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## Injuries, Damages, and the Bourgeois: Eric Reiter's *Wounded Feelings* Between Law and History

JAMES MUIR

Eric Reiter's *Wounded Feelings* is an exceptional book. It contains great richness and inspires thoughts that can lead in other fruitful directions. Like Reiter, I am a historian by training who teaches law (half of the time in my case). My thoughts on *Wounded Feelings* draw on both the law and history parts of my work life. I will begin by discussing the law of injury, commending *Wounded Feelings* as a book that teachers and researchers of common law tort law should take seriously, even as it is both historical and civilian. I will then turn to damages and suggest what *Wounded Feelings* might start to tell us about this understudied part of the history of private law. Finally, I will turn to class, considering how Reiter's book may help Canadian historians think about bourgeois culture.

*Wounded Feelings* is a book about injuries. In Quebec's civilian tradition, the injuries he discusses are largely delicts; in the common law tradition, the analogues are torts. It is not quite that simple, of course: Reiter devotes part of Chapter 1 to distinguishing between *injure*, *biens*, rights, and damages, the "key legal categories that in the nineteenth century provided the conceptual framework for the cases" he examines (31, but see 31–48). The discussion of specific cases in the following chapters, while informed by these terms, is often more concerned with how the litigants, their lawyers, the judges, witnesses, and others made, responded to, and understood claims of emotional injury than it is with fine points of law and doctrine (although those do get discussed when it matters). Reiter's concerns mean the book can be of great value to legal scholars and historians working in either tradition.

*Wounded Feelings* is remarkable for including both intentional and unintentional injuries. Reiter focuses on more cases of intentional injury and studies them as cases that merit serious historical analysis in and of themselves. He walks through many varied examples of how several intentional injuries occurred and were litigated in Quebec's civil law: assaults, false imprisonment, and several sorts of defamations, including defaming the dead. On the whole, we assume that assaults, defamation, and the like arise out of acts that are expected to wound or do damage in one way or another, even if the people acting do not think of their actions as unjust or leading to damage that

should be compensable. In common law legal history and in contemporary common law legal education, intentional torts have received far less attention than unintentional torts.<sup>1</sup> Injuries caused by negligence have drawn and continue to draw the most attention both because the intention of the injurious act seems to mean there is less that is legally intriguing or. Flipping the focus, he shows how injuries that seem intentional were not so obviously so.

In his discussion of defaming the dead and injuries to a family's honour, Reiter analyzes two cases involving similar claims, one where damage was intended and one where it was not. He begins with a column printed in the Catholic newspaper *La Croix* on the death of Euphémie Allard. In the course of the article, the author noted that Allard was "nothing more than a concubine" for having been married to a priest. Euphémie's daughter Rebecca sued the newspaper because it had both insulted her mother and father and called into question the legitimacy of her own birth. Next, Reiter describes the case of *Decelles v. International Shows Ltd.* In 1920, the Eden Musée, a wax museum, included a new tableau entitled "The three hanged men," featuring the likenesses of a trio of men recently hanged for murder in Montreal. The crime, the conviction, and the execution of the three was not secret, and the men's names were widely published in the press around each event. Nevertheless, family members of the three men portrayed in the exhibit challenged the display as both a criminal libel and defamation. Reiter dissects these cases, along with another, as examples of suing over family honour. He deals with how the cases involve defamation of both the living family members by association and of the dead. In discussing the Allard case, Reiter argues that the editor of *La Croix* knew he was making a negative and derogatory statement when he published the impugned line. The editor believed the description was correct for Catholic theology. Reiter also suggests the editor knew that he could be accused of defaming the family: at the conclusion of his description of this trial, Reiter recounts how *La Croix* was sued again a year later, this time for publishing the claim that a politician was a Freemason. Reiter suggests damages for defamation were simply "a controversialist's cost of doing business." Reiter does not speak to what the wax museum expected, and likely cannot do based on the sources available. We can surmise that it did not expect the legal trouble it received. In other words, while setting up the display was certainly intentional, doing harm was not. In these cases, the question of intention turns on

whether or not the defendants thought they were doing something even potentially defamatory at all.

