A NEWLY-RELEASED REPORT DOCUMENTS HUNDREDS OF VIOLENT INCIDENTS RELATED TO CANADIAN MINING PROJECTS IN LATIN AMERICA

Shattering Canada’s “Peaceful Nation” Stereotype

One community, four years, five brutal murders. One victim was found in a well with his fingernails removed — a telltale sign of torture. Another victim was eight months pregnant. A third victim survived the first attack, in which he was shot eight times in the back, but was killed in a subsequent attack four months later. All five victims had vocally opposed a mining project that Canadian mining company Pacific Rim had sought to develop in their El Salvadorian community. These unsettling stories are some of many examples of targeted attacks often seen in communities that host a Canadian mining project.

On 24 October 2016, under the leadership of Osgoode Professor Shin Imai, the Justice and Corporate Accountability Project (JCAP) released a staggering report documenting violence that occurred near Canadian mines in thirteen Latin American countries. With the help of law students across Canada, JCAP collected information from a variety of English and Spanish media sources, as well as reports from non-profit organizations, government agencies, and Canadian mining companies. Each incident included in the study’s data was verified by two independent sources, a decision that demonstrates JCAP’s commitment to accuracy over shock value.

Despite this self-imposed limitation, the report documented forty-four deaths, 403 injuries, and over 500 arrests and detainments at the sites of twenty-eight Canadian mining projects in Latin America between 2000 and 2015. While the report also documented fifteen victims that had experienced sexual violence, JCAP was quick to state that the endemic underreporting of sexual violence made it difficult to assess whether their findings were reflective of this crime’s true figure. JCAP did not document a myriad of other crimes associated with Canada’s mining activities, such as death threats, property destruction, and forced displacement. This report has so far been covered in the Toronto Star, teleSUR, La Presse, and the Centre for Research on Globalization.

As the title of the report – The Canada Brand – suggests, our country’s name is being increasingly associated with this pattern of violence surrounding resource extraction. As Professor Imai stated, “The world is taking notice of Canadian companies for all the wrong reasons.” While The Canada Brand was the first report to provide details of these allegations and sources as well as name the companies involved, the incidents of violence near Canadian mining projects are neither new nor newly-exposed. In fact, the United Nations has been calling on Canada to develop a more robust accountability mechanism for the last fourteen years!

At this time, Canada’s sole measure of company conduct is voluntary, non-enforceable Corporate Social Responsibility (CSR) codes. Created in 2009 by then-Prime Minister Stephen Harper in response to a wave of public pressure, the position of CSR Counsellor is responsible for monitoring these codes.
World Politics and the OCI

Obiter Dicta

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It was 8:07 a.m. on Call Day, and my phone hasn’t rung. I was buried in a fort of pillows on my bed, holding onto my phone like its my life line, willing it to ring – to save me from joblessness – whilst being fully conscious that as every second ticked by, it was less likely to.

I can’t deny that the job appealed to me. Despite everything that Bay Street stands for, and the voices in my head that continue to battle on over the choice between capitalism and social justice, part of me wanted to go to work in one of those skyscrapers, decked out in a fancy suit and heels, and work in an intellectually stimulating environment.

I admit this because I am not perched on my high horse as if money and success are irrelevant to me. After all, I did just go through the entire OCI process. In fact, I often feel exhausted from resisting against what seems to be a clear path of action.

But instead of anxiety and impatience, as I watched my chances for $1450 a week tick by; I felt numb, I felt absurd.

It was only 30 hours after Trump’s win. By this point, all my anxieties and impatience had been exhausted after passing through the first few stages of grief and arriving in depression. Regardless of context, of how aloof I felt about the job, being rejected hurt. But having just witnessed Hilary’s most public defeat from a job post that she was much more qualified for, I couldn’t help but laugh.

Just recall the number of times we worried about appearing a certain way for Bay Street during the OCI process. How many times were we concerned that our wardrobe didn’t quite scream, “hire me hire me hire me please”? Or too much? How hard did we try to appear earnest but not desperate?

Like Hilary, we performed for our perspective employers, trying to fit into a certain box to appear employable, to appear assertive but not nasty, likable as well as competent, as if we are all human with a healthy balance of personal life even though I can’t remember the last time I did any of the “interests” listed in my resume. Other than the fact that in her case, her employers included every American citizen, Hilary and I are in the same boat.

There is such parallel between getting a Bay St. job, and running for the US presidency, between a personal career choice and world politics. Because more crucially than ever, our choices in our personal life influence what is happening on the world stage. Just as the vice versa has always been true.

There is a clear division in law school: those gunning for Bay Street, and those who want to be advocates. The chasm is there, but we don’t talk about it. Likewise, the chasm between Republicans and Democrats, Conservatives and Liberals continue to widen.

For those who got a job last week, I am not suggesting that choosing Bay Street is the same as voting Trump. Hilary is not exactly about social justice. But the reason that Trump’s triumph came as such a shock to most of us is that we live and have been living in increasingly polarizing bubbles.

The last stage of grief is acceptance. But coming to terms with having Donald Trump as the next US president does not mean surrendering to a sense of hopelessness. It does not mean we close our eyes and cover our ears and pretend that what is happening in the US has nothing to do with Canada, or that what goes on in world politics is too far removed from our personal lives. Trump’s win is an inevitable outcome of a divided state, where the same change is considered progress by one camp, and blamed for individual struggles by the other.

This is a wake up call. It is now more urgent than ever that we individually take responsibility to think critically, speak adamantly, and as students, lawyers, social workers, doctors, engineers, be an advocate in every vocation. We need to reach beyond political correctness, and speak in a language that translates.
The Environmental Policy Cycle
Reflecting on the Paris Agreement

Author › Jerico Espinas
Opinions Editor

“If we don’t start taking additional action now … we will grieve over the avoidable human tragedy. The growing numbers of climate refugees hit by hunger, poverty, illness and conflict will be a constant reminder of our failure to deliver. The science shows that we need to move much faster.”

United Nations Environment Programme (UNEP) Chief Erik Solheim

On December 2015, 195 countries gathered in Paris to discuss how the international community will address climate change, culminating in the adoption of the Paris Agreement that officially came into effect on 4 November 2016. Many international actors praised the Agreement because it created legal obligations, requiring countries to help limit the effects of climate change by, for example, preserving forests from degradation (Article 3), assisting developing countries (Article 9), and creating an international transparency framework (Article 13). One of the Agreement’s main goals is to cap climate change at 2°C above pre-industrial levels, showing mixed optimism from the international community that they can at least slow down warming within the next few decades.

The UNEP reported that the Agreement had already reached an important stepping stone within the past year: ratification by at least 35 countries representing at least 55% of global emissions. Countries that have ratified the agreement include the US, China, India, the EU, and Canada. This level of national support, alongside the Agreement’s legal obligations and relatively fast timeline for coming into force, signals a strong commitment by the international community to combat climate change.

Critically, the UNEP also reported that the long-term objectives of the Paris Agreement require accelerated efforts and more ambitious greenhouse gas reductions. Revised studies show that, even with reforms from the Paris Agreement, climate change will still cause global temperatures to climb over 3°C above pre-industrial levels. That is, despite countries’ best efforts so far, climate change will still radically affect the world and the populations living in it.

