

"Even in England, the courts will see whether what the House of Commons declares to be its privileges really are so, the mere affirmation by that body that a certain act is a breach of their privileges will not oust the courts from enquiring and deciding whether the privilege claimed really exists."

See also, in *Barnard vs. Walkem*, the words of Begbie, C.J.:⁴²

"It will be said — "The Act itself declares the vacancy." But the Act itself must by some competent tribunal be declared to apply to the case; the facts must in some way be legally ascertained; and the consequent results legally declared. It cannot surely be that any person in the Province has a right and power to declare a forfeiture, and to have the seat treated as vacant, merely on his own opinion."

At the risk of being repetitious one is moved to observe that although Canadian institutions have been, at least, until now, largely patterned on those of the United Kingdom, the scrupulous constitutional separation of the judge from the legislator in Canada, obviates the concern expressed by Mr. Justice Stephen in *Bradlaugh vs. Gosset*. Canadian jurisprudence ought to be cognizant of Canadian realities. In a confederated nation it is obvious that no legislature can arrogate — or be accorded — all the majestic supremacy of the Parliament of a unitary state. The interposition of the Courts, if no other external authority be constituted, must prevail to assure that the Legislature and the legislator alike observe the laws which apply to each. It cannot be considered to be gratuitously officious of the Court at least to maintain the minimal means of enforcing the law. This unstartling conclusion surely proves itself to be conclusively Canadian!

FRANCIS C. MULDOON*

ROY ST. GEORGE STUBBS — AN OVERVIEW OF HIS LEGAL WRITING TO DATE (CONCLUDED)¹

A descriptive phrase which Roy Stubbs has been prone to apply to those about whom he has written, and which I believe he borrowed from Lord Campbell, can be applied quite aptly to himself: he is without doubt one of the brightest ornaments of the Manitoba Bar, making his contribution not only as a lawyer and now as the Senior Judge of the Winnipeg Family Court, but particularly as a writer. In the 1969 issue of this Journal I dealt with the four books which Mr. Stubbs has published

42. (1867-89), B.C.R. 120 at pp. 132-3.

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1. The first part of this comment can be found in (1969) 3 M.L.J. 92.

to date; I wish to conclude by re-viewing his many articles, editorials, book reviews and letters which have appeared in a host of publication.²

Some idea of the quantity and scope of his writing can be gleaned from the following statistical information: In addition to the 14 biographical sketches which have appeared in three of his four books, Roy Stubbs has written 21 other biographical sketches of comparable length and detail.³ As well, he has penned approximately 102 book reviews, 83 articles, and 18 notes, letters and miscellaneous pieces. The 102 book reviews can be further roughly categorized into law and the legal profession (34), poetry (28), cooking and wines (13), literature (13), political figures (5), and miscellaneous (10). Of his 21 additional biographical sketches, 16 are about men who made their mark chiefly as barristers and 5 concern men whose fame derives from their work on the bench. Roy Stubbs literally erupted in the years 1936-40 with an almost incredible output of writings and then he remained relatively dormant, except for the years 1951 and 1954, until 1959 from which year he has contributed regularly to various newspapers and journals.

Interestingly, included in the group of biographical sketches written during the years 1936-40 were several, namely those of Lord Erskine, Lord Russell, Sir Edward Clarke and Marshall Hall,⁴ which can be compared to some extent with sketches done by Norman Birkett in 1961.⁵ Admittedly, Mr. Stubbs' pieces are truly biographical sketches of a relatively comprehensive nature when compared to Lord Birkett's "talks" which amount to personal reminiscences focusing in greater detail on a few trials in the case of each man; however, I have to say that I found Lord Birkett's sketches much more captivating and instructive. In a review which Roy Stubbs wrote of Lord Birkett's book,⁶ he made the point that while it is the advocates who were and are known popularly, it is the judges, practically all of whom are not known at all by the general public, who are actually responsible for the health of our common law. To what lengths did Roy Stubbs strive to correct this general ignorance? I leave that to the reader to decide bearing in mind the subjects of three of his four books and the statistical information given in the preceding paragraph.

Naturally, in leafing through his biographical sketches there are many references that I would like to make and there are also many passages and comments that I would like to pull out; however due to the limitations of space, I will have to restrict myself to only a few. In his sketch of Lord Erskine, Mr. Stubbs had this to say about advocates and orators:

2. I shall not refer to each every one of them, but a fairly complete list of citations is available in the Archives of the Faculty of Law, University of Manitoba.

