

Reflections on my Father

by

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I always thought that Dad would be remembered primarily for two things: the unique relationship that he and the people of Barra jointly crafted over the past 40 years, and his development of the theory of relational contract law. The outpouring of support and affection that has taken place after his death – in Barra, throughout Scotland and from around the world -- has proved me wrong: both of these take a back seat to the myriad of personal relationships and interactions he had with so many people in so many places. In the conversations and reminiscences that have come forth since his death it is Dad's interest in, respect for, and kindness to individuals which shine through most clearly.

I thought it would be interesting to look back at Dad's life and in the course of doing that to speculate a bit about something which has puzzled me for some time, namely whether there is a connection between Dad's relationship with Barra and his scholarly work. Many people have said many wonderful things about Dad and his contributions to Barra, but we should not overlook Barra's influence on Dad and Barra's contributions to his scholarly work.

First I would like to mention three examples of things Dad did which are too small or personal to get covered in any of the 'official' accounts, but bring out important elements of his character – his generosity and concern for the unfortunate and unfavoured, his initiative, his creativity and independence of thought, his determination to get important things, no matter how unglamorous, done and done right, and perhaps most strikingly, his strong sense of duty and his astonishing productivity. These are but three of many examples (others of varying significance would include Dad's remarkable relationship with Mum, his service as Chief of the Clan Macneil and the many duties and relationships that entailed, and his battles to prevent the Standing Council of Scottish Chiefs from becoming commercialised) which would make the point equally well.

The first example dates back to the early 1960s. When I was about seven or eight and we were living in Ithaca, New York I played baseball in a league which focused solely on playing and winning games. Dad thought that this wasn't right, so he got some of the other dads together and founded 'Sandlot Baseball'. This was run by the dads themselves with the help of some students on the local university baseball team, and focussed on learning skills, training and participation, rather than competition and winning. The dads also managed to get most of the local kids who were not good enough to play in the league involved, so there was an emphasis on including everybody. Sandlot Baseball developed into a local institution and thrived for more than 25 years.

The second is a building project Dad instigated. In the 1980s, when Mum and Dad were living in a Coop in Chicago, Dad discovered that the windows in the building (which had dozens of units) were old and leaky, resulting in lost heat and high energy bills. So he conceived and then drove through the procurement and installation of modern, better insulated windows which at the time constituted a very innovative solution to the problem. Consulting with the neighbours and dealing with the contractors took up countless hours, many of them very stressful, at a time when Dad was already very busy teaching and writing at Northwestern Law School and administering the estate in Barra, but he saw the project through and in the end the neighbours, many of whom had been sceptical or resistant, were very pleased.

The third is the enormous volume of correspondence Dad conducted throughout his adult life. He wrote to family, friends, university colleagues and scholarly counterparts, people in connection with the Barra estate, Macneils all over the world, the many associations and groups he was involved with, businesses, newspapers, and countless others, including replies to many unsolicited requests for information or advice. He must have written tens of thousands of letters over the course of his life (and in the last few years thousands of emails, which were composed with the same attention to detail as the letters). And all of them were composed and edited with incredible attention to detail.

One recent letter stands out in my mind. Last year two elderly sisters sweetly wrote to thank Dad for the kindness of (they thought) his ancestor, General MacNeil of Barra, who had taken their great grandfather in when his ship, on its way from Dundee to Ireland, had gone down off Barra in the 1820s. Tragically, he fell off a cliff and died, but the General had taken him in the night before in Eoligarry House. Dad was fascinated by this tale. After undertaking a fair bit of research, he responded with a detailed three page essay thanking the sisters, explaining that the General was not his ancestor, and then proceeding to dissect every aspect of the story, for example speculating about how it was that a commercial vessel originating in Dundee was travelling down the West Coast in the 1820s, making some guesses about the possible identify of the doctor in Barra who had seen to the Dundee ship's captain, etc., etc.

