CLAIRE L'HEUREUX-DUBÉ: A LIFE, CONSTANCE BACKHOUSE (VANCOUVER: UBC PRESS FOR THE OSGOODE SOCIETY FOR CANADIAN LEGAL HISTORY, 2017)

– A COLLECTIVE REVIEW –

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I. OVERVIEW

A. A SMALL GROUP GATHERS

In June of 2018, a small group of University of Victoria law scholars, students, and staff — a summer reading collective — assembled in the Faculty workroom of the Fraser Building.[1] We gathered together for an enticing purpose: to share our thoughts about *Claire L'Heureux-Dubé: A Life*, written by University of Ottawa's distinguished professor of law, Constance Backhouse.[2]

This review, written collaboratively, is a snapshot of the conversation that unfolded. The discussion was wide-ranging, as the best ones often are, and embodied in its care and intensity the richness of the text that brought us together. Across our conversation, two over-arching themes emerged. First, the story that we were unravelling together was actually about two women: the subject of the biography, Claire L'Heureux-Dubé, and her portraitist, Constance Backhouse.[3] Indeed, a catalyst for, and focus of, our dialogue was Backhouse's singular approach to documenting the life of the woman who sat on the Supreme Court of Canada at a truly pivotal moment. This shifting emphasis between author and subject meant that we often had to clarify which "she" we were referring to throughout our discussion.

The second theme was the feminism at the heart of the book, and the effect it had on all of us, including how we gathered to talk about it, the ideas that emerged and resonated, what was missing, and why this text was, for so many of us in the room, a profound and unsettling read. Indeed, we queried whether any other legal or judicial biography would have prompted us to pose questions with such intellectual, political, and emotional charge.

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* As of writing, all authors are currently with the Faculty of Law, University of Victoria: Hester Lessard, Professor Emerita; Elizabeth Adjin-Tettey, Professor; Maneesha Deckha, Professor; Freya Kodar, Associate Professor; Gillian Calder, Associate Professor; Patricia Cochran, Assistant Professor; Pooja Parmar, Assistant Professor; Kate Plyley, PhD 2018; and Mark Zion, PhD candidate.

1 Those present at the lunchtime gathering represented a thick slice of the University of Victorial law community: graduate students, faculty, emerita, visiting scholars, staff, and the library: Patricia Cochran, Freya Kodar, Pooja Parmar, Caron Rollins, Elizabeth Adjin-Tettey, Maneesha Deckha, Mark Zion, Kate Plyley, Lydia Bracken, Gillian Calder, Yvonne Lawson, Hester Lessard, Mathilde Pavis, and Donna Greschner. Not everyone present at the discussion chose to be part of the writing of this piece, but everyone's presence enhanced the experience. As a result, the speakers of the comments have not been named. Gillian Calder and Maneesha Deckha both sent private notes of congratulations to Constance Backhouse before becoming involved in this book review.

2 Constance Backhouse, *Claire L'Heureux-Dubé: A Life* (Vancouver: UBC Press for the Osgoode Society for Canadian Legal History, 2017).

3 We have chosen to refer to Constance Backhouse as "Backhouse" and Claire L'Heureux-Dubé as "L'Heureux-Dubé" throughout our review. Backhouse takes up a more nuanced approach to naming in the text, but for consistency we have chosen to just use their last names in our discussion. See the explanatory note in Backhouse, *ibid* at 135.

So, what follows is a reconstructed, reimagined version of our hour together, with the benefits of hindsight and time, thinking through some of the various ways in which those of us lucky enough to be in the room connected with this epic book. We hope to convey why this text is a worthwhile read for anyone engaged in questions of law, gender, history, judgment, and justice, and the ways in which it advances the genres of legal history and judicial biography.

Our book review proceeds as follows. We start with an overview of the structure and contents of the book. Next, we focus on the themes that inspired intense and extended engagement throughout our discussion. We address these themes in the following order: Backhouse's approach (feminist biography, historical method, language issues); transitional figures in social change — but not without tensions; intersectionality and the disjuncture between author and subject; the power of the personal, the public, and the private; and a judicial life — and its seeming incompatibility with caregiving for either others or oneself. Finally, the two over-arching themes of our conversation (the interplay between author and subject, and feminism) converge in our concluding reflection on biography as a feminist practice.

