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## Canada in Question: Federalism in the Seventies

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# Reviews

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*Canada in Question: Federalism in the Seventies.* By D. V. Smiley. 2d ed. Toronto: McGraw-Hill Ryerson Ltd., 1976. Pp. xiv, 248. Price: \$6.25

*Canada in Question* is an apt title for D. V. Smiley's book discussing federalism in the seventies and the future of the Canadian federalist system. In this second edition, not only does he incorporate recent developments but he expands and re-casts several chapters in order to provide the reader with a more comprehensive coverage of the Canadian federal system. Smiley, in the first seven chapters, deals almost exclusively with the structures and processes of Canadian federalism, whereas the final three chapters are devoted to what he terms a more "speculative analysis of the relations between these structures and processes" (p. 184). Through use of this format, he is able to present a broad spectrum of issues defining and analyzing the nature of Canadian federalism. Since the coverage is so extensive, depth is sometimes sacrificed to the broader discussion. It is, however, an excellent book for those wishing a survey of the Canadian constitution and the nature of the federalism that has developed from this constitutional framework. Although Smiley recognizes the important influence of the judiciary, his primary focus is on the effects of institutional and governmental interaction on the nature of Canadian federalism.

Chapter I sets the stage with a general discussion of the Canadian constitution and the federal system. This includes the division of powers and the rationale for allocation of the classes of subjects, the various attempts to formulate a mutually agreeable amending formula, the energy crisis, federalism and human rights, and judicial review. The author assesses the role of the Judicial Committee of the Privy Council and the Supreme Court of Canada in Canadian federalism by presenting the opposing views of critics about the success or failures of both Courts in creating the kind of federalism that Canadians had envisaged at the time of confederation. He also points out that our constitution is flexible and has not frustrated federal-provincial negotiations. As some of the mechanisms which provide flexibility, he cites the use of the power of the federal government to exercise its spending powers in respect to matters within provincial jurisdiction, and the recent decisions

allowing delegation between the federal government and provincial agencies. The price to pay for this flexibility is the reduction in accountability of governments to their respective legislatures which provides politicians with constitutional justifications for failure to act when action is required. One may ask whether this is an inevitable consequence of a federal system designed to accommodate diverse regional interests and thus not an unreasonable price? The author uses education to demonstrate this constitutional flexibility in a concrete form.

In the second chapter, the attempts to reform and review the constitution in the 1960s and early 1970s are presented as part of the background reasons for the increasing importance of executive federalism. Smiley castigates those critics whose criticisms of the courts and the constitution do not recognize that mere age does not make a constitution inadequate and that criticisms of this nature would discredit the useful functions served by the courts. These criticisms may, however, have been the catalyst needed to focus attention on reforms which may be necessary to preserve the integrity of the existing system. This chapter concludes that piecemeal changes could not satisfy the demands being made in the 1970s. The recent movement for patriation of the constitution with the special demands of Quebec readily supports Smiley's conclusion.

Following this general introduction he discusses, in chapter three, the machinery of federal-provincial relations by outlining the many consultative mechanisms that exist to further negotiations between the federal government and the provinces and relations among the provinces. With the rise in provincial autonomy came the recognition among the provinces of the need for inter-provincial consultative processes and the importance of cooperation in winning concessions from the federal government. The vast network of committees assists in resolution of some of the inevitable conflicts between the two levels of government and, in many instances, can prevent a conflict by ensuring that both levels of government are proceeding from accurate perceptions of facts and one another's intentions. Cooperation among the provinces, however, often fails when Quebec's demands are not compatible with the other provinces. This also tends to strengthen the central government's position at the expense of the provinces.

Chapter four examines the basic structure of the political parties in Canada and questions the effects that these may have on

Canadian federalist patterns. Studies of federal-provincial political party interactions, voting patterns and party organizations have failed to show conclusively any major effects on the nature of Canadian federalism. Smiley concludes that no evidence is available to show elections are a method of resolving federal-provincial conflicts nor that such conflicts even occur along party lines. Lines of division are usually between Quebec and the remainder of Canada or between "have" and "have not" provinces.

