

LAW, CONSCIENCE AND BALANCE

Portions of a tribute paid to Chief Justice Samuel Freedman of Manitoba by the Honourable Mark MacGuigan, Q.C., M.P., Minister of Justice and Attorney General for Canada at a dinner of the Bench and Bar on April 9, 1983.

Your Honour the Lieutenant Governor of Manitoba, Mr. Chairman, Chief Justice Freedman, my lords, ..ladies and gentlemen.

It is of the first importance that a profession and indeed a country should celebrate its heroes and what a hero we have with us this evening. Tonight is an event of uncommon note in the history of the legal profession in Canada and also in our short history as a people. However, my personal delight in being able to participate actively is somewhat tempered by an awareness of the impressive array of legal talent here assembled.

I feel very much like the man at the pearly gates who was told by St. Peter that he was eligible for admission but that a condition of entrance was an address to the heavenly multitudes on a subject of his choice. The man was not habituated to public speaking and felt that only in the light of the great goal to be attained could he bring himself to this act of courage. Furthermore he thought that since he had recently lost his life in a flood he might adequately express his feelings on that subject. Having signalled his intention to St. Peter and the crowd being assembled, he was about to begin his address when St. Peter leaned over to him and said: "I think I should warn you that Noah is in the audience."

Well, I feel there is a real flood of Noahs here this evening as I rise to speak to you. Indeed, even without this kind of inhibition, it's hard to find words truly appropriate to the distinctiveness of the occasion and indeed, the eloquence of our honoree himself.

In thinking of judges and the judicial function I recall the words of Chief Justice Taft on the occasion of his appointment as Chief Justice of the United States in 1921:

I love judges and I love courts. They are my ideals on earth of what we shall meet afterwards in heaven under a just God.

Well, many judges over the years have obviously felt the same way though some have perhaps taken the analogy to the deity a bit too immediately.

My judgment in the matter of Samuel Freedman was actually prepared in 1966 and has long awaited the appropriate moment for public presentation. The original occasion was the preparation of my book of cases and readings on jurisprudence. I decided at that time to include a section on jurisprudence in Canada and I decided that the only selection from a Canadian judge which I would include was a 1962 address — "Judges and the Law" — by Mr. Justice Freedman, as he then was.... That judgment of mine at the time reflects my views, past and present of the immense contribution of Chief Justice Freedman to Canadian law.

It would in fact be difficult to exaggerate that contribution. He rose — predictably enough, given his outstanding talents of mind, heart, and tongue

— to the top of our profession. . . . He belongs to all of us and I want to pay him tribute this evening, not solely as a great jurist but also as a citizen of Canada whose dedication to his profession and to the welfare of his community, his country, and its institutions is both outstanding and exemplary. To paraphrase Mr. Justice Holmes: he has left fragments of his fleece everywhere upon the hedges of life.

The impact that any individual has on the world around him is seldom reflected only in a catalogue of events in which he has participated or posts that he has held. Rather it is measured by the esteem of his peers, those best able to fathom the significance of his contribution. It is measured by all those in his community who either benefit directly from his concern and generosity, or by all whose lives, careers or attitudes were somehow altered by his skill at persuasion, the evident wisdom of his advice, or the strength of his conviction in defending a principle. And what better testimony could we have of the judgment of Chief Justice Freedman's peers than the presence of the cream of the legal profession of Canada here this evening?

For many years it has been evident that regardless of which principle we choose to apply, and in Chief Justice Freedman's case we might well apply all of them, our guest of honour is undoubtedly among the greatest of Canadians.

As so many in this room tonight will attest, his service to the Bar, both here in Manitoba and throughout Canada, has been uncompromising. Some here will remember the period in the 40's when he edited the *Manitoba Bar News* with such articulation and thoughtfulness. They will also recall the ten years he spent on the executive of the Manitoba Bar Association before his election as President of that body in 1951. Undoubtedly there are many more here and throughout Canada who benefitted from the eighteen years in which he lectured in family law at the University of Manitoba. Those years were only one facet of his commitment to the academic world, highlighted by the years from 1959 to 1968 when he was Chancellor of the University.

It is worth noting that his academic interest in those years did not overshadow his interest in the practical. For ten years, until 1974, he was also chairman of the Manitoba Law School Foundation. One of the most telling marks of his academic fame has been the recognition accorded him by institutions of learning elsewhere. He has been awarded honorary doctorates by at least fourteen universities...in Canada, United States and Israel.

It is sometimes said with regret that in an age of specialization there can be no "Renaissance Men". Over the years our guest has succeeded better than most in refuting that gloomy notion by his vital involvement with the League of Nations Society, the Canadian Institute of International Affairs, the Civil Liberties Association, and the Canadian Club. But Sam Freedman's beloved Winnipeg is perhaps the greatest beneficiary through his work with the Winnipeg Family Bureau, the Jewish Welfare Fund, the Manitoba Medical Service Bureau, and the Manitoba Heart Foundation. These and many more activities in which he involved himself have directly benefitted untold numbers of Manitobans. Even my native province of Prince Edward Island has benefitted from his experience and dedication through his association for more than twenty years as a director of the Conference Center of the Arts in Charlottetown.

Mr. Justice Holmes once wrote that "the law is not the place for the artist or the poet: the law is the calling of thinkers." We all know what Holmes meant and we can certainly agree on the absolute necessity of clarity in thinking and writing. But, perhaps in reaction to his literary father, Holmes sold lawyers a bit short, and no one more so than Chief Justice Freedman. In fact Holmes himself, with his own literary grace, might well have been a prototype of our Chief Justice.

But the judge to whom I would most liken Chief Justice Freedman is Benjamin Cardozo, the superlative American jurist of whom Judge Irving Layman wrote, at the time of Cardozo's death, "from boyhood until death, he walked steadily along the path of reason seeking the goals of truth". And I might add not only truth but, as befits the great mediator, balance. As Cardozo himself put it, in words to which I know Chief Justice Freedman would subscribe: "the judge is under a duty within the limits of his power of innovation, to maintain a relation between law and morals, between the precepts of jurisprudence and those of reason and good conscience". Law, conscience and balance, those features of Cardozo are also the same features we find in Chief Justice Freedman. And I might add of our Chief Justice, as he once wrote of Cardozo, "he is a person in whom law and literature are wedded in a most felicitous union."

Chief Justice Freedman, I will conclude by saying that while we must be inspired by your great contribution to so many facets of life in Canada, we all hope that you will consider your retirement from the Bench, the result of the somewhat arbitrary wisdom of law-makers, to be an opportunity for further public service. Canadians need you. We hope that you will, as you always have, continue to give us your wisdom and dedication. Thank-you.

