

# Would Aristotle Have Owned an iPod?

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Once you reach a certain age, whether you are a spiritual person or not ... you begin to appreciate things in a different way. I now see each day as a gift from God. If that is the case, I have to acknowledge that today was a pair of socks.

I've just spent the last few days in Cape Breton. I put my faith in Air Canada to get me here in time. No, that's not a joke. It does make for a rather hectic day however.

The last time I arrived rushed for a talk it didn't turn out so well, so you might want to consider that a bit of a warning.

My last rushed speaking engagement happened after I got a call at my Cox Hanson office from the conference saying that I was supposed to be speaking at 9:30 a.m. and here it was 9 a.m.; I wasn't there. My first reaction is, as my wife will tell you, to always try to cover up. "Oh yes, no problem ... I was just on my way."

Well, I wasn't on my way. It wasn't in my book and I couldn't remember ever having agreed to speak.

It was a labour law conference and I picked up a paper that I'd done the year before with Kim Turner on "Developments in Collective Bargaining"... a topic area so ripe with interest that it could be adapted for any purpose. (That comment might also serve as a bit of a warning for you.)

I grabbed a cab to the Lord Nelson Hotel. I made it on time. Outside the conference room I adjusted my tie (to make it crooked ... a bow tie that's too straight looks like it's a clip on. I used to call my bow tie an earring for Tories but I can't say anymore). In I went, put my notes on the podium, sat down and waited to be introduced.

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I usually look around and try to make eye contact with someone I know in the crowd ... even do the wave thing to a few I know or vaguely recognize, to make me look “connected.” I don’t do that now. I don’t want to be connected. The good news was there were no lawyers I knew ... no critics in other words. Just HR people and union organizers and I didn’t even recognize any of the usual conference hounds in the crowd.

The other people at the head table weren’t even familiar ... then I saw the conference binder in front of the person next to me. I think it had something to do with Respiriology. I don’t remember because as soon as I saw “ology” my brain froze.

Wrong room. Without making a fuss I got up and calmly walked out. Wrong hotel. I called my assistant Jennifer who can fix anything. If I had anything from the conference she’d know where I was supposed to be ... but I didn’t. She had to call Toronto ... where apparently there is someone who knows where you’re supposed to be all the time.

I finally made it into a taxi and for the only time in my life urged the driver to go as fast as he could to the Westin Hotel. Zipping down South Park Street it hit me ... my notes are on the podium.

Back to the Lord Nelson ... back into the room ... back up to the podium where by this time someone was Power Pointing in high gear. The only thing you can do then is to throw any pretense at dignity to the wind. As you can tell, the pretense of dignity is important to me. I got my paper from the podium (or Kim’s paper I suppose) I was back to the cab and off to the Westin, only about 15 minutes late.

At the conclusion of my somewhat off topic remarks the conference chair, who happened to be my cousin, John MacPherson, sensing the less-than-overwhelming level of satisfaction in the room said, “As they say in hockey try outs ... Jamie, thanks for coming out.”

Sometimes though, I think a bad speech is better than a good one. People share the moment when sitting through a really bad one; they bond. They are memorable in the way that good after dinner speeches just aren’t. When a speech is billed with the title “Would Aristotle have owned an iPod,” and then has the really over the top academic sounding subtitle, “The Retreat from Public Life,” you might want to get to know the people at your table because this could be really memorable!

I like to do self-deprecating humour ... I'm just not very good at it.

Justice Joel Fichaud<sup>1</sup> called and asked for a title many months ago (when this sounded a long way off), and suggested “something pretty general so you can fit your remarks in around it.” Yeah: “Would Aristotle have owned an iPod?”; that allows a fair bit of scope, don't you think?

I have to confess, I picked it because I thought it made me sound well read and, at the same time witty, and sort of with it. At the time I was reading a couple of books by Richard Sennett, *The Fall of Public Man*<sup>2</sup> and *Respect, in an Age of Inequality*<sup>3</sup> and thought that his ideas seemed to fit pretty nicely with the theme of the conference. However, my recollection of the books is somewhat less clear than it was 5 or 6 months ago and my own brilliant insight seems a bit less insightful than it did then.

Now I'm struck by the inconvenient truth: Never do the title before you write the speech.

But let me explain, or try to explain.

The theme of the conference is the concept of dispute resolution outside the courts and the effect of what some have called the “privatization of justice” on the public system of justice. I thought I should at least pretend to be “on topic.”

