

**FORGING ALBERTA'S CONSTITUTIONAL FRAMEWORK, RICHARD CONNORS & JOHN M. LAW, EDs. (EDMONTON: UNIVERSITY OF ALBERTA PRESS, 2005)**

This book would have benefited from a more accurate title. It makes an invaluable contribution to the literature on Alberta but will disappoint those interested exclusively in constitutional issues. In addition, it will not be consulted by readers with a more general interest in the province. This is a pity, because if the title had provided some hint of the breadth of the project, it would have ensured a wider audience.

*Forging Alberta's Constitutional Framework*<sup>1</sup> was conceived as a centennial project of the Centre for Constitutional Studies at the University of Alberta Faculty of Law, and is the product of a colloquium held at the University of Alberta in October 2003. The original intention was to examine Alberta's constitutional development through a chronological analysis. However, given the diverse backgrounds and disciplines of the authors, "it became a collection of essays that reflected the varied interests of the contributors."<sup>2</sup>

It is always a challenge to impose thematic consistency on an edited work but in this book, fidelity to the theme is strong in a handful of chapters, tenuous in some, and absent in others. In fact, the admission in the introduction quoted above suggests that the authors had wide latitude to pursue their interests.

Weighing in at a daunting 538 pages (in fairly small print), the 16 chapters cover a great deal of ground and very interesting ground it is. Between its covers, *Forging* provides a wealth of information about the province on such diverse topics as the office of the Lt. Governor, Justices of the Peace (which reaches back in time to 1391!), and the Persons Case.<sup>3</sup> It is only possible to comment on a few of the contributions.

Sandra M. Anderson's contribution on constitutionalizing Alberta's schools is an important addition to our knowledge about Alberta's constitution.<sup>4</sup> It traces the history of separate schools as provided for in the *North-West Territories Act*<sup>5</sup> from the situation prior to 1905 to the provisions that found their way into the *Alberta Act*.<sup>6</sup> Her analysis concludes with the Supreme Court's decision in 2000 in *Public School Boards' Association of Alberta v. Alberta (A.G.)*.<sup>7</sup> The controversy over separate schools in Alberta pitted Protestants against Catholics, Laurier against Haultain, and saw a collision of views about the role of the education system.

At the heart of the conflict was whether provisions in the *British North America Act, 1867*<sup>8</sup> and the *North-West Territories Act* of 1875 should prevail. Both were more favourable to

<sup>1</sup> Ricard Connors & John M. Law, eds., *Forging Alberta's Constitutional Framework* (Edmonton: University of Alberta Press, 2005) [*Forging*].

<sup>2</sup> *Ibid.* at xviii.

<sup>3</sup> *Edwards v. Canada (Attorney General)*, [1930] A.C. 124.

<sup>4</sup> Sandra M. Anderson, "Venerable Rights: Constitutionalizing Alberta's Schools 1869-1095" in *Forging*, *ibid.*, 61.

<sup>5</sup> R.S.C. 1886, c. 50.

<sup>6</sup> S.C. 1905, c. 3, reprinted in R.S.C. 1985, App. II, No. 20.

<sup>7</sup> 2000 SCC 45, [2000] 2 S.C.R. 409.

<sup>8</sup> (U.K.), 30 & 31 Vict., c. 3, reprinted as *Constitution Act, 1867*, R.S.C. 1985, App. II, No. 5.

separate schools than provisions in Ordinances introduced between 1884 and 1901 by the Territorial government.

Anderson points out that the debate on schools consumed a great deal of time and energy, eclipsing more important issues. She quotes an editorial in the *Calgary Herald* of 2 March 1905 which argues that

[t]he west has not spoken on the subject of separate schools. Not one single utterance from a public man of the west has thus far been made on the subject.... Ontario is being inflamed by orators who display amazing zeal in the affairs of the country 2,000 miles removed.

It is just possible that Alberta would be more thankful to these enthusiasts if they would urge more even-handed justice for the west in the way of distribution of natural resources of the country, a more equitable boundary division, capital location, and other features of substantial value in the new provinces.<sup>9</sup>

The reference to natural resources proved to be prophetic as retention of ownership by the federal government assumed enormous salience in Alberta.

Separate schools were controversial in Manitoba in the 1880s, a dispute that was anticipated by the Fathers of Confederation. They thought they would kill two birds with one stone when they inserted s. 93 into the *British North America Act, 1867*, protecting Protestant schools in Quebec and Catholic schools elsewhere. Its provisions permit the federal government to pass remedial legislation in the event a province moves to eliminate denominational schools that were in existence when a colony or a territory became a part of the union. The assumption was that the French language would be protected via denominational schools because French Canadians were Catholic.

