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## Book Review: A History of Dalhousie Law School, by John Willis

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*A History of Dalhousie Law School.* By JOHN WILLIS. Toronto: University of Toronto Press. 1979. Pp. 302. (\$20.00)

This is an intimate history of a law school. That a *law school* could have a “history” at all, immediately signals that it is a very special kind of institution. That its history would be written “intimately” tells us something about the author, and his relationship to his subject.

To speak first of John Willis, many of his devoted admirers know him as Canada’s consummate, peripatetic pedagogue (he taught memorably in four law schools), a redoubtable foe of cant and conceptualism in administrative law (from the Donoughmore Committee to the McRuer Commission), a picaresque practitioner (his firm’s motto: “we know everything, we do anything, we stop at nothing”), and public servant in war and peace (the International Monetary Fund and the Ontario Securities Commission, respectively). But the writer of a history? An intimate history? This begs for speculation, of a type more common in “lit-crit” than legal circles.

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<sup>1</sup> (1974).

<sup>2</sup> (1973).

\*Edward G. Hudon, former Librarian, Supreme Court of the United States, and former Professor, Faculté de Droit, Université Laval, now Adjunct Professor, University of Maine Law School.

Dalhousie law school witnessed both the dawn and sunset of John Willis' teaching careers, where it began in 1933 and ended in 1975, with a gap of thirty years or so in the middle. A man must get a sense of place over forty years, an instinct about what is really happening which transcends what (in Willis' phrase) a school "says about itself when it's on parade". And, if one is naturally endowed with a skeptic's tendencies, and allowed the perspective of time and distance between one's first and last observations, one's instincts are likely to be pretty sound. Willis, in other words, was the logical man to write this history.

There is, moreover, another aspect of Willis which must help to explain his obvious affection for Dalhousie. As he said in another context, "the principle of 'uniqueness' is the principle for me". Dalhousie is nothing if not unique, at least amongst Canadian law schools. Of this topic, more in a moment; let it only be noted that a man who respects the distinctive qualities of institutions, and appreciates their source and implications, is in a sense a natural-born historian. After all, Willis' early study on *Canadian Boards and Commissions at Work* was very much in the same vein.<sup>1</sup>

Finally, anyone who has read Willis or listened to Willis will want to know if the Willis style has survived intact in this "intimate" context. To an extent, it has. The history is written simply, with an occasional salty phrase, and just the right mixture of irreverence and kindness. Some flavour of this is caught by Willis' reference in the preface to the important preliminary work on this history which had been begun by the late Dean Horace Read:<sup>2</sup>

Had Horace Read lived to finish what he began, the book would probably have been long, detailed, and, if I may dare say so, a shade too boastful about the achievements of the school.

But he gives Read his due, and states that he has merely tried to finish what Read began.

So much for Willis. What of Dalhousie Law School?

The story of the law school, as Willis tells it, from its inception in 1883, is largely a story of its dominant personalities. Foremost amongst these was its founding dean, Richard Weldon, whose thirty years in office understandably loom large in Dalhousie folklore. Weldon, a most unusual man, was a political scientist and mathematician, trained in the United States and Germany, and a prominent, practising politician. He has come to personify two virtues which historically have been associated with the law school: humane and civilized relationships amongst all of its members, and a

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<sup>1</sup> (1939).

<sup>2</sup> Pp. v-vi.

commitment to public service. And Weldon also personified a third virtue which, in the long run, may well explain his law school's rise and reputation: through his close working relationship with Benjamin Russell, a local practitioner and part-time teacher, he was able to preserve the goodwill and support of the legal profession for full-time legal education which then existed neither in England nor elsewhere in Canada.

Weldon's successor, D.A. MacRae made explicit, and institutionalized, the bonds of trust which obviously must have existed between Weldon and the legal profession. MacRae, strengthened the professional sector of the law school curriculum, and ultimately succeeded in persuading the new Canadian Bar Association to adopt the Dalhousie curriculum as the basis for a standard Canadian common law curriculum. Elements of MacRae's handiwork are to be seen in the curriculum of every modern Canadian law school. And what has disappeared from view—the compulsory aspects of some of the MacRae curriculum—remains a ghostly presence haunting the relationship between Canadian law schools and the legal profession they serve.

A "golden age" dawned for Dalhousie, according to Willis, in the period 1920 to 1933. Two distinguished deans, John Read and Sidney Smith, respectively to become a judge of the International Court of Justice and president of the University of Toronto (and briefly Secretary of State for External Affairs), were to preside over the school's fortunes during this period. ("Fortunes" is used euphemistically: the school was impoverished then, and became more so later). Here again, prominent personalities come to the fore: the faculty included a future premier of Nova Scotia, Angus L. Macdonald, a future judge of the Nova Scotia Supreme Court, Vincent C. MacDonald, and Horace Read, a future dean. Students at the school included N.A.M. MacKenzie, a future president of the University of British Columbia, J. Keiller Mackay, a future Ontario Court of Appeal judge and Lieutenant Governor, and a future chief justice of Newfoundland, A.J. Walsh. And, in this period, students of an earlier age reached positions of great prominence, not least of whom was R.B. Bennett, prime minister of Canada. This was a period when the school began to impinge on the national consciousness, being closely involved in the founding of *The Canadian Bar Review*, embarking upon a series of exchange lectures with other Canadian law schools, and holding several important public events, including the fiftieth anniversary of the law school in 1933. And the school lived, as well, in the consciousness of its graduates. Two of these, R.B. Bennett himself, and Sir James Dunn, became major private benefactors of the school, while Angus Macdonald, nearly twenty years premier of Nova Scotia, contrived a variety of public benefactions in its support.