3. Plus the sketch of Frank Scott which appears elsewhere in this Journal.

4. (1936) 14 C.B.R. 22; (1936) 14 C.B.R. 672, (1937) 15 C.B.R. 174, (1937) 2, No. 5 Alta. L.Q., respectively.

5. *Six Great Advocates* (Penguin, Baltimore, 1961).

6. *Winnipeg Free Press*, March 24, 1962, and from which I gather that he was less than enthralled with *Six Great Advocates*.

"Few great advocates have made their mark as statesmen . . . Advocacy and statesmanship are at opposite poles . . . The advocate speaks to convince, he seeks the most direct route of bringing twelve men around to his way of thinking. He deals with the concrete. His words must bear immediate fruit or his effort is wasted. The statesman speaks to charm. Very often he has no other end in view than the desire to delight his audience, and thus gain its confidence. He deals with theory, and more often than not the seeds he plants are not harvested until long after his voice is stilled";⁷

"Though words are more powerful than cannon-balls, and achieve more lasting good, the orator enjoys but a shining hour before he fades into oblivion, while the warrior attains deathless fame . . . An orator may tear men from the arms of their loved ones, and send them to die in defence of their country with a smile on their lips; he may, by pouring oil on troubled waters of civil dissension, avert a national calamity, he may bind a nation to a cause with hoops of steel—and yet be forgotten in a generation, because his genius takes no permanent form. . . . Oratory dies upon the air, or at best, lives in the hearts of those who hear it."⁸

Mr. Stubbs considers "the most brilliant" of Erskine's reported speeches to be his defence of Stockdale.⁹ Two other speeches of Erskine's on arms and munitions manufacturers and on trial by jury, which are quoted by Mr. Stubbs,¹⁰ remain pertinent to our present situation. In Roy Stubbs estimation, "the two greatest names in the directory of great advocates are Rufus Choate and Lord Erskine". He compares the two by calling Erskine the Shakespeare and Choate the Milton of the bar.¹¹

In his sketch on Serjeant Ballantine, Mr. Stubbs comments on the margin of error open to the advocate:

"If an advocate goes off on the wrong tack, the truth will out. No other professional man runs the same risk of having his ignorance exposed, his errors brought to light. The doctor can cover up his mistakes, the clergyman holds an *ex parte* brief, the teacher is an autocrat whose word there is none to dispute; but the barrister works in the open, subject to opposition at every turn. He does not have the floor to himself, but shares it with a brother barrister who gives the other side of the picture. If he does not know his case, that fact soon becomes obvious. If he is incompetent, the truth soon proclaims itself."¹²

Besides writing about the Lord Erskines, the Charles Russells and the Marshall Halls of the courtroom, Roy Stubbs, as is his wont, has also written about some of the significant men who for one reason or another have faded into the background with the passage of time — men such as Serjeants Parry and Ballentine, Frank Lockwood and Jeremiah Mason; of Mason, Mr. Stubbs wrote:

7. (1936) 14 C.B.R. 22, at pp. 27-8. Also of the advocate he has written these thought provoking words: "When the smoke of a forensic encounter clears away the prisoner at the Bar may go to the gallows, his counsel may move from an inaccessible back flat into pretentious chambers . . . a prisoner may leave the dock a ruined man, broken in health, his purse empty and his reputation gone; his counsel may quit the courtroom, the idol of the hour, the golden fruit of success within easy reach" — (1936) 9 M.B.N. 337.

8. *Ibid.*, at pp. 33-4.

9. *Ibid.*, at pp. 30-1.

10. *Ibid.*, at pp. 28 and 32, respectively.

11. (1939) 17 C.B.R. 716, at p. 726. This same Shakespeare — Milton comparison he used with his two greatest Jewish judges Mr. Justice Cardozo and Sir George Jessel, (1951) 29 C.B.R. 147 at pp. 164-5.

12. (1936) 14 C.B.R. 812.

"[He was] one of the giants of the American Bar in the infancy of his country . . . today [he is] almost a forgotten man. The reason for his neglect can be readily explained. His best energies were given to his labours in the law, and time deals harshly with the lawyer who makes his profession his first and last love, for it can find nothing tangible to seize. The lawyer's achievements are written in water. They must be supported with activity in other fields of endeavour if they are to be preserved for posterity."¹³

Jeremiah Mason's formal education provided Mr. Stubbs with an opportunity to vent his opinion of our present day post-secondary education:

