



THE CONSTITUTION OF CANADA

An Introduction to its Development and Law



W.P.M. Kennedy
Introduction by Martin Friedland

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Cover image: Picture of W.P.M. Kennedy probably taken in 1923, when he was 44,
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THE ENIGMATIC W.P.M. KENNEDY

*Martin Friedland*¹

I have a three-fold interest in W.P.M. Kennedy, the author of the ground-breaking, *The Constitution of Canada* published in 1922.² He was the first dean of law at the University of Toronto. In 1972, I became the school's fourth dean. As the founder of the law school, Kennedy holds an exalted position in the history of the faculty. Studying his career, I believed, would give us a better understanding of the origins and the development of the faculty of law.

I am also interested in Kennedy because in 1983 my wife and I bought the Kennedy family cottage north of Huntsville, just west of Algonquin Park, where Kennedy and his wife spent almost four months each summer until shortly before he died in 1963. He had purchased the cottage on Beaver Lake in 1940 and each summer had his correspondence redirected to the post-office in the nearby Town of Kearney. He loved the cottage and is buried, along with his wife, in an Anglican cemetery in the neighboring town of Emsdale. The cottage came with a collection of his books and a trunk full of letters and documents which he had accumulated over the summers, but did not need to take back to the city. I subsequently donated the material relevant to Dean Kennedy, including the picture on the cover of this new edition, to the University of Toronto Archives.³

One of the most important events in the history of the University of Toronto Law School took place at that cottage. Kennedy, a non-lawyer, who had, it seems, never taken a formal course in any legal subject, started the undergraduate "honour law" program between the wars. Graduates of that program received a BA degree from the University but were given no credit by

1 Martin L. Friedland, CC, QC, LLD, FRSC, University Professor and James M. Tory professor of law emeritus, University of Toronto. I have benefitted from discussions with and comments from a number of constitutional scholars and others, in particular, Alan Cairns, Judith Friedland, Peter Hogg, Ian Kyer, Patrick Macklem, Patricia McMahon, Mayo Moran, Robert Prichard, Kent Roach, Sydney Robins, Carol Rogerson, Peter Russell, David Schneiderman, Robert Sharpe and participants at a faculty workshop on September 23, 2013. I was fortunate to have had the research assistance of an excellent summer research assistant, Stephen Aylward, who had just completed his law degree at the University of Toronto and had not yet left for Ottawa to clerk for Supreme Court Justice Thomas Cromwell. Harold Averill and his colleagues at the University of Toronto Archives and Sufei Xu and her colleagues at the Bora Laskin Law Library provided their usual expert assistance.

2 W.P.M. Kennedy, *The Constitution of Canada* (London: Oxford University Press, 1922). There was a second impression in 1931 and a second edition in 1938. The second edition reprinted the first edition and added four chapters relating to the years after 1922 as well as two appendices on current events, one on the Canadian New Deal cases and another on the abdication of Edward VIII.

3 Martin Friedland, *My Life in Crime and Other Academic Adventures* (University of Toronto Press, 2007), pp. 33–35.

the Law Society of Upper Canada, which operated Osgoode Hall Law School, the only professional law school in the province.⁴ Cecil Augustus Wright—usually referred to as “Caesar” Wright—was a professor at Osgoode (later its dean) and was unhappy with the way legal education was being delivered there. He thought of it as a “trade school.” In 1945, he and his good friend and fellow lawyer Sidney Smith, who had become the president of the University of Toronto, developed a plan⁵ to transfer professional legal education from Osgoode Hall to the University of Toronto. One aspect of the plan was that Bora Laskin, who many years later would become the chief justice of Canada, would leave the University of Toronto, where he had been a student and later a professor, and join Osgoode Hall Law School. Then, at an appropriate time, Wright, Laskin, and others, such as John Willis, would leave Osgoode and start a professional law school at the University of Toronto, with Wright as the dean.⁶ Wright wrote to Smith about coming to the University: “*I will go—provided there is hope—and enough money to live on—and I am sure I can take Laskin and Willis—both of whom should be there.*”⁷ How much Laskin knew about the plan is not clear.⁸

The scheme required Kennedy’s blessing—or at least his acquiescence. Laskin was one of Kennedy’s favourite colleagues. So one summer day in mid-July 1945, after Laskin had discussed the strategy with Caesar Wright at Wright’s northern cottage, Wright and Laskin went to see Kennedy at his cottage near Kearney. Wright and Kennedy walked along a well-groomed waterside trail, with Laskin walking slightly behind. Kennedy could see some merit in the scheme as could President Smith, which, as events unfolded, did indeed, come to pass. Laskin went to Osgoode that year and in 1949 Wright, Willis, and Laskin left Osgoode and founded the so-called “modern law school” at the University of Toronto. The Law Society, however, did not give up its monopoly on legal education. Graduates of the University

4 Osgoode Hall Law School remained in downtown Toronto, run by the Law Society, until it was transferred to York University in the 1960s.

5 Claude Bissell, in his memoir, *Halfway up Parnassus* (University of Toronto Press, 1974), wrote that they “worked out a coup” (p. 99).

6 See Ian Kyer and Jerome Bickenbach, *The Fiercest Debate* (University of Toronto Press, 1987), p. 164 et seq.; Friedland, *My Life in Crime*, pp. 33–35; and Friedland, *The University of Toronto: A History* (University of Toronto Press, 2002), pp. 438–42.

7 Wright to Smith, July 12, 1945, cited in Kyer and Bickenbach, p. 168.

8 See Bora Laskin, “Cecil A. Wright: A Personal Memoir,” *University of Toronto Law Journal* 33 (1983): 148 at 159. But see Philip Girard, *Bora Laskin: Bringing Law to Life* (University of Toronto Press, 2005), which assumes that Laskin was involved (pp. 152–54). Girard states that the argument that Wright and Laskin put to Kennedy on the lakeside walk was that “Laskin could act as a bridge between Osgoode and Toronto, between the benchers and the university authorities, with a view to establishing a professional university based law school” (p. 153).

of Toronto had to spend an extra year at Osgoode until 1957, when the U of T law school was recognized by the Law Society, and other law schools in Ontario were created.⁹ Like Kennedy, I keep that path along the lakeshore of our cottage very well groomed, and may someday put up a plaque in honour of the event that took place there.

I was also very interested in Kennedy, who I never met, because, as the author of *The University of Toronto: A History*,¹⁰ I discovered that Kennedy was one of the University's most distinguished, engaging, and enigmatic personalities. His book, *The Constitution of Canada*, is still well known to students of the Canadian constitution. In 1998, my colleague R.C.B. Risk published a brilliant article on Kennedy, appropriately entitled "The Many Minds of W.P.M. Kennedy,"¹¹ which I have, in part, drawn on for this introduction. Unfortunately, Kennedy destroyed all his personal papers in Toronto shortly before he died.¹² To write a full biography of him would be difficult, although not impossible.

The year 1922—the year *The Constitution of Canada*, was first published—is a particularly important date in the history of the University of Toronto. Canada had survived the Great War and had become a more confident nation. It had been included as a member of the League of Nations and continued as a significant partner in the British Commonwealth. This optimism was reflected at the University of Toronto. The opening paragraph of chapter 24 of my history of the University notes the significance of that year:

In early 1922, two important events took place at the University of Toronto: the discovery of insulin and the creation of the School of Graduate Studies. The former established Toronto's international reputation, and some would argue that the combination of the two was the turning point in Toronto's becoming the leading university in Canada.¹³

Kennedy was part of that renaissance.

9 Friedland, *My Life in Crime*, p. 35.

10 Martin Friedland, *The University of Toronto*.

11 R.C.B. Risk, "The Many Minds of W.P.M. Kennedy" *University of Toronto Law Journal* (1998): 48, republished in a collection of essays, R.C.B. Risk (Blaine Baker and Jim Phillips, eds.), *A History of Canadian Legal Thought: Collected Essays* (University of Toronto Press, 2006), p. 300 et seq.

12 Risk, "The Many Minds," p. 354; Gilbert Kennedy (W.P.M.'s son) oral interview (interview by Maryla Waters 1983, Victoria University), p. 15.

13 Friedland, *U of T History*, p. 285.

KENNEDY'S BACKGROUND

There are many gaps in our knowledge of W.P.M. Kennedy's background and some of what we know is opaque.¹⁴ He was born on January 8, 1879, in Shankill, a suburb of Dublin, Ireland, the eldest of 10 children.¹⁵ According to an oral interview with his son Gilbert in 1983, Kennedy left home at the age of 14. "Dad was a bit reticent about his early life,"¹⁶ Gilbert told the interviewer. Gilbert's wife Betty recently told me that as far as she knows, Kennedy "ran away from home."¹⁷ W.P.M. Kennedy's father was a Presbyterian minister, whose family had come from Scotland and Kennedy was raised in that faith. Kennedy's father later left Ireland and spent his last 25 years as a minister in Scotland. It appears that Kennedy did not visit his father in the summer of 1926, his only trip back to the "old country."¹⁸

W.P.M. Kennedy attended Trinity College Dublin, graduating in 1900 with a gold medal in history and English literature along with several other awards, including a prize in English prose. His earlier education, according to entries he prepared for *The Canadian Who's Who*, consisted of "private tuition; Paris, Vienna & Berlin."¹⁹ Why he went to school—if he did go to school—in those cities is unclear. He certainly spent time in Paris because one of the books left in his cottage library, *Cavalier Poets*,²⁰ was signed by him and dated "Paris Xmas 1904."

After graduating, he became a private tutor for a number of years and for about two years before coming to Canada in 1913 taught school at a Catholic boys' school in Ramsgate, England,²¹ near Canterbury, and then at a boys' college in Cuba. He left the latter and returned to England because

14 See W.P.M. Kennedy file at the U of T Archives; Risk, "The Many Minds"; Gilbert Kennedy's 1983 oral history: conversation with Betty Kennedy (Gilbert's wife), July 8, 2013; discussion with Frere Kennedy, July 16, 2013; various *Who's Who* volumes, obituary by Alexander Brady in *Proceedings of the Royal Society of Canada*, 1964, p. 109.

15 I did an on-line search of the census and the birth and death records from England and Ireland for the relevant periods, but could not find W.P.M. Kennedy's name or any version of his given names (linking it with his approximate date of birth and occupation, etc.) in the records amongst the great number of William Kennedy's listed.

16 P. 8.

17 Telephone conversation with Betty Kennedy, July 8, 2013.

18 Conversation with Frere Kennedy, July 16, 2013.

19 See, e.g., the 1948 edition (Toronto, Trans-Canada Press).

20 Clarence M. Lindsay (Abbey Press, New York, 1901).

21 A "to-whom-it may concern" letter from the head prefect of studies at St. Augustine's College, Ramsgate, February 30, 1912 in the St. Francis Xavier College files, saying that Kennedy was "an excellent disciplinarian, a capable and successful teacher."

he could not bear the heat.²² He was unable to find an academic position in England.

Even his name is uncertain. Everyone knows him as William Paul McLure Kennedy—hence he is usually referred to as W.P.M. Kennedy—but his Trinity College records show him as William Waugh McLure Kennedy.²³ His early books—before coming to Canada—dropped the name Waugh and had him as “W. M. Kennedy” on the title page.²⁴ His mother was a McClure, but where the name Waugh came from is not certain.²⁵ Kennedy started using W.P.M. as early as 1904, according to his signature in the previously mentioned book of poetry.

Kennedy’s doctorate from Trinity College, a “Litt.D,” which he received in 1919, is also not clear-cut. He gave the impression in his *Who’s Who* entries that it was a research doctorate in the traditional sense, as the official history of the department of history and my own history of the University assumed,²⁶ but it was, in fact, a doctorate that was granted on application based on published work, similar to such degrees granted by Oxford and Cambridge.

Between 1902 and 1911, he spent considerable periods of time at a monastery in Mirfield England, near Leeds, home of the High Anglican Community of the Resurrection.²⁷ According to the Community’s archivist, he lived there in 1903, and in 1906 to 1908, inclusive, and perhaps in 1904 and 1905.²⁸ It may be that Kennedy’s objective was to continue with a life in the Community of the Resurrection, perhaps as a church scholar. The head of Mirfield was at the time Walter Howard Frere, later Bishop Frere, an important Anglican Church scholar, who, with Kennedy’s help, published a three-volume work on Tudor church history in 1910.²⁹ Kennedy assisted with the first two volumes and was named as the

22 Similar letter from the prefect of studies at The English College, Marianas, Cuba, August 12, 1912 in the St. Francis Xavier College files, saying that Kennedy was “an excellent teacher” and “a thorough disciplinarian.”

