

## If It's Not Impossible, It's Not Worth Doing: Rod Macdonald's Vision of Legal Education

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"If it's not impossible, it's not worth doing." I have chosen these words as the title for my paper on Professor Rod Macdonald's vision of legal education, for two reasons. The first is that this is a direct quote from Rod Macdonald, one he used when he spoke at Harvard University's Law School and presented McGill's transsystemic law program to its faculty.<sup>1</sup> The second, and more important, reason is because this expression exemplifies the man himself. It speaks to his whole life and career, one that by any standards is impossible to most, but to Rod, one that in its sheer and audacious impossibility was the only one worth doing.

Andrée Lajoie, emeritus professor at Université de Montréal and longtime friend, colleague, and collaborator of Rod Macdonald, recently published a biographical monograph entitled, *La vie intellectuelle de Roderick Macdonald: un engagement*.<sup>2</sup> This publication project itself attempts the impossible in that it aims to capture the entirety of Rod Macdonald's multi-faceted career in a single book. Moreover, it seeks to give the reader insight into the man himself, the beliefs that forged the path of his life, and the extensive contribution he has made via his scholarship, his teaching, his mentorship, and his public service.

The success of Andrée Lajoie's book is that it is not merely a dispassionate summary of Rod Macdonald's life and work. The book is peppered with interesting biographical data and is brought to life by extensive quotes from numerous interviews with Rod Macdonald himself, as well as from those who have worked and collaborated with him in the Faculty of Law at McGill University, at the Law Commission, and

in the broader academic community. Professor Lajoie also includes excerpts from Rod Macdonald's publications, another challenging task, because it is difficult to know even where to begin to sift through the reams of words and pages he wrote in his three books, 140 articles, and eighty-eight book chapters (many of them quite lengthy) to find the right quotes that describe or exemplify the point being made. For all this, Professor Lajoie should be applauded and thanked.

However, an inevitable consequence of trying to capture such a prolific and influential man and thinker in a single volume is that many readers will complain of inadequate coverage of their "favourite" aspect of Rod Macdonald's creative and ground-breaking thinking. Given that his work spans numerous weighty topics that include, to mention just a few, legal theory and legal pluralism, access to justice, security on property, constitutional law, and administrative law, these complaints are somewhat unjustified. They are, however, understandable because Rod Macdonald's research has influenced each of us in such profound but unique ways.

In this paper, I would like to highlight a scholarly contribution that was not only given less prominence in Lajoie's book but that often got eclipsed by his paradigm-shifting research in other areas of law, namely, Rod Macdonald's important scholarship on legal education and theory of legal pedagogy.

When one thinks of Rod Macdonald's contribution to legal education, the natural impulse is to focus on his influence as a pedagogue and mentor to his students and his colleagues, many of those colleagues being former students. As Andrée Lajoie correctly describes him in her book, Rod Macdonald was "avant tout professeur." And as a professor, he advanced a distinct vision of teaching as an agent for social change, developed unconventional, challenging, and creative methods that shaped his pedagogy, and lived his belief that we don't teach "stuff," we teach who we are. Moreover, during his term as dean of the Faculty of Law at McGill from 1984 to 1989, he made significant contributions to legal education through the curricular reform that he advanced in his decanal capacity.

What is, however, often under-recognized is Rod Macdonald's important influence on legal education and pedagogy in his scholarship – the influence of which surpasses both the curriculum at McGill and the students and colleagues with whom he interacted directly. Rod thought deeply about all aspects of legal education, from the power of mentorship<sup>3</sup> to how curricular choices evidence deep philosophical decisions.<sup>4</sup>

His important scholarship on this subject enables the world to benefit from his philosophy of legal education and his wisdom concerning what it really ought to be about.

