

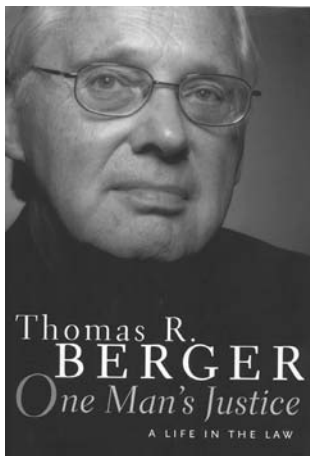
community, and then being given something useful to do" (page 22). A community-based initiative facilitated by an Institute for the Humanities attached to a university might explore how the university community could discover something useful to do. The concept of community articulated by Dr. Jareg seems to have a holistic character; it is a collection of all people coincidentally gathered in a particular place. Dr. Jareg is referring to a Ugandan village, with all of its integrated components. It is her hope that the young people from this village can be reintegrated back into their community. In contrast, "community" in Canada can often mean a collection of people bound together by a particular concern or interest. We see in Canada groups of people gathered to lobby various levels of government. We also see a community of concerned individuals, organizations, business interests, NGO's and government bodies able to raise funds to develop or re-develop community in areas such as those described by Axworthy. Various differences in our definition of "community" create challenges: one must ask where the Canadian community might be. Is this "political" enough to satisfy Axworthy's criticism of lack of academic involvement? That question can only be answered when we see the discussion about community participation unfold with all that it entails.

From my point of view, the value of this book cannot be found in a political or economic assessment of statements made. Canada's ability economically to sustain the bureaucratic infrastructure through which decision-making information is collected and presented, maintaining Canadian consulates and establishing a peace keeping presence aside, the value is in the answer to the question, does this book kindle the imagination of Canadians as to Canada's place in the global arena? Key to Canada's ability to navigate in this new world is an political leadership. When Axworthy states that this is the choice that Canadians must make, and then asks if we are ready for such an undertaking, we can identify his intended audience. I hear Axworthy speak to me as a member of a

community geographically described by electoral boundaries. Axworthy goes into great detail building his case for the need to do things differently, to change the focus of discussion so that real solutions are developed. He builds his case as he gives an account of his time in Sudan and Uganda and Bosnia, Cambodia, Croatia, Rwanda; these are areas we are familiar with from news accounts of horrible atrocities. His description of the Ottawa Process on Landmines and the challenges in getting 143 signatures on a treaty banning the manufacture, use and export of anti-personnel land mines illustrates the moral imperative and the confidence that that imperative can be met. It builds in the reader a confidence that even as the quiet neighbour to a superpower there is opportunity for Canadians to have a place in the world, to participate with our own agenda.

The overwhelming concerns for many Canadians are issues of autonomy given our economic, cultural and social proximity to our neighbour. Axworthy points out in his discussion of American "Treaties and Transactions: Rules or Power," that there *is* opportunity to negotiate sustainable solutions. Given the complexities of NAFTA, the challenge becomes one of ensuring that a Canadian design would be part of this evolving North American fabric. In his account of relationships between the U.S. and Mexico one begins to see the consistencies in Axworthy's Canadian design. Our relationship with the US and Mexico must be navigated with the same skills and instruments as those required in the broader expanse of the world stage. The choice of tools is a political one. Canadians must make decisions at the polling station based on sound information regarding our country's potential at home and internationally. It is imperative to lead with what Axworthy refers to as soft power because the alternative would be the loss of Canada to an overwhelming US agenda.

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## *One Man's Justice: A Life in the Law* by Thomas R. Berger

—Philip Bryden

Few Canadians can lay claim to a legal career as remarkable as that of Tom Berger. In addition to more than thirty years of practice as a lawyer, Berger had a brief career as a politician (serving as a Member of Parliament, a Member of the British Columbia Legislative Assembly and Leader of the British Columbia New Democratic Party). He spent twelve years as a justice of the British Columbia Supreme Court. He also served as a commissioner of inquiry in places as far flung as the Mackenzie Valley, Alaska and India. *One Man's Justice* is Berger's account of his life in the law, and a fascinating account it is.

