert v. The Queen*, [1967] S.C.R. 822. Six weeks after Klippert’s conviction, Prime Minister Trudeau enacted amendments to the Criminal Code, decriminalizing homosexual acts. However, Klippert remained in jail until 1971.

(treating like cases alike) and philosophies such as formal equality, injustices are far easier to perpetrate and justify. Decisions made in the abstract, outside of the messy, concrete reality of life are often too far removed from reality to truly understand what justice requires.

Feminist theorists have demonstrated that the nature of law itself, its reasoning processes and its language, are not unjust solely because they are built on formal equality; they are unjust because they are built on male conceptions of justice and on male forms of analysis.²⁵ They point out that women were not even permitted to practise law until well into the last century, and that men developed the substantive legal doctrines we use on a day-to-day basis, with male problems in mind, and reflecting male perspectives on the world.

Racial minorities, especially First Nations, argue that the law reflects white, male, Euro-centric worldviews and understandings of events. They say justice eludes them because there is no space for their group-based culture and values to be expressed.²⁶

Individual rights regimes, the legacy of Aristotle, Locke, Hobbes and Rousseau, require violations of individual rights to be the foundation of a cause of action, not group rights. This is how Canada was able, for 150 years, to force—with impunity—Native children to attend residential schools created for the purpose of destroying their cultures and languages. This was not only because the Native children were not the same as non-Native children, but also because there was no legally recognized group-based right for loss of language and culture to complain about in the courts.

The Canadian Charter of Rights and Freedoms²⁷—Trudeau's answer to some of these problems—came into effect in 1982.²⁸

25. Lucinda Finley, "Breaking Women's Silence in Law," *Notre Dame Law Review* (64), 886.

26. See John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2002), 4.

27. Part I of the Constitution Act, 1982, Assented to March 29, 1982.

28. The equality provisions in section 15 of the Charter did not come into effect until 1985.

By giving individuals and groups (linguistic and Aboriginal) fundamental constitutional rights for the first time, Trudeau effectively handed the job of creating a just society over to its citizens while arming them with constitutional tools which could possibly dismantle the master's house.²⁹

With the Charter as a backdrop, women, homosexuals, Aboriginal groups, linguistic minorities, and other equality seekers left out of the mainstream for so long began for the first time to shape justice in ways that reflected their reality.

The most significant reform to our understanding of justice was the Supreme Court of Canada's interpretation of the equality provisions in the Charter.

The Charter's equality guarantees are the most comprehensive of any constitution in the world. It guarantees equality four ways: equality before and under the law, and the equal protection and benefit of the law. Most constitutions have just one or, at the most, two guarantees of equality.

The Charter also has an affirmative action provision, which recognizes that different or preferential treatment may be required to correct the past effects of discrimination on disadvantaged groups.

A further clause explicitly affirms sex equality, and a multicultural clause affirms that cultural differences are a part of the Canadian identity. The Aboriginal sections of the Constitution affirm Aboriginal and treaty rights.

In 1985, the federal government, recognizing that the equality guarantees would be quite meaningless unless there was access to the courts for the people they were designed to protect, aided them by creating the Court Challenges Program of Canada to provide basic funding for legal representation in test cases. This access to justice

29. For a contrary, more pessimistic view from a non-essentialist perspective, see Audrey Lourde, "The Master's Tools Will Never Dismantle the Master's House," in *Sister Outsider, The Crossing Press Feminist Series* (1984).

tool enabled equality seekers to put their cases before the courts in their own way, describing the impact of discriminatory laws on their lives.³⁰ This reform clearly resonated with the views of John Rawls and his vision of the just society.

Just as significant as the Charter equality sections and the Court Challenges program, was the judiciary's response to the equality cases that were brought before the Courts.

The late chief justice of Canada Brian Dickson considered the interpretation of the Charter to be a revolutionary role for the judiciary.³¹ He said judges needed take a new approach, contrary to tradition and contrary to the principles of formal equality. He urged his judicial colleagues to practise "compassionate justice," declaring compassion to be "part of the nature of law itself" and that judicial decision making should not simply be an application of abstract rules. He said,

I view law as the means by which we order social relations to create social conditions for human cooperation and the attainment of justice. By compassion, I mean a feeling of empathy, or sympathy for

30. A Parliamentary Committee on Equality Rights, chaired by Patrick Boyer, held hearings across Canada and recommended in its report *Equality for All* that "funds...be provided to assist those involved in equality litigation." In the report the committee stated, "The imbalance in financial, technical and human resources between the opposing parties constitutes a serious impediment to those who might wish to claim the benefit of section 15, thus reducing the effectiveness of resorting to the courts as a means of obtaining redress."

