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A Conversation with Roderick Macdonald

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On Life and Environs

AB: *It would be nice to begin this conversation by talking a bit about your personal experience and then move to more conceptual questions. Indeed, in your essays you often try to draw lessons from lived experience and everyday life. So, where did you grow up, and what were your first studies?*

RM: I was born in a small farming town in Ontario, of about 800 to 900 people, just northeast of Toronto, which is where my mother's parents lived. When it was time for me to be born, my mother went to live with her parents because my father was frequently working out of town. So I happened to be born in Markham, even though at that time my family had already moved from the rural area into a suburb of Toronto, which is where I grew up.

I went to a neighbourhood public elementary school in a new suburb that was created from farmland between 1946 and 1949. The elementary school had been built in 1952. I began school in 1954, and I was there until 1961. Then I went to the local public high school, which was only about half a kilometre from my house, from 1961 to 1966. I had a pretty normal suburban childhood. Only a couple of things stand out. First, I started going to summer camp in 1956, and that turned into a passion. I spent parts of every summer (and from 1964 onwards all summer) at camp until I got my first law teaching job in 1975. In addition, I was always interested in sports, although I was far from being a good athlete. I played on school

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teams in soccer and softball (in elementary school) and cross-country running, track and field, basketball, and swimming (in high school).

During my Grade 8 studies, the last year of elementary school, I was named as a page boy (the guy who runs messages for the elected members during the sittings, brings water, updates their binders of law and Hansard, and stuff like that) at the provincial legislature in Ontario. So I was out of school for six months, and we had a private tutor. We were thirteen boys from all over Ontario, and it was the first time I really got to interact with people from different socio-cultural backgrounds.

When I was twelve and my brother was fourteen, we built airplanes, big airplanes, with twelve-metre-length wings, and we flew them. We climbed up a hill and launched them, sometimes with younger neighbourhood kids as pilots, by pushing them over a cliff. We also built rockets. Some of them actually worked, but our science club came to an end when one exploded – seriously injuring a friend. I had always done very well in maths and sciences, and it was generally thought at that time that if you wanted a career in sciences, you had to read German, because a lot of scientific papers in physics and chemistry were written in that language. So in Grade 10 my parents thought I should learn German. I took an extra class in German and made some very good friends. There were only about eight boys in the class, and six of us still keep in regular contact. This year we all got together for a reunion. Besides the science courses, I also studied Latin, French, and history.

I don't know why, but at the end of high school I decided that science was boring. Despite the fact I was recruited for science programs in established universities (I had managed to graduate with an 80 per cent average – in 1966 this would have put me in the top 5 per cent of the class), I decided to go to a new university – York University – to study liberal arts. In first year, I took courses in English, French, social sciences, humanities, economics, political science, logic, natural sciences. However, in later years I never really took advanced seminars in a particular discipline; I just had a broad base. I did follow a couple of upper-level history courses, a few political science courses, and two sociology courses but do not feel that I acquired a disciplinary field. That's why I say I am a bit of an autodidact.

When I finished my BA in 1969, I really wanted to be a university professor. By that time, there had been a huge expansion in Canadian universities, but in Ontario most of the posts had been already taken – usually by Americans who were political refugees and draft dodgers from the Vietnam conflict. My undergraduate adviser told me that the chances of finding a job in the liberal arts were pretty slim. While there

were more chances in political theory and Canadian history than in other fields, I was advised not to pursue a PhD but to look for a field where universities were still hiring Canadians.

So I wound up enrolling in the law faculty at York University – Osgoode Hall. From the first day I embarked on legal studies, I knew I was not there to be a lawyer, I was there to be a professor. It was pretty terrible the first year. I was not interested; I had mediocre grades. It is true that the teaching was pretty traditional, but I had some very good teachers: in fact, the real problem was that I was a bad student. It wasn't until my second year, when I met Shelley, my future wife, that I reconciled myself with the fact that if I was ever to get a job as a law teacher, I would have to get better marks! By my last semester, I managed to reconcile myself to law and wound up with three As, one B+, and one B (a lot better than the two Bs, one C and two Ds in my first year). Funnily, it turns out that I spent all my education to that point (elementary school, high school, liberal arts, and law from 1954 to 1972) studying at institutions with an address on Keele Street in Toronto!

I also decided that if I wanted to have a chance of making a life together with Shelley (who was an anglophone Quebecker), I would have to improve my French and be able to teach civil law as well as common law. So after I graduated from Osgoode Hall with a common law degree, I went to the University of Ottawa and studied civil law entirely in French. I was there for two years. At that time, I guess I was a bit more serious about things. I got the prize for standing first in civil law courses, and I applied to the University of Toronto for a master's program. I was accepted and found a fabulous supervisor, a wonderful person, John Swan.* Researching for my master's thesis was my first exposure to Lon Fuller. The thesis was a 140-page work on different approaches to finding the frontier of law, of legal relevance. The great consequence of that was that Professor Swan told me to take the opportunity to read – to build intellectual capital – and not just to write. It was terrific advice. Even now I can conjure up references and connections and understandings that I first encountered during my LLM year.

Then I applied for a teaching position. Most faculties wouldn't even look at me because when hiring Canadians, they preferred Canadians who had a graduate degree from the US or from England. So I went to the University of Windsor, which turned out to be a very fortunate move. I had a fabulous, supportive dean and great colleagues. At Windsor I became involved with law and poverty work, with community legal

* Now Angela Swan.

education, and with access to justice – activities that have remained preoccupations throughout my teaching career.

Who were the most important reference persons for your intellectual life during that time?

Other than my parents (my father, an engineer, was an encyclopedia of information and a meticulous craftsman; my mother was more spontaneous, intuitive, athletic and always saw connections across disparate fields) influences I felt were my Grade 3 teacher (Nancy Laurenson – an exchange teacher from New Zealand), my Grade 7 teacher (Doreen Henley – who also later became the tutor for the page boys at Queen's Park), my Grade 10 and 12 Latin teacher (Charles Brubacher), and my Grade 9 and 13 English teacher (Gregory Schultz). At university, the most significant person in my undergraduate studies was a professor of humanities, Brayton Polka. I was actually never a student of his. He was the senior tutor at the residence where I lived and where I ultimately became a floor don, and, more than anybody else, he encouraged me to think about teaching as a career. I also felt a personal affinity to a history professor – Jack Granatstein – who though not an intellectual mentor, taught me a lot about discipline, hard work, and scholarship.

At my first law studies at York, there wasn't really a person in the faculty who made much of a difference to me. The funny thing is that they were almost all very fine professors whom I was too immature to appreciate. The person at that faculty I got most close to afterwards was Harry Arthurs, who was the associate dean when I was a student. He later became dean at Osgoode and president of York University – but I never met him at that time. He is the person I have been interacting on a scholarly level the most with since the early '80s. When I went to Ottawa, there was one professor, Alain-François Bisson, whom I liked and came to admire because he was a questioner and a rigorous scholar. During my graduate studies, I was fortunate to have studied with John Swan. As I said, most of my professors were very good, but maybe I wasn't a particularly good student.

