# JUDGING LIVES: JUDICIAL BIOGRAPHY FROM HALE TO HOLMES

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In Australia, New Zealand and Canada, the writing of judicial biography has been a somewhat halting and sporadic enterprise. A few pearls glitter in the mud, but many have been written by unabashed admirers, based on inadequate or undisclosed sources, and published by small obscure presses where they rapidly, and perhaps deservedly, fell out of print.[1] The best that James Thomson could say, writing fifteen years ago, was that 'the literature focusing on the lives, intellect and professional careers of individual judges in Australia has not been dismal'.[2] More recently, he seems to have become reluctant to bestow even that faint praise. '[B]iographies of Australian judges ... have to quantitatively and qualitatively improve,' he admonished in 1998, requiring 'more and better scholarship'.[3] In both of these articles, however, Thomson assumes that the writing of judicial biography has some intrinsic value, and does not fully explain why scholars should comply with his exhortations. To the extent that he adverts to questions of justification, Thomson suggests that biographies of more recently named judges might assist the appointments process, by allowing predictions about 'the likely post-appointment performance of candidates for judicial office,' or might assist legal theory by 'enhanc[ing] understanding of judges' decision-making processes'.[4] These reasons may appeal to lawyers, legal academics, politicians and even the general public, but they are essentially presentist in nature and do not address the reasons why historians, legal or otherwise should want to engage in the writing or reading of judicial biography.

Writing *about* judicial biography remains rare everywhere in the common law world[5] with the exception of the United States, where there has been a recent surge of interest in the subject. The first National Conference on Judicial Biography held in 1995 resulted in over three hundred pages of papers published in the New York University Law Review, written by such luminaries as Richard Posner, G Edward White, Mark Tushnet, Laura Kalman, and others.[6] G E White, himself the author of mammoth biographies of Oliver Wendell Holmes and Earl Warren, has spoken recently of the renaissance of judicial biography,[7] but the clearest signal of the field's legitimacy is the creation of a course in American Judicial Biography, offered by the T C Williams School of Law at the University of Richmond, Virginia. Contrary to White's impressions, this renewed interest has not been reflected in any increase in the actual number of judicial biographies being published in the US. That number has remained fairly constant at about three or four per year over the last few decades, most devoted to US Supreme Court justices; it is the reflexivity of the enterprise that is new.

The language of renaissance suggests of course a re-emergence after a period of decline or quiescence, and the writing of judicial biography does indeed have its own history, its cycles of advance and retreat. This paper will attempt a historiography of judicial biography in the common

law world, principally in England and the Commonwealth, but with some comparative references to the American experience. First it will ask a number of obvious questions, such as: when did judicial biographies begin to be written and why? At what times and places was the enterprise of judicial biography more or less popular and why? What differences or similarities can one perceive among judicial biographies in England, the colonies, twentieth-century post-colonial societies, and the United States? After the main temporal and geographic contours of this form of scholarship have been sketched out, I will turn to a different order of questions. Is judicial biography a useful form of scholarship? Is it as useful for historians as for legal scholars? What should its aims be?

I should state first what criteria I am using when I speak of judicial biography. Principally I am interested in book-length works on individual judges or major works of collective judicial biography. I draw the line here because I am interested in works which offer a sustained interpretation of the life of the subject, not just a recounting of the stages in their career, and also because a book-length study represents a very substantial commitment of intellectual and temporal resources. I impose one more requirement, which is that the time spent by the subject in judicial office, as opposed to doing other things, should be of more than passing interest to the biographer.

Given the dearth of writing about judicial biography in the common law world outside the United States, it is tempting for Australasian, English and Canadian scholars to absorb the easily available American literature and to reflect its preoccupations. This would be a mistake, because modern American judicial biography is written principally as a kind of specialized intellectual history. My main argument is that it is wrong to look at judicial biography as a unity. Both its forms, and the reasons for writing it, have changed considerably as the judicial office itself has evolved over the centuries. Writing a biography of a US Supreme Court judge today is very different from writing the biography of a Victorian Lord Chancellor, one of the colonial judiciary in the tropical empire, or a member of the bench under the Stuarts. The current model dominant in the US assumes that judicial biography is aimed at a relatively small coterie of lawyers, legal academics and political scientists. It has a definite interiority about it – the focus is on the particular judge's patterns of thought, and how the events of his or her life contributed to the formation of those patterns. The outside world is mediated through the subject. If one is writing the biography of a 20th century member of the US Supreme Court, or indeed of a member of one of the higher courts in Australia, New Zealand or Canada, there may be some truth in that, though I think even here that judicial biography may have more to offer to historical scholarship.

However, judges at other times and in other societies played much more varied roles, both official and unofficial, than modern day judges of supreme courts. Their decisions were not necessarily reported and their contributions to intellectual history may have been slight; nonetheless their lives may be of great historical interest as windows on the age in which they lived. Whereas the intellectual history model focuses inward, the 'window on an age' approach focuses outward. We take the judge's life as the starting point and look out from there at the surrounding society. I take this phrase from the subtitle of a recent biography of one of Charles I's judges, Sir Robert Heath.[8] Heath did not have much of a chance to contribute to jurisprudence because he had the distinction to be dismissed twice from judicial office. Charles I had made him chief justice of Common Pleas in 1631, and dismissed him in 1634; then, just as the English Civil War was beginning Charles repented and made him chief justice of King's bench in 1642, but in 1645 the Long Parliament declared him civilly dead and vacated his office. One could not call this work a judicial biography as such, in that it devotes only a dozen pages to Heath's judicial career, yet it provides a vivid sense of the nature of judicial office-holding before the Act of Settlement. It succeeds admirably in providing a window on the Stuart age, as does a similar work on a contemporary figure, Sir Julius Caesar, judge in Admiralty under Elizabeth I and Master of the Rolls under James I.[9] I want to suggest that for those undertaking biographies of judicial figures in the Canadian or Australasian colonial or early national periods, the 'window on an age' approach is likely to be more fruitful than any attempt at purely intellectual history. The careers of our early judges have a fluidity about them which harks back to early modern times rather than forward to the streamlined career paths of most modern judges. And their contributions to our history are more likely to be, broadly speaking, as much in the political and social spheres as in the purely legal.

What then do the contours of judicial biography look like? According to the criteria outlined earlier, the first works we might want to call judicial biographies would be those of Thomas More which circulated in the late 16th century. More was Lord Chancellor from 1529 to 1532 and was executed by Henry VIII in 1535 for refusing to acknowledge the legitimacy of his divorce from Catherine of Aragon. More's political stance meant that it was not exactly safe to publish accounts of his life, and indeed it was not until twenty years after More's death, during the relative safety of the reign of Queen Mary, that More's son-in-law William Roper felt able to write down his recollections of More in manuscript form. Even these were not published — and then, in Paris — until 1626, nearly a century after More's death.[10] Roper does not devote many pages to More's judicial duties, but in those pages he provides a number of anecdotes to support his claim that More rendered speedy, impartial and accessible justice to all suitors who came before him.[11] He notes that More did not afford any advantages to various relatives who were engaged in Chancery proceedings, More famously proclaiming that 'were it my father stood on one side, and the Devil on the other, his cause being good, the Devil should have right'.[12] The saintly Chancellor also refused presents offered to him both after and in the course of litigation. It is not More's legal learning that is of paramount interest for Roper, but his sense of justice, founded on his unshakeable faith, his incorruptibility and impartiality, and his profound humanity.

