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Public Service and Charter Pessimism: A Review of Harry Arthurs, Connecting the Dots: The Life of an Academic Lawyer

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Book Review

Charlotte Hobson: Public Service and *Charter* Pessimism: A Review of Harry Arthurs, *Connecting the Dots: The Life of an Academic Lawyer* (McGill–Queen's University Press, 2019)

Introduction

In *Connecting the Dots,* Harry Arthurs recounts his life's work: diligently pushing for the changes he saw as necessary in legal education and the legal profession.[1] He worked not only as an academic,[2] but also as an arbitrator,[3] government advisor,[4] and inquiry chair.[5] Arthurs is highly regarded and is often referred to as "the Dean of Canadian labour law."[6] Brian Langille, in an earlier issue of the Dalhousie Law Journal, said "You can draw a line under Harry's name and then debate, if you are so inclined, who comes second."[7] He served as Dean of Osgoode Hall Law School between 1972–1999 and as the President of York University from 1985–1992. In *Connecting the Dots,* Arthurs tracks his career trajectory across these roles and offers reflections on underlying personal and political dynamics.

Despite his substantial contributions, Arthurs attributes much of his success to simply being in the right place at the right time.[8] He began his legal career when there were few "prominent" scholars in the field, and labour law was emerging as an academic subject.[9] Arthurs was both a participant in and creator of the emerging field, and he seized that opportunity, especially through educating law students.[10]

Connecting the Dots is one of the first autobiographies of a legal academic. It provides insight on how the legal profession might best survive into the future: not by promoting "practice-ready" lawyers, argues Arthurs, but by ensuring that law schools remain centres of learning and

1. Harry Arthurs, *Connecting the Dots: The Life of an Academic Lawyer* (McGill-Queen's University Press, 2019).
2. Arthurs has written extensively on legal education, labour law, administrative law, and constitutional law.
3. Arthurs served as an arbitrator in labour disputes, beginning in 1962: Arthurs, *supra* note 1 at 34.
4. See e.g. *ibid* at 33 (on legislative policy and government enquiries), at 52 (on replacing the War Measures Act), and at 53 (on the Charlottetown Accord).
5. *Ibid,* ch 9.
6. Brian Langille, "If Labour Law is a Subset of Employment Law, What is Employment Law a Subset of?" (2020) 43:2 Dal LJ 581 at 583.
7. *Ibid.*
8. See especially Arthurs, *supra* note 1 at 31.
9. *Ibid* at 31.
10. *Ibid* at 32.

critique.[11] This perspective is not surprising given that Arthurs is well known for his *Law and Learning* report ("sometimes referred to as the '[expletive deleted] Arthurs Report'").[12] *Law and Learning* supported interdisciplinary approaches to legal education and pushed against "legal fundamentalism," which is the idea that law students should be taught only the fundamental skills of lawyering. Arthurs' disagreement over the need for "practice-ready" lawyers is one of his many arguments that force readers to carefully consider their own views. Notably, *Connecting the Dots* provokes an important question: the capacity of lawyers (and the law, generally) to create societal change.

Book's Structure

The book begins with Arthurs' family history. His grandparents were remarkable people: activists who worked with labour unions and who pushed the Canadian government to accept Jewish immigrants and refugees.[13] Arthurs notes that his grandparents' life shaped his worldview and career.[14] The theme of identifying those who shape and inform a career path is threaded throughout the memoir.[15]

Arthurs then discusses his key contributions to labour policy,[16] including his role on government enquiries,[17] and as an arbitrator deciding several consequential cases.[18] One story from chapter 3 is particularly demonstrative of his approach to arbitration. In deciding *Port Arthur,* he refused to accept that arbitrators needed to apply the common law of contract in decisions on collective agreements. Arthurs notes that this choice aligned with common practice at the time.[19] Arthurs' reasoning shows his tendency to focus on the lived reality of the parties rather than basing decisions solely on legal principles.[20] While his decision was overturned by the Supreme Court of Canada, he successfully pushed for

