

# The Public Intellectual in Canada

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## 9 A Political Scientist in Public Affairs

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Richard Posner defines a public intellectual as

someone who uses general ideas drawn from history, philosophy, political science, economics, law, literature, ideas that are part of the cultural intellectual tradition of the world, to address contemporary events, usually of a political or ideological flavor, and does so in the popular media, whether in the form of Op Ed pieces, television appearances, signing full-page advertisements, or writing magazine articles or books addressed to a general audience.<sup>1</sup>

I have done most of those things; but more importantly I was nominated by Lorne Gunter in a *National Post* 1995 contest to determine "the most important public intellectual in Canada."<sup>2</sup> That I was badly beaten in the contest by hockey announcer Don Cherry is a good measure of my stature as a public intellectual!

More seriously, a public intellectual draws on his academic discipline while addressing a larger audience about public affairs. I have attempted to do that, partly through appearances in the media, partly through writing books that try to reach a larger audience than the usual academic targets of professors, students, and university libraries. But I have also participated in public life in ways that did not involve directly addressing the public. I have, for example, been an expert witness in litigation, offering historical evidence in cases involving Aboriginal rights and land claims. Such cases usually generate little media coverage, and as a witness you are not speaking to the public but to the judge who has to arbitrate among competing versions of history. I have also spent several years working for political parties, holding

organizational positions such as director of research, chief of staff, and national campaign manager. These were confidential activities (though I wrote about them later); but what happens behind the scenes within political parties obviously has an impact on public debate, because parties take the lead in structuring the perception of issues.

This chapter is about participation in public affairs broadly understood, including all four of my ventures: writing books for a broader public than academic specialists, speaking to judges as an expert witness in litigation, organizing the work of political parties, and writing and speaking as a media pundit. Although these four roles are quite different from one another, they exhibit one overarching similarity as compared to the academic life of teaching and research. To state it as simply as possible, public affairs are fundamentally adversarial, while intellectual life is fundamentally authoritative.

University teaching is highly authoritative. The university puts a professor in charge of teaching a course, with the right and responsibility to assign readings, lead discussions, and evaluate performance. You can let students know it's all right to disagree with you, but you are still in charge, and your decision about what grades to award may have a considerable effect upon students' future lives.

Research is less obviously authoritative; indeed, certain adversarial elements are built into the research process. Post-graduate theses are "defended" rather than "approved," which implies an adversarial process rather than an authoritative judgment. Grant applications and publications are submitted to multiple referees, who often disagree among themselves. Journals publish book reviews and literature surveys designed to promote debate about the value of research contributions. In all these respects, research involves a constant clash of views and perspectives.

And yet there is a higher sense in which authority rules in the world of science and scholarship. Through all their disagreements, researchers are united by seeking to discover something true about the universe, a correspondence between theory and fact. Academic disagreements are supposed to be settled by reference to evidence, not by rhetorical appeals to passion or attacks on personal character. Aristotle's *ethos* (character) and *pathos* (emotion) are the very stuff of political debate, but peripheral to scholarly discussion, which is supposed to be about *logos* (reason).<sup>3</sup> Like everyone else, scientists and scholars care about material success, but they strive above all for reputation – recognition for having discovered some truth about the world. Recognition confers authority.

We say that a distinguished researcher "is an authority" in his field, which testifies to our belief that his statements are well grounded in empirical evidence. In contrast, we say that a government official "is in authority," which doesn't imply that he has any particular expertise, only that he wields the power of the state. Science and scholarship harness adversarial processes for reaching authoritative determinations of what is true and false, for discovering validated theories about the natural universe and the human world.

The realm of public affairs, in contrast, is essentially adversarial, at least in a liberal democracy, where social life and political order are considered pragmatic arrangements for living together, not "true" emanations of reason or divine will.<sup>4</sup> Law is what legislatures decide to pass and what the courts say it means. As the American Supreme Court justice Robert Jackson wrote, "We are not final because we are infallible, but we are infallible only because we are final."<sup>5</sup> Public opinion is never univocal. Responsible media outlets strive to represent a range of views by creating panels on radio and TV, commissioning various columns in print, and requiring reporters to consult multiple sources in preparing news stories. The media never expect you to persuade anyone else, just to represent a point of view so that readers and viewers will have options.

The contest of political parties, moreover, is adversarial in a very special way, because the main purpose of participation in democratic politics is not to be right but to build a coalition large enough to get control of the government. Democracy not only recognizes the legitimacy of opposition but builds it into the system. For example, the leader of the opposition in the Parliament of Canada is paid a ministerial salary, gets an official residence and limousine with driver, and is sworn into the Privy Council. It is his duty, and his party's duty, to oppose the government, which often leads to taking implausible positions (how can the government always be wrong?) for the higher good of ensuring that the government's position is tested in public debate.

Moving from academic life into public affairs is a transition that may take many years to understand fully. Rather like Jeremy Bentham sending reform proposals to Catherine the Great,<sup>6</sup> you begin with the naive conviction that, in virtue of years of study and research, you possess special knowledge that only needs to be put into practice in order to improve the quality of public life. If you are lucky, you outgrow that preposterous conceit and realize that participation in public affairs is like acting in a drama whose plot is unknown to anyone. You play your role

in the belief that the endless adversarial jousting will discover more beneficial arrangements for living together than any one intelligence could ever design. In my Hayekian view, politics is a process for discovering new modi vivendi, not for implementing abstract paradigms. The intellectual who specializes in using his individual reason to search for truth encounters "the wisdom of crowds" in the realm of public affairs.<sup>7</sup>

**Author**

Academic books in Canada usually sell about five hundred copies, mostly to university libraries as well as researchers and students particularly interested in the subject matter. A thousand copies is almost a best-seller for a Canadian academic book.<sup>8</sup> I've written a number of books that have sold in the range of five to ten thousand copies. My first book to experience good sales was *The Diaries of Louis Riel*, published in 1976.<sup>9</sup> Today I wouldn't consider this translation of Riel's notebooks a particularly good book because my knowledge of editing texts was very limited when I did it. But it sold about 8000 copies because of Riel's notoriety. Two subsequent books I wrote on Riel also sold well: *Louis "David Riel": "Prophet of the New World"* (1979) and *Riel and the Rebellion: 1885 Reconsidered* (1983).<sup>10</sup>

These books, as well as my other writings on Riel, were historical in character and did not deal with contemporary public affairs except to argue that Riel should not be granted a posthumous pardon for having incited the North-West Rebellion. I believe, however, that they had some influence on public opinion by portraying Riel as a millenarian prophet and by explaining how the government had in fact responded to alleged Metis grievances. Riel is probably the most recognizable figure in Canadian history, so it matters culturally what Canadians know and think about him.

