New Directions in Judicial Biography: More Humane, More Transnational, More Comparative

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Blaine Baker was always interested in the people who made, interpreted, and used the law throughout history. As others in this collection have pointed out, he devoted less attention to those who found themselves subjected to the law; as a result, the people in his scholarly universe were primarily elite WASP males, though he descended the social scale somewhat in his late-career study of the will of farmer William Martin.\textsuperscript{1} Blaine both wrote and wrote about what he called “juristic biographies”—studies of legal professionals broadly defined—with his posthumously published volume on Gerald Le Dain containing his last words on the subject.\textsuperscript{2} This contribution will pair Blaine’s devotion to juristic biography with his interest in the migration of legal personnel, law books, and legal ideas.\textsuperscript{3} It will also introduce a theme—what is now called “law and emotions”—that featured in Blaine’s last work on Le Dain. It does not,

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however, share Blaine’s view that juristic biography exists outside of what he called “mainstream legal history,” whatever that might be.  

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Some time early in 2007, an American judge wrote to an Australian judge in the following terms:  

Just to say I am thinking about you with cheers for your courage. I have no doubt you will remain steadfast in the pursuit of justice. And if you feel lonely in Canberra, please remember that you have legions of like-minded colleagues and applauders among jurists around the world.  

The writer was Justice Ruth Bader Ginsburg of the United States Supreme Court, the recipient, Justice Michael Kirby of the High Court of Australia. They had met nearly twenty years earlier, before either was on their country’s highest court, at a judicial gathering in India. The letter came late in Kirby’s career, when he was locked into a pattern of seemingly perpetual dissents, a position Ginsburg herself could sympathize with later in her career.  

On the surface the letter may seem inconsequential, but it speaks to new realities in judicial appointments and experience in the last few decades. The first, one that has been quickly incorporated into judicial life-writing, is simply the opening up of judicial office to a wider applicant pool than the traditional affluent white heterosexual male of Judaeo-Christian

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background. Both the writer of the letter, the second woman to join the United States Supreme Court, and the recipient, the first openly gay judge to join the top court of a major western democracy, also came, notably, from humble backgrounds. Ginsburg, born Joan Ruth Bader, was the child of Russian Jewish immigrant parents who settled in Brooklyn, where her father made a modest living in the garment business; her mother died when Ginsburg was fourteen. Although her Jewish background was no longer a novelty at the U.S. Supreme Court when she was appointed in 1993, her gender certainly was. Michael Kirby was born to a working-class Catholic father, himself the child of an unwed mother, and a middle-class Protestant mother, albeit one who was obliged to work to help support the family. He came out publicly, if discreetly, soon after his appointment to the High Court of Australia in 1996, but was marginalized by most of his colleagues even as his reputation as a jurist continued to grow with the Australian public and international observers.6

Ginsburg and Kirby belong to a small cohort of women and of male judges from less traditional backgrounds who joined their country’s highest court in the closing decades of the twentieth century or early in the twenty-first. Others I will discuss include the first three women on the Supreme Court of Canada, Bertha Wilson, Claire L’Heureux-Dubé, and Beverley McLachlin (appointed in 1982, 1987 and 1989 respectively); Sandra Day O’Connor and Sonia Sotomayor of the Supreme Court of the United States (appointed in 1981 and 2009 respectively); Mary Gaudron, the first woman on the High Court of Australia (appointed in 1987); Thurgood Marshall and Clarence Thomas (appointed in 1967 and 1991 respectively), the first two black

appointees to the United States Supreme Court; and Bora Laskin, the first Jewish appointee to the Supreme Court of Canada (appointed 1970). The personal differences of this cohort from traditional judicial profiles could not help but stand out, making them obvious targets for biography.\(^7\)