23 This fact was discovered by Trinity College Dublin archivist Ellen O’Flaherty: e-mails dated May 2013.

24 *Archbishop Parker* (London: Pitman, 1908), *The “Interpretations” of the Bishops* (London: Longmans, 1908). The title page of volume 2 of *Visitation Articles and Injunctions* states “With the assistance of William McLure Kennedy, M.A.” (3 vols; Longmans, 1910).

25 It likely comes from his mother’s side of the family. There is a privately published history of the McLure family on the internet which mentions a justice of the peace in the eighteenth century, William Waugh McLure, who lived in Lurgan, Ireland, the same town where Kennedy’s father was a minister.

26 Robert Bothwell, *Laying the Foundation* (Department of History, University of Toronto, 1991), pp. 47–48: “Kennedy, hired in 1916, possessed the only genuine research degree in the department.” See also, Friedland, *The University of Toronto*, p. 297.

27 See Alan Wilkinson, *The Community of the Resurrection: a Centenary History* (London: SCM Press, 1992).

28 E-mail from the Community of the Resurrection archivist Brother Steven Haws, May 13, 2013.

29 See B. Gordon-Taylor and N. Stebbing, eds., *Walter Frere, Scholar, Monk, Bishop* (Norwich: Canterbury Press, 2011).

co-author of the second volume, published in 1910.³⁰ Kennedy named one of his sons—the person who sold us the cottage—Walter Howard Frere and is known simply as Frere. Frere Kennedy was trained in law, but became an Anglican priest and later entered and headed an Anglican monastery in Bracebridge, Ontario, relatively close to the cottage he had inherited. The monastery, the Society of St. John the Evangelist, grew out of the same movement—the Oxford Movement—that had established the Community of the Resurrection in England.³¹ At the time of writing, Frere is in a retirement home in Ottawa.³² He has a picture of Bishop Frere in his room, with a signed note that it is to his godson, Frere. Unfortunately, the Bishop Frere papers in England contain no correspondence to or from W.P.M. Kennedy.³³

Kennedy was a significant Tudor scholar, publishing several books in 1908, including *Archbishop Parker*,³⁴ a book on the first Archbishop of Canterbury elected under Elizabeth I. This was written under the direction of a major ecclesiastical scholar, W.H. Hutton of St. John's College, Oxford, and was part of a series of books edited by Hutton, *Makers of National History*. Again, it is likely that Kennedy spent time at Oxford working on the Archbishop Parker book, although there is no record of him as a student in the St. John's College or other college records or of obtaining an Oxford

30 *Visitation Articles and Injunctions of the Period of the Reformation, 1536–1575*. The three-volume set was published by Longmans in 1910 for the Alcuin Club. When they were originally published, Kennedy was thanked in the preface to volume 1, made a co-author of volume 2 (“With the assistance of”), and was not named in volume 3. Frere stated in volume 1: “Mr. W.M. Kennedy worked at the whole in the earlier stages of preparation, and was responsible for seeing the greater part of the earlier set of documents through the press; but when that volume was printed off he was unable to give further help.” In 1917, Kennedy presented a three-volume set to the University of Toronto Library and all three volumes state on their title pages: “Edited, with Introduction and Notes, by W.H. Frere, M.A., and W.P.M. Kennedy, M.A.” The three volumes are otherwise the same as the volumes originally published, as can be seen from the three volumes in the Trinity College Library at the University of Toronto and two of the three volumes at the Pontifical Institute’s library (now online). Kennedy must have had Longmans’ and/or Walter Frere’s permission to change the authorship because he later published a note in the *English Historical Review*, October 1926, stating that the three volumes were jointly authored (pp. 577–79). No doubt Kennedy felt justified in requesting the change because of his 1908 book on the documents, which probably led to the more ambitious project at Mirfield on which Kennedy was certainly a collaborator. In the list of his other books at the front of *The Constitution of Canada*, Kennedy simply states for all three: “With Dr. W.H. Frere.”

31 See Martin L. Smith, “Benson, Richard Mieux, 1824–1915,” *Dictionary of National Biography*.

32 I met with Frere—now over 90—for over two hours in Ottawa on July 16, 2013.

33 Letter from Lydia Dean, Borthwick Institute for Archives, University of York, England, June 13, 2013.

34 (London: Pitman, 1908). There is a draft of this book in the Fisher Library. He also published that same year, *The “Interpretations” of the Bishops and Their Influence on Elizabethan Episcopal Policy* (London: Longmans, 1908) and in the preface to that book he thanks Reverend E. Rhys Jones, S. Luke’s Vicarage, “beneath whose hospitable roof this little book was largely written.” Jones was in a church in Reigate, about midway between London and Brighton, and so we can conclude that Kennedy spent some time there.

degree.³⁵ Although Kennedy did not claim an Oxford degree in his publications, he apparently never corrected the annual University Calendar, which certainly gives one the impression that he had a master's degree from Oxford as well as one from Trinity College Dublin. Each year—from the 1916–17 Calendar³⁶ until his death in 1963, part of the entry for Kennedy would read “M.A., Dublin, Oxon.”

The Parker book was well received. The *Guardian* reviewer wrote: “Exceedingly well conceived, clearly expressed, and compiled with great care.”³⁷ Kennedy likely spent time in London because he thanks historian Frederick Pollard of London University in the preface to another book, *Parish Life under Queen Elizabeth*, published in England under the name W.P.M. Kennedy in 1914 after he came to Canada and based on research notes that he brought with him from England.³⁸

In 1913, at age 34, Kennedy moved to Canada, taking up a position teaching modern history and English literature at St. Francis Xavier College, a Roman Catholic college in Nova Scotia.³⁹ Some years earlier, perhaps during his stay at the Mirfield monastery, Kennedy had turned to Catholicism.⁴⁰ His application to the Nova Scotia college was supported by his former teachers at Trinity College Dublin, including a form reference letter, dated 1901, by the then eminent Shakespearean scholar Edward Dowden⁴¹ (who

35 E-mails from Sian Astill, Oxford University Archives, May 2013, and from Michael Riordon and Alastair Wright, St John's College, Oxford, May 2013. A subsequent request by me to double check their records resulted in the following note from Sian Astill, Oxford University Archives, dated June 26, 2013, who conducted research in all their registers, and concludes: “We can find no record, therefore, that Kennedy was a member of the University or obtained the degree of MA at Oxford.”

Oxford University permits graduates of Trinity College Dublin and Cambridge and other universities, who are at Oxford studying for a degree, to obtain an Oxford BA “by incorporation.” The process, which changed over the years, is fully described under the heading “incorporation” on the Oxford University website. There is no record that Kennedy ever received an Oxford degree by incorporation: e-mail from Emma Harrod, Oxford University Archives, September 30, 2013. Perhaps the thought that Kennedy could have received the degree if he had become a student at Oxford justified, in his mind, claiming it. Becoming a student, however, required the payment of fees and it is clear that from the Mirfield records he had no money.

36 The 1915–16 calendar is missing from the U of T Archives. All other calendars for the relevant years were consulted.

37 The review was found in an advertisement on the back pages of a book by W.H. Hutton on Thomas à Becket in the series he edited, *Makers of National History*.

38 (London: Manresa Press, 1914). See the preface to the book and Risk, “The Many Minds,” pp. 355–56.

39 He describes himself in the *Parish Life* book as “Professor of Modern History in the University of St. Francis Xavier's College.”

40 A book on Tudor history by Kennedy, *Elizabethan Episcopal Administration: An Essay in Sociology and Politics*, published in 1924, was dedicated to Frere, “my greatest friend,” and refers to “a friendship which, since my university days, has known neither deviation nor shadow caused by turning.” This is no doubt a reference to Kennedy becoming a Catholic, while at or after he was at Mirfield.

41 *The Globe*, June 14, 1913. I am grateful to the archivist at St. Francis Xavier, Kathleen MacKenzie, for providing documents on Kennedy's time in Nova Scotia.

is mentioned—unfavourably—in James Joyce’s *Ulysses*, perhaps because Dowden refused to give Joyce a good reference for a position).⁴² Kennedy, it will be recalled, had received numerous prizes, including the Shakespeare Prize, while at Trinity. The two schools Kennedy had taught at before coming to Canada stressed that Kennedy was a good teacher and a strict disciplinarian.⁴³

The following year, 1914, he was invited to join the faculty at St. Michael’s College in the University of Toronto, where he taught English literature, a college subject, for the next eight years.⁴⁴ His son Gilbert believes his father first came to Toronto during the summer of 1914 because he would talk about canoeing during that summer near Hudson’s Bay with a friend and when they emerged from the wilderness discovered that war had been declared.⁴⁵ Why he stayed at St. F.X. for only one year is also not clear. His friend, Father Edmund McCorkell, who taught with him at St. Michael’s and later became the head of St. Michael’s College, stated in an oral interview in 1974: “I don’t know what happened down there . . . but McNeil, the Archbishop [of Toronto, who earlier had been the rector at St Francis Xavier], who was influential down there . . . got him to come up here and got Father Carr to take him on the staff.”⁴⁶ The rector of St. F. X was happy to see him go, writing to a college benefactor the following year that Kennedy had “a loose screw in his mechanism.”⁴⁷ The vice rector was equally uncomplimentary, telling a contact at Oxford who was helping to find Kennedy’s replacement: “For Heaven’s sake try and get us a decent sober man with a level head.”⁴⁸ In the same letter the vice-rector writes: “I wish you would try and find out through the Jesuits who this W.M. Kennedy is . . . I understand he was once a Jesuit novice. He says he studied History at Oxford for a time.” The St. F.X. files do not contain a letter of application from Kennedy. In a glowing report of an interview in the student newspaper in October 1913⁴⁹

42 See Helen Sword, *Ghostwriting Modernism* (Cornell University Press, 2002), pp. 60–63. References to Dowden in *Ulysses* can be found in Random House’s 1961 Modern Library Edition, p. 204 and p. 214.

43 See earlier footnotes on the two schools.

44 I am grateful for the assistance of St. Michael’s College archivist Constance Lewin.

45 Gilbert Kennedy interview, p. 9.

46 Edmund McCorkell oral interview conducted by Richard Alway, June 1974, p. 81.

47 Letter from Rector Hugh MacPherson to John E. Somers, May 18, 1914, also referred to in James D. Cameron, *For the People: A History of St Francis Xavier University* (McGill-Queen’s, 1996), p. 458, footnote 95. I am grateful to Professor Cameron for his further assistance in my quest to understand Kennedy’s year in Nova Scotia.

48 Letter from Vice-Rector Jimmy Tompkins to J.M.P. Coady, May 19, 1914; and see also the later letter to Coady dated June 3, 1914: “If you should chance to be [in Dublin] look up his history. I have an idea that it is somewhat unsavory.” I am grateful to Anne Marie MacNeil of the Beaton Archives in Nova Scotia for locating these documents.

49 *The Xaverian*.

(“Mr. Kennedy has won nothing but golden opinions from his students”), Kennedy is reported to have said that he “studied history under ... the late Prof Stubbs, Oxford,” presumably after graduating from Trinity College. If so, it could not have been for long because Stubbs became ill in November 1900 and died in April 1901.

It seems likely that Kennedy had not planned on leaving St. F.X., because a few months before he left, the vice-rector told a friend that Kennedy and another person were “hard at work on a 600 page History of the Catholic Church in Nova Scotia.”⁵⁰

One curious fact about Kennedy’s stay in Nova Scotia is that the book he published in 1914, which was written at St F. X., is dedicated to “S.J.C.” and the dedication is dated October 12, 1913. Gilbert Kennedy states that in 1968 he met a priest that had been in one of W.P.M. Kennedy’s classes in 1913–14, who told him that S.J.C. was a fellow student, Sarah Josephine Cameron, one of the very few women in the class.⁵¹ According to Frere Kennedy, Gilbert remembers the priest asking Gilbert whether his father had married Sarah Cameron. That is all we know, except that Sarah’s uncle was Bishop Cameron, a former rector of the college. The year after Kennedy left, Ms. Cameron became an editor of the college paper and published three articles, all of which would have interested Kennedy, one on the British Empire, one on Byron, and one on “conversation.”⁵² There was obviously some sort of close relationship between the two or the dedication would not have been made, but whether it was more than an intellectual bonding or perhaps simply research assistance is not known. Ms. Cameron, who graduated in 1916 with a number of prizes, became a teacher in Saskatchewan, never married, and died in 1990.⁵³ Historian P.B. Waite, who does not mention Ms. Cameron, put it this way in his book on Larry Mackenzie, who later worked under Kennedy at the University of Toronto: “The little college in the little town could not contain Kennedy. He was too hot to handle; if the girls in the St. Bernard residence were not scandalized, the Roman Catholic authorities of the college were. He was unloaded onto St. Michael’s College.”⁵⁴

Kennedy continued to publish in Tudor history. A book, published in 1916, *Studies in Tudor History*, simply says “St. Michael’s College, Toronto

50 Letter from Vice Rector Tompkins to David Allison, March 29, 1914.

51 See the introductory pages of the Gilbert Kennedy interview, where the interviewer sets out the publications of W.P.M. Kennedy. There were only two other women in Sarah Cameron’s year.