In chapter five, fiscal and economic policies are viewed as the most complex and vital aspects of Canadian federalism particularly in light of our present economic problems and the highly charged environment precipitated by natural resource shortages and revenue sharing. Current patterns of fiscal and economic relations are best understood when examined against their historical background. When growing dissatisfaction with national economic policies forced the provinces to actively seek a new role, a struggle ensued for larger shares of the nation's resources and greater provincial management responsibilities. In his discussion on the diverse methods utilized in attempting economic stabilization, Smiley examines the successes and failures of these programs. It is here that regional concerns and needs create more disparities in provincial bargaining positions and tend to create disunity among the provinces. Present government discussion concerning patriation of the constitution provides an opportunity for examining the possibilities of formalizing fiscal arrangements although caution would have to be exercised to prevent an overly rigid formula. Resolution of the existing problems will require discussion, compromise and a formula which recognizes regional diversities and can meet the challenges of our changing economic environment. Although this chapter is excellent it is impossible to have a detailed discussion of this complex region in one chapter.

No book on federalism could be complete without a discussion of the cultural duality which creates sparks and adds an additional dimension to the problems of Canadian federalism. In chapter six, Smiley outlines the effects of the quiet revolution in Quebec and the change from church domination to secular and governmental leadership. The rapid changes, and active assertion of cultural language and internal management rights created discord and disharmony between Quebec and the remainder of Canada. In this chapter, Smiley fails to devote enough discussion to the October

1970 crisis and the resultant effect in both Quebec and the rest of Canada. Since 1970, Quebec has remained vocal and aggressive in its demands for cultural and language rights, and recognition as a "special" province. He concludes that Quebec provincial authorities are working towards assimilation of non-French people into the majority community whereas the rest of Canada refuses to acknowledge that the French are any more than one of several ethnic groups.

Chapter seven starts the analysis of the relations between the structures and processes of Canadian federalism. Canada-United States relations affect our federalism particularly when the provinces feel that federal policies in relation to the United States are inadequate. Do the demands for energy conservation and the non-trend towards economic integration necessitate a strong central government to resist American pressures, and will provincial demands fragment central policy? Does the recent Anti-Inflation Reference support the need for national policies when dealing with the economy? Smiley also discusses East-West and French-English relations. Since 1960, these three sets of relations have led to a strengthening of the provinces and more vocal expression of regional and cultural demands, particularly in Quebec and the west.

The concluding chapters raise the question of whether Canada is a national community and focus on Canada as a federal country. Here Smiley attempts "to relate the territorial diversities of Canadian life to the political institutions of federalism" (p. 200) and reaches the conclusions that most lobby groups are federal in their structures and most crucial public issues are raised and debated in the context of federal-provincial negotiations. Federal government institutions are, however, not representative of regional or provincial interests so these are channeled through municipal and provincial authorities which has the effect of weakening federal authority. Canada is, he concludes, a federal country in the most elemental way and can be governed by institutions which reflect and tolerate regional differences and through the forbearance and flexibility of the Canadian people. The second question he raises is what do Canadians share so as to constitute a nation? As examples, he cites the *Criminal Code*, commitments to the Canadian Welfare State, to the alleviation of regional economic disparities, to a single price for petroleum, to the arts and to public access to government. Following this he asks if a national community is compatible with federalism. In response to this question, Smiley presents the views

of some critics on the questions of Quebec nationalism, the two-nations concept and Canada as a loose union of provinces. His ultimate conclusion is that there is only one Canadian question, which is how the population "can establish and sustain governmental institutions which are at once, humane, effective and responsive" (p. 228).

This book is an excellent source for those wishing an overview of Canadian federalism and the problems inherent in the system. The footnotes provide invaluable references to many of the leading authorities in the area and the text ties these authorities and ideas together. The book would be enhanced if Smiley added more of his own views in relation to many of the issues presented. Keeping in mind, however, the purpose of the book, the second edition does an admirable job of presenting the issues and leaving hope for the future of Canadian federalism.

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*Marriage, Family and Society: Canadian Perspectives.* Edited by S. Parvez Wakil. Toronto: Butterworths, 1975. Pp. 515. Price: \$8.95

This volume of twenty-nine short papers is an attempt to "achieve a melange of different emphases and viewpoints"<sup>1</sup> relating to the family and marriage in Canada and to satisfy, to some extent, the apparent need for information and analysis in this area. It is also, probably, intended as an introductory volume for students enrolled in a sociology course. Indeed, the editor, in his Preface, says that the use of a source text is recommended; "otherwise the instructor should tailor each lecture so as to provide the textual context".<sup>2</sup> In the Introduction, which is rather obscure in parts, at least to those not trained in sociological methodology, the editor indicates that he hopes the book "will encourage the finding of uniformities and crucial differences in the Canadian family structure that will further our quest for the development of a scientific sociology of the family

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1. Preface at x

2. *Id.*

in an explanatory rather than an exploratory fashion".<sup>3</sup> However, he then points out that, "It has not been possible for us to spell out these uniformities and differences but the reader will detect them throughout this collection".<sup>4</sup> To the legal practitioner or law student, who will probably not read a good many of the pieces, it may thus be difficult to obtain a true picture of the uniformities and differences involved.

