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## *Shilling for Judges: Brian Dickson and His Biographers*

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Robert J. Sharpe and Kent Roach, *Brian Dickson: A Judge's Journey*.  
Toronto: University of Toronto Press for The Osgoode Society for  
Canadian Legal History, 2003. Pp. xiv, 576.

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**Reviewed by R.W. Kostal\***

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An unmistakable sign of a power shift is the sudden proliferation of justificatory propaganda. Not thirty years ago, Canadian judges were deservedly viewed as marginal figures in the country's political structure. (In this regard, professors of law were not even worth talking about.) Of course the *Canadian Charter of Rights and Freedoms*<sup>1</sup> or, put more precisely, the first phase of *Charter* interpretation by the Supreme Court of Canada, changed all that. Suddenly this handful of unelected lawyers was a formidable political force. Just as suddenly, the Canadian constitutional law professoriate, once almost comprehensively irrelevant, thrilled to their new role as public policy experts. But in all this an irony: although judicial law-making under the *Charter* has only rarely faced acerbic criticism in Canada, a number of legal scholars have felt no less compelled to vindicate it, even if in curiously oblique ways. In recent years, the judicial biography has proved a popular vehicle for this task.

When Canadian judges had little power, their lives remained mostly unwritten. (Of the fourteen Chief Justices preceding Dickson only one, Lyman Duff, has been seen to merit a full-scale published study.<sup>2</sup>) The book under review,<sup>3</sup> Robert Sharpe and Kent Roach's expansive biography of Brian Dickson, is symptomatic of a much

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<sup>1</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11 [*Charter*].

<sup>2</sup> David Ricardo Williams, *Duff: A Life in the Law* (Vancouver: University of British Columbia Press, 1984).

<sup>3</sup> Robert J. Sharpe & Kent Roach, *Brian Dickson: A Judge's Journey* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2003) [*A Judge's Journey*].

different historical moment. *A Judge's Journey* follows closely on the heels of W.H. McConnell's narrative study of the life and career of William McIntyre,<sup>4</sup> and Ellen Anderson's more ambitious treatment of the life and judicial legacy of Bertha Wilson.<sup>5</sup> The Osgoode Society for Canadian Legal History series of the University of Toronto Press has recently published a full-length biography of Bora Laskin, its third such volume in four years.<sup>6</sup> It is not incidental that all the extant works are admiring, sometimes fawning, of their subject matter. They portray the judge—if not as hero—then as exceptionally virtuous champion of the *summum bonum* of contemporary Canadian jurisprudence: “rights”. When these biographers are critical of their subjects, it is in a perfunctory and detectably regretful way. In Canadian legal circles, moreover, this reverential stance is regarded as befitting and even meritorious. For its part, *A Judge's Journey* has garnered high critical praise,<sup>7</sup> and a prestigious prize.<sup>8</sup> It was co-written by persons of considerable academic weight. Robert Sharpe is the widely published former dean of the law school at University of Toronto (and now a Justice of the Ontario Court of Appeal). Kent Roach is one of the nation's leading constitutional scholars. Both are fellows of the Royal Society. By all accounts and appearances, then, Sharpe and Roach on Dickson is intended (a subtle disclaimer<sup>9</sup> notwithstanding), not as a boardroom decoration, but as a serious work of historical scholarship. And on this basis it is herein reviewed.

In historical scholarship worthy of the name, scholars advance and sustain arguments about their subject matter, and its connectedness to other important events. On this score we encounter the first of *A Judge's Journey's* many material shortcomings. In the place of explicit theses, Sharpe and Roach are satisfied to advance a number of general claims, claims not so much argued as repeated. In the opinion of this reviewer, however, only one of the book's central claims is uncontroversial: that Brian Dickson was a fine man, exceptionally intelligent, conscientious, and principled. The corollary of this claim, that Dickson was also a

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<sup>4</sup> W.H. McConnell, *William R. McIntyre: Paladin of the Common Law* (Ottawa: Carleton University Press, 2000).

