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Courts in Federal Countries: Federalists or Unitarists?

Hannah Steeves

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Claire L'Heureux-Dubé: A Life. By Constance Backhouse. Vancouver: UBC Press, 2017. xviii, 740 p. Includes index, bibliographical references, notes, and illustrations. ISBN 978-0-7748-3632-6 (cloth) \$49.95.

Constance Backhouse's biography, *Claire L'Heureux-Dubé: A Life*, about the second woman, and first from Quebec, appointed to the Supreme Court of Canada, is an exceptional contribution to Canadian legal literature. Backhouse, a prolific author on the historical struggles of women in law, completely immersed herself in her subject by taking extensive French immersion studies, learning about the Quebec civil law system, and conducting close to 200 interviews over a ten-year period, including several with L'Heureux-Dubé. The result is a meticulously researched but very readable biography of a leading figure in Quebec and Canadian law. The 150 pages of footnotes contain a rich background of material for researchers on multiple topics in legal history.

One recurring theme in the book is the resilience shown by L'Heureux-Dubé in overcoming the personal and institutional barriers she encountered. At home, she entered law school at Laval over stern opposition from her father, a customs and military official. While registering at Laval, she was told by at least two officials that the legal profession was only for men and she should not apply for any scholarships. She prevailed and was one of only two women in her 1951 graduating class. She was also the second woman to enter private practice in Quebec City (Quebec was the last province to admit women as lawyers in 1941).

The first jobs L'Heureux-Dubé applied for resulted in rejection. She was finally hired as a lawyer after working as a secretary for a progressively minded Jewish lawyer, Samuel Bard, who eventually hired her as part of his practice. Even as her legal practice successfully evolved into an appointment to the Quebec Superior Court and Court of Appeal, the long-term illness of her mother, a fractious relationship with her father, and the deaths of her husband and son required her to display particular resilience.

The book chronicles L'Heureux-Dubé's appointment to the Supreme Court of Canada in 1987 and its inside workings over fifteen years. There is a fascinating exploration about the tense relationship she had with Chief Justice (and fellow Quebecer) Antonio Lamer, as well as her interactions with the other two female judges during her tenure, Bertha Wilson and Beverley McLachlin, which underline that sharing the same gender did not always result in arriving at the same decision.

After hearing the sexual assault consent case *Ewanchuk*, the assignment of writing the majority decision proved to be contentious when L'Heureux-Dubé, the more senior judge, was passed over in favour of Justice John C Major. The reasoning was that Major, from Alberta, where the case originated, would be in a better position to write the decision.

The book has a fascinating account of L'Heureux-Dubé's denunciation of the issue of implied consent in sexual assault heard in the *Ewanchuk* case, as well as the wide-ranging criticism and support that her stance attracted from

such disparate groups as defense lawyers, newspaper editorialists, and academics. The Justice from the originating Alberta Court of Appeal decision, which was subsequently overturned, took the unprecedented step of writing an open letter highly critical of L'Heureux-Dubé in the *National Post*.

The last part of the book focusses on the important contributions that L'Heureux-Dubé made with her opinions, which often included citations to social science data. This section highlights a number of decisions from the Supreme Court of Canada on issues of sexual assault, consent, same sex couples, spousal support, tax law discrimination, Quebec secession, and immigration law—decisions that often broke new ground in Canadian law.

Backhouse's biography is extremely informative, not only of L'Heureux-Dubé's rise up the legal and judicial ladder but also as a look at the evolution of the legal profession, the judiciary, and significant issues in Canadian law.

REVIEWED BY
DAVID CAMELETTI
Barrister and Solicitor
Guelph, ON

Courts in Federal Countries: Federalists or Unitarists? Edited by Nicholas Aroney & John Kincaid. Toronto: University of Toronto Press, 2017. xvi, 583 p. Includes index. ISBN 978-1-4875-2289-6 (paper) \$35.96.

This book is the product of a comparative research project completed by the Forum of Federations and supported by the Government of Quebec. The Forum of Federations has the goal of linking academic research to real world practices and is supported and funded by international partners. *Courts in Federal Countries: Federalists or Unitarists?* contributes directly to this goal by providing a well-rounded, highly informed, comparative approach to the topic of the structural issues of federalism. This text is the first of a larger, forthcoming, seven volume series on federalism to be developed by the Forum of Federations.

The book undertakes the task of clarifying the authority of the court in relation to the government, the nation, and society in general. An introductory chapter that defines federalism and reviews its general history from both legal and political perspectives is followed by chapters analyzing individual case studies from 13 federal and quasi-federal countries. The countries examined are a diverse sampling, including historical, leading democratic nations, and countries with newer constitutions that are still in the process of developing their federal systems. They are also a mix of both common and civil law traditions.

Within the introduction, a small number of tables are included to provide background information on each of the countries. These tables include their rule of law and freedom ratings, their level of decentralization, as well as demographic covering information such as population, GDP, constitutional documents, legal tradition, court system, etc.

