

## *Prologue to the Law Faculty Tales*

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G H L Fridman\*

When that September with his breezes cool  
The summer's heat has tempered to the full  
And from humidity provided rest,  
Restoring life and rendering back our zest;  
When harvesters their annual tasks have done,  
Now welcoming relief from tiring sun,  
Their toil complete, and eagerly await  
The revenues expected at that date,  
And minors contemplate with groans and sighs  
The way that summer's freedom quickly flies,  
Then students of all kinds return in flocks  
To schools wherein they undergo the shocks  
Entailed in testing, grappling, hand to hand,  
With skilful teachers all across this land;  
And especially, from every province wide  
Of Canada, unto the legal side  
Of universities their ways they wend  
Where many weary, boring months they spend  
In gaining knowledge leading to the Bar,  
So that they might be richer than they are.

Befell it that in one eventful year  
Before my future plans had been made clear  
I was permitted to associate  
Myself, albeit in a role not great,  
With one such learned Faculty of Law.  
A golden opportunity I saw

To benefit my pocket and my mind  
 Participating in the daily grind  
 Of those who'd come to make the pilgrimage,  
 Necessitated in this bookish age,  
 T' achieve the baccalaureate degree,  
 Thereby to gain the requisite entry  
 To articles and law societies.  
 I thought that through the year I'd simply breeze.  
 There was no hardship in such exercise,  
 And once completed I could break the ties  
 Linking me with the ill-assorted set  
 Of men and women whom I quickly met  
 I did not realise that they would haunt  
 My corridors of memory, and flaunt  
 Their idiosyncratic characters  
 Before my eyes beyond those early years.  
 Now in this way these *personae* I must  
 Shake off, a traveler, dismissing dust.  
 Mayhap by telling of their various lives  
 I can dispose of them, like one who shrives  
 Himself of evil and confesses sin.  
 Such is my earnest hope. Let us begin.

The first of those who taught there was the DEAN  
 He nothing stupid did: nor nothing mean.  
 To keep the peace, no easy task these days,  
 Between the different factions, to whose gaze  
 He was subjected every day, he sought.  
 When circumstance allowed he wrote, or taught.  
 But this was rare: for most of all his time  
 Was occupied with matters not sublime.  
 The trivial, the petty and the dull  
 Engaged his mind; and over these he'd mull  
 Instead of seeking to advance the bounds  
 Of knowledge of the law. Increasing mounds  
 (Fit only for the garbage bin or fire)  
 Of memoranda slowly grew e'en higher  
 Upon his desk. Such is the consequence  
 That scholarly bureaucracy, immense  
 In its expanse, has brought about  
 These overpriced and spendthrift days. No doubt  
 His intellect he would have liked to use  
 Hunting around the law reports for clues  
 That could unravel mysteries unsolved  
 As yet within the law. He was not bold

Enough those tiresome, mundane tasks to eschew.  
 He coped with them. And so his stature grew  
 As one who wisely could administer,  
 A function that, in time, he would prefer,  
 Since up a ladder, gradually, it led  
 Till he'd become th'administrative head  
 Of all the varsity, the president.  
 Indeed his skill and expertise he bent  
 Towards superior posts successful Deans  
 Sometimes achieved.<sup>1</sup> Hence law was but a means  
 And not an end. Which is the reason why  
 He to avoid mistakes did ever try.  
 There are some men, and women too, I'm sure,  
 Who sense, and follow eagerly, th' allure  
 That emanates from posts suggesting power  
 Though they do not provide a rosy bower  
 Within to rest. How foolish are these folk,  
 Willing themselves to undertake the yoke  
 Of officedom. Their lives they but afflict  
 The bubble of command is quickly pricked,  
 And expectations disappear, deflate.  
 It is no true advantage to be great,  
 I mean, strongly to hold to the belief  
 That in the wider world one is a chief.  
 This knowledge would the Dean one day attain;  
 But only after agony and pain.  
 That lesson must each individual learn  
 In whom the fires of fierce ambition burn.

The Dean was helped by two ASSOCIATES.  
 They were, and were intended as, his mates.  
 Their purpose was t'alleviate the load  
 That burdened him while he was on the road  
 Towards preferment in the wider world.  
 Hence to their groaning desks he often hurled  
 Problems too complicated for his mind,  
 Hoping there was an answer they would find.  
 He was a skilful fellow at his trade;  
 While they travailed, at politics he played.

Now to some others who were in the band

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<sup>1</sup> Thus former Deans of Law have been made University Presidents, Federal Ministers of Justice, judges of various courts including the Federal Court of Appeal and the Supreme Court of Canada.

Of educators under their command.  
 A motley crew, as one would well expect,  
 Not all of them were worthy of respect.  
 Some may have thought they were. But in my view  
 Their merits and their qualities were few.