Reiter raises a different issue of intention in several of the other cases. In these cases, the defendants probably recognized they were acting in ways that would harm others, but acted as they did because their employment or even the general tenor of the times appeared to make their actions acceptable. A mob kidnapped and forcibly removed Winifred Parsons and Olive Lindell from Joliette for being Jehovah's Witnesses. The mob took collective action, not too dissimilar from Premier Duplessis's own anti-Witness actions (285–94).<sup>2</sup> Likewise, members of a charivari crowd 60 years earlier were sure that social convention allowed them to act as they did (89–98). When the police arrested Gabrielle D because she was walking alone and away from a crowd, the officers involved surely thought both the law and the privileges of their office were enough to support their actions (145–57). In all of these cases, intention becomes all the more interesting because it is wrapped up with power relations within the society. Reiter tells these stories expertly. In the process, he reminds us that intentional injuries (delicts or torts) are complex: that the intention is an intention to act, but not necessarily to do harm. That even when harm is intended, it is sometimes done with the full expectation that to be sued is possible, even probable; but sometimes it is done with no such expectation, no awareness and conscious rejection of the deterrent effect of the law. These intentional acts and injuries reveal the ways people understood their relationships to each other and to the culture at large.

Reiter reveals those relationships in aspects of the stories he tells. In *Decelles*, the family of the executed man made into wax was successful at trial. The judge found the wax museum exhibit “constitutes an illegal defamation to the memory of the condemned man, which was legitimately likely to humiliate the plaintiff and his spouse” (that is, the condemned man's sister and brother-in-law). Henri Decelles demanded \$5000 in damages. They received \$50. Reiter's book is, I believe, unique in Canadian legal history, and peculiar in legal history more generally, for being a book that, from a particular perspective, is largely about damages: that is, what injuries occurred and what was awarded (if anything) to successful plaintiffs. The feelings that are at the core of Reiter's project come into the trial process at the point of proving compensable injury and assigning it a dollar value, not proving an act. Reiter investigates what people thought about harms received and how those harms could be compensated.

Reiter's plaintiffs' emotions have been damaged, in the vernacular sense, and the plaintiffs tried to use the law to monetize that harm into damages in the legal sense. This makes sense: seldom are the actions that give rise to litigation such where emotion determines whether there was an injury at all. Rather, emotion is how the plaintiffs explain the effect of the injury they suffered. Reiter traces the ways people enunciated (or did not) the emotions they felt at the time they were injured or the incidents in question occurred, and in the lingering after-effects of those incidents and injuries. He spends a great deal of valuable time analyzing how people reported their damages within court. All of his interest in damages opens up space for asking even more questions about the history of damage awards. There are 28 cases in *Wounded Feelings* where he reports the successful plaintiffs' demands and the damages awards. The mean damage awards were a little more than 20% of the demands, but that is largely the result of a couple of outliers. Half of the awards were 5% or less of the demand, and the largest number were only 2% of demand. In *Decelles*, the final award was just 1% of the demand. The total number of cases is too small to make a serious statistical claim, but they point to how to understand both senses of the word "damage."

One of the core legal principles in damages at law is often to put the plaintiff back into the position they were in before they were injured. There are some cases where the damages can be clearly accounted, especially those turning on claims for a widow's mourning clothes where the value of the damages awarded was based on the actual costs of the clothes in question (240–3). The problem, in many of the cases Reiter reviews, is that it was (and is) impossible to quantify emotional damage with the certainty of the cost of a suit of clothes. He addresses the outward extremity of tabulating damages in a case where parents inadvertently poisoned and killed their toddler by giving him medicine wrongly prescribed by a doctor. The key question at law, as Reiter phrases it, was "for what injuries specifically could the Couillards claim, and how much?" There were, as he enumerates, the cost of the funeral and burial, the loss of future earnings to support the household and eventually his parents, and the cost of grief for and loss of love from their child (225). In keeping with the themes of the book, Reiter is most concerned with the last of these. To get at them he provides a brief history of article 1056 of the Civil Code of Lower Canada, the English common and statutory law of wrongful death, and the Canadian jurisprudence up to 1890 that attempted to rationalize

