

# Book Review: The Conventional Man: The Diaries of Ontario Chief Justice Robert A. Harrison, 1856-1878, by Peter Oliver (ed)

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Book Review

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*THE CONVENTIONAL MAN: THE DIARIES OF ONTARIO CHIEF JUSTICE ROBERT A. HARRISON, 1856-1878* EDITED BY PETER OLIVER (TORONTO: UNIVERSITY OF TORONTO PRESS FOR THE OSGOODE SOCIETY FOR CANADIAN LEGAL HISTORY, 2003) 644 pages.<sup>1</sup>

BY PAUL ROMNEY<sup>2</sup>

Ontario Chief Justice Robert A. Harrison may have been a conventional man, but he was far from ordinary. Only forty-five years old at his death, he had already been chief justice of Ontario for three years, having been appointed straight from the bar, where he was recognized as the province's top common law practitioner. One might guess that such a high achiever got off to a fast start and this diary confirms the supposition. Only twenty-two years old at its opening, he was already running the office of Attorney General for Canada West John A. Macdonald, having received the job two years prior from Macdonald's predecessor. He was also writing articles (sometimes two a day) for a leading Toronto conservative newspaper, taking a prominent part in debates at the city's Literary and Debating Society, and working at full spate on the latest in a series of legal manuals. The first of such manuals was a comprehensive digest of Upper Canadian common law reports, which appeared in 1852. To this workload Harrison soon added a leading role as writer and co-editor at the newly founded *Upper Canada Law Journal*, a progenitor of the *Canadian Bar Review*. After work he danced into the small hours, was the life and soul of many drinking parties, and still found a few hours in the day (or night) for sleeping. But sleeping, it appears, is not what he was best at.

Harrison's fast start brings to mind another high-flyer, Ontario Chief Justice John Beverley Robinson, who became acting Attorney General of Upper Canada at the age of twenty-one and chief justice before he was forty. But Robinson's career was accelerated by the wartime

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<sup>1</sup> [*The Conventional Man*].

<sup>2</sup> Baltimore.

emergency of 1812 and the paucity of legal talent in a sparsely populated pioneer colony. Robinson, moreover, was born into the colony's social elite—an elite founded on privileged access to the institutions of colonial government. Harrison, in contrast, belonged to an emergent rival elite based on Toronto's municipal politics, dominated in the mid-nineteenth century by the city's powerful Orange organization. Harrison's father, an Irish Protestant, ran the city market, a respectable and responsible job, but one of clerical rather than professional status. His mother seems to have boasted genteel antecedents: her father was an Irish clergyman and two brothers were army officers during the Napoleonic Wars (both died in Spain). Yet, as newly arrived immigrants in the 1830s, the Harrison family had to work their way up. In a poignant entry, a little more than a year before his death, Chief Justice Harrison, revisiting his childhood home, recalls "the time when a kind father and mother slaved and saved to make a future for their children."<sup>3</sup> It was their merit and exertion, as well as his own, that placed Harrison in Upper Canada College, where he excelled as a scholar, and then in the legal profession, which was somewhat thicker in talent than in Beverley Robinson's youth forty years earlier.

Harrison's diary displays the qualities that brought him so swiftly to the fore in this competitive sphere: brains, ambition, self-confidence, tremendous energy, and the obsessional temperament that expressed itself both in his incessant writing (including the diary itself) and his insomnia. Peter Oliver persuasively reads the diary as an expression of Harrison's self-confidence and ambition, but he notes that a sceptic might perceive an unacknowledged insecurity in the diarist's assiduous recording of every compliment he received. If so, it was perhaps the insecurity not of personal diffidence, but of the self-made individual, whose every guinea or dollar must come through his own hard work. (His father had property, but not nearly enough to sustain a widow and six children in genteel idleness.) Harrison was big and bold in some ways: he was loud-voiced, self-assertive, and had an appetite for food and drink that put 221 pounds on his frame before he was thirty, and sixty more before his death. He could rebuke a sitting judge and make it stick. But he was not a risk-taker. He started out, following paternal example, in a government job. When he decided to enter private practice in Toronto, rather than move to Quebec with the Attorney General,<sup>4</sup> it was with the assurance that he would be the government's law agent in Toronto. To this he sought to add another government job, that of County Attorney for York and Peel. In this light, Harrison's assiduous

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<sup>3</sup> *Supra* note 1 at 587.

