

**DEBATING THE CONSTITUTION.** Edited by Jean Laponce and John Meisel. University of Ottawa Press. Pp. 156. (\$19.00).

It may not be unusual for the Royal Society of Canada to sponsor a Round Table and it has done so in the present case<sup>1</sup> with an eye to both brevity and imagination. For in this multi-logue of 28 of its members and guests — including one woman, perhaps to accept the challenge of politically correct appearances — the Society has made it possible to avoid the dullness of formal papers. It relies instead upon wit and clarity for an investigation of concepts and history to the advantage of satisfying the demands of both. Indeed, over the years there has developed the threat of constitutional talk becoming steeped in the written and unwritten footnotes representing generations, a case almost of the insoluble awaiting the interminable.

The conference organizers provided five sections managing the debate that prepared the mind for an orderly if truncated substance:

- I. The shadows cast by previous constitutional formats and their subsequent interpretations.
- II. The new role of Aboriginal Peoples and the other "Charter Groups".
- III. The respective roles of elites and mass publics in processes of public consultation, negotiation, and ratification by referendum.
- IV. Efforts to reconcile diversity and equality.
- V. Efforts at comprehensive vs incremental constitutional reform and past preoccupations with constitutional change rather than with other forms of adjustment.

In its introduction, the editors, knowing how subtle was the conference membership, prepared against potential attacks on the proceedings by stating a number of caveats, assuring the reader as to what the proceedings were not, with the following:

The debate chronicled in this volume should *not* be read for what it is not: it records a free-wheeling, informal and impromptu discussion.... A verbal snapshot, it captures an academic conversation held among specialists, but specialists away from their books, footnotes and records. And, a very important point, away from the media.<sup>2</sup>

A sense of history pervaded the opening rounds as the early pages so clearly indicate. But there is something strange about the self-evident role of history to require this reminder. Indeed, the presence of four professional historians and the pervading historic atmosphere of political scientists and two other categories, including "High Political Office" and "High Administrative Responsibilities", suggests the insecurities such an agenda presented in the possibility for grievous errors or omissions in setting out a vulnerable past and an insecure present, to say nothing of the impending future. The Royal Society demonstrated a good deal of wisdom in these preparations, but one can really wonder why the constitutional lawyers were a modest three among the 28 and of those three only one can be said to have earned his credentials in full-time practice or

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<sup>1</sup> This book records the "Proceedings of a conference held in May 1993 under the auspices of the Royal Society of Canada".

<sup>2</sup> At 9.

teaching, and all three were Francophones, while former Prime Minister Trudeau quite properly was double-listed for both "High Political Office" and "law". The historians (5) and economists (4) all appear to be Anglophones.

Finally, on language and procedure: both English and French were at the option of each speaker while the sections on "Concluding Glosses" and "Key Words in the Constitution" were in both languages.

The preoccupation with history and its both palpable and indirect effects on constitutional change dominated, in a sense, the whole conference. At the same time, the role of ethnicity in nation-building, or more particularly nation-state building, not only represented by the special place of Aboriginals on the one hand and Francophone Québec on the other, clearly influenced also the underlying small-print of much of the rest of the conference, penetrating the exchange at almost every stage of Chapters II, III, IV and V.

Indeed, Chapter II was heavily concerned with the Aboriginals' developing role and that of other "Charter Groups" as these emerge from the multicultural and multi-interest elements of Canadian society, particularly after World War I and II. No reader can avoid the sense of profoundly unfinished business represented by the Aboriginals and perhaps some less welcome new social entities in the impact of the *Charter* in aid of the new Charter Groups. In some very constructive segments, the debate was candid about the limitations of political creativity in satisfying both Aboriginals and some of the Charter Groups. In the case of the former, it was a matter of going forward with everything, from status, to self-government, to resources, with their sometimes impossible dimensions, e.g. land claims in B.C. In the case of the latter (Charter Groups), new forms of systematized group life had to be shaped into a juridical dimension. For neither Canadian federalism nor recent political experience offered much hope of completely satisfying the novelties that Canadian Charter rights seemed to have left both Canada (as a whole), as well as these newly claiming forms only modestly prepared. But in fairness to the debaters, they recognized how much more urgent, difficult and demanding were the unfinished Aboriginal claims, situations and priorities than the new rivals' for constitutional time and space in these "Charter Groups".

A sense of incompleteness doubtless haunted the participants, as it may the readers of this document. Nevertheless, future debaters both inside high office and outside will be nourished from these creative juices as they seep back and forth through the crevices of multiple meanings.

The temptations in Section III on the respective roles of "elites and mass publics" will titillate the actual and potential power-brokers making up a reasonable proportion of conférenciers. Here the techniques of maintaining the Canadian federal system evoked a degree of candour that was refreshing. It is not easy for outsiders, coming often fresh to the methodologies and circuitous routes of achieving constitutional change, to understand everything from formal amendment to non-constitutional arrangements that can *de facto* alter the operating constitution, or how it actually works. Equally difficult will it be to understand e.g. "referendums", and other newly designed methods that now appear as rescue agents by denying the necessity of correcting every confederate ailment with the strained footnotes of major juridical change.

Not every adversarial moment in the life of country or province needs the high altar of constitutional writ to save the day. And this kind of realism came out of what perhaps

was the most informing and pragmatically helpful of the sessions. The timing of the exchanges here could not have been more fortuitively selected — with referendums ringing in Canadian ears from past nightmares to oncoming fairy tales, all providing a rich diet for many newcomers to the games and processes of Canadians. There is here, of course, to be found the very ironic presence of democracy — how those who have power share it with those who do not and how does any system learn and relearn the varied means of political seduction initiated without lasting harm to victims or masters. For this section of the Round Table encourages a hopeful recognition of the high responsibilities here to preserve the art of governing so that neither elites nor publics can steal the show which for one may lead to tyranny and for the other to anarchy.

Turning to the final topic of these virtual creations — *en passant*, as it were in sharing, transferring and removing power and its realities within the federation and around it — the debate focused severely on how to achieve and not to fail in this ever-ongoing process. At the heart of the struggle here for safety, clarity and sharing, is the tormenting choice: big gollops of power as against more modest scenarios. Indeed, it became quite obvious from the changing Round Table majority that there emerged a basic insecurity with very large juridical changes as against the favoured incrementals of more modest ambitions. If the first hours of the conference were tempted with the prospect of major challenges to history and risk-taking, the last minutes saw caution bowing to a limited stance and foregoing the elegies to high achievement. In short, most of the actors seemed to recognize that major constitutional alterations perhaps are for crisis but not for the operational demands of daily life.

Indeed, the conference terminated with this lesson in political frugality, lest those too easily tempted reach for their own paeon to history. But they must get there first. And that will take more doing than marked words writing out the failures or successes of major political strategies. Strangely, the conference as a whole, in all of its five sessions, and in its conclusion became, in the end, a cautious tribute to practicality. The beginning engaged the aid of history to foster wisdom for the present and in the last hours that wisdom had syphoned away the heroic in favour of confronting very deliberately a mastery of the minor. Great deeds were to be reserved more for true challenges to a people in serious trouble. For in the final hours, “classroom dons” and men-of-affairs were hoping to turn carefully designed words away from self-praise toward the lesser ambition of satisfying an adversary in a well completed joint task. And so the small volume ends and tells a day’s tale worth reading in peace, comfort and with some humour.

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