

LAWYERS OF MENNONITE BACKGROUND

IN WESTERN CANADA

BEFORE THE SECOND WORLD WAR:

TWO CULTURES IN CONFLICT

A THESIS PRESENTED TO THE

FACULTY OF LAW

UNIVERSITY OF MANITOBA

IN PARTIAL FULFILLMENT OF THE DEGREE OF

MASTER OF LAWS

BY

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BY

HAROLD J. DICK

A Thesis submitted to the Faculty of Graduate Studies of the University of Manitoba in partial fulfillment of the requirements for the degree of

MASTER OF LAWS

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PREFACE

This thesis has its roots in a conversation between my supervisor, Professor Alvin Esau of the Faculty of Law at the University of Manitoba and myself. Professor Esau, Director of the Legal Research Institute at the University of Manitoba, commented about recent investigations by the L.R.I. into the lives of early Icelandic lawyers in the Province of Manitoba. He noted that a relatively large number of Icelanders entered the practice of law within two or three decades of their arrival in what is now Manitoba and that some achieved great prominence within the profession rather quickly. I noted that the Icelanders came to the Interlake region of Manitoba within a year of the Mennonite arrival in southern Manitoba. (The first Mennonites came in 1874. Icelanders began arriving in 1875.) Both Professor Esau and I are of Mennonite background and the coincidence intrigued us. Knowing something about Mennonite culture, we both agreed that far fewer Mennonites than Icelanders would have entered the legal profession in the decades following their arrival. Indeed, I was willing to predict that not a single Mennonite in Western Canada entered the legal profession prior to World War II. Professor Esau was not so sure, and we decided it would be a worthwhile project to discover the truth. My thesis had begun.

In the months that followed, I pursued every lead I could find. With the assistance of Professor Esau, and with funding

from the Legal Research Institute, I combed Law Society records, interviewed old-timers, talked with amateur and professional historians and visited towns in southern Manitoba, British Columbia and southern Saskatchewan.

After several months, I reported that I had discovered seven lawyers of Mennonite background who had entered the practice of law prior to 1940. Moreover, I had learned that every one of the seven had left the Mennonite community during his adult life before he began practicing law. I had been wrong in my initial assumption that the culture of the Mennonite community would prevent any Mennonites from practicing law. However, the fact that none of the lawyers had retained membership in the Mennonite community suggested that I had not been mistaken in believing that Mennonite beliefs, values and culture in the early years of this century were incompatible with the practice of law.

Still, a theoretical framework was required which would explain the apparent phenomenon I had discovered. Dr. W. Wesley Pue, Johnston Visiting Professor in Legal History at the Faculty of Law at the University of Manitoba, was able to assist me in discovering that framework. He suggested that I attempt a cultural comparison between the legal profession and the Mennonite community. Having done work on the legal profession in England, Dr. Pue has turned his attention to the history of the Canadian legal profession. His familiarity with theoretical literature concerning a profession as a

culture and his own ground-breaking research into the legal profession in Western Canada were invaluable in helping me to explore the culture of the legal profession in Western Canada in the early years of this century. Although a discussion of the culture of the Mennonites on the Canadian prairies is made substantially easier by the vast amounts of literature by and about Mennonites, Professor Esau's familiarity with this literature was equally useful in the preparation of Chapter 2.

What has resulted is a thesis divided into two parts. Part I consists of four chapters: An introduction, an examination of Mennonite culture, an analysis of the culture of the legal profession and a conclusion. Part II consists of an introduction, the biographies of the seven lawyers I investigated, and a conclusion.

I am pleased to be able to express my thanks to the many people who assisted or encouraged me in this project. Primary among them are Professors Esau and Pue. My friend and former colleague, Judy Slagerman, and my father, David Dick, assisted by proof-reading this work. The Legal Research Institute of the Faculty of Law at the University of Manitoba, under the directorship of Professor Esau provided very valuable financial support which allowed me to travel to British Columbia and to Saskatchewan to interview various individuals and to participate in a legal history conference. Even greater financial aid was provided by the Manitoba Law Foundation, which granted me a scholarship of \$15,000, making

my LL.M. year possible.

There are many others who assisted me. Lawrence Klippenstein of the Mennonite Heritage Centre provided encouragement and valuable suggestions, as did Ted Friesen and Delbert Plett, two keen amateur students of Mennonite history. Many academics, including John McLaren, DeLloyd Guth, Dale Gibson, Lee Gibson, Leo Driedger, Gerhard Ens, Gerald Friesen, Harry Loewen and others offered words of wisdom and encouragement at various stages of this project. They all deserve my thanks.

I also wish to express my appreciation to those who took the time to meet with me, by telephone or in person, and to recall their experiences and give their impressions of the seven men in whom I was interested. Too many to list here, their names may be found in the footnotes of Part Two of this thesis. My gratitude goes to each of them.

Finally, I wish to note the role of the staff of the E.K. Williams Library at the University of Manitoba's Faculty of Law. Head Librarian Neil Campbell and his staff were marvels. They were invariably polite and helpful, despite the often unreasonable demands placed on them by a graduate student pressured by a massive assignment and all too little time. I offer unqualified thanks for their assistance in this project.

On a less happy note, it is necessary to report that cooperation was not entirely forthcoming from the Law Societies of Manitoba and Saskatchewan. The Law Society of

Manitoba responded to my request for information by retrieving their files on my subjects and reading information contained there over the telephone. I was not allowed to inspect the files personally. The Law Society of Saskatchewan was even less enthusiastic and provided information only after several requests. Again, I was allowed only basic information, although this information was put in writing. Their files remained closed to me as well.

This is not the forum in which to address the larger question of access to historical information. However, it should be noted that other professional governing bodies have instituted procedures and policies for access to archival materials. To the best of my knowledge, no policy has even been considered by the law societies of either Saskatchewan or Manitoba. It is clear that a complete understanding of both the development of the legal profession in Canada and of the history of Western Canada will require an examination of the history of the legal profession in the Canadian West. It is equally clear that this examination will be, at best, only partial without access to key information contained in the law society archives of the prairie provinces. By failing to institute a policy which allows historians the freedom to research their archival materials, these law societies are preventing an understanding of the legal history of Western Canada. It is to be hoped that this state of affairs will not be faced by future students of the legal history of the

prairies.

I believe that the research and conclusions presented here are significant in their own right. They are the first attempt to examine the lives of lawyers of Mennonite ethnicity in this time period. Nevertheless, I do not pretend to have provided the "last word" on this matter. The time constraints imposed by my program of studies alone make that claim presumptuous. I do hope to have provided the basis for further research, if not conducted by myself, by some other interested person. I trust that what follows will assist in that future project.

PART ONE

INTRODUCTION

In this thesis I wish to examine two cultures as they existed in Western Canada during the period between 1870 and 1940. The two cultures I will investigate are those of the Mennonite community and the legal profession.

Although Mennonites, like Jews, can be considered a religious rather than an ethnic group, it is my contention that their history and their ideology (or theology) combined to produce an ethnic identity by the time of their arrival in Manitoba in 1874. Both factors are extensively examined in the chapter on Mennonite culture.

It is by no means unusual to examine the culture of an ethnic group. Indeed, culture is often considered a natural product of and integral to the development of ethnic identity. Its study is considered essential in the study of ethnicity. What is less common is the application of the notion of culture to the study of a professional group.

The academic study of professions has gone through at least three phases. The first phase was dominated by the "structural-functionalist" perspective, and the second by an economic or market-control model. The third is in some ways a synthesis of the first two.

The structural-functionalist approach has been criticized as reducing "sociological analysis to little more than

professional apologetics."¹ It takes seriously the justification for professional status provided by the professions themselves. From this perspective, professions are legitimized by the role and function they play in society. Professions exist because they have mastered an "internally consistent system" of knowledge upon which are constructed techniques that allow "the application of the scientific method to the service-related problems of the profession."² Because of his/her extensive training in systematic theory, the individual professional is entitled to authority over the client in a relationship which differs substantially from that of a merchant or tradesman with a customer.³

Professions enjoy a special status not achieved by other occupational groups. Elements of this status include the profession's control over education, training and licencing; immunity from community judgment over technical matters; a monopoly over services within the area of the profession's expertise and, in some cases, legally protected rights of

¹ Richard L. Abel, The Legal Profession in England and Wales (Oxford: Basil Blackwell, 1988) footnote 4 at 7 in W. Wesley Pue, "'Trajectories of Professionalism?': Legal Professionalism After Abel", (1990) 19 Manitoba Law Journal 384 at 388. See also Magali Scarfatti Larson, The Rise of Professionalism: A Sociological Analysis (Berkeley, Los Angeles, London: University of California Press, 1977) at xii.

² Ernest Greenwood, "The Elements of Professionalization" in Howard M. Vollmer and Donald L Mills, eds., Professionalization (Englewood Cliffs, New Jersey: Prentice-Hall, Inc. 1966) 9 at 11-12.

³ Ibid. at 12.

confidentiality between professional and client.⁴ Special status is accorded the professions because the areas of expertise in which various professions specialize are thought to be too sensitive to be given over to the unrestricted marketplace. Professional bodies ensure the protection of the public in these areas by instituting and enforcing ethical codes which require practitioners to consider the interests of the public and their clients before their own monetary gain.⁵

In this view of professions a cultural analysis is appropriate. In 1957 Ernest Greenwood was able to describe culture as one of "the elements of professionalism".⁶ He noted that accommodation to the culture of the professional group was one of the necessary tasks of the would-be entrant to the profession.

"To succeed in his chosen profession, the neophyte must make an effective adjustment to the professional culture....the transformation of a neophyte into a professional is essentially an acculturation process wherein he internalizes the social values, the behavior norms, and the symbols of the occupational group. In its frustrations and rewards it is fundamentally no different from the acculturation of an immigrant to a relatively strange culture. Every profession entertains a stereotype of the ideal colleague; and, of course, it is always one who is thoroughly adjusted to the professional culture. The poorly acculturated colleague is a deviant...⁷

⁴ Ibid. at 13-14.

⁵ Ibid. at 15.

⁶ Ibid. at 10.

⁷ Ibid. at 17.

For Greenwood, the fundamentals of a profession's culture were shared values, shared norms and shared symbols. Greenwood described the shared values of a professional culture as "its basic and fundamental beliefs, the unquestioned premises upon which its very existence rests."⁸ Shared norms are widely accepted guides to appropriate behaviour in particular social situations.⁹ Shared symbols include insignia, emblems, dress, history, folklore, heroes and villains which are imbued with meaning shared by members of the culture.¹⁰

The values of professional culture rest on the role of the profession in society. According to Greenwood,

Foremost among these values is the essential worth of the service which the professional group extends to the community. The profession considers that the service is a social good and that community welfare would be immeasurably impaired by its absence. The twin concepts of professional authority and monopoly also possess the force of a group value. Thus, the proposition that in all service-related matters the professional group is infinitely wiser than the laity is regarded as beyond argument. Likewise nonarguable is the proposition that acquisition by the professional group of a service monopoly would inevitably produce social progress. And then there is the value of rationality; that is the commitment to objectivity in the realm of theory and technique.¹¹

This "structural-functionalist" view of professions has

⁸ Ibid. at 16.

⁹ Ibid. at 17.

¹⁰ Ibid. at 17.

¹¹ Ibid. at 16.

been under attack in recent years. A "market control" model of professionalization has been advanced which would explain the process by which professions were and are being created as "the process by which producers of special services sought to constitute **and control** a market for their expertise."¹² In this framework, "professionalization is ...an attempt to translate one order of scarce resources -- special knowledge and skills -- into another -- social and economic rewards."¹³

Those who advance and defend this theory reject the justifications of the structural-functionalists as mere subterfuge. The structural-functionalist view is that professions, "while they are not pursued for gain, must bring to their practitioners income of such a level that they will be respected and such a manner of living that they may pursue the life of the mind."¹⁴ This perspective, which places financial considerations at the periphery of professionalism, is rejected as disguising the true function of professionalization -- the securing of a guaranteed market for a profession's services by controlling the number of producers of that service and the amount of service produced by those

¹² Larson, supra, note 1 at xvi.

¹³ Ibid. at xvii.

¹⁴ Everett C. Hughes, The Sociological Eye, vol.1 (Chicago: Aldine-Atherton, 1971) at 364 in Pue, supra, note 1 at 387.

producers.¹⁵

Left unresolved by a market-control theory is the question of the extent to which professionalization was **consciously** directed toward economic goals. Although most theorists do not go so far as to state it explicitly, the language and terminology used by some advocates of market-control suggest that, because of the self-evident benefits of the "professionalization project", the goal of leaders and members of occupational groups striving for professional status must have been market control of their area of occupational expertise.¹⁶

To the extent that this is suggested, professionalization can only be seen as "organized conspiracies against the consumer and society at large, and their ideology of public service as a mixture of self-deception and clever public relations."¹⁷ Statements, writings and speeches of professional leaders justifying professionalism must be seen

¹⁵ Richard L. Abel, "England and Wales: A Comparison of the Professional Projects of Barristers and Solicitors" in Richard L. Abel and Philip S.C. Lewis, eds., Lawyers in Society: The Common Law World (Berkeley: University of California Press, 1988) 23 at 38-39.

¹⁶ One of the terms which suggests a conscious effort to secure control of the market is the phrase "professionalization project" itself, although Larson takes pains to point out that consciousness is not necessarily implied in the phrase. Larson, supra, note 1 at 6.

¹⁷ W.R. Prest, "Why the History of the Professions is not Written," in G.R. Rubin and David Sugarman, eds., Law, Economy and Society, 1750-1914: Essays in the History of English Law (Abington, Oxon: Professional Books Limited, 1984) 300 at 302.

as nothing more than the patter of flim-flam artists intent on bilking the public by perpetrating a scam of monumental proportions.

If culture is defined as "a set of learned values and habitual responses"¹⁸, the study of the legal profession's culture is of little interest in a market-control model. From this perspective, the only cultural value shared by lawyers would be greed and, perhaps, self-deception in order to accommodate that greed. The values of professional culture outlined by Greenwood must be dismissed as "a mystification trick deliberately designed to dupe outsiders into acquiescence in their own exploitation".¹⁹

There are difficulties with this approach. Unless it presumes a remarkable degree of enduring ignorance on the part of the public, a purely economic explanation cannot fully account for the widespread acceptance of professionalism by those outside the professions and for the degree of authority professionals were granted by their clients. It does not explain the pervasive nature of "professionalism" in the late nineteenth and early twentieth centuries throughout English and North American societies. It also fails to account for the role of the state in constructing professions,²⁰ and the

¹⁸ Burton Bledstein, The Culture of Professionalism: The Middle Class and the Development of Higher Education in North America (New York: W.W. Norton & Company Inc., 1976) at x.

¹⁹ Pue, supra, note 1 at 406.

²⁰ Ibid. at 406.

fact that many of the leaders in the professionalization movement were sufficiently wealthy and entrenched to have little to gain by their efforts.²¹ The ideology which created professionalism may in fact have been a false religion from our perspective, but it must have had appeal to both professionals and to those outside the profession in order to achieve the entrenchment within societal structures professions now enjoy.

However, a view which dismisses ideology as the calculated subterfuge of professionalizers is not necessary for the validity and utility of market-control analysis. A more limited theory which addresses itself only to the results, rather than to the intent, of the professionalization project would be just as valid and useful.²² An approach which remains agnostic with respect to the intent (if not the result) of the professionalization project can and should be taken.

If this latter, more limited approach is taken, the study of a professional culture, far from being irrelevant, serves as a useful tool which helps to answer questions the market-control model cannot. A cultural theory would help to explain

²¹ W. Wesley Pue, Becoming Professional: Western Canadian Lawyers (Paper presented at the "Law for the Beaver, Law for the Elephant" Conference, Victoria, British Columbia, February 22-25, 1991), [unpublished] at 9.

²² The fact that no leading market control theorist has explicitly propounded a "conspiracy" theory suggests that this more limited theory is seen as sufficiently useful for their purposes.

the success of the professional project in the decades surrounding the turn of the century throughout the Western world. It would begin to explain the authority granted to professionals. If a cultural theory is adopted, the values enunciated by professional leaders, including the leaders of the legal profession, can be taken seriously in their own right because they were persuasive both to members of the profession and to the public which sanctioned professional power. These ideological statements, far from irrelevant, would be the best evidence of the "set of learned values" at the basis of the profession's culture. Moreover, such an approach need not dismiss economic factors as irrelevant, but would treat them as insufficient to account for the whole of the professional phenomena.

This thesis is based on the proposition that a cultural theory can assist in understanding the legal profession in Western Canada.

However, culture is not an easy thing to describe or discuss. Indeed, it may be incapable of precise description.

As one observer has noted:

Nebulous, kenetic, swirling, ever transmogrifying but nevertheless real, culture is everywhere and nowhere. It is constituted from the bottom-up; the top-down; the middle-out. Humans are animals suspended in webs of significance which we ourselves have spun, but these cultural webs vary from place to place and time to time.²³

Recent sociological work has downplayed a clear

²³ Pue, supra, note 21 at 11.

distinction between "culture" and "ideology".²⁴ "Ideology" once carried with it the notion of "ideas" and implied a rationally constructed and well thought-out set of beliefs. "Culture" was a broader term, based perhaps on an ideology, but incorporating notions of group customs, dress, celebrations, habits and patterns of behaviour. Ideology has more recently been seen as "beliefs about realities which are unexamined and by their nature held on faith."²⁵ Ideology is the "screen of assumptions, beliefs, explanations, values, and unexamined knowledge" through which people view their world.²⁶ Inconsistent and sometimes contradictory, an ideology is nonetheless real and significant. Viewed this way, "ideology" and "culture" become hard to distinguish. If any distinction can be made, it is that ideology provides the motivation or rationale for cultural characteristics. Yet the relationship is mutual. While ideological considerations motivate cultural

²⁴ For example, Christine B. Harrington and Barbara Yngvesson have discussed the ideology of law in the following terms:

"Law as ideology is not a sphere from which meanings emerge and to which meanings are carried back, and practice is not a process separable from law. Rather, law is found, invented, and made in a variety of locations (mediation sessions, clerks' hearings, welfare hearings, social movements, lawyers' offices, classrooms), through a variety of practices which are themselves ideological."

Christine B. Harrington and Barbara Yngvesson, "Interpretive Sociolegal Research" (1990) 15 Law and Social Inquiry 135 at 142.

²⁵ M. Patricia Marchak, Ideological Perspectives on Canada, 2nd ed. (Toronto: McGraw-Hill Ryerson Limited, 1981) at xi.

²⁶ Ibid. at 1.

activities, cultural patterns in turn transform ideologies as they strengthen certain elements and weaken others.

It is my contention that both the legal profession and the Mennonite community on the Canadian prairies during the early part of the twentieth century had developed distinctive ideologies or cultures. Those cultures will be examined here.

I found little difficulty in obtaining materials with which to complete my study of Mennonite culture. Mennonites have been well-researched, primarily by Mennonites themselves, but also by "outsiders", notably James Urry.²⁷

Unfortunately, the same cannot be said of the legal profession. Unlike the legal professions in the United States and England, the legal profession in Western Canada has not generally been the subject of inquiry by either historians or sociologists.²⁸ On the assumption that the culture of the legal profession of Western Canada was influenced by other cultures, I have supplemented primary materials by drawing on the research of the general culture of the prairie west and the studies of the legal professions in England, Ontario and

²⁷ Urry's most significant contribution to literature about Mennonites is None but Saints: The Transformation of Mennonite Life in Russia 1789-1889 (Winnipeg: Hyperion Press, 1989).

²⁸ This point was made by Richard Allen Willie in the Introduction to 'These Legal Gentlemen': Becoming Prominent in Manitoba, 1870-1900 (Ph.D. Dissertation, University of Alberta, 1989) a work which addresses the vacuum in scholarship to some extent. Note should be made of the works published and in progress by Dale and Lee Gibson, including Substantial Justice: Law and Lawyers in Manitoba 1670-1970 (Winnipeg: Peguis Publishers, 1972).

especially the United States.

Much of what is contained in Chapter Three, my study of the culture of the legal profession in the prairie west, is based on research being conducted by Professor W. Wesley Pue, one of my supervisors. It is Dr. Pue's theory that the modern legal profession, based explicitly on an ideology of expertise, was largely a product of Western Canada because of the influence of U.S. ideology and unique conditions on the prairies in the early decades of the twentieth century. Dr. Pue graciously allowed me to have access to drafts of several of his papers and articles which will be forthcoming in due course. His ideas have greatly influenced the content of much of the chapter on the legal profession's culture. Although I have attempted to give proper credit to Dr. Pue through my footnotes throughout this thesis and while I hope to have built on Dr. Pue's theory with additional research (which I believe tends to support his theory), it should be made clear that many of these ideas originated with Dr. Pue.

It remains to be seen if the theory outlined by Dr. Pue and the conclusions based on my research will be supported by evidence discovered in future academic forays into this field.

MENNONITE CULTURE

Leo Driedger has borrowed Peter Berger's notion of a "sacred canopy" to describe Mennonite culture in Western Canada.¹ He sees the "sacred canopy" of Western Canadian Mennonites as resting on four stakes: Biblical theology, the idea of a caring community, the German language and related customs, and agriculture.² Although it does not provide a complete and thorough analysis of the complex relationships between the various "stakes", Driedger's description is a useful one in that it seems to encapsulate most, if not all, of the key features of Mennonite culture as it arrived and grew in Western Canada. This chapter will attempt to investigate Mennonite culture in Western Canada, particularly in Manitoba, using Driedger's four stakes as a basis for analysis.

¹ Peter L. Berger, The Sacred Canopy (Garden City, New York: Doubleday and Company, 1967) at 19, quoted in Leo Driedger, Mennonite Identity in Conflict (Lewiston and Queenston: The Edwin Mellen Press, 1988) at 38 [hereinafter Mennonite Identity]. Driedger describes the "sacred canopy" as "a tent-like roof used by the Jews as a symbol of protection", with four stakes to hold it up. For Driedger, "this symbolism is useful for our discussion [of Mennonite culture] because the blanket can be seen as a roof that protects from the external onslaughts which may ruin some of the valuables inside. The stakes, too, are important, because without stakes there would be nothing to hold up the roof." Driedger, ibid. at 38.

² Driedger, ibid. at 38-39. See also Leo Driedger, "Fifty Years of Mennonite Identity in Winnipeg: A Sacred Canopy in a Changing Laboratory" in Harry Loewen, ed., Mennonite Images: Historical, Cultural and Literary Essays Dealing with Mennonite Issues (Winnipeg: Hyperion Press Limited, 1980) 123 at 125-6.

A. MENNONITE THEOLOGY

Any description of Mennonite culture anywhere in the world must begin with a discussion of Mennonite theology, for, as will become clear, it is the theology of the Mennonites, as influenced and changed by subsequent history, which serves as the foundation for that culture. Driedger explicitly recognizes the significance of the religious underpinnings of this culture in his first two stakes, but it would be fair to say that in some sense all four of the stakes in the Mennonite sacred canopy have religious underpinnings.

Mennonite theology grew out of the Reformation of sixteenth century Europe. Mennonites were part of the Anabaptist tradition³ which sought to chart a theological course which was neither Catholic nor Protestant.⁴ It is difficult, however, to adequately describe Anabaptist theology for two reasons. The first is that Anabaptism emerged more or less simultaneously and more or less independently in various

³ Despite the fact that the term "Mennonite" was applicable only to the followers of Menno Simons, an Anabaptist leader in the Netherlands, it is now a generic term for many descendants of the Anabaptists. Those whose roots go to Switzerland and southern Germany, the birthplace of the Anabaptist movement, also refer to themselves as "Mennonites". There are, however, other groups, notably the Hutterites and the Amish, who can also trace their roots to Anabaptism but who should not be identified as Mennonites.

⁴ Walter Klaassen, Anabaptism: Neither Catholic Nor Protestant (Waterloo, Ontario: Conrad Press, 1981).

parts of Europe.⁵ Difficulties in communication, the persecution which Anabaptists experienced, and the Anabaptist rejection of hierarchy meant that no single leader emerged to dominate and unify Anabaptist thought.⁶ Any discussion of Anabaptist beliefs must be sensitive to this reality and, since only general statements can be made, Anabaptism as expressed in certain geographical areas by certain groups may not be adequately portrayed.

The second difficulty is that in some respects Anabaptists had no theology, or at least not one which was different from the mainstream churches.⁷ When interrogated by their enemies, when asked to explain their beliefs, Anabaptists are said to have often recited the Apostles' Creed.⁸ They could do so in good faith, for the Anabaptist

⁵ Calvin Redekop, Mennonite Society (Baltimore and London: The Johns Hopkins University Press, 1989) at 56.

⁶ Klaassen, supra, note 4 at 2.

⁷ In his analysis of the Dutch Anabaptists, William Echard Keeney concludes that, "No great difference from other Christians was discovered on the major foundations of theology, such as the nature of God and the Trinity except possibly on the Incarnation. Even here they sought to affirm the historic formulations of the Christian Church..." William Echard Keeney, The Development of Dutch Anabaptist Thought and Practice From 1539-1564 (Nieuwkoop: B. De Graaf, 1968) at 191.

⁸ Menno Simons, the most prolific Anabaptist writer, the most prominent leader of the Anabaptists in Holland and the man after whom the Mennonites were named, refers to the Apostles' Creed when he says, "I trust that we who are grains of one loaf not only agree as to the twelve articles (as he counts them), but also as to all the articles of the Scriptures..." The Complete Writings of Menno Simons, ed. by John Christian Wenger and trans. by Leonard Verduin (Scottdale, Pa.: Herald Press, 1956) at 761 [hereinafter Complete Writings].

movement can fairly be characterized as being an ethical rather than a creedal response to the dominant churches, both Catholic and Protestant.⁹ Their primary criticism of the established churches did not concern their theology but centered on the fact that these churches permitted so-called Christians to act without regard to Christian teaching.

For this reason, Anabaptists saw little point in theologizing. They repudiated the idea that reason could be a source of divine truth.¹⁰ "Truth was found in living, not in abstract reasoning," they believed.¹¹ Although many of the Anabaptist leaders were well educated, they saw education and theology as largely irrelevant and even detrimental if they

⁹ According to Redekop, supra, note 5 at 55, the Anabaptist belief system should be seen

"in the context of a continuing dialectic with the majority of Christendom on the issue of ethic or lifestyle -- that is, on the concrete expression of the Christian faith....

The controversy that ultimately caused the formation of the Anabaptist movement seemed to be basically an issue of accepting the Christian teaching at face value **and living it**....The conclusion that naturally emerges is that the Anabaptist-Mennonite utopian movement was much more an ethical response than a creedal one. The ideological and philosophical dynamic of the movement was a derivative one, focusing on the application of the basic Christian beliefs in personal and social life, rather than on an emphasis on abstract doctrine which was then expressed in elaborate ecclesiastical liturgy and litanies."

¹⁰ Klaassen, supra, note 4 at 39.

¹¹ Ibid. at 41.

detracted from an emphasis on ethics.¹² Moreover, "it was the 'learned professors and doctors' who provided the rational justification of the rejection, persecution, and oppression of the Anabaptists."¹³ Small wonder that Menno Simons railed against the academics of his day: "I repeat, Do not hear, do not follow, and do not believe the many learned ones who let themselves be called doctors, lords, and masters, for they mind but flesh and blood...."¹⁴

Because Anabaptists, like Martin Luther, stressed the notion that the individual could come to God without the Church or theologians as intermediaries, Anabaptists also believed that the Bible could be understood by common people without the need for academic training or the interpretation of the Scriptures by the learned.¹⁵ Melchior Hoffman, an early Anabaptist leader, said: "Therefore I warn all lovers of truth that they do not give themselves over to lofty arguments which are too hard for them, but that they hold themselves to

¹² According to Keeney, supra, note 7 at 192, "The Mennonite stress upon the obedient will rather than reason as the primary means for obtaining spiritual knowledge led to and reinforced their interpretation of the Scriptures. Their approach to the Scriptures affected most directly the Mennonite position on teachers and preachers. The moral consequences in a man's life gave the evidence for judging whether he had the charismatic gift which confirmed a call to the ministry. The qualifications for office were not dependent upon education or formal training."

¹³ Redekop, supra, note 5 at 174.

¹⁴ Complete Writings, supra, note 8 at 195.

¹⁵ Robert Friedman, The Theology of Anabaptism: An Interpretation (Scottsdale, Pa: Herald Press, 1973) at 19-20.

the straightforward words of God in all simplicity."¹⁶ Menno Simons challenged his critics: "You say, we are inexpert, unlearned, and know not the Scriptures. I reply: the Word is plain and needs no interpretation".¹⁷ It is not surprising, given this approach, that little or no attempt was made to systematize Anabaptist thought into a coherent theology.¹⁸

Any attempt to provide a systematic description of beliefs which were never systematized and often not written down at all is fraught with difficulties. All that is possible is to attempt to do so while keeping in mind these facts as caveats.

The emphasis placed by Anabaptists on ethical living is as good a point as any to begin a discussion of Anabaptist "theology" for in many ways it incorporates the whole of Mennonite thought. Anabaptists began with Luther's emphasis on **sola scriptura**¹⁹, heartily endorsing the view that anything

¹⁶ Redekop, supra, note 5 at 107.

¹⁷ Complete Writings, supra, note 8 at 214.

¹⁸ Friedman, supra, note 15 at 31, argues that the fundamentally inner and subjective Christianity experienced by the Anabaptists is alien to the objectivity required to create a systematic theology.

¹⁹ Luther broke decisively from the Roman Catholic Church in emphasizing the Word of God as the sole source of divine revelation and rejecting the notion that additional revelation or rules were valid. This became known as the doctrine of **sola scriptura** (the scriptures alone). Menno Simons adopted this tenet, as can be seen in the following passage from his Complete Writings, supra, note 8 at 267:

"Therefore I would admonish in the Lord all my beloved readers not to heed the flighty philosophy of the learned ones, nor to look at long usage, but at the plain and

not found in the Scriptures was not binding on the Christian.²⁰ However, in a manner which has earned the movement the title "the Radical Reformation", Anabaptists then insisted upon obeying all of the Scriptures and applying them to everyday life. The leaders of the Swiss Anabaptists, were part of the successful reform movement in Zurich led by Ulrich Zwingli. However, they differed with Zwingli and eventually parted ways with him on this very point. As Redekop points out, they left Zwingli because of the

"great dissatisfaction with the gap between the actual conditions in the society and the ideals which were expressed in the rhetoric and behavior of societal institutions, particularly the established [Protestant] church. Specifically, Anabaptists saw a total lack of coherence between the ideals and norms expressed in the biblical narrative as well as the teaching of the church on the one hand, and what they were experiencing in the life of the church and the community on the other hand."²¹

The hypocrisy they saw in the church was the foundation for the Anabaptist movement. Predictably, Menno Simons' writings are characterized by demands that the gap between the

unmixed Word of God...

God's Word shall stand forever, and according to the divine Word every pious Christian shall and must build the structure of his faith, if his work is to be pleasing before God, and he shall not build it according to his own pleasure."

²⁰ "And we add that all doctrines which do not agree with the doctrine of Jesus Christ and His apostles, let them be ever so holy, are accursed." Complete Writings, supra, note 8 at 62.

²¹ Redekop, supra, note 5 at 48.

Scriptures and everyday reality be closed.²²

The Anabaptist emphasis on a literal, unsophisticated and unspeculative reading of the Bible²³ and its application to life had implications for both the church as an institution and for ordinary Christians in everyday life. The most well-known example of its impact on church life was the Anabaptist's rejection of infant baptism and their practice of rebaptizing as adults those who professed their new faith.²⁴ Anabaptists rejected infant baptism, as well as the other sacraments, as unscriptural. They saw baptism, the Lord's Supper and foot-washing as important symbols but they rejected

²². For example, in his Complete Writings, supra, note 8 at 391, Menno states:

"... even as a good fruitful tree of its own accord, without any compulsion, brings forth its own good fruits, so also the true Christian faith must bring forth its own good fruits. For it is infallible, The righteous must live out of his faith."

In a similar passage, Menno states at 392:

"Seeing then that it is altogether evident that a sincere Christian faith acknowledges God in His righteousness, therefore trembles before His judgment, and consequently buries sin and forsakes it, as has been related more than once; and seeing that you nevertheless live in all avarice, unchastity, drunkenness, wrath, fornication, blindness, idolatry, and all manner of wickedness; pray where is then your faith, and the Word of God of which you boast so much?"

²³ Keeney, supra, note 7 at 191.

²⁴ The very term "Anabaptist" is derived from the Latin for "rebaptizer" and was used pejoratively by their enemies. Interestingly, Anabaptists rarely used the name to describe themselves, preferring names like "the Brethren", which was the term used in Switzerland and southern Germany. Often they identified themselves with reference to their leaders; for example, Melchiorites (after Melchior Hoffman), Hutterites (after Jacob Hutter) Obbenites (after Obbe Philips) and Menists or Mennonites (after Menno Simons). See Redekop, supra, note 5 at 3-4.

the idea that the observance of these practices contributed to one's salvation. Menno said of infant baptism:

"For in the Scriptures no command is given to baptize them [infants]. Therefore, it is not required of them as a sign of obedience. And since infant baptism is unscriptural, therefore it cannot be a ceremony of God, but a seductive superstition of men..."²⁵

The Anabaptist's rejection of the sacraments and their adoption of adult baptism were also in keeping with their views on both the "New Birth" and the church.

Like Luther, Anabaptists believed that grace was extended by God and came to the individual through faith, rather than on the basis of merit or the performance of ceremonies.²⁶ Unlike Luther, however, they took this belief through to its logical conclusion, arguing that, since only adults could accept God's grace and enter the new life, only adults could be baptized.²⁷

²⁵ Complete Writings, supra, note 8 at 131. Again, at 124, Menno states:

"For only this inward baptism, as already stated, is of any value in the sight of God, while outward baptism follows as evidence of obedience which is of faith. For if outward baptism could save without the inward, then the whole Scriptures which speak of the new man would be spoken to no purpose. The kingdom of heaven would be bound to ordinary water..."

²⁶ "Life is promised, not through any ceremony, but of pure grace, through the blood of the Lord..." Complete Writings, supra, note 8 at 131. See also C. Henry Smith, Smith's Story of the Mennonites (Newton, Kansas: Faith and Life Press, 1981) at 14.

²⁷ "To all those who, by their own invention and without Scriptural warrant, argue for the regeneration of infants because they are baptized...to them I reply: First, that they do not know what the new birth is. Second, with the same propriety and reasonability, bells are baptized. God in His Word has no more

Anabaptists did not follow a radical course when it came to the interaction of faith and ethics, however. Luther's emphasis on the sufficiency of faith alone for salvation was interpreted by many as a licence for all sorts of immorality.²⁸ Anabaptists repudiated this emphasis, arguing that faith and ethics could not be separated.²⁹ In this they seem to have charted a middle course between the Protestant emphasis on faith alone and the Catholic emphasis on good works. While Anabaptists accepted the notion of salvation through faith, they also believed that the proof of one's salvation lay in the "fruits" which would result from that salvation.³⁰

The attempt to balance faith and actions led to a view of Christ as more than a Saviour alone. They saw the person of Jesus Christ as a Saviour, but also as a model and example of

commanded the one than the other, for according to their nature, there is as little faith and fruits in the one as there is in the other." Complete Writings, supra, note 8 at 266.

²⁸ Luther's belief in faith alone (*sola fide*) and his rejection of the traditional Catholic emphasis on good works and observance of the sacraments and other ceremonies was the bedrock of the Protestant Reformation.

²⁹ "To the early Anabaptists and Mennonites, none of these areas of activity that were at all possible for the Christian were counted as secular; all were sacred, to be done as to the Lord." Harold S. Bender, "The Mennonite Conception of the Church and its Relation to Community Building" (1945) 14 Mennonite Quarterly Review 90 at 92.

³⁰ See for example Complete Writings, supra, note 8 at 391.

the Christian life.³¹ Moreover, Anabaptists went further than the *imitatio Christi* of Thomas a Kempis. Anabaptists saw themselves as becoming part of Christ's body, of sharing in the cross of Christ by participating in his work.³² Keeney views Anabaptism as incorporating a "practical Christ-mysticism":

God was in Christ, and through the Incarnation the true being of God joined the true nature of man. If holiness was characteristic of the divine nature, then holiness should also characterize the new creature in Christ who partook of the divine nature, and was therefore a member of the body of Christ.

This mysticism and suggested holiness were not esoteric or ethereal, but moral and ethical.³³

This notion is captured in the concept of *Christus nachfolgen*, of "following after Christ". In a famous quote, Hans Denck said, "No one may truly know Christ except one

³¹ Ernst Troeltsch, The Social Teachings of the Christian Churches (New York: Harper Torchbooks, 1960) at 703 in Redekop, supra, note 5 at 53.

Menno, in an attempt to persuade others of the truth of his understanding, began a piece entitled "The New Birth" as follows: "In order that you may comfort yourselves no longer with such false and vain hopes contrary to all Scriptures and to your eternal damnation, and may not vainly boast in the afore-mentioned riches and glory of the children of God in the kingdom of Christ, His grace, merits, flesh, blood, cross, death, and promises, which do not as yet belong to you, since you are altogether earthly, carnal, and devilishly minded, reject Christ and do not keep His Spirit, Word, and example, without which no one can be a Christian..." Complete Writings, supra, note 8 at 89.

³² Troelsch, ibid. at 703 in Redekop, supra, note 5 at 53.

³³ Keeney, supra, note 7 at 154-155. See also Donovan Smucker, "The Theological Triumph of the Early Anabaptist Mennonites" (1945) 19 Mennonite Quarterly Review 74.

follows him in life."³⁴ For Anabaptists, Christ was Saviour, leader, model and indwelling presence.

Given this belief, the distilled teachings of Christ, the "Sermon on the Mount",³⁵ took on special importance. Although previously only those in holy orders had been expected to live the sort of holy life demanded in this passage,³⁶ Anabaptists saw themselves as already participating in the "Kingdom of God" of which this passage speaks.³⁷ They therefore took seriously the "new commandments" Jesus set out in this passage.³⁸ For this reason, they refused to swear oaths.³⁹ They also refused to participate in violence, taking literally commands to "turn the other cheek", "walk the second mile",

³⁴ The original German phrase, is "Christsein heist Christum im Leben nachfolgen." Driedger, Mennonite Identity, supra, note 1 at 38. Redekop provides the translation in Mennonite Society, supra, note 5 at 55, citing C.J. Dyck, An Introduction to Mennonite History (Scottsdale: Herald Press, 1967) at 47.

³⁵ The "Sermon on the Mount" is a term which is used to refer to Jesus' teaching found in Gospel of Matthew, chapters 5 - 7.

³⁶ Bender, supra, note 29 at 90.

³⁷ Troelsch, supra, note 31 at 703 in Redekop, supra, note 5 at 53.

³⁸ In Matthew 5:21-48, Jesus uses a pattern of teaching in which he sets out the old law and then demands an even higher ethical standard. For example, at 5:27-28, he says: "Ye have heard that it was said by them of old, thou shalt not commit adultery; But I say unto you that whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart."

³⁹ Keeney, supra, note 7 at 193.

and "love your enemies." They refused to bear arms⁴⁰ or to condone capital punishment.⁴¹ Indeed, the doctrine of non-resistance can be seen as fundamental to the Anabaptist understanding of the Christian ethic.⁴²

The "all-embracing application of love and non-resistance"⁴³ and their belief that they were citizens of the Kingdom of God resulted in grave practical difficulties for Anabaptists in terms of their relationship with the unsaved world and its governance. Luther had addressed the problem practically with his "Two Kingdom" notion, which recognized the citizenship in the Kingdom of God enjoyed by Christians but which also made allowances for the earthly realities in which Christians found themselves. Christians were permitted to perform acts as citizens of the earthly kingdom which would have been prohibited for them as members of the kingdom of

⁴⁰ "...by these and other Scriptures we are taught and warned not to take up the literal sword..." Complete Writings, supra, note 8 at 423. Menno also spoke strongly against "Anabaptists" who, at Munster, took armed control of the city until they were eventually crushed militarily. Ibid. at 670-671.

⁴¹ "...it would hardly become a true Christian ruler to shed blood. For this reason, If the transgressor should truly repent before his God and be reborn of him, he would then also be a chosen saint and child of God... and for such a one to be hanged on the gallows, put on the wheel, placed on the stake, or in any manner hurt in body or goods by another Christian...would look somewhat strange and unbecoming in the light of the compassionate, merciful, kind nature, disposition, spirit and example of Christ, the meek Lamb -- which example He has commanded all His chosen children to follow." Complete Writings, supra, note 8 at 920-921.

⁴² Smucker, supra, note 33 at 75.

⁴³ Ibid. at 75.

God.

Anabaptists recognized that there were two kingdoms. Indeed, they drew a marked distinction between the two, viewing reality as divided into "two domains of moral space"⁴⁴, the one being described as evil, demonic, dominated by the forces of darkness and doomed, and the other seen as good, Godly, the Kingdom of light.⁴⁵

This stark contrast prohibited Anabaptists from compromising with reality as Luther had. The new birth was understood by Anabaptists to mean the creation of a new creature quite unlike the old. "They understood this to mean that the Christian would be different and live under a different set of requirements from the one who was of the world. The new reality would set limits upon the believer's participation in society and culture."⁴⁶ From the stark difference between the two kingdoms as portrayed in the writings of Menno and others grew the doctrine of separation, of non-conformity with the world.⁴⁷ Compromise was out of the

⁴⁴ James Urry, None But Saints: The Transformation of Mennonite Life in Russia 1789-1889 (Winnipeg: Hyperion Press, 1989) at 35.

⁴⁵ Ibid. at 35.

⁴⁶ Keeney, supra, note 7 at 123.

⁴⁷ "The Anabaptist belief in the ontological possibilities of the New Creature in Christ and some significant discontinuity between the Old and New Testament teachings led them to accept some ethical demands which differed from the major Reformers. Discipleship results in a separation from the world in certain practices such as nonresistance and nonswearing of oaths...The life of the believer is to correspond fairly directly

question. The Anabaptists believed in the need to separate themselves from the "world" and its institutions. They would be in the world but not of it.

On the other hand, the early Anabaptists were active missionaries and evangelists, stating their faith to anyone who would listen.

The whole movement was thoroughly evangelical, and characterized by a strong missionary zeal. Meetings were held day and night. Bible reading, exhortation, testimonies, and singing of hymns, often of their own composition, constituted a large part of the worship. Baptism was administered to new recruits at nearly every meeting...⁴⁸

Menno's writings are indicative of this spirit in that they were generally addressed to his enemies rather than to his own people, demonstrating his interest in convincing others of his beliefs. In this, then, the early Anabaptists struck a balance between the isolationist tendencies of their faith and the need to speak to the world in order to convert it.

Of specific importance in the early years of Anabaptism was the question of the legitimacy of the State's authority. Given their refusal to bear arms and to swear oaths⁴⁹, their criticism of capital punishment and the fact that they engaged in civil disobedience often to the point of death, it is not

if not absolutely with the nature of his Lord." *Ibid.* at 193.

⁴⁸ Smith, *supra*, note 26 at 14. See also Redekop, *supra*, note 5 at 31.

⁴⁹ Smith, *ibid.* at 16.

surprising that Anabaptists were viewed as revolutionaries and insurrectionists. However, despite the natural conclusions to which these facts gave rise, it is clear that Anabaptists saw the role of the State and ruler as legitimate within certain limits.⁵⁰ Authority was viewed as God-ordained "for the punishment of the wicked and the protection of the pious".⁵¹ The state was to "restrain violence with violence."⁵² On the other hand, despite its God-ordained status, civil authority too was a fallen institution, created "outside the perfection of Christ,"⁵³ a part of the old order and superseded by the new Kingdom of God. Indeed, Anabaptists went so far as to

⁵⁰ " That the office of the magistrate is of God and His ordinance I freely grant..." Complete Writings, supra, note 8 at 922.

⁵¹ The Dordrecht Confession, an early Anabaptist confession of faith, stated: "God has instituted civil government for the punishment of the wicked and the protection of the pious: and also further for the purpose of governing the world...and to preserve its subjects in good order and under good conditions." Guy F. Hershberger, The Way of the Cross in Human Relations (Scottsdale: Herald Press, 1958) at 165 in Redekop, supra, note 5 at 217.

⁵² Klaassen, supra, note 4 at 46.

⁵³ The Schleithem Confession in John C. Wenger, Glimpses of Mennonite History and Doctrine (Scottsdale: Herald Press, 1947) at 210 in Redekop, supra, note 5 at 127. The Schleithem Confession was another Anabaptist confession of faith.

In a footnote to "A Brief and Complete Confession" in Complete Writings, supra, note 8 at 422-423, Wenger explains as follows:

"The Anabaptists believed in a basic difference between the Old and New Covenants. The Old Covenant involved a theocracy, a situation in which God's people were both a body of believers and a body politic. This latter involved Israel's maintenance of law and order within the covenant people by the use of force. The sword of Israel did not pass to the church, however, but to the governments of the world."

suggest that the coercive function of the state was unnecessary with respect to those belonging to the Kingdom of God.⁵⁴

Anabaptists accepted the authority of the State while it remained within its legitimate jurisdiction, but believed that the State was to be disobeyed whenever it exceeded its jurisdiction. As far as Anabaptists were concerned, the State's authority was exceeded whenever it ventured into religious areas. Anabaptists advanced a case for religious liberty and the radical concept of the separation of church and state.⁵⁵

This paradoxical view of the state (as legitimate and God-ordained, yet fallen) also explains why Menno and others could call on the state to maintain law and order while at the same time repudiating any resistance on the part of Christians to evil men. It also explains why Anabaptists saw service in the state apparatus as illegitimate for the Christian. An early Anabaptist Confession of Faith specifically prohibited the Christian from acting as a magistrate, both because the position involved the use of force and because it was part of

⁵⁴ Smith, supra, note 26 at 16. Smith notes that this "naive and somewhat selfish attitude" was "perfectly inevitable and logical in that day of intolerance and union of state and church."

⁵⁵ Abraham Friesen, *Emigration in Mennonite History with a Special Reference to the Conservative Mennonite Emigration from Canada to Mexico and South America After World War I* (M.A. Thesis, University of Manitoba, 1960) at 2. See also Troelsch, supra, note 31 at 695 in Redekop, supra, note 5 at 11, and Klaassen, supra, note 4 at 46-52.

the old order, while the Christian was to be unreservedly committed to the new.⁵⁶ Anabaptists believed that "the Christian shall render all honour and obedience to the state but he cannot administer justice in the state; that is not his calling....Christians are to let God take care of evildoers; they themselves are to feed their enemies and give them drink."⁵⁷

The Anabaptist concept of church-state separation, then, went further than a demand that the state remove itself from involvement in matters of religious faith. It also rejected the notion that the Christian had any role to play within the state apparatus.⁵⁸ Since the state found its authority in the realm of the "world" and the Christian was a citizen of another kingdom, and since the state's legitimate role was to punish the evildoer and the Christian was called to an ethic of non-violence, the state and the Christian would have little

⁵⁶ The Schlietheim Confession in Wenger, supra, note 53 in Redekop, supra, note 5 at 27. Naturally, there are differing interpretations as to the reason for this prohibition. According to Klaassen, supra, note 4 at 46, Hans Denck did not see the magistracy as wrong, but emphasized the "better way" of the Christian's calling. For Smith, supra, note 27 at 16, the rationale lay in the particular circumstances of the day. "If the magistracy must enforce religious uniformity and burn men at the stake for their religious beliefs, then of course no Christian, according to the Anabaptist standard, who believed in absolute soul liberty could consistently hold office."

⁵⁷ John Christian Wenger, "Preface" in Complete Writings, supra, note 8 at 423.

⁵⁸ "Anabaptists held that Christians could not hold public office because this constituted a compromise with the use of coercion..." Redekop, supra, note 5 at 8.

point of contact, except perhaps in regulatory matters. The State and the Christian operated in different worlds.

B. COMMUNITY

If the practice of adult baptism was consistent with the Anabaptist belief in the supremacy of Scripture and their concept of the New Birth, it also reflected the Anabaptist understanding of the church as a community, the second of Driedger's four pillars.

For Anabaptists, the church was not the organizational structure one entered as a matter of course at birth (or shortly thereafter). The church was a voluntary association of Christians.⁵⁹ No one could enter the "Body of Christ" by means of a ceremony performed without his/her understanding and consent. Baptism was a symbol of one's entry into the invisible church through the New Birth and, since the visible church was to be as coterminous with the invisible church as possible,⁶⁰ baptism also signalled entry into the visible body of believers. It was believed that the church would be able to identify its own through the "fruits" by which the New Birth would reveal itself and would welcome the convert on the

⁵⁹ Keeney, supra, note 7 at 151.

⁶⁰ Ibid. at 150.

basis of both a verbal confession and a changed lifestyle.⁶¹

If the individual Christian was to be holy, the Church was necessarily also to be holy.⁶² Anabaptists therefore placed emphasis on Paul's admonition that the church was to be "without spot or wrinkle."⁶³ The church was to be the "body of Christ" on earth, the working out of the Kingdom of God in time and space.⁶⁴ As such, it was to be governed by biblical principles. It was to be characterized by love and non-resistance. It was to be the arena for mutual aid, for service to others.⁶⁵ It was also to be egalitarian,

⁶¹ Ibid. at 150.

⁶² According to Redekop, supra, note 5 at 11: "Their real strength, however, lay in the emphasis which they gave to the desire to be a 'holy community', 'holy' in the sense of the Sermon on the Mount."

⁶³ Ephesians 5:27. Menno Simons said: "The holy Scriptures and our common faith teach us that the holy, Christian church is an assembly of the righteous and a communion of saints." Complete Writings, supra, note 8 at 99. See also Keeney, supra, note 7 at 151.

Church discipline naturally followed from an emphasis on a holy church and is present in the teachings of both Menno and Dirk Phillips. See Keeney, supra, note 7 at 154.

⁶⁴ "The Church which was a spiritual fellowship of believers who were united with one another and Christ was the meeting point of the divine and human, the eternal and the temporal. This was the Kingdom of Heaven to the degree that it was possible of fulfillment on earth and by men who were still assailed by the weaknesses of the Adamic nature, even though already granted the divine nature. This church was to be without spot and wrinkle, the pure and holy body of Christ on earth." Keeney, supra, note 7 at 155. For Keeney, at ibid. at 107, "The celebration of the Lord's Supper reinforced this conception of the church, for it was seen as "a communion of the flesh and blood of Christ, a mystery, but a spiritual reality, the partaking of the divine nature."

⁶⁵ Calvin Redekop, "Anabaptism and the Ethnic Ghost" (1984) 58 Mennonite Quarterly Review 133 at 138.

recognizing the "priesthood of all believers"⁶⁶ and the belief that no one was greater than another since all were engaged in the same activity -- discipleship. Finally, the church was to be a separated people, distinct from the "world".⁶⁷

The church as envisaged in Anabaptist thought was therefore much more than a collection of individuals representing the visible portion of the invisible church. It was to be a "gathered fellowship," a community in which the individual could be sustained and nurtured. "The Anabaptist movement stressed a concept of the church as a gathered people, a covenanted community, in which everything is centered on the gathering of a people around the presence of Christ."⁶⁸

Furthermore, since the whole of an individual's life was to be under the Lordship of Christ, the church as the community of believers was to be involved in the whole of life. One Mennonite has noted:

"In the sense in which we Mennonites understand the meaning of the words "Church" and Christian" we might as well substitute "church" for

⁶⁶ I Peter 2:5 and 2:9.

⁶⁷ Menno Simons said, "The whole evangelical Scriptures teach that Christ's church was and must be a people separated from the world in doctrine, life and worship..." Harold S. Bender, Menno Simons' Life and Writings (Scottsdale: Mennonite Publishing House, 1936) at 74 in Redekop, supra, note 65 at 133. See also Bender, supra, note 29 at 95-96.

⁶⁸ Redekop, supra, note 5 at 131. See also Keeney, supra, note 7 at 152. According to Keeney, ibid. at 107, the celebration of the Lord's Supper became "an emblem of Christian love, unity and peace in the Church of Christ."

"community"...For have we not historically, and in our highest thought, always held that to be "Christian" means to follow Christ in all our ways including what the world calls "secular", and that the church is a brotherhood of love in which all the members minister to each other in all their needs both temporal and spiritual?"⁶⁹

Another commentator claims:

The life of the Mennonite community constituted the total expression of normal living, under the religious sanctions which represent the Mennonite faith."⁷⁰

The community created by the early Anabaptists was not large and hierarchical. There was no central authority: the local congregation was sovereign. The local Anabaptist congregation admitted new members, selected its own leaders and missionaries and determined the collection and distribution of its resources, among other things.⁷¹ Anabaptists did not think of their congregation as a "church", with its institutional, organizational and hierarchical

⁶⁹ Bender, supra, note 29 at 90.

⁷⁰ John R. Mumaw, "Current Forces Adversely Affecting the Life of the Mennonite Community" (1945) 19 Mennonite Quarterly Review 101 at 101.

⁷¹ "From the beginning...the local congregation has been the authoritative social organization which has accepted members by baptism; selected and appointed its own pastors, elders, deacons and other officials; overseen its own educational program; determined the collection as well as the allocation of its own resources; decided if, when and how it should engage in missionary and evangelical work; and commissioned its own missionaries - to name only a few of its many fundamental responsibilities....Mennonite congregations have never really relinquished their hegemony and authority to any other body, at least theologically..."

Redekop, supra, note 5 at 63.

overtones.⁷² Rather, the term **Gemeinde**⁷³ was used to describe their vision of the church. Mutual aid and intimate, face-to-face fellowship were to be the overriding characteristics of the local group.⁷⁴ The ideal community has been described as one which

encompasses all forms of human relationship which are characterized by a high degree of personal intimacy, emotional depth, moral commitment, social cohesion, and continuity in time. Continuity is founded on man conceived in his wholeness rather than in one or another of the roles, taken separately, that may hold in a social order.⁷⁵

This was the sort of community the Anabaptists wanted to create.

The Anabaptist conception of the church helped to balance its emphasis on the individual, for, "while the decision to become a disciple was an individual step of faith, the new life upon which the disciple entered was communal".⁷⁶ One's faith could not be lived out in solitary withdrawal,⁷⁷ but only through life in the community of faith.

⁷² Keeney, supra, note 7 at 155.

⁷³ The Dutch term is **Gemeente**. See Keeney, supra, note 7 at 155. The word might be translated as "congregation" or "community".

⁷⁴ Redekop, supra, note 5 at 62.

⁷⁵ Robert A. Nisbet, The Sociological Tradition (New York: Basic Books, 1966) at 47 in Redekop, supra, note 5 at 129.

⁷⁶ Klaassen, supra, note 4 at 22.

⁷⁷ Urry, supra, note 44 at 36.

The persecution experienced by the Anabaptists in all parts of Europe, strengthened and reinforced certain elements of their beliefs while it weakened others. The outward-looking, evangelical impulse of the early Anabaptists was repressed, since an admission of one's faith could result in torture and execution. Conversely, the inward-looking tendency of Anabaptism was strengthened as Anabaptists saw around them only hostility, persecution and sometimes death. The "world" was revealing itself to be as evil as the Anabaptists claimed it was. For those who refused to surrender, the need to escape the world became paramount. The community of fellow believers took on special importance as Anabaptists were forced to turn to like-minded and sympathetic people for support and assistance both within their local groups and from others.

...the same persecutions which decimated us also united us. And we heard about each other at unexpected times or when we met in unexpected places, we found our common suffering created a bond so strong that we knew we belonged to each other. And that is why, next to the Bible, the stories of our suffering in the **Martyr's Mirror** and the songs of our suffering in the **Ausbund**, became the ongoing symbols of our common peoplehood.⁷⁸

The persecutions suffered by the Anabaptists resulted in flight to areas where the persecution was less intense or non-existent. These migrations also served to strengthen the

⁷⁸ Frank Epp, Mennonite Peoplehood: A Plea for New Initiatives (Waterloo: Conrad Press, 1977) at 23 in Redekop, supra, note 5 at 138. The **Martyr's Mirror** was a collection of stories of Anabaptists who were executed for their faith. The **Ausbund** was a widely-used hymnbook.

bonds of community.

