"Bora Laskin as Engaged Academic"

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In many ways Bora Laskin served as the role model for what a legal academic should be in Canada. He played this role at a critical time, from the late 1950s to the early 1960s, when the full-time professoriate at law schools was expanding dramatically and large numbers of young people were being recruited to law teaching. (Until the 1940s there were more full-time professors at Harvard Law School than in all Canadian law schools put together.) In the 1950s and 60s Bora Laskin was undoubtedly the single best-known legal academic in Canada. Caesar Wright was perhaps better known in Ontario, but across Canada as a whole Laskin was better known because he was more active in national associations and causes than Wright was, and Laskin was better known outside the legal profession than Wright was. In addition to being a serious scholar and teacher, Laskin helped reform university legal education, carried out a number of important administrative tasks within the university, and acted as a kind of roving ambassador for universities on the public stage and with government. He more or less invented modern labour arbitration, was at the legal heart of the postwar anti-discrimination and human rights movement, carried out a number of inquiries for government and for private organizations, and was publicly involved in debates on constitutional reform in the 1960s. Not only that, but Laskin remained actively involved in the life of his synagogue, Holy Blossom Temple, serving on its board of trustees and its religious education committee.

One's initial reaction to this might be, what's not to like? Certainly if one's ideal is that law professors should use their talents to help shape public policy, carry out quasi-judicial roles and participate in the public sphere, in addition to carrying out their usual tasks of scholarship, research and university administration, then Bora Laskin is indeed an excellent role model. I could very easily talk to you for my allotted time providing more detail about all the things outside of academe that Bora Laskin did and saying, in effect, isn't that great. But academics in general are a somewhat contrarian lot, so I am not going to do that. Rather I am going first to contextualize Laskin's academic career and then I am going to suggest that Canadian legal academe paid a price for taking Laskin as its role model; i.e., that there were and are costs as well as benefits to the model of what we might call the hyper-engaged law professor. I am not going to condemn all forms of extra-curricular engagement, but to suggest that some are less desirable than others.

By way of contextualization, let me note first of all the very obvious point that Laskin's career pattern was a highly gendered one, specifically a very masculine one. Laskin benefited, career-wise, from the fact that he lived at a time when there was a very traditional division of labour between men and women, between husband and wife. Laskin had a spouse who worked until they had children, and then was a full-time wife and mother thereafter. She freed up enormous amounts of time for him to devote to his career, time that would otherwise have been spent at least in part in household tasks.

I interviewed former chief justice Antonio Lamer about Laskin when I was writing the biography and he told me the following story. He said he asked Laskin once (this was before Lamer himself was on the court) how Laskin managed to accomplish so much. Laskin said that

he never wasted time, and the example he gave was that when he arrived home, if Peggy said it was going to be 10 or 15 minutes till dinner time, he would go down to his study and add a few sentences to something he was working on, or read a case for the next day's class or one that was on the docket for the next day after he became a judge. I think that if I had organized my life that way, I would long ago have resumed my single status because my wife would have divorced me. Peggy's forbearance was not unusual at the time, but patterns of domestic life have changed enormously since Laskin's day. The last generation or two of academics have not been able to assume the presence of a help-mate spouse who will put everything on hold in order to enable the learned professor to carry out his academic work or engage in extra-curricular activities. The last two generations of academics, especially those with children, have faced issues of work-life balance that did not have to be faced by male academics of Laskin's generation, and this has necessarily made it harder for them to live up to the model created by him.

My second point involves taking a hard look at the activities in which Laskin engaged outside of the purely academic and doing a kind of cost-benefit analysis. My concern here is with the point when the tail begins to wag the dog, when the position of law professor becomes identified as a base from which the quest for other more glamorous and remunerative activities can be launched, rather than a worthwhile and respected position in its own right. As a prelude to this analysis, it is worth taking a bit of a historical detour back to the origins of the career professoriate in law schools, to see, in effect, what our original role model was supposed to be. To do that you have to go back to Christopher Columbus Langdell's time as dean of Harvard Law School, from 1870 to 1895. (I should note that what I am about to say comes from Bruce Kimball's biography of Langdell, published just last year. It should be read by every law