As a professor, I have to acknowledge the important impact of my first dean at Windsor – Ron Ianni – and the dean at McGill who hired me in 1979 – John Brierley. Both were outstanding leaders, and Brierley was also an incredible intellectual and scholar. Contemporaries who have shaped my understanding were my friends Robert Wolfe (from the School of Policy Studies at Queen's University) and Ralph Simmonds, whom I met at U of T, taught with at Windsor and McGill, and who is now a judge on the Court of Appeal of Western Australia. As well, many

students over the years (of whom several are now colleagues) were among my best teachers.

Besides canoeing, I know your other passions are music and carpentry. What do you find exciting in music? What was the period of your life in which you played most?
I am, here also, an autodidact. I had a couple of years of piano lessons when I was six or seven. By the time I got to Grade 10, I guess I was thirteen or fourteen, my parents gave me a guitar and ten lessons as a Christmas present. So I started to play popular stringed instruments – ultimately, banjo, dobro, mandolin, autoharp, etc., as well. Well, we are talking about the time when Bob Dylan and others were appearing on the scene. I also wrote poetry at that time, most of which was pretty mediocre stuff, but some not so bad. I would often perform my own songs at clubs to make money to support my university studies. I played the standard mid-'60s folk-type music, but I also went on to play a bunch of instruments that were common in country-western bands, because there was much demand for bar bands. What sometimes happened is that I was a pick-up: a band would have a booking, and someone in the band would get sick, and I'd be called to replace him. I had more or less given all this up by the end of the 1960s and was only an occasional performer after that.

Who are your favourite artists/writers?
Leonard Cohen was certainly a contemporary poet who really spoke to me when in high school. I also really like Wallace Stevens and Sylvia Plath. There was a group in England in the '30s that comprised Spender, Auden, Betjamin, C. Day Lewis, and so on. Collectively, their poems appealed to me because of their political orientations. Of that group the one who has come probably to speak loudest was Louis McNeice – particularly because his politics were more personal and more subtle. Ever since my teenage years, I have been fascinated by T.S. Eliot's *Murder in the Cathedral*. I was much more interested in that than in *The Waste Land* and the other works he is usually cited for.

As far as singer-songwriters are concerned, I especially like Phil Ochs, Buffy Sainte-Marie, Tom Paxton, Joni Mitchell, Tim Hardin, Eric Anderson, Neil Young, Steve Goodman, Jerry Jeff Walker, Kris Kristofferson – and, of course – Bob Dylan. Among later writers whose music I found attractive were Gordon Lightfoot and John Denver. Some of Woody Guthrie's stuff appeals, as do the Weavers, Pete Seeger, Cisco Houston, Goebbel Reeves, and Jimmie Rodgers.

Apart from the possibility of listening to music while you do carpentry work, what is it that makes carpentry self-rewarding and gratifying? Is it more important to build new things or to fix the old ones?
I suppose you don't want an epistemological discussion on what is old and what is new. What I like doing most of all with carpentry and construction is solving puzzles. Building is solving puzzles. There are as many challenges in figuring out how to reposition a wall or a window, or fix a roof, as there are in building something new, say, building a cabin from scratch. The ideas of encountering a problem and thinking about how to solve it are the same when building something new and when fixing something up. Executing the performance successfully is what I find is giving a sense of accomplishment. I do electrical work, plumbing, carpentry, but not concrete. I also would build rock walls as well as docks. It's fun to work with different kinds of material, because every material has its own limitations and its own possibilities and this requires additional creativity. I mentioned that I enjoy playing sports. I also like canoe tripping, hiking, rock climbing – generally being outdoors. I never had summer jobs in the city with law firms when I was a student; rather, I always had employment at summer camps.

On Theory, Concepts, Themes, and Refrains

From your work, a very thick concept of agency transpires. How was this concept forged through your life experiences?

I think this probably comes from my childhood and my relationships with my family. I'm sure that I was a real pain to my elder brother, whom I much admired (and therefore whom I constantly copied – in building airplanes and rockets, in athletics, in interests in outdoor life at camp) – but with whom I was extremely competitive. I carried a sense that my mother (whose attention I craved) liked my brother best. As for my sister, I think she got visited with unfair comparisons to me. I'm convinced she was actually smarter than me, but I had a better memory and could therefore do "school things" more easily, was a boy at a time when the world was even more stacked in favour of men than it is now, and was more willing than she was to defer strategically to authority.

I also think that I was not a very good son to my parents as long as I lived at home. I chafed under their discipline because my friends seemed to have much more freedom than I did. My parents had quite protestant (in my mother's case practically puritan) views of one's role in life. I was strong-willed and argumentative. My mother felt that the way to control

me was to constantly elevate her expectations of me – nothing I ever did elicited from her a comment that I had done well or that I merited congratulations. In the last year of her life (when she was dying of a brain tumour and therefore was going through quite a change of personality), she frequently reminded me of how much I had disappointed her.

As a result, I think I grew up with a sense that one had to develop a strong sense of oneself in order to resist the demands of others – be these demands of parents or society generally. Concomitantly, I came to see that there could be a sense of powerful affirmation of oneself in the decision to subsume one's conduct to the rules of another. Very early on, I saw structures as potentially liberating so that rather than thinking about following patterns of others as surrender, I came to see the power of adopting a structure as a conscious act of will – of asserting the possibility of not choosing to follow: every decision of "doing what authority (parents, the summer camp boss, the dean, the state) wants" was a decision that was *my* decision. In my adolescence, I came to see that I was never doing what the dean wanted, I was always doing what I wanted in choosing to do what the dean wanted.

I can think of at least half a dozen times – at summer camp, in the university, working at the Law Commission – where I have said, "I have chosen to do what you wanted loyally and without complaint, not because I felt I had to but because I chose to; now I choose not to, because you are wrong; if you don't like it, then fire me, but don't expect me to do something I think, for good reason, that I ought not to do simply because you are in authority." When people talk about Nazi orders or soldiers in Vietnam simply following commands, I have often wondered whether I would be the kind of the person who would do evil because the commander says "do it." And I don't really know. We never know what we would actually do until we confront the situation. But I know how I would think about it, and to the extent I can think about it, I can't imagine myself doing evil just because the commander says "do it." In my life so far, just because the commander has said "do it" has never been a good enough reason for me: the reason for acting has to be independent from what the commander wants. The commander's command would always be a factor in the decision to act, but it would never be determinant.

As far as I can judge, this is what I believe. And it is this belief that probably grounds my idea of human agency. To be truthful, I don't know this for sure, and I certainly don't know what the theological origins or even implications of this view are.

Is agency about free choices within a system or about changing the structure of the system of choices?
I have not thought about this before. Let me try to give a kind of Kantian answer about the proof of intentions. I presume that one might be able to exercise agency as I conceive it within a system, but you don't know whether you are really exercising agency or whether you are just being significantly determined by the system itself. You could well be exercising agency, but there's no way to tell that, because there is no counterhypothesis. So when I say to the dean that I'll do what he wants, but only because I choose to do so, it is not easy to figure out the character of my actions. This is even true when you explicitly say that you will not do what the dean wants. Perhaps resistance within the system is agency; perhaps it is just co-optation by hegemonic power.