<sup>4</sup> This was the time when Toronto and Quebec were alternating as the Canadian capital.

tallying of compliments was arguably of a piece with his obsessive accounting of his bowels, sleep, weight and income: a tracking of the conditions of personal and professional success or failure.

The diary, then, is a log rather than a monologue; it is factual rather than reflective. A typical entry states, “[h]ad a long talk with Mr. Thompson about J.A. Macdonald. Afterwards with Eagan about Sir Allan MacNab.”<sup>5</sup> This was just at the time when Attorney General Macdonald and his allies were ousting MacNab, then Prime Minister of Canada, from office and from the leadership of the Conservative party in Canada West. But the diary says nothing of the context or what was said. Likewise, we learn at different times that Harrison has been reading John Stuart Mill’s *Political Economy, Liberty and Representative Government*, John Bright’s speeches, Charles Darwin’s *Origin of Species*, and many other nineteenth century classics; but there is no word of reflection on any of them. The U.S. Civil War, the Fenian invasions, and Confederation pass almost unmentioned, except in so far as they touch Harrison professionally or politically, and they are not pondered at all. The problem is, in part, that the diary is not a complete text in itself. It makes many allusions to attached documents, including newspaper clippings of Harrison’s cases and speeches, which are not reproduced here.

Nevertheless, for all its limitations, the diary presents intriguing nuggets of information on many aspects of life, law, and politics in mid-Victorian Canada. Harrison’s private life is its chief topic; therefore the diary has much to say in passing about popular culture, domestic economy, and social, gender, and family relations. As to law, it sheds light on the professional life of the mid-nineteenth century lawyer and judge in and about Osgoode Hall and elsewhere in the province as Harrison travels the assize circuits by train and boat appearing in, or hearing, a miscellany of criminal and civil cases, often involving sexual transgression. The diary is thick with allusions, often uncomplimentary, to judges and practitioners. Usually these are purely personal, but once or twice they expand into a broader comment, such as the following instance in 1874: “The judge ... acted as a partisan for the plaintiffs. It seems to me that the power which common law judges now have to try questions of fact without a jury, unfits them properly to try case[s] with a jury.”<sup>6</sup> In this instance the culprit is Adam Wilson. Having written of Justice John Wellington Gwynne of the Supreme Court of Canada as John A. Macdonald’s virtual surrogate in constitutional cases, I was pleased to find Harrison complaining of Justice

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<sup>5</sup> *Supra* note 1 at 127.

<sup>6</sup> *Supra* note 1 at 494.

Gwynne's proclivity for taking sides in any and every sort of case.

As to politics, I had long wondered how a man who was so close to Macdonald and was a Conservative MP from 1867–1872, could have been raised to the bench by a Liberal government at a time when it was most unusual to extend such patronage to a political opponent.<sup>7</sup> However, we learn here that Harrison was a reluctant politician who allowed himself to be drafted into the fray in 1867 but was tired enough of politics by 1870 to be ready to accept the judgeship that he had rejected as premature when Macdonald first mentioned it two years earlier. Apparently the judgeship was not then forthcoming, but the diary offers no hint that this had any connection with the estrangement from Macdonald that Harrison notes in December 1872.

The diary records other circumstances that might have made Harrison more acceptable than some other Conservatives to the Minister of Justice who promoted him. Edward Blake and he had been classmates at Upper Canada College. Early on, one finds Harrison expressing support for the fusion of common law and equity, one of Blake's pet ideas. Furthermore, as a Member of Parliament, Harrison had supported Blake in attacking Macdonald's bilateral readjustment of the financial terms of Confederation with Nova Scotia. This was the first major provincial rights controversy, and I was interested to find Harrison, some months later, reading the Confederation Debates and Andrew Calhoun on states' rights. As usual, however, the diary makes no comment on his reading, and for the most part it offers little illumination of politics outside his personal involvement. Significantly, however, Harrison remarks in June 1864 that Macdonald and George Brown have joined forces "to make a federal union between Upper and Lower Canada"<sup>8</sup> rather than to promote the union of British North America.

