

Frederick Vaughan, *Aggressive in Pursuit: The Life of Justice Emmett Hall* (Toronto: University of Toronto Press, 2004). Pp. xv, 285.

As Emmett Hall's biographer, Frederick Vaughan is more clear-eyed curator than choreographer of deeds. Despite his personal interactions with Justice Hall in the course of researching this book, Vaughan cultivates an even-handed tenor (Preface).

This tenor underscores the humanity of the subject, for Justice Hall's humanity is indeed the subject of this book. From the very title, Vaughan highlights what he feels was Justice Hall's defining characteristic; Vaughan rejected "Aggressive in the Pursuit of Justice" as a title because he felt that this would unduly narrow the qualification (255). Justice Hall was aggressive in all that he felt strongly about; Vaughan himself fell afoul of Justice Hall's temper in the course of a conversation related to Hall's Supreme Court colleagues.

The chronology of the book is chiefly linear. This feature, while practical for a full-length portrayal of the subject, is a double-edged sword. On the one hand, the reportorial narration allows for a detailed portrait of a man who made a lasting imprint on Canadian society. On the other, the relentless stacking of incident upon incident undermines the credibility of Vaughan's interpretive passages. Vaughan claims, for instance, that Hall's childhood, spent in genteel poverty, is the reason behind Hall considering money as an important measure of success (15, 19). Such claims, though made, are left undeveloped in this book.

It is true, however, that money concerns were a motivation behind the earliest formative event in young Emmett Hall's life. Concerned about their children's ability to resist the lurid attractions of Montreal, the staunchly Catholic Hall family relocated to Saskatoon from Saint Columban, Quebec in 1910. Having full vision in only one eye, Hall was ineligible to enlist in the armed forces for the Canadian effort in the First World War. With most young men from Saskatoon overseas on ill-fated military service, Hall became one of the few law students left in town. It was in Saskatoon, while attending the University of Saskatchewan College of Law, that Hall first encountered fellow-student John Diefenbaker. Law school was the setting for a friendship that would impact Hall's life, both positively and not, in the years to come.

Given relatively more latitude than the average student-at-law, Hall gravitated immediately towards litigation. This practice, which Hall grew to love, formed his famous attention to detail. Although it is unclear from Vaughan's narration to what extent Hall was able to choose the files he took on as a young litigator, his practice in Saskatoon consisted chiefly of criminal and insurance cases.

In the course of this work at the Bar of Saskatchewan, Hall developed his own lawyering style. His aggressive pursuit of his client's interest earned him a fierce reputation and, on more than one occasion, the displeasure of the judge in the

proceedings (41-43). Vaughan attempts to treat this period briskly, yet is foiled by an eagerness to deploy all the careful research he has conducted. The result is an overwrought narration, brimming with facts and opinions, sometimes pulling in different directions.

In October 1957, less than four months after he became prime minister, Diefenbaker appointed Hall Chief Justice of the Court of Queen's Bench for Saskatchewan. Five years later, Diefenbaker appointed Hall to the Supreme Court of Canada. Vaughan unabashedly addresses Hall's tendency to stroke Diefenbaker's ego. More strikingly, Vaughan meticulously catalogues a handwritten communication to Prime Minister Diefenbaker in which Hall detailed the Supreme Court's holding in a politically sensitive decision *before* that decision had been released to the parties and the public (102). Vaughan's treatment of Diefenbaker in this book reveals the latter as a desperately ambitious man who was surprisingly small-minded and unhappy with the successes of others (231-32, 253-54).

Hall's thirty years of private practice, defending clients in criminal proceedings, made him sensitive to matters of criminal jurisprudence (97). As a result, Hall was a great protector of the *Canadian Bill of Rights*¹ during his years on the Supreme Court bench, from January 1963 to February 1973. Hall's frustrations at being stymied by *stare decisis* saw him clash with some of his colleagues' strict-constructionist views. In *R. v. Wray*,² for instance, Hall's dissent in favour of upholding maximum procedural safeguards departed dramatically from Justice Judson's strict interpretation of the *Canada Evidence Act*.³ Hall seems to have enjoyed the theatrics of public reactions to his decisions. In his famous dissent in *Reference Re Truscott*,⁴ Hall called for the quashing of a criminal conviction due to, *inter alia*, its reliance on unreliable circumstantial evidence (206). Hall's basking in public approval was unseemly to some of his colleagues on the bench. Justice Abbott, for instance, went as far as to say that the *Truscott* dissent was an example of Hall's grandstanding (205).

In Hall's defence, Vaughan suggests that the former's progressive bent had simply fused with his vision of the activist role of the judge. Clearly, Hall would have enjoyed the activism of the Supreme Court bench rather more after the passage of the *Canadian Charter of Rights and Freedoms*⁵ in 1982 (188).

Vaughan spends a great deal of his book discussing Hall's participation in matters beyond the practice of law. From early on in his career as a litigator, Hall took his social duties as a devout Catholic and lawyer seriously. Before his appointment to the bench, Hall served as chairman of the board of St. Paul's Hospital, on the Saskatoon Catholic school board, and as a director of the Canadian Red Cross Society. Once on

¹ S.C. 1960, c. 44, reprinted in R.S.C. 1985, App. III.

² *R. v. Wray*, [1971] S.C.R. 272.

³ R.S.C. 1985, c. C-5.

⁴ *Reference Re Truscott*, [1967] S.C.R. 309.

⁵ Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

the bench, Hall accepted work on several high-profile public enquiries such as a co-chairmanship of an Ontario committee charged with studying the province's public education system (114, 143). Vaughan's careful analysis reveals that Hall's judicial duties suffered as a result of some of these commitments.

Not surprisingly, Hall's work on the Royal Commission inquiry into national health services is treated at some length. It is here, somewhat naturally, that the linearity of Vaughan's chronology is disturbed. Hall accepted to chair the Royal Commission while he was still Chief Justice in Saskatchewan, but carried on as chair when he was appointed to the Supreme Court. Under Premier Tommy Douglas, *The Saskatchewan Hospitalization Act* of 1946 had established a beachhead for state-financed medicine in Canada. Despite being perceived as "Diefenbaker's man", Hall produced a report in June 1964 that was deeply humanitarian in its foundations and led the House of Commons to adopt a national health care scheme in December 1966 (137-38). Vaughan claims the origins of Hall's humanitarianism lay in his Depression-era experiences in Saskatchewan. Be that as it may, the public enquiries were heated affairs, with the influential Canadian Medical Association (encouraged by its American analogue) strongly against a national health care scheme (124). Further, the discredited Diefenbaker government had since been replaced by the Liberal government of Lester B. Pearson. The research and writing of the Hall Report was deeply coloured by Hall's own muscular fair-mindedness, and in laying the framework for national healthcare, Hall planted the seed of an institution that has become emblematic of all things Canadian. If only as an historical log of this achievement, Vaughan's biography is important.

Vaughan's is a fair-minded, if plodding, biography that will only improbably be a mainstream commercial success for the Osgoode Society. Happily, the aim of the Osgoode Society is not commercial but rather to encourage research into Canadian legal history. *Aggressive in Pursuit* is the most recent fruit of this initiative, and provides an important glimpse of the evolution of the machinery of justice in Canada. Almost more importantly, it serves as a valuable reminder of the humanity of the cogs that make up that machinery.

Hall emerges staunchly human in this book. He lost his temper with colleagues, was a domineering teacher, and refused to travel economy class even while on official government business. This sort of detail, however, is the kind that endears the man to the reader. Despite these traits, and to some extent *because* of them, Justice Hall was a formidable progressive force.

S. Akbar Hussain