Turning to the possible relationship between Dad's conception and development of relational contract theory and the early days of his experience as a landlord in Barra, I would like first to look back to the 1930s and early 1940s. Two things, I think, may have set the stage for subsequent developments. The first is Dad's experience growing up in a rural Vermont township where the old community ways and oral traditions were still very much alive and many of the families had local roots going back a hundred years and more. Dad soaked up the history and the sense of community, but as a member of an incoming family, also was an outsider. In addition, he was often on his own, since his mother died when he was five, and his father was often away. As a teenager, he boarded with the Eames, a large and closeknit neighbouring farming family (He spent a lot of time under the tutelage of Grandpa Eames, who had been born in the 1860s). This must have further strengthened the sense of being part of yet distinct from a family and the community. I suspect that Dad's independence of thought, his fierce self

reliance and his empathy with those who were not part of the 'in crowd' stem from these childhood experiences in Vermont.

The second are the two visits he made to Scotland, and Barra, in 1938 and 1939. In Barra too Dad spent a lot of time with locals, this time Barra locals. The family rented what became Peggy Angus' house from Archie Beag, and Dad was often with Archie Beag. Here and with others, like Annie and the other members of the Sinclair clan, he heard many Barra stories. Through the interactions and the stories, he must have developed an understanding of the strength of the community in Barra. Again the sense of being associated with the community yet outside of it must have made a deep impression, especially on a 9 and 10 year old boy.

We need to make one more stop on the journey before turning to the key years of the early 1970s. Between 1965 and 1967 Dad spent two years teaching law at the University of Dar es Salaam in the newly independent Tanzania. Many people who worked at the University and virtually everyone else Mum and Dad interacted with still had close ties with their villages and in some cases were still living in the village. So Dad developed a firsthand familiarity with yet another set of very strong communities. And he began to incorporate this experience into his scholarly work. In 1968 He published a path breaking work, *Contracts, Instruments for social cooperation, East Africa*, the first book on East African contract law (an interesting aside is that in 1966 he published *Bankruptcy Law in East Africa*, the first textbook ever published on Tanzanian law. The first, autographed, copy was presented to President Julius Nyerere), in which he explicitly grappled with the ways in which contract law deals with contractual relationships which are embedded in the context of a complex social context, in this case East African tribal societies.

In June of 1970 Dad became Chief and along with that inherited the responsibilities for managing the Estate and the Castle. He had had very little to do with the day to day running of either the Estate or the Castle, was living in Ithaca, New York and had a full time and busy job at Cornell Law School. I do not think he was at all prepared for the commitment that would be required to fulfil his responsibilities in Barra; over the next several years there was a very steep learning curve and doubtless he had to make major adjustments in allocating his time to make room for Barra. The pattern developed of spending time in Barra in the summer and during the rest of the year working on Barra matters with the factor, Gerard Campbell, and the solicitor in Edinburgh, Hamish Gunn.

Dad eventually got used to the pattern and the extra work, and although the time spent in Barra was often very stressful, trying to cram a full year's work into a summer visit, he loved being in Barra, re-establishing old acquaintances and making new ones, and playing an increasingly productive role in the community. What proved harder than the work and the stress, I think, was the resentment he faced from significant numbers of people who were ambivalent or even hostile to Dad in his position as landlord. This stemmed not only from the deep rooted feeling against landlords in the Gaeltacht, but also from the legacy left over from Grandpa's time in Barra. I suspect that the depth of

feeling came as a shock to Dad. I am not sure how long it took him to understand what was going on, but by 1974 he was able to articulate it clearly in the context of his father's and his own positions. In the Preface to the republication of *Castle in the Sea*, he wrote:

“One of the keenest felt disappointments was Robert Lister's failure to achieve the ancient position of chiefly primary on the Island of Barra itself. His desire to be not only chief of the clan, but also of the island was, however, doomed from the start. Not the least of the many reasons for this is that Barra is about as close to a classless society as may be found anywhere in the developed world. When the Macneil family reacquired the Estate of Barra in 1937, the days were long gone when the Laird could command a tug on the forelock, and whatever lingering customs in that direction yet remained happily died out during World War II. (There was, for example, considerable Barra resentment at the near-royal reception accorded the Macneil family upon its return in 1938.) Whatever position the new chiefs wished to enjoy in Barra could come about only from accomplishments and contributions made as members of an equalitarian community.”