Objections to separate schools in Alberta mirrored those in Manitoba. The Manitoba Schools Question, a watershed in the evolution of publicly-funded denominational schools, had its roots elsewhere as the *Herald* quote suggests. Public funding to separate schools in Manitoba was abolished in the 1880s triggering a protracted battle. The Laurier government eventually negotiated some concessions on religious instruction in the public system, but chose not to invoke the right to pass remedial legislation under s. 93. This decision dealt a blow to denominational schools in that province. Some historians argue that the defeat of proponents of separate schools in Manitoba represents the victory of Ontario's vision of Canada over the Quebec vision of this country. The battle against denominational schools was joined once again in Alberta.

Opposition to separate schools was fuelled by supporters of the Orange Lodge, among other groups, who were determined to undermine Catholicism. What might have been the outcome had protection been afforded to the French language rather than the religion practiced by French Canadians?

Catholics were the primary target of the Orange Lodge where it originated in Ireland. In Canada, however, the coincidence of Catholicism and the French language led to the

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<sup>9</sup> *Supra* note 4 at 62.

enfolding of language into the mix. The way this later played out is illustrated by events in Saskatchewan in the 1920s. Separate schools in Saskatchewan were the target of the Orange Order, the Independent Order of the Daughters of the Empire, and even the Ku Klux Klan in the late 1920s. Rand Dyck remarks that the Klan did not create anti-Catholic or anti-ethnic feelings “but coalesced the formerly diffuse opposition. [The Klan and its allies] appealed to submerged prejudices but the message could be presented in a positive light, such as preserving the virtues of a British, Protestant, and ‘Canadian’ way of life.”<sup>10</sup> Such sentiments echo those expressed by those opposed to linguistic and religious diversity in the North-West Territories in the 1880s and beyond.

The role of language in unifying the new province is discussed in Edmund A. Aunger’s piece, “One Language and One Nationality.”<sup>11</sup> It focuses on the history of language legislation in Alberta which the author describes in the subtitle as “the forcible constitution of a unilingual region.”<sup>12</sup> When the *North-West Territories Act* of 1875 was first introduced, it did not contain the French-language component that was present in the *Manitoba Act, 1870*.<sup>13</sup> However it was revised in 1877 to entrench English and French as official languages in the North-West Territories.

As in the case of separate schools, the situation changed in the 1880s. There was a gradual decline in the publication of ordinances in French, objections to the Speech from the Throne being read in English and French, and abandonment of the use of French in the legislature. For the next hundred years, Aunger argues, the rallying cry was “one language and one nationality” to reflect the goal of building a homogeneous English-speaking province.<sup>14</sup> In the 21st century, the author argues, English language usage is not imposed (arguably it no longer has to be) and minority language usage is tolerated, but grudgingly.<sup>15</sup>

Reading Anderson’s chapter in conjunction with Aunger’s suggests that the individuals who were to become Alberta’s political leaders were mean-spirited and narrow-minded. However, Fred Martin’s contribution on the history of Alberta’s Métis settlements<sup>16</sup> paints a more positive picture of provincial politicians.

Alberta is the only province in the country to recognize the Métis and to provide them with a land base. The author points out that in 1934 the federal government refused to participate in discussions with the province on the Métis question.<sup>17</sup> In 1938, the Aberhart government accepted the recommendations of a Royal Commission, the Ewing Commission, set up by the United Farmers for Alberta government in 1934. The Commission recommended establishment of Métis colonies, but made it clear that “the rights issue was

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<sup>10</sup> Rand Dyck, *Provincial Politics in Canada: Towards the Turn of the Century*, 3d ed. (Scarborough, Ont.: Prentice-Hall, 1996) at 462-63 [footnote omitted].

<sup>11</sup> Edmond A. Aunger, “One Language and One Nationality: The Forcible Constitution of a Unilingual Province in a Bilingual Country, 1870-2005” in *Forging*, *supra* note 1, 103.

<sup>12</sup> *Ibid.* at 103.

<sup>13</sup> 33 Vict., c. 3 (Canada), reprinted in R.S.C. 1985, App. II, No. 8.

<sup>14</sup> *Supra* note 11 at 129.

<sup>15</sup> *Ibid.* at 130.