these different lines. When he returns to the Couillards, he reconstructs the arguments at trial, ranging from those that treated the young child as a material investment made in monthly payments of \$10 to those that attempted to assert the immorality of reducing a life to simply its material costs and benefits. Given the state of the law in the 1890s (and all the way to the 1990s), we are told that at the court of first instance, of the \$1500 demanded, the court awarded \$300. On appeal, the court reduced their damages to \$50. Reiter explains the discounting of the demand in this case by the jurisprudence of the moment, providing a startling amount of detail about the very ideas of damages motivating the trial and decisions as first instance and on appeal. In so doing, he exposes the difficulty the law has when confronting emotional harm.

Throughout, Reiter engages with the quantifying of damages and reveals much more than many historians have. Damages and the discounting of demands at trial are key to his analysis. He addresses in more detail than most legal historians the sorts of damages that could be claimed, and the changing jurisprudence around the various types. Yet we are missing a general theory of damages, not as a legal matter, but as a historical phenomenon. Reiter takes us some way along toward a general theory and opens the space for other historians to develop it further. The people of Quebec had to develop a sense of how one's wounded feelings could be expressed in monetary terms, and why they should be. Reiter exposes a need for both a cultural history and a political economy of emotions: of how people came to see their emotions and emotional pain in relation to the actions of others, and how they came to see their good and bad feelings as worth so much in money.

Reiter demonstrates these intersecting legal, cultural, and political economy histories in the changes over time he finds. In another case of defaming the dead, *Huot v. Noiseux*, we are presented with one theory of damages as understood in the 1880s. Here the son of the defamed deceased man was asked at trial whether any monetary damages could truly make amends for the dishonour done to the memory of his father. Huot responded that no amount would be sufficient, "Honour is too important to me for that" (123). Reiter traces how witnesses avoided or denied identifying strictly material losses to the son and returned to the moral injuries he suffered. In 1888, the absence of any evidence of material loss was significant. Huot was successful at trial: the court found that his father had been defamed. Instead of

receiving the \$5000 demanded in damages, he received \$50. Moreover, Reiter argues that the judge was so frustrated with Huot's suit that while the defendant had to pay Huot's legal costs for a \$50 lawsuit, Huot would have to pay the losing defendant's legal costs for defending a \$5000 suit (124–5).

Contrast Huot to the case of Euphemia Tudor, a wealthy woman from Quebec City travelling by train to Lake St. Joseph, north of the city in 1908. In the course of the train ride, Tudor got into a verbal altercation with the conductor, Antoine Cantin, who may have accused her of lying about her and her party's train tickets. Tudor was so upset by the incident that she sued the railway, seeking \$100 in damages. Not only was she successful, but also the court awarded her the full \$100 in damages she demanded. \$100 is closer to \$50 than \$5000, and Reiter does assert that its small value "in part explains why the judge did not reduce it" (71–80, quotation at 78). The theory of damages in this analysis is one where courts are prepared to declare that the emotional damage was real and that the defendant harmed the plaintiff but are skeptical of the monetizing impulse.

I draw my last point from the caveat in Reiter's description of the Tudor decision: the small value of the demand explains Tudor's complete victory *in part*. He goes on to write, "the award is also evidence that the judge fully accepted Tudor's story and could himself see the injury she claimed to have suffered. ... Tudor was part of the same emotional community [as the judge] and shared its norms, while Cantin was an outsider" (78). Euphemia Tudor's case and several others, especially in the first half of *Wounded Feelings*, feature the Industrial-era Quebec bourgeois: often Anglophone, professionals, capitalists, and part of a redefining bourgeois class. In writing about this shared emotional community, Reiter brings out some of the meanings of bourgeois culture in Canada at the end of the nineteenth and beginning of the twentieth century. The litigation seems intimately tied to not just people of money who could afford to sue, but also people for whom suing over emotions was rooted in maintaining their class identity.