The UNEP’s report, which has already been picked up by environmental actors to strengthen calls for action, will likely influence discussions in the Marrakech Climate Change Conference. The Conference follows up the Paris Climate Change Conference in 2015, focusing on how countries can effectively uphold the obligations created by the Paris Agreement.

For myself and many environmental activists, these recent developments in the international community’s attempts to stop climate change follow the usual routine. First, a new international instrument is created that is more progressive and more accepted than the previous one. The honeymoon period begins and countries optimistically applaud themselves for their efforts. (Patricia Espinosa, the UN’s climate chief, previously stated that “humanity will look back on 4 November 2016 as the day that countries of the world shut the door on inevitable climate disaster and set off with determination towards a sustainable future.”)

Second, experts within the scientific community and environmental watchdogs remind leaders that more needs to be done, and that international agreements - even ratified ones - are ineffective without proper enforcement. The honeymoon period ends and the bickering begins, further delaying effective government action.

Lastly, the international instrument expires, forcing the international community to rapidly reform and create a new agreement in order to show their continued stance against climate change. The negotiation period starts, bringing in new ideas from current science, innovative policy groups, and underrepresented actors to create an even stronger international instrument.

Then the cycle repeats itself.

This endless churn of environmental policy, whether it’s the Kyoto Protocol, the Millennium Development Goals, the Sustainable Development Goals, or the recent Paris Agreement, often leaves environmental activists angry, exhausted, and burnt out. Despite best efforts, large gas-emitting sectors, like the fossil fuel and beef industries, will simply find new ways to move forward despite the roadblocks. People will largely continue to support these sectors despite numerous studies showing the dangers of consumption. And developing countries will invest in their own growth despite calls to slow down and act sustainably.

However, we need to resist the urge to slip into jaded defeatism. After all, support is growing, our leaders are starting to listen, and even some industries are changing. Despite the slow pace, our actions count for something. And these climate change goals are not a matter of mere policy or science, but of real human lives. As we debate, extreme weather conditions are destroying entire communities and rising water levels are sinking whole countries. The consequences are dire for these populations, and it would be a gross misuse of our privilege to simply let that happen.
People are Better than their Religious Beliefs

Author › Ian Mason
Managing Editor

A Christian, a Muslim, and an atheist walk into a bar, and they all get along because none of them are jerks who need to argue about religion.

I know, it’s a bad joke. Fine, it’s a terrible joke. A stale premise, the dull thud of a punchline, and I can only use the classic “X, Y, and Z walk into a bar” bit because I’ve known Muslims who drink alcohol—the Quran only prohibits wine, as a Scott-drinking Muslim supervisor once explained with a wink. It’s mostly unfunny because it’s not remotely unusual. Decent people can find reasons to get along and would prefer to do that over finding reasons to hit someone else over the head with the deadliest object within reach. At least, that’s my understanding of how decent people operate. I’m probably not giving decent people enough credit, or at least setting the bar a bit too low.

Full disclosure: I’m “one of those” atheists—one who scoffs many religious beliefs and admits it far too readily. I try to resist the urge to see everyone as either evangelical Christians or fundamentalists. In particular, I try to limit it to those who feel that somehow, in the age of the internet, there are still people who don’t even know about a deity worshipped in some form by over half of this planet’s population. It’s called Jehovah or Allah, last I checked. Some people call it a “he”; some people altogether refuse to name it. But between Christians, Jews, and Muslims, it’s worshipped by about four billion people. Apparently, it’s all-powerful and loves us in a unique way that involves eternal torment for non-reciprocation. That seems to be the main consistency in the narrative. I don’t believe in its existence, in case that wasn’t clear.

On the subject of clearing the air, atheism does not entail worshiping something in place of a deity. I don’t worship Satan. I do enjoy blasphemy, and demonology amuses me, but if I don’t believe in an entity, you can be pretty sure I don’t believe in that entity’s enemy. I don’t worship Richard Dawkins, Christopher Hitchens, or Charles Darwin. Dawkins is kind of a jerk, Hitchens was kind of a jerk, and if the evolutionary theory had stopped with On the Origin of Species, Darwin would be as relevant as Galen. I don’t hate “God.” You can’t hate something if you don’t believe it exists, and if I did, it would make me a maltheist, not an atheist. Finally, I don’t eat babies. I don’t even like pel or lamb. If I was going to eat people, I’d... I think we’re getting off topic here.

Anyway, I bring up the subject of religion partly because Trinity Western University plans to open a law school in 2018, and the British Columbia Court of Appeal recently determined that its graduates should not be denied accreditation by the Law Society of British Columbia. However, the Ontario Court of Appeal has upheld the Law Society of Upper Canada’s right to deny accreditation to graduates of its proposed law school, and thus, TWU is going to appeal that decision to the Supreme Court. At issue is the school’s code of conduct, which prohibits any sexual relations between students outside of heterosexual marriage. Without getting into too much detail, the primary concern is that TWU would train law students to disregard the constitutional rights of LGBTQ individuals, and would refuse admission to LGBTQ applicants (or condemn them to celibacy, a fate possibly worse than death). This decision doesn’t greatly concern me. It doesn’t seem as offensive as it is creepy, and it’s incredibly creepy. Sometimes, the viciously binged out remnant of my naivety speaks for long enough to remind me that people are basically good, and that might be the one instance where I don’t tell it to get back in its crate. Please don’t deny me that.

And the same goes for atheists. I’m only a moderately decent person. I generously tip my waiter, gently correct the cashier who gives me too much change, hold doors for the elderly, and try to be as nice to people as possible. I also drink, have a short temper, laughed at Ramsay Bolton scenes in Game of Thrones, and scored fairly high on the Hare Psychopathy Checklist (the last one does prove that law school was a good move for me, at least). My grandfather was an atheist and might have been the greatest man I ever met. He worked into his eighties to ensure his family’s financial security after he died, largely because he felt it was the right thing to do. Conversely, in his final years, he funded something of a hangout for atheists, and one of the younger attendees tried to exploit his generosity because he thought a little old man wouldn’t have the wherewithal or energy to prove him wrong. Granddad did prove him wrong by putting a chainsaw through a picnic bench erected without his permission on the property (in violation of city bylaws), but that’s more a lesson on not screwing with your elderly benefactor. The main point is that this punk was and as far as I know still is an atheist, and anyone who willingly deals with him will be tarred by association. He’s a Men’s Rights Activist—a misogynist with delusions of persecution—if you need further context. You can be good or bad with or without religion, and there’s a lot of middle ground.

So, as humanity stumbles awkwardly into an ever-uncertain future, remember this: if you must judge a person, judge them based on their actions, not their beliefs. You’ll never fully understand what someone else thinks, and if someone says worshiping Satan inspired them to volunteer at a soup kitchen, try to give them the benefit of the doubt. To end on an ironic note that still doesn’t do a thing to undercut my point, I leave you with the words my mother has drilled into my head every time my short temper got in the way of my better judgment and human decency:

“‘There but before the grace of God go I.’”
President Evil

Thus Dies the Lingering Remnants of my Faith in Humanity

Author - Ian Mason
Managing Editor

The unthinkable has happened: Trump won the 2016 election.

