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Mélanges Jean Beetz

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Critical Notice

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Review of *Mélanges Jean Beetz*, J.-L. Baudouin et al., eds., (Montreal: Les Éditions Thémis, 1996)

Mélanges Jean Beetz is a collection of essays honouring the late Supreme Court of Canada judge who died in 1991 after a lengthy battle with illness. The timing of the publication of the book, some five years after his death, places the work within what is perhaps a fitting social and political context. The constitutional crises that have plagued this country continue in what seems to be a period of heightened alienation between Quebec and the rest of Canada. An exploration of the contribution of Justice Beetz to the jurisprudence of the Supreme Court of Canada may be of assistance in the exploration of some of the profound differences and misunderstandings which exist between common law Canada and civil law Quebec.

This collection of essays can be approached in at least two ways. The book is, by design, a tribute to a late Justice of the Supreme Court. In this regard, it forms part of the genre of tribute works. Like many such works, the only real thematic consistency of the pieces in the *Mélanges* is the centrality of the subject of the tribute. In the *Mélanges*, as in other such works, the essays tend, by design, to be more laudatory than critical, and many are more anecdotal than scholarly. Nevertheless, this book has a potential for interest beyond acolytes of the Canadian judiciary. The *Mélanges* may also serve as a partial bridge between the common and civil law worlds.

Mélanges Jean Beetz begins with a short biographical note about the late judge, who spent the early part of his legal career as a professor of law at the Université de Montreal. The note is followed by a bibliography of his writings, and by a list of his judgments. The next hundred pages is given to a collection of speeches given by Justice Beetz on a variety of occasions, and to a variety of different audiences. The remainder of the book, which is close to one thousand pages in length, is given over to three essays in memory of Justice Beetz, followed by a collection of essays on private law and on public law written in French and English.

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Although his contribution to the development of Quebec private law has been a very significant one, it is least likely to be of interest to the reader coming from a common law background. It is also this section of the *Mélanges* which is least accessible to one who does not read French, as the five essays are all written in that language. In keeping with the national significance of the work of Justice Jean Beetz, the vast majority of space in the *Mélanges* is given over to essays in public law. These essays touch on areas which include labour, tax and administrative law. They range from discussions of particular topics, to more general essays discussing the contribution of Justice Beetz to the development of Canadian constitutional law.

The contributors to the *Mélanges* form an impressive list of some of the leading scholars, judges and jurists from Quebec and the rest of Canada. Nevertheless, it should be noted that like any such collection, the *Mélanges Jean Beetz* has a very uneven character, ranging from well-researched scholarship to more loosely structured "reflections". While some essays are broad in scope, others focus on fairly narrow points of law. Although there are some gems in this collection,[1] other essays will only be of passing or anecdotal interest.

Among the contributors to *Mélanges Jean Beetz*, few write in English and even fewer are from outside Quebec. A reader from a common law background might well wonder if Justice Beetz was a figure of national importance, given a tribute volume which is heavily weighted towards his province of origin. Yet the question might well be raised as to whether the weighting of the essays in the book reflects the place earned by Justice Beetz on the national legal scene, or merely the place accorded to him. The common lawyer who can begin to understand the contribution of Justice Beetz and his significance in the national judicial pantheon takes a step towards understanding some of the fundamental differences between Quebec and the rest of Canada.

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1. It is a difficult task to compare the merits of articles which have such a wide diversity of themes and purposes. By singling out a few pieces which I found particularly interesting I do not wish to imply that there are no other essays in the *Mélanges* which are deserving of note. The reader wishing to explore québécois perceptions of the constitutional situation in Canada might be particularly interested in Pierre Blache's "La Charte canadienne: obstacle postmoderne à l'émergence d'un Québec moderne et rassembleur?" (at 351–384). Andrée Lajoie et. al., "Jean Beetz: sur la société libre et démocratique" (at 509–563) is part of an ambitious project which explores the pre- and post-Charter conceptions of a "free and democratic society" in the jurisprudence of the Supreme Court of Canada. Peter Oliver's "The 1982 Patriation of the Canadian Constitution: Reflections on Continuity and Change" (at 799–838) is a thoughtful examination of the 1982 patriation process and its implications for future constitutional change.

The different perceptions of the contributions of Justice Beetz inside and outside of Quebec are perhaps an illustration of the gulf between the common and civil law worlds in Canada. Having spent four years studying law in Quebec and more than four years teaching at a law school in common law Canada, I have had many occasions to observe these differences. Although there was nothing like an official fan club of Jean Beetz where I studied, I was nonetheless taught to appreciate his meticulous judgments for their clarity, consistency and economy of words.[2] Justice Beetz was considered a fine scholar who crafted his judgments according to principles of scholarly and intellectual integrity.[3] In private law courses, his judgments were models of civilian methodology and reasoning. He was credited with maintaining the integrity of Quebec's Civil Law system against common law concepts and methodology. He did so without becoming insular in his approach; his judgments often reflected a careful comparative methodology. In constitutional law, his "duels" with former Chief Justice Laskin were legendary. Although a committed federalist, in division of powers cases the opinions of Justice Beetz, often in dissent, put forth a regionalist perspective against what was often a dominant centralizing ideology.