"During the troubled days when the Thirteen Colonies were struggling . . . many things went by the boards. Education . . . was neglected for more immediate problems . . . in those less favoured days only those who wanted an education got one and no time was lost in the process of getting it. University courses were not designed to meet the lowest common denominator of a nondescript lot of students. A student's first reason for being at college was to eat of the fruits of the tree of knowledge. Football, and such delights of later years, had not yet come into their own."¹⁴

Apparently, Jeremiah Mason was not a polished orator and he was not known for his vocabulary or picturesque language; however, a statement of his, quoted by Roy Stubbs, in tribute of Daniel Webster's performance in their first meeting in a courtroom, strikes me as being superb: "He broke upon me like a thunder shower in July, sudden, portentous, sweeping all before it".¹⁵

Two of the judges about whom Mr. Stubbs has written biographical sketches were George Jessel and James Richard Atkin. The article which he wrote about Sir George Jessel, Master of the Rolls, brought him into an interesting exchange of letters with Professor J. G. Flemming on the question, "Who is a Jew?"¹⁶ Mr. Stubbs commenced his sketch of Lord Atkin, whom incidently he considers to be the equal of Sir Edward Coke, Sir Mathew Hale, Lord Mansfield, Chief Justice Cockburn and Sir George Jessel, "among others", by writing:

"In theory, the end and aim of law is to promote right and justice, as between man and man, and man and the state. In practise, it sometimes misses its mark. Law translated from the books into action in the courts bears the imprint of the translator. Because judges are human, and subject to the limitations imposed by them by their humanity, law in the books and law in action too often travel divergent paths. Yes sometimes the two — theory and practise — do meet, reconciled by a judge whose courage, industry and ability enable him to transcend the limits placed by nature upon ordinary men. Such a judge was Lord Atkin of Aberdovey."¹⁷

I cannot pass over the note¹⁸ which Mr. Stubbs wrote on Chief Justice Wallbridge, Manitoba's third Chief Justice, without commenting that in the story told of the learned Chief Justice concerning his comments on a certain statute, which is quoted by Mr. Stubbs, Chief Justice Wallbridge

13. (1946) 24 C.B.R. 678.

14. *Ibid.*, at pp. 679-80.

15. *Ibid.*, at p. 684.

16. (1951) 29 C.B.R. 466-67.

17. (1961) 33 M.B.N. 1.

18. (1937) 10 M.B.N. 481.

to my mind displayed not only bad taste, but also a wholly arrogant and misconceived role for the judiciary vis-a-vis the legislature in the light of our doctrine of the Supremacy of Parliament.

Turning to his newspaper articles, these began to appear on a regular basis in the *Winnipeg Free Press* in January 1959; in 1964 he appeared to shift his forum to the *Winnipeg Tribune*. In one of his very first articles, *The Public and the Police*,¹⁹ Mr. Stubbs promoted the idea that some knowledge of the law and of our system for administering justice ought to be part of every citizen's package of general education. That is to say, it should be taught in our elementary and secondary schools. Indeed, this belief seems to be the thrust of many of his newspaper articles; quite obviously he was using many of his early articles especially, as a teaching and informing vehicle — the rights of a citizen to make arrests and the citizen's obligation to assist the police,²⁰ the defence of the "guilty",²¹ the high cost of litigation,²² ignorance of the law,²³ leading questions,²⁴ the historical rationale behind Mr. Bumble's classic statement "if the law supposes that, the law is a ass — a idiot,"²⁵ the importance of juries,²⁶ and the presumption of innocence,²⁷ to rhyme off a few of the subject matters.²⁸ A pleasant touch to many of these teaching articles is Mr. Stubbs' penchant for including snatches of history, an example of this is seen in his article on the M'Naghten Rule of insanity in which he takes the time to describe the actual case which led to establishment of the Rule.²⁹

In the 1960's while he continued to expound the law for the layman Mr. Stubbs also began to write articles which were comments on current issues and akin to extended letters to the editor. Typical of this type are his articles on the labour movement,³⁰ and on the controversies which raged briefly over the reduction of criminal charges³¹ and the independence of magistrates.³² As well from time to time, he turned his pen to straight

19. *Winnipeg Free Press*, January 29 and 30, 1959.

20. *Ibid.*

21. *Judgment is for Judges*, *Winnipeg Free Press*, April 30, 1959.

22. *The High Cost of Going to Law*, *Winnipeg Free Press*, June, 1959.

23. *Winnipeg Free Press*, July 4, 1959.

24. *The Law's Answer to leading questions*, *Winnipeg Free Press*, October 30, 1959.

25. *Mr. Bumble and the Law*, *Winnipeg Free Press*, September 26, 1959.

26. *Trial by Jury: A Training in Citizenship*, *Winnipeg Free Press*, February 23, 1963.