I woke up the morning after election night hoping the disastrous outcome that had appeared increasingly inevitable would be miraculously averted. That was foolish: even if you believe in miracles, you can’t count on them. Trump won decisively, taking swing state after swing state until he finally became the leader of the world’s most powerful country. The pre-election polls had been leaning in Clinton’s favour, but polls remind me of a quip regarding “lies, damned lies, and statistics”. Trump simply inspired more of his followers to get out and vote, and the boy (I still refuse to call him a man) certainly has an undeniable charisma, plethora of failings aside. He inspired people. He inspired the darker side of the psyche that tells you to screw everyone who isn’t you, but he inspired the hell out of it. Now I sit with a glass of rye and diet cola in arm’s reach, contemplating the implications of what may be the most disastrous election in American history. Trump won. Typing those two words makes me sick to my stomach. It’s almost inevitable would be miraculously averted. That was the disastrous outcome that had appeared increasingly

First, we have the story of the Central Park Five, a group of five ethnic youths who were wrongfully accused and convicted of a gruesome rape and attempted murder of a jogger in 1989. Trump placed ads in all major New York city newspapers calling for their execution. After the five young men served their prison sentences, a convicted rapist and murderer named Mattias Reyes admitted to the crime, the five’s convictions were vacated, and eventually received a combined $41 million from the city for their wrongful conviction. After they were exonerated, Trump not only refused to apologize, but implied they were still guilty, simply because they were in the park at the time of the assault. He called for the deaths of five innocent men, and refused to apologize.

Second, there’s the incident where he purchased a building in New York, hoping to demolish it so he could build a luxury condominium. The existing tenants refused to vacate, so he made their lives hell. He tried to evict them, cut off heat and water, and had the building manager refuse to do repairs, to a point where two tenants had mushrooms growing on their floors as the result of a leak. He also placed ads in New York newspapers offering vacant units to homeless persons, not out of any sense of charity, but to encourage the existing tenants to vacate (city officials turned him down, because of course they did). On top of that, he sued the tenants for $150 million. Fortunately, he failed to have the building demolished and lost the civil case, but the amount of effort he put into having people kicked out of their homes is nothing short of monstrous.

Finally, “grab them by the pussy”. Excuse me as I try to retain the contents of my stomach. I’ve already covered his sexual misdeeds in a previous article, and don’t want to repeat myself on that issue. I couldn’t write a whole paragraph on that subject without vomiting on my laptop, largely because following the events of election night required the consumption of large quantities of Seagram’s (Seagram’s: it’s better than Schenley’s!). I’ll let those five appalling words speak for themselves.

Trump is a monster, plain and simple. While I present the DNC’s promotion of Clinton despite her lack of charisma and refusal to learn anything from Sanders’ surprising rise to prominence (thus alienating or disllusioning many voters), it’s hard to imagine that anyone could lose to Trump. He’s a pathological liar with no redeeming qualities who has spent his entire life ripping people off while promoting his own name. Only in America could such a person not spend most of their adult years in prison. He is the worst kind of swine, but America has decided to go Animal Farm. America was given the political equivalent of going to a restaurant, and either ordering the cheeseburger and fries you have every time, or burning the place to ash and shooting those who flee the flames. They voted for the flames.

Let’s hope this is just a lit match, and not the inferno that ends the world.
O P I N E N T  

PERSPECTIVES IN HEALTH

Your Osgoode Health Law Association

The Devil Called Depression:
A Topic of Access to Justice for the Mentally Ill

Author: Osgoode Health Law Association

What makes a mental illness? While the phrase is bounced around quite often, defining the boundaries and understanding the diversity of psychiatric disorders is a very challenging task. Part of this can be attributed to the dynamic nature of psychiatric discovery. While the volume of scientific literature is constantly growing and what constitutes a particular condition may be changed or redefined in its entirety, how can one expect those outside of the field to know of its exact nature and understand the appropriate accommodations? Of course, this is why we have professionals with specialized knowledge of the human psyche, but what about situations where the fate of peoples’ psychological conditions is entrusted to those without the requisite knowledge?

While it may be easy to visualize a barrier to justice for someone with a physical condition, conceptualizing the barriers for a mental condition requires another degree of abstraction and understanding. For example, in practice a lawyer may view an individual afflicted by major depressive disorder (MDD or, more commonly, depression) as someone experiencing a bout of sadness that extends over a longer duration. While some elements of this view may be correct, it fails to capture the debilitating nature of mental illnesses or their scientific underpinnings.

A loss of interest in self preservation (a common feature of depression) may create elusive barriers to the pursuit of legal counsel. There may be clear evidence of a legal violation—say violent domestic abuse—but depression has a peculiar way of dissuading people from pursuing what may otherwise appear to be an appropriate course of action. Continuing with our example of MDD, being bombarded by thoughts of worthlessness or that “I deserved it” can create a seemingly rational argument for not pursuing justice for the affected person. When gripped by depression, it may seem wholly rational to do nothing and bear the burden of the wrong. Furthermore, should the afflicted individual seek counsel, the lawyer may not accurately consider how a long and strenuous legal conflict may exacerbate her/his client’s well-being. So, it becomes apparent that lawyers must have some understanding of the nature of the client’s illness, but how deep should this rabbit hole go?

Say we pose a slightly different situation—not only is the client affected by depression, but also a generalized anxiety disorder. As with depression, the presence of severe anxiety may reduce the likelihood of an afflicted person pursuing legal and psychiatric counsel when needed. Thus, adding an anxiety disorder to the mix would further decrease the chances of successfully accessing the appropriate legal resources while also increasing the chances of severe risk factors, such as suicide. While the choice of adding an anxiety disorder to our hypothetical client may appear to be a mere coincidence, depression and anxiety are actually common comorbidities. That is, they are illnesses that are likely to occur together due to their biochemical underpinnings. So, the hypothetical introduced so far is not an extreme irregularity in the field, but a rather probable occurrence that perhaps has been given insufficient attention in practice.

In consultation, the willingness to communicate the details of one’s case to counsel or participate in high pressure meetings that are billed at a rate of $500 per hour is an additional burden on the mentally ill. Keep in mind, the pursuit of legal counsel may also have been stimulated by an exceptionally bad manifestation of some stimulus—say a very damaging domestic abuse event—and this creates a high stress environment for the prospective client. To add to that, those afflicted by mental illness may be underemployed or subject to abusive or discriminatory employment practices which would further inhibit the ability to meet a lawyer’s high fees. Imagine the combined effects of the low mood and low energy of depression with the persistent tension of anxiety and being faced with the choice of whether to spend the last of one’s savings on talking to a lawyer—who may know little to nothing about your traumas—in hopes of ensuring the especially devastating abuse suffered at the hands of your partner or relatives. With this in mind, describing the affected person as merely chronically sad and nervous is quite the understatement.