The second new reality, however, has been much less noticed by those in the life-writing business. That is the extent to which judges in the late twentieth and early twenty-first century have been on the move, as my introductory epistle indicates. This movement encompasses

intellectual and personal exchanges between east and west, between north and south, between national and international legal norms, and among countries with civil law, common law, and mixed legal systems. The reasons behind this mobility will be explored later, but it has grown to such an extent that it is now common to speak of “a global constitutional dialogue, and the corresponding emergence of an international epistemic community of courts and judges.”\textsuperscript{8} While an epistemic community can exist based purely on the written word, without the personal acquaintance of its members, in noting the factors contributing to this phenomenon scholars have pointed to “the importance of the international professional networks that judges operate in (e.g., [the] judicial urge to join or be associated with an international epistemic community of cosmopolitan jurists).”\textsuperscript{9}

This paper will consider the impact of these two factors, the growing personal diversity of the bench in some countries and the growing international contacts of the judiciary, on both the content and the form of judicial biography. It will argue that the time has come for juristic biography, historically a purely national enterprise, to become more international and comparative. Demands for a more diverse and “representative” bench are now common to many countries, even as the judicial mission, particularly with regard to constitutional interpretation, human rights, and the meaning of equality, becomes more internationalized, and the boundary between national and international law more fluid. Biography permits us to observe the working


\textsuperscript{9} Hirschl, \textit{Comparative Matters}, 21.
out of these trends at the level of individual lives, and to see the personal costs imposed on the pioneers of diversity as well as their potential influence through international networks of solidarity.

A more diverse bench

For centuries, the subjects of judicial biography in the common law tradition were powerful white males. In the nineteenth-century, the shape of such works always focused on the pre-judicial career. The emphasis on superlative legal ability and sterling character was meant to demonstrate the worthiness of these men for the bench, but on their judicial contributions themselves the biographers usually fell silent. It would, after all, have been contrary to dominant trends in legal thought to admit that the personality or predilections of a judge should influence their decisions. Law was a science, and all that mattered was demonstrating that judicial candidates were good scientists.10

The realist turn in the legal thought of the early twentieth century, whose exponents argued that judges were influenced by their political, social and moral inclinations more than by legal doctrine, took some time to infiltrate the writing of judicial biography.11 This shift took place first in the United States, and experienced an uneven uptake elsewhere. However, when

10 Philip Girard, “Judging Lives: Judicial Biography from Hale to Holmes,” (2003) 7 Australian Journal of Legal History 87. The role of individual judges in civil law and other legal traditions is less prominent than in the common law, such that judicial biography is a less prominent genre in those jurisdictions.

judicial appointments themselves took a realist turn, when it was admitted that the bench itself should be broadly reflective in its personal characteristics of the society it served, judicial biography found itself with a new and potentially more controversial mission. It could be summed up in the title of a well-known 1990 article by Canada’s first female Supreme Court judge, Bertha Wilson, “Will Women Judges Really Make a Difference?” Substituting “Black” or “Jewish” or “Gay” or any other relevant characteristic, and you will have described the orientation of the new wave of judicial biography, or at least a subset of it. Justice Wilson’s answer to her own question was, to paraphrase, “maybe women judges will make a difference in some particular areas, such as sexual assault law, but in most areas of the law they will not make a difference.”

Judicial biographers have problematized Wilson’s minimalist account of the possible influence of gender (and by extension, other identity-based characteristics) on judicial decision-making, in two ways. First, they consider their subjects’ entire life experience rather than reducing them to their gender, race, religion or class background, although these of course remain important elements of their identity. In Wilson’s case, for example, her judicial persona reflected not just her gender but the fact that she was a Scottish immigrant, a clerical spouse, and a student of philosophy. Second, they do not confine themselves to interrogating their subjects’ influence on particular areas of law, but consider broader dimensions of their possible impact. Bora Laskin, for example, was always concerned about the architecture of the legal order and openly challenged the highly precedent-oriented nature of the judicial reasoning of his


13 Ibid. at 515.
generation, while Michael Kirby pushed the relationship between international law and domestic law much further than his colleagues were usually prepared to accept.14