52 *The Xaverian*.

53 See the *Antigonish Casket*, April 11, 1990, p. 7.

54 *Lord of Point Grey* (University of British Columbia Press, 1987), p. 58.

University.”⁵⁵ While at St. Michael’s he took the first steps in setting up a library of mediaeval history,⁵⁶ which may have played a role in laying the groundwork for what later became the world famous Pontifical Institute for Mediaeval Studies. No doubt, Father Carr, the president of St. Michael’s, who told University President Robert Falconer that he wanted to make St. Michael’s “the greatest Catholic education centre in the world,”⁵⁷ was involved in these early steps.

In spite of leaving St. F.X. after only one year in curious circumstances, Kennedy took the unusual step in 1915 of asking the rector of St. F. X.—the person who wrote one of the previously mentioned letters—if the college would grant him an honorary doctorate. “I write to ask you if St. F.X. could see its way to confer on me *causa honoris* an LL.D. for my work on Tudor History.” He adds that “His Grace the Archbishop will visit Washington in February and will propose me there for an honorary D. Lit.”⁵⁸ The rector replied that he had discussed the matter with some of the faculty and believed that “a resolution in favor of granting you an LL.D. would not carry at a Faculty meeting.”⁵⁹

McCorkell, who had been ordained as a priest in 1916, came to St. Michael’s the following year to teach some of Kennedy’s English courses.⁶⁰ McCorkell states in his oral interview that Kennedy “really was a very effective teacher, very brilliant, and he was quite a tonic here, and gave the place [a lift] in the way of scholarship and general interest.” McCorkell “liked him personally a lot and I think we all did.” But he added: “It was hard to discover his true background. He boasted about so many things that [people] figured that he had to have lived a hundred years to do all the things that he said he did.”⁶¹ R.C.B. Risk’s assessment is that Kennedy was “inclined to exaggerate.”⁶² That is certainly my conclusion as well. Still, like McCorkell, in spite of Kennedy’s exaggeration and self-promotion, I believe that if I had known him, I would also have “liked him personally a lot.”

A year after moving to Toronto, he married a Roman Catholic woman, Teresa Johnson, who had recently come from England to Canada and worked

55 (London: Constable, 1916).

56 Letter from Falconer to Kennedy, September 3, 1915.

57 Friedland, *University of Toronto*, p. 218; see Carr to Falconer, May 10, 1916.

58 Letter dated January 6, 1915.

59 Letter dated January 15, 1915. It is not known whether the archbishop took steps to try to get an LL.D. from, I assume, the Catholic University of America in Washington.

60 McCorkell interview, pp. 1, 76–82.

61 McCorkell, pp. 76–79.

62 Risk, “The Many Minds,” p. 355, note 5. Risk goes on to say: “but his reputation is itself also an exaggeration.”

for the English publishing firm of J.M. Dent, which had opened in Toronto in 1913.⁶³ They were married in St. Basil's church on the St. Michael's campus and lived in an apartment across from the College on the south side of Wellesley Street.⁶⁴ Two years later, June 1917, they had a child, Gilbert, while at their summer cottage in Muskoka.⁶⁵ Gilbert and his sister Beatrice, born a little over a year later, were baptized as Roman Catholics. The family's financial situation would have been difficult as Kennedy's wife was unable to continue working and Kennedy's pay was relatively modest—a total of \$2,000 a year, worth under \$40,000 today.⁶⁶

That same year, 1917–18, in part to supplement his earnings, Kennedy started teaching courses in constitutional history as a lecturer in the department of history. Unlike English, which was a subject taught and paid for by the colleges, modern history—for historical reasons⁶⁷—was a university subject taught by persons appointed and paid by the University. George Wrong, the chair of history, wanted to reclaim jurisdiction over constitutional history,⁶⁸ which was then being taught by Henry Lefroy in the department of political economy. Kennedy taught three history courses that year, one in Canadian and two in English constitutional history, and was paid \$750 on top of his St. Michael's salary.⁶⁹

As his correspondence with President Falconer shows, Kennedy was eager to obtain a permanent position in the history department. Kennedy had been complaining to Falconer about his lack of a secure position and having to teach nineteen hours a week to barely get by financially.⁷⁰ He was teaching English literature as a professor at St. Michael's College; modern history as a lecturer in the department of history; and English as a “substitute lecturer” in W.J. Alexander's English department at University College. His main interest was constitutional history, he told Falconer, stating that English “is a minor subject with me.”⁷¹ The appointment as an assistant professor in the history department did not go through at that time, however.

63 Roy MacSkimming, *The Perilous Trade* (McClelland and Stewart, 2003), p. 28.

64 McCorkell interview, pp. 77–78.

65 Gilbert Kennedy interview, pp. 1, 38.

66 St. Michael's archive, treasurer ledger cards.

67 Friedland, *University of Toronto*, pp. 108–109.

68 March 23, 1911 letter from George Wrong to Falconer. Bothwell, *Laying the Foundation*, pp. 57–58; Ian Drummond, *Political Economy at the University of Toronto* (Faculty of Arts and Science, 1983), pp. 36–37; Alan Bowker, “Truly Useful Men: Maurice Hutton, George Wrong, James Mavor and the University of Toronto,” 1880–1927 (Ph. D. thesis, 1975), pp. 326–27.

69 Bothwell, *Laying the Foundation*, p. 58.

70 Undated letter from Kennedy to Falconer, probably 1917.

71 Ibid.

Other appointments and financial issues, it seems, prevented it.⁷²

The following year, both Falconer and Wrong agreed that Kennedy should become an assistant professor in the history department. “Mr. Kennedy is doing excellent work,” Wrong wrote to Falconer, “and I understand that he is to get the rank of Assistant Professor.”⁷³ For the 1919–1920 academic year, he was finally appointed an assistant professor in the department, receiving \$2,200 while also continuing to teach English at St. Michael’s College, at \$1,000 a year.

Kennedy’s ties with St. Michael’s were severed at the end of the 1921–22 academic year.⁷⁴ At some point before that he had ceased being a Roman Catholic. Father McCorkell stated that even when he was at St. Michael’s his religion was not clear, and his son Gilbert states in his oral interview that his father was not a church-goer.⁷⁵ In a letter to President Falconer in March 1922, Kennedy stated: “I write to ask you to change my religious affiliations to ‘Church of England’ on the records of the President’s Office.”

George Wrong⁷⁶ and Kennedy had a serious falling out in 1920. “I think their quarrel was basically over this student that Kennedy married,” McCorkell stated in his oral interview: “I don’t know the whole story at all.”⁷⁷ It is likely that no-one now living knows it. We do know that Kennedy’s first wife, who had two very young children, died at age 26 in the Spanish influenza epidemic in April 1919. Fifty thousand Canadians died of the flu—often an agonizing death—and a disproportionate number of them were women in their twenties.⁷⁸ Teresa’s death certificate shows that, as was common in the case of the Spanish flu, she died of pneumonia, having had influenza for only 24 hours.⁷⁹ Kennedy’s two young children were also infected. A week after his wife’s death, he wrote to the chair of political economy, James

72 Letter from Falconer to Kennedy, dated June 28, 1918: “Professor Hodder Williams has been made an Assistant Professor in the Department this year, and Professor Wrong thought it was well to defer any action with regard to yourself until later.”

73 Letter from Wrong to Falconer, December 18, 1918. See also letter from Wrong to Falconer, May 4, 1919.

74 Treasurer ledger cards, St. Michael’s archives.

75 McCorkell interview, p. 77; Gilbert Kennedy interview, p. 62.

76 George Wrong was an ordained Anglican priest, whose appointment as professor of history at the University of Toronto was the cause of the famous student strike of 1895: see chapter 15 of Friedland, *The University of Toronto*.

77 McCorkell interview, p. 80. Vincent Bladen was equally vague, stating in his memoirs, *Bladen on Bladen* (privately published, 1978): Kennedy “had ... some sort of conflict with Wrong. MacIver bailed him out by appointing him as a Special Lecturer in Mediaeval Economics and in Federal Institutions” (p. 37).

78 See generally, Esyllt W. Jones, *Influenza 1918: Disease, Death, and Struggle in Winnipeg* (University of Toronto Press, 2007); and Heather MacDougall, “Toronto’s Health Department in Action: Influenza in 1918 and SARS in 2003,” in M. Fahrni and E.W. Jones, eds., *Epidemic Encounters* (University of British Columbia Press, 2012), p. 225 et seq.

79 Death records of April 13, 1919 at Ontario Archives. The physician was a Dr. W.F. Plewes, who appears to have been an obstetrician; he may have delivered their two children.

Mavor, thanking him for his sympathy and adding: “Yes—we are fighting night and day for the lives of my two kiddies, Gilbert and Beatrice. Poor things they are still in danger—and we can only face each hour like flint.”⁸⁰

There was no suggestion of any difficulty between Kennedy and Wrong during that difficult period. Wrong wrote to Falconer in early May after hearing about “the dreadful tragedy,” and suggested to Falconer that, if possible, Kennedy receive an increase in his salary.⁸¹ Falconer also arranged a gift or loan to assist Kennedy.⁸² That summer—the Falconer papers show—Kennedy went with his two children and a nanny back to his cottage in Muskoka, during which time he was placed under a doctor’s care. “Insomnia plays hard with me & arterial trouble is threatening,” Kennedy wrote Falconer.⁸³ Later that month, Falconer was informed by Professor George Brett that Kennedy did not think he would be able to teach in the next academic year.⁸⁴

George Brett, the distinguished chair of philosophy, had a cottage close to the one Kennedy then owned on Lake Muskoka and kept Falconer informed about Kennedy’s progress. On top of his wife’s death, there was a fire at Kennedy’s uninsured cottage and, according to Brett, “some affair in England greatly upset him.” Kennedy, Brett wrote, became “temporarily unhinged—not to say deranged.”⁸⁵ (It is worth noting that Brett’s field was psychology; he was soon to publish the final book in his famous trilogy, *A History of Psychology*.⁸⁶) Brett thought that perhaps Kennedy should take a year’s leave in England, with some pay, and leave his children with his mother-in-law. By the end of the summer, however, Kennedy had recovered, telling Falconer: “The doctor’s report is very favourable and there is good improvement ... I have no wish personally to get leave of absence if it can possibly be avoided ... I am cheered up by the doctor’s latest, as the whole future of the kiddies depends on my health.”⁸⁷

In June 1920, fourteen months after Teresa died, there was an announcement in the *Globe* that Professor Kennedy had “very quietly” married Pauline

80 Letter to Mavor April 19, 1919. Betty Kennedy, the late Gilbert Kennedy’s wife, confirmed in a telephone conversation on July 8, 2013 that both Gilbert and Beatrice had continuing medical problems—Gilbert’s spleen was removed when he was a teenager—likely because of the Spanish Flu.

81 Wrong to Falconer, Wrong folder in Falconer Papers, May 4, 1919.

82 Letters from Hodder Williams to Robert Falconer, April 20, 1919 and July 17, 1919. The cost was estimated at \$1,000, but in the end was a little over half that, including funeral expenses: letters from Hodder Williams, the acting chair of history, dated April 20 and June 7, 1919. Wrong thought that Kennedy should repay the money in course of time: Hodder Williams to Falconer, July 17, 1919. Kennedy told Falconer that he considered it a debt: August 14, 1919.

