

The Dickson Legacy: Prudential Wisdom for Canada

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I WOULD LIKE TO BEGIN my appreciation of Chief Justice Dickson's legacy by quoting two statements he made at different stages in his service to Canada's Supreme Court. The first he made off the bench at an academic gathering such as this in 1976 just three years after his initial appointment to the Supreme Court. On this occasion, he said of the Court, that "[w]e are not in a position to make broad legal pronouncements to guide the future of Canada for foreseeable years ahead."¹ Now, with respect, I would say that had this statement turned out to be accurate, I doubt very much that there would have been a rationale for the present symposium. But, of course, Justice Dickson's 1976 statement has been belied by the Court's emergence since then as a major institution of national governance and by his own contribution to that evolution — evidence of which is provided by my second Dickson quotation. This time I quote words he wrote a decade later as Chief Justice in the important *Charter* case, *Edwards Books*, in which he warned that "the courts must be cautious to ensure that it [the *Charter*] does not simply become an instrument of better situated individuals to roll back legislation which has as its object the improvement of the condition of less advantaged persons."² This surely is a broad pronouncement intended to guide the future of Canada for foreseeable years ahead.

The gulf between these two quotations marks the distance both the Court and Chief Justice Dickson have travelled in ascending to such a prominent role in the life of our nation. The first important steps in the Court's movement "to centre stage"³ were taken before Dickson became Chief Justice. Changes in the country's circumstances and political culture account for much of the transformation: the severing

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¹ Comments on "The Judge as Lawmaker" in A.M. Linden, ed., *The Canadian Judiciary* (Toronto: Osgoode Hall Law School, 1976) 80.

² *Edwards Books and Art Ltd. v. R.*, [1986] 2 S.C.R. 713 at 779.

³ The phrase is from J.G. Snell & F. Vaughan, *The Supreme Court of Canada: History of the Institution* (Toronto: University of Toronto Press, 1985).

of the colonial umbilical chord, the intellectual growth of its legal class, the increasing factiousness of its political elites and their tendency to submit constitutional disputes to the Court. But judicial leadership also played a role, especially that of Dickson's immediate predecessor as Chief Justice, Bora Laskin.

Laskin had a clear vision of the role and function of a Canadian Supreme Court. Many of the elements of that vision he articulated in the article he wrote as an academic in 1951 critically examining the Court's position at that time.⁴ When he became Chief Justice in 1973 he was able to steer the Court towards the destination he had earlier plotted. Under Laskin's leadership, the Supreme Court organized its decision making activity much more effectively. Chief Justice Laskin fully appreciated how essential it was for the nation's highest Court to deal with the country's most important legal business. He worked for and welcomed the 1974 jurisdictional change which gave the Court control over at least the civil side of its docket. He encouraged much more collegiality in decision-making so that the Court would indicate more clearly its majority and minority positions. His own opinions frequently manifested the honesty and openness about policy assumptions which he had long advocated. And Chief Justice Laskin recognized the need within a democracy for a Court which was exercising much greater power to be more accessible and accountable. He was the first Chief Justice to make the Supreme Court more open to media coverage and the first Chief Justice of Canada to communicate directly with Canadians about the judicial branch as a whole.

Bora Laskin, tragically, did not live to see the full maturation of the Court. The severe illness he suffered in his final years and the poor health of a number of his colleagues severely handicapped his efforts to strengthen the Court organizationally. He died in 1984 just as the first *Charter* cases were coming before the Court. And, of course, it is the Court's role in interpreting the *Charter* which has consolidated its position as a major institution in the governing of Canada.

As Chief Justice, Brian Dickson led the Court further in directions fostered under Laskin's regime. As the Court's Chief Executive Officer, he was innovative in using new technology, notably in computerizing the court and in using long distance video for hearing leave applications. More significantly, he was brave enough and shrewd enough to instigate changes in court procedures which put reasonably tight time limits on oral argument and removed the right of counsel to argue

⁴ B. Laskin, "The Supreme Court of Canada: a Final Court of and for Canadians" (1951) 29 Can. Bar Rev. 1038.

every leave application. Through these changes the Court is better able to manage its time and devote its energies to the researching and writing of opinions. I believe he was even more successful than Laskin in making himself and the Court accessible to the media. As Chief Justice of Canada, he was an effective head of the third branch of government. Especially notable were his contributions to judicial education, through his participation in judicial seminars on opinion-writing and his leadership in establishing the Canadian Judicial Centre.