<sup>5</sup> Ellen Anderson, *Judging Bertha Wilson: Law as Large as Life* (Toronto: University of Toronto Press for the Osgoode Society for Canadian Legal History, 2001).

<sup>6</sup> Philip Girard, *Bora Laskin: Bringing Law to Life* (Toronto: University of Toronto Press, 2005).

<sup>7</sup> See e.g. Paul Truster, “Brian Dickson Down the Middle” *Law Times* (15 December 2003) 8; Kirk Makin, “The Judge and the Juror” *The Globe and Mail* (3 January 2004) D8; Roland Penner, “Defender of the Charter” *Literary Review of Canada* 12:4 (May 2004) 25; Jamie Cameron, “Dickson's Law: ‘Manifestly One of the Humanities’” (2005) 54 U.T.L.J. 93. The Cameron piece is at once a review of *A Judge's Journey* and fond tribute to Dickson and his judicial legacy, only occasionally and superficially critical of the scholarship on display in *A Judge's Journey*.

<sup>8</sup> *A Judge's Journey* was awarded the John Wesley Dafoe Book Prize for 2003. The prize is an annual award honouring a book that “contributes to the understanding of Canada and/or its place in the world”.

<sup>9</sup> *A Judge's Journey*, *supra* note 3 at viii. In their Preface, the authors acknowledge that theirs is not a complete history of its subject (*ibid.* at xiii). This point is discussed below.

great judge, “arguably the most important judge in Canada’s history,”<sup>10</sup> deserves closer critical scrutiny.

One reason for caution is that the criteria employed by Sharpe and Roach to measure greatness in a judge are theoretically unintelligible. In this regard, only the authors’ biases are clear cut. *A Judge’s Journey* relies, to say the most about it, on a simplistic model of Supreme Court judging. Before Dickson was appointed to the Court, the authors contend, the “Court spent its time dealing with technical legal questions and resolving run-of-the-mill legal disputes.”<sup>11</sup> In fact, during this long and dismal era the Justices were so timorous and befuddled “they thought their job was to apply precedents to the clear letter of the law, leaving questions of law reform and social justice to the elected legislatures”!<sup>12</sup> In the early phases of Dickson’s judicial career—here the authors are brutally frank—he himself embraced this primitivism. But faithful readers are quickly reassured. Although Dickson’s career on the bench had an unsure start, during his tenure at the Supreme Court, first as a puisne Justice and then for six pivotal years as its Chief Justice, he found his stride. In fact, in the authors’ estimation Dickson ultimately became exactly the right sort of appellate judge, one whose decisions were (the terms are repeated beyond the point of tedium) “creative” and “contextual”. Dickson, so it would seem, possessed a very special gift. In sizing up a case, he could discern when the law was out-of-step with the times, and how best to bring it into line with “changing social attitudes and sensibilities.”<sup>13</sup> Dickson also had an especially keen sense of what human interests deserved to be fully realized as legal rights, and when these rights were being trod upon by Canada’s antediluvian elected bodies. In this new and heroic era of appellate judging, the Supreme Court “would not hesitate to strike down laws the judges thought infringed fundamental rights and freedoms.”<sup>14</sup> Once a cautious and even humble institution, under Brian Dickson’s stout leadership the Court came to be “at the centre of political life in Canada.”<sup>15</sup>

In the hands of Sharpe and Roach, Dickson’s (purportedly) uninspired early career as a judge is employed as a literary device. *A Judge’s Journey* is biography as romance quest. It chronicles how a gifted but somewhat hesitant man overcame a series of daunting obstacles (his native conservatism being one) finally to achieve his destiny as a paragon of progressive judicial method during the crucial first years of the *Charter* era. If Pierre Trudeau was born to entrench the *Charter*, Brian Dickson was born to entrench a robust *Charter* jurisprudence. And if *A Judge’s Journey* has a unifying thread, it is a total and serene conviction in the value and wisdom of this jurisprudence. In this account, like a modern-day Saint Paul, Brian Dickson

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<sup>10</sup> *Ibid.* at 479.