83 Kennedy to Falconer, August 4, 1919.

84 Brett to Falconer, August 15, 1919.

85 Ibid.

86 George Brett, *A History of Psychology* (London: G. Allen, 1921).

87 Undated, but likely late August 1919.

Simpson, an Anglican, from Hamilton, Ontario.⁸⁸ The marriage—Kennedy was then age 40, Pauline 25—had taken place at St. Michael’s Cathedral in Toronto on June 8th that year.⁸⁹ She had been one of Kennedy’s students—in English literature at University College, according to Gilbert Kennedy, but perhaps also in modern history.⁹⁰ She was a University College undergraduate student from 1915 to 1919, and in her final year served as the head of the UC women’s residence. She had been expected to graduate with a B.A. in 1919—indeed, her graduation picture had been placed in *Torontonensis* in anticipation that she would graduate—but she did not do so.⁹¹ She continued at the University as a special student. Why she did not graduate is not clear. She and Kennedy later had two children, Frere, born in 1923, and a daughter, Shelagh, in 1926. Pauline Kennedy stayed home to look after her family, but later became prominent in many charities, the Anglican church, and various women’s organizations. In 1939 she became the president of the Women’s Canadian Club of Toronto and during the war was the chair of the Consumer Branch Committee of the Wartime Prices and Trade Board.⁹²

Others in the department of history, including Wrong’s son Hume (later a senior official in External Affairs), were hostile to Kennedy and at various times tried to block his advancement, in part because of what Hume Wrong referred to in a letter to his father several years later as the “cause célèbre,” which most likely refers to the circumstances surrounding his relationship with Pauline Simpson.⁹³ Five years later, Lester B. (Mike) Pearson, then a lecturer in the history department, also married one of his students, but, according to his biographer, John English, Pearson’s colleagues, and especially Wrong, were apparently unaware of the developing romance.⁹⁴ The relationship between George

88 The *Globe*, June 22, 1920, stating that the marriage took place on June 8. Understandably, Gilbert’s oral interview places the marriage two years after his mother’s death, that is, in 1921 (p. 39). No doubt that is what he had been told by his parents. Until he was a teenager, he says, he did not know that his real mother had died and that his father had remarried.

89 The marriage license was obtained on May 3, 1920 and solemnized at the Cathedral at 200 Church Street. According to Frere Kennedy, Pauline’s father had died when she was young and her mother got along well with her new son-in-law.

90 Gilbert Kennedy interview, p. 39. University records indicate that she took a number of courses which Kennedy could have taught in her four years as an undergraduate and as an occasional student, including some English courses at University College, where she was a student.

91 University records file. Gilbert assumes she never received her degree: “She got as far as fourth year at the U of T and was then picked up!” (p. 41).

92 Pauline Kennedy clipping file at the U of T Archives.

93 Hume Wrong letter to his father George Wrong, February 8, 1826. There are many letters in the George Wrong fond in the U of T Archives from George Wrong to his wife Sofia because he travelled extensively, but he was in Toronto in 1920 and so there are no letters from him to his wife that year.

94 John English, *Shadow of Heaven*, volume 1 (Lester & Orpen Dennys, 1989): “The secret, as usual, was poorly kept, although Mike’s colleagues apparently did not know. Not even Methodist self-righteousness could have excused Mike’s serious dalliance with one of his students in the eyes of George Wrong. Fortunately, they were able to avoid his stern gaze” (p. 109).

Wrong and Pearson, according to English, continued to be good.⁹⁵ (Pearson also had a good rapport with Kennedy, who suggested he should apply to the department of external affairs and not stay in the academic world, where he would have to compete with the likes of Donald Creighton.⁹⁶) So the exact circumstances behind Wrong's dislike of Kennedy are unclear. A few weeks after his wedding, Kennedy wrote to James Mavor from Nova Scotia stating that he was resigning from Toronto in June of the following year and asking him to support his application to Dalhousie University, where the chair of history was vacant, as well as his applications to the archives in Ottawa and Toronto. "I am quite downhearted," Kennedy wrote to Mavor, "but G.M. W[rong] has played a curious game to which there is neither Alpha nor Omega."⁹⁷

Kennedy asked Falconer to intervene in the dispute with George Wrong, but in the fall of 1920 Kennedy wrote Falconer: "On reflection it will be far better not to mention any personal differences between me & Mr Wrong ... I don't want ... to wash dirty linen, and above all, I do not wish to complicate a situation which will, someday & somehow straighten itself."⁹⁸ It never did. On November 25, 1920, Wrong wrote to Falconer asking that "official notice ... be given to Prof. Kennedy that his appointment terminates at the close of the present academic year."⁹⁹

The termination did not go through that year, but there was obviously no future for Kennedy in the history department. There are a number of letters in the Falconer papers showing Falconer writing on Kennedy's behalf in 1921 and 1922 to a number of colleges in England, including the recently established Royal Air Force College, supporting Kennedy's applications for a teaching position in English literature.¹⁰⁰ No offers were apparently forthcoming.

Political economy then came to the rescue. In 1922, at age 43, Kennedy transferred from the department of history to the department of political economy,¹⁰¹ where Robert MacIver was the acting head and would the following year become the head of the department.¹⁰² Kennedy would be a

95 E-mail from John English, June 12, 2013.

96 English, *Shadow of Heaven*, pp. 138–39.

97 Kennedy to Mavor, June 26, 1920. In a letter to Berriedale Keith in the Edinburgh archives, undated but very likely the summer of 1922, Kennedy states without elaboration: "I've got into a hole with a graduate student here."

98 Letter from Kennedy to Falconer, November 29, 1920.

99 Letter from George Wrong to Falconer, November 25, 1920.

100 Letter from Falconer to Royal Air Force College, March 22, 1921. There was also a letter to Armstrong College, now part of Newcastle University, April 19, 1922.

101 Drummond, *Political Economy*, p. 37.

102 Drummond, *Political Economy*, p. 53. Kennedy taught for both departments that year: Drummond, p. 37.

lecturer on federal institutions and his total salary from political economy would be \$2000.¹⁰³ Kennedy, who continued to teach in the history department, was demoted by Wrong to “special lecturer.”¹⁰⁴ As stated earlier, he no longer had an academic position at St. Michael’s College. He had gone from professor to lecturer in a few short years.

Kennedy dedicated his 1922 *Constitution of Canada* book to MacIver and also stated in the preface: “To Professor R.M. MacIver, University of Toronto, I am under the greatest obligations, and in the dedication I attempt not merely to acknowledge these, but to record a friendship which lies deeper than a common interest in history would suggest.”¹⁰⁵ Given that MacIver is not otherwise mentioned in the book, it seems likely that personal reasons lie behind the dedication. MacIver and Kennedy came to the University of Toronto about the same time. MacIver was a Scotsman and Kennedy’s family had come from Scotland to Ireland. Both had cottages on Lake Muskoka, as it seems did many members of the faculty. They also had similar interests in the development of national states.¹⁰⁶ MacIver likely supported Kennedy in the so-called “cause célèbre” and assisted in his transition from history to political science. Many years later, MacIver, who went on to a distinguished career at Columbia University, wrote in his memoirs about “the somewhat erratic but distinguished W.P. M. Kennedy.”¹⁰⁷

The final and strongest intellectual debt is given by Kennedy to Professor A.H.F. Lefroy, who died in 1919. Kennedy writes in the preface:

For three years before his death he and I worked through carefully the cases in constitutional law while preparing his *Short Treatise on Canadian Constitutional Law* for publication. We discussed their bearing and importance, and in determining the form of his work we mutually agreed on many phrases and generalizations. Almost naturally I have fallen back on these, and I acknowledge my obligations elsewhere. I cannot, however, let this book go to the press without a recognition of Professor Lefroy’s insight into Canadian

103 Memo from Falconer to file, April 12, 1922.

104 Falconer to Kennedy, June 5, 1922. See also a letter dated January 8, 1923, in the George Wrong papers from George Wrong to his son Murray, then studying at Oxford, where George Wrong refers to Kennedy and then adds: “who is, I am thankful to say, nearly out now.”

105 Preface, p. ix.

106 See R.M. MacIver, *The Modern State* (Oxford University Press, 1926), which cites Kennedy’s *Constitution of Canada*, but does not mention Kennedy or, indeed, anyone in the preface.

107 Robert MacIver, *As a Tale that is Told* (University of Chicago Press, 1968), p. 89.

federalism, and of a friendship which was so courteously willing to guide me in a new and difficult field.¹⁰⁸

Lefroy was a lawyer, who continued to practice law, and at the same time—since the turn of the century—was a professor in the department of political economy. He was Canada’s leading constitutional scholar, having published his major work, *The Law of Legislative Power in Canada* in 1897.¹⁰⁹ He was more than 25 years older than Kennedy. R.C.B. Risk describes him as “the leading common-law scholar in Canada in the late 19th and early 20th centuries.”¹¹⁰ Kennedy and Lefroy had much in common. Lefroy was an Oxford graduate and his roots on his father’s side were Irish. His cousin, Tom Lefroy, was the chief justice of Ireland from 1852 to 1869—today better known as Jane Austen’s “only known love interest who ... shaped Jane’s outlook on love and life”¹¹¹—and Professor Lefroy kept a portrait of the chief justice in his law office on Church Street. He kept a picture in his University office of his maternal grandfather, John Beverley Robinson, the chief justice of Upper Canada (later Canada West) from 1829 to 1862.¹¹²

Kennedy worked closely with Lefroy for the three years before Lefroy’s sudden death in 1919. As stated above, he actively assisted Lefroy in the publication of his 1918 text, *A Short Treatise on Canadian Constitutional Law*, for which Kennedy wrote the historical introduction. In 1918 Kennedy also published *Documents of the Canadian Constitution*, which was meant for student use and no doubt involved many discussions with Lefroy, although, surprisingly he does not thank Lefroy in the preface to that book. As far as I can tell, this was Kennedy’s first involvement in the publication of a book with Oxford University Press, although he had published articles in Oxford

108 The statement “I acknowledge my obligations elsewhere” probably refers to a lengthy and flattering obituary in *The Varsity* in the Lefroy clippings file in the U of T Archives, published March 10, 1919, shortly after Lefroy’s death, signed simply “K.”

109 (Toronto: Toronto Law Book, 1897).

110 DNB online article by R.C.B. Risk on Lefroy, volume XIV (accessed July 2013). In his earlier article on Lefroy, “A.H.F. Lefroy: Common Law thought in Late Nineteenth-Century Canada,” Risk had said that Lefroy was “one of the leading common law scholars in Canada in the late nineteenth and early twentieth centuries” (*University of Toronto Law Journal* 41 [1991]: 307). The words “one of” were omitted after Risk had finished his survey of legal thought in Canada. The Lefroy essay in the collection of Risk’s essays, *A History of Canadian Legal Thought: Collected Essays* (University of Toronto Press, 2006), states “one of” (p. 66).

111 See Laura Boyle, “Who was the Real Tom Lefroy?” July 16, 2011, <www.janeausten.co.uk/who-was-the-real-tom-lefroy/>. The “love affair” is the subject of the 2007 movie, “Becoming Jane.” In one letter, dated January 16, 1796, Jane Austen writes: “At length the day is come on which I am to flirt my last with Tom Lefroy, and when you receive this it will be over. My tears flow as I write at the melancholy idea.” See <www.pemberley.com/janeinfo/brablet1.html#letter1>.

112 Lefroy file clippings in U of T archives.

publications.¹¹³ The 1922 text, *The Constitution of Canada*, built on the material collected together in the book of documents. He dedicated the 1918 book of documents to George Wrong “as a token of friendship and esteem” and stated in the preface that the dedication “feebly acknowledges a friendship which lies deeper than common work in a common subject would suggest.” When a second edition of the book came out in 1930, the dedication was changed from Wrong to two students who had died prematurely.¹¹⁴ The preface to the first edition was repeated but the sentence about Wrong was omitted.

There is a substantial file in the Oxford University Press archives concerning the second edition of *The Constitution of Canada* that came out in 1938, but relatively little on the first edition of 1922. The Oxford archivist explained that this was “due to the earlier publication being handled by our London office, which shed a great deal of material during war-time evacuation and later weeding of its files.”¹¹⁵ I have little doubt that it would have been an interesting and thick file. The very small file on the first edition in the Canadian branch contains the surprising fact that the contract executed by Kennedy in October 1918 was to produce a book jointly with U of T historian W. Stewart Wallace to be entitled *The Development of Canadian Government*.¹¹⁶ Royalties were to be 20 percent after the first 2,500 copies. In October 1921, however, Wallace withdrew from any connection with the book.¹¹⁷ Perhaps he felt he had his hands full, having just been appointed the assistant librarian at U of T, soon to be the head librarian, and had also taken on the editorship of the recently established *Canadian Historical Review*.¹¹⁸ And perhaps Wallace’s close working relationship with George Wrong played a role in his withdrawal.¹¹⁹ Kennedy simply mentions in the preface to his 1922 book that “Mr. W.S. Wallace has given me, especially in the earlier chapters, the benefit of his knowledge of Canadian history.”

THE CONSTITUTION OF CANADA AND BEYOND

Kennedy’s 1922 book was a great achievement, and was particularly remarkable considering all the turmoil in his life in the years leading up to its publication

113 See, for example, “Fines under the Elizabethan Act of Uniformity,” *English Historical Review* 33 (1918): 517.

114 Noted by Maryla Waters, who prepared a full list of Kennedy’s publications as part of her oral interview with Gilbert Kennedy in April 1983.