A small selection of them specialised  
 In tax – a subject that I realised  
 Like many others was beyond my ken.  
 Some three or four inhabited a den  
 Of intellect distinct from all the rest,  
 Pursuing with great eagerness and zest  
 The mystic policies that underlay  
 This law. And none of us could say  
 With certainty, or hazard any guess  
 Wherein they were above us or were less  
 In mundane usefulness or relevance.  
 'Twas thought, however, that they did enhance  
 The Faculty's renown and its repute.  
 Hence many things were organised to suit  
 Their needs, requirements and designs.  
 They held themselves aloof. Nor were there lines  
 Of interaction 'tween their world and ours.  
 They dwelt, it seemed, in whitest ivory towers.  
 These TAXISTS, as collectively I call  
 Them, though it was not likely that they all  
 Were clones, without an individual style,  
 Both exercised their minds and all their guile  
 In seeking out the ways to justify  
 Taxation's burden, but I know not why.  
 It seems to me a Tax Professor's aim  
 Should be to lessen and negate the claim  
 Made on the powerless subject by the State –  
 Not add unto its force his weight.  
 I liked not both their topic and their ways  
 And from them kept apart throughout my days.

On either side of where my office lay  
 Were two with whom I never sought to play  
 Or talk. Leftwards was one I designate  
 The JOCK; and to the right, my happy fate,  
 The ARBITRATOR, who was never there.  
 For he was always flying off somewhere.  
 The JOCK was one I could not bear t'approach.  
 A football team, of which he'd been the coach,

In former times, was his main interest.  
 That and the joys of sex for him were best.  
 Crude was his tongue; unwholesome was his breath.  
 His company I shunned: far better death!  
 When his too massive form hove into sight  
 I'd quickly disappear, to left or right,  
 Choosing t'avoid confronting such a man  
 Whose conversation, limited in span,  
 Consisted of the latest 'scores', in sex  
 And sport alike. His presence seemed to vex  
 Those of his colleagues who were disinclined  
 Towards such topics of a feral kind.  
 In some respect I envied his remove  
 From the realities of life. To prove  
 Himself, save on the football field, or bed,  
 Was not required. To all else he was dead.

The ARBITRATOR, raking in much wealth,  
 Enjoyed in full the rudest of rude health.  
 He did not care what to the others happed.  
 At fortune's steaming bowl he sat and lapped.  
 Around the Province avidly he flew.  
 In settlement of claims he was a true,  
 A trusted judge. Whatever was the field  
 Of law involved his expertise he'd wield,  
 Resolving conflicts in the stead of courts,  
 The claims of litigants his constant thoughts.<sup>2</sup>  
 His lectures and his classes were postponed  
 (A practice which the Dean, alas, condoned –  
 That is to say when this was known to him).  
 And from his frequent sorties he would skim  
 A profitable subsidy of cash  
 That in his growing bank account he'd stash.  
 His professorial title was a boon  
 To business. Between each crescent moon  
 He'd arbitrate sufficient arguments  
 T'amass a hoard of dollars (skip the cents!).  
 A practical and worldly man was he  
 Not what an academic ought to be.  
 He gave no place to philosophic thoughts  
 Pertaining to the law. The torts

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<sup>2</sup> Arbitrators are usually more specialised, dealing in one of the following areas: (i) labour relations; (ii) commercial disputes; (iii) human rights; (iv) pay equity. Some arbitrators do indulge in more than one speciality.

That filled his mind were cakes not wrongs.  
 Nor was he to be counted among throngs  
 Of scholars who employed their energies  
 Examining a hose of theories  
 About the law or any part thereof.  
 His academic robes he'd quickly doff  
 In hot pursuit of ways to earn a buck.  
 I envied him. I wished I'd had his luck,  
 Or his insensitivity I mean.  
 But I could never contemplate that scene.  
 I was committed to the teaching art,  
 While I within that group remained a part.  
 Of those who pleased me most the DILETTANTE  
 Stood out. On law he'd never rave or rant.  
 His was a casual carefree approach  
 To every student he was paid to coach.  
 No serious thoughts of law would entertain  
 His mind; he sought avoidance of all strain.  
 Once he, at Cambridge, had achieved a 'first'  
 For legal knowledge he'd no longer thirst.  
 Such was the firm commitment that he made.  
 At law, at love, at art, he simply played.  
 What was there in his character t'attract?  
 Just that he'd never be a dull Didact.  
 A boon companion was he for the bar  
 (The drinking kind, of course) as some men are –  
 While others do avoid such ways,  
 Seeking alternatives to fill their days  
 And nights. His was an easy fellowship,  
 For from his friendly path he'd never slip.  
 Hence was he liked by students, whom he'd mate,  
 And sometimes, save the mark, he'd even date,  
 At least before society deplored  
 Such conduct it has previously ignored.  
 He was a handsome, brawny chap, and tall,  
 Whose footsteps often echoed down the hall  
 Within the building which we occupied.  
 Whenever he saw a door ajar he tried,  
 With some at least, to enter to converse.  
 But others thought it was a waste of time, or worse,  
 A hindrance to their own peculiar deeds.  
 His purpose was to serve his personal needs,  
 That is to say, to while away the time  
 He was not bound to lecture upon crime,  
 Or tort, or any other topic in the course.

By nature he would never seek to force  
Himself upon a colleague who demurred,  
And to avoid his company preferred.  
Which is the reason why we got along,  
Since I could never see that it was wrong  
To spend at least some portion of my day  
In listening to what he had to say.  
So were the hours sometimes in pleasure spent  
In conversation with this lazy gent.

