It was at some point in 1938 that Dean Cecil “Caesar” Wright of Osgoode Hall Law School sat down to write a letter of recommendation for his protégé, Bora Laskin. Wright had been Laskin’s mentor and would continue to be his close colleague and friend as their respective careers intertwined over the better part of the next two decades. For the moment, however, Laskin, despite his academic brilliance and his Harvard LLM, was without a permanent position in either the academy or the practise of law and a vacancy had opened upon at the Law Department of the University of Manitoba. Wright addressed his letter to Sidney Smith the humane and cultured President of the University who would subsequently go on to do great things in the same post at the University of Toronto. Here in part is what Wright said:

‘Unfortunately he is a Jew. This may be fatal regarding his chances with you. I do not know. His race is, of course, proving a difficulty facing him in Toronto so far as obtaining a good office is concerned … Laskin is not one of those flashy Jews, and the highest recommendation which I could give him is to say that, in the absence of any overwhelming prejudice and if I had control of a decent faculty, I would have no hesitate in placing Laskin.’

Laskin didn’t get the job.
He did finally land an Instructor’s position in the then Department of Law at the University of Toronto, but not before the Chair of the Department wrote to his Dean in support of Laskin’s appointment as follows:

“I had to ask him to declare unequivocally that he has no connections public or private, expressly or implicitly, with organized or unorganized communism, fascism or any subversive movements; and he has categorically made such declaration and repeated it in the presence of a witness.”

By all accounts, Bora Laskin regarded his subsequent remarkable career, culminating in his appointment by Pierre Elliott Trudeau as Chief Justice of Canada as an illustration of “accidentalism”, the serendipity of being in the right place at the right time.

Of course, it’s all a matter of perspective.

Viewed from the point of view of the casual Anti-Semitism and reflexive red baiting of the Canadian Establishment of the Thirties, Forties and Fifties, not to mention the smug anti-intellectualism of the legal profession, Bora Laskin’s rise from his roots in the Lakehead as the son of Jewish refugees from the pogroms of Czarist Russia, though occasional forays in workers education and a stuttering early legal academic career, to the very pinnacle of the Canadian legal world might seem as much to illustrate “miraculism” as “accidentalism”.

Looked at from the point of view of contemporary Canadians at the time of his elevation to the Supreme Court of Canada that same career arc might appear as an appropriate, almost inevitable,
vindication of the egalitarian, merit-based promise of a “Just Society”, with Laskin appearing as both embodiment and champion of that promise.

Regarded from a present day perspective, some twenty years after Laskin’s death, the massive social and intellectual shift in Canada and its legal and intellectual cultures symbolized by Laskin’s appointment as well as his role in that shift, are now history. It is not surprising that a new academic generation would set its sights on the alliterative “Laskin Legacy”, taking stock as to the ongoing significance of Laskin’s career through the prism of today’s social and philosophic theories and issues.

Philip Girard’s new book *Bora Laskin: Bringing Law to Life*, the first full biography of Laskin, is a timely contribution to this process as it focuses on the life and thought of Canada’s first, and arguably, only popular judicial icon.

Girard’s emphasis is mainly on intellectual biography. He sees Laskin as a transformative figure, sweeping away the dominant static “black letter” approach to the law in favour of an approach that as suggested by the subtitle “brings law to life” rather then requiring life to bend to the law. Girard coins the term “legal modernism” to describe Laskin’s approach to the law. As Girard explains it, the essence of this approach was to understand the law in terms of its actual impact on real people, rather then as an abstract system of disembodied rules. This implies a functional “purposive” approach to legal issues that also carves out a specific role for judges to consider the policy implications of their rulings and in appropriate circumstances, to improve the alignment of the law with its real life consequences.
Girard illustrates this theme in Laskin’s thinking copiously and persuasively. He discusses Laskin’s decisions in cases dealing with criminal prosecution, the constitution, labour relations, corporation, the family property rights, civil liberties, aboriginal land claims and more. His description of Laskin’s jurisprudential writing is clear enough for general readers to follow, but nuanced and specific enough also to constitute an important contribution to academic legal scholarship. His description of Laskin’s approach as “bringing law to life” also helps capture the dynamic between this wholesale modernization of the “law” and the accompanying changes in Canadian “life” that influenced and in turn were influenced by it.

As much as the emphasis is on intellectual biography, Girard’s book also deals with “life” in the more traditional biographical sense of telling the story of the events in Laskin’s life.