I left law school with nothing but respect and admiration for the work of Justice Beetz. I was therefore surprised when, on moving to common law Canada to pursue a teaching career, I discovered profoundly different perceptions of Justice Beetz. I have discovered that outside of Quebec, Justice Beetz is sometimes viewed as a minor judge, with conservative views and formalistic tendencies. It cannot be said that the work of Justice Beetz was inaccessible outside Quebec for language reasons, given that Supreme Court of Canada decisions have been published in both official languages for as long as he was a member of the Court. In any event, Justice Beetz is acknowledged as "speaking and writing with equal facility and distinction in the two official languages."[4] In my view the gulf in perceptions is deeper than language, and extends to legal and political culture.

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2. In his tribute article, Justice Gérard La Forest writes: "Son style clair et logique et la profondeur de son raisonnement sauront toujours convaincre." (Gérard La Forest, "Jean Beetz — Souvenirs d'un ami", in *Mélanges Jean Beetz*, 143–152, at 151.)

3. Former Supreme Court of Canada Justice Gerald Le Dain refers to Justice Beetz's "'intellectual integrity', which, I suppose, is just another expression for intellectual honesty . . .". (Gerald Le Dain, "Jean Beetz as Judge and Colleague", in *Mélanges Jean Beetz*, 673–681, at 677). Another former Justice of the Supreme Court, Louis-Philippe de Grandpré also emphasizes the intellectual rigor of Jean Beetz: "Il est possible aussi que son extrême rigueur intellectuelle lui ait rendu difficile la tâche d'écrire ses jugements. Avant de conclure, il lui fallait être convaincu que la solution proposée était la seule vraiment valable." (Louis-Philippe de Grandpré, "Jean Beetz", in *Mélanges Jean Beetz*, 133–140, at 134.)

4. Le Dain, *supra* note 3 at 677.

In my first two years at Dalhousie Law School, I taught a seminar course called Quebec Law. One of the more interesting pedagogical experiences in that course involved the class discussion around the case of *Rubis v. Gray Rocks Inn Ltd.*[5] In that case, parents sued a hotel on behalf of their small child, who was grievously injured in an accident at the hotel. The child climbed onto a radiator in the hotel room, and leaned up against a window screen which did not bear her weight. She fell to the ground below, and was seriously and permanently injured. The issue was whether the hotel could be held liable under the provisions of the Civil Code for the injuries to the child.

The five judges who sat on the case produced a decision which is split along common and civil law lines. Writing for the two common law judges, Justice Estey is fairly direct in finding the hotel responsible. He dismisses arguments based on other sections of the Code in order to find liability under Art. 1053, which he describes as "a general and flexible concept of fault which lends itself to ready application, unencumbered by rules and foreign concepts, to the infinite variety of circumstances which daily floods in upon the courts."[6] Justice Beetz, for the three civilian judges, reaches the opposite conclusion through a meticulous review of the relevant provisions of the Civil Code and the principles of civil law.

After asking the students to read the case, I asked them which they felt was the right decision. The students strongly favoured the judgment of Justice Estey, perhaps owing to their instinctive sympathy for the injured child, combined with a sense of impatience at what was seen as an overly formalistic reasoning process on the part of Justice Beetz. Yet the more closely we reviewed the decision, examining the quality of reasoning and the underlying civil law principles, the more ambivalent the students became about their earlier assessment. Towards the end of the class, the majority of the students were of the view that the opinion of Justice Beetz was correct in law and was therefore the better of the two decisions. It is interesting that former Chief Justice Dickson, in his article about Jean Beetz in the *Mélanges* chooses this very case to discuss as an example of the quality of Justice Beetz' civil law reasoning. He describes this decision by Justice Beetz as "an elegant judgment that forced one to return to basic principles underlying particular sections of the Civil Code."[7]

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5. [1982] 1 S.C.R. 452.
6. *Ibid.* at 483–484.
7. Dickson, Brian, "Federalism, Civil Law and the Canadian Judiciary: an Integrated Vision", in *Mélanges Jean Beetz*, 421–444, at 441.

Like his judgment in *Rubis v. Gray Rocks*, the career of Justice Jean Beetz deserves a far closer look by common law scholars than it has received to date. The reason for the tremendous respect in which Justice Beetz is held in Quebec legal circles is not because civilian jurists are more formalistic or conservative than their common law colleagues. Rather, it is due to a different set of legal, political and ultimately cultural values which the work of Justice Beetz serves to exemplify. Quebec is a vibrantly different legal and political community. *Les Melanges Jean Beetz* contributes to bridging the sometimes significant gap between this culture and the world of the common law jurist.