This same general thrust is present in the next major work I want to notice, which is in many ways the fons et origo of judicial biography in the common law tradition. Gilbert (later Bishop) Burnet's account of Sir Matthew Hale, entitled *The Life and Death of Sir Matthew Hale, kt. Sometime Lord Chief Justice of His Majesties Court of Kings Bench*, was first published in 1682. It is the only biography in the list of books recommended by Samuel Johnson, and William Wilberforce saluted it as one of the best lives of eminent Christians. For Burnet, Hale represented both a model of practical Christian piety and a staunchly independent judge who managed to retain his principles amid the turbulent politics of the interregnum and Restoration years. Burnet knew all about turbulent politics. He was banished from court shortly after writing his biography of Hale and by 1685 felt obliged to leave England; he would remain on the Continent for three years, returning only in 1688 with William of Orange, who rewarded his loyalty with the bishopric of Salisbury.

Burnet stated that his 'design in writing [was] to propose a pattern of heroic virtue to the world,' in keeping with the aims of biography as practised since ancient times.[13] In fact his life of Hale, like Roper's of More, represents a transitional point between the medieval lives of saints and princes, and modern biographies which emphasize the development of character over the subject's lifespan. Unlike Roper, however, who portrays More as possessing his characteristic virtues from his earliest days, Burnet allowed his subject some youthful indiscretions before developing into the heroic figure of his adult years.[14] He relates that Hale abandoned a life of careless self-indulgence upon witnessing the sudden death of a friend after a night of debauchery. While not glossed in explicitly religious terms, the incident bears all the hallmarks of a conversion narrative, for Hale's protestantism is the sheet-anchor of both his public and private life. Burnet was not at all interested in Hale's contributions to the common law as such, but rather in his role in redefining the office of judge in a manner suitable for a limited constitutional monarchy. He does this by means of a series of vignettes which may seem quaint to modern eyes but which throw into sharp relief the norms and practices of other judges of the period:

After he was made a Judge, he would needs pay more for every purchase he made than it was worth .... [H]e said it became Judges to pay more for what they bought, than the true value; so those with whom they dealt might not think they had any right to their favour, by having sold such things to them, at an easy rate.[15]

Hale also stopped the pernicious practice of judges giving presents to the monarch and receiving presents from influential suitors. While on the assizes, a local gentleman sent Hale a buck for his table. Hale would not allow the court to proceed until he had paid for the buck, which obliged the gentleman to withdraw the proffered item. Burnet tells us that Hale would not receive private addresses from noblemen interested in causes *sub judice*, and sent a duke from his chambers who presumed to do so.[16] All these incidents are related almost in the manner of miraculous happenings in medieval hagiography, and in fact Burnet's life of Hale portrays its subject as a kind of secular saint. Written on the eve of the triumph of the protestant constitution of 1688, it provides

a clear role model for the independent judiciary who were to be the cornerstone of that constitution. This theme of the judge as a key figure in constitutional history, rather than purely legal history, will remain an enduring one for the next two hundred years.

The eighteenth century saw the beginnings of major initiatives in biography generally, with the publication of the *Biographia Britannica* series published between 1747-66, a precursor to the *Dictionary of National Biography*. But judicial biography did not flourish particularly. The early years of the century saw the first collective biography of the Lord Chancellors of England, published in two volumes in 1708, but of course the Lord Chancellor holds high political as well as judicial office, and his political activities are often easier and more exciting to read and write about than his judicial duties.[17] One individual life written in the 18th century does stand out, however: Roger North's account of the life of his brother, Lord Guilford, Chief Justice of the Common Pleas 1675-82 and Lord Keeper 1682-85. It is actually part of a triptych, being biographies of his three famous brothers, Guilford himself, Sir Dudley North and Dr John North, published posthumously in 1742-44. Guilford's vehement royalism had not endeared him to later commentators, and North wrote the biography and another lengthy vindication of Guilford in an attempt to rehabilitate his brother's memory. Although overly partisan at some points, it is a thoroughly engaging work, disarming in its recounting of many small incidents of the subject's private life. In its attempt at comprehensiveness and psychology it foreshadows modern biography, and its detailed discussion of a number of Guildford's judicial decisions give it some claim to be the first modern judicial biography. Unlike the lives of More and Hale, it is not cast in heroic mode. Roger North gives his brother ordinary human virtues and attributes, and invites the reader to identify with him.

It is not until the early decades of the 19th century that we find a remarkable increase in the supply of judicial biographies. From the 1820s to the 1860s there is a virtual explosion of writing in the field. Before 1825, for example, there was no book length biography of even such a towering figure as Sir Edward Coke. In the next dozen years two were written.[18] A new two-volume account of Sir Matthew Hale appeared, and individual lives of a number of Lord Chancellors such as Hardwicke, Eldon, Northington, and Jeffreys.[19] Then there were the collective biographies: beginning modestly with James Grant's *The Bench and the Bar* (1837), William Townsend's *The Lives of Twelve Eminent Judges of the Last and of the Present Century* (1846), W N Welsby's *Lives of Eminent English Judges of the Seventeenth and Eighteenth Centuries* (1846), these soon swelled to Lord Campbell's 7-volume *Lives of the Lord Chancellors from the Earliest Times* (1844-47), his 3-volume *Lives of the Chief Justices* (1849-57) and Edward Foss's monumental work, *The Judges of England* (1848-64) in nine volumes, providing notices on some 1589 judges from 1066 onwards. It would not be an exaggeration to call this the heroic age of judicial biography.