A SCHOLAR was there of renown and fame  
Who in judicial circles found acclaim.  
Long had he laboured in the library's rooms  
Among the thousands of ignored volumes  
Of cases where he thought were to be found  
The spirit and rules of law. Abound  
Did he with knowledge of a detailed kind  
Of litigation that in time did wind  
Its weary way through levels of the courts  
Wherein the several judges uttered thoughts  
On principles and policies alike  
That on the anvil of the facts would strike.  
He was an earnest and a serious man  
Who eagerly each new report would scan  
Seeking to find the latest and the best  
Authority for propositions to invest  
His lectures and his books with verity.  
For this he suffered from adversity.  
Lonely his life and from the world remote.  
'Twas on the law alone that he would dote.  
In legal doctrine did he find his joy.  
It was at once his doxy and his toy.  
Short was his frame: his shoulders were o'er stooped  
From bending over tomes he daily groped  
On wooden benches where they silent stood  
Waiting their turn each to provide the food  
For his voracious appetite for law.  
I do not think the students ever saw  
A more devoted seeker after truth.  
He was a single-minded man, forsooth.  
Yet from this narrow path he sometimes strayed  
And in the wider world he went and played.  
At least that's what his anxious colleagues thought  
When to discover where he was they sought.  
What did he do upon those times? He slept.

He ate. Perhaps. But other acts he kept  
 Secret and hidden from the other men,  
 And more especially the females when  
 They tried determinedly to seek out  
 His unknown vices – since no one's without  
 Such blemishes. But he was circumspect.  
 The truth was more than any could suspect.  
 He had no taste for music, love, or art.  
 Only the law was dearest to his heart.  
 He neither could nor would permit his work  
 T'Contain a hint of what beneath might lurk.  
 His was a law all virginal and pure  
 Of all external influence. To ensure  
 Success in this he steadfastly exiled  
 From Law's domain all sorts of wild  
 Irrelevance. He was of scholars strict  
 In his approach. And carefully he picked  
 His sources, thoughts, ideas and words.  
 In this he was distinct from herds  
 Of others who did not discriminate  
 Between th'ignoble and that which was great.  
 Because of this he was reviled, ignored:  
 And in the game of life he never scored.  
 Hence he was sad, morose, disconsolate.  
 His was, of all careers, unfortunate.

In striking contrast to this sad recluse  
 Came others with an attitude more loose.  
 They more expansively the law approached  
 And other aspect of its life they broached.  
 There was within this group a REALIST,  
 Who gave to every rule a worldly twist.  
 Within the USA this view took root.<sup>3</sup>  
 No other version of the law would suit  
 His taste. He was obeisant to those  
 Who sponsored scepticism and he chose  
 To inculcate his students with their views.  
 For him such realism was still news,  
 Though many now have jettisoned this style,  
 Or left it far behind for quite a while.  
 For realists the law was down to earth.

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<sup>3</sup> There are two different forms of Realism: American and Scandinavian. They should not be confused. The American version has been more generally effective and in time was transformed into both the economic analysis of law and critical legal studies.



The judges' words were subjects for much mirth,  
 Based on the fact that they were hypocrites.  
 They did not quite reveal the truth, as fits  
 A person sitting on the bench. They tried  
 To say that logic ruled their dooms. They lied.  
 It was the consequences of a rule  
 And not its provenance, as in the school  
 Of English lawyers was the old belief,  
 That was of prime importance and the chief  
 Dictator of the cause. Thus did they have,<sup>4</sup>  
 All legal doctrine and so fully cleanse  
 Th'encrusted body of the law, which men's  
 Outworn ideas had gradually let  
 Be fossilised, and so in concrete set.  
 So strongly and so fully did he hold  
 To those conceptions that he'd freely scold  
 Any who thought that this was an extreme  
 Analysis and one that did demean  
 The very nature of the law. They scorned  
 His firm rejection of what once adorned  
 The law – a structure that was logical.  
 In his view law was psychological,  
 That is today, its content ever vests  
 In how a judge's mind performs and rests,  
 Or how the jury understands the facts,  
 Not on the balancing of legal tracts.<sup>5</sup>

A NATURAL LAWYER was one of this band  
 Of educators who took young in hand  
 To lead them to their knowledge of the law.  
 For him all other theses held some flaw.<sup>6</sup>  
 The Realists he forcefully dismissed.  
 The Positivist view of law he hissed.  
 Nor, frankly, could he stomach or abide  
 Those who some trendy vehicle would ride

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<sup>4</sup> For example, Mr Justice Holmes of the U.S. Supreme Court, whose pragmatic, and 'bad man' approaches to law ultimately led to the emergence of the Realist School in the United States.

<sup>5</sup> Jerome Frank, *Law and the Modern Mind* (1930); Jerome Frank, *Courts on Trial: Myth and Reality in American Justice* (1949).

<sup>6</sup> Natural law has a long and complex history, during the course of which it has been associated with philosophical or religious ideas about law and the role of law in society. It has enjoyed a revival in recent decades, after the dominance of positivist and then realist or instrumentalist theories of law. For a modern conception of natural law, based on Aristotelian rather than Aquinian principals, see John Finnis, *Natural Law and Natural Rights* (1980).