The movements across oceans, through valleys, over mountains, and to new frontiers were experiences akin to the sufferings of the persecution. Where we needed each other we helped each other and where we helped each other we knew that we belonged together...In all kinds of ways we walked our separate paths, but mutual aid and neighbourliness knew only a single road and a single peoplehood.

Indeed, in some areas our neighbourliness was so complete, our communities so solid and continuous, that we developed the characteristics of ethnicity and cultural uniformity.⁷⁹

Less poetically and more analytically, E.K. Francis has noted a pattern of responses surrounding migration and the resultant formation of ethnic identity.⁸⁰ Francis saw the ethnic coherence of the Mennonites being formed by a common religious bond and religious teachings, reinforced by religious persecution, which in turn caused migration. Arrival in a new and strange land emphasized the differences between the migrants' culture and that of the new host society. Because the migrants were disinclined to give up the familiar in favour of the unfamiliar, certain characteristics of the previous host society were retained and became part of their own culture. To maintain this culture, the immigrants looked to one another for support and became even more firmly embedded in the web of familiar social relationships.⁸¹

⁷⁹ Epp, Ibid., at 28-29 in Redekop, supra, note 5 at 139.

⁸⁰ E.K. Francis, Interethnic Relations: An Essay in Historical Theory (New York: Elsevier, 1978) at 183ff. in Redekop, supra, note 5 at 22.

⁸¹ Francis, ibid, at 169 in Redekop, supra, note 5 at 22.

This pattern is certainly descriptive of the history of the Mennonites who came to Manitoba in the 1870s. Originating in Holland, these Anabaptists moved gradually to the Vistula delta, near present-day Gdansk in Poland. At the time, the area was governed by a Prussian aristocracy which was prepared to tolerate the Dutch Anabaptists because of their skills in draining the marshes of the Vistula. Although they were granted the freedom to practice their faith they were never granted citizenship status nor allowed certain occupations and employment.⁸² Given the discrimination they faced and their status as foreigners, Mennonites naturally gathered in congregational groups. Again, they were forced to look to one another for support:

For them the term "brotherhood" was not a vague and distant ideal but a reality. It was not so much spoken of on Sunday, as practiced everyday. They formed not merely a "spiritual" brotherhood but also a cultural and economic unit.⁸³

Nevertheless, despite legal and religious distinctions separating the Mennonites from their Prussian neighbours, Mennonites were not physically separated from the surrounding society. After two hundred years of living in Prussia, certain patterns of living were adopted by the Mennonites, including language. By 1750, they lost the practice of

⁸² David G. Rempel, "The Mennonite Commonwealth in Russia: A Sketch of its Founding and Endurance, 1789 - 1919" (1973) 47 Mennonite Quarterly Review 259 at 280.

⁸³ Cornelius Krahn, "From the Steppes to the Prairies" in Cornelius Krahn, ed., From the Steppes to the Prairies (1874-1949) (Newton, Kansas: Mennonite Publication Office, 1949) 1 at 2.

speaking Dutch and began using High German in church services and the Low German dialect of the area in everyday speech.⁸⁴ Except for their religion, Mennonites in Prussia were losing any distinctiveness which separated them from "the world".⁸⁵

Two factors led in the late 18th century to the emigration of Mennonites from Prussia. The first was the concern felt by some Mennonites about the extent to which the Mennonite community was being assimilated into the larger culture. The second was the more profound discrimination which faced them after the first partition of Poland, in 1772. Special taxes were imposed upon the Mennonites in lieu of military service and they were prohibited from purchasing land from non-Mennonites unless they left the Mennonite church.⁸⁶ Although these laws were designed to encourage greater assimilation, they had the opposite effect, at least among the more conservative Mennonites, those who wished to retain their faith and some economic well-being. Since these Mennonites were not prepared to abandon their faith in order to avoid these disadvantages, the new laws generally served to preserve their sense of separateness. The new restrictions also served to encourage some Mennonites to begin thinking about

⁸⁴ Ibid. at 2.

⁸⁵ E.K. Francis, "The Mennonite Commonwealth in Russia, 1789-1914: A Sociological Interpretation" (1951) 25 Mennonite Quarterly Review 173 at 174.

⁸⁶ Rempel, supra, note 82 at 281.

emigration, for both religious and economic reasons.⁸⁷

Fortunately for those interested in emigrating, their interest coincided with an offer from Empress Catherine of Russia. The Empress needed settlers for the newly conquered lands in southern Ukraine which had never been tilled. She invited great numbers of settlers from all over Europe to these lands, and was prepared to grant favorable terms to those groups prepared to endure the hardships of the frontier.⁸⁸ A great number of Mennonites in Prussia were interested and arrived in Russia between 1789 and 1796. They founded a colony, Chortitza, made up of villages spread out along the Chortitza and Dnieper rivers. A later migration, beginning in the early 19th century, resulted in the founding of a new colony, Molotschna, along the Molotschna River.⁸⁹ Between 1789 and 1810, an estimated 18,000 Mennonites arrived

⁸⁷ Krahn supra, note 83 at 2, states that their reason for leaving was to "escape the 'world'" James Urry, supra, note 44 at 64, suggests that the leaders of those who left saw Russia as a place to re-establish the Mennonite faith in a purer form but he also acknowledges that the economic prospects in Russia were more important to the rank and file. E.K. Francis, In Search of Utopia: The Mennonites in Manitoba (Altona: D.W. Friesen & Sons Ltd., 1955) at 20, sees both religious and economic reasons present in the decision to move, but stresses the former.

⁸⁸ Under Empress Elizabeth, Greeks, Bulgarians and Hungarians had settled in these lands. Catherine II (the Great) induced Swedes, Moravians and especially Germans to settle in the area. All were granted a military exemption. Krahn, supra, note 83 at 1.

⁸⁹ Ibid. at 2.

in Russia, almost exclusively from Prussia.⁹⁰

The Russian government was anxious to keep the Mennonites segregated from the Russian population.⁹¹ The Mennonites were granted large tracts of land in which they were the only settlers, and were prohibited from proselytizing members of the Russian Orthodox church.⁹² The government was also prepared to grant the Mennonite settlers extensive concessions in terms of self-government. They were free to institute their own arrangements for government and were given control over nearly everything that affected their everyday lives. The Mennonites in Russia "were expected to organize themselves as a self-sufficient, self-regulating and self-perpetuating social system."⁹³ The government allowed the colony organization rather than individuals to control the land,⁹⁴ and gave Mennonite governments the authority to care for

⁹⁰ Francis, supra, note 87 at 19. Redekop, supra, note 5 at 14, citing Frank H. Epp "The Migrations of Mennonites" in Paul Kraybill, ed. The Mennonite World Handbook (Lombard, Ill: Mennonite World Conference, 1978) sees the number as substantially lower, perhaps 8000.

⁹¹ David G. Rempel, supra, note 82 at 295, refers to the Russian attitude as one of "religious apartheid".

⁹² Driedger, supra, note 1 at 20, claims that "there is still debate about whether they could proselytize converts, there is evidence that they were expected to keep their religion to themselves." Other writers seem more certain. Urry, supra, note 44 at 189, in discussing the evangelical practices of the Mennonite Brethren, notes that "...as evangelism among Orthodox subjects was illegal, the Brethren were liable to arrest."

⁹³ Francis, supra, note 85 at 180.

⁹⁴ Urry, supra, note 44 at 61. See also Francis, supra, note 85 at 176.

roads, schools and hospitals, to regulate commerce and deal with deviants.⁹⁵ Mennonite secular authorities "held all the powers and duties of authorities in the modern secular state."⁹⁶ The Mennonite special status in Russia was exemplified by the fact that the government dealt with leaders of the community rather than with individual Mennonites⁹⁷ and even used German as the language of official correspondence.⁹⁸ In short, Mennonites were given "an extraordinary and almost inconceivable degree of autonomy under one of the most centralized, autonomous regimes in pre-war Europe."⁹⁹

The Mennonite emphasis on community at the expense of the individual, strengthened by the migration from Prussia and the hardships of frontier life, was further reinforced by the Russian government's attitude of "benevolent paternalism".¹⁰⁰ In this atmosphere the Mennonites were able to indulge their most utopian ideas. They had an opportunity to create the Kingdom of God on earth, a place in which "the ethical rules

⁹⁵ Redekop, supra, note 5 at 81. The "Oberschultze," head of the district council, had responsibility for policing and law enforcement. He had authority to impose fines and imprisonment, force the offender to perform labour and even (with the consent of the Russian authorities) impose corporal punishment. Urry, supra, note 44 at 72.

⁹⁶ Redekop, supra, note 5 at 81.

⁹⁷ Francis, supra, note 87 at 21. See also Francis supra, note 85 at 176.

⁹⁸ Urry, supra, note 44 at 71.

⁹⁹ Rempel, supra note 82 at 261.

¹⁰⁰ Francis, supra, note 87 at 21-22.

of the community -- its public expression of faith -- dominated social life," where "all cultural exchanges [would be] contained within the bounds of the congregational community."¹⁰¹

As the Mennonites not only survived but prospered on the steppes, their sense of distinctiveness increased. Their special legal status, their control over virtually all aspects of their lives, resulted in another sense of Mennonite community. "Community" was not restricted to relationships within the context of a local congregation, but became something larger. A sense of "peoplehood" emerged, and Mennonites began referring to themselves as "**das Mennonitsche Volk**".¹⁰² They became an independent, self-contained society and produced an ethnic identity

in which religion was just one of the markers of distinctiveness. Mennonites already identified with their village, with their district and colony, as well as with their own congregation. There was also a sense of being a citizen of a larger Mennonite community...The government reinforced this sense of being different by singling out the Mennonites for special attention. For them, the Mennonites were not only different but also viewed as superior to many of their neighbours."¹⁰³

This new Mennonite society was one in which the same individuals were responsible for both religious institutions

¹⁰¹ Urry, supra, note 44 at 38.

¹⁰² Rempel, supra, note 82 at 50. Literally, "the Mennonite people", the German phrase carries connotations of ethnicity, nationality and even race.

¹⁰³ Urry, supra, note 44 at 103.

and civil government. The spiritual and the secular were co-extensive as to both territory and personnel.¹⁰⁴ The religious group which had rebelled against the **Corpus Christianum** of medieval Europe had produced in Russia a miniature State-Church.¹⁰⁵ Membership in the church was the prerequisite to legal status in the secular community. No Mennonite could hold office unless he was a member of a Mennonite church and was elected by land-holders of the colony who were also church members.¹⁰⁶ While the sacred and secular were separated for administrative purposes and occasionally clashes took place between religious and civic authorities, for the most part the church and the "state" worked together. The fact that the "sacred" and the "secular" operated simultaneously within the same collectivity of people served to reinforce the Mennonite view that all of life was lived within the community.

A world in which virtually all contact was with those who shared a common language, a common history and a common religious belief system was ideal for the formation of an ethnic group. The fact that both their religious beliefs and their history stressed the importance of community made the

¹⁰⁴ Francis, supra, note 87 at 25.

¹⁰⁵ The irony of the situation was lost on most Mennonites, with the exception of a dissenting group which refused to accept involvement in positions of civil authority: See Urry, supra, note 44 at 79-80. This group, known as the **Kleine Gemeinde** (Little Church), was one of the groups to emigrate to Manitoba.

¹⁰⁶ Redekop, supra note 5 at 81-82.

formation of an ethnic group inevitable.¹⁰⁷ And, like ethnic groups everywhere, they created their own culture.

C. GERMANIC CULTURE

While in Prussia, but only a few years before leaving for Russia, Mennonites had adopted both the German language and some cultural habits from their neighbours. In their move to Russia, they retained both. To some extent, this was due to the natural inclination of any group to preserve the familiar patterns of living when faced with a new and alien environment. However, while in most cultural contexts, a minority is gradually assimilated within the prevailing culture, few of the factors which reinforce the assimilation process were present in Russia. Due to the degree of separation from the indigenous population desired by both the Mennonites and the government, there was little need for Mennonites to come into contact with Russians or Ukrainians or to learn their language. The Mennonite colonies were self-supporting economically. The Russian government officials were prepared to use German as the language of communication with the Mennonite authorities. Mennonites were free to

¹⁰⁷ Indeed, E.K. Francis, supra, note 85 at 174 goes further than describing Mennonites as a mere ethnic group. He claims that in Russia they were "more like an independent people than anything else."

operate their own school system, and the language of instruction was, naturally, German. Since the previous occupants of the areas in which Mennonites settled had been nomadic herdsman, few previous attempts had been made to farm in an intensive manner. Therefore few patterns of living could be borrowed from the peoples native to the area that would be useful to a Mennonite lifestyle.

This lack of interaction with the host culture, meant that few inhibitions were placed on Mennonites that would have prevented the emergence of a uniquely Mennonite culture. Mennonites were free to initiate their own life-style without great influence from either officialdom or the larger society. "In-group language, symbols, meanings, sentiments, and other private elements"¹⁰⁸ could develop virtually unchecked. Mennonites developed their own dress, food, celebrations; in short, their own culture.¹⁰⁹

The natural and human inclinations toward the development of ethnicity and culture were supported by the teachings of the church. The need to live separately from the "world" was basic to Anabaptist teaching. In the preceding centuries such separation was achieved by adopting their own lifestyle and beliefs, by refusing to develop close relationships outside of the Mennonite community. It was easy to extend this to a spatial separation in Russia, especially since spatial

¹⁰⁸ Redekop, supra, note 5 at 22.

¹⁰⁹ Redekop, supra, note 65 at 143.

separation had been encouraged by the government.

In other areas of life too, the church played a role in "sacralizing" the emerging culture.¹¹⁰ Because, in keeping with Anabaptist doctrine, the church refused to acknowledge any gap between the sacred and the secular, and because cultural activities had the tacit if not the explicit support of the church, religion and culture became identified with one another. This was especially true in more conservative areas,¹¹¹ since, as one sociologist notes:

"Sacralization...is a sort of brake applied to unchecked infinite adaptations, in symbol-systems for which there is increasingly less evolutionary necessity and which become increasingly more dysfunctional for the emotional security of personality and for the integration of tribe or community...Sacralization produces immunity against persuasion similar to the biological immunization process."¹¹²

The church therefore became deeply identified with the emerging Mennonite culture and, because it sacralized that culture, the church became an inherently conservative presence in the Mennonite community.

¹¹⁰ "Sacralization" has been described by Hans Mol as a process "by means of which on the level of symbol-systems certain patterns acquire the same taken-for-granted, stable, eternal quality which on the level of instinctive behaviour was acquired by the consolidation and stabilization of new genetic materials." Hans Mol, Identity and Religion: International, Cross-cultural Approaches (London: Sage Publications, 1976) at 5 in Driedger, supra, note 1 at 26.

¹¹¹ Rempel, supra, note 82 at 20.

¹¹² Mol, supra, note 110 at 5 in Driedger, supra, note 5 at 26.

D. LAND

Land, the fourth stake in Driedger's sacred canopy, can be seen, like culture, as a corollary of the concept of community. Like the cultural aspect of the Mennonite identity, the importance of land became entrenched in Russia. However, unlike culture, which is a natural product of the creation of an ethnic group, the importance of land to the Mennonite sacred canopy was not inevitable. It evolved into a stake only as a result of circumstances peculiar to Mennonite history.

The agricultural lifestyle was certainly not seen as integral to the early Anabaptists. Studies have shown that more than 40% of the Anabaptists in Switzerland, Southern Germany and Central Europe in the early years of the Reformation were craftsmen and most lived in urban centres.¹¹³ Among Anabaptist martyrs in the Low Countries the percentage of weavers, tailors, shoemakers, and other small craftsmen was even higher, constituting more than half of those who died for their faith.¹¹⁴

¹¹³ Claus-Peter Clausen, Anabaptism: A Social History, 1525 - 1618 (Ithaca, New York: Cornell University Press, 1972) at 435 in Driedger, supra, note 1 at 17.

¹¹⁴ W.L.C. Coenen, Bydrage tot de Kennis van de maatshappelijke verhoudingen van de zestiendeeniwsche Doopera (Amsterdam, 1920) at 1-90 in Driedger, supra, note 1 at 18. Admittedly, those who were martyred may not be a representative sample of Dutch Anabaptists. However, it is the only evidence available as to the occupations of Anabaptists in the Low Countries.

The occupational tendencies of Anabaptists changed with the move into Prussia and with the passage of time. A 1776 register of the names of the families of 12,032 Mennonites in West Prussia showed that two-thirds of the heads of households were agriculturalists. A further 10% were labourers, but it is unknown whether they worked on farms or in the cities. Only 23.3% were involved in other occupations, including crafts.¹¹⁵

The extent to which Mennonites moved to an agricultural life in Prussia is not surprising, given that the tolerance shown them by rulers in Prussia was largely based on their usefulness in dike-building and reclaiming flooded swampland for agricultural purposes.¹¹⁶ Indeed, their skills in these activities served as the basis for the special economic and social status they enjoyed in the Vistula delta.

Leo Driedger has described Mennonites in Prussia as "true economic middlemen",¹¹⁷ using characteristics identified by van den Berghe,¹¹⁸ which seem to apply in uniform fashion to a variety of middleman minorities in societies around the

¹¹⁵ Horst Penner, Die Ost- und Westpreussischen Mennoniten in ihren Religiösen und Sozialen Leben in ihren Kulturellen und Wirtschaftlichen Leistungen (Weirhof, West Germany: Mennonitischer Geschichtsverein, 1978) at 414-469 in Driedger, supra, note 1 at 19.

¹¹⁶ Driedger, supra, note 1 at 19.

¹¹⁷ Ibid. at 19.

¹¹⁸ Pierre van den Berghe, The Ethnic Phenomenon (New York: Elsevier, 1981) in Driedger, supra, note 1 at 9-10.

world.¹¹⁹ Driedger summarizes van den Berghe's description of the economic aspects of middleman minorities as follows:

"...middleman minorities arise from voluntary immigrants who have usually not been enslaved previously but who are often propelled by difficult economic or political situations in their previous homeland, and are now attracted by economic prospects in the country of destination. They usually constitute a small minority.

...Van den Berghe classifies middlemen minorities as an urban petty bourgeoisie social class, better off than the majority of the population, but often far from wealthy....This better-than-average socioeconomic status often provides them with many advantages in competition with their neighbours. Middleman minorities often possess special skills which may be scarce in the rest of the population, and therefore valued. In addition, middleman minorities often hold to values of the Protestant ethic such as hard work, thrift, frugality, lack of ostentation, and postponement of gratification.¹²⁰

Other than the fact that Mennonites were predominantly rural rather than urban, van den Berghe's characterizations seem to describe them well.

In moving to Russia, Mennonites were again placed in the position of a middleman minority. Mennonites were invited to settle, given free land and granted special status precisely because of their agricultural expertise.¹²¹

The conditions they found in Russia were considerably different than those in Prussia, however. Instead of swamps and marshes to reclaim, Mennonites found themselves on the

¹¹⁹ Driedger, supra, note 1 at 19.

¹²⁰ Ibid. at 10.

¹²¹ Ibid. at 19.

arid steppes. Gradually, they adapted to the new conditions. Their survival and later prosperity were facilitated by the communal approach they favoured. Mutual aid was made easier by the fact that Mennonites lived in villages. To ensure a fair distribution of land, farm land was divided into strips in an "open field" arrangement so that each household received a share of the good and the bad land. Communal village pastures were maintained as well as land for eventual use by the next generation. Implements were shared and labour exchanged. New ideas and techniques were always available to all. Individualism was frowned upon. Equality and harmony were seen as ideal.

In this environment, a self-contained economic community was possible and desirable. Mennonites could obtain all they needed from their own efforts, and little contact with the outside world was necessary. As their prosperity increased and land became more difficult to acquire, trades sprang up. While previously Mennonites had created necessary goods by way of home shops and part-time crafts, after 1830 it became both necessary (due to a shortage of land) and increasingly worthwhile for some Mennonites to devote themselves full-time to the manufacture of bricks, the processing of flax and tobacco, to weaving, tailoring, wagon-making and building farm implements.¹²²

Despite this trend, most Mennonites saw crafts and other

¹²² Urry, supra, note 44 at 139-140.

commercial enterprises as a second-best option. Land and farming were viewed as the most desirable occupation and all trades and crafts existed only within the context of the agricultural community.¹²³ Mennonite disdain for crafts and merchants was partly due to economics. Many craftsmen were not well paid while successful farmers did well.¹²⁴ Religious and social reasons were also involved. Merchants in the Mennonite colonies were identified with usury and "sharp practice". Merchants were stigmatized and generally not allowed to hold religious office.¹²⁵ The belief that a simple farmer, at one with nature and his God, was the most appropriate role for the Mennonite to play, dominated Mennonite thinking.¹²⁶

E. PRELUDE TO EMIGRATION

By the middle of the nineteenth century the Mennonite sacred canopy was under pressure. Modernity and commercialization began to influence agriculture and, with it,

¹²³ Redekop, supra, note 5 at 200.

¹²⁴ Urry, supra, note 44 at 144-145. It could, of course, be argued that the reason craftsmen were not well paid was that they were not highly regarded.

¹²⁵ Ibid. at 142.

¹²⁶ Robert Friedman, trans. and ed. "Faith and Reason: The Principles of Mennonitism Reconsidered in a Treatise of 1833" (1948) 22 Mennonite Quarterly Review 75 at 91.

the Mennonite sense of culture. A new movement emerged which tried to breathe vitality into religious life and, in so doing, threatened the established Mennonite community. Simultaneously, the Russian government changed its policy and attempted to assimilate the Mennonites, causing great alarm.

In the 1830s Johann Cornies, a Mennonite who had demonstrated extraordinary skills in farming, was authorized by the government to modernize Mennonite agriculture. Under the Cornies-controlled Agricultural Union¹²⁷ a variety of reforms were instituted, especially in the Molotschna colony, over which Cornies had virtually total control.¹²⁸ Breeds of sheep and cattle were improved as were many strains of vegetables and grains. Trees and orchards were planted which became known throughout Russia. Indeed, the Russian government held up Cornies and the progressive areas of Mennonite settlement as a model for Russian agricultural development. Those of Cornies' progressive bent developed a new identity as model, superior farmers.¹²⁹

Under Cornies' direction and with increasing force after the Crimean War the Mennonites turned from subsistence farming to large-scale commercial farming, especially in the area of

¹²⁷ The common name for the organization was the **Landwirtschaftliche Verein**, according to James Urry, "'The Snares of Reason' - Changing Mennonite Attitudes to 'Knowledge' in Nineteenth-Century Russia" (1983) 25 Comparative Studies in Society and History 306 at 317.

¹²⁸ Urry, supra, note 44 at 134-135.

¹²⁹ Ibid. at 138.

wheat production. Seaports on the Black Sea were developed to make shipment of grain to the rest of the world possible, and the grain trade became increasingly lucrative. The Crimea and southern Ukraine became known as the "Breadbasket of Europe."

In this environment businesses and merchants were created. An influx of Prussian Mennonites in the 1820s included merchant families who capitalized on the developments and founded industries and businesses which flourished in the second half of the century. The development of Russian industry was heavily concentrated in southern Russia and large industrial cities grew up near the Mennonite colonies.¹³⁰ Mennonites began producing industrial goods, especially farm equipment. By 1888 one Mennonite firm was producing 1200 harvesters per year and in 1908 Mennonite factories produced 10% of all agricultural machinery in Russia.¹³¹ Mennonites found they could move off the land and be prosperous in the production of industrial goods, particularly farm machinery.

Cornies' reforms, especially those in the area of education, were resisted by conservative Mennonites. The

¹³⁰ George K. Epp, "Urban Mennonites in Russia" in John Friesen, ed., Mennonites in Russia: Essays in Honour of Gerhard Lohrenz (Winnipeg: CMBC Publications, 1989) 239 at 241 states that, for example, Schoenwiese, a Mennonite village, was situated across a small river from Alexandrovsk and was eventually incorporated into the city. According to James Urry, "Mennonite Economic Development in the Russian Mirror" in Friesen, ibid. 99 at 102, a nearby city, Ekaterinoslav, grew from a population of 20,000 in 1863 to one of 218,000 in 1914.

¹³¹ Urry, supra, note 130 at 102.

traditional Mennonite view of education was based on the group's religious perspective. An elementary education was seen as necessary for all children so that everyone would have the ability to read the Bible for himself or herself. The ability to perform simple arithmetic tasks was seen as important for farming and household duties. In this they were further advanced than most European societies of the time. However, despite this progressive position, little interest was paid to education by the Mennonite community. The local teacher was chosen on the basis of his spare time or his desire to earn some extra money. His task was to supervise and to discipline, not to instruct.¹³² Students taught each other and the bright students spent their time assisting the slower. This was seen as positive, as it encouraged the development of concepts of community and mutual aid. Academic competition was discouraged and bright students generally prevented from pursuing their studies for fear that they would develop pride and be the objects of envy among their peers.¹³³

In addition, there was no sense of critical thought. Truth was the known, not the knowable.¹³⁴ Truth was to be maintained, not discovered. Children were not even taught the Mennonite faith in school, a task considered the function of the home and the Church. The school was the servant of the

¹³² Urry, supra, note 127 at 313.

¹³³ Urry, supra, note 44 at 153-155.

¹³⁴ Urry, supra, note 127 at 311.

community and was not to permit a questioning of Mennonite beliefs and attitudes nor to encourage the discovery of any thought outside the boundaries of shared knowledge.¹³⁵

Cornies changed all that, especially in the Molotschna colony. Using the ideas and support of new Mennonite immigrants from Prussia (the leading educational nation at the time), the Agricultural Union took control over schooling from local churches and villages. Cornies expanded and standardized the curriculum. He ordered improvements to school buildings and replaced poor teachers with better ones, some of whom had been trained to teach. Competition and grades were introduced. Teachers were expected to instruct and not just supervise. A secondary school was built, its graduates becoming teachers, civic administrators and clerks in the new businesses springing up.¹³⁶

Conservative resistance to Cornies' educational reforms proved justified, for the reforms "provided the basis for the introduction of new forms of knowledge into the community, altered the aims and values of the younger generation, and helped to create a sense of discontinuity between the old Mennonite way and the immediate demands of the nineteenth century."¹³⁷ Cornies and the reformers helped a new generation of Mennonites in the Molotschna to turn away from

¹³⁵ Ibid. at 312.

¹³⁶ Urry, supra, note 44 at 160-165.

¹³⁷ Urry, supra, note 127 at 317.

the inward-looking, closed order to the world outside the Mennonite colonies. They became outward-looking individuals for whom community was less significant than for the previous generation. They were much less willing than their parents to embrace the values and beliefs that had created the Mennonite community in Russia.¹³⁸

Cornies' aggressive approach to modernizing the Mennonite communities shifted the center of control and authority from the Church to the local Mennonite government. This shift was particularly obvious in the area of education, which had traditionally been part of the jurisdiction of the Church. This secularized approach to education and other practical matters coincided with a new materialistic impulse within the Mennonite community. The prosperity offered by Cornies' agricultural reforms appealed to this impulse and strengthened the growing power of civic authorities.¹³⁹

¹³⁸ Urry, supra, note 44 at 153-173.

¹³⁹ Urry notes a significant incident which took place in 1846. A Mennonite mayor had ordered two Mennonites to assist in the flogging of an offender. When a Mennonite Church elder banned the two Mennonites for this violation of the Mennonite principle of non-resistance, a Russian official became involved. He demanded that the ban be revoked. The elder justified his actions by appealing to the **Privilegium** granting religious freedom to the Mennonites. His position was that the government official had no right to intervene. The Russian official then called a meeting of Mennonite authorities, asking if they agreed with the elder's interpretation of the **Privilegium** and announcing that, if they did agree, he would have the **Privilegium** changed. In the face of this threat, the Mennonite authorities abandoned the elder and, when the elder refused to retreat from his position, the elder was himself banned from the church and exiled from the colony.

Urry believes that the incident is instructive in that it reveals the extent to which Mennonites were prepared to subordinate

For these reasons, Cornies' reforms were resisted by more conservative Mennonites. Although he was able to gain control of the Molotschna and its daughter colonies before his death, Chortitza and other smaller colonies, like Bergthal, resisted modernization. They recognized these changes in Mennonite society as detrimental to the community concept as it had developed over nearly fifty years in Russia. Modernity and progressive reforms were seen as threatening to sacralized practices. The loss of control from religious to civil authorities threatened the role of the Church in the day-to-day lives of ordinary people.

Cornies' reforms and the commercialization of agriculture after his death resulted in an immense increase in the prosperity of the Mennonite commonwealth in Russia. Those who took advantage of modernization became extremely wealthy and a new Mennonite gentry was formed which owned vast tracts of land outside of the Mennonite colonies.¹⁴⁰ At the same time, while some benefitted enormously from these changes, others faced hardship. Certain crafts, such as weaving and silk-spinning were virtually eliminated due to the availability of imported factory-made textiles.¹⁴¹ With the rise of vast

religious values to the maintenance of their privileged position within Russia. Urry, supra, note 44 at 132-134.

¹⁴⁰ In 1841, 131,314.5 acres of land were owned by only nine Mennonites outside the Mennonite colonies. Urry, supra, note 44 at 143.

¹⁴¹ Ibid. at 146.

agricultural and industrial enterprises, an employed working class was formed and concomitant social divisions sprang up between Mennonites.¹⁴² As the price of land increased with the profitability of the grain trade, the landless, already prevented from voting in civic affairs, found the prospects of prosperity increasingly beyond their grasp.

This state of affairs resulted in a huge dispute in Molotschna in the 1850s as the landless poor demanded the release for general use of lands owned by the colony and rented at favourable rates to already wealthy farmers. They were opposed by the land-owners who had a vested interest in farming the land and in maintaining a pool of captive labour.¹⁴³ Because only the land-owners could vote for civic leaders, the civic governments refused to accommodate the landless. By dominating the churches as well, the land-owners also obtained religious support for their position. Eventually, to the great embarrassment of most Mennonites, the Russian government was forced to intervene between 1860 and 1871 to force the release of these lands to the landless.

By bringing about vast social inequities and creating social divisions, commercialization and modernization had undermined the Mennonite ideals of equality, mutual assistance and a closely-knit community. Economic interests were rapidly becoming a more powerful force than social cohesion.

¹⁴² Ibid. at 143.

¹⁴³ Francis, supra, note 87 at 28-30.

Established patterns of authority in the congregations had been shattered and power had shifted radically to the secular authorities. The traditional Mennonite sense of community had been markedly weakened.¹⁴⁴

Still, although tensions were disrupting the Mennonite community, it continued to enjoy a clear sense of identity and a relatively secure, albeit increasingly secularized, sacred canopy.

Behind all the fragmentation and uncertainty lay a particular conceptional invariance. A Mennonite was born a Mennonite and, for better or for worse, remained a Mennonite until his death. From the western borders of the Russian empire to the frontiers of Siberia, all Mennonites were connected by an adherence to a common faith and by dependence on a unique set of privileges.¹⁴⁵

However, both this common faith and their "unique set of privileges" were also soon under attack.

Secularization and prosperity had resulted in a loss of a great deal of the radical vision of the early Anabaptists. Conformity to group values had replaced individual faith as a key characteristic of the Mennonite version of Christianity. Adult baptism was no longer a symbol of faith representing a difficult choice in favour of a life of persecution. It had become a routine matter, a political, economic and social necessity for membership in the Mennonite community. Ethical living and discipleship had been replaced by a pattern of

¹⁴⁴ Urry, supra, note 44 at 152, 196ff.

¹⁴⁵ Urry, supra, note 127 at 320.

established cultural values and mores. The community of believers had become an ethnic, political and cultural entity with established authorities holding vast amounts of power. The sense of discovery, of finding God for oneself and the enthusiasm for sharing that faith had disappeared. Mennonite sermons were passed down from generation to generation and read at services. Religion had become institutionalized and had lost most of its spiritual content.¹⁴⁶ The biblical theology of the early Anabaptists now served as little more than a cultural glue.

In 1860 a new phenomenon surfaced to challenge the religious life of the community. A group of well-educated Mennonites,¹⁴⁷ influenced by religious literature from outside the colonies, began holding Bible studies and prayer meetings. They adopted the beliefs of a nearby Lutheran pietist minister who "stressed the redemption of Christ crucified, how individuals by personal faith could overcome sin and through the experience of God's love gain assurance of their own salvation."¹⁴⁸ This group was more concerned with personal salvation than with disrupting the socio-economic fabric, but their criticisms of the lifestyles of other Mennonites alarmed the Mennonite authorities. Eventually they were isolated from

¹⁴⁶ Francis, supra, note 85 at 178-9.

¹⁴⁷ Urry, supra, note 44 at 172, notes that they were primarily teachers, millers, merchants and estate-owners. Few were "colony farmers".

¹⁴⁸ Ibid. at 169.

the Mennonite Church, at which point these radicals held their own communion in 1860 without the sanction or presence of a minister ordained by the Mennonite Church. When excommunicated by the Mennonite Church, they responded by forming the "Mennonite Brethren" Church and excommunicating members of the Mennonite Church.¹⁴⁹

Predictably, the religious authorities attempted to have the Mennonite Brethren expelled from the colonies as they had with the Kleine Gemeinde 45 years earlier. Despite these efforts, the Mennonite Brethren were granted status by the Russian government and were allowed to remain within the Mennonite commonwealth.¹⁵⁰ By proposing a new, vibrant and non-traditional religious alternative and by launching a successful challenge to their power, the Mennonite Brethren constituted a threat to the conservative religious authorities.

In the 1860s and 1870s, the "unique set of privileges" enjoyed by Mennonite society was also threatened. Responding to its terrible performance in the Crimean War and under pressure from both liberals and Slavophiles, the Russian Government began a modernization program based on nationalist principles.¹⁵¹ With the emancipation of the serfs in 1861, the relations between the Mennonite commonwealth and the

¹⁴⁹ Ibid. at 179-180.

¹⁵⁰ Ibid. at 183-195.

¹⁵¹ Francis, supra, note 87 at 31.

Imperial government were also changed. Mennonite colonies were no longer administered by a special government department, but became part of a county and province. Justices of the Peace were elected and some Mennonites stood for office. The landless were granted the right to vote in civic elections and, as already noted, were the beneficiaries of the distribution of surplus land forced by the Imperial government. Individual rather than communal ownership of land was permitted. The traditional division of village land into strips was changed, and the various strips consolidated into larger plots. Mennonites were forced to pay taxes to the government.¹⁵²

All of this was perceived as an attempt to assimilate Mennonites into the larger Russian society and, more darkly, as an effort to reduce Mennonites to peasant status.¹⁵³ However, when the Imperial government demanded that the Russian language be taught in Mennonite schools and, most significantly, that the Mennonite exemption from military service be abolished, great alarm was expressed by the Mennonites.¹⁵⁴ It was at this point that many Mennonites, perhaps even a majority, began exploring the possibility of emigrating from Russia.

¹⁵² Ibid. at 32ff.

¹⁵³ Urry, supra, note 44 at 210.

¹⁵⁴ Francis, supra, note 87 at 36 and Urry, supra, note 44 at 210.

F. EMIGRATION

The threat to the traditional Mennonite prohibition against participating in the armed forces is often cited as the real reason for the Mennonite emigration of the mid-1870s. For example, Klaas Peters, one of the emigrants, stated:

It was not hardship or persecution in the Fatherland that motivated us to cross the vast ocean to a distant land, but the fact that we were soon to lose our exemption from military service which we had enjoyed until that time according to the Privilegium guaranteed by Empress Catherine and maintained under Emperor Paul.¹⁵⁵

Nevertheless, despite this popular view, evidence suggests that the threat to impose a military service requirement on the Mennonites was but one factor which led to the emigration.

Despite the fact that the Imperial government compromised on the issue of military service and allowed Mennonites to perform alternative service in forestry camps under the supervision of other Mennonites rather than the military almost one-third of the Mennonites in Russia decided to emigrate. The fact that two-thirds of the Mennonite commonwealth found this concession acceptable suggests that

¹⁵⁵ Klaas Peters, The Bergthaler Mennonites, trans. by Margaret Loewen Reimer (Winnipeg: CMBC Publications, 1988) at 8.

those who left may have had other reasons for their decision.¹⁵⁶

The fact is that by the 1870s a sense of unease had settled on many of the conservative members of the Mennonite colonies. The forces of change and progress, of secularism and modernity threatened their cultural constructs. As early as 1833 the often gut-level concerns of the conservative Mennonites over the direction of Mennonite society had been thoughtfully stated by an educated and liberal Minister of the Mennonite church, Heinrich Balzer, who later joined the conservative Kleine Gemeinde. Balzer drew a distinction between reason (**Vernunft**) and understanding (**Verstand**).¹⁵⁷ The former was necessary and useful, but was corrupted by the Fall. Reason demanded higher education, more efficient civic

¹⁵⁶ Although the threat to their military exemption seems to have reached the status of myth in Mennonite circles at the time, Harry Loewen, "A House Divided: Russian Mennonite Non-Resistance and Emigration in the 1870s" in John Friesen ed., Mennonites in Russia: Essays in Honour of Gerhard Lohrenz (Winnipeg: CMBC Publications, 1989) 127 at 127-130, points out that non-resistance as a way of life had long since died among the Mennonites of Russia. The Imperial government itself noted, in response to Mennonite protests, that Mennonites had long engaged in acts of injustice to other Mennonites, often backed by official sanction. The ill-treatment of the landless in Molotschna was but one example of this behaviour. In addition, Mennonite authorities routinely employed corporal punishment and imprisonment as a matter of law and order. Furthermore, Mennonites had been very active in the Crimean War, not as combatants but as suppliers and transporters of materiel. Indeed, many had become rich through their contracts with the Russian army. The government wondered now why the Mennonites were more than prepared to be involved in a war in order to make money but refused on religious grounds when involvement threatened their safety.

¹⁵⁷ Urry, supra, note 44 at 123.

administration, and greater wealth. These inevitably led to a conditioning to worldly attitudes and increased secularism. They resulted in ambition, greed and pride. True understanding was not a product of reason but a spiritual matter. It allowed one to live a simple, godly life. It was to govern reason and the five senses, just as the congregational community was to govern the civic authorities. It controlled reason by allowing no more education than was necessary for the life of a simple husbandman.¹⁵⁸

This conservative approach is echoed in the writings of the leader of one of the major groups which came to Manitoba. In Causes and History of the Emigration of the Mennonites from Russia to America, Elder Gerhard Wiebe of the Bergthal colony set out the evils he saw in the Mennonite colonies in Russia. These included the desire to serve as Justices of the Peace,¹⁵⁹ the increasing wealth of the Mennonite community and

¹⁵⁸ See Robert Friedman, supra note 126. See also Urry, supra, note 127.

¹⁵⁹. In warning against this particular evil, Wiebe describes a conference in Molotschna colony in which the subject was raised. Two recent Mennonite immigrants from Prussia, elders in the Church, then spoke, stating that the desire to act as judges had been the final blow to the Mennonites in Prussia. According to these Elders,

"The government gladly accepted those who wished to serve in the judicial court, but after everything was said and done, they locked the back door, and the only door left open for us was emigration."

'So', said Aeltester [Elder] Hamm, 'we wish to walk in simplicity and not push ourselves into civic offices or places of high rank. But, because of our pride the enemy could capture us everywhere, when the time was ripe.' Both Aelteste, especially Hamm, spoke in this vein, and we can not possibly describe it all, but it made a deep

its accompanying ostentation and pride,¹⁶⁰ as well as the desire for higher learning. This latter concern was particularly worrying for Wiebe, as he recalled for his readers the lessons of the Mennonites in Prussia.

Now all the non-resistant ones had settled together in Russia, but for how long? When **Aeltester** [Elder] Toews [presumably a recent immigrant from Prussia] came to our colony, that is, to Bergthal, we asked him how it was that they all had to emigrate. "Oh, dear brethren," he said. "We resembled those virgins; they had become sleepy and fallen asleep. When the bridegroom came, their lamps were almost extinguished. Ours was a similar experience. All this time the enemy had observed us carefully, and when the time came he used his opportunity. This occurred as follows. The rich began to let their sons study in the advanced

impression on the Aelteste and ministers. Here, dear reader, experience spoke and the enemy was driven back once more."

Gerhard Wiebe, Causes and History of the Emigration of the Mennonites From Russia to America, trans. by Helen Janzen (Winnipeg: Manitoba Mennonite Historical Society, 1981) at 23.

¹⁶⁰ "Therefore, presumptuousness comes first, then pride, ostentation and arrogance and this was already happening to us, because we already drove in large, magnificent buggies and coaches, and when we passed the native Russians, they hardly knew whether we were aristocrats or only German farmers. That is how the farmers had already changed, and this led to our downfall, for God grants grace only to the humble, but He resists the arrogant. It is true, the spirit of the time had captivated us so much, and become so much a part of us, yet we thought ourselves to be the same humble and lowly people who had emigrated to Russia eighty years earlier. Yes, we were of the same stock, but our hearts and minds had been transformed into arrogance. The time had come that the Lord had to humble these children of the immigrant fathers and the time was close at hand."

Ibid. at 23.

school of Danzig, from there they went to the Berlin university, and when they returned home and were visited by their neighbours' sons they would say to them, 'Oh, you are only a boorish peasant.' At the same time they were so well dressed and bore themselves like military officers. The other youths did not have to be told twice and so this worldly current swept into the congregation more and more, continually causing greater indifference. Finally our teachers were chosen from this educated group and so we ourselves planted the germ of arrogance and pride into our schools, as well as into our congregations. After the teachers had gained much influence in the church, which had become lax, the congregations began to elect their preachers from these teachers. These began to speak freely from the pulpit, without reading, saying: It must come from the Spirit, or, the Spirit must speak through us.

But what sort of preachers were most of these? While the text came from God's Word, most of the sermon consisted of the latest news, what happened here or there, or accidents; occasionally they also included Scripture verses. But when the congregation knew which of these would be preaching the church would be filled with the curious because these preachers brought what their ears itched to hear. But when we preached there was no eagerness to come, for they said, 'We know all that by now; they simply read a sermon.'

Sometimes several of them preached in succession, and that really pleased them, but the hearts remained empty of God's Word. They had become fed up with the genuinely heavenly manna, and we stood by, despised and without being heard. Now our eyes were opened, but it was too late. The wicked enemy had won, because we had raised them ourselves to our destruction. It is as I said, when there was still time to watch we had fallen asleep, and while we calmly slumbered the wicked enemy had sown weeds among us, and the worldly-wise priest had gained the upper hand. All our resistance was of no avail; we had to be silent. Arrogance and self-righteousness had completely gained the upper hand.

Now the time had come when the enemy could prepare to attack the sleepy ones or pull them into his net, for the government had observed us closely for several years, and suddenly it was announced that the Mennonite must participate in state service. When we turned to the government in order to plead for religious freedom, we were told, 'Yes,

you want your freedom, but what is your conduct by now? Your youth cannot be distinguished from officers anymore,' and so on. And we had to be silent, because this was pure truth. Then they closed the door completely and we had no option left except emigration. But the majority would remain, this they knew. To be sure, these still carry the name Mennonite, can retain baptism and communion, but, dear reader, the humility had disappeared, and God resists the arrogant and lets them go their own way. As long as they walked in humility and held fast to God's Word, they prevailed, but they could not prevail when they lived in pride and arrogance."¹⁶¹

Concerns over the material wealth and what he perceived to be the spiritual degeneration of the Mennonites in Russia were clearly at the root of Elder Wiebe's desire to emigrate.

Urry concludes that:

Although recent government reforms, especially those that affected the status of the colonists, had acted as a catalyst forcing many to reconsider their position in Russia, long-term tensions within the Mennonite communities undoubtedly contributed to their decision to emigrate. This was particularly true among conservative, maintaining groups. There were serious, long-standing doubts among many concerning the direction of Mennonite life in Russia. These doubts included not just the willingness of many to accept official policies, but also the eagerness of some to seek economic reward at the expense of fellow brethren, as well as the enthusiasm and the desire for new kinds of knowledge and higher learning and the desire for new forms of religious practice. Recent events merely increased these doubts. Political corruption, religious dissent and schism, the ugly struggles over land - all were viewed as ill omens for the future. Emigration promised a great deal. Once again there were new lands to be settled and new economic opportunities to be secured. Above all there was a desire to make a new beginning away from official interference, from other groups and

¹⁶¹ Ibid. at 13-15.

from other Mennonites whose way of life was being rejected. The Mennonite reaction to reform ultimately resulted in a massive parting of the ways.¹⁶²

G. IMMIGRATION TO MANITOBA

A variety of groups left Russia, and, by and large, they were the most conservative of the Mennonites in Russia. They were the ones least happy with the progressive direction of Mennonite life in Russia and they were the most concerned about the loss of their special status. Indeed, for those who emigrated, these spiritual and cultural issues were uppermost, certainly as significant as economic issues and, by most accounts, more so.¹⁶³

Moreover, there is little doubt that those Mennonites who chose Manitoba over the United States did so for religious and cultural reasons rather than for economic reasons. Their only significant economic concerns involved the ability of the land to sustain them. This is evidenced by the fact that they

¹⁶² Urry, supra, note 44 at 217-218.

¹⁶³ This is not to suggest that economic prospects in North America were irrelevant. Even those most dissatisfied with developments in Russia would not have left had they not seen the chance to sustain themselves in Canada and the United States, and there were those who left Russia because they were dissatisfied with their economic circumstances rather than with the cultural or religious situation in Russia.

chose Manitoba before even seeing land in the United States,¹⁶⁴ despite the fact that the land and climate in Manitoba were clearly inferior to the land offered by the American government.¹⁶⁵ It is also shown by the fact that the leaders of the groups who came to Canada stressed as the advantages of Manitoba the religious freedoms offered by the Canadian government (including a complete military exemption and freedom of education) and the bloc settlements for the exclusive settlement by Mennonites.¹⁶⁶

Only about seven thousand of the eighteen thousand Mennonites who left Russia chose Manitoba over the United

¹⁶⁴ "The five delegates representing the most conservative Mennonite congregations made the decision to recommend that their people migrate to Manitoba. They came to this conclusion probably not so much on the basis of the quality of the land, but because they preferred the concessions promised by the Canadian government to those offered by the American government....."

These conclusions are borne out by the fact that they made their decision to select Canada before they had examined the lands in North Dakota and other American areas."
John Henry Warkentin, *The Mennonite Settlements of Southern Manitoba* (Ph.D. Dissertation, University of Toronto, 1960) at 32.

¹⁶⁵ An Canadian inter-governmental communication stated that the land being given to the Mennonites would not result in objections by Canadians since the land was viewed as "unfit for settlement by their being destitute of timber." P.A.C., Department of the Interior, File 3129(1), Telegram, Donald Codd to J.S. Dennis, July 23, 1875 in *Ibid.* at 37.

¹⁶⁶ "The historical record of those who chose Canada is clear: their conscientious non-resistance and their German culture were of paramount importance, although they were not unhappy about the fact that both of these values related to free land. The legal provisions were so important to them that they felt they could face any environmental handicaps to ensure them."

Frank H. Epp, *Mennonites in Canada, 1786 -1920: The History of a Separate People* (Toronto: Macmillan of Canada, 1974) at 195.

States. They were the most conservative group of the Mennonite emigrants. Their very choice of Manitoba was a conservative act.¹⁶⁷ They were utopians, seeking a world in which they could return to the principles of their faith, far from "the world," progress and alien influences. They came in three identifiable groups.

The first and smallest was the Kleine Gemeinde who had rejected the Mennonite commonwealth model in Russia and had refused to participate in governmental activities. They were primarily from the Molotschna colony and were progressive agriculturally and willing to get involved in non-farming activities. They were, however, conservative spiritually and demanded strict ethical lifestyles from their members. They constituted only about 10% of the Mennonite population in Manitoba and they settled on the "East Reserve", near Steinbach. No one of this group entered the practice of law prior to World War II.

The second group was known by a number of names. Its leadership came from a small daughter colony of the large Chortitza colony in Russia. This colony had settled on land rented from Grand Duke Michael Nikolaevich (the son of Czar Nicholas I) in Russia and was named Fürstenland.¹⁶⁸ Although

¹⁶⁷ Gerhard J. Ens, "Die Schule Muss Sein": A History of the Mennonite Collegiate Institute 1889-1989 (Gretna, Manitoba: Mennonite Collegiate Institute, 1990) at 4. See also Frank Epp, supra, note 166 at 287.

¹⁶⁸ Peter D. Zacharias, Reinland: An Experience in Community (Altona: Reinland Centennial Committee, 1976) at 21.

concerns over the expiration of the colony's lease played a role in the decision to emigrate, concerns over higher education, use of the Russian language, loss of military exemption and progress generally were all factors in this group's decision to leave Russia and to choose Canada over the United States.¹⁶⁹

This group was joined by many friends and relatives from the Chortitza colony (the "Old Colony") who had no leaders of their own and felt at home with the immigrants from Fürstenland.¹⁷⁰ Indeed, it is thought that more than half of the group came from the Chortitza colony.¹⁷¹ It is for this reason that the group was popularly known as the "Old Colony" Church.¹⁷² The group was large, amounting to about 47% of the Mennonites in Manitoba.¹⁷³ It settled on the western portion of the "West Reserve", located south of Winkler and Morden. Since its elder, Johann Wiebe settled in the village of Reinland, the church was also called the Reinlander Church.

The conservative nature of this group cannot be

¹⁶⁹ "Canada was seen as the land in which the Anabaptist ideal, as many Mennonites including Elder Johann Wiebe understood that ideal, could be restored. A total church-state separation would be possible. A return to the old values in uncompromised form could again be achieved. Migration was a reform movement." Ibid. at 28-29.

¹⁷⁰ Ibid. at 194.

¹⁷¹ Ens, supra, note 167 at 4.

¹⁷² Zacharias, supra, note 168 at 194.

¹⁷³ Ens, supra, note 167 at 2.

overstated. Elder Wiebe gave a hint of the direction he wished the church to take in a meeting he called shortly after the group's arrival in Canada to establish the group's religious and civil administration. He later remarked:

I must add that the ministers themselves could not grasp all these things when the conflict grew so intense, because this was to be an entirely different order from the one they were accustomed to in Russia - to deal with everything according to the Gospel was strange to some. Some said we were introducing a new teaching, when it was only the teaching of Christ which the apostles had received from the Lord more than 1800 years ago.¹⁷⁴

Under Wiebe's leadership, the Old Colony church became, not merely traditional, but sometimes radically conservative. It went so far as to revert to a hymnbook with neither notes nor numbers to indicate pitch, a departure from the hymnbooks which had been common in Russia.¹⁷⁵ The church became once again the primary power in the areas of Old Colony settlements. It insisted on compliance with a complete system of cultural and social norms. It controlled civic administration in Old Colony areas by nominating and having the congregation acclaim civic officials.¹⁷⁶ Although it

¹⁷⁴ Johann Wiebe, Die Auswanderung von Russland nach Kanada (Cuauhtémoc, Mexico: 1972) at 47 in Zacharias, supra, note 168 at 186.

¹⁷⁵ Ibid. at 191-2.

¹⁷⁶ Epp, supra, note 168 at 288. This system worked well in the West Reserve until a significant number of Bergthal church members arrived who felt uncomfortable with the Old Colony civic government. When the provincial government created the rural municipality of Rhineland in 1883 (which encompassed the whole West Reserve), the Bergthalers and Old Colony dissenters were happy to vote for a reeve. The Old Colony refused to vote and an

rejected civil punishment, the Old Colony used church discipline zealously, excommunicating offenders for a violation of either church regulations or civic authorities.¹⁷⁷ It prohibited recourse to law or Canadian civil authorities.¹⁷⁸ It controlled schools, patterns of village settlement and the equipment Mennonites could use on their farms. It forbade its members from abandoning the village, strip system of farming and from moving to larger towns. Any departure from farming as an occupation was considered dangerous.¹⁷⁹

The Old Colony Mennonites have been described as exhibiting

...a simple and steadfast faith in the provident God who had called on them to be his faithful people. Since they would often have to suffer for

excommunicated Old Colony member was elected. The Old Colony church then prohibited contact with the municipal government by its members, acknowledging only the authority of its own Oberschulze in civic matters. Thereafter a bizarre but workable arrangement evolved whereby the Old Colony Oberschulze ran an unelected and illegal municipal government for a large percentage of the municipality while the legally elected reeve had authority over only a portion of his territory. Generally the reeve was able to cooperate with the Oberschulze sufficiently to make the arrangement work. Francis, supra, note 87 at 92-95.

¹⁷⁷ Zacharias, supra note 168 at 205. Among the offences for which Old Colony members were excommunicated were: sending children to a public school, seeking employment with non-Mennonites, selling land to outsiders (even members of other Mennonite churches), mortgaging property, insuring land with fire insurance companies established by other Mennonite groups, and adopting such novelties as bicycles, buggies, music boxes or sleigh bells. Epp, supra, note 166 at 288.

¹⁷⁸ Francis, supra, note 87 at 85.

¹⁷⁹ Driedger, supra, note 2 at 128.

their faith, a sombre seriousness typified the spirit of the Old Colony. Joy and satisfaction lay in conforming to the will of God as interpreted by the bishop, in raising large families, keeping a good household, and otherwise exemplifying a well-ordered life in social conformity and agricultural productivity....

Community and Gemeinde (church) were the all-important words. The Old Colony knew themselves to be a people of God who had made a covenant with Him. Salvation was more corporate than individual, hence the great emphasis on keeping the villages intact, and on keeping faith with the brotherhood. The Old Colony did not practise common ownership of goods but in other ways were a total social organization similar to that of the Hutterites.¹⁸⁰

The final group of Mennonites which emigrated to Manitoba were the Bergthalers. Bergthal was a daughter colony of Chortitza which had escaped Cornies' reforms that had swept Molotschna and made inroads into Chortitza. Its school system was untouched by any change and the term "complete sterility" has been used to describe education in the colony.¹⁸¹ Its people were viewed by other Mennonites as backward and illiterate. The colony still held land for everyone, and it refused to allow non-members of the church to own land.¹⁸² Its elder was Gerhard Wiebe, a cousin of the Old Colony elder, who was also an uncompromising conservative. The concerns he felt about the inroads of modernity and progressive practices

¹⁸⁰ Epp, supra, note 166 at 285.

¹⁸¹ Henry J. Gerbrandt, Adventure in Faith: The Background in Europe and the Development in Canada of the Bergthaler Mennonite Church of Manitoba (Altona: D.W. Friesen & Sons Ltd., 1970) at 29-33.

¹⁸² Ibid. at 18.

are made clear in his writings.¹⁸³ Education, wealth, pride and compromise with the "world" were the primary reasons for his decision to emigrate.¹⁸⁴ Canada was seen as a place to make a fresh start.¹⁸⁵ Under his leadership the whole colony left for Manitoba.¹⁸⁶

Bergthalers comprised the remaining 43% of the Mennonites who came to Canada and initially settled primarily in the "East Reserve".¹⁸⁷ Here they coalesced around Elder Wiebe whose village, Chortitza, became the official name of the church.¹⁸⁸ Almost immediately, however, Bergthalers began moving to the West Reserve where better land was available. By 1882, this group was sufficiently large to require an elder to serve their spiritual needs and Johann Funk was ordained for the Bergthalers on the west side of the Red River.¹⁸⁹ By 1887, the Bergthalers on the West Reserve had a separate

¹⁸³. Wiebe, supra, note 159.

¹⁸⁴ Wiebe, supra, note 159 at 13-15, 23.

¹⁸⁵ Ens, supra, note 169 at 4.

¹⁸⁶ The feelings of the rank-and-file members of the Bergthal colony are unclear. Gerbrandt and others claim that the land in Bergthal was not particularly good and that the chance for a better life in Canada may have been influential in the decision to emigrate. Gerbrandt, supra, note 184 at 37. However, others suggest that the colony was perfectly well-off. See William Schroeder, The Bergthal Colony (Winnipeg: CMBC Publications, 1986).

¹⁸⁷ Ens, supra, note 167 at 2.

¹⁸⁸ Zacharias, supra, note 168 at 203.

