A Review Essay: Torts — American Style*

Reviewed by G.H.L. Fridman**

In this two volume work of almost 2000 pages, some 1409 are devoted to the exposition of the law of torts in the United States. The remaining pages, apart from the Index and Table of Cases, comprise two appendices. One provides selected provisions from various Restatements of Torts, the other offers information for researching the law on “Westlaw”, now that the former method of seeking the law in volumes is antediluvian.

The size of this work, which is twice that of comparable Canadian texts, resembles the English classic treatise Clerk & Lindsell on Torts, which is edited by a collection of participants. The volumes under review are by a single author. As such it is a remarkable achievement. The mere thought of writing such a work is sufficient to frighten most academics, many of whom today eschew the art of producing a treatise. Equally daunting, however, is the prospect of reading the entire work rather than dipping into appropriate segments as required by the demands of practice or the necessities of research. In truth, I cannot pretend to have read every page. Some chapters were perused closely, others skimmed to glean their content. However, the energy and devotion of the author, the quality of the work and the importance of the subject matter, all require and justify more than a cursory examination of what Professor Dobbs has provided.

Immediately, two important features of the work must be mentioned: firstly, it is concerned with the law of the United States. Since this review is geared to Canadian lawyers it is pertinent to say that except for comparative purposes or where Canadian counsel has a client amenable to that law, this work is of limited utility in this country. Secondly, this is a book for practitioners from the publisher’s “Practitioner Treatise Series” and it is not aimed at academics. This should not deter the academic reader as it, in fact, has much to offer that constituency, as it is a significant addition to the American literature on the subject.

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Like Gaul, this review is divided into three parts. One deals with the presentation, another with content and the last with the author’s approach to the law of torts, any overlap being minimal.

Dan Dobbs writes clearly and directly, which aids comprehension. The subject matter of each chapter is divided into sections and sub-sections, each with its appropriate heading and follows a logical sequence. The reader has no difficulty following the author’s train of thought or appreciating the arguments made. This does not mean that the writer has produced the traditional, simplified “Hornbook”. Rather this comprises a detailed, analytical account of the law along with explanation and discussion of the nature and content of the sphere of tort law. To that end, he includes in the text accounts of the facts of important decisions followed by discussion. However, mostly the facts are consigned to the footnotes in which are given references to Australian, English and Canadian jurisprudence and literature. The work explores critically the differing approaches of the United States’ jurisdictions to many topics such as occupiers’ liability. The resulting text is of obvious benefit to both practitioner and law teacher.

There are two features of tort law in the United States that separate its operation from that in Canada, despite the seeming overall similarity of the law in both countries. These are: (a) the importance in the United States of the jury, and (b) the co-existence of federal and state tort law. The first requires frequent discussion of the roles of the judge and jury in tort cases. The second is revealed in the consideration of “Civil Rights Torts” in chapter 3 and in the discussion of the Federal Torts Claims Act in chapter 15.

The extent to which juries still function in American tort suits makes some of Professor Dobbs’ account of the law of negligence, for example, less pertinent to the Canadian reader.

As for constitutional torts providing remedies for wrongs of government officials, it would seem that this possibility has been neglected by judges and counsel in Canada, despite the popularity of the Charter otherwise. In contrast, as Professor Dobbs points out, “Even the United States Constitution itself may implicitly create a tort claim.”

The role of the jury is vital to appreciating Professor Dobbs’ work. He writes: “Tort law cannot be understood apart from its institutions like the jury...”, which is startling for Canadian lawyers. Hence the jury figures prominently in Part I — entitled ‘Introducing Tort Law’ — in which he considers the legal nature of tort, the aims, policies, methods and history of the law and, what he terms, “operating conditions” of that law. This section includes discussion of trials and appeals, judge, jury and community values, the prima facie case, burden of proof, remedies and, of course, attorney fees and liability

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2 Vol. 1 at 31-8, 200-1 and 353-9.
4 Vol. 1 at 30.
insurance. He adds: "No one will understand tort law in the United States without understanding that liability insurance fuels the system, limits capacity for compensation and deterrence, and affects the costs and choices in the system as a whole."  