But if what you're doing is taking on the system, contesting it, asserting the new as against the system, then you are exercising agency, and you know that you are doing so. This is what I meant by a Kantian answer. It is like Kant's claim about moral behaviour: if you are doing something that is in your own interest, you may well be acting morally, but you never know, but you know for sure that if you do something that you believe to be right and that is against your interest, then you are acting morally. I do not deny that agency can exist within structures, it's just that – whether we accept or contest authority, when we acknowledge the legitimacy of the authority as authority (even when it is wrong) – we never know for sure if we are exercising agency. So if you are looking for an instance of agency you can be sure of, it would be in contesting a system – in contesting not just orders, decisions, and actions but in contesting the legitimacy of the authority of the system itself, whether this is a political system or an intellectual system.

One of the main dichotomies in your thought about law is the distinction between the two legal domains or legal dimensions of the explicit and the implicit. You argue extensively for the importance of the implicit over the explicit …
Well, let me interrupt here. I'm still working on this puzzle, but as I get older I'm not quite sure that this explicit/implicit dichotomy is the right way to frame my epistemological concern. At one point I used to talk about the difference between formulated and inferential artefacts of human knowledge as a complementary dimension. So you could have a relatively formulated but implicit artefact. It seems to me that normativity or the sense of knowledge that we have of it is, at its most fundamental level, both inferential (non-formulated) and implicit. It is central

to the way we think. Somewhere I came to call this the "tacit." So one could imagine, in terms of normativity, that the standard everyday legislation is explicit and is formulaic. What is produced by judicial decision-making, in the way we develop notions of precedent, is also explicit in the sense of textual and institutional but is inferential. And what we typically associate with practices and custom is unwritten (implicit) but is pretty recognizable – it has a kind of formulaic character to it. These three forms are different from each other, but they all share this feature: each has a sense of limitation built in (whether institutional in the case of the explicit, or ontological in the case of the formulaic, or both in the case of most of the artefacts through which we organize and understand our lives). The tacit, which is a fourth type of artefact, is ineffable. It has no limitation. Puzzling about these two overlapping dimensions of human accomplishment first opened my eyes to the tacit; thinking through the implications of such a conception of law and human knowledge has occupied a large part of my reflection for the last twenty years.

Why do you think the implicit, and especially the tacit, have been rejected and under-theorized for so long?

A tradition of the book is a tradition of text, and most Western law – whether it be civil law or common law – is a tradition of the book. So whether the text is a legislative text or a judicial text, it has a character of explicitness attached to it. And it is taught: law is taught, as opposed to learned in the living. One of the things I tried to reflect on in my little collection *Lessons of Everyday Law* is that there are no rules that are thoroughly explicit. Even the point of "the lesson" is never explicit. Why then are jurists so prone to explicit? Well, it's easy to find, easy to identify. Techniques for the interpretation of words are much more widespread than mechanisms that we have for interpreting actions. And since so much of thinking about law today has become instrumentalized, then our attention is focused on artefacts that we can identify, elaborate, and deploy for instrumental purposes. Recipe-book jurisprudence is the curse. More than this, the "turn to post-modernism" is no salvation. Deconstruction is simply reconstructed instrumentalism that depends on language, on text, and on dissimulating power through language.

Do the dynamics of explicit and implicit involve a matter of control over expression too?

Ernst Cassiser and Suzanne Langer were both interested in the way human beings communicate other than by language. When you are in a system that privileges language, and discursive language in particular – as opposed

to poetry and other modes of communication – one can pretend that one is in control, because one can pretend that the language empowers one to capture all human experience. As Wittgenstein said in the *Tractatus* (I paraphrase), "if I can't say it, I can't think it, and if I can't think it, it isn't" – and as a corollary, "if I can think it, I can express it clearly."

But I think the challenge of Michael Polanyi, who is another person whom I found very interesting, is that if you can think it, you can attempt to write it down, but your expression of an idea will always be inadequate. The writing it down will always be an incomplete expression of the tacit, and the very act of writing or attempting to seize it generates new tacit knowledge that you were unaware of at the time that you were doing it. So you can see the regress: if you can drag it back to the explicit, this only means really regenerating another tacit somewhere else.

At least since the beginning of the '90s, you have been exploring legal issues through the use of metaphors. Is it just the case to remember family relationships, scouts experiences, dramas, Gospels, house objects, and, more recently, music and hockey? What is the rationale for this project?
Well, generally, the metaphor (unlike the simile) assumes that there is a distance between the objects of our knowledge – the distance is not comparative; it is not the reach for a general category that we can deploy to organize the likeness as in a simile. The one term of a metaphor is a way of invoking or understanding the other, but they are really different knowledges. The metaphor exists because there is a distance. The stories in *Lessons of Everyday Law*, the story of "Office Politics," and the other stories I deploy may be allegorical, but they are not (as I intend them) *metaphors* of law. They are not metaphors, because these stories *are* law. It's not as if there is analogy of what goes on in the family *as* what goes on in law, because what goes on in the family *is* already law. An allegory is a story which is meaningful on its own but by which there is also something else to be learned. An allegory has a parabolic character.

Are all of them allegories?
That is hard to answer. Let me start by distinguishing allegories, such as that in "Office Politics," and metaphors, such that invoked in "The Swiss Army Knife of Governance." The Swiss Army knife is a metaphor of law and governance, while office politics is itself law and governance. In other words, a Swiss Army knife has no agency itself; the metaphor arises because the knife is more than instrumentalized; the Swiss Army knife has at least some agency attributed to it.

In addition to metaphors like the Swiss Army knife, there are more difficult cases like "The Fridge Door Statute." Here we have at one level an object like a Swiss Army knife – a metaphor of law (especially for those who see law as just the product of the political state). But at the same time, fridge doors are used within families as normative constructs. The fridge door reflects all the messages posted on it; therefore, unlike the Swiss Army knife, the fridge door is a site of normativity itself.

And what about the call centre, an image which you adopt to talk about governance and government?
The interesting thing about the call centre, and the "Call-Centre Government" article, is that it seems to imply yet another category of figure of speech: the call centre is a mode of governance that not only governs call centres but that is deployed by governments as a means of organizing law. As a structure of human interaction, it is a simile, a metaphor, and an allegory all at once. So it is not just metaphorical in the way the fridge door is metaphorical. The fridge door is both a metaphor and a site of governance; the call centre is directly a site of governance in its own way. Therefore, here there is no need of imagining allegories; I am just trying to draw attention to the ways in which governance and government take place today.

However, the interesting point is that, while people may be willing to see some governance in a call centre, they do not usually think about it as a form of government – lest they think governments as types of call centre …
You are right. As I mentioned, the call-centre idea has two features: in one dimension it is government, a mode of governance in itself, while in another dimension it is an instrument of governance which governments deploy. At one and the same time, it is an instrument and the government structure itself, the site of governance.