The chief appeal of this diary lies in its poignant presentation of a man's life. Courtship, marriage, and family happiness all pass in bland succession until suddenly we are in hell as Harrison recounts, with heart-rending pathos, his fifteen month-old daughter's death from diphtheria. Can it get worse? It does, as Harrison's beloved wife and mother die within weeks of each other. It continues to worsen as Harrison marries a younger woman whom he clearly loves, and continues to love, even as she alienates him from friends, family, and even the only surviving child of his first marriage, who is packed off to a convent near Niagara Falls. Finally, there

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<sup>7</sup> But the answer to this is not unknown: this very diary condemns as "moral cowardice" Macdonald's nomination of Samuel Hume Blake, a Liberal, as vice-chancellor of Ontario in December 1872.

<sup>8</sup> *Supra* note 1 at 228.

are two heart attacks and Harrison on his knees praying to God to spare his life, and the final poignant entry: “[d]id not feel very strong today. I am conscious that this week I have not made as much progress as I did last week.”<sup>9</sup> Within two weeks he is dead. But long before that we have come to appreciate Harrison as an ardent man who owed his success not only to a hard-driving temperament but to personal warmth. Harrison’s likeability may have helped with juries, but he was not, perhaps, skillful in reading other people’s hearts—and that, added to a self-made man’s concern for his income, which politics sadly reduced, may explain why he stayed out of politics as long as he could and quit as soon as he could. Politics, pride, and the human heart: here is a tale worthy of Trollope’s or Hardy’s attention.

This book reproduces about thirty per cent of the diary and adds a long interpretative and biographical introduction, which outlines, in an easy style, the different themes of legal, social, and political history, and traces Harrison’s life with appealing sensitivity. The book’s title reflects Oliver’s perception that “Harrison, while he possessed talents and a driving ambition which made him anything but ordinary or typical, was also profoundly conventional in his values, his attitudes, and his prejudices.”<sup>10</sup> Oliver presents this as a paradox, but it is not clear why he should do so. Surely in most walks of life, including some in which originality is supposedly a virtue, a bright, energetic conformity is the surest path to success.

It is as an exercise in textual redaction that the book impresses least. There is scarcely any annotation, which is bound to leave much interesting material inaccessible to most readers. Oliver pleads that the diary contains far too much to make the effort feasible. Comprehensive annotation may have been impossible, not because of the effort it would entail, but because it would preclude single volume publication. But that is a far cry from nothing at all, which is virtually what is provided. Worse by far is the inexplicable omission of even a nominal index, which makes the diary harder to read for everyone and far less handy for the scholar. Another annoyance is the profusion of garbled names and words. A.M. Smith boasts a different set of initials on each of his first four appearances<sup>11</sup>; “*Lepbron v. City of Ottawa*” and “*Lephram v. Ottawa*” are clearly the same case, which is actually *Leprohon*<sup>12</sup>; Governor-General Viscount Monck makes an appearance as “Moore,” and Machiavelli as

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<sup>9</sup> *Ibid.* at 626.

<sup>10</sup> *Ibid.* at 6.

<sup>11</sup> *Ibid.* at 247, 261, 301.

<sup>12</sup> *Ibid.* at 565, 574.

“Machiesel”<sup>13</sup>; John Duggan, a Q.C. of Irish Protestant stock, is mislabelled R.C.<sup>14</sup>; Ilma di Murska, the Croatian soprano, becomes “di Murski” within two lines and reappears three years later as “Di Musski”<sup>15</sup>; the Reverend Saltern Givins figures as “Gallein Gwens.”<sup>16</sup> And I strongly doubt that in April 1867 the widowed Harrison was praying to God daily to “rend” him a new wife.<sup>17</sup> Perhaps the editor relied too little on the manuscript diary and too much on the typescript prepared by Harrison’s granddaughter. These lapses must be noticed to alert the scholar, but for scholar and lay reader alike this is decidedly a book to be cherished for what is valuable rather than spurned for its flaws.

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<sup>13</sup> *Ibid.* at 203, 587.

<sup>14</sup> *Ibid.* at 384.

<sup>15</sup> *Ibid.* at 517, 615.

<sup>16</sup> *Ibid.* at 425.

<sup>17</sup> *Ibid.* at 296.