One thing I have learned is that to have an impact on public opinion through your writing, you have to publish a lot. Over a period of almost twenty years, I published three monographs and dozens of articles on Riel and the Metis, while also working with a team that collected, edited, and published everything that Riel ever wrote.<sup>11</sup> One book, no matter how well received, is almost always quickly forgotten. To have an impact, you must establish yourself as a leading authority, and that requires volume. I don't know if Engels was right when he said that quantity can turn into quality,<sup>12</sup> but my experience is that you don't get to quality without quantity.

I also learned that scholarly publications by themselves have little impact unless they are discussed in the media. That doesn't mean a review in the *Canadian Journal of Political Science*; it means reviews and columns in newspapers as well as appearances on talk radio and TV shows. It's almost impossible to get that kind of attention unless the book contains an element of controversy. Because the media are in the entertainment as well as information business, they thrive on conflict.

A good example of what I mean is the work that Rainer Knopff and I did on Canadian human rights commissions in the 1980s. Publishing in refereed journals and university presses,<sup>13</sup> we developed the same criticisms of human rights commissions recently popularized by Ezra Levant in *Shakedown*.<sup>14</sup> What Knopff and I wrote had zero impact on public opinion and the political process because it was confined to narrow academic circles, whereas Levant touched off a broad wave of popular concern about the human rights industry.

In contrast, I set out deliberately to influence public policy by writing books about contemporary Aboriginal issues: *First Nations? Second Thoughts* in 2000, and *Beyond the Indian Act: Restoring Aboriginal Property Rights* in 2010.<sup>15</sup> *First Nations? Second Thoughts* was a polemical book, challenging what I called the "Aboriginal orthodoxy" deriving from the Report of the Royal Commission on Aboriginal Affairs. It gored sacred cows right and left, including Aboriginal self-government, land claims, and treaty rights. It won two prizes<sup>16</sup> and was on the *National Post* non-fiction Canadian best-seller list for eleven weeks in the summer of 2000. It was also vociferously denounced by almost every native leader from Phil Fontaine on down. With that level of controversy, it garnered an avalanche of media attention.

The book's effect on public opinion and public policy was more negative than positive. It helped stiffen the resistance against Aboriginal demands for more sympathy, more land, more jurisdictions, and more money without accountability. Certain arguments in the book, for instance, that band councils have an inherent trend to "family factionalism," abetted by representation without taxation, had rarely been made in public before, but have now become conventional wisdom among conservatives, especially in the *National Post*, which devotes a lot of editorial attention to Aboriginal affairs. At first, media accounts referenced my book, but gradually my arguments became familiar enough that the author no longer needed to be identified – a sign that the ideas were making some headway in public opinion.

My most recent book, *Beyond the Indian Act*, is a positive attempt to bring about legislative change in the form of a proposed *First Nations Property Ownership Act*, which would allow First Nations to take over ownership of their lands from the federal Crown and to create individual titles in fee simple on as much or as little of their land as they wished. Both stages of reform would be completely voluntary. The idea of private property for First Nations is a theoretically radical departure from the status quo, made incremental in practice by a voluntary opt-in approach.

Writing by myself, I could never hope to achieve legislative change; but *Beyond the Indian Act* is a collaborative effort, especially with Manny Jules, former chief of the Kamloops band and head of the First Nations Tax Commission, who contributed the foreword to the book and also designed the cover. Jules virtually created the concept of voluntary, First Nations-led legislation, beginning with the "Kamloops Amendment" of 1988, which for the first time authorized Indian bands to levy property taxes on reserve leaseholds.<sup>17</sup> *Beyond the Indian Act* wraps an academic gown around ideas that Jules has been developing for years. The book addresses public opinion, while Jules will work at finding First Nations to request the legislation, so that the government will be willing to introduce it into parliament. Initial indications are positive, but we won't know for several years whether we will succeed in getting the legislation passed.

It is easier to excite outrage than to bring about positive change. An author who writes fluently and has media connections can get people worked up about grievances, but it is another matter altogether to steer the political process towards a specific change. For that you need to link with a group or organization capable of undertaking political action; and at that point your book leaves the realm of pure scholarship and takes on a political aspect. Manny Jules and I generally agree about property rights for Aboriginal people, so that's what we wrote about in *Beyond the Indian Act*. We could undoubtedly find some differences of opinion on other Aboriginal issues if we worked at it, but we don't do that because we are trying to achieve change in one area, not to have the last word about Aboriginal issues in general. Hence, the book is a sort of political compromise, not because it states things we don't actually believe, but because it leaves potentially divisive questions unaddressed. That's one of the differences between pure scholarship (being right) and politics (building support to get things done).

## Expert Witness

My publications on Riel and the Metis led to my work as an expert witness in Aboriginal litigation. In the summer of 1986, I received a telephone call from the federal Department of Justice, looking for someone to help the Crown as a consultant and expert witness in litigation over fulfilment of the Manitoba Act. The Manitoba Metis Federation (MMF) was arguing that the land provisions of the Manitoba Act and related legislation had not been properly implemented after 1870. There were many interrelated claims, but the central one concerned section 31 of the Manitoba Act, which required 1.4 million acres of land to be set aside for distribution "to the children of the half-breed heads of families ... towards the extinguishment of the Indian title to the lands in the province." In the view of the MMF, if the land had not been distributed properly, the Metis share of the Indian title was still alive, which meant that the federal government would have to negotiate a modern land-claims agreement with the Metis of Manitoba.