I know nothing about it that you don't already know. I don't have a firmly held view on whether private dispute resolution is a good or bad thing and most of you likely couldn't care less if I did! Maybe the best I can offer is a penetrating insight into the obvious. I can at least tell you what it looks like from the perspective of a still rookie Provincial Court Judge, on the front lines of the public justice system. Having come from a background of labour arbitration and aboriginal negotiations, the world of non-judicial dispute resolution.

I do think it's interesting—interesting to me, though perhaps not to you—how private dispute resolution is becoming more popular as a

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<sup>1</sup> (New York: Knopf, 1977).

<sup>2</sup> (New York: Norton, 2002).

<sup>3</sup> (New York: W.W. Norton, 2003).

number of other developments are taking place in society. Society wants scientific certainty. When it can't have it, it pretends it's there.

Clients want certainty and predictability or at least the perception of certainty and predictability.

The public institutions of justice deal in doubt and uncertainty.

Is there disconnect between public institutions—the public institutions of justice in particular, and public values? Put another way, are our public institutions of justice a bulwark against strident certainty?

Margaret Thatcher famously said, “there is no such thing as society .... There are individual men and women, and there are families ...”<sup>4</sup>

That denial of any social connection has in some ways defined the last few decades. You might remember Lady Thatcher being referred to as Atilla the Hen,<sup>5</sup> a mean and nasty remark, whether you see it that way from the point of view of Lady Thatcher, older women, English people or chickens, or, I suppose, from the point of view of scourges of God for that matter.

Margaret Thatcher's statement was a highly politicized one. Might it also be a fairly accurate observation?

We have not all gone off to live like hermits. We still depend on others and crave human interaction, with people we like (or people we find hot). People still care about others. How can anyone say there is no society? I agree with Margaret Thatcher but in a way of which she might not approve. (Though she would approve of how I just awkwardly worded that to avoid putting the preposition at the end of the sentence.)

Have we created our own plastic version or even better an avatar of society where “have a nice day” replaces any meaningful social interaction?

We have lost or are in the process of losing our ability to debate, discuss and compromise. We are losing the tools that allow us to function

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<sup>4</sup> Attributed to Denis Healey, in Malcolm Rifkind, “Atilla the hen” *New Statesman* (8 May 2000).

<sup>5</sup> As reported in an interview on September 23, 1987 with *Women's Own*, published, October 31, 1987; transcript available online: <<http://www.margaretthatcher.org/speeches/default.asp>>.

as a real society ... where people actually do argue and need to know the skill of argumentation as a basic mode of reasoning.

We have come to define ourselves now as members of our own particular ideological bubble. The certainty the bubbles provide is divisive.

To me, the iPod is a symbol of that bubble. Music, by the way, used to be a communal experience; now, it's a solitary one. While in Cape Breton I took in some concerts. Sitting in a crowded hall in Dingwall swaying to the masters of the art form of the Cape Breton fiddle—Jerry Holland, Brenda Stubbart and Doug MacPhee, you know that Lady Thatcher might have been wrong. There is society, but it isn't found in the centres of commerce and culture. Gaelic has a term *cuideachd*, "your people," including distant relatives, friends and hangers on. It is an expression of society that finds itself in places like Dingwall.

But it's not about iPods or music. (I had to mention iPods because that's in the title.) Aristotle said that it is "a mark of an educated mind to be able to entertain idea thought without accepting it."<sup>6</sup> (There, I've mentioned Aristotle and iPods ... job done.) But that insight is worth repeating ... the sign of an educated mind is the ability to entertain an idea without accepting it ... have it over to tea without having sex with it.

We have begun to treasure our individuality, our certainty, so much that we want to close off society ... whether it be with an iPod or in a gated community. We have begun to close off not only the sounds of music we don't like, but the opinions we don't like or the opinions of people we don't like. Debate and discussion become debased and compromise becomes a sure sign of a weak-kneed loser. As we do that, the public institutions of debate and compromise become less valued. They are replaced with shouting talk show hosts, blogs where you can read opinions that so closely match your own that you might have written them yourself and invective that calls itself political debate.

I'm not allowed to be political anymore, but I expect I'm safe confessing a certain admiration for Calvin Coolidge. His reputation for

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<sup>6</sup> This brief quote has been widely attributed to Aristotle with a source rarely cited. Another quote conveys the same sense of the importance Aristotle placed on maintaining an open mind, but its less than pithy nature has meant that has not attained aphorism status. "It is the mark of an educated mind to rest satisfied with the degree of precision which the nature of the subject admits and not to seek exactness where only an approximation is possible." Nicomachean Ethics, I.iii 1094b20.

being a man of few words was well known. There is a story about Cool Cal hosting a reception at the White House. Two women came up to him and one said, "I've made a bet with my friend here that I can get you to say more than two words!" To which Cal responded "You lose" and walked away.