Hoping by such modern transport to achieve  
 An explanation of the tangled weave  
 Of law. This attitude was well revealed  
 In all his work, and never was concealed.  
 Morality, he preached, was at the base  
 Of legal doctrine, whether in a case  
 Or in a legislative Act. The test  
 Of valid law was if it well expressed  
 The moral rules which regulate our life.  
 Oh, he was pious; so, too, was his wife.  
 They went with regularity to church  
 Where in their pews they eagerly did perch  
 Attentive to the sermons and the hymns.  
 Once I assented to indulge their whims  
 And went along the service to attend.  
 They thought my self-indulgent ways to mend  
 By such an exercise. In this they erred.  
 To swallow natural law I found too hard.  
 His philosophic argument was marred  
 By sins of logic and by yawning gaps  
 In reasoning. But he would never lapse  
 From his determination to uphold  
 The truth: that law was fashioned in a mould  
 Constructed from a higher set of norms  
 Than those which seemed to stipulate the forms  
 Of legal reasoning. Unworldly man.  
 But one whose life was governed by a plan.

In contradiction of this fellow's view  
 Was someone who Hans Kelsen did imbue  
 Almost with sainthood, and would try to show  
 That natural law was not the way to go.  
 Morality and law did not connect,  
 Although sometimes the two might intersect.  
 A law was just a law: no less, no more.  
 Its worth was gauged not by what was before,  
 Or what the mischief was it meant to cure,  
 But by the application of the pure  
 Unsullied logic of the system which  
 Engendered it. It was not meant to hitch  
 The legal system to extrinsic aids.<sup>7</sup>

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<sup>7</sup> Kelsen's pure theory of law, that seeks to divorce law from extraneous sources or influences and purports to describe law in strictly logical terms, is set out in numerous of his writings, e.g. Hans Kelsen, *General Theory of Law and The State* (1946); Hans Kelsen, *The Pure Theory of Law* (1967).

'Twas meant to flourish Occam's razor blades  
 To rid the law of otiose content.<sup>8</sup>  
 At least I think that this is what he meant.  
 For those who've tried Hans Kelsen's works to read  
 It will be no surprise not to succeed  
 In comprehending what that scholar wrote –  
 Albeit that he was a man of note.  
 So when my colleague tried to explicate  
 The Kelsenistic theory, or to prate  
 About the purity of law, I failed  
 To understand or follow while he railed.  
 Obscurity I never could accept.  
 So at those times I to my office crept,  
 Seeking t'avoid this tiresome orator,  
 And once inside I simply shut the door.

We had, of course, like many other schools  
 A CIVIL LAWYER, learned in the rules  
 That emanated from the law of France.  
 His function was t'enrich and to enhance  
 Our overall curriculum.<sup>9</sup> Recall  
 (Though where we taught was Canada, not Gaul)  
 Consideration had to be displayed  
 For such things as by francophones were made.  
 To me the French had lost at Waterloo  
 (On Plains of Abraham were vanquished too).  
 The common law was far superior  
 And other systems its inferior.  
 What can an English lawyer ever gain  
 From looking at the law of France, or Spain,  
 Or Italy, or any other place  
 That harbours people of another race,  
 Not governed by the innate common sense  
 Which underlies our common law, from whence  
 Stem freedoms, liberties, and all those rights  
 That let us sleep in peace throughout our nights,  
 And go about our business in the day  
 Secure in what we do and what we say.  
 It was, no doubt, our obligation

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<sup>8</sup> Occam's Razor: *Entia non sunt multiplicanda praeter necessitatem.*

<sup>9</sup> Proponents of comparative law extol the virtues and advantages of their field of study. It was said of one such comparative lawyer, at Oxford, that if he had known any English law (he was in fact an English lawyer by training), he would have known a little of every system of law.

To give our students information  
 Pertaining to that section of the land  
 That long ago was taken by the hand  
 Of Cartier and Samuel Champlain.  
 One should not cavil, question or complain  
 About the value or propriety  
 Of looking at this French society  
 And seeing how it tackles and decides  
 An issue that confuses and divides,  
 If only to expose with clarity  
 The fundamental, wide disparity  
 Between the common and civil law's attack.  
 From open comment I, of course, held back.  
 His alien world to me was hardly apt:  
 And in its cloak he was securely wrapped.  
 Still he was not unpleasant or aloof.  
 We talked in friendly tones, which is the proof  
 That French and English are compatible  
 As long as each remains responsible  
 For what belongs within each one's own sphere.  
 If any politicians stopped to hear  
 The thoughts of those who freely cast their votes  
 Instead of listening to their own notes  
 They might accept that it is wrong to force  
 Unwanted unions, when it is divorce  
 That is the resolution of our ills.  
 Theirs is the cure that does not save, but kills.  
 For common and for civil lawyers both  
 This is a land for independent growth,  
 Just as my civil lawyer friend and I  
 Could live in harmony, though no ally  
 Was he of those who were steadfastly ranged  
 Upon the side of how we were arranged.  
 For there were those who sought t'upset the calm,  
 And bring about dissent, without a qualm.