Because of the enormous impact of Laskin’s judgments, there is a natural tendency to think of his life and career in terms of the final judicial phase. That, though, is only part of the story and in some ways not even the most interesting part. Well before his “accidental” elevation to the Bench, Laskin had played a leading role in events that would have important, usually transformative impacts on Canadian society and its institutions.

Girard’s account of Laskin’s career points to Laskin’s imprint on a remarkable range of important areas. Some of the roles Laskin played are familiar. There is Laskin as Canada’s foremost constitutional authority, championing a leading role within Confederation for a strong
federal government, views that later would make him seem Pierre Elliott Trudeau’s judicial
doppelganger in the Patration Reference.

Other familiar, maybe less colourful impacts include Laskins’ pivotal role, first as arbitrator and then as scholar in establishing the modern Canadian system of labour relations or his role in establishing the educational structure and academic governance of Canadian universities. Perhaps less familiar is Laskin’s major influence, through the Jewish community’s Joint Public Relations Committee, first on the acceptance of the concept of Human Rights Codes and then on the development of their content.

Most of the episodes described by Girard speak for themselves, but some need a little explanation to illuminate their full significance. For instance, Laskin’s contribution, through the Canadian Association of University Teachers, to the defence of academic freedom in the famous Crowe case was immediately important in spotlighting an instance of institutional unfairness, but it also had an ever more important and lasting effect on the university world by entrenching the role of academics themselves in policing institutional respect for academic freedom.

Other then his judicial appointments, perhaps the central event in Laskin’s life, in terms of its far reaching effects, was the famous walkout of Instructors from Osgoode Hall Law School. Girard gives this key episode extensive treatment. In January 1949, the entire permanent “staff” (they were not referred to as “faculty”) of Osgoode Hall, including Laskin and Caesar Wright, resigned in protest over what they considered its retrograde educational policies. Osgoode Hall was at the time controlled by the governing body of the Law Society of Upper Canada, the quaintly named
“Benchers” and held a monopoly on mandatory legal education for lawyers in Ontario. The walkout was headline news in The Globe and Mail, complete with a front page photo of Laskin reading the group’s letter of resignation. Shortly after their resignation, the “staff” migrated as a group to the University of Toronto where they soon became the “faculty” in the newly reconfigured “Faculty of Law”, a university based professional school that was eventually to break the Benchers’ monopoly and become the paradigm for Canadian legal education.

Girard enlivens his telling of the story with a dash of controversy. Was the walkout planned well in advance by a calculating Caesar Wright? Was Laskin’s prior move from the University of Toronto to Osgoode Hall in 1945 already a part of that plan, engineered in order to include him in the eventual defection? Girard lays out his evidence and suggests ways to connect the dots that make out a plausible case for affirmative answers, though it might also be argued that the evidence is equally consistent with simple contingency planning as it is with a stage-managed plot.

Interesting as this new controversy may be, it should not divert attention from the real significance of the walkout, which marked the decisive turning point in a process that shifted control over the training of lawyers from practitioners to university-based academics. The rise of the University of Toronto Faculty of Law and Laskin’s leading role as its academic voice gave Laskin unparalleled influence not only on the content of legal education, but also on the entire intellectual orientation of the profession. Both directly as a teacher of lawyers and indirectly as a teacher of teachers, Laskin’s impact may have been every bit as profound through this channel in transforming Canadian legal thinking as it later would be through his legal judgments. A
plausible argument could be made that it was the consequences of the Osgoode Hall walkout that made Laskin’s subsequent “accidental” appointment “inevitable”.

For all the time Girard spends on the events in Laskin’s various careers, he spends a great deal less on Laskin the person. We see a lot of Laskin the teacher, the scholar, the arbitrator, the public intellectual, the administrator and the judge but very little of Laskin the father, the husband, the colleague, the mentor or the friend. Nor, despite the obvious biographical and thematic importance, do we get much of a glimpse of Laskin’s own view of himself as a Jew or, for that matter, of any aspect of his own private self-assessment.

Part of this may be inevitable because of Girard’s focus on intellectual biography, but there is also a more mundane reason. Although the amount of research into Laskin’s life and career Girard has conducted is prodigious, this is not, as he points out in his preface, an “authorized” biography. Girard did not have the benefit of participation by Laskin’s family, nor it seems, by many of those of Laskin’s still-living closest friends. Most crucially, he did not have access to Laskin’s own papers. This is a huge handicap for a biography of someone like Laskin, who by all accounts, scrupulously guarded his privacy. Until the Laskin papers see the light of day and until his family and more of his friends, students and clerks share their recollections and assessments, a good deal of the picture Girard paints of Laskin the human being will have to be viewed as incomplete.
It is unlikely that anyone would seriously disagree with Girard’s assessment that Laskin had his flaws. The problem as always is in the details, especially in terms of the strength of the factual foundations for specific conclusions.