B. A QUICK SUMMATION OF A DAUNTING TEXT

At 740 pages (including close to 200 pages devoted to footnotes and the index), the book has a weighty material presence. It is, however, a compelling and relatively fast read. We all agreed that we had trouble putting it down, partly because of its immediacy. In some ways, this is a book about us; it addresses our time and our generational positioning in the institutions and processes that comprise Canadian law. So many of the tales and personalities in the book have only just now moved from current events into history. We could feel a crowd of mothers, grandmothers, sisters, daughters, colleagues, mentors, mentees, friends, and students peering with avid interest over our shoulders while reading.

A second reason for the biography's compelling quality is its structure. After a short introduction, the book begins, not with the expected "cradle to retirement" story, but with a discussion of the notorious *R. v. Ewanchuk* case,[4] including the judicial and media firestorm that surrounded this case and largely centered on the judge herself.

Ewanchuk was a sexual assault case in which the defendant was acquitted at trial on the basis of the defence of "implied consent." This decision was upheld by a majority at the Alberta Court of Appeal in reasons by Justice John McClung, who took explicit aim at feminist "No means No" activism.[5] He painted a portrait of the defendant as the clumsy but well-intentioned suitor, and of the complainant as essentially asking for it, based on her dress and her status as an unmarried mother, and despite her repeated entreaties rebuffing Ewanchuk.

The Supreme Court of Canada was unanimous in overruling Justice McClung's decision and substituting a guilty verdict. However, as Backhouse recounts, L'Heureux-Dubé was deeply concerned that the reasons drafted by her colleague Justice Major hewed to a narrow

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4 [1999] 1 SCR 330 [*Ewanchuk*].

5 *R v Ewanchuk*, 1998 ABCA 52. Backhouse, *supra* note 2 at 9.

legal analysis, and ignored the overt sexism in the lower court's judgment.[6] So, with the support of Justice Gonthier, she wrote her own set of reasons critiquing the assumptions underpinning Justice McClung's analysis.[7] McClung responded with a remarkably intemperate and insulting letter in the *National Post* excoriating L'Heureux-Dubé's "feminist bias."[8]

The media proceeded to amplify the personal and political dimensions of the debate. Ensuing complaints against both Justice McClung and Justice L'Heureux-Dubé before the Canadian Judicial Council prolonged a heated public discussion about judicial conduct, sexual assault law, and the public and private lives of judges. The controversy solidified a perception of L'Heureux-Dubé as "la tigresse," a woman willing to speak her mind, and, despite disavowing a feminist identity, to use feminist arguments and scholarship in her judgments. Backhouse makes it clear, however, that this pivotal moment, far from capturing some sort of "essence" of L'Heureux-Dubé's judicial persona, is in fact better understood as a starting point for delving into her complexities and contradictions. Accordingly, Backhouse concludes her discussion of the furor over *Ewanchuk,* with the gripping question: "[w]ho was the woman behind the *Ewanchuk* decision?"[9]

The rest of the book seeks to answer that question in a contextual, compassionate, and unstintingly critical manner. Over the next twenty-seven chapters, Backhouse tells the story of L'Heureux-Dubé's life, from her origins, through her judicial career, and into her retirement. The initial chapters relate L'Heureux-Dubé's family background and her childhood with her three sisters in Rimouski and Quebec City, and describe her education at "all girls" boarding institutions administered by nuns at both the secondary and post-secondary levels. As this narrative unfolds, Backhouse provides richly detailed, contextual descriptions of the mores and expectations of the time and places of L'Heureux-Dubé's youth. These accounts include the texture and feel of the landscapes she was surrounded by, and, where possible, the voices and images of L'Heureux-Dubé and of those who nurtured, taught, and befriended her. In the chapters that follow, L'Heureux-Dubé's law school years at Laval, her experiences as a young woman practicing law in Quebec City, and the complexities brought by marriage and children are all vividly portrayed.

Backhouse closes the chronological part of the book by devoting a section to each of the three courts to which L'Heureux-Dubé was appointed: the Quebec Superior Court, the Quebec Court of Appeal, and finally, the Supreme Court of Canada. Here we learn about her working conditions, her relations with judicial colleagues and law clerks, her work ethic, and her developing judicial approach. Significant professional endeavours (such as her stint early on at the Immigration Commission of Inquiry), as well as often tempestuous or tragic events in her personal life (including her husband's death, and her son's mental health and his entanglements with the criminal justice system), are woven into the story of her rise through

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6 Backhouse, *supra* note 2 at 11.

7 Justice McLachlin, as she then was, also wrote a brief set of concurring reasons. See *Ewanchuk*, *supra* note 4 at paras 103–104.