There were of course supporters of Dad and the family – like Morbhan, and some like Flip and Dollag who delighted in making their support clear, thumbing their noses as it were at those who did not agree with them – old friendships with individuals and families dating back to the 1930s, new friendships with growing numbers of people, and good working relationships with the priests in Castlebay and Northbay, and most people were friendly. Nevertheless the undercurrent of resentment took a long time to work itself out despite Mum and Dad's efforts to be good members of the community.

On the evidence of the words quoted above Dad's experience on re-engaging with Barra in the early 1970s resulted in an intense period of reflection about communities and relationships, bringing to the surface the earlier contradictions and tensions which had informed his childhood experiences, and following closely on the time spent in Tanzania. It was during exactly these same years that he developed a revolutionary new way of looking at contract law. This was first manifested in *Cases and Materials on Contracts: Exchange Transactions and Relationships*, a 'casebook' published in 1971 which was innovative both in the way it was constructed, and the materials used, and its insistence on understanding contracts and contract law as being embedded in complex human relationships. Then in 1974 – the very year he wrote the preface quoted above – came the publication of *The Many Futures of Contracts*, a full blown exposition of the theory of 'relational' contract law, setting out a framework for explaining contracts along a spectrum running from simple 'discrete' transactions' to complex, long term relationships.

This is not the place to elaborate on the details of these works – David Campbell and many others have written extensively about Dad's work on contracts—but for those who have time or interest to dip into these works it is apparent that they are a deep exploration of, and a repeated series of efforts to look from different angles at, the issues which arise when people collaborate in making commercial and non-commercial

arrangements. Dad's core insight was that classical contract law had made the mistake of pretending that contracts were made and carried out in isolation from their social context. His relational theory placed contracts firmly back in the social context which is their lifeblood. What better place could there be than Barra to reinforce this point? And what better vantage point than Dad's – a reflective outsider who was finding himself drawn ever more closely into the heart of the community and its affairs – to serve as a catalyst for seeing that the kinds of relationships he was dealing with in Barra were instances of generalisable principles operating everywhere?

Like the process of gaining acceptance in the Barra community, so too the acceptance of Dad's ideas on relational contracts took time and considerable effort. But during the 1980s it is fair to say that good progress was made on both fronts. On the scholarly front, Dad wrote further about relational contracts and other scholars began to engage him in debate. In Barra one happy development was the increasing use of the Castle as a centre for social activities – ceilidhs, clan gatherings, parties for locals and visitors like the participants in the Round Britain Yacht races, and the many dinners prepared by Mum in her tiny kitchen.

In 1990, after Mum and Dad moved to Scotland, and Dad took partial and then, around 1995, full retirement from Northwestern Law School, he was able to devote more time to Barra. I am not sure whether it was coincidental or not, but in the early 1990s, after Dollag made a house site available, the family was able to 'move ashore' to the house in Garrygall. As Canon Angus pointed out in his moving remarks at the recent service, this step had important symbolic import as well as practical consequences. Being based on the island allowed Dad and the rest of us to interact more easily and naturally with everyone on the island in a way that had not been possible given the isolation that necessarily accompanied living in the Castle.

By the mid 1990s, Dad was turning his attention to two things. The first was to secure a long term future for the Castle and the Crofting Estate in a way that was good for the Island (and the Castle itself because he of course had a deep and abiding belief in the importance of history as well as a love of the building itself). The second was the current and future wellbeing of the community, as new threats to Barra began to appear with alarming regularity. He approached both matters with characteristic resolution and persistence. After years spent investigating alternatives and negotiating and crafting a very detailed, creative and distinctive settlement, the Castle was leased to Historic Scotland in 2000, but on the condition that Historic Scotland would have to conserve and manage the Castle in a way which preserved its physical fabric and maintained the Castle's dual roles as centrepiece of Barra's identity and economy, and symbolic home of Macneils everywhere. And in 2004 he returned the Crofting Estate to Scottish Ministers, believing, correctly as it has turned out, that among the available alternatives they were best placed to manage the estate in way which continued to serve the interests of the crofters and the wider community.