The federal government responded quickly to the recommendations and observations of the committee. The program's mandate was expanded to include challenges to federal laws, policies, or practices based on sections 15 (equality), 27 (multiculturalism), or 28 (sex equality) of the Charter. Also, the federal government entered into a five-year contribution agreement with the Canadian Council on Social Development so that the program could be administered independently.

31. The Hon. Claire L'Heureux-Dubé, "Making a Difference: The Pursuit of a Compassionate Justice," in *Conversations on Equality* (1999) 26 Manitoba LJ 273 AT, 283-295; 298.

the hardships experienced by others—a feeling which extends to a sense of responsibility and concern to alleviate hardship at least in some measure...It is my belief and contention that for the law to be just, it must reflect compassion. For a judge to reach decisions that comport with justice and fairness, he or she must be guided by an ever-present awareness and concern for the plight of others and the human condition.³²

He then went on to say, “Compassion is not some extra-legal factor magnanimously acknowledged by a benevolent decision-maker. Rather compassion is part and parcel of the nature and content of what we call ‘law.’”

This hugely significant statement, reflecting the wisdom of both Rousseau and Rawls, shifted the ground beneath years of judicial thinking that had stressed the benefits of positivism and the abstract application of rules.

By 1989 the Supreme Court of Canada had its first opportunity to interpret equality under the Charter.³³ In the BC Court of Appeal, it was decided that Charter equality would be understood as sameness of treatment for those who were the same, or, in other words, the Aristotelian formal equality model would inform judicial thinking under Charter equality guarantees.

The decision was appealed and after hearing from an array of interveners representing disadvantaged minorities and women, the Supreme Court overturned the decision of the BC Court of Appeal, saying that formal equality or same treatment may be appropriate in some cases, but would not be sufficient to achieve equality in the manner the Charter intended.

The Court instead opted for substantive equality—an approach which required judges to look into the social context of claimants’ lives and investigate whether or not the challenged law or practice

32. *Ibid.*, 288, quoting from a 1986 convocation address at the University of Toronto Faculty of Law.

33. *Law Society of British Columbia v. Andrews* [1989] 1 S.C.R. 143.

worsened their disadvantage, regardless of whether they were treated the same as the dominant group or not.

The Morgentaler decision shows how the Court's new compassionate justice and commitment to context decision making played out.³⁴ In that case, the law regulating abortion was challenged and found to be fundamentally unjust because it failed to take women's humanity into account in its requirement for a panel of doctors to decide whether a woman could have an abortion or not. In striking down the law, the Court saw what the lawmakers did not—that the right to reproduce or not to reproduce was “properly perceived as an integral part of modern woman's struggle to assert her dignity and worth as a human being.”³⁵ It said that women could not be treated as a means to an end, passive objects of decisions made by others, and maintain their human dignity.

Many other decisions in the first 20 years of Charter jurisprudence significantly changed the ways we thought about justice. Using context-based substantive equality and compassionate justice, the Court made decisions favourable to women seeking refugee status on the basis of gender persecution; it found sexual harassment and pregnancy were forms of sex discrimination; it upheld legislation protective of women from degrading and violent pornography, and upheld legislation protective of homosexuals and religious, ethnic and racial minorities from the promotion of hatred.³⁶ Same-sex equality rights were read into provincial human rights legislation; rights of the disabled were affirmed when seeking public services; refugees were given Charter protection. The cultures and dignity of First Nations peoples were affirmed when oral history evidence was

34. *R v. Morgentaler* [1988] 1 S.C.R., 30.

35. *Ibid.*

36. For an overview and critique, see Diana Majury, “The Charter, Equality Rights, and Women: Equivocation and Celebration,” *Osgoode Hall Law Journal* 40, nos. 3 and 4, 298.

legitimated in trial proceedings and the duty to consult was imposed as a legal obligation before development could take place on Indian lands.

These and many other decisions applicable to women and disadvantaged minorities, made possible by the Court Challenges Program, revolutionized Canadian equality law and standards of justice both under the Charter and in cases raising Charter values, such as human rights cases, refugee cases, and family law cases.³⁷

I use the word “revolutionized” because the decisions explicitly acknowledged history and the multiplicity of experiences the plaintiffs seeking Charter relief represented, and sought to correct past injustices. This had never been done before.

