

University of Colorado Law School

## Colorado Law Scholarly Commons

---

Articles

Colorado Law Faculty Scholarship

---

1989

### Book Review

Charles F. Wilkinson

*University of Colorado Law School*

Follow this and additional works at: <https://scholar.law.colorado.edu/faculty-articles>



Part of the [Human Rights Law Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [Legal Biography Commons](#), [Legal Education Commons](#), and the [Natural Resources Law Commons](#)

---

#### Citation Information

Charles F. Wilkinson, Book Review, 29 Nat. Resources J. 1097 (1989) (reviewing Carolyn Swayze, *Hard Choices: A Life of Tom Berger* (1987)), available at <https://scholar.law.colorado.edu/articles/940/>.

#### Copyright Statement

Copyright protected. Use of materials from this collection beyond the exceptions provided for in the Fair Use and Educational Use clauses of the U.S. Copyright Law may violate federal law. Permission to publish or reproduce is required.

This Book Review is brought to you for free and open access by the Colorado Law Faculty Scholarship at Colorado Law Scholarly Commons. It has been accepted for inclusion in Articles by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact [lauren.seney@colorado.edu](mailto:lauren.seney@colorado.edu).

# HEINONLINE

Citation:

Charles F. Wilkinson, Hard Choices: A Life of Tom Berger. Carolyn Swayze, 29 Nat. Resources J. 1097, 1100 (1989)

Provided by:

William A. Wise Law Library

Content downloaded/printed from [HeinOnline](#)

Fri Aug 25 15:10:17 2017

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.
- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

## [Copyright Information](#)



Use QR Code reader to send PDF to your smartphone or tablet device

## HARD CHOICES: A LIFE OF TOM BERGER

CAROLYN SWAYZE

Vancouver and Toronto: Douglas & McIntyre Publishers, 1987.  
Pp. 237. \$24.95, hardbound.

Early in this biography of Vancouver, B.C. attorney Thomas Berger, author Carolyn Swayze identifies her subject as "one of the few Canadian heroes of our generation" (page 9). One may suspect some hero worship here—Swayze is a former law student of her subject, still just in his mid-fifties—and indeed there is some of that in *Hard Choices*. Nevertheless, Swayze is absolutely correct. The career that she recounts will leave most readers shaking their heads at the magnitude of Berger's abilities, vision, and hard accomplishments. And Tom Berger is not just for Canadians: he has made great contributions to us Americans as well.

Berger (with a soft "g," as in merger) took his law degree at the University of British Columbia and became a practicing lawyer in Vancouver in 1957. He specialized in labor law but gradually became enlisted in the cause of Canadian Natives. He argued on behalf of the Nishga Indians in a pathbreaking 1973 case before the Supreme Court of Canada. For the first time, the Court squarely recognized the essential basis for Native rights: that aboriginal possession of land is a valid property interest under Canadian real property law.

Berger, who has served as law professor and also as judge, continued his interest in Native issues with a 1981 book, *Fragile Freedoms: Human Rights and Dissent in Canada*. This incisive, elegantly written piece remains in the forefront of international law scholarship on human rights for aboriginal peoples.

One episode in *Hard Choices* proves out the applicability of Swayze's title and makes especially sprightly reading. During the constitutional debate in 1981, Native land and political rights were contentious matters. Berger, then a sitting judge, heeded the call of his conscience and spoke out on behalf of Native people. Pierre Trudeau and others who are skittish about any constitutional recognition of Native rights criticized Berger's foray into "the political arena." The Judicial Council was also displeased, although—perhaps respectful of Berger's point that this was not ordinary politics but "was, after all, a moment of constitutional renewal, unique in our country's history"—the Council stopped short of calling for his resignation. But the controversy had taken its toll and Berger tendered his resignation from the bench in April, 1983. His view today? In Swayze's words, "Minority rights in the Constitution are of singular importance

to Berger, and he thumps his fist on the table to vow, 'You bet your life I would do it again.'" (The episode is treated at pages 164–91.)

Two other tours of duty are possibly most noteworthy of all. In the 1970s, Berger was appointed as a Federal Commissioner to report on the Arctic Gas Pipeline proposed for the McKenzie River Valley. Among other things, the pipeline would have cut deep into Native homelands and the pristine habitat of the Porcupine caribou herd. After taking an exhausting 283 days of testimony, Berger released his comprehensive recommendations, which included his conclusion that the pipeline should not be built (and it has not been built). The report, entitled *Northern Homeland, Northern Frontier*, makes wonderful reading (it is the best-selling document ever published by the Canadian government), and is a valuable case study in the rapidly-emerging field of dispute resolution in natural resources policy.

Berger took to the back country again, from 1983 through 1985, in what may well have been his most difficult assignment. The Circumpolar Conference, a Native organization spanning the Arctic, asked Berger to serve as Commissioner of the Alaska Native Review Commission. Berger agreed and launched another backbreaking hearing schedule—he visited more than sixty villages in Bush Alaska and held several weeks of hearings in Anchorage—in an investigation of the mega-politics of Alaska Native land, resources, and culture. The product was another gem. *Village Journey*, published as a book by Hill & Wang in 1985, is a fact-filled, deeply personal, and profound account of the status and needs of Alaska Natives, along with Berger's recommendations for reform. It, too, is highly readable and is the best single source on contemporary Native Alaskans, their obstacles, and their dreams. These issues in Alaska remain on hold, due to opposition from the state, energy companies, and other vested interests, but, if Alaska Natives are able to achieve their goals, they will be first to accord a high and honored place to Tom Berger.

Swayze's biography may go too soft on Tom Berger, the man. He has no warts. I am told that upon reading *Hard Choices*, Berger's wife, Beverley, who has a seemingly congenital twinkle in her eye, remarked, "What a terrific guy. I'd love to meet him sometime."

Still, this is a good and valuable book. Swayze writes well and details Berger's multi-faceted career fully and fairly. And let it be known that she is not alone in her admiration for her subject. Berger is revered by Native people in Canada and Alaska; held in rare esteem by civil libertarians and environmentalists in Canada and the United States (he sits on the board of The Wilderness Society); and is admired almost beyond the saying by lawyers and scholars for his analyses and the literary quality and courage of his written work. Berger's life of public service to date

is chock full of remarkable achievement—if Tom Berger is not a great man then the phrase has lost its meaning—and Swayze has done a real service by chronicling it.

CHARLES F. WILKINSON\*

---

\*Moses Lasky Professor of Law at the University of Colorado. Professor Wilkinson has written extensively on natural resources and Indian law and policy. His most recent book is *American Indians, Time, and the Law—Native Societies in a Modern Constitutional Democracy* (Yale University Press, 1987).