115 E-mail from Dr. Martin Maw, Archivist, Oxford University Press, July 8, 2013.

116 Memorandum of Agreement dated October 28, 1918.

117 Letter from Wallace to Kennedy dated October 3, 1921.

118 William Stewart Wallace, *The Canadian Encyclopedia*, online edition. Maybe Wallace had his eye on another book, *A First Book of Canadian History*, which he published in 1928 and sold over half a million copies. See Friedland, *The University of Toronto*, p. 306.

119 Robert Blackburn, *Evolution of the Heart* (University of Toronto Library, 1989), p. 132.

and the new courses he was preparing in those years. It received many excellent reviews. These were collected in a one-page sheet by Wm. Tyrrell and Company, booksellers and engravers at 8 King Street West, Toronto, who were selling the book for \$5.00 plus 20 cents for shipping. The advertisement started with an endorsement from Viscount Richard Haldane, a past and later future Lord Chancellor of England, who said it was “a remarkable volume” as well as a quote from a member and future chair of the University’s board of governors, the Reverend Henry Cody, later the president of the University of Toronto, who said that the book was “a national service to Canada and the Empire.” There then followed excerpts from 23 reviews. The book was favourably reviewed in the major English papers and journals. The *Times* called it “a work of great accuracy and conspicuous fairness”; the *Observer*, “alive, human, dramatic”; the *Law Quarterly Review*, “an admirable and most readable book”; and the *New Statesman*, “a book which will rank high in the literature of political science.” Canadian reviews were equally positive. The *Canadian Historical Review* said that it was “a theme worthy of a Macaulay”; and *Saturday Night* said it was “brilliant ... a monumental work.” In the United States, the *Christian Science Monitor* called it “masterly” while in the *New Republic* Harold Laski wrote, “To say that Dr. Kennedy has written a valuable book is to do him less than justice; he has written what is likely long to remain the standard introduction to the study of the Canadian constitution.”¹²⁰ No doubt, Kennedy was particularly pleased with the review by an unattributed reviewer in the Toronto *Star Weekly*, which compared his book to the discovery of insulin. “The sun of insulin is in the ascendancy,” the unnamed reviewer stated dramatically, “but even its world rays cannot obscure other university stars of the first magnitude. One of the brightest of these is W.P.M. Kennedy, associate professor of modern history. His latest work, ‘The Constitution of Canada,’ is said to be in its way quite as epoch making as insulin.”¹²¹

The *Star Weekly* characterization may have been an exaggeration, but the book was indeed a major triumph and was responsible for establishing Kennedy’s reputation as a major constitutional scholar. Political scientist Alan Cairns states that Kennedy was “the most influential constitutional analyst of the period from the early twenties to the middle forties.”¹²² Kennedy

120 “Canada’s Constitution,” *The New Republic*, July 4, 1923, p. 159. For an insightful article on Laski and Canada, see David Schneiderman, “Harold Laski, Viscount Haldane, and the Law of the Canadian Constitution in the Early Twentieth Century,” *University of Toronto Law Journal* 48 (1998): 521.

121 *Star Weekly*, October 20, 1923.

122 Alan Cairns, “The Judicial Committee and its Critics,” *Canadian Journal of Political Science* 4 (1971): 301 at 306. See also J.M.S. Careless’ survey of Canadian historical publications in 1971 which refers to Kennedy’s “still-classic” text. *Papers of the Bibliographical Society of Canada* 10 (1971): 73 at 75.

was obviously pleased with the reception of his book. He kept Falconer informed of his scholarly work, writing: “The *Constitution* goes well. I had charming letters about it from [constitutional law scholar] Berriedale Keith of Edinburgh & from [Rodolphe] Lemieux the speaker [of the Canadian House of Commons]. [Ernest] Lapointe quoted it in the house.” Kennedy added a P.S. to the letter: “Arthur Meighen wrote me a nice letter about an article of mine on Canada and the Imperial Conference.”¹²³

Kennedy may have been a name-dropper, but I do not doubt that he actually corresponded with the persons whose names he was dropping. The prime ministers’ papers in the National Archives, for example, show items relating to W.P.M. Kennedy in the papers of Robert Borden, William Lyon Mackenzie King, Arthur Meighen, and Richard Bennett.¹²⁴ There are letters concerning gifts by Kennedy of books and articles, invitations to visit the University to address students, discussions of various public policy matters, and other items. By far the most entries are in the William Lyon Mackenzie King fond,¹²⁵ where there are 28 items listed, including letters congratulating King on election victories (1926, 1930, and 1935). They indicate that Kennedy was a Liberal supporter. “A thousand congratulations,” he wrote at midnight of election day September 14, 1926: “I could not do much publicly, but you may have recognized some of my handiwork in speeches and the press.” Kennedy seemed to have had a friendly although a peripheral relationship with King.¹²⁶ It is possible that King knew about and sympathized with Kennedy’s troubles with George Wrong. King had had his own run-in with Wrong over twenty years earlier. It was the appointment of Wrong—University chancellor Sir Edward Blake’s son-in-law—as the professor of history in 1894 that caused King to lead the famous student strike on the issue of nepotism at the University of Toronto in 1895.¹²⁷

123 Letter dated August 24, 1923 from Kennedy to Falconer. The article which Meighen mentions was published in July 1921.

124 I pass on to the reader that one can go to the “Prime Ministers’ Fonds” under the letter “P” in the A–Z Index on the Library and Archives Canada home page, where one can search online for correspondees. This is not possible for the Laurier and Louis St. Laurent papers. There are, of course, some letters in other files at Ottawa and in other archives that I have not discovered or examined. There are, for example, a number of letters in the Sir John Willison files in Ottawa, which are interesting—he was the Canadian correspondent for the *London Times*, but are not sufficiently important for the purpose of this introduction. I am grateful to Ottawa historian Richard Clippingdale for sending me copies of these letters.

125 I am grateful to Ottawa researcher Christopher Cook for retrieving these letters for me.

126 An electronic search does not, however, mention Kennedy in King’s diaries. There are many entries for persons named Kennedy, but none that could be W.P.M. Kennedy.

127 See chapter 15 of Friedland, *The University of Toronto*, where a full chapter is devoted to the strike. It is interesting to read the correspondence between George Wrong and Murray Wrong in the Wrong papers (see, e.g., George Wrong to Murray May 30, 1921 and January 8, 1923) which shows George Wrong’s interest in securing academic positions at the University of Toronto for George Wrong’s children.

There are a number of letters in which Kennedy is openly asking to be appointed to a position, such as being a delegate to the Imperial Conference of 1926 and as Canadian representative to the League of Nations Hague Conference on the Codification of International Law. With respect to the latter, Kennedy states that he has “given [his] life to this work,” and then adds that “it is very improbable that I would be able to go, but an invitation by the Prime Minister of Canada to his alma mater in this connection would be a most grateful compliment.” On the face of it, the request looks odd. Kennedy had not given his life to international law. Indeed, he had never taught international law. Still, he had a legitimate claim to have been invited because the conference was on codification of conflict of nationality laws and Kennedy had recently completed a study for the government on nationality.¹²⁸ In a note by King on Kennedy’s letter, King asks his aide to draft a reply noting that Kennedy seems to have a need for “recognition.”¹²⁹ Once again we see a large measure of exaggeration and seeking recognition. Other requests from Kennedy include asking King to propose him for an honorary Harvard doctorate¹³⁰ and a request that he be awarded a British honour—“maybe a c.m.g. on King’s b’day or sometime.”¹³¹ He added a note to the latter letter that “this is a very personal letter and I do ask you to destroy it when you’ve read it and w’d not like it to survive with your papers.” The letter, of course, did end up in the King papers. King replied that Canada was not sending a list of honours for the King’s birthday that year, but instructed his staff to make sure that “consideration” be given to Kennedys name in future years.¹³²

The previously mentioned 1923 letter to Falconer shows that Kennedy had plans for follow-up volumes to his book on the constitution. Kennedy wrote: “I’ve been collecting material for the second vol. of my *Constitution*, on ‘The Government of Canada’ which the Oxford Press have ordered. It may be two and will take me a year or two.”¹³³ As we now know, his career path suddenly changed. At the end of the 1922 academic year, he was no longer, as the book states, an “assistant professor of modern history in the University of Toronto.” He was a special lecturer in the department of

128 *Report to the Honourable Secretary of State for Canada on Some Problems in the Law of Nationality* (Ottawa: King’s Printer, 1930).

129 Letter to King, February 11, 1930.

130 Letter dated May 20, 1926 and letter dated April 23, 1948.

131 Letter dated April 23, 1948.

132 King to Kennedy, April 27, 1948 and J.W. Pickersgill to the Undersecretary of State, E.H. Coleman, May 1, 1948.

133 A similar plan was revealed by Kennedy to Berriedale Keith in a letter to Keith in the Edinburgh archives, dated December 13, 1923.

political science as well as in the department of history. The two further proposed volumes were never prepared.

The 1922 book was followed by a three-volume study published in 1924 on Tudor ecclesiastical history, *Elizabethan Episcopal Administration: an Essay in Sociology and Politics*,¹³⁴ that was dedicated to Bishop Frere, his former colleague at the Mirfield Monastery. Perhaps Kennedy was covering the possibility that he would have to return to English literature or church history. It was a continuation of the earlier three-volume work that he and Frere produced that had been published in 1910.

Kennedy's scholarly output in the early 1920s, including many scholarly articles, was staggering. By the end of the 1920s, he had published ten books.¹³⁵ *The Constitution of Canada*, it was reported by the *Star Weekly*, had sold 3,000 or 4,000 copies in less than six months.¹³⁶ He was also giving lectures to the Bankers Educational Association that paid more than the lectures he had also been giving to the Workers Education Association.¹³⁷ His financial position was becoming more secure. In 1925 he moved with his four children from his house, no longer standing, at 110 Quebec Avenue, just north of High Park, to a fine home, still standing, at 77 Spadina Road in what is known as "the Annex." The Kennedy family, his son Frere states, had a billiard table in the basement and W.P.M. was known as an expert player. Frere told me that he remembers George Wrong, who lived a block away on Walmer Road, nodding respectfully to his mother, Pauline, on his walk to the University.¹³⁸ Frere also told me that he was not aware of any conflict between his father and George Wrong.

Kennedy did not shy away from public issues. In 1924, for example, he gave a public address in Convocation Hall on the situation in Ireland.¹³⁹ As early as 1917, he had urged women in a letter to the *Varsity* to insist on securing the vote.¹⁴⁰ One issue that he was careful to avoid, however, was the very controversial and well-known Byng-King dispute in which Governor General Byng refused Prime Minister Mackenzie King's request for dissolution of the House in 1926, and instead called on Arthur Meighen to form a

134 *Elizabethan Episcopal Administration*, 3 vols (London: Mowbray, 1924).

135 Risk, "The Many Minds," p. 365.

136 *Toronto Star*, March 7, 1924, in Kennedy's university file.

137 He gave courses to the Bankers Educational Association in 1926–27 and 1927–28. Vincent Bladen, *Bladen on Bladen* states that many members of the department taught evening classes (pp. 32–33). Workers Educational Association lecturers got \$200 for a course, but the Bankers Educational Association paid \$400.

138 Frere thought that his parents married in 1922, the year before he was born.

139 See Risk, "The Many Minds," p. 363.

140 Kennedy file. Letter in the *Varsity* of February 8, 1917.

government. That summer Kennedy was in England—the only time he ever returned to Europe.¹⁴¹ “I’ve been driven crazy over the constitutional issue here by the papers,” he wrote to President Falconer that summer, and went on to state that he had issued the following release to the Associate Press: “Professor Kennedy has a stringent rule to grant no interviews or to write on any matters in party politics. He cannot see his way in the present case, to break this rule.”¹⁴²

A jurisdictional struggle once again took place between the departments of history and political economy. Each claimed that constitutional history came within its jurisdiction. In the mid-1920s, the department of history was declared the winner.¹⁴³ In October 1927, the chair of political economy, E.J. Urwick, wrote to Falconer: “I should ... make it clear that Constitutional History is not in question, as we fully understand that this subject belongs to the Department of Modern History.”¹⁴⁴ But he also told Falconer that it is their understanding that the department of political economy includes “Political Institutions and Law.”