<sup>11</sup> *Ibid.* at 5.

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.* at 444.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.* at 336.

journeyed along a preordained path. He was Canada's first great judicial apostle, the *Charter of Rights and Freedoms* his "good news".

Sharpe and Roach seem oblivious to the question begging underlying their claims about the Supreme Court and Dickson's impact on its jurisprudence. The defects of "formalism" (their term) both as a judicial practice, and more pertinently as a judicial practice within a parliamentary democracy, are treated as self-evident. The analytical and normative content of "creative" and "contextual" judging are also left for the reader to supply. What passes for legal theory in *A Judge's Journey* is a rigid liberal determinism. In Sharpe and Roach's Canada, social attitudes and sensibilities are carried forward on a prevailing liberal-progressive current. There are momentary deviations to be sure, some of which become the subject of litigation. But citizens are not to worry. When a judge like Brian Dickson, a judge almost mystically in tune with the national soul, implements a "creative" and "contextual" approach to legal issues, the law inevitably is restored to its right course. For Sharpe and Roach, it is simply inconceivable that the nation's politics might be internally complex and divisive, or that to be in tune with Canadian society might, now or someday, to be in tune with social conservatism, or even reaction. It is also inconceivable that some Canadians might have serious reservations that a coterie of unelected lawyers, secure in their tenure until age seventy-five, have managed to insinuate themselves to the "centre of political life."

If the claims made in *A Judge's Journey* are dubious and dogmatic, its stance toward historical sources is even more problematic. In the Preface to *A Judge's Journey*, the authors, if inadvertently, supply readers with at least two reasons to have serious misgivings about the basic motivation and character of this work. Sharpe and Roach explain that many of the most important and original sections of *A Judge's Journey*, especially those relating to the decision-making process at the Supreme Court of Canada, are based on the authors' exclusive and unrestricted access to the Dickson archive, a large cache of private judicial papers and recorded interview material deposited in the National Archives of Canada in 1995. The archive includes previously undisclosed case files, memoranda, judicial conference notes, out-of-court deliberations, and the research briefs and notes of his law clerks. Here Sharpe and Roach rightly suggest that this is a "rich and unusual resource"<sup>16</sup> for scholars. But two further revelations raise alarm. Before he came to work on the Dickson biography, one of the authors, Sharpe, had a long and close association with his subject. In the 1980s (as the authors make clear), Sharpe was an executive officer at the Supreme Court of Canada. In these years he became an intimate of Dickson, and a trusted retainer to the Court as a whole. In the early 1990s Sharpe undertook extensive recorded interviews with Dickson, and with Dickson's co-operation began a biography. After his death in 1998, Dickson's personal archive was closed to everyone save Sharpe. Not accidentally perhaps, Sharpe (with his chosen co-author) continued to enjoy exclusive access to these papers. From the point of view of the

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<sup>16</sup> *Ibid.* at ix.

scholarly objectivity of the project, this fact is worrying enough. But then some further information about the integrity of the archive itself. Before he turned over these materials, Sharpe and Roach reveal, “Dickson carefully vetted every file and removed any material that he thought should not be disclosed, even under the restrictive terms he imposed.”<sup>17</sup>

The authors express qualms about these matters, but for historians they are decidedly the wrong ones. Nothing is said about how Sharpe’s professional relationship, perhaps friendship, with Dickson might have influenced the nature and content of the book. With respect to the Dickson archive, the authors’ main preoccupation is with the sanctity of confidentiality at the Supreme Court. In writing the book, Sharpe and Roach were particularly concerned that a profligate use of Dickson’s notes might impair out-of-court deliberations between Justices. On this point Sharpe and Roach actually express *relief* that Dickson had been “meticulous and cautious”<sup>18</sup> in culling his archive, minimizing the chance that its use would injure ongoing operations at the Court. (Many historians would have taken a different view of Dickson’s evidence tampering.) The authors frankly concede that the fact that the archive has been compromised “weakens [their] ability to present a complete historical account.”<sup>19</sup> It would have been a larger concession, alas, from historians who had begun the project committed to telling the whole story. In the result, the Sharpe and Roach study suffers from a deficit of critical detachment, not source materials.