What these newer biographies have in common is a sensitivity to their subject’s outsider status, a status that may be signalled by a particular characteristic such as gender but is not subsumed by it. Thus, Constance Backhouse highlights Claire L’Heureux-Dubé’s French-Canadian cultural traits as well as her gender in analyzing her uneasy reception in the largely Anglophone Supreme Court of Canada, while Pamela Burton stresses Mary Gaudron’s working-class background and leftish political views in reviewing her role on the High Court of Australia. Perhaps surprisingly, by contrast U.S. Supreme Court justice Clarence Thomas found his new colleagues to be mostly receptive and welcoming even after the tumultuous and unprecedented confirmation hearings during which he was accused of sexual harassment by law professor Anita Hill.15

These biographers have blended the personal and the professional, the public and the private, in ways that bring judicial biography more into the mainstream of life-writing in general, rather than confining it to a specialized subgenre. In doing so they have moved closer to the practice of literary biography (i.e., the biography of literary figures), which is arguably the best model for judicial biography. While I may disagree with Richard Posner about many things, I agree with his observation that “judicial biography is a cousin of literary biography.”16 Like literary biographers, judicial biographers are faced with the choice of how to balance the written

14 Girard, Bora Laskin, 539-42; on Kirby, see below, text accompanying note 48.

15 Foskett, Judging Thomas, 256, 260.

work with the life. Just as literary biography and literary criticism are two distinct genres, so too judicial biography and what is called (in Canada at least) “legacy scholarship”—the study of a judge’s jurisprudential corpus and its influence over time—are, or should be, distinct. When Quentin Bell’s biography of his aunt Virginia Woolf appeared, it was at first criticized for not saying enough about her novels.\(^17\) In my view, such criticism is misplaced. Bell wanted to give the most comprehensive account possible of Woolf’s life, one that could be used by critics in exploring the connections between her work and her life.\(^18\) The guiding principle for both judicial and literary biographers should be: “be comprehensive about the life, selective about the work.” In other words, draw suggestive parallels, certainly, but do not overdo the analysis of the work itself.

Obviously, one must address a judge’s case law legacy in some way, and the biographers of my cohort of judges have dealt with this in various creative ways. In a thirty-eight-chapter biography, Constance Backhouse chose to devote seven chapters to case studies of her subject’s most characteristic and significant decisions, plus one each of a more synthetic nature to L’Heureux-Dubé’s judging at the trial and appellate levels before she reached the Supreme Court of Canada.\(^19\) Less than a quarter of Burton’s biography of Mary Gaudron is devoted to her case law at the High Court; aside from one chapter devoted to the ground-breaking \textit{Mabo} decision on indigenous land rights in Australia, the approach is thematic rather than focused on individual cases.\(^20\) A similar approach is taken in my biography of Bora Laskin, with only the \textit{Patriation}


\(^{20}\) Burton, \textit{Mary Gaudron Story}. 

Reference of 1981 singled out for special attention. Michael Kirby’s biographer A.J. Brown was more interested in what his subject’s decisions tell us about Kirby himself and his interactions with his colleagues and the public, than in the decisions themselves.

Another aspect of this cohort of biographies is the privileging of the role of emotion, or what Bernard Hibbitts terms in his preface to the Le Dain volume, the “‘humanity of judging,’ relating the function and role of the judge to his or her status and standing as a human being.” This, in a profession traditionally devoted to the suppression and abstraction of human emotion rather than its embrace, is particularly striking. The central characters in such biographies are living, breathing human beings with all their foibles and complexities, not just stoic generators of judicial prose or individuals who have climbed the greasy pole of professional status to achieve high judicial office. In part this is because the principal subjects are still alive in many instances; either they have given interviews to their biographers or a wide circle of their acquaintances and

