

***Canada...Notwithstanding*, Roy Romanow, John Whyte and Howard Leeson, Toronto: Carswell/Methuen, 1984. Pp. xxi, 279. \$38.00 (cloth).**

The 1867 creation of Canada involved not the common will of a people, but rather the reorganization of their governments by their governments. It was a process repudiated by the electors of New Brunswick prior to union and of Nova Scotia subsequent to union. Upper and Lower Canadians were not even consulted. Being a governmental reorganization, the relationship among the parties has been, to some degree, a mercenary one. The early years of Canada saw the federal government renegotiating financial terms at one time with one province, at other times with them all. The readjustments are now somewhat institutionalized in the quinquennial revisions of equalization and established programs financing.

A continuing goal of federal Canada has been to forge a direct link with the people of Canada — to create not a union of governments or communities, but a nation. Financial considerations, such as family allowance, old age pension and unemployment insurance cheques, have never proven satisfactory links upon which to build a sense of nation. With the approach of the national centenary in 1967, the federal government sought to create a sense of Canadian identity in the people. A distinct national flag was proclaimed following acrimonious debate in 1965 and, much later, the national anthem was revised. These, however, were but the symbols of the state for public display. What was needed was a high profile, a readily acceptable direct link between the people and Canada. That link may well have been found to be the Constitution, in particular the *Canadian Charter of Rights and Freedoms*. It is the *Charter* which provides a common shield in protecting fundamental rights of all Canadians.

Canada...Notwithstanding chronicles the process of constitutional renewal from the decidedly Saskatchewan perspective during the period 1976-1982. That this is so follows from the fact that the three authors were all members of the Saskatchewan "team": Roy Romanow as Attorney-General and Minister of Intergovernmental Affairs, John Whyte as Director of Constitutional Law in the Attorney-General's Department and Howard Leeson as Deputy Minister of Intergovernmental Affairs. In such capacities, the authors participated in the various federal-provincial sessions, meetings of the Continuing Committee of Ministers on the Constitution (CCMC), sessions of the dissenting provinces during the penultimate state of federal unilateralism and the final successful meetings which achieved the accord enshrined as the *Constitution Act, 1982*.

The authors lay the foundations by presenting the successive attempts at constitutional renewal and include a virtual scorecard of proposals with lineups of both proponents and opponents in reviewing the best efforts drafts of the CCMC during the period 1978-79. The emphasis during these negotiations, as is pointed out by the authors, was decidedly decentralist. However, the return of the majority Liberal government in 1980, coupled with the victory of federalist forces in the Quebec referendum, gave strength to the centralist bias

of federal constitutional proposals.

Succeeding chapters relate the developments from the federal decision to "go it alone" in October 1980, through the "Battle [for] Britain", the Supreme Court decision, and the subsequent return to the conference table in November 1981. The focus then turns to the accord achieved and to an assessment of the process of constitutionalization of individual rights in the *Charter*. In this final chapter is included an apologist's explanation for the absence of Quebec as a party to the final accord, and a look to future tasks ahead, if the political will exists, to reform federal institutions such as the Supreme Court and the Senate, and to rationalize economic and cultural jurisdictions.

Those wishing a novelized version of the negotiations and discussion sessions, replete with insightful descriptions of leading personae and the contents of private conversations, will not be satisfied with this account. For it is neither a tale of the renewal process, nor an enquiry into the dynamics of that process, but rather, a chronicle of the steps leading to constitutional renewal. For example, when relating the response by Prime Minister Trudeau to a British Columbia compromise package presented during the November 1981 sessions, the authors are satisfied to recount that: "The compromise was emotionally rejected."¹ Throughout the volume, respect for confidentiality by a minister and his advisors has been adhered to. As well, the color of characterizations and the quirks of individuals are avoided. To the student of constitutional history, however, it is a valuable encapsulation of the lengthy and complicated process of constitutional amendment.

The title, *Canada...Notwithstanding*, is not explained in the text, yet no doubt reflects the ultimate compromise of *Charter* section 33 which provides that Parliament or a Legislature may expressly declare a law to be operative "notwithstanding" section 2 and sections 7 through 15 of the *Charter*. To the cynics, however, the title may also be taken as a reflection of the insular and somewhat selfish positions of some of the participating government leaders and their delegations. The contentious positions, such as recognition of British Columbia as a distinct region and of Newfoundland's offshore mineral rights, were finally set aside by the participants in the interests of achieving the federal objective of enshrinement of basic civil and language rights. These issues remain unsettled. They are government to government issues of the old type.

"The chronicle of the constitutional debate is replete with ironies and contradictions...", state the authors.² Unfortunately, some unintended contradictions have slipped into the descriptive text. For example, we are informed that Ed Broadbent had secured assurances of Labour Party support for the federal resolution from Michael Foot in 1980.³ Yet only three pages later, we are told: "The federal NDP had earlier secured the support of the key front-benchers in Labour, with the exception of Michael Foot, the leader of the opposition."⁴ On the whole, however, the chronicle is a well presented account

¹R. Romanow et al., *Canada...Notwithstanding* (Toronto: Carswell/Methuen, 1984) 201.

²*Ibid.*, at 113.

³*Ibid.*, at 147.

⁴*Ibid.*, at 150.

of the process of amending the Canadian constitution.

Finally, a note to the publisher and editors: please avoid placing end-notes at the conclusion of each chapter. They are inconvenient to use and an unnecessary aggravation to readers entitled to footnotes.

JOHN P. McEVOY*

*B.A. (STU), LL.B. (UNB), LL.M. (Osgoode), Assistant Professor, Faculty of Law, University of New Brunswick.