

Emmett Hall: A Life

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Introduction

This year marks the twentieth anniversary of the death of Justice Emmett Hall. As the previous months saw real interest as to whether Saskatchewan would finally offer a Supreme Court appointment from its own ranks, it is fitting to remember the last justice named directly from our province. As lawyer, judge, and public policy-maker, Emmett Hall truly influenced some of the defining features of Canadian life during the past half century.

The descendent of Irish immigrants, Emmett Matthew Hall was born in a small village north of Montreal in 1898. Seeking opportunity in the Canadian West, his parents made the dusty journey to Saskatchewan in 1910. Emmett spent his formative years in a booming Saskatoon, where family life revolved around the Roman Catholic Church. Each winter saw the Halls dutifully trek over the ice of the South Saskatchewan River to attend St. Paul's Cathedral. An early memory was seeing Prime Minister Wilfred Laurier speak at the site of the future University of Saskatchewan. Years later, the same young lad in the audience would become chancellor of the very institution whose cornerstone had been laid that day.

Hall entered adulthood just as his generation was called to the battlefields of Europe. While poor eyesight precluded him from personal service, he came to count this initial disappointment as a blessing when recollecting in later years of the many Saskatoon enlisted men who had never returned. Interested in the law since high school, Hall began apprenticing with the Saskatoon firm of Murray and Munro in 1916. The articling system of that day paired law office work with concurrent attendance at the College of Law. Hall spent his morning and evening hours listening to lectures from men such as J.W. Estey, later to become the second Saskatchewan appointment to the Supreme Court of Canada. Amidst his other duties, Hall found time for such extracurricular activities as amateur debate. One such contest in February of 1919 saw Hall teamed with a certain classmate named John Diefenbaker, only to see the pair go onto defeat.

While different men in many ways, their shared law school experience formed the basis of a remarkable friendship between Hall and Diefenbaker. Following graduation in 1919, Hall ultimately settled in Saskatoon while Diefenbaker's professional career brought him to Prince Albert. The two never lost touch however, and their continuing closeness is illustrated by a letter

from Hall in the early days of the Depression: “Being very hard up yesterday and having to raise money to save myself from being closed out in more ways than one, I took the liberty of drawing upon you for the sum of \$60...I would ask you to meet this draft and raise hell with me afterwards.”

Hall’s legal career in Saskatoon would see his involvement in a number of remarkable cases. Though it seems scarcely believable now, the late 1920s had seen the Ku Klux Klan gain a foothold throughout our province. When one Saskatoon newspaper editor denounced an arriving Klan figure with the headline “Well Known Hatred Breeder Comes to Town”, he was charged with criminal libel. For his defence efforts on behalf of the editor in the resulting trial, Hall was reportedly burned in effigy by the Klan one summer evening.

Hall courted further controversy by defending participants in the 1935 Regina Riot. Driven to despair by joblessness and dismal relief camps, some 1,600 unemployed men had begun a trek to present their demands in Ottawa. While camped *en route* in Regina, an attempt by police to arrest leading trekkers descended into a pitched battle. The dust cleared to reveal two dead and hundreds injured. When 24 hikers were eventually brought to trial, Hall was invited to serve as co-defence counsel. Helping to spare most of the men from conviction, Hall grew to sympathize with his clients as miserable unemployed seeking sustenance from their government. The trekkers had been branded as Bolsheviks by many in Hall’s own circle however, and he himself remembered years later that “friends who used to call and invite me to dinner every time I came to Regina suddenly didn’t know who I was.”

The Regina Riot case did much to establish Hall’s reputation as a civil libertarian. Never one to flinch from unpopular causes, he accepted cases that few Catholic lawyers of his day would touch. In 1945, Hall defended a local doctor against charges of procuring abortions for five women. Immersing himself in medical literature, he consulted daily with a leading gynecologist throughout the trial. The doctor was cleared on all counts, with Hall establishing that the abortions had been vital to preserving each woman’s life. Hall’s firm also handled much of Saskatoon’s divorce work in an era when scandal still clung to the word. All the while, Hall – a devout churchgoer – served on the board of St. Paul’s Hospital and performed *gratis* corporate work for various Church causes.