Neither the Foreword to *A Judge’s Journey* (a pro forma blurb written by Peter Oliver and Roy McMurtry), nor the authors’ Preface confront the really pertinent questions about the motivation, genesis, or methodology of this project. Why, for instance, did Dickson entrust his archive to Sharpe and Co.? On what criteria did Dickson hold back specific documents, even from friendly biographers? How might these decisions have skewed the information that remained? More generally, what is the appropriate stance of scholarly biographers toward their subject matter? Finally, and vitally, was *A Judge’s Journey* the critical inquiry of independent scholars or, in effect, an authorized biography by scholars handpicked for their admiring predilections toward Dickson and his career?

When the most plausible answers to these questions are collated, they support the latter view. Why did Dickson entrust his archive to Sharpe and Co.? The only sensible inference is that Dickson felt confident that Sharpe would write just the kind of book that he in fact has written, a book which would celebrate his career and especially his *Charter* jurisprudence. This, from the very outset of the Dickson project, before the first box was opened and document read, was the book’s foregone conclusion. A more intriguing question is why Dickson took pains to encourage such an undertaking, going so far to provide exclusive access to a selective private archive.

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<sup>17</sup> *Ibid.* at xii.

<sup>18</sup> *Ibid.* at xiii.

<sup>19</sup> *Ibid.*

Here the answer must be more conjectural. It seems fair to suggest, however, that after his retirement in 1990, Dickson harboured nagging doubts about public acceptance of judicial review under the *Charter*, and about his own contribution to this dramatic development in Canadian law and politics. Despite the exuberant enthusiasm of much of the press and the legal professoriate for judicial review under the *Charter*, Dickson worried that the country did not yet fully accept the idea that judges should be at the centre of Canadian politics. With characteristic shrewdness, Dickson believed that a sympathetic biography of his career could only enhance the prestige of the Supreme Court and its *Charter* jurisprudence, if only in more elite circles. This speculation squares with the fact that, as Sharpe and Roach describe at some length,<sup>20</sup> one of Dickson's primary goals as Chief Justice had been to increase the public profile and status of the Supreme Court.

Of the content of the materials Dickson held back, we are told and (for now) can know nothing. But the only viable supposition is that Dickson culled documents that might have further underlined the political contingency and contentiousness of *Charter* interpretation at the Supreme Court. Dickson wanted us to have some insight into this process, but not more than was good for us. In the event, however, *A Judge's Journey's* much ballyhooed "inside look" at decision making at the Supreme Court, while not uninteresting, too often amounts to an inside look at how Dickson overcame self-doubt, and the resistance of lesser men and women, to get things, especially the big things about the *Charter*, just right. If this is an implausible picture of Dickson's Supreme Court, it is a convincing picture of the *Charter* propaganda machine at full throttle. Here another point about *A Judge's Journey* can be made without qualification. If I am wrong in my central contention about the book, if in fact it is the product of open-ended inquiry, it remains the case that it does not *read* as such. On the contrary, *A Judge's Journey* reads as an elaborate contrivance, as if the Dickson archive, and in a sense (if with his collaboration) Dickson himself, has been disinterred in order to justify cherished dogma about recent Canadian constitutional history and interpretation. These judgments are fully born out by the book's structure and component parts.

The first chapter, an examination of Dickson's approach to the *Morgentaler* cases, lays down the pattern for the remainder of the work. In the first *Morgentaler*<sup>21</sup> case (decided in 1975), Dickson is said to have relied on his "conservative instincts" that "courts should follow clear precedents and defer to clear expression of legislative will."<sup>22</sup> In these years Dickson still was unwilling or unready to adopt the "creative approach to judicial lawmaking"<sup>23</sup> exemplified by Bora Laskin. Some ten years later, and in the wake of the *Charter*, the second *Morgentaler*<sup>24</sup> case reached the Supreme

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<sup>20</sup> *Ibid.* at 289-92.

