

2010

Tribute to Bob Moffat

Winston P. Nagan

Follow this and additional works at: <https://scholarship.law.ufl.edu/jlpp>

Recommended Citation

Nagan, Winston P. (2010) "Tribute to Bob Moffat," *University of Florida Journal of Law & Public Policy*. Vol. 21: Iss. 3, Article 2.

Available at: <https://scholarship.law.ufl.edu/jlpp/vol21/iss3/2>

This Article is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in University of Florida Journal of Law & Public Policy by an authorized editor of UF Law Scholarship Repository. For more information, please contact kaleita@law.ufl.edu.

TRIBUTE TO BOB MOFFAT

*by Professor Winston P. Nagan**

The faculty at the University of Florida Fredric G. Levin College of Law is saddened, and in some degree diminished, by the passing of our colleague Bob Moffat. In remembrance of Bob, I wanted to share some thoughts about his achievements as a colleague and professor.

I have known Bob since I came to the University of Florida College of Law in 1975. He welcomed me to the school by taking me to lunch. From the very beginning of our relationship, Bob was interested in the fact that I came from a Commonwealth background (South Africa). Bob's own Commonwealth connection was with Australia, where he earned his LLM on a Fulbright Scholarship and where he met the woman who would be his wife—Janette. These connections gave Bob a certain affinity toward matters culturally connected to the Commonwealth. We often discussed Australian constitutional law; and he introduced me to the works of Australia's leading legal thinkers, such as Julius Stone. Bob appreciated our shared interest in legal theory and encouraged me to attend the meeting of the International Society of Social Philosophy and the Philosophy of Law, in which he was an influential member and a former President. Upon attending, Bob introduced me to several important philosophers and legal theorists, including Elizabeth Flowers and Lon Fuller. Bob was well-regarded by all; and it was an honor to be there as his guest.

Bob was a serious legal theorist. Before coming to UF to teach, he was doing Doctor of Juridical Science (SJD) graduate work at Harvard under Fuller. Bob came to Fuller having been influenced by the Australian approach to legal theory. This meant that Bob brought to Fuller's approach (focusing on the morality of law) a basic understanding of the salience of the social sciences to legal theory, as well. In my own understanding of Bob's SJD work, he had been grappling with the issue of rationally integrating the 'is' and the 'ought'. Unfortunately, Fuller died just as Bob was completing his dissertation. This was a major trial for Bob, not least because it resulted in some confusion about the completion of his dissertation. Fuller had not generated a distinctive following on the Harvard faculty, where the dominant jurisprudential approach was a version of positivism (the Legal Process approach). Ultimately, Bob was assigned a dissertation

* Professor of Law at the University of Florida College of Law, Sam T. Dell Research Scholar Professor of Law, Affiliate Professor of Anthropology and Latin American Studies, Director, Institute for Human Rights, Peace and Development.

advisor who attacked the same lines of inquiry that Fuller had encouraged him to develop. Later, as a fellow theorist and jurisprudential specialist, Bob sent me this advisor's critique of his SJD dissertation; and he asked me to review the dissertation itself. It was clear that Bob's work at Harvard meant very much to him. Upon reading his dissertation, it was clear, too, that Bob had produced a creative, disciplined development of Fuller's fundamental ideas. The new advisor had been so rooted in Austin's conventional positivism that he could not transcend the paradigm to appreciate Bob's valuable contribution to legal theory. His dissertation was a needed contribution to understanding the importance of Fuller's approach to law and morality. Indeed, it extended in significant ways Fuller's analysis of the nature of law. I suggested that Bob's dissertation manuscript should have been published as a book. However, Bob published several chapters separately, and also used his dissertation to generate influential papers in the American Society of Social Philosophy and the Philosophy of Law.

Our shared interest in jurisprudence brought Bob and I especially close when we worked together on a committee to assess the possibility of a jurisprudence course offering for the first year classes. One of the central concerns for both of us was that, in teaching the course, the content could vary radically depending upon who taught the course. Bob's own experiences in conflicting schools of legal theory became a valuable contribution to the development of what we thought could be a core curriculum. We proposed that jurisprudential ideas not only should be included as an orientation to legal education, but also that they should be taught to reveal the theoretical and philosophical bases of legal assumptions. Bob understood that professors themselves could improve as teachers, if they recognized and understood alternate schools of jurisprudence. We also agreed that students should have a basic understanding of the outlines of positivism, natural law, realism, sociological jurisprudence, as well as an introduction to the theories that shape precedent, statutory interpretation, and constitutional interpretation.

One of the very useful tools for education that Bob introduced me to was Fuller's "The Case of the Speluncean Explorers." In this thought-based court opinion, Fuller used the different justices to write judgments from different major theoretical perspectives. This suggested that if we took leading cases from the constitutional law of the U.S. Supreme Court, we could identify different theoretical influences in the way the different judges express themselves. *Griswold v. Connecticut* is a good example of this. Additionally, it gave the students a sense that ideas are

reflected in practical legal judgments, and even more importantly, in the definition of lawyer roles themselves.

Bob's jurisprudential insights were extremely important and may not have been fully appreciated by our faculty. When Bob expressed an interest in legal theory at Oxford—a school rooted in modern versions of analytical positivism—I recommended him to J.K.B.M. Nicholas, who was then Principal of Brasenose College (University of Oxford). Nicholas invited Bob as a Visiting Fellow; and I was able to visit Bob at Oxford while he was there. At Oxford, Bob attended and actively participated in most of the advanced-level seminars and colloquia on legal theory. During my own stay as a Fellow, Bob was fondly remembered to me by the jurisprudence community.

Bob and I often taught the same students; and we shared the appreciation for students who were attracted to a deeper analysis and insight into the law as a learned profession. Both of us taught Professor Malloy, who holds a distinguished chair at Syracuse and has written extensively and critically on issues of law and economics. We both admired Malloy's intellectual curiosity and his passion for theoretically-informed scholarship. Bob also taught UF's own Professor Amy Mashburn when she was a student here; and I know that Bob took pride in the fact that Professor Mashburn had been one of his most thoughtful and intellectually gifted students. As always, good teachers are living tributes to their own good teachers.

In my view, Bob Moffat critically helped to keep the light of jurisprudence alive as an important part of the culture of this faculty, and as a meaningful contribution to the education of our students. Bob's passing is a significant loss to all of us at the law school, as well as a loss to the community of scholars. We were lucky to have him with us for as long as we did.