It is worth noting that legal education, as a scholarly pursuit, is not something Rod Macdonald undertook only after decades of experience teaching thousands of students. In fact, a glance at the long list of publications that make up his curriculum vitae confirms that Rod Macdonald actually began his scholarly career with an academic interest in legal pedagogy, publishing his very first articles on legal education in the late 1970s.<sup>5</sup> One can also not help but notice that his three most recent articles, one appearing in print posthumously, are also on legal education.<sup>6</sup> Constituting bookends of his academic career, this topic was obviously a lifelong academic and personal interest of his. And interestingly, although he refined and developed his views over the almost four decades he engaged with it, he really did not change his mind about much! Many of the seeds of his important contributions can be found in one of his earliest publications on the topic, an article he wrote in 1979 entitled "Legal Education on the Threshold of the 1980s."<sup>7</sup>

What exactly did Rod Macdonald, in his research on legal pedagogy, teach us? What follows is my understanding of some of his most important teachings and those that have influenced me as a pedagogue and an aspiring scholar of legal pedagogy.

First and foremost, he taught us that our view of legal education is far too narrow if we think it occurs only in the classroom dispensed only by law professors. Rather, he taught us that it occurs both inside and outside the law faculty, formally and informally, in a variety of sites and through a variety of media and that we should rejoice in "the implicit, the inferential, the tacit, the underground [because there, we] truly discover where change is occurring."<sup>8</sup> He lived his belief in the pedagogical power of hallway conversations, encounters in coffee shops, and shared rides home on the bus.<sup>9</sup> He found, and taught us to find, important lessons of law from interactions with the unlikeliest of legal sources, ranging from piano teachers to one's own children. And, unsurprisingly, he challenged the exclusive use of traditional sources, such as state-enacted law and appellate court decisions, in teaching materials, quipping, "what effect, if any, do appellate decisions have on the way ordinary people live their lives?"<sup>10</sup>

Rod Macdonald also taught us to challenge the traditional dichotomy of legal education, what he termed "the perennial chestnut" of "'practical' as opposed to 'theoretical' education," a dichotomy that has plagued

so much of the debate concerning the nature and role of legal education.<sup>11</sup> He exposed the falsity of this dichotomy by explaining rationally, and poetically, that “[a]bstract, theoretical knowledge is [simply the] canvas on which students of law learn to paint.”<sup>12</sup> Moreover, he maintained throughout his academic writing that legal education can, and should, prepare our students for a multitude of careers and that the “goal is not to stigmatise certain career choices, but rather to value all careers and thereby confront every student ... with the challenges and responsibilities attendant upon the ethical deployment of legal knowledge in any type of practice.”<sup>13</sup>

These were important lessons for me when, together with a doctoral student at McGill, I embarked on writing about legal education as it pertains to graduate study in law. My co-author, Kate Glover, and I used Rod Macdonald’s conception of legal pedagogy to posit that undergraduate and graduate legal education should not be polarized and siphoned off into separate silos where, inevitably, much of the conversation about legal education excludes graduate study. Viewing them in separate spheres only serves to perpetuate the tug of war Rod identified between legal practice and legal theory, mapping graduate studies onto legal academia and theory and undergraduate studies onto legal practice and the profession. Instead, we proposed conceiving of the law faculty in a holistic sense, as an integrated whole, with a single but broad mission: that of cultivating jurists. Thinking of legal education as forming jurists avoids pigeonholing law graduates into categories of academic, theoretician, practitioner, or policy-maker. It evokes a calling that transcends the practising bar and the academy, one that incorporates contribution to society and legal thought, intellectual reflection, and creative and critical thinking and one that is shared across graduate and undergraduate legal education.<sup>14</sup>

For Rod Macdonald, the law faculty (and he always deliberately referred to it as a “law faculty” rather than as a “law school”) was not only an intellectual community but also a community of learners where professors learn as much from their students as students do from their professors. Rod Macdonald lived that philosophy every day of his teaching life. Aiming to elicit not only class participation but genuine dialogue, he knew that the best teachers learn from their students. In his words, “true *teaching* involves qualities, skills and actions that are the exact opposite of the notion that equates teaching with authority and the one-way projection of expert knowledge from teacher to learner.”<sup>15</sup> It is profoundly telling that in one of his later articles on legal pedagogy,