A FEMINIST there was, vehement and firm  
 In her pursuit of the offending germ  
 That lived and flourished, or so she thought,  
 Within th'environment where law was taught  
 According to the masculine ideal.  
 For her th'imagined climate was the real.  
 No good could ever come from any male;  
 For men had turned the world into a vale  
 Of tears for those not of their sex. Such brutes

Deserved no mercy, nor should get the fruits  
 Brought forth from all that women had performed.<sup>10</sup>  
 Her attitude to men was so deformed  
 That they for her were worthless and depraved.  
 Women they just exploited, used, enslaved.  
 Nor was it possible for her to trust  
 A man's conception of what would be just.  
 All present law was fiendishly inspired  
 By masculine ideas that were fired –  
 Or, if you like, were shaped – by lust and pride  
 (And there were other vices that beside  
 these two were instrumental in the way  
 the law would subject to abuse and prey  
 upon the female section of the world).  
 Such accusations frequently she hurled  
 At men and lawyers in particular,  
 Spreading her criticism near and far.  
 The evil that she caused she did not mind.  
 She was a sort of talking doll you wind  
 To cause to speak some pre-selected words.  
 But those who followed her were like to herds  
 Of sheep, who lacking any thoughts their own  
 Pursue a path their leader them has shown.  
 When students in her courses would object  
 To her approach she'd chide and she'd reject  
 Them and their efforts to reduce the flow  
 Of vitriolic language that would so  
 Affect them that they could not freely learn,  
 Since they could never easily discern  
 A glimmering of law and legal skill  
 In what she daily said wherein to fill  
 Her lectures and her seminars. She left  
 Them totally and helplessly bereft  
 Of any kind of guidance or of aid  
 In finding out of what the law was made.  
 To thrust her out was everyone's desire –  
 Well almost everyone; some did admire  
 Her and her attitude, and willed the Dean  
 To bring more of her ilk upon the scene.  
 Whether he did or no I cannot tell.

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<sup>10</sup> Such views are held by the best-known, and most outspoken of all the feminist lawyers, Catherine McKinnon: see her writings, such as *Feminism Unmodified* (1987); *Reflections on Sex Equality Under Law* (1991) 100 *Yale Law Journal* 1281. See also a Symposium in Vol. 24 *Georgia L.R.* 759-907.

I only know it pleased me very well  
 To leave a place containing such as she.  
 Too near such folk it was not good to be.  
 As I have said, she was not all alone  
 In her opinions, but upon the throne  
 Of feminism she was firmly placed.  
 However there were others who were graced  
 With similar proclivity and charm,  
 Though none could ever cause quite so much harm.  
 They were her acolytes, her sycophants.  
 They copied her beliefs: they dressed in pants,  
 Which seemed a curious action, one that jarred,  
 Since they abhorred all men, but never barred  
 Them from their coterie. What kind of men  
 Were those who dared to enter such a den  
 Replete with hatred of their very sex?  
 That question often came my mind to vex,  
 I found it all a gruesome paradox  
 That a philosophy that scorns and mocks  
 Mankind could yet attract into its sphere  
 The very people who should have kept clear.  
 It seemed to me while this strange year sped past,  
 That our society will never last.  
 It will destroy itself before long  
 Unless there comes about a very strong  
 Reaction to the fierce and strident claims  
 Of those who number in their tacit aims  
 The downfall of what centuries have built.  
 In this they are assisted by the guilt  
 Felt by some victims of their wrath and ire.  
 These I could never stomach or admire.  
 While to the ardent feminists they yield  
 The fate of all mankind is writ and sealed.

A similar attack upon the law  
 Came from another, who believed the paw  
 Of politics controlled not only courts  
 Or judges who pronounced most legal thoughts,  
 But in addition everyone involved  
 In regulating how the law evolved.  
 He practised Legal Studies Critical  
 (A type of thinking most political).<sup>11</sup>

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<sup>11</sup> For the origins, meaning and scope of Critical Legal Studies see, for example, Roberto Unger, 'The Critical Legal Studies Movement' (1983) 96 *Harvard Law Review* 561; James

This fellow was an Englishmen. I thought  
 At first that surely he would be my sort  
 Of man, an English lawyer far from home  
 (We have a tendency, you know, to roam).  
 I erred. In dialect, in thought, in tone  
 We were as different as cheese and stone.  
 For his approach was 'modern' in its slant,  
 And was more realist than elegant.  
 They called themselves the deconstructionists  
 (Which meant that they were revolutionists).  
 They terrorised with concepts, not with guns.  
 For those who were the Romans they were Huns.  
 The edifice the law had built they hoped  
 To overthrow. And so they dug and groped  
 Into the legal system's fundaments  
 And criticised the very rudiments  
 Of every legal principle they found.  
 Perhaps they thought that one day they'd astound  
 The world of law by what they had achieved.  
 I think that this is what they all believed.  
 Some may in honesty have held these views.  
 Our man, in my opinion, sought to cruise  
 To some brave destination on the ship  
 Steered by these 'Crits'. He strived to grip  
 The baton of success. Work was the means  
 Towards that end. And so behind the scenes  
 He schemed, connived, and skillfully applied  
 Himself to 'getting on'. His urge supplied  
 The energy he used to reach his goal.  
 He might attain the world; he'll lose his soul.  
 Just as the 'Crits', if they achieve their aims,  
 Will loosen all the hold the law now claims  
 Upon our loyalty, our faith, our trust,  
 And leave us with a legacy of dust.  
 Our only hope, indeed our magic wand,  
 Lies in the fact that nobody is fond  
 Of 'Crits' or their constructs. Their sole impact  
 Is on each other, and each vicious tract  
 Serves only to display their jealousy