Talking openly in their decisions about the interaction between historical events, legal change, political change, power, and domination, the jurisprudence clearly demonstrates that diversity had influenced the process of judicial deliberation and helped to develop new perceptions of impartiality.

Difference being used in a manner committed to achieving equality and fairness rather than inequality was most definitely revolutionary. It indicated a new awareness of an openness to broader conceptions of justice and equity.

I have always found it curious that law’s metaphor for neutral and impartial justice is blindness—a figure with a blindfold on holding the scales of justice. It is curious because, when you consider the meaning of blindness in other contexts, it is not equated with objectivity, impartiality and a universal view. On the contrary, it is understood as an inability to have full comprehension of a problem which can lead to errors of judgment and misunderstanding.

37. For a detailed overview, see Mary C. Hurley, *Charter Equality Rights: Interpretation of Section 15 in Supreme Court of Canada Decisions*, Publications List, Library of Parliament, <http://www2.parl.gc.ca/content/lop/researchpublications/bp402-e.htm>.

The ancient parable of the six blind men asked to describe the elephant comes to mind. The blind man who feels a leg says the elephant is like a pillar; the one who feels the tail says the elephant is like a rope; the one who feels the trunk says the elephant is like a tree branch; the one who feels the ear says the elephant is like a hand fan; the one who feels the belly says the elephant is like a wall; and the one who feels the tusk says the elephant is like a solid pipe. None of the blind men can imagine the whole elephant.

I would argue that compassionate justice and substantive equality effectively remove Lady Justice's blindfold so she can see the nature of problems in all their peculiarities, just like she would see the whole elephant.

This certainly proved to be the case with the Charter jurisprudence of the first 20 years, from 1982 to 2002. It looked like Trudeau's vision of a just society in line with the ideas of Rousseau and Rawls was beginning to take hold.

In 2006, however, all of that began to change. The more compassionate and inclusive approach to governance exhibited in the 80's and 90's began to be replaced by formal equality and the white, male normative standard—the norm from which all other views are measured and found deviant if they do not conform.³⁸ This turning back of the clock on all or most of the progress towards substantive equality achieved under the early years of Charter decisions and influence touched everything from funding decisions of human rights and equality organisations to the appointment of judges. “Charterskeptics” began advising political leaders, and some were elected to public office. An example was Ian Brodie, Prime Minister Harper's choice for chief of staff. He had made his anti-equality

38. F.L. (Ted) Morton and Avril Allen, “Feminists and the Courts: Measuring Success in Interest Group Litigation in Canada,” *Canadian Journal of Political Science* 34, no. 1 (March 2001), 55-84; F.L. Morton and Rainer Knopff, *The Charter Revolution and the Court Party* (Peterborough: Broadview Press, 2000).

views crystal clear in his 2002 book in which he, for example, criticized both the Supreme Court and the Court Challenges Program for favouring feminist and gay-rights groups. Echoing his mentors, Morton and Knopff,³⁹ Brodie castigates the high court for making political decisions under the pretext of interpreting constitutional law and specifically targeted the Court Challenges Program as being antithetical to formal equality principles.⁴⁰ It is no coincidence that one of the first acts of the Harper government was to scuttle the Court Challenges Program.⁴¹ This was so even though the UN heralded the Court Challenges Program as a best practice in human rights for the world to emulate, because of the access to justice it provided to marginalized citizens.⁴² Closing it down meant the government, in one fell swoop, stopped most if not all equality cases from even getting to the courthouse door.⁴³

At the same time, the concept of substantive equality and compassionate justice was under constant attack from the government and its supporters for conferring “special rights” on some but not on others. The message clearly transmitted was that formal equality or treating everyone the same is the preferred approach.

Unprecedented attacks from conservative politicians, academics, and media continue against what they term as “activist judges” who find discriminatory laws unconstitutional while practising

39. Ian Brodie, *Friends of the Court: The Privileging of Interest-Group Litigants in Canada* (Albany: State University of New York Press, 2002).

40. See note 45.

41. Eighteen months later the linguistic rights part of the mandate of the Court Challenges Program was restored.

42. The UN Committee on Economic, Social and Cultural Rights recommended that the Court Challenges Program be expanded to fund test case litigation against provincial laws and policies that violate constitutional equality rights. See: www.fafia-afai.org/en or www.ccpcj.ca.

