

Constance Backhouse

Claire L'Heureux-Dubé. A Life. Vancouver, BC: UBC Press, 2017. 769 pp.

Constance Backhouse's magnificent biography of former Supreme Court of Canada Justice Claire L'Heureux-Dubé is an impeccably researched contribution to contemporary legal history. It is also impossible to put down. The book was nine years in the making. In her acknowledgements, Backhouse admits that neither she nor her subject "fully anticipated" what the project would entail (xii), and that completing the biography caused both author and subject to "reflect upon our distinctive ways of viewing the world" (xiii). The research and writing are grounded in core feminist principles: "a recognition that gender matters, that discrimination exists, that resistance and backlash follow [and] that our society would be a better place if there were greater inclusion and equality" (xiii). The book is a feminist biography of a "singular woman" and "extraordinary judge" (545) who had an "uneasy" (xiii) relationship to feminism, and was particularly uncomfortable with the connections between feminism, gender equality, religious freedom, race, and ethnicity (542). The book is remarkable precisely because of the comprehensive, critical, and compassionate manner in which Backhouse explores and illuminates these connections. She does so by insisting that L'Heureux-Dubé herself be understood in context, mirroring one of the book's central claims, that L'Heureux-Dubé's legal approach was innovative because it was anchored in an explicit social, economic, and political context (3). The book concludes by calling L'Heureux-Dubé's influence "undeniably transformative," a description that applies with equal force to Backhouse's ground-breaking feminist legal scholarship.¹

Backhouse uses *Ewanchuk*²—"a sexual assault case that catapulted [L'Heureux-Dubé] onto the front pages of newspapers, made her the subject of nightly telecasts and radio talk shows, and plunged her into the centre of public debates across the land" (8)—as both an introduction to the biography and an epilogue to the examination of L'Heureux-Dubé's Supreme Court of Canada jurisprudence. The strategy works brilliantly, drawing the reader into L'Heureux-Dubé's story while deftly introducing the themes that will inform the remainder of the book. In fact, the law of sexual assault offers the perfect location for introducing L'Heureux-Dubé's courage, her commitment to women's equality, and her outsider status. Backhouse, an expert on sexual assault law herself, presents the *Ewanchuk* story as a paradigmatic example of L'Heureux-Dubé's impact as both an icon, "for courageous decisions that forged deeper understandings of discrimination," and a lightning rod, a "pariah within some sectors of the legal community" and target of anti-feminist backlash (8). When Backhouse revisits *Ewanchuk* as a way of concluding her

¹ See, for example: Constance Backhouse, *Carnal Crimes: Sexual Assault Law in Canada, 1900–1975*, Irwin Law, Toronto: 2008; *Colour Coded: A Legal History of Racism in Canada, 1900–1950*, University of Toronto Press, Toronto: 1999; *Petticoats & Prejudice: Women and Law in Nineteenth Century Canada*, Women's Press, Toronto: 1991.

² *R v Ewanchuk*, [1999] 1 SCR 330.

examination of L'Heureux-Dubé's impact some 500 pages later, she offers direct evidence of how context enriches and complicates any story, particularly one as fascinating and troubling as this.

Most of the book is organized chronologically, with sections devoted to childhood and family heritage, early education, legal education, law practice, and L'Heureux-Dubé's three successive judicial appointments. In each, Backhouse illuminates how L'Heureux-Dubé's experiences fail to conform to familiar narratives and reveals the personal costs exacted by her status as an outsider in a masculine culture. She was the ninth woman to graduate from the law school at Laval University, in 1951, the first woman to establish a successful private practice in Quebec City, in the 1960s, the first woman appointed to the Quebec Superior Court, in 1973, the first woman appointed to the Quebec Court of Appeal, in 1979, and the second woman, first francophone Québécoise, and first family law specialist to be appointed to the Supreme Court of Canada, in 1987. Backhouse locates this professional trajectory within a personal life marked by tragedy: her parents' unhappy marriage, her mother's illness and disability, her sister's death, her marriage to a brilliant but mentally ill man who eventually took his own life, the gendered discrimination she experienced at every stage of her career, and her son's juvenile delinquency, drug abuse, and eventual death in a hospital lock-up.