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Boyle, 'Politics of Reason: Critical Legal Theory and Local Social Thought' (1984) 133 *University of Pennsylvania Law Review* 685. A lengthy and well-written critique of Critical Legal Studies, is that of William Ewald, 'Unger's Philosophy: A Critical Legal Study' (1988) 97 *Yale Law Journal* 665. See also John M. Finnis, 'On the Critical Legal Studies Movement' (1985) 30 *American Journal of Jurisprudence* 21.

Of other viewpoints which fall zealously  
They subject to a merciless assault,  
By arguing the law is all at fault.  
A miserable and an alarming set.  
Let's pray that never any rule they get.  
Next in this introspective catalogue  
Is one, a kind of politician's dog.  
The constitution was his field of choice;  
And in the wider world he spread his voice.  
For politicians in and out the House  
He undertook research, which purposed not to dowse  
The flames of constitutional reform.  
His function was to find a new Grundnorm,  
Rejecting what the BNA Act said.  
The ancient order, so he claimed, was dead.  
For this was what his patrons specified  
When they engaged his skill. He had no pride  
But he was bumptious, brash and arrogant.  
He knew the way to get a wholesome grant  
That funded all the wily work he did,  
For he had many contacts in the grid  
Composed of those who wield the greatest power  
Within this country at the current hour.  
At meetings to the fore he thrust himself.  
He had no wish to stay upon the shelf.  
Political ambition was his spur.  
In making friends he intended not to err  
But always to attach himself to those  
Who counted in the game, and not their foes.  
Whatever benefits from this ensued  
Were meant for him alone and not the rude  
Inhabitants of Canada. Their fate  
Was merely incidental to a great  
And worthy cause – himself. No chance  
Was lost to push his name or to enhance  
His bloated reputation as a smart  
And able scholar in the noble art  
Of constitution-making at a time  
When, of all great concerns, this was the prime.  
He was a user, one who took, not gave.  
To aggrandise himself and not to save  
The day was what he meant to do.  
The more he did the more ambition grew.  
For glory, money, and success he did thirst  
And blew his trumpet hard. I thought he'd burst.



Never a hope. These cunning fellows last  
 While modest ones, like me, are over passed.  
 Commissions came and went, he met them all,  
 And seemed to hold their members in his thrall,  
 Though this does not extol him very much  
 Since they contained MPs and others such,  
 Not very skilled and certainly not bright,  
 More often in the dark than in the light.  
 Thus prospered he – through prostitution.  
 He rose – and sank the constitution.

We did not have Americans on board,  
 By way of a reaction to the horde,  
 Of years ago. This was no handicap,  
 Since much of what they write on law is pap.  
 How few Americans can really write  
 In ways that serve to eradicate the blight  
 Of ignorance. But an AUSTRALIAN  
 Was welcomed here. Sesquipedalian  
 In language he was not. His words were clipped;  
 And often into Aussie slang he slipped.  
 Such factors did not operate to hide  
 The intellect that was contained inside  
 His head. He was engaged upon a work  
 Concerned with bankruptcy. He did not shirk  
 From all the toil this enterprise required.  
 With great enthusiasm he was fired.  
 A breezy chap he was and popular  
 Among the students who thought singular  
 His accent, redolent of 'Strine.' A class  
 Of his would guarantee an easy pass.  
 That of itself would be enough t'endear  
 A law professor, any place or year,  
 To those compelled by lot to be a part  
 Of any group he taught. He'd start  
 The session with the usual cautious crowd  
 Who never answered questions in a loud  
 Or easy voice. But by the end of term  
 They'd come to be more confident and firm  
 In their opinions on the issues raised  
 By him. His style of teaching must be praised.  
 It should be emulated by all those  
 Who wish to make of students friends, not foes.  
 I wished that I such talent could possess,  
 And be a teacher whom the students bless.