Is that statement applicable to tort law in this country? Or is it possible to understand Canadian tort law without any reference to liability insurance, even if it is vital to the compensation of tort victims? For Dobbs the question is ineluctable. His account of the law here is presented under two headings: (a) physical interference with the person or property (occupying volume 1 and part of volume 2); (b) economic and dignitary injury. A third portion, sandwiched between the other two, deals with damages, apportionment and joint and several liability; a critique of the tort system; and an examination of workers' compensation, social security disability payments, and no-fault schemes.

Professor Dobbs' presentation under these headings is masterly. First, come the various forms of trespass, conversion and detinue — but only as a historical footnote. Then he deals with the defences, followed by negligent interference with the person and property. This "subpart", so termed, provides an in depth survey of all of the aspects of negligence from "statutory" negligence, to occupiers' liability and the liabilities of healthcare providers. It also deals with immunities such as limitations or exceptions to liability, for example, of governments, spouses and family members. Here he includes charities as some States do exclude liability of such organizations contrary to Canadian practice.

The "negligence" portion of the work includes chapters on professional risk-takers such as firefighters and the police, and pre-natal and birth-related injury, wrongful death, intentional and negligent infliction of emotional harm, the "rescue" cases and liabilities of persons such as landlords with respect to tenants or employers and their employees. From this Professor Dobbs passes on to strict liability, including vicarious responsibility, liability for animals and those who create abnormal danger, along with products liability. This exposition reveals differences from the law of Canada. The final part of the volume deals with "economic and dignitary injury" — defamation, interference with family and contractual, commercial or economic relations, unfair competition, nuisance (an awkward inclusion here), misrepresentation and lawyer malpractice. This last topic, important though it is to the practice, fits uneasily here, as errors by lawyers can involve more than economic harm, for example where counsel fails to act to prevent harassment of a spouse.

The contents of this treatise have been described so to illustrate its coverage and extent as compared with our own texts. To avoid tedious over-examination, let me concentrate on areas of congruence between the laws of the principal

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5 Ibid. at 43.
6 Ibid. at 121.
jurisdictions. Professor Dobbs writes that only intentional touching constitutes battery — that is not our law. On burden of proof in battery, he states that the onus is on the plaintiff to show that the defendant’s touching was non-consensual, but that very approach was rejected in Scalera. He appears to be of the view that trespass to land is not a strict liability wrong which is at odds with the generally accepted Canadian position albeit there is the occasional heresy with regard to incursions above land. The Restatement cited does not resolve the trespass/nuisance issue definitively.

Three other aspects of trespass merit mention. Firstly, there is trespass ab initio, which he describes as “a crazy wrinkle” in the defence of lawful authority to entry onto land. For Dobbs this doctrine is “a covert imposition of punitive damages” that is rejected by the Restatement because there are few post-1900 cases in support. But in Canada and England the doctrine is very much alive and has nothing to do with punitive damages and everything to do with abuse of authority. The second is that of freedom of expression on another’s land. This is clearly of concern in the United States but the closest Canadian situation is that of picketers where employee dissent takes place adjacent to the employer’s property. The collision between constitutional rights of freedom of expression and those of landowners to exclusivity have not been efficiently explored in our jurisprudence to this time. The third matter of note, the issue of disciplining children, has recently emerged as a vexing question for Canadian courts. Professor Dobbs’ discussion reveals that in the United States, as in Canada, there is uncertainty as to when legitimate discipline ends and abuse begins. However, there does not seem to be any call in the United States, as there is in

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8 Vol. 1 at 53.
11 Vol. 1 at 102-3.
12 Kingsbridge Development Inc. v. Hanson Needler Corp. (1990), 71 O.R. (2d) 636 (H.C.).
13 Vol. 1 at 107-10.
14 Ibid. at 206-8.
16 Vol. 1 at 209-12.
18 In Committee for the Commonwealth of Canada v. Canada, [1991] 1 S.C.R. 139 the issue was that of freedom of expression under the Constitution with respect to airport regulations, not trespass to land.
Canada, for the rejection of the defence of discipline where trespass is alleged. One other lesser point should be raised: nowhere does the author consider the possible effect of provocation by the plaintiff on a defendant’s liability for trespass to the person. Yet this is a question that has caused some change of opinion, and difficulty, in Commonwealth courts. Are we to assume that this has never arisen in the United States? That would appear to be the case.

Turning to the author’s treatment of negligence, which sprawls over many chapters, it was intriguing to read:

...The core of negligence law is about injury to persons and property. Other tort rules protect against intangible losses like emotional or financial harm, but negligence alone is often not enough for liability in those cases.