¹⁸⁹ Ens, supra, note 167 at 6.

church registry¹⁹⁰ and in 1889 their own **Waisenamt**.¹⁹¹

Like his cousin, Elder Gerhard Wiebe wanted to do more than to maintain the culture Mennonites had developed in Russia. He wanted to reverse the assimilation he felt had gone too far in Russia.¹⁹² Like the Old Colony Church, the Bergthal Church rather than local government was the most important factor in the lives of its member. It was more influential than it had been in Russia.¹⁹³

The Mennonites in Manitoba attempted to bring with them the cultural lifestyle and institutions they were familiar with in Russia. They built houses identical to their homes in Russia. They lived in villages laid out as they had been in Russia. Although technically belonging to individuals, the land surrounding a village was divided into strips in an "open

¹⁹⁰ Ibid. at 6.

¹⁹¹ Gerbrandt, supra, note 184 at 84. The Waisenamt was a combination estates court, insurance company, social agency, trust company and bank. The Waisenamt administered estates according to Mennonite custom (which, by the way, was based on the belief that real property was shared by a husband and wife and that all children should inherit in equal shares) and held monies for minor children pending their majority. These monies were lent to others in the community and served a banking function. The Waisenamt administrators also made arrangements for guardians to be appointed for orphaned children (whether they had lost one or both of their parents). Guardians were to represent the children in matters relating to their inheritance and were to try to fill the place of the missing parent. Waisenamt administrators were also authorized to remove a child from an abusive home. This fascinating institution is more fully explored in Jake Peters, The Waisenamt: A History of Mennonite Inheritance Custom (Steinbach, Manitoba: Mennonite Village Museum, 1985).

¹⁹² Epp, supra, note 166 at 287.

¹⁹³ Ibid. at 288.

field" arrangement as it had been in Russia. They brought their **Waisenamt** from Russia. They spoke High German in church and Low German on weekdays, as they had in Russia. Their clothing was the same as it had been in Russia and they ate the same foods as they had in Russia. In short, they managed to transplant their culture and way of life, their "sacred canopy", intact from Russia.¹⁹⁴ In so doing, they became "almost the sole example of the transfer of a European settlement pattern to North America".¹⁹⁵

The success of this transfer of culture must be attributed largely to the reasons for their immigration to Canada. Had they come to achieve material success they would have been anxious to adopt the prevailing language, cultural patterns and customs which would have made that success more likely. Any retention of the old sacred canopy would have been as a consequence of nostalgia or a desire for the familiar. It would not have had the strength to endure. The Mennonites came for a different reason: a desire to preserve their culture, their way of life, their religious faith and their community. All operated together in a complete cultural system. All were seen as integral to and were sacralized by their faith. Canada had nothing to offer them except the chance to be left in peace.

¹⁹⁴ Driedger, supra, note 2 at 127. See also Driedger, supra, note 1 at 41-42.

¹⁹⁵ Warkentin, supra, note 164 at viii.

G. LIFE IN WESTERN CANADA

Unfortunately, Canada was not prepared to leave them in peace. Although for several years Mennonites lived in virtual isolation from other settlers, the rapid settlement of southern Manitoba meant contact with outside influences more quickly and with greater intensity than had been the case in Russia. In 1870 there were only 19,000 people living in what is now southern Manitoba.¹⁹⁶ By 1881 the population in the same area numbered 66,000 and by 1886 it was 109,000.¹⁹⁷ Winnipeg had grown from 200 residents in 1871 to a city of 20,000 in 1886.¹⁹⁸ Manitoba was a rapidly developing province and the Canadian government was anxious to settle the West as soon as possible. Railroads, schools, towns and government soon came to the previously unsettled prairies.¹⁹⁹

Moreover, unlike Russia, the Canadian and Manitoba governments did not offer Mennonites the sorts of legal arrangement which strengthened the community. Mennonites were not dealt with as a group but as individuals. They were not permitted their own system of self-government. Authorities

¹⁹⁶ Gerald Friesen, The Canadian Prairies: A History (Toronto: University of Toronto Press, 1984) at 201.

¹⁹⁷ Ibid. at 202.

¹⁹⁸ Ibid. at 202.

¹⁹⁹ For a good overview of the settlement of the prairies, see Ibid. at 129-382.

were not prepared to use German in communicating with them. The village system was tolerated by the authorities²⁰⁰ but there were no legal restrictions preventing a Mennonite from claiming his homestead and withdrawing it from the village. If the village happened to be situated on his homestead, he was free to demand that the other villagers move, but even if such a disaster was avoided, the withdrawal of one homestead often had the effect of dissolving the open field arrangement. Moreover, there was no law preventing a Mennonite from selling his land to a non-Mennonite, a fact which threatened the spatially-separated block settlements which had attracted the Mennonites to Manitoba in the first place.

Furthermore, the Manitoba government, concerned over the existence within their borders of a cultural group which was not particularly interested in assimilating,²⁰¹ took active steps to undermine the cultural isolation Mennonites saw as their primary reason for coming to Canada. The government's primary assimilating tool was education, and over the next decades the province gradually tightened restrictions on Mennonite private schools in an attempt to make the children

²⁰⁰ By law, a homestead of 160 acres became the property of the individual only when he had lived on it and farmed it for three years. *Ibid.* at 183. Because the Mennonite families in a village pooled their land and farmed it in strips, few actually lived on the land they claimed as homesteads and therefore did not qualify for ownership. However, Canadian authorities were prepared to overlook this technicality because they valued Mennonite settlements.

²⁰¹ Francis, *supra*, note 87 at 77.

more accommodating to Canadian attitudes and values.

To some extent the centrifugal pressures on the Mennonites to assimilate into the Canadian culture, to abandon the tightly knit community and the traditional agricultural way of life were countered by the habits of generations and by the sense of familiarity and security offered by the community. As noted by E.K. Francis, migration had the effect of strengthening ethnic coherence²⁰². Moreover, the viability of their lifestyle on the prairies was not in question. Nor should the role of the Church in sacralizing culture be ignored. Francis notes that the Mennonite settlements of Southern Manitoba were characterized by:

...strong social coherence, intensive interaction on a face-to-face level, readiness to cooperate and offer mutual aid, and a common value system which leaves few alternatives in one's everyday conduct, and which is reinforced by strict social controls based on both inner and external sanctions. In fact, it would appear that it cannot be made to work adequately unless those sanctions have a distinctly religious connotation. For whenever hedonistic and other secular values become dominant, undermining the inner consistency of the total system of constituent group norms perceived in a religious context, the solidaristic type of rural community organization soon tends to collapse, yielding to characteristically individualistic forms of social and economic behaviour.²⁰³

Without the force of law to reinforce them, Mennonite religious authorities responded to external encroachments with the only weapon at their disposal. Church discipline was used

²⁰² Redekop, supra, note 5 at 22-23.

²⁰³ Francis, supra note 87 at 64.

frequently in order to preserve the traditional Mennonite culture and distance from the "world". Excommunication was a typical sanction imposed on those who moved their homesteads away from the village settlement, especially among the Old Colony.²⁰⁴ Mennonites moving into local towns,²⁰⁵ working for non-Mennonites, selling land to non-Mennonites, sending children to public schools or in other ways adopting Canadian cultural practices also faced the real possibility of excommunication and the ban.²⁰⁶ Under pressure to assimilate, the Mennonites in Manitoba responded by sacralizing every traditional aspect of their life. It is undoubtedly true, especially among the Old Colony Mennonites, but also to some extent in the other two Mennonite groups, that "the web of social relationships [was] strengthened and [became] sacralized to the point where the group's own survival [became] more important than its original objectives and beliefs."²⁰⁷

²⁰⁴ Esther Epp-Tiessen, Altona: The Story of a Prairie Town (Altona: D.W. Friesen & Sons Ltd., 1982) at 64.

²⁰⁵ "For the majority of Mennonites, particularly for the most conservative branches, the town represented 'the world', the godless place from which the Bible taught them to be separate. Farming had been the Mennonite way of life for centuries, and those who deviated from this pattern were generally regarded as spiritually immature. The Old Colony church did not hesitate to excommunicate those members who left the village for the homestead and certainly those who took up business in one of the towns." Ibid. at 64

²⁰⁶ Ibid. at 288.

²⁰⁷ Redekop, supra, note 5 at 23.

It was inevitable that the complete unanimity demanded and the strict controls imposed by the Mennonite churches under the leadership of strong and unbending elders would drive some members from the church. Interestingly, for the most part, those who felt uncomfortable with the conservative approach being taken by the churches did not simply abandon the Mennonite community entirely. Instead they formed their own Mennonite church which was more progressive, more outward-looking and less disciplined than the Mennonite churches from which its members had come. Not surprisingly, the flash-point which resulted in the creation of the new church was a dispute over education.

The issue of schooling was, as always, sensitive for Mennonites. Mennonite leadership consistently identified it as critical to the survival of the community. All three Mennonite groups established schools quickly after arriving in Manitoba and all three had similar views on education. School attendance was mandated by the churches for both boys and girls. The curriculum included reading, writing, arithmetic, instruction in catechism and reading of the Bible.²⁰⁸

The level of instruction in these schools was not high. Low pay discouraged Mennonites from adopting teaching as a permanent profession. Most teachers had themselves been educated only in a village school and had no incentive or

²⁰⁸ Ens, supra, note 167 at 4-5.

desire to improve their pedagogy.²⁰⁹ This was not a concern to most Mennonites for whom a good education was not a high priority. "Knowledge other than for participation in religious functions, local community life and the occupation of a simple farmer was considered a worldly pretense. If it was not outright evil in itself, it certainly was an occasion for sin."²¹⁰ Many Mennonites still summed up their views on the subject with the maxim, "The more learned, the more confused".

According to The Manitoba School Act of 1871, denominational schools were to be administered by local trustees and fell into the jurisdiction of either Catholic or Protestant sections of the Board of Education. Although private schools were also permitted, initially most Mennonite schools, especially in the East Reserve, registered with the Protestant Board. The Old Colony refused to register their schools. After 1879 the Chortitza on the East Reserve began to withdraw their registration when a legislative grant on condition of outside inspection was offered to registered schools. The Old Colony and Chortitzer Churches vehemently opposed government involvement in their schools. By contrast, the Kleine Gemeinde were prepared to accept the grant and consequent inspection, since few other restrictions were

²⁰⁹ Francis, supra, note 87 at 164.

²¹⁰ Ibid. at 168.

imposed on the schools by the government.²¹¹

The attitude of the Chortitzer on the East Reserve and the Old Colony Church was not shared by some of the Bergthaler in the West. The Bergthalers on the West Reserve had enjoyed a less restricted atmosphere by reason of their distance from Elder Gerhard Wiebe on the East Reserve. They were joined in their fellowship by excommunicated Old Colony Mennonites, and gradually a more liberal spirit emerged. Because of their late arrival in the West Reserve, many had simply settled on homesteads rather than instituting village systems of farming.²¹² Some moved to the growing towns.²¹³ Bergthalers participated in municipal elections, and many sent their children to public schools. Their leader, Elder Johann Funk, became the symbol of this progressive spirit. Funk was not opposed to public schools and other progressive ideas. Indeed, Funk believed that a higher standard of education was crucial for Mennonites if they were to survive as a people.²¹⁴

In 1889 some of the Bergthalers, with the support of Elder Funk, established a high school in Gretna. The goal of this group was to train Mennonite teachers for the Mennonite elementary schools, as well as to provide superior German

²¹¹ Ens, supra, note 167 at 5-6.

²¹² Friesen, supra, note 55 at 35-36.

²¹³ Francis, supra, note 87 at 167.

²¹⁴ Ens, supra, note 167 at 6-8.

language instruction at a high school level.²¹⁵ After a false start in 1889, the school society hired as principal of the Mennonite Educational Institute (M.E.I.) H.H. Ewert, a Prussian Mennonite who had been educated in the United States. Ewert also accepted an offer from the Manitoba government to serve simultaneously as a school inspector for the registered schools in Mennonite areas.²¹⁶ The two roles meshed with one another. As school inspector, Ewert was to raise the standards of the district or public schools and as principal of M.E.I. he was to provide teachers for these schools.²¹⁷ Ewert threw himself into his work, for "he believed with a missionary zeal that better education was necessary to enable the Mennonites to progress" and that "schools as the first station of knowledge were necessary for a true Mennonite vision."²¹⁸

Ewert and the M.E.I. were bitterly opposed by the vast

²¹⁵ Ibid. at 11.

²¹⁶ Ewert met with Clifford Sifton, then Manitoba's Minister of Education, who told him that the government would impose no curriculum requirement, that the language of instruction was of no concern except that some English should be taught and that the government only sought to bring the Mennonite schools up to standards. Ens notes: "Given Sifton's commitment to a single 'National' school system and his evident determination that the will of the Majority should shape Manitoba society, Ewert's confidence in the government must have seemed misplaced to many at the time." Ibid. at 20.

²¹⁷ Ibid. at 22.

²¹⁸ Ibid. at 19. Ewert told one student that he had come to Manitoba because he had been told that the Mennonites of Manitoba were as much in need of help as the heathen of Africa. Ibid. at 21.

majority of Mennonites. Ewert was seen as an outsider, having come from Prussia and the United States. Many Manitoba Mennonites viewed the Mennonites who had immigrated to the United States from Russia as compromising their faith. They were not pleased about an American Mennonite arriving in Manitoba to teach them anything.²¹⁹ In addition, they thought Ewert too educated and too closely allied with the Manitoba government. They felt that government schools violated the proper role of the school as an instrument of the Church. The location of the M.E.I. in Gretna, a non-Mennonite trading centre, was also threatening to many Mennonites.²²⁰ Suspicion of higher education in general was probably at the root of most of these sentiments.²²¹

In 1892 and 1893 anger over Elder Funk's support of the school and other progressive causes²²² led to a major rift in the Bergthaler Church in the West Reserve. In 1892 a group of Bergthalers asked David Stoesz, the Elder of the East Reserve Chortitza Church, to baptize 98 young people. A year later, at this group's request, Elder Stoesz ordained as elder of

²¹⁹ Ibid. at 22.

²²⁰ Ibid. at 22-23.

²²¹ Ibid. at 17.

²²² Epp sees Funk as "the rallying point for all those independent Bergthaler who had from the beginning welcomed the break-up of the villages, the coming of railroads, trading centres, municipal organizations, and...the visits of the General Conference "home missionaries" from the United States..."Epp, supra, note 166 at 294.

their church Abraham Doerksen of the village of Sommerfeld.²²³ The new Sommerfelder Church attracted a large majority of the Bergthalers in the West and Elder Funk was left with a tiny minority which still used the Bergthaler name.²²⁴

The Mennonite Educational Institute and its successor, the Mennonite Collegiate Institute,²²⁵ acted as an "agent of change among the Manitoba Mennonites"²²⁶. However, the effect

²²³ Epp, ibid. at 295, claims that it was Elder Wiebe of the Chortiza church who performed these acts, but Ens, supra, note 167 at 23, and Gerbrandt, supra, note 181 at 90, claim it was Stoesz, who had taken over after Wiebe's death.

²²⁴ The conservative nature of the Sommerfelders is outlined by Epp-Tiessen, supra, note 204 at 137, who notes that well into the twentieth century the Sommerfelder refused to institute Sunday Schools or youth groups, used handed-down, written sermons and the old hymn-book, did not allow the use of musical instruments, and spoke only German in church.

²²⁵ In 1903 a decision was made to build a new, larger school and a controversy erupted as to the location of the new school. A meeting was held in 1905 which determined that the new location would be Altona, only a few miles from Gretna. However, allegations of irregularities at this meeting eventually resulted in the construction of two schools. The Mennonite Educational Institute was built in Altona and the Mennonite Collegiate Institute, with H.H. Ewert as principal, was constructed in Gretna. Only the latter survived the 1920s. See Ens, supra, note 169, ch. 4.

²²⁶ "The Mennonite Education Institute was one of the catalysts of this accommodation or opening of Mennonite life. For at least the first two decades of its history the school acted as an agent of change among the Manitoba Mennonites. Its commitment to better and progressive education helped break down the Mennonite distrust of higher education, and its training of Mennonite teachers helped many communities in making the transition from private to district school. The M.E.I.'s close connection to the Manitoba government (H.H. Ewert for many years received part of his salary from the government for acting as a school inspector) broke with the traditional Mennonite tenet of church control over schools. Finally, the school's commitment to the

of that change must not be over-emphasized. The M.E.I.'s commitment to better and progressive education may have helped to break down the Mennonite distrust of higher education,²²⁷ and those who attended high school at the M.E.I. could find a niche in the Mennonite community. But those whose taste of education led them to university found themselves distant and cut off from that community. The old complaint that those who learned English could not be kept at home²²⁸ was a self-fulfilling prophecy. The natural inclination of students discovering a new world outside of the Mennonite culture was to reject the closed world of the Mennonites, but this tendency was matched by the inability of the Mennonite community to maintain contact with the students.

The rural, agrarian, German-speaking and often legalistic Mennonite community was not about to follow the students; nor did the students want it to follow. Connections between farm and city, village school and university, pious sermon and learned lecture, agrarian simplicity and urban sophistication were for the most part non-existent.²²⁹

teaching of English, or more precisely to bilingualism (German/English), helped spread the use of English among the Mennonites. The school of course did more. It emphasized Christian education and the study of German, and it helped ensure that the teachers of the district schools in the area would be Mennonite. However, from both the perspective of the 1890s and of today, the schools initial impact was that of an instrument of accommodation."

Ibid. at 16.

²²⁷ Ibid. at 16.

²²⁸ Francis, supra, note 87 at 168.

²²⁹ Epp, supra, note 166 at 350.

In addition, while school teachers produced by the M.E.I. were at work within conservative Mennonite communities helping to liberalize traditional attitudes, the fundamentally conservative nature of the Mennonite community in Manitoba can be seen in the fact that in 1912 the Old Colony (despite its excommunications) numbered 3808 souls,²³⁰ the Chortitzer numbered 2037, the Sommerfelder 5214 and the Bergthaler only 1112.²³¹ The Bergthaler, the only progressive faction of the Mennonites in Manitoba, numbered less than 10% of the total Mennonites in Manitoba. The overwhelming majority of Manitoba Mennonites rejected the progress and accommodation symbolized by the M.E.I. and clung to their traditional cultural-religious values well into the twentieth century.

This is not to say that the Manitoba Mennonites remained static. Under pressure from government and other sources and faced with the attraction of Canadian culture,²³² Mennonites acculturized themselves much more quickly than the more conservative would have liked. In Epp's view, the solidarity and total community of the Russian Mennonite model of

²³⁰ The term "souls" is used to refer to members of a family, the heads of which belong to the church indicated but which may or may not have been baptised into that church themselves. Ibid. at 284.

²³¹ All statistics have been taken from Epp, supra, note 166 at 284 who attributes them to the Canadian census of that year.

²³² Friesen, supra, note 55 at 36, notes that, unlike local Russian peasant culture to which the Mennonites felt themselves superior, Canadian culture was not unattractive to many Mennonites.

settlement had largely been lost in Manitoba by the turn of the century.²³³ Certainly the village, open-farm system which had served them well for a century had largely disappeared by then.²³⁴

A shortage of land, and perhaps a desire to escape the tightly-knit communities of Manitoba, led many to move to Saskatchewan around the turn of the century.²³⁵ Here, although some settled in traditional, closed communities, others found a degree of liberality which had been absent in Manitoba. They came into contact with Mennonites from the United States who:

...already influenced by the melting-pot, were assuming the inevitability, perhaps even the desirability of a language transition....The Americans assumed that the linguistic and cultural forms of Mennonitism could be changed without great peril to the content of their religion....²³⁶

This attitude had an effect on the Manitoba Mennonites migrating westward. Indeed, it seems fair to say that the further west the Mennonites went, the more willing they became

²³³ Epp, supra, note 166 at 228-229.

²³⁴ Zacharias, supra, note 168 at 200, blames excommunication and inroads by the Bergthaler and Sommerfelder Churches for the loss of village, open-field settlements and the loss of the compact, unified social system which accompanied them.

²³⁵ Ibid. at 197-200. According to census data cited by Epp, supra, note 166 at 304, Mennonites in Saskatchewan numbered 3787 in 1901, 14,586 in 1911 and 20,568 in 1921.

²³⁶ Epp, supra, note 166 at 335-336.

to adopt the cultural traits of the surrounding community.²³⁷

Still, despite the pressures to assimilate and the spirit of pioneer individualism, those in Saskatchewan found as they moved westward that there remained a sense of Mennonitism and a commitment to traditional values. It is significant that Mennonites moving to Saskatchewan settled in groups even when reserves of land had not been set aside for them. While American Mennonites were more prepared to assimilate, to the Mennonites from Manitoba "it was clear that their cultural environment could not be radically changed without drastically affecting its religious content."²³⁸

In Manitoba, the biggest threat to traditional culture came in the form of a deliberate attempt by the government to inculcate nationalistic, Anglo-Saxon values in Mennonites and other ethnic groups. Concerns over the numbers of new immigrants to Western Canada and perceived threats to "Canadian" (Anglo-Saxon) culture, coincided with the First World War. Although the nationalism engendered by the war and

²³⁷ Aron Sawatsky, in *The Mennonites of Alberta and their Assimilation* (M.A. Thesis, University of Alberta, 1964) at 44, reports that the Mennonites who settled in Didsbury and Carstairs in Alberta were prepared to cooperate with other churches and participate in community organizations. Some went so far as to join secret lodges, including the Masonic Lodge, against which there had been a prohibition since the Schleithem Confession. Sawatsky concludes: "No doubt the pioneer environment which accentuated the spirit of liberty and individualism, as well as the desire to retain a position of leadership and acceptance in an evolving community led to such a deviation from one of the principles of the Mennonite faith."

²³⁸ Epp, *supra*, note 166 at 336.

the consequent desire to integrate non-Anglo-Saxons were widespread and directed at all ethnic groups, Mennonites were particular targets because they were German and because they claimed an exemption from military service. In 1907 the government had linked nationalism to education by requiring the flag to be flown in front of every school building, a requirement to which Mennonites objected.²³⁹ During the war education was even more tightly tied to Anglicization, patriotism, and militarism.²⁴⁰

Throughout World War I, Mennonites tried to show their love of Canada and to deflect criticism through financial donations toward the war effort. Mennonites purchased \$700,000 worth of Victory Bonds during the war and donated \$100,000 to the Red Cross in 1918 alone.²⁴¹ Yet, despite the fact that only minor challenges were made to their military exemption, they came under heavy criticism. They were prohibited from voting under the Dominion Elections Act and the War-Time Elections Act and, following the war, federal Orders-in-Council withdrew conscientious objector status for incoming Mennonites and Hutterites and prohibited further immigration.²⁴²

²³⁹ Francis, supra, note 87 at 174.

²⁴⁰ John J. Bergen, "The World Wars and Education Among Mennonites in Canada" (1990) 8 Journal of Mennonite Studies 56 at 158.

²⁴¹ Francis, supra, note 87 at 189.

²⁴² Ibid. at 190.

The nationalistic sentiment caused by the war resulted in an attempt on the part of the government to unify the disparate ethnic elements under a single language and system of values. It chose to do so through the education system.

The Laurier-Greenway Compromise of 1890 had allowed bilingual instruction in Manitoba whenever ten students did not speak English as their mother tongue.²⁴³ This had served to slow integration because school divisions had been largely drawn on ethnic lines and because, for the most part, English was badly taught.²⁴⁴ However, The School Attendance Act of 1916 required English to be used as the sole language of instruction in public schools. While it permitted private schools, it demanded that these schools achieve a level of instruction satisfactory to government inspectors. If it did not, its pupils would be treated as truant.²⁴⁵

Many Mennonites identified the legislation as an attempt to inculcate their youth with a nationalistic, militaristic culture particularly odious to them.²⁴⁶ In 1918, the

²⁴³ Ibid. at 169-170.

²⁴⁴ Ibid. at 180-181.

²⁴⁵ Ibid. at 183. The fact that the true purpose of the legislation was to integrate ethnics and not merely to raise the standards of education can be seen in the repeated rejection on the part of the Ministry of Education of petitions and letters from Mennonite leaders promising to raise educational standards. Ibid. at 186.

²⁴⁶ Ironically, the government's attempt to use education to assimilate Mennonite children into an English culture served to reinforce the Mennonite belief that the German language, their religion and education were inseparably linked. Bergen, supra,

government went further, requisitioning Mennonite private school buildings for use as public schools. In response, many Mennonites withdrew their children from any schools and were fined and even jailed for violating the legislation. An appeal to the Courts, normally anathema to Mennonites, was launched, but the Courts held that the provincial government, which had jurisdiction over education, could legislate freely in the area. The province was not bound by the federal government's earlier promise to the Mennonites of complete freedom in matters of education.²⁴⁷

Faced with this threat to the transfer of their cultural values to their children, those Mennonites who were not prepared to be assimilated into the dominant Canadian culture, looked again to emigration as a solution. These conservative Mennonites, who saw any changes to culture as threats to their faith, found refuge in Mexico and Paraguay, countries which offered them generous terms of religious freedom, if not the possibility of economic success.²⁴⁸ Between 1922 and 1926, 3200 Old Colony Mennonites (between two-thirds and three-quarters of the total group) left Manitoba for Mexico.²⁴⁹

note 240 at 158.

²⁴⁷ Francis, supra, note 87 at 184-186.

²⁴⁸ Francis, ibid. at 191, declares: "This time economic motives do not seem to have played any role in the decision to emigrate."

²⁴⁹ Both Epp-Tiessen, supra note 204 at 107, and Francis, supra, note 87 at 191, agree that 3200 Old Colony Mennonites left Manitoba. Francis believes this was 75% of the group and Epp-

They were joined by 800 Old Colony Mennonites from the Hague-Rosthern area of Saskatchewan,²⁵⁰ 1500 from the Mennonite reserve south of Swift Current,²⁵¹ and 1000 Sommerfelder from Manitoba.²⁵² Between 1926 and 1930 a further 1765 Mennonites, both Sommerfelder and Old Colony, left from Manitoba to Paraguay.²⁵³

The departure of such a large portion of the most conservative Mennonites from Manitoba and Saskatchewan coincided with the arrival of a second wave of immigrant Mennonites from Russia. The Mennonites who had decided to stay in Russia in the 1870s had achieved considerable economic success in the intervening years. They had established industries,²⁵⁴ migrated in significant numbers to the cities,²⁵⁵ learned Russian and become considerably more educated.²⁵⁶ These Mennonites found their society shattered

Tiessen claims it was only 64%.

²⁵⁰ Francis, ibid. at 191, estimates this as 18% of the Old Colony group there.

²⁵¹ Francis, ibid. at 191 estimates this as 55% of the Old Colony group there.

²⁵² Ibid. at 191 and Epp-Tiessen, supra, note 204 at 107.

²⁵³ Francis, ibid. at 191.

²⁵⁴ See Urry, supra, note 130 at 99.

²⁵⁵ Epp, supra, note 130 at 240.

²⁵⁶ See for example Harry Loewen, "Intellectual Developments Among the Mennonites of Russia: 1880 - 1917" (1990) 8 Journal of Mennonite Studies 89 at 89, who notes that the Mennonites in Russia, especially after 1905, achieved a level of education higher than the Russian population in general and one which compared

by the Russian Revolution and the Civil War which followed, much of which was fought over their territory. Of the 104,000 Mennonites in Russia in 1915, 10% lost their lives through war, disease and famine.²⁵⁷

In the 1920s the opportunity to leave Russia coincided with a relaxation of barriers to entry into Canada. Tens of thousands sought refuge in North America. More than 10,000 settled in Manitoba.²⁵⁸ Most of these settled on land vacated by Mennonites who had gone to Mexico and Paraguay, but about 25% settled in Winnipeg.²⁵⁹

Given the large number of conservative Mennonites who had left Manitoba and the large number of progressive Mennonites who arrived, it would seem logical that the pace of progress would accelerate after the 1920s. However, there were conservative factors countering this tendency. One was the natural inclination of the "Rüsslander" to retreat into community following their traumatic experiences in Russia and their arrival in a strange land. Another was the depression

favourably to the educational levels achieved in the United States and progressive countries in Europe. He also notes the language of instruction in Mennonite schools was generally Russian.

N.J. Klassen, "Mennonite Intelligensia in Russia" (1969) Mennonite Life 51, outlines the institutions of higher education in the Mennonite colonies, which included twenty-five secondary schools, two teacher training institutions and a business school. He also lists 133 university graduates among Mennonites prior to the First World War.

²⁵⁷ Francis, supra, note 87 at 200.

²⁵⁸ Ibid. at 207.

²⁵⁹ Ibid. at 207.

of the 1930s, which forced even the most progressive Mennonite into a simple struggle for survival. In typical Mennonite fashion, economic hardship caused Mennonites to look to one another for assistance, rather than to become more independent.²⁶⁰

Mennonite culture during the inter-war years remained a powerful force in the lives of Mennonites in Manitoba and Saskatchewan. Despite the departure of the most conservative element, efforts on the part of the government to assimilate Mennonites into the mainstream, and the lure of Canadian values, Mennonites remained a coherent group with strong cultural values. They rarely married outside of their group,²⁶¹ they retained a strong affinity for agriculture,²⁶² German remained their language of general usage,²⁶³ and the

²⁶⁰ Ibid. at 220-226.

²⁶¹ Ibid. at 243. In Alan Anderson's 1972 study of Mennonites in North-Central Saskatchewan, he found that 97.6% married other Mennonites and over half opposed marriage outside of the ethnic group, the highest percentage of the nine ethnic groups Anderson studied. Alan Anderson, *Assimilation in the Bloc Settlements of North-Central Saskatchewan: A Comparative Study of Identity Change Among Seven Ethno-Religious Groups in a Canadian Prairie Region* (Ph.D. Dissertation, University of Saskatchewan, 1972) [Unpublished] in Driedger, supra, note 5 at 81-82.

²⁶² Francis, supra, note 87 at 243, notes that in 1955 they were the least urbanized ethnic group in Manitoba. According to Driedger, supra, note 1 at 84, of twenty religious groups in the 1981 Census, Mennonites were the only group with more than half its membership living in rural areas.

²⁶³ Francis, supra, note 87 at 275 claims that his survey of Mennonite students at the University of Manitoba found that over half spoke only High or Low German at home. Anderson, ibid. in

Church continued to play an important role in their lives.²⁶⁴ Their resistance to assimilation, especially among the descendants of the immigrants of the 1870s, can also be seen in the reluctance of many to pursue higher education.²⁶⁵ In short, Mennonites in Manitoba and Saskatchewan retained the four stakes of their sacred canopy in easily recognizable form at least until the onset of World War II.

Dreidger, supra, note 1 at 81 found in 1972 that, among Mennonites in North-Central Saskatchewan, 97% could speak either High or Low German and 69% did so frequently.

²⁶⁴ Anderson found that 86% attended church regularly. Anderson, ibid., in Driedger, ibid., at 82.

²⁶⁵ Francis, supra, note 87 at 275 says that his survey of 40 Mennonite students at the University of Manitoba in 1946-47 revealed that all but one were of a "Rüsslander" background.

THE CULTURE OF THE LEGAL PROFESSION

In this chapter, I wish to compare and contrast the culture of the Mennonites in Manitoba and Saskatchewan with that of the legal profession in the same geographical area. It is my contention that the two cultures, when set side by side, will prove to be incompatible. In other words, I hope to demonstrate that, while it was possible to cross from one culture to the other, it was impossible to belong to both simultaneously.

Unlike the history of Western Canadian Mennonites, the history of the legal profession in Western Canada has not been extensively studied. It is therefore difficult to identify the stakes which supported its 'sacred canopy' with any degree of certainty. Nevertheless, certain elements of its culture are evident. This chapter will focus on four of the elements which supported the culture of the legal profession in Western Canada in the period between 1900 and 1939.

Two of the key elements in the legal profession's culture were shared with the larger British-Canadian culture which dominated Western Canada. The first was an attachment to British institutions, which revealed itself within the legal profession by an almost religious faith in the British common law. The second was a capitalistic liberalism. A third important element in the legal profession's culture was a

belief that lawyers were to be leaders in society -- respected, admired and heeded.

These three stakes alone were sufficient to support the legal profession's culture at the turn of the century. However, by the end of the First World War, all three stakes were under attack. Vast poverty and economic dislocations gave rise to radical politics and aggressive labour movements which threatened capitalist and liberal ideology. Huge numbers of immigrants, primarily from Eastern Europe, were unfamiliar with British Canadian values and institutions. Imbued with notions of equality and democracy, they were prepared to question English traditions and to challenge the cultural dominance of the British-Canadian elite. The honoured position of the legal profession, hitherto taken for granted, was under attack in Western Canada. The very existence of the legal profession itself was seen to be threatened. In response, the profession adopted a fourth stake to stabilize its sacred canopy and to justify its existence. That stake was 'legal science' as it had been developed in the United States and England.

A. BECOMING PROMINENT: THE LEGAL PROFESSION, 1870 - 1914

When the Province of Manitoba was formed in 1870, its prevailing culture was very much in doubt. The population of

the area was mixed. Natives, Metis, French and English all lived in the small province. The influx of settlers from Eastern Canada in the remaining decades of the century settled that doubt. They were firmly convinced that the West should, could and would be "Canadian".

When they spoke of "Canada", these immigrants were referring to a relatively young country which had just begun to find its identity. The notion of "Canada" was primarily negative. It was not American or Republican and, after the failure of Louis Riel's rebellion, it was clearly not French-Canadian or Metis. To the extent that the notion of Canada could be described positively, it had substantial British overtones. The version of "Canadian" which came to dominate the West envisioned the dominance (if not the exclusivity) of the English language, the installation of British Parliamentary institutions, the application of the British common law and the creation and maintenance of an attachment to the British Crown.

While immigrants from other lands were welcomed as settlers of the West, it was clear that they were expected to assimilate. Protestant churches played an important role by combining the national enterprise with a spiritual mission. Presbyterians and Methodists were especially active.

Full of nationalistic enthusiasm ...
Presbyterians prepared to take part in the
winning of the West for Canada and for Christ.
These two missions -- the national and the
spiritual -- seemed inextricably bound
together in the minds of mid-Victorian

churchmen and churchwomen. In the struggle to establish churches on the plains after 1870, Canadian Presbyterians felt that they could not evangelize without Canadianizing, nor could they Canadianize without evangelizing.¹

The earliest lawyers in Manitoba (and therefore the first lawyers in Western Canada) were part of this "intrusion of forces which marked and propelled the broad transition from a predominantly Metis settlement to one which in 1878 was 'rapidly completing the transition to an industrial British-Ontario community.'"² As such, they were largely in agreement with the prevailing desire to establish a "Canadian" presence on the plains and, in keeping with their station, they set to work to establish Canadian values and institutions in the new province. They formed a Bar Society, modelled after the governing body of Ontario's legal profession, helped establish courts which applied the common law, and were heavily involved in local politics.³ They quickly established themselves as leaders of Western Canadian society.

Lawyers were also quickly involved in "exploring the parameters of expectant capitalism."⁴ They participated in a

¹ Catherine MacDonald, "James Robertson and Presbyterian Church Extension in Manitoba and the North West, 1866-1902 in Dennis L. Butcher et al., eds., Prairie Spirit: Perspectives on the Heritage of the United Church of Canada in the West (Winnipeg: University of Manitoba Press, 1985) 85 at 85.

² Richard Allen Willie, 'These Legal Gentlemen': Becoming Prominent in Manitoba, 1870 - 1900, (Ph.D. Dissertation, University of Alberta, 1989) [unpublished] at 76, citing Gerald Friesen, The Canadian Prairies: A History (Toronto: University of Toronto Press, 1984) at 195.

³ Willie, ibid. at 84.

⁴ Ibid. at 173.

variety of commercial enterprises outside of their legal roles. Again, in this they were not out of step with the prevailing norms. The dominant cultural vision was liberal and devoted to free enterprise. The immigrants from Eastern Canada "simply assumed that a capitalistic labour market, private property, and individualism were part of the environment, like the plains and the river valleys."⁵

The arrival on the prairies of huge numbers of immigrants from outside of Canada reinforced and provided further momentum for the capitalist and democratic ideologies which had been taken for granted by early settlers. Whether from Britain, the United States or Europe, immigrants to the prairies were prepared to take advantage of free enterprise and individualism. They saw the West as a place where one could get a fresh start, where one's fortune could be made with a little hard work, and where an individual could achieve success on his or her own merits.⁶

The West was also a place where everyone was considered equal.⁷ Although the period "when simple log shacks and soddies,

⁵ Friesen, supra, note 2 at 242.

⁶ Ibid. at 303. See also Robert Craig Brown and Ramsay Cook, Canada 1896-1921: A Nation Transformed (Toronto: McClelland and Stewart Limited, 1974) at 82.

⁷ In Canada: A Descriptive Textbook, commissioned by the Department of the Interior, E.R. Peacock explained to British immigrants that the society of the West was egalitarian. "The feeling of equality with one's neighbours, and particularly the knowledge that the land is one's own, is worth a great deal," he noted. (Friesen, supra, note 2 at 302-303).

like equality of social status, were the rule"⁸ was relatively short, the notion of egalitarianism was more powerful in the West than elsewhere in Canada. Settlers of the frontier were independent-minded souls who were suspicious of hierarchy and of presumptive authority.⁹ The enthusiasm on the prairies for direct democracy, against 'partyism' and political patronage¹⁰ revealed a deep "distrust of all elites and deep faith in the common sense and ethical wisdom of the common people."¹¹

Of course, there were elites, especially after the first few decades of settlement. In cities, towns, villages and in rural society, hierarchies developed, largely based on wealth and ethnicity. In each area there were those who set the social tone and took leadership roles. They were almost invariably British-Canadian and relatively well-off financially.¹² However, these were not formalized elites, granted power and wealth by mere tradition or governmental decree. They were successful -- so ran the myth -- because of their hard work and character; their status

⁸ Friesen, supra, note 2 at 311-312.

⁹ W. Wesley Pue, Becoming Professional: Western Canadian Lawyers (Paper presented at the "Law for the Beaver, Law for the Elephant" Conference, Victoria, British Columbia, February 22-25, 1991) [unpublished] at 5. Used with permission of the author.

¹⁰ David Laycock, Populism and Democratic Thought in the Canadian Prairies, 1910 to 1945 (Toronto: University of Toronto Press, 1990) at 40-50.

¹¹ Ibid. at 37.

¹² Friesen, supra, note 2 at 283-325.

was a function of what they had done, not of who they were.¹³

Although largely hidden, there were tensions between the ideological elements of the emerging prairie culture and an unquestioned adherence to British-Canadian norms. The logic of the "fresh start" and "equal opportunity" required a willingness to examine critically the institutions and values of older parts of Canada and the British-Canadian culture which had given them birth.¹⁴ Prairie residents were not prepared to transplant wholesale to the West those institutions which reproduced 'received' patterns of thought and activity, especially if those institutions created an elite. They were prepared to model prairie institutions on those in Britain and English Canada but only if they were seen to be appropriate and useful to prairie life.¹⁵

The egalitarian and practical elements of prairie culture were also a potential challenge to the place of the legal profession. If any group had gained its status by tradition and governmental fiat, it was the legal profession. Lawyers in Western Canada, most of whom were immigrants from Ontario, may well have assumed that the honour and authority granted to the profession in Eastern

¹³ According to Friesen, ibid. at 317, evidence suggests that the belief in the equality of opportunity, the notion that the chances of a man's success lay in his own hands, was false. The key factor in determining the likelihood of success or failure was not his ability to farm, his business acumen or any other personal quality he might bring to the task, but the financial resources a settler had available to him.

¹⁴ Ibid. at 342.

¹⁵ Laycock, supra, note 10 at 27.

Canada would be automatically replicated in the West.¹⁶ If this was their assumption, they were mistaken. The milieu of the prairies, emphasising the need to earn one's position and distrustful of elites, was not going to allow a statutorily-created elite to enjoy without challenge the status, wealth and privilege it had been accustomed to in more established surroundings. The profession would have to provide some justification for its position.

To a large extent, that justification was provided by the key role lawyers claimed they played in society, particularly as catalysts for business. They wedded themselves firmly to the economic, social and political elite and were, in fact, at the centre of Western Canada's societal structures.¹⁷ However, when those structures, and the dominant British-Canadian culture came under attack, the legal profession faced a threat more serious than it had thought possible.

A Culture Under Siege: The Legal Profession, 1914-1919

¹⁶ Blaine Baker notes that legal education in Ontario, despite its relatively open ranks, was self-consciously designed to create a social elite in that province. For example, despite the fact that many students came from "inferior" ethnic groups, all were referred to in documents related to legal training as "gentlemen" as soon as they began the study of law. See Blaine Baker, "Legal Education in Upper Canada, 1785-1889: The Law Society as Educator" in David H. Flaherty, ed., Essays in the History of Canadian Law, Volume II (Canada: The Osgoode Society, 1983) 49 at 55-57.

¹⁷ Willie, supra, note 2 at 438-439.

In the decades prior to the First World War the prairies had bubbled with optimism. One prairie lawyer expressed his enthusiasm as follows:

Opportunities of unusual appeal confront the profession in the west by reason of the tremendous development that is bound to take place in Western Canadian commerce. Winnipeg as the centre of the grain trade of the Country, has taken its place as a great commercial metropolis. That position is constantly becoming more established and augmented. One cannot doubt that it is destined to be if not in population at least in importance one of the first commercial cities of the Dominion. As a railroad centre and terminus it will hold an outstanding place not only in Canada but on the Continent. It will be as it is fast becoming - one of the great banking capitals of America. These elements of great commercial activity are already in Winnipeg and to their growth there hardly seem any bounds. The place of the profession in a community with these potentialities and this achieved position should be an enviable and a commanding one.¹⁸

This optimism was a direct result of the dominant prairie ideology. It was taken for granted that freedom, egalitarianism and British institutions would produce an ideal society.

The frontier, in western Canada as in the United States, was the land of new beginnings. Where all citizens started as social equals, merit and virtue rather than class would be rewarded. Where farms and rural life, rather than factories and cities, were the foundations of the economy, true wealth would be created. Where life was lived close to nature, individuals learned the lessons of God at first hand. Calculations of prairie greatness and imperial power inevitably ran together; the west would have a population of 100 million; it would be the bread-basket of the world; it would be the centre of gravity of all Canada; and, if it ruled Canada, and Canada led the empire (as it soon would), then, as anyone could see, the west would lead the world.¹⁹

This optimism extended to a confidence that "foreigners", the

¹⁸ W.H. Trueman, "The Place of the Lawyer in the Business Life of Western Canada" (1917) 37 Canadian Law Times 92 at 104.

¹⁹ Friesen, supra, note 2 at 342.

immigrants from Eastern and Southern Europe who had flooded into Western Canada at the turn of the century, could be accommodated and assimilated into "Canadian" society. The prevailing view was that "the attributes of the new society -- education, religion, law, economic opportunity and social equality -- were sufficient ... to mould recalcitrant peasants into good citizens."²⁰

The optimism with which the future was regarded was nowhere more evident than in the phenomenon known as "boosterism", the belief that, by pulling together, communities could achieve success. Boosterism was common among the leaders of every Western Canadian community prior to the War who sought to encourage almost unrestricted development of the local community. Its belief in the initiative and ability of citizens to make a town or city great "became entrenched in urban political life in the west."²¹

For a time boosterism and the widespread optimism from which it sprang managed to camouflage huge social and economic inequities. Boosterism implied that internal social and economic divisions were insignificant and were to be ignored. Anyone who found fault with 'development' and 'progress' was a 'knocker':

"A 'knocker,' as he was described in those days of boosterism, was one who questioned the optimism of the economic developers, saw flaws in the plans of the real estate promoters, and commented publicly on such social problems as inadequate housing, substandard water and sewage services, and serious problems associated with vice and violence. The 'knocker' was the most reviled of all creatures in the circles of the boosters. According to one student of the subject, 'the attitude of boosters

²⁰ Ibid. at 345.

²¹ Ibid. at 283.

toward organized labour and the poor and disadvantaged was one of scorn, and the cities the boosters dominated spent only a small fraction of their budgets on such community services as sanitation, health departments, or welfare - far less than was spent on promoting growth.'...The greatest victory of the boosters was not the creation of their metropolis but the creation of an ethos of community solidarity that transcended class, income, and occupation."²²

But the untrammelled optimism of the early years of the century was unable to deal with the enormous pressures placed on society by massive immigration, urbanization and industrialization. Abject poverty, crowded conditions,²³ open sewers,²⁴ and a lack of affordable medical care contributed to disease and death for many, especially in the cities.²⁵ The distribution of wealth in Western Canada was closely related to ethnicity; immigrants from central and southern Europe were disproportionately poor.²⁶

The onset of World War I imposed even greater pressures on the

²² Ibid. at 283-4 quoting Alan Artibise, "Boosterism and the Development of Prairie Cities, 1871-1913" in Alan Artibise, ed., Town and City: Aspects of Western Canadian Urban Development (Regina: University of Regina, Canadian Plains Research Center, 1981) 209 at 216.

²³ A 1909 federal government survey in Winnipeg found that 837 individuals were living in 41 homes -- more than twenty people per house. Friesen claims, "The average house, which had about seven rooms, thus contained three families and an additional nine or ten unmarried boarders..." Ibid. at 287.

²⁴ One investigator compared the sanitary conditions in Winnipeg in the early years of the twentieth century to those of medieval European cities. Ibid., at 288.

²⁵ Winnipeg, for example, experienced an outbreak of typhoid between 1904 and 1906 which produced a death rate higher than any other major city in North America and Europe. Ibid. at 287-288.

²⁶ Ibid. at 288.

fragile structures of Western Canada. The result was "the breakdown of the region-wide bipartisan consensus on political priorities and the regional ideal"²⁷ which had characterized the pre-war period.

The War intensified campaigns for reform from within the British-Canadian middle-class, notably campaigns for female suffrage and temperance. While both were successful in Western Canada, they suggested a willingness to challenge the status quo.

Of greater significance, perhaps, was a marked divergence from the previously good-natured approach to immigrants. The assumption that Eastern Europeans would inevitably embrace the benefits of "Canadian" values, language and culture began to be questioned. The fact that the War was portrayed as pitting liberty, democracy and enlightenment, represented by the British Empire and its allies, against the forces of authoritarian evil, represented by many of the nations from which the immigrants had come, added to the tensions and resulted in the imposition of sterner measures to ensure the assimilation of "foreigners".

Between 1914 and 1919, the western Canadian ideals of social reform and majoritarian democracy had moved ever closer to repression and nativism... Revenge, fear, and hostility had replaced confidence and concern for improvement as the primary sentiments of many reformers; deportation and repressive legislation rather than schools and missions were becoming the focus of so-called reform campaigns... Rather than celebrating the social and ethnic democracy of the west, as had been done in the pre-war years, the prairie elite now stressed its British Canadian roots and its superior social character.²⁸

²⁷ Ibid. at 348.

²⁸ Ibid. at 352-354.

The major challenge to the governing ethos, however, came from the working class. Prior to the War, activists among the working class had been reform-minded, basing their proposals on the assumption of a relatively stable economy. However:

...the First World War altered their fortunes. Inflation upset household calculations and encouraged recurrent battles at the bargaining table; registration of manpower and conscription, especially when juxtaposed with alleged profiteering by wealthy capitalists, convinced many workers that their class alone bore the brunt of the war effort; and the prospect at war's end, with an overcrowded labour market, of further price instability, and a final opportunity to secure the ideals of liberty and justice, suggested that they must act immediately if they were to defend their interests and secure reforms.²⁹

The ethnic and class divisions, building for years and worsening during the war, exploded in 1919.³⁰ An expression of radicalism "much more pervasive in the west than in the rest of Canada or North America"³¹ swept the region shortly after the War and culminated in the Winnipeg General Strike of 1919. After virtually closing down the city for weeks, the strike was violently put down on 'Bloody Saturday' as the Royal Northwest Mounted Police charged into a crowd of demonstrators, then fired into the crowd, killing two and wounding dozens.³²

Despite their victory in Winnipeg, the established interests in Western Canada were forced by events to face "the conundrum of

²⁹ Ibid. at 359.

³⁰ Ibid. at 359.

³¹ Ibid. at 358.

³² For a description of the Winnipeg General Strike, see ibid. at 355-364.

how to contain radical urges in a society where deeply held commitments to an open, democratic, egalitarian order co-existed with immense class and ethnic inequities"³³. That issue, and the related question of how to maintain the position of the legal profession in such an environment, must have been on the mind of Sir James Aikins as he addressed the Canadian Bar Association's annual meeting in August of 1919.

A BOLD NEW SOLUTION

Sir James Aikins was a man intimately tied to the status quo. The son of an important family in Ontario, he had arrived in Winnipeg late in the nineteenth century and had made his fortune in law and in business. He was extremely prominent in local affairs, serving as a Member of Parliament and as leader of the provincial Conservative party. At the time of his speech, he was Lieutenant-Governor of the Province of Manitoba. He had been very influential in the creation of the Canadian Bar Association in 1915 and had served as its president since its founding.³⁴

³³ Pue, supra, note 9 at 14.

³⁴ Dale and Lee Gibson, Substantial Justice: Law and Lawyers in Manitoba 1670-1970 (Winnipeg: Peguis Publishers, 1972) at 219-220. For a more complete description of Aikins, see Dale and Lee Gibson, Sir James Aikins' Seamless Web: Finding Fortune and Fame as a Lawyer in the Adolescent Canadian West (Paper presented at the "Law for the Beaver, Law for the Elephant" Conference, Victoria, February 22-25, 1991), [Unpublished]. Used with permission of the

Sir James was well aware of the forces threatening his world. He identified an "intellectual, temperamental and spiritual ferment"³⁵ following the war, to which he attributed the doubts about the guiding verities in his life. He noted that "in economics professors have arisen who declare the principles of Adam Smith and Mill to be quite unsound."³⁶ Furthermore, he claimed, "moral philosophy is being invaded by such revolutionary ideas as 'there are no definite rights.'"³⁷ He also pointed out, to an audience which could hardly be unaware of the fact:

In politics, strong agitation is made for collectivism and enslavement to a system in substitution of individual liberty, and for group or class control in lieu of popular democracy, and for Bolshevism instead of settled national government by the people, of the people, for the people.³⁸

It was clear to Aikins that these threats to the established order were entirely relevant to the profession he was addressing. Aikins made the connection clear when he declared that "the strong bent of the profession has been to uphold and develop the law of

authors.

³⁵ Sir James Aikins, "Address of the President to the Canadian Bar Association Annual Meeting, Winnipeg" (August, 1919) (1919) 39 The Canadian Law Times 537 at 539.

³⁶ Ibid. at 539.

³⁷ Ibid. at 539.

³⁸ Ibid. at 539. There can be little doubt that this was a reference to the leaders of the General Strike. Strike leaders were commonly referred to as Bolsheviks and revolutionaries. The belief in government and business circles was that the strike was revolutionary in intent. While this view has been largely discredited, the point is that it was undoubtedly the perception of Aikins and the audience he was addressing in 1919.

personal liberty, freedom to contract, and the right to hold property, checked only by the reciprocal liberty and rights of others."³⁹ If any of his listeners still needed to be convinced of the link between the legal profession and the besieged social order, Aikins supplied proof in the words of an anonymous strike leader who, Aikins reported, had shouted "Damn the lawyers!" only months earlier in the very city in which Aikins was now speaking.⁴⁰

Interestingly, Aikins did not offer a direct solution to the wider problems he identified. Instead, he devoted himself to a refutation of those whose "false notion of democracy" led them to believe that "the right to practise law should be free for all, that anyone can practise it".⁴¹ He offered as a solution a model for the legal profession which promised to ensure for the profession a prominent place in a society which was under attack.

Generally, the vision contained the following components:

1. An entry system based on ability, both academic and practical.
2. A Code of Professional Conduct.
3. Independent governing bodies to enforce rules of admission and punish violations of the Code.
4. Minimum fee schedules.
5. A monopoly over the right to provide legal services.
6. The suppression of all unlicensed competitors in the field of legal services, so defined by the profession.⁴²

These features were seen as "a unitary structure of

³⁹ Ibid. at 543.

⁴⁰ Ibid. at 544.

⁴¹ Ibid. at 545.

⁴² Pue, supra, note 9 at 7-8.

professionalism"⁴³; each component was made logically necessary by the others. Mastering both the theoretical and practical aspects of the law in an educational system consuming years of one's life was necessary to ensure expertise. Governing bodies independent of government restriction were necessary because only professionals themselves would have the expertise to determine whether or not an applicant had mastered the law and only legal experts were capable of judging a fellow professional accused of negligence or some other offence. A monopoly was required to ensure that only experts, warranted and policed by these regulatory bodies, would provide service to the public. Minimum fees were necessary to ensure that the best people would be willing to endure the sacrifice of money and time for an education which would give them the expertise needed to properly fill their role.⁴⁴

The implicit belief underlying this professional vision was that a new sort of expertise was essential for the legal professional. It was no longer sufficient for the legal profession to rely on the craft skills of earlier generations, the easy-going admission and regulation policies of professional bodies, the belief that vague notions of "gentlemanly" conduct would continue to guide the everyday activities of lawyers. What was needed was a clearly enunciated foundation of expertise on which the profession could rest securely and which would invite the confidence of lawyers and clients alike.

⁴³ Ibid. at 8.

⁴⁴ Ibid. at 8.

While Aikins' model of professionalism was primarily directed to the legal profession itself, his vision was not confined to lawyers. Not coincidentally, his vision had implications for the larger society under attack from all sides. He offered a vision which would simultaneously reinforce the position of the legal profession in the hierarchy of society, secure the capitalist ideology of the prairie west (in part by providing the ambitious spirit of Western Canada with an outlet for its energies in an orderly fashion), and ensure the dominance of the British-Canadian culture over that of the immigrants from a myriad of foreign lands.

It is very unlikely that the vision of the profession Aikins offered his listeners in 1919 was the product of his own thought. Aikins, like many other leading members of the Canadian legal profession, had enjoyed extensive contact with the U.S. profession for years.⁴⁵ Aikins was particularly close to the legal profession in the United States, especially the Chicago Bar.⁴⁶ The idea for the creation of the Canadian Bar Association came from the interaction between leaders of the Canadian profession and the U.S. profession.⁴⁷ It seems more than a coincidence, therefore, that

⁴⁵ Pue, Ibid. at 7.

⁴⁶ Aikins established such an intimate relationship with the legal profession in Chicago that members of the Bar there honoured him at a special dinner during the final year of his presidency of the C.B.A. in 1927. During the dinner, Aikins was serenaded with popular songs to which his admirers in Chicago had composed personalized lyrics. Gibson and Gibson, Sir James Aikins, supra, note 34 at 29-31.

⁴⁷ Dale and Lee Gibson note that the Canadian Bar Association was first suggested by Canadian observers at the American Bar Association meeting, held in Montreal in 1913. Aikins then took up

the vision of the legal profession which Sir James Aikins placed before the Canadian Bar Association was essentially the model which had been adopted by the profession in the United States. It was a vision which was based on the need for "expertise" in the practice of law and did so successfully by incorporating the idea of "legal science" as it had developed in the United States and Britain.

LEGAL CULTURE IN THE UNITED STATES

The United States in the last third of the nineteenth century had experienced massive changes, beginning with the Civil War. The period began with an inner stability generated by the familiar institutions of small and homogeneous communities. However, it soon witnessed the creation of a "distended society," characterized by political disruption,⁴⁸ business disorganization,⁴⁹ and a wide gap between city and farm.⁵⁰ Industrialization, mechanization, massive urbanization, advances in transportation and communication all contributed to a general sense of dislocation and

the idea and the C.B.A. was formed in 1915. Ibid. at 28.

⁴⁸ Robert H. Wiebe, The Search for Order: 1877 - 1920 (New York: Hill and Wang, 1967) at 5.

⁴⁹ Ibid. at 19.