Chief Justice Dickson, like Chief Justice Laskin, responded positively to the invitation which Canada's contemporary political system has given the Court to assume a new level of responsibility in the governance of the federation. Two occasions when the Dickson-led Court dealt decisively with major public issues the elected branches of government failed to resolve are particularly remarkable. The first was the Court's response to the Manitoba language rights crisis when the Court squared the circle of giving meaning to constitutional language guarantees without depriving the province of the rule of law, and manufactured a practical time period during which technically unconstitutional laws would be in force while being translated to meet the long ignored constitutional standard.⁵ The other was the *Daigle* case in August of 1989 when the Chief Justice summoned his colleagues from their summer vacations to render a decision in a day (with reasons to be written later) — a decision which freed Canadian women from the threat that natural fathers could use the law to control the course of pregnancies.⁶

Decisions like these where the Court steps into the breach and makes decisions in highly politically charged situations are not without risks. The modern Supreme Court under Laskin and under Dickson has been much more exposed to public criticism and political attack. But, I believe, whether we like it or not, the time for the quiet exercise of judicial power has passed in Canada. The public's deep disenchantment with electoral politics has enlarged the mandate for judicial power. The so-called legitimacy crisis which many of us thought the judiciary might experience, particularly in the *Charter* era, when courts became more openly involved in political issues, has not occurred. The citizens of this country like those of the republic to the south do not have strict ideas about the limits of judicial power.

⁵ Reference *Re Manitoba Language Rights*, [1985] 2 S.C.R. 347.

⁶ *Tremblay v. Daigle*, [1989] 2 S.C.R. 530.

One of the Supreme Court's decisions rendered during the Dickson era has led to a legitimacy crisis of sorts. I refer to the Court's 1988 decision in *Ford* striking down Quebec's French only sign law.⁷ This decision did not sit well with Quebec's National Assembly which, in response, used s.33 of the *Charter* to override the Court's decision and re-establish a French only law at least for outdoor signs. In response to Quebec's action, I hardly need remind a gathering in this city, Premier Filmon withdrew the Meech Lake Accord from Manitoba's legislature and, so far as the fate of Meech is concerned, the rest, as they say, is history. While these events may well have jeopardized the unity of our country, they have not threatened the Court's legitimacy. Very little of Quebec's opposition to the result of the decision in *Ford* was directed at the Supreme Court itself. The real casualties of the Quebec signs case were the legitimacy of the override clause in English Canada and the legitimacy for Quebecers of a constitutional regime that insists on giving individual rights priority over the cultural security of the Quebecois.⁸

So the Supreme Court, despite its much greater exposure to political controversy, indeed some might argue because of that exposure, has, at the end of Brian Dickson's tenure as Chief Justice, consolidated its position as a powerful and respected national institution. While this is part of the Dickson legacy, it does not take us to the heart of what was truly distinctive, and in my own judgment, most admirable about his contribution as a member of our highest court — that is his jurisprudence. In the jurisprudential area it is most difficult for Chief Justices to be leaders, for it is in this area that the authority of office, of being "chief", counts the least.⁹ Here a Chief Justice's leadership depends solely on intellectual and literary power not institutional power. It is precisely in this area, in his jurisprudence, that Brian Dickson became an exceptional leader. I need hardly

⁷ *Ford v. A.G. Quebec*, [1988] 2 S.C.R. 712.

⁸ For further reflections on the *Charter* becoming a major source of national disunity see P.H. Russell, "The Charter and the Future of Canadian Politics" in A.-G. Gagnon & J.P. Bickerton, eds., *Canadian Politics: An Introduction to the Discipline* (Peterborough, Ont.: Broadview Press, 1990) 246; and F.L. Morton, P.H. Russell, & M. Withey, *The Supreme Court's First One Hundred Charter of Rights Decisions: A Statistical Analysis* (Calgary: University of Calgary Research Unit for Socio-Legal Studies, Occasional Papers Series, 1990).

⁹ See Canadian Institute for the Administration of Justice, *A Compendium of Information on The Status and Role of The Chief Justice in Canada* (Montreal: C.I.A.J., 1987).

add that this is the most important area in which to excel, for jurisprudence is the Court's most important product.

In a nutshell what I find so admirable in the work of Dickson the jurist is the faculty he developed for reasoning lucidly and thoughtfully about the broad background issues of policy and social value that lie at the heart of so many of the cases the Supreme Court is called upon to decide. It is a mode of reasoning which, at its best, can provide the country with prudential wisdom on the best way of developing its constituent laws.