To which he adds, “there is seldom a claim for stand-alone emotional or financial harm based on simple negligence.” These are curious statements, particularly in light of the subsequent detailed discussion of negligent infliction of emotional harm, and of negligent interference with contract or economic interests. It is not clear what he intends by the expression “negligence alone is not enough.” He is correct if he means that a duty of care is required, as Canadian and English cases manifest. But such an interpretation requires the reader to understand his reference to “negligence” in Volume 1, chapter 6 to mean negligent conduct, whereas the title of the chapter — “The Negligence Cause of Action” suggests that he is also referring to what is often called “the tort of negligence.” If so, it would be incorrect for a Canadian or English lawyer to deny the possibility of a negligence action for “stand-alone” emotional or fiscal loss. Both systems of law are now familiar with (a) actions for negligent infliction of nervous shock, and (b) negligent liability for “pure economic loss”, even though the situations for recovery are limited. There is scope for uncertainty or confusion here. But, in contrast, there is clarity of exposition in the chapter on negligence standards. This is detailed and analytical, especially on (i) standards to be applied where children are charged with negligence (Commonwealth courts have yet to resolve this issue satisfactorily); (ii) the standards to be employed where breach of a statute is alleged; and (iii) the famous “Learned Hand formula” for weighing risks against utility. Professor Dobbs begins this chapter by considering the “objective reasonable person standard.”

21 Vol. 1 at 258.
22 Ibid. at 259.
23 Vol. 2 at chap. 20, Topic C.
24 Ibid., chap. 32, 1282-7.
After dealing with proof of negligence, including *res ipsa loquitur* in the United States, which has received its quietus in Canada\(^{25}\), Professor Dobbs turns to the notions of "cause in fact" and "proximate cause".\(^{26}\) A Commonwealth reader would recognize these as (a) causation, whether the defendant's conduct brought about the plaintiff's injury, and (b) remoteness of damage, whether in spite of such causation the defendant should not be held liable. As regards the former, in dealing with what he terms "alternative causes" he cites *Cook v. Lewis*\(^{27}\), in which the Supreme Court of Canada adopted the approach of the California court in *Summers v. Tice*.\(^{28}\) In both, pragmatic reasoning rather than logic prevailed. Associated with the problem raised in those two cases is something that does not seem to have arisen in Canada in negligence cases: the issue of "market share liability.\(^{29}\) first invoked in *Sindell v. Abbott Laboratories*\(^{30}\). Market share theory, he states, imposes liability on each defendant only for a percentage represented by their market share in the harmful product. Judging from the text, courts in the United States do not seem to have resolved the issues deriving from that original theory.

The analysis of proximate cause canvasses many interrelated, complicating themes. To the Canadian reader it is interesting that Professor Dobbs discusses not only *Palsgraf*\(^{31}\) but also *Re Polemis*\(^{32}\) and *The Wagon Mound*.\(^{33}\) The contrasting principles of directness and foreseeability, including the legal consequences of intervening acts, are given full treatment allowing the author to reveal the extent to which "proximate cause" is employed as a method of controlling the scope of liability. It is curious that the author appears to consign the thin, crumbling and eggshell skull cases to foreseeability as an exception to foreseeability, rather than directness, as is the law of the Commonwealth.

No comment is necessary on the chapter dealing with the defences, such as "comparative fault" or contributory negligence, illegal conduct of the plaintiff, assumption of risk — a.k.a. *volenti*, save to examine a problem which has vexed both jurisdictions — the limitation of actions in regard to childhood sexual abuse claims.\(^{34}\) There is no agreement among the State courts on whether recovery of memory can be analogized to discovery of an injury, which permits time to run from such discovery rather than the date of occurrence of the injury. The Supreme Court of Canada, in an excess of empathy, has opted for a generous

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\(^{26}\) Vol. 1, 408.

\(^{27}\) Cit. *supra* note 9.

\(^{28}\) 33 Cal.2d. 80 (1948).

\(^{29}\) Vol. 1 at 430-2.

\(^{30}\) 607 P.2d. 924 (1980).


\(^{32}\) In *re Arbitration between Polemis and Furness, Withy & Co.*, [1921] 3 K.B. 560.


\(^{34}\) Vol. 1 at 566-70.
limitation doctrine here.\textsuperscript{35} \textit{Nescit vox missa reverti}? Since then the courts have been inundated with claims for fiscal recompense for early abuse, the limitation period commencing on the date of the awareness of the right to sue.

