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Book Notes: Mighty Judgment: How the Supreme Court of Canada Runs Your Life, by Philip Slayton

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MIGHTY JUDGMENT: HOW THE SUPREME COURT OF CANADA RUNS YOUR LIFE, by Philip Slayton[1]

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POWERFUL. PATERNALISTIC. COMPETENT. Undemocratic. Secretive. This is how Philip Slayton, author of *Mighty Judgment*, describes Canada's highest court, and these attributes lead him to conclude that the Court must be reformed.[2]

In Part I Slayton describes a Court that has shifted from a sleepy institution in its infancy—attributed in part to a lack of independence from the Privy Council—to one that changes the "social fabric of Canada ... in astonishing ways" since the enactment of the *Canadian Charter of Rights and Freedoms* in 1982.[3] Slayton argues that judges have taken up this constitutional power with vigour and have "become a new political class of activists"[4] with the power to "decide social, economic, and political issues that ... [affect] every Canadian."[5]

To illustrate this point, Slayton describes a number of highly influential *Charter* decisions that confront issues of liberty and security of the person, equality and discrimination, religious freedoms, and rights of the accused in the context of illegally obtained evidence. Slayton recounts highly personal details of the litigants involved in these cases. Take the *AC* decision,[6] for example, wherein the Court was asked to determine the government's capacity to force a child to receive a blood transfusion contrary to her own strongly held religious beliefs. Slayton retells the child's reaction to the compelled transfusion: "Nothing can properly describe how I was feeling ... I could liken it to being raped and

1. (Toronto: Penguin Group, 2011) 340 pages.
2. *Ibid* at xxvii-iii.
3. *Ibid* at 12. See Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (UK), 1982, c 11.
4. *Supra* note 1 at 18.
5. *Ibid* at 35.
6. *Ibid* at 48. See *AC v Manitoba (Director of Child and Family Services)*, 2009 SCC 30, [2009] 2 SCR 181.

violated, but even those words do not express my feelings strong [*sic*] enough."[7] These intimate details serve to reveal how involved the Court has become in the minutiae of the lives of Canadians.

As a seeming *quid pro quo* for meddling so deeply in the emotional, corporeal, and spiritual lives of Canadians, Slayton details the personal and professional lives of each Supreme Court justice in Part II of his book. Separating his descriptions by "the Chief,"[8] "Leaders of the Court,"[9] "Middle of the Pack,"[10] and those "Bringing Up the Rear,"[11] Slayton shares many less widely known details, such as the politics of each judge's appointment and information about each justice's family and upbringing. How do these diverse personalities work to make decisions for the country? Slayton concludes that Supreme Court judges are simply "[n]ine people doing their best,"[12] thereby humbling and humanizing the judges who make these fundamental decisions.

In his concluding chapter, Slayton suggests that "the judges seem to get it right more often than they get it wrong";[13] however, he argues the change is needed to remedy the "mismatch between the job the constitution gives [the judges] and some of the ways in which the court is structured and operates."[14] Slayton's core suggestions are geared at democratizing the Court. He first suggests changes to the selection process, which is now controlled by the prime minister.[15] In an earlier chapter, Slayton details the selection process and recent attempts at reform by both Liberal and Conservative governments,[16] which he concludes have been "meaningless" in their effect on the prime minister's untrammeled decision-making power.[17] Instead, Slayton advocates for a US- or UK-style model, both of which disperse the decision-making authority to selection committees in the hopes of democratizing and, particularly in the case of the UK-style model, depoliticizing the process.[18]

Slayton also argues that current tenure provisions that allow federal judges to stay in office until the age of seventy-five should be limited. He encourages

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7. *Ibid* at 49.
8. *Ibid* at ch 9 (McLachlin CJC).
9. *Ibid* at ch 10 (Binnie and Abella JJ). Binnie J retired in October 2011, after the publication of Slayton's book.
10. *Ibid* at ch 11 (LeBel, Charron, and Rothstein JJ). Charron J retired in August 2011.
11. *Ibid* at ch 12 (Deschamps, Fish, and Cromwell JJ).
12. *Ibid* at 234.
13. *Ibid* at 244.
14. *Ibid* at 260.
15. See *Supreme Court Act*, RSC 1985, c S-26 s 4(2).
16. *Supra* note 1 at 136-37, 140.
17. *Ibid* at 245.
18. *Ibid* at 246-48.

adopting a similar system to South Africa, which limits judicial terms to twelve years.[19] Slayton also calls for judges to open themselves, and the Court processes, to the public by developing more public personas. He pushes against the traditional theory of a cloistered and isolated judiciary and suggests that greater public scrutiny—facilitated by both the media and by the judges themselves—will provide the public with recourse against "an overbearing judiciary."[20] Given the power awarded to the Court by the *Charter*, Slayton concludes by asserting that these suggestions for democratization are essential "to make what [the Court] does tolerable in a true democracy."[21]

19. *Ibid* at 249.
20. *Ibid* at 260.
21. *Ibid* at 260.