In his recent study of whom the bourgeois were, Franco Moretti has used Henrik Ibsen's characters as exemplars of the class at the turn from the nineteenth to the twentieth centuries. Ibsen's characters come from a range of occupations: Moretti lists "shipbuilders, industrialists, financiers, merchants, bankers, developers, administrators, judges, managers, lawyers, doctors, headmasters, professors, engineers, pastors, journalists, photographers, destines, accountants,



clerks, printers." Moretti continues, "Social historians sometimes have doubts on whether a banker and a photographer, or a shipbuilder and a pastor, are really part of the same class. In Ibsen, they are; or at least, they share the same spaces, and speak the same language. None of the English 'middle' class camouflage, here; this is not a class in the middle, overshadowed from those above it, and innocent of the course of the world; this is the *ruling* class, and the world is what it is because they have *made* it this way."<sup>3</sup> Many of the cast of characters in Reiter's book can be placed in the list: for example, Euphemia Tudor is the wife of an electrical engineer. Tudor's case appears alongside another from 1906 of the hotelier (manager), Wilfred Corbeil. The senior, deceased, Huot's occupation is unmentioned, but all of his sons "were in business." Reiter doesn't identify the occupation of Couillard, father to the toddler poisoned by the wrong prescription, but the defendants in the case, doctor and pharmacist, both fit squarely in Ibsen's and Moretti's lists. Quebec in Reiter's period is one where the social revolution has happened: the seigneurs and the governing officials of earlier periods in Quebec's history gave way to families in industry, in business, in the professions, and a political class that is largely Canadian (if still divided linguistically).<sup>4</sup>

The detailed discussion of cases begins in Chapter 2 with a lengthy analysis of two cases of bourgeois people being mistreated, to their minds, by lower ordered staff: Wilfred Corbeil, who was forcibly prevented by security from enjoying the Scenic Railway, the most popular ride at an amusement park (54–71), and Euphemia Tudor, whose ill-fated railway trip occurred while she and some of her family headed to their summer house. In recounting these cases, Reiter stresses the importance of class in their disposition. Corbeil and Tudor suffered injury in part because of their class status: being removed from the line in the amusement park or being drawn into the argument with the conductor were harmful because people of Corbeil's and Tudor's class did not do such things and certainly would not be called out publicly if they did. Reiter contrasts their cases (from 1906 and 1908) with an 1874 case involving a maid. The maid's employer asked her to open her bag upon leaving the employer's house; she took offence at this veiled accusation of thievery and sued. She lost because the master "behaved in a gentlemanly manner in keeping with his station" even as he wanted to search her bag. As Reiter points out, "insults of the master by the servant were dealt with much more strictly than those going the other way. Inferiors were expected to handle a certain



amount of suspicion and moderately insulting behaviour: their honour, such as it was, was less highly developed and so less susceptible to injury" (69).

In the early period that Reiter discusses, compensable emotional injuries were intimately tied to class. Reiter offers in the early chapters of his book a study largely of Quebec bourgeois class consciousness, and the precarity of that class identity, especially at the very end of the nineteenth century and beginning of the twentieth. The bourgeois were superior to others in the broader Quebec society, but that position was under constant threat. The slights that could either knock them or have them step down from their pedestal needed to be policed in part to secure that sense of self and sense of the treatment they deserved. It is here where the idea of "bourgeois" as opposed to simply "elite" matters. Sometimes, as with Corbeil and Tudor, the policing was at the boundaries between the bourgeois and working class. In other cases, like the lawsuits beginning in the same decade between Augustus Agnew's parents and May Gober, the threats came from within the bourgeois, as both sides struggled to hold on to their sense of honour in the course of maintaining or annulling a marriage (130–143).