Let me clarify my appreciation of Dickson's accomplishments as a jurist by going back to one of his early opinions as a Supreme Court justice in which the qualities I have just recited were not in evidence. This is his opinion in *Harrison v. Carswell*¹⁰ where the Court was considering whether peaceful and otherwise lawful picketing in a modern shopping plaza was an illegal trespass on private property. On this occasion Justice Dickson was reluctant to deal directly with the competing values at issue in the case. He gave the following explanation of his reluctance:

The submission that this court should weigh and determine the respective values of society of the right to property and the right to picket raises important and difficult political and socio-economic issues, the resolution of which must, by their very nature, be arbitrary and embody personal economic and social beliefs.¹¹

What concerns me about that explanation is the thought that judgments about values by ordinary people or by judges must necessarily be arbitrary and nothing more than the expression of personal bias.

The epistemological assumption that human thinking about values is inherently arbitrary has bedevilled much of contemporary legal thought. It has cultivated the notion that in hard cases of adjudication there are two elements. First there is "the law", hard and firm and "out there" to be found by the judge. But unfortunately in the hard case the judge confronts a situation to which "the law" has not been applied before and for which it offers competing possibilities. So enter the second element of the decision in hard cases, the value bias of the judge like a primordial grunt from the deep black hole between the clear hard grooves of the law. This interstitial view of judicial

¹⁰ [1976] 2 S.C.R. 200.

¹¹ *Ibid.* at 218.

creativity is found not only at the popular level of our legal culture but also in some of its more sophisticated intellectual constructs.¹²

My objection to the theory of knowledge embedded in this view is that it exaggerates both the hardness of law and the softness of value judgments. It does this by fostering a believe in a false dichotomy between the complete objectivity of law and the utter subjectivity of values. But in realty we know that the complex legal order of an evolving society, including its "legal doctrines," is a thoroughly human product shot through with conflicting possibilities for the future. And if we are true to the most conscientious moments in our ethical lives we surely also know the difference between acting out of gut self-interest and acting on the basis of a reasoned consideration of what one ought to do.

Graham Hughes has advanced a theory of law and judicial decision-making which brings together these two features of our experience much more successfully than the interstitial theory. It is a theory which recognizes that "Doing law is always to be arguing and deciding" — arguing and deciding not in an arbitrary way, nor solely with reference to formal legal materials, but with reference to many of the moral, social, economic and political considerations that enter policy decisions. The indispensable prerequisite, he writes,

is a realization that "law" and "policy" are not contiguous territories suitable for border raids and frontier violations. Policy is almost always to some extent articulated in law. Sometimes it speaks with a clear voice in the most formal of legal materials; sometimes it is muted or muffled and has to be amplified and clarified through a process of pursuit that leads us out through layers of less formal legal material into a realm of discourse where authoritative prescriptions have receded into the background. Choices will have to be made at many points along the path to clarification and they are choices which deserve to be examined by criteria which are a blend of the standards used in everyday, non-legal decision-making and the special, technical and intellectual traditions of the legal profession.¹³

The essential elements of Hughes' ideal of judicial decision making are evident in many of the opinions Dickson wrote after *Harrison v. Carswell*. In cases dealing with the most problematic and significant public issues one can see him defending policy and value choices by, to invoke Hughes' words again, "a blend of the standards used in

¹² One leading example is H.L.A. Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961) c. 7.

¹³ G. Hughes, "Rules, Policy and Decision Making" (1968) 77 Yale L.J. 411 at 438.

everyday, non-legal decision making and the special, technical and intellectual traditions of the legal profession.”

An early example is *R. v. Hauser*¹⁴, an opinion he wrote in 1979 just three years after *Harrison v. Carswell*. The case as you will recall involved a provincial challenge to federal legislation authorizing the Attorney General of Canada to direct the prosecution of narcotics and other federal offences. Many, including the litigants, thought that the core issue in the case concerned the division of powers with respect to the prosecution of criminal offences. But the majority managed to avoid that question by supporting an opinion written by Justice Pigeon denying that the *Narcotic Control Act*¹⁵ was criminal law and holding that the federal government had exclusive power to preside over the enforcement of its non-criminal laws. But Justice Dickson refused to participate in such an unconvincing subterfuge and wrote a lengthy dissenting opinion supporting the proposition that directing the prosecution of criminal offences is a field of concurrent jurisdiction.