Why this sudden and expansive interest in the lives of England's judges? Virginia Woolf would have blamed it on the damp which, she alleged in her fantastical biography *Orlando*, settled on England on the first day of the 19th century, a damp which 'got into the inkpot as it got into the woodwork — sentences swelled, adjectives multiplied, lyrics became epics, and little trifles that had been essays a column long were now encyclopaedias in ten or twenty volumes'.[20] However the historian is likely to want a less fanciful explanation. England's wealthy and newly empowered middle classes were demanding new examples of leadership based on merit and struggle rather than birth. The bar was widely viewed as the preeminent way for young men short on means and long on ability to attain gentility and enter the ranks of the elite. Young men flooded into the bar — the number of barristers nearly quintupled between 1810 and 1855, to reach over 4000 in the latter year. The advice literature of the day constantly proposed studying the lives of eminent judges and lawyers of the past.[21] The new legal periodicals which emerged in the 1830s fed this trend with a steady stream of biographical notices, whetting the appetite for more sustained treatments. And indeed a frequent narrative thrust of these biographies is the hero overcoming respectable poverty by diligent study and hard work and going on to achieve some of the most glittering prizes England's legal order had to offer. Thus this passage about the career of Lord Hardwicke:

Of the numerous individuals whom the profession of the law has raised from indigence and obscurity to the possession of wealth and honours, there are few, if any, who at the outset of their career have had to contend against more powerful obstacles, or who have surmounted them with greater

success, than Philip Yorke, afterwards Earl of Hardwicke and Lord High Chancellor of England. His father was an attorney at Dover, ... without lucrative practice ... reduced to such poverty as to be wholly incapable of affording his only son the means of entering the profession of which he afterwards became such a distinguished ornament.[22]

William Townsend meanwhile urged the reader to:

trace the gradual ascent of the surgeon's boy, and the barber's son, up the rugged steep, and rejoice over the course of the brothers Scott [Lord Eldon and Lord Stowell] working their way up from the coal-fitter's yard at Newcastle, to the height of civil greatness – teaching the valuable lesson fraught with courage and constancy to the profession, that neither lowliness of birth, nor absence of fortune, nor delay of opportunity, is sufficient to crush or subdue the progressive and expanding force of talent and industry.[23]

The two-volume biography of Lord Eldon by Horace Twiss[24] went through three printings of 2000 each within 18 months, which qualified it as a best-seller by early Victorian standards, on a par with Samuel Smiles's *Lives of the Engineers* (1862-65). One of Coke's biographers suggested that he was disadvantaged at the outset of his legal career because 'he did *not* start in life with both the great advantages which Lord Talbot considered the best endowments of a law student, "parts and poverty," for he had a family estate, and excellent connexions'.[25]

The individual judicial biographies of the heroic early Victorian era are seldom read today, although the collective works by Campbell and, especially, Foss are still useful as reference works. While both are examples of the same genre, it would be difficult to imagine works more different in tone, style and approach. Where Foss is objective, scholarly, fair-minded and tedious, Campbell is partisan, gossipy, cavalier with facts and delightfully titillating. Thus we have his assessment of Lord Guilford:

We come now to one of the most odious men who ever held the Great Seal of England. He had not courage to commit great crimes; but selfish, cunning, sneaking, and unprincipled, his only restraint was regard to his own personal safety, and throughout his whole life he sought and obtained advancement by the meanest arts.[26]

Or consider this assessment of Lord Kenyon, Lord Chief Justice of England in the late 18th century. After enumerating some of his virtues, he continues with a barrage of vices:

[H]e was unacquainted with every portion of human knowledge except the corner of jurisprudence which he professionally cultivated; – he had not even the information generally picked up by the clever clerk of a country attorney from bustling about in the world; – of an arrogant turn of mind, he despised whatever he did not know, and without ever doubting, bitterly condemned all opinions from which he differed; – giving way to the impulses of passion, he unconsciously overstretched the severity of our criminal code; – he never sought to improve our judicial system either by legislation or by forensic decision; – and his habits of sordid parsimony brought discredit on the high station which he filled.[27]

It was no wonder that a contemporary judge lamented that Campbell's work 'had added a new terror to death'.[28]

Campbell was himself an example of the narrative of success so cherished by Victorian middle class audiences. The son of a minister of the Kirk, he graduated from St Andrew's at the age of fifteen, then forsook the study of theology for London and the bar.[29] Entering the House of Commons in 1830, he became successively Solicitor General and Attorney General. When Melbourne resigned in 1841 Campbell found himself with time on his hands and began his series on the Lord Chancellors, three volumes of which had appeared by 1845. Encouraged by their success – over 2000 copies of a second printing sold on the very day of publication – he immediately plunged into a second series on the chief justices of England. He was then appointed chief justice himself in 1850 and completed the third volume while on the bench. When the Liberals regained power in 1859 he was made Lord

Chancellor at the age of 80 and retained the seals until his death two years later. Campbell expressed his literary goals in this way:

my ambition is that [my works] may amuse the general reader, ... afford some instruction to those who wish to become well acquainted with our constitutional history; and above all, that it may excite the young student of law to emulation and industry, and confirm in his mind the liberal and honourable maxims which ought ever to govern the conduct of an English barrister.[30]

Judicial biographies continued to be written after the death of Lord Campbell, but without the same conviction or goals. His series on the Lord Chancellors was continued by J B Atlay in a two-volume set published in 1908, itself continued by two further volumes by R F V Heuston published in 1964 and 1987 respectively and covering the chancellors down to 1970. But after the *Judicature Acts* of the 1870s deprived the Lord Chancellor of his role as head of the Court of Chancery and left him only his judicial role in the House of Lords, it is not really appropriate to call lives of Lord Chancellors judicial biographies. Some Lord Chancellors have been very active on the bench, but others have not. Lord Kilmuir, for example, sat on only three appeals per year in the House of Lords during his eight years on the woolsack from 1954 to 1962.[31] Heuston's works are principally political biographies; even someone like Lord Dilhorne who sat on 205 appeals between 1969 and 1980 has only four pages devoted to his judicial decisions.[32] So the apparent continuity in the form of this series disguises a substantive discontinuity.

When we turn to the biographies of 'real' judges, we find a rather thin crop for the twentieth century in England. Aside from Lord Denning, who has two full-length biographies plus a multi-volume autobiography,[33] we find rather few biographies of judges of the High Court or the Court of Appeal. The writing of judicial biography in twentieth century England has settled into three main forms: a breezy journalistic type centred on human interest cases involving the judge in question – a style that first became very popular in the 1920s and 30s,[34] serious scholarly biographies of mainly pre-twentieth century judges,[35] and a perhaps surprising amount of judicial autobiography.[36] It is not hard to see why this should be so. The easy confidence in English legal institutions manifested in the heroic age of judicial biography has dissipated, and the earnest middle-class market of Victorian times, searching for edifying role models, has been replaced by a mass market entertainment culture. This means that serious judicial biography is likely to be produced only by scholars and aimed at a fairly limited academic market. Among twentieth century judges who did not become Lord Chancellors, there are few who have had historically significant pre or post-judicial careers. The career of Lord Reading, son of a Jewish London fruit merchant who became successively Attorney General, Lord Chief Justice of England from 1913 to 1921 and then Viceroy of India until 1926, is not likely to be repeated. As an aside, he was horribly frustrated as Lord Chief Justice and couldn't wait to do something else: day after day he would come out of court muttering that 'he really could not be expected to go on trying trumpery "running down" cases for the rest of his life and that his patience was at an end'.[37] Absent someone like Reading, the biographer would choose a judge who had made a significant intellectual contribution to the law, and situate his work as a kind of intellectual history, as has been so successfully done in the US context. The problem is, who aside from Lord Denning is there? Lord Diplock? Lord Atkin? Individual English judges of the twentieth century have not tended to stand out. They play no role in passing on the constitutional merits of legislation as judges in Canada, Australia and the United States routinely do, and no longer assume that their words will be avidly read in the far-flung outposts of empire as well as at home. This suggests that collective rather than individual biography might be a better way of understanding the evolution of English law in the 20th century.