The chapter dealing with emotional harm or the intentional and negligent infliction of such harm in Canadian terms, suggests that the suffering of "severe distress" — distress so severe that no reasonable person should be expected to endure it — suffices for this purpose whereas in the Commonwealth jurisprudence some physical manifestation of harm is required for success. In the United States it is the "outrage" that grounds the action which notion is not confined to violent shock or fright per se. The use of words may be enough, especially where religious freedom, racial slurs or sexual harassment are involved.\textsuperscript{36} In the negligent infliction of emotional harm cases, some require a physical manifestation while others do not.\textsuperscript{37} Professor Dobbs discusses the concept of "zone of danger" which was once an appropriate test where one party claimed emotional harm consequent on the risk of harm to another. Rejection of that formulation in favour of a test of general foreseeability has rendered the law of the United States and the Commonwealth jurisdictions similar in approach.\textsuperscript{38} However, the author's discussion of \textit{Dillon v. Legg}\textsuperscript{39} and its aftermath,\textsuperscript{40} indicates that the courts in the United States have not gone as far as other systems in the scope of liability for "nervous shock" as opposed to "severe distress".

Also under the rubric of emotional harm, Professor Dobbs considers loss of consortium, which in some states includes a claim for loss of parental consortium. Loss of consortium is gone as a cause of action in Canada due to the post-1982 Charter compliance legislation in all provinces and territories, but in legislation such as the \textit{Family Law Act of Ontario},\textsuperscript{41} causing the death or injury to a spouse may give rise to claims which are economic rather than emotional in essence.

It must be said that, for the Canadian reader, chapter 20 contains some curiosities which suggest that the law of the United States has reached some extravagant, even outlandish, forms of liability. In contrast, the subject matter of its successor shows how the law of the two jurisdictions may be moving in the same direction. This chapter brings together duties to act affirmatively and obligations to protect plaintiffs from themselves or from others. Under the latter heading Professor Dobbs reviews the duties owed by landlords to tenants,\textsuperscript{42} by

\textsuperscript{36} Vol. 2 at 829-32.
\textsuperscript{37} Ibid. at 836-39.
\textsuperscript{38} Ibid. at 840.
\textsuperscript{39} 68 Cal.2d. 728 (1968).
\textsuperscript{40} Vol. 2 at 840-1.
custodians to wards, by schools to pupils, by caregivers such as foster-parents, by employers to employees, by psychotherapists to potential victims of their patients,\textsuperscript{43} and by providers of alcohol in all settings. This is a burgeoning area of liability in all jurisdictions. There appears to be a tendency everywhere to broaden the scope of liability to ensure that more and more persons are responsible for the safety of more and more people! This trend may explain not only the gradual extension of the scope of vicarious liability\textsuperscript{44} and liability for animals, abnormal conditions and special dangers,\textsuperscript{45} but also the acceptance of strict liability for defective products,\textsuperscript{46} which has come into the law of the United Kingdom by entry into the European Union.

Part IV — “Economic and Dignitary Injury” — illustrates the extent to which the law of the United States and those of Commonwealth origin may differ. For example, the privilege defence in libel, as in \textit{New York Times} v. \textit{Sullivan},\textsuperscript{47} and based on the United States Constitution has not been followed in Canada and England, but has found support in Australia.\textsuperscript{48} Invasions of privacy have been accepted by the \textit{Restatements} and by some courts in the United States,\textsuperscript{49} while in Canada some provinces have passed Privacy Acts of similar compass; other provinces have recognized a tort of appropriation of personality.

The chapter on interference with family relationships acknowledges the abolition of the former actions for “criminal conversation”,\textsuperscript{50} adultery and for alienation of affection, which mirrors the Canadian experience. The text discusses actions which may be brought for interference between parents and children and which are possible in Canada through such statutes as Ontario’s \textit{Family Law Act}.

Two American innovations in the field of interference with contract and economic opportunity are of considerable interest for Canadian readers: (i) the action in tort for bad faith breach of contract\textsuperscript{51} and, (ii) a tort action for wrongful discharge from employment.\textsuperscript{52} Nothing comparable is to be found in Canadian or English jurisprudence.