8 Justice JW McClung, "Right of Reply," *National Post* (26 February 1999) A19. Backhouse, *supra* note 2 at 13.

9 Backhouse, *ibid* at 19. Backhouse also makes clear in her introduction that this complex exploration of the contradictory elements in L'Heureux-Dubé's life and persona is at the heart of her project. See Backhouse, *ibid* at 3–7.

the judicial ranks. Throughout these chapters, the fullness and immersive quality of the writing is remarkable.

The book's penultimate section, "Selected Cases," struck a chord with the teachers in our summer reading collective.[10] Here, Backhouse delves into L'Heureux-Dubé's remarkable judicial record at the Supreme Court of Canada by analyzing seven of her key judgments: *Seaboyer*, *Moge, Mossop*, *Symes*, the *Quebec Secession Reference*, and *Baker* before returning to *Ewanchuk*.[11] Each case is given a separate chapter, and the elucidation of each one — its importance, its central players, its socio-legal context and effects, its innovative aspects, and its woeful shortcomings — is succinct and incisive. These chapters alone provoke questions about legal judgment, socio-political change, and the lives of litigants and their struggles to extract justice from law. Each chapter is easily able to stand on its own, and to be assigned for teaching purposes.

The last chapter in this section, in which Backhouse returns to *Ewanchuk*, is crucial to the structure of the book. This return allows the reader to measure how deeply Backhouse has drawn us into the complexities that *should* underpin any story about legal judgment and socio-political change. Having provided a much more fully developed context with respect to L'Heureux-Dubé's journey through life and the internal divisions on the Supreme Court, Backhouse gives a textured account of how the *Ewanchuk* controversy reverberated through L'Heureux-Dubé's life and sense of self, how she simultaneously thought of herself as a judge "just doing [the] job"[12] and, perhaps for the first time, as a judge singled out because of her gender.[13] Additionally, Backhouse illuminates how the politics of sex and gender are entangled with judicial protocols and hierarchies — even at the very highest level of our judicial system. Ultimately, "la tigresse" is no longer a sufficiently nuanced image to capture L'Heureux-Dubé's trajectory and impact.

The book concludes with a final section comprised of two chapters. The first discusses L'Heureux-Dubé's work with judicial education and her international influence. The second recounts her retirement and the cascade of "Clairefests" it inspired, as well as her post-retirement pursuits, including her disappointing (but by this point not inexplicable) role in the Quebec *Charter of Values* controversy. The end of the story pulls no punches. A short conclusion looks back at L'Heureux-Dubé's legacy and life, focusing in particular on her "individualist streak,"[14] her consistent disavowal of feminism (despite her commitment to women's organizations and feminist friends), and her inability to recognize racial injustice or grasp the fundamentally intersectional nature of discrimination. And yet, as Backhouse observes in bringing the biography to a close, L'Heureux-Dubé was indefatigable in her pursuit of justice and equality for women, children, gays, and lesbians, and her influence as

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10 *Ibid* at 377.

11 *R v Seaboyer; R v Gayme*, [1991] 2 SCR 577; *Moge v Moge*, [1992] 3 SCR 813; *Canada (Attorney General) v Mossop*, [1993] 1 SCR 554; *Symes v Canada*, [1993] 4 SCR 695; *Reference re Secession of Quebec*, [1998] 2 SCR 217; *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*]; *Ewanchuk*, *supra* note 4.

12 Backhouse, *supra* note 2 at 489, quoting L'Heureux-Dubé.

13 Backhouse recounts that it was only on the eve of her retirement that L'Heureux-Dubé admitted that sexism might explain why only she, and not Justice Gonthier who signed her judgment, was singled out for vilification by Justice McClung, conservative organizations and pundits, and powerful members of the bar such as Edward Greenspan and Alan Gold. See *ibid* at 490.

14 *Ibid* at 545.

a "critical force on the Supreme Court at a critical time" was "demonstrably and undeniably transformative."[15]

With that summary of the text, we now turn to our reflections on our reading group discussion. Significantly, our conversation that day kept returning to race analysis, and notable silences in the life work of L'Heureux-Dubé. What kind of book, what kind of author, what kind of moment, would enable this sort of discussion? What follows is some of what the book pushed us to talk about. In certain places our thoughts are inchoate and our queries unanswered, but throughout this piece our shared sense of wonder at the author and her subject shines through.