When did you begin this kind of research in metaphoric and allegorical styles of exposition?
During my reading for my master's thesis in 1975, I was impressed with Fuller's 1968 essay "Two Principles of Human Association." The use of an anecdote from his youth struck me as a powerful way of starting a reflection, because there he was able to show how his own experiences as a child were directly connected to problems he encountered throughout his life as a jurist. I thought no more about this until after the birth

of our first child in 1982. Like all parents, I was always reading her fairy tales and other bedtime stories – Shelley was much better than I, and like A.A. Milne with Winnie the Pooh, she invented stories every evening. These evening encounters led me to realize how much law could be found in these fairy tales, how successful they were in conveying ways of understanding normativity.

The first text I wrote using personal stories was shortly after the birth of our second child. In a 1985 essay called "Pour la reconnaissance d'une normativité implicite et inférentielle," I wrote very briefly (and elliptically) about three personal events: a singing group I was involved in in the 1960s, the phenomenon of old guards at summer camp, and the process of office allocation in the law faculty. That was also the first time I intentionally wrote an article that adopted a law and society perspective as well. Interestingly, apart from Fuller, most of the legal writing I had read up to that point was either doctrinal analysis of fields of law or high-level legal philosophy that presupposed the irrelevance of practice to understanding law.

To your mind, is the use of allegories and metaphors more a way of enlarging the views of lawyers and legal scholars, or is it more a way of figuring out the actual characteristics of the object "law," i.e., is the use you make of these tools more pedagogic-heuristic or more epistemologic?
I don't think that the primary interest is in what we might call the pedagogical point. Ask yourself as a scholar, "Why do you do research? Why do you bother to puzzle through problems?" I believe that you are doing this for yourself; you are doing it to understand, to make sense of your world. In this sense, a legal article or a book is like a fine piece of literature: no matter what it is written for, it can still have a meaning and an impact which goes far beyond what the author may have thought or intended. I don't think I have written anything self-consciously to say to another: "Look here, dummies, this is it." Writing like that appals me.

Allegories also came with different genres and styles in your theoretical production. Alongside briefs, you have been writing laws, poems, short stories, songs, epistolary collections, fridge sticks, sport comments, études, and even call-centre menus, all of these on law and legal topics. How was the reception of your writings: have you ever been criticized for your theoretical project?
Surprisingly, not – if by criticized you mean *critique*. Some people obviously reject everything I do straight up without engaging with the text.

Here is an example. When I first delivered "Office Politics" at a conference, one very smart co-dean of mine, who later became president of the University of Toronto and who is a fine legal scholar in his own right, came up to me afterwards and said: "Rod, this is crap. What is it? What is your point? I just don't get it."

Concomitantly, a real weakness of the intellectual tradition in Canadian legal scholarship is that people who are happy that I do what I do are uncritical about it. I've never been taken on for the epistemology: as I say, I've been rejected by some but without any proper argument on the substance of the paper. Likewise, with many of those who read what I do and find it interesting and are enthusiastic about it, there is a kind of "immaturity" in the sense of lack of a critical tradition. Maybe only such a tradition would make it possible for people to feel comfortable in saying: "I like 'Office Politics,' and I like the way you have presented it. But there is a problem – in two senses: substantively, you are assuming 'x' and 'y,' which are demonstrably unsustainable, for the following reasons; and procedurally, the allegory does not work, because you assume that 'a' is like 'b' and that the ontological perspective is transferable. Well, it is not, and here is why." But so far I never had to defend anything that I have done on its epistemological or ontological ground from such a critique.

Is it because the inner logic of your works is cogent, or is it because people have not explored them far enough to find their shortcomings?

Again, this is a tough question. I may be seen as complaining about the lack of a critical tradition in Canadian legal theory. But this is a mixed blessing. Intellectual traditions tend to produce "schools" – and schools are deadly for genuine inquiry. A school of legal theory means you've entered into a common way of thinking; even as opposition, it means that you keep saying something which looks like it is critical but in fact only reinforces all the standard premises of the position you are critiquing. One of the reasons that it took so long for people to read Fuller intelligently is because he did not get into a first-order debate. For years, people wanted to reduce his thinking into the box of "natural law" so they could fit him into the existing schema. Only now is the richness of his thinking being appreciated.

Compared to the complexity of trying to engage with Fuller's position, the legal realist versus analytical positivists debate is really simple. Both camps of schools see the reality of law as essentially power, and the only question is "is this power in the hands of legislators or in the courts?"

And the same can be said for adherents to the critical legal studies perspective: they accept that the object of their critique is state law. These various internal debates can rage happily for decades, because people actually agree on the most important thing.

But when someone like Fuller comes along and says, "your whole understanding of law is wrong" and "law is fundamentally implicit and it's about the architecture of interaction," there is initially not much of a debate, because people don't get it. At that point, either you buy Fuller completely and try to find intellectual allies with whom you can engage in a truly critical discussion of his ideas, or you reject his perspective by just saying, "not for me." I think this is what happened with some of my own stuff, because I refuse the premises that most academics agree upon. People either just rejected me from where they stand, or they said, "you're right" rather than actually trying to work on or contesting or developing my premises.

Would you agree that Fuller was your main intellectual mentor?
I never met Fuller personally. When I went to the University of Toronto, my graduate supervisor – John Swan, who taught contract law and who had encountered Fuller through the teaching of contracts – encouraged me to read Fuller's work other than the standards: "The Reliance Interest in Contract Damages," "The Speluncean Explorers," "Positivism and the Separation of Law and Morals," *The Morality of Law*, "The Forms and Limits of Adjudication." I xeroxed or purchased everything he ever wrote and every article or book review critical of him. By working through this material, I started to feel that he was puzzling about the kind of questions in law that seemed to me the most interesting to puzzle about.

How would you describe the main similarities and differences between Fuller's approach and your own?
Fuller had a very strong concept of human agency and had a deep preoccupation with individualism and liberty. For this reason, he was often considered to be a conservative thinker. This image was not helped when he served as chair of the Professors for President Nixon organization in the lead-up to the 1960 US presidential election. But this view is paradoxical. True, he did write about non-state legal institutions probably more than anybody else in the Anglo-American tradition in the twentieth century. He asked questions about what we commit ourselves to when we adjudicate or when we ponder or make a rule and so on. But he was actually quite ecumenical about state action. If he did not like regulatory agencies, it was because they were trying to use command and control

regulation and adjudication as a process of ordering to accomplish social tasks for which they were unsuited. In largely forgotten essays now, he also provided strong justifications for government regulation but using other tools such as property, voting, markets, and contract.

In other words, he and I share the concern with thinking about legal processes and instruments and means–ends complexes. His image of the lawyer as architect strikes me as infinitely better than the realist image of the lawyer as social engineer. In the end, Fuller was limited mainly by the fact that he was an auto-didact who never sorted out all the pieces of his intellectual universe so that people could more easily see the coherence to his theoretical perspective.