Lacking more complete biographical information, Girard sometimes turns to psychological theory to explain elements of Laskin’s behaviour. Taking what may seem rather a large speculative leap, he interprets many elements of Laskin’s attitudes and behaviour as embodying “Twentieth-Century masculinity”. This is harmless enough as an explanation of matters like Laskin’s consistent, and by all accounts genuine, response to questions as to his proudest accomplishment with the story of how he hit the longest home run on record in Fort William. It may seem somewhat less reliable when cited to explain Laskin’s at times abrupt public demeanour, his perceived intense competitiveness, his alleged unkindness to rivals and insensitivity to women’s perspectives, or his public attitude to his own Jewishness.

Girard may well be right in all or some of his assessments and his lack of access to important biographical information may be outside of his control, but conjecture however shrewd it may be, remains guess-work, and it remains problematic to draw conclusions about character and motivation on what seems so relatively thin, speculative and incomplete an evidentiary basis.

So what is the bottom line on Laskin’s legacy?

First of all, it is important to understand that any “re-evaluation” of Laskin’s significance occurs at the margins. Laskin’s greatness is a given, and Girard’s narrative does nothing to disturb the
image of a man of outstanding intellect and astonishing achievement in the widest range of legal and academic endeavour.

Girard is clearly right to put a lot of stock in Laskin’s “legal modernism” and to place near the centre of Laskin’s legacy his role in the transformation of the law and of legal institutions in Canada. The effect of “bringing life to the law” is to legitimate movement in the law as it catches up to life. If this approach seems self-evident to judges and lawyers today, it is in large measure due to Laskin’s influence.

But the thing about transformation is that once it gets going, it is an ongoing phenomenon. Yesterday’s innovation is today’s status quo. Legal modernism itself implies that as life changes, so will the law. A lot of life has changed since Laskin started writing judgments and especially in the twenty years since his death. It shouldn’t be surprising that in many areas Laskin’s substantive judgments have been or are in the process of being eclipsed. Despite its name, even “modernism” in its various forms is no longer cutting edge and at least in the Academy is losing ground to deconstructionism in its respective manifestations.

Should we look at Laskin as much as a transitional as a transformational figure? Perhaps. One possible conclusion is that a functional, purposive approach linking law to life is likely to be Laskin’s main lasting contribution, as his actual judgments fade from the foreground.

But there is another theme in Bora Laskin’s judgments worth thinking about in terms of his lasting legacy – the theme of “fairness”.
In case after important case, Laskin turns to some version of “fairness” as the basis on which to realign law and life. Sometimes, this means fair procedure. In administrative law, the balance to the deference Laskin says should be shown to the expertise of specialized tribunals, is judicial oversight over the fairness of the process. The check on the criminal law power of the state is fairness in how the police and the prosecution behave and during a trial. In company law, Laskin rules that laissez-faire assumptions cannot displace a duty to act fairly to one’s partners or associates. In family law, he involves the ancient common law property concept of a “constructive trust” to try to ensure fairness to non-working wives when marriages dissolve.

Girard tells the story in his preface, of informing his parents that he was writing a biography of Laskin. His mother rummaged through some papers until she uncovered an old Macleans article about Laskin’s famous dissent in Murdock v. Murdock that contrary to received legal wisdom would have entitled a farm wife to a share of family property based on her non-financial contribution to the marriage. The law was soon changed by legislation along the lines of Laskin’s dissent.

“He was”, Girard’s mother said “such a fair man.”

Laskin is sometimes seen as a Moses-like figure: a lawgiver and prophet who was allowed to see from afar the Promised Land of the Charter which he had laboured so long to attain, but who died without being able to participate in its realization.
To extend that metaphor, a case might be made that Laskin’s legacy isn’t simply to have made possible the crossing over to a new era of “rights-based jurisprudence”, but that between his functional approach to the law and his insistence on an underpinning for that law of “fairness” in its various guises, Laskin defined the very analytic tools still being applied by Canadian judges in the new world of the Charter and that they are likely to apply for the foreseeable future.

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September 16, 2005