So, how can the legal community hope to address the special needs of people with mental illnesses? There are two main approaches to addressing these needs: greater interdisciplinary collaboration with mental health specialists and educating lawyers about rudimentary mental health issues. For the former, liaising with physicians and psychologists as well as being able to understand the idiosyncratic characteristics of one’s client and how best to approach her/him to make legal consultations as comfortable and as nonstrenuous as possible could help close the gaps in communication. In the case of the latter, having a general familiarity with the nature of psychiatric conditions and what they entail would grant some much-needed context to the position of one’s clients, what they might hope to achieve through legal counsel, and how the law can improve their overall standard of living.

At the core of access to justice for the people with mental illness is the need for an empathetic approach in legal practice and understanding that barriers to justice can manifest in many ways. While the legal community is not directly responsible for their clients’ mental health it would be in their best interest in practice to understand what sort of actions and attitudes will help make consultations and proceedings as accommodating as possible without adding unnecessary stress. In the end, the issues faced by the mentally ill when dealing with the law represent another area of nonlegal knowledge which must be incorporated into legal practice to maintain equality for all persons.

This article was written by Dominic Cerilli, who received his MSc in Chemical Sciences and HBSc in Biochemistry from Laurentian University and is currently affiliated with the Health Law Association (HLA), the Osgoode Mental Health Law Society (OMHLS), the Osgoode Peer Support Centre (OPSC), IPOsgoode, and the Law in Action Within Schools Program (LAW3).

Source: metro.co.uk

Author: Dominic Cerilli, who received his MSc in Chemical Sciences and HBSc in Biochemistry from Laurentian University and is currently affiliated with the Health Law Association (HLA), the Osgoode Mental Health Law Society (OMHLS), the Osgoode Peer Support Centre (OPSC), IPOsgoode, and the Law in Action Within Schools Program (LAW3).

This article is part of the Osgoode Health Law Association’s Perspectives in Health column. Keep up to date with the HLA on Facebook (Osgoode Health Law Association, Osgoode Health Law Association Forum) and Twitter (@OsgoodeHLA).
Since its inception, however, the CSR Counsellor has responded to a mere six complaints and has not mediated a single resolution. The Counsellor position does not have the power to launch investigations, call meetings, or even produce reports. Its sole ability is to recommend that our government withdraw financial support and/or its embassy support. MiningWatch Canada refers to the Counsellor position as “ineffective and embarrassing,” and Canadian grass-roots groups have begun to pressure Prime Minister Justin Trudeau to develop a more robust and effective accountability mechanism.

In addition to the scolding from the international community and the rising calls for action from Canadians, Trudeau has also been implored to take action by the affected communities themselves. In a letter sent this past June, 180 Latin American organiza- tions collectively urged Trudeau to take a stand against this violence by implementing a stronger mechanism to increase corporate accountability.

Legal Technology and Access to Justice

Legal Technology is often reported as being intrin- sically linked to access to justice. Apps, AI, and digital access suggest an Uber-like ability to receive legal ser- vices at the push of a button. A recently published Globe and Mail article by University of Ottawa law profes- sor Jena McGill, for example, bore the headline “Better access to justice in Canada! There’s an app for that.” However, while there are increasing numbers of apps and technologies being developed and integrated into the legal world, it is a mistake to assume that technolog- ical developments on their own will necessarily improve access to justice for those Canadians currently struggling.

Stanford University’s curated list of legal technol- ogies companies currently lists 585 separate companies, but the focus of most is on the improved efficiency of existing services. Ascent, for example, is described as focusing on assisting “compliance and operations staff at financial institutions with maintaining compliance with rapidly changing and burdensome rules and regulations.” Professor McGill posited that these developments will “decrease the costs associated with conventional legal interactions” and so “have great potential to improve the state of access to justice in Canada.”

While increasing efficiency has the potential to reduce costs, there are a number of arguments to sug- gest that this will not have a real impact on access to jus- tice. Sam Glover of the Lawyerist website, for example, maintains that the small reductions in costs associated with improved efficiency do not address the primary reasons the justice system is often out of reach. Rather, for many, a much more significant reduction in costs would be needed. As he cites from the US Federal Reserve’s Report on Economic Well-Being of US Households in 2014: “Forty–seven percent of [Americans] either could not cover an emergency expense costing $400, or would cover it by selling something or borrowing money.” Even if the cost of addressing a legal issue could be brought down to $400, then, it would still be out of reach of almost half of all Americans.

Will Hornsby, a Staff Counsel at the American Bar Association, has also argued that affordability isn’t really the problem. In his view “[t]he research clearly indicates the crisis in [access to jus- tice] involves the recognition, or lack of recognition, by people that their problems have legal solutions and decisions need to be made determining when it is of value for people to pursue those solutions.”

According to the Canadian Forum on Civil Justice’s Everyday Legal Problems and the Costs of Justice Overview Report, the average cost of resolving everyday legal issues in Canada is $6,100 – without accounting for related non-monetary costs. While lawyers’ fees do account for the highest portion of that cost, at 22%, even a significant reduction in that cost still leaves the legal system out of the reach of many Canadians. Only about one in five Canadians seeks legal advice and less than one in ten use the formal legal system to resolve their problems. It is often countered, as noted by Professor McGill, that developments in legal tech “[a]t a minimum […] can contribute to improving everyday access to legal information while we continue to work toward bigger, more systemic change.”

However, when legal tech is grouped together, there is a danger that the systemic change can seem to progress more than it actually does. Yves Faguy, writ- ing in the Canadian Bar Association National Magazine, compares the situation to that of the “sharing economy” apps, such as Uber and Airbnb. “Uber likes to trumpet its success in making urban transportation more acces- sible in under-served neighbourhoods. But the evidence shows that is mostly true for people with money, who travel in relatively affluent areas.” Similarly, lowering costs of the legal system may reduce costs for those with access, but not increase the reach of access to justice. Mr. Faguy further compares the situation to Uber’s success, which has been argued as a driver in eroding the politi- cal will to fix public transportation for the most needy.

This is not to suggest that legal tech cannot have a positive impact on access to justice. But a clear goal is needed. The Ontario A2J Challenge launched by the Legal Innovation Zone at Ryerson University, for example, shows incredible promise. The program sets out a definition of access to justice as existing “when the public can understand and use information and services in a timely and affordable way to prevent and resolve their legal problems and to achieve just outcomes.” Similarly, the Winkler Institute for Dispute Resolution at Osgoode Hall will be hosting a two-day technology and justice Hackathon in February 2017 that will focus on building technology that will improve access to justice.

While Professor McGill’s article’s headline provides a problematic conflation of all legal tech as relating to access to justice, she did acknowledge in her article that “Apps are not a panacea for the myriad complex issues we face, and should not take the place of needed politi- cal and structural change.” This is, ultimately, the key aspect of legal tech developments.

The Canadian Forum on Civil Justice is a national non-profit organization at Osgoode Hall Law School that is dedicated to advancing civil justice reform through research and advocacy.

This article originally appeared on slaw.ca and has been edited for publication in the Observer-Dicta.