43. Charlie Smith, “Women Kick Harper’s Ass,” *Straight.com*, <http://www.straight.com/article-59499/women-kick-harpers-ass> (December 14, 2006).

compassionate justice. Their judgments have been ridiculed and some have been personally vilified.⁴⁴ Some commentators argue that the government's objective is to appoint judges who are anti-Charter in orientation to meet its objective of achieving a more limited view of equality.⁴⁵

Indigenous demands have been marginalized, even while many First Nations are in crisis, with more children in state care than ever before, and youth suicide rates as high or higher than any place in the world; there is a lack of schools, clean water, and health care facilities on most reserves in the country.⁴⁶ The government's opposition to the UN Declaration on the Rights of Indigenous People is consistent with the special rights rhetoric even though for 25 years prior to the Conservatives' taking power, Canada had supported and worked on drafting the Indigenous Declaration.⁴⁷

44. See, for example, F.L. (Ted) Morton, "Can Judicial Supremacy Be Stopped?" *Policy Options* (November 2003), 25; Morton and Knopff, *The Charter Revolution*; F.L. (Ted) Morton, "Damn the Law Profs!" *Globe and Mail*, January 27, 2005; Rory Leishman, *Against Judicial Activism: The Decline of Freedom and Democracy in Canada* (Montreal and Kingston: McGill-Queen's University Press, 2005); Rainer Knopff and F.L. (Ted) Morton, *Charter Politics* (Scarborough, Ontario: Nelson Canada, 1992); Robert Hawkins and Robert Martin, "Democracy, Judging and Bertha Wilson," *McGill Law Journal* (1995); Robert Martin, *The Most Dangerous Branch: How the Supreme Court of Canada Has Undermined Our Law and Our Democracy* (Montreal and Kingston: McGill-Queen's University Press, 2003).

45. Cristin Schmitz, "Conservatives aim to replace judicial 'Charterphiles' with 'Charterphobes,'" *Lawyer's Weekly* 25 (February 2007), 36, <http://lawyer-weekly.ca/printarticle.php>. She argues that because the prime minister and other Harper government officials have been opposed to how the Supreme Court has operated, especially in its broad and liberal interpretations of equality, they are keen to reign in the Court. They are also eager to shift the balance of the Court to reflect the current government's more right-wing ideology.

46. See Borrows, *Recovering Canada*.

47. See Tom Flanagan, *First Nations? Second Thoughts* (Montreal and Kingston: McGill-Queen's University Press, 2000).

Bureaucrats working for the federal government say that in certain government departments the word “gender” cannot be spoken; NGOs and other agencies that have the word “equality” in their mandates have been denied government funding; 12 of 16 Status of Women offices across the country have been eliminated, as well as their research funds; and Rights and Democracy, an arm’s-length international human rights organization, which I used to chair, has been subjected to an apparent ideological takeover by government appointees determined to change the direction of what they perceive to be a “left-leaning” organization.

One of the most vociferous campaigns against equality is the attack against human rights legislation and human rights commissions.⁴⁸

Human rights legislation and commissions do in the private sector what the Charter is meant to do the public sector. When established in the 1950s, they were designed to eliminate discrimination in services, housing, and employment, such as that suffered by Mr. Christie when he was refused service at the Montreal Forum merely because he was black.⁴⁹

48. Ezra Levant, *Shakedown: How Our Government Is Undermining Democracy in the Name of Human Rights* (Toronto: McClelland & Stewart, 2009). Levant is a fierce critic of the Alberta Human Rights Commission, particularly concerning a preacher who was fined \$7,000 and banned from publicly “disparaging...gays and homosexuals” in May 2008. This case concerned a letter published by the local newspaper in 2002 in which the preacher attacked the “homosexual agenda” as “wicked.” In June 2008, Levant republished the letter on his blog. When the Alberta Human Rights Commission dismissed the resulting complaint in November 2008, Levant accused it of religious discrimination, asserting that “100% of the Commission’s targets have been white, Christian or conservative” and that “It’s legal for a Jew like me to publish the letter. It’s illegal for a Christian like the preacher to publish it.”

See also Ian Brodie, *Friends of the Court*; Ian Brodie, “Interest Group Litigation and the Embedded State: Canada’s Court Challenges Program,” *Canadian Journal of Political Science* 34, no. 2 (June 2002), 357-376.

49. *Christie v. York* (1939) [1940] S.C.R. 139.