⁵⁰ Ibid. at 14.

bewilderment.⁵¹

As the networks of relations affecting men's lives each year became more entangled and more distended, Americans in a basic sense no longer knew who they were or where they were. The setting had been altered beyond their power to understand it, and within an alien society they had lost themselves. In a democratic society who was master and who servant? In a land of opportunity what was success? In a Christian nation what were the rules and who kept them? The apparent leaders were as much adrift as their followers.⁵²

By the 1880s, the vast changes sweeping the country produced "a feeling suddenly acute across the land that America stood at bay, besieged by giant forces abroad and beset by subversion at home."⁵³ This sense of emergency produced a variety of responses: populism,⁵⁴ the Knights of Labor,⁵⁵ the "nationalism" of Edward Bellamy⁵⁶, the "Alliances" in the south⁵⁷, temperance movements and xenophobic policies, especially at a local level.⁵⁸ In short, the United States in the last years of the nineteenth century bore a remarkable resemblance to Western Canada at the time of the First World War.

⁵¹ Ibid. at 12.

⁵² Ibid. at 42-43.

⁵³ Ibid. at 45.

⁵⁴ Ibid. at 62.

⁵⁵ This remarkable organization grew from 50,000 to 700,000 members in a period of two years, from 1884 to 1886. Ibid. at 45, 67-68.

⁵⁶ Ibid. at 69-70.

⁵⁷ Ibid. at 71-73.

⁵⁸ Ibid. at 56-58.

Another similarity between the United States of the late nineteenth century and Western Canada in the early twentieth century was the dominance of the individualistic, "relentlessly competitive" capitalistic spirit.⁵⁹ If a desire for personal achievement, advancement, wealth and status characterized the Canadian West, it was also characteristic of the United States in the late nineteenth century and was an especially critical element of middle-class culture.⁶⁰ Complementing this longing for success was a rejection of class divisions and positions of permanent privilege, except for distinctions resulting from one's abilities and achievements.⁶¹

The social dislocation of the era freed the middle-class from the confines of carefully constructed social norms present in small communities and created an environment where these aggressive tendencies could flourish. The new cities made possible social structures in which no one knew their neighbours. In economic relations, **caveat emptor** was the only policy:

Small businesses appeared and disappeared at a frightening rate. The so-called professions meant little as long as anyone with a bag of pills and a bottle of syrup could pass for a doctor, a few books and a corrupt judge made a man a lawyer and an unemployed illiterate qualified as a teacher.⁶²

⁵⁹ Burton J. Bledstein, The Culture of Professionalism: The Middle Class and the Development of Higher Education in America (New York: W.W. Norton & Company Inc., 1976) at 30.

⁶⁰ Ibid. at 5-7.

⁶¹ Ibid. at 7.

⁶² Wiebe, supra, note 48 at 13-14.

A cyclical phenomenon had been set in motion: the social and economic dislocation of the period released the individualistic, acquisitive and competitive instincts nurtured by the middle-class, resulting in even more profound social and psychological dislocation which, in turn, encouraged even more aggressive and ambitious behaviour.

However, the social, economic, political and emotional dislocation experienced by the middle-class prompted a contradictory, but powerful, desire within the culture for all the things that the culture had abandoned. This aspect of the culture longed for law and order, stability, ethical integrity, traditional and religious values, patriotism and democratic institutions.⁶³ Greed was therefore countered by a desire for respectability, individualism competed with a desire for orderliness, and ambition was challenged by a belief in self-control and discipline within the culture and, indeed, within individual members of the culture. Even the desire for material success, fundamental to the tenor of the times, was not one-sided; while wealth was pursued as a source of pleasure and instinctual fulfillment, the solitary pursuit of wealth was renounced as an unworthy aim.⁶⁴ Therefore, while U.S. society experienced a more rapid change than ever before, much of the late nineteenth century can be described as a search for order, stability and permanence.

These two contradictory aspects of middle-class culture

⁶³ Ibid. at 7.

⁶⁴ Bledstein, supra, note 59 at 43.

demanded a structure which could accommodate both. The chaos of the era had to be replaced with order but, at the same time, the "relentlessly competitive"⁶⁵ spirit of the middle-class needed some outlet.

To a great extent, the American quest for order was satisfied by science and the scientific method. The solution was ironic, since science had been responsible for many of the changes and disruptions in U.S. society. However, the science which had turned the world upside down now promised to set things right by creating a new, ordered and rational world. It offered "a basis in universal and predictable rules to provide a context for the competitive spirit of individual egos,"⁶⁶ a "formal conceptual framework in which calculating individuals could determine the natural course and limits of expectations."⁶⁷ And the primary instruments by which scientific rationality was incorporated into the structure of U.S. society were the professions.

The professions had always been prestigious, largely because of their association with universities and higher learning. However, without controls and regulations, particularly in the heyday of Jacksonian democracy, entry to traditional professions had been easy, often just a matter of claiming to be a lawyer, doctor or minister. At the same time, other occupations seized on the opportunity to claim professional status for themselves.

⁶⁵ Ibid. at 30.

⁶⁶ Ibid. at 31.

⁶⁷ Ibid. at 32.

Increasingly, success required a claim that one was a professional. If one could not (or did not wish to) claim that he was a lawyer, doctor, or minister, success could just as easily be achieved by elevating the status of one's occupation by referring to it as a profession.⁶⁸

As the middle-class began to search for order, however, a desire grew to give the word "professional" some meaning. The middle-class wanted to distinguish the "real" professions and professionals from those who were professional in name only. The natural basis for this distinction was "science". The "true" profession came to be seen as one whose activity was grounded in "rational, expert, neutral, universal and verifiable knowledge."⁶⁹

The "true" professions:

attempted to define a total coherent system of necessary knowledge within a precise territory, to control the intrinsic relationships of their subject by making it a scholarly as well as an applied science, to root social existence in the inner needs and possibilities of documentable worldly processes.⁷⁰

⁶⁸ Ibid. at 34.

⁶⁹ W. Wesley Pue, "'Trajectories of Professionalism': Legal Professionalism after Abel" (1990) 19 Manitoba Law Journal 384 at 416.

⁷⁰ Bledstein, supra, note 59 at 88. Richard Abel reinforces this view as follows:

An essential element in the professional project of market control was the successful assertion of unchallenged authority over some area of knowledge. Several variables are helpful in charting the extent to which a body of knowledge lends itself to exclusive possession. It must be esoteric and not easily codified, a quality that is affected by the ratio of indeterminacy to technicality. Because sectors of professional expertise are constantly being routinized, they will be lost to the laity unless the profession is able to

If a profession was based on scientific knowledge, the best -- perhaps the only -- place for the discovery of science was the university. It was natural, then, for the professions and the universities to develop a relationship. Indeed, from the perspective of the profession, such a relationship was critical. Its absence suggested a hollow claim to scientific credentials. The university, therefore, became the "seminal institution" within the culture of professionalism.⁷¹ University endorsement, preferably in the form of an on-campus faculty, guaranteed the profession's status. "Higher education in America certified recognized spheres of cultural authority and autonomy, and Mid-Victorians designed that certification to transcend any public

delegate them to subordinate occupations it controls. One defence against routinization is constant change, but to avoid the danger that such change will be seen as a confession of ignorance, it must be gradual and characterized as progress. Finally, knowledge must be standardized by formalizing, and thus depersonalizing, it. **The only body of knowledge that meets all these requirements is science** and indeed pure science, which lacks clients and is only responsible to the collegial community comes closest among all disciplines to attaining exclusive authority over its cognitive domain. The professions, by contrast, are only quasi-disciplines; they must satisfy clientele, not peers. Nevertheless they seek to pattern themselves upon the rationality of science and to imitate scientific training by separating theoretical and practical education. (Emphasis mine)

Richard L. Abel, "The Rise of Professionalism" (1979) 6 British Journal of Law and Society 82 at 86-87. This article is in fact a review of Magali Scarfatti Larson, The Rise of Professionalism: A Sociological Analysis (Berkeley: University of California Press, 1977).

⁷¹ Bledstein, ibid. at 121.

dispute."⁷²

The unquestioning belief in science within middle-class society created a source of authority for any profession which could take advantage of it. The individual practitioner would be elevated from tradesman or merchant status to that of a scientist. The symbols of his authority -- degrees, diplomas, and libraries of casebooks -- reinforced his image as one who was privy to scientific knowledge inaccessible to the ordinary mortal.

LEGAL SCIENCE

Although the practise of law had traditionally been associated with the university and a "liberal education", it had no connection with pure or physical science, and could not therefore claim to be 'scientific', as medicine or engineering could. This difficulty was being addressed, however, by simultaneous and connected developments within the academic community.

The university and the academic community had long been part of the Enlightenment "to develop objective science, universal morality and law, and autonomous art according to their own logic".⁷³

The idea was to use the accumulation of knowledge

⁷² Ibid. at 126.

⁷³ J. Habermas, "Modernity: an incomplete project" in H. Foster, ed., The Anti-aesthetic: Essays on Post-Modern Culture (Port Townsend, Washington: Bay Press, 1983) 3 at 9.

generated by many individuals working freely and creatively for the pursuit of human emancipation and the enrichment of daily life. The scientific domination of nature promised freedom from scarcity, want, and the arbitrariness of natural calamity. The development of rational forms of social organization and rational myths of thought promised liberation from the irrationalities of myth, religion, superstition, release from the arbitrary use of power as well as from the dark side of our own human natures. Only through such a project could the universal, eternal, and the immutable qualities of all humanity be revealed.⁷⁴

This "project of modernity" captured the imagination of the academic world in the nineteenth century. Physical sciences had achieved great status in society and a secure place in the university due to revolutionary discoveries and great technological advances whose benefit was evident to all. Social sciences were beginning to stake a claim to academic legitimacy by purporting to apply the same scientific method to the study of humanity. If there was to be a scientific basis for the study of history, the classics and politics, it was perhaps inevitable that a scientific approach to the study of the law would not be far behind. Predictably, law came to be widely added to the curriculum in universities throughout both England and the United States in the late nineteenth century so that its scientific study could be achieved.⁷⁵

David Sugarman has demonstrated the process by which law

⁷⁴ David Harvey, The Condition of Postmodernity: An Inquiry into the Origins of Cultural Change (Oxford: Basil Blackwell, 1989) at 12 quoted in Pue, supra, note 69 at 407.

⁷⁵ Robert Stevens, Law School: Legal Education in America from the 1850s to the 1980s (Chapel Hill: The University of North Carolina Press, 1983) at 52.

professors in England carved out a space for themselves between the legal profession and the university community.⁷⁶ In order to legitimate their discipline in the academic world, these jurists had to show that law was rational and therefore capable of scientific examination. This was no simple task, for there had existed no significant tradition of university education in the law prior to 1850.⁷⁷ Furthermore, the English common law was so confused and contradictory that John Austin claimed: "...turning away from the study of English to the study of Roman law, you escape from the empire of chaos and darkness to a world which seems, by comparison, the region of order and light."⁷⁸

The legal academics responded by developing the "black letter" tradition. According to Sugarman, this tradition:

assumes that although law may appear to be irrational, chaotic and particularistic, if one digs deep enough and knows what one is looking for, then it will soon become evident that the law is an internally coherent and unified body of rules. This coherence and unity stem from the fact that law is grounded in, and logically derived from, a handful of general principles; and that whole subject-areas such as contract and torts are distinguished by some common principles or elements which

⁷⁶ David Sugarman, "Legal Theory, the Common Law Mind and the Making of the Textbook Tradition" in William Twining, ed., Legal Theory and Common Law (Oxford: Basil Blackwell, 1986) at 26-61 [hereinafter "Legal Theory"]. See also David Sugarman, "'A Hatred of Disorder': Legal Science, Liberalism and Imperialism" in Peter Fitzpatrick, ed., Dangerous Supplements: Resistance and Renewal in Jurisprudence (London: Pluto Press, 1991) at 34-67 [hereinafter "Disorder"].

⁷⁷ Sugarman, "Legal Theory", ibid. at 29.

⁷⁸ J. Austin, Lectures in Jurisprudence (5th edn; 1885) at 58 quoted in ibid. at 29.

fix the boundaries of the subject. The exposition and systematization of these general principles, and the techniques required to find and to apply them and the rules that they underpin, are largely what legal education and scholarship are all about.⁷⁹

The "black letter" tradition also staked the law's claim to a place on the university curriculum. By holding that the principles which governed law were much like the principles which governed nature, legal educators could claim that their study was as worthy of a place within the university as the natural sciences.⁸⁰

Similar developments were taking place in the United States. Practitioners' schools had developed well before the mid-nineteenth century and claimed to teach law as a science, and the merger of these private schools with universities in the 1820s allowed universities to promise its students "knowledge of the science of legislation, and the theory and practice of law."⁸¹ Yet the scientific method in the study of law did not achieve real success in the United States until after the Civil War. Harvard University, under the leadership of University President Charles Eliot and Dean of the Law School, Christopher Columbus Langdell, became the first law school to apply the scientific method to legal study. Harvard consequently became the most emulated law school in

⁷⁹ Ibid. at 26. The first portion of this quotation can also be found in Sugarman, "Disorder", supra, note 76 at 34.

⁸⁰ "Legal Theory, ibid. at 30.

⁸¹ John P.S. McLaren, "The History of Legal Education in Common Law Canada" in Roy J. Matas and Deborah J. McCauley, eds. Legal Education in Canada (Montreal: Federation of Law Societies of Canada, 1987) 111 at 113. The quotation is from New York University's syllabus in 1858 as quoted in Stevens, supra, note 75 at 21.

the United States.⁸²

Like the English jurists, Langdell claimed to see order in the chaos of the common law. He argued that a systematic analysis of case law would reveal a "unitary, self-contained, value-free and consistent set of principles that could then be applied to each new case as it occurred."⁸³ He wrote:

...law, considered as a science, consists of certain principles or doctrines. To have such mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs is what constitutes a true lawyer.... Moreover, the number of legal doctrines is much less than is commonly supposed.⁸⁴

As a pedagogical tool, Langdell created the case method of instruction, for he claimed that "the shortest and the best, if not the only way of mastering the doctrine effectually is by studying the cases in which it is embodied."⁸⁵ His disciple, James Barr Ames, said: "If we cannot summon at will the living clients, we can put at the service of the students...the adjudicated cases of the multitude of clients who have had their day in court."⁸⁶

⁸² McLaren, *ibid.* at 119-120. Stevens, *ibid.* at 36-7, notes that Dean Langdell and Harvard President Eliot had three goals for the law school. They hoped to establish law as a discipline worthy of a place in the university. They wanted the institutionalized study of law made mandatory for professionals and they hoped to introduce the case law or Socratic system to the law school. They not only accomplished all three, but found that all three were widely adopted over time through-out the country.

⁸³ *Ibid.* at 53.

⁸⁴ C.C. Langdell, A Selection of Cases on the Law of Contracts, vii, quoted in *ibid.* at 52.

⁸⁵ Langdell, *ibid.*

⁸⁶ *Ibid.* at 54.

Yet the case method had detractors and, interestingly, these seemed to be centered within the corporate firms which hired a disproportionate share of the graduates of Harvard and other university law schools. There were a number of reasons for their dissatisfaction.

Because the case method focused on litigated cases, and because it "tended to emphasize the relative indeterminacy of the common law,"⁸⁷ it was well suited to training advocates, especially for appellate courts. However, the corporate law firms were not particularly interested in litigation. On the contrary, they wanted solicitors who would be able to avoid litigation.⁸⁸

Similarly, because the case method focuses on cases, it largely ignored statutes. Yet statutes were extremely important in an office-based practice. The corporate law firms were getting experts in case law who were ill-trained in the use of legislation.

The case method claimed to study "law as it is" rather than "law as it should be." According to Robert Stevens:

⁸⁷ Sugarman, "Disorder", supra, note 76 at 61.

⁸⁸ Robert W. Gordon, "Legal Thought and Legal Practice in the Age of American Enterprise: 1870 - 1920" in Gerald Geison, ed., Professions and Professional Ideologies in America (Chapel Hill: University of North Carolina Press, 1983) at 73-74. The A.B.A.'s Committee on Legal Education complained in 1892:

"The result of this elaborate study of actual disputes, and ignoring of the settled doctrines that have grown out of past ones, is a class of graduates admirably calculated to argue any side of any controversy, or to make briefs for those who do so, but quite unable to advise a client when he is safe from litigation...The student should not be so trained as to think he is a mere hired gladiator."

Stevens, supra, note 75 at 59, quoting "Report of Committee on Legal Education," (1892) 15 ABA Proceedings 317, 323.

The lasting influence of the case-method was to transfer the basis of American legal education from substance to procedure and to make the focus of American legal scholarship -- or at least legal theory -- increasingly one of process rather than doctrine.⁸⁹

At the same time, the systematization of legal principles inevitably resulted in "a selection from the sum of legal principles available and, therefore a strong evaluative element."⁹⁰

The task of systemization...both simplifies and idealizes. The complexities of actual statements are replaced by generalizations. These, at best, represent but dominant patterns discernable amid the varied pronouncements. More often they are but the writer's [teacher's] views as to what the law ought to be, expressed in language which speaks of principles of what the law is...⁹¹

Ironically, both the assertion that law schools were studying "law as it is" and the tendency towards "juristic legislation" inherent in the systematizing process were offensive to different elements of the Bar. Those who wanted to see uniformity in the law objected to the self-contained, "law as it is" approach, and urged an interdisciplinary approach with social sciences so that greater social planning could be achieved.⁹² They were, in effect, urging university law schools to adopt a different form of scientific training altogether, one that would be more like that of the social sciences. On the other hand, those lawyers who were comfortable with the peculiarities and the haphazard nature of local law took

⁸⁹ Stevens, ibid. at 56.

⁹⁰ Sugarman, "Legal Theory", supra, note 76 at 27.

⁹¹ Montrose, 'Return to Austin's College' (1960) Current Legal Problems 9, quoted in ibid. at 27.

⁹² Stevens, supra, note 75 at 57-8.

issue with the attempt to systematize and reform the law.⁹³ From either perspective, the university law school was under attack.

Despite attacks from influential corporate law firms, from reformers who wanted to systematize the law and from established interests who were happy with the status quo, the university law schools, exemplified by Harvard, not only survived but consistently placed their students at the highest levels of the profession. For Robert Gordon the explanation for this phenomenon lies in the authority of the scientific method. By claiming to create systematic activities of legal argument and decision-making, and by demonstrating that these activities could be governed by a coherent theoretical structure,⁹⁴ the university law schools created an ideology. That ideology permitted lawyers to maintain their position as "curators of and contributors to what many people in the society supposed to be vital forms and categories of public discourse."⁹⁵ Gordon concludes:

...the main task of the legal elite may have been to show that the activities and goals of the clients and reform constituencies fit into a traditional but continually self-renewing and self-transforming framework of justice."⁹⁶

Like their U.S. counterparts, English jurists also applied the notion of legal science within a closed system of legal thought. Although they seem to have arrived at this position in a different

⁹³ Gordon, supra, note 88 at 73-4.

⁹⁴ Ibid. at 82.

⁹⁵ Ibid. at 81.

⁹⁶ Ibid. at 81.

manner and as a result of different influences, the English law professors produced a jurisprudence which, as in the United States, functioned independently of the social sciences and came to be virtually self-contained.⁹⁷ Like their American counterparts, English law professors focused almost exclusively upon "judge-made" law,⁹⁸ ignored legislation and drifted away from any contact with other disciplines.

Moreover, like their American counterparts, English jurists found in the authority of the scientific method the weapon with which they were able to defend themselves against the hegemony of the legal profession (with which the university law schools shared legal education). Because law only appeared to be chaotic but was

⁹⁷ Sugarman, "Legal Theory, supra, note 76 at 34, argues that the early legal theorists were quite expansive in their approach to law but that the theoretical domain of jurisprudence was progressively and consciously narrowed in succeeding decades in an effort by the jurists to protect the "narrow ledge" of their area of competence from encroachment by the profession. Jurists could not venture too deeply into the world of "facts" or "reality" (areas in which psychology or sociology might have been useful) because "to assert that law was principled and internally coherent seemed to require that 'facts' and 'reality' were kept at a safe distance." Besides, "practitioners were the masters of the relationship between law and facts, what was frequently spoken of as the 'empirical' dimension of law." To enter into this territory was to trespass on the practitioners' domain.

Nor could jurists discuss too much the 'substance' of the law for in doing so they would be "challenging the traditional orthodoxy that vested law-making, 'better opinion' and 'sound judgment' in the bar and, above all, in the bench." To avoid this conflict "jurists, by an act of conscious self-limitation, refrained from criticizing, let alone meddling, with the **content** of the law. That was for others. Their skills resided in its formal organization; the embellishment of its principles."

⁹⁸ "In America and England, the opinions of judges as inscribed in the law reports remained at the centre of legal education and thought." Sugarman, "Disorder", supra, note 76 at 62.

in fact internally coherent and grounded on relatively few general principles:

the legal scholar was in a unique position to tease out the general principles underlying the law and impart this sense of cohesion through the teaching of general principles and the systematization of those principles in law textbooks. They were, therefore, uniquely useful to the profession. They showed that the grubby, disorderly world of the court room and law office could, in fact, be regarded as 'science in action'.⁹⁹

Thus in both England and the United States the 'scientific' method was used to preserve university legal education from attacks from both the academic and the professional communities.

LEGAL EDUCATION

The status enjoyed by a profession as a consequence of its 'scientific' approach to its subject was reinforced by the methods used in the selection and training of new professionals, especially in the United States. The professional school claimed to select its students on the basis of merit alone, without regard to social class, ethnicity, political influence or financial resources. In doing so, it appealed to the highest ideals of the middle class.

⁹⁹ Sugarman, "Legal Theory", *supra*, note 76 at 29-30. For an examination of an unsuccessful attempt to amalgamate practical legal skills and knowledge (desired primarily by attorneys and solicitors) with a more classical, "liberal" and "learned" approach to legal education, see W. Wesley Pue, "Guild Training vs. Professional Education: The Committee on Legal Education and the Law Department of Queen's College, Birmingham in the 1850s" (1989) 33 American Journal of Legal History 241.

The appeal of a meritocracy was strengthened by the use of science in achieving it. In utilizing 'scientific' methods to select its students, the professional school had eliminated any possibility of prejudice, corruption or favouritism.

Professional schools went even further, extending the scientific evaluation of merit to the educational process itself. The student was constantly tested, again with the latest scientific methods, in order to prove his or her mettle. In legal education, the Socratic style, closely identified with Langdell's 'legal science' approach, was widely used. The method forced students to overcome verbal roadblocks thrown up by professors on a daily basis. Whether by accident or not, the constant challenge faced by the students created an atmosphere in the classroom which meshed with popular science.

The case method fulfilled the latest requirements in modern education: it was "scientific", practical, and somewhat Darwinian. It was based on the assumption of a unitary, principled system of objective doctrines that seemed or were made to provide consistent responses. In theory, the case method was to produce mechanistic answers to legal questions; yet it managed to create an aura of the survival of the fittest."¹⁰⁰

Universities could not have been better designed to appeal to the middle class. By invoking merit, talent and, above all, science in both the selection and the training of its students, universities ensured the respect of the middle class and their own place in society. By associating themselves with the universities, professional schools not only elevated their status, but sanctioned

¹⁰⁰ Stevens, supra, note 75 at 55.

the privileged position of their graduates beyond any dispute.¹⁰¹

But the university did more than merely determine which occupations were sufficiently scientific to qualify as "professions" and which individuals were sufficiently meritorious to qualify as "professionals". The universities also "educated" professional students which, around the turn of the century, meant more than providing information and testing students' knowledge. It involved the creation of "character".

For the middle-class in the United States in the late-nineteenth century, "character" was an important concept. It stood for "power, permanence, and fortitude".¹⁰² In addition to "habits of industry and frugality", character consisted of "aggressive mental initiative, self-reliance, and usefulness."¹⁰³

The person with an ideal character was distinctive, intellectually and emotionally confident. He paced life properly, heard the true rhythm of the universe; and chose the real over the illusory, the natural over the artificial. He demonstrated such judiciousness, discretion, equanimity, and balance that right and wrong became clear to him, duty defined and worldly matters set straight, perhaps for a lifetime...Beyond confusion the person of character discovered meaning, beyond chaos he perceived a rational order, beyond doubt he settled upon hard facts, beyond youthful experimentation he pursued a career that suited his nature. The person of character never wandered aimlessly in a bleak and dessicated world.¹⁰⁴

The leading universities of the United States proposed to

¹⁰¹ Bledstein, supra, note 59 at 127.

¹⁰² Ibid. at 134.

¹⁰³ Ibid. at 135.

¹⁰⁴ Ibid. at 147.

create men of character (character was thought of in exclusively masculine terms)¹⁰⁵ in their schools.¹⁰⁶ Gone were the days when student life was characterized by drinking, gambling, initiations, pranks and inappropriate behaviour with females. "The earnest young man regenerated himself during his college years; he purified his character and reformed his intelligence in order to fight the battle of an American life on the terms of his own permanent choosing."¹⁰⁷ The discipline of college life, especially that of athletics,¹⁰⁸ was designed to produce the "character" the middle-class wanted to see.

If the colleges and universities produced men of "character", the professions offered these men of character a "career". In the United States of the late nineteenth century the two went hand in hand. The man of character looked beyond the immediacy of events toward the broad horizon and calculated his course with reference to distant goals.¹⁰⁹ Naturally, such a man sought a career, since a career was not made of unthinking habits, *ad hoc* decisions, or an infinite series of jobs, but "the entire coherence of an

¹⁰⁵ Colleges in the United States were almost the exclusive preserve of males in the late nineteenth century and the notion of "character" was closely allied to that of masculinity. Andrew Dickson White, president of Cornell from 1868 to 1885 is said to have "reiterated the word *manly* with the frequency of an incantation. 'In Heaven's name be men,' he charged the faculty..." *Ibid.* at 151.

¹⁰⁶ *Ibid.* at 129-158.

¹⁰⁷ *Ibid.* at 250.

¹⁰⁸ *Ibid.* at 257-8.

¹⁰⁹ *Ibid.* at 135.

intellectually defined and goal-oriented life."¹¹⁰ A career was "a pre-established total pattern of organized professional activity, with upward movement through recognized preparatory stages, and advancement based on merit and bearing honor."¹¹¹ As such a career was part of the "vertical vision" cultivated by the middle-class in the United States. This vision "compelled persons to look upward, forever reaching toward their potential and their becoming, the fulfillment of their true nature."¹¹²

The careerist was a person in flight, striving to realize the total resources of an inner nature, and moving aloft supported by that profound representation of natural power called character. The upward-looking Mid-Victorian revered no spiritual possession more. Character was the internal and psychological symbol of continuity that corresponded to the sociological course a person ran in a career. Character and career were the two faces of a single phenomenon.¹¹³

The successful professional emerged as the winner in the middle-class game of life. He was a man of character - independent, confident, ambitious, and mentally organized. He had structured a career which offered upward mobility, personal wealth and noble aims and purposes, including service to society.¹¹⁴ Although he invariably accumulated wealth, his real reward for success was the authority generated by his position. The professional was a leader in society and could justify his role "not

¹¹⁰ Ibid. at 111-112.

¹¹¹ Ibid. at 172.

¹¹² Ibid. at 105.

¹¹³ Ibid. at 112.

¹¹⁴ Ibid. at 92.

in the name of an irrational egotism, but in the name of a special grasp of the universe and a special place in it."¹¹⁵ Moreover, within the realm of his professional expertise he could not be challenged.

It was within the power of the professional person to define issues and crises - threats to life and security - perhaps real and perhaps unreal. And it was within the power of the professional to justify his actions...by appealing to a special knowledge called scientific fact. No metaphysical authority more effectively humbled the average person.¹¹⁶

Through his claim to scientific knowledge and the prestige generated by his proven character, the professional possessed an authority which "transcended the favoritism of politics, the corruption of personality, and the exclusiveness of partisanship."¹¹⁷

The extent of the authority wielded by the professional can be seen as the "dark side" of professionalism as far as non-professional society is concerned. But even for the professional himself, professional culture was destructive. Both "character" and "career" were creations of the individual and the culture which surrounded them was one of extreme individualism. If success in one's career was personal, failure was also a personal matter.

¹¹⁵ Ibid. at 92.

¹¹⁶ Ibid. at 105. Abel, supra, note 70 at 87, states the same idea differently:

"Assimilating professional knowledge and training to the characteristics of the scientific model solves two problems: it defends that body of knowledge against competing paradigms and justifies the high status of those who have mastered it."

¹¹⁷ Bledstein, ibid. at 90.

Evil lay in the inability of the individual to realize his potential. If he failed, the flaw lay within himself, for no external force or event could be blamed for the individual's inability to overcome it by force of character.¹¹⁸

This extreme individualism had its price. The "vertical vision", which obligated an individual to move ever higher on the ladder of success, resulted in a loss of a "horizontal recognition" of others as equals and a lack of a "corporate sense of community."¹¹⁹ Professionals, who incorporated these values most dramatically, were "increasingly isolated in their private spaces, confined to the self-realization of their special natures, and admonished by the need to act professionally and responsibly."¹²⁰

A culture which placed such an emphasis on success, had little patience for failure. Predictably, the fear of falling "was often the source of a general anxiety within individuals which no amount of monetary security, public honors, or personal confidence seemed to eliminate."¹²¹ Professional success was often achieved at a high cost in personal and psychological well-being.

LIBERALISM

The individualism which the culture of professionalism

¹¹⁸ Ibid. at 113.

¹¹⁹ Ibid. at 106, 107.

¹²⁰ Ibid. at 113.

¹²¹ Ibid. at 106.

exemplified was completely consonant with the dominant liberal political ideology of the late-nineteenth and early twentieth centuries in Britain and the United States. This liberal ideology, like all dominant ideologies, came to be manifested in the legal system.

In the first half of the nineteenth century, legal decisions were based on the assumption that people had certain duties and expectations which depended on their relationship with others and their status in that relationship. Notions of "implied intent" were routinely used by judges to impose notions of social duty on parties to a dispute.

Subjectivity and free will were thus combined with the potentially conflicting imposition of objective, judicially-created obligations; and both notions were integrated into the amorphous blend of natural law, positive law, morality, and utility, which made up the justificatory language of early-nineteenth-century law.¹²²

In the late nineteenth century, coinciding with the Industrial Revolution, a new perspective came to dominate political philosophy and the general culture. This ideology stressed the freedom of the individual rather than the good of society or the community. Indeed, among other things, "industrial man is distinguished from pre-industrial man in his view of the individual as a distinct entity with personal prerogatives over which the community has no control." This new, dominant ideology was incorporated into law through legislation and judicial decisions. This liberal

¹²² Elizabeth Mensch, "The History of Mainstream Legal Thought" in David Kairys, ed., The Politics of Law: A Progressive Critique (New York: Pantheon Books, 1982) 13 at 22.

philosophy saw an individual as:

a centre of force, an active atom, whirling about among other atoms, a person in whom there inhere certain powers and capacities, which he is entitled to assert and make effective, not only against other citizens, but against all other citizens taken together; that is against the state itself...¹²³

This approach emphasized freedom as the exercise of "free will" within "combat zones of free conduct in which individuals might do as they willed without fear of legal reprisal."¹²⁴ The courts were to create these spheres of free will by drawing boundaries between the zones of individuals and between those of individuals and the state.

Logically derivable vacuum boundaries defined for each individual her own sphere of pure private autonomy while simultaneously defining those spheres within which public power could be exercised freely and absolutely.¹²⁵

The courts, having been given the task of defining appropriate boundaries, excercised their function by presuming the equality of all (adult male) people. Everyone was presumed to be born with an identical bundle of rights. Distinctions based on relationship or status were discarded as irrelevant.¹²⁶ The courts then recast all legal obligations. Rather than arising from morality, custom or

¹²³ James Bryce, "The Influence of National Character and Historical Environment on the Development of the Common Law" (Address Delivered to the American Bar Association at its Annual Meeting, Portland, Maine, August 1907) in James Bryce, University and Historical Addresses Delivered During a Residence in the United States as Ambassador of Great Britain (New York: The Macmillan Company, 1913) at 45-46.

¹²⁴ Gordon, supra, note 88 at 88.

¹²⁵ Mensch, supra, note 122 at 23.

¹²⁶ Gordon, supra, note 88 at 89.

public policy considerations, they were considered projections of either the will of private individuals or the collective will of the people through the state.¹²⁷ Finally, the legal system sought to make the whole structure formally realizable by standardizing the definitions of rights and duties to create certainty.¹²⁸

It was at this point that the task of the legal system coincided with the project inaugurated by the advent of legal science. Textbook writers and legal educators, using legal science, were able to reduce the mass of law to "a few core propositions" and derive sub-rules from them. Law was then 'objectified' by defining which actions would trigger which obligations and which actions would violate the law by intruding into another's protected zone of free activity.¹²⁹ Judges could then put the theory into practice.

Of course, in reality, legal scholars did not so much "discover" the fundamental legal principles of the common law as select certain principles from the sum of principles available. One observer has noted:

The task of systematization...both simplifies and idealizes. The complexities of actual statements are replaced by generalities. These, at best, represent but dominant patterns discernable amid the varied pronouncements. More often they are but the writer's views as to what the law ought to be, expressed in language which speaks of principles of what the law

¹²⁷ Ibid at 89.

¹²⁸ Ibid. at 89.

¹²⁹ Ibid. at 89-90.

is....¹³⁰

Thus, while proclaiming the 'objective' nature of their work, those systemizing the law were also revising it.

This was especially the case in England where the systematization project of legal scholars coincided with the collapse of the ancient forms of action and the fusion of the common law with equity. This coincidence allowed legal scientists, whose primary instrument was the textbook, an unparalleled opportunity to reconstitute the common law into patterns which met with their approval.¹³¹ These patterns were almost invariably governed by liberal principles.

The scientific method, applied to law, was thus identified with the notion that "freedom meant the legal guarantee that rights and powers would be protected as absolute within their own sphere, but that no rightholder/powerholder would be allowed to invade the sphere of another."¹³² The ideological message of legal science was that:

...law (primarily through case law) and the legal profession (centrally, the judiciary) play a major role in protecting individual freedom; and that the rules of contract, torts and constitutional law, for example, confer the maximum freedom on individuals to act as they wish without interference from other individuals or the state. Policing the boundaries within, and between, legal subject areas constitutes a major foundation of the

¹³⁰ Montrose, "Return to Austin's College" (1960) Current Legal Problems 9, quoted in Sugarman, "Legal Theory", supra, note 76 at 27.

¹³¹ Ibid. at 32-33.

¹³² Mensch, supra, note 122 at 23-24.

rule of law.¹³³

The common law was therefore a beneficiary of popular enthusiasm for liberty and freedom. As Sugarman notes:

...the form as well as the content of the law [became] synonymous with our very definitions of individual freedom and liberty, and thereby acquire[d] an additional patina of reverence and universality."¹³⁴

The power of this judicial philosophy lay in its scientific approach. Judges and courts, backed by legal theorists and law professors, no longer claimed to apply temporal notions of morality or the "public good" to their judicial decisions. They were applying "universal legal principles" and an "objective" and "neutral" methodology to the case at hand. Legal reason was not viewed as embodying "universal moral principles and knowledge of the public good" but was rather seen as "the application of objective methodology to the task of defining the scope of legal rights."¹³⁵

Legal science in action took on a formalist tone. Judicial language implied that the law in any area was pre-existing, clear and predictable, the relevant facts could be and were determined in an objective hearing from which truth would emerge, the result in a case could be determined by a routine application of the 'law' to the 'facts', and that any competent and fair judge, properly trained for this procedure, would reach the 'correct' result in any

¹³³ Sugarman, "Disorder", supra, note 76 at 35.

¹³⁴ Ibid. at 35.

¹³⁵ Mensch, supra, note 122 at 24.

case.¹³⁶

All of this accompanied and helped establish a new understanding of "the rule of law" -- the notion that laws rather than individuals would be the arbiters of human conduct. Since the basic principles of law were objectively determined and applied to everyone, everyone was "equal before the law". No one had an advantage. One apologist for this perspective stated:

The conception of freedom under the law...rests on the contention that when we obey laws, in the sense of general abstract rules laid down irrespective of their application to us, we are not subject to another man's will and are therefore free. It is because the lawgiver does not know the particular cases to which his rules will apply, and it is because the judge who applies them has no choice in drawing the conclusions that follow from the existing body of rules and the particular facts of the case, that it can be said that laws and not men rule.¹³⁷

The presumption of this perspective was that the common law (i.e. case law) was inherently rational and could be studied and

¹³⁶ David Kairys, "Introduction", in David Kairys, ed., The Politics of Law: A Progressive Critique (New York: Pantheon Books, 1982) 1 at 1-2.

¹³⁷ F.A. Hayek, The Constitution of Liberty (Chicago, 1960) at 153, quoted in Gordon, supra, note 88 at 90. G. Blaine Baker, "'So Elegant a Web': Providential Order and the Rule of Law in Early Nineteenth Century Upper Canada" (1988) 38 University of Toronto Law Journal 184 argues that this modern conception of the "rule of law" was not that of the early nineteenth century political and legal elite of Upper Canada, commonly known as the 'Family Compact'. He claims that it was only in the late nineteenth century that public figures in Ontario began appealing to, inter alia, the "monolithic rule of consensual law" in order to justify their position. In this, Baker takes issue with Paul Romney who, in a variety of works, including "From the Types Riot to the Rebellion: Elite Ideology, Anti-legal Sentiment, Political Violence, and the Rule of Law in Upper Canada" ((1987) Ontario History 113 argues that the Upper Canada elite held to an eighteenth century contractarian political theory and Whig constitutionalism.

applied scientifically. Nevertheless, as Sugarman points out:

[The] tendency towards scientific rationality was yoked to an irrational belief in the spontaneous, piecemeal, unconscious continuity of the law. The law was a residue of immutable custom. This is the ancient constitution that was central to England's national identity and the protection of individual freedom. In this aspect of common law culture, Whiggish notions of continuity had been allied to a Burkean conservative tradition, with its veneration of age-old institutions. Thus scientific rationality was forever being mediated, refracted and sustained by an omnipresent irrationality; therein lies the peculiar rationality of the common law mind....Thus lawyers could, with seeming effortlessness, eulogize the haphazard, particularistic, unsystematic evolution of the common law; and trumpet its intrinsic rationalism.¹³⁸

This "peculiar rationality" so appealed to the late nineteenth and early twentieth century mind that, especially in England, the law took on many of the qualities of religion, a faith in which lawyers, judges and jurists took a leading role.

Faith and belief in the law and its beneficence were, like the language of religion, evoked by jurist after jurist.....Jurists held themselves out as defenders of the faith, encouraging respect for law and order. Above

¹³⁸ Sugarman, "Legal Theory", *supra*, note 73 at 40. Peter Fitzpatrick notes that customary law, in which the common law claimed to be rooted, was in fact transformed by the Enlightenment notion of rationality. Custom became "that which was denied."

"From being a vital foundation of law, custom becomes a peripheral, contained and decadent category. It becomes identified with that which remains, for the time being at least, outside of the inexorable reason of Enlightenment and outside the universal truth of humanity. For Aquinas, custom was 'as much motivated by the reasoned will' as statute, yet it comes to be seen as operating without reason and reflection. Increasingly, it is confined to the marginal and the interstitial and to the reduced remnants of the 'small-scale' peasant community." Peter Fitzpatrick, "Imperialism and Law in the Experience of Enlightenment" in Anthony Carty, ed., Post-Modern Law: Enlightenment, Revolution and the Death of Man (Edinburgh: Edinburgh University Press, 1990) 90 at 92, quoting J.B. Morrall Political Thought in Medieval Times (Toronto, University of Toronto Press, 1970) at 75.

all, they proclaimed and solemnized the miraculous attainments of the high priests of the law, the judges. In this sense, university law schools were akin to seminaries, socializing future generations in the values of the legal community, systematizing canonical beliefs which bound the sect, but rarely challenging its foundations. They consecrated its genius in the manner that was representative of the orations of the profession: 'To Our Lady of the Common Law.' Thus Pollock invoked the 'brotherhood that subsists between all true followers of the Common Law'.

In these ways, the classical jurists were 'organic intellectuals' whose words, symbols and rituals helped to produce certain beliefs and values about law and society. From this perspective, the law was a 'civil religion'.¹⁴⁰

Peter Fitzpatrick has demonstrated convincingly that the imperialism of the late nineteenth century, far from being an aberration, was in fact the logical and inevitable product of the Enlightenment.¹⁴¹ It was a small step from a belief in the common law as rationality incarnate and the foundation for the "rule of law" to the use of those notions as justifications for a colonial policy. If the common law was a guarantor of personal freedom, then imposing it on a foreign population could not logically be oppressive and must necessarily be liberating. The imposition of the "rule of law" was perceived as freeing colonial populations from the oppression of petty tyrants.¹⁴² In its rationality and scientific approach, the common law released natives from the misery of superstition and myth.

At the same time, reverence for the common law and for the freedoms it represented led to an association of the Anglo-Saxon

¹⁴⁰ Sugarman, "Legal Theory", supra, note 76 at 40.

¹⁴¹ Fitzpatrick, supra, note 138 at 90-106.

¹⁴² Sugarman, "Disorder", supra, note 76 at 57.

race with a unique respect for law and order.¹⁴³ It was commonplace to trace "genetic preferences for freedom and individual rights, from the Teutonic forests via the village communities of Anglo-Saxon England to America."¹⁴⁴ Notions of racial superiority and eugenics were not far behind.

It has been suggested that both the systematization of law and the liberal ideology which accompanied it were designed for the benefit of emergent capitalism.¹⁴⁵ Whether or not this is the case, it is clear that an ideology which stresses the freedoms enjoyed by every individual and which assumes that the rich and powerful are in no different position than the poorest and least powerful would tend to benefit those at the top of the ladder of success.¹⁴⁶ Moreover, it makes sense that a legal system which perceives its function as assisting "progress" and which sees business as the primary engine of that progress, would tend to support the efforts of business. Auerbach takes the view that the leaders of the legal profession in the United States were corporate lawyers whose clients' priorities "shaped professional education, career patterns, ethics, mobility, and the availability and

¹⁴³ Ibid. at 57.

¹⁴⁴ Ibid. at 57. An example of this effort can be found in Bryce, supra, note 123.

¹⁴⁵ R. Kent Newmyer, "Harvard Law School, New England legal Culture, and the Antebellum Origins of American Jurisprudence" (Paper presented at "Groups, Rights, and the American Constitution", Conference of the Centre for American Studies, University of Western Ontario, May 6-8, 1987) [unpublished].

¹⁴⁶ Gordon, supra, note 88 at 92.

distribution of legal services -- indeed, the very meaning of law and justice."¹⁴⁷

Liberal legal science was a conservative philosophy in that it perceived the status quo as fundamentally sound. It was not interested in basic changes and believed that "in so far as a better world is possible, it would not fundamentally differ from the present."¹⁴⁸ The function of the courts was not to change the rules, but to act as a disinterested referee in the contest for wealth and happiness. Intervention was only legitimate when one party broke the rules by invading another party's private zone of autonomy. The realities of poverty and wealth were denied by being ignored in a philosophy which pronounced that "each person was handed at birth the same standard package of rights, defining the same standard autonomous area of free movement..."¹⁴⁹ To the extent that the courts were able to guarantee each individual's freedom, domination and oppression, by definition, disappeared.

If in liberal legal scholarship, the present was bright, the future looked even brighter. The use of scientific principles would allow the courts to continuously improve their arbitration of the boundaries between the zones of autonomy enjoyed by each individual.

The progressive discovery of the underlying principles of the social order would provide the means for its neutral,

¹⁴⁷ Jerold S. Auerbach, Unequal Justice: Lawyers and Social Change in America (New York: Oxford University Press, 1976) at 21.

¹⁴⁸ Sugarman, "Disorder", supra, note 76 at 35.

¹⁴⁹ Gordon, supra, note 88 at 93.

disinterested management in everyone's interest so that conflict (between, for example, capital and labor) would seem pointless and illicit and domination would become impossible.¹⁵⁰

Liberalism was fundamentally optimistic. Science and technology were positive forces which could only result in "progress." Society was becoming wealthier, fairer, and more free. The future would be better than the present just as the present was better than the past. The law, using principles discovered by legal science, would be able to assist society in its development by ensuring that each person would have the freedom to reach his or her potential unhampered by the vestiges of the pre-modern, irrational past and by any interference with his or her freedom by other individuals.¹⁵¹

Liberal ideology, especially in Britain, also incorporated a materialist perspective which held that "it was the law of the land, and not metaphysics, which embodied the principal criterion of justice."¹⁵² This perspective was strengthened by the attempt of legal educators to study "law as it is" rather than "law as it ought to be." In an attempt to be 'scientific', legal education

¹⁵⁰ Ibid. at 93.

¹⁵¹ Robert Gordon, "Critical Legal Histories" (1984) 36 Stanford Law Review 57 at 57-64 discusses the prevailing view in legal circles which he describes as "evolutionary-functionalism." The view, which he sees as having dominated law for about 150 years, holds that society is developing along an objective, determined, social evolutionary path along the lines of liberal capitalism and that, although law and society are separate, they are causally linked so that the legal system has been assisting society with its development by adapting to its changing needs.

¹⁵² Sugarman, "Disorder", supra, note 76 at 48.

was divorced from 'policy' decisions or 'political' judgments. And because the law was 'scientific', it also came to be separated from morality. The law existed to ensure the right of every individual to enjoy maximum freedom within his/her zone of autonomy. It was not supposed to impose moral standards within that zone.

Ethical values were increasingly located in the private sphere of the family. They were alien to economic, political and legal questions and to the everyday world of the workplace."¹⁵³

The shift from a judicial emphasis on the best interests of society and the need to reinforce societal norms and morality to a judicial philosophy which emphasized boundary definition, had implications for legal advocacy. The former approach meshed with a view of the lawyer as an agent of society as well as an advocate for his client. Adopting this perspective, Sir John A. Boyd, the Chancellor of Ontario, told law students at Osgoode Hall in 1905:

Every man when he advocates a case in which morality is concerned has an influence upon his hearers which arises from the belief that he shares the moral sentiments of all mankind...If he mix up his character as an advocate with his character as a moral agent, using his moral influence for the advocate's purpose, he acts immorally...The lawyer must look upon his profession like every other endowment and profession, as an instrument which he must use for the purpose of morality. To act rightly is his proper object: to succeed as an advocate is a proper object only in so far as it is consistent with the former.¹⁵⁴

In this philosophy of advocacy, the interests of society and those of the client were fundamentally harmonious. When they seem

¹⁵³ Ibid. at 49.

¹⁵⁴ Sir John A. Boyd, "Legal Ethics" (1905) 4 Canadian Law Review 85 at 94.

to be at odds,

...it is usually because the individual does not know what is good for him. The client, as we have seen, is often ignorant. Authority passes to the professional, who must give him what he needs, rather than what he wants. The client, unlike the customer, is not always right.¹⁵⁵

From this perspective, the advocate's role is not to defeat the opposition but to assist the court to arrive at a proper conclusion.¹⁵⁶

A liberal viewpoint would logically replace the interests of society with those of the client, as defined by the client. Rather than seeing the client's interests as synonymous with society's values and goals, a liberal would be concerned that the client's zone of autonomy was being threatened by society. Far from serving as an agent of society in trying to convince the client to give up his misguided individualism, the lawyer becomes the agent of that individualism, defending it against all assailants, including society itself. The fact that the advocate may share the "moral sentiments of all mankind" is irrelevant to his or her role and may even interfere with it. Instead of assisting the court to achieve the correct result, the lawyer is to be utterly partisan, bound by no restraining influence except the limits of the law.¹⁵⁷

¹⁵⁵ T.H. Marshall, "The Recent History of Professionalism in Relation to Social Structure and Social Policy" (1939) 5 The Canadian Journal of Economics and Political Science 325 at 330.

¹⁵⁶ Trueman, supra, note 18 at 103.

¹⁵⁷ See William H. Simon, "The Ideology of Advocacy: Procedural Justice and Professional Ethics" (1978) 29 Wisconsin Law Review 29 at 39-42.

RETURN TO WESTERN CANADA

There are a number of striking parallels between developments in England and the United States and in Western Canada. The cultural milieu of the prairies, more than any other region of Canada, closely resembled that of the United States. In particular, the West had developed a powerful myth of equality and individualism which was fundamental to its culture. Moreover, like the United States, it had suffered attacks on its prevailing ideology more serious than anywhere else in the country. Capitalism, private property and individualism were being assaulted by a variety of social movements, some more radical than anywhere else in North America. Western Canada's belief in British-Canadian cultural values was being undermined by new immigrants from foreign lands who observed alien customs and spoke strange tongues. Tradition, as a source of ideological and cultural authority, had virtually disappeared in the new world of the prairies. Sir James Aikins offered to the legal profession and to society at large the promise of a new order based on science and expertise. Evidence suggests that the Canadian West was more than receptive to such an idea.

Like Americans, Canadians were increasingly enamoured of the scientific method in the early years of the twentieth century. One observer describes the inter-war years as "an era in which faith in

science and expertise had reached unprecedented if not mystical proportions."¹⁵⁸ In a matter as fundamental as religion, many Canadians had already adopted a rational and scientific view at the time of Aikins' speech. The social gospel, which achieved its greatest influence in the Protestant churches which dominated religious life on the prairies,¹⁵⁹ disavowed the supernatural in favour of a more materialistic perspective.¹⁶⁰ This new faith found authority in the social sciences. Methodist theologian Salem Bland of Winnipeg's Wesley College declared that, "Religion is becoming primarily sociological, which is a good deal better than if it should be regarded as primarily ecclesiastical or even theological."¹⁶¹ Rev. Dwight Chown, General Superintendent of the Methodist Church of Canada, stated confidently, "The perfect sociology, perfectly applied, will realize the Kingdom of God on

¹⁵⁸ Paul Axelrod, Making a Middle Class: Student Life in English Canada During the Thirties (Montreal & Kingston: McGill-Queen's University Press, 1990) at 66.

¹⁵⁹ Friesen, supra, note 2 at 351.

¹⁶⁰ "It is apparent, therefore, that what was unacceptable to progressive proponents of modern culture was not the whole of the Christian belief system, but rather the supernatural sanction and the traditional theological system that gave Christianity its meaning. Religion and culture, the sacred and the secular, were thus identified as one."

Ramsay Cook, The Regenerators: Social Criticism in Late Victorian English Canada (Toronto: University of Toronto Press, 1985) at 45.

¹⁶¹ Salem Bland, Address to Queen's University Theological Conference, in Richard Allen, Salem Bland and the Social Gospel, (M.A. Thesis, University of Saskatchewan, 1961) at 52 quoted in ibid. at 225.

Earth."¹⁶²

Other social movements were also taken with scientific methodology and the promise it held for social progress. For example, David Laycock claims that Western Canadian populists were "attracted by the apparently scientific, conflict-resolving, and abundance producing elements of technocratic thought."¹⁶³ Like reformers in the United States, who "looked hopefully forward to a world made better by rational planning, education, proper procedures, continuous enforcement, and 'ethics' infusing the interstices of everyday life,"¹⁶⁴ Western Canadian reformers believed in the power of technocracy and 'scientific' administration to solve the problems of society.¹⁶⁵

The legal science which had prevailed in university law schools in England and the United States was tailor-made for the difficulties and challenges faced by the legal profession in Western Canada after World War I. If the primary threat to the traditional status of the legal profession was posed by a growing belief in technology and science, it was only a natural reaction

¹⁶² United Church Archives, S.D. Chown Papers 11, File 51, "The Relation of Sociology to the Kingdom of Heaven" in Cook, *ibid.* at 195.

¹⁶³ Laycock, *supra*, note 10 at 10.

¹⁶⁴ Pue, *supra*, note 9 at 16-17.

¹⁶⁵ Laycock, *supra*, note 10 at 52-54. See in this regard Mariana Valverde, The Age of Light, Soap and Water: Moral Reform in English Canada, 1885-1925 (Toronto: McClelland & Stewart Inc., 1991) who notes that the very influential moral reform movement of the late nineteenth and early twentieth centuries was an amalgamation of what we would now call "social sciences" with moral or religious messages.

for lawyers to buttress their position by accommodating reformist values. By declaring that the properly trained legal professional "grasped the concept behind a functional activity, allowing him both to perceive and to predict those inconspicuous or unseen variables which determined an entire system of development,"¹⁶⁶ lawyers could portray themselves as masters of legal science. If the reformist voices in the Progressive and United Farmers movements demanded the scientific administration of society, the legal profession could offer a ready-made scientific approach to the administration of law.

It is clear that the scientific study of law as a requirement for the practice of law could do much to certify the scientific nature of the legal profession in Western Canada or, contrarily, to undermine a portrayal of the profession as modern and technologically advanced. While the history of legal education in Western Canada remains largely unexplored, it appears that the profession recognized its importance and adopted an approach which would have been perceived as strengthening its claim to scientific knowledge.

By 1920, two rival models of legal education existed in Canada from which the profession could choose. A systematic but practical approach had been entrenched by the influential Law Society of Upper Canada through the Osgoode Hall Law School since 1889, while the law school established at Dalhousie University in 1883 offered

¹⁶⁶ Bledstein, supra, note 59 at 88-89.

a more academic environment for legal education.¹⁶⁷ Significantly, the practitioners' school approach was abandoned in both Alberta and Saskatchewan in favour of the Dalhousie model: a full-time period of study in a university setting prior to articling.¹⁶⁸ A practitioners model was initially adopted in Manitoba; while the Manitoba Law School was jointly sponsored by the Law Society and the University of Manitoba, allowing its graduates to obtain a university degree,¹⁶⁹ its courses were not offered as a substitute for articles until 1921. However, although it eventually returned to a model more closely resembling Osgoode Hall than Dalhousie, between 1921 and 1928 it became the first school in Canada to adopt the model curriculum proposed by the Canadian Bar Association and in 1926 and 1927 was rated the best law school in Canada by the Carnegie Foundation's "Annual Review of Legal Education."¹⁷⁰

The role of the Canadian Bar Association, dominated by Western Canadian lawyers, in encouraging the development of legal education throughout the country should also be noted. It produced a model curriculum in 1920 and the Canadian Bar Review served as a medium for exchanges between law schools which laid "the basis for a

¹⁶⁷ McLaren, supra, note 81 at 120-123.

¹⁶⁸ Ibid. at 123. For a detailed account of legal education in Alberta during the first decades of the twentieth century, see Peter M. Sibenik, "Doorkeepers: Legal Education in the Territories and Alberta, 1885-1928" (1990) 13 Dalhousie Law Journal 419. See also W. H. McConnell, Prairie Justice (Calgary, Burroughs & Company, 1980) at 104.

¹⁶⁹ McLaren, ibid. at 123 and Gibson and Gibson, supra, note 34 at 216-217.

¹⁷⁰ Gibson and Gibson, ibid. at 248-249.

scholarly tradition in legal writing in Canada".¹⁷¹

It is difficult without further research to evaluate the extent to which "legal science" was a factor in the education of young lawyers in the West in the early years of the century. Undoubtedly the association of the law schools with universities in all three prairie provinces had some role in bolstering the profession's claim to a unique knowledge based on a scientific study of their subject area. There is also little doubt that the influence of legal scholarship in both Britain and the United States was felt in legal education in the prairies as in the rest of Canada, if nothing else than through the presence of legal academics who had graduated from Harvard and other prominent schools.¹⁷² However, to what extent this was the case is difficult to say without further study.

Nevertheless, it is clear that the identification of 'reason' with the common law was not confined to Britain or the United States. In Canada, where English case law was still authoritative and the Judicial Committee of the Privy Council was the final court of appeal, the common law was praised by one Winnipeg lawyer as "the perfection of reason." This practitioner went so far as to assert that

¹⁷¹ McLaren, *ibid.*, at 124-125.

¹⁷² *Ibid.* at 125. Sibenik, *supra*, note 168 at 460-462 notes that Henry M. Tory, president of the University of Alberta from 1908 to 1928, had a close friendship with Harvard Law Dean Roscoe Pound and that the law school in the 1920s was based on the Harvard model. Alberta's law school adopted a case method of instruction, using leading English and American cases.