The case Dickson made for a provincial role in the enforcement of criminal law went beyond formal legal materials — the constitutional text and earlier interpretive precedents — for they were ambiguous on the issue at hand. Much of his opinion was an examination of our experience as a federal people in operating a criminal justice system combining national standards with flexibility in their local application. There was nothing arbitrary about Justice Dickson’s elucidation of the benefits Canadians had derived from these arrangements. His judgment that these benefits were of value and ought to be retained was not simply a personal whim or bias but an illumination of the wisdom of our collective experience.

Sometime ago in defending some of my own writing I was provoked into an attempt to define the qualities of a good judicial decision on the constitution. Spelling out one’s own criteria is, I admit, for the judicial critic as for the literary critic, an enterprise which is as dangerous as it is pretentious. Still, I did it, and wrote the following:

Such decisions should be principled. That is, they should not be simply acts designed to favour a particular litigant or policy outcome, but should be based on some principle or ordering of principles which the court is prepared to apply to similar situations in the future. The principles should be based on a reading of the constitutional text that is true to both its internal logic and its historic context. In identifying these principles, judges should consider the political ideals and objectives that animated those who established the constitution as well as the practical experience of the country in living with the

¹⁴ [1979] 1 S.C.R. 984.

¹⁵ R.S.C.1985, c. N-1.

various implications of the constitution. A good decision is more than the product of these considerations. Ideally it is the articulation of these considerations in reasons that are clearly and cogently expressed. These reasons must serve both as a guide to the legal community, which must advise citizens and governments on their constitutional rights and duties, and for the wider public as an exercise in practical reasoning on the best application of the country's constituent political values.¹⁶

I went on to cite Justice Dickson's opinion in *Hauser* as the judgment that comes closest to meeting this ideal.

But Dickson's opinion in *Hauser* was a dissenting opinion. Therefore it might seem that it is unable to fulfil the final part of my ideal, namely serving as a useful guide for future action. However, it is precisely "as an exercise in practical reasoning on the best application of the country's constituent values" that his opinion has stood up so well — despite its lack of formal legal authority. Four years after *Hauser*, in *C.N. Transportation*,¹⁷ the Court's majority finally got around to biting the bullet it had dodged in *Hauser* and endorsed the position that in principle the prosecution of all federal criminal offences is under exclusive federal jurisdiction. From that part of the majority opinion Justice Dickson continued to dissent, but the *practice* of our federation has continued to follow Dickson not the majority. Federal authorities have not taken over the prosecution of all federal criminal offences from the provinces, nor have provincial attorneys general in directing criminal prosecutions acted as delegates of the federal government. In this field, Justice Dickson's pronouncements, despite his earlier disclaimer, serve as a wise and practical guide for the foreseeable years ahead.

The *Charter of Rights and Freedoms*¹⁸ significantly expanded the Supreme Court of Canada's responsibility for making the law of our constitution. Chief Justice Dickson presided over the Court through its initial six years of decision-making on the *Charter*. His contribution to the Court's *Charter* jurisprudence has been definitive. Although the Court has become increasingly divided on key *Charter* issues, overall it has evolved an approach to the *Charter* which I have dubbed

¹⁶ "Comment on 'Critics of the Judicial Committee: The New Orthodoxy and an Alternative Explanation'" (1986) 19 Can. J. Pol. Sci. 531 at 536.

¹⁷ [1983] 2 S.C.R. 206.

¹⁸ Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11.

"moderate activism."¹⁹ This approach, I believe, can be associated with Chief Justice Dickson more than any other member of the Court.²⁰

For me two features of Dickson's *Charter* jurisprudence stand out. One is methodological and the other ideological. Together they may constitute the most valued and enduring part of his legacy to Canada.

On the methodological side Dickson should be remembered most for introducing and advocating the so-called "purposive approach" to the *Charter*. Now I know this phrase "the purposive approach" can have a hollow ring. It may mean different things to different people. But when Chief Justice Dickson first brought it forward and used it in the early cases of *Hunter v. Southam*²¹ and *R. v. Big M Drug Mart*,²² it had a very determinate and challenging meaning. The purposive approach Dickson set out in these cases was a method of ascertaining the core meaning of a particular right or freedom. The key to this approach was to inquire into why Canadians and the western tradition from which so much of their social and political thought is derived have come to value a particular right or freedom so highly.