"Everyday Lessons of Law Teaching – Le quotidien de l'enseignement juridique," he features sixteen "teachers" from whom he has learned and includes several of his students in that list.<sup>16</sup>

Many aspects of Rod Macdonald's scholarly life were defined by his challenging of the status quo and perceived orthodoxy. Legal pedagogy was no exception. He challenged all the "isms" – the instrumentalism, pragmatism, formalism, and professionalism of legal education long before this was popular. In so doing, he also taught us the importance of being provocative, a trait that came quite easily to him. If we had any doubt, he sometimes proudly told us that in his written texts, saying openly, "I mean deliberately to be provocative."<sup>17</sup> After all, who but Rod Macdonald would have had the nerve to write in a journal article in 1979, at an incipient stage of his academic career, that he wasn't quite sure that teaching the law of contracts was preferable to teaching the law of bumble-bees,<sup>18</sup> bemoaning, years later, "[w]hy, in heavens name, do the labels put on subjects by practitioners and treatise-writers a century ago continue to drive the way we, as university law teachers, organize our curriculum?"<sup>19</sup> Rod's call to provocation was deliberate. It was to teach us the dangers of complacency, the reality of contingency, and the importance of instability. Only through what he called "destabilizing the known" can we "imagine the world differently."<sup>20</sup>

Rod Macdonald was always far ahead of his time when it came to ideas about legal pedagogy. Although it is a hot topic in law faculties today, Rod was a pioneer when he began to stress the importance of interdisciplinarity. He recognized early on that law courses "have a non-legal meaning [and that] their boundaries are defined by non-legal factors."<sup>21</sup> He taught us that "to see any particular incidence of human interaction through the lens of law is simply a choice," law being but one lens through which to analyze and solve human problems.<sup>22</sup>

Through this notion of law as a means of solving human problems, Rod Macdonald taught us his most important lesson – what legal education should really be about. Inspired by Lon Fuller, who, in Rod Macdonald's words, "saw law as a human project, a human accomplishment, and a human aspiration that emerges from ongoing patterns of human interaction and the reciprocal adjustment of human expectation,"<sup>23</sup> he conceived legal education as being, at its core, learning how "to attend to the complexities of human beings in interaction with each other,"<sup>24</sup> stating that we should teach how law could be "a facilitator of human interaction"<sup>25</sup> and "about finding social outcomes that help solve human problems [rather than] perfecting abstract concepts to solve legal puzzles."<sup>26</sup>

He stressed that teaching law is not about teaching “the” law but rather “focus(ing) on the goals we seek to achieve through law”<sup>27</sup> and that the “pedagogical propeller” of a law course had to be its “commitment to questioning orthodoxy’s privileged place in the creation and perpetuation of legal knowledge.”<sup>28</sup> Ultimately, he taught us that legal education is about self-discovery. And that the “who” (who we are and who we become) is more important than the “what” (what we teach or what we learn).

Remarkably, despite being extremely critical, even at times mocking, of traditional conceptions and practices of legal education, he managed to inculcate in us a sense of optimism. Instead of leading us down the path of cynicism, which would have been relatively easy, he told us that not only are we fortunate to be law teachers but that teaching law is actually a way of being alive!<sup>29</sup>

Rod Macdonald’s thinking on legal education and pedagogy ultimately evolved into his conception of the virtuous life. There is much to say about his concept of virtue, and many papers in this collection rightly focus on it.<sup>30</sup> Rod Macdonald himself summed up what pursuing virtue meant – “a morality of duty and responsibility in our relationships towards others and a morality of aspiration and virtue in our expectations of ourselves.”<sup>31</sup>

To many, this may sound impossible, but as Rod has taught us, “if it’s not impossible, it’s not worth doing.”

