

Book Review

CANADIAN MAVERICK: THE LIFE AND TIMES OF IVAN C. RAND, by William Kaplan¹

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TO LAWYERS, SCHOLARS, AND STUDENTS of a certain generation, Ivan C. Rand was an iconic figure. He is remembered as the judge who forged a singular path for the Supreme Court of Canada in that first, magical decade of final-court supremacy after Privy Council appeals ended. Rand immortalized the Court's coming of age with glittering decisions showcasing "found" rights that were protected by the Constitution from violations by the state. Extra-judicially, he masterminded a solution to the Ford strike and invented the "Rand formula"—a brilliant device of union security that made union dues mandatory without creating a closed shop.³ Accomplishments that continue to stand out in Canadian legal history marked Rand as a man who was ahead of his time.

I. A FIRST-RATE MIND AND A THIRD-RATE TEMPERAMENT

Little has been written about Rand and his life, but it is not that he is forgotten or that his achievements have been diminished by the passage of time. More to the point, judicial biography and legacy scholarship are relatively new in the Canadian academic literature. Like the subject of this biography, William Kaplan is also ahead of his time. After being inspired to "awe"⁴ by Rand's civil liberties judgments and calling the judge his hero in law school, the author resolved to

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1. (Toronto: University of Toronto Press, 2009) 510 pages [Kaplan, *Canadian Maverick*].
 2. Professor of Law, Osgoode Hall Law School, York University.
 3. The Rand formula was the compromise that settled the bitter Ford strike of 1945 and then became "the defining feature of Canadian labour law." Kaplan, *Canadian Maverick*, *supra* note 1 at 220. This compromise made union dues mandatory for all union employees, without requiring employees to become members of the union.
 4. *Ibid.* at xi. Kaplan is a senior labour lawyer and former academic. He has written many books on diverse subjects, including former Prime Minister Brian Mulroney and the Airbus scandal.

find out who this man was. The result, more than twenty years after Kaplan began this journey, is *Canadian Maverick: The Life and Times of Ivan C. Rand*.

The Preface states that, except around the edges, Canadian judicial biography has been “mostly uncritical and largely celebratory, written by unabashed admirers.”⁵ A self-confessed admirer at the outset, Kaplan discovered to his “great surprise”⁶ that *Canadian Maverick* would break that mould. By the time he is done, the author’s one-time hero emerges as a “complex, confounding and often contradictory man,”⁷ whose “first-rate mind [was] accompanied by a third-rate temperament.”⁸ Just as Rand may no longer be thought of in the same way, Kaplan’s determination to expose the man’s mistakes and flaws has challenged the manner of Canadian judicial biography.

II. A DISGRACE AND A DISASTROUS INVESTIGATION

Rand’s lifetime achievements are neatly summarized in the first paragraph of the book.⁹ A graduate of Harvard Law School, he served briefly as Attorney General in his home province of New Brunswick and then as general counsel to the Canadian National Railway, before being appointed to the Supreme Court of Canada during World War II.¹⁰ During the 1940s and while on the Court,¹¹ he resolved the Ford labour dispute¹² and represented Canada on the United Nations Special Committee on Palestine.¹³ Then, following the heady jurisprudence of the 1950s, Rand agreed to be the University of Western Ontario’s inaugural law dean.¹⁴ He also headed three major inquiries and commissions after retiring from the Court.¹⁵ At the time of his death in 1969, at age eighty-four, he was on

5. *Ibid.* at xv.

6. *Ibid.*

7. *Ibid.* at 424.

8. *Ibid.* at 430.

9. *Ibid.* at 3.

10. *Ibid.*, c. 2 at 29ff, c. 3 at 64ff.

11. *Ibid.*, c. 4 at 93ff.

12. *Ibid.*, c. 5 at 165ff.

13. *Ibid.*, c. 6 at 221ff.

14. *Ibid.*, c. 8 at 293ff.

15. *Ibid.*, c. 7 at 252ff, c. 9 at 331ff, c. 10 at 377ff.

assignment again, this time to Newfoundland and Labrador, which retained him to report on labour relations and make recommendations for a labour code.

The seven chapters on Rand's public career form the core of *Canadian Maverick*. After leading off with the two feature events of his professional life, the book follows a path of downward momentum. Kaplan gives the Supreme Court years and Ford strike extended consideration, and his praise of Rand in these chapters seems to set the tone. The next sections detailing his service on the UN Committee and work on the King Coal report remain positive, if lukewarm. However, a shift occurs and Rand's biographical fortunes wane as a crescendo of criticism rises in two denouement chapters. Kaplan's description of Rand as a "dull, mediocre,"¹⁶ and "traditional"¹⁷ law dean is unflattering, but not as damaging as his hard-hitting chapter on the inquiry of Leo Landreville, whom he styles as the "Mambo King."¹⁸ The author claims that the process was profoundly unfair, that Rand was prejudiced against French Canadians and Roman Catholics, and that the inquiry was "a disgrace."¹⁹ Almost as damaging is the next chapter, which is titled "Rand's Disastrous Investigation into Labour Disputes." Following a discussion of Rand's misguided ideas, Kaplan castigates the report as an "extreme and absurd response"²⁰ by a man who did not understand the dynamics of labour relations. In this way, *Canadian Maverick* sets Rand's pinnacle achievements up against harsh criticisms of his late-career activities.