In the course of writing *Riel and the Rebellion*, I had acquired some knowledge of Metis lands in Saskatchewan; but I was far from an expert on Metis lands in Manitoba, having treated that subject only in passing in *Louis "David" Riel: "Prophet of the New World."* In spite of its deep pockets, the Crown often has trouble finding expert witnesses who have already done research on a particular topic, because most researchers who work on Aboriginal issues are part of the Aboriginal political movement and will testify on behalf of Aboriginal litigants but not on behalf of the Crown. So the Justice department was willing to fund a year's worth of research while I took a sabbatical to develop the necessary expertise on the history of Manitoba Metis lands.

This turned out to be one of the most interesting experiences of my life. I spent the academic year 1987-8 on sabbatical in Ottawa, going through records in the National Archives of Canada in order to write the history of the Manitoba Act and its implementation. We originally thought the case would come to trial quickly, but when that didn't happen, the Department of Justice gave me permission to publish my findings in book form, entitled *Metis Lands in Manitoba*.<sup>18</sup> When the trial finally did take place in the spring of 2006, I was on the witness stand for three weeks - one of examination in chief and two of cross-examination - to present all the details of my research. The Crown subsequently won a sweeping victory, getting the trial judge to agree with all of its main contentions.<sup>19</sup>

My work on the Manitoba Metis case led to a number of others invitations to be an expert witness in cases on both Metis and Indian claims. These invitations came from the federal Departments of Indian Affairs and of Justice as well as Departments of Justice in Manitoba and Alberta. Sometimes they came directly from government lawyers, sometimes from private litigators acting for the government. In a number of instances (e.g., the Lubicon dispute) I filed a report that may or may not have affected the government's negotiating policy, but the case never came to trial, so I did not testify.

I did end up testifying in three cases of some importance. In *Blais*, I gave evidence about the implementation of the Manitoba Act, which helped convince the court that the Metis defendant did not have an unextinguished Aboriginal right to hunt moose out of season.<sup>20</sup> *Benoit* concerned a dispute over whether Treaty 8 conferred immunity from taxation beyond that specified in section 87 of the *Indian Act*. I testified about the history of Treaty 8, how it was drafted, negotiated, and signed, showing that no promise about taxation had been included or implied. The Crown lost at trial, but won in the Federal Court of Appeal.<sup>21</sup> Whereas *Benoit* was narrowly focused, *Buffalo* was broad. Its main contentions concerned Indian Affairs' administration of the natural gas revenues of the Hobbema and Ermineskin bands in Alberta, but there were many other claims about the implementation of Treaty 6. It was almost as if the bands had bundled together every grievance accumulated since 1876. As in *Benoit*, my role was to testify about the genesis of Treaty 6, showing what it meant in historical context. My work in *Buffalo* consisted more in critiquing the extensive reports filed by half a dozen experts from the other side than in carrying out an original program of research. As the other side had introduced most of the relevant facts, my job was to put them in a more sensible historical framework. The Crown prevailed in this case in the areas where my testimony was relevant.<sup>22</sup>

My role as an expert witness was to provide historical information and context as a backdrop for the court's assessment of legal arguments. All cases involved factual disputes about what had been said and done in the past, so the judges could not do their legal work without getting a report on the relevant history *wie es eigentlich gewesen ist* (as it really was). It required an appeal in *Benoit*, but the courts eventually got the history right in all these cases.

There is usually a political element in these high-stakes cases, which often arise out of the breakdown of negotiations with government; but

as an expert witness you are insulated from the politics. The lawyers reserve the law to themselves and you never talk to the politicians; you are just given an assignment to carry out historical research. I was originally recruited to work on the Manitoba Metis case when the Conservatives were in government, but I was kept on the file after the Liberals won the 1993 election. The Liberals were also in power when I worked for the federal Crown in *Buffalo*. My invitations to work for Alberta and Manitoba all came when Conservative governments were in office. Saskatchewan never asked me to do any work, which may have something to do with the NDP's long spell in government in that province (1991–2007), but I have no direct evidence about this “dog that didn't bark.” But I can say that in all my work as an expert witness, there was never any discussion of political factors.

However, invitations to be an expert witness virtually ceased after my second period of activity in party politics, 2001–6. After getting lots of offers in the 1990s, the only invitation I have received recently was to replace Gerhard Ens as a consultant in the CAP-Daniels case, after Ens decided to withdraw.<sup>23</sup> The Crown asked for a history of Metis land and scrip in Western Canada, which builds on what I did in the Manitoba Metis case, plus some other academic publications about Metis history.<sup>24</sup> Again, it's a dog that didn't bark; no one tells me why they're not seeking my services, so I'm not entirely sure of the reasons. I suspect it's because several years of managing campaigns for the man who is now prime minister has made me seem too partisan, and therefore vulnerable to charges of bias during cross-examination.

The common-law judicial process is adversarial, with two sides arguing a question before an impartial judge. In cases requiring outside expertise, each side hires its own witnesses, giving rise to the famous “clash of experts,” which the judge has to resolve by assessing credibility and examining the objective evidence introduced along with testimony. Legal teams avoid hiring expert witnesses whom they perceive to be committed to the other side; but beyond that, at least in my experience, they are looking more for reputation and competence than for pre-commitment to their own cause. I was never pressured to torque my findings to support the arguments being made by the Crown. Lawyers sometimes questioned my choice of wording (do you have to be so inflammatory?) or topics (is that really relevant?), but they never asked me to suppress anything. Indeed, it would be pointless to pressure a witness too much, because any departures from evidence would easily be revealed in cross-examination. The more sensible course for an

advocate is not to bring a witness into court if he feels his testimony will not be helpful. Indeed, that happened to me once. I was in Edmonton to testify for the Crown in a treaty fishing-rights case, and there hadn't been much of a chance for the lawyer to consult with me beforehand. When we finally sat down to discuss matters, I said I couldn't offer historically valid testimony about the treaty to support the argument he wanted to make. At that point, he sent me home, and I sent him my invoice – no hard feelings.