\textsuperscript{43} \textit{Tarasoff v. Regents of the University of California}, 131 Cal. Rptr. 14 (1976).
\textsuperscript{44} Chap. 22.
\textsuperscript{45} Chap. 23.
\textsuperscript{46} Chap. 24.
\textsuperscript{47} 376 U.S. 254 (1964); Vol. 2 at 1169-87.
\textsuperscript{49} Vol. 2, chap. 29.
\textsuperscript{50} Chap. 31; but see \textit{Davenport v. Miller} (1990), 70 D.L.R. (4th) 181 (N.B.Q.B.).
\textsuperscript{51} Vol. 2 at 1287-91.
\textsuperscript{52} \textit{Ibid.} at 1291-96.
In conclusion, the book's structure, that is, the analytical framework within which the substantive law is explained and discussed, and the nature of that explanation and discussion indicate that the author's approach is consistently pragmatic. For him, as for Mr. Justice Holmes, the law is what a court says, or would most likely to say the law is, based on findings of fact determined by a jury. Unlike other textbook writers, Professor Dobbs is not concerned with economic, sociological, ethical or meta-legal explanations of the law of torts. There is some discussion in the first chapter of corrective justice, community standards, policy rationales and economic analysis. These introductory remarks serve as a general background to the fundamental purpose of the book: to explain to practitioners the substantive content of the law so to improve the quality of their service to their clients. This is the strength of the book. The writer does not lose his true purpose in the thicket of "policy analysis". Nor does Dobbs attempt to foist his views of what the law should be upon the reader. In a sense, this is an old-fashioned treatise. It is founded firmly on the dissection and analysis of cases and statutes. This is very welcome. Too often, writers and judges scorn and eschew time-honoured and well-established principles of judicial reasoning, jettisoning them in favour of some temporary vogue for this or that "policy" and employing dubious statistics or drawing on suspect theories of the prejudiced. It is heartening, therefore, to find a book that sets out not to cajole or intimidate the reader into accepting questionable attitudes about the law but rather seeks to inform and enlighten, and which achieves those goals in an intelligent, clear and satisfying manner.

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**Judging Bertha Wilson: Law as Large as Life**

By Ellen Anderson

Toronto: University of Toronto Press, for The Osgoode Society, 2001. xxii, 472 pp. index, photos

Reviewed by Rebecca Johnson*

A package arrives in the mail. I unwrap it, and pull out a copy of Ellen Anderson's book. On the cover, a portrait of Bertha Wilson in her black working silks. Her gaze seems direct, and there is a slight smile on her face. I find myself wanting to grin back. I can almost place myself as a music student back in the old Moot Court Room at the University of Calgary, where I have gone to hear

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53 Vol. 1 at 12-25.

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a speech by the newly appointed first woman on the Supreme Court of Canada. Since the law school was then located on the 4th floor of the Biosciences building, the memory blends the unexpected musical lilt of a Scottish accent with the faint fragrance of formaldehyde. I am drawn back to the title of the work *Judging Bertha Wilson*. Wondering what judgment I will find between the covers, I settle down to read.

Anderson begins her book with the provocative assertion that Bertha Wilson can be characterized as a postmodern judge. While postmodernism remains notoriously resistant to definition, Anderson notes that a concern with the multiplicity and blurring of boundaries is one of its general characteristics. Throughout the book, Anderson follows these threads, exploring their influence in the life and jurisprudence of this judge who was to play such an important role at a crucial juncture in Canadian legal history. But this postmodern concern with multiplicity and blurred boundaries is not just a characteristic of the Wilson jurisprudence, but it is also a characteristic of Anderson’s book. Indeed, this postmodern blurring provides something of an answer to the question I found myself returning to while reading the book: that is, ‘what genre of book is this?’ The book also carries the markings of multiplicity and blurred boundaries. It is a blend of the biographical, the analytic, and the prescriptive. The blurring can make for occasional jarring moments (when, for example, a prescriptive authorial voice unexpectedly inserts itself in what had seemed to be a descriptive passage), but I also found that the blurring raised interesting questions about the porosity of the boundaries between life and law. It provides an effective vehicle for trying to understand both the life of this important judge, and of the nature of the Canadian legal scene. Further, it produces a book that will be of interest to different kinds of readers.