II. A CONVERSATION

A. BACKHOUSE'S APPROACH: HISTORICAL METHOD AND LANGUAGE

It was clear to those who gathered together on that June afternoon that the experience of reading the book had been a powerful one for all of us. Moreover, this feeling was enhanced by the sense that this story was so much more than just the biography of a judge.[16] While this biography lays bare who L'Heureux-Dubé is, and what enabled her to occupy such a prominent place on the Supreme Court of Canada, it also provides compelling insight into the method of legal history. Backhouse's careful documentation, and the depth and breadth of her research, allows us to see how her subject responded to the shifting questions of her time. In the telling of her small-town upbringing, the details regarding her parents, and the descriptions of the homogenous make-up of early twentieth century Quebec, so much work went into the writing in order to have the story unfold in the complex way that it does. The text provides a detailed account of L'Heureux-Dubé's life and rise to prominence in a way that inculcates respect and empathy without losing nuance or critical purchase. It also powerfully models how to write about racism, or rather how to write in a way that enables the reader to see and interrogate the absence of any race-consciousness, and the consequent unchallenged whiteness, in the construction of so many of our lifeworlds.

Part of our conversation focused on the structure and the writing, including the way in which Backhouse included the original French quotations throughout. Methodologically, the movement between languages was a brilliant choice that continually disrupted the narrative to remind Anglophone readers of their own status as "outsiders." In particular passages, Backhouse's language choices also amplified her subject's voice, enabling a more direct conversation between L'Heureux-Dubé and the reader. In making visible the acts of translation involved in writing this book in English, Backhouse manages to simultaneously alert her audience to both the possibility and impossibility of fully knowing her subject. The privileges accorded to the reader owing to Backhouse's array of French and English sources were not lost on us, particularly as we learned about a recent decision at Library and

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15 *Ibid.*

16 Indeed, it is also a compelling social history of twentieth century Quebec.

Archives Canada to withhold a judge's papers from public disclosure for 50 years, which means that we may not see another book like this for a long time.[17]

B. A TRANSITIONAL FIGURE IN SOCIAL CHANGE — BUT NOT WITHOUT TENSIONS

Our discussion of the book often circled back to the ways in which L'Heureux-Dubé became a transitional figure in social change. As Backhouse points out, L'Heureux-Dubé's generational positioning placed her at a particularly opportune historical moment; she established herself as a lawyer slightly ahead of second-wave feminism, but she was also able to take advantage of the feminist movement's rise as a political force, as well as its demands for women's advancement in all fields of endeavour.[18] Of course, L'Heureux-Dubé struggled against immense odds and overt sexism in her early years of practice when the insular nature of the Quebec legal profession made it almost impossible for female lawyers to find employment. As L'Heureux-Dubé quickly discovered, even if employed, female lawyers often encountered clients who insisted on seeing a male lawyer.[19] Nevertheless, as Backhouse suggests, L'Heureux-Dubé's strength and endurance may have been nurtured, in part, by the insularity of her upbringing and its social milieu. Perhaps some of her fierce independence and confidence in her own abilities was attributable to her cloistered, sex-segregated education by nuns. What aspects of her early environments allowed her to both test intellectual ideas and safely experiment with rebellious notions?[20]

Moreover, did her eventual success in finding employment as a young law school graduate, despite the odds, further bolster her self-confidence and develop her understanding of marginalization? Sam Bard, L'Heureux-Dubé's first employer and one of Quebec City's few Jewish lawyers, gave her the trust, mentorship, and guidance that enabled her to slowly but successfully build a client base despite the conservative and exclusionary nature of legal practice at that time.[21] As L'Heureux-Dubé herself observed: "[h]e hired me at a time when women lawyers couldn't get a job. I accepted his offer and it made my life."[22] This first big break had a profound influence on L'Heureux-Dubé and her future career.

Throughout the book, L'Heureux-Dubé is characterized as an optimistic person. The text is replete with references to this disposition, such as her "sunny world-view"[23] or her "rose coloured glasses."[24] In one example, her sister describes a childhood home as rather cramped and uncomfortable, but L'Heureux-Dubé recalls it as pleasant and "filled with light, warmth, and happiness."[25] More tragically, she was optimistic that her son, Pierre, would take a turn for the better, even though his trajectory made that hope unlikely. These optimistic

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17 This decision was announced by Library and Archives Canada and the Office of the Registrar of the Supreme Court of Canada on 9 June 2017. See online: <https://www.bac-lac.gc.ca/eng/news/Pages/2017/supreme-court-agreement.aspx>. See also Sean Fine, "Keeping Supreme Court Discussions Secret for 50 Years is in 'the Public Interest,' Chief Justice Richard Wagner Says," *Globe and Mail* (22 June 2018), online: <https://www.theglobeandmail.com/canada/article-keeping-supreme-court-discussions-secret-for-50-years-is-in-the/>.