Dad's response to the growing threats to Barra's current and future wellbeing in the forms of omission – e.g. the failure to provide secure transport links -- and commission

– e.g. the efforts of SNH to establish control over both Barra itself and the surrounding seas – was to take a leading role in organizing and galvanizing the community to address these threats, and to represent the community in interactions with civil servants and politicians on the mainland. The first and in Dad's view in many ways the most important step was the creation of the Transportation Committee and having it formally constituted as a body under the two Community Councils. This gave the Transportation Committee the credibility and legitimacy to communicate effectively with CalMac, civil servants and government ministers, providing a precedent and a platform from which the campaign to save the Air Service in 2003 (which of course continues to this day), ongoing efforts to obtain a better ferry service, the fight against SNH and other initiatives have all benefitted.

Dad's leadership in these areas also led to working relationships with a whole new group of people in the community, which were immensely satisfying to him. Dad thus has been instrumental not only in the various campaigns noted above but also in the stimulation and training of a new generation of community leaders and activists. As Donald Manford has pointed out, one result of the emergence of this new generation is that Barra is now much better placed to defend its interests than it has been at virtually any point in the past 20 years – I would say that you could substitute '200' for '20'.

The 2000s also saw increasing scholarly discussion of relational contracts and acceptance of the importance of Dad's work. Highlights included David Campbell's publication of a book solely dedicated to Dad's works and the translation of *The New Social Contract* into Japanese, Chinese and Portuguese.

Happily in his last decade Dad also discovered a second scholarly interest which, it could be said, constituted a perfect culmination of his life in that it had Barra at its heart, allowed him to deploy his love of history in a systematic way, involved many of the same underpinnings as relational contract theory, and was in essence a campaign in support of an unfavoured or at least overlooked or misunderstood group, namely Hebridean Galley Castles, which of course are in part proxy for the people of the Hebrides. Stimulated by his frustration with the dominant school of historiography which either mindlessly or for ideological reasons dates Kisimul to the 15th century on the basis of highly selective evidence and Victorian views –Scotocentric as Dad called them – which hold that civilisation made its way up from the south with the advent of the Normans, and only very belatedly reached the backward heathens of the Hebrides after passing through mainland Scotland, Dad began an exploration of the origins of what he came to refer to as Hebridean Galley Castles, i.e castles in the Hebrides and the adjacent mainland which were close to the shore and had, he believed, been constructed as adjuncts to the galleys which were the main vehicles of both commerce and war in the Hebrides during medieval times.

He got started on this work in preparation for the 2004 Northern Studies Conference (which, thanks to Dad's efforts, was held in Barra and focussed on the islands of Barra and Skye). He had been asked to talk about Kisimul, and in the course of preparing for this he began to look more widely at castles in the Hebrides and elsewhere in the

medieval Norse-Celtic seaways. This work resulted in a paper, *Kisimul Castle and the Origins of Hebridean Galley Castles: Preliminary Thoughts*, which he read at the conference and subsequently published in the conference proceedings, which came out in 2006. The paper is a call to arms, exposing the flawed assumptions of the dominant school of historiography and the way in which these lead to unjustified conclusions about late dating of Kisimul. It goes on to call for a proper 'contextual analysis' and sets out a list of issues that need to be investigated in detail and without ideological blinkers before a proper understanding of the history of the Galley Castles can be written, issues such as comparative mortar analysis of relevant castles, a comprehensive review of early charters, etc.