21 Girard, Bora Laskin.

22 Brown, Michael Kirby.

23 Baker and Janda, eds., Tracings, at page x. The discussion of Le Dain’s humanity is inevitably tied to the diagnosis of clinical depression in 1988 that led to his resignation from the Court. The recent episode in which Justice Clément Gascon of the Supreme Court of Canada went missing briefly and later revealed he had long suffered from depression and anxiety, also highlights the issue of mental health and judging (National Post, 19 May 2019). Nor is this a new theme. Chief Justice of Upper Canada John Beverley Robinson (1791-1863) also suffered from depression (Patrick Brode, John Beverley Robinson: Bone and Sinew of the Compact (Toronto: Osgoode Society for Canadian Legal History, 1984)), as did Chief Justice Edward Jarvis of Prince Edward Island (1788-1852) (personal information from Anna Jarvis, currently writing a biography of Jarvis). The mental strain imposed by the demands of judicial office is a topic that deserves more research, both contemporary and historical.
colleagues have done so. Only the biographers of Laskin and Marshall in my cohort wrote without personal access to their subjects. Personal correspondence between the subject and others, the traditional privileged source of many biographers, is often not as prominent in these works as in the past. And while such correspondence can provide valuable insights into a subject’s character, it can also be distancing compared to the immediacy of personal interviews.

This embrace of judicial humanity can be seen especially in the ways these “outsider” judges were treated by their judicial colleagues and in the media. They were often given a chilly reception that was hurtful, if not downright painful. They were often assumed to have been appointed to satisfy a political agenda, which in some cases they were, rather than because of their qualifications (or in addition to their qualifications). Hence an aura of “not being good enough” hung over them in the eyes of their colleagues, was furthered by the media, and in some cases may have affected their own self-confidence. This was particularly the case with the first women judges. Claire L’Heureux-Dubé told her biographer that she “was received like a dog in a china shop” by her colleagues on the Quebec Superior Court when appointed in 1973.24 When she had tried to register for law school at Laval University in 1948, the university secretary told her “No, it’s only for men,” and encouraged her to enroll in social work.25 A few years later, Bertha Wilson, too, was discouraged by Dean Horace Read from enrolling in Dalhousie Law School. Even after she graduated near the top of her class, he advised her not to take up a post-

24 Backhouse, Claire L’Heureux-Dubé, 231.
25 Ibid., 103.
graduate scholarship that she had been offered at Harvard: according to Read, there would never be women legal academics in her lifetime. 26 She opted for articling instead.

A generation after these experiences, things had improved for some women. In 1964 Beverley McLachlin, encouraged by her future husband to think about studying law, found an acceptance letter in her mailbox four days after writing Dean Wilbur Bowker of the University of Alberta Faculty of Law merely asking for information about law school. Later, her desire to try her hand at full-time law teaching was supported by her Vancouver law firm. She was hired without controversy on a tenure-track position at the University of British Columbia Faculty of Law in 1974, although she was given “a host of subjects that no one else wanted to teach.” 27

In some instances, the process of a judge’s “othering” was more multi-faceted. Judges on the Ontario Court of Appeal were deeply suspicious of their new colleague Bora Laskin when he was appointed in 1965, the first Jew and the first academic appointed to that court. While it may be difficult to disentangle these two sources of discontent with him, the one vocalized by his new colleagues related to his previous career. They felt that academics were too “soft” and fuzzy-minded and would not be able to stand the pace of work. Like women and minorities in other workplaces, Laskin had to work twice as hard as everyone else to prove himself, which he eventually did. 28

In other cases, matters did not improve over time. Michael Kirby’s general approach to law was considered unsound by most of his colleagues, even though his biographer argues that