Going several times through all the work of an expert witness – carrying out research, submitting a written report, testifying in the trial hearing – has increased my admiration for the judicial process as an adversarial approach to approximating historical truth. Each side is allowed to hire the best witnesses it can afford. Prospective witnesses are given months or years to do detailed research on the points at issue. The witness's report is then vetted by the team of lawyers for whom he is working. In my experience, one of the (usually) junior members of the team will spend so much time with the historical evidence that he virtually becomes a historian himself, capable of posing extremely detailed challenges to the report. As a witness, you have to be able to defend everything you have written. Scrutiny faced from legal employers is far more searching than anything encountered in submitting research proposals, articles, or books to academic referees.

The intensity of the challenge goes up another notch when your report is submitted to the other side. Now it is reviewed by another legal team, assisted by their own experts, intent on discrediting your findings or reinterpreting them to support their own arguments. Anyone who publishes in academic life is accustomed to occasional hostile reviews, but this is like having an issue of a journal with multiple hostile contributors entirely devoted to finding the flaws in something you have written. Finally, you spend days or even weeks on the stand, answering under oath questions based on the preparatory work which has engaged the other side for months or years.

One of the most challenging experiences of my life was to be cross-examined in the Manitoba Metis case for two weeks by Jim Aldridge, a Vancouver lawyer with a deservedly high reputation in Aboriginal issues. Having immersed himself in all the details of my long and complicated reports, and the thousands of pages of nineteenth-century documents on which they were based, Aldridge took me through everything line by line, asking polite but probing questions. His manner was so friendly that I had to constantly remind myself that he was not

drawing out the strengths of my report but zeroing in on its weaknesses. And indeed he did find spots where I had overlooked or misunderstood relevant documents. As a witness, you have to accept that as a fallible human being you will have made some mistakes that are bound to be discovered by all the smart people working for the other side. You have to admit it when you are obviously wrong and not try to defend the indefensible or make excuses for yourself.

Of course, witnesses for both sides are getting the same treatment for the edification of the court. At the end of the process, the judge should have a highly nuanced understanding of the historical backdrop to the case, including what cannot be established for lack of evidence. I have never been through an inquisitorial system where the court appoints its own neutral experts, but I can't see how it could produce a better result for the judge than the "clash of experts." In complex matters where truth is difficult and sometimes impossible to establish with certainty, I see no replacement for the confrontation of hypotheses presented by experts chosen and prepped by the parties to the conflict.

Only once did I encounter an abuse of the adversarial process, when I was cross-examined for four days on my qualifications in *Buffalo*. Cross-examination on qualifications usually lasts about twenty minutes. One side presents a witness, running through his qualifications as recorded on his curriculum vitae, and asks the court to qualify him as a witness. The other side then cross-examines, probing those qualifications and pointing to areas of relative weakness. The strategy is normally not to prevent a witness from being qualified to testify but to raise doubts about credibility in the mind of the judge – usually a rewarding exercise, since all witnesses are human and thus are stronger in some respects than in others. But in *Buffalo*, the other side mounted an all-out effort to keep me off the stand. They had apparently read everything I had ever written and threw back at me any wording that could possibly imply animus against native people. They even asked if I was a drug abuser, based on some comments in my doctoral dissertation about the relationship between religious mysticism and an oxygen-carbon dioxide mixture sometimes used in psychotherapy to promote free association. The whole experience was made worse because the lawyer conducting the cross-examination had most of his own experience in criminal law and treated me as if I were a dodgy associate of a criminal defendant. Several lawyers to whom I have subsequently described the ordeal said the judge should not have let it go on so long.

And yet, even when the process was arguably abused for a personal vendetta, it did serve a purpose. Cross-examination did highlight some weaknesses in the report. In one place an alignment error in a statistical table had put some entries in the wrong columns, and in another spot I had relied on anecdotal evidence from newspaper accounts when more reliable evidence from government reports might have been available. These slips in handling evidence did not nullify my conclusions, but they certainly deserved to be pointed out. It was unorthodox to do it in cross-examination on qualifications rather than on evidence, but that made it more dramatic and hence more appealing to the other side. Looking back on it, in my written report for the court, I had made some pretty sharp criticisms of the reports submitted by the other side's witnesses, and indeed of the qualifications of some of those witnesses, so I shouldn't have been surprised when I got a rough ride myself. Adversarial processes by definition involve conflict, so you have to take some punches as well as land them. Trying to sanitize the process too much might interfere with the give-and-take that is its greatest advantage.<sup>25</sup>

### Political Hack

When I was a student and a young professor, my interest in politics was mainly historical and philosophical, and my choice of research topics was often esoteric. I never dreamed that I would some day get involved with political parties and campaigning. I became seriously interested in contemporary public policy issues as a result of reading Friedrich Hayek, Milton Friedman, and many similar authors in 1976-7. I was in Washington, DC, that year to accompany my wife, who was studying sign language at Gallaudet University, an institution for the deaf. I was revising the manuscript of *Louis "David" Riel: "Prophet of the New World,"* but I couldn't do that all day every day, so I undertook a reading program in classical liberalism. It was originally intended to be for teaching purposes, but it also made me start paying closer attention to public policy. From there I started to read books such as William Gairdner, *The Trouble with Canada*, and Peter Brimelow, *The Patriot Game*,<sup>26</sup> as well as many works published by market-oriented think tanks such as the Fraser Institute. Partisan politics was still far off the agenda, however, because from my new libertarian point of view, the Progressive Conservatives and the Liberals were almost equally unattractive.

I joined the Reform Party in 1990 after a graduate student gave me the party's "Blue Book" to read (I learned later that it had been largely

written by another University of Calgary graduate student, Stephen Harper).<sup>27</sup> For the first time, I saw a political party that represented my views on balanced budgets, lower taxes, deregulation, privatization, and many other economic topics. I was less enthusiastic about some of Reform's other positions, such as senate reform and direct democracy, but I was happy to accept them as part of an overall package. I joined the party and gave \$100, but didn't do anything else, still not thinking of myself as politically active.

All that changed in the winter of 1991, when Preston Manning asked me to go to work for him as director of policy, strategy, and communications. It was a risky move to offer such a senior position to someone with absolutely no experience in working for a political party, but Manning didn't have a lot of other choices. As leader of a new party vilified as extreme, even racist, he had to take some chances with personnel.