27. *Winnipeg Free Press*, May 23, 1959. Also on this presumption see Mr. Stubbs review of Lord Kilbrandon's book, *Other People's Law*, *Winnipeg Free Press*, February 18, 1967.

28. See also *Danger of the Card Carriers*, *Winnipeg Tribune*, December 5, 1966. In the same vein, Roy Stubbs has produced the manuscript for a book of law for the layman, which has yet to and may never be published. Certainly there is a gap and we have failed to date through any of the various media available to enlighten adequately the public on our law in general.

29. *A Judge Speaks Out*, *Winnipeg Free Press*, March 19, 1959.

30. *Corporate Status for Unions, Unions Can Be Sued — But*, *Winnipeg Free Press*, April 4-5, 1962; *Stages of Trade Unions*, *Winnipeg Free Press* April 13, 1962; *Unions and Political Funds*, *Winnipeg Free Press*, March 9, 1963; *Lawyer replies to Pentland about the role of lawyers*, *Winnipeg Tribune*, February 3, 1964; *Reply on Union Dues*, *Winnipeg Tribune*, March 1, 1964 (see also letters to the editor March 14, 1964).

31. *The debate over reducing criminal charges*, *Winnipeg Tribune* March 21, 1964; *Tarnished words are cause of controversy*, *Winnipeg Tribune*, March 28, 1964.

32. *Soft bed of conformity or hard couch of criticism?*, *Winnipeg Tribune*, January 9, 1965.

legal history.³³ Another task which Mr. Stubbs has undertaken, is to write notes for the newspapers on at least three of the guest lecturers who have been brought to Winnipeg in the last five years by the Manitoba Law School Foundation for its annual public lecture.³⁴

In my estimation Roy Stubbs forte is book reviews; this is his medium. There, is, of course, more than one approach to reviewing books and Roy Stubbs' approach is generally speaking a kindly one. In his own words:

"There is no ultimate profit in being unkind to a book";³⁵

"I do not need Pliny the Elder to remind me that no book is so bad that it does not have some good in it."³⁶

His book reviews most often amount to a precis of the contents of the book and not infrequently the books which he reviews provide him with a convenient excuse to write a pleasant, meandering, and often quite instructive note, comment or biographical sketch. In Mr. Stubbs opinion "a reader should not harken to the voice of authority. Critics cancel each other out. The golden rule for the reader must be: I shall trust my own judgment. If a review calls attention to a book and gives a general idea of what the book is about, it has done all that it can legitimately be expected to do. If it does more, and many reviews do more, the reader in search of guidance gets a bonus".³⁷ A glance at the review which Mr. Stubbs wrote of *Judge of the Far North* and at another review of the same book which appeared in a previous issue of this Journal will afford a comparison of two differing styles and it will facilitate a better appreciation of the Stubbs style.³⁸

Among his many reviews are three of works written on or about Louis Riel. In his review of *The Man Who Had To Hang — Louis Riel* by E. B. Osler, Mr. Stubbs states:

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33. *Sir John A.'s First Case*, Winnipeg Free Press, September 10, 1960; *Knox Magee and the Judges*, Winnipeg Free Press, November 22-3, 1962; *Manitoba's First Execution*, Winnipeg Free Press, March 2, 1963; *Manitoba in 1870 and Today*, Winnipeg Free Press, May 11, 1963; *City Hall's Land Title*, Winnipeg Free Press, May 25, 1963; *The Case of the Hired Girl*.
 34. *Lord Denning*, Winnipeg Tribune, September 10, 1965; *Walter V. Shaefer*, Winnipeg Tribune, September 27, 1966; *Sir Leslie Scarman*, Winnipeg Free Press, September 5, 1967. He also wrote a note on *Lord Gardiner* who in September 1969, officially opened Robson Hall, Winnipeg Free Press, September 13, 1969.
 35. *On Canadian Poetry*, Winnipeg Free Press December 31, 1966. I know for example that he was very much more unhappy with the book *Verdict!* than appeared from his review ((1969) 3 No. 2 M.L.J. 103), but the point was that here was a type of book that ought to be encouraged.
 36. *Not Good Enough*, Winnipeg Free Press, November 9, 1967. This review of *A Century of Canadian Literature* comes close to being one of the two or three damning reviews which Roy has written. In his most damning review, of *Canadian Business Law* (Coles Handbook Series, 1964), Roy was "so unnerved" by "the over-simplification, half-truths and misstatements" contained in the book that he could not "trust [him]self to speak further about . . . the book"; instead he used the rest of the review to relate "a little known incident in Manitoba's legal history" which concerned an ill-advised and unsuccessful attempt by Manitoba's second Chief Justice to publish an everyman's law manual in conjunction with *The County Court Act*.
 37. *His Trade: Words*, Winnipeg Free Press February 15, 1969.
 38. *Winnipeg Free Press*, June 29, 1968; (1968) 3, No. 1 M.L.J. 157. In *Poets in a Hostile World*, Winnipeg Free Press, April 28, 1962, Roy wrote: "It has been said that a review contains two portraits — one of the book reviewed and one of the reviewer."