student, law professor, lawyer and judge in North America. In it you will find that Langdell created not just the case method, but also three-hour hypothetical-based exams and the career law professoriate. He has a lot to answer for.) Langdell fought hard to create a career professoriate based on academic merit, and to convince his contemporaries that being a law professor was a profession distinct from that of lawyer or judge. When he became dean virtually all law professors were in effect adjuncts; they were judges or had law practices and were not expected to devote themselves full-time to law teaching. This was for both ideological and financial reasons: ideological because law was seen as a body of practical knowledge that should be taught by practitioners; and financial because they were prepared to teach for relatively little as they had other sources of income. Langdell did not believe that law professors (even when they were full-time) should be paid as much as practicing lawyers because he thought of them as an entirely distinct profession: in a famous quote he said "the teaching of law cannot often be combined with, or late in life taken up in exchange for, the practice of law, which appeals to different motives, develops different qualities, and holds out different rewards." (Kimball, *The Inception of Modern Professional Education*, at 170). He did believe that only the top-ranking graduates should become professors, and largely succeeded in establishing academic merit rather than practical success as the passport to law teaching by the time his deanship had ended; Kimball notes, however, that the definition of "academic merit" was problematic at the time because Harvard Law excluded from admission all women (until 1950!) and virtually all graduates of Catholic colleges.

Now, the issue today is not so much that law professors combine law teaching with law practice; but there is a variant of the same phenomenon, as I identified earlier. That is, that the

professorship becomes a base to which are added various prestigious and remunerative appointments. The usual justification for this kind of activity is that it enriches the teaching and scholarship of the professor in question. I have no evidence beyond the anecdotal with regard to the teaching part of this proposition, but with regard to the scholarship, I think the evidence suggests that in most cases, albeit with some notable exceptions, it suffers in both quality and quantity. I would hold up Laskin as an example; his extensive extra-curricular activity in labour law did not result in any particularly remarkable scholarship. His legacy in labour law is really the text of his arbitral decisions, so let us look more closely at that aspect of his engagement.

Laskin got in on the ground floor at a unique historical moment, just after the legitimation of collective bargaining produced a need for a cadre of grievance arbitrators. He wrote 137 reported arbitration decisions in the 18 years between 1947 and 1965 and undoubtedly presided over many others which settled either with or without his help, so to say he was involved in roughly 200 arbitrations over just under 20 years, or about 10 a year, is not likely to be an exaggeration. Laskin was uniquely qualified to undertake this work and I do not criticize him for doing so. Not only were there very few people around at that time who knew anything about the emergent field of labour law. But Laskin also understood the larger political and philosophical background to the new labour law; he was thus particularly unreceptive to solving interpretive issues in a literal, textualist way and wanted, through more purposive interpretation, to ensure that workers had a secure and respected place in the new industrial order. Arbitral law might have gone off in a quite different, much more conservative, direction if not for Laskin. By the time he went to the bench in 1965, however, the main lines of this new arbitral jurisprudence had been settled and the scope for original contributions was correspondingly reduced. This was the

very moment when quite a number of law professors started to develop labour arbitration practices, for which one could hardly blame them as the example of Bora Laskin was there before them. But as I have said, Laskin's contribution was, in my view, a one-off. He made a significant contribution that he was uniquely placed to make. The same could not be said of most of his successors.

Another aspect of Laskin's engagement was with the human rights movement of the 1940s and 50s, particularly the pro bono assistance he provided to the Canadian Jewish Congress in its attempts to create anti-discrimination laws. I think this kind of activity was and is justifiable for law professors whether or not it enhances scholarship or teaching because it is essentially about access to justice, about trying to assist groups or causes that would not otherwise be able to afford legal advice or representation. That is a legitimate part of the law professor's role as a citizen, whether or not it intersects with research or teaching. The interesting thing here with regard to Laskin as a model is that, for reasons I spoke about yesterday, this aspect of his extra-curricular activity was not well known outside the Jewish community. So when most young law professors of the 1960s looked to Laskin they did not, as far as I am aware, see a balance of paid and pro bono activities, but rather someone who mostly engaged in remunerated activity outside the confines of the university. Some might have known about Laskin's efforts on behalf of the CAUT, which were of course gratuitous, about which I will speak in a moment. But these, especially the CAUT inquiry into the Crowe case in 1959, were quite high profile and glamorous in their own way. In other words, they were rather unlike the grunt work that Laskin did for the CJC for years, with the hurried lunch time meetings and the bad coffee while sitting in uncomfortable chairs. It was not Laskin's fault, but the public

image that developed about him was one of heroic activity unmediated by the less dramatic bit equally necessary kinds of pro bono work that he did behind the scenes.