The method was used by Dickson most elegantly and persuasively in *Big M Drug Mart* to identify the essential content of the *Charter* right to freedom of conscience and religion. Here he went back to the origins of the demand for this freedom in the religious struggles in post-Reformation Europe.²³

The spread of new beliefs, the changing religious allegiance of kings and princes, the shifting military fortunes of their armies and the consequent repeated redrawing of national and imperial frontiers led to situations in which large numbers of people...found themselves living under rulers who professed faiths different from, and often hostile to, their own and subject to laws aimed at enforcing conformity to religious beliefs and practices they did not share.²⁴

¹⁹ P.H. Russell, "Canada's Charter of Rights and Freedoms: A Political Report" (1988) Public Law 385.

²⁰ There is some statistical evidence for this statement. Dickson's overall voting record in *Charter* cases is almost exactly the same as the overall court average. See Morton, Russell, & Withey, *supra*, note 8 at 25.

²¹ [1984] 2 S.C.R. 145.

²² [1985] 1 S.C.R. 295.

²³ *Ibid.* at 336.

²⁴ *Ibid.* at 345.

He went on to observe how the experience of this kind of oppression engendered a perception

that belief itself was not amenable to compulsion. Attempts to compel belief or practice denied the reality of individual conscience and dishonoured the God that had planted it in His creatures²⁵.

He then pointed out how religious freedom was bound up with the freedom that lies at the heart of our democratic political tradition.

The ability of each citizen to make free and informed decisions is the absolute prerequisite for the legitimacy, acceptability, and efficacy of our system of self-government.....Viewed in this context, the purpose of freedom of conscience and religion becomes clear. The values that underlie our political and philosophic traditions demand that every individual be free to hold and to manifest whatever beliefs and opinions his or her conscience dictates, providing *inter alia* only that such manifestations do not injure his or her neighbours or their parallel rights to hold and manifest beliefs and opinions of their own.²⁶

Here the Chief Justice in interpreting the *Charter* certainly ranged far beyond the formal legal materials — the text itself and previous judicial decisions. But note that there is nothing arbitrary about his inquiry into the historical and philosophical roots of freedom of religion. It would be a gross distortion, a perverse simplification, to say that these words do no more than express Dickson's value judgment, his personal bias. It would be much more accurate to say that these passages summon us to reflect on what our society and the civilization of which it is a part have learned about the value of enjoying certain conditions of freedom and the evil which results when those conditions are denied.

The purposive approach with its exploration of the philosophical implications of history cannot logically yield certain answers to the specific questions raised in *Charter* cases. Nor is it an approach on which the Court is likely to get much help from the submissions of lawyers given the limits of their education and their style of advocacy. Still, it strikes me as the most useful and appropriate way of giving clearer shape and definition to the broadly phrased rights and freedoms of the *Charter* by indicating both what they must include and exclude. While Dickson has stressed that rights and freedoms must be interpreted liberally so as to capture the fullness of their historic purpose, he has

²⁵ *Ibid.* at 345.

²⁶ *Ibid.* at 346.

also warned that "it is important not to overshoot the actual purpose of the right or freedom in question."²⁷ This latter point seems sometimes to be ignored by members of the Court and by commentators²⁸ who suggest that the only limits on *Charter* rights and freedoms are those based on s.1 and none are to be built into the definition of the rights and freedoms themselves. Such an approach would mean that virtually all of our *Charter* jurisprudence would consist of ad hoc balancing tests under s.1. The Court serves our constitutional system better when it augments the drafters' work by using the purposive approach to give a meaningful core and discernible boundaries to constitutionally protected rights and freedoms.

I turn now to the ideological content of the Chief Justice's *Charter* jurisprudence. It has, of course, many strands and themes, a number of which have already been dealt with at this conference. But the tendency which I hope will be his most abiding influence is the consideration for social and economic justice which he brought to *Charter* interpretation.

Dickson seemed well aware that in a society based on a competitive market economy private power is not evenly distributed and the power of the state may be needed to protect the more vulnerable individuals and groups. Thus he understood the danger that a constitutional instrument like the *Charter*, which is inherently anti-state in its ideology, could undermine the capacity of government in Canada for intervening in private economic activity to assist those who are socially and economically disadvantaged.

He first warned of this danger with his *dictum* in *Edwards Books* quoted at the beginning of this talk, namely that

...the courts must be cautious to ensure that it (the *Charter*) does not simply become an instrument of better situated individuals to roll back legislation which has as its object the improvement of the conditions of less advantaged persons.²⁹

Here he was applying his sense of social justice in a defensive fashion against a *Charter* challenge to legislation designed to protect retail

²⁷ *Ibid.*

²⁸ For the most extreme example, see D.M. Beatty, *Talking Heads and The Supremes: The Canadian Production of The Constitutional Review* (Agincourt, Ont.: Carswell, 1990).