Through the depression period and the Second World War, the school's significant accomplishment was survival. It was at this time that Willis himself taught at Dalhousie, a fact characteristically recorded in the third person, as did George Curtis, subsequently founding dean of the Faculty of Law in British Columbia. They were the first non-Maritimers to join the faculty. At the end of the war, both Willis and Curtis had left; they were replaced by two other subsequently-famous law teachers—J.B. Milner and Moffatt Hancock of Toronto and Stanford. A period of post-war adjustment ensued, with large enrolments of veterans, a tiny and unstable faculty complement, and chronic financial problems. Once again, Dalhousie was sustained by its tradition, and by the personal qualities of its faculty—which was enlarged twenty-five per cent in numbers and, ultimately, even more in repute by the appointment of W.R. Lederman in 1949.

On Dean MacDonald's appointment to the bench in 1950 (the first such appointment for a Canadian academic) he was succeeded by Horace Read who presided over the school until 1964. It was during this period, one might say, that Dalhousie and the rest of Canadian legal education began to draw together. On the one side, despite inadequate, though improved, facilities and lilliputian library and salary budgets, the Dalhousie law school grew, its curriculum developed and a graduate programme was launched, and new teaching methods were introduced. On the other, the three year LL.B. became universal across the country, curricula acquired a suspicious resemblance to the one Dalhousie had pioneered forty years earlier, and the newly established Association of Canadian Law Teachers provided all Canadian legal scholars with the possibility of participation in a national academic community.

In a sense, at this point in time, Dalhousie's story becomes less interesting to anyone who is neither an alumnus nor an aficionado of Canadian legal education. In 1966, the law school finally acquired a suitable building—appropriately named in honour of Weldon—and began to develop its much-neglected library. It continued an earlier tradition of recruiting students from across the country and enjoyed a favourable balance-of-payments in the export of its graduates.

Recitation of its recent deans and faculty members, a listing of new courses and conferences, or celebration of the accomplishments of its modern graduates would undoubtedly lead to invidious omissions and burden the editor of the *Review* with wrathful protests. It will suffice to mention two facts which will serve to record the undiminished load-bearing capacity of the twin pillars of the so-called "Weldon Tradition". The first of these is the remarkable presence of no less than four Dalhousie law graduates at

one particular moment amongst the ten provincial premiers, eloquent testimony to the school's commitment to public service. The second "fact" is perhaps not capable of scientific verification, but as a visitor to the law school, in 1976, I can testify that relationships between faculty and students indeed seemed to be—and were believed to be—warmer and more civilized than might be expected from a school which had recently been visited by the four horsemen of the academic apocalypse: the sixties, physical expansion, democratization and curriculum reform.

Willis' book must be read by anyone who wishes to know the history of Canadian legal education. But it is not, ultimately, satisfying for those who wish to understand its causes and assess its results. Willis himself raises some of the unanswered question in his Epilogue: why would a giant like Weldon immerse himself in an obscure, little law school? what influences formed its many remarkable graduates? and was the law school, at any time, a "great" law school, however greatness might be measured? But the questions which interest me most are those implied by Willis' confession, in his Preface, that he would have preferred to have written an essay in social history.

Osgoode Hall Law School, the one I know best, is only six years younger than Dalhousie Law School. It began its life as well under visionary leadership, although William Reeve, its first principal, died within a few years of taking office. It too nestled securely, perhaps too securely, in the bosom of the profession, while enduring the character-forming travails of poor facilities, a tiny overworked faculty, and an inadequate library. And, if vicarious immodesty may be excused, its graduates also sit in serried ranks in the seats of legal, political, and financial power.

But no one speaks of a "Reeve Tradition" or a "Falconbridge Tradition". No one writes maudlin memoirs of Osgoode of the sort Willis quotes frequently. And no one would think to ask, as Willis does of Dalhousie, whether Osgoode was ever (in ancient times; I cannot speak of today) a "great" law school. Why not?

Can the differences in the development of these two schools be traced merely to the personalities which animated them? Presumably not, for Osgoode did not become Dalhousie by the simple expedient of hiring MacRae and Smith in the 1920's or Willis in the 1940's. Was the mutually respectful relationship between the Dalhousie law school and its legal constituency possible only in the small and stable society of the Maritimes, and incapable of imitation in the more turbulent circumstances of Upper Canada? Perhaps so, because Ontario had to cope with the growth of population, ethnic diversity, industrialization, and changes in legal professionalism which

arrived, if at all, much later in Atlantic Canada. Or, paradoxically, was Dalhousie's evolution a normal and natural one, with the onus of explanation for deviant development falling on Osgoode? Dalhousie, after all, looked much like many other North American law schools at most moments in its history, while Osgoode was a distinct anomaly until the late 1950's.

I have deliberately refrained from asking the most difficult question, the question that Willis often asked himself and all of us, sometimes in despair, and sometimes in defiance: what difference does it all make in the end? Can a law school make its graduates more self-fulfilled or successful, their clients better served, its community more humanely governed and its legal system more just than they otherwise would be? Or do we law teachers, like mediaeval monks, simply record, transcribe and illuminate the songs of more eloquent poets, the mysteries of ancient traditions and modern catastrophes, or the mythic achievements of the men of action in the world around us?

Perhaps Willis would say that such questions are only meant to be asked and not answered. If so, it is nonetheless characteristic of his life-long scholarly impact that they should be implanted in the mind of the reader, even after reading this uncharacteristically benign and affectionate book.

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