This article is written by Lucas Gindin, Osgoode Hall Law School Student and Research Assistant at the Canadian Forum on Civil Justice.
In August of 2016, the Trudeau Government announced a new process for appointing Justices to the Supreme Court of Canada (SCC), in expectation of Justice Thomas Cromwell’s retirement from the bench this past September.

Aimed at promoting transparency, inclusiveness, and accountability to all Canadians, the new selection process called upon an independent and non-partisan advisory board of lawyers and legal scholars to recommend appropriate nominees to fill Justice Cromwell’s vacancy. The Advisory Board, which was comprised of seven elected individuals and chaired by the Right Honourable Kim Campbell, was guided by criteria set out by the Minister of Justice, Jody Wilson-Raybould, in late August. Among the suggested standards were the requirements that the candidate had to be not only qualified but also “functionally bilingual”, and familiar with Canada’s diverse backgrounds and experiences.

From the thirty-one applications submitted, the Advisory Board drafted a list of five potential candidates and ultimately selected Justice Malcolm Rowe on October 17th. Trudeau’s announcement of Justice Rowe’s nomination made him the first SCC Justice nominated under the Government of Canada’s new selection process and the first Newfoundland and Labrador appointee to the country’s top court since Newfoundland joined Confederation in 1949.

Throughout his distinguished career, Justice Rowe has worked in all three levels of government as well as private practice. He was first appointed to the Newfoundland and Labrador Supreme Court in 1999 and has most recently sat on the Court of Appeal of Newfoundland and Labrador since 2001. During his time on the bench, Justice Rowe has made a remarkable contribution to the area of sentencing law, particularly when dealing with sentencing circles within Newfoundland and Labrador, where he has been credited with establishing the guiding principles currently used.

Selected for his thorough understanding of the country and his remarkable depth of legal experience in criminal, constitutional, and public law, Justice Rowe has also been involved in Charter rights, foreign relations, the arbitration of maritime boundaries, and the negotiation of conventional law through the United Nations.

Under the old regime, Justice Rowe’s remarkable achievements may have been enough to solidify his nomination. However, to further enhance Trudeau’s new promise of transparency and accountability, opportunities were also provided to Members of Parliament and the Senate thereby allowing them to be involved in the appointment process. In addition to ad hoc meetings and hearings before the House of Commons Standing Committee on Justice and Human Rights, Justice Rowe took part in a Town Hall style meeting with members of Parliament, the Senate and representatives of the Bloc Québécois and the Green Party. Taking on the role of audience members with approximately one hundred and forty other law students from across Canada, Heather Fisher and I attended this moderated question-and-answer session as the representatives for Osgoode Hall Law School. Held at the University of Ottawa on October 25th, this ninety-minute Q&A period allowed Members of Parliament and Senators from all parties the opportunity to address Justice Rowe on a series of topics, including his outlook on Indigenous legal issues, diversity in the Court, and the importance of judicial activism.

Of the twenty-four Senators and Members of Parliament in attendance, only fourteen individuals made up the Q&A panel. The panel included NDP Party Leader Tom Mulcair, former head of the Truth and Reconciliation Commission Senator Murray Sinclair, Conservative Senator Denise Barnett, and Liberal Senator Mobina Jaffer, the first South Asian woman to practice law in Canada. Each panelist was given five minutes to question Justice Rowe on any issue they desired and could address him in either French or English. Over the session, questions touched on everything from Justice Rowe’s bilingualism and his familiarity with Quebec culture and Civil law, to his view on creating law and the importance of judicial activism.

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When it was her turn to ask a question, Senator Jaffer noted that “20% of Canadians are visible minorities,” however, there has yet to be a single person of colour nominated to the SCC, let alone appointed to it. In his response, Justice Rowe attempted to address Senator Jaffer’s concerns by stating that although his decisions will be limited to his experiences, those experiences have taken place from “Nunatsiavut to Burnaby, BC.” He continued by saying that with each new case, he has learned new things about Canada and its citizens and that these insights will allow him to understand the need for subjectivity when approaching various cases. Justice Rowe concluded his answer by stating that as a SCC Justice, he hopes he will be able to continue learning from the bench and vowed to “listen” as he does.

Despite being appreciative of his answer, I felt that, with all due respect, although undoubtedly sincere, his response lacked some realism. While it is true that having a broad range of experiences from coast to coast would assist in Justice Rowe’s understanding of the Canadian landscape, I am hesitant to accept that these experiences would also make Justice Rowe as privy to the daily experiences of a visible minority as someone directly from that community. This point was made extremely evident when Justice Rowe suggested that Indigenous law within Canada is “still young.” While Canada’s acceptance of Indigenous legal traditions has only gained traction as of late, our legal traditions stem from time immemorial, and frankly, an Indigenous justice would be familiar with that.

So, while I appreciate Justice Rowe’s understanding for the need to be subjective, and while I do not doubt that he will be effective in the SCC, I cannot help but support Senator Jaffer’s worry about representation among the bench. Although regional representation is and has always been important, without true diversity amongst Justices, regional representation can only achieve so much.

Hopefully, with the predicted retirement of Chief Justice Beverley McLachlin in 2018, we will see diversity get another chance during the next selection process. Until then, however, I am enthusiastic to see what new perspectives Justice Rowe will bring to the SCC, and how his vast experiences and knowledge will continue to advance Canada’s law. In particular, I am especially excited to see Justice Rowe re-examine his controversial decision from last May, as the case was appealed to the SCC earlier this year.

I would like to thank Osgoode Hall and in particular Dean Sossin and Associate Dean Berger for allowing Heather and me to attend this amazing opportunity. It was a highlight of our law school careers and one we are not likely to forget anytime soon. 
Next, there were the representatives from the House and Senate—political leaders representing a range of parties, views, regions, cultures, and languages. What was their purpose in participating in the town hall? Observing the questions asked—their phrasing, their content, and the follow-ups that flowed from them—made me realize that the people around the table wanted an active role in the selection process. They wanted to vet, to critique, to challenge. They wanted to push Justice Malcolm Rowe to provide answers.

And finally, there were the observers. Law students from across the country filled the room and were given a chance to witness the first ‘public introduction’ of a Supreme Court Justice. As an observer, my purpose was not to judge; it was to get to know. It was to witness a member of the judiciary reason through the law and his role on the bench. For me, the question period was a window into the mind of a system that tends to be insular and closed-off.

I realized very quickly that the first two purposes conflicted. The process’ design prevented the questioners from getting answers to the issues they wanted—and sometimes tried—to discuss. That design was that way for good reason. Having an impartial judiciary is a cornerstone of our justice system. We need to know that judges in our highest court will not be tied to an opinion given outside the context of the particular facts confronting them.

The outcome of this design gave me the sense that the politicians in the room were underwhelmed by the process. They did not get what they came for.

But we did. As students of law, and as citizens, we got to witness the start of a new tradition, and perhaps to observe another culture shift for the Supreme Court of Canada. A shift away from the culture where judges feel they need to shield their thoughts from the public to one where we can—and should—know them from the outset. A culture where knowing a judge enhances the public’s confidence in the administration of justice instead of calling it into question.