The book is divided into three parts. The first deals with pre-marriage problems and marriage itself. This part contains such papers as "Campus Dating: An Exploratory Study of Cross-National Relevance" and "Reactions to Premarital Intercourse", as well as two interesting papers on interfaith and cross-cultural marriages in Canada. The second part looks at the life styles of Canadian families, the procreative function of the family, interactions between husband and wife, and at the family in the context of larger kinship groups. The third part discusses the changes that have occurred to the family and the consequent adaptations to change. Perhaps the most interesting segment of this part are the three papers found under the heading "Explorations into the Future". These papers deal with trial family living, alternatives to marriage and the probable evolution of parenthood and child rearing, one generation hence. R.N. Whitehurst's paper, "Alternate Life Styles and Canadian Pluralism",<sup>5</sup> while exploring the limits of alternatives to marriage, concludes that marriage as an institution is here to stay, at least for the foreseeable future. The author does, however, foresee a drastic change in the roles of the participants in a marriage. The problem of adjusting to changes and coping with structural conditions in society will, he says, result in a higher divorce rate. Dr. Leo Davids asks the question "What will They Be Like, These Canadian Parents?"<sup>6</sup> Dr. Davids canvasses a variety of views in seeking an answer. Some, like Mary Van Stolk,<sup>7</sup> have already determined that society should not allow parents to have as free a reign in the rearing of children as they presently have:

The belief that we should do nothing to diminish the authority of parents lends support to those parents who perpetrate acts of brutality upon children. In view of the fact that parents are among

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3. *Id.* at xiv

4. *Id.*

5. At 443-446

6. At 446-452

7. In *The Battered Child in Canada* (Toronto: McClelland and Steward, 1972)

the major killers and maimers of North American children, it becomes imperative to recognize that we must not continue to allow parents to have this almost-unlimited authority over children.<sup>8</sup>

It is evident that a number of the authors favour state interference in a home where there are or will be children. Licensing for parenthood is mentioned and the undergoing of education for parenthood before assuming the role of mother or father. If accepted, this will open the home to "participation in child care [by interested agencies] of a greater degree than at present".<sup>9</sup> The unfortunate parent will also come under the scrutiny of offspring if the notions of children's liberation espoused in Dr. Davids' essay come to fruition. This paper will clearly generate a good deal of discussion among lawyers and law students alike.

Most of the volume's papers are a result of the evaluation of empirical data. Included among those that are not are the essay by Iwan Saunders entitled "Canadian Law and Marriage" (found in Part One) and the piece by Terry Wuester called "Canadian Law and Divorce" (in Part Two). Both works are written for consumption by the lay person.

The organization of the book, the editor indicates, will "convey a dynamic picture of the family within the perspective of the larger society, as well as the dynamics of interaction within the family itself".<sup>10</sup> Thus, it is said, "The functional viewpoint once again comes into sharper focus, according to which an institution can be viewed not only in terms of functional interaction among its constituent members (units), but also *between* [*sic*] itself and the society at large".<sup>11</sup>

This volume will not be of immediate value to those of us who practise Family Law. Many of the findings or conclusions in some pieces will have been evident to the practitioner for some time. See, for example, the papers on the battered and abused child, adaptation of the rural family to change and life styles of Canadian families. Despite this fact, these papers, together with such pieces as "Deviance and Family Integration",<sup>12</sup> "Women and Men in Second Marriages"<sup>13</sup> and "Married Women in Canada's Labour

8. *Id.* at 100, cited at 448 in Davids' article

9. At 449

10. At xiii

11. *Id.*

12. At 203-211

13. At 317-333



Force",<sup>14</sup> should be of some interest to the specialist in Family Law. The law teacher might consider the utilization of Part Three as a source of discussion.