26 Anderson, Bertha Wilson, 48. Harvard Law had only begun to accept women students in 1950.

27 McLachlin, Truth Be Told, 100, 147.

28 Girard, Bora Laskin, 339-41.
he was stereotyped as a judicial activist when this was far from his own self-image and from his conservative views on many legal matters. The negative view of him held by his colleagues was probably reinforced by his homosexuality. His rate of dissent reached 48% in 2006, and his judicial colleagues, even if they themselves dissented, virtually never joined in an opinion authored by Kirby.29 In 2002, when he was wrongfully accused by a senator of using government cars to ferry young men to and from his house for sexual purposes—the documents relied upon were soon shown to be forgeries—only one of his colleagues, Mary Gaudron, supported him and the chief justice did nothing.30 Similarly, when Claire L’Heureux-Dubé was attacked in a national newspaper by an appeal court judge whose reasons she had criticized in a controversial sexual assault case, Chief Justice Lamer did not come to her aid and she felt a “lack of support from her fellow justices.”31 When Kirby retired in 2009 after twenty-three years on the court, only two of his six judicial colleagues came to the retirement event he himself had organized (the court’s tradition was to organize such events only for a retiring chief justice). By contrast, in spite of her semi-outsider status on the Supreme Court of Canada, Claire L’Heureux-Dubé was treated to a “cascade of Claire-fests” on her retirement in 2002, in the words of Chief Justice Beverley McLachlin.32 Thus, it seems that the members of some apex courts can “agree to disagree” on important matters but still display mutual respect and some sense of cohesion, while others possess a more individualistic sense of the judicial office.

29 Brown, Michael Kirby, 399.

30 Ibid., chap. 15. The senator made his remarks in the legislature, where he was protected from libel actions by parliamentary privilege.

31 Backhouse, Claire L’Heureux-Dubé, 491.

32 Ibid., 524.
The commonalities of the life stories of this cohort of judges have suggested a new form of life-writing: the joint biography. This form is not entirely new: in *The Warrior and the Priest* John Milton Cooper, Jr compared and contrasted the lives of Theodore Roosevelt and Woodrow Wilson, while more recently Doris Kearns Goodwin used the form to study William Howard Taft and Theodore Roosevelt.33 Linda Hirshman followed suit in 2015 with *Sisters in Law: How Sandra Day O’Connor and Ruth Bader Ginsburg went to the Supreme Court and Changed the World*.34 Constance Backhouse employed the same format in her 2019 book, the more modestly titled *Two Firsts: Bertha Wilson and Claire L’Heureux-Dubé at the Supreme Court of Canada*.35

Although identical in form, the latter two books are quite different in their focus. Hirshman spends about 40% of the book reviewing the lead-up to her principals’ U.S. Supreme Court appointments, and then about 60% comparing and contrasting their major decisions, mainly in the field of women’s rights. Backhouse is much more interested in the lived experience of her subjects and allots only one chapter to each of her judge’s decisions while on the Supreme Court of Canada. *Sisters in Law* is principally biography as intellectual legal history, written for an American audience assumed to be familiar with the U.S. Supreme Court’s jurisprudence on a variety of topics, while *Two Firsts* has a broader, more socio-cultural focus. Backhouse is more interested in the “making” of her subjects’ careers, in the barriers Wilson and L’Heureux-Dubé faced and how they were overcome, in the evolution of legal and judicial culture, and in the


34 Hirshman, *Sisters in Law*.

35 Backhouse, *Two Firsts*. 
complicated ways in which these two women engaged, or not, with feminism, though *Sisters in Law* also engages with the latter theme to some extent.