Human Rights Commissions, both federal and provincial, are all about giving everyone access to justice to fight for their chance to enjoy the good life without having to be stymied by discriminatory barriers based on immutable characteristics such as race, age, sex, religion, sexual orientation, and other personal attributes.

Just recently, the federal government closed federal Human Rights Commission offices in three cities where more than 70 percent of their cases originate, namely, Toronto, Halifax, and Vancouver.

Even more disturbing is the fact that lawyers and other human rights defenders are under attack for defending or assisting those who seek their help to fight for their rights. There is no doubt we live in a different world today than Trudeau experienced in his lifetime.

Since 9/11 there has been a preoccupation with security requiring some rights to be rebalanced. Whether the right balance has been found is the topic for another paper.

However, this does not and cannot explain why disadvantaged minorities, First Nations, and women are being targeted for regressive policies that take away what they have gained in their struggle for justice. Why has the quest for equality, self-determination, and access to justice been attacked?

Why would a government want to subtract from the sum of justice in the world by imposing anti-equality policies on its weakest, and on citizens who are most in need? What is the ideology that informs these strategies?

Trudeau warned that ideology is often the enemy of justice⁵⁰ and freedom, as did Isaiah Berlin, who said, "I can only say that those who rest on such comfortable beds of dogma are victims of forms of self-induced myopia, blinkers that may make for contentment, but not for understanding of what it is to be human."⁵¹

50. See "On the Eve of the Third Millennium," in Pierre Elliott Trudeau, *Against the Current* (Toronto: McClelland and Stewart Inc., 1996), 325-340.

51. Isaiah Berlin, *The Crooked Timber of Humanity* (London: John Murray Publishers, 1990), 14.

Trudeau knew, as did Locke, Mill, Rousseau, and Rawls, that “human created” utopias are not achievable. He said, “Because we are mortal and imperfect, [the Just Society] is a task we will never finish.”⁵²

On the other hand, he was optimistic enough to see that the search for justice can never be abandoned. He said, “On the never-ending road to perfect justice we will...succeed in creating the most humane and compassionate society possible.”⁵³ It is clear that he saw the challenge was in achieving equality. He asked, “Where is justice in a country in which an individual has the freedom to be totally fulfilled, but where inequality denies him the means?”⁵⁴ At the unveiling of the Louis Riel Monument in Regina he stated, “We must never forget that, in the long run, a democracy is judged by the way the majority treats the minority. Louis Reel’s battle is not yet won.”⁵⁵

I believe we have arrived at a very important crossroads in our history and our identity as a country. Before we go any farther down the road we are on, regardless of political affiliation or ideology, I believe we must reinvigorate the public conversation about what is required to live in a just society.

What is important to understand, and what I think our current government loses sight of, is that human dignity is not an ideology. It is a basic human need, along with identity, recognition, and justice. These are non-negotiable elements for human development in a just society. Since individual self-worth is tied to the collective identifications people have, denial of those identifications through

52. Pierre Elliott Trudeau, *Conversation with Canadians* (Toronto: University of Toronto Press, 1972), 42.

53. *Ibid.*

54. Pierre Elliott Trudeau, “The Values of a Just Society,” in *Towards a Just Society: The Trudeau Years*, eds. Thomas Axworthy and Pierre Elliott Trudeau (Penguin Group, 1990), 358.

55. Pierre Elliott Trudeau, “Democracy and Minorities,” in Trudeau, *Against the Current*, 297.

discrimination, repression, or worse is a root cause of conflict. Surely that is a direction no one would advocate taking us in.

Trudeau warned us that “Only if statecraft and public law are diligent in the constant reshaping of social contracts appropriate to the rapidly changing times will our crowded world feel secure from the terrible vision of Yeats.”⁵⁶ He quoted Yeats as follows:

The Second Coming! Hardly are those words out
When a vast image our of *Spiritus Mundi*
Troubles my sight: somewhere in the sands of the desert
A shape with lion body and the head of a man
A gaze blank and pitiless as the sun,
Is moving its slow thighs, while all about it
Reel shadows of indignant desert birds.
The darkness drops again; but now I know
That twenty centuries of stony sleep
Were vexed to nightmare by rocking cradle,
And what rough beast, its hour come round at last,
Slouches towards Bethlehem to be born?⁵⁷

56. Ibid., “On the Eve of the Third Millenium”, 339.

57. See William Butler Yeats, “The Second Coming”; reprinted in several collections including *The Norton Anthology of Modernist Poetry*, Peter Childs, *Modernism* (London: Routledge, 2007), 39 for the full text.

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