Kennedy’s main subject of interest was, of course, constitutional history. What was he going to do? One possibility, it seems, was to go to Ottawa to replace Arthur Doughty as the National Archivist. Doughty was rumoured to have been offered the post of chief archivist for the Hudson Bay Company.¹⁴⁵ Kennedy was close with Doughty and may well have had his support. Hume Wrong wrote to his father that they had to block Kennedy’s appointment.¹⁴⁶ “His departure,” Hume Wrong wrote in 1926, “would be good for the University, but mighty bad for the Archives.” But in an added note, he wrote that he had just learned that Vincent Massey had said privately that Doughty may stay on; Doughty did remain, after receiving an “increased salary,” arranged by Prime Minister Mackenzie King.¹⁴⁷

141 Gilbert Kennedy interview, p. 14. He went to England with Alexander Brady.

142 Letter to Falconer, August 2, 1926. Kennedy had been staying in Cambridge with Professor John Rose, the editor of the *Cambridge History of the British Empire*, for which Kennedy was editing the volume on Canada. A clipping from the *Star*, July 15, 1926, states that Kennedy “was taken ill and on medical advice returned home to Toronto to undergo [an] operation.”

143 Drummond, *Political Economy*, p. 37. See Falconer note to file of January 20, 1926; Falconer to Kennedy of June 14, 1926; Alan Bowker, “Truly Useful Men: Maurice Hutton, George Wrong, James Mavor and the University of Toronto,” 1880–1927 (Ph. D. thesis, 1975), pp. 326–27.

144 Letter from Urwick to Falconer, October 26, 1927 in Falconer Papers.

145 E-mail from former national librarian and archivist Ian Wilson, May 2013. Kennedy had been an advisor to the Archives of Ontario, 1919–23, according to his 1955–57 *Who’s Who* entry.

146 Letter from Hume Wrong to his father, George Wrong, February 8, 1926.

147 King’s diary of April 26, 1926. An examination of King’s diary that year shows that Doughty was closely involved with King’s day-to-day activities and was valuable to King. He did not retire until 1935 and died the following year.

Kennedy had no choice but to craft a new life for himself in the department of political economy. It was to be law. Law was not a subject that history was interested in teaching and MacIver wanted to build up the law side of his department¹⁴⁸ in the same way that political economy was also developing commerce and finance and other programs.¹⁴⁹ Kennedy, who, as previously stated, had absolutely no legal training,¹⁵⁰ had been designated as “Special Lecturer on Federal Constitutions in the Sub-department of Law” in the department of political economy.¹⁵¹ In 1926, he became the head of the law program in the department and given the title “Professor of Law and Political Institutions.”¹⁵² In late 1928, Kennedy proposed an honours BA course in law, which came into effect in the 1929–30 academic year.¹⁵³ New legally trained faculty were hired, such as Larry Mackenzie (later the president of the University of British Columbia) in international law,¹⁵⁴ Frederick Auld in Roman law, and Jacob Finkelman (the first Jew appointed as an academic at the University of Toronto)¹⁵⁵ in administrative law. In the 1929–30 University Calendar, the degree of LLB first appeared after Kennedy’s name and was there every subsequent year as well as in various *Who’s Who* volumes. I have not, however, found any evidence in Convocation or Senate records that Kennedy was ever awarded an LLB, even an honorary LLB. When Bora Laskin and Caesar Wright prepared a lengthy memorial to the Senate after Kennedy died, there is no mention of Kennedy’s LLB.¹⁵⁶

This new law program was in part the result of Kennedy’s ambitions in political economy being blocked. According to political economist Harold

148 P.B. Waite, *Lord of Point Grey* (University of British Columbia Press, 1987), p. 58.

149 Drummond, *Political Economy*, chapter four, “The MacIver and Urwick Years.”

150 See Alexander Brady, *Proceedings of the Royal Society of Canada, 1964*, and Risk, “The Many Minds.”

151 This first appeared, however, in the 1922–23 Calendar. I have drawn on the calendars for much of this paragraph, but it is sometimes misleading because some events took place too late for entry into the calendar. As Risk discovered (p. 371, footnote 75 in “The Many Minds”), the various changes are not entirely clear. We are still waiting for a definitive history of the law school.

152 Falconer to Kennedy, June 14, 1926, too late for the 1926–27 calendar, but included in the 1927–28 calendar. The same letter shows that Kennedy would continue to teach in history in the 1926–27 academic year. See Risk, “The Many Minds,” p. 371. There were two undergraduate degrees, a BA and an LLB, plus, starting in 1930, graduate degrees: see letter from Kennedy to Falconer January 31, 1930 and March 10, 1930; Kyer and Bickenbach, *The Fiercest Debate*, pp. 58 and 149. There were, however, very few LLBs granted prior to 1949, often only a couple each year, according to the records of Convocation.

153 See the 1929 calendar and letter from Kennedy to Falconer December 21, 1928. See also Risk, “The Many Minds,” p. 371, citing various 1928 law school papers in the Archives.

154 See P.B. Waite, *Lord of Point Grey: Larry Mackenzie of U.B.C.* (University of British Columbia Press, 1987).

155 Friedland, *University of Toronto*, p. 235. It is interesting to note that Kennedy—atypical of the times—invited a number of important foreign Jewish judges and academics to visit the law school, such as Justices Frankfurter and Cardozo, and Professor Arthur Goodhart: letter from Kennedy to Falconer, November 13, 1930. There were no Jewish superior court judges in Ontario until Abraham Lief was appointed by Prime Minister Lester Pearson in 1963.

156 Law files in the U of T Archives.

Innis, Kennedy had wanted to be the head of political economy. MacIver had left for Columbia University in 1927 and E.J. Urwick, who had retired from the University of London and had come to Toronto as a special lecturer in 1925–26, had been appointed the head of the department.¹⁵⁷ In a letter to President Falconer in 1929, Innis claimed that this was a disappointment to Kennedy, who, along with a number of others, had wanted the position and thought that Urwick was appointed for only one year. Innis explained the background to the troubles in political economy:

The various strong contestants were anxious to improve their relative positions against the appointment of Prof. Urwick's successor. The rumor that Prof. Urwick was appointed for only one year was largely responsible for the tremendous energy which Prof. Kennedy displayed last year. He spent his energies and of course ended in failure except that he succeeded in gaining control of a substantial part of the course over which he exercises complete jurisdiction.¹⁵⁸

Kennedy was anxious to continue to reshape the honours program to concentrate on law and to separate law from political economy. Physical separation occurred when political economy moved to McMaster Hall on Bloor Street in 1933 and law remained on St. George Street.¹⁵⁹ In 1937 law became a separate division in arts and science, not connected with political economy.¹⁶⁰ Kennedy continued his quest for independence and in 1941 the department of law became the School of Law, a separate division in the University, with Kennedy as chairman, and three years later—in 1944—the school became a faculty, with Kennedy as dean and professor of law.¹⁶¹ The University Calendars and the division itself, however, continued to call the institution the School of Law. The law school was responsible for teaching students in the five-year LLB program, graduate students seeking LLM and D.Jur. degrees, and the many students taking individual law classes in the faculty of arts and science and in the professional faculties.¹⁶² Finally,

157 Friedland, *University of Toronto*, p. 297.

158 Letter from Innis to Falconer, no date, but in the 1929 correspondence file. Innis also notes in that letter that he “was subjected to severe and prolonged attacks from Prof. Kennedy.”

159 Friedland, *University of Toronto*, p. 297.

160 Letter from President Cody to Kennedy dated June 1, 1936, stating that the change would be made in 1937.

161 *U of T Monthly* 44 (1944): 172. The change may not have been as clear as intended because in 1955 Caesar Wright got the senate to confirm that the law school was not the School of Law, but the Faculty of Law. See also the undated nine-page memorandum from Kennedy to Sidney Smith in the mid 1940s contained in the law school papers in the U of T Archives.

162 See the undated memo from Kennedy to Smith.

in 1949—as we have seen—the school became a second-entry professional faculty of law, with Caesar Wright as dean. At that point, Kennedy retired at the age of 70.¹⁶³

The extensive correspondence between Kennedy and Falconer over more than a quarter century are replete with references to Kennedy's health. In 1923, to give one example, he wrote at the end of the summer: "I was laid up for two or three weeks in bed with the old intestinal trouble, and now I'm limping after a bad strained ankle."¹⁶⁴ In 1930, to give another, he wrote: "I am ordered to ... lie down each afternoon for two hours ... every ounce of strength has got to be conserved, and some effort made to avoid a complete breakdown."¹⁶⁵ At this stage of his career, his scholarly production did not slow down, in part because he was able to publish a significant number of books with co-authors.¹⁶⁶

Kennedy developed a strong law faculty, with an interest in interdisciplinary studies, not unlike the present faculty of law, but with only a handful of professors. There were both undergraduate and graduate students. Bora Laskin, a student in the school, later wrote that Kennedy "introduced us to the riches of American legal scholarship, to Holmes and Brandeis and Cardozo, to Pound and Frankfurter ... and to so many others."¹⁶⁷ Laskin and Wright wrote in a tribute to the University Senate after Kennedy died: "He sought to emphasize the jurisprudence rather than the technology of the legal system."¹⁶⁸ In 1935 Kennedy founded the *University of Toronto Law Journal*—the first scholarly legal journal in Canada and, arguably, the pre-eminent law journal in Canada from its inception.¹⁶⁹ The journal reflected Kennedy's view, expressed the previous year, that "we study law as a social science, a great creative process of social engineering."¹⁷⁰

Throughout his career Kennedy was known as a stimulating and sparkling teacher. J.J. Robinette, one of Canada's greatest lawyers, who was taught by Kennedy in the 1920s, recalled that "Kennedy was one of those brilliant Irishmen who could dazzle you ... a performer as much as a teacher."¹⁷¹

163 Friedland, *University of Toronto*, p. 306. Risk, "The Many Minds," p. 370 et seq.

164 Kennedy to Falconer, August 24, 1923.

165 Kennedy to Falconer, January 31, 1930.

166 See *The Law of the Taxing Power in Canada*, with Dalton Wells (University of Toronto Press, 1931); *The Right to Trade*, with Jacob Finkelman (University of Toronto Press, 1933); *The Law and Custom of the South African Constitution*, with H.J. Schlosberg (Oxford University Press, 1935); *The Canadian Law of Trade Marks and Industrial Designs*, by Harold Fox, edited by Kennedy (University of Toronto Press, 1940).

167 Bora Laskin, "Cecil A. Wright: A Personal Memoir," *University of Toronto Law Journal* 33 (1983): 148 at 150.

168 Law files in the U of T Archives.

169 R.C.B. Risk, "Volume 1 of the Journal," *University of Toronto Law Journal* 37 (1987): 193.

170 W.P.M. Kennedy, "Law as a Social Science," *South African Law Times* (1934): 100.

171 Jack Batten, *Robinette: The Dean of Canadian Lawyers* (Toronto: Macmillan, 1984), p. 27.

Sydney Robins, who attended the Law School in the early 1940s and was the president of the Law Club in his final year, recently wrote to me about “Doc Kennedy,” as the students called him:

His lectures to the small classes then at the school were given in his office, a rather large room on the second floor at 45 St. George Street. Every lecture was indeed a performance. He would speak while sometimes standing, sometimes sitting, sometimes walking around the room, and sometimes lying down on his psychiatrist-style couch. His lectures went beyond the law. He spoke also of history, politics, current events and the many prominent people he claimed to know and who had, or so he told us, sought his advice. He was certainly one of the most charismatic lecturers I ever had—always interesting, often funny, the words flowed effortlessly.¹⁷²

Kennedy’s programs attracted some of the best students in the University. Apart from Robinette, there were G. Arthur Martin, thought by many to be Canada’s greatest criminal lawyer, William Howland and Charles Dubin, both distinguished chief justices of Ontario, the previously mentioned Sydney Robins, later the treasurer of the Law Society and a member of the Ontario Court of Appeal, Moffat Hancock, who joined the faculty and later became a noted professor of law at Stanford University, Bora Laskin, later the chief justice of Canada, and many more.¹⁷³ Their future success was disproportionate to their relatively small number. Perhaps they were inspired by Kennedy’s view that legal education should “create a body of citizens endowed with an insight into law as the basic social science, and capable of making those examinations into its workings as will redeem it from being a mere trade and technique and ... make it the finest of all instruments in the service of mankind.”¹⁷⁴

KENNEDY’S IDEAS ON THE CANADIAN CONSTITUTION

It is not surprising that Kennedy became interested in the constitution of Canada. His knowledge of church politics in the Tudor era gave him a good understanding of the various forces and interests that shape change in society.

172 E-mail from Sydney Robins to me, August 19, 2013. To accommodate the construction of a new engineering building, the building that housed law at 45 St. George Street was later torn down to permit the much larger Forestry Building next door to be put on rollers and moved to the site.