So far, I see more similarities than differences …

There are differences in emphasis. Fuller was more preoccupied with what he called freedom than with justice. Fuller's concept of freedom is very close to my understanding of – or to what I try to puzzle with through the concept of – agency, the capacity of human beings to make choices. But I am probably more interested than Fuller was in a theory of justice, a theory of the good.

Fuller was exploring the way human beings manage institutions for the achievement of purposes that were respectful of other human beings as agents on the assumption, I guess, that generally if you enhance those conditions, good consequences will result; therefore, he was not as concerned with directly thinking about consequences. Perhaps I'm more concerned with power and unequal distributions of power and resources and unequal outcomes. It is a difference in stress.

I remember once being asked – when I was writing my first essay on procedural fairness – whether I would choose equality over liberty. I naively answered, equality. Now I think I would answer that freedom is the precondition to justice but that without the aspiration to justice, freedom is not worth having.

The difference of symbolic forms and the multiplicity of symbolic languages is also an important point in your thought. When we move from one system to another, how much can we really carry with us? This question, if you prefer, can be also read: is it more important to be able to translate from one system to another or to master different systems at the same time?

The reason why we are brought to aspire to draw, write poetry, be a sculptor, build things, be a musician, dance is not because we are trying to translate our experience from one symbolic system to another symbolic

system but because we recognize that the richness of our lives is enhanced by multiplying and extending the range of ways in which we can communicate and share ideas and experiences with others in multiple symbolic ways. So the multiplicity of symbolic languages is not instrumental, is not directly meant to achieve an end.

I don't learn French because I want to speak English better: that is inevitably a consequence, but that's not the aim for doing it. "Orchestrating Legal Multilingualism" does not mean that the object is to perfect that translation of knowledge from one symbolic form into another. Rather, it is about attempting to keep as many of these expressive modes alive and in communication with each other. It is about seeking them out in one's own life, about looking for multiple symbolisms in which to apprehend and understand the complexity of one's own being.

Well, what you are saying makes me think that the distinction upon which I based the question was somehow a false distinction …
Maybe not. Some people think it's very important. Some people instrumentalize relationships, other people are interested in interdisciplinarity. But the ultimate reason for multiplying symbolic discourses and for engaging passionately in the exercise is not instrumental. It is because human beings are symbolizers.

*The image of law in the Western legal tradition has been unquestionably dominated by the verbal understanding (*lógos*). You have been questioning the idea that law is only or primarily a creature of language. In this vein, I think, Desmond Manderson – one of your former students who is now a professor – has written under your supervision a doctoral thesis that is now a monography on the aesthetic dimension of law.*
Desmond and I have a different take here, because to me it's not clear whether Desmond sees aesthetics as normative. His thesis is about the aesthetic dimensions of law, as if there is a separate law, which we can analyze in aesthetic terms. I think I would position myself by saying that aesthetics is an alternative normativity. The aesthetics of law is part of what constitutes law as law: it's not something you can do to law, it's what law is. If you think of logic, for example, it would seem funny to say "logical dimensions of law," because implicit in our understanding of law is that there is a degree of logic in it. That comes with the term. Likewise, aesthetics is not an external critique of law, because laws and judgments are aesthetic in themselves.

In general, then, how do you see all the five sensorial dimensions interact with the disembodied, conceptual dimension of law?
Well, what do we know? We know that we have a preoccupation with language, *lógos*, and that as a result, our understanding of that which is law is framed around language and especially written text. But if you acknowledge that much of the business of law is interactive and behavioural, then what are the analytical tools that we have that allow us to understand behaviour as a site of law? They are the analytical tools of sight, sound, smell, of senses. They become the mode of apprehension of the normativity of action.

It seems to me that in your recent "Orchestrating Legal Multilingualism," you suggest that sound and music are a mode of apprehension of normativity but also that what goes on in organizing, training for performing, performing, and then listening to any kind of sonic material raises normative problems and problems of personal commitment. So, if we are to overpass the simple simile that music is like law, e.g., that their structures are similar, should we say that making music is making law and vice versa?
Absolutely. Art and music are not things out there that could be looked at in some kind of legal analysis. The performance of them is law.

Let's try to move these reflections into a concrete example. You used these background ideas in your thread of research on access to justice, fairness, and property. Recently, you have prepared a paper for a Quebec conference on autochtony and governance where you try to imagine what a legal infrastructure for Aboriginal economic modernity could look like. This is also a topic you are going to develop further. What do you argue for?
One thing that capitalist economy tends to produce is a multiplication of forms of property – perhaps even an entropy – as our understanding of value becomes dissociated from objects: the idea of property is increasingly dematerialized. In the Western legal traditions, we started with a conception of property which was largely about land and objects. Gradually, we have come to understand value in the utilities of property – in its usages. What that suggests is that it is possible for the Aboriginal people to maintain a vision of property, especially land, that is consistent with collective ownership but at the same time to deploy the increasingly sophisticated dematerialized units of property to achieve their social purposes. My paper was an argument that you don't have to go through

a stage of private property of land in order to get to a decomposition of possibilities of ownership: the economic exploitation of the various possibilities of ownership in land can be divorced from ownership of the land itself.

Can the different conceptions of property be made transversal to different societies?
That is a question that is directly raised by the work of Étienne LeRoy: do you have to find analytical categories of property which are outside any existing regime of allocation of rights? His answer is "yes, the only way you can talk about Aboriginal conceptions of property is to use a vocabulary and concepts rooted in something other than existing systems." I don't know. I think if First Nations want to join a trading economy, there are certain things they will have to do, and the question is: is there a way of imagining to have these things done that does not undermine their view of collective identity and collective ownership?

The answer to that question surely has to be: let's look at what you can do with the latest capitalist property concepts, let's see how many of those can be related to that subtext in a way that lets you participate in a global economy without at the same time undermining your root conception of sovereignty of the land. You don't get there by going up to a level of abstraction and then asking what's the equivalent Aboriginal concept, because that is not going to get them to any viable regime. That's just a great scholarly pastime. It has analytical merit, but it's not pragmatically a workable mechanism for engaging with modernity.

The paper to which you refer was actually a small part of a general project of modernity commissioned by the Assembly of First Nations of Quebec and Labrador for instrumental purposes – improving the conditions of those living in First Nations territories. I did not set out to write an abstract piece of legal theory, although the paper ended up developing a few key theoretical concerns; I tried to write a paper that stays relatively close to the pragmatic purpose asked of me by the Assembly of First Nations.

An Aboriginal economic modernity would certainly change the Aboriginal society. But would it also change the mainstream society and, if yes, to what extent?
That is actually the same issue that all European and North American countries address when we talk about immigration. Immigration will generally change a society if there is enough of it that the receiving society

has to account for it as a phenomenon. There is no doubt that engaging with economic modernity and its institutions will change Aboriginal society. Mediating and accommodating that change will be the largest governance task for First Nations leadership over the next fifty years.