<sup>21</sup> *R. v. Morgentaler* (1975), [1976] 1 S.C.R. 616, 53 D.L.R. (3d) 161.

<sup>22</sup> *A Judge's Journey*, *supra* note 3 at 10-11.

<sup>23</sup> *Ibid.* at 13.

<sup>24</sup> *R. v. Morgentaler*, [1988] 1 S.C.R. 30, 44 D.L.R. (4th) 385.

Court. By then Dickson and many of his co-Justices on the Supreme Court had discovered the secret of good judging: they had “become more creative”.<sup>25</sup> Dickson himself wrote a judgment striking down Parliament’s abortion law. In the interceding decade, the authors exuberantly contend, the crusty old formalist finally had come to realize that the Supreme Court of Canada was not merely a court of law, but the “nation’s moral compass”.<sup>26</sup>

And so the mould is set. Subsequent chapters concerning Dickson’s tenure as a judge in Manitoba’s trial and appellate courts are treated as a long prelude to his apotheosis as Canada’s great moralist and *Charter* champion. In the early years Dickson’s judging was “meticulous” but uninventive and cautious. He still lacked for the “fully worked out theory of equality”<sup>27</sup> that (it is alleged) was the trademark of his mature judging. The seventh chapter of the book charts how during his first five years on the Supreme Court in the 1970s, Dickson remained stubbornly comfortable “in the mainstream of a Court that was criticized [justly, the authors imply] for resolving disputes by applying precedents and deferring law reform to the legislatures.”<sup>28</sup> Still under the thrall of the Court’s habitually “narrow and legalistic approach,” Dickson continued to resist Laskin’s “creative approach to lawmaking”<sup>29</sup> and Wishart Spence’s “liberal and creative approach” to judging. But lest readers should grow impatient with Dickson’s “slow and cautious start” at the Supreme Court, they are soon comforted. During the late 1970s, “Dickson was quickly gaining ground and becoming significantly more [you guessed right] creative in his approach to judicial lawmaking.”<sup>30</sup>

The death of Laskin in 1984 presented Dickson with the opportunity to become Chief Justice, just as the first *Charter* cases reached the Supreme Court. This was a job which Dickson wanted, sought, and got. Sharpe and Roach are forthright in stating that Dickson brought a missionary zeal to the first *Charter* cases. In fact the Chief Justice “made no secret of his ... determination to breathe life into [the *Charter*’s] vague and general language.”<sup>31</sup> If the constitutional language was open textured, Dickson’s conceptual bent was not. He endorsed the trio of assumptions that now underpin much of Canada’s *Charter* orthodoxy. Dickson was certain, first of all, that from the seemingly vague and obscure language he could divine the *Charter*’s true philosophical essence, its “underlying principles”.<sup>32</sup> Second, he was confident in his ability to discern the “specific needs of an evolving Canadian reality.” Finally, having correctly identified what Canadians wanted and needed from the law, Dickson believed that he could craft legal decisions to answer these needs. It seems not to

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<sup>25</sup> *A Judge’s Journey*, *supra* note 3 at 16.

<sup>26</sup> *Ibid.* at 25.

<sup>27</sup> *Ibid.* at 128.

<sup>28</sup> *Ibid.* at 136.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.* at 157.

<sup>31</sup> *Ibid.* at 310.

<sup>32</sup> *Ibid.* at 313.

have occurred either to Dickson or to Sharpe and Roach that at best these assumptions are problematic and debatable, at worst, fatuous and arrogant.

In *A Judge's Journey* the theoretical problems raised by Dickson's *Charter* jurisprudence are mainly disregarded. But the authors do acknowledge that Dickson struggled with the seeming contradictions raised by *Charter* interpretation. No sooner had Dickson's decisions begun to convey the "profound message of the *Charter*"<sup>33</sup> when it occurred to him that it was daunting business to be (in Dickson's own words) the "John Marshall of Canada."<sup>34</sup> "Rights", undoubtedly great things, only awkwardly could be treated as absolute entitlements. Somehow rights claims had to be harmonized with the legitimate objectives and incursions of legislative bodies. As Sharpe and Roach document, there were moments in the 1980s when Dickson was much perplexed about how judges might accomplish this task without looking like politicians. His answer was the *Oakes* test.