*One Man's Justice* is not a conventional autobiography (if there is such a thing) because so little of the focus of the book is on Berger himself. He offers the reader occasional glimpses of his background and family life, but the book is really about the cases in which he appeared as counsel. Berger's political career barely rates half a dozen paragraphs in the 332 pages of text. Even Chapter 6, which is entitled "To the Bench and Back", is less a discussion of Berger's years as a justice of the British Columbia Supreme Court than it is a defence of the actions that led him to resign his judicial office and return to the private practice of law in 1983. *One Man's Justice* might well have been entitled *A Barrister's Tale*, since it is mainly the story of Berger's search for justice for his clients, rather than his reflections about justice in the abstract.

Anyone who has read *One Man's Justice* will quickly come to understand why Tom Berger is so well respected as a lawyer (and also why he is so successful). He demonstrates the barrister's art of pruning the facts of the cases he describes to their essential elements, while adding just enough detail and colour to keep the reader's interest. He marshals his legal arguments with care. He is scrupulously fair in his presentation of the arguments raised by his opponents. Nevertheless, he inexorably draws the reader toward the conclusion that the courts were correct in finding that justice lay on the side of his clients (or that the courts erred on the rare occasions when they found against him). He has a way of taking complicated legal ideas and expressing them in simple and understandable terms that a law teacher like myself can only envy and hope on occasion to emulate.

Berger organizes his reflections into twelve thematic chapters that roughly follow the trajectory of his career as a lawyer. On the whole this structure works well, since it allows Berger to explore in each chapter a number of lawsuits that raise related questions without worrying about when they occurred during the course of his legal career. The decision to organize the material in this way does, however, tend to exacerbate what seems to me to be the major weakness of the book. It is that while each of the chapters is interesting in and of itself, the collection of them together is unsatisfying either as a portrait of Berger's life as a lawyer or as a coherent picture of his views about justice. The book offers the reader fascinating glimpses of both Berger's life and times and his views of justice, but at the end of the day these themes are overwhelmed by the legal arguments Berger puts forward in championing his clients' causes. As interesting as these arguments are, I suspect that most readers of *One Man's Justice* will share my view that we would have appreciated the opportunity to know less about the arguments themselves and more about the man who made them.

My favourite chapters in the book are the first three, which concentrate on the early part of Berger's career as a lawyer, before his appointment as a judge in 1971. They include the story of Berger's work as a criminal defence lawyer in

Vancouver in the late 1950s and 1960s, the account of his representation of the Ironworkers Union in the strike that took place during the construction of what is now known as the Ironworkers Memorial Bridge, and the tale of George Jones, the chairman of the British Columbia Purchasing Commission, who was fired by the government of W.A.C. Bennett and who retained Berger to bring a successful action for slander against Bennett. What particularly appeals to me about these chapters is the insight they offer into the world of British Columbia law and politics. In addition to being an outstanding barrister, Berger is an insightful observer and a skillful storyteller, and his portraits of the individuals who occupied centre stage in these legal dramas left me eager for a more extensive account of Berger's life and times.

In Chapters 4 and 5, Berger tells the story of the cases that originated his lifelong advocacy for aboriginal people and for legal recognition of their treaty rights and title to land. Chapter 4 is the story of an aboriginal hunting rights case, *R. v. White and Bob*, in which Berger successfully appealed the convictions of two members of the Nanaimo band for hunting deer out of season on the basis that they were exercising rights conferred on them by an 1854 treaty. In Chapter 5, Berger describes the efforts of the Nisga'a people to obtain legal recognition of their title to their lands which culminated in the signing of the Nisga'a Treaty in 1998. Berger was counsel to the Nisga'a in the landmark case of *Calder v. Attorney General of British Columbia*, in which the Supreme Court of Canada in 1973 first recognized aboriginal title, albeit in a split decision that did not uphold the Nisga'a claim itself. Berger was appointed as a judge after this case had been argued, and his colleagues Don Rosenbloom and then Jim Aldridge took over the role of legal advisors to the Nisga'a during the lengthy negotiations that ultimately led to the signing of the Treaty itself. After Berger's resignation from judicial office in 1983, however, he did return to represent the Nisga'a (along with Aldridge) in resisting then Opposition leader Gordon Campbell's legal challenge to the constitutional validity of the Treaty.

As noted above, Berger writes in Chapter 6 about his years as a judge, but the bulk of the chapter is a discussion of the circumstances that led him to resign his judicial office. Berger had made a speech to the Canadian Bar Association in 1981 endorsing Prime Minister Trudeau's constitutional proposals, including their guarantee of Aboriginal and treaty rights. When the Prime Minister, under provincial pressure, altered these proposals later that year, Berger felt he had a duty to speak out against the changes, and did so in a speech at Guelph University and an op-ed piece for the *Globe and Mail*. The latter comments sparked a complaint to the Canadian Judicial Council, and Berger describes in detail the unfortunate manner in which this complaint was dealt with by the Council, and most importantly by Chief Justice Bora Laskin. This chapter stands apart from the others. In it Berger openly struggles with the question of what a judge ought to do in the

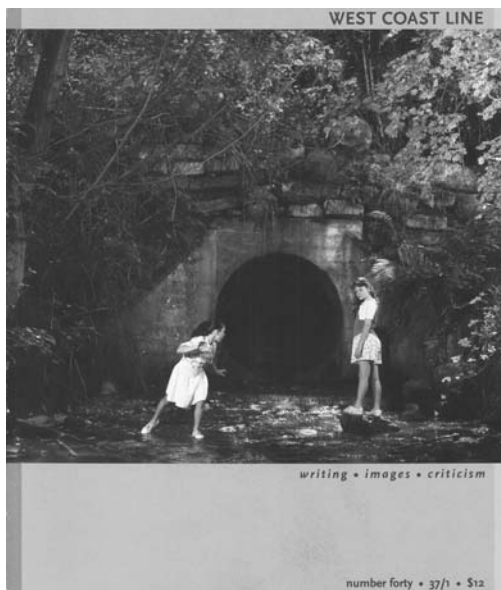
face of political action that he believes is a violation of minority rights that he is uniquely well positioned to address. Were Berger's comments an example of a judge meddling in politics, as Chief Justice Laskin clearly believed, or were they an example of a judge speaking out to defend minority rights and the rule of law? Berger reflects on the possibility that he was wrong to speak out, yet he ultimately concludes that he was right and would do it again, even though Chief Justice Laskin's criticism of him made decide that he could not maintain those views and continue to serve as a judge. Berger offers some deep insights into the role of a judge in a democracy, and momentarily steps outside his role as a barrister to give us a glimpse of his thinking about justice as something more profound than justice for his clients.

The last six chapters of the book describe Berger's more interesting cases since his resumption of legal practice. In them Berger the barrister reasserts himself, though not, in my own view, to such good effect as he did in the earlier chapters. Berger offers up an eclectic mix of cases in these chapters. They range from his representation of Dr. Jerilynn Prior in her efforts to seek a declaration that the requirement that she pay taxes that might be used for military purposes violated her freedom of conscience and religion to his defence of the decision of the B.C. College of Teachers to refuse approval of

Trinity Western University's teacher education program because of the University's denunciation of homosexual behaviour as sinful. While these chapters provide a very interesting discussion of a series of legal subjects, the material in them is too diverse to present anything like a coherent picture of the practice of law in Vancouver in the last two decades of the twentieth century. Berger's observations about the environment in which he worked, which so enlivened the first part of the book, become more indistinct here. Likewise the threads of a theory of justice that were inchoate in the early part of the book and came to the surface in Chapter 6 seem, to me at least, to disperse in the second half of the book.

Tom Berger has made an outstanding contribution to Canadian law, and his description of this contribution in *One Man's Justice* makes for interesting reading. If the book itself is not quite as remarkable as its author, it is because the glimpses Berger offers us of his life and times and his ideas about justice suggest that he has more insights to offer than his account of his cases reveal.

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## West Coast Line

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edited by Glen Lowry and Jerry Zaslove

***Violence and its Alternatives: A Special Section* edited by Trish Graham, Coleen Gold, and Jerry Zaslove**

This volume of West Coast Line contains a special section which captures some of the papers and the discussion at the 2001 Joanne Brown Symposium on Violence and its Alternatives, an annual Institute for the Humanities symposium supported by Joanne Brown.

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