For all his progressive instincts, Hall was no radical liberal. In 1936, when a sympathizer of the Spanish Republican cause addressed the Saskatoon Kinsmen Club, Hall stood and began to fiercely denounce him as a communist. The surprised Master of Ceremonies was compelled to distract the audience by having “Moonlight and Roses” performed on the xylophone.

Hall’s allegiance to the Tory party also testified to a conservative side to his nature. Although unsuccessful both times, he even stood for office personally under that banner. After his own

string of early failures, his former classmate John Diefenbaker had begun to enjoy a measure of electoral success however. As Diefenbaker rose in the Conservative ranks, Hall threw his energies behind him. The crowning achievement came in June of 1957, when Diefenbaker led his party out of the wilderness to end two decades of Liberal reign.

Diefenbaker wasted little time in offering opportunities which his old friend would never have otherwise enjoyed. Long possessed of judicial ambitions, Hall had always felt thwarted by Saskatchewan's powerful Liberal baron, Jimmy Gardiner. Before 1957 was out however, Hall had been named Chief Justice of the Saskatchewan Court of Queen's Bench. Hall and his wife left their beloved Saskatoon and purchased an elegant home near Wascana creek. Even while joining the city's elite, Hall did not lose his inborn sense of equality. After becoming a member of the exclusive Assiniboia Club, he began a quiet but successful drive to undo the club's exclusion of Jews.

Though Diefenbaker thereafter elevated Hall to the Court of Appeal, Hall would not serve on either court long enough to leave a significant legacy. In 1962, he was called upon to leave the province entirely on his appointment to our nation's highest court. While the responsibilities of a Supreme Court justice are daunting to any new appointee, it must be remembered that Hall shouldered them in addition to the labours of the landmark Royal Commission on Health Services. Tasked with examining Canadian health care in light of the universal health insurance recently adopted by Saskatchewan, Hall ultimately called for measures even more radical than those of Tommy Douglas. Now regarded as a founding father of Medicare, Hall's leadership resulted in a unanimous report endorsing the creation of the public health care we enjoy today.

On the bench however, Hall found himself out of sync with brethren who often approached the law as an exercise in dry and technical interpretation. Hall had come to believe that sound judicial decisions had to recognize social reality, and could not merely be a mechanistic application of pre-existing rules. As biographer Frederick Vaughan describes, "Hall always had difficulty comprehending the strict-constructionist approach of some of his colleagues...For Hall, the only approach was to see if an injustice had been done and, if so, find a way to correct it."

Hall's devotion to justice was on clear display in the appeal of Stephen Truscott. Tried for murder at age fourteen, Truscott had been found guilty on circumstantial evidence. His case became a Canadian *cause célèbre*, with members of Parliament visiting him in prison. In 1967, Prime Minister Pearson referred his case to the Supreme Court, setting the stage for what many predicted would be the reversal of a blatant injustice.

However, eight of the nine justices were unmoved and refused to overturn the conviction. Conspicuous in his lone but forceful dissent, Hall stressed that "even the guiltiest criminal must be tried according to law." Truscott, Hall believed, had not received a fair trial and deserved a

new one. Though Hall did not live to see it, in 2004 Justice Minister Irwin Cotler indeed found a reasonable basis to conclude that Truscott had likely been subject to a miscarriage of justice.