I worked for Reform from May 1990 through December 1992, and later described that brief experience in my book *Waiting for the Wave: The Reform Party and Preston Manning*.<sup>28</sup> I got a crash course in political parties, and I made some contributions to Reform's development, but overall I flamed out badly. I now understand that my basic problem was an overly deductive approach to public policy. I thought of issues in public policy as problems to be solved by applying principles derived from my libertarian gurus such as Hayek and Friedman. I was intolerant of the practical compromises that political parties have to make if they are serious about building a coalition big enough to win. I remember, for example, being quite disappointed when Preston Manning invented a verbal formula that allowed him to accept supply management of dairy products.<sup>29</sup> I thought (and still think) that supply management is one of the worst policies ever adopted in Canada, but it was extremely popular in the only areas of rural Ontario where Reform had some chance of making a breakthrough. Paris was worth a Mass (or at least some overpriced milk).

I might have been able to put up with political pragmatism and occasional opportunism, but the problem was deeper than that. Manning described himself at that stage in his life as a populist, deriving his positions inductively from "the common sense of the common people."<sup>30</sup> I was a Hayekian, deriving positions deductively from what I took to be the timeless truths of libertarian philosophy.

After resigning my Reform Party employment at the end of 1992, and being fired as a Reform adviser in August 1993, I became a media pundit (described in the next section). I stayed out of partisan politics



except for collaboration with Stephen Harper, with whom I occasionally co-authored publications. For me it was a literary exercise, but Harper was thinking through the strategy for his return to politics after resigning as a Reform MP in 1997. One of our joint essays became, in effect, his roadmap to power. First presented as a speech by Harper to the 1996 "Winds of Change" conference in Calgary, it described how a national conservative party could be rebuilt by uniting Western populists, traditional Tories in Ontario and Atlantic Canada, and nationalist (but not separatist) francophones in Quebec.<sup>31</sup> That turned out to be exactly the strategy Harper followed in running for leader of the Canadian Alliance, engineering a merger with the Progressive Conservatives, and finally making a breakthrough in Quebec in 2006. The thinking was entirely Harper's; I just helped give it a persuasive literary form.

The other highlight of our literary collaboration was the notorious "Firewall" public letter, which called on Premier Ralph Klein to reverse some exercise of Alberta's constitutional jurisdictions, for instance, by opting out of the Canada Pension Plan and creating an Alberta Pension Plan.<sup>32</sup> The idea behind the letter, which was entirely Harper's, was to encourage the "have" provinces to distance themselves from Liberal-controlled Ottawa; he also hoped to start a similar movement in Ontario. My contribution was literary form plus some specific policy ideas. But the "Firewall" movement never really got under way because Stockwell Day got into extreme difficulty as leader of the Canadian Alliance, and Harper decided to re-enter elective politics by running to replace him.

Almost by accident, that decision led to my own return to partisan politics. Along with several other friends, I volunteered to help Harper's leadership campaign get under way; and when the first campaign team we hired didn't work out, I volunteered to manage the campaign myself.<sup>33</sup> Easy to offer when you don't know what's involved! Apart from dropping leaflets door to door for my MP Diane Ablonczy, I had never even worked in a local campaign, let alone managed a national leadership race. So I set out to learn by doing. Fortunately, Harper and I had friends who had much of the necessary knowledge and experience, so I didn't have to tell everyone what to do. My role was to weld all the volunteers, and a few hired people, into a team, keep them focused, and make sure they were doing what they had promised on time and within budget. There were lots of little bumps along the way, but overall the campaign was highly successful. Harper won on the first

ballot, and we made a profit of \$100,000 to use as seed money for future campaigns and projects.

In the wake of that success, Harper wanted me to go to Ottawa with him as chief of staff in the Office of the Leader of the Opposition. But my wife didn't want to move to Ottawa for the long term, so I said I could do it for a year to help him get started. I returned to the University of Calgary in June 2003, but at Harper's request stayed on half-time to build a campaign team for the next federal election, whenever that might come. I had barely started on that project when Harper pulled off the merger with the Progressive Conservatives, so I had to drop national campaign preparations in order to manage his leadership campaign against Belinda Stronach and Tony Clement. By the time we won that race, Paul Martin had become prime minister, and we knew there would soon be a national election. So I stayed on to supervise the breakneck preparations for that race, which began when the writ was dropped on 23 May 2004.

After we failed to win that election, I tried to resign, but Harper asked me to stay on as half-time campaign manager to get ready for another election, which could come at any time in that minority parliament. When we failed to force an election in spring 2005, I finally did succeed in resigning, to be replaced by deputy campaign manager Doug Finley. I then went back to work in the war room as senior communications adviser for the 2005–6 campaign. Mainly what I did was to lead the rapid response group to ensure that we had no more fiascos like the "child porn" media release that had undermined our 2004 campaign.<sup>34</sup> Once the election was won, I was again out of active politics and back to the University of Calgary.

This go-round in politics was much more successful than my Reform years. I made a significant contribution to making Harper Conservative leader and to helping build the campaign machine that brought the Liberals down to a minority government in 2004 and took the Conservatives to minority government in 2006 and 2008 and a majority in 2011. To put this in perspective, when it became obvious that Paul Martin would replace Jean Chrétien, the most common view was that the Liberals would be in power for another generation and that under Martin's leadership the Liberals would win more than two hundred seats in the next election. I take satisfaction in having helped build the team that derailed Martin's "juggernaut."<sup>35</sup>

Working for Harper meant that I had no involvement with policy because, both as candidate and leader, he exercised tight personal control

over strategy, policy, and communications. I was his chief organizer, dealing with the more mundane side of politics – raising money, hiring people, finding premises, printing pamphlets, and negotiating contracts with suppliers, including airlines, bus companies, telemarketers, pollsters, and advertisers. I saw my job as creating the machine that could implement whatever strategies Harper decided upon.