<sup>16</sup> Fred V. Martin, “Alberta Métis Settlements: A Brief History” in *Forging*, *supra* note 1, 345.

<sup>17</sup> *Ibid.* at 355.

not on the table, and the Métis leadership did not insist that it be dealt with."<sup>18</sup> In the face of federal indifference, Métis leaders preferred to work with the province, initially the Social Credit government and then the Conservatives. In a report presented to Premier Peter Lougheed, the Métis leadership stressed that they "are proud to be western Canadians and proud to be Albertans."<sup>19</sup>

In 1985, the Alberta legislature passed a resolution to amend the *Alberta Act* to protect Métis lands. However, when the Alberta government requested this amendment, Ottawa refused to cooperate, leading to a "made in Alberta" solution: the province passed the *Constitution of Alberta Amendment Act, 1990*<sup>20</sup> providing constitutional protection to the Métis land base in the province. Martin observes that "[t]he fact that 'redneck' Alberta provided this kind of leadership often surprises the rest of Canada."<sup>21</sup>

That Canadians outside Alberta have a stereotypical view of Albertans is noted in Allan Tupper's fine chapter "Uncertain Future."<sup>22</sup> Referring to the "firewall letter"<sup>23</sup> penned by Stephen Harper and (now Alberta cabinet minister) Ted Morton among others, Tupper notes that Albertans were tepid to the idea of the firewall but "Albertans' disinterest in the firewall idea made little impression on media, who continue to cast Alberta as Canada's constitutional *enfant terrible*."<sup>24</sup> The author points to other misconceptions about the province, misconceptions that are partly rooted in political rhetoric:

Contrary to political and journalistic rhetoric, Alberta exerts a strong influence on national affairs and its portrayal of itself as an oppressed, ignored and misunderstood hinterland is no longer convincing. Under Premier Klein, Alberta's intergovernmental relations have been rhetorically critical of national policies and institutions, but substantively, they have been unexceptional in content and process.<sup>25</sup>

Given the changed circumstances in Alberta, Tupper points out, it is increasingly difficult to portray the province as an exploited hinterland. Preston Manning's chapter, "Federal-Provincial Tensions and the Evolution of a Province,"<sup>26</sup> harkens back to that earlier era when the province was a victim of discriminatory treatment.

Manning makes clear that his contribution is not that of a detached observer, but a member of a family that has been involved in Alberta politics for 72 of Alberta's 100 years. His analysis of the tensions, which he divided into six periods, is, by his own admission, viewed

<sup>18</sup> *Ibid.* at 357.

<sup>19</sup> *Ibid.* at 371, quoting Alberta Federation of Metis Settlement Associations (AFMSA), *Metisism: A Canadian Identity* (Edmonton: AFMSA, 1982) at 17.

<sup>20</sup> R.S.A. 2000, c. C-24.

<sup>21</sup> *Supra* note 16 at 346.

<sup>22</sup> Allan Tupper, "Uncertain Future: Alberta in the Canadian Community" in *Forging*, *supra* note 1, 479.

<sup>23</sup> The letter was written in 2001 to Premier Ralph Klein recommending that Alberta build "firewalls" to forestall encroachments upon provincial jurisdiction by a hostile federal government. The measures suggested included recommendations that the province set up a provincial police force, its own pension plan, and run its own health care system.

<sup>24</sup> *Supra* note 22 at 492 [emphasis in original].

<sup>25</sup> *Ibid.* at 479.

<sup>26</sup> Preston Manning, "Federal-Provincial Tensions and the Evolution of a Province" in *Forging*, *supra* note 1, 315.

through a very personal lens. Such insights are useful, but they can also be clouded by the subjective interpretation of events by the observer.

In Manning's case, this comes through in the terminology he utilizes. He breaks Alberta's history into six periods that he labels "struggles" (for provincehood, control of natural resources, survival, and so on). This is revealing as it reflects Manning's perception that Albertans have been engaged in a constant struggle with Ottawa, which has attempted to thwart its efforts at every turn. No doubt his perception is coloured by his father's recollections of Social Credit's battles with the federal government in the 1930s.

Given the salience of natural resources, it should come as no surprise that half of the chapter focuses on the struggle for ownership prior to 1930, and for control over pricing and revenue in the 1970s.