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14. At 341-358

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*Industrial Assistance Programs in Canada 1976*. By Peter E. McQuillan and George H. R. Goldsmith. Don Mills: CCH Canadian Limited, 1976. Pp. 289. Price: \$8.50

This is the fourth edition of this book, which was first published in 1970, and which has gone through a new edition every even-numbered year since. It is a guide to various incentive programs made available by the federal and provincial governments for various phases of economic activity. It is a practical book, directed to those in business and their advisers. It outlines and describes incentives under the *Income Tax Act*<sup>1</sup> and a broad array of federal and provincial programs, both well-known, such as under the *Regional Development Incentives Act*,<sup>2</sup> administered by DREE, and such lesser known programs as, for example, the Footwear and Tanning Industries Adjustments Program. A brief perusal of this publication by someone in business could very easily be rewarded by the grant of substantial financial help for the undertaking of an activity. The book stresses, and this is often most important, that many programs are only available where no prior commitments have been made, to contractors for example, before the application for assistance. The book is also very useful in that it contains tabular summaries of the various programs, and contains addresses where one might write for further assistance and information.

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1. S.C. 1970-71-72, c.43 (as amended)

2. R.S.C. 1970, c. R-3 (as amended)

The book has its limits. It cannot, by its very nature, be up-to-date but there are loose-leaf services available, one indeed published by CCH Canadian Limited, which are kept much more current, although even they sometimes suffer from a time-lag. This publication deals with the situation as of November 1, 1975, and there have been changes in the *Income Tax Act*, and in other government programs since that time. I suggest that the book is most useful as a starting point and as a guide. Indeed, one must always have regard to the actual legislation, and more importantly, to the practices and procedures which have been developed within the agencies administering the various incentives. However, at \$8.50, it could prove, in many cases, to be a most cost-effective investment.

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#### Books Received

*Admissibility of Confessions.* By F. Kaufman. Toronto: Carswell Co. Ltd., 1974. Pp. 282. Price: \$22.50.

*Butterworths English Law Catalogue.* Toronto: Butterworths, 1976. Pp. 70. Price: free.

*Canadian Industrial Relations: A Book of Readings.* By S.M.A. Hameed. Toronto: Butterworths, 1975 (Student Text: 1976). Pp. 378. Price: \$7.50

*Community Participation in Sentencing.* Law Reform Commission of Canada. Ottawa: Supply and Services Canada, 1976. Pp. 227. Price: \$5.75.

*Crime and Its Treatment in Canada.* By W. T. McGrath. Toronto: Macmillan of Canada — Maclean-Hunter Press, 1976. Pp. 591. Price \$19.95 (cloth), \$12.50 (paperback).

*Fear of Punishment: Deterrence.* Law Reform Commission of Canada. Ottawa: Supply and Services Canada, 1976. Pp. 149. Price: \$4.00.

*Habeas Corpus.* By Alan Bennett. London: Faber & Faber, 1975. Pp. 75. Price: \$3.50.

*The Immigration Appeal Board.* Law Reform Commission of Canada. Ottawa: Supply and Services Canada, 1976. Pp. 88. Price \$2.75.

- The Land Transfer Act, 1974.* By C. Hudson. Toronto: Butterworths, 1975. Pp. 111. Price: \$15.00.
- The Law of Habeas Corpus in Canada.* By D. A. Cameron Harvey. Toronto: Butterworths, 1974. Pp. 284. Price: \$27.50.
- The Law of Search Warrants in Canada.* By James A. Fontana. Toronto: Butterworths, 1974. Pp. 139. Price: \$25.00.
- Maintenance on Divorce (Working Paper 12).* Law Reform Commission of Canada. Ottawa: Information Canada, 1975. Pp. 40. Price: \$2.00.
- Perception in Criminology.* By Richard L. Henshel & Robert A. Silverman. Toronto: Methuen Publications, 1975. Pp. 471. Price: \$6.95.
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- The Principles of Sentencing and Dispositions (Working Paper 3).* Law Reform Commission of Canada. Ottawa: Information Canada, 1974. Pp. 35. Price: \$2.00.
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- Studies on Imprisonment.* Law Reform Commission of Canada. Ottawa: Supply and Services Canada, 1976. Pp. 329. Price: \$6.50.
- The Supreme Court and the Commander in Chief.* By Clinton Rossiter. Ithaca: Cornell University Press, 1976. Pp. 219. Price: \$15.00.
- The University and The Law.* Edited by H. N. Janisch. (Dalhousie Continuing Legal Education Series No. 8). Halifax: Dalhousie University Faculty of Law, 1975. Pp. 201. Price: \$10.00.
- Working Paper on Trade Marks Law Revision.* Department of Consumer & Corporate Affairs. Ottawa: Information Canada, 1974. Pp. 304. Price: \$3.00.