There was a RHODES,<sup>12</sup> both talented and keen.  
 Like me this was his first year on the scene.  
 From Oxford had he come, aspiring high.  
 To reach an academic peak he'd try.  
 What youthful energy and splendid zest  
 He exemplified. No doubt he meant the best.  
 Sometimes his attitude was so intense,  
 His ignorance of life was so immense,  
 That he would leave the students much confused.  
 Their minds were very easily bemused,  
 Since all was new and hard to comprehend,  
 And, being clever, he could never bend  
 (Though he made many efforts of all kinds)  
 In the direction of their virgin minds  
 As yet devoid of any intercourse  
 With law. Relentlessly he tried to force  
 Upon them the enthusiastic feel  
 For legal thoughts that he could not conceal.  
 In vain. For property they did not care.  
 His love of equity they could not share.  
 He persevered, in hope that one fine day  
 They'd come to appreciate the earnest way  
 He had attempted to provide a path  
 (Or, if you would prefer, to cut a swath)  
 To open up a route for them to reach  
 Full understanding of the law, to teach  
 Which he intended to devote his life.  
 Although his mind was sharper than a knife,  
 As I have said, he was intense, and worse  
 He was naive. Nobility's a curse,  
 Especially when it is nobility  
 Of mind. He did not lack ability.  
 I only hoped that in the course of time,  
 When ultimately he achieved his prime,  
 He'd learn the uselessness of sacrifice.  
 I am a cynic, one who knows the price  
 Of things, but of their value's ignorant.  
 Hence nothing irked me quite as much as cant.  
 But he was young and needed much to learn.  
 Doubtless in time the truth he would discern.

I must recall to mind, and not omit,

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<sup>12</sup> Someone who had been a Rhodes Scholar at Oxford.

Th'HISTORIAN who was another Brit,  
 Nor the PHILOSOPHER. They were supposed  
 T'ensure that many students were exposed  
 Unto the elements that when combined  
 Made up the fullness of the legal mind.  
 Though there were clearly some who could obtain  
 Some benefit from these pursuits, and gain  
 An insight into how the law evolved  
 And what the essence of the law involved,  
 Such niceties were just as clearly lost  
 Upon the multitude, the ones who tossed  
 Aside all that was theoretical.  
 They did not wish to hear heretical  
 Or otherwise disturbing thoughts. Their plan  
 Was to be 'called' as quickly as they can.  
 Theirs was no interest in the finer points,  
 Nor in the sacred knowledge that anoints  
 The heads of scholars striving for a crown  
 Of understanding. They would merely frown  
 At such irrelevance to what was not  
 The law. They did not seek the golden bough.  
 Admission to the Bar made them content.  
 They did not care to know what scholars meant.  
 But these two men were happy to confine  
 Their efforts to a few; as well to mine  
 The nuggets found by seekers after truth,  
 Who pan in muddy waters from their youth  
 Until the time has come to abdicate  
 From all endeavour and embrace a state  
 That Shakespeare tells us is our common end,  
 Sans hair, sans teeth, sans eyes, nay more, sans friend.<sup>13</sup>

Some two or three who taught the law of crime  
 Were of our company. One spent some time  
 In prosecuting criminals in court.  
 You could say that he practised what he taught.  
 A CROWN ATTORNEY was he on the side;  
 Which was a source of money and of pride.  
 No conflict seemed inherent in his use  
 Of expertise in this way. Nor was abuse  
 Involved of academic enterprise.  
 Indeed his skill was lauded to the skies.

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<sup>13</sup> See Shakespeare's *As You Like It*, Act II, scene vii *per* Jacques.

Myself believed that there was something odd  
 About the fact, to which the Dean gave nod,  
 Since he held two appointments which produced  
 More wealth than my poor salary adduced:  
 And I could never reconcile this view  
 With one's commitment solely to pursue  
 Research and scholarship, the stated tasks  
 Of academic folk. He donned two masks  
 Alternately, as teacher one, and then  
 A stern and forceful counsel as and when  
 Necessity upon occasion called.  
 Perhaps the work of teaching sometimes palled  
 From time to time, as happened to us all.  
 No reason was it, to my mind, to fall  
 Away from teaching and to undertake  
 Another occupation e'en to make  
 Some extra cash. If criticised he said:  
 'Noblesse oblige is very well, but dead.  
 The hour is ripe for each to garner wealth.  
 And would you have it that I did by stealth?'  
 It seemed that two allegiances he owed.  
 Yet this his conscience did not overload.  
 Were I to ask, like Pistol in the play,<sup>14</sup>  
 'Under which King, Bezonian?' he'd say:  
 'A person can two loyalties maintain'.  
 Beyond this he would never try to explain.

A FAMILY LAWYER, one of several who,  
 Embracing something old, yet something new,  
 Discoursed on marriage and its consequence,  
 Was someone with a lot of common sense.  
 He was aware this was a fruitful field  
 That quite a healthy crop of cash could yield.  
 A practical, but clever man was he;  
 A man who all the advantages could see  
 In dealing with a topic steeped in mud  
 The sort that is involved in certain blood  
 Relationships arising from a troth.  
 He practised in this sordid law on both  
 Sides of the fence. He acted for a wife  
 Or for her spouse. Such was his daily life  
 As well as lecturing. He was the sole

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<sup>14</sup> See Shakespeare's *Henry IV, Part 2*, Act V, scene iii *per* Pistol.