When we turn to judicial biography in Canada, Australia and the former Empire, we are dealing with a much different phenomenon. There is no heroic age as such. When biographies of local judges begin to be written in Canada towards the end of the 19th century and in the early 20th, they are often written as an exercise in nostalgia for the good old early colonial days, or they subtly attempt to legitimate courts whose reputations suffered in the wake of the overtly politicized appointments processes following responsible government.[38] They are not written with a view to serving up role models for aspirant lawyers or illustrating constitutional history, nor do they pretend to be provide anything like an intellectual history of the law. Written by judges and lawyers in semi-retirement, they attempt mainly to chronicle rather than interpret the lives of their subjects. I

should say that I have to stretch my own rules here with regard to book-length biographies. There are very few of these in Canada before the First World War, and I have to include article length and collective biographies if I am to be able to speak of the phenomenon of judicial biography at all. All of these are biographies of judges of the superior courts of the individual provinces.[39] What is very noticeable as we proceed through the 20th century is the absence of biographies of members of the Supreme Court of Canada, founded in 1875. It is not until more than a century after its establishment that a book-length biography of any judge of the Supreme Court was written. That one was certainly worth waiting for – it is an excellent study of Chief Justice Sir Lyman Poore Duff, the longest-serving judge on the court, whose record 37 years of service is unlikely ever to be surpassed.[40] We have since had only four other book-length biographies of Supreme Court judges.[41] This pattern presents a certain contrast with the judges of the High Court of Australia. The first biography of a High Court judge appeared in 1931,[42] and at least ten have followed; some judges have even had multiple biographies.[43] In addition there are two collective biographical studies written about them. And we must recall that the High Court has always been smaller than the Supreme Court of Canada and was founded a quarter-century later. Comparative judicial biography opens a window on to a number of distinctions between Canadian and Australian legal and political culture.

It is no secret that the High Court of Australia very quickly established a reputation as a more powerful court, intellectually speaking, than the Supreme Court of Canada. Before the 1970s, a handful of individual Canadian judges such as Lyman Duff and Ivan Rand were known outside Canada, but the decisions of the Court as a whole were not known, whereas decisions of the Australian High Court were regularly noticed elsewhere in the common law world. Many of Australia's best legal minds found their way on to the High Court whereas their Canadian counterparts tended not to be offered the positions or to decline them when offered. The differences can be explained, I suggest, by three factors.

First, the Supreme Court of Canada traditionally played a much less significant constitutional role when compared to that of the High Court of Australia. From its foundation the High Court was the final court of appeal for the interpretation of the Australian constitution; appeals to the Privy Council existed for non-constitutional matters only, a concession to British capital in case Australian legislatures were ever tempted by confiscatory legislative impulses. Internal jurisdictional squabbles were beneath imperial notice in Australia, but in Canada Quebec had determined to keep open an outside avenue of appeal in 1867, and her desires could not be lightly ignored. In Canada the Supreme Court did not become the final court of appeal for constitutional matters for 75 years after its foundation, and in fact did not even give opinions in a number of important constitutional cases because one could proceed from the provincial courts of appeal directly to the Privy Council pursuant to what were called *per saltum* appeals. The higher status and responsibility thrust on the Australian High Court in 1903 may have served to attract a higher calibre of appointee than in Canada, and in fact the earliest appointments to the High Court were, in effect, persons whom Canadians would call Fathers of Confederation.

A second factor is the relative significance of regional and ethno-religious representation on the two courts. While the *Supreme Court Act* in Canada formally mandated only two (later three) judges trained in Quebec civil law and said nothing about the provenance of the remaining judges, in fact elaborate conventions of representation grew up very quickly. In Australia, such factors have played little role. No member of the bar of South Australia, Western Australia or the Northern Territory has been appointed to the High Court in a century, and for many years the complaint was that the High Court was composed of only Sydney and Melbourne men. Such a situation is simply unthinkable in Canada, where, in the absence of an elected upper house representing the provinces, regional representation is woven by convention into all national institutions. I do not want to be understood as saying that regional appointments are by definition bad or inferior, but certainly there are instances in Canadian history where the government felt compelled to appoint a candidate from a particular region even though there was no raw material. In 1931 Prime Minister R B Bennett lamented to the premier of New Brunswick a propos of a vacancy on the Supreme Court which, according to tradition, was to be filled from that province: 'we have no one in N B fitted by training and experience to become a member of the Court of last resort, in this Dominion'.[44] Reluctantly Bennett settled on a trial judge from the New Brunswick Court of King's Bench, Mr Justice Oswald

Smith Crocket. Justice Duff thought so little of him that on one occasion when Crocket, hoping to please Duff, told him that he was about to concur with him on a particular judgment, 'in that case,' Duff snapped, 'he would change his decision'.[45]

The third historical difference between the highest courts in Canada and Australia is a function of the very different structures of their legal professions and paths to judicial appointment. With its split profession and attendant glamorization of the role of barrister, Australia has hewed more closely to the English model than has Canada. As in England, a QC is virtually obligatory for higher judicial appointment, with the result that the judiciary tends to reflect very closely the makeup of the senior bar. The QC designation itself by and large reflects professional excellence. The result is a judiciary highly expert within a fairly narrow set of professional parameters, but one drawn from a thin social stratum excluding, until very recently, virtually anyone but white Anglo-Saxon Christian males.[46] In Canada the distinction between barrister and solicitor has no formal significance, and the QC designation was by the time of Confederation simply another ornament of patronage awarded by the attorney general, without any consultation of professional opinion. The judiciary was thus not virtually self-selecting, as in Australia. A much wider pool of candidates might be considered in Canada, many of them possessing less than the highest professional qualifications but perhaps endowed with other qualities nonetheless desirable in occupants of judicial office. The transition to a judiciary more broadly representative of the population in terms of gender and racial/ethnic identity thus commenced earlier and continued with more vigour in Canada than in Australia, though it is far from complete in either country.

All of which is to say that Canadian judicial biography at the Supreme Court level has not flourished in part for entirely justifiable reasons: the members of that court who, since 1875, have made any significant impact on the law or whose lives have possessed sufficient historical interest to engage the attention of a biographer can be counted on two hands. That began to change rapidly in 1982 with the adoption of the *Canadian Charter of Rights and Freedoms*, which thrust upon the Supreme Court a wide-ranging power of constitutional review of legislation. The Supreme Court has been obliged to rule on issues touching the lives of millions — from the accessibility of abortion services, the validity of gun control measures, the nature of surviving aboriginal claims in many parts of the country, and the recognition to be afforded same-sex relationships, to issues truly fundamental to the national character, such as the permissibility of Sunday shopping. And not surprisingly, the biographical train has leapt ahead: of the two judges most closely associated with the formulation of *Charter* jurisprudence, a biography of Justice Bertha Wilson has recently appeared, while one of Chief Justice Brian Dickson is now close to completion. Their colleague William McIntyre has also rated a biography and one devoted to Chief Justice Bora Laskin, whose career straddled the adoption of the *Charter*, is in preparation. These are primarily exercises in intellectual history, similar to those devoted to US Supreme Court justices, although with both Laskin and Wilson, the first Jewish lawyer and the first female lawyer respectively appointed to the Supreme Court, there will be an important sub-theme: that of the outsider as insider.