18 Backhouse, *supra* note 2 at 541.

19 *Ibid* at 156.

20 *Ibid* at 68–70.

21 *Ibid* at 150–61.

22 *Ibid* at 137, quoting L'Heureux-Dubé from an interview on 10–14 May 2009 in Clearwater, Florida.

23 Backhouse, *ibid* at 39.

24 *Ibid* at 70.

25 *Ibid* at 35.

inclinations may relate to L'Heureux-Dubé's tendency to naturalize what exists. At times, she exhibited a tension between her propensity to challenge certain socio-legal coordinates while leaving others uninterrogated and intact. Instances in which she naturalized the (then) current state of affairs include assertions like: "I don't dream about impossible things,"[26] or her insistence that she never faced gender discrimination (even though it was ever-present and evidenced in her own experiences of sexual harassment).[27]

Significantly, this combined "optimism-naturalization" may have been a *condition of possibility* for L'Heureux-Dubé's rise through the ranks. One topic of conversation for our group was the idea that in order to advance her career, L'Heureux-Dubé had to be *politically* non-threatening to those in power, who were mostly men. Meanwhile, we viewed her reluctance, at times, to apply political pressure as a source of missed opportunities to make visible systemic problems, particularly pertaining to racism and intersectionality. In this way, the book also documents the collateral damage caused by this optimism-naturalization perspective. Much of L'Heureux-Dubé's commendable strength and positive outlook seemed to be conjoined with an unwillingness to engage in certain types of introspection. Although this was a difficult conclusion for some of us to reach, this telling of her story seemed to elucidate her ability to compartmentalize family and work even amidst slowly unfolding family tragedies; again, "I don't dream about impossible things."[28]

It also seems likely that L'Heureux-Dubé's generational positioning and strong self-confidence constrained and cordoned her off from expanding her understanding of particular injustices. As will be discussed in the next section of this review, nowhere is this clearer than with respect to issues of racism and racial discrimination. Similar tensions are evident in L'Heureux-Dubé's admittedly complicated relationship to feminism. She had a singular and remarkable readiness to learn from her feminist law clerks and from the work of feminist academics. She also acted on that knowledge in the form of writing (often dissenting) judgments that relied on feminist analysis to expose deeply ingrained sexism. As a result, she shouldered the burden of devastatingly personal and professional attacks for her supposed "feminist bias."[29] Despite all this, she dismissed the feminist movement as "anti-men" and as something she, personally, did not generally want to be involved with.[30]

Backhouse's richly detailed narrative of L'Heureux-Dubé's life does not shirk from a careful and thoughtful depiction of these contradictions. As readers, we felt we were left with a palpable understanding of the enormous personal costs of being an "agent of change" (and of the debt all of us owe L'Heureux-Dubé). Simultaneously, we were also led to reflect on the fundamentally flawed quality of this touted "feminist icon" with respect to the very issues — justice and equality for the most marginalized in our communities — for which she became a leading figure.

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26 *Ibid* at 217, quoting L'Heureux-Dubé.

27 Backhouse recounts a story of L'Heureux-Dubé leaving a secretarial position during law school due to the advances of her boss, behaviours that did not shift even after she reported it. Yet, she did not connect her own experience to those of the immigrants who testified at the Immigration Commission of Inquiry that she chaired from 1973–1976 (*ibid* at 251).

28 *Ibid* at 217, quoting L'Heureux-Dubé.

29 *Ibid* at 492.

30 *Ibid* at 543.

C. INTERSECTIONALITY AND THE DISJUNCTURE BETWEEN AUTHOR AND SUBJECT

Through her careful documentation, Backhouse has unearthed, and thus enabled us to discuss, the lack of intersectional analysis in L'Heureux-Dubé's judgments. Throughout the book, it becomes clear that L'Heureux-Dubé experienced and witnessed inequality in many parts of her life: she had to fight to be taken seriously as one of the first women to attend law school in Quebec, and she was embraced by the Jewish community, itself the target of discrimination. And still, as our discussion brought out, examining L'Heureux-Dubé's story reveals a notable absence of racial analysis in her judicial work.