But Coolidge had a philosophy that made him seem quaint even in the 1920's and would even more so today. He said of his successor Herbert Hoover (whom he called Wonder Boy, by the way): "I wish I could be as sure of anything as he is of everything!"

Cal embraced uncertainty in an age when confidence and certainty were becoming the fashion. Today, certainty defines our culture. We live in what some have called an age of dueling certainties.

We prize confidence, scientific certainty and deep knowledge of a specialized subject. The experts whose interviews are played on a continuous loop on CNN and Newsworld have those qualities. If you want an explanation, find the person whose expertise in that area is most minutely defined.

We will look far and wide for explanations, for certain explanations, of why things happen, preferably expressed in 100 words or less or even better in list (and ideally, on a PowerPoint slide with bullet points). The word "solutions" was hot a few years ago, because people want "the answer." We like explanations, answers and solutions. We like knowledge, but understanding is a different story. Having an explanation and having understanding are two very different things.

Sometimes the more explanations the less understanding. Like Euripides said:

"To know more is not to be wiser."<sup>7</sup>

Notice how I drop in Euripides like a just read him on the beach!

If the world were populated by the stick people who keep showing up in business and self help books, you know the ones: "YOU! YOU! After applying six simple steps to fulfillment." If those people actually lived in the world, the steps would never be simple. Wander through Chapters (or any of the other bookstores that aren't called Chapters but are still in fact Chapters, you can tell by the smell of burning rubber that comes from the Starbucks) and you'll find that you can do anything from

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<sup>7</sup> Euripides, Bacchae I. 395 ("Cleverness is not wisdom.")

learn French to learn how to think like a genius in anywhere from 6 to 12 easy steps.

In the criminal courts there are no stick people, people with sticks yes, stick people, not so much. It is the place where doubt and uncertainty sit in the front row, staring us down with their uncomfortable beady eyes with too often dilated pupils.

We can't get certainty and we can't get answers. The best we can ever do is to try to understand those people and some of their circumstances.

Our courts are crowded with people who are the victims of drugs, alcohol and mental illness. But what brought them to that? The 16 year old robber who as a child watched his father try to kill his mother, then lived with his mother's drug addiction and poverty and was diagnosed with ADHD is just part of the statistics of "youth crime." The more explanations that are offered for why he is there, the less understanding there seems to be that he is as complex a person as any of those who try to offer explanations. There is no "answer," no "explanation" and no easy "cure."

The others, we might say, well those are the *real* criminals. But, like me and I expect you, many of those others are not evil, but simply sometimes mindless. I don't mean mindless as it is often used as a synonym for stupid. Mindless means a lack of consciousness or awareness of context. It means forgetting perhaps, the consequences of your actions or failing to appreciate the context in which another person's acts.

That shows up in many ways. Consider the drunk driver, who in caricature is the person throwing a hand grenade into a crowded room and not particularly worrying about whether anyone gets hurt. In reality, it's the 19 year old kid who lost his judgment gradually over the course of a few beers, and the single mom on her first night out in a year who just forgot how easy it was to get very drunk. It's not the heart of darkness. It is a potential that lies in every one of us. Everyone has the potential for mindlessness in a society where we live in a bubble, where we can chose or programme our own context.

I work in the temple of uncertainty. It is one of those institutions where uncertainty meets a public that has become increasingly uncomfortable with it. Many are certain that stiffer sentences are the answer. Others are equally certain that more social programs are the

answer. The courts are an institution that is in the middle of that debate and where its' practical consequences are played out.

In a world where good and evil duke it out every day the courts are sometimes seen as the "ring" where that takes place. In reality they are the place where the line gets blurred. The courts in some ways serve as a public symbol of how we struggle with balancing justice and compassion, doubt and certainty, and rights and obligations. They do that in a setting where there rarely is a scientifically "right" answer.

That is out of step with the kind of certainty that modern society has come to demand and value.

We have tended to shut out the extraneous sounds and listen only to our own programming. Aristotle would not have approved.

Public institutions of justice can be noisy places, both literally and figuratively. The crying baby in the courtroom in Amherst a few weeks ago was held in the arms of a young mom there to support her boyfriend and who just can't get childcare. She was also a symbol of the cacophony of uncertainty that echoes about the place. That uncertainty, like the crying baby can be annoying; but it is richly and wonderfully so.

Like the music at the concert, the baby is saying it's a small boat and we're all in it together. Those of us who work behind secure doors need to hear that every now and then.