Though Kaplan cautions readers not to dwell on Rand's failures at the expense of the high points of his brilliant career,²¹ the downward trajectory is a central and immensely deflating part of the book. As such, it raises questions about the biographer as well as his subject. From the perspective of Rand's legacy, it is a matter of considering how these failures should be understood. In the author's case, the question is whether the criticism of Rand is fully deserved.

16. *Ibid.* at 430.

17. *Ibid.*

18. *Ibid.*, c. 9 at 331ff. In the chapter's title, "Canadian Gothic Meets the Mambo King," Kaplan uses imagery to show how incompatible the two men's personalities were; while Rand is "Canadian Gothic," Landreville is the "Mambo King." See also William Kaplan, *Bad Judgment: The Case of Mr. Justice Leo A. Landreville* (Toronto: University of Toronto Press, 1996).

19. Kaplan, *Canadian Maverick*, *ibid.* at 372.

20. *Ibid.* at 421.

21. *Ibid.* at 431.

In chapter nine, “Canadian Gothic Meets the Mambo King,” for example, Kaplan agrees that Landreville was not fit for judicial office, but chastises Rand for treating him unfairly. It is evident that Rand was a rigid and judgmental man who could easily have disliked Landreville as a person.²² Though any unfairness is unacceptable, suggesting that he acted out of a deeper, more insidious animus toward French Canadians as a group takes the issue of unfairness to a new level. A claim like this, which essentially alleges discrimination, should be rigorously substantiated, and care must also be taken not to magnify its importance, either in the Landreville inquiry or as an essential element of “temperament.”²³ As for the “drastic investigation,”²⁴ Kaplan’s conclusion that Rand’s report missed the mark is fair comment. Even so, the report detracted from the reputation he earned for the Rand formula but caused little damage, because the recommendations Rand proposed at the twilight of his career were simply ignored.²⁵

Even his triumphs at the Court are slighted by doubt. In chapter four, Rand is portrayed as a “path-breaking judge identifying something essential about the nature of Canada’s Constitution,”²⁶ who proved his “courage and guts from his first important Supreme Court case to his last.”²⁷ Apart from his Harvard training, Kaplan could find “nothing in his background or experience”²⁸ that presaged the judge’s civil libertarian streak. This leads him to state that “it seems more likely than not that Rand’s great civil liberties judgments were to some degree motivated by a dislike of Roman Catholics and French Canadians.”²⁹ In doing

22. According to Kaplan, “Rand made no secret of the fact that he despised Landreville.” *Ibid.* at 354. He also states that Rand’s report “attacked the man in an offensive and demeaning way” and “never gave Landreville a break.” *Ibid.* at 372.

23. Apart from Rand’s antipathy to Landreville, who happened to be Franco-Ontarian, Kaplan’s evidence consists of a question Rand posed to a colleague at the University of Western Ontario (UWO): “What kind of judge puts up a crucifix in his chambers?” *Ibid.* at 367. Yet nothing in Rand’s objection to this display targeted Roman Catholics or French Canadians, for that matter.

24. Kaplan’s chapter on Rand’s appointment as chair of the Royal Commission on Labour Disputes is titled “Rand’s Disastrous Investigation into Labour Disputes.” *Ibid.*, c. 10 at 377ff.

25. *Ibid.* at 420.

26. *Ibid.* at 134.

27. *Ibid.* at 160.

28. *Ibid.* at 145.

29. *Ibid.* at 427.

so, the author assumes the worst about Rand, and effectively reads his negative assessment of the Landreville inquiry back into the Supreme Court jurisprudence. On the face of it, there is little reason to suppose that Rand's likes or dislikes affected his decision making.³⁰ The judgments speak for themselves and remain the best evidence of this: Rand's contributions were timeless because they forged a fresh constitutional relationship between the state and its citizens, which placed then unheard-of limits on the abuse of government power.³¹

Still, what inspired Rand to these heights remains something of a mystery. Kaplan reports that Rand made no secret of his admiration for Glen How, the long-time lawyer for the Jehovah's Witnesses. In a conversation between the two that took place many years later, Rand reflected on those "stirring days" of the 1950s and observed that "[t]he wolves fight in packs ... but the lion fights alone."³² It is likely that Rand was motivated, in his role as Canadian "maverick," by the extraordinary resolve of How and the Jehovah's Witnesses.