173 See Kyer and Bickenbach, *The Fiercest Debate*, p. 58.

174 Friedland, *University of Toronto*, p. 307.

His colleague, political scientist Alexander Brady, wrote a memorial tribute in the *Proceedings of the Royal Society of Canada*, 1964, stating that Kennedy's "earlier explorations in ecclesiastical law and institutions exhibited the special bent of his mind, which in Canada found in the constitution a new and fascinating theme."¹⁷⁵ But it was more than that, as R.C.B. Risk rightly observes. Kennedy saw similarities between England under the Tudors and the constitutional development of Canada. The dominant objective of the Tudors, Risk argues, "was to make England a unified nation, under the control of the state" and Kennedy's "story of Canada's nationhood paralleled the story of the emergence of the English nation state under the Tudors."¹⁷⁶

Kennedy's book traces the development of Canada from the earliest days of the French explorers until the date of publication. The comprehensive scope of the book is evident from an examination of the twenty five chapter headings. All the important familiar events are discussed: the Royal Proclamation of 1763, the Constitution Act of 1791, Lord Durham's Report of 1840, the granting of responsible government in 1848, the British North America Act 1867, and later events up to and including 1922. The study, Kennedy states in the preface, is "an evolutionary account of the various movements and stages which have issued into the organized political life of Canada to-day."¹⁷⁷ "It is well worth, studying," Kennedy writes, "as a recent example of the process of nation-making."

To understand this nation-building, it is necessary to keep the social background always in view, to show how, under the special conditions of a new land, the conjuncture of groups detached from older countries, particularly England and France, the insistent near influence of a great neighbouring country already ahead in economic development, and the later influx of more heterogeneous elements from many lands ... have worked in the end to a certain unity and a sure nationhood.¹⁷⁸

"The aim," he states,¹⁷⁹

is to trace the stream of development. The mere retelling of a well-known story lies more or less outside its purpose. It is rather an

175 P. 109.

176 Risk, "The Many Minds," pp. 356 and 361.

177 P. vii.

178 Preface, p. vii.

179 P. 6.

attempt to find in the facts the complex characters and divers conditions out of which they grew; to seek the causes which gave energy and purpose to the constitutional evolution; to animate dead documents with something of the vital energy which called them into being.

Kennedy succeeds admirably in presenting this historical and, indeed, sociological view of the development of Canada. Unexpected events occur, but everything leads towards the present, with Canada as a nation within the British Empire, a body which Kennedy strongly supported. The book is written with engaging style, which is not surprising given that Kennedy had won the prize in English prose at Trinity College Dublin. Here is how he describes the setting for the historic Quebec Conference of 1864, which led to the “federation” of 1867. (It was a federation, Kennedy insists, not a confederation.¹⁸⁰) “On October 10, 1864,” he writes, “there assembled at Quebec one of the most epoch-making conferences in history.” He continues:

It is impossible to reconstruct those pregnant days without emotion. Outside, the most ghastly civil war in history was desolating a kindred race, Sherman was on the move, leaving destruction and ruin in his wake. Inside, broken little provinces had toiled for a long colonial night and caught apparently nothing. Sectionalism was a recent sore. Party politics then as now were unstable. Jealousies, but recently shed, might easily be reassumed. Suspicion, publicly cast out, lay watching in the secret recesses of every heart. Every step forward meant a backward look to see how others viewed it ...¹⁸¹

In the preface, Kennedy states that the book has two aims. One of the aims of the book, as stated above, was to study Canada “as a recent example of the process of nation-making.” A second aim was to use Canada “as a most significant illustration of that real and yet not absolute sovereignty which defies the older theories of government and thereby leads us to a truer conception of the state.”¹⁸²

Kennedy attacks the so-called Austinian doctrine of sovereignty, a now-discredited doctrine that had been developed by legal philosopher

180 Kennedy, chapter xxiii.

181 P. 301.

182 P. vii.

John Austin in the nineteenth century,¹⁸³ which conditions statehood on full and absolute sovereignty. “As the law of nations now stands,” Kennedy writes, “Canada is not a sovereign state ... Canada’s position in the League of Nations is due to its position in the empire.”¹⁸⁴ It “cannot negotiate directly with a foreign country in the political or any other important sphere.”¹⁸⁵ Canada had signed the Versailles Peace Treaty acting on the advice of the British Secretary of State for foreign affairs.

Canada’s status, he argues, should be recognized by the law of nations. The future of the British Empire requires it. Such an approach de-emphasizes nationalism. Nationalism, he argued, causes wars. In 1921, Kennedy had written that nationalism is “almost uniformly related to a fatherland; and it is of such consuming force that men will gladly die to preserve it.”¹⁸⁶ In historian Carl Berger’s words, Kennedy’s view was that “modern nationalism and the striving for absolute sovereignty was a retrogressive and dangerous force.”¹⁸⁷

Groupings of nations are better. “It is the insistence of the older doctrine of sovereignty,” Kennedy states, “which is the great stumbling block in the way of the evolution of the greater unities which political exigencies ... require today.”¹⁸⁸ “While the civilized world is groping for the solution of the problem [absolute sovereignty] thus created, the British Empire is at least [suggesting] the form which that solution must take.”¹⁸⁹

Kennedy continued with this important theme over the years. “Having cast down the Austinian idol,” he stated in 1924, “let us grind it to powder.”¹⁹⁰ And in a speech on Irish politics in Convocation Hall that same year he stated that “sovereignty is that pestilential legal fiction which has drenched this poor world in oceans of blood.”¹⁹¹ He did not comment further on the danger of nationalism in the second edition in 1938. The growing threat of war caused by nationalism spoke for itself.

183 See, generally, Brian Bix, “John Austin,” *The Stanford Encyclopedia of Philosophy* (Spring 2013 Edition), Edward N. Zalta (ed.), <<http://plato.stanford.edu/archives/spr2013/entries/austin-john/>>.

184 Pp. 446 and 452.

185 P. 451.

186 “Nationalism and Self-Determination,” *Canadian Historical Review* 6 (1921): 10. The paper is in part reproduced in Marlene Shore, *The Contested Past: Reading Canada’s History* (University of Toronto Press, 2002), pp. 104–107.

187 Carl Berger, *The Writing of Canadian History* (Toronto: Oxford University Press, 1976), p. 40.

188 Pp. 455–56.

189 P. viii.

190 Risk, “The Many Minds,” p. 362; “The Conception of the British Commonwealth,” *Edinburgh Review* 227 (1924): 238.

191 Risk, “The Many Minds,” pp. 363–64. This paper by Kennedy is in the Kennedy Papers in the Fisher Rare Book Library.

Over the years, his views on the division of powers, however, changed dramatically. There is a marked contrast between the first and second edition with respect to his view of the Privy Council and its interpretation of the division of powers. In the first edition he has few complaints about the Privy Council and is optimistic about how the court interpreted the distribution of power in the British North America Act. He states: “Room was thus left for constitutional progress and for the development of a theory of constitutional law related as far as possible to the social and political growth of the people.”¹⁹² The Privy Council decisions, even those favouring provincial rights, “have humanized the British North America Act. They have given it the elasticity of life.”¹⁹³

Kennedy accepted without criticism, for example, Lord Watson’s provincial rights view, set out in a 1892 case (the *Maritime Bank* case) that “[t]he object of the Act was neither to weld the provinces into one, nor to subordinate provincial governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy.”¹⁹⁴ “Lord Watson’s conception,” Kennedy states, “has been acted on to such an extent that to abandon it would upset much of the structure of the constitution.”¹⁹⁵

There is no demand in the first edition to abolish appeals to the Privy Council, although he writes of “a future when Canada might reasonably hope normally to make its own supreme court supreme in reality.”¹⁹⁶

In November 1921, however, the Privy Council released its judgment in the *Board of Commerce* case, dealing with a federal Act of 1919 controlling prices.¹⁹⁷ In a judgment delivered by Viscount Haldane, the court held the legislation invalid, stating that under the “peace order and good government” clause the legislation would only be constitutional “under necessity in highly exceptional circumstances.”¹⁹⁸ The decision was not published in the official law reports until 1922 and was probably still on board a ship heading for Canada when Kennedy completed the proofs of his book. As all students of constitutional law learn, this case led to the Snider case in 1925, where

192 P. 436.

193 P. 431.

194 *Liquidators of the Maritime Bank of Canada v. Receiver-General of New Brunswick* [1892] A.C. 437 at 441-2. See Peter Russell, *Constitutional Odyssey*, 3rd edn (University of Toronto Press, 2004), p. 43.

195 P. 411.

196 P. 398.

197 [1922] 1 A.C. 191, November 11, 1921.

198 P. 198.

Haldane limited the “peace, order, and good government” clause to “extraordinary peril to the national life of Canada, as a whole.”¹⁹⁹

In the second edition of *The Constitution of Canada*, Kennedy—now age 59—strongly criticizes these decisions.²⁰⁰ The federal government, he argues, was meant to have the residuary power that would allow it to pass laws “of national importance.”²⁰¹ This was John A. Macdonald’s view and also the view of the colonial secretary, Lord Carnarvon. Carnarvon had stated: “The real object which we have in view is to give to the central government those high functions and almost sovereign powers by which general principles and uniformity of legislation may be secured in those questions that are of common import to all the provinces.”²⁰²

Haldane had therefore limited the “peace, order, and good government” section, in Kennedy’s words, to “cases arising out of some extraordinary national peril.”²⁰³ Thus, says Kennedy, “the residuum of powers would appear to have passed largely to the provinces under their exclusive authority over ‘property and civil rights.’”²⁰⁴ The court’s interpretation has “divorced it from history and from the intention of those who in truth framed it, with the result that the centrifugal forces in Canadian national life have been strengthened.”²⁰⁵

The problem was created, he states in the second edition, because the Privy Council interpreted the BNA Act as a statute and not as a constitution.²⁰⁶ Legislative history was, according to the techniques of statutory interpretation used at the time, not relevant. There had been some hope of a different approach following Lord Sankey’s decision in the well-known *Persons Case* released in 1929, which decided that women were “persons” and so could be senators.²⁰⁷ This was the case where the “living tree doctrine”—now widely used to interpret the *Charter of Rights and Freedoms*—was first enunciated, but the Sankey court also held that it did not apply to

199 [1925] A.C. 396.

200 P. 488 et seq.

201 P. 490.

202 P. 489.

203 P. 491.

204 P. 492.

205 P. 489.

206 P. 488.

207 *Edwards v. Attorney General of Canada* [1930] A.C. 124. See Robert Sharpe and Patricia McMahon, *The Persons Case: The Origins and Legacy of the Fight for Legal Personhood* (University of Toronto Press, 2007). An interesting footnote appeared on p. 384 of the first edition of Kennedy’s *The Constitution of Canada* that mentions a document dated three days after the date of Kennedy’s preface: “An official opinion of the federal minister of justice has laid it down that no woman senators can be created without an amendment of the B.N.A. Act, 1867.” Kennedy does not, however, comment further on the opinion which led to the *Persons Case* in 1930.

the division of powers.²⁰⁸ Kennedy criticized that aspect of the decision²⁰⁹ and in a later case²¹⁰ Sankey adopted the living tree approach to the entire BNA Act. But in the *New Deal* cases in 1937²¹¹—to which Kennedy devotes a scathing supplementary appendix in the second edition²¹²—Lord Atkin for the Privy Council struck down federal legislation on working conditions, unemployment insurance, and the regulation of natural products marketing schemes because, in his view, they intruded into provincial legislative power.

I took constitutional law from Bora Laskin in 1956–57 and I can still hear him vigorously denounce the privy council decisions, just as Kennedy, his own teacher, did in his second edition. Like Kennedy in his later career, Laskin was a centralist. “For Laskin,” his biographer, Philip Girard, states, “only the federal government had the resources, the vision, and the power to implement a modernist agenda for Canada.”²¹³ Indeed, in one case in 1983, his colleague on the Supreme Court, Brian Dickson, referred to Laskin’s view as “blind centralism.”²¹⁴ Many other legal academics in the thirties, such as Frank Scott of McGill and Vincent McDonald of Dalhousie, also adopted Kennedy’s centralist approach.²¹⁵

This is not the place for a detailed discussion of the Privy Council’s interpretation of the BNA Act. It is one of the most, if not *the* most, discussed and written-about issues in Canadian constitutional law. Not everyone agrees with Kennedy’s approach. Political scientist Alan Cairns, to pick one respected commentator, states in a thoughtful and provocative essay in 1971, “The Judicial Committee and Its Critics”: “The interpretation of the British North America Act by the Judicial Committee of the Privy Council is one of the most contentious aspects of the constitutional evolution of Canada.”²¹⁶ For two thorough

208 See Sharpe and McMahon at 202–206.

209 “The Judicial Interpretation of the Canadian Constitution,” *Canadian Bar Review* 8 (1930): 703 at 706–707. See also the second edition of *The Constitution of Canada*, p. 494.