While I was preoccupied with that mission, I became quite agnostic about questions of public policy. I was willing to let Harper and his policy advisers debate the merits of various policies, while I was focused on winning the next election. As far as I was concerned, legendary Conservative campaign manager John Laschinger was right: “To those in the backroom, winning is everything.”<sup>36</sup> It was raw primate politics, almost as described in Frans de Waal’s classic book *Chimpanzee Politics* – males forming coalitions to win rank, and thereby to get more copulations with females in their fertile periods.<sup>37</sup> Human beings play for resource control more than for direct sexual advantage, but the basic idea is the same. Ironically, I had evolved from my original purist view that policy had to be deduced from first principles to an agnostic view in which policy was merely a weapon of political combat.

Not surprisingly, the Conservative Party that I helped propel to victory now espouses many policies that I can’t endorse. Supply management, subsidies to business, government bailouts of auto manufacturers, deficit spending in the name of stimulus – the list could go on and on. Of course, the Conservative government in power has also done many things that I do support, such as cuts to the GST and personal and corporate income tax, re-equipping the Canadian Forces, and stopping the movement towards federally funded institutional day care. I didn’t get whole loaf by helping the Conservatives win, but I certainly got half loaf – and what conservative ever expects to get a whole loaf in the complex and tangled field of public affairs?

More broadly, I believe my political work helped restore competitiveness in Canadian federal politics. Prior to Harper’s return to politics as Canadian Alliance leader, pundits such as Jeffrey Simpson frequently lamented the fact that no one could seriously challenge the Liberals, which was making that party complacent and even corrupt.<sup>38</sup> But after a merger of the Canadian Alliance with the Progressive Conservatives, and the building of an efficient Conservative campaign machine, Canadian politics has become competitive again. The 2011 election produced a Conservative majority government faced by a New Democratic opposition of 103 members – the largest opposition since 1979.

So my contribution to Canadian politics was to help make it more competitive – and hence adversarial – by restoring the balance between parties of the centre-right and centre-left. Not exactly a utopia, is it? Adversarial politics is unifying in many ways – a pervasive spirit of partisanship, a wildly exaggerated question period, negative advertising between elections. Many Canadians tell pollsters they don’t like it. I don’t like it, either. But I still think it’s better than giving one party a lock on power for generations.

### Among the Punditi

Like many political scientists, I was occasionally in the media early in my career when something came up touching my expertise. For me in the 1980s, that meant mainly Louis Riel. The publisher of *Reform and the Rebellion* paid for a promotional tour for the book, which led to a lot of media coverage. Perhaps most memorable was winning a CBC radio debate about Louis Riel’s trial and execution. The historian Desmond Morton and I, facing literary critic George Woodcock and Metis leader Elmer Ghostkeeper (a former student of mine), managed to convince a CBC audience that Riel had been properly convicted.

But apart from these occasional forays, I wasn’t in the media much until after Preston Manning fired me as a Reform Party adviser in August 1993. Being then in my doctrinaire phase (which I now find comical), I was afraid Manning was going to water down the conservatism that I thought the Reform Party should represent, so I decided to go public. I had a vague vision of steering the Reform Party by becoming an independent Reform voice in the media. By then I had been associated with Reform for almost two years, so I had met some journalists and had developed a notion of how to place stories in the media.

Reporters quickly started coming to me once they learned that I was willing sometimes to criticize Preston Manning. I was supportive of Reform more often than I was critical, and much of the time I was simply analytical, but it was enough to get me into the media’s collective Rolodex. The 1995 publication of *Waiting for the Wave* (as close to a tell-all book as anyone ever writes in this decorous country) intensified the media attention. I knew I was being used sometimes by reporters who only wanted to disparage Manning, but I also wanted to promote my book and took every opportunity to enhance sales. Not very successfully, by the way – *Waiting for the Wave* sold the fewest copies of all my books intended for a broad audience. I used to joke that Preston

wasn't charismatic enough to sell my book, but I now understand that the book was too densely written for popular taste. Also, a book about Reform didn't appeal much to Canada's literary class, unless it was an all-out attack, which mine wasn't.

I haven't kept an exact count, but I suppose that since 1994 I have appeared in Canadian media between one and two hundred times a year. The only exception was in the years 2002-6, when I was working for Stephen Harper. Then I followed his commandment, which I also thought was correct, that his employees should shun publicity and leave the media to the communications department. I have done a lot of things in the media: writing my own op-eds, appearing on radio phone-in shows, acting as a talking head on television panels, and being a source for reporters' interviews. However, I haven't set up my own blog or gone into social media. Maybe that reluctance is a generational thing, but I also think it's in my own interest. I've learned from experience that my initial reaction to breaking stories is often unreliable, especially if based on partial and preliminary information. I prefer to wait to comment rather than rush into print before I really understand what's happening.

I wrote a monthly op-ed for the *Globe and Mail* from 1997 to 2000, then switched to the *National Post*. I wrote for that paper somewhat more than monthly until mid-2002, when I entered my Harper-imposed tunnel of silence. Coming out the other end, I started to write monthly again for the *Globe and Mail* in April 2006, and am still doing that five years later. I try to publish columns that no one else would write, using my knowledge of political science and history. Many pundits are already doing a fine job of commenting on daily events, so I try to be a little different.

I'm also now appearing twice weekly on CBC News Network's "Power and Politics" with Evan Solomon, where I'm trying to introduce a little humour into the discussions. For a lot of Canadian public affairs broadcasting, Marshall McLuhan might have said, "The tedium is the message." I try to liven it up with occasional props, costumes, and flashes of deadpan humour. Occasionally I get it wrong, as in December 2010, when I joked about assassinating WikiLeaks founder Julian Assange and made myself an international target of hate mail, leath threats, and media outrage. Most of the time, however, it seems to work, even if it's still a work in progress. The purpose, in addition to having a little fun, is to make my hard-edged conservative ideas seem less threatening to the CBC's largely left-leaning audience.

I also continue to pick up the phone and talk to reporters whenever they call. Sometimes they try to get me to say something critical about (originally) Preston Manning and the Reform Party and (now) Stephen Harper and the Conservative Party. I've learned to recognize this situation and only respond to it now if I feel my comments might be useful. Other times they have a story already written, at least in their minds, and are looking for a specific comment from an academic authority to provide what they see as balance. Again, I've learned to recognize the situation and will sometimes play the game if it's a reporter with whom I have a useful long-term relationship.