Backhouse devotes almost 200 pages to L'Heureux-Dubé's tenure on the Supreme Court of Canada. The material is divided into two parts, the first focussed on the personal and experiential, and the second delving more deeply into selected cases. The materials begin with the story of the appointment itself. Prime Minister Brian Mulroney called to offer her the seat late one evening, and when she expressed hesitation about the move to Ottawa, generously gave her until eight the next morning to decide. A sleepless night of advice-seeking followed. At 6:30 a.m., she called Justice William McIntyre, a friend and puisne judge on the Court. He told her there were rumours that she was "trouble" and "would not be welcomed" (325). L'Heureux-Dubé claims that it was this exchange that led her to accept the appointment, saying "I never backed down from a challenge" (325). The materials continue with an examination of Justice L'Heureux-Dubé's arrival at the Court, the gendered ways in which she was isolated by some of her colleagues, the inner workings of the Court, the personalities, both judicial and extra-judicial, of her colleagues, and her evolution, over fifteen years of jurisprudence, as both a "great dissenter" (359) and a judge who insisted on a progressive vision of equality law grounded in social context.

The second section profiles six pivotal cases in six separate chapters: *Seaboyer*, *Moge*, *Mossop*, *Symes*, *the Quebec Secession Reference*, and *Baker*.³ These chapters are quintessential Backhouse: they locate each decision in its contemporary legal, judicial, and social context by telling the stories of the litigants, lawyers, intervenors, scholars, and judges who participated. Each chapter could be read as a stand-alone assessment of the case it profiles, but they are immeasurably enriched by the life story which precedes them.

³ *R v Seaboyer*, [1991] 2 SCR 577, *Moge v Moge*, [1992] 3 SCR 813, *Canada (Attorney General) v Mossop*, [1993] 1 SCR 554, *Symes v Canada*, [1993] 4 SCR 695, *Reference re Secession of Quebec*, [1998] 2 SCR 217, *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

The book concludes with a chapter describing L'Heureux-Dubé's retirement from the Court as well as her controversial public interventions on religious freedom and gender equality. Backhouse offers a thoughtful and thought-provoking analysis of the decade between 2004, when L'Heureux-Dubé spoke out on the decision in *Amselem*⁴, and 2014, when she testified in favour of the proposed *Quebec Charter of Values*⁵ before a Quebec legislative committee. It is clear that Backhouse profoundly disagrees with her subject's position, writing, "Her objection to Muslim women's religious garments failed to take account of the wider context. Quebec and Canada shared a history marred by racial and ethnic discrimination. ... She, like many others, did not appear to recognize the potential for damage when rules prohibiting religious dress were promulgated within a society exhibiting pervasive discrimination against Muslims" (533). And, later, "The fuller dimensions of discrimination appear to have eluded her. Where rights came into conflict, she opted for sexual equality as the main priority. Hers was a notion of gender that was "essentialized," lacking significant intersection with race, ethnicity, and religion, among other variables" (542).

Yet Backhouse continues to challenge the reader to reflect on the life story and social context that brought L'Heureux-Dubé to her position of influence, and how her streak of individualism, contrariness, and passionate commitment to women's equality was forged in an environment of profound anti-feminism. Backhouse reminds us of the personal challenges she faced, describing the "inhuman toll" exacted by the constant struggle to "maintain a functional work/life balance" in the face of "gendered and voyeuristic" public attention and in a milieu dominated by male lawyers and judges who were never held to the same standards (541). These pages offer a challenging blend of acceptance and critique which, for me at least, tempered and qualified my own reactions to this part of the L'Heureux-Dubé story.

We live in an era of simplified and often simplistic story-telling, where complex issues are compressed into 140 characters. A documentary on the extraordinary life of Ruth Bader Ginsburg is screening in my local repertory cinema,⁶ just as the retirement of the first woman to hold the title of Chief Justice of the Supreme Court of Canada, Beverley McLachlin, has unleashed a torrent of media adulation and professional praise.⁷ While I will most certainly see the documentary and have enjoyed the media tributes to our former Chief Justice, I worry about what is left out of these public narratives. Constance Backhouse's

⁴ *Syndicat Northcrest v Amselem*, [2004] SCC 47.

⁵ Bill 60, National Assembly of Quebec, "Charter affirming the values of state secularism and of religious neutrality and of equality between men and women, and providing a framework for accommodation requests" (2013).

⁶ RBG, a documentary was released on May 4, 2018. It is produced by Betsy West and Julie Cohen and described as an intimate portrait of an unlikely rock star: Justice Ruth Bader Ginsburg. With unprecedented access, the filmmakers explore how her early legal battles changed the world for women. As of this writing it has brought in almost 4 million USD.

⁷ See for example, Sean Fine, "How Beverley McLachlin found her bliss, Where she came from and what she leaves behind" *The Globe and Mail*, January 12, 2018, on-line at <https://www.theglobeandmail.com/news/national/beverley-mclachlin-profile/article37588525/>

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powerful and important biography of this complex, courageous, and influential woman is an act of scholarly resistance to the lure of oversimplification. Read it and resist.

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