What about Aboriginal conceptions influencing mainstream society? In other words, is there enough land, money, people, resources in Aboriginal communities that they can not only carry on to the Western conceptions but move those conceptions to their own purposes? I don't think so. Rather, what would happen is that people operating in the capitalist model would see things going on in the Aboriginal community and say, "hmm, that's interesting, let's use this idea." The impact it is likely to have is the demonstration of ideas that are attractive enough that people will want to borrow them. The impact will not be like the immigration phenomenon, where 500,000 Italians have actually changed the way life in Toronto works, whether people who were then living in Toronto wanted their style of life to change or not.

Talking about migration, your argument about the relationship between migration and legal pluralism is for a radical enlargement of the concept of migration, which overpasses the classical geographical and geopolitical meaning of the term.

The problem with classical analyses of migration is that they think that the phenomenon of migration is essentially one of "movement of people" and the movement of peoples across "state boundaries." I would say this classical phenomenon can be modified in two ways. The first is to consider that *geographically* sometimes people migrate because boundaries move: they stay in the same place but boundaries move, and therefore here we have a reflexive phenomenon. The second is to consider migration that happens when you view a change not just in geography but in commitments, in what you believe in: changing school, changing religion, getting married, changing jobs. This shows that migration can be thought as a phenomenon of intellect as well as a phenomenon of space.

Let me put it this way: my theory of migration is like the evolution of my theory of legal pluralism. The first stage is the idea that the only boundaries that count are those of the state and you can have at most interstate relationships. Then you have a social scientific theory of legal pluralism, which strives to identify social spaces other than states. This corresponds to a theory of migration that recognizes movements such as rural to urban, from centre of city to suburb, changing neighbourhoods within a city, changing the place of employment. But then we

move to a radical legal pluralism, which says: every time you change a normative universe, that's migration. The two fields are now one field: changing religion from Catholicism to Protestantism, passing from feeling an attachment for the Montreal Association for the Blind to an attachment for the Cystic Fibrosis Foundation, changing from an attachment for the soccer league to an attachment for playing baseball. All of these are migrations. That's how my idea of migration tracks my idea of legal pluralism.

Therefore, the idea of change should be put at the conceptual centre. I wonder what is the role of institutions in social and personal change. For instance, what did your empirical research on the small claims court teach you on the issue of access to justice? In a recent piece, you talk about a circumstance in which, as a citizen, you were tempted to resort to that institution, but because of your previous scholarly knowledge, you refrain from doing so.

I'm not a litigious type. It would really take me a lot to sue somebody. In the great divide between "fleers" and "fighters," I'm a fleer. But the access to justice had an important impact on my reflection about legal institutions: the sense of disempowerment and disengagement is deeply personal to the agent. There are not a lot of institutional responses that can produce equal empowerment. I'm very fortunate, because I have the advantages of time, of intellect, of financial resources, of knowing whom to call to navigate through all the bumps of everyday human existence. But despite that (and referring to the article you mentioned), an unresponsive service-department call centre can drive me crazy just like any other person. Most people in such situations just give up, they just can't cope with that. Of course, a very small minority grab a gun and wreak violence. But most just resign themselves to the fact that they "don't matter."

That's the lesson of access to justice. The small claims courts helps, but in fact it can only help those who can already help themselves. There is a certain level of something ineffable (confidence? energy? money? will power?) that you must have before you can get an institutional machine started. At the same time, it is not for me to say that the disempowered actor might say: rather than empower me, just give me thirty dollars a week for the next four weeks so I can buy four cases of beer. Does that make a better life? I don't know, that's surely not for me, but some might want that.

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On Academic Life and Intellectual Engagement with/in the Present

You were appointed dean of the Faculty of Law here at McGill when you were only thirty-five. At about that time, and as a result of that experience, you also wrote "Office Politics," a caustic paper about under-the-table informal ways in which all the actors in a law faculty – ranging from the students to professors, as well as secretaries and the administrative staff – interact with each other in pursuing their own agendas, be they more particularist and devoted to immediate self-advantage or be they more universalist and devoted to some theorized or fancied "justice." But in the story, the dean himself was an actor, exercising what undoubtedly was a position of power. How was your experience with exercising power?

I often felt that I did not have any power at all. Actually, the range of action that a dean has is not that great – and that is a good thing. Institutions and procedures are meant largely as prudential constraints, as fail-safe mechanisms. My experience was one of coming to the conclusion that those exercising institutional authority may have the capacity of setting terms, developing aspirations, getting people to engage with certain kinds of themes, rather than the directive power of saying "you do" or "you don't do." I was very concerned as dean to prevent people from arguing with each other. As I've mentioned, one of the defects I suppose that I have as a person, or parent, or colleague is that I hate conflict. I can't stand it. I would rather walk away from such situations. This certainly compromised my capacity to induce recalcitrants to do what they should be doing. But in the end, I think more people perform better under a regime of condign sanctions than under a more coercive regime of punishments and explicit rewards.

How did the perpetual discordance between theory and practice come out during your academic experience?

I've never been able to figure out what the difference between theory and practice is. I suppose I can give some examples, but I don't know how useful these will be. One might say: being practical means navigating around the world as seen in the way that everybody else thinks the world looks like, while being theoretical means thinking that there may be other ways to think about the world that could help us navigate. But, presumably, to live in the world you both have to live in the world and

try to change it. This is the lesson I take from the Eleventh Thesis on Feuerbach once again. If you want to change it, you can't just dream a different world: the point is to change it while living in it. On the other hand, it is very difficult to imagine anybody in a kind of reflective position being satisfied with the way the world is. I remember that when I was told the following as a joke, I did not think it was funny. There is an old expression in English: "that is a good idea in theory, but it won't work in practice." The joke is that a person criticized some proposal by saying: "that is a good idea in practice, but it won't work in theory." I don't find this funny. I find it true. Our actions and ideas have to work in practice and in theory. If they work in practice but not in theory, odds are that we are living in a false consciousness about what really "works" in practice.

Since 1995, you have been F.R. Scott Professor of Constitutional Law. In your inaugural lecture, you made a distinction between the "constitution according to Frank Scott" and "Frank Scott's constitution," where the former is more the concrete, historical, written achievement and the second is more aspirational. What is the legacy of F.R. Scott, and how do you see it related to the work you have been doing so far?

Like with the Vanderlinden piece on legal pluralism, I was given a topic and an occasion: this was an inaugural lecture meant to celebrate my accession to the chair and the career of the person for whom the chair was named. Since I was the first-ever chairholder, I felt that I had to talk in detail about the person and his ideas. However, however great he was as professor and scholar, he was not a very lovable person. So I made that distinction and spoke first of the "constitution according to Frank Scott" in the paper in order to allow those who knew what he really thought to see that I was projecting onto that what I thought he should have thought, trying to find some things in what he said that were closer to the view of what I believed that he should have said. Obviously, therefore, the aspirational content of "Frank Scott's constitution" was actually my own aspirational content, but the convention of the form of an inaugural lecture obliged me to put the point as I did!

Another figure who was very important for Canada was Pierre Elliott Trudeau. You are now a Trudeau Fellow appointed by the Trudeau Foundation. What are your thoughts about him?