After 2004 Dad threw himself into detailed study of the areas he had laid on in the paper. His library at home is piled with the hundreds of books and articles he was using as reference materials, and he left several papers in draft form. The first follow on fruit of his labours, a series of four maps showing possible Galley Castles in their contexts of the Hebrides and adjacent mainland, and the wider Norse-Celtic seaways, will soon be published. The second, an article on how castles are dealt with by the 14th century chronicler John Fordun, is almost complete. Mum and I will now be turning ourselves to the task of ensuring that these and other aspects of Dad's work on Hebridean Galley Castles are not lost and to the extent possible are further developed.

Dad was convinced that with this work he was onto something of great significance. It is not hard to see why. In essence what he has begun doing is to rewrite the history of the medieval Hebrides from a Hebridean perspective. In the 12th and 13th centuries the Hebrides, of course including Barra, were at the centre of the Norse –Celtic seaways. With their galleys and Galley Castles, the Hebrideans were producing advanced technology and were part of a thriving, forward looking set of sea kingdoms. This is hardly the view that comes through from the Scotocentric history, written from a mainland perspective, which projects back in time the current situation, when the Hebrides are seen to be a backward part of 'the periphery', and, deprived of control over their natural resources like fish and wind and sea power, Hebrideans are caught up in seemingly endless battles for survival with bureaucrats in places like Edinburgh and Brussels (In recent years Dad, ever creative in his thinking and ever a believer in self reliance, had begun to focus on the concept of a quasi independent island federation comprised initially of the Hebrides, Shetland, Orkney, and the Faroes as a political vehicle that would enable citizens of the islands to regain control over their natural resources and free themselves from the shackles of absentee bureaucrats, and in so doing find greater prosperity and create a framework for a more participative polity that better reflects Hebridean traditions and predilections than the stifling state bureaucracy of modern Britain. This might seem a far fetched vision but who knows how things might develop? As David Campbell said last month of Dad's work on relational contract, which as noted above originated in the early 1970s, "even now he remains far, far ahead of his time.")

So, Dad's final contribution to Barra has been, and will continue to be as the results of his research on Hebridean Galley Castles begin to see the light of day, an intellectual

complement to the administrative efforts which spanned the past 40 years and the more recent organisational and political contributions of the past 15 – 20 years. It is nothing less than to help Barra regain its history. This is important for two reasons. First, because history is vitally important in and of itself. And second, because an understanding of history is central to making sense of and dealing with current issues. Dad's work on Hebridean Galley Castles was also intended to remind the Barraich that elements of Barra's proud past can serve as signposts for crafting an equally proud future.

Before concluding I should make it clear that neither I nor, I am sure, others, would pretend that Dad was a saint! He had his share of faults like everyone else. In his younger years he had a very quick temper, as his children well remember! Another was that he was often difficult, and too certain that he was right or his way was the right way, as those who knew him well would surely attest (Padula, does this sound familiar?). I suppose this was the flipside of his self reliance and his independence of thought.

In these reflections I have tried to come to grips with aspects of Dad's life which have interested me for many years and of course are part of my life. The process of reflection and composition has helped me to better understand their context and their significance. But there is something at the heart of Dad's character which I have no better understanding for now than when I started. That is the strong sense of duty that underlay everything he did and lay behind his incredible self-discipline and productivity. Duty to colleagues, friends and neighbours, duty to fellow clanspeople, duty to Barra, and duty to his family above all. It is possible to speculate about how other elements of his character may have related to his environment and his experience, but his sense of duty was his alone and must have arisen from deep within himself.

Of course there is no way of knowing whether he would agree with the perspectives I have developed in working out these reflections, but being Dad he certainly would have had a strong opinion! It is only fitting that he should have the last word. It was impossible to know my parents without being struck by their extraordinarily close relationship. Mum's love and support provided the underpinning that enabled Dad to lead the remarkable life he did. I don't think she will mind my ending by saying that Dad asked that on his headstone his name, and Mum's, appear with the words United in Love Forever, and that if possible there also be included "a pair of clasped hands which is how we always walk together."