Turning away from the highest courts and considering the whole field of judicial biography in Canada and Australasia, one is struck by the same trend as in England to auto-biography, a form almost entirely absent before the First World War.[47] Why should this be so? One reason must be the combination of greater longevity and mandatory judicial retirement, but that is only a sufficient and not a necessary condition for the production of such a literature. Some were clearly produced for the same reasons that have motivated people from all walks of life to write their own stories: 'I have lived a satisfying and interesting life and I want to share it with a wider audience'. Others are motivated by concerns specific to the twentieth century. As public interest in, and media criticism of, judges has become more prevalent, autobiography provides judges an avenue for telling their side of the story, something they cannot do while still holding judicial office. Justice J H Muirhead of the Supreme Court of the Northern Territory presided over one of the most notorious trials in 20th century Australia, which ended in a jury convicting Lindy and Michael Chamberlain for the murder of their daughter Azaria at Ayer's Rock in 1980.[48] The result was later overturned after a special commission considered additional evidence which supported the parents' story that Azaria had been attacked and killed by a dingo. The judge devotes considerable space to the trial and to his reflections on jury trials in general, which he believes the accused should always have the right to waive. Judges on the Canadian frontier have also felt compelled to write their memoirs.

A major impetus behind that of Justice William G Morrow, the second resident judge of the Northwest Territories Supreme Court, seems to have been his anger at what he perceived as attempts by the federal government to derail an important aboriginal land claims case with which he was dealing in 1973, and a desire to set the record straight.[49] Lord Denning felt compelled to write a further instalment of his autobiography after the inglorious circumstances of his resignation in 1982.[50] Sir Garfield Barwick, a key player in the constitutional crisis which resulted from the dismissal of the Whitlam government in 1975, wrote his autobiography at the age of 90[51] in order to discredit a previous biography in which the author proclaimed his intention 'to pin on the man [Barwick] his responsibility for the crimes of 11 November 1975'.[52]

For some judges who have got used to constant media attention during their working lives, autobiography provides a last chance to stand in the spotlight. Lord Denning, unable to sit still in retirement, churned out several books, all of a more or less autobiographical nature. In Canada, examples of the phenomenon include Jules Deschenes, former Chief Justice of the Superior Court of Quebec,[53] and Samuel Hughes, an Ontario judge who presided over a major inquiry into child abuse at a facility run by the Christian Brothers at Mount Cashel, Newfoundland.[54]

When we turn to the colonial period, Australia is once again better served than Canada in at least quantitative terms, but there are two fine examples in the Canadian literature, biographies of Sir John Beverly Robinson of Upper Canada and Sir Matthew Baillie Begbie of British Columbia. Both provide good models of the blending of the intellectual history and 'window on an age' approaches I described earlier. When we turn from the settler colonies to the tropical empire of the Caribbean, Africa, Asia and the Pacific, there is a largely unexploited opportunity for using judicial biography to illuminate colonial history in general, the role of law in non-white and mixed race colonial societies, the contradictions of imperial rule, and the migration of legal ideas within the empire. Here the 'window on an age' approach really comes into its own, as judges play many different roles in colonial societies and their lives may throw light on aspects of colonial history that would otherwise remain obscure. There are however pitfalls: imperial judges are often administering an alien and imposed system of law, or where they are directed to apply local law are dependent on the advice of local authority figures who may have their own agendas at work. Biographers must come to grips with the role of these men in extending and often legitimating colonialism. I want to examine some of these problems and opportunities with reference to two recent biographies of imperial judges: Sir John Gorrie, a Scottish lawyer who served as judge and chief justice in Mauritius, Fiji, the Leeward Islands and Trinidad and Tobago in the second half of the 19th century; and Sir Robert Chambers, a member of the Supreme Court of Bengal in the last quarter of the 18th century. The titles of the two works convey accurately their quite different mandates: *Law, Justice and Empire: The Colonial Career of John Gorrie 1829-1892*,[55] and *Sir Robert Chambers: Law, Literature and Empire in the Age of Johnson*.[56]

The central theme in the Gorrie biography is indeed justice: Gorrie's pursuit of justice for the 'subject peoples' of the empire and the enormous resistance his quest generated in colonial elites, legal and otherwise. John Gorrie was a man of action possessing radical political and social views. He cut his teeth in imperial matters as counsel before the Royal Commission into the uprising at Morant Bay, Jamaica in 1865, in which 354 'rebels' were executed by sentence of courts martial, 85 executed without any trial, 600 flogged and over 1000 houses burned by order of Governor Edward Eyre.[57] Gorrie represented a group of British liberals and former anti-slavery activists anxious to reveal the full story before the Commission and bring the perpetrators to justice. This first exposure to colonial conditions sensitized him to the poverty and injustice endured by the majority of the local population. For the rest of his career he advocated not just formal equality but substantial justice for the ex-slaves, indentured labourers and indigenous peoples he encountered in his far-flung postings. As author Bridget Brereton points out, Gorrie would have been happier as an administrator than a judge, given his interest in reform. But his role as a judge did not preclude him from drafting ordinances, and here we can see the value of judicial biography in tracing the diffusion of juridical models throughout the Empire. While on his way from Mauritius to his new appointment as Chief Justice of Fiji in 1876, the small Danish schooner on which Gorrie was travelling stopped in at Adelaide after five weeks at sea. Here Gorrie did some research on the Torrens system and was sufficiently impressed that he successfully advocated its adoption in his next three postings in Fiji, the Leeward Islands and Trinidad. While in Fiji Gorrie virtually

drafted its statute book. He blended his own civil law heritage and that drawn from Quebec, Mauritius and St. Lucia with common law precedents to create a code which he argued would be more appropriate for local conditions than a complete adoption of English law.

Gorrie's career also provides a valuable perspective on race relations in the tropical empire. He was the most influential member of a commission which investigated serious abuses relating to indentured Indian labour in Mauritius, strove to ensure that white adventurers did not take over lands occupied by Fijians, made court action more accessible to the poor black population in the Caribbean, and became highly conversant with the problems of policing in a multicultural society when in Trinidad, where he observed, perhaps unwisely, in open court that 'the police were capable of any kind of perjury to save one of their own'.[58] For his efforts he earned the implacable enmity of white colonial elites, culminating in the recommendation of a judicial enquiry commission in Trinidad that he be removed from the bench because he had lost the confidence of the respectable elements of the population; fortunately, perhaps, he died before action could be taken.