In the more strictly biographical parts of the book, Anderson assumes the role of storyteller, and takes us on a voyage through Bertha Wilson’s life. In Part I of the book – “Life Before Judging” – we begin in Kircaldy, Scotland, birthplace to both Wilson and Scottish Enlightenment philosopher Adam Smith. We follow her through early childhood experiences with siblings and friends, to war and romance, and her experiences as a minister’s wife. We follow her as she immigrates to Canada, through the dislocation of life as an immigrant, as she lives on her own during the Korean war, supports herself as a dental assistant, goes to law school as an older adult, and works on Bay street. In Part II of the book – “On the Bench” – we follow her movements from trial, to appellate, to Supreme Court judge. These chapters are full of evocative and unexpected moments, ranging from the issue of toilets for female judges, to the psychic burden of so many expectations as Canada’s first female Supreme Court justice, to tea with Lord and Lady Denning at their home in Whitchurch, followed by a “Pilgrimage to Paisley” (where Mrs May Donoghue had sipped from that infamous snail-tainted bottle of ginger beer). In Part III of the book – “Life After Judging” – Anderson tells us gripping and poignant stories from Wilson’s experiences working on the CBA Gender Equality Study, and on The Royal Commission on Aboriginal Peoples.
But the biographical is of course interwoven with the second strand of the book: that of judging. Anderson devotes considerable attention to the Wilson jurisprudence, both at the Court of Appeal and Supreme Court levels. In these chapters, one does get access not simply to Anderson's assessment of the cases, but also to moments of Wilson's analysis of the concerns that had driven her during various hearings and judgments. Anderson has grouped the cases by subject, giving the reader some sense of the larger themes and tendencies emerging in the Wilson jurisprudence. In doing so, Anderson has interwoven the substantive law areas with a discussion of procedural provisions, resulting in a complex and persuasive picture both of Wilson's philosophy of principled contextuality, and of Wilson's impact on the law. And here, there is something for everyone: the processes of decision making among the judge of the Supreme Court; issues of diversity (including not only human rights law, but also immigration, religion and wrongful dismissal); family law and justice for women and children; law and economics in the marketplace, and procedural issues in the context of both the criminal and administrative state.

The theme of judging also emerges in the authorial voice. Not only does Anderson provide us with a robust picture of Wilson's judgements, she also engages in some judging herself, offering her own assessment of those who have disavowed Wilson, as well as those who have claimed her as their own. It was in this role that I occasionally found myself provoked, and wanting to enter an extended dialogue with the author. One of Anderson's claims is that Wilson's character and judgment is better explained by Scottish Enlightenment philosophy than by feminism. Speaking as a feminist, I say, "Wonderful! If Scottish Enlightenment is responsible for this judicial voice, I salute the Scottish enlightenment." But there were several junctures in the book where I felt that Anderson's commitment to this point was built on the construction and dismissal of a straw version of feminism. Feminism is more nuanced and textured than is portrayed in this work. However, though I found myself sometimes irritated by the subtext of negative judgment in the authorial voice, I also believe that with this book, Anderson has opened an important dialogue about judging and judgment.

This book sketches a complex portrait of a woman who would find herself, feminist or not, thrust into the position of change agent, carrying symbolic weight beyond what a person should be required to carry, and carrying it well. Certainly, I am aware of my own debts to Wilson, as I reflect on the role that a mixture of Scottish brogue and formaldehyde played in my decision to enter a life in the law. In blurring the boundaries of biography, analysis and prescription, Anderson offers insights into the ways that the seemingly disparate experiences of any person's life often are woven into something of coherence over the course of a lifetime. The book opens a dialogue about the Court, about the business of judging in a world inflected by the postmodern condition, and about the role played by a woman who, willing or not, shouldered a symbolic role at a crucial juncture in the history of Canadian jurisprudence. Anderson's book does not simply introduce us to the life of an important judge, though it does do that. It
also encourages us to live similarly in the law. It encourages an adoption of Wilson's concerns with a multiplicity of legal subjects, legal facts, legal venues, and legal states, with the blurring of boundaries between the professional and the personal, the public and the private. Anderson reminds us that life and law are indeed pieces of a whole, and that the boundaries between them are porous and fluid. I am persuaded by Anderson's assessment of Bertha Wilson as postmodern judge. And persuaded also that Wilson, as postmodern judge, would likely affirm Gary Minda's assertion that, in postmodern times, "the future of jurisprudence remains in our hands, it is up to us to build the legal world we wish to inhabit." Anderson offers both a book and a challenge worth picking up.

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