These two books only begin to explore the potential of joint judicial biography. There is no reason that the genre should be confined to figures from one country, though it is probably true that it works best with individuals who are contemporaries, broadly speaking. Comparing the lives of judges of different national backgrounds would be a new way to explore comparative legal culture. Take Michael Kirby and Claire L’Heureux-Dubé, for example. Born in 1939 and 1927 respectively, they both enjoyed long judicial careers as trial, appellate and supreme court judges, and were actively involved in law reform, seen as legal iconoclasts, and were very widely known in international legal circles; L’Heureux-Dubé in fact succeeded Kirby as president of the International Commission of Jurists in 1998. A joint biography of them would provide not only a way into comparing Canadian and Australian legal culture, but a way of studying the growing internationalization of the judiciary. Given the historic links between Jewish and Black lawyers in North America, a joint biography of Thurgood Marshall, named the first Black judge on the U.S. Supreme Court in 1967 and Bora Laskin, named the first Jewish judge on the Supreme Court of Canada in 1970, would be intriguing. Although both were involved with the cause of civil rights, their modes of engagement were almost completely opposite, with Marshall nationally known for his role in the NAACP while Laskin’s work on behalf of the Jewish community was almost entirely behind the scenes.

Or, consider the parallels between the lives of Claire L’Heureux-Dubé and Sonia Sotomayor.36 Both were products of a devout Catholic childhood with most of their education

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36 I thank Constance Backhouse for making this suggestion.
provided by nuns. Moreover, the close-knit communal life experienced by L’Heureux-Dubé in the town of Rimouski was not as different as might be expected from Sotomayor’s Puerto Rican neighbourhood in the Bronx, which she described as a village far removed from big-city life in Manhattan.\textsuperscript{37} Where it was her gender that made L’Heureux-Dubé an outsider on the courts in her home province, however, Sotomayor’s Latina heritage, more than her gender, was the main reason many believed she was not “up to the job” when she was named to the bench.

I have no illusions that a spate of such cross-national judicial biographies will be forthcoming any time soon. National conventions and preoccupations with respect to legal biography are too well entrenched. Yet it is well worth considering what intellectual rewards could be harvested from the writing of such works. This call to action also provides a convenient lead-in to my second theme, which is the growing international dimension to judicial life and work.

\textit{A more internationally connected bench}

At one time, international gatherings of judges were decorative affairs, usually spurred by some anniversary or important commemoration in the host country, with the presence of foreign judges lending an air of legitimacy and gravitas to the occasion. Thus, when Harvard University celebrated its tercentenary in 1936, the law school held a “Conference on the Future of the Common Law” at which jurists from Britain, Canada and the Irish Free State joined their American colleagues for three days of leisurely discussion and lunch al fresco on the Harvard

\textsuperscript{37} Sotomayor, \textit{My Beloved World}, 11-12, 116.
lawns.\textsuperscript{38} When the Supreme Court of Canada observed its centenary in 1975, a symposium on “The Role and Functions of Final Appellate Courts” featured just three speakers, the Lord Chancellor of the United Kingdom, the president of the French Cour de cassation, and Associate Justice Byron White of the U.S. Supreme Court.\textsuperscript{39} At these gatherings judges typically said something about their home tradition, people applauded politely, and everyone went home after some nice dinners.

Several events in the 1990’s made that decade a turning point with regard to such judicial gatherings. The most important was the fall of the Berlin Wall and the consequent dismantling of the Warsaw Pact. All of a sudden, many emerging democracies were putting together new constitutions and trying to establish independent judiciaries. Who better to ask about the latter than judges from countries with well-established independent judiciaries? The end of apartheid in South Africa and its constitutional and judicial reforms also sparked worldwide interest. At the same time the number of women judges around the world reached a critical mass and sparked the creation of the International Association of Women Judges in 1991.\textsuperscript{40} This organization engages in judicial and public education on the topic of women’s rights around the world; some of its meetings have drawn as many as 4,000 members from 100 nations.\textsuperscript{41} The 1990s also saw the beginnings of social context education for judges in Canada and elsewhere, albeit not without controversy. Initially, many judges, including the Chief Justice of Canada, feared that any such


\textsuperscript{39} Girard, \textit{Bora Laskin}, 429-30.

\textsuperscript{40} www.iawj.org.

\textsuperscript{41} Backhouse, \textit{Claire L’Heureux-Dubé}, 515.
education would become “a vehicle for indoctrination.” Canada’s National Judicial Institute (NJI) began a study of social context education in 1994 but did not begin offering programs until 1998.