Each chapter is written by leading authorities from the country

and follows a semi-structured series of questions designed by the editors to ensure a relative level of consistency when discussing countries with distinct variances in their level and type of federalism. Each chapter explains how judicial decisions concerning constitutional issues are linked to whether the federalist country moves toward or away from a centralized system. The titles of chapters are indicative of the context of the commentary in each essay.

The editors use the conclusion to provide a comparative analysis of the varied approaches the 13 countries' high courts take when considering constitutional issues, as well as highlighting exceptional, outlying facts and cases. This analysis is broken down by the same set of questions that are answered in each essay, including each country's history with federalism; whether their populations consist of similar or diverse demographics; how the distribution of powers determined by a constitution affect political institutions, and vice versa; the impact of legal traditions; and the how their judiciary is selected in relation to those political institutions. The editors explicitly avoid offering the reader a theoretical framework on the topic and suggest that this work has laid the grounds for future theoretical research.

Academic literature on the broader topic of constitutional law or the role of the judiciary in federal nations is readily available; however, most literature focusses on an individual or specific group of countries (e.g., commonwealth countries), as a legal history, or on the topic of centralization/decentralization. The foreword states that the only substantial publication with a similar approach to the topic was published in 1959 when many of today's federations had yet to be established. This collection offers a significant contribution by broadening the scope of countries examined.

All contributors of the book are academics, and many have worked within their country's government, as well as having achieved many other prestigious accolades and contributed to a wide variety of research during their careers. Given the contributors' expertise and the previous gap in literature on this topic, this book is appropriate for a wide range of legal professionals. Students may find it valuable for their coursework, while academics and political representatives could use it to inform further research for both theoretical, as suggested by the editors, and institutional advancements. The book could also be dissected into individual articles for course packages or recommended readings, due to its design as a collection of well-written, highly accessible essays for those with differing levels of legal knowledge.

Courts in Federal Countries: Federalists or Unitarists? reaches the goal of linking the world of academia and real-world practices by providing a foundation for further research. It is a necessary contribution to the academic realms of comparative law, constitutional law, federalism, and understanding the significance of the role of the high courts and the judiciary.

REVIEWED BY

HANNAH STEEVES

Instruction & Reference Librarian

Sir James Dunn Law Library

Dalhousie University

***Everyday Exposure: Indigenous Mobilization and Environmental Justice in Canada's Chemical Valley.* By Sarah Marie Wiebe. Vancouver: UBC Press, 2017. xx, 260 p. Includes forward by James Tully, bibliographic references, photo essays, index, and appendices. ISBN 978-0-7748-3263-2 (hardcover), \$95.00. ISBN 978-0-7748-32649-9 (softcover), \$32.95.**

This revision of Sarah Marie Wiebe's 2013 dissertation, *Anatomy of Place: Ecological Citizenship in Canada's Chemical Valley*, is based on interviews conducted when the author resided with the Aamjiwnaang First Nation, a community located within the city limits of Sarnia, Ontario. The interviews serve as community-based research to illustrate geopolitical policy, biopolitical assemblage, sensing policy, jurisdictional ambiguity, environmental reproductive justice, and power relations. Particularly startling are the statistics of high cancer rates, low male births, and high learning disabilities in Canada's Chemical Valley. Pollution affects traditional and ceremonial ways and Elders indicate that the high cancer rates caused by environmental pollution lead to trapped spirits in the cemeteries. The constant environmental issues of spills, leaks, chemical releases, and accidents are portrayed in powerful photo essays and stories of normal daily life. Coupled with this is a description of the complex practice of reporting environmental hazards to the multiple levels of government responsible for the region.

The corporate phrase "no offsite impact" is used repeatedly in *Everyday Exposure* in relation to environmental incident reporting. However, "a close look at the citizen's experiences of living in this sacrifice zone reveals the entwined impacts of this place on physical and cultural survival" (p 97). The book offers examples throughout of this impact: ever-present smokestacks on the horizon, children playing games involving scooping up mercury, and concerns over a chain reaction of plant fires caused by lightning. In 1992 a chemical spill near the band office and daycare centre led to moving the daycare farther from the reserve boundaries to better protect the children. Despite the government blaming "lifestyle factors" such as smoking, drinking, home carpeting, wearing makeup, and using fabric softeners and cleaning products as the sole reason for wide-spread disease, the Aamjiwnaang people continue to collect air samples via "bucket brigades" and send these, at their own expense, to California for testing.

Wiebe provides a brief historical context and uses political theory to criticize governments of all jurisdictions for their lack of authority, responsibility, and action in responding to issues of environmental pollution (chemical, air, and noise) on reserve lands with the Aamjiwnaang First Nation as her primary case study. Her overview of Canadian Confederation includes a discussion of Aamjiwnaang's treaty surrenders in the Sarnia area where ceded land is now within city limits. She describes how since World War I these lands have been industrialized with very limited consultation with band members. The author explains how the people are unable or unwilling to move away from their land, which is central to their being as opposed to simply being a place. The wampum belt, as a symbol of diplomacy and agreements between peoples, can perhaps represent a more positive perspective on future treaty relations in a decolonized Canada.