It was in the field of Aboriginal law that Hall created his most enduring judicial legacy. Knowing of how First Nations had suffered at the hands of successive governments, Hall wrote in one opinion of “the lamentable history of Canada's dealings with Indians in disregard of treaties.” In *R. v. Drybones*, at issue was a law criminalizing drunkenness by Aboriginals while off a reserve, even in a private residence. Conversely, a Caucasian could face a charge only for public drunkenness and even then with a lesser penalty. In his concurring opinion, Hall joined the majority in condemning the law as a denial of the equality guaranteed by the 1960 *Bill of Rights*. He emphatically dismissed the idea that the *Bill of Rights* was not offended so long as all members of a particular class – i.e. First Nations – were treated equally. All Canadians, declared Hall, were entitled to freedom from legal discrimination regardless of race. While *Drybones* gave voice to Hall’s passion for fundamental freedoms, it proved a fleeting victory. In the remaining decade and a half before the Charter revolution, the Supreme Court never again consistently invoked the *Bill of Rights*. As Hall was to remark sadly, this statutory declaration of human rights “went from a high point of great expectancy down a short steep slope to near oblivion.”

A more important contribution to Aboriginal law came in *R. v. Calder*. In the late sixties, Chief Frank Calder sought a declaration that Nisga’a title to territory in the Nasa River valley had never been lawfully extinguished. Upon reaching the Supreme Court, a majority of Hall’s colleagues dismissed the requested declaration. Three of the four majority members held that any title had been extinguished by previous colonial proclamations and exercises of sovereignty. Hall strongly dissented. Finding that Aboriginal title existed through countless centuries of occupation, he declared that it could only be extinguished through surrender or by competent legislative authority. Consequently, any future taking of Aboriginal land would require compensation. As Vaughan writes, Hall deeply regretted that his was not a majority judgment, “since he could think of no better way to end his career as a judge than to see a long-standing injustice to native peoples corrected.” However, Hall did not write in vain. Today’s visitors to the College of Law library will see a bust of Hall, its plaque crediting his dissent in *Calder* with having influenced the modern Aboriginal land claims process in Canada.

Viewed broadly, Hall’s jurisprudence reflect a reverence for fairness and individual rights. He decided for the accused in over eighty percent of the criminal appeals he heard. As one former law clerk observed, Hall “was particularly interested in the rights of the individual. Whenever a case arose where it was the state against the individual, he almost always ended up on the side of the individual.” Though his time on the court saw the *Bill of Rights* fall into disuse, it is fascinating to contemplate what might have been had Hall served in the era of greater judicial powers offered by the Charter.

Hall retired from the court in February of 1973. Far from seeking a leisurely retirement, he presided over a series of important royal commissions and national arbitrations. In the field of judicial reform, Hall made an exhaustive study of the Saskatchewan court system. It is him who we may thank for such things as reform of the outdated magistrates court and a transition to our unified family court system.

Hall also studied the question of status for the Regina campus of the University of Saskatchewan. His ultimate recommendation in favour of its autonomy would cost him an old friendship however. Then serving as chancellor of the institution, Diefenbaker never forgave Hall for dismembering his beloved university. The ill feeling ran so deep that the retired Prime Minister even struck Hall off the list of proposed pallbearers and invitees to his funeral. When Diefenbaker was ultimately interred on campus grounds, Hall was reduced to wistfully watching the proceedings from his balcony across the South Saskatchewan River.

Conclusion

Emmett Hall remains one of the most respected justices in the history of our Supreme Court. While his closeness to our thirteenth Prime Minister thrust him into national renown, it was Hall's own accomplishments which secured his place in history. From publically-available health care to fairness and due process, he championed basic human rights for all Canadians. A Conservative stalwart, his progressive instincts nevertheless earned the title of "friend of the working people" from the Canadian Labour Congress and saw him serve as Honorary Chairman of the Canadian Civil Liberties Association in his retirement.

Hall's legacy as a jurist may never rank him as a Cardozo of the North; his own colleague Ronald Martland once described him as competent, but not "one of the stars of the court." Nevertheless, his integrity and unswerving devotion to fundamental social values – both on and off of the court – have left an enduring contribution.