Sharpe and Roach describe *R. v. Oakes*<sup>35</sup> as Dickson's finest hour. They contend that his decision in that case contains "five of the most important pages ever written in Canadian constitutional law,"<sup>36</sup> the veritable Rosetta stone of systematic *Charter* interpretation. But while the case unquestionably is historically significant, the authors do nothing to recover the juristic controversy that underscores its significance. Clearly not all contemporary commentators regarded *Oakes* as a breakthrough case, either for *Charter* rights or for *Charter* jurisprudence more broadly defined. Although cogent arguments have been made that the main effect of Dickson's "tests" was to obscure the inherently contingent and value-laden character of *Charter* interpretation,<sup>37</sup> these are nowhere to be found in the pages of *A Judge's Journey*. While the authors approve of contextual judging, they are not similarly interested in contextual history.

In the opinion of Sharpe and Roach, Dickson successfully rationalized and systematized *Charter* interpretation. But Dickson's actual record as a *Charter* diviner, so thoroughly and admiringly set forth in *A Judge's Journey*, betrays the project as all-too-human. Although Sharpe and Roach are disinclined squarely to confront their own evidence on this point, Dickson himself was sometimes flatly inconsistent in his *Charter* decision making. In *Oakes*, he posited a stringent standard for the infringement of *Charter* rights. Then, in *R. v. Edwards Books and Art Ltd.*,<sup>38</sup> apparently rattled by critics of the Supreme Court's "power-grab", Dickson qualified

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<sup>33</sup> *Ibid.* at 323.

<sup>34</sup> *Ibid.* at 325.

<sup>35</sup> *R. v. Oakes*, [1986] 1 S.C.R. 103, 26 D.L.R. (4th) 200.

<sup>36</sup> *A Judge's Journey*, *supra* note 3 at 334.

<sup>37</sup> As one commentator remarked soon after the case was decided, *Oakes* was an "ultimately unsuccessful attempt to mask the arbitrariness of the Court's exercise of its new found power" (Andrew Lokan, "The Rise and Fall of Doctrine under Section 1 of the Charter" (1992) 24 Ottawa L. Rev. 163 at 164).

<sup>38</sup> [1986] 2 S.C.R. 713, 35 D.L.R. (4th) 1.



this position.<sup>39</sup> Sharpe and Roach, always on watch for the reputation of their man, do not attribute this (and other flip-flops) to the incoherence of the *Oakes* test, not even to a failure of nerve. Dickson sometimes changed his mind as a function of his natural pragmatism and prudence. A similar tack is taken with regard to Dickson's shifting jurisprudence on capital and labour. Although Dickson helped bestow generous *Charter* protections on business corporations, he found it more difficult to make up his mind about the *Charter* rights of labour unions. This seeming contradiction is a useful bridge to a number of important issues regarding Dickson, social justice, and Sharpe and Roach's constricted and unconvincing treatment of these subjects.

If Sharpe and Roach emphasize one theme in their book, it is that Dickson ought to be remembered as the socially progressive champion of a socially progressive constitutional instrument. But in this regard a number of apposite questions are deflected or ignored. By what manner of social progressivism do private business corporations bear rights under the *Charter*? Why was Dickson so ambivalent about the *Charter* claims of labour unions? What did Dickson mean by the term "equality"? What are we to make of the fact that in his legal career Dickson was pervasively linked to that key bastion of social inequality, the private business corporation? What are we to make of his life of uncommon personal wealth and privilege? Can a lifelong ally of corporate capitalism also be a credible champion of equality and human rights? At the end of the day, just how *progressive* was Dickson's progressivism?