My reaction to Trudeau is similar to my reaction to Scott. There is a lot of good in what Trudeau did over time. He was, undeniably, a great Canadian. But if you ask me, "given his overall legal and constitutional

theory, do you agree with him or not?" the answer is no, I don't. That doesn't mean that some of the things he did as prime minister were not terrific and worthy of praise. But I do not share his underlying legal theory. He was a classic legal republican, and I am not. He was a legal centralist (a statist), and I am not. He was an instrumentalist, and I am not.

However, federalism and bilingualism are two themes that both Scott and Trudeau dealt with at length. So you are dealing with the same issues, but from a different perspective …
Exactly. For me, federalism – especially as I develop it in "Kaleidoscopic Federalism" – is a manner of thinking about legal pluralism, and bilingualism – especially as I develop it in "Orchestrating Legal Multilingualism" – is a manner of thinking multiple identities. I don't think either Scott or Trudeau conceived the state that way.

You mentioned Vanderlinden, to whom you dedicated another recent essay of yours. What is your relationship with him?
I met him first in 1993, although of course I had read his articles and books before. We are colleagues working on similar types of things and derive insights from each other's works, but we are not close collaborators on any specific project.

I would now like to move to your teaching experience. I was impressed by the fact that you remember the names of all your undergraduate students, which is no small number. From what I have seen, not many profs judge their relationship with their students exciting or even inspiring for their own research …
I taught baseball and canoeing when I was a youth myself and was a Beaver leader after I had spent all those years at summer camp. In much of my life, I have been involved in positions where I was interacting with people who were my junior in the "discovery of stuff." But I never thought I was really that much smarter than anyone else. What you – as teacher, instructor, or coach – have is experience, insights, engagement. I'm fortunate to have been given a good memory, so I accumulated over time lots of experiences and relationships and reflections. And I remember those with whom I was interacting as part of recalling these experiences, relationships, and reflections.

I enjoy new experiences, and as part of that I find people fascinating. Actually, I haven't met many very boring people in my life; people always have very insightful things to say if you just keep your ear open to them.

When I ask questions in casual conversations, I am always amazed by how much I wind up learning. The university is an institution where you have this unique opportunity to get paid to interact with other people and learn from them!

You have been called an "instigator." Do you see teaching as an instigation to think?
Well, one thing I perhaps do too much is I find it very hard just to think about the specific issue on the table. Once a friend said to me, "the problem with you is that we can be talking about ashtrays and in two minutes you jack the conversation up into the scientific discovery of fire ceramics." I can't seem to stick for long at the basic level of an inquiry. So maybe I'm instigating in the sense that I'm constantly trying to explore the broader implication of things.

You said you haven't met many boring people. What are boring people like?
Boring people are those who have no sense that their own life is interesting. If you've no perception that there is anything interesting in what you're doing, and who you are, then you're boring.

I have appreciated your "Tips on Applying for an Academic Position," where you explain a lot of informal mechanisms young people applying for academic jobs should be aware of. Thinking about it, I realized that in Italy most of that knowledge – although actually quite simple in essence – is sort of kept secret and revealed only to the select few.
That's interesting because, although I would not presume to speak for Italy, I don't think that people here would say these mechanisms or tips are *kept* secret. What probably accounts for the fact they are not well known is that until now, nobody has taken the trouble to write about them. It's the implicit law. This unwritten law is not written down until someone feels the *need* to write it down. I felt that need, because I have seen the uncertainty of a lot of people who were entering the job market. Informally, personal mentorship seemed to be lacking. So I thought that it would be worthwhile to write something that would get people to think what are the kinds of things that would be important for them to keep in mind.

At McGill you have recently launched a new program for training law students in both civil and common law at the same time, based on what

you call a "transsystemic approach." How would that approach work on the field, when your students are lawyers?
This is a kind of metaphor of knowledge too: the more you know about more things, the better you can do any particular thing. So, if somebody would ask in what ways students trained in transsystemic education would be better than somebody else, they are going to be better only to the extent that to know more and to think about things having more reference points and more experiences is better than having less.

But do I think there is something magic in transsystemia? No. I don't even like the word "transsystemia," since it presupposes systems. For much the same reason I don't like the expression "international law," since it presupposes that the central artefact is national law. Our sense of the new teaching program is that law is like language, is like disciplines. Do you speak a better English because you speak French? Absolutely. Are you a better economist if you also happen to be trained in sociology? Absolutely. I think the drive to specialization, to positivizing knowledge is destructive, and to the extent that the transsystemic project moves in the other direction, that's its primary value.

What's the relationship between teaching and researching?
I think it's easier to talk about (and to see) how doing research with your students can be part of the teaching experience. Engaging with your students in having some of them as research assistants is a pedagogical opportunity: unless you totally instrumentalize your research students. Every professor who has ever worked with graduate students or undergraduate summer research students knows that in research is teaching, in both ways: you teach them, and they teach you. Of course, it's harder to see the ways in which the oral performance of the teaching function in the classroom is research. But I think it is in at least two ways.

First, in the context of the class, if you are a responsible teacher, you can only teach who you are. You won't just transmit other people's information about constitutional law or contracts as if you were somehow aside from or separated from what it is that you are teaching. That's not teaching – that is indoctrination. The exercise of teaching means mediating between who you are and the "expected understandings" of what the subject matter is in a way that is novel and insightful. And that necessarily produces chain reactions of ideas, since every class, every group of students, and every student has a different "expected understanding." The mediation of your own understandings and those of your

students necessarily plays into the things you think about in the other work that you do at the research level.

Second, once you decide that the classroom should become an interactive endeavour, you give up the one-way projection of authority and magisterial structure of omniscience and (to be frank) the lazy professor's way of simply mollifying people by making the "information absorption" task merely passive. The interaction with your students will take the class in directions that you've never seen before and never heard before. The conversation with your students therefore becomes the implicit engagement of your students as research assistants, and you are together exploring new dimensions of ideas. There is rarely a class I teach that I don't come out of it with at least one idea I had never thought of directly before. And in the course of a semester there are probably four or five times when classroom observations, or postings on a discussion board, or hallway conversations with students do have a major impact on what you are thinking about. Students don't get a chance to see this, because they don't know what you didn't know beforehand, but when they take an advanced course that builds on an earlier course, then they can see how a previous classroom experience changes how you think about certain questions. That's another way that the teaching exercise feeds the research endeavour.

On Canada, the World, and Law Reform

I would now like to ask some questions about Canada and its society. You have described Canadian constitutional history as an ongoing hockey match between anglos/canadians and francos/habitants. Every polity is plural and conflictual. Here, however, the conflict is not only on the ordinary politics (laws) but also on the extraordinary politics (constitution). The problem is that usually extraordinary politics is thought to set out the rules of fair play to be applied in ordinary politics. In the absence of clear fair-play rules, in your judgment has there been a sufficient degree of fair play so far here?