#### NOTES

- 1 Roderick Macdonald, “If It’s Not Impossible, It’s Not Worth Doing: The Challenges of Trans-systemic Legal Education” (Presentation at Harvard University Law School, 23 November 2004).
- 2 Andrée Lajoie, *La vie intellectuelle de Roderick Macdonald : un engagement*. (Montreal: Thémis, 2014).
- 3 In “Post-Charter Legal Education: Does Anyone Teach Law Anymore?” *Policy Options* 75 (February 2007): 83, he writes, “How law professors teach and what they teach mightily shape the attitudes, ambitions and aspirations of their students. These aspirations will then influence how students understand law for their entire careers.”
- 4 See, for example, his discussion of curricular reform in “Legal Education on the Threshold of the 1980s: Whatever Happened to the Great Ideas of the 60’s?” *Saskatchewan Law Review* 43 (1979): 39–62.
- 5 Of note are articles such as “Law Teachers and Their Jurisdiction,” *Canadian Bar Review* 56 (1978): 710–23; “Law Schools and Public Legal Education,” *Dalhousie Law Journal* 5 (1979): 779–90; and “Legal Education on the Threshold of the 1980s.”

- 6 Macdonald, "Everyday Lessons of Law Teaching – Le quotidien de l'enseignement juridique," *Canadian Legal Education Annual Review* 6 (2013): 1–14; Roderick Macdonald and Kate Glover, "Implicit Comparative Law," *La Revue de droit de l'Université de Sherbrooke* 43 (1/2) (2013): 123–92; and Roderick Macdonald and Thomas B. McMorrow, "Decolonizing Law School," *Alberta Law Review* 51 (2014): 717–38. This last article appeared in print in August 2014 after his death in June 2014.
- 7 Macdonald, "Legal Education on the Threshold."
- 8 Macdonald, "Still 'Law' and Still 'Learning'?" *Canadian Journal of Law and Society* 18 (1) (2003): 21.
- 9 Macdonald, "Everyday Lessons of Law Teaching," 6.
- 10 Macdonald, "Legal Education on the Threshold," 48.
- 11 *Ibid.*, 50.
- 12 Macdonald, "Does Law Have a Place in the Modern University? Or Every Great University Needs a Legal Studies Programme." (London School of Economics Law, Society and Economy Working Papers 4/2012, 2012), [www.lse.ac.uk/collections/law/wps/wps.htm](http://www.lse.ac.uk/collections/law/wps/wps.htm).
- 13 Macdonald, "Everyday Lessons of Law Teaching," 4.
- 14 Rosalie Jukier and Kate Glover, "Forgotten? The Role of Graduate Legal Education in the Future of the Law Faculty," *Alberta Law Review* 51 (4) (2014): 761–87.
- 15 Macdonald, "Everyday Lessons of Law Teaching," 3.
- 16 *Ibid.*
- 17 Macdonald, "Post-Charter Legal Education," 76.
- 18 Macdonald, "Legal Education on the Threshold," 54.
- 19 Macdonald, "Still 'Law' and Still 'Learning'?" 15.
- 20 Macdonald and Glover, 130.
- 21 Macdonald, "Legal Education on the Threshold," 44.
- 22 Macdonald, *Lessons of Everyday Law* (Montreal: McGill-Queen's University Press for the School of Policy Studies, Queen's University, and the Law Commission of Canada, 2002), 7.
- 23 Macdonald, "Let Our Future Not Be behind Us: The Legal Profession in Changing Times," *Saskatchewan Law Review* 64 (2001): 16.
- 24 Macdonald and McMorrow, 725.
- 25 Macdonald, "Legal Education on the Threshold," 59.
- 26 Macdonald, "Let Our Future Not Be behind Us," 26.
- 27 Macdonald, "On Teaching Law Transsystemically," *inFocus*, Faculty of Law, McGill University publication, spring-summer 2007: 4 (on file with the author).
- 28 Macdonald and Glover, 140.

- 29 Macdonald, "Everyday Lessons of Law Teaching," 12.
- 30 See, for example, papers in this collection by David Sandomierski and Blaine Baker.
- 31 Macdonald, "Everyday Lessons of Law Teaching," 12.