11. *Ibid* at 68.
12. *Ibid* at 106.
13. See Arthurs, *supra* note 1, ch 1.
14. *Ibid* at 12.
15. See especially *ibid,* ch 2.
16. *Ibid,* ch 3.
17. *Ibid* at 33.
18. *Welland County General Hospital* (1965), 16 LAC 1, [1965] OLAA No 1185; *Russelsteel Ltd and United Steelworkers of America* (1966), 17 LAC 253, [1966] OLAA No 4; *Port Arthur Shipbuilding Co v Arthurs et al* (1966), 60 DLR (2d) 214, 17 LAC 109.
19. Arthurs, *supra* note 1 at 35.
20. Another key example is his decision in *Re Mens Clothing,* in which he focused on the practical implications of involving lawyers in a dispute. On review, the court disagreed, focusing instead on legal principles in its analysis: *Re Men's Clothing Manufacturers Association of Ontario et al and Arthurs* (1979), 26 OR (2d) 20, 104 DLR (3d) 441.

a change in legislation.[21] The book is filled with similar stories of Arthurs pushing for changes that he felt better reflected the circumstances of the day.

In chapter 4, Arthurs explains his critical stance on judicial review. He has a "long-standing belief that courts [have] no business meddling in labour law."[22] And his critique extends beyond labour law. Arthurs believes judicial review limits administrative decision-makers in viewing their mandate broadly, for example, and that requiring procedural fairness impairs their efficacy.[23] By the 1980's, his dislike for judicial review led him to question its very authority.[24] He set out to trace the roots of judicial review and to ask simple, fundamental questions about its legitimacy.[25] While his "stand" against judicial review became somewhat untenable with a change in context, including the introduction of the *Charter,*[26] his dislike for the power held by judges remains.[27]

The balance of the book traces Arthurs' various roles in academia. In chapter 5, Arthurs describes his contribution to "institution building" at Osgoode Hall.[28] The next few chapters discuss Arthurs' views on globalization,[29] his role as an administrator,[30] and his perspective on teaching the law.[31] His teaching style is, unsurprisingly, centered in the on-the-ground impacts of the law and its underlying context.[32] He acknowledges that his approach often left students "reconsidering their own long-held (though not always carefully considered) beliefs about politics, society, and the legal system itself."[33] As a law student reading Arthurs' views on the *Charter* and judicial review, I can confirm this phenomenon and the feelings of discomfort it carries.

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21. Arthurs, *supra* note 1 at 35.
22. *Ibid*.
23. *Ibid* at 44-46.
24. *Ibid* at 46
25. *Ibid* (questions included "where had it come from and when? What was its constitutional underpinning? By what legal or political logic could it be justified? How might administrative errors of abuses be prevented or cured in some other way, if not by reviewing courts?")
26. *Ibid* at 48.
27. *Ibid* at 50.
28. *Ibid* at 59.
29. *Ibid,* ch 6.
30. *Ibid,* ch 7.
31. *Ibid,* ch 8.
32. *Ibid* at 95 (Arthurs notes, for example, that in teaching administrative law, he wanted to urge students to go beyond concepts like "natural justice" and move towards understanding the broader, compelling societal concerns like public health).
33. *Ibid* at 96.

The book finishes with his more recent experiences as a "useful idiot,"[34] and some reflections on why he has found success in his work. Above all, he believes that his success has been driven by his capacity to look beyond a single transaction or phenomenon—to "connect the dots."

Contributions

In his career, Arthurs questioned the utility of two fundamental legal tools: judicial review and the *Charter*. While his investigation into the authority of judicial review became less significant because of developments in the law, it remains an excellent reminder that even commonly used processes can and should be questioned.