Professor Brereton does not stop with her subject's contributions to legally-related matters. She is sensitive to the role of a colonial judge's family as social leaders in everything from deportment to recreations to charitable activities. And she effortlessly sketches in the economic, political and administrative background against which the lives of her central characters unfold. While it is true that she has chosen a subject whose views are broadly congenial to modern observers, she nonetheless has written a model biography of a colonial judge which deserves to better known. Here we have the contradictions of empire writ small: the rapacious waves of Europeans set loose by imperialism on the one hand, on the other, the fragile net of legality put in place by imperial authority to restrain them.

If the central theme in Gorrie's life is justice, in the Chambers biography it is literature. Written by a well-known Johnson scholar, Thomas Curley, the relationship between Samuel Johnson and his protégé Robert Chambers is a running theme of this highly evocative and extensively researched work. Chambers gave the second set of Vinerian lectures at Oxford, in succession to Blackstone, between 1767 and 1773. These were known for some time to have been secretly co-written with Samuel Johnson, but Curley explores their collaboration in greater depth than any previous scholar. In 1773 Chambers was appointed to the newly established Supreme Court of Bengal at Fort William (later Calcutta), where he would remain for 26 years, the last eight as chief justice. Curley's argument is that Chambers:

had the greatness of mind to let India transform English law into a hybrid creation that outlasted the British empire and helped to shape the political fabric of the world's most populous ... modern democracy.[59]

He is able to reconstruct this formative period in Anglo-Indian jurisprudence in some detail because of his 1984 discovery, at Calcutta's Victoria Memorial Hall, of 72 surviving judicial notebooks of Chambers and a fellow judge. Using these and a mass of other sources he provides both a window on an age, a rich portrait of the English legal and literary scene and Anglo-Indian society in the late 18th century, and an intellectual history of an early contributor to Anglo-Indian law.

How well do these two biographies surmount the challenges I identified earlier? Brereton does so rather better than Curley. While she generally approves of Gorrie's views and his crusading mission, she can be critical of his views and actions. However, she does not always emphasize the contradictions inherent in his position. In Fiji, for example, Gorrie was strongly in favour of white settlement and opposed attempts by local chieftains to control areas that they did not actually use. Providing an orderly system of Crown grants to Europeans was, he said:

the only way to prevent squatting, and to provide a revenue sufficient to permit the country to be governed at all. Any disposition on the part of the natives to resent reasonable and proper settlement must be put down just as firmly as sedition among the whites.[60]

Brereton reports this but does not provide any comment. How one could expect the Fijians to behave

'reasonably', when a quarter of their entire population was wiped out by measles in 6 months in 1875 owing to lax quarantine procedures by the British, is never raised as an issue. On the one hand, the British sought to bring the territory of Fiji within the ambit of European civilization; on the other, they felt that plantation labour would be demoralizing for the Fijians, and thus imported Indians and Polynesians to do the work, while leaving the Fijians to continue their traditional life. Gorrie actively supported the recruitment of Polynesian labour under government supervision, to 'relieve the pressure on the Fijian whom we hope to see preserved as a Race'.[61] The Fijians were to be kept in a kind of bell jar or anthropological museum, insulated from the economic development that was to be undertaken on their 'unused' lands. What Brereton does not really explore is how Gorrie managed to preserve his belief in the empire as a force for progress and justice in the face of the unceasing resistance he encountered everywhere in his efforts to carry out that mandate.

Curley's biography of Robert Chambers fares less well in this regard. He is probably right to observe that after Sir William Jones, Chambers was probably the British jurist most genuinely interested in Indian law of his generation, and to note Chambers's significant contribution to the development of Anglo-Indian law. What he fails to recognize is the British need at this point in the imperial encounter to 'legitimize [their] rule in an Indian idiom'.[62] Anglo-Indian law could be seen as the iron hand of colonialism in the velvet glove of the shastra and the sharia, not as the progressive cross-cultural achievement that Curley would have us believe. Scholars have suggested that the end result of British efforts to codify local law was the entrenchment of the more conservative version of Hindu law idealized in ancient texts, rather than the more flexible version recognized in local custom which was less sympathetic to caste and male privilege. As Janaki Nair has said, the Orientalists' efforts to homogenize and codify theological aspects of Indian law effected:

a Brahmanisation of Indian law at the expense of customary law, and an invidious distinction was made and retained between the spheres of 'personal' and 'public' law, to the continuing detriment of women's rights within the family ... . A high cultural Brahmanism, posturing as an antique, universal 'tradition', was thus thoroughly imbricated in the articulation of colonial modernity, and ... even received a fresh lease on life.[63]

Similarly, D A Washbrook has pointed out that:

with the support of British power, the Hindu law expanded its authority across large areas of society which had not known it before, or which for a very long period had possessed their own more localised and non-scriptural customs.[64]

Curley makes little attempt to engage with post-colonial scholarship by Indians or others, and his equation of law with authoritative texts is inadequate for any profound understanding of Chambers's contribution to Anglo-Indian law. This failure fully to contextualize Chambers within the dynamics of imperial rule diminishes what is otherwise a quite remarkable achievement. While Curley, through Chambers, provides us with a window on late 18th century India, it is tiny casement rather than a sweeping picture window, and there are definitely some flaws in the glass.

This brings me to a final point about biographies of judges or colonial officials in the non-settler empire. By and large academics in Africa and Asia have other priorities, but even if they wanted to write a biography of an important figure in their colonial past, they would be hard pressed to do so for a variety of very practical reasons. They have much less access to funds for research and international travel than scholars in Canada or Australasia, and in many cases the primary sources will be in Britain or strewn about the world. If biographies of these figures are going to be written it is much more likely that someone from the First World academic community will do so. Under such circumstances it behooves the researcher to consider very carefully the question of voice and perspective. The local view and the imperial view may be very different, may indeed be irreconcilable. But they need at least to be acknowledged.

Judicial biography is not an easy undertaking. Yet the role of judges in the common law world is too

important to be ignored. If the enterprise is to go forward we must have some idea of which models are useful and which are not. I have tried to suggest that the US approach is perhaps too centred on intellectual history, while the genre in England has run out of steam. If we are to explore the lives of judges in Australia, New Zealand or Canada, or of colonial judges elsewhere in the former empire, we have largely to create our own models. A continuing dialogue with the broad themes of national, colonial and imperial history will, I suggest, be more fruitful than one limited to purely legal themes. Such work has the potential to make a major contribution to the socio-legal history of the common law world.