The short answer is no, but the long answer is yes. I say this because Quebec is not Northern Ireland and Canada is not Zimbabwe. Actually, there is broad agreement on the framework, and where there is disagreement, it is not that there are no points of discussions, and it's not that there are thirty-eight opinions. There are two understandings, they reflect two well-developed political theories, they engage with each other on particular issues. The fact that the framework has been contested means

that you have to be more careful about ordinary politics, and we have seen in Canada a couple of times that people made matters worse by forgetting that ordinary politics is a politics of negotiation, of compromise. When you move to extraordinary politics and constitutional challenges, where there are definitive winners and definitive losers, fair play is impossible. Fair play is only possible when more important than win or lose is to get to an agreement.

The issue of First Nations, or – as you suggest – the First People, is also a constitutionally historic chagrin in Canada. What is the point of the debate according to you?

There are two ways you can think about Aboriginal people. One is to say: "they were here first, and we stole their land, therefore we have to do something about it." This is a pretty naive view about the basis for recognition, because current Aboriginal peoples either killed or fully assimilated the people who were there before they arrived. Unless we get someone to figure out who were the very first persons and then give those persons everything just because they were first, that is not much of an argument. Curiously, however, if I were to say that in a public forum, I'd be vilified. But in fact, being "first" – even if you were demonstrably first – is not a good enough reason to claim territory. That is not a popular discourse when you move to discussions of Aboriginal rights today, because the current governments in the territory of North America are so obviously colonial reconstructions. But the problem is colonialism, not the fact that the occupation of the antecedents to these governments originated at some later time than First Nations peoples.

I reject the view that simply because they were here first we have to negotiate with them. However, there is also a different perspective, which is to say: the political community we know of as Canada cannot exist if it treats a significant part of its population, who is a rooted population, as disempowered and dependent. So, yes, we need to redesign political institutions, and we have to get to a very hard point, the point where Aboriginal peoples decide to call themselves Canadians, which is what they do not do now. Mohawks are Mohawks, they do not call themselves Canadians; if you want Aboriginal people to get angry, call them Aboriginal Canadians: they will deny they are Canadians. That is why, short of apartheid and short of building ghettos, we have to build a political community in which they are included, if we don't want to excommunicate them. So I think we have to build a political community in which they are in and find the terms under which they will come in: this is the challenge.

On the basis of your experience at the UNCITRAL*, how do you see the role of Canada as an actor on the international scene today? In particular, how do you see its role vis-à-vis North America, on the one hand, and Europe, on the other hand?*
In UNCITRAL, it constantly amazes me how much the rest of the world listens when the Canadian delegation speaks. It is the one delegation that everybody listens to, no matter what the topic is and no matter how the sides are drawn. And I think it's because the Americans are so self-righteous about their legal ideas! In large measure, these meetings are the rest of the world against the US. The Americans have an agenda, and they are trying to push it forward. The Canadian delegation actually agrees with most of those directions. But because people find the Americans just insufferable, they need to hear the message said by someone who is not insufferable, with a degree of nuance. Say, if we are playing poker, the US wants to win every last penny off the table. They just don't know how to play a game in such a way that the game keeps playing. They are much more interested in winning than in keeping the game playable.

You have been president of the Law Commission of Canada, and you have been involved in many sorts of law reform projects. Is there a tension between the idea that the informal is permeating the law and the attempt at conscious and formal law reform? If law is decentred in many social places and, tendentially, in every human being, how is it possible to carry on a centralized project about law itself?
That's the topic of "Recommissioning Law Reform." There I asked myself: how can I be a legal pluralist and sit in an institution that claims to be the centre? There are some pragmatic answers: you learn lessons of everyday law, and you consider them important in following a statute; you are more interested in opening up public debates about issues rather than coming to any particular conclusion; you are more focused on finding ways of characterizing social life using terms of everyday experience rather than terms of legislation. But let's face it: you are still an institution, you are still in the centre, you still have the authority to govern, absolutely.

Do you mean that you feel at the centre and that you have to act as if you were at the centre or that you actually are at the centre? Doesn't a legal pluralist consciousness lead to relativize the sense of centredness of law?
Others out there will ascribe to you, as an institution, a centredness, and make you the centre. You know that you are not. On the other hand, you also know that you *are*, because as a pluralist you believe that everybody

is the centre. So what you have to do is to use your own perception of being in the centre as a way of decentring others' perception of what makes the centre so that they may see the sense of centredness that you have. You have to show people that the reason why they are looking at you, as an institution – i.e., the necessity of finding a centre – is the very reason why they should not be looking at you.

Is the gap between a centred and a decentred, an explicit and an implicit perspective on law, bound to stay?
What presumably happens is the recognition that the first order of normativity is always implicit, is always tacit. Explicit law provides institutions, processes, and practices through which human beings can mediate between the immediate and the ineffable, between the practice of conversation in a room and a commitment to justice, rule of law, and fulfillment. Explicit law provides structure and guidance to make it possible for human beings to develop patterns of shared understanding and interaction. When you say to somebody whom you feel deeply about "I love you," you do not want to say, "and here are fifteen reasons why," you don't want to drive up from the implicit into the explicit. On the other hand, when you say "I love you," you also don't want to say, "and let me tell you what love means" in some transcendent sense. The expression "I love you" provides a linkage and a reflection towards what it really means to love somebody as an ideal and the practices and manifestations of that ideal in everyday life. That's how law works: explicit law works between the absolute, ineffable idea and the tacit practices of everyday interaction.

You have also been active in making explicit law, e.g., drafting secured transactions regimes in Ukraine – but let's not forget the regulation of the Faculty of Law of McGill University. Besides the professional commitment and study, is there a particular gratification, a particular feeling, in drafting a piece of legislation?
Sure, it's terrific. I have always found that there is more gratification in writing legislation than there is in writing a judgment or writing an article. Because when writing legislation, you can't explain what you are doing: the explanation of what you are doing has to be derived from what it is that you actually did; whereas when you're writing a judgment, that is all about explaining what you are doing. And that is easy, infinitely easier than doing it in such a way that those who read what you did can figure out what it is that you are trying to do without asking you. To be able to craft legislative instruments effectively is extremely powerful.

I would be tempted to call this conversation "The Many Activities of a Legal Pluralist around the World." You travel quite a lot around the world, to give talks at conferences and to join UN *meetings. Did travels contribute to your understanding of the particular situation of your Canada?*

If you travel in the right frame of mind, you will have a sense, wherever you are, of being at the margins, of being the *other*. I think there is something quite liberating about consciously understanding that you are other, because it means you do not have a direct responsibility for what is going on in front of you; therefore, you have the capacity to engage with it differently: you get a deep feel of where you are if you approach reality in that way.

The payback in your own society, if you have any sense of things, is that you can appreciate the perspective of those who are themselves *others*. That is, there are people within your own society who are positioned as others. As a result, you want constantly to be thinking about the experiences of the others in your own society. What do they think about what your society has to say to and about them? How can you take your experience of being other as a way to recognize and work to overcome the disempowerment, hostility, disenfranchisement, and disengagement that is often experienced by those who are the other in your own society?