His views are disruptive because they go against what we are taught as students. Shouldn't everyone be owed procedural fairness? Isn't ensuring procedural fairness a more important goal than allowing tribunals to have a slightly broader scope? And isn't this particularly true with the growth of the administrative state? Arthurs' arguments push us to consider questions beyond a single case or subject. They force us to think normatively about how society should be structured.

The second of Arthurs' disruptive ideas is his *Charter* pessimism. Arthurs explored the *Charter's* utility in a 2005 article with Brent Arnold.[35] They investigated whether the *Charter* had changed life in Canada, particularly for marginalized groups including Indigenous Peoples, women, visible minorities, and immigrants. They found that it had not, and Arthurs' stance appears unchanged today.[36] He recognizes the efforts made by lawyers in crafting creative *Charter* arguments, but his skepticism remains.[37] Remarkably, given Arthurs' life working within the legal field, he argues that the problem with the *Charter* is that the only thing it changes is the law, "and, as it turns out, the law does not change the deep structures of the economy, culture, society, or polity."[38]

In other words, his skepticism over the utility of the *Charter* is rooted in his broader worldview that the law is not capable of transforming societies. Instead, he believes that legal systems are constrained by unequal power relationships.[39] This idea is similarly described in more

34. *Ibid,* ch 9. Arthurs calls himself a "useful idiot" because, on commissions, he acted as the "well-reputed person who can be counted on to study the problem carefully, to write an insightful report, and to make sensible recommendations which can then be safely ignored" (*ibid* at 100).
35. Harry Arthurs & Brent Arnold, "Does the Charter Matter?" (2005) 11 Rev Const Stud 37.
36. Arthurs, *supra* note 1 at 131.
37. *Ibid.*
38. *Ibid* at 54.
39. *Ibid* at 129.

recent scholarship, which describes a tension between legal outcomes and true social transformation in which power relations shift.[40]

As someone who began studying the *Charter* in 2019, Arthurs' pessimism is shocking. Entering law school soon after *Bedford v Canada*[41] and *Carter v Canada*[42] means my legal worldview has been shaped by the idea that the *Charter* is critical in protecting Canadians, particularly vulnerable groups. We learn that the *Charter* is an instrumental tool in ensuring fairness and in protecting fundamental rights—surely it makes a difference? For those who could, for example, receive medical assistance in dying since *Carter*, the *Charter* has no doubt made a massive difference. His pessimism is also surprising given that Arthurs describes his process in life as "simply doing what members of every generation would naturally want to do: make things better."[43] If his skepticism is warranted, he fails to explain how lawyers pushing to protect the vulnerable should work with legal tools available to them.

Conclusion

Whether or not readers agree with Arthurs' views—on how law schools ought to train future lawyers, whether the *Charter* matters, or how much power judges should have—this book provides valuable insights, gained over a lifetime working to serve the public. His recollections demonstrate that even high-achieving legal academics and advisors are not always (or even mostly) successful in their pursuits. Arthurs describes many projects that did not go as planned,[44] and many policy recommendations that were disregarded despite strong evidentiary backing.[45] Arthurs notes, however, that even if there is no uptake, making the effort has value: it pushes forward an idea that may be adopted when the time is right.[46]

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40. See e.g. Dana Erin Phillips, *Epistemological Justice in Strategic Challenges to Legislation under Section 7 of the Canadian Charter of Rights and Freedoms* (LLM Thesis, York University, 2021).
41. *Canada (AG) v Bedford*, 2013 SCC 72.
42. *Canada (AG) v Carter*, 2015 SCC 5.
43. Arthurs, *supra* note 1 at 138.
44. See e.g. *ibid* at 61, 76.
45. See e.g. *ibid* at 53 (discussing the need for "the federal government to take a lead role" in labour policy); *ibid* at 106 (the *Law and Learning* report was ignored and critiqued strongly); *ibid* at 109 (the *Fairness at Work* report which "disappeared from view" for almost ten years).
46. Arthurs attributes this idea to Rod Macdonald, who said that if you put out good ideas, "someone someday will adopt them" (*ibid* at 104).