Or they may be looking for specific historical, constitutional, or institutional information that I am likely to know as a political scientist. This happens occasionally but not very often, given that the media are more in the entertainment than the information business. And occasionally they want to talk to someone who's been inside a political party and can perhaps give a realistic internal assessment of what's being reported in public.

I often ask myself whether all this media activity is worthwhile. I enjoy it most of the time, as long as it doesn't become so time-consuming that it ruins the day. Most media people are intelligent and well informed about public affairs, so it's interesting and informative to talk to them. I learn quite a bit, because reporters tell me about developments I wouldn't otherwise be aware of. And knowing that I might speak and write about many aspects of public affairs makes me inform myself more broadly and not get trapped in academic specialization. But the question still lingers, what's the point?

Being in the media is like a family reunion where everyone is talking at once. Some people are well informed and others are downright ignorant. Some are moderate and polite while others are extreme and rudely offensive. The milieu is not conducive to serious reflection. The *Globe and Mail* gives me a maximum of 650 words for an op-ed; only rarely do I get to write anything longer. Appearance as a talking head lasts only a few minutes, normally shared with other guests. And these are the best forms of media appearance, where you get to write or speak directly without being filtered by reporters. When you are interviewed for a story by even the fairest and most competent journalist, all that emerges is short quotations and sound bites, often taken out of context, always much less than you attempted to say. And even if the story portrays your comments accurately, the headline, written by an editor who may have his own agenda, sometimes gives readers a distorted view of what you said.<sup>39</sup>

Measured by the standards of academic discourse, the media conversation is poorly structured, superficial, and chaotic. But it's the only public conversation we have that's relevant to politics. It's the agora of modern democracy. Every political office in Ottawa has at least one television set running all the time, turned to the news networks. Every politician, staffer, and civil servant starts the day with a news summary as reading as many newspapers as possible. Many have their BlackBerry set to bring them instantaneous news alerts on topics they're interested in. Even if they don't, someone is sure to email them any important story as soon as it appears on a media website. It may not be perfect, but it's what we have, and as a conservative I have to respect that. It's a privilege to be granted a voice in the democratic Tower of Babel. My goal is to articulate an unabashed but reasoned conservative world view amidst all the other viewpoints struggling to be represented in the conversation. Occasionally I may persuade someone, but most of the time I, like all the other voices, am speaking primarily to those already disposed to agree with me. What I'm doing, in effect, is to provide others with intellectually grounded arguments for use as political weapons.

In a modern pluralistic democracy, the public forum is adversarial in a multilateral way. Virtually all viewpoints are represented, albeit some much more strongly than others. Very little goes unchallenged for any length of time, particularly now that the mainstream media are heavily influenced by the blogosphere and social media. The process is messy and unsatisfying if you believe the goal of rational inquiry is to establish the truth, but it does force ideas about public affairs to be tested in public. Ultimately political decision-makers, most of whom have little expertise in anything except getting elected, will be influenced by what they think is true, or at least popular. So it's worthwhile to be a part of the media conversation, even though I recognize the limits on what any individual can accomplish. And, fundamentally, those limits are a good thing, for democracy is not supposed to mean rule by an intellectual elite.

## Inclusion

I conclude with some observations on the four adversarial processes that I have encountered in Canadian public affairs. Table 9.1 provides an overview of these processes as seen from the point of view of individual taking part in them:

Table 9.1. Adversarial Processes in Public Affairs

	Publication of books	Expert witness in litigation	Political party worker	Media pundit
Intellectual rigour	Can be high, though must be saleable	Very high because of intense scrutiny	Low for policies, which are determined by political appeal	Low because of very short format
Control of message	High, as long as acceptable to publisher	High, within narrow focus determined by employer	Low, message controlled by party leader	High in op-ed or TV appearance; low when serving as journalistic source
Policy impact	Can be substantial if tied to political movement or mass media	Can be substantial but narrowly focused	Occasionally substantial, but subject to vagaries of politics	Low unless connected to political movement
Level of influence	Usually low unless book becomes widely discussed	Narrow, confined to restricted area of law, but can be important within that area	Wide if working for a major party	Superficial but wide if appearing in national media

Being an expert witness is closest to the academic life. The intellectual rigour of the work is very high, indeed higher than that of much academic research; and the researcher controls what he is doing, albeit within the limits set by relevance to the litigation. The adversarial aspect is intense and highly focused in the "battle of the experts" taking place in the courtroom. Impact on the law can be significant if the case is precedent-setting and if your research helps win the legal battle.

Writing books for the general public is also relatively close to academic life, except that you have to express yourself in a way that is intelligible and interesting to non-specialists. As author, you get to choose your topic and say what you want, assuming it's not libellous

and the publisher thinks it's saleable. The book market is pluralistic, so you have to expect critical reviews and denunciation in parts of the media – all of which can be good for sales. A widely discussed book can help nudge public opinion in a certain direction over time. But in the short run a book by itself will have little or no impact on public policy unless it's tied in with a political movement or resonates in the media echo chamber.

Working for a political party holds out the prospect, and sometimes the reality, of getting close to governmental power and being able to influence legislation, regulation, and the appointment of officials. Of course, you have to fight through the intensely adversarial process of election campaigns to get to that stage. But even if you do get close to power, the result will probably be less enticing than the prospect. In competitive democracy, it is almost impossible to evade the median voter theorem,<sup>40</sup> so your policy views are likely to be implemented only if they are close to the conventional wisdom.

Finally, being in the media gives you wide but superficial influence. Tens of thousands of readers may peruse your 650-word op-ed, and hundreds of thousands of viewers may see your eight-second clip on the evening news. But your opinions are just part of the democratic babel, and it is virtually impossible to track any influence on government policy arising out of participating in the media. Your contribution to help keep the democratic conversation going, not to achieve any particular result.