Interestingly, it is not until almost the second half of the book that the issue of race receives substantive treatment. Readers conversant with Backhouse's writings on racism will know that this observation likely speaks to the whiteness of the insular Quebec world in which L'Heureux-Dubé grew up and the productive detail Backhouse employs to document these formative periods of her life. Backhouse's incisive appraisal of L'Heureux-Dubé's lack of racial analysis first surfaces to illuminate the deficiencies in a report L'Heureux-Dubé authored for the Immigration Commission of Inquiry (1973–1976),[31] exonerating the system of racist bias, before her appointment to the Court of Appeal. This exposition sets the stage for Backhouse's deft analysis of L'Heureux-Dubé's landmark judgment in the chapter on *Baker*.[32] Lauded by many for its attention to multiple inequalities while contextualizing the humanitarian analysis at the heart of Mavis Baker's appeal to stay in the country, the *Baker* judgment, as Backhouse persuasively argues, reveals the disconcerting degree to which none of the judges on the all-white Supreme Court, L'Heureux-Dubé included, could be relied on to understand race or racism as a social force. L'Heureux-Dubé's failure to perceive race is particularly evident and troubling in Backhouse's compelling account of the Quebec *Charter of Values* story, including not only the public stances L'Heureux-Dubé adamantly defended at the time, but also her more recent interviews with the author.[33] The reason that these positions are especially unsettling is because they emerged toward the end of a career heralded for its vision of equality.

Backhouse's critical race orientation and captivating writing brings to life the story of a judge who sat on the bench through these influential *Charter* years and who did not seem to raise critical questions with respect to race, even though issues of diversity and discrimination influenced and animated her life. The parts of the book where she was clearly listening to and interacting with her clerks were hopeful, and she remained a woman open to different perspectives. But as readers, we were often left wondering what might have been. Perhaps L'Heureux-Dubé's disengagement from racial discussions links back to her optimism-naturalization tendency, and her reluctance to apply political pressure in certain domains.

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31 This Inquiry is discussed at length in chapter 19. See *ibid* at 238–52.

32 *Supra* note 11. See Backhouse, *ibid* at 470.

33 The absence of race and intersectionality in her analysis is also perplexing given her international experience. One of our readers suggested that although she was interacting with judges from all over the world, this experience might not be as generative as we might think with respect to intersectionality because judges tend to occupy privileged social positions relative to their own societies. Thus, her international work may not have necessarily exposed her to other perspectives that could have influenced her analysis. This raises familiar fundamental questions about the relationship between the courtroom and wider social and political change.

The book, for its exposition of L'Heureux-Dubé's views on a range of inequalities, as well as a host of other topics canvassed in this review, is sometimes empowering and other times disheartening. But on addressing systemic racism in particular, the text leaves the reader with regrets that L'Heureux-Dubé did not use her position, and in many ways, her experience, to engage more fully in an intersectional approach and, perhaps lead Canadian jurisprudence down a different path.

D. THE POWER OF THE PERSONAL, THE PUBLIC, AND THE PRIVATE

Those who have revered L'Heureux-Dubé for her dissenting voice on some of the most challenging issues in the *Charter* era, have often harboured questions about the criminal law dimension of her work.[34] In some of the most personal — and difficult — parts of this biography, readers are left wondering whether, and how, her son's experiences with mental health and criminalization influenced her engagement with the criminal law as a judge, and her desire for the criminal justice system to do more to rehabilitate offenders. For us in the room, this part of the book evoked significant empathy, and a shared sense that even when life is at its most difficult, we would want to stand by our children as L'Heureux-Dubé does.

The aspects of the text that thoroughly excavated the stories of her family, and in particular her husband and her son, were incredibly rich and moving. But these sections also raised questions about whether, and how, to write about the private lives of judges. When discussing other judicial biographies, the general consensus was that we know far less about the private lives of male judges from their official biographies than we learn about L'Heureux-Dubé in this volume.

At the same time, the detailed storytelling also makes this biography an excellent text for teaching purposes, particularly the seven case-based chapters that seem to anchor the text.[35] For many who had read, studied, and regularly taught these cases, the revelations embedded in these chapters are stunning, including with respect to otherwise invisible details about the people who lie behind the styles of cause. For some of us in the room, learning more about Zofia Moge and Mavis Baker alone made the book worthwhile. The material in these chapters prompted a rich discussion about the ways we bring these stories into the classroom, and the diverse methodologies we might apply. It is a strength of the text that it invites reflections about such fundamental questions.