...what is not founded on reason has and can have no place in English law. It is here that lawyers make a distinction between law as a philosophic system and the judgments of the Courts when they fail to be grounded on ultimate logic. The true lawyer as a true son of his profession, never, no matter what happens, forgets the fundamental principle of English jurisprudence contained in the orthodox doctrine of judicial infallibility. In so far as judgments fail to give effect to true reason they are wholly of no account as statements of the law no matter how binding and awkward for the time being they may be. They must and eventually do go into the limbo of forgotten and repudiated things along, say, with many of Lord Chancellor Brougham's judgments. For there are domains of law where its perfect fruit has been gathered beyond the reach of ill-digested learning or crude and crass thinking. Of such is the English law of partnership worked out by the master minds of the English Bench in a period of hardly one hundred years and now codified in the Partnership Act. To consider that piece of workmanship and to perceive its grasp of sound and balanced principles and to realize the far-reaching provision it makes for well-nigh every conceivable case is to comprehend the claim that the Common Law is the highest product of human wisdom.¹⁷³

Such a view of the common law, while powerfully establishing the validity of the law's scientific and rational credentials, would have the additional effect of reinforcing the cultural dominance of British-Canadians over the waves of 'foreign' immigrants ethnic groups flooding into the West. Members of the legal profession, as servants of the common law, were firmly placed within the ranks of the increasingly aggressive assimilationist voices of British-Canadians. If the fear was that the culture of Southeastern Europe would be "transplanted and perpetuated on our virgin soil",¹⁷⁴ a claim that "the Common Law is the highest

¹⁷³ Trueman, supra, note 18 at 92-93.

¹⁷⁴ Brown and Cook, supra, note 6 at 67, quoting J.W. Sparling, "Introduction" in J.S. Woodsworth, Strangers Within Our Gates (Toronto, 1909). Sparling was the Principal of Wesley College, a

product of human wisdom" would more than justify a demand that immigrants adopt "Canadian" values, beliefs and customs and abide by "Canadian" laws.¹⁷⁵

The fact that Sir James Aikins identified the legal profession with the defence of liberty was not coincidental. For Aikins, liberalism and the law were inextricably linked. This is made clear in his approving quotation of Gladstone:

"Law is the venerable emblem of the union of mankind. Its personal agents are hardly less important to the general welfare of society than its prescriptions, for neither statute nor Parliament nor press is more essential to liberty than an absolutely free spoken Bar."¹⁷⁶

Aikins also linked liberalism with capitalism when he identified "freedom to contract and freedom to hold property"¹⁷⁷ as the key liberties which the law was obliged to protect. Obviously for Aikins, a millionaire capitalist himself, liberty and industrial capitalism went hand in hand.

That Aikins was not alone in his view can be seen from the comments of other lawyers in the period. W.J. McWhinney, K.C. used his Presidential Address to the Ontario Bar Association in 1916 to

Methodist school associated with the University of Manitoba in Winnipeg.

¹⁷⁵ Friesen, supra, note 2 at 345-346, outlines the blatantly assimilationist and British-Canadian imperialist environment of the school-room. He notes the increasingly authoritarian attempts to force school attendance during the war years but believes that "despite the coincidence, the war should not be seen as the occasion for the new educational regulations rather than the cause of their imposition." Ibid. at 347.

¹⁷⁶ Ibid. at 543.

¹⁷⁷ Ibid. at 543.

underline the link between law and commerce.

"This is a business age, and business exigencies prevail, and in the main our Judges and lawyers are business men as distinguished from legal technical controversialists, and are expected to know and apply business principles in preference to merely establishing precedents.¹⁷⁸

W.H. Trueman, a Winnipeg lawyer, expressed a similar view in 1917:

All that commerce has of security it derives from the law. Step by step, there has been laid down for it by the great sages of the profession the stones of foundation principles that define and safeguard its rights. Upon them has been built up the great fabric of credit and mutual confidence that has brought the vast world of commerce into being.¹⁷⁹

Some lawyers were so sympathetic to business interests that they were prepared to denounce lawyers whose practice encouraged injured workers to sue large corporations for damages.¹⁸⁰ In an

¹⁷⁸ W.J. McWhinney, K.C., (Presidential Address) "Ontario Bar Association" (1916) 52 Canadian Law Journal, 1 at 6.

¹⁷⁹ Trueman, supra, note 18 at 103.

¹⁸⁰ "In most places where there are large factories, electric railways and similar undertakings, involving great personal risk, there are always a certain number of lawyers who appear on the scene in company with the ambulance or the coroner. Men, not lawyers, have to my knowledge been employed by legal vultures, and have received a commission to bring in the body dead or alive. Retainers are promptly obtained, and actions are brought again and again, on purely speculative grounds. Relying on the sympathy of a jury, defendants are put to heavy costs, with no chance of getting a dollar from the plaintiff, and with many chances in favour of a substantial judgment against them, particularly in actions against large corporations."

E.F.B. Johnson, "The Honour of the Profession" (1915) 51 Canadian Law Journal 178 at 184, quoted in W. Wesley Pue,

environment where lawyers increasingly saw their interests as identified with that of the business community, a 'legal science' which entrenched an individualistic liberal ideology would have been more than favourably received.

The U.S. model of the profession suggested by Aikins was also consonant with a liberal, middle-class ideology. With such a model Aikins was addressing the concerns of the democratic and populist movements in Western Canadian society. His model was built on the premise that expertise was needed to ensure the most efficient solution to every problem in society. Because the legal profession could claim superiority in its area of expertise, it did not need to rely on tradition or governmental fiat to justify its position in society. A lawyer's authority was generated by what he did, rather than by who he was.

Following logically from a profession's claim to unique expertise was the introduction of meritocratic admission standards for the profession. A profession could hardly claim to offer the best possible service and simultaneously close its doors to the ablest candidates. A meritocratic approach had the added advantage of being consistent with the egalitarian elements of populist rhetoric. By pointing to examples of those who had risen from lower social classes to enter the practice of law, the profession was able to appeal to the ideology of the middle class and to

"Becoming 'Ethical': Lawyers' Professional Ethics in Early Twentieth Century Canada" in Dale Gibson and W. Wesley Pue, eds., Glimpses of Canadian Legal History (Winnipeg: Legal Research Institute of the University of Manitoba, 1991) 237 at 257.

provide an outlet for the ambitious Western Canadian spirit. This opportunity was extended to some groups of ethnic immigrants as well, although other ethnic groups (aboriginals, Jews, orientals and others) and women either continued to face substantial obstacles or were absolutely barred entry into the profession.¹⁸¹

The redesigned legal profession described by Aikins in 1919 was intended to reinforce and augment the profession's prestige in the face of those individualistic elements in the culture of Western Canada.¹⁸² It did so by simultaneously endorsing liberal individualism and maintaining the power of the lawyer over his clients. The key ingredient which mediated the contradiction was science. Without denying that each person was the best judge of his or her own best interests, the lawyer could justify his authority over a client by claiming a scientific knowledge of which the client was unaware. Given the lawyer's superior education and expertise, the client could hardly prefer his or her own

¹⁸¹ Valverde, supra, note 165 at 110 refers to J.S. Woodsworth's list of ethnic groups "in descending metaphysical order" as set out in Strangers Within Our Gates (1909). This list, which Valverde claims was "part of the dominant culture of the time," grants top place to immigrants from Great Britain, followed by immigrants from the United States, Scandinavia, Germans and French. Then follow groups from Austria-Hungary, the Balkan states, Jews, Italians, "the Levantine races" (Greeks, Turks, Armenians, Syrians and Persians), orientals, Negros and East Indians.

¹⁸² This is not to suggest that prairie culture was solely or even primarily based on liberal individualism. A variety of philosophies and ideologies coexisted in the culture and even within individuals. Examples of more communitarian approaches to political and economic thought are the cooperative movement, the Wheat Pools, the One Big Union and the Cooperative Commonwealth Federation. For a good discussion of these social movements, see David Laycock, supra, note 10.

unscientific choices over the advise of a professional. Science thus enabled the prestige of the professional to coexist with the belief that the individual was acting in perfect freedom.

Securely anchored by its position as the administrator of 'legal science', claiming to be open to all meritorious candidates, the legal profession proclaimed its relevance to society and especially to the business community. However, determined to extinguish every possible threat, Aikins intended to further secure the position of the legal profession by addressing himself to ethical concerns.

Having made a personal fortune while practising law, Sir James Aikins was keenly aware of criticisms that lawyers were primarily concerned with earning money. Aikins denied that the practice of law was fueled by greed. In his mind, "the key feature which distinguished the profession of law from a mere 'craft' was...the professional's principled rejection of the profit motive."¹⁸³ Moreover, as far as Aikins was concerned, the vast majority of lawyers were above reproach in this matter.

Few indeed have spent energy and time and money in preparation for admission to the legal profession and have entered it with the primary object of thereby making money. Those who have done so have shewn at the outset lack of judgment and good taste, both essentials of true professional success. It is not a calling or instrumentality suited to that purpose as is the business of the merchant, manufacturer or miner.¹⁸⁴

¹⁸³ Pue, supra, note 180 at 9.

¹⁸⁴ Sir James Aikins, "The Advancement of the Science of Jurisprudence in Canada" (C.B.A. Presidential Address)(1919) 51 Canadian Law Journal 161 at 162 in ibid. at 9-10.

However, to ensure that this high moral tone of the profession was maintained, Aikins proposed two solutions -- better training for entrants to the profession and a Canon of Ethics.

For Aikins, much of the blame for unprofessional and immoral conduct among lawyers had to be directed at an incomplete legal education.

The administration of justice has always touched the nadir of its decline when the profession has been lowest in morals and least educated. In such times there has been a tendency on the part of practitioners to regard the work of the Bar as a trade and not a profession, a thing to be bartered and not a national service to be sought after; then also is found the pettifogger, the ambulance chaser, the fabricator of evidence and the trickster, and the man who is alien to the professional spirit and its traditions, destitute of gentlemanly instincts, disrespectful of his seniors and a slanderer of judges. Students at law should know the ethics of the Bar."¹⁸⁵

In Aikins' mind, it was necessary to train students to have "the right spirit as well as the trained mind."¹⁸⁶ He was seeking men of 'character' and looking to legal education as the means by which they would be created.¹⁸⁷

¹⁸⁵ Aikins, supra, note 35 at 545.

¹⁸⁶ Ibid. at 545.

¹⁸⁷ This emphasis on creating character fits with what Mariana Valverde, supra, note 165 describes as the influential "moral purity" movement of the late nineteenth and early twentieth centuries in Canada. Moral reformers sought to build a nation in part by building the character of its citizens. Valverde at page 27 describes the dominant view of "character" as follows:

An individual without character...was a miniature mob: disorganized, immoral and unhealthy as well as an inefficient member of the collectivity. Character was not to be acquired bureaucratically, by learning information or following rules...It involved learning to lead a morally and physically pure life, not only for the sake of individual health and salvation but for the sake of the nation.

Aikins proposed that the effort to train students in legal ethics be buttressed by an ethical code. In this, Aikins was opposed by some elements of the profession, notably Justice William Renwick Riddell of the Supreme Court of Ontario. Justice Riddell did not approve of the attempt to codify legal ethics for a number of reasons.¹⁸⁸ One reason was that legal ethics were not codifiable.

...there is and can be nothing in the practice of law inconsistent with the highest type of scholar, gentleman and Christian. With that as text, all else follows - the lawyer, a gentleman, will act as such, he will treat all, whether professional brethren or laymen, as he would be treated in like case - that, it seems to me, is the whole of the law and the prophets...¹⁸⁹

Riddell's was, however, a minority voice in the debate. He expressed a paternalistic vision of a profession whose trustworthiness and commitment to the collective good could be taken for granted.¹⁹⁰ The future belonged to Aikins and others who responded to the democratic and populist urgings of Western Canada by providing authoritative proof of the ethical nature of the profession in the form of written, organized and numbered canons of ethical conduct.

The extent to which either the traditional, 'gentlemanly' approach or the more adversarial, 'liberal' approach to advocacy were present in Western Canada has yet to be fully investigated.

¹⁸⁸ Justice William Renwick Riddell, "A Code of Legal Ethics" (1919) 39 The Canadian Law Times 620.

¹⁸⁹ Ibid. at 623.

¹⁹⁰ Pue, supra, note 180 at 22.

Given the dominance of a liberal ideology within the profession, one would expect that an adversarial approach, stressing the rights of the individual client over the interests of society, would be dominant. Yet the Canons of Legal Ethics approved by the C.B.A. in 1920 and adopted by the Law Society of Manitoba in 1921, only partially incorporated a 'liberal' approach to advocacy, while leaning heavily towards the traditional view. On the one hand, the Canons stressed that the lawyer was entitled to take on the defence of an accused person "regardless of his own personal opinion as to the guilt of the accused" and was to "discharge his duty to his client with firmness and without fear of judicial disfavour or public unpopularity."¹⁹¹ On the other hand, not only was he bound in his representation by "the bounds of the law" but he was restricted to "fair and honourable means" in the pursuit of his client's goals. He was to treat the court with "candor and fairness" and was not to "offer evidence which he knows the Court should not admit". He was to treat adverse litigants and witnesses fairly and other counsel with "courtesy and good faith". He was to avoid "unseemly wrangling" and was not to "take paltry advantage when his opponent has made a slip or overlooked some technical matter." In short, he was to "maintain the high traditions of his

¹⁹¹ Canons of Legal Ethics, approved by the Canadian Bar Association, Ottawa, September 2, 1920. The Canons are divided into five sections, outlining the lawyers duties "To the State", "To the Court", "To the Client", "To His Fellow Lawyer" and "To Himself". Each section sets out several rules. The whole document is only four pages in length.

profession by being in fact as well as in name a gentleman."¹⁹²

The Canons reflect the dilemma faced by Aikins and the legal profession generally. The profession had tied its fortunes to that of capitalism through a legal ideology which emphasized individualistic freedoms and which began with the premise that everyone was equal in law, no matter how unequal they might be in fact. It wished to secure the connection between the law and liberalism and did so by underlining the practical nature of the profession and the law it served. Simultaneously, however, the profession wished to cultivate an image of trust-worthiness, competence and respectability. Aikins' ideal lawyer was therefore a contradictory creature.

[He] was a useful "man" of the world who exhibited pristine personal ethics while engaged in "vigorous participation in affairs" and the "robust work of the world." "He" was to be a practical individual whose function and role could be justified on the starkly utilitarian terms required of early twentieth century North American democracy while simultaneously embodying the contrary ideas of professional distance and public service. All things to all persons, the lawyer was portrayed as faithfully serving public interests while respecting public good, integrating the demands of individual liberty with the impulses of democracy, working actively in commerce while resisting the taint of commercialization, serving at once "the people", commerce, and the state while remaining untarnished by overly close identification with any of these.¹⁹³

¹⁹² While informative, the Canons do not provide a very complete picture of the approach taken in advocacy by lawyers in everyday practice. Such an investigation would be fruitful and helpful in constructing a picture of the professional culture in Western Canada.

¹⁹³ Pue, supra, note 180 at 10.

CONCLUSION

The extraordinary address of Sir James Aikins to the C.B.A. in 1919 provides the observer with a revealing glimpse of the culture of the legal profession mid-way between the turn of the century and the Second World War. It was a culture in transition. Where its position in the British-Canadian, liberal and capitalistic society had previously been taken for granted, that position, like the society itself, was now under assault. The emergent democratic impulses of the western plains demanded more than lip service. A culture suspicious of elites demanded that the position of the profession be justified by criteria other than tradition. Lawyers' status and wealth were going to have to be earned by proof of superior expertise and ethical conduct, not granted them by legislative fiat.

At the same time, the values of the broader culture of which the profession was a part were under attack. British-Canadian institutions were threatened by waves of immigrants who would soon outnumber those of British origin.¹⁹⁴ These 'foreigners' had no particular reason to love and admire Anglo-Saxon traditions and practices and, in keeping with an ideology of equality, were not prepared to grant them unquestioned authority. Like the legal profession, the British-Canadian cultural elite would have to earn

¹⁹⁴ Friesen, supra, note 2 at 272, reports that by 1940 one-half of prairie residents "acknowledged paternal origins other than British..."

its position of dominance by demonstrating the superiority of their culture and institutions.

The capitalist ideology, taken for granted at the turn of the century, was most immediately threatened (at least in the minds of its defenders) by collectivist and socialist politics and by labour unrest. It too required ideological support.

Aikins' vision, expressed in the turmoil of 1919, offered a solution for all of these embattled cultural stakes. Capitalism, despite obvious inequities, was the best system for the achievement of progress and prosperity because it was based on individual freedom. That freedom was guaranteed by a liberal legal ideology which rested on the twin foundations of 'legal science' and the 'rule of law.' The superiority of liberty, freedom and the 'rule of law', discovered and systematized by 'legal science' served as proof of the superiority of the English common law and the British system of justice, if not the genetic superiority of the Anglo-Saxon race. 'Legal science' also served as the foundation for the legal profession's claim of superior expertise which, together with its newly codified ethical standards and utility in everyday life, served to justify its status in Western Canadian society.

MENNONITE CULTURE VS.

THE CULTURE OF THE LEGAL PROFESSION

In Part II of this thesis the lives of seven Mennonite lawyers will be examined. None of them remained within the Mennonite community after entering the practice of law. It is my contention that they were in fact unable to integrate their professional lives with the culture in which they were raised. The reason for their failure to do so was that Mennonite culture and the culture of the legal profession in Western Canada, at least prior to the Second World War, were essentially irreconcilable.

In the previous analysis of Mennonite culture and the legal profession's culture some of the incompatibilities between the two cultures have become obvious. Perhaps the most identifiable point of incompatibility is the view each held concerning the role of the State. Anabaptist theology and Mennonite tradition had placed great emphasis upon the doctrine of non-resistance and the separation of Church and State. While granting that the State's use of violence was legitimate, Anabaptists believed that the true follower of Christ was unable to participate in the coercive behaviour characteristic of temporal authority. They saw the State as a fallen, albeit necessary, institution within which a Christian could play no role. They even went so far as to suggest that the State had no legitimate role to play within the context of the Christian community.

In subsequent centuries this position was modified (some might say perverted), but the Mennonites of Manitoba retained two key elements of this theological doctrine. One was the belief that the Christian could not engage in violence. The other was that the further the distance between the government and a Mennonite's everyday life, the better. There was a fundamental distrust within the Mennonite community of the State and its institutions.

One Manitoba Mennonite lawyer's son claims that his father was told that the law was an illegitimate occupation for a Mennonite because Mennonites told the truth and did not commit crimes and therefore had no need of lawyers.¹ This sort of logic may appear naive, but closer examination reveals more than a grain of truth. The law is fundamentally coercive. Even the most routine legal activity (drafting a will, a land transaction) has at its root the threat of force. If a court order is not observed, a contract is not honoured, the state can and does act in a coercive manner toward the offender. It may force the person to perform certain actions, force the person to pay money, or it may put the person in jail. If this is recognized, the lawyer's participation in the legal transaction makes him or her a party to the coercion inherent in the legal system. Participation in this system would therefore require the repudiation of the pacifist

¹. Letter from Harold Buhr, Abraham Buhr's son, November 24, 1990.

doctrine espoused by Mennonites.

There is, in addition, the issue of the lawyer's participation in the life of the larger society. Mennonites had grown accustomed in Russia to a physical distance, as well as a cultural and spiritual separation, from the larger culture. The Mennonites who came to Manitoba left Russia in part (and perhaps primarily) because of the threat of assimilation into the larger Russian society. They chose Manitoba over the United States because of the better guarantees offered by Canada for a separated culture. An ideal existence for most of the Mennonites who came to Manitoba would have been to live entirely separated from the rest of society. Failing that, they wished to make non-Mennonite society irrelevant in their everyday lives.

The legal profession, by contrast, saw its existence as integrally linked to the survival and prosperity of the dominant Western Canadian culture. Lawyers were deeply involved in the larger society as the practitioners of the law, which formed one of that society's central institutions. Moreover, they emphasized their relevance (and the relevance of the law) to that larger culture, stressing the utility and efficacy of the law in dealing with Western Canada's problems and in achieving its goals. Their very survival as a profession demanded that this link be secured within the structures and thinking of the broader society.

Another obstacle to the integration of Mennonite and the

legal profession's culture which appears obvious is the ethnic tension between the dominant British Canadian culture and the Mennonites. As has been observed, the legal profession's culture developed between 1870 and 1940 in a way which helped to protect the institutions and values of the British Canadian culture from attack by the sheer numbers of non-Anglo-Saxon immigrants. One of the ways in which the superiority of the British Canadian culture was established was through the belief in the Common Law as superior to all other systems of justice (with derivative suggestions that Anglo-Saxons were superior to all other ethnic groups). This view placed a great deal of emphasis upon the assimilation of other ethnic groups within the greater culture, dominated by British Canadians. As an ethnic group which resisted these assimilationist pressures, the Mennonite community would have been seen as threatening the dominant culture. As a group which denied the relevance of the Common Law to their lives and which, at least in theory, described it as fundamentally "fallen" and "evil", Mennonites could only have been seen as offensive to the broader culture of which the legal profession was a part.

There was also the matter of Mennonite education. Aside from the fact that the school system was utilized by the dominant culture as a tool of assimilation and as a means of celebrating militaristic and imperialistic British culture, Mennonites viewed education as unnecessary (at best) and

dangerous (at worst). In 1912, only a small minority of Mennonites in Manitoba -- about ten per-cent -- supported higher education.² For the vast majority of Manitoba Mennonites, education was necessary only to the extent that it was useful in farming.

This perspective is obviously at odds with the legal profession's culture, which was increasingly emphasizing academic training as the road to better legal services. However, the difference goes much deeper than the need for a few years of taking notes in a classroom.

Mennonite culture was essentially pre-modern, whereas the legal profession's culture was thoroughly tied to the scientific and technocratic thought characteristic of the modern age. The legal profession's movement toward academic training grew out of an emphasis on legal science, developed in Britain and the United States. Legal science, in turn, was a product of what has been termed the "project of modernity", an attempt to utilize rationality and science in an effort to solve the problems of humanity, including social problems and moral dilemmas.

The development of rational forms of social organization and rational myths of thought promised liberation from the irrationalities of myth, religious superstition, release from the arbitrary use of power as well as from the dark side of our

² Frank H. Epp, Mennonites in Canada 1876-1920: The History of a Separate People (Toronto: Macmillan of Canada, 1974) at 284 notes that the Bergthaler Church amounted to only 1112 "souls" (including unbaptized family members) of a total Mennonite community in southern Manitoba of 13,023.

own human natures. (Emphasis mine)³

The almost religious faith in scientism which developed throughout the Western world in the late nineteenth and early twentieth centuries did not merely espouse the value of science and rationality as useful tools, subject to the moral judgments of humanity. Instead, science and the scientific method were seen as sources of authority in and of themselves, inherently capable of resolving the moral issues facing humanity. Even leading churchmen were so captured by the potential of science that sociology replaced theology as the focus of their interest.

At the same time, scientism was deeply materialistic. Belief in a divine power acting in the world, which had formerly dominated Western thought, was becoming increasingly peripheral in everyday life. Through technology, humans came to exert increasing control over their environment and God was relegated to the purely spiritual. As people became increasingly concerned with material improvements to their lives, the promise of science and rationality to solve the problems of the real world and their success in doing so made the metaphysical even less relevant.

By contrast, Mennonite culture was one for which the metaphysical was foundational. One's fundamental purpose in

³ David Harvey, The Condition of Postmodernity: An Inquiry into the Origins of Cultural Change (Oxford: Basil Blackwell, 1989) in W. Wesley Pue, "'Trajectories of Professionalism?': Legal Professionalism After Abel" (1990) 19 Manitoba Law Journal 384 at 407.

life was not to achieve material success, but to discover God and to develop a relationship with Him. Moreover, Anabaptist theology declared that God was found in the Scriptures and in obedience to them, not in reason or higher learning. Mennonite culture was therefore distrusting of rationality. The perspective of Heinrich Balzer, who drew a distinction between Reason and Understanding, and argued that the former was to be subject to the latter, was representative. For Mennonites, reason, logic and science were not seen to be useful in and of themselves. They were not guides for life. They were simply tools which had to be brought under the Lordship of Christ. Indeed, had Mennonites considered the question, they might have considered the Enlightenment idolatrous, for it placed science in the centre of life, a position which only God should occupy.

The irrelevance of the supernatural to society can be seen clearly in the approach taken to legal education in both England and the United States. Both taught law "as it is". "Law as it should be" was "political"; it involved the expression of "value judgments" and the recognition of something metaphysical. Besides, it was not particularly helpful to the actual practice of law. As a result, notes Sugarman, "ethical values were increasingly located in the private sphere of the family. They were alien to economic, political and legal questions and to the everyday world of the

workplace."⁴ A new ideology of advocacy emerged in which lawyers had an "obligation to be blind to the moral implications of their work."⁵

Such a development would have been thoroughly repudiated by Anabaptists. Biblical values and norms were to be applied to every aspect of life. Ethical conduct and morality could not be restricted to one's private life. The moral implications of one's work were critical to one's very claim to be a Christian.

A belief in "progress" grew naturally out of a materialistic and scientific world view. The flurry of scientific discoveries, the visible proof of the successful application of the scientific method to problems of disease, communication and transportation, the demonstrable domination of nature by human ingenuity, gave rise to an enduring belief that scientific progress would only lead to a better world. The law, in applying "legal science" to its own processes, promised to assist in the achievement of "progress" by ensuring that everyone would have the freedom to develop his or her own potential unbound by the shackles of tradition and pre-modern thinking.

For the traditional Mennonite culture of Southern

⁴ David Sugarman, "'A Hatred of Disorder': Legal Science, Liberalism and Imperialism" in Peter Fitzpatrick, ed., Dangerous Supplements: Resistance and Renewal in Jurisprudence (London: Pluto Press, 1991) 34 at 49.

⁵ Ibid. at 49.

Manitoba, "progress" did not have the appeal it did for the modernist culture of the day. If not actually evil, progress was at least seen by Mennonites as potentially dangerous. It threatened the cohesion of their community by introducing notions of acquisitiveness and personal achievement. Mennonite culture had a deeply conservative strain which was fundamentally at odds with liberal legal culture. The latter had confidence that it was on the road to a better world and that it had chosen the best path to achieve it. Mennonites believed they had already achieved the world they wanted. They were suspicious of changes to the status quo.

The fundamental difference between the pre-modern Mennonite culture and the modern culture of the legal profession was also apparent in the Mennonite emphasis on community. One theologian, commenting on a Mennonite understanding of life, notes that for Mennonites,

Human life is primarily communitarian. Human beings are not isolated atoms who can and should live unto themselves; we are members of one another, and human life finds its real fulfilment in the love and trust and mutual support experienced in community."⁶

Mennonites aspired to a *Gemeinschaft*, which was to be characterized by "personal intimacy, emotional depth, moral

⁶ Gordon D. Kaufman, "Mennonites and Professionalism" (Paper delivered at "Professionalism: Faith, Ethics and Christian Identity" Conference, Philadelphia, Pennsylvania, March 1978) at 11-24.

commitment, social cohesion and continuity in time."⁷ **Gemeinschaft** was fostered by mutual assistance and a minimalization of differences based on wealth, ability or success. Individualism was frowned upon. The good of the community, rather than the success of any one individual, was the priority. Service to others, forgiveness, reconciliation and self-sacrifice were valued qualities. **Gemeinschaft** stressed the individual as a whole, rather than any single aspect of his/her character or role within the community.⁸

On the face of it, the legal profession seems to have incorporated certain **Gemeinschaft** elements into its culture. The C.B.A. itself was an attempt to foster a sense of community within the profession. The Code of Ethics and comments by leaders in the profession emphasized the need for a bond of trust to be established between the lawyer and his client. A sense in which duty to the court and to society took priority over personal success suggests self sacrifice.⁹

A closer examination reveals, however, that the legal profession's culture more closely resembled a **Gesellschaft**

⁷ Robert A. Nisbet, The Sociological Tradition (New York: Basic Books, 1966) at 47, quoted in Calvin Redekop, Mennonite Society (Baltimore and London: The Johns Hopkins University Press, 1989) at 129.

⁸ **Gemeinschaft** is "founded on man conceived in his wholeness rather than in one or another of the roles, taken separately, that he may hold in a social order." Redekop, ibid. at 129.

⁹ In an address to the Albany Law School, reprinted in the Canadian Law Times, one lawyer advised, "If your fight cannot be won in the open, let it fail." H. St. George Tucker, "The Lawyer as a Business Man" (1912) 32 Canadian Law Times 513 at 522.

model than a **Gemeinschaft**. **Gesellschaft** is typical of large, modern economic enterprises and is nurtured by an urban environment.¹⁰ It presumes the "basic heterogeneity of all things" and relationships within it are based on only a few or even a single common interest or bond between individuals.¹¹ The wholeness of the individual is ignored in favour of one aspect of his/her character or a single role that person plays in the social order.

This was certainly typical of the lawyer-client relationship, where everything about the lawyer and the client was irrelevant except to the extent that it affected the legal problem they were attempting to solve. However, it was also true about relationships within the legal profession's culture itself, which rested on the foundation of a common occupation rather than the whole of one's lifestyle, values, priorities, and history.

The "vertical vision" incorporated and exemplified by professional culture, the priority placed on personal achievement and achieving one's potential, resulted in a loss of camaraderie, social cohesion and group solidarity.¹² Meritorious admissions, foundational to the legitimacy of the profession within the larger culture, ensured that

¹⁰ Redekop, supra, note 6 at 129.

¹¹ Ibid. at 129.

¹² Burton Bledstein, The Culture of Professionalism: The Middle Class and the Development of Higher Education in America (New York: W.W. Norton & Company Inc., 1976) at 127.

aggressiveness, superior skills, initiative and ambition, rather than submission to the community and self-sacrifice, would be valued qualities within this culture. The very nature of the practice of law, based on regular (in some cases daily) contests which tested one's prowess at aggressive verbal combat, discouraged a close relationship with one's opponents. The artificiality of the representative function, in which an ill-considered word or the revelation of weakness could have disastrous consequences, also discouraged the development of intimacy.

The law which the legal profession administered reinforced these tendencies. Increasingly based on a view of individuals as "active atoms, whirling about other atoms",¹³ it presumed a free zone of autonomous conduct within which the individual was free to act independently, in pursuit of his or her own best happiness. The law guaranteed privacy and the privilege of selfish conduct, not mutual support and dedication to others; it emphasized impartial and objective rules, not forgiveness and reconciliation.

The culture of the Mennonites and the culture of the legal profession in Western Canada were widely divergent in

¹³ James Bryce, "The Influence of National Character and Historical Environment on the Development of the Common Law" (Address Delivered to the American Bar Association at its Annual Meeting, Portland, Maine August 1907) in James Bryce, University and Historical Addresses Delivered During a Residence in the United States as Ambassador of Great Britain (New York: The Macmillan Company, 1913) at 45.

the period before the Second World War. Mennonite culture was pre-modern, based on a belief in the metaphysical, with the community as a central feature. In such a culture, higher education and progress were at least nonessential and potentially dangerous. The application of Biblical teachings in matters of everyday ethics was the standard by which one was judged. By contrast, the culture of the legal profession was thoroughly modern, practically indifferent to a metaphysical reality and based on a belief in the intrinsic value of rationality and science. It was materialistic, and placed great value on personal qualities and individual accomplishments which made impossible the achievement of real community.

So wide was the gap between the two cultures that, while it could be crossed, it could not be successfully bridged.

PART TWO

INTRODUCTION

Part II of this thesis represents the result of my research into the lives of the lawyers of Mennonite background in Western Canada who entered the legal profession before the Second World War. There were, to the best of my knowledge, only seven of these individuals.¹

I have attempted to set out as completely and accurately as possible the biographical details of these seven men. I have also attempted to capture and set down on paper something of the flavour of their lives: their personalities, their values, their interests. Since I wished to test my contention that Mennonite culture and the culture of the legal profession were irreconcilable, I was particularly interested in two things - their relationship with the Mennonite community and the effect of their Mennonite backgrounds on their legal careers. I have obviously been more successful with some of these men than with others.

None of the men of Mennonite background in Western Canada who entered the legal profession prior to the Second World War is alive today. This obviously hampered my research. Moreover, I was unable to find a substantial legacy of personal papers - letters, diaries, journals and the like -

¹ I hesitate to state categorically that the seven men I have investigated were the only lawyers of Mennonite background prior to the Second World War. They are the only ones I was able to find after several months of my best efforts. I would, naturally, be happy to learn of the existence of others who fit into this category.

which would have aided me. Had these sources been available, many gaps would have been filled and I would have been able to present a more accurate picture of their lives. In the circumstances, I have had to rely on other sources of information - official records of the Law Societies of Manitoba and Saskatchewan, local (town) histories, family histories, as well as personal interviews with relatives and friends of these men. The result is a less complete and accurate description than I would have wished, but one which I believe is still worthwhile.

Of the lawyers examined here, I believe that I have been most successful in my study of Abraham Buhr. To the extent that I have captured something of him, my thanks must go to five of his children (Arthur and Walter Buhr of Winnipeg, Harold Buhr of Osoyoos, B.C., Louise Clarkson of Kamloops, B.C. and Alma McQuiggan of Ganges, B.C.) who provided me with their recollections and insights. The use of Walter Buhr's copy of the histories of his paternal grandparents, both edited and authored by Helen Buhr Regier, was also most helpful.

The lives of Henry Vogt and David Vogt are less clearly pictured than that of Mr. Buhr. This is due in part to the fact that Henry Vogt's children were able to provide fewer details of their father than the children of Abraham Buhr were able to provide of theirs. My research into the life of David Vogt was seriously hindered by the fact that his children,

after initially agreeing to assist me in this project, later withdrew their offer and refused to discuss their father with me. The assistance of Tracey Spears, a niece of these two men is greatly appreciated.

I was able to contact Peter Hooge's son, Walter, and the assistance provided me by both Walter and his wife Lorraine accounts for most of the light I have been able to shed on Peter Hooge's life. Florence Driedger, Dr. Ella Peters and Henry Peters also provided assistance for which I am grateful.

John and Erdman Friesen's step-sister, Elaine Pollard and a close relative of the Friesen family who wished to remain anonymous were helpful in providing background to the lives of these two men. John Friesen's two children, John Friesen Jr. and Betty Lutz, as well as his son-in-law, Willard Lutz, also offered valuable and revealing glimpses into the life of their father.

Unfortunately, I was unable to contact either the wife or daughter of Erdman Friesen.

To the extent that Elmer Driedger's life is revealed, credit must be given to three individuals. Elmer Driedger's cousin, Leo Driedger, has researched the life of his own and Elmer Driedger's grandfather. His research provided excellent background material for my study. Elmer Driedger's brother, Don, offered insight into his brother's early years and Driedger's wife, Elsie, offered a description of her life with Mr. Driedger. Both were invaluable.

My thanks to all those who gave of their time and energy
to make this research possible.

MENNONITE LAWYERS

ABRAHAM BUHR (1880-1960)

In 1874, Jakob and Katarina (Funk) Buhr arrived in Manitoba with fellow Mennonites from the Bergthal Colony in Russia,¹ settling on the East Reserve.² Their son, Johann was 16 at the time. On November 19, 1877, Johann married Helena Friesen, whose family had arrived in Manitoba from Bergthal in 1876.³ They initially lived with Johann's parents, as was customary. The first two of their six children were born in Schonwiese, on the East Reserve. Abraham was the second child, born on July 28, 1880.⁴

In 1881, the whole clan, including the families of both Jakob and Johann Buhr, moved to Edenburg, a small village on

¹ Helen E. Regier, ed. Jacob Buhr Family: 1805 -1977 (Newton, Kansas: Mennonite Press, Inc., circa 1977) at 3.

² Ibid. at 31. This book claims that the family initially settled in Schonwiese or Schonwies.

³ Ibid. at 34. Although Regier, ibid. at 31, states that Helena's family arrived in 1875, the same author in The Friesens: 1768 - 1983 (Newton, Kansas: Mennonite Press, Inc., circa 1983) at 5 states that they arrived in 1876.

⁴ Birthdate confirmed by information from the Law Society of Saskatchewan, provided under covering letter of April 16, 1991, and by the Law Society of Manitoba by telephone in 1990. It may also be found in his Application for Admission to the Law Society of Manitoba, dated November 18, 1926, a document contained in Buhr's file in the Law Society of Manitoba Archives at the University of Manitoba. This date was also found in both Regier, supra, note 1 at 50 and Regier, supra, note 3 at 135. It is clear that the family lived in Schonwies, although his Application for Admission shows him as being born in the Postal District of Chortitz. Chortitz and Schonwiese were quite close together, about midway between Steinbach and Niverville.

the West Reserve, within a mile or two of the present town of Gretna.⁵ Abraham's father, Johann, was a prominent member of the Bergthaler church in Edenburg, serving over the years as deacon, church treasurer, administrator of the **Armenkasse** (a sort of Welfare Fund) and business manager of the Gretna Old Folks Home.⁶ He was a successful farmer and was able to purchase several farms for his sons when they went out on their own.

In 1886 Johann's wife, Helena Friesen died. On her deathbed, for reasons not entirely certain, she requested that her parents-in-law, Jakob and Katarina Buhr, take up the task of raising Abraham, who would have been 5 or 6 at the time.⁷ Abraham's grandparents acceded to this request and raised the young lad. Since his father and his new wife, Helena Friesen's sister, Aganetha, lived only about half a mile away,⁸ Abraham continued to have frequent contact with his immediate family. Nevertheless, Abraham's children report that their father was closer in many ways to his grandparents than his own father and step-mother. On subsequent visits to Gretna, for example, the Abraham Buhr family would stop by to

⁵ Regier, supra, note 1 at 31. According to Regier, supra, note 3 at 128, Helena's parents also moved at about this time to the West Reserve, settling in the village of Halbstadt, about five miles from Edenburg.

⁶ Regier, supra, note 1 at 32.

⁷ Ibid. at 48.

⁸ Ibid. at 31.

visit with Abraham's grandparents before going to Abraham's parents' home.⁹

Both Jakob and Johann Buhr were strong supporters of the Mennonite Educational Institute which began operations in Gretna in 1889 and, after one year's interruption, again in 1891.¹⁰ The village of Edenburg stood solidly behind Bishop Funk during the controversy over the school and was apparently the only undivided church among the Bergthalers during the split.¹¹ The Jacob Buhr and the Johann Buhr families are listed among the sixty families which supported Bishop Funk and remained Bergthalers.¹² Jacob Buhr is listed as a leader

⁹ Ibid. at 48. This is not to suggest that he did not get along with his father. On the contrary, Buhr's children report that he and his father were on good terms. Interview with Arthur and Walter Buhr, November 6, 1990; Letter from Harold Buhr to the writer, Nov. 24, 1990.

¹⁰ It will be recalled that it was the existence of this institution which has been widely credited with causing the split within the Bergthaler Church of the West Reserve. The Sommerfelders, who formed the majority of the church, did not support the school and decided to form their own Church organization under the leadership of Abram Doerksen of the village of Sommerfeld. The minority who followed the leadership of Johann Funk in support of the school, retained the Bergthaler name. "Out of the unorganized colony church of the West Reserve, loosely called the Chortitzer, West Lynn or Bergthaler, two new churches emerged. The conservative group rallied around Elder Doerksen and eventually called themselves the Sommerfelder Mennonite Church. The aggressive school supporters rallied around H.H. Ewert and Elder Funk and eventually began to call themselves the Bergthaler Mennonite Church."

Henry J. Gerbrandt, Adventure in Faith: The Background in Europe and the Development in Canada of the Bergthaler Mennonite Church of Manitoba (Altona: D.W. Friesen and Sons Ltd., 1970) at 93.

¹¹ Ibid. at 140.

¹² Ibid. at 93.

of the movement for better schools among Mennonites in Southern Manitoba by Gerhard J. Ens in his history of the Mennonite Collegiate Institute.¹³ John Buhr was one of those who petitioned for the incorporation of the M.E.I. in 1898¹⁴ and, in 1908, Johann Buhr was elected to the Board of Directors of the society which operated the school.¹⁵

Given his family's support of the school, it is not surprising that Abraham Buhr and his brothers attended the M.E.I.¹⁶ Buhr became the first Mennonite to obtain a government teaching certificate in 1899.¹⁷ He appears to have utilized this teaching certificate in teaching for three years,¹⁸ before entering the University of Manitoba through its affiliated institution, Wesley College, which he attended from 1902 to 1907.

¹³ Gerhard G. Ens, "Die Schule Muss Sein": A History of the Mennonite Collegiate Institute, 1889-1989 (Gretna: Mennonite Collegiate Institute, 1990) at 10.

¹⁴ F.G. Enns, Gretna: Window on the Northwest (Altona: Village of Gretna History Committee, 1987) at 132-133.

¹⁵ Ibid. at 26.

¹⁶ Regier, supra, note 3 at 128. The fact that Buhr attended the M.E.I. is confirmed by A. Warkentin, ed., Who's Who Among the Mennonites vol.1 (North Newton, Kansas: Bethel College, 1937) at 22.

¹⁷ Ens, supra, note 13 at 23.

¹⁸ Mennonite Who's Who, supra, note 16 at 50, shows Buhr teaching between 1899 and 1902 but doesn't state where he taught. Given H.H. Ewert's desire for Mennonite teachers and his position as school superintendent for the Mennonite areas of Southern Manitoba, it seems likely that Ewert would have been happy to place Buhr in one of these village schools.

Wesley College in the early years of the century was the center of Methodist higher education in Western Canada. Despite its relatively small size,¹⁹ its Board members included some of the most illustrious Manitobans of the day. Among them were Sir James Aikins,²⁰ J.H. Ashdown, "the hardware prince of Western Canada," R.T. Riley, President of the Board of Trade, and the Premier of the Province, Sir Rodmond Roblin.²¹ At the same time as its Board represented the most powerful and conservative elements of Winnipeg society, however, its Faculty included Salem Bland, one of the most prominent apostles of the 'social gospel'.²²

It is unclear what would have persuaded a young Mennonite in Buhr's position to attend university at all and why, having decided to do so, he would attend the College of a rival denomination. There would have been little encouragement from the Mennonite community for such an adventure, even among the more liberal Bergthaler congregations. After all, Buhr was

¹⁹ According to an article in the college newspaper, Wesley College graduated 21 men in 1907 from its Arts program. A small number of women would also have graduated. (1909) 13 Vox Wesleyana at 121-122.

²⁰ Dale and Lee Gibson, Sir James Aikins' Seamless Web: Finding Fortune and Fame as a Lawyer in the Adolescent Canadian West (Paper presented at "Law for the Elephant, Law for the Beaver" Conference, Victoria, Feb. 22-25, 1991) at 4, 40.

²¹ Richard Allen, "Salem Bland and the Spirituality of the Social Gospel: Winnipeg and the West, 1903-1913" in Dennis L. Butcher, et al., eds. Prairie Spirit: Perspectives on the Heritage of the United Church of Canada in the West (Winnipeg: University of Manitoba Press, 1985) 217 at 219.

²² Ibid. at 218-220.

not seeking a practical education in agriculture or medicine but was interested in an Arts degree.²³ When asked why their father decided to become a lawyer, Buhr's children frequently replied that he did not enjoy farming. That answer does not, of course, explain why he left teaching or why he did not enter the business world as did his brothers.²⁴ It may well be that Buhr was simply interested in academic life and was prepared to endure the financial cost and the disapproval of the Mennonite community for the pleasure of studying.

It is possible that, having decided to go to university, Buhr felt more at ease attending a Christian college than the non-sectarian, public university. The student paper of Wesley College, Vox Wesleyana, reveals a religious overtone which may well have been indicative of the school's operations. There was a theological program operating side-by-side with the Arts program at the school. In addition, the relatively small size of the student body may have been less intimidating to a student from rural Manitoba than that of a larger school.

There may be another reason for his decision to attend Wesley College: the presence of another Mennonite student whom he may have known from M.E.I.. That student was Carl Ewert,

²³ That this is true is borne out by the fact that Buhr's father did not assist Buhr financially in his education, although the elder Buhr was prepared to assist his other sons in mercantile and agricultural endeavour. Harold Buhr, Arthur and Walter Buhr, supra, note 9.

²⁴ According to Ens supra, note 14 at 151, his brothers ran a general store in Gretna and Morse, Saskatchewan.

the son of H.H. Ewert, who went on to become an Oxford don. It appears that Ewert and Buhr were roommates²⁵ and, in the fall of 1906, Buhr took over the post of literary editor of Vox Wesleyana from Ewert.²⁶

The first real mention of Buhr in Vox Wesleyana comes in December 1905 when it is noted that he participated in a debate on the Sunday operation of streetcars, his "initial performance as a speaker."²⁷ The reporter did not indicate for which side Buhr spoke, but did note that "his treatment of the moral aspect did much to win the decision for his side."²⁸ In March, 1906, his article, "Characteristics of English Renaissance Poetry", was published in Vox Wesleyana, proof of his "active part in the Literary Society."²⁹

Buhr seems to have limited his extra-curricular

²⁵ A note in the "Local and Personal" section of the October, 1903 issue of Vox Wesleyana refers to Carl Ewert and A. Buhr being "busy" again in Room 31, presumably referring to their dorm room. (1903) 8 Vox Wesleyana at 18.

²⁶ (1906) 11 Vox Wesleyana at 1. In an interview on August 14, 1991, Buhr's daughter, Alma McQuiggan, recalled her father mentioning Carl Ewert often and believes that Buhr probably knew him even before university.

²⁷ (1905) 10 Vox Wesleyana at 39.

²⁸ Ibid. If Buhr's initial participation in a debate during his third year at university seems unusually late, it may be because he was embarrassed about his accent. In a letter dated November 16, 1990, Buhr's daughter, Louise Clarkson, remembered her mother mentioning that at university Buhr spent hours in front of a mirror practising proper English pronunciation.

²⁹ The article appeared in (1906) 10 Vox Wesleyana at 103. The comment concerning his role in the Literary Society is contained in the May 1907 edition of 11 Vox Wesleyana at 133.

activities to literary matters. His graduation description acknowledged that "he is not prominent in sports", but reported that "Mr. Buhr is deservedly well-liked by the students of Wesley College".³⁰ It seems Buhr was also a good student, winning the medal and the accompanying scholarship for modern languages in his graduating year.³¹

Subsequent to his graduation, Buhr took a lecturer's position at Wesley College for one year. He then attended Chicago University for one term. In 1908, while attending Chicago University, Buhr married Mary Kelly.³² He had met Mary at Wesley, where she had begun studying in 1904.³³

Despite her Irish-sounding name, Mary Kelly was of Icelandic descent, originally named Maria Thorkellson.³⁴ She

³⁰ (1907) 11 Vox Wesleyana at 133.

³¹ (1907) 11 Vox Wesleyana at 130 and 133.

³² The date of the wedding is somewhat at issue. A 1914 article in The Morse News states that Mrs. and Mr. Buhr were married in 1907. The Morse News (Special Illustrated Edition, January 22, 1914).

However, both Regier, supra, note 1 at 50 and Regier, supra, note 3 at 135 state that they were married in 1908. Louise Clarkson and Walter Buhr both recall vaguely something about their parents being married in Chicago. Walter says that he thinks Buhr's parents and grandparents were unable to attend because of the distance. (Interview with Louise Clarkson, February 24, 1991; Interview with Arthur and Walter Buhr, Nov. 6, 1990.)

³³ Vox Wesleyana, in December of 1904, states, "Miss Mary Kelly has returned to College and is a welcome addition to the First year." (1904) 9 Vox Wesleyana at 57.

³⁴ She retained the name Maria throughout her life, although she was more commonly known by the Anglicized "Mary". Her family name was changed by her father when his boss insisted he could not pronounce his last name and began calling him "Kelly".

was born north of Selkirk, Manitoba, on July 20, 1885.³⁵ Like her husband, Mary Kelly was forced to overcome the disadvantages of her immigrant roots to succeed at university. Like Buhr, she was a scholarship student and worked her way through university by teaching during the summer months.³⁶ However, unlike Buhr, she was apparently a good athlete. She is shown as right-wing on the school's women's hockey team in 1907.³⁷ Little is known about the courtship between Buhr and Ms. Kelly, although they remained together for life.

Ms. Kelly's decision to attend Wesley College is at least as remarkable as Buhr's, given the relatively small numbers of women attending university at the time and her Icelandic background. Nevertheless, there were more than a handful of women attending Wesley College during her years there and

Regier, supra, note 3 at 139.

³⁵ Regier, supra, note 3 at 135 and Regier, supra, note 1 at 50. Her place of birth is listed as Drunken Point, Manitoba in both volumes. This birthplace is ironic, since she was always an adamant teetotaler.

³⁶ Interview with Arthur and Walter Buhr, supra, note 9. In a meeting with Louise Clarkson on February 24, 1991, the writer was shown teaching certificates authorizing Mary Kelly to teach during the summers of 1901 and 1903. In addition, the May, 1907 issue of Vox Wesleyana reports Mary Kelley (sic) teaching at Ridgeville, Manitoba. (1907) 11 Vox Wesleyana at 144.

According to Mrs. Clarkson, her mother told her that her father also taught during the summers, although the November, 1906 issue of Vox Wesleyana reports that Buhr spent "an instructive summer in journalism." (1906) 11 Vox Wesleyana at 18.

³⁷ The picture is printed in the Regier, supra, note 3 at 134. She must have maintained her athletic abilities throughout life, for Regier, supra, note 3 at 134, claims that she competed in the Manitoba Winter Games regional bowling finals in 1978 at the age of 92.

women appear to be well-represented in various activities, including sports and the school newspaper. Kelly's Icelandic background may explain her choice of Wesley College for her studies. Despite the fact that most Icelanders were of Lutheran background, Methodist Wesley College seems to have had a high number of Icelandic students in the early years of the century. The Icelandic group appears to have placed a high value on higher education and on assimilating into the larger Canadian culture. This mood seems to have been matched by the welcoming attitude of Wesley College. An editorial in Vox Wesleyana welcomed the increasing numbers of Icelandic students and applauded the creation of a chair in Icelandic language and literature.³⁸ In December, 1904, two items with Icelandic themes appeared in Vox: "Iceland in English Novels" and "With the Fishermen on Lake Winnipeg."³⁹ The eagerness of the Methodist church to assimilate immigrants and the willingness of the Icelandic community to assume Canadian customs and language seem to have resulted in a happy arrangement for both groups. Having decided, like many others of Icelandic origin, to get an education, it may well be that the decision to attend Wesley was not particularly difficult for Ms. Kelly.

Returning from Chicago, Buhr decided to enter the practice of law. This decision must have been as difficult

³⁸ (1902) 7 Vox Wesleyana at 3.

³⁹ (1904) 9 Vox Wesleyana at 40 and 42.

for him as the decision to attend university. Although one niece suggested that "Uncle Abe must have been a source of great pride to his parents",⁴⁰ the reality was in fact quite different, at least initially. One of Buhr's sons reports that, according to family tradition, when Buhr's father heard of Buhr's intentions to enter law, he became extremely upset, claiming that it was "scandalous" for a Mennonite to so "demean" himself. Since Mennonites always told the truth, they had no need of lawyers, claimed the elder Buhr.⁴¹

Buhr's decision may well have been influenced by the number of students at Wesley who were entering the legal profession. In 1907, the year Buhr graduated, eleven of the twenty-one male Arts graduates went into law.⁴² A number of these were Icelandic students, and one of them, Walter Lindal, later became Buhr's law partner.

Buhr's first step toward becoming a lawyer was obtaining an articling position with Edwin Loftus in Winnipeg in

⁴⁰ Renatta (Buhr) Fast, "My Uncle Abe - As I Remember Him" in Regier, supra, note 1 at 49.

⁴¹ Letter from Harold Buhr, supra, note 9. Again, this disapproval did not result in a break in the relationship between father and son. Interview with Arthur and Walter Buhr, supra, note 9.

⁴² (1909) 13 Vox Wesleyana at 121-122. This issue also noted an increasing tendency toward the legal profession on the part of Arts graduates. In surveying the total of 192 male Arts graduates since the inception of Wesley College, Vox Wesleyana revealed that 67 had gone into theology, 54 had entered law, 20 had become teachers and 13 had entered medicine. It also advised that in recent years law had outstripped medicine as the first choice of male Arts graduates.

September, 1908, at the age of twenty-eight. It is not clear why Buhr chose Loftus as principal or, for that matter, why Loftus chose him. The fact that Loftus graduated from Wesley College in 1895 may have had something to do with the decision.⁴³

Because Buhr had graduated from university, he was required to complete only three years of articles, rather than the normal five. Yet after one and a half years Buhr decided to transfer his articles to Edward Bill, a lawyer in Saskatoon. No reason has been ascertained for this decision, and one can only speculate that the prospects were better in the west. After only seven months, Buhr again transferred his articles, this time to Fred M. Brown, again of Saskatoon. Eventually Buhr completed his articling program and he was called to the Saskatchewan Bar in September, 1911.⁴⁴

Buhr did not begin practising immediately, however. Near the end of his articling experience he contracted typhoid fever and he and his family (including two small children)

⁴³ Loftus is reported as part of the firm of Aikins, Robson and Loftus in 1904. (1904) 9 Vox Wesleyana at 58. Loftus would have been in select company at this firm. Sir James Aikins was a prominent lawyer, businessman and politician. H.A. Robson was to become a judge and the founder of the Manitoba Law School. In January, 1907, Vox Wesleyana at 70 reported Mr. Loftus leaving Aikins, Robson & Co. to form a partnership with W.R. Mulock. According to Dale and Lee Gibson, Substantial Justice: Law and Lawyers in Manitoba 1670 - 1970 (Winnipeg: Peguis Publishers, 1972) at 225, Mulock was distinguishing himself by leading the fight for temperance legislation. He was also "active in church work and in various social reform movements, from criminal rehabilitation to assistance for the blind."

⁴⁴ Law Society of Saskatchewan, supra, note 4.

went back to Gretna for several months, where his father and step-mother cared for them. After Buhr had recuperated, his father suggested that he set up practice in Morse, Saskatchewan, where Buhr's two brothers had set up a general store in the summer of 1911.⁴⁵ It may well be that Buhr's father assisted financially in setting up this law practice.⁴⁶

Buhr arrived in Morse in January of 1912 and began practising law.⁴⁷ He appears to have done well, almost from the start.⁴⁸ He became the solicitor for the Canadian Bank of Commerce in Morse, The Standard Trust Company, and The Rural Municipality of Morse.⁴⁹ He also seems to have obtained the

⁴⁵ Louise Clarkson, supra, note 36 and Helen Buhr Regier, "The Buhr Families in Morse, Sask." in As the Pendulum Swings (History of Morse, Sask.) at 50.

As the Pendulum Swings at 85 also claims that "Mr. Peter and Jacob Buhr came to Morse in 1909 and started a general store under the title of John Buhr and Sons, although the father did not come to Morse." Jacob had originally opened and operated a hardware-furniture store in Gretna for some years. He received financial assistance from his father in this endeavour. Regier, supra, note 1 at 38. According to a history of Gretna, a furniture store known as John Buhr and Sons was in operation by 1903. Enns, supra, note 14 at 151. Given John Buhr's name in the name of the business it is likely that he was financially involved in the business.

⁴⁶ According to a letter from Alma McQuiggan to the writer, dated December 5, 1990, "About graduation time or shortly thereafter dad contracted typhoid fever and needed help. A loan came through quite readily."

⁴⁷ "A. Buhr" Morse News (Special Illustrated Edition, January 22, 1914).

⁴⁸ He once told his daughter that he made as much money during his first day practising in Morse as he had in a month during his articles in Saskatoon. Letter from Louise Clarkson, supra, note 28.