In the section dealing with control of petroleum pricing, Manning states that between 1947 when oil was discovered in commercial quantities in Alberta and 1960, "wellhead prices for Alberta oil were largely set by competitive forces in the international market."<sup>27</sup> This assertion is questionable. Ernest Manning's government adopted American precedents including the practice of "pro-rationing" (basically, supply management), which had been developed by the Texas Railroad Commission. The goal was to adjust production levels to market demand thus preventing the price from plummeting. Richards and Pratt comment that Manning's government "introduced legislation in 1949 to permit pro-rationing to market demand, and the Conservation Board instituted the practice in December 1950 following public hearings. Planned oil had arrived in Alberta."<sup>28</sup> In the 1970s when the problem was no longer excessive supply, the practice was discontinued.

Manning also has an interesting perspective on the National Oil Policy (NOP) established in 1961. It was a response to the difficulty of finding a market for Alberta oil. Independent Alberta producers called for the federal government to step in and help find markets for them. The NOP divided the country into two at the Ottawa Valley, providing a protected market for Alberta crude west of the line. Provinces from Quebec eastwards, continued to be served by cheaper offshore oil. Manning dismisses the Ottawa Valley line as "the point in Canada where the cost of Alberta oil coming east equated the cost of offshore oil coming west from eastern Canada,"<sup>29</sup> implying that there was no change in price for Ontario consumers. According to Natural Resources Canada's "Canadian Energy Chronology," in the 1960s consumers in Ontario and the west "had paid at least \$500 million more than they would have for foreign imported oil in order to help Alberta develop its oil industry."<sup>30</sup> Ironically, Quebec viewed this policy as hostile to its interests, as Alberta crude displaced Venezuelan crude that was being refined in Quebec before being sent to Ontario.

Manning's observations illustrate that there is little room in the provincial narrative to assign a positive role to Ottawa. The federal government is typically portrayed as predatory

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<sup>27</sup> *Ibid.* at 330.

<sup>28</sup> John Richards & Larry Pratt, *Prairie Capitalism: Power and Influence in the New West* (Toronto: McClelland & Stewart, 1979) at 58.

<sup>29</sup> *Supra* note 26 at 331.

<sup>30</sup> The information is available online: <[www2.nrcan.gc.ca/es/es/EnergyChronology/index\\_e.cfm](http://www2.nrcan.gc.ca/es/es/EnergyChronology/index_e.cfm)>.

and eager to benefit from Alberta's natural resources. In fact, prior to 1930, Ottawa's attitude to oil and gas development in the province could be characterized as one of indifference or neglect. The main concern expressed in the province was the need for regulation and conservation.

That Alberta was not a helpless pawn in Ottawa's chess game is illustrated by Michael Behiels' contribution.<sup>31</sup> Behiels presents a very detailed description of mega-constitutional battles that dominated the political stage during the bulk of Loughheed's political career. He points out that the Premier made a tremendous contribution to constitutional renewal in Canada: "He did so by incessantly promoting and enhancing provincial autonomy, especially in the area of resource development and taxation, and by holding out for the Alberta amending formula, one based on the equality of the provinces."<sup>32</sup>

Doug Owram's "The Perfect Storm,"<sup>33</sup> deals with a policy that to this day, renders some Albertans apoplectic. Owram examines the National Energy Program (NEP) from a policy-making perspective, labeling it "one of the most confrontational federal-provincial battles in the history of the country."<sup>34</sup> He argues that the NEP was necessary from a federal perspective because of the energy crisis, and was "a policy that was wrecked as much by Alberta greed as by the unpredictable trend of energy prices."<sup>35</sup> His main conclusion is that an unusual conjunction of events resulted in the NEP and as it is unlikely that they will ever converge again, federal-provincial diplomacy will likely prevail in the future.

Alberta's centennial year sparked a great deal of interest in the province's past and a number of books were published to celebrate the milestone. *Forging Alberta's Constitutional Framework* is one of the best such publications that I have read.

Dr. Doreen Barrie, President  
Western Social Science Association  
Department of Political Science  
University of Calgary

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<sup>31</sup> Michael D. Behiels, "Premier Peter Loughheed, Alberta and the Transformation of Constitutionalism in Canada, 1971-1985" in *Forging*, *supra* note 1, 411.

<sup>32</sup> *Ibid.* at 450.

<sup>33</sup> Douglas Owram, "The Perfect Storm: The National Energy Program and the Failure of Federal-Provincial Relations" in *Forging*, *supra* note 1, 391.

<sup>34</sup> *Ibid.* at 391.

<sup>35</sup> *Ibid.*