The detailed account of Justice L'Heureux-Dubé's time at the Supreme Court of Canada was also revealing, and it reminded us again of the power of this kind of legal history and feminist storytelling. Backhouse has laid bare what it was like to be a judge at the nation's highest court and the often toxic workplace environment that existed. We found ourselves incredulous at some of the stories disclosed, while asking: why would anyone want to work there? Backhouse's careful and multi-faceted synthesis of the narratives of judges and their families foregrounds the enormous physical, emotional, and social costs exacted on the

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34 See e.g. Peter Sankoff, "Generally Speaking, Canada Is Going in the Right Direction: A Response to the Honorable Claire L'Heureux-Dubé" (2006) 3:2 Ohio State J Crim L 491.

35 *Supra* note 11.

people who occupy these roles.[36] While some judges thrived in that environment, others merely endured it in order to do important work. Backhouse's meticulous accounting of L'Heureux-Dubé's full experience of judicial work invites serious questions about how our society structures the practice of judging.

E. A JUDICIAL LIFE — INCOMPATIBLE WITH CAREGIVING FOR EITHER OTHERS OR ONESELF?

L'Heureux-Dubé's work ethic was also made visible in the text, not just in her time at the Supreme Court, but throughout her life; Backhouse described both what L'Heureux-Dubé had to fight for, and what she did to earn — and then keep — her place. Moreover, the story sets out many of the costs associated with L'Heureux-Dubé's work ethic, including the impacts on the time spent with her children and family, and her sense of herself as a mother.

The book offers a powerful story of caregiving. It provides an analysis of the kind of dedicated life focus and work ethic a person needs to rise through the judicial ranks. The text also presents a story of Quebec, during L'Heureux-Dubé's formative years; its insularity and its family expectations. And still, the book complicates any attempt to treat as obvious the singular impact of L'Heureux-Dubé's talent, charm, and connections in enabling her to do what the vast majority of us simply cannot. We are also invited to ask what kind of caregiving network is necessary to allow one person to rise. What did families have to do so that one member could thrive in this exceptional way? Additionally, how do families decide, if they ever consciously or explicitly do, who that person will be, and what factors (such as gender, birth order, or other) might be considered? We were reminded at multiple times that L'Heureux-Dubé believed she rose to her stature without help from anyone;[37] whether or not this estimation includes the other women in her family who not only raised her, but also helped her raise her own children and took care of her mother when she could not, is a lingering question.

One caregiving subject L'Heureux-Dubé did seem to address — which speaks to the social expectations demanded of women who parent — was an evaluation of her own motherhood. Given Backhouse's feminist commitments, navigating this issue was surely fraught with complications. How to convey the tangible regret that L'Heureux-Dubé felt in this realm of her life without reinforcing the social norms demanding that women balance their careers while caring for their children? These norms are difficult to live up to today, and were essentially impossible during L'Heureux-Dubé's career. Backhouse understandably provides a delicate rendering of this discussion, raising the question of whether L'Heureux-Dubé was a good mother primarily through her subject's own reflections. Indeed, this book's ability to foster our rich conversation about gendered expectations, careers, and caregiving speaks to the effectiveness of Backhouse's writing on these topics.

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36 See for example the recent CBC Sunday Edition exposé on Justice Gerald Le Dain, and the impact that living with depression had on his time on the Supreme Court: Bonnie Brown, "'He Didn't Have a Choice': How Depression Cost Gerald Le Dain his Supreme Court Post," *CBC* (15 January 2018), online: <https:// www.cbc.ca/radio/thesundayedition/the-sunday-edition-january-14-2018-1.4471379/he-didn-t-have-a-choice-how-depression-cost-gerald-le-dain-his-supreme-court-post-1.4471385>.

37 Backhouse, *supra* note 2 at 543–45, quoting L'Heureux-Dubé's daughter, Louise.

In one of our most telling moments, our discussion turned to L'Heureux-Dubé's lack of sleep throughout her career, and the parallels with similar stories of Ruth Bader Ginsberg, (as depicted, for example, in the recent biographical documentary, *RBG*).[38] Although, we acknowledged that this sleep deprivation is a familiar story for those who believe that "doing more than others" is the only path to success, instead of straightforwardly celebrating these dedicated women, we also found ourselves conflicted and concerned about this aspect of their work ethic. We were intrigued by how this book had pushed us to talk about sleep in our conversation. If success requires spending all day in the courthouse hearing appeals, then writing judgments until 11pm at night, and only sleeping for four hours before repeating everything the next day, we wondered who amongst us (let alone the next generation of young women) would want to pursue a judicial life? Moreover, who has the ability to cope with this kind of lifestyle? For some of us, such a work life would simply be physically and mentally impossible.