⁴⁹ Law Society of Saskatchewan, supra, note 4.

confidence of townspeople generally, for within a year of arriving in Morse he was elected to the Town Council for a two year term, beginning in 1913. He received the greatest number of votes of any candidate in that election.⁵⁰ He was also elected to the School Board at about the same time, perhaps in the same election.⁵¹ Incomplete town records show that he served on the Town Council in 1915, 1918, 1920-1923 and was mayor of Morse from 1924 to 1926.⁵²

In addition to being involved in local politics, Buhr entered the realm of provincial politics by serving on the local Liberal Party executive.⁵³ At some point in the early twenties, Buhr attempted to win the Liberal nomination for the Morse constituency but was unsuccessful in doing so. The experience appears to have soured him on provincial politics for he abandoned his involvement in all politics except those of a municipal variety at that point. One explanation for Buhr's disillusionment with politics is that Buhr discovered his campaign manager secretly working for his opponent.⁵⁴ However, one of his daughters believes that Buhr attributed his unsuccessful bid to discrimination against him based on his German/Mennonite roots and that this was the cause of his

⁵⁰ Morse News, supra, note 47.

⁵¹ Ibid.

⁵² Morse Town Records examined by the writer, April 12, 1991.

⁵³ Interview with Harold Buhr, February 21, 1991.

⁵⁴ Ibid.

departure from partisan politics.⁵⁵

If the latter explanation is correct, there may well have been some grounds for Buhr's belief. Prior to the war, Germans had been well-treated in Western Canada and were viewed as being "as civilized as the British."⁵⁶ However, the sinking of the *Lusitania* and alleged German atrocities in Belgium resulted in a "growing hatred for all things German."⁵⁷ In Morse a rumour circulated that Buhr was holding German *Bund* meetings in his office.⁵⁸ In fact, the impugned meeting was that of the local Liberal Association's executive.⁵⁹ Nevertheless, Buhr's status was doubly difficult; he was not only German ethnically, but was a pacifist and, as a Mennonite, was exempt from wartime service. Buhr seems to have escaped from at least some of this ill-will by the war-time visit of Mrs. Buhr's brother, Sam Kelly, in full military uniform.⁶⁰

⁵⁵ Letter from Louise Clarkson, supra, note 28.

⁵⁶ Gerald Friesen, The Canadian Prairies: A History (Toronto: University of Toronto Press, 1984) at 352.

⁵⁷ Ibid. at 352.

⁵⁸ In a discussion with Arthur and Walter Buhr on November 6, 1990 mention was made of an attack on Buhr's office in which a window was smashed. However, neither of these subjects wished to guarantee the accuracy of this story.

⁵⁹ Interview with Louise Clarkson, supra, note 36.

⁶⁰ Interview with Harold Buhr, supra, note 53. Louise Clarkson suggested that her uncle Sam Kelly articulated with her father before the war and that he was a member of the Royal Flying Corps. Interview with Louise Clarkson, supra, note 36. In an interview on August 14, 1991, Walter Buhr claimed that Sam Kelly

Despite this brief negative period, the Buhrs seem to have enjoyed life in Morse. Six more children were born and the Buhrs "adopted" a 12-year-old Icelandic boy, Leonard Christiansen, after his parents, friends of the Buhrs, succumbed to the flu epidemic of 1919.⁶¹

There seems to have developed a small tribe of Buhrs in the Morse area. In addition to his two brothers, Jacob and Peter, who were running the general store and who lived in town with their families, Buhr's half-sister Helena and her husband, Henry Loewen, moved to Morse where Henry worked in the general store. Buhr's half-brother, Cornelius, and his family also moved to Morse, probably in 1915, and Cornelius began a farming operation in the Morse area.⁶² For a two or

joined the Royal Flying Corps after arriving in Europe and that Kelly was killed during the war.

⁶¹ Christiansen's parents were ranching near Rush Lake when they died. The Buhrs unofficially adopted Leonard without any government involvement. He left home just before the Buhrs moved from Morse. Interview with Walter Buhr, *ibid*.

⁶² There is a discrepancy of accounts with respect to Cornelius Buhr and Henry Loewen. The account outlined above is related by Helen Regier Buhr in "The Buhr Families in Morse, Sask." in As the Pendulum Swings, *supra*, note 45 at 50. Regier, *supra*, note 1 at 70, 77 states that Cornelius moved to Neville, Saskatchewan in 1912 where he and Henry Loewen built a livery stable. A year later Henry moved to Vanguard, Saskatchewan where he worked in Peter Buhr's store. (The account in As the Pendulum Swings states that Jacob and Peter Buhr owned stores in Flowing Well and Hodgeville, but says nothing of a store in Vanguard.) Henry later moved to Morse, where he worked in the General Store. Cornelius' livery stable was burned in 1915 and he was arrested and tried for but acquitted of arson. Cornelius returned to Gretna briefly, but then moved again to Neville with his family and with his sister Tina and her husband, Peter Vogt, where they lived for some time. Eventually, Cornelius and his family moved again to Morse, where he attempted (unsuccessfully) to farm. After three

three year period during the War there would have been sixteen children of five Buhr families living in the town.⁶³ Although by 1919, only the Jacob Buhr family and the Abraham Buhr family remained in Morse, all of this contact with the Buhr side of the family meant that the children of Abraham Buhr experienced a definite "tilt" in favour of their father's family over their mother's.⁶⁴ This tilt was likely emphasized by the fact that the children could always find cousins of their own age in the Buhr clan while their mother's family did not have this advantage. Mrs. Buhr's brother Sam was killed in World War I. Another brother, Barney, was an alcoholic and visited rarely.⁶⁵ The only relatives on the Kelly side of the family well known to the Buhr children were their grandmother and their Aunt Sarah.

Interestingly, the children of Abraham Buhr do not recall thinking of their father or of themselves as "Mennonite", despite the fact that they did consider Jacob Buhr and his family to be Mennonites.⁶⁶ There may be a number of reasons for this. The fact that their mother was not Mennonite was

years, in 1918, they returned to Gretna.

⁶³ Regier, supra, note 1 at 43-78.

⁶⁴ Interview with Walter and Arthur Buhr, supra, note 9; interview with Louise Clarkson, supra, note 36; interview with Harold Buhr, supra, note 53.

⁶⁵ According to Louise Clarkson, supra, note 36, he did, however, send each child one dollar every Christmas.

⁶⁶ Ibid. Also interview with Arthur and Walter Buhr, supra, note 9.

probably the most important. Because she did not speak German, the Abraham Buhr family did not speak German at home. The other Buhr families did, at least occasionally. In addition, while both the Abraham Buhr family and the Jacob Buhr family attended the local Methodist (later United) Church throughout their stay in Morse, it seems likely that the Jacob Buhr family occasionally attended the Mennonite church in Herbert, about seven miles away.⁶⁷ It is certain that the Abraham Buhr family did not, although the children recall attending services held in a local home when a visiting Mennonite minister would come to town.⁶⁸ Unfortunately for the children, these services were held in German, and as a result, they found them rather boring.⁶⁹ Other than these occasional services and their relationship with relatives, the Buhr children had no connections to the Mennonite past of

⁶⁷ In an interview on April 12, 1991, Mrs. Sarah Unger of Herbert recalled one of the Buhr brothers attending Herbert Mennonite church on occasion.

⁶⁸ Letter from Alma McQuiggan to the writer, supra, note 46; interview with Arthur and Walter Buhr, supra, note 9.

At least one of these ministers was Benjamin Ewert, the brother of H.H.Ewert. Benjamin Ewert was a minister and teacher in Edenburg, beginning in 1895. He was also a teacher at the M.E.I./M.C.I., administrator of the Gretna Old Folks Home, involved in printing and publishing for the Conference of Mennonites in Canada, a spokesman for the Mennonites in the First World War and Conference **Riesepraediger** (Itinerant Minister), involved in visiting Mennonites across Canada after 1921. Gerbrandt, supra, note 10 at 141-142.

⁶⁹ Interview with Arthur Buhr, supra, note 9; letter from Alma McQuiggan supra, note 46. Mrs. McQuiggan also reports that the travelling minister usually had a meal at the Buhr home, despite the difficulty in communicating with Mrs. Buhr and the children.

their father.

The Buhr household was one in which religion was important. The children believe that their parents experienced a religious conversion while in Morse, which resulted in a more emphatic and serious approach to religious matters.⁷⁰ The family attended the Methodist church regularly,⁷¹ and Mr. and Mrs. Buhr attended the mid-week Bible Study/Prayer Meeting. Mrs. Buhr was involved in the Ladies Missionary Society.⁷² The children went to Sunday School, sang in the choir and were involved in "Mission Band".⁷³

Mrs. Buhr appears to have been the disciplinarian in the family, and sometimes used physical punishment.⁷⁴ Mr. Buhr preferred talking to the children in order to correct their

⁷⁰ Interviews with Harold Buhr, supra, note 53 and with Louise Clarkson, supra, note 36. Walter and Arthur Buhr, supra, note 9, recall that an evangelist came to town and that their parents went to the front after the service. They also recall that prior to this experience their parents occasionally went to dances but neither ever drank.

⁷¹ Louise Clarkson, supra, note 36, recalls her parents discussing church union and believes they were concerned about it. However, they continued to attend the church after it became the United Church. It would be interesting to know why, given their belief in the need for conversion, they did not attend the Nazarene Church, which was very evangelical. Alma McQuiggan, supra, note 26, believes the Nazarene Church was too "flamboyant" or charismatic for her parents' taste.

⁷² Interview with Louise Clarkson, ibid. Regier, supra, note 45 at 52.

⁷³ Louise Clarkson, ibid. Mrs Clarkson describes this program as one in which children would do crafts and make items to send to the "heathen."

⁷⁴ Interviews with Harold Buhr, supra, note 53 and with Louise Clarkson, supra, note 36.

behaviour. His approach must have been effective; at least one child says she would have preferred to have been spanked.⁷⁵

Mr. Buhr was a tall, handsome man, devout, quiet-spoken and gentle in demeanour.⁷⁶ One daughter claims she never once saw her father lose his temper.⁷⁷ A later articling student described him as "a gentle giant of a man."⁷⁸ He was honest, almost to a fault. One son claims that, while attending university, Buhr "hitched" a ride on a freight train from Gretna to Winnipeg and, upon arrival, paid the engineer for his fare.⁷⁹ Mrs. Buhr is universally described as being of very strong character,⁸⁰ and sometimes by outsiders as being stronger than Mr. Buhr.⁸¹ This may have been because she was

⁷⁵ Louise Clarkson, Ibid.

⁷⁶ Letter from Harold Buhr, supra, note 9.

⁷⁷ Interview with Alma McQuiggan, supra, note 26.

⁷⁸ Interview with His Honour John Enns, Judge of the Manitoba Provincial Judges Court, Fall, 1990.

⁷⁹ Letter from Harold Buhr, supra, note 9.

⁸⁰ Interview with Louise Clarkson, supra, note 36 and with Harold Buhr, supra, note 53. This view was echoed by outsiders as well. Interview with Elizabeth King, February 20, 1991. (Mrs. King spent a year with her Aunt Susanna, who was married to Peter Buhr and lived in Morse.) Interview with Tina Friesen, January 29, 1991. (Mrs. Friesen's father was Abraham Buhr's cousin.) Interview with David Friesen, Q.C., November 29, 1990. (Mr. Friesen purchased Buhr's practice in Winnipeg.)

⁸¹ Interviews with David Friesen, Tina Friesen, Elizabeth King, Ibid. The Buhr children, especially Alma McQuiggan, supra, note 26, dispute this assessment and believe that Mr. Buhr was just as strong-willed as his wife.

more gregarious, extroverted and outspoken than her husband.⁸²

Whatever their differences in character, Abraham and Mary Buhr were devoted to one another. The "division of labour" between them on household or family matters was likely quite conventional for that time and culture. The Buhr children report that Mrs. Buhr made most of the day-to-day decisions of the household and that the major decisions were made jointly by Mr. and Mrs. Buhr, but that Mr. Buhr was responsible for the final decision.⁸³

Besides raising nine children and being involved in church life, Mrs. Buhr had the time and energy to be involved in community issues. She was a member of the Women's Christian Temperance Union and a life member of the Red Cross.⁸⁴ She was also elected to the Morse Town Council in 1921, highly unusual for a woman in that era.⁸⁵ Both Mr. and Mrs. Buhr were Prohibitionists, but Mrs. Buhr seems to have been the more adamant. Indeed, her position on Prohibition

⁸² Interview with Harold Buhr, supra, note 53. In a letter, supra, note 9, Harold Buhr described his father as "quiet spoken, gentle in manner, who very rarely raised his voice." He added: "with 8 children (5 boys) that is really something".

⁸³ Harold Buhr, supra, note 53, reported that his mother "ran the house" but submitted when his father "put his foot down." Louise Clarkson, supra, note 36, believed that they made joint decisions, reaching a consensus on most issues, and recalls hearing them argue on occasion. Alma McQuiggan, supra, note 26, saw them as being a partnership and reaching a consensus on nearly every issue.

⁸⁴ Regier, supra, note 45 at 52.

⁸⁵ Morse Town Records, supra, note 52.

seems to have played a role in her decision to run for political office.⁸⁶ She refused to allow alcohol in the house. Her firmness on the issue is attributed to the fact that both of her brothers experienced difficulties with alcohol and one complained that his problems with alcohol were due to the fact that alcohol was always available in their home as he was growing up. Mrs. Buhr was determined not to allow that situation to develop in her own home.⁸⁷

Buhr was involved in a number of businesses other than his law office during the Morse years. In the fall of 1912, shortly after arriving in Morse, Buhr entered a partnership with J.J. Williams, a local businessman, to build the Empress Theatre. The theatre became home to movies, plays and concerts in the town. There is no evidence of the reaction of the larger Buhr family to this involvement⁸⁸ but some time later Buhr sold his interest (perhaps after his religious

⁸⁶ Arthur Buhr, supra, note 9, expressed the opinion that her decision to seek town office was based on her desire to counter the "Wets".

⁸⁷ Louise Clarkson, supra, note 36, reported an interesting incident in this regard. When Louise was about 19, she became quite ill and the doctor recommended that she be given brandy in lieu of other forms of sustenance which she was unable to digest. Despite misgivings, Mrs. Buhr purchased the brandy and administered it to Louise. When Louise recovered, the partially full bottle was put in storage. Louise recalls her father stealing into the cupboard to have a sip on at least one occasion thereafter. Although generally a teetotaler, Mr. Buhr does not appear to have been as strongly committed as Mrs. Buhr.

⁸⁸ When queried about the probable reaction of the Mennonite community to the idea of Buhr owning a theatre, David Friesen, Q.C., supra, note 80, advised that they would have been "shocked".

conversion experience). Mrs. Buhr later lamented that "all the money that came from the theatre went bad." Buhr used the money from the sale of the theatre to purchase a farm. When the farm began losing money, he sold it and used the sale proceeds to buy another farm in Spy Hill. This also lost money and was sold, the proceeds being used to buy a store in Starbuck, Manitoba which was operated by Buhr's son Arthur and one of Jacob Buhr's sons. Eventually this store went bankrupt.⁸⁹

Little is known about Buhr's practice in Morse. It seems a fair assumption that it would have been primarily solicitor-based, with land transactions, incorporations, and wills predominating. One daughter reports that Buhr received a telephone call asking him to defend a young man accused of murder. Buhr refused, declaring that he did not want to be responsible for a man's life.⁹⁰

Other than the Buhrs, it is uncertain to what extent Mennonites were present in the Morse area during this period of time. There was a substantial Mennonite settlement in Herbert, a few miles away, and it may well have been that some Mennonites came to Morse for legal services, preferring a lawyer who spoke their language to one in Herbert who did not. The number of Mennonite clients Buhr served in his practice is, however, unknown.

⁸⁹ Interview with Louise Clarkson, supra, note 36.

⁹⁰ Letter from Alma McQuiggan, supra, note 46.

Despite his successful practice⁹¹ and the family's position in the town, Buhr was interested in moving away from Morse. In the early 1920s, Mr. and Mrs. Buhr took a trip to Vancouver, in part to check out the possibilities of a move. This possibility was rejected after they met there with a former classmate from Wesley College, also a lawyer, and found that making money in law was more difficult in Vancouver than on the prairies.⁹² In 1923, Buhr made a trip to Los Angeles and wrote back describing the beauty of the roses in Pasadena. Mrs. Buhr vetoed the possibility of a move to the United States, however, refusing to raise her children in "that Godforsaken country."⁹³

Eventually a move was mandated in 1926 when the eldest son, Arthur, who was attending the University of Saskatchewan in Saskatoon, suffered an attack of appendicitis. This convinced Buhr that the time had come to move to a city with a university so that his children could attend school while living at home.⁹⁴ The Buhrs considered Regina, Vancouver and Calgary before the decision was made to move back to Winnipeg.

⁹¹ Buhr once told his son Arthur that he had earned \$10,000 one year in Morse. Interview with Arthur Buhr, supra, note 9.

⁹² According to Louise Clarkson, supra, note 36, her mother commented on the tidy office of this lawyer and remarked that she wished that her husband's office were that clean. The lawyer replied that he would be happy to have Buhr's messy office if he could also have Buhr's practice.

⁹³ Ibid.

⁹⁴ Interviews with Harold Buhr, supra, note 53 and with Arthur and Walter Buhr, supra, note 9.

Buhr made arrangements to enter a partnership with Walter Lindal and another lawyer.⁹⁵ Lindal, a prominent Icelandic lawyer, had been a classmate of Mr. and Mrs. Buhr at Wesley College.⁹⁶

Buhr sold his Morse practice to David Vogt, who had been articling with him since December, 1923. Mr. Vogt's brother, Henry Vogt, was married to Buhr's sister, Aganetha. There appear to have been difficulties in the winding up of Buhr's involvement with his practice. Mr. Buhr and Arthur stayed in Morse to help with the transfer, while the children and Mrs. Buhr left for Winnipeg.⁹⁷ Harold Buhr recalls his father telling him that if he had all the money he was owed when he left Morse, he could have retired.⁹⁸ This may have been a reference to accounts with clients outstanding at the time he left his practice. However, Buhr may also have been referring to money owed him by David Vogt. Two of the children recall their father mentioning that he was never paid the full

⁹⁵ Interview with Arthur and Walter Buhr, supra, note 9.

⁹⁶ Interview with Harold Buhr, supra, note 53. Louise Clarkson, supra, note 36, suggested that her father may also have known Lindal from Liberal politics.

⁹⁷ According to Louise Clarkson, ibid., three of the children stayed for a brief time with Mrs. Buhr's mother. Mrs. Buhr and the other four children stayed with the Henry Vogt family (Mrs. Vogt was Mr. Buhr's half-sister) for a week or so until Mrs. Buhr found a house for them.

⁹⁸ Interview with Harold Buhr, supra, note 53.

purchase price agreed to by Mr. Vogt.⁹⁹

In Winnipeg, Buhr visited a number of churches before selecting Elim Chapel, an interdenominational evangelical church, as their new church home.¹⁰⁰ The Buhr's took an evangelical approach to Christianity (in the sense that they believed that a person had to be "born again")¹⁰¹ and Mr. Buhr endorsed Elim Chapel by declaring: "They teach the Bible."¹⁰² The Buhrs were quickly involved with the congregation. Mr. Buhr served on the Church Board and later in life was made an honorary member of the Board.¹⁰³ He also led the Adult Bible School class¹⁰⁴ and was involved in some para-church organizations, including the Gideons, the Lighthouse Mission

⁹⁹ Interviews with Arthur Buhr, supra, note 9 and with Louise Clarkson, supra, note 36. Arthur Buhr recalls that the family home was also to be disposed of by David Vogt. He says that some years later he and his new bride drove through Morse and found that this house had simply disappeared.

¹⁰⁰ Alma McQuiggan, supra, note 26, reports that the children and Mrs. Buhr were attending Maryland United Church while Mr. Buhr attended a variety of churches in order to select one. When Mr. Buhr announced that he had selected Elim, all of the children and Mrs. Buhr objected. They felt that Elim was too cold and unfriendly. Mrs. Buhr had no difficulty with Elim's theology, which was the primary reason Mr. Buhr liked Elim. Despite the objections, Mr. Buhr prevailed and the whole family began attending Elim.

¹⁰¹ Interview with Louise Clarkson, supra, note 36.

¹⁰² Interview with Harold Buhr, supra, note 53. Louise Clarkson, supra, note 36, believes that the Buhrs were also attracted by the interdenominational aspect of the church and the fact that the church regularly received visiting ministers from all over North America.

¹⁰³ Interview with Harold Buhr, supra, note 53.

¹⁰⁴ Interview with Arthur and Walter Buhr, supra, note 9.

and other mission groups. He supported the Big Brothers organization. Mrs. Buhr was also busy, continuing her involvement with the Women's Christian Temperance Union, participating in church activities and supporting Big Sisters.

Although the Buhrs decided not to attend one of the several Mennonite churches in Winnipeg (probably because Mennonite church services were all conducted in German and Mrs. Buhr was unfamiliar with the language), the Buhrs cultivated Mennonite connections during their sojourn in Winnipeg.

The Buhr's most extensive involvement with Mennonites was with Mr. Buhr's family, both immediate and extended. Visits to the Gretna area were frequent and the Buhr sons sometimes stayed all summer to help with the farm work.¹⁰⁵ When in Gretna, the Buhrs attended the Mennonite church. Visits from Southern Manitoba to the Buhr home in Winnipeg were also frequent. Stories abound about the many occasions when Mennonites appeared on the doorstep without warning and were warmly welcomed.¹⁰⁶ Often this hospitality required the Buhr

¹⁰⁵ Harold Buhr, supra, note 53, mentioned this latter fact In a letter to the writer, supra, note 9, he also reported that Mr. Buhr made a point of visiting every one of his siblings and half-siblings, as well as his parents during these visits in a letter to the writer of November 24, 1990. All of the Buhr children contacted mentioned the trips to southern Manitoba.

¹⁰⁶ One such story is related by Harold Buhr, supra, note 53, who told of the time a Mennonite relative whom Mr. Buhr had not seen since age nine showed up unannounced and explained that his wife was undergoing gall bladder surgery. This man stayed at the Buhr household throughout the two weeks of his wife's recovery. Louise Clarkson, supra, note 36, claims that one Mennonite

children to sleep on a couch or a floor and to go with less than their fill at meals.¹⁰⁷ Mrs. Buhr seems to have gone out of her way to make Mennonite visitors welcome.¹⁰⁸ Besides earning a reputation for never turning away a relative, she learned Low German in order to communicate with her parents-

relative emitted a particularly violent aroma and, when approached about it by Mr. Buhr, announced that he never bathed in the winter. After he left, the house had to be fumigated.

Another story concerns the Henry Vogt family. Although the Vogts had been living in Winnipeg in 1926, they subsequently moved to Swift Current, where they stayed for a couple of years. On their return to Winnipeg, they stayed at the Buhr home, just as Mrs. Buhr and the children had stayed in the Vogt home when moving to Winnipeg. The reciprocity of the impositions was complete after about one week however, and the Vogts showed no signs of leaving after that time. Indeed, they continued their stay for several months. Moreover, the two families did not get on well. One of the Vogt daughters stole some face powder from one of the Buhr daughters and Mrs. Vogt was not particularly keen to help out around the house. Evidently, Mrs. Buhr eventually solved the problem by asking Mrs. Vogt to iron all the curtains in the house. The Vogts were gone two days later. Interview with Louise Clarkson, supra, note 36.

¹⁰⁷ Elmer Buhr, in "A Tribute to Aunt Mary" in Regier, supra, note 3 at 135 recalls living with his Uncle Abraham and Aunt Mary in Winnipeg. He claims the distinction of being the only Buhr that ever paid Mary Buhr board and room. He claims to have met "more Buhr relatives that were free-loading on the generosity of the hosts on Walnut Street than I ever knew existed." He claims, "...you were never sure if you had a place at the table because of the rest of the visiting Buhrs... I remember on many occasions going to sleep on the second floor and waking up anywhere else in the house, like the sleeping balcony, bathroom, third floor, or on the chesterfield, as sometime during the night some Buhrs showed up from somewhere and they were always accommodated and made welcome." He also claims to have been privy to the various hand and verbal signals used by the Buhr family to ascertain the extent of the food available at a meal.

¹⁰⁸ Elmer Buhr, ibid., referred to her as "the Florence Nightingale of the prairies."

in-law and other relatives.¹⁰⁹

In addition to relatives, Buhr maintained other links with the Mennonite establishment. Alma McQuiggan reports that both Benjamin and H.H. Ewert and their families were visitors to the Buhr household on more than one occasion.¹¹⁰

One area of official involvement in the Mennonite community concerned Mennonites escaping from the Soviet Union after having endured the post-revolution Civil War (much of which was fought in the area in which they were living) and subsequent famine. By 1923, these Mennonites were coming to Canada in huge numbers, their immigration arranged by a network of Mennonites in Canada, the United States and Europe.

Buhr was aware of the situation while still living in Morse. One daughter remembers being taken to the train station in Herbert early in the morning to meet a special train with Mennonite refugees.¹¹¹ In Winnipeg, Buhr became more extensively involved. The C.N.R. had suggested to the Board of Colonization (the Mennonite agency settling the refugees) that it was prepared to offer assistance in the project. The C.P.R., with which the Board of Colonization had

¹⁰⁹ Letter from Alma McQuiggan, supra, note 46; interview with Harold Buhr, supra, note 53.

¹¹⁰ Supra, note 26.

¹¹¹ Letter from Alma McQuiggan, supra, note 46. Mrs. McQuiggan says she was appalled to find that these poor and exhausted Mennonites were first taken to a church service before being served breakfast. (That this would surprise her may indicate her unfamiliarity with Mennonites.)

been dealing, rejected the prospect of the C.N.R.'s involvement.¹¹² (Evidently, Mennonites were considered good risks as settlers and both railways wanted them to settle on their land.) Out of dissatisfaction with C.P.R. policies¹¹³ and in an effort to accommodate the huge numbers of Mennonites seeking an escape from the Soviet Union, Buhr and a Mennonite doctor, Gerhard Hiebert, took the lead in the formation of an alternative agency which would take advantage of the C.N.R.'s offer. This agency, known as Mennonite Immigration Aid, was headquartered in Winnipeg.¹¹⁴

It is not certain to what extent this agency was able to assist in the immigration of Mennonites. By 1926, travel restrictions were being imposed in the Soviet Union and exit visas were more difficult to obtain. In addition, M.I.A. suffered from internal problems. Henry Vogt, a member of the board and Buhr's brother-in-law, withdrew his involvement and then took the extraordinary step of writing a letter to the Soviet Minister of Immigration denouncing M.I.A. He noted (correctly) that Buhr and Hiebert had not been attending a Mennonite church for twenty years. He also accused them of

¹¹² Frank H. Epp, Mennonite Exodus: The Rescue and Resettlement of the Russian Mennonites Since the Communist Revolution (Altona: D.W. Friesen and Sons Ltd., 1962) at 179-180.

¹¹³ The C.P.R. was somewhat restrictive in its quotas. In addition, it followed the policy of detaining in Europe the entire family of any individual who was unable to pass the Canadian medical examination required for admittance to Canada. Ibid. at 173.

¹¹⁴ Ibid. at 180.

operating a money-making venture, claiming that they were "the same as hundreds of other real estate agents."¹¹⁵ That this accusation was true is unlikely, but even if it were, justification for Vogt's actions (which may well have jeopardized the lives of hundreds or even thousands of would-be immigrants) is hard to find.

Despite this situation, the M.I.A. must have had some success in assisting Mennonite refugees. Harold Buhr recalls going to Winnipeg's Union Station with his father to meet Mennonite refugees¹¹⁶, and Alma (Buhr) McQuiggan remembers her family employing Mennonite girls as household help. Mrs. Buhr gave these girls English lessons, but the Buhr family was forced to learn basic Low German in order to communicate with them.¹¹⁷

Buhr was also involved in Mennonite immigration in the matter of the Intercontinental Land Company.¹¹⁸ This company was heavily involved in the purchase of land in Manitoba and Saskatchewan vacated by the more conservative Mennonites who were emigrating to Mexico and Paraguay. The land was then resold to Mennonites recently immigrating from Russia. The purchase and re-sale of the land was financed by issuing A-

¹¹⁵ Ibid. at 181.

¹¹⁶ Interview with Harold Buhr, supra, note 53.

¹¹⁷ Letter from Alma McQuiggan, supra, note 46.

¹¹⁸ All information obtained concerning this matter can be found in Frank H. Epp, supra, note 112 at 301-304.

Bonds (purchased primarily by large corporations and trust companies) and B-Bonds (second mortgage bonds). The latter were purchased primarily by Mennonites and Amish in Ontario and the United States, largely on the strength of the recommendation of Bishop David Toews, Chairman of the Board of Colonization.¹¹⁹ When the Depression and drought set in, many of the Russian Mennonites were unable to make the payments on their mortgages, and the land plummeted in value. The Intercontinental Land Company was unable to pay the interest due to its shareholders and the A-Bond holders threatened to foreclose. An offer by the A-Bond holders to give the B-Bond holders prior security in exchange for payment of the taxes owing on the Company's property was declined. Buhr, as counsel for the B-Bond holders, won a court decision delaying foreclosure for some time, but in October, 1934 the National Trust Company won final judgment, leaving the B-Bond holders with nothing to show for their investment. Buhr then recommended that the Russian Mennonites who had been the recipients of the B-Bond holders' assistance take out life insurance policies naming the B-Bond holders as beneficiaries. No action seems to have been taken on this proposal.

Buhr had many Mennonite clients, and the percentage of Mennonites in his clientele grew steadily. According to his daughter, who worked in his office in the 1930s, about 20% of

¹¹⁹ Bishop Toews recommended the purchase of the Bonds, noting that the land was being sold fairly and suggesting that it was one way of assisting the Mennonites fleeing the Soviet Union. Ibid.

his clientele was Mennonite.¹²⁰ By the time his son helped out in the office, just after World War II, that percentage had increased to 50%.¹²¹ During the 1930s, Buhr operated a branch office in Steinbach two days a week and most of his clients at that office would have been Mennonite.¹²² His secretary during the last years of his practice (in the 1950s) considered that most of his clients were Mennonites.¹²³

One of Buhr's clients was his **alma mater**, the Mennonite Collegiate Institute. In 1936, the ownership of the M.C.I. passed from the Society which was operating it to the Manitoba Conference of Mennonites. Later in the same year, ownership was returned to a new society. Neither transaction was registered with the Land Titles Office, and as a result the original society (now disbanded) technically still owned the property. In 1946-47, the problem was discovered and Buhr was retained to sort the matter out, apparently successfully.¹²⁴

At least one of Buhr's children believes that Buhr was a "preserver" of Mennonite culture, in the sense of acting as an intermediary between the Mennonite culture and the larger

¹²⁰ Letter from Louise Clarkson, supra, note 28.

¹²¹ Letter from Harold Buhr, supra, note 9 and interview with Harold Buhr, supra, note 53.

¹²² Interview with Louise Clarkson, supra, note 36.

¹²³ Interview with Irmgard Friesen, Fall, 1990.

¹²⁴ This information was provided by Gerhard Ens, author of Die Schule muss sein, supra, note 13 in an interview on December 29, 1990.

culture while attempting to protect the former.¹²⁵ One of the ways he did this was by representing Mennonites to the larger culture. He did so in a non-professional capacity in a series of CBC Radio broadcasts as part of the "My Neighbour" series in 1936, reprinted in a publication and attached as Appendix 1. In these broadcasts, Buhr covered the history of the Mennonites and most of their beliefs. The broadcasts were objective, but definitely cast the Mennonites in a positive light.

Buhr's representation of Mennonites to the larger culture was also evident in his professional role. One daughter recalls her father discussing sometime in the 1930s a meeting which had taken place the night before in St. James (a Winnipeg suburb).¹²⁶ Her father had attended the meeting at which the proposed purchase of land by Mennonites was discussed. (It is unknown whether this was a City Zoning meeting or whether Buhr was representing the Mennonites, although both seem likely.) Considerable opposition was expressed to the purchase and Buhr finally addressed the real issue by asking the group, "How do we differ from you?" Apparently the crowd was surprised by Buhr's identification with Mennonites, commenting that he didn't have a beard and

¹²⁵ Interview with Louise Clarkson, supra, note 36. See Thomas L. Schaffer and Mary M. Schaffer, "Lawyers as Assimilators and Preservers" (1988) 58 Mississippi Law Journal 405 at 408-414.

¹²⁶ All information concerning this incident has been obtained from Alma McQuiggan, either in her letter, supra, note 46, or through an interview, supra, note 26.

wore a tie. Alma McQuiggan believes that the incident is revealing and that "deep down" Buhr considered himself a Mennonite.¹²⁷

This perspective is strengthened by Buhr's activities during the Second World War. Despite the fact that all five of his sons joined the Canadian Army, Buhr believed that doing so was wrong. He was not a supporter of Hitler (as some Mennonites were) and believed that Hitler was evil, but he also believed that killing was not an appropriate response.¹²⁸ Buhr went beyond holding a private view by defending Mennonite men who were being conscripted, despite the fact that he was not a courtroom lawyer.¹²⁹ His children believe that he took this action out of a conviction that these men were right in refusing to fight, rather than out of a professional obligation to defend an accused.

Their disagreement over the War did not seem to affect the mutual love and respect between Buhr and his sons. When one son, Richard, returned to Winnipeg after being wounded in

¹²⁷ Supra, note 26. Arthur Buhr, in an interview on August 14, 1991, concurred in this assessment.

¹²⁸ Harold Buhr, supra, note 53, revealed that he had had many opportunities to discuss the matter with his father during the year Harold was forced to spend at home due to a bureaucratic bungle which prevented him from joining the Armed Forces.

¹²⁹ It is unknown whether these "defences" took place in hearings to determine conscientious objector status or later, in court, after C.O. status had been refused, the conscript had failed to obey his conscription notice and had been charged. For a discussion of the experiences Mennonites had when conscripted, see Ken Reddig, "Judge Adamson Versus the Mennonites of Manitoba During World War II" (1989) 7 Journal of Mennonite Studies 51.

Italy, his parents met him at Union Station. Mr. Buhr noticed Winnipeg's mayor at the station and proudly introduced Richard to him.¹³⁰ Another son, after receiving his discharge, was on a bus with Mr. Buhr where they met another lawyer who asked in a condescending manner how the son felt about having his father represent conscientious objectors. The son replied that the children in his family had been brought up to do what they thought was the right thing and he assumed that his father had the same privilege.¹³¹

As evidenced by the move to Winnipeg, education was a high priority for the Buhrs. During the 1930s, accommodating this priority was difficult. Buhr sold his car¹³² and borrowed against his insurance policy so that his children would have the chance to attend university.¹³³

Although the Depression meant a drop in the Buhrs' standard of living, the children remember surviving it quite well. Their diet was supplemented by vegetables and meats offered as payment to Mr. Buhr by those unable to pay cash for his services. One farmer is said to have supplied the family

¹³⁰ Interview with Louise Clarkson, Supra, note 36.

¹³¹ This story was provided by Harold Buhr, supra, note 9, although he was not the son in question.

¹³² Buhr may not have found the lack of a car a great loss. According to Harold Buhr, supra, note 53, Buhr was always a great walker. He walked to his office at Portage and Main from the family home at Walnut and Preston daily. In addition, Mr. and Mrs. Buhr would often take a walk in the evening.

¹³³ Interview with Harold Buhr, supra, note 53.

with pork for three winters.¹³⁴

In addition to farm produce, Buhr was often forced to accept shares of companies he incorporated as payment for his services. Most of these were essentially valueless, but one share with a mining company turned out to be quite valuable indeed and Buhr considered its sale to have made up for all the others.¹³⁵

Buhr entered practice in Winnipeg with Lindal, Buhr and Stephansen. It is thought that initially Buhr bought into a full-fledged partnership, but this was unsatisfactory.¹³⁶ Eventually the partners split up, retaining a partnership of sorts by sharing office space and expenses while each took responsibility for his own earnings and secretary.¹³⁷

Buhr ran an inefficient office. His son Harold, who worked in the office, reports that he had virtually no book-keeping system. There were dozens of outstanding accounts and many funds were unaccounted for. Because of his desire to be honest, Buhr would place all undesignated funds in his trust account, with the result that the trust fund was larger than necessary. Harold solved the problem by sending demand letters to every possible outstanding account. Many sheepish

¹³⁴ Louise Clarkson, supra, note 28.

¹³⁵ Ibid.

¹³⁶ Louise Clarkson, supra, note 36, reports that Lindal did not keep his promise to turn clients over to Buhr.

¹³⁷ Ibid.

debtors came forward to pay debts years old. Other presumed debtors claimed to have paid their accounts, in which case monies were released from the trust account into Buhr's private account.¹³⁸

Buhr's practice was predominantly solicitor-based, involving mostly land transactions, wills and incorporations.¹³⁹ He was uncomfortable with litigation, and preferred to settle.¹⁴⁰ When an appearance in court could not be avoided, he was meticulous in his preparation, perhaps because he was unwilling to rely on his courtroom experience or technique.¹⁴¹ To the extent Buhr was involved in litigation, it consisted largely of routine collection matters and farm assistance work, especially during the 1930s, in which he tried to save farms (many Mennonite) from foreclosure. He did very little criminal work and refused to handle divorces. Indeed, his practice in divorce matters was to attempt to persuade the client against getting a divorce

¹³⁸ Harold Buhr, supra, note 53.

¹³⁹ His secretary in the mid-fifties claims not to have known where he kept his robes, so rarely did he go to court. Irmgard Friesen, supra, note 123. The remainder of the information concerning his practice can be attributed to Louise Clarkson, supra, notes 28 and 36, and to Harold Buhr, supra, notes 9 and 53. Mrs. Clarkson worked for her father between 1931 and 1934. Harold Buhr worked in his father's office between 1945 and 1946.

¹⁴⁰ David Friesen, Q.C., supra, note 88.

¹⁴¹ Arthur and Walter Buhr, supra, note 9 and with Harold Buhr, supra, note 53.

and, if he was unsuccessful, to send him to another lawyer.¹⁴² Buhr did make one appearance before the Supreme Court of Canada, losing the case but being commended for his presentation.¹⁴³

Some time after World War II, Buhr sold his practice to David Friesen, Q.C. and then entered into an arrangement with Mr. Friesen whereby Buhr continued to work at the office now owned by Friesen. Buhr retired from practice in 1957.

It is unclear to what extent Buhr was involved in the culture of the legal profession. He was a member of the Manitoba Bar Association¹⁴⁴ but there is general agreement that the practice of law was not the most important thing in his life. A former articling student and partner, David Friesen, Q.C., observed that Buhr was not particularly interested in making a great deal of money or "getting ahead" in law. He didn't love law to the extent that it filled his thoughts and conversation.¹⁴⁵ Harold Buhr concurs, and believes that his father viewed the law as a way of making a

¹⁴² Harold Buhr, ibid., reports that when he was proceeding with a divorce, his father visited him in Montreal to try to convince him not to go through with it. Despite Buhr's strong feelings on the issue of divorce, Harold does recall him handling one divorce case.

¹⁴³ Ibid.

¹⁴⁴ The writer is in possession of an undated newspaper clipping which shows him registering for a Manitoba Bar Association conference. The clipping was provided by Harold Buhr.

¹⁴⁵ David Friesen, Q.C., supra, note 88.

living, not as a way of life.¹⁴⁶ Both Harold and Alma McQuiggan report that their father mentioned more than once that, if he had it to do over again, he would have become a minister rather than a lawyer.¹⁴⁷

Despite this expressed desire, and despite that Buhr very likely continued to think of himself as a Mennonite, it is doubtful that if Buhr had it to do over again he would have been a Mennonite minister. Indeed, his relationship with the Mennonite church and community remain one of the most fascinating aspects of his life. It is unknown whether Buhr was ever baptised into the church (although Alma McQuiggan thinks that he was) and, if so, whether he was ever expelled from the church.¹⁴⁸ Buhr had certainly done enough to flout the traditions and values of Mennonites by marrying a non-Mennonite, attending university, becoming a lawyer¹⁴⁹, owning

¹⁴⁶ Harold Buhr, supra, note 53.

¹⁴⁷ Ibid. and Alma McQuiggan, supra, note 26.

¹⁴⁸ Alma McQuiggan, supra, note 26, reports that, while the family was living in Morse, Buhr attended a Mennonite conference held in a large tent in Herbert. At that conference a resolution was passed declaring that, since Mennonites did not believe in violence, they could not be lawyers. Accordingly Buhr was "read out" at the conference. (It is uncertain what was meant by this term or of the implications. It seems apparent that there was expressed disapproval for Buhr's profession.) Ironically, as Buhr was leaving the conference, a Mennonite man approached him to inquire about legal representation.

¹⁴⁹ David Friesen, Q.C., supra, note 88, reports that when he was considering entering law, he was encouraged by H.H. Ewert, but that the majority of Mennonites had an antipathy toward the profession. They were identified with the "scribes and pharisees" of the gospels.

Arthur and Walter Buhr, supra, note 9, recalled an incident in

a theatre and attending a non-Mennonite church when Mennonite churches existed in Winnipeg. Despite this, by all accounts, Buhr continued to have a good relationship with his immediate and extended family, with leaders in the Mennonite church¹⁵⁰ and with the large number of individual Mennonites who retained his services.

One explanation for this apparent contradiction is that Mennonites were hypocritical - denouncing Buhr's profession but utilizing his services and hospitality when it suited them.¹⁵¹ This explanation does not, however, fully account for the cordial relations between Buhr and church leaders, especially the Ewerts.¹⁵² Such an explanation may also overemphasize the homogeneous nature of the Mennonite community. It may be that some Mennonites were more prepared than others to accommodate Buhr's lifestyle.

which their parents attended a Mennonite church and the minister began railing against the legal profession generally and Buhr in particular. Like the incident in Herbert, *ibid.*, a Mennonite attending the service approached Buhr afterwards to ask for legal advice.

¹⁵⁰ This is evidenced by the fact that the itinerant ministers visiting Morse would often be served meals at the Buhr residence, by the visits of both Benjamin and H.H. Ewert to the Buhr home in Winnipeg and by the fact that the Mennonite leadership was involved in retaining Buhr to act for C.O.s in World War II and in the land registration difficulties of the M.C.I. in 1947.

¹⁵¹ Arthur Buhr, *supra*, note 127, suggested this as an explanation.

¹⁵² Alma McQuiggan, *supra*, note 26, sees their relationship as being friendly and built on mutual respect. She claims never to have heard or heard of visiting Mennonites upbraiding Buhr for any of these transgressions.

Of equal interest is the relationship from Buhr's perspective. Having "thrown off the traces" by attending university, marrying a non-Mennonite and becoming a lawyer, he continued to draw a line between himself and the Mennonite community by not attending a Mennonite church and not raising his children in a Mennonite community. On the other hand, he identified with the Mennonites publicly, especially by defending conscientious objectors, and is considered by two of his children, "deep down", to have considered himself a Mennonite throughout his life. It seems clear that he felt a certain affection for Mennonites and acted as protector for them from the larger culture. He also retained a firm belief in at least one of the Mennonite tenets, that of non-violence.

In short, while a great deal is known about Abraham Buhr, much remains a mystery and, given that he is unavailable for comment, will remain so.

Buhr died on May 14, 1960.

HENRY VOGT (1886-1968)

There are two versions of the history of Henry Vogt's grandparents' arrival in Canada. The first, recounted by Henry Vogt's son, Alfred, in his autobiography, is that Henry's grandfather, of "provincial Dutch" origin settled near Portland, Oregon in the 1860s where he became a "hunter, trapper and rancher who could read animal spoor and follow the tracks of wild game".¹⁵³ Hearing of Dutch settlers in Manitoba, Henry's grandfather moved there with his family, but didn't like it "because they weren't his kind of Dutch", so he returned to Oregon.¹⁵⁴ However, his older children had already married in Manitoba and stayed there.¹⁵⁵

The other, more credible, version of events is provided by Henry Vogt's niece, Tracey Spears, an amateur geneologist, who reports that Henry Vogt's grandfather, Wilhelm Vogt, was born in Nieder Chortitz, Russia (a Mennonite Colony) on January 10, 1842.¹⁵⁶ His wife, Anna Quiring was born on July

¹⁵³ A.E. van Vogt, Reflections of A. E. van Vogt: The Autobiography of a Science Fiction Giant With A Complete Bibliography (Lakemont, Georgia: Fictioneer Books Ltd, 1975) at 15, 22.

¹⁵⁴ Ibid. at 15.

¹⁵⁵ Ibid at 15-16.

¹⁵⁶ This information is courtesy of Tracy (Vogt) Spears, 8664 Armstrong Avenue, Burnaby, B.C., V3N 2H6, Ph. (604) 522-8357. Mrs. Spears is the daughter of Heinrich Vogt's brother, Peter. Mrs. Spears has taken an interest in her family's geneology and has graciously provided the information attributed to her to the writer.

10, 1845, also in Nieder Chortitz. They and their three sons are listed on the passenger list of the S.S. Austrian which left Liverpool on June 30, 1874 and arrived in Quebec on July 17, 1874. Their middle son, Heinrich, born in 1865, was eleven years old at the time. The family is listed in the 1881 Manitoba Census, which shows the subsequent births of two children. The family lived in Plum Coulee, Manitoba, where Wilhelm joined the Mennonite church in 1896. As the Bergthaler Church record shows that Anna Vogt died in Oregon in 1895, it may be that the family moved there some time later.¹⁵⁷ At any rate, Heinrich Vogt was in Manitoba on July 15, 1885, for he married Judith (Ida) Wiebe in Gretna on that date. Ms. Wiebe had been born in Russia on Nov. 30, 1865. Her family had also arrived in Canada in 1874.¹⁵⁸

Heinrich (Henry) Vogt was the eldest son of this couple, born in Gretna, Manitoba on May 9, 1886.¹⁵⁹ The family appears to have settled in the Gretna area, for all of the eight children which were born in the next fourteen years have

¹⁵⁷ Information provided by Tracy Spears under covering letter dated November 10, 1991.

¹⁵⁸ Letter from Tracey Spears, dated February 27, 1991.

¹⁵⁹ Regier, supra, note 1 at 68 shows a birthdate of May 9, 1889 but Spears, ibid., and the Law Society of Saskatchewan, supra, note 4, both show a date of birth as 1886. Regier, supra, note 1 at 68 shows Henry as born in Neville, Saskatchewan, while the other two sources show Gretna or Edenburg (a mile or two outside of Gretna) as the place of birth.

For purposes of clarity, the father will be referred to as Heinrich, while the son (who became a lawyer) will be referred to as Henry.

Gretna listed as their birthplace.¹⁶⁰

Like Abraham Buhr's father and grandfather, Henry Vogt's father appears to have been a supporter of the Mennonite Educational Institute and the more progressive position taken by Bishop Funk and the Bergthaler group, for his family was among only sixty families who supported Bishop Funk during the split within the Bergthaler church in the 1890s.¹⁶¹ Henry attended the M.E.I., graduating in 1902.¹⁶² He was probably attending the High School when his father died of illness on March 23, 1900.

Henry's mother, alone with seven children and seven months pregnant with an eighth child at the time of her husband's death, was remarried on July 9, 1901 to Abram Schmidt, a widower with ten children of his own. They later had two children together. Tracy Spears reports that Abram Schmidt is said to have had a drinking problem, but nothing else is known about him.¹⁶³

Little is known about the next few years of his life, but in 1907, Henry Vogt married Aganetha Buhr in Edenburg, Manitoba. Agenetha Buhr was born in Edenburg, Manitoba on

¹⁶⁰ Spears, supra, note 158. One of these children died in infancy and another when she was five years old.

¹⁶¹ Gerbrandt, supra, note 10 at 93.

¹⁶² Ens, supra, note 13 at 26. Enns, supra, note 14 at 167, shows Henry Vogt to have contributed \$100 to the school during a building drive in 1912.

¹⁶³ Spears, supra, note 158.

September 30, 1887. She was the oldest child of Johann Buhr's "second family", i.e. the oldest child of Johann Buhr's marriage to Aganetha Friesen, whom he married after the death of his first wife, Helena (Friesen).¹⁶⁴ She was therefore Abraham Buhr's half-sister.

Again, the next few years are blank, but it is clear that Abram Schmidt moved the family to Saskatchewan sometime around 1909 to 1911. He is said to have taken out homestead rights for his sons and step-sons in the Pambrun district.¹⁶⁵ The Vogt Bros. General Store was established in the nearby town of Neville in 1912.¹⁶⁶ Henry Vogt and his family apparently made the move to Saskatchewan with his parents' family,¹⁶⁷ but at some point Henry decided to pursue the practice of law, for he is known to have graduated from the Indianapolis College of

¹⁶⁴ Regier, supra, note 1 at 37.

¹⁶⁵ Neville: The Golden Years, 1900-1980; A History of Neville Saskatchewan and Surrounding Area (Neville: The Neville Celebrate Saskatchewan Historical Committee, 1980) at 97-98. Henry Vogt's son, Alfred, wrote an article in this volume at 97-98 entitled "Recollections of Neville" in which he states that his father and uncles had inherited land upon the death of their father, and that one or all of the brothers purchased Henry's share from him.

¹⁶⁶ Ibid. at 97-98.

¹⁶⁷ According to Regier, supra, note 1 at 68, a daughter, Amanda, was born in 1907 in Edenburg and died in infancy. A son, Arthur, was born on April 29, 1909 and his birthplace is listed as Edenburg. Alfred van Vogt, supra, note 153 at 15, claims that his family was living in Saskatchewan when he was born on April 26, 1912 but that his birth took place in Edenburg, where his mother had gone, presumably to be with her family for the birth.

Law in 1913.¹⁶⁸ The length of the program at this school is unknown, but Henry's family apparently moved to Indianapolis for his studies.¹⁶⁹ Henry Vogt was one of 26 graduates in a school with a faculty of nine and served as secretary-treasurer of the class as well as on the committee responsible for the class picture.¹⁷⁰ The family then returned to Saskatchewan, where Vogt set up a law office next door to his brothers' store.¹⁷¹

The family lived in Neville for the next decade. According to Law Society of Saskatchewan records, Vogt began articling with A. Buhr in 1916 and finished his articles with Herbert Cathrea before being called to the Bar in 1920.¹⁷²

¹⁶⁸ Tracey Spears has provided me with a photocopy of the graduation program. The course of studies may well have been only one year in length.

¹⁶⁹ Interview with Edna (Vogt) Mortimer, August 20, 1991.

¹⁷⁰ Program of the Graduation Exercises of the Indianapolis College of Law, 1913, supra, note 168.

¹⁷¹ Neville, supra, note 165 at 97. Tracey Spears has provided a picture of the General Store in Neville which she dates as 1912 and which shows a building next door which she claims is Henry's law office. She has also provided a picture showing Henry Vogt at work in an office which she identifies as his law office in Neville and which she dates as July, 1912. Given that Henry Vogt only graduated from a law school in 1913, one explanation is that the dates of the photographs are mistaken. However, there may be another explanation as well. In the picture of the General Store, a sign indicates "Notary Public, Farm Loans, Insurance". It may be that Henry Vogt practiced as an untrained, unlicensed "notary" for some years before deciding to enter the licensed practice of law.

¹⁷² The Law Society of Saskatchewan, supra, note 4, provided the following information:

"Articled to:

A. Buhr - Law Clerk - Supreme Court of Saskatchewan
June 1, 1916 - December 31, 1918

Nothing is known about Vogt's practice during these years, although it may be assumed that he conducted a solicitor's practice typical of a small rural centre - primarily land transactions, wills, and other non-litigious matters. Vogt was apparently elected the first mayor of the town but the length of his service in this capacity is unknown.¹⁷³ Some contact was maintained with the Buhr clan in Morse, Saskatchewan, about 60 miles away. The Buhrs came to visit Neville on at least one occasion¹⁷⁴ and during the flu epidemic of 1919, Henry is said to have pumped a hand car on the railway to get to Vanguard, Saskatchewan, where his brother and sister-in-law, Peter and Susanna Buhr, were ill.¹⁷⁵

In May of 1922, the family moved to Morden, Manitoba

Herberty (sic) Cathrea - December 1918 to enrollment
Enrolled: March 24, 1920"

No explanation has been provided for the juxtaposition of articles with A. Buhr and the position of Law Clerk at the Supreme Court of Saskatchewan. Presumably A. Buhr refers to Abraham Buhr. The name Herberty Cathrea is likely misspelled in the information provided and should be "Herbert". It is unknown where Mr. Cathrea practiced law.

¹⁷³ Neville, supra, note 165 at 97.

¹⁷⁴ Regier, supra, note 1 at 66 shows a picture of three cars outside the Vogt Bros. General Store in Morse. It dates the picture as "approx. 1916" and identifies the occupants as the Abraham Buhr family, the Jacob Buhr family, the Peter Buhr family and Mr. and Mrs. Cornelius Buhr.

¹⁷⁵ van Vogt, in Neville, supra, note 167 at 98.

where Vogt continued to practice law.¹⁷⁶ The reasons for this move are uncertain, but one son claims that Agnes Vogt's father, Johann Buhr, persuaded Henry to move to Morden on the strength of his promise to obtain for him the legal work of the Mennonites in the area. The family stayed in Morden for some years and, according to Alfred van Vogt, Morden was where his father "began his gambling" on speculative properties.¹⁷⁷

By 1926, the Henry Vogt family had moved to Winnipeg.¹⁷⁸ Vogt was apparently involved in the operation of the Holland-America Steamship Line. Indeed, it appears as though his involvement was somewhat of his own manufacture. Alfred van

¹⁷⁶ Law Society of Saskatchewan, supra, note 4 and Regier, supra, note 1 at 67. Law Society of Manitoba records, supra, note 4, show him being called to the Bar in Manitoba on May 31, 1922.

¹⁷⁷ Vogt's son, supra, note 153, at 26-27, has this to say: "Morden was also the place where my father began his gambling. He had got on the mailing list of a Texas "bicket shop" and thereafter he was busy buying phony oil stocks. I recall his excitement when a flyer came through from the "bicket shop" with a flash news item that the well in which he had invested heavily was reported to have come in as a huge gusher. But - the report went on - until the gusher was confirmed, the stock could still be bought at the old price.

I thought that was odd, and thought it even odder that subsequent flyers never again mentioned the gusher; and, in fact, that stock was no longer quoted.

There we were, in a distant part of western Canada, being conned by someone located at one of the centers of the miracle oil development that was, in those days, booming in Texas.

So far as I could determine, no doubts about this ever entered my father's mind. Or, if they did, they were quickly forgotten in some new gambling excitement."

¹⁷⁸ This was the year in which the Abraham Buhr family moved to Winnipeg and initially stayed with the Henry Vogt family.

Vogt indicates that his father went to New York and convinced the Holland-America head office to appoint him as their agent in Winnipeg to take advantage of "some big immigration deal" of which he had become aware.¹⁷⁹ It further appears that Vogt's activities as agent for Holland-America were conducted coincidentally with his law practice out of his law office.¹⁸⁰

In his capacity as agent for Holland-America, Vogt was involved in the transportation and settlement of immigrants from Europe. Edmund van Vogt recalls his father requiring these immigrants to agree to farm for at least one year before settling in an urban centre.¹⁸¹ It may be that this connection gave rise to Vogt's involvement with Mennonite Immigration Aid, details of which have been provided in the section on Abraham Buhr.¹⁸²

¹⁷⁹ van Vogt, supra, note 153 at 29. One can only speculate, but it may well be that the "big immigration deal" was the arrival of the Mennonite refugees from Russia in the prairie west.

¹⁸⁰ Louise Clarkson, supra, note 36 and his son, Edmund van Vogt, recalled his association with Holland America. In an interview on August 19, 1991, Edmund van Vogt expressed the belief that his father was the Winnipeg manager or agent for the company. He also believed that Henry Vogt continued to operate a law office while acting as agent of the Steamship Line and that he essentially did so out of his law office.

¹⁸¹ Edmund van Vogt, ibid. This would be consistent with the requirements of the Canadian government for Mennonite immigrants.