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[1] In Canada, one might mention the exemplary biographies by David Ricardo Williams of Chief Justice Sir Lyman Poore Duff, *Duff: A Life in the Law* (1984) and of the first Chief Justice of British Columbia, *The Man for a New Country: Sir Matthew Baillie Begbie* (1977), as well as Gordon Bale, *Chief Justice William Johnstone Ritchie: Responsible Government and Judicial Review* (1991); Patrick Brode, *Sir John Beverley Robinson: Bone and Sinew of the Compact* (1984); and Ellen Anderson, *Judging Bertha Wilson: Law as Large as Life* (2001). In Australia, Charles Herbert Curry's *Sir Francis Forbes; the first Chief Justice of the Supreme Court of New South Wales* (1968) is a fine study of a colonial chief justice. Zelman Cowen's *Isaac Isaacs* (1967); (rev ed 1993) is worthy of note, as is the collective biography of High Court judges by Graham Fricke, *Judges of the High Court* (1986). The latter is refreshingly frank in its assessments considering that its author held judicial office at the time of writing. John Rickard's *H B Higgins: The Rebel as Judge* (1984) provides a good example of the potential of psycho-biography although it devotes less time to Higgins's judicial career than might have been hoped. New Zealand naturally offers a smaller field of biographical subjects, but mention might be made of Alex Frame's, *Salmond: Southern Jurist* (1995). Salmond served only four years on the Supreme Court of New Zealand before his untimely death in 1924 but as Australasia's most recognized legal theorist his life deserves to be better known. A recent doctoral dissertation makes a significant contribution to the field: Grant Morris, 'Chief Justice James Prendergast and the Administration of New Zealand Colonial Justice, 1862-99' (PhD thesis, University of Waikato, NZ, 2001).

[2] James A Thomson, 'Judicial Biography: Some Tentative Observations on the Australian Enterprise' (1985) 8 *UNSWLJ* 380, 380.

[3] James A Thomson, 'Swimming in Air: Lionel Murphy and Continuing Observations on Australian Judicial Biography' (1988) 4 *Aust J Leg Hist* 221, 228 (review of Jenny Hocking, *Lionel Murphy: A Political Biography* (1997)).

[4] Thomson, above n 2, 382.

[5] Richard Gosse, 'Random Thoughts of a Would-Be Judicial Biographer' (1969) 19 *U Toronto L J* 597; R F V Heuston, *Judges and Biographers* (1967).

[6] 'Symposium: National Conference on Judicial Biography' (1995) 70 *NYULRev* 485. See also J W Howard, Jr, 'Alpheus T Mason and the Art of Judicial Biography' (1991) 8 *Constitutional Commentary* 41; Spillenger, 'Lifting the Veil: The Judicial Biographies of Alpheus T Mason' (1993) 21 *Reviews in Am Hist* 723; M J Gerhardt, 'The Art of Judicial Biography' (1995) 80 *Cornell L Rev* 1595; Warren M Billings, 'Judges' Lives: Judicial Biography in America, 1607-1995' in Timothy L Coggins (ed), *The National Conference on Legal Information Issues: Selected Essays* (1996).

[7] G Edward White, 'The Renaissance of Judicial Biography' (1995) 23 *Reviews in Am Hist 716*.

[8] Paul Kopperman, *Sir Robert Heath 1575-1649: Window on an Age* (1989).

[9] Lamar M Hill, *Bench and Bureaucracy: The Public Career of Sir Julius Caesar, 1580-1636* (1988).

[10] It is conveniently found in Richard S Sylvester and Davis P Harding (eds), *Two Early Tudor Lives: The Life and Death of Cardinal Wolsey by George Cavendish [and] The Life of Sir Thomas More by William Roper* (1962). All page references are to this edition.

[11] Of these claims, only the first has been doubted by modern scholarship, which has shown that a backlog of cases remained after More's resignation, but attributes the slowness of litigation largely to the intractability of the litigants rather than judicial procrastination: J A Guy, *The Public Career of Sir Thomas More* (1980).

[12] Roper, above n 10, 220.

[13] Gilbert Burnet, *The Life and Death of Sir Matthew Hale, Kt. Lord Chief Justice of England* (1805) 41.

[14] In general, though, Burnet deprecated the tendency of 'writing lives too jejunely, swelling them up with trifling accounts of the childhood and education and the domestic or private affairs of those persons of whom they write, in which the world is little concerned'; ibid viii.

[15] Ibid 83.

[16] Ibid 40-41.

[17] *The Lives of all the Lords Keepers and Lords Commissioners of the Great Seal of England, from William the Conqueror to the present time,* 2 vols (1708). Although the author is identified only as 'an impartial hand,' he is generally acknowledged to be John Oldmixon.

[18] Humphry Woolrych, *The Life of the Right Honourable Sir Edward Coke, Knt Lord Chief Justice of the King's Bench* (1826); Cuthbert William Johnson, *The Life of Sir Edward Coke, Lord Chief Justice of England in the Reign of James I with memoirs of his contemporaries* (1837).

[19] J B Williams, *Memoirs of the Life, Character, and Writings, of Sir Matthew Hale, Knight, Lord Chief Justice of England* (1835); George Harris, *The Life of Lord Chancellor Hardwicke*, 3 vols (1847); Robert Henley Eden, *A Memoir of the Life of Robert Henley, Earl of Northington, Lord High Chancellor of Great Britain* (1831); Humphrey Woolrych, *Memoirs of the Life of Judge Jeffreys* (1827).

[20] Virginia Woolf, *Orlando* (1994) 176.

[21] See eg, John Raithby, *The Study and Practice of the Law considered, in their various relations to society in a series of letters* (2nd ed, 1816) 17, 28; 'When I look back upon the history of my own country, or search the records of those which are no more, I rejoice that the most elegant ornaments of the one, and the noblest monuments of the other, are to be found in the fame of those men who have studied the laws, and directed the jurisprudence of their respective nations ... . Look up to these exalted characters, and resolve to imitate, if you cannot equal them. ... [N]ot only their works but their actions ought to be the objects of investigation. Endeavour to mark their feelings while you peruse the accounts of their lives; see how the ambition of this man has led him too far, or the immoderate love of repose too greatly restrained him ... how the intemperance of lust has destroyed another, or his want of social affection rendered his powers and acquisitions useless.'

[22] William N Welsby, *Lives of Eminent English Judges of the Seventeenth and Eighteenth Centuries* (1846) 287.

[23] William Townsend, *The Lives of Twelve Eminent Judges of the Last and of the Present Century*

(1846) iv.

[24] Horace Twiss, *The Public and Private Life of Lord Chancellor Eldon*, 3 vols (1844).

[25] Johnson, above n 18, 6 [emphasis added].

[26] J Campbell, *The lives of the Lord Chancellors and Keepers of the Great Seal of England from the Earliest Times till the Reign of King George IV* (1845-47) iii, 429.

[27] Ibid 1.

[28] Attributed to Lord Lyndhurst in the entry on Campbell in A W B Simpson, *Biographical Dictionary of the Common Law* (1984) 99-102.

[29] Ibid 100

[30] Campbell, n 26, i, xi.

[31] R F V Heuston, *Lives of the Lord Chancellors 1940-1970* (1987).

[32] Ibid 200-04.

[33] Iris Freeman, *Lord Denning: A Life* (1990); Edmund Heward, *Lord Denning: A Biography* (1991); A T Denning, *The Family Story* (1981); *The Closing Chapter* (1983).