To properly comprehend a host of social-legal issues, we need judges who value caregiving — from direct experience — and we need to revise expectations that those who aspire to the bench require a relentless and singular focus on their profession. More generally, this book also makes visible that societal expectations for successful careers in the public sphere may be unsustainable and not possible without having to rely on others to do the critical and invisible work of caregiving and yet receive no credit for that professional person's success. All of these expectations create significant barriers for many, and help create and sustain gender and social inequalities that we hope would be eliminated in a just society. We were grateful to have gathered with this text and to have benefited from this conversation; ultimately, we largely agreed that there is a need to change the structure and expectations of judicial and other legal, academic, and professional work.

III. SOME CONCLUSIONS: SO, WHAT DOES IT MEAN TO WRITE A FEMINIST BIOGRAPHY?

As people in our circle left the room at the end of our slated time, there was some wondering aloud about whether L'Heureux-Dubé's compelling personal qualities — it is hard not to like or at least empathize with her after nearly 800 pages of reading — might blunt the critical edge in any discussion of her life. But as our gathering had shown in abundance, Backhouse's book is not a biography that shies away from complexity. Might such an unqualified willingness to accept and examine rather than tidy away contradictions, be a signature characteristic of a feminist biography?

Feminism is a political practice that defies any attempt to squash it into the usual taxonomies of theory-making or even political claims-making. Feminist biography, in linking the particularities of women's lives to the larger currents of women's struggles, is bound to reflect that category-defying quality. Backhouse's book models an approach to judicial biography that looks for truths in the material and cultural contexts that frame our lives, as well as in the emotional, familial, and social relations that mark and shape us. Crucially,

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[38] Released in 2018, directed by Betsy West and Julie Cohen, produced by Participant Media, this documentary tracks in a very similar way to the Backhouse text, the rise to the US Supreme Court of Ruth Bader Ginsberg, her work ethic, gendered influence, and the costs on her family. See online: <https://www.rbgmovie.com>.

Backhouse's attentiveness to the full person and her environment is underpinned by a deep commitment to exposing and challenging the politics of injustice. As Backhouse tells the tale of L'Heureux-Dubé's life, we begin to understand that we want and need to read about the journey taken by this extraordinary woman because we want and need to understand how deeply justice and injustice are interwoven with what we take to be our own emotional and intellectual truths. A biography that works such terrain inevitably engages with the contradictions that inhere, for each of us, in our individual negotiation of relations and contexts that simultaneously enable and stifle us.

Not surprisingly, feminist biography has had a skeptical relationship with the traditional "model of biography as the study of great or exceptional people."[39] An aspect of the unease is that such an approach "reinforces the idea that only public achievement is significant and that those women who lead predominantly domestic lives are of no particular interest."[40] Backhouse's previous work offers one possible response, namely that of "profiling previously unacknowledged women who sought to use the law to redress discrimination in the face of overwhelming odds, typically in losing battles."[41] However, to ignore women who have been widely celebrated for their public achievements and "place within a male-defined framework,"[42] thereby ridding them from women's history, would be an alarmingly counter-productive, if not Swiftian, solution to this version of the gendered public and private dilemma. Instead, some have suggested expanding the focus to how (rather than what) such "women worthies" did what they did:

> [How they] experienced their domestic and social worlds; how they felt about their private and familial life; how they negotiated the social and familial structures that defined or constrained their opportunities as women; what strategies they used to follow their own interests; what support they received and whence it came; and finally what it cost them to follow their own path and to succeed in the field they chose.[43]

Backhouse gives us this and more. She provides the fuller portrait of the social, domestic, and emotional environments L'Heureux-Dubé inhabited as she pursued her exceptional and extraordinary life, but also stages, in a non-pedantic way, a confrontation with some of our deepest and recurrent questions of social justice.

Ultimately, this a brave book, telling the inspiring and at times messy life story of a Canadian legal icon. Read it, and then gather some of the people you like best, and talk about it together.

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39 Barbara Caine, "Feminist Biography and Feminist History" (1994) 3:2 Women's History Rev 247 at 250. See also, Judith P Zinsser, "Feminist Biography: A Contradiction in Terms?" (2009) 50:1 Eighteenth Century 43 at 47.

40 Caine, *ibid* at 250.

41 Backhouse, *supra* note 2 at xi.

42 Zinsser, *supra* note 39 at 47.

43 Caine, *supra* note 39 at 251. See also Sara Alpern et al, "Introduction" in Sara Alpern et al, eds, *The Challenge of Feminist Biography: Writing the Lives of Modern American Women* (Urbana: University of Illinois Press, 1992) 1 at 4–5.