"When the Hudson's Bay Company laid down the reins of authority, they were not taken up immediately by Ottawa. The Provisional Government of Rupertsland, proclaimed by Louis Riel, stepped into the breach."³⁹

This is a distortion of history not infrequently made apparently to justify legally to some extent the step taken by Louis Riel on December 8, 1869; his Provisional Government was simply illegal it seems to me and I say this without intending to deny the fact that he was the man most responsible for the Province of Manitoba coming into being. My understanding of the situation at that time in the history of Manitoba is that, while the H.B.C. intended to lay down its reins of authority on December 1, 1869, it did not do so at the request of Ottawa in fact or in law, notwithstanding the stupid and hollow gesture of Lieutenant-Governor-elect William McDougall. On the technical side of Mr. Osler's biography, and this is an aspect which I personally regret not finding in most of his book reviews, Mr. Stubbs tells his readers virtually nothing about Mr. Osler's writing style, the readableness of the book, the use that the author has made of primary and secondary resource sources, whether the book is well footnoted and contains a workable index and so on.

Again, in leafing through Mr. Stubbs' book reviews, I must be content to highlight but a few. The number of book reviews and articles which Roy Stubbs has written on cooking and wines attest to the fact that he has more than a nodding acquaintance with and a casual interest in good cuisine. In his review of Larousse Gastronomique he wrote:

"A man's allotted span of life is seventy years. If he follows the custom, which has become general, at least in the affluent countries of the world, of eating three meals a day and spends an average of half an hour at the table for each meal (and he should spend more, if only for his digestion's sake), he will pass 39,325 hours of his lifetime eating. Serious thought should be given to a pursuit which claims so considerable a portion of his time. His life will be enriched if he takes a proper enjoyment in the pleasures of the table."⁴⁰

From another of his reviews the various ethnic groups which comprise the cultural fabric of Canada can see that in Roy Stubbs they have a staunch supporter:

"There is now much less talk about the 'melting pot' than there once was. This is a healthy sign. For into the melting pot may go fat-heads, block-heads and well-fitted heads and they all may become nondescript heads. Let an immigrant retain the stamp that is impressed upon him in the country of his birth and he may make a more significant contribution to our country than if he is a product of the melting pot. From many different and diverse strands is the culture of a country woven."⁴¹

During the last few years the majority of Mr. Stubbs' reviews have been of books of Canadian poetry. Following the advice of James Whistler, he knows what he likes, and it is not modern poetry:

39. Winnipeg Free Press, May 6, 1961.

40. Winnipeg Free Press, February 24, 1962.

41. Time's Revenge, Winnipeg Free Press, October 17, 1964.

"Some modern poets so bethump us with eccentric words and extraneous images that our minds either refuse to spin, or spin too quickly, for us to catch hold of any intelligent meaning. It is a rare treat to come across a book of poems like this book, which speaks directly to those readers whom Coleridge once characterized as 'no unfair specimens of perhaps the majority of readers of poetry'; in other words, those readers who go to poetry to save their souls alive, not to solve intricate verbal puzzles or to strain their imaginations to find some little sense in a great maze of words";⁴²

". . . much modern verse is written [on the principle that he who understands, i.e. 'the closed priesthood of fellow poets and academic critics',⁴³ will understand]. Some modern poets resent the old-fashioned notion that they have an obligation to make their meaning clear to the common reader — which gives rise in the common reader's mind to the suspicion that there is no meaning to be made clear";⁴⁴

"Among the innumerable divisions into which modern poets may be divided is a convenient one . . . which separates them, speaking symbolically, of course, into two categories — those who swig beer and those who sip sherry, the swiggers and the sippers. At the present time the Canadian woods are filled with poets who swig beer. Some of these poets, but by no means all of them, are loud-mouthed and foul-mouthed, deliberately and with malice aforethought. Their work, because it deals with passing fancies, fads and fashions, contains within itself the seeds of its own decay";⁴⁵

and finally, speaking of the poetry of Ralph Gustafson:

"I confess that I cannot follow Mr. Gustafson all the way. There are depths in his poetry beyond my depth. Some of his poems seem to me but words stuck in a 'onomatopoeic paste'. . . The fault is mine. I was born too soon. I am an old dog who cannot be taught all the intricate tricks of the new poetry. I suspect that a man's taste for poetry is so conditioned by his first encounter with the poets that his old friends are his true friends and that try as he may to escape their chains, he must march, perforce under their banner until the end of the road."⁴⁶

Although I have been straying somewhat from the legal writings of Roy Stubbs, I trust that two more quotes from reviews of non-legal books will not be entirely out of order. Roy Stubbs is a solid admirer of Margaret Laurence, although he was disappointed with her book *A Jest of God*. *Inter alia*, in that book review he pointed out:

"Old-fashioned readers (a vanishing race before the aggressive assault of T.V., the greatest time-waster among all the toys of man) still believe that the first duty of a novelist is to tell a story, the second duty to tell a story that is worth telling, and the third to tell a story in a way that does it full justice."⁴⁷

Of William Butler's *The Great Lone Land* and *The Wild North Land* Mr. Stubbs suggests:

"Copies of them should be placed at government expense in every school library in Western Canada. Students whose minds have not been dulled by over-exposure to T.V. might be tempted to read them, and to learn

42. *The Green Fig Tree*, by Michael Parr, Winnipeg Free Press, March 25, 1965.

43. *Poet of Alienation*: James Reaney, Winnipeg Free Press, November 30, 1968.

44. *For Those Who Like It*, Winnipeg Free Press, January 4, 1969.

45. *The Third Eye*, Winnipeg Free Press, July 20, 1968.

46. *Two Books of Poetry*, Winnipeg Free Press, February 4, 1967.

47. Winnipeg Free Press, October 13, 1962.

from Butler that real adventure is something quite different from the weekly exploits (tailored to fit a half-hour's or an hour's program including the advertisements of the sponsors) to trigger-happy untouchables, of lawless lawmen, or of adult delinquents whose adolescent antics defame our amiable ancestor — or fellow traveller? — the gorilla".⁴⁸

Several years ago Mr. Stubbs reviewed a book by William M. Kunstler, entitled *The Case for Courage*.⁴⁹ The book is a collection of profiles in courage by defense counsel through the ages on behalf of highly unpopular clients and despite large personal sacrifices. Interestingly, the author, William Kunstler, recently "kept the faith" in the Chicago Seven Conspiracy trial.

Geert Van Den Steenhoven concluded in his book, *Leadership and Law Among the Eskimos of the Keewatin District*, that "law . . . is virtually absent [in Eskimo societies] and that [therefore] the realization of social control . . . should . . . be sought and found on another level". He sees law as "identified by form and not by content" — "a social norm is legal if its neglect or infraction is regularly met, in threat or in fact by the application of physical force by an individual or group possessing the socially recognized privilege of so acting".⁵⁰ In disagreeing with Mr. Steenhoven and surmising that surely Eskimos live under a system of law Roy Stubbs wrote:

"The essence of law is to be found, surely, in its function as an instrument of social control, rather than in its form or its machinery . . . Mr. Van Den Steenhoven takes too narrow a view of the law. He places too much emphasis on sanctions. Law is more than a series of commands, enforceable by the collective will of society and carrying penalties for any failure to act in obedience to them. This is but the negative aspect of law. The positive aspect is concerned with assuring every individual a limited scope for the free development of his personality . . . Mr. Van Den Steenhoven looks for the essence of law in conflicts and disputes . . . Law may have to depend on force for its ultimate vindication. But the persuasive element of law cannot be discounted . . . Obedience to law does not depend on a policeman or some other symbol of the law, being always within easy distance. It depends in large measure upon the subtle pressures of social life."

In short, as Mr. Stubbs analogized, just as certainly as there is law in a wolf pack there is a form of law in any group of humans who live together.⁵¹

I believe that on the subjects of how pointless and horrendous war can be and of man's inhumanity to man there are lessons to be re-taken periodically from a re-viewing of movies such as *Paths of Glory*, *The Pawnbroker*, *The Shop on Mainstreet* and *The War Game*; in this same vein in his book review of *Auschwitz in England* by Marvis M. Hill and L. Norman Williams, Mr. Stubbs stated:

48. *The Laurence Magic Slumbers*, Winnipeg Free Press, September 24, 1966.

49. *A Soldier with a Difference*, Winnipeg Free Press, August 24, 1968.