²⁹ *Supra*, note 2 at 779.

workers.³⁰ In the "labour trilogy" he attempted to go further and interpret the *Charter* in a manner which would positively enhance the legal resources of organized labour by reading the right to strike into the *Charter's* freedom of association. Unlike his colleagues who formed the majority in these cases, Dickson was prepared to justify a much wider interpretation of freedom of association for employees than for employers on the grounds that

Freedom of association is most essential in those circumstances where the individual is liable to be prejudiced by the actions of some larger and more powerful entity, like the government or an employer...it has enabled those who would otherwise be vulnerable and ineffective to meet on more equal terms the power and strength of those with whom their interests interact and, perhaps, conflict.³¹

Dickson was not successful in securing majority support for this very positive and activist use of the *Charter* to enhance the interests of labour. But perhaps the *quid pro quo* here is his success in *Irwin Toy* in obtaining majority support for the exclusion of corporate economic interests from the protection of section 7.³² If the *Charter* is not to be used as a positive tool to enhance the interests of trade unions neither should it be used to enhance those of business corporations. Positively, there is also evidence of Dickson's concern for social justice in the position the Court took in *Andrews*³³ on the essential purpose of the *Charter's* guarantee of equality rights, namely to overcome discrimination against weak and vulnerable groups in society. The same philosophy of using constitutional rights as a foundation for improving the circumstances of those who historically have suffered severe injustices in our society animated the opinions Chief Justice Dickson wrote on aboriginal rights, particularly those in *Guerin*³⁴ and *Sparrow*.³⁵ Fortunately here his position has been fully supported by the Court, if not by the Government of Canada.

In the last few years there have been so many changes in the Court's composition that it is difficult to assess how far Dickson's

³⁰ Also, in *Slight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038, on similar grounds he upheld a limitation on an employer's freedom of expression in writing a letter of reference concerning an employee who had been wrongfully dismissed.

³¹ *Reference Re Public Service Employee Relations Act (Alta.)*, [1987] 1 S.C.R. 313.

³² *Irwin Toy Ltd. v. A.G. Quebec*, [1989] 1 S.C.R. 927.

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

³⁴ *Guerin v. R.*, [1984] 2 S.C.R. 335.

³⁵ *R. v. Sparrow*, [1990] 1 S.C.R. 1075.

ideological orientation on the *Charter* will be sustained in the future. The Court's mammoth and confusing 1990 decision in *Thomson Newspapers*³⁶ indicates that there is now a close division within the Court on the extent to which the *Charter* should be strictly applied against state regulation of the economy. In this case, Justice LaForest appears to be the clearest heir to Dickson's ideology when, in his majority judgment upholding the investigative powers of the Restrictive Trade Practices Commission, he writes that

It must be remembered that private organizations can be just as oppressive as the state when they gain such a dominant position within their sphere of operations that they can effectively force their will upon others.³⁷

This is the crucial point about fundamental rights which Dickson and LaForest grasp but which is overlooked by so many other lawyers, judges and commentators who are "rights-oriented": in a capitalist society, human rights — that is real freedom and equality for individuals — can be jeopardized as much by large private centres of corporate power as by the state. An approach to the *Charter* that always sees government rather than the private sector as the greatest threat to fundamental rights will not be true to what is best in the Canadian tradition of political economy.

We Canadians are indeed fortunate that just as the our Supreme Court reached the apogee of its influence in our public affairs it was presided over by the greatest jurist this country has yet produced. Whether his jurisprudence, his prudential wisdom, is a permanent legacy depends on whether its influence goes beyond our legal culture and permeates our political culture at a more popular level. We know little about the transmission belts which connect judicial opinions to popular political culture — even if there are any. We do know how difficult it is for the mass media to focus the attention of the public on anything more than the bottom line, the bare result, of Supreme Court decisions. The cynical relativism about values that our secular culture is so wont to follow does not provide a congenial climate for appreciating Dickson's reasoning about the purposes of fundamental rights. Nor does the tendency, now so evident in English Canada, to treat the *Charter* as a kind of icon, the very embodiment of virtue, leave much room for sharing Dickson's balanced understanding of its value and its dangers. Still, I can only conclude that if, despite these obstacles,

³⁶ *Thomson Newspapers v. Canada*, [1990] 1 S.C.R. 425.

³⁷ *Ibid.* at 510.

some of Chief Justice Dickson's wisdom filters through to the popular level of political consciousness, we will be a better country for it.