Practitioner in court among the whole  
 Select, if small fraternity, and yes  
 Sorority (as anyone would guess  
 This was a topic that the feminists  
 Marked out as eminent for entering lists  
 With men), who taught the law of spouses and their kin.  
 So skilful was he that he'd always win  
 (Well almost always, that is what he said).  
 I'm sure that some disputes he lost instead.  
 He was, like many gamblers at the track,  
 A man whose confidence would never crack.  
 Those others whose chief topic was the same  
 Never participated in the game  
 Of litigation, or gave out advice  
 On legal issues that were hard or 'nice'.  
 Some were reluctant to become embroiled  
 In spousal conflicts that both parties soiled;  
 While others did not have the needed skills,  
 Or concentrated on the law of wills.  
 So much, and nothing more, is all that need  
 Be said about this very special breed.

And then, of course, there were the 'OLOGISTS',  
 I mean the ones who were apologists  
 For modern views about the reasons why  
 Some people caused some other ones to die,  
 Or stole their property, or otherwise  
 Committed crimes; or thought they would surprise  
 Us with their transcendental news  
 About the way society now views  
 Its law, its lawyers, and the various ways  
 That people try to navigate the maze  
 Created by a myriad of Acts  
 And rules. These 'ologists' preferred the facts  
 Of life to analysing what they called  
 'Black-Letter Law', whose narrowness appalled.  
 On its enthusiasts they poured their scorn.  
 They did research on how the law was born  
 And how it lived. Into the world of crime  
 They delved, in fervent hope that in due time  
 Its causes could be found, and thereby cured.  
 They sought to know how anyone endured  
 The stress of life, of family, of court,  
 And tried to learn the origins of thought  
 So to reveal and to expose to light

The way the law was looked at in the sight  
 Of those who were subjected to its rule,  
 And how it should be thought of in a school  
 Devoted to its study and its worth.  
 Sincere they were, and lacking any mirth.  
 'Soc', 'Psych' and 'Crim' the three most potent kinds  
 Of 'ology' were what beset their minds.  
 And you must know that it is a la mode  
 To follow trains of thought along this road,  
 For interdisciplinary research  
 Has now become a modern form of church  
 Whose worshippers bow down before the thought  
 From such pursuits true knowledge can be brought.  
 Forgive me if I can't agree or lend  
 Support to any such new-fangled trend.  
 My interest in law's traditional.  
 I cannot cope with these additional  
 Inquiries into such extraneous things.  
 My mind is lacking the essential wings.

Our INTERNATIONAL LAWYER closed the set.  
 He seemed to stand apart from life, and yet  
 Right in the thick of things he could be found;  
 Should there be gossip there he was, around.  
 If there were trouble he would be on hand.  
 He did not teach the law of any land,  
 But that which *inter gentes regulates*.  
 For him the only persons are the states  
 To which the subject of his choice applied.  
 His jurisdiction was the planet wide.  
 The mundane matters of our legal world  
 Concerned him not. His flag of thought was furled  
 When local issues were involved, except,  
 It must be said, when some disruption swept  
 Among our ranks. This his attention gained,  
 And, once aroused, his interest sustained.  
 A busybody was he, who conceived  
 His role to mollify those who were grieved.  
 How typical, was what I often thought,  
 Of what an international lawyer taught,  
 A subject which has always problems caused  
 For jurists who for centuries have paused  
 Bewildered as to how to conjugate  
 This branch of law. It does not seem to mate  
 Too easily with standard theories

Of law, and explanations fail to please  
 The subtle or inquiring minds of those  
 With philosophic bent. Nobody knows  
 Its proper place within the scheme of law,  
 Or how it can survive amid the raw  
 And vicious conduct of the states it rules,  
 Which seems to turn into a set of fools  
 The men and women who profess its force  
 And seek its overwhelming claims t'endorse.  
 Our man, I'm sure, was honest in his quest.  
 T'explain and justify what he professed.  
 And certainly there was a lot of meat  
 In what he taught. Though students did not beat  
 His door to join his class, they did enlist  
 Sufficiently to prove that he'd be missed  
 Were he not there. So it must be agreed  
 That something that he did supplied a need.

Such were the ones who constituted all  
 Who came together in that crucial Fall,  
 For it was crucial in my history.  
 Thereafter there was never mystery  
 In academe or academic lore.  
 I learned what University had in store  
 For those who were inclined to teach not do.  
 I lasted all that year, and I came through  
 The exercise a bit more cynical  
 Than once I was. For me it was a clinical  
 Experience. I came away in June  
 Thinking the year had been a useful boon.  
 In some respects my outlook was confirmed.  
 I was committed to what scholars termed  
 'Black-letter law'. At no time could I stray  
 On paths that led a different way.  
 Suspicion or contempt I came to feel  
 For those among my colleagues who would deal  
 In fashionable notions or in thoughts  
 That stretched the mind beyond the law of torts  
 Or any other area in which  
 The law or lawyers dealt. There was one hitch.  
 Whatever in that single year I gleaned,  
 My questing mind had been forever cleaned  
 Of any thought to embrace the scholar's life.  
 Instead I turned to practice and a wife.  
 What of that muddled professorial band

Whose way of life I tried to understand,  
And whose peculiarities and style  
I've tried to explicate through all this while?  
Of each of them a story could be told  
That would without a doubt in thrall you hold.  
For each man's life has its own history  
And every woman is a mystery.  
Suffice it now that I no more do say.  
Such tales must wait until another day.