210 *British Coal Corporation v. The King* [1935] A.C. 500.

211 *A.-G. Can. v. A.-G. Ont.* [1937] A.C. 326 (P.C.); *A.-G. Can. v. A.-G. Ont.* [1937] A.C. 355 (P.C.); *A.-G. B.C. v. A.-G. Can.* [1937] A.C. 368 (P.C.); *A.-G. B.C. v. A.-G. Can.* [1937] A.C. 377 (P.C.); *A.-G. B.C. v. A.-G. Can.* [1937] A.C. 391 (P.C.); *A.-G. Ont. v. A.-G. Can.* [1937] A.C. 405 (P.C.).

212 P. 545 et seq. On p. 552 Kennedy says he predicted the decisions.

213 See Philip Girard, *Bora Laskin: Bringing Law to Life* (University of Toronto Press, 2005), p. 217–18.

214 Friedland, *University of Toronto*, p. 469; *R. v. Wetmore Close* [1983] 2 S.C.R. 284.

215 See Alan Cairns, “The Privy Council and Its Critics,” *Canadian Journal of Political Science* 4 (1971): 301; R.C.B. Risk “The Scholars and the Constitution,” *Manitoba Law Journal* 23 (1996): 496, reprinted in *A History of Canadian Legal Thought* (University of Toronto Press, 2006), p. 233 et seq.; Eric Adams, “Canada’s ‘Newer Constitutional Law’ and the Idea of Constitutional Rights,” *McGill Law Journal* 51 (2006): 435; and Adams’ 2009 University of Toronto S.J.D. thesis, now online: “The Idea of Constitutional Rights and the Transformation of Canadian Constitutional Law, 1930–1960.” Their centralist views continued after the war: see R.C.B. Risk, “On the Road to Oz: Common Law Scholarship about Federalism after World War II” *University of Toronto Law Journal* 51 (2001): 143.

216 Cairns, “The Privy Council,” p. 301.

discussions of the various debates, see John Saywell's book, *The Lawmakers: Judicial Power and the Shaping of Canadian Federalism*²¹⁷ and Peter Russell's *Constitutional Odyssey*.²¹⁸ Alan Cairns shows that contrary to the critics, there is much to be said for the approach taken by the Privy Council. He argues that its "great contribution, the injection of a decentralizing impulse into a constitutional structure too centralist for the diversity it had to contain, and the placating of Quebec which was a consequence, was a positive influence in the evolution of Canadian federalism." He cites Pierre Elliott Trudeau's statement in Trudeau's 1968 book, *Federalism and the French-Canadians*, that if the Privy Council had been a centralist court, "Quebec separatism might not be a threat today: it might be an accomplished fact."²¹⁹

The first edition of Kennedy's text did not call for immediate constitutional change. Canada, he stated, is not in the mood for serious reform: "No-one can seriously doubt that at present Canada is not enamored of constitutional changes. Mr. Meighen avoided the issue at the general election of 1921, and his successful opponent [Mackenzie King] is inclined to follow the Laurier tradition."²²⁰ Canada moved along the path to independence within the British Empire with the enactment of the Statute of Westminster in 1931.²²¹ Canada now had, Kennedy argued in the second edition, "undoubted legal powers to abolish or curtail" appeals to the Privy Council.²²² But there was still no amending formula. Amendments still had to come from legislation at Westminster.²²³

In his second edition, Kennedy urged Canada to take control over amendments to the BNA Act. "The truth is," he writes, "that we have outgrown the British North America Act. Canada is attempting today to carry on the highly complex life of a modern state under a constitution drawn up for a primitive community, scarcely emerging from pioneer agricultural conditions" The country is "attempting to deal with a vast network of national complexities, with the dominion driven from field after field by judicial decisions."²²⁴

217 (University of Toronto Press, 2002).

218 *Constitutional Odyssey: Can Canadians Become a Sovereign People?*, 3rd edn (University of Toronto Press, 2004).

219 Cited in Cairns, p. 324 (footnote). See Pierre Elliott Trudeau, *Federalism and the French-Canadians* (Toronto: Macmillan, 1968), p. 198.

220 Pp. 453–54.

221 See the second edition, chapter 28, "Canada and the Statute of Westminster, 1931," p. 518.

222 P. 526.

223 P. 450, 2nd edn. See Russell, *Constitutional Odyssey*, pp. 56–57.

224 P. 529.

The rewriting of the constitution, he argues in the second edition, “must proceed from at least substantial provincial agreement.”²²⁵ He set out his own scheme²²⁶—a scheme which he had earlier presented to a House of Commons Committee on the BNA Act.²²⁷ That committee issued a report in 1935 which led to the Rowell Sirois Commission on Dominion-Provincial Relations in 1937, that, in turn, reported in 1940,²²⁸ and for which Kennedy provided research assistance.²²⁹ Some things, he told the Commons Committee, the federal government could do alone; some would require unanimity, and some needed the support of two thirds of the provinces. This is not unlike the amending formula adopted in the Constitution Act 1982, except that Kennedy did not require that the two-thirds majority also constitute half the population of Canada.²³⁰

There are a number of important constitutional issues that Kennedy did not mention in either edition, which are front and centre today. He did not, for example, mention the possibility of a *Bill of Rights* or a *Charter of Rights and Freedoms*. Nor did he have much to say about Aboriginal issues. And there are relatively few discussions of the American constitution, except to point out that the BNA Act was a reaction to the “great source of weakness” in the American system, that is, the power of the states.²³¹

Nor does he discuss any reform of the senate—speaking of today’s “front and centre.” The lack of senate reform was the only major criticism of Kennedy’s first edition that Harold Laski made in his review, where Laski states: “Dr. Kennedy’s program does not include any full discussion of what may be termed the dynamics of the Canadian constitution. It would be interesting to know whether the Dominion Senate is really necessary now; it has been, clearly enough, the outstanding institutional failure.”²³²

There is also no mention in either edition of the possibility of a province unilaterally seceding from the federation. He would clearly have said it was not possible because he states that “Canada’s severance from the empire could only take place by imperial and not by federal legislation.”²³³

225 P. 528.

226 P. 532.

227 House of Commons Special Committee on the British North America Act, 1935.

228 Report of the Rowell-Sirois Commission on Dominion-Provincial Relations, 1940.

229 Risk, “The Many Minds,” p. 385.

230 Section 52(3) of the Constitution Act 1982.

231 P. 5 of first edition, quoting John A. Macdonald.

232 *New Republic*, July 4, 1923, p. 159.

233 2nd edn, p. 449.

The publication of the second edition in 1938, which was declared out of print in 1942, is not the end of the story. There is considerable correspondence in the files of Oxford University Press about Kennedy trying to encourage the publication of a third edition. This started in 1951, but Oxford was not interested. But then in 1952 the distinguished Canadian historian George Stanley, then at Royal Military College, proposed that he and Kennedy's son Gilbert, a professor of law at the University of British Columbia, prepare a new edition of the book.²³⁴ Stanley and Gilbert had been colleagues at UBC in the late 1940s. This had W.P.M. Kennedy's blessing. Stanley would do the parts up to Confederation and Gilbert would do those after it. The project had the backing of the important constitutional scholar Sir Kenneth Wheare of All Souls College, Oxford, who was also on the Oxford publication board. Wheare wrote, "It is a very good book ... there is a great need for a good historical book, and Kennedy's holds the field It is true that if it were proposed that Kennedy himself should bring it up to date one might be a little nervous ... but I understand that is not the proposal at all. I support the idea very strongly, and I hope the Delegates will take it without any more delay."²³⁵

A contract was eventually signed, giving the authors £500 pounds instead of royalties, and Stanley wrote in March 1955 that "everything now seems to be in order for us to proceed with the task of preparing the book for publication." But first Gilbert Kennedy had to complete his doctorate for Harvard University and then the following year he was appointed the Deputy Attorney General of British Columbia. By 1961, Oxford concluded that "Kennedy files has dropped out."²³⁶ W.P.M. Kennedy suggested that Alexander Brady of political economy or Bora Laskin of law could take Gilbert's place. Whether they were ever approached is not known.²³⁷ Nothing further happened with the project. Stanley went on to design the Canadian flag and to become the Lieutenant Governor of New Brunswick. In 1969 he used the material he had prepared for the Kennedy book to publish through Ryerson Press, *A Short History of the Canadian Constitution*.²³⁸

234 Letter, dated March 14, 1952, from Stanley to Oxford University Press, Toronto.

235 Letter dated October 5, 1953 from Wheare to the Secretary of the Board, D.M. Davin.

236 Note in 1961 from Ivon Owen of Oxford Canada to Peter Sutcliffe of Oxford England. Coincidentally, Sutcliffe was my editor for the publication of my thesis, *Double Jeopardy*, by the Clarendon Press, Oxford, in 1969. Another example of the fact that it is a small world is that my research assistant, Steve Ayelward, mentioned in footnote 1 is now clerking for Tom Cromwell, who is George Stanley's son in law and may possibly be able to shed some light on the project. But for the purpose of an "introduction" one has to stop someplace.

237 Possible collaboration with Stanley is not mentioned in Philip Girard's biography of Laskin.

238 (Toronto: Ryerson Press, 1969).

In his preface, Stanley simply notes that a book on constitutional history “has been unavailable ever since W.P.M. Kennedy’s *Constitution of Canada* went out of print.” Perhaps it is just as well that Stanley published his own book. Stanley favoured the so-called “compact theory of confederation” rather than the “centralist theory” advocated by W.P.M. Kennedy.²³⁹ “Doc Kennedy” might not have been happy with the result.

As previously stated, Kennedy retired as dean in 1949, at age 70. R.C.B Risk states: “After the late 1930s, Kennedy wrote little and after he retired in 1949 he lived quietly until his death in 1963.”²⁴⁰ He was given an honorary degree by the University of Toronto in 1953, having received an honorary degree from the University of Montreal in 1939. The *Globe and Mail* reported a retirement banquet in his honour in the Crystal ballroom of the King Edward Hotel, stating that when he stood to reply after the tributes in his honour, “it was with the wry wit, the undimmed enthusiasm, the youthful idealism that made him famous.”²⁴¹

In his book on Bora Laskin, Philip Girard notes that “Caesar Wright, when he ultimately succeeded Kennedy . . . would do all he could to exclude Kennedy from the life of the law school and to erase and obscure his place in the collective memory of the institution.”²⁴² Kennedy was almost forgotten until Risk wrote his important article on Kennedy. He died at age 84 on August 12, 1963 in the Toronto General Hospital. The funeral service was at St. Paul’s Anglican Church on Bloor Street East, with cremation at St. James the Less Chapel. Donations were directed to the Canadian Cancer Society.²⁴³ His wife Pauline, who moved from 77 Spadina to a later-demolished apartment building, now a University residence, at the south-east corner of St. George and Bloor streets, died at age 71 in 1966. Both are buried at St. Mark’s cemetery in Emsdale, near the cottage on Beaver Lake. Their son Frere Kennedy intends to be interred there.

CONCLUSION

The story of Kennedy’s career, the writing and possible republication of *The Constitution of Canada*, and the founding of the University of Toronto Law School, illustrate a theme that has run through much of my own writing, that is, the accidental nature of change and the need to understand change

239 P. 154.

240 Risk, “The Many Minds,” p. 386.

241 *Globe and Mail*, March 18, 1949.

242 Girard, *Bora Laskin*, p. 154.

243 Article and obituary, *Globe and Mail*, August 13, 1963.

in the context of the personalities, politics, and social conditions. One can see this in the development of laws,²⁴⁴ the outcome of specific cases,²⁴⁵ and the growth of institutions.²⁴⁶ Each depends—to some degree—on personalities, politics, and pressure groups, although the mix varies, of course, from situation to situation.

The same is true of constitutional change, as Kennedy showed in *The Constitution of Canada*. In 2017, Canada will be celebrating the 150th anniversary of the passage of the British North America Act 1867. Kennedy's book, published about one third of the way through the intervening years and the change in approach set out in the second edition provide important sign-posts in our understanding of that journey.

And W.P.M. Kennedy? After this further examination of his life and career, I still end up, as I started, by finding him distinguished, engaging, and enigmatic.

244 See, for example, the issues of law and morality, gun control and codification of the criminal law, described in chapters 4, 14, and 17, respectively, of my memoirs, *My Life in Crime*.

245 See *The Trials of Israel Lipski* (London: Macmillan, 1984); *The Case of Valentine Shortis* (University of Toronto Press, 1986) and *The Death of Old Man Rice* (New York University Press, 1994).

246 See my University of Toronto History and *A Place Apart: Judicial Independence and Accountability in Canada* (Ottawa: Canadian Judicial Council, 1995).