Book Notes

*Dwight Newman, Book Review Editor**

This section continues the new Book Notes feature commenced in the last issue, seeking to offer brief comments on a wider variety of books than has been previously possible in the *Review*. This issue's books span a range of different topics across the spectrum of constitutional issues, thus manifesting the ongoing richness of scholarship available today.

Anthony Arlidge & Igor Judge, *Magna Carta Uncovered* (Oxford: Hart Publishing, 2014)

This book, out in time for the eight-hundredth anniversary of the Magna Carta, is a very helpful introduction to that document, offering both historical background and a detailed, clause-by-clause explanation of its contents. Because the book considers the contents piece by piece, the bulk of it is divided into a large number of chapters, unfortunately diminishing the possibility of understanding the instrument in terms of more unified themes.

However, a gesture towards some possible larger themes appears at the end of the book in chapters considering what the Magna Carta foregrounded. It served, of course, as inspiration for the English Bill of Rights, but even more so for aspects of the American constitutional settlement. So, the book begins and ends with some larger context, but it is principally a book that explicates each clause of the Magna Carta.

The specific examination of the actual text of the Magna Carta and the meaning of the different provisions will, of course, be informative to many readers. Often, the instrument is discussed only as symbol; this book discusses it as a text. In doing so, it offers an important context for modern understandings of the Magna Carta. Those seeking to better understand the Magna Carta could start with this very useful book.

* Professor of Law & Canada Research Chair in Indigenous Rights in