With regard to Laskin's work for the Canadian Association of University Teachers, there were two major roles that he carried out, which I will describe briefly before commenting on them. In 1958 he was appointed by CAUT with another professor, Vernon Fowke, to conduct an inquiry into the firing of Professor Harry Crowe at Winnipeg's United College. This inquiry had no real legal status and the College refused to participate in it. Nonetheless Laskin and Fowke carried on, made findings of fact, and then drew conclusions that were highly critical of the actions of the administration of United College. Their report was published by CAUT, widely commented on in the newspapers and known to virtually every professor teaching in what was then a much smaller Canadian university system. Even a year later the *Toronto Star* was still commenting on the case, observing under the headline *United College Aftermath: Profs Flex their Muscles*: "Canadian university administrators noted the bulging professorial biceps and were impressed. They know the professors will play rough if they're shoved in future. The professor was no blinking, timid egghead. The faculty man can be rugged in asserting his rights." So now you know that I was not exaggerating when I talked about Laskin as being viewed in the heroic mold.

Not surprisingly after this, Laskin was recruited for the executive of the CAUT, where he served as vice-president in 1963-64 and president in 1964-65. Faculty associations were very weak at the time and relied on CAUT to do research and advocacy on behalf of the universities with the federal and provincial governments, so the profile of the CAUT and its executive was much higher then than it is now. Two big issues at the time Laskin was on the executive were

RCMP surveillance of students and professors on campuses, and university governance. Laskin actually met with Lester Pearson, the minister of justice Lionel Chevrier and the chief commissioner of the RCMP to discuss what kind of restraints the RCMP were or should be under when investigating subversion on Canadian campuses. It is hard to believe today that the president of the CAUT could get even a one-line email from the lowest functionary in the PMO, not to mention an in-person meeting. My point here is simply that the historical setting in which Laskin found himself was much more deferential to academics and more willing to lionize their activities *as* academics lobbying on behalf of academic freedom. Academics engaging in such activities today, which are still important, are given little recognition even within academic circles, not to mention in the wider sphere of public affairs.

To conclude, let me say that there is no doubt that Laskin's contributions as an engaged academic were very positive. I want to enter two caveats, however, as to the utility of the Laskin model of the law professor for the Canadian law professoriate as a whole. First, Laskin's heroic stature was the result of a unique confluence of his own qualities with a particular historical moment. It was unusual and the unusual case is not one that should become normative. The second caveat is that the Laskin model came with a price tag that was paid for by Laskin himself and by his successors. Laskin's scholarship suffered, I think, from his being over-extended. The concerns that I have identified here about the extent to which legal academe has absorbed Laskin's career as a model are raised not with a view to denigrating his kind of extra-curricular engagements in themselves; rather, I ask whether certain forms of engagement contribute to a perhaps subtle denigration of the core roles of legal academics, which are teaching and research.

Laskin's career encourages us to think of full-time teaching and scholarship as perhaps insufficient to occupy the ideal law professor, who should also be engaged in the wide world of public affairs and public policy. It also encourages us to think of the law professor as a rather exalted being within the university, one who is distinguished from colleagues in most other departments by the wide spectrum of prestigious and lucrative opportunities available to him or her outside the university itself. This model of the law professor may create divisions within a law faculty itself, as some professors, through the nature of their particular specialty, are better placed to benefit from outside appointments than others. There is definitely a role for the engaged law professor, but we perhaps need a new model, one where the research and teaching roles of the professor are better balanced with the outside activities, both paid and pro bono, that law professors are qualified to engage in, and with one's non-professional roles as an individual, a citizen, and a family member.