¹⁸² See Epp, supra, note 112 at 180-181. Epp also notes that in 1922, H. Vogt had made complaints that the Board of Colonization, the larger Mennonite immigration organization, was utilizing non-Mennonite lawyers in its operations. This complaint may have given rise to his involvement with the M.I.A. The fact that Vogt appears to have been acting as an agent of a steamship company with a vested interest in the immigrants and their settlement at the time of his involvement with the M.I.A. suggests

Holland-America closed its Winnipeg office some years later and Vogt was forced to return fully to the practice of law. This apparently had significant financial consequences for the family. Alfred claims that his father's position with Holland-America "had had the promise of fifty thousand dollars a year."¹⁸³ He claims that his father was no longer satisfied with merely practicing law after having "tasted the heights".¹⁸⁴ A desire to regain the financial success of previous years may have prompted the family's move to Swift Current, Saskatchewan in 1929 where Vogt entered legal practice. However, this venture proved unsuccessful and the family returned to Winnipeg in 1931.¹⁸⁵

Henry Vogt and his family appear to have settled in

that his accusations about Buhr and Hiebert being involved for monetary gain could more properly be made about Vogt himself.

¹⁸³ van Vogt, supra, note 153 at 31. Alfred does not indicate whether or not this promise was ever realized.

¹⁸⁴ Ibid.

¹⁸⁵ According to the Law Society of Manitoba, supra, note 4, Vogt was granted non-practicing status in January, 1929. The Law Society of Saskatchewan, supra, note 4, indicates that "he came back to Saskatchewan (Mankota) in March 1929. Was found practicing in Swift Current in November of that year..." There is no mention of Mankota in any other source I have examined and Tracey Spears, supra, note 158, claims that he practised in Swift Current, Saskatchewan. She further states that the whole family moved to Saskatchewan, but the two youngest children (Agnes and Ira) stayed at the home of Tracey Spears' parents, Peter and Tina Vogt. Peter Vogt was Henry Vogt's brother and Tina Vogt was Aganetha Vogt's sister. Their home was ten miles from Neville. The rest of Henry Vogt's family lived in Swift Current. Law Society of Saskatchewan records, supra, note 4, indicate that Henry Vogt was declared non-practicing in 1931 and Law Society of Manitoba records, supra, note 4 show him regaining his practicing status in Manitoba in November of 1931.

Winnipeg at that point, but Vogt's career was not going well. Times were tough for everyone during the Depression and many lawyers were finding it hard to make ends meet. However, according to Alfred van Vogt, his father made matters worse with his ambitions. Van Vogt claims that his father "involved himself with studying corporation law, setting up corporations, and spending less of his time in actual hard work."¹⁸⁶ In addition, Henry tried to satisfy his "obsessions of grandeur" by speculating on the Grain Exchange. Alfred speculates that his father lost half his income on the grain market.¹⁸⁷

Henry retained a practicing certificate with the Law Society of Manitoba until 1948,¹⁸⁸ with the exception of two periods during which he was suspended for failure to pay Law Society fees.¹⁸⁹ Again, other than the fact that he was a

¹⁸⁶ van Vogt, supra, note 153 at 31.

¹⁸⁷ Ibid. at 31.

¹⁸⁸ This is at odds with Edmund van Vogt's belief that his father continued to practice law "until the day he died." Edmund van Vogt, supra, note 180.

¹⁸⁹ These periods, according to the Law Society of Manitoba records, supra, note 4, ran from April 1938 to November 1938 and from February 1939 to April 1941. The records show that he stopped paying fees in 1948, with the implication that he retired.

There is a suggestion that Henry Vogt was disbarred at some point. Both Louise Clarkson, in an interview on January 4, 1991, and Tina Friesen, in an interview on January 29, 1991, claim to have heard that this was the case. Information from the Law Society of Saskatchewan, supra, note 4, seems to support this possibility when it states: "He was then struck off the Rolls in Manitoba, I found no date or explanation. The next we heard was 1954, with an address of Box 98 Winnipeg." However, the Law Society of Manitoba claims to have no record of any disbarment,

solo practitioner,¹⁹⁰ little is known about Vogt's practice during this period.

Henry Vogt died on February 24, 1968.

Henry Vogt is described by his children as a patient, gentle man.¹⁹¹ Edmund van Vogt describes his parents as "kind and reasonable" and his father as "easy-going". He claims that he never was strapped by his father except once when his mother insisted.¹⁹² Edna Mortimer, who worked in his law office for a time, reports that he was sometimes too kind for his own good, in that he found it difficult to charge clients for services rendered.¹⁹³ Mrs. Mortimer takes a very positive view of her father, describing him as being ahead of his time, pushing against the barriers of tradition. His gentleness was his weakness, in her view, for he was unable to react strongly when people "pushed him back and kept him down". However, she remarked at his resilience in rising again after each defeat.¹⁹⁴

This positive and even heroic perspective of Henry Vogt

striking off, or suspension other than the aforementioned temporary suspensions for non-payment of fees.

¹⁹⁰ Interview with Agnes van Vogt, August 20, 1991.

¹⁹¹ Edmund van Vogt, supra, note 180 and Edna Mortimer, supra, note 169.

¹⁹² Edmund van Vogt, supra, note 180.

¹⁹³ Edna Mortimer, supra, note 169. However, she also reports that he was involved in a case for years in which he was suing someone on his own behalf.

¹⁹⁴ Ibid.

is disputed by his niece and nephew in the Abraham Buhr family. Arthur Buhr views Henry Vogt as a bit "fast". He points to Vogt's involvement with the sale of a house to the Buhrs when they moved to Winnipeg from Morse. Either the house or the service Vogt supplied did not meet expectations and a residue of bitterness appears to have been left in the Buhr clan. Arthur Buhr believes that his father did not like nor fully trust Henry Vogt, an assessment in which his sister concurs.¹⁹⁵ Another niece got the sense that the rural Buhr clan were of the view that Henry Vogt was always "looking for an angle" and that he could not be fully trusted.¹⁹⁶

The view that Vogt was ambitious and not above stepping on toes in order to get ahead is reinforced by his involvement with Mennonite Immigration Aid and the circumstances surrounding his departure from that organization. Vogt wrote a letter to the Soviet Minister of Immigration accusing Buhr and Hiebert, the leading figures in the organization of not being Mennonites because they had not attended a Mennonite church for many years and of profiting personally from their activities. The first charge could be as easily levelled against Vogt himself and the second charge appears to fit Vogt much more easily than it does the two whom he accused.

¹⁹⁵ Arthur Buhr, supra, note 127, and Louise Clarkson, in an interview on January 7, 1991.

¹⁹⁶ Interview with Freda (Buhr) Bain, August 20, 1991. Mrs. Bain is the daughter of Cornelius Buhr, Aganetha Buhr's sister, and is described by Edna (Vogt) Mortimer, supra, note 169, as the one cousin with whom she was close.

Louise Clarkson recounted the incident in which the Vogt family stayed at the Buhr home upon their return to Winnipeg from Swift Current. This imposition on the Buhr family, exacerbated by the fact that Edna Vogt was accused of stealing face powder from Louise Buhr and the apparent unwillingness of the Vogt family to pitch in and help with tasks around the home, seems to have soured relations between the two families, at least from the Buhr perspective.¹⁹⁷

The Vogts' attitude toward higher education is uncertain. Edna Mortimer suggests that her mother resented the fact that she was unable to attend high school or university. She reports that, when she was 16 years of age, her father enrolled her at Wesley College and made arrangements for her tuition, an arrangement he did not make for his sons. His rationale was that "Its a tough world for girls" and that he was prepared to assist her in every way possible.¹⁹⁸ On the other hand, Edmund van Vogt indicates that both he and his brother, Arthur, dropped out of school in Grade 11 without any particularly negative comment from either of their parents.¹⁹⁹ Alfred van Vogt's recollection is that his parents informed him that he had to get a job, "because there was going to be,

¹⁹⁷ Louise Clarkson, *supra*, note 36. According to Tracey Spears, in an interview on March 19, 1991, when Edna and Ira stayed at her parents' home, both were involved in family chores and she can recall no particular difficulty in them accommodating themselves to her family.

¹⁹⁸ Edna Mortimer, *supra*, note 169.

¹⁹⁹ Edna Mortimer, *supra*, note 169.

apparently, no college for me."²⁰⁰

Other characteristics of Henry Vogt's personality or character are difficult to find. Edmund van Vogt claims that he recalls little of his father; he does not recall whether he had particular interests, whether he was ever involved in sports, for example. Edna Mortimer, on the other hand, claims that, outside of law, her father's main interest was world news. She recalls him constantly listening to the radio and reading the newspaper.

There is a difference of opinion about the role played by the legal profession in Henry Vogt's life. Edna Mortimer sees her father as "totally engulfed" by the law. She recalls that, despite the fact that he was kind and generous with his family, he was constantly thinking about his law practice, even at home.²⁰¹ Edmund van Vogt takes exception to this view. He sees his father as being devoted to law, but only reasonably so, and denies that he was "totally engulfed" by it.²⁰² A niece recalls Vogt as "distracted", always thinking about something, but believes that it was about some new scheme to make money and not necessarily about legal matters.²⁰³

²⁰⁰ van Vogt, supra, note 153 at 32.

²⁰¹ Edna Mortimer, supra, note 169.

²⁰² Edmund van Vogt, supra, note 180.

²⁰³ Freda Bain, supra, note 196. Mrs. Bain suggests that the fact that Henry Vogt was always secretive about his business dealings may account for the difference of opinion among his

Whether or not he was "totally engulfed" by the practice of law, it does appear that Vogt was not notably successful in his chosen profession. Vogt moved four times during his career, setting up new solo practices each time. Presumably, he did so at least in part because of a lack of success in his current practice. His position with Holland-America suggests that he required a secondary income in order to maintain himself and his family. Finally, Law Society records, which indicate substantial periods of suspension for non-payment of fees and a cessation of all payment of fees in 1948, suggest that Vogt was not particularly successful as a lawyer even after a number of years in practice in Winnipeg.

While Henry and Aganetha Vogt appear to have been influenced by both the religious and cultural aspects of their Mennonite upbringing early in their marriage, this influence appears to have been less and less important as time went on. The older children have some recollection of these influences. Alfred van Vogt recalls speaking "Dutch" at home until about the age of four, when his mother insisted that they all speak English, even around the house.²⁰⁴ Edmund van Vogt remembered that his mother wouldn't let the boys play games on Sunday when they were very young. He recalled attending

children about his career. She doubts that even his wife would have been aware of most of his activities. If so, this may account for the fact that Vogt was no longer enrolled as a lawyer after 1948 while his son, Edmund, believes that he practiced law until he died in 1968.

²⁰⁴ van Vogt, supra, note 153 at 16.

Sunday School at a Presbyterian church in Winnipeg as a young child, but reported that church attendance largely lapsed as time went by.²⁰⁵ A cousin, Tracey (Vogt) Spears described the Henry Vogt family as a non-religious²⁰⁶ and Vogt's daughter, Edna Mortimer, claims that religion was never discussed at home.²⁰⁷

The family's lifestyle does not reflect traditional Mennonite restrictions on activities. The Vogts did not smoke but Mr. Vogt had a drink on occasion. The children went to movies and dances.²⁰⁸ When World War II broke out, all three brothers signed up, although Arthur and Alfred were rejected for medical reasons. Edmund van Vogt does not recall his parents having any objection to their enlisting.²⁰⁹

Edmund van Vogt does not recall his parents remarking on their past in either a positive or negative way, but Edna Mortimer believes that her mother had an unhappy childhood, dominated by unending labour and the strict discipline of

²⁰⁵ Edmund van Vogt, supra, note 180. Edmund claims that the change came about as a result of the church they attended offering Bingo. His mother played Bingo and this activity in a church caused her to recognize the foolishness of the religious restrictions with which she had grown up.

²⁰⁶ Tracey Spears, supra, note 197.

²⁰⁷ Agnes Mortimer, supra, note 169.

²⁰⁸ Edmund van Vogt, supra, note 180, reports that his brother was known as the "Sheik of Furby Street" because of his attractiveness to girls. He claims that dance halls would persuade him to attend their events and then advertise in the newspaper that the "Sheik" would be there.

²⁰⁹ Ibid.

religious parents. She believes that her mother was only too happy to escape through marriage the drudgery of caring for her younger siblings. She also believes that her mother resented the fact that she was never able to obtain a high school education.

It is clear that, especially in later years, the Vogts made little or no attempt to acquaint their children with their Mennonite roots. Edmund recalls visiting his mother's father and having the Bible read at meals, but both he and Edna Mortimer claim they never attended the Mennonite church on their visits to southern Manitoba. Edna Mortimer recalls that visits with relatives in southern Manitoba were only occasional and that the topic of religion or Mennonitism never came up. Indeed, she reports that she was unaware of the fact that her parents were of Mennonite background until sometime after leaving home. She claims that her brother Alfred told her that he too was unaware of his parents' Mennonite connection until the early 1960s when a relative visiting from Manitoba pointed it out to him.²¹⁰

The lack of any discussion on the part of Henry and Aganetha Vogt within the family about their past suggests an indifference which would account for the ignorance on the part of the children concerning their Mennonite roots. Edmund van

²¹⁰ Agnes Mortimer, *supra*, note 169. Edmund van Vogt, *supra*, note 180, was aware that his parents were of Mennonite background but claims he and the family thought of themselves as Dutch rather than Mennonite.

Vogt believes that their Mennonite past was "a heritage that meant nothing" to his parents, at least in their later years.²¹¹

A lack of awareness may offer an explanation for the fact that the word "Mennonite" is never mentioned in Alfred van Vogt's autobiography. On the other hand, there is evidence within Alfred van Vogt's autobiography of a sort of "ethnic denial". Great pains appear to have been taken to distance the Vogt name from Mennonites. The history of Alfred's great-grandfather, "the Oregon hunter, trapper and rancher," is not reinforced by any data and flies in the face of evidence provided by Tracey Spears. Again, without any supporting evidence, Alfred insists that the original name of his father's family was "van der Vogte" and makes a point of identifying it with an Austrian title.²¹² He claims that the name was reduced to "Vogt" by his maternal grandfather. He describes his grandfather as "an extreme Christian, [who] was outraged by any pretense of personal worth. Though he was a kindly man, to him everybody was a nobody before God."²¹³ According to Alfred van Vogt, not only was his grandfather responsible for reducing "van der Vogte" to "Vogt" but he also reduced his own name, van Buhr, to a simple "Buhr" and his

²¹¹ Ibid.

²¹² van Vogt, supra, note 153 at 22.

²¹³ Ibid. at 23.

wife's name, "van Riesen", to "Friesen."²¹⁴ Alfred refers to his mother's family as "Dutch" and their language as a "Dutch dialect".²¹⁵ He refers to the Mennonites of southern Manitoba as "the religious people with whom [Alfred's maternal grandfather, Johann Buhr] was associated."²¹⁶

The "ethnic denial" theory is further supported by the fact that all five children of Henry and Aganetha Vogt refer to themselves as "van Vogt".²¹⁷

If in fact, Alfred van Vogt and his siblings are engaged in a certain degree of denial of their ethnic origins, it may be that their parents contributed to this perspective. Whether or not this was the case is unknown. However, Alfred van Vogt does reveal that his father claimed to have seen himself as "the archtypical transition person - from the farm to the city..."²¹⁸ For Henry Vogt, that transition included a movement from a culturally and religiously Mennonite setting to a purely secular environment. It may well be that the transition was assisted by a certain rejection and denial of the past.

²¹⁴ Ibid. According to Alfred van Vogt, the more appropriate name, "van Vogt", was restored by Alfred's brother Arthur a generation later.

²¹⁵ Ibid. at 15, 16.

²¹⁶ Ibid. at 23.

²¹⁷ Regier, supra, note 1 at 68. Whether or not they have legally changed their names is uncertain.

²¹⁸ van Vogt, supra, note 153 at 27.

As can be surmised from the paucity of materials the writer has been able to accumulate concerning Henry Vogt, much remains hidden about this man. Further information and opinions would be most useful, especially since there remain inconsistencies in both factual data and opinions about his character.

DAVID VOGT (1900-1979)

David Vogt was the youngest child of Heinrich Vogt and Judith (Wiebe) Vogt and was Henry Vogt's brother. David was born on May 19, 1900, two months after his father's death.²¹⁹ Nothing is known about David's childhood except that he moved with his mother and step-father, Abram Schmidt, and their other children to southern Saskatchewan in the later years of the first decade of the twentieth century.²²⁰

David apparently attended the Mennonite Collegiate Institute in Gretna in order to obtain his high school education, but the length of time he spent there is unknown.²²¹ David is described as an easy-going, popular fellow during this time.²²²

Again, little is known about the next few years of David Vogt's life, but his sister-in-law recalls that he was

²¹⁹ Tracey Spears, supra, note 158.

²²⁰ It will be recalled that the exact date of this move is unknown. As the Pendulum Swings, supra, note 45, the history of Morse, claims at 59 that David Vogt moved with his family in 1908. The Neville History, supra, note 165 at 97 reports that the Vogts moved between 1909 and 1911.

²²¹ Elizabeth (Wiens) King, David Vogt's sister-in-law, stated in an interview on February 20, 1991 that he was at M.C.I. in 1918-1919 because her sister Kate and brother Peter were in attendance there at that time and they knew David from school. Henry Peters was also in attendance at M.C.I. between 1915 and 1920 and remembered David Vogt from high school. He does not recall how many years David attended M.C.I. Interview with Henry Peters, July 3, 1991.

²²² Henry Peters, ibid.

involved with Chautauqua.²²³ His task was to precede the actual road show and make arrangements and accommodations for the performers.²²⁴ At some point in the following years David decided to enter the practice of law, but the reasons for this decision are unknown. Perhaps the fact that his brother Henry was a lawyer was influential. Law Society of Saskatchewan records indicate that David entered articles with Abraham Buhr on December 19, 1923.²²⁵

David Vogt married Katherine (Kate) Wiens of Herbert, Saskatchewan, on May 9, 1926 in Herbert.²²⁶ Kate Wiens was

²²³ The Chautauqua was popular throughout North America in the early years of the twentieth century. According to Sheilagh S. Jameson, Chautauqua in Canada (Calgary: Glenbow-Alberta Museum, 1979), it grew out of camp ground meetings and temperance rallies of the late nineteenth century. The first Chautauqua was held at Lake Chautauqua, New York as a Sunday School teachers assembly. The travelling version, which toured Western Canada in the 1920s and 1930s, retained something of this religious flavour but also contained non-religious items. The Chautauqua consisted of several days worth of performances by lecturers, actors, singers and musicians. Each day's performance was self-contained, so that those who took part in the first day of the show would move on and be performing in another town while the second or third day's performance was going on in the first town. Obviously, great organizational abilities were required to ensure the smooth functioning of the show.

²²⁴ Elizabeth King, supra, note 221.

²²⁵ Law Society of Saskatchewan, supra, note 4. The location of David Vogt's legal training is unknown. The Law Society of Saskatchewan did not make reference to a university education. Florence Driedger, a relative of his wife, claimed in an interview on February 16, 1991, that he graduated from the University of Saskatchewan in 1926 and articulated in Regina. David's niece, Edna Mortimer, supra, note 169, remembered her father being upset that he had helped to pay for David's university education but that David had not kept in touch with Henry later.

²²⁶ Elizabeth King, supra, note 221.

born in Winkler and as a child had moved to Herbert with her parents. After attending the Mennonite Collegiate Institute in Gretna, she taught school at Bell Creek, a site near Neville.²²⁷ Although she was two years younger than David (born November 25, 1902), both were in attendance at the Mennonite Collegiate Institute some years earlier and it seems reasonable to guess that they knew each other from high school. It may well be that they were reacquainted when David moved to Morse, only a few miles from the Wiens' home near Herbert.

His marriage may have been the reason David Vogt decided to purchase Buhr's law practice. The final transfer took place sometime in the fall of 1926 when Buhr moved to Winnipeg. Records of the Law Society of Saskatchewan show that David Vogt's articles with Buhr ended in 1925 and that he was called to the Bar on December 28, 1926. No explanation is provided for this gap, although the records indicate that Vogt was the successor to Buhr's practice in Morse.²²⁸

The success of Vogt's legal practice in Morse is unknown, but he seems to have been popular. He was mayor of the town from 1931 to 1933 and secretary-treasurer from 1935 until 1939.²²⁹ During his term as mayor, the first water works were installed in the town, a project which had the advantage of

²²⁷ Neville, supra, note 165 at 97.

²²⁸ Law Society of Saskatchewan, supra, note 4.

²²⁹ Morse Town Records, supra, note 52.

providing much-needed employment during the Depression. The ditches for the pipeline were dug by hand and when it rained the project was dubbed "Dave's Mud."²³⁰

Because of the unwillingness of David Vogt's children to discuss their father, little is known of the Vogt family during their years in Morse. Seven children were born to the Vogts, which may explain one observer's recollection of Mrs. Vogt being constantly pregnant.²³¹ The same observer recalls the Vogts living at the same economic level as everyone else during the Depression, except that Mrs. Vogt employed maids to help with the housework.²³² Although the Vogts did not drive the seven miles to Herbert for church on Sundays, at least not in later years,²³³ contact with Kate's family seems to have been maintained throughout the Vogt's time in Morse.²³⁴ The

²³⁰ As the Pendulum Swings, supra, note 45 at 59.

²³¹ Interview with Harold Harder, April 12, 1991. Mr. Harder is a long-time resident of Morse. As the Pendulum Swings, supra, note 45 at 59, names Vogt's seven children and indicates that they received most of their education in Morse.

²³² Harold Harder, ibid. Harvey Jahnke, Kate Vogt's nephew, recalled in an interview on April 12, 1991, that David and Kate Vogt lived in a small but nice house.

²³³ There is some dispute about this. Elizabeth King, supra, note 221, said that the Vogts drove to Herbert to attend the Mennonite church until the birth of their third or fourth child, at which point they abandoned this practice. Harold Harder, supra, note 231, whose parents also lived in Morse and drove to Herbert for church weekly, says he doesn't recall the Vogts attending the Herbert church.

²³⁴ Harvey Jahnke, supra, note 232, recalled his family visiting the Vogts occasionally. Elizabeth King, supra, note 221, reported that she was unaware of any problems between her parents and the Vogts.

Vogts attended the United Church in Morse.²³⁵ Observers have had little to say about the personalities of either David or Kate Vogt. Moreover, those with whom the writer spoke were not able to comment on their relationship with each other or with their children.²³⁶

In 1939, catastrophe struck the Vogt family in what appear to have been two separate incidents of financial impropriety on Vogt's part. The first was in connection with Vogt's role as secretary-treasurer for the Town of Morse. The August 1, 1939 meeting of the Town Council dealt with David Vogt's resignation from the post "owing to the fact that he had taken on certain duties that would fully occupy his time."²³⁷ The resignation was to take effect August 15, as Vogt would not be available for an audit prior to that date. By August 4, a special meeting heard an interim report from the auditor, who indicated that he had discovered a shortfall

²³⁵ Interview with Clara Viborg, April 12, 1991. Mrs. Viborg is David and Katherine Vogt's daughter. She indicated that the distance to Herbert was the chief barrier to their attendance there. Elizabeth King, *supra*, note 221, recalled Kate as a regular church-goer but was uncertain about the regularity with which David attended.

²³⁶ Elizabeth King, *ibid.* indicated that she got along with David Vogt. Harvey Jahnke, *supra*, note 232, thought that David was "a nice enough guy." Arthur Buhr, *supra*, note 127, thought that David and Kate were devoted to one another, based on his observations.

²³⁷ Minutes of Town Council meeting of August 1, 1939. Photocopies of the Minutes of the Council meetings referred to below have been obtained and are in the possession of the Legal Research Institute at the University of Manitoba Faculty of Law.

of \$612.75.²³⁸ The Council voted to suspend David Vogt from his position, remove him as signing officer and report the discrepancy to the Bond Company.²³⁹ Another special meeting on August 21, 1939 (at which the auditor and representative from the Bond Company were present) learned that a shortage had been found with respect to rents on houses owned by the town. The amount of the shortfall was not indicated, but Vogt offered to repay the amounts owing.²⁴⁰ Vogt offered to issue

²³⁸ If this was in fact the amount of the shortfall, it would have been a substantial amount in 1939. Harold Harder, supra, note 231, recalled that he worked as a labourer at that time and indicated he earned \$35 per month. Arthur Buhr, supra, note 9, was a teacher in 1939 and earned \$1200 per year.

²³⁹ Minutes of Special Meeting of the Town Council of Morse, August 4, 1991.

²⁴⁰ There is some confusion and much left unsaid in the minutes of this meeting. The Minutes of the special meeting of the Town Council of August 21, 1939 state as follows:

"Mr. Vogt was called in and questioned by Mr. Taylor of the Bond Company re: rents. Mr. Vogt stated that, in his opinion it was unwise to disclose particulars of rents in Books of Town.

The idea was conceived by the relief Committee with the approval of the Relief Inspector.

Mr. Vogt also stated that the monies had accumulated in his personal bank account for the past year and that the shortage began in the spring of 1938, but the bulk of it was taken in 1939 and that nothing had been done out of order except \$42.00 water account which had been made good since.

Mr. Vogt proposed to issue a cheque to the Town of Morse (Post Dated for Ten Days) for shortage and give the Town an order on monies owing him by the Federal Government and would assign money to Local Bank Manager or any person suitable to Town in Trust, Said Monies amounting to 1200.00."

Vogt's comments suggest that the \$42.00 water account is the sum total of the problem, but this is at odds with the subsequent arrangement to repay the money. On the other hand, the \$1200.00 referred to appears to be the amount owing to Vogt by the Federal Government, not the amount of the discrepancy.

a post-dated cheque and to assign to a Third Party in trust the sum of \$1200.00 owed to him by the Federal Government. This arrangement was accepted.²⁴¹ However, no settlement had been made by September 5, 1939 (the date by which the cheque was to be paid)²⁴² and was still unpaid on October 30, 1939, when Vogt agreed to draw up a new agreement by which he handed over to the town the title to his office building.²⁴³ This agreement was presented to and accepted by the Council on November 7, 1939. No further mention is made of the matter in the subsequent Minutes of Council Meetings.

The second incident appears to have taken place with respect to Vogt's position as a lawyer. The Law Society of Saskatchewan reports that Vogt was disbarred on September 9, 1940 by Order of the Benchers, "having been found guilty of default in payment of moneys received by him in his capacity as a Barrister and Solicitor."²⁴⁴ Since the shortfall which caused his difficulties with the Town of Morse appear to have had nothing to do with his capacity as Barrister and Solicitor, this appears to have been the consequence of an

²⁴¹ Ibid.

²⁴² Minutes of Meeting of Morse Town Council, September 5, 1939.

²⁴³ Minutes of Meeting of Morse Town Council, October 30, 1939.

²⁴⁴ Law Society of Saskatchewan, supra, note 4. It should be reiterated that the Law Society of Saskatchewan refused to provide details of this matter. A review of the minutes of the hearing resulting in Vogt's disbarment would have been extremely helpful in discovering the nature of the breach of which he was accused.

entirely separate incident.

The actual nature of these improprieties remain a mystery.²⁴⁵

Vogt managed to escape the opprobrium that must have resulted from his activities by joining the Armed Forces. Despite the fact that he would have been nearly 40 years of age, he apparently joined the Ordnance Corps and was stationed in Kingston, Ontario.²⁴⁶ Harold Harder recalls seeing him in Kingston during the war and remembers that he had a "desk job."²⁴⁷ Mrs. Vogt and the children remained in Morse where she defended his reputation vigorously against all attacks.²⁴⁸

After the war, Vogt went to Ottawa where he began a career as a civil servant. He apparently worked initially with the Wartime Prices and Trade Board²⁴⁹ and then as legal advisor with the Department of Indian Affairs until his

²⁴⁵ Elizabeth King, supra, note 221, recalled that the explanation she received was that Vogt was involved with three other individuals who all blamed Vogt, with the result that he "took the fall" for the impropriety. Freda Bain, supra, note 196, recalled hearing something about Vogt getting into trouble for doing something to help out people during the Depression.

²⁴⁶ Rose Conn, "Former Morse Lawyer (Dies)". This article, was provided to the writer by Tracey Spears, supra, note 158. Unfortunately, Mrs. Spears was unable to identify the newspaper from which the article was clipped.

²⁴⁷ Harold Harder, supra, note 231.

²⁴⁸ Elizabeth King, supra, note 221.

²⁴⁹ Ibid.

retirement.²⁵⁰ Interestingly, his two oldest sons joined him a few years after the war, but Mrs. Vogt and the rest of the family moved to Ottawa only in 1951. During these six years, Vogt would visit the family in Morse during the summers. Mrs. Vogt's sister recalls that this arrangement was cause for some comment at the time.²⁵¹

David Vogt died in Ottawa on March 3, 1979.²⁵²

Questions remain about nearly every aspect of David Vogt's life. There are obvious questions about the incident(s) which gave rise to his disbarment. Moreover, almost nothing is known by the writer about his personality, his relationship with family, his legal practice, his values and beliefs, his religious convictions, his relationship with the Mennonite community and with his Mennonite past. Until and unless his children are prepared to reveal some of these aspects of his life, these questions will remain unanswered.

²⁵⁰ Rose Conn, supra, note 246.

²⁵¹ Elizabeth King, supra, note 221.

²⁵² This from an obituary, apparently in an Ottawa newspaper, provided to me by Tracey Spears, supra, note 158. The article by Rose Conn, supra, note 246 gives March 1, 1979 as his date of death.

PETER J. HOOGE (1886-1963)

Peter J. Hooge was the son of Johan Hooge and Maria Warkentin Peters, each of whom had in childhood suffered the loss of a parent.²⁵³ Johan Hooge was born in 1841 in the village of Franzthal in the Molotschna Colony of South Russia. His mother died when Johan was 4 years old. His father later remarried but little is known of Johan's childhood, except the fact that he received "a little better than average education." Despite the fact that he was relatively small, he was forced by a crop failure in the Molotschna to walk with a number of other young men to the "Old Colony" (Chortitza) in the 1860s to find work. There he met Maria Warkentin Peters.

Mary Peters was born in 1845 in Osterwick in the Chortitza Colony. Her father died when she was very young and her mother remarried a man named Neustater. She was apparently abused by Neustater, on one occasion to the point where "he nearly killed her." At this point the Mennonite authorities stepped in and removed her from the home, evidently placing her with another family. Later she worked as a domestic maid and was likely so employed when she met Johan Hooge. They were married on October 4, 1867 in the Chortitza Colony.

The couple had four children when they decided in 1875 to

²⁵³ All information concerning Johan and Maria Hooge has been provided by Florence Driedger, their great-granddaughter.

leave Russia with other Mennonites who were going to North America. They settled initially near Brainerd, Minnesota, but moved a year later to the West Reserve in southern Manitoba. After settling briefly in the village of Chortitz, they moved to Hoffnungsfeld, just north of Winkler. Their youngest child, Peter J. Hooge, was born there in 1886.²⁵⁴ By 1889, the communal village arrangement in Hoffnungsfeld had dissolved and each family moved to the homestead they had initially claimed. The Hooge homestead was only one mile from the town of Winkler. Peter Hooge received his elementary education in Winkler.

Although both were very religious, neither Johan nor Maria Hooge fit the picture of dour, somber and colourless Mennonites. Johan played the harmonica, loved music, and was full of "joie de vivre." He was a **vorsaenger** (song-leader) in the Bergthal church. Maria insisted on having bouquets of flowers in the house and pictures on the wall at a time when these were considered frivolous. Johan Hooge was always a strong supporter of education and stood solidly behind the Mennonite Collegiate Institute. He also contributed financially to Bethel College, a Mennonite post-secondary institution in Kansas, an unusual activity in those years.

Given his father's support of the school it is not surprising that Peter Hooge attended the M.C.I. in Gretna.

²⁵⁴ Peter's sister Susanna, two years older than himself, later married Peter Buhr, Abraham Buhr's brother. Regier, supra, note 1 at 61.

Following his graduation in 1903,²⁵⁵ Hooge embarked on a short teaching career in Altona, Manitoba, and Herbert, Saskatchewan.²⁵⁶ It appears that Hooge also attended the Manitoba Normal School in Winnipeg in 1906.²⁵⁷

At some point Hooge decided to enter the legal profession, apparently with the encouragement of a judge in Swift Current.²⁵⁸ He began articling on September 4, 1909,²⁵⁹

²⁵⁵ Mennonite Who's Who, supra, note 16 at 71. Walter Hooge, Peter J. Hooge's son, states in a letter dated March 20, 1991, that his father started teaching in 1902 at the age of 16, which suggests that he graduated from high school at that age. Another explanation, however, is that he taught for a summer while still in high school.

²⁵⁶ Biography in Archives of Saskatchewan. Bettie Hall, June Buhr, Ruth Sapinsky, Loreen Redekop, Bittersweet Years: The Herbert Story (self-published), the local history of Herbert lists him as a teacher there in both 1907 and 1908. Hooge may have moved to Herbert because his sister Maria and her husband, Jacob Wiens, moved there in 1907. Maria and Jacob Wiens were the parents of Kate Wiens, who married David Vogt. Florence Driedger, supra, note 225.

²⁵⁷ Walter Hooge, supra, note 255. In an interview on August 22, 1991, Walter Hooge indicated that he was in possession of a picture of his father in a group of people identified as the graduating class of the Normal School and dated 1906.

²⁵⁸ Walter Hooge, supra, note 255. Hooge once told his son that he wanted to enter the profession of medicine rather than law and Judge Smith had helped to steer him in the direction of law. No further information is available concerning Hooge's relationship with Judge Smith. Florence Driedger, Hooge's grand-niece, supra, note 225, speculated that Hooge may have been teaching in Saskatchewan when it became a province in 1905 and that the political enthusiasm generated by that event may have interested him in the law.

²⁵⁹ Law Society of Saskatchewan, supra, note 4. Walter Hooge, supra, note 255, is in possession of a medal awarded to Hooge by the Law Society, presumably for the highest marks in the Bar Admission course. One side of the medal carries the date "1907" but this presumably refers to the founding date of the Law Society, not the date the medal was issued. The Legal Research

and articulated with four separate lawyers over the next five years, two of which (at least) appear to have been within the same firm in Saskatoon.²⁶⁰ Hooge's son, Walter, claims that John Diefenbaker was with the firm with which his father articulated.²⁶¹ While articling, Hooge simultaneously completed a Bachelor of Laws degree.²⁶² Hooge was called to the Bar in Saskatchewan in September of 1914 and began practicing with Acheson, Durie and Wakeling in Saskatoon, the firm with whom he had finished his articles.²⁶³ In 1916 Hooge moved to Herbert, Saskatchewan and a few months later to Prussia (later

Institute has a photocopy of this medal.

²⁶⁰ Information from the Law Society of Saskatchewan, supra, note 4, shows Hooge articling with the following practitioners: W. Oswald Smyth from September 4, 1909 to December 26, 1910; Robert W Shannon from December 29, 1910 to April 1, 1911; Herbert Acheson from April 1, 1910 to February 3, 1914; Bertram Wakeling from February 3, 1914 to Sept. 3, 1914.

²⁶¹ Walter Hooge, supra, note 255.

²⁶² "P.J. Hooge" The [Regina] Leader-Post, March 1, 1947 at 6 states that the degree was granted by the University of Manitoba. This is confirmed by the Mennonite Who's Who, supra, note 16 at 71 which states that he received an LL.B. degree in 1914 from the U. of M. Given that the Manitoba Law School awarded degrees through correspondence courses in that era, it is certainly possible that Hooge did in fact obtain a degree from that school. However, John A. Pauls, "Peter J. Hooge" in Old and New Furrows: the Story of Rosthern (Rosthern Historical Society, 1977) at 445 claims that Hooge graduated from both the University of Manitoba and the University of Saskatchewan, but provides no dates. As a law school existed at the University of Saskatchewan, it is also possible that Hooge obtained a degree from this institution as well.

²⁶³ Law Society of Saskatchewan, supra, note 4.

Leader), Saskatchewan.²⁶⁴

On April 11, 1917, Hooge married Margaret Matchett of Winnipeg in the Grace Church in Winnipeg.²⁶⁵ Ms. Matchett was the only child of her mother's second marriage.²⁶⁶ Originally from Winnipeg, she was living with her half-sister in Saskatoon and working at Acheson, Durie and Wakeling as a legal secretary when she met Hooge.²⁶⁷ It is unknown whether or not Hooge's parents and other relatives were present at the ceremony. However Walter Hooge, Peter and Margaret Hooge's son, reports that the marriage was accepted by both families and that his parents maintained a close relationship with his paternal parents and family throughout their lives.²⁶⁸

The Hooges lived in Prussia (Leader) until 1933, when they moved to Rosthern, Saskatchewan. Throughout his time in Leader, Hooge acted as solicitor for the town. He was the agent of the Attorney-General of Saskatchewan in Leader from

²⁶⁴ Ibid. Hooge must have moved to Prussia early in 1917, for his marriage certificate, dated April 11, 1917, shows his residence as Prussia. A copy of the marriage certificate was provided to the writer by Walter Hooge, supra, note 255.

²⁶⁵ Walter Hooge, ibid. Walter Hooge has also provided the writer with a copy of his mother's Birth Certificate, which shows her to have been born on February 4, 1893 in Argyle Municipality in Manitoba.

²⁶⁶ Matchett's half-sisters carried the last name "Best", which suggests that they were Anglo-Saxon, although Margaret Hooge told her daughter-in-law, Lorraine, that her family was Irish. Interview with Walter and Lorraine Hooge, August 22, 1991.

²⁶⁷ Walter Hooge, supra, notes 255 and 257.

²⁶⁸ Ibid.

1925 until the judicial district of Leader was abolished.²⁶⁹

Hooge's clientele appears to have been dominated by the German immigrants who settled the area in and around Prussia.²⁷⁰ Outside the practice of law, Hooge was a significant figure in the community. He served as secretary-treasurer of the town for some time²⁷¹ and was a member of the Masonic Lodge.²⁷² The Hooges attended the United Church in Leader.

The reasons behind the Hooges' move to Rosthern in 1933 are subject to speculation. Hooge seems to have established a solid practice in Leader. It may be that the Depression played a role in his decision and it seems probable that the large Mennonite population in the Rosthern/Hague area served as an attraction. Because of his Mennonite background and his ability to speak Low German, he would have been assured of a substantial client base in the area.

In Rosthern, Hooge acted as official receiver for the Judicial District of Prince Albert and Saskatoon.²⁷³ However,

²⁶⁹ "Judgeship Announced for Hooge" The [Regina] Leader-Post, October 25, 1948 at 3. Mennonite Who's Who, supra, note 16 at 71.

²⁷⁰ Walter Hooge, supra, note 255.

²⁷¹ Walter Hooge, supra, note 255, has provided me with a series of bylaws from the Town of Prussia. Bylaw No. 1, dated June 8, 1917 declares: "Peter J. Hooge, Barrister, hereby appointed to act as secretary and treasurer of the Town of Prussia at a salary of \$700. per annum. Lot 29 and 30 in block 1 were purchased for a town well."

²⁷² Walter Hooge, supra, note 255.

²⁷³ Mennonite Who's Who, supra, note 16 at 71.

other than the fact that he was appointed King's Counsel in 1937, few details of Hooge's legal practice in Rosthern are available. Presumably, as in Leader, Hooge had a general practice dealing with both litigation and non-litigious matters.

Although Hooge appears to have established few links with the Mennonite community in the Rosthern area, he was substantially involved in the general community while in Rosthern and attained a position of some prominence. He was a member of the Masonic Lodges at Duck Lake and Rosthern and earned the honorary title of Grand Master.²⁷⁴ He was also a founding member of the Order of the Eastern Star, an organization in which Mrs. Hooge also participated.²⁷⁵ Hooge was involved with the Red Cross²⁷⁶ and served as secretary of the Rosthern Board of Trade.²⁷⁷

Hooge seems to have taken a great interest in politics, and was heavily involved with the Liberal Party in the provincial and federal election campaigns of 1934, 1935, 1938 and 1940. He stood as a candidate in the provincial election of 1944 and won a seat in the provincial riding of Rosthern,

²⁷⁴ Walter Hooge, supra, note 255. Pauls, supra, note 262 at 445.

²⁷⁵ Pauls, ibid. Walter Hooge, supra, note 257.

²⁷⁶ Walter Hooge, supra, note 255.

²⁷⁷ Pauls, supra, note 262 at 445-446.

one of only five Liberals to withstand the C.C.F. landslide.²⁷⁸

Little is known of Hooge's activities as an M.L.A. The best description of his involvement in caucus is provided by a colleague, G. Herman Danielson, M.L.A. for Arm River, who remarked in the legislature on the occasion of Hooge's death that Hooge "always gave us a piece of Shakespeare" in his speeches to the House. Danielson also recalled that Hooge would take new legislation to his hotel room and read it overnight, providing a written analysis to the members of his caucus the next day. Danielson concluded by stating that "it was a tremendous help to us on this side of the House to have a person like Mr. Hooge."²⁷⁹

Hooge's daughter-in-law, Lorraine, recalls that Hooge mentioned after his retirement that he had been influential in mandating an annual review of the condition of each patient committed to mental institutions in the province.²⁸⁰

²⁷⁸ The [Regina] Leader-Post, supra, note 262 at 6. An undated article from an unnamed newspaper entitled "Rosthern Again Votes Liberal" provided by Walter Hooge, supra, note 255, advises that Hooge won the seat with 2124 votes compared to his nearest rival, the C.C.F. candidate, who received 1475 votes. The article reports that "Rosthern has voted Liberal since the first legislature in the province."

²⁷⁹ Friday, February 7, 1964; Legislative Assembly of Saskatchewan, Sixth Session - Fourteenth Legislature, 2nd Day. Provided by Walter Hooge, ibid.

²⁸⁰ Lorraine Hooge, supra, note 266. Mrs. Hooge is uncertain whether his involvement with this issue occurred while he was practicing law or while he was an M.L.A., but the latter seems more probable. In addition, Walter Hooge, ibid. recalls his father being involved in the creation of crests for the various law

Hooge seems to have had a strong antipathy toward the socialist leanings of the C.C.F. In a speech to the Regina Women's Liberal club on Feb. 27, 1947, Hooge declared that, "as in the Garden of Eden, the acceptance of the apple (of socialism) meant the end of many freedoms."²⁸¹ According to the report of the speech, "In defining socialism the speaker said that in Germany it had been called Nazism, in Italy Fascism and in Russia Communism, but in Saskatchewan it was called C.C.F. 'It's all the same,' he said, 'they all believe in the individual being subservient to the state.'"²⁸²

Hooge did not seek a second term as M.L.A., stepping down to allow W.A. Tucker, recently elected Liberal leader, to run in the "safe" Rosthern riding.²⁸³ In 1948 he received the reward for his generosity in the form of a district court judgeship for the judicial district of Moosomin.²⁸⁴

Hooge was not nearly as involved in the community of Moosomin as he had been in Rosthern. According to one Moosomin resident, neither Judge nor Mrs. Hooge were involved in any clubs, social or community organizations or church

societies across Canada, but again does not know whether or not this occurred while he was an M.L.A.

²⁸¹ "Socialism's apple wormy Hooge tells Liberal club" The [Regina] Leader-Post, March 1, 1947, at 6.

²⁸² Ibid.

²⁸³ "Clears Path For Tucker", The [Saskatoon] Star-Phoenix, October 31, 1948.

²⁸⁴ "Judgeship announced for Hooge" The [Regina] Leader-Post, October 25, 1948 at 3.

during his twelve years in the town.²⁸⁵ Indeed, they appear to have developed no close friendships during their stay.²⁸⁶ However, there were apparently no complaints about the quality of his judicial decisions.²⁸⁷

Hooge retired in 1960 and moved to Burnaby, B.C. in 1961.²⁸⁸ In a newspaper article, he admitted that the "rugged climate" of Saskatchewan had been a factor in his move,²⁸⁹ but the presence of his son and his family in Burnaby undoubtedly also played a role. Despite stepping down from the Bench, however, Hooge refused to stay retired and was admitted to the B.C. Bar at the age of 75. He explained his unusual decision by stating that he had no particular hobby and "simply doing nothing at all seems futile."²⁹⁰ Unfortunately, he was unable to enjoy his B.C. legal career for long. He died on April 13, 1963. An island in northern Saskatchewan was later named in his honour.²⁹¹

Hooge's personality appears to have been very reserved.

²⁸⁵ Interview with Ralph Tanner, former Moosomin Alderman, July 3, 1991.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Pauls, supra, note 262 at 445.

²⁸⁹ "Retired prairies judge joins B.C. Bar as hobby", undated, unidentified article, provided by Walter Hooge, supra, note 255.

²⁹⁰ Ibid.

²⁹¹ Letter from A.I. Bereskin, Controller of Surveys, Department of Natural Resources, Province of Saskatchewan to Mrs. R.K. Daniels (Hooge's daughter), September 29, 1965.

His son claims that his father rarely spoke at meals and that he can never recall his father ever losing his temper.²⁹² Ralph Tanner of Moosomin describes him as morose and "uppity",²⁹³ but his children dispute this claim. His daughter-in-law believes that he was not naturally so reserved but felt compelled to resist his natural friendly impulses.²⁹⁴ She and Walter Hooge believe that the impulse for this restraint may have come from Mrs. Hooge who they see as very influential, even dominant, in the relationship.²⁹⁵ They note that Hooge's sister, Susanna Buhr, once commented that he had been a gregarious, fun-loving person in his youth.²⁹⁶

Mrs. Hooge is described by her children as "very proper" and "set in her ways". She kept an impeccably clean house and always set a proper table. She felt very strongly about the

²⁹² Walter Hooge, supra, note 257.

²⁹³ Ralph Tanner, supra, note 285. Tanner also made comment about Hooge's perceived "tight" attitude toward money. He believes that the reason Hooge didn't join any organizations or church was that he would be asked to contribute. This perception may have been generated by the fact that, during a period when Tanner was an alderman, Hooge appealed a tax assessment on his property imposed by the Town.

²⁹⁴ She recalls once during his retirement, her father-in-law told her that he would go to the post office to collect his mail in Rosthern and would notice the men standing around chatting. He said that he would have loved to join them but simply couldn't allow himself to do so. Lorraine Hooge, supra, note 266.

²⁹⁵ Walter and Lorraine Hooge, supra, note 266, report that their parents were not particularly affectionate physically in any of their relationships, including their relationship with each other.

²⁹⁶ Ibid.

need for a judge to be strictly impartial and believed that any relationship with people in the area would have harmed Hooge's ability to act as an impartial arbiter. Her children believe that Hooge may have adopted this perspective from her.²⁹⁷ Described as one who did not mix easily on a social level,²⁹⁸ her view of the proper role of the judiciary may have accentuated her aloofness and may account for the fact that the Hooges were virtually unknown in Moosomin.

Despite the fact that Mrs. Hooge was hard to get to know, her children describe her as warm and friendly in an environment in which she felt comfortable. This view is echoed by other, more distant family members.²⁹⁹ Hooge too was able to relax his inhibitions in certain situations. One niece describes him chatting with his sister on the farm in southern Manitoba and warming his stockinged feet on the stove as she tried to make a meal.³⁰⁰ She recalled him as friendly, down-to-earth and decidedly unstuffy.³⁰¹ Another niece

²⁹⁷ Ibid.

²⁹⁸ Ibid.

²⁹⁹ A Letter from Henry F. Peters (Hooge's nephew) to the writer, dated June 24, 1991, describes her as "a lovely, affectionate woman." Elizabeth King, supra, note 221, was a niece of Peter and Margaret Hooge. She described Mrs. Hooge as friendly and hospitable.

³⁰⁰ Interview with Dr. Ella Peters, February 18, 1991. Dr. Peters is a niece of Peter Hooge.

³⁰¹ Ibid.

describes him as having a great sense of humour.³⁰²

Peter Hooge's two great interests appear to have been law and politics. A nephew who visited him regularly in Moosomin reports that his interests were virtually restricted to these two areas.³⁰³ However, Mrs. Hooge discussed with relatives after her husband's death the fact that he had a great love of gambling, especially on the open grain market. Apparently, this habit resulted in substantial losses, to the point where the Hooges almost lost their home. Not surprisingly, Mrs. Hooge was "quite agitated" about the matter.³⁰⁴

The Hooges placed a great deal of value on an education. Walter reports that the only time his father commented on his behaviour was when he wasn't doing well in school. The Hooge's paid for their daughter's university education.³⁰⁵

Neither Judge nor Mrs. Hooge appear to have been particularly religious people.³⁰⁶ Walter recalls going to Sunday School as a child but can't recall whether or not his parents attended regularly. He does know that his father sang in a United Church choir in Saskatoon while articling,³⁰⁷ and

³⁰² Elizabeth King, supra, note 221.

³⁰³ Interview with Henry Peters, July 3, 1991.

³⁰⁴ Henry Peters, supra, note 299.

³⁰⁵ Walter and Lorraine Hooge, supra, note 266.

³⁰⁶ Ibid.

³⁰⁷ Since the United Church of Canada was only created in 1925, it must have been known by another name when Hooge attended it.

that when they went to church in Leader and Rosthern, they attended the United Church.³⁰⁸ Lorraine Hooge reports that, after his move to British Columbia, she often took him to a United Church and that he greatly enjoyed the singing.³⁰⁹

Hooge seems to have distanced himself from the Mennonite community quite thoroughly. He married a non-Mennonite and never attended a Mennonite church in his adult life. His involvement in the legal profession, fraternal organizations and electoral politics and his speculations on the grain exchange would all have been viewed as "worldly" and would have set him apart from the Mennonite community. One relative believes that he discarded his Mennonite roots with relative ease; that he never reacted radically to his past but that it simply became meaningless to him.³¹⁰ This view is supported by his stay in Rosthern. In spite of the fact that many of his clients were Mennonites, Hooge did not identify himself with the Mennonite community in any way. It is further strengthened by the fact that every one of the newspaper articles concerning him, as well as his biography in the Saskatchewan archives, refer to his parents as "Dutch" rather than Mennonite.

This distance between Hooge and the Mennonite community must have affected his relations with the more traditional

³⁰⁸ Walter and Lorraine Hooge, supra, note 266.

³⁰⁹ Ibid. Perhaps this was inherited from his father.

³¹⁰ Florence Driedger, supra, note 225.

members of his family. One nephew recalls him arguing with his brothers over the evil of administering oaths, and believes that he was viewed as something of a "black sheep" within the clan.³¹¹ On the other hand, two of his nieces believe that the family was proud of his educational achievements and looked up to him, despite of the fact that he was the youngest sibling.³¹² If any significant tensions existed between himself and his family, Hooge may have dealt with them through distance. Despite the fact that he maintained a relationship with his family, Hooge does not appear to have been particularly close to them. His son recalls meeting only two of his aunts during his childhood.³¹³

Although much remains hidden about Peter Hooge, what is known suggests a man who left his past firmly behind him as he entered the cultural community of the legal profession and non-Mennonite society. His success in making that transition is evidenced by the fact that he rose to significance within his new community as a lawyer, politician and judge.

³¹¹ Henry Peters, supra, note 303.

³¹² Dr. Ella Peters, supra, note 300 and Elizabeth King, supra, note 221.

³¹³ Walter Hooge, supra, note 257.

JOHN EVERETT FRIESEN (1895-1987)

Johann M. Friesen was born on September 3, 1865 in the Bergthal Colony of Russia. He moved to Canada in the 1870s with his parents, Martin and Margaretha Friesen, who settled in the Altona area.³¹⁴ Johann married Maria Kehler (or Kethler) in the late 1880s.³¹⁵ He attended the Mennonite Educational Institute in Gretna from 1891 to 1893, despite the fact that his third child was born in 1891.³¹⁶ Friesen then began a teaching career, presumably in the small village schools which characterized the Mennonite areas of southern Manitoba, and combined this with a ministerial role after being appointed a minister of the Bergthaler Church in 1895.³¹⁷ As a minister, he was apparently on the cutting edge of Mennonite thought, considered progressive and even radical for his time.³¹⁸ He was active in the organization of the Canadian Conference of Mennonites (now the Conference of

³¹⁴ T.E. Friesen, Genealogy of Margaretha Klippenstien 1842-1902 and Martin Friesen 1838-1910. (Altona, Manitoba: Self-published, 1989) at ix.

³¹⁵ Ibid. at 2. Friesen notes that their oldest child, Margaretha, was born in 1888 and presumes that the couple would have been married sometime earlier.

³¹⁶ Ibid. at 2-3.

³¹⁷ Gerbrandt, supra, note 10 at 155.

³¹⁸ Ibid. at 156.

Mennonites in Canada)³¹⁹ and in the movement to have the Mennonite Educational Institute moved to Altona in the 1904-1907 period.³²⁰ During that same period, when H.H. Ewert was dismissed from his position as school inspector for the Mennonite areas, Friesen was appointed to take his place.³²¹

John E. Friesen, the second youngest son of John M. Friesen and Maria Kehler, was born on September 1, 1895.

John E. Friesen's mother, Maria Friesen, died sometime in the early 1900s.³²² Shortly thereafter John M. Friesen remarried. His second wife was Anna Falk of Altona.³²³ Apparently Ms. Falk was less than enthusiastic about the prospect of caring for a family of seven children, but was persuaded to accept Friesen's proposal nonetheless.³²⁴ At

³¹⁹ Friesen, supra, note 314 at 2. See also Gerbrandt, supra, note 10 at 155.

³²⁰ Esther Epp-Tiessen, Altona: The Story of a Prairie Town (Altona: D.W. Friesen & Sons Ltd., 1982) at 80.

³²¹ Friesen, supra, note 314 at 2 and Gerbrandt, supra, note 10 at 155.

³²² T.E. Friesen, ibid., gives her date of death as sometime between 1904 and 1912. A close relative, who wishes to remain anonymous, claims in a hand-written history provided to the writer that Maria Friesen died in the early 1900s, "possibly 1906."

³²³ Anna Falk was 26 when she was married. According to a close relative ibid., she had studied at a dress-making school prior to her marriage. A daughter, Elaine Pollard, claimed in an interview on February 20, 1991 that Anna had been caring for her deaf and dumb sister before her marriage. Since Mrs. Pollard also reports that her father was in some way involved with an institute for the deaf and dumb in Winnipeg, it may be that this proved to be the means by which the two were acquainted.

³²⁴ "Handwritten history", ibid.

around the same time, in June 1910, the family moved to Herbert, Saskatchewan.³²⁵

John M. Friesen's second marriage seems to have been loveless, probably on the part of both parties, and quite unhappy, at least for Anna Friesen. Her daughter reports that her step-daughters were quite hostile and disrespectful to her, an attitude which may have been based on their father's view of his second wife.³²⁶ One daughter reports that her father used to abuse Anna physically, to the point where her sons stepped in and warned Friesen to stop or they would kill him.³²⁷ A daughter of John M. and Anna Friesen and a close relative agree that the "first family" received preferential treatment over the second. There were four children in the "second" family.

John M. Friesen seems to have left the closed Mennonite community of Manitoba well behind him in his move to Herbert,

³²⁵ The close relative's history, *ibid.*, indicates that the family moved to Herbert first and that John M. Friesen then returned to Altona to propose to and marry Anna Falk. However, Elaine Pollard, *supra*, note 323, believes that the marriage took place before the move.

The 1910 date is from a biography of John E. Friesen at the Saskatchewan Archives which appears to have been written by Friesen himself.

³²⁶ Elaine Pollard, *ibid.* and "Handwritten history" *ibid.* The two youngest sons, John E. and Erdman, did not have such a low view of their step-mother, Elaine Pollard reports. Moreover, when an older brother, Martin, was injured in leaping from a train, Anna Friesen cared for him until he died some weeks later.

Betty Lutz, John E. Friesen's daughter, indicated in an interview on April 10, 1991, that her father always had the highest regard for his step-mother.

³²⁷ Elaine Pollard, *ibid.*

Saskatchewan. He continued his occupation as a school teacher at the local high school. However, he did not continue his involvement with the Mennonite church.³²⁸ Instead, he seems to have adopted the role of itinerant and ecumenical minister. He apparently preached occasionally in a variety of churches in the Herbert area, including the Mennonite and Swendenborgian congregations.³²⁹ However, despite his continued involvement in religious affairs, a close relative does not recall a significant amount of religious instruction or discussion in his home.³³⁰ It does not appear that his family attended the Mennonite church; they either attended the United Church or did not attend church at all, except when their father was preaching.³³¹

The low priority given religious instruction in the Friesen household may be that religion was for Friesen a purely intellectual pursuit. It seems clear that Friesen was a man of considerable intellect who cultivated his interest in

³²⁸ The biographical sketch of Friesen offered by Gerbrandt supra, note 10 at 155-156 essentially ends with Friesen's move to Herbert.