Reiter's time period of 1870 to 1950 is important for this story about the bourgeois as a class, for it includes both the apogee of the bourgeois and its ultimate, to use Moretti's description, "self-effacement as a class." Moretti continues, describing the mid-twentieth century as "the dawn of today: capitalism triumphant and bourgeois culture dead."<sup>5</sup> Bourgeois power remained, but the cultural markers of the class dissolved in the creation of a middle class. Reiter marks that transition through the book. Tudor and Corbeil got visibly and publicly angry at affronts to their character, to their identity, and then sued the working-class people (and their employers) who forced them to get so angry.

In the penultimate chapter, Reiter traces a line of cases about Black Montrealers denied service in theatres, a line that leads to *Christie v. York* and begins with hotel bellhop Fred W. Johnson, who was gifted two passes to a visiting theatre show in 1898. As he and his date tried to take their seats in the orchestra, theatre staff prevented them from doing so. When Johnson sued, successfully, over the affair, he was asserting his right to respectful treatment, to not be humiliated. In other words, he faced a similar situation to Euphemia Tudor, although the differences matter: Johnson and his witnesses strived to

show that he remained respectful and calm throughout his ordeal. Johnson's success did not set the law. Rather, over the next 40 years, Black litigants failed when they sued over a denial of service. Reiter stresses the distinctions between Johnson's and Tudor's reactions, and he smartly dissects the way race and racialized expectations seemed to play a role in denial-of-service decisions (282–4). Johnson's claim is a sign that parts of the culture of the bourgeois, part of what set them apart, was becoming available to all even as the class was at its strength. By 1950, the claims being made came from a broad swath of the community, including many working-class people. Their assertion that they had the same honour and deserved the same respect as the bourgeois is but one aspect of how a separate bourgeois culture was lost, even as the power of some in the bourgeoisie continued to grow.

*Wounded Feelings* is an exceptional book. Eric Reiter has done a great deal in advancing the history of emotions and law in Canadian history. The complexity of his analysis, the variety of cases he discusses, and the ways he has presented and organized the cases together all make space to ask even more questions and push his analysis in more directions. There is perhaps no better sign of an excellent book of history than one that asks and answers important questions while prompting even more consideration and reconsideration of its topics from other historians.

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## Endnotes

- 1 For Canadian Legal History, see, for example, James Muir, “Instrumentalism and the Law of Injuries in Nineteenth-Century Nova Scotia” in *The Supreme Court of Nova Scotia, 1754–2004: From Imperial Bastion to Provincial Oracle*, ed. Philip Girard, Jim Phillips, and Barry Cahill (Toronto: University of Toronto Press, 2004), 361; R. Blake Brown and Noelle Yhard, “‘The harshness and injustice of the common law rule ... has frequently been commented upon’: Debating Contributory Negligence in Canada, 1914–1949” *Dalhousie Law Journal* 1, no. 1 (2013): 137. The debate in the United States is summarized in the works above, but it is perhaps best encapsulated in three monographs: Morton J. Horwitz, *The Transformation of American Law, 1780–1860* (Cambridge, MA: Harvard University Press, 1977); Peter Karsten, *Heart Versus Head: Judge-Made Law in Nineteenth-Century America* (Chapel Hill: University of North Carolina Press, 1997); and Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865–1920* (Cambridge: Cambridge University Press, 2001).
- 2 *Wounded Feelings*, 285–294.
- 3 Franco Moretti, *The Bourgeois: Between History and Literature* (London: Verso, 2013), 169–70.
- 4 Brian Young has traced the rise of the Quebec bourgeois in a series of books, including *George-Etienne Cartier: Montreal Bourgeois* (Montréal and Kingston: McGill-Queen’s University Press, 1981); *Patrician Families and the Making of Quebec: The Taschereaus and McCords* (Montreal and Kingston: McGill-Queen’s University Press, 2014); and, with Geoffrey James, *Respectable Burial: Montreal’s Mount Royal Cemetery* (Montreal and Kingston: McGill-Queen’s University Press, 2003).
- 5 Moretti, 21–2.