To its credit, *A Judge's Journey* provides readers with plenty of intriguing clues to these questions, if not even one critical insight or judgment. We are informed that Dickson was born to a "modestly prosperous"<sup>40</sup> family, the son of a prairie bank inspector who spent the Depression foreclosing on bankrupt farmers. This work was regular and remunerative enough that Dickson was able to finish secondary school and attend university in 1932. In the 1930s, as Canada was coming apart at the seams, Dickson completed undergraduate and legal studies. He graduated with a good deal of his banker father in him. His articles, undertaken in Winnipeg during the height of the Depression (a city divided by class and politics), mainly "involved collections, mortgage foreclosures, and tax sales."<sup>41</sup> This was an unpromising beginning for a social progressive. But, Sharpe and Roach maintain, the experience of wounds and comradeship during the Second World War shook Dickson from his bourgeois complacency. We are informed that he returned to civilian life with a "vision of Canada as an inclusive society."<sup>42</sup> Well, perhaps. But the record presented in *A Judge's Journey* might fairly lead one to different conclusions.

At the war's end, Dickson appears to have had a few pretty noninclusive projects on his mind. With his wife, the daughter of a wealthy businessman, Dickson "worked very hard to become a prominent member of the Winnipeg legal, business, and social

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<sup>39</sup> *A Judge's Journey*, *supra* note 3 at 357.

<sup>40</sup> *Ibid.* at 31.

<sup>41</sup> *Ibid.* at 41.

<sup>42</sup> *Ibid.* at 62.

establishment.”<sup>43</sup> In this he succeeded admirably. In the years before he became a judge in 1963, Dickson was a man (Sharpe and Roach are insistent) of steadfastly “progressive views”, but none which prevented his seamless integration with Manitoba’s WASP social and business elite. Dickson’s early legal career, while there were some laudable charitable activities, was largely devoted to the formation of corporate capital and the consolidation of social position. In this era, Dickson signally was not leading the battle for collective bargaining, socialized medicine, and old-age pensions. Arguably, in fact, if Dickson himself was a great proponent of these policies, he was allied professionally and socially to those who were not. During the crucial political and social struggles of the 1950s, Dickson was on the sidelines, leading a life of uncommon affluence and privilege. During his prime as a Supreme Court Justice in Ottawa, the Dickson family lived on a country estate with a stable of horses, full-time farm manager, and two domestic servants.<sup>44</sup>

Strangely, there is nothing in *A Judge’s Journey* to suggest that Dickson’s position of marked class inequality, or his lifelong alignment with Canada’s corporate and social elites, was a source of inner conflict or anxiety. Nor is it a matter of comment by his biographers. There is a way, of course, in which this makes sense. In many ways, as honourable as it was, Dickson’s judicial career exemplifies the ideological blinkeredness of Canada’s leading *Charter* proponents. It nicely paralleled the period in Canadian political history in which the progressive left largely abandoned systematic criticisms of capitalism and class for the less inconvenient manifesto of “rights”. This is a progressivism that costs the bearer nothing. It is the progressivism that permits the smooth transition from Supreme Court clerk to Bay Street associate. It is the progressivism that permits its well-dressed devotees to advocate for multinational banks and mining companies one day, same-sex marriage the next. It is a progressivism that permits Sharpe and Roach to hold up Brian Dickson as a great proponent of “equality”.

But this is to digress. If its anemic vision of equality were the only thing the matter with this book, it would not bear mentioning. In that case the reviewer might rightly dwell on the fact that it is an otherwise well-written and even interesting account of an important Canadian life. Regrettably, however, there are more consequential things the matter with *A Judge’s Journey*, beginning with the fact that it is an up-market exercise in legitimation. Dickson’s life is not critically evaluated so much as it is used to consolidate a political position. Every chapter and paragraph is calculated to convince readers of something external to the life and career of Brian Dickson: that judicial review under the *Charter* is the most welcome innovation in Canadian politics since Confederation, and that the people should rest easy with the empowerment of elite judges.

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<sup>43</sup> *Ibid.* at 65.

<sup>44</sup> *Ibid.* at 140.