[34] See eg, George Pollock, *Mr Justice McCardie: A Biography* (1934); Evelyn Graham, *Fifty Years of Famous Judges* (1930); *Lord Darling and His Famous Trials* (1929); Edward Marjoribanks, *The Life of Lord Carson* (1932); Earl of Birkenhead, *Fourteen English Judges* (1926); Stanley Jackson, *The Life and Cases of Mr Justice Humphreys* (1952); Iain Adamson, *A Man of Quality: A Biography of the Hon. Mr Justice Cassels* (1964).

[35] See the biographies of Heath, Kopperman, above n 8 and Hill, above n 9, as well as Denis Judd, *Lord Reading* (1982); Stephen Waddams, *Law, Politics and the Church of England: the Career of Stephen Lushington, 1782-1873* (1992); George W Keeton, *Harvey the Hasty: a Medieval Chief Justice* (1978); Henry J Bourguignon, *Sir William Scott, Lord Stowell, Judge of the High Court of Admiralty, 1798-1828* (1987); K J M Smith, *James Fitzjames Stephen: Portrait of a Victorian Rationalist* (1988); R A Melikan, *John Scott, Lord Eldon, 1751-1838: the Duty of Loyalty* (1999).

[36] In addition to Lord Denning's autobiographical work, L F S Upton, *The Loyal Whig, William Smith of New York and Quebec* (1969), see Dame Elizabeth Lane, *Hear the Other Side: the Autobiography of England's First Woman Judge* (1985); Sir Peter Bristow, *Judge for Yourself* (1986); Muriel Box, *Rebel Advocate: A Biography of Gerald Gardiner* (1983) [technically not autobiography but written by Lord Gardiner's widow, with whom he had collaborated]; Sir Frank Douglas MacKinnon, *On Circuit, 1924-1937* (1940); Quinton Hogg (Baron Hailsham of St Marylebone), *The Door Wherein I Went* (1975) and *A Sparrow's Flight: the Memoirs of Lord Hailsham of St Marylebone* (1991); *Both Sides of the Circle: the Autobiography of Christmas Humphreys* (1978); Sir Neville Faulks, *A Law Unto Myself* (1978).

[37] Judd, above n 35, 186.

[38] J W Lawrence, *The Judges of New Brunswick and Their Times* (1907) [reissued with an introduction by D G Bell (1985)]; D B Read, *The Lives of the Judges of Upper Canada and Ontario from 1791 to the Present Time* (1888); Charles Townsend, *Life of Honorable Alexander Stewart* (1911); William Renwick Riddell, *The Life of William Dummer Powell, First Judge at Detroit and Fifth Chief Justice of Upper Canada* (1924). For context see D G Bell, 'Judicial Crisis in Post-Confederation New Brunswick' (1991) 20 *Manitoba LJ* 181; Philip Girard, 'The Supreme Court of Nova Scotia, Responsible Government, and the Quest for Legitimacy, 1850-1920' (1994) 17 *Dalhousie LJ* 430.

[39] The first modern scholarly biography of a Canadian judge appears to be Upton, above n 36.

[40] Williams, above n 1.

[41] Bale, above n 1; Dennis Gruending, *Emmett Hall: Establishment Radical* (1985); W H McConnell, *William R McIntyre: Paladin of the Common Law* (2000); Anderson, above n 1. The first comprehensive collective biography of all the Supreme Court judges was published late in 2000 to commemorate the 125th anniversary of the Court. Each entry contains only the barest biographical details in a standardized format (religion, political affiliation and post-judicial activities are excluded), and no assessment or appreciation is provided; see *The Supreme Court of Canada and its Justices 1875-2000. A Commemorative Book* (2000). In contrast, at least two collective studies of judges the High Court of Australia exist: Eddy Neumann, *The High Court of Australia: A Collective Portrait 1903 to 1972* (2nd ed, 1973), and Fricke, above n 1. Neither shies away from assessment and interpretation of the judicial lives under review.

This focus on biographies of Supreme Court judges is primarily a function of the existing literature. Biographies of lower court judges can also provide rich insight into a historical period and into different models and theories of the judicial role: for a suggestive example see Tom Mitchell, ' " Laws Grind the Poor and Rich Men Rule the Law" : Lewis St George Stubbs, the Canadian State, and the Ignominy of Judicial Insurgency' (1997) 22:2 *Prairie Forum* 277-313.

[42] Admittedly, this was by his niece: Nettie Palmer, *Henry Bournes Higgins: a Memoir* (1931).

[43] For a bibliography of biographies of High Court judges only down to 1985, see Thomson, above n 2, 393-96. To these should be added Joan Priest, *Sir Harry Gibbs: Without Fear or Favour* (1995). Several biographies of Lionel Murphy focus mainly on his political career.

[44] James Snell and Frederick Vaughan, *The Supreme Court of Canada: A History of the Institution* (1985) 147.

[45] Ibid 164.

[46] Although with regard to Jewish judges, it must be noted that Sir Isaac Isaacs went to the High Court of Australia in 1906, while the Supreme Court of Canada waited until 1970 for Bora Laskin's appointment as its first Jewish member.

[47] The only 19th century examples I have found are *The Life and Times of Henry Lord Brougham written by himself* (1871); Mrs Hardcastle, *Life of Lord Campbell, Lord High Chancellor of Great Britain: consisting of a selection from his autobiography, diary and letters* (1881); *Autobiographical notes of George Denman, 1819-1847* (1897).

[48] *A Brief Summing-up* (1996).

[49] W H Morrow (ed), *Northern Justice: The Memoirs of Mr Justice William G Morrow* (1995) 156-79. Morrow's predecessor also wrote his memoirs: Jack Sissons, *Judge of the Far North* (1968).

[50] Upton, above n 36.

[51] G Barwick, *A Radical Tory: Garfield Barwick's Reflections and Recollections* (1995).

[52] David Marr, *Barwick* (1980)

[53] *Sur la Ligne de Feu* (1988).

[54] *Steering the Course: A Memoir* (2000).

[55] Bridget Brereton, (*Law, Justice and Empire: The Colonial Career of John Gorrie 1829-1892*

(1997).

[56] Thomas Curley, *Sir Robert Chambers: Law, Literature and Empire in the Age of Johnson* (1998).

[57] The matter is treated at greater length in Geoffrey Dutton, *In Search of Edward John Eyre* (1982) and in Bernard Semmel, *The Governor Eyre Controversy* (1962).

[58] Brereton, above n 55, 237.

[59] Curley, above n 56, 542.

[60] Breteton, above n 55, 123.

[61] Ibid 141.

[62] Javed Majeed, *Ungoverned Imaginings: James Mill's The History of British India and Orientalism* (1992) 22. See also Ranajit Guha, *An Indian Historiography of India: A Nineteenth Century Agenda and its Implications* (1988).

[63] *Women and Law in Colonial India: A Social History* (1996) 41.

[64] D A Washbrook 'Law, State and Agrarian Society in Colonial India' (1981) 15 *Modern Asian Studies* 649, 653.

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