Ironically, the social context education that got off to such a rocky start in Canada became very popular in the global south, particularly with regard to issues of gender justice. Naina Kapur, who had been raised in Canada but chose to practice law in India, her parents’ home, found that the problem there was not with the law as such but with the discriminatory attitudes of male judges. She went to the chief justice of India, Aziz Mushabber Ahmadi, and obtained his support for judicial training. The two of them decided to expand the initiative to neighbouring countries in South Asia, and to invite Michael Kirby of Australia, Albie Sachs of South Africa, and Claire L’Heureux-Dubé and Douglas Campbell of Canada. The inaugural meeting in 1997 assembled twenty-six judges and twelve representatives of feminist NGOs from India, Sri Lanka, Bangladesh, Nepal and Pakistan, and the program continued for ten years. “The participants visited courts, women’s shelters, sexual assault centres, juvenile detention homes, and prisons,” providing them with sometimes shattering experiences and causing them to rethink some of their attitudes and assumptions.

Claire L’Heureux-Dubé became a superstar at these meetings, and the range of countries who sought her out in connection with their democratic, legal or judicial reforms expanded

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42 Ibid., 507.

43 Ibid., 507-09. Provincial courts had moved ahead of the NJI in some cases; in British Columbia, training on gender, race and Indigenous issues had been offered since 1988.

44 Ibid., 511.
exponentially. By the time of her retirement in 2002 she had delivered 240 speeches in at least thirty countries from Argentina to Zimbabwe. Her presence spread the reputation of the Supreme Court of Canada and particularly its jurisprudence on equality far and wide, as she became one of the best-known participants in the “international epistemic community” of cosmopolitan jurists noted earlier. Although her biographer argues that she was not particularly good on race issues in her Canadian jurisprudence, this did not seem to hamper her reception in cross-cultural settings in the global south. Observers attributed this to her never standing on ceremony or demanding the privileges of a Supreme Court justice; she would travel in jam-packed Indian trains, visit Palestinian prisons, and accept without complaint whatever accommodation was available. She could instantly develop a rapport with anyone, no matter what their background or station in life. As someone who had been an outsider for so much of her life, even at the Supreme Court, L’Heureux-Dubé had developed the skill of putting people at their ease immediately. This personal rapport went a long way in getting her message on gender equality accepted by those who might have been otherwise un receptive.

In these international settings, L’Heureux-Dubé was also prepared to go much further in identifying her own experiences with sex discrimination than she had been at home. In Canada she was a highly reluctant feminist icon, always distancing herself from the label. Abroad, in her later years as a judge and in retirement, she was prepared to embrace it. Bertha Wilson, too, in retirement became more overtly involved with gender and Indigenous issues than she had ever been before.

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Mary Gaudron too was able to move to the international sphere after her retirement from the High Court of Australia. Just months after her retirement in 2003 she was named to the International Labour Organization’s Administrative Tribunal in Geneva, later serving as its president from 2011 to 2014. The tribunal decides upon complaints from those employed by the ILO itself and by a number of other international organizations that recognize its jurisdiction. She was also appointed by Kofi Annan to a panel tasked with reviewing the dispute resolution system of the United Nations system, which reported in 2006. While not as impactful or high-profile as addressing global chief justices on gender equality, these tasks allowed Gaudron to continue to contribute to her chosen fields, labour law and anti-discrimination law. Her greatest contribution to global jurisprudence, however, will always be the decision she co-wrote with Justice Deane in the Mabo case on indigenous rights in Australia, a case that has joined others in settler societies around the world in attempting to right historic wrongs against indigenous peoples.  