50. At pp. 119, 102 and 102 respectively.

51. (1963) 41 C.B.R. 362. See also by Roy Stubbs, *Law and the Eskimos* (1962) 1 M.L.S.J. 91.

"[The incredible events which took place under the Nazi regime in regard to the Jews] must never be forgotten, however distasteful to any normal healthy mind their remembrance may be. They must serve as a beacon light to warn us that we must never let the veneer of civilization wear thin . . . It happened in Nazi Germany. It could happen elsewhere. The safeguards and guarantees of the common law make it less likely to happen here, or in any country where that law prevails. A word about these safeguards may be appropriate, and here I follow closely Dr. Arthur L. Goodhart [The Migration of the Common Law].⁵² First, there is the jury system . . . Second is the writ of habeas corpus . . . Third is the principle of the independence of the judiciary . . . Fourth, is the principle . . . 'of government under the law'. In an uncertain world, our debt to the common law is a fact for which we should be daily thankful. But it is a fact which we should never, for one single unguarded moment, take for granted."

As well in this book review Mr. Stubbs points out that the situation in which Dr. Dering found himself raised the "important ethical question; which each man, if he should ever be so unfortunate enough to find himself in circumstances demanding a direct answer, would have to answer for himself, and not by words alone: Is life so sweet that it should be purchased at the price of moral dishonour and mental degradation? . . . By what standards is a man to be judged whose courage fails when the finger points to him? With compassion, surely! Not in the light of a strict black-and-white morality! In the knowledge that we, too, are human flesh and blood; and that we, too, may fail the extreme test of courage and virtue. . . . We, safe and formal men, from the safety of our studies, or the sweet security of our homes must not be too severe on Dr. Dering. But, because he showed no sign of repentance, gave no indication that he carried an accuser within his own breast, he cannot claim an unqualified forgiveness for the evil which he has done"⁵³

A pet peeve of Roy Stubbs is the manner in which Queen's Counsel appointments are dispensed in Canada; recently the strength of his conviction was tested — he stood fast! On this subject he once wrote:

"In the days when New England was in flower, it used to be said that a stone could not be thrown in Boston Common without striking a couple of poets. With greater truth, it could be said today that a stone could not be thrown on Portage Avenue without striking a couple of King's Counsel."

This is the opener to what I consider to be one of his best pieces of writing in which he draws up a compact, comprehensive and scorching indictment, complete with an exhaustive historical review, of the Queen's Counsel designation.⁵⁴

And finally, to the several definitions and descriptions of the common law, Roy has added one of his own:

52. (1960) 76 L.Q.R. 39 at pp. 45-8.

53. (1966-67) 2 M.L.J. 158. See also *Time's Revenge*, supra note 41.

54. On the Appointment of King's Counsels (1951) 23 M.B.N. 15. See also, *A Second Helping* (1951) 23 M.B.N. 61. These two articles should be read and re-read by every law student, lawyer and Attorney General until the message seeps through. On the subject of titles in general in his sketch of R. B. Bennett in *Prairie Portraits* at p. 57 he quotes George Bernard Shaw: "Titles distinguish the mediocre, embarrass the superior and are disgraced by the inferior".

"A philosopher once said that no one can step into the same stream twice — because the water is moving all the time. The same may be said of the common law. It is a flowing stream, not a stagnant pool. . . . Law at any given time is a reflection of the general social climate of the time. This is not to say that it reflects the most advanced social thinking of the time. There is always a gap between the law and up-to-date current social opinion. But, perhaps, that gap is narrower today than at any time in the history of our law."⁵⁵

Anyone who reads much of Roy Stubbs' writing will appreciate that two of his delightful knacks are his ability to draw upon his vast reservoir of reading to come up with the beautifully apt opener and his Victorian turns of phrase. Examples of the former are the opener to his article, *On Appointment of King's Counsels*, cited above and the opening paragraph of his review of *The New York Times Cookbook*:

"In the last year of his crowded life, Alexander Dumas, with some five hundred assorted books to his credit (written at the rate of three a month during his hey-day), sat down to write a cookbook as the crowning of his literary career, and to pay grateful tribute to his own vast stomach which had served him well through many years of prodigious eating and drinking. 'My aim (was)' he said 'to be read by the worldly ones and to be used by the professionals'. Craig Claiborne, the editor of the *New York Times Cook Book*, had quite another purpose. . . ."⁵⁶

Illustrative of the latter are:

"That night, being happily met with several good companions we continued the discussion over our pipes and a temperance cup";⁵⁷

and from a letter to the editor of the *Manitoba Bar News*, lamenting the fact that the potential dining facilities of the present Law Courts Building have never been developed:

"If we had a professional home where the Benchers and also-runners, the students and veterans, could sit down, side by side, to eat and drink in good-fellowship, the wise Bencher by keeping his eyes and ears open; by watching the neophyte, how he handles his knife and fork, how he drinks his wine or ale, how he manages his chop or cutlet; by listening to his talk, does he know that the law is a profession; does he know what a profession is, do dollar signs come into his eyes at mention of the word 'law' — could tell whether he belongs, before it is too late."⁵⁸

If one were to construct a collage to represent Roy Stubbs from some of his writings one would include: the respect which Socrates had for the law to which Mr. Stubbs refers on more than one occasion; the reforming spirit of Samuel Romilly and Lord Brougham; the forthrightness, come what may, of Serjeant Parry; the habit of reading, the vocabulary and the penchant for turning the unusual phrase of Rufus Choate; an

55. *The Courts and Social Change*, *Winnipeg Free Press*, May 4, 1962. There are many other passages which I should like to quote such as his advice for the law student regarding legal history ((1954) 32 C.B.R. 231 at p. 232) and his thoughts on law and morality (*Winnipeg Free Press*, April 17, 1965 and a C.B.C. talk which he gave on February 27), but similar to the after-dinner speaker, I ought to close.

56. *Winnipeg Free Press*, December 9, 1961. See also his reviews of *Riel* by John Coulter, *Winnipeg Free Press* July 14, 1962, of *The Wind Has Wings*, *Winnipeg Free Press*, October 26, 1968; of *Frederic William Marland, A Memorial Address*, (1953) 31 C.B.R. 947, as well as his sketch of *Jeremiah Mason* (1946) 24 C.B.R. 678 and his article *On the Appointment of King's Counsel* quoted earlier in this overview.

57. *The Newspaper Pieces of T.B.R.*, *Winnipeg Free Press*, August 2, 1960.

58. (1963-66) 35 M.B.N. 157, at p. 158.

empathy which prevents him from ever passing over without reading carefully any dissenting judgment; a constant devotion to Frederick Philip Grove who in his opinion is Canada's greatest writer; and, to be honest, the failing, albeit slight, of John W. Dafoe as a public speaker. From the nature of his writings generally it can be seen that here is a man who is not only a genuine scholar of the law, and mini-biographer of men not so well known who have made significant contributions and of men whose flame burns not so brightly as once it did, but also here is a gourmet and a reader of Canadian poetry; indeed, here is a man of substance and accomplishment.

In concluding this glimpse of Roy St. George Stubbs and his writings to date, I leave you with this list of what I consider to be the best of Roy Stubbs, exclusive of his book reviews: *Four Recorders of Rupertsland*; *Daniel Webster: The Olympian*;⁵⁹ *Hon. Edmund Burke Wood*;⁶⁰ *In Search of a Poet*;⁶¹ *On Crime and Punishment*;⁶² and *On Appointment of King's Counsels*.⁶³

CAMERON HARVEY*

WHY A COURSE ENTITLED LEGAL INSTITUTIONS?

Legal Institutions is a compulsory First Year course at the Faculty of Law, University of Manitoba;¹ if you put to one side its civil procedure content,² it is merely an expanded version of the traditional and now, in most Canadian Faculties of Law, jettisoned course in *Legal History* or *History of Law*. Most knowledgeable people would agree that at least in recent years *Jurisprudence* and *Legal History* have been by far the two least appealing and most irritating courses to Canadian law students. Insofar as *Legal History* is concerned, the lack of student satisfaction stems from several causes: it is, unlike the other First Year courses³ which

59. (1937) 23 A.B.A.J. 753.

60. (1962) 34 M.B.N. 109.

61. *Winnipeg Tribune*, December 31, 1966, January 7, 14, 1967—a sketch of Guttormor J. Guttormson, the world famous Icelandic poet of Riverton, Manitoba.

62. (1962-65) 1 M.L.S.J. 283.

63. (1951) 23 M.B.N. 15, and its sequel at p. 61.

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1. The length of the course is 105 hours, although the student receives credit and thus is responsible for only 90 of the hours. A bare outline of the course without reading references is appended to this note.

2. Which is a basic Civil Procedure I course and which was made a part of the *Legal Institutions* course mainly as a result of the credit hours involved (that is to say from the point of view of the University's grading system.)

3. Traditionally, *Legal History* was a compulsory First Year course. In some Canadian law schools it is now available as a Second or Third Year optional course.