³²⁹ Interview with close but anonymous relative, February 23, 1991.

³³⁰ Ibid. This relative does not recall any sort of devotions or religious instruction in the Friesen home.

³³¹ The close relative, ibid., claims that they attended the United Church. Elaine Pollard, supra, note 323, does not recall attending any church except the United Church after her father's death in 1930. Since both recall their father preaching in a variety of churches, it is possible that the family attended these when he was speaking.

a variety of academic fields. He was well-read and familiar with Nietzsche, Schopenhauer, Shakespeare, Schiller and others. He wrote academic essays and a novel, none of which were published.³³² He loved classical music and enjoyed singing. His daughter would occasionally accompany him on the piano.³³³ He was the music teacher at school.

Although acquaintances dubbed him "the Prussian" for his military bearing,³³⁴ John M. Friesen seems to have been taken with the dominant British-Canadian culture. One close relative describes him as an anglophile, who had great respect for the British Royal Family and was a supporter and defender of the Commonwealth.³³⁵ His family spoke only English at home.³³⁶

Friesen was somewhat involved in politics, particularly in the Wheat Pool organization. He was also apparently involved to some extent in the Mennonite immigration to Canada during the 1920s.³³⁷ He was a Justice of the Peace, and his daughter recalls him meeting frequently with R.C.M.P.

³³² "Handwritten history", supra, note 322.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Close relative, supra, note 329.

³³⁶ Close relative, supra, note 329.

³³⁷ The "handwritten history", supra, note 322 states that he "travelled sporadically to Ottawa, under the aegis of the government, in the business of bringing Russian immigrant workers to Canada."

officers. He enjoyed his contact with the law to such an extent that one daughter believes that he would have liked to have been a lawyer.³³⁸

Given interests which had moved well beyond the acceptable limits of Mennonite culture, it is not surprising that John M. Friesen was happy that two of his sons entered the practice of law.³³⁹ John E. Friesen, the first to do so, seems to have taken an unusual path to the profession. At 16 years of age, in 1911, John began working in the local law office of R.J. McClelland as a law clerk.³⁴⁰ McClelland encouraged him to pursue the profession and Friesen attended Central Collegiate in Regina in order to complete his High School requirements.³⁴¹ Interestingly, he did not return to McClelland's firm in Herbert to article, but began his articles with Abraham Buhr of Morse, in January, 1916.³⁴² In January of 1919, his articles were transferred to F.C. Hayes of Swift Current, Saskatchewan. Friesen was called to the Bar

³³⁸ Elaine Pollard, supra, note 323.

³³⁹ Ibid. and close relative, supra, note 329.

³⁴⁰ Saskatchewan Archives biography, supra, note 325.

³⁴¹ This is not mentioned in his biography, ibid., but is mentioned in numerous newspaper articles and by his son, John Friesen Jr., in an interview on March 25, 1991 and daughter, Betty Lutz, in a letter to the writer dated November 16, 1990.

³⁴² Law Society of Saskatchewan, supra, note 4. Friesen's son, John, ibid. suggests that McClelland was unable to afford to take him as an articling student.

in September of 1921.³⁴³ Friesen remained with Begg, Hayes and Friesen in Swift Current until October, 1926, when he began his own practice in Swift Current.³⁴⁴

In 1922, Friesen married Myrtle Inch, a stenographer with a rival firm in Swift Current.³⁴⁵ Ms. Inch was of British-Canadian stock, born in Cornwall, Ontario. She had come to Saskatchewan at the urging of her brother, a court reporter in Swift Current.³⁴⁶ Friesen and Inch were married in the United Church in Swift Current.³⁴⁷ They had three children.

Friesen practised alone for thirty years. He was probably involved in every area of law as a solo practitioner. He apparently appeared in court on occasion.³⁴⁸ He was the Official Receiver for the Farm Creditors Arrangement Act and dealt with many of the farmers in the Swift Current area in this capacity.³⁴⁹ His daughter recalls travelling to the

³⁴³ Law Society of Saskatchewan, ibid.

³⁴⁴ Saskatchewan Archives biography, supra, note 325.

³⁴⁵ Friesen's close relative, who does not wish to be identified, supra, note 329, claims that Friesen was initially in love with and wanted to marry another woman, but did not because of her Roman Catholic background.

³⁴⁶ Betty Lutz, supra, note 326.

³⁴⁷ Betty Lutz, ibid., reports that her mother came from an Anglican background but did not find the local Anglican church to her liking.

³⁴⁸ George T. Yolland, a former police officer in Swift Current, in an interview on April 12, 1991, recalled seeing Friesen in court.

³⁴⁹ Betty Lutz, supra, note 341.

rural areas of the province with her father during the Depression.³⁵⁰

While in Swift Current, Friesen became actively involved in politics, both of a local and provincial variety. He was elected alderman of the City of Swift Current (whose population has been estimated at about 6000 at the time)³⁵¹ from 1936 to 1939 and from 1943 to 1948. He was elected mayor in 1953 and 1954.³⁵²

Friesen was also involved in provincial Liberal politics, although not in an elected capacity. He was secretary-treasurer of the local Liberal association for a number of years³⁵³.

In January 1957, Friesen was appointed to the Bench for the District Court of Shaunavon.³⁵⁴ Two years later, in 1959, he was transferred to the judicial centre of Regina where he remained until his retirement in 1970.

Friesen's devotion to law resulted in great respect for his work from his colleagues on the Bench. A newspaper

³⁵⁰ Betty Lutz, supra, note 326.

³⁵¹ The estimate was made by Robert Dahl, another Alderman at the time, during an interview on April 9, 1991.

³⁵² Information from the City of Swift Current.

³⁵³ Betty Lutz, supra, note 326.

³⁵⁴ Although the court appointment was made by the Federal Government, Dahl, supra, note 351, reports that he and another local Liberal travelled to Regina to urge Liberal Leader Jimmy Gardiner to appoint Friesen to the Bench. Presumably, Gardiner used his influence with the federal party to obtain the appointment.

article claims that he was described by colleagues as a "walking encyclopedia" of legal knowledge.³⁵⁵ His daughter reports that judges of every level of court would consult with Friesen concerning the law.³⁵⁶

Having retired at age 75, Judge Friesen took a position in the Attorney General's office as Special Assistant with responsibility for the revision of legislation.³⁵⁷ He was appointed Queen's Counsel in 1971. In 1976, Friesen was involved in a serious car accident and, after recovering, accepted an offer as counsel to Morris Schumiatcher's law firm in Regina. He finally retired from the law in 1978, at age 83.³⁵⁸

Judge John Friesen died on April 5, 1987.

It is clear that Judge Friesen was consumed by the law, and that it was the single greatest passion in his life. His children agree that he was a "seven day a week" lawyer. Indeed, his son claims that he was "married to the law" and that the law became his religion.³⁵⁹ He took no holidays and

³⁵⁵ Jim McCreedy, "Pressure, not violence, said way to change" The [Regina] Leader-Post (August 27, 1970). The article was provided to the writer by Betty Lutz.

³⁵⁶ Betty Lutz, supra, note 341.

³⁵⁷ Ibid.

³⁵⁸ Betty Lutz, supra, note 326.

³⁵⁹ John Friesen, supra, note 341.

participated in few recreational activities.³⁶⁰ He consistently returned to his law office in the evening after dinner to put in a few more hours of work. Indeed, his daughter recalls that the only occasion when he spent time at home in the evenings was when she fell quite ill as a child. During that period he would stay by her bedside until she fell asleep.³⁶¹

Friesen took a high view of law. He very much believed in the usefulness of the law and that law and justice were synonymous.³⁶² His son describes his judging style as "taking the law down from the Mount and applying it to the situation before him."³⁶³ This belief in the "rule of law" is reflected in an interview granted to a newspaper a few days before his retirement. Friesen is quoted as saying: "As long as the law is there, it should be obeyed. If there were no law applicable to all persons, there would be no principle of

³⁶⁰ Ibid. John Friesen Jr. claims that he recalls only one holiday from his childhood. His father drove the family to Northern Saskatchewan, then drove home and came to pick them up again some time later. John Friesen also recalls that his father was involved briefly in golf, a recollection shared by Friesen's acquaintance, Robert C. Dahl, supra, note 351, who remembers that Friesen was an original member of the Elmwood golf course in Swift Current. Dahl's recollection is that Friesen did not frequently take advantage of this membership. Betty Lutz, supra, note 326, recalls her father curling on occasion.

³⁶¹ Betty Lutz, ibid.

³⁶² Ibid.

³⁶³ John Friesen, supra, note 341. This is not an exact quote.

legal liability applicable to all."³⁶⁴ On the other hand, Friesen seems not to have taken a mechanistic approach to judging. He told the same reporter, "As a judge, I have found that no two cases are exactly alike. The offence may be the same but circumstances make every case entirely different."³⁶⁵

Friesen's love of the law is expressed in a letter to his nephew written only days before his retirement from the Bench. In it, he refers to his retirement and states, "It is not a happy experience to pass thru (sic), but the calender is a cruel reminder that my time is up, and I must retire from office, and I do so with considerable regret."³⁶⁶ He describes the legal profession as "most interesting, challenging and satisfying."³⁶⁷ His continued involvement in law after leaving the Bench underlines this passion for the law.³⁶⁸

Friesen's other great passion was politics. He was an ardent Liberal and, for him, the Liberals could do no wrong,

³⁶⁴ McCreedy, supra, note 355.

³⁶⁵ Ibid.

³⁶⁶ Letter from Judge John Friesen to his nephew, Robert J. Klassen, August 21, 1970. The letter was provided to the writer by Robert Klassen.

³⁶⁷ Ibid.

³⁶⁸ According to McCreedy, supra, note 355, Friesen told the reporter, "I couldn't retire from the law after all these years. What would I do?"

while the C.C.F. were suspect, at best.³⁶⁹ Even in municipal politics, Friesen was quite opinionated and partisan.³⁷⁰ He thought in "black and white" terms.³⁷¹ Friesen's straightforward approach is described in an editorial in the Swift Current Sun which describes Friesen as follows:

One thing they can never say about Mr. Friesen is that he has been a community 'yes man'. When he had a thing to say, he said it, let the chips fall where they may. That principle he took along with him in city affairs and while sometimes there were citizens who resented his attitude, there was never any implication but that he was sincere in his endeavors to do the most for his community.³⁷²

Apparently Friesen's downfall as mayor came about as the result of a citizen who "resented his attitude." According to former alderman Robert Dahl, an individual named Jack McIntosh had had a run-in with the city over property given to him as a veteran of World War II. When McIntosh didn't build on the lot as required, the city repossessed the property. McIntosh

³⁶⁹ Betty Lutz, supra, note 326. Indeed, so politically partisan was Friesen that his daughter was surprised that he would accept a position with a New Democrat Attorney General (Darryl Heald and later Roy Romanow). However, she explained that the position involved technical expertise, rather than partisan political leanings, which presumably made it acceptable for Friesen. According to Robert Dahl, supra, note 351, Friesen had no love whatsoever for the "socialists".

³⁷⁰ Dahl, ibid., expressed the view that Friesen was sometimes too partisan. Dahl noted that, although Friesen's political views were never expressed in personal terms, through name-calling and the like, they were expressed in appointments to committees.

³⁷¹ Ibid.

³⁷² Although no date is shown on this editorial, provided by Betty Lutz, the column was written on the occasion of Friesen's appointment to the Bench, which took place in January, 1957.

carried a grudge against Friesen, who was mayor at the time, and launched his own campaign for the mayoralty. Dahl describes McIntosh's tactics as "dirty" and "scurrilous" and claims that Friesen refused to respond in kind. Perhaps because of Friesen's failure to engage in mud-slinging, McIntosh was successful.³⁷³ Friesen later viewed the affair with equanimity. He stated: "...by the decision of the electors, I was retired from civic-political life."³⁷⁴

The man who would not stoop to respond to a "dirty" election campaign was also courteous and polite on the Bench. He refused to engage in gossip, and never openly criticized counsel.³⁷⁵ At the same time, ill-prepared or incompetent counsel found that Friesen did not suffer fools gladly. He was able to make clear his disapproval without ever being explicit.³⁷⁶

Physically, Friesen was short and slight.³⁷⁷ However, he more than made up for his diminutive stature with his active, aggressive personality. He was very combative; he loved a fight and probably enjoyed politics for its partisan nature as

³⁷³ Robert Dahl, supra, note 255.

³⁷⁴ Saskatchewan Archives biography, supra, note 325.

³⁷⁵ Interview with Cornelius Toews, a lawyer in Regina, on April 9, 1991.

³⁷⁶ Ibid.

³⁷⁷ His son-in-law, Willard Lutz, in an interview on April 10, 1991, estimated his height as about 5'8" and his weight as "140 lbs. soaking wet."

much as anything.³⁷⁸ He was a man in motion. During a visit with him near the end of his judicial career (Friesen would have been nearing 75 years of age at the time) his nephew was hardly able to keep up with him as he marched down the street.³⁷⁹ He was a hard worker, a "self-made man". He told his nephew, just entering the practice of law, that "it is not shiny brains, but shiny seats of pants, that bring the desired results in the long run."³⁸⁰

Friesen was an ethical man. He had a strict code of conduct and applied it to everyone. He believed that there was a proper, ethical and "right" way to behave and that it was one's responsibility to behave in that way.³⁸¹ However, while capable of judging others harshly for failing to meet his standards, it is clear that he applied the same standards to his own conduct. His conduct in his unsuccessful mayoralty campaign is revealing. John Friesen refused to cut corners. He was always courteous and observed proprieties, even when at his most combative, whether in or out of court. He never resorted to name-calling, to gossip and to back-stabbing.³⁸²

³⁷⁸ Betty Lutz, supra, note 326.

³⁷⁹ Interview with Robert Klassen, Friesen's nephew, on February 23, 1991.

³⁸⁰ Letter from John E. Friesen to Robert Klassen, supra, note 366.

³⁸¹ John Friesen, supra, note 341.

³⁸² Robert Dahl, supra, note 351 and Cornelius Toews, supra, note 375.

He was a gentleman, even to the point of doffing his hat to every lady he met on the street.³⁸³

There was obviously a tension between the gentleman in Friesen and his aggressive personality. Especially in retirement, Friesen's combative nature revealed itself in stubbornness, contrariness and occasional rudeness. Indeed, in his declining years, frustrated at his inactivity and irrelevance, Friesen could be described as "prickly", "ornery" and "crotchety".³⁸⁴ For example, in the emergency room of the hospital immediately after his car accident in 1976, Friesen refused to be treated for his injuries and threatened to sue anyone who did so. The hospital staff were unable to reason with him. Eventually, however, when his daughter convinced him that he would die without treatment, Friesen changed his mind and, just as loudly, demanded immediately the surgery he had adamantly refused earlier.³⁸⁵ His son-in-law recalls on more than one occasion being curtly summoned to Friesen's home to perform chores. Friesen rarely expressed any thanks or gratitude for these favours.³⁸⁶

³⁸³ Betty Lutz, supra, note 326.

³⁸⁴ Betty Lutz, supra, note 326 and Willard Lutz, supra, note 377.

³⁸⁵ Ibid.

³⁸⁶ Willard Lutz, supra, note 377, reported that on one occasion Lutz was at home watching T.V. during a blizzard when the phone rang. Friesen was at the other end and told Lutz curtly, "My car is stuck in the driveway," and then hung up. Lutz got into his winter outfit and drove over, to find the tire flat. After fixing the tire in the storm and parking the car in the garage, he

Friesen's impatience with the incompetence of others and his lack of confidence in the ability of anyone to do things properly seems also to have grown in his latter years. Despite the fact that his son-in-law, the executor of his will, was the Auditor-General of Saskatchewan, Friesen wrote detailed, step-by-step instructions for him to follow during probate.³⁸⁷

Friesen's view of the world as black and white spilled over into many areas of life. Having grown up in a world where the roles of women and men were clearly defined, he was unwilling to accept changes in those roles. He had no use for feminism as a political force and opposed abortion. For him, the woman's place was in the kitchen; he expressed dismay that his son-in-law would demean himself by helping out with household chores.³⁸⁸

Friesen's intensity was not leavened by a sense of humour; his daughter remembers having to explain jokes to him. When it came to the law, however, Friesen's lack of a natural sense of humour was irrelevant. He simply believed that it was wrong to poke fun at the law. For him, it was a serious and honourable profession and to laugh about it was utterly

returned the key to Friesen, hoping to get a drink to warm up. Friesen met him at the door, said "Thank you" and shut the door.

³⁸⁷ Betty Lutz, supra, note 326 and Willard Lutz, supra, note 377. Friesen's monthly check of his bank record paid dividends when he discovered \$10,000 missing from his account, money which had apparently been embezzled by the bank manager.

³⁸⁸ Ibid.

inappropriate.³⁸⁹

The aggressiveness of Friesen's personality must have been exacerbated by the frustration he felt in retirement. Hard-working and active, he found himself without work and faced with forced idleness. His life had been devoted to politics and the law; he had developed no other interests. He was ill-equipped for retirement. Rather than developing hobbies or other activities, however, Friesen maintained his interest in the politics of both the federal and provincial governments. He found enjoyment in reading the annual Auditor General's reports, provided to him by his son-in-law, the Auditor General of Saskatchewan and he regularly watched parliamentary and legislative debates on television. He read avidly, took walks and occasionally watched baseball on T.V. However, on the whole, he was unhappy in retirement, an active man forced to do nothing.³⁹⁰

As might be expected of a man who had a traditional view of gender roles, and who was devoted to interests outside the home, Friesen left the raising of his children largely to his wife. Mrs. Friesen did all the household chores and most of the disciplining of the children. However, despite the fact that Mrs. Friesen was responsible for raising the children, it is perhaps not surprising, given Friesen's "black and white"

³⁸⁹ Ibid. On the other hand, his daughter, Betty Lutz, does not see him as pompous or self-important.

³⁹⁰ Ibid.

view of life, that standards for his children were high and their upbringing was strict.³⁹¹

Religion was not a subject of interest for Friesen. Mrs. Friesen and the children attended the United Church but Friesen did not.³⁹² Friesen once mentioned to Robert Dahl that he listened to the United Church services on the radio³⁹³ and commented to his daughter that, if he were ever to attend church, he would prefer the Roman Catholic church because of its formality. He also objected to the ministers who were using the pulpit to advance political and social causes, believing that they should "stick to religion."³⁹⁴ However, on the whole, religion seems to have been irrelevant to Friesen, and he probably did not think about it a great deal. Friesen's son believes that he was disillusioned with religion and was probably agnostic.³⁹⁵ He claims, perhaps with some insight, that his father's religion was the law.³⁹⁶

Friesen's view of his Mennonite past is unknown, but

³⁹¹ Betty Lutz, ibid.

³⁹² Both John Friesen Jr. and Betty Lutz agree that Friesen did not attend church. Mr. Friesen, supra, note 341, remembered that his mother was a regular church-goer and involved with the Women's Auxiliary while Betty Lutz, ibid. did not recall this. Mrs. Lutz remembered that, as children, they attended Sunday School but merely because it was considered "the thing to do".

³⁹³ Robert Dahl, supra, note 351.

³⁹⁴ Betty Lutz, supra, note 326.

³⁹⁵ John Friesen, supra, note 341.

³⁹⁶ Ibid.

certain facts do provide some basis for speculation. As noted, Friesen's father was prominent in the Mennonite community for the first dozen years of Friesen's life and presumably Friesen would have attended church regularly during this time and would have been familiar with Mennonite cultural values and norms. However, it also appears clear that John M. Friesen had moved well beyond the boundaries of traditional Mennonite thought and behaviour by the time Friesen reached his teens. Friesen himself seems to have put his past behind him without a backward glance and no evidence of bitterness. He clearly abandoned the Mennonite peace position. He volunteered for service in World War II and, when he was rejected due to his age,³⁹⁷ became chairman of the Air Cadets.³⁹⁸

Friesen does not seem to have thought his background worthy of much discussion with his family. Indeed, his daughter was unaware of her father's Mennonite background until after his death.³⁹⁹ Moreover, despite the fact that they lived only 30 miles away, Friesen's children grew up utterly cut off from their grandparents and uncles and aunts. Friesen's step-sister and close relative both commented about this lack of contact. Both were sure that Friesen's parents

³⁹⁷ Ibid.

³⁹⁸ "J.E. Friesen Appointed to District Court Judgeship", Swift Current Sun, undated article on occasion of Friesen appointment to Bench in 1957.

³⁹⁹ Betty Lutz, supra, note 341.

had not attended his wedding. According to a close relative, the family from Herbert visited the Friesen home in Swift Current only once, apparently without previous arrangement. The visit was never repeated.⁴⁰⁰ Friesen's step-sister says that the family would go to Swift Current to shop and she, a young child, would go to Friesen's law office, where he would give her a dime for candy. However, she doesn't recall ever meeting Friesen's family. She only recalls Friesen visiting the family in Herbert on one occasion (perhaps for the funeral of their father), at which time he showed his family a picture of his wife and children.⁴⁰¹ Years later, Friesen's nephew met Judge Friesen in Regina, but did so at his office, where Friesen apologized that he could not meet him at home. He did not provide an explanation for this fact.⁴⁰²

Still, despite this peculiar lack of contact, Friesen does not seem to have denied this background. While his brief biography does not mention his Mennonite past, neither does it display evidence of "ethnic denial."⁴⁰³ Friesen never attempted to change his name, which in the Swift Current area, would have been readily associated with the Mennonite

⁴⁰⁰ Close relative, supra, note 329.

⁴⁰¹ Elaine Pollard, supra, note 323.

⁴⁰² Robert Klassen, supra, note 379.

⁴⁰³ Ethnic denial appears to be, however, a feature of the "handwritten history", supra, note 322. The unnamed author has taken pains to describe her family's ethnicity as Dutch rather than Mennonite.

community. He had many Mennonite clients, with whom he spoke Low German.⁴⁰⁴ Moreover, he made passing comments to his children which, had they been interested in pursuing them, would have told them about his background. On one occasion his daughter visited her father's law office and was introduced to a relative of her father whom she knew to be a Mennonite by his clothes.⁴⁰⁵ Friesen also made other passing comments about his background. For example, he told her that he had grown up in Herbert and spoke highly of his step-mother.⁴⁰⁶

One can speculate that the lack of contact with Friesen's siblings was caused, at least in part, by the wishes of Mrs. Friesen. Myrtle Friesen came from a "very British" family, and it may be that she disliked and was embarrassed by her husband's background.⁴⁰⁷ Friesen's daughter's feelings in growing up were that Mennonites were "Germans" and the subject of disapproval, but she is unaware of the source of this unconscious feeling. She speculates that it may have come from her mother, but it may also have been the result of general anti-German feelings in the area, especially during

⁴⁰⁴ John Friesen, supra, note 341.

⁴⁰⁵ Betty Lutz, supra, note 326.

⁴⁰⁶ Ibid.

⁴⁰⁷ This explanation was given by Elaine Pollard, supra, note 323, and by a close relative, supra, note 329.

the war.⁴⁰⁸

Whatever the source of this lack of contact, it is clear that John E. Friesen, following the example of his father, had left the Mennonite community well behind him in his interests and career.

⁴⁰⁸ Betty Lutz, supra, note 326.

ERDMAN FRIESEN (1904-1969)

Erdman Friesen was the youngest child of John M. Friesen's first marriage and was John E. Friesen's younger brother. He was born in Altona, Manitoba on July 12, 1904.⁴⁰⁹ As a child, he moved to Saskatchewan with his family and grew up in Herbert. He began articles with Archie McWilliams of Swift Current in 1921 and transferred them to P.M Anderson and G.F. Stewart a month before being called to the Bar in June of 1926.⁴¹⁰ He worked as a city solicitor in Regina after being admitted to the legal profession.⁴¹¹

Little is known about Erdman's childhood or of his reasons for entering the practice of law. One can speculate however, that the influence of his father and his brother may have played a role.

While in Regina, Friesen married Jean Donahue, the daughter of a wealthy Regina family. Erdman's parents were

⁴⁰⁹ Law Society of Saskatchewan, supra, note 4.

⁴¹⁰ Ibid. Henderson's Directory for Regina lists an Edward Friesen as a law student in 1923. This may in fact refer to Erdman, who commonly referred to himself as "Ed". If so, this would contradict Law Society records, which show him articling in Swift Current at the time. However, his step-sister, Elaine Pollard, supra, note 323, and a close relative, supra, note 329, also recall that he studied at the University of Regina, although this is not mentioned in the Law Society records. If in fact Erdman was living in Regina in 1923, it may be that he was studying there for a brief period during his articles.

⁴¹¹ Henderson's Directory lists Edward Friesen as Assistant City Solicitor from 1926 to 1940. This corresponds with the recollections of his step-sister, supra, note 323 and a close relative, supra, note 329.

not in attendance at the wedding and the couple never visited Erdman's family's home in Herbert.⁴¹² However, Erdman's family visited the couple more than occasionally in Regina. They found Erdman and Jean living what was to them an exciting and glamorous life. Their home was well appointed and both Erdman and Jean wore the latest fashions.⁴¹³ Erdman was very handsome and cultivated an urbane, distinguished and "dapper" look. He played golf, had a great sense of humour and was "the life of the party". Jean Friesen was also very attractive and had good taste in clothing.⁴¹⁴ They enjoyed an active social life, with many parties and lots of drinking. Yet, despite Erdman's apparently successful and well-to-do lifestyle, the poor and somewhat provincial visitors from Herbert experienced no sense that they were viewed with disdain. Neither Erdman nor Jean showed any lack of warmth for Erdman's family.⁴¹⁵

Around the time of the Second World War, Erdman Friesen's wealthy and successful lifestyle came to an end, as the couple divorced. Despite his age, Erdman entered the war as a Pilot Officer and Squadron Leader in the R.C.A.F. He was posted to

⁴¹² Close relative, supra, note 329.

⁴¹³ Friesen step-sister and a close relative, supra, notes 323 and 329, speculate that Jean Friesen's family may have contributed financially to the couple's financial resources.

⁴¹⁴ This description is that of a close relative and Elaine Pollard, ibid.

⁴¹⁵ Ibid. According to Erdman's close relative, supra, note 329, her father and Jean Friesen got along very well.

Moosomin, Saskatchewan and Ontario.⁴¹⁶

After returning from active service, Erdman joined the Law Society of Upper Canada and practiced law in Toronto for some years before moving to Port Hope, Ontario, about 80 miles east of Toronto. He had a general practice there.⁴¹⁷ At some point he was appointed Queen's Counsel.⁴¹⁸ He remarried, to Helen Marie Carscallen. They had one daughter. It may be that they eventually separated as well.⁴¹⁹

In 1969, ill with liver cancer, Erdman committed suicide.⁴²⁰

⁴¹⁶ Ibid.

⁴¹⁷ Robert Klassen, supra, note 379. Klassen, Friesen's nephew, was in contact with Friesen during his years in Port Hope and Friesen offered him a position in his practice.

⁴¹⁸ His obituary, dated April 24, 1969, from an unnamed paper, provided by Betty Lutz, supra, note 341, gives him this title.

⁴¹⁹ Friesen's close relative, supra, note 329, claims this is the case. The obituary, ibid., makes reference to his widow surviving him without mentioning the fact that they were separated.

⁴²⁰ A close relative, ibid., claims he died in 1979, but the records from the Law Society of Saskatchewan, supra, note 4, as well as the obituary notice, supra, note 418, give 1969 as the date of death.

ELMER ABRAM DRIEDGER (1914-1985)

Elmer Driedger's paternal grandfather, Johann Driedger, was born in Chortitza, Russia in 1859.⁴²¹ He came with his parents to Canada in 1875 at the age of fifteen. The family settled in Blumenfeld, in southern Manitoba, and were part of the Old Colony community in Manitoba. There Johann Driedger married and raised a large family. Although he was prepared to break with tradition by opening a small store in the back of his farmhouse, Driedger seems to have been accepted by the community, for he served as mayor of Blumenfeld for some time.⁴²² In 1904, Johann Driedger and his family moved to Saskatchewan, settling in Clark's Crossing (between Warman and Saskatoon) for a few years until they moved to Osler, north of Saskatoon. Osler was on the edge of the Hague-Osler block reserved for Mennonite settlers. The town itself was three miles from the nearest Mennonite village.⁴²³

Johann Driedger seems to have been a rebel within the Old Colony congregation. While living at Clark's Crossing, he had built a store in the open country on the railway line and became a postmaster there, two activities which were outside

⁴²¹ Leo Driedger, Mennonite Identity in Conflict (Lewiston and Queenston: The Edwin Mellen Press, 1988) at 67. Leo Driedger uses his grandfather, Johann Driedger, as a case study at 61 to 76.

⁴²² Ibid. at 67-68.

⁴²³ Ibid. at 69.

of the traditional Mennonite lifestyle.⁴²⁴ He also ran a store in Osler. He had just moved his goods from Clark's Crossing into the new store when it, along with four other stores, burned to the ground. The fire had begun in the neighbouring store, also owned by an Old Colony Mennonite, and Driedger accused the owner of arson. While his neighbour had taken out insurance with the more liberal Minnesota Mennonite insurance company, Driedger had insured his Clark's Crossing store with the Old Colony fire insurance. The Old Colony church debated whether Driedger's goods were covered by the insurance after being moved from the insured store and whether coverage should extend to businesses in towns. Eventually, the church declined to compensate Driedger and demanded that he be reconciled to his neighbour (without examining Driedger's complaint).⁴²⁵ Driedger was outraged and the resultant dispute with the church led to his expulsion in 1908.⁴²⁶ Thereafter, Driedger fought a running battle with the Old Colony church. The church invoked the ban on Driedger and instituted a business boycott. Driedger responded by opening new stores in towns in the area and by filing lawsuits against individual Mennonites and the Mennonite Insurance

⁴²⁴ Ibid. at 69.

⁴²⁵ Ibid. at 69-70. The fact that Driedger was building a new modern house in Osler, presumably with the intention of moving there, may have added to the church's reluctance to compensate him.

⁴²⁶ Ibid. at 70.

Association.⁴²⁷ He also testified against the excommunication practices of the church in hearings into Mennonite separate schools held in Warman in 1908.⁴²⁸

Despite the gap between Driedger and the church, Driedger did not attempt to find Christian fellowship elsewhere. He and his family continued to attempt to attend church, to the point where the church elders obtained the services of a temporary constable to keep Driedger from attending their services.⁴²⁹ He also maintained communication with the leadership of the church, entering into frequent and emotional arguments with Bishop Wiens and other leaders of the Church. In these arguments Driedger used his orthodox, if modern, interpretation of the Scriptures to try to convince the elders logically that a more progressive perspective was possible. However, as one observer notes, "logic did not persuade, and the power of the elders prevailed."⁴³⁰ Driedger's modern notions of Mennonite culture were incompatible with those of the Old Colony church.⁴³¹

The progressive views of Johann Driedger seem to have rubbed off on his son, Abram, Elmer Driedger's father.

⁴²⁷ Ibid. at 71-72.

⁴²⁸ Ibid. at 72.

⁴²⁹ One of Driedger's sons recalls attending a church service at Neuanlage where the entire congregation left after the Driedger family had sat down. Ibid. at 71.

⁴³⁰ Ibid. at 73.

⁴³¹ Ibid. at 74.

Although he was baptized into the Old Colony church, Abram Driedger married a woman whose family was ethnically Mennonite but who followed the teachings of Swedenborg.⁴³² They were married in the Swedenborgian church in Rosthern. Because they lived in Osler, where there was no Swedenborgian church, the Abram Driedger family went to the more liberal General Conference Mennonite church in town.⁴³³ Even within this more liberal environment, Abram Driedger was considered progressive. He was not a farmer, but a grain buyer for Pioneer Grain and the Saskatchewan Wheat Pool. He played cards and argued that there was no harm in dancing. Although he contributed to the local Mennonite high school, Rosthern Junior College, he sent his sons to the public high school.⁴³⁴ His son suggests that, although his father compromised sufficiently to maintain a place in the church (largely for the sake of his wife, who was quite devout), and although he quite liked Mennonites as people and adopted many of their values, he never adopted Mennonite religious beliefs and was probably an agnostic.⁴³⁵

⁴³² Interview with Don Driedger, Elmer Driedger's brother, on April 11, 1991.

⁴³³ Ibid. On visits to Rosthern the Driedger family attended the Swedenborgian church.

⁴³⁴ Ibid.

⁴³⁵ Ibid.

Elmer Driedger was born on January 14, 1914,⁴³⁶ the second of five children, and almost certainly drank in the controversies of the Mennonite community with his mother's milk. Both of his parents saw value in education and were prepared to sacrifice in order to ensure that their children received the best education possible.⁴³⁷ Although Elmer attended the one room school house in Osler until Grade 10, his parents paid for violin lessons in Saskatoon. Elmer caught the train between Osler and Saskatoon every week in order to continue his musical studies.⁴³⁸ The Driedger family spoke only English and Low German at home but Elmer's parents felt that instruction in High German was called for. They therefore arranged to have Elmer and his older brother, Edwin, study German privately with J.J. Thiessen, a Mennonite who had been educated in Russia and who had recently come to Canada.

After his sons completed Grade 10 in Osler, Abram Driedger arranged to have Elmer and Edwin attend the public high school in Rosthern, 28 miles away, where they boarded

⁴³⁶ This date is provided by the Law Society of Saskatchewan, supra, note 4. A Curriculum Vitae for Elmer Driedger has been provided by Elsie Driedger, Elmer Driedger's widow, and gives his birthdate as January 14, 1913.

⁴³⁷ Elsie Driedger, in an interview on August 28, 1991, sees her husband's parents as valuing education far more highly than even non-Mennonites in that time and place.

⁴³⁸ Don Driedger, supra, note 432. All five children had some exposure to music lessons. Elmer was apparently quite musical and did well on the violin. He stopped taking lessons when attending high school.

with a local family.⁴³⁹ Following their graduation from high school, Elmer and his older brother registered at the University of Saskatchewan in Saskatoon. In order to allow them to live at home while attending university, the Driedgers moved to Saskatoon in 1930.⁴⁴⁰ The Driedger family stopped attending church regularly as a family in Saskatoon since there was no Mennonite church in the city at that time.

Elmer Driedger is described as very bright but not likely to brag about it. Hampered by heart trouble and shortness of breath caused by rheumatic fever he had suffered as a child, Elmer was not a great athlete.⁴⁴¹ He enjoyed his own company, and liked to read and do puzzles, but was comfortable in groups and enjoyed playing games with the family. Although he was a good student, he was not constantly studying and generally had time to socialize.⁴⁴²

Elmer Driedger obtained his B.A from the University of Saskatchewan in 1932 and an LL.B. from the same institution in 1934.⁴⁴³ He then went to Germany for about a year, attending universities at Marburg and Kiel, but it is unclear whether he

⁴³⁹. Abram Driedger felt that the education they received at the public high school would better prepare them for university. Therefore, although he contributed financially to Rosthern Junior College, his sons attended the public school. Ibid.

⁴⁴⁰ Ibid.

⁴⁴¹ Don Driedger, ibid., does recall that he tried out for the baseball team once.

⁴⁴² Ibid.

⁴⁴³ Curriculum Vitae, supra, note 437.

did so while studying Law or Arts.⁴⁴⁴

The reasons for Driedger's decision to enter law are unclear. Given his parent's emphasis on education and the family's distance from the Mennonite community (both literally and figuratively), there would have been little to prevent Driedger from pursuing law as a career. However, the positive impulses to enter the legal profession are unknown.

After obtaining his LL.B. in 1934, Driedger articulated the requisite three years with F.F. MacDermid, Q.C. of Ferguson, MacDermid & MacDermid in Saskatoon.⁴⁴⁵ He was called to the Bar in 1937 and worked for this firm until 1939. In 1939, he lectured in Company Law at the University of Saskatchewan.⁴⁴⁶ Later that year he moved to Yorkton and became a partner in a law office there.⁴⁴⁷ Driedger's general practice in Yorkton was short-lived, however, as he obtained a position as librarian to the Supreme Court of Canada in 1940.⁴⁴⁸ Before

⁴⁴⁴ Don Driedger, supra, note 432, believes that he was studying International Law there. Elsie Driedger, supra, note 437, says that she always assumed that he studied Arts there. Driedger's curriculum vitae, ibid., says only that he was engaged in post-graduate studies.

⁴⁴⁵ Law Society of Saskatchewan, supra, note 4. Don Driedger, ibid., suggests that he may have articulated with Peter Makaroff, a Doukhobor lawyer, but this is not shown in Law Society records.

⁴⁴⁶ Curriculum Vitae, supra, note 436.

⁴⁴⁷ Don Driedger, supra, note 432. The Law Society of Saskatchewan, supra, note 4, has no record of such a move.

⁴⁴⁸ Law Society of Saskatchewan, supra, note 4. Elsie Driedger, supra, note 437, notes that Elmer had no great desire to leave the prairies but that the librarian position offered substantially more money than he was making practicing law. She

being confirmed for this post, questions were raised about Driedger's German background and his year in Germany. Given that Canada was at war with Germany, it is perhaps understandable that concerns about security were expressed. This difficulty was overcome, however, with some political support from Driedger's father, who used contacts within the Liberal party to ensure Driedger's appointment.⁴⁴⁹

Shortly after his move to Ottawa, Driedger returned to Saskatchewan to marry Elsie Norman, a school teacher he had met in Yorkton. The couple had two sons.

A year after moving to Ottawa, Driedger again changed positions, transferring to the legal branch of the federal Department of Justice. He began as junior advisory counsel, the normal entry-level position, but rose quickly within the department. His promotions came primarily as a result of his expertise in the area of legislative drafting. He was appointed King's Counsel in 1949 and became Deputy Minister of Justice and Deputy Attorney General in 1960.⁴⁵⁰ During his

was earning \$400 per year as a teacher and made more than Elmer did, at least in his first year in Yorkton. She thinks he liked the practice of law well enough and was good in court, although he hated domestic law.

⁴⁴⁹ Don Driedger, *supra*, note 432. Don Driedger believes his father contacted Walter Tucker, M.L.A. for Rosthern, and the Dean of the Saskatchewan Law School. Elsie Driedger, *ibid.*, confirms that the German issue was raised but knows nothing of the political influence brought to bear on the matter.

⁴⁵⁰ Undated and unidentified article provided by Law Society of Saskatchewan, *supra*, note 4, entitled "Saskatchewan Native Gets Post". According to Don Driedger, *supra*, note 432, Elmer Driedger owed this position to Prime Minister Diefenbaker, who wanted "the

time at the Department of Justice, he was a member of the Statute Revisions Commissions of 1949 and 1965, the National Council on Administration of Justice from 1958 to 1967, and the Commission on Uniformity of Legislation from 1947 to 1967.⁴⁵¹ He lectured at the University of Ottawa from 1957 to 1959 and received an honorary doctorate in law from that institution in 1963.⁴⁵² He was also the author of two books, three pamphlets and fifteen articles.⁴⁵³

In 1967, Driedger was appointed Canadian Consul General in Hamburg, Germany. His wife, Elsie Driedger, views this period as a respite from the pressures of Driedger's position in Justice. He very much enjoyed his time in Hamburg and found it quite relaxing.⁴⁵⁴ However, in 1969 the Driedgers returned to Canada and Driedger took a position in the Faculty of Law at Queen's University in Kingston, Ontario.⁴⁵⁵ A year later he returned to Ottawa, instituting the new program in legislative drafting, jointly sponsored by the Faculty of Law and the Department of Justice.⁴⁵⁶ He wrote a further eight

boy from Osler" appointed to the position.

⁴⁵¹ Curriculum Vitae, supra, note 436.

⁴⁵² Ibid. The undated, unidentified newspaper article, "Sask. Native Gets Post", supra, note 450, states that he lectured at the University of Ottawa from 1958 to 1960.

⁴⁵³ Curriculum Vitae, supra, note 436.

⁴⁵⁴ Elsie Driedger, supra, note 437.

⁴⁵⁵ Curriculum Vitae, supra, note 436.

⁴⁵⁶ Elsie Driedger, supra, note 437.

academic articles after returning to Canada. Although he retired and was appointed Professor Emeritus in 1979,⁴⁵⁷ Driedger maintained contact with the Department of Justice by providing seminars for staff on a contract basis.⁴⁵⁸

Elmer Driedger died in Ottawa on September 21, 1985.

Elmer Driedger owned a brilliant mind. His wife claims that he was not a workaholic and spent most weekends and evenings at home with the family. Despite this, he rose rapidly within the Department of Justice without evidence of political gamesmanship. His colleagues claimed that he had tremendous powers of concentration and could accomplish a great deal in a short period of time.⁴⁵⁹ His textbook on legislative drafting, Construction of Statutes,⁴⁶⁰ is the standard text in the area and the program he instituted at the University of Ottawa remains the premiere program of its type in Canada. His wife describes him as a "born student" and, because of his patience with young people, a "natural teacher."⁴⁶¹

Despite his enjoyment of the academic aspects of law,

⁴⁵⁷ Curriculum Vitae, supra, note 436.

⁴⁵⁸ Elsie Driedger, supra, note 437.

⁴⁵⁹ Ibid.

⁴⁶⁰ E.A. Driedger, Construction of Statutes (Toronto: Butterworths, 1974).

⁴⁶¹ Elsie Driedger, supra, note 437.

Driedger was not singleminded. He enjoyed photography, philately and music.⁴⁶² Prior to his appointment to the civil service, he was very involved in politics (of the Liberal variety) but put this interest aside during his career. His wife considers him one of the most well-rounded people she has ever met.⁴⁶³

The influence of his Mennonite background on Driedger's later life is hard to assess. Although his family had compromised sufficiently to be part of the Mennonite community during the years in Osler, Driedger's childhood was clearly not typical of the mainstream Mennonite community. His mother had grown up in a church whose philosophy differed sharply from that of the Mennonite faith and his father was always dubious about many Mennonite cultural and religious values. Mennonite culture was not unchallenged in the Driedger household and, although his mother is said to have been very devout, religious faith was probably not as significant in Driedger's family as in many other Mennonite homes.⁴⁶⁴ Driedger grew up in a home where lifestyles, value-systems and world-views were not taken for granted and where tolerance was

⁴⁶² Although he never played violin after his marriage, Elsie Driedger, *ibid.*, recalls that he loved to attend musical concerts and he had a large collection of classical records. His eldest son studied organ, piano and tuba and later went to England to pursue his organ studies.

⁴⁶³ *Ibid.*

⁴⁶⁴ Elsie Driedger. *ibid.*, expressed the view that, other than Elmer's mother, the Driedger family was not particularly "church-oriented".

extended to the ideas and choices of the various members of the family.⁴⁶⁵ Given this background, it is not surprising that Driedger is said to have been very tolerant of different views and the traditions and cultures of ethnic groups.⁴⁶⁶

Driedger does not appear to have been scarred by the bitterness and anger generated in the battles between his grandfather and the Old Colony Church. Nor does he appear to have associated Osler with a closed and conservative Mennonite community. The fact that he had a picture of Osler displayed on his office wall throughout his career, suggests that he had good memories of his childhood. Those who know him claim that he was proud of his background and small-town roots.⁴⁶⁷ He maintained regular contact with his parents and siblings throughout his life.⁴⁶⁸

Elsie Driedger was raised in the United Church and after his marriage Driedger attended the United Church regularly. He also became at least peripherally involved in church matters. Nevertheless, although Driedger's brother thinks that Driedger believed in a supernatural power, Don Driedger does not think that religious faith played an important role

⁴⁶⁵ Elsie Driedger, ibid., assessed her husband's parents as being confident of their children's ability to make the decisions and choices that were best for them.

⁴⁶⁶ Don Driedger, supra, note 432.

⁴⁶⁷ Ibid. Elsie Driedger, supra, note 437, confirms this.

⁴⁶⁸ Elsie Driedger, ibid.

in Driedger's life.⁴⁶⁹

In some sense, then, Driedger's background was an influence on him throughout his life, although that influence would not have been typically Mennonite. Driedger's background was not dominated by the Mennonite Church, but by his rather exceptional family. Rather than a heritage which passed on a firm view of right and wrong, strict guidelines for everyday behaviour and a strong cultural identity, Driedger's heritage placed a high value on education, personal development, and tolerance of others.

⁴⁶⁹ Don Driedger, supra, note 432. Elsie Driedger, ibid., did not wish to comment about her husband's faith, but noted that he joined the United Church without urging from her and attended regularly.

CONCLUSION

I came to the discovery of the seven men described in the preceding chapter as a lawyer with some training in history. My expertise does not lie in sociology or cultural studies. Nor did I have any specific theoretical framework into which I expected to fit the data I discovered. I did, however, enter my research into the lives of these lawyers with a number of expectations and hypotheses. I wish to discuss these expectations and to provide some thoughts as to further analysis and research.

My first expectation, shattered almost immediately, was that there would be no lawyers of Mennonite background prior to World War II. I expected that the Mennonite community would be so cohesive and would view the practice of law as so threatening to its cultural constructs that no individual would be able to break away sufficiently to enter the legal profession. I clearly overestimated the power of the community to control the choices of its members, even in the early years of the Mennonite community on the Canadian prairies. On the other hand, I believe that my expectation of the fundamental chasm between the legal profession and the Mennonite community in the first part of the twentieth century was met, and I have attempted to outline the extent of that chasm in the first section of this thesis. Moreover, the fact that none of the gentlemen whom I have studied managed to bridge that gulf leads me to conclude that the Mennonite

community, perhaps in some visceral sense, also recognized the extent of the differences between the practice of law and Mennonite culture.

Another hypothesis which occurred to me (through my supervisor, Professor Alvin Esau) was that it would not be the more liberal Mennonites but rather the most conservative Mennonites who would produce the first lawyers. The theory was that, by yielding in some non-essential ways to the larger culture, the more liberal Mennonites would be more successful in preserving a viable Mennonite cultural construct. For example, by creating a Mennonite high school, the more liberal Mennonites would allow their children to obtain an education within the context of their own community. These children would be less inclined to abandon that community than would those whose community forbade an education. The more conservative groups, on the other hand, would inevitably produce individuals for whom the restrictive practices and thinking of the group would be too much to bear. These individuals would then abandon their community with some vehemence and cut all ties to it. Having done so, they would be entirely free (and would be somewhat inclined) to live a lifestyle without any reference to their past. In an effort to underline their independence from Mennonite culture, these individuals might in fact deliberately choose a career causing the most offence to the Mennonite culture. The practice of law would fulfill that role.

Obviously, this theory is not consonant with the facts. All but one of the Mennonites who became lawyers were from the most liberal Mennonite group and many studied at the Mennonite high school in Gretna.¹ Four of the seven lawyers (Buhr, Hooge and the two Friesens) had fathers who were ardent supporters of the school. It may be that the example of their parents in modifying the rigid traditions and cultural mores of Mennonite culture, may have encouraged even more liberal thinking and behaviour in their sons. If higher education (traditionally viewed by Mennonites as dangerous) was in fact a good thing, perhaps the practice of law was not so bad after all.

The prospect of disapproval from the Mennonite community for their decision to enter the legal profession appears to have been present for all seven men. However, the weight carried by this prospect would have been dependent on the importance of that community in their lives. Three of the lawyers had fathers who had moved a substantial distance from the Mennonite culture as their sons were growing up. John M. Friesen, the father of John E. Friesen and Erdman Friesen, seems to have abandoned the Mennonite community and his leadership role within it after the death of his first wife. He moved to Herbert, Saskatchewan and, although he maintained

¹ The exception, Elmer Driedger, whose roots are in the Old Colony community, came from a family which could be described as peripheral to the Mennonite community in Saskatchewan. His family appears to have adopted a much more tolerant attitude toward questions of lifestyle than the typical Old Colony church members.

contact with religious groups, seems to have been wrestling with his faith. His children describe him as taking a greater interest in academic pursuits than in religious matters during his later years. He certainly was not an integral part of the Mennonite community in Herbert. Similarly, Elmer Driedger's father, Abram, was peripheral to the Mennonite community during Elmer's formative years. His son, Don Driedger, believes that Abram Driedger may well have been an agnostic.

Obviously, this attitude on the part of their fathers would have had an impact on the sons who entered law. Doubts about religious faith generally and the Mennonite faith in particular would have called into question the whole of the Mennonite worldview and made distance from that cultural construct easier to attain.

Henry and David Vogt's father died before they reached adulthood, so his influence might well have been minimal (especially for David). The extent to which their family remained a part of the Mennonite community after his death is in doubt, although both attended the Mennonite High School. It may be that the Mennonite community did not play an important role in their lives, which would have made the decision to enter law less difficult.

Peter Hooge and Abraham Buhr seem to have been the most "connected" to the Mennonite community through their families while growing up. Their parents remained within the culture throughout their lives. It is therefore more difficult to

explain the reasons for their decision to enter law, although both seem to have drifted away from the community by first becoming teachers.

The prospect of familial disapproval undoubtedly played a role in the decision of these men to enter law, although the importance of that role would depend on the extent of the disapproval, the degree of intimacy within the family and the personality of the individual making the decision. These factors are difficult to assess, although some judgments can be made concerning the reactions of the families of these individuals to their entry into the practice of law.

Nothing is known of the reaction of David and Henry Vogt's family to their decision. However, the families of Elmer Driedger and John and Erdman Friesen appear to have been pleased with their decisions to enter law. Peter Hooge and Abraham Buhr seem to have maintained good relations with their respective families. Sources go so far as to suggest that they were in fact admired by their families for their education and position in society. While that may have been the case later in life, it does not preclude the possibility that their choice of law was viewed negatively by their families at the time the choice was made. Abraham Buhr's father refused to support him financially during his university education, which suggests some disapproval, although Buhr was later a significant and well-liked member of the family.

Although no study to date has focussed on Mennonite lawyers after World War II, it appears that large numbers of lawyers of Mennonite background have entered the legal profession in the past fifty years. It further appears that a significant percentage of these modern Mennonite lawyers have been able to maintain a membership in the Mennonite and the legal community simultaneously. If so, this suggests that one or both of the two cultures have changed in a manner which has narrowed the gap between them since 1940.² This in turn raises the possibility that the two cultures were already moving closer to one another prior to the war. If so, a logical hypothesis would be that, of the seven lawyers who entered the profession before the Second World War, the earliest entrants would find the most difficulty in maintaining connections with Mennonite culture, while the most recent entrants would find that task less difficult. One would expect the earliest lawyers to be the most distant from their Mennonite roots and the most recent lawyers to be closest.

In fact, the opposite appears to have occurred. The most recent entrant, Elmer Driedger, maintained almost no contact with his native culture, living in Ottawa and, after his family moved to Vancouver, never visiting Osler. David Vogt, called in 1926, had minimal (primarily familial) contact with

² My own hypothesis is that the culture of the legal profession did not change appreciably but the the Mennonite culture was altered dramatically in the period following World War II.

Mennonites and left Saskatchewan during World War II, moved to Ottawa after the war and never returned to Saskatchewan. Erdman Friesen, also called in 1926, practiced in Regina without substantial contact with Mennonites and also left Saskatchewan during the war. John Friesen, called in 1921, had a substantial Mennonite clientele, but distanced himself from his family and roots. Henry Vogt, called in 1920, enjoyed some contact with his roots, primarily through his family, but does not appear to have made even the slightest effort to pass on his religious or cultural heritage to his children. Hooge's children knew of their father's Mennonite roots and Hooge practiced in Rosthern where his clientele would have included a number of Mennonites, but his social group was not Mennonite. Only Abraham Buhr, who was called in 1911, seems to have maintained substantial connections with the Mennonite community. His relationship with his family was strong and he was happy to act in Mennonite interests both professionally and privately. Indeed, there is some suggestion that he still considered himself a Mennonite.

A number of explanations for this phenomena are possible. The first, that one's choice of marriage partner both indicates and influences one's relationship with the ethnic and cultural group, does not appear to be applicable. The two lawyers who married Mennonites (Henry and David Vogt) appear not to have revealed their desire to remain within the Mennonite community through that choice. Nor does that choice

appear to have significantly fostered a continuing relationship with the Mennonite culture. Indeed, Buhr (certainly) and Hooge (possibly), both of whom married non-Mennonites, had closer relations with the Mennonite community.

Another explanation is that those whose families remained within the Mennonite tradition and who managed to maintain a close relationship with their families despite the cultural gap, would have been more amenable to bridging the gap. The first qualification eliminates Elmer Driedger and the two Friesens, whose families cannot be said to have retained a position within the Mennonite cultural community. However, even if only the remaining four are considered, this theory appears to apply to only one individual. David and Henry Vogt's family may well not have been firmly situated within the Mennonite community but their wives' families certainly were. Yet this fact does not appear to have resulted in any significant ties to that community. Similarly, Peter Hooge's family remained firmly Mennonite and he seems to have had good relations with them, but again, he does not seem to have developed substantial connections with the Mennonite community as a result. Only Abraham Buhr can be said to have been involved with the Mennonite community to the extent that the influence of his family provides the possibility of an explanation.

There are some interesting connections in the lives of these men. One is that, despite the larger Mennonite

community in Manitoba, all seven of the lawyers from Mennonite backgrounds had substantial connections with Saskatchewan and spent at least part of their careers in that province. One was born there (Elmer Driedger), three moved there with their parents (John and Erdman Friesen and David Vogt) and three moved there from Manitoba as adults (Abram Buhr, Henry Vogt and Peter Hooge). This phenomenon appears more than coincidental and deserves some explanation.

The simplest (and perhaps the most plausible) explanation is that the Mennonites who moved to Saskatchewan around the turn of the century were the most adventurous and innovative members of the community. As land became harder to find in Manitoba, they were the most inclined to take the risks and endure the hardships of beginning again. The milieu of Saskatchewan was also less structured than the already settled reserves of southern Manitoba. The Mennonites moving to Saskatchewan, especially those who declined to settle in the block reserves near Swift Current and Hague-Osler, experienced freedom from the established patterns of life in the older Manitoba settlements. Those who found the reserves of southern Manitoba claustrophobic would have found in Saskatchewan the freedom they were seeking. If greater personal freedom was in fact one of the attractions of Saskatchewan, it is not surprising that those Mennonites who came to be lawyers emerged from the less traditional group who went west.

This theory seems to be borne out by the biographies of the seven individuals studied. Elmer Driedger was the product of a family anxious to break out of the restrictive atmosphere in southern Manitoba and was prepared to break with the Church in Saskatchewan as well. John M. Friesen, the father of two lawyers, clearly used a move to Saskatchewan to sever ties with the Mennonite community. Growing up in Neville, far from other Mennonites, David Vogt had a childhood much different than that of his contemporaries in Manitoba. Abraham Buhr, Henry Vogt and Peter Hooge found in Saskatchewan a place where they could practise law and raise their children at arms-length from the Mennonite community.

A second characteristic of the lawyers studied is that, except for Erdman Friesen (about whom no data is available on this matter), all of the lawyers studied had some connection with the United Church. One can understand why these men would not attend a Mennonite church (convenient reasons of distance, wives who didn't understand German), but why would they not attend Anglican, Lutheran, Baptist or other evangelical churches?

One part of the explanation appears to lie in the fact that the United Church was the largest Protestant church on the prairies. There would have been a United Church in nearly every town. Secondly, the United Church (and previously the Methodist and Presbyterian churches) had a missionary philosophy which made it accessible to newcomers of various

ethnic origins. Finally, the United Church appears to have had a relatively high status within most Western Canadian communities. This fact may have appealed to a lawyer.

Beneath these relatively superficial explanations, however, may lie more interesting theories. The appeal of the United Church may lie in its aggressive and progressive image. It may be that the theology it espoused appealed to these "renegades" from the Mennonite community. No conclusions can be drawn at this point.

The number of lawyers examined here precludes the possibility of a statistical analysis. Few conclusions can be drawn, at least of a final nature. Only observations can be made and even these may be subsequently modified. It may well fall to someone else to initiate a project which will provide a clearer picture of the Mennonite community and culture and that of the legal profession. If so, I hope that this study will prove of some assistance.