Of all the judges in my cohort, Michael Kirby is the one who most consistently engaged with the international sphere at both the personal and ideational level. By the time he was named to the High Court of Australia in 1996, he had served on committees of the United Nations, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, and the Organization for Economic Cooperation and Development, he was already “a world figure in the fight against HIV/AIDS,” and his international engagements only multiplied thereafter. Kirby often cited the decisions of other national courts but it was,  

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according to his biographer, at the Bangalore Judicial Colloquium of 1988 convened by the former Chief Justice of India, P.N. Bhagwati, that he had his Damascene moment with regard to international law. There he became fully converted to the idea that international human rights law, even when not formally incorporated into domestic law, could be used to interpret and develop national law, including constitutional law. It was in Bangalore, in the course of discussions with senior judges from South Asia and Africa, that Kirby realized they were already taking the law in this direction, and that he had much to learn from them, rather than the other way round.\(^{48}\) It was on this same occasion that Michael Kirby and Ruth Bader Ginsburg met for the first time, the origin of their decades-long friendship.

In spite of considerable resistance from his colleagues, Kirby began to use the *International Covenant on Civil and Political Rights, the European Convention on Human Rights*, and other international instruments liberally in his decisions. His approach finally bore fruit in a 2007 case in which federal Australian legislation depriving all prisoners of the right to vote was challenged. In *Roach v Electoral Commissioner*, all seven judges referred to the *European Convention on Human Rights* and to Canadian Supreme Court authority in holding the legislation invalid.\(^{49}\)

**Conclusion**

If there is one factor that characterizes biographies of what we might call the “diversity cohort” of judges, it is the emphasis on their subjects’ humanity. This of course should always be at the core of life-writing, but in legal biography, and particularly in judicial biography, this has

\(^{48}\) Ibid., 223.

\(^{49}\) Ibid., 397-98.
not always been the case. In the common law tradition, the idea that a judge’s personal predilections should not influence his or her decision-making remained strong, and tended to drive a wedge between the life and the work instead of uniting them.\(^{50}\) Indeed, there has been no shortage of voices claiming that “diversity” candidates had to leave their gender or race at the door when they crossed the judicial threshold – including at the Supreme Court of Canada itself.\(^{51}\) But the turn to the ideal of a more responsive and representative judiciary undermined that traditional idea. Surely, part of the reason for appointing a Black judge, for example, is to permit that person to bring some of their experience as a racialized person into the interpretation and application of the law? How those early appointees navigated their entry into all-male, all-white, all-fill-in-the-blank institutions is a subject of absorbing human interest as well as legal significance.

My second theme, that of “judges on the move,” is meant to highlight an under-recognized dimension of judicial life. It is too early to offer any definitive interpretation of its consequences, given how recent it is, but I offer some suggestions. Judges are expositors of national law, and their biographers have not traditionally been interested in their transnational connections. Given the long resistance to foreign authority in the U.S. Supreme Court, biographers of its judges have

\(^{50}\) For examples, see Girard, “From Hale to Holmes.”

\(^{51}\) Various views on whether a racialized judge could or should rely on her own life experience in interpreting the events before her were expressed in the Supreme Court of Canada’s decision in \(\text{R. v. R.D.S.}, [1997] 3\SCR 484\), in which the decision of a Black Nova Scotia judge, Corinne Sparks, had been impugned on the ground of alleged racial (anti-white) bias. The two female justices on the Court at the time, Justices McLachlin and L’Heureux-Dubé, were the most receptive to the idea that Judge Sparks could rely on such experience, while the male judges were split, with some only reluctantly in favour of the idea, and others downright hostile.
been particularly insular in this regard. Yet the evidence culled from the biographies of judges in
my cohort demonstrates that personal connections between judges of different countries are on
the rise, and that the intellectual consequences of these connections are not just one-way, from
jurisdictions of the developed North to those of the Global South, but rather are multi-directional
and will surely take on new forms in a post-Covid 19 world given its impact on international
travel. Those who wish to trace the emergence of global trends in jurisprudence would do well to
keep in mind the circulation of persons (physical and virtual) as well as ideas in the formation of
these trends. And in this effort, judicial biography will be a crucial resource.