Overall, there is no particular imperative for scholars to participate in public affairs, certainly no more than for other professionally educated people. It's a matter of taste and interest, not moral obligation. The scholar who does choose to participate in public life will find that his search and writing ability, as well as his knowledge of his discipline, can be useful assets in carving out a niche for himself. For a person with the right temperament, the activities themselves can be their own reward, and they are sometimes even financially remunerative. But messianic hopes of changing the system are best parked at the entrance. If you do decide to play in this league, you'll be in with thousands of teammates and opponents who couldn't care less that you are the acknowledged authority on John Stuart Mill's early life, or the theory of justice, or the effects of proportional representation on party competition. You'll be there hitting and getting hit with everyone else, no one knowing for sure where it's all going. It's a long way from academic life.

## NOTES

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- 2 <http://www.canada.com/national/nationalpost/news/story.html?id=6ac60088-625d-4f18-877b-e34e3dced5f5>.
- 3 Aristotle, *Rhetoric*, 1356a.
- 4 J.L. Talmon, *The Origins of Totalitarian Democracy* (London: Norton, 1952).
- 5 *Brown v. Allen* (1952), <http://www.jrank.org/quotations/pages/835/>.
- 6 Robert-H-Jackson-Robert-Houghwout-Jackson.html.
- 7 Mary Mack, *Jeremy Bentham: An Odyssey of Ideas, 1748–1792* (London: Heinemann, 1962), 362.
- 8 James Surowiecki, *The Wisdom of Croats* (New York: Doubleday, 2004).
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- 11 Thomas Flanagan, *Louis "David" Riel: "Prophet of the New World,"* 2nd ed. (Toronto: University of Toronto Press, 1996; 1st ed. 1979); *Riel and the Rebellion: 1885 Reconsidered*, 2nd ed. (Toronto: University of Toronto Press, 2000; 1st ed. Saskatoon: Western Producer, 1983).
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- 15 Ezra Levant, *Shakedown: How Our Government Is Undermining Democracy in the Name of Human Rights* (Toronto: McClelland & Stewart, 2009).
- 16 Tom Flanagan, *First Nations? Second Thoughts*, 2nd ed. (Montreal: McGill-Queen's University Press, 2008; 1st ed., 2000); Tom Flanagan, Christopher Alcantara, and André Le Dressay, *Beyond the Indian Act: Restoring Aboriginal Property Rights* (Montreal: McGill-Queen's University Press, 2010).

16. The Donner Canadian Prize for the best book of the year in Canadian public policy; and the Canadian Policy Science Association's Donald Smiley Prize for best book of the year in Canadian politics, both awarded in 2001.
17. Flanagan et al., *Beyond the Indian Act*, 142–6.
18. Thomas Flanagan, *Metis Lands in Manitoba* (Calgary: University of Calgary Press, 1991).
19. *Manitoba Métis Federation et al. v. A.G. of Canada et al.*, 2007 MBQB 293.
20. Upheld by the Supreme Court of Canada, *R. v. Blais*, [2003] 2 S.C.R. 236, 2003 SCC 44.
21. *Canada v. Benoit*, 2003 CAF 236 (2003).
22. *Buffalo v. Canada*, 2001 CAF 282 (2001).
23. *Daniels et al. v. HMTQ et al.*, Federal Court file no. T-2172-99.
24. E.g., Thomas Flanagan, "The History of Metis Aboriginal Rights: Politics, Principle, and Policy," *Canadian Journal of Law and Society* 5 (1990), 71–94.
25. Readers interested in this topic will want to consult Arthur J. Ray, *Telling It to the Judge: Taking Native History to Court* (Montreal: McGill-Queen's University Press, 2012). I had not seen this book at the time of revising this chapter (June 2011).
26. William D. Gairdner, *The Trouble with Canada* (Toronto: Stoddart, 1990); Peter Brimelow, *The Patriot Game: Canada and the Canadian Question Revisited* (Toronto: Key Porter, 1988).
27. Reform Party of Canada, Blue Book, 1988, p. 26. At <http://contentdm.ualgary.ca/cdm4/document.php?CISOROOT=/reform&CISOPTR=197>.
28. Tom Flanagan, *Waiting for the Wave: The Reform Party and Preston Manning* (Toronto: Stoddart, 1995); 2nd ed. repub. as *Waiting for the Wave: The Reform Party and the Conservative Movement* (Montreal: McGill-Queen's University Press, 2009).
29. *Ibid.*, 30.
30. *Ibid.*, 22.
31. Stephen Harper and Tom Flanagan, "Our Benign Dictatorship," *The Next City* (January 1997), 35–40, 54–7.
32. Stephen Harper et al., "Open Letter to Ralph Klein," *National Post*, 24 Jan. 2001.
33. Tom Flanagan, *Harper's Team: Behind the Scenes in the Conservative Rise to Power*, 2nd ed. (Montreal: McGill-Queen's University Press, 2009), 39.
34. *Ibid.*, 179–80.
35. Susan Delacourt, *Juggernaut: Paul Martin's Campaign for Chrétien's Crown* (Toronto: McClelland & Stewart, 2003).
36. John Laschinger and Geoffrey Stevens, *Leaders and Lesser Mortals* (Toronto: Key Porter, 1992), 6.

37. Frans de Waal, *Chimpanzee Politics: Power and Sex among Apes* (Baltimore: Johns Hopkins University Press, 1982).
38. Jeffrey Simpson, *The Friendly Dictatorship* (Toronto: McClelland & Stewart, 2001).
39. E.g., my interview reported in Peter Zimonjic, "Ex-Harper aide: Turn AG loose on MPs' expenses," *Toronto Sun*, 28 Apr. 2010. The headline wrongly gives the impression I think there's a lot of mispending by MPs waiting to be uncovered, while the story accurately reports what I really said: "Flanagan said he's less concerned with the estimated one-fifth of the board's budget used to pay for MPs' expenses than he is with the remaining \$400 million. 'I think there's all sorts of antiquated stuff that is not a case of individual members misusing their allowances but rather of a sluggish institution that hasn't really been open to public view for a long time or maybe ever.'"
40. Anthony Downs, *An Economic Theory of Democracy* (New York: Harper & Row, 1957). Downs showed that, given certain assumptions, political parties competing for power tend to position themselves towards the middle of whatever ideological spectrum prevails.