III. RAND'S ACCORDION

There is much to admire in the author's approach, which is historiographical. *Canadian Maverick* does a masterful job of building the history around the man, and though the book demands an intrepid reader, the amount of detail provided is impressive. For content and readability, the best chapters are the ones on the civil liberties jurisprudence, the Ford strike, and the Palestine Committee. In each, Rand is part of history in the making and plays a vital role in the narrative. Elsewhere, the book's biographical thrust is obscured in places by too much documentation of peripheral events and information; in chapters like "King Coal," Rand is all but crowded off the page in the story of his own life.

30. For Kaplan's evidence of this argument, see *ibid.* at 162 (quoting another of Rand's UWO colleagues who voiced the opinion, sometime after the fact, that "Rand had to decide who he hated less, French Roman Catholics or the Jehovah's Witnesses"). The author also considers it highly damaging that Rand advised his sons to stay away from the Acadian enclave when they were growing up, because he thought the Acadians "lacked ambition." *Ibid.* at 367, 427.

31. See e.g. *Reference Re: Persons of Japanese Race*, [1946] S.C.R. 248; *R. v. Boucher*, [1951] S.C.R. 265; *Winner v. S.M.T. (Eastern) Ltd.*, [1951] S.C.R. 887; *Saumur v. Quebec (City)*, [1953] 2 S.C.R. 299; *Switzman v. Elbling*, [1957] S.C.R. 285; and *Roncarelli v. Duplessis*, [1959] S.C.R. 121.

32. Kaplan, *Canadian Maverick*, *supra* note 1 at 163.

The book's methodology focuses on the tasks Rand undertook and the milieu in which his many appointments took place. Even after making allowances for the Preface, which states that Rand was "a private person"³³ and that "we do not know a lot about the private Rand,"³⁴ it is striking how little *Canadian Maverick* tells of the man himself. No mention is made in this account of flannel shirts and plaid slippers, countryside walks, favourite books or arias, card games with neighbours, or trips abroad. Instead, Rand emerges a man of little or no personality, whose life appears to have been astonishingly free of curiosity, joy, and humour. It is not so much that he is presented in negative terms, as cold, unfeeling, or unlikeable; despite his palpable reaction to Landreville, it is more to the point that Rand comes across as simply lacking in emotional dimension. That is why the following rare anecdote detailing one of the small joys in his life stands out in a sad but endearing way. According to Kaplan, Rand had such a passion for apples that he carried a paring knife to be ready, at a moment's notice, to enjoy a chance apple. This led to an apple-sharing ritual with Commission Counsel on the Landreville inquiry, which created a bond and camaraderie between the two men that was unusual in Rand's case.³⁵

He was unquestionably attached to his wife, Dell, but otherwise had few close or fulfilling relationships. From that perspective, another anecdote also looms large in the emotional subtext. Near the end of his life, Rand paid Lyman Duff a visit in the hospital. Awkward and unsure of what the circumstances required, he asked Duff's private secretary what he should do. In accordance with the man's instructions, he took Duff's hand and stroked the dying man's forehead. The simple gesture triggered a moment of emotional connection when Duff opened his eyes and said, "Rand ... you are my friend."³⁶ For Rand, a man who was fundamentally undemonstrative and uncomfortable with intimacy, losing Duff—his mentor as well as his friend—left a "void of sorrow."³⁷

Yet more poignant is an episode near the end of Rand's own life, which took place at his beloved Shediac in New Brunswick. After portraying him for four hundred pages as a closed and emotionless man, Kaplan shows Rand's

33. *Ibid.* at xii.

34. *Ibid.*

35. *Ibid.* at 351.

36. *Ibid.* at 106.

37. *Ibid.*

vulnerability as the tears streamed from his eyes while he played the accordion.³⁸ Readers are called to alert at this pivotal moment because it reveals—almost for the first time—that Rand was a man of untold emotional complexity. In doing so, this revelation also raises the question whether Kaplan stumbled on a rare and isolated scene in the man’s life, or chose, as a matter of authorial prerogative, not to explore this part of his persona. In either case, Rand remains an enigma at the end of *Canadian Maverick*: was he just a man with a first-rate mind and a third-rate temperament, or was there more to him than that?

IV. A MAVERICK BIOGRAPHER

Biography is relational, and biographers form attachments of many kinds with their subjects. In part, that is why the genre poses special challenges for authors as well as readers. It can be difficult on both sides to know and judge whether, and when, the biographer has introduced too much of himself into the life story of his subject.

Kaplan never says that Rand was a disappointment, or suggests that his one-time hero fell irretrievably from grace. Though he finds him flawed and uneven, he never stops admiring the man. Ironically, conflict between Rand, the hero of Kaplan’s law school days, and Rand, the man with a third-rate temperament, sets up a dynamic between author and subject. If no longer Kaplan’s hero, Ivan C. Rand could at least be presented as a “maverick.” It is fitting, perhaps, that the author echoes his subject: Kaplan could only be true to Rand’s legacy by writing a biography that is itself a “maverick” in the new and evolving genre of Canadian judicial biography.

38. *Ibid.* at 405.