I don’t know if the Liberals had this outcome in mind when they designed the town hall process. For some reason, I doubt it. Regardless, I feel extremely privileged to have been a part of it.
Why Landing a "Generational Talent/Player" Through Today's National Hockey League Draft Is So Difficult

Ever since the term "generational talent/player" was coined roughly a decade in the 2005 National Hockey League (NHL) Draft, a highly-anticipated draft that produced the current fact of the NHL in Crosby, NHL General Managers (GMs)—especially those whose teams are at or near the very bottom of the NHL standings from the previous season—have been actively chasing the next such phenom. While these GMs in all likelihood have the luxury of high draft choices—assuming that these GMs (or their predecessors) have not traded their first round selection away—the task of landing the next 'generational talent' remains elusive at times because so many things have to break right for it to happen rather than just merely wishful thinking.

By all accounts, there are two prerequisites that need to be met for a team to secure a 'generational player.' First, the draft has to be one that features such a phenom. Until Connor McDavid came along in 2015, Edmonton did not get their 'generational talent' despite having three consecutive first overall picks of the NHL Entry Draft from 2010 to 2012, in part because none of Taylor Hall (who is an elite player), Ryan Nugent-Hopkins (who is a good to arguably very good player), and Nail Yakupov (who has been a bust to this date) are true 'generational players' from a talent perspective. Second, even if such a 'generational talent' is available in the draft, a team would need to hold the first overall selection in order to guarantee itself of having the opportunity to choose the phenom seeing that it is extremely unlikely that other teams would pass on him. Further complicating the matter, the team that finishes last (thirtieth) place is no longer automatically granted the top (first overall) pick in the upcoming NHL Entry Draft as the league has put into place a draft lottery system since the "Sidney Crosby sweepstakes" in 2005 as a way to stop teams from intentionally losing games to secure the top selection of the upcoming NHL Entry Draft. In fact, the NHL further tightened its grip in the most recent (2016) NHL Entry Draft in order to deter teams from "tanking." Whereas the team that finished in last place had a twenty-five percent chance of winning the draft lottery and retaining the top pick in the NHL Entry Draft from 2006 to 2015, the team that finishes in thirtieth place now (2016 and onwards) only has a twenty percent chance of winning the draft lottery and keeping the first overall selection (not to mention that it could drop to the third or fourth overall pick given that the top three selections are determined by separate lottery draws). Just ask poor Buffalo, as the Sabres, who had to settle picking second overall having lost the draft lottery in back-to-back years after finishing in the basement for both the 2014 and 2015 seasons. Instead of getting Aaron Ekblad in the 2014 NHL Entry Draft, Buffalo had to go with Sam Reinhart. Instead of welcoming McDavid to the city of Buffalo, the Sabres had to take Jack Eichel, even though Buffalo GM Tim Murray insisted that Eichel is every bit the 'generational player' that McDavid is because unlike the overwhelming majority of previous drafts, the 2015 NHL Entry Draft had the unusual spectacle of having not one but TWO 'generational talents' in McDavid and Eichel for the taking! Curious considering that Murray could not hide his disappointment at the 2015 Draft Lottery after losing out on the Connor McDavid sweepstakes to Edmonton when he minted words such as "I’m disappointed for our fans" as well as statements such as, "Thankfully it’s a short drive from Buffalo. I’d hate like hell to be flying across the country to take part in it"; "When you have an eighty percent of losing something, you have to be ready for that and think that’s probably going to be the case and that was the case;" and three, "This is two years of me coming up here. It’s a two-minute draw,
Is the story always bleak for the team that finished dead last in the league heading into the draft lottery with reduced odds in their favour? Not so much so if you take Toronto as an example, as the Maple Leafs won the 2016 draft lottery and got their hands on yet another ‘generational talent’ in Auston Matthews by virtue of hanging on to the first overall pick in the 2016 NHL Entry Draft. Still, one ought to conclude that the NHL has been relatively successful in combating the art of tanking as the Leafs were only the second team with the worst overall record to win the draft lottery in draft lottery history (albeit the rules in place have also simultaneously permitted the Oilers to get the top selection four times within a six-year span on the flip side).

All in all, teams have some limited degree of control over fulfilling the second prerequisite as they can opt to take the risky route of ‘tanking’ for a twenty percent chance of landing the top selection in the next NHL Entry Draft. However, GMs really have no control when it comes to the first prerequisite as whether a draft class has a draft-eligible ‘generational player’ is entirely the luck of the draw. Why else would it take Edmonton five cracks at it before the Oilers finally hit the jackpot with McDavid? Before McDavid came along in 2015, the last consensus ‘generational player’ was Crosby in 2005. That is a span of a decade! Before Crosby, it would have to be (the pre-concussed) Eric Lindros in 1991 although the term ‘generational’ had yet to be popularized. That is a fourteen-year gap between Lindros and Crosby. And before then? That would be the legendary Mario Lemieux in 1984. That represents a seven-year waiting period. If we were to average the wait times between the appearance of the last four ‘generational talents’ from 1984 to 2015, it comes to ten years and four months. This sounds about right as most scouts and hockey minds are of the impression that a ‘generational player’ comes along in every decade. Yet, there are anomalies because the ‘generational’ label has been slapped onto McDavid, Eichel, and Matthews at one point or another. If the trio is truly as talented as advertised, then by all accounts, we have witnessed three generational talents making their NHL debuts in the last two NHL Entry Drafts! As exciting as this sounds to hockey fans, keep in mind that the probability of us seeing multiple ‘generational talents’ entering the NHL in the same NHL Entry Draft or back-to-back drafts are extremely low due to the laws of regression to the mean. Coupled with the draft lottery regulations that the NHL has installed, ANY TEAM’s chance of winning the draft lottery and along with it the first overall pick seems rather pessimistic at best.

On Deck: Watch out for my upcoming article discussing why Auston Matthews is a better player than Jack Eichel at this stage of their NHL career!
The Best Mexican Restaurants in Toronto

The Best Mexican Restaurants in Toronto

Author: Nadia Aboufariss

Arts & Culture Editor

La Carnita (ranked #4)

Location: 130 Eglinton Avenue East, with three other locations at 106 John Street, 501 College Street, and 780 Queen Street East

Atmosphere: Eclectic urban industrial

I love tacos. One of the best trends to happen in recent food history—as far as I’m concerned—was the surge in popularity of Mexican food. I’m old enough to remember a time when going for some tacos meant mystery meat in a hard shell at Taco Bell. Or maybe if you were lucky, some kitchy Tex-Mex restaurant that served margaritas made with sour mix (barf!) in giant novelty glasses. That was all I really knew until my taco epiphany, which happened eight years ago during my first year of working in a restaurant. One of our prep cooks was from Mexico City, and one day she brought in some homemade lengua and corn tortillas for us to try. I had never tried beef tongue before so I was a little hesitant at first, but those tacos, garnished only with diced white onion, cilantro, and a squeeze of lime juice, were melt-in-your-mouth heaven.

La Carnita at Eglinton doesn’t serve lengua tacos, unfortunately, but it’s okay because the tacos they do serve are amazing. My only quibble with blogTO’s decision to rank La Carnita as the best Mexican restaurant in Toronto is that I’m not entirely sure if it is actually a Mexican restaurant. When I think Mexican restaurant, I would assume there’d be some big entrées like mole poblano, enchiladas, pozole, etc. La Carnita is more of a snack bar than a restaurant. It is, more appropriately, ranked on the blogTO list of best tacos, second only to Seven Lives, which I haven’t been to because every time I go to Kensington Market there is a massive lineup and I am very impatient. One day.

Quibbling aside, I love this place. At least at the Eglinton location, it manages to be cool without being pretentious, the cocktail list is phenomenal, and the fact that the menu has an option where you can buy theWilly Wonka’s chocolate factory for $250. I have never done that. It’s extremely close to my heart. I can definitely understand some people being annoyed by this place—as per the Yelp reviews—by the fact that the old school hip hop can get loud, it’s often packed leading to poor service (at least at the downtown locations), and the tacos are actually spicy. If these are things that would bother you, you may suggest Jimmy Buffett’s Margaritaville instead.

On this visit I went a little later on a Thursday in order to avoid a wait, which was a great call as we were sat immediately and the service was excellent. We started with the chips and guacamole and the mango avocado salad. The salad was good—fresh, light and crunchy—and the chips and guac were so good that I ordered a Who Shot Ya’, a bourbon-based drink with hibiscus grenadine, ginger syrup, and lemon juice. It is well-shaken with a nice froth on top and the combination of sweet, sour, and Wild Turkey blends together perfectly. My partner ordered one of the micheladas, a beer cocktail with jalapeno brine and pineapple juice. Micheladas normally have tomato juice as an ingredient, but I noticed that at La Carnita it’s Clamato instead, reflecting the Canadian preference for Caesars over Bloody Marys. It’s a nice touch.

There are six tacos on the menu plus a daily special, which range in price from $4.95 to $6.50. We decided to order five tacos off the regular menu plus the special. I will list them below in order of preference.

**In Cod We Trust:** a fried fish taco garnished with pickled cabbage, apple and lime crema. They’re basically taco perfection, and every time I come here, I wonder why I don’t just order twenty. I love the way the sourness of the green apple and pickle balances the richness of the fish, and there’s not too much going on so that any of the distinct flavours get lost.

**Butter Chicken Taco:** this Indian-Mexican fusion taco was the Thursday special. We were both surprised at how well the Indian flavours of the Butter Chicken came through—I was expecting it to be on the blander side, but you could really taste the spices, and it worked well with the Mexican accompaniments, perhaps because both cuisines feature cumin and coriander heavily.

**Pollo Frito:** fried chicken with a peanut mole sauce, garnished with cabbage and salsa. Again, the last time I had this taco the balance of flavours was much better. Unfortunately, this time it was overstuffed and more or less exploded at first bite. Also, I find the salsa to be a bit much here. Still tasty, though.

**Beef Cheek:** I ordered this taco again because I wanted to give it a second chance. It sounds like something I would absolutely love, and being a taco de cabeza (head taco), it is the most similar to the lengua taco of my dreams. But both times I’ve had it, it has fallen short. Despite all the garnishes, I find that the braised beef is all I can taste and it weighs the whole thing down. Maybe some lime wedges (or the salsa from the Pollo Frito) would help.

It’s worth reiterating that even the tacos I found somewhat disappointing are delicious and better than most other tacos I’ve had in this city. I’ve also noticed both times that I tend to like the tacos I eat first more than later ones, which can get soggy as they sit, so my advice is to skip the Instagram photos and just dig in. Since the people who own La Carnita also own Sweet Jesus, there is usually soft serve ice cream and paletas in the same building if you can handle it after binging on tacos.

Cost for an appetizer and three tacos (excluding drinks): $25.40 + tax + tip

**Service:** 4.5/5 Dean Sossins

**Food:** 5/5 Dean Sossins

**Value:** 4.5/5 Dean Sossins

**Overall:** 4.5/5 Dean Sossins
On 2 November, I had the privilege of hearing Elly Gotz, a retired engineer, businessman, and a Holocaust survivor, speak at one of his many talks on intolerance he does at various schools, universities, and public functions. I met Elly in May earlier this year at the March of Remembrance and Hope (MRH), an educational leadership program that teaches the dangers of intolerance through the study of the Holocaust. Elly was born in Lithuania and was deported to Dachau in Germany during the Second World War. Even though I had spent ten days with him in Germany and Poland, I was very excited to finally listen to one of his talks that he does throughout the year. This wonderful event was organized by a friend who I had met on the MRH trip this past May.

At 89, Elly has thirty-eight talks at various locations throughout Toronto in the next six weeks. That is a rigorous schedule for anyone of any age, but he does it with grace and absolutely adores it. He opens his story by informing everybody that he is in the business of learning. He spends his life learning. After spending ten days with him, I know this is a real testament to his great capacity for life, and those words are so fitting coming from his mouth. It makes me smile instantly.

I first heard about the trip from one of my history professors a week before the deadline last January. The itinerary of the trip consisted of many sites I had always wanted to visit: the grave of Moses Mendelssohn; Bebelplatz (site of the infamous 1933 Nazi book burning); Tiergarten memorials to the gay victims and Roma and Sinti victims; the Reichstag; Track 17 (Memorial at Grunewald Train Station, site of deportations 1941-42); Wansee Haus; Kazimierz; Auschwitz I; Birkenuau; Plaszow; and Treblinka. These were just a few of the things we did. I was a little hesitant about applying as I didn’t know much about the program. However, I prepared my application and sent it in. I found out a month later that I was accepted.

Throughout the next few months, the applicants selected to go participated in several webinars on various subjects including genocide and anti-Semitism. I knew none of my fellow participants before going, and this made me a little nervous as I am far from being an experienced traveler. We all met for a day in Toronto for an orientation before leaving for Germany. And then we were off.

The experience of being on the trip itself, the emotions you feel, and the discussions you have are so incredible and stimulating. It really is an experience difficult to put into words. I left with strangers and came back with a family. We all came from a variety of different cultural backgrounds, university educations, religious beliefs, different sexualities and genders, different political views, different personalities, and different walks of life. However, we all came together for one reason—to study what humanity is capable of when there is intolerance. This goal heightened the already dynamic experience on the trip. I could write thousands of words about the heartache I felt while visiting the ashes of Majdanek or the cemeteries of Poland, but I know I will not do the experience any justice.

So here I am—thousands of Whatsapp messages, hundreds of Facebook posts, countless pictures, infinite memories, a million things learned and six months later—encouraging anyone interested in intolerance studies to apply. It isn’t a major time commitment and lands at the beginning of the summer over the Victoria May long weekend. It is an excellent way of doing something memorable and educational this summer while still working/travelling/volunteering throughout the rest of the summer. The trip also provides excellent commentary on the practice of law and human rights. The trip is open to any student attending university in Canada with a passion for learning more about genocidal studies. The cost of the trip is on a financial need basis, so it is very flexible financially. The program is ten days long with approximately thirty other students from across Canada, and one of the most unique things about the trip is having a survivor join the group. The MRH program was among the ten greatest days of my life and will continue to affect how I approach everything in every day of my life afterwards.

Learn more about the MRH program and apply to join by January 6, 2017, at www.marchofremembranceandhope.org.

Please feel free to contact me with any questions about the trip—I am always eager to share and help!
The Lady with the Dog

Author: Natasha Jerome
Contributor: obiter dicta

In Issue 4 of the Obiter Dicta, the following article was printed with a subtitle that was not written by the author. It also included a grammatical error in the first paragraph. In accordance with the author’s wishes, it is being reprinted below. We regret these errors and apologize sincerely to the author.

The lady with the dog was crying today. I saw her lift the lower reaches of her skirt hem to wipe her sunburned face and wrinkled cheekbones. I watched her cut across the street, almost hurried, almost desperate, two other women hot at her heels. Slowly, surely, a crowd was gathering. I walked on, more quickly now, heading back from Campo dei Fiori, from where the church had immolated the brilliant 16th century priest, Giordano Bruno. He had committed the greatest of all crimes: illuminating questions. How many worlds had God created? Were they truly inhabited? Or was there only one? Could the woman have done that was not permissible? How? Could the woman have said, “I’m sorry!”? I watched the two women angrily address their comments to a third, and so, I figured that that woman must have stolen the old woman’s purse.

But then, the woman shot up in a rage, as though an ant nest had erupted beneath her. She pounced at one of the two women, the one that was crying, “I’ll kill you!” flinging a menacing hand across her face. The woman dodged, but the blow connected with her forearm. The old woman’s hate was clear, and when the woman standing off in the corner, amid the mob that gathered, called her down, sconding her to cease immediately, I understood in an instant. The two women were not defending her. They were denouncing her, for the sake of the dogs. For she had not had one, but several, even though she carried only one at any one time.

“Ce l’ho visto!” the man called out, “Jeri!” “I saw it myself, yesterday!” And then one of the women added, holding up the four fingers, “I, Ciucio, appena nata, sarebbe potuto morire! Tutti!” “The puppies!” she called, in anger. “Newborns, they could’ve died! All of them!” And then, the old woman answered, spitting as she did so, “Va fanculo! Va fanculo!” “F*** off!” “F*** off!” she shrieked, in a floridly perfectly perceptible Italian. “Va fanculo, tu! I suoi bambini! I tuoi famigl! Tutti! Va fanculo!” “You can’t kill your children! Your family! All of you! F*** Italy!”

And it intrigued me how every foreigner immediately learns to swear, even if they know no other words, in the host language. Why is that? I wondered, barely able to articulate a clear sentence, but fully equipped to damn an adversary. How could such a thing not be true, that words, in the host language, could so immediately learn to damn an adversary. Some equally intriguing spirit must have been lingering about me. For though I couldn’t see it, I heard the categorical voice of its answer, “Because words are weapons,” it said, “and gross language, above all, is the sword we wield when threatened. So, whether or not the old woman speaks a staggered Italian, her ability to fence with foul words, parolace as the Italians call it, should not be held against her.” And it was right. For, living as she was, in a land that was strange to her, on the fringe of the social milieu, a nobody, a nomad, gross language was all she had.

And, of course, she had the dogs! They too were weapons. And well she knew how to wield them. The first time I saw them together, I was moved. She was leaned up against a wall, sitting on the upside down crate, in a corner of the street that intersected just where Via dei Giubbonari meets Via dei Chiavari. One couldn’t help but see her. The dog, on a cloth spread out before her, was sleeping at her feet. Just beside, a bowl containing sparse coins in Euro. What a darling, I couldn’t keep from thinking. And I tossed a few loose pennies inside the bowl. From then on, I would always see her – her and the small dog. They stirred tenderness within me. For she cooed it, humanized it, and lovingly attended it. Or so it struck me. It could have been an infant.

To me, it was a scandal. And then I thought about the puppies and the old woman with the dog. Two days ago, a group of us had walked by and oh the start it gave us. “Where? When? How?” we gasped, confounded. For what we saw was not simply the lady, not simply the dog, but the lady with the dog and a brand new litter! Four tiny, black all over, so minute, they could fit in your palm, each one – puppies! We could hardly believe it. The dog had never so much as appeared to have been pregnant!
But then, we realized that it wasn’t the same one. They looked alike, but this was a different dog, and here it was with a brand new litter: barely but a few hours come into the world. I, for my part, could not resist them. Not only did I ask whether I could take a picture and promptly proceeded to do so, I also tossed a generous amount of loose Euros into the old container. A number of admiring passers-by did the same thing. And I gather that that was one of her most profitable days of panhandling.

And then it rained, later, the same morning. In torrents. For Rome had come under an unusual system: hot, suffocating days, punctuated by violent, extended downpours. Around midday, I was going by and saw her cupping the puppies in her hand. She was removing them hastily from the cloth spread out before her, tucking them into her skirt. I saw, as well, my friend go by, looking across at them, visibly perturbed. I called out to her and waved hello. She acknowledged my greeting and, getting nearer, said how bad she had felt for the dogs. Didn’t I think that she should go buy them an umbrella, she inquired, and give it to the woman, so she could keep them from the storm? “I suppose you could,” I said, “but you can be sure she collected a lot of money today,” I added. And then, hurriedly, in afterthought, “But don’t let me discourage you; if buying them an umbrella is what you want to do, then, by all means, do that. I only meant that I saw her smoking, so I figured ...” “It’s just that they’re in the rain,” she interrupted, regretful.

And that, precisely, was the point of the two women jostling her now with words. “We don’t care about her!” they were screaming, “We care about the dogs! You saw her with them, newborn puppies, in the rain; you did nothing. How come?” They were addressing the passers-by who were reprimanding them for harassing the old woman, “la zingara” was the Italian term. For her part, the woman went on crooning. And when a passing stranger went over to inquire what had happened to be the matter, she took hold of the woman, leaned into her shoulder, and proceeded to weep on her neck. This unexpected gesture made the woman shirk, at which point the woman took hold of her face and pathetically kissed her. Was it thus that Judas had kissed Jesus?

Others walked by and stopped short to console with her. A middle aged man berated the animal activists as anti-Italian, “Partigiani,” he ejaculated, spitefully. “Grazie!” one of them retorted. A couple of other women, colluding, started to usher the old woman away from the crowd. The one, young, covered in tattoos, surprised me most of all. I had thought, until that point, that tattoo-aficionado went hand in glove with animal rights activism. It was confounding that hardly anyone stood ground with the two women. And by this time, as one of them had managed to be standing quite near me – for I had gone and got myself smack in the middle of the row – I leaned over and quietly mumbled, “Ha ragione, signora; è uno scemo; ce l’ho visto anch’io, ieri; ho pure scattato delle foto.”

The young tattooed lady, in concert with another woman, took hold of the woman’s arm. Presently, they began to whisper conspiringly and proceeded to carry her way, “Va’ via, va’ via,” they told her. “Just go along, leave, get away.” But the two women wouldn’t allow it. They followed, rounding round her like hounds upon a jackal, blocking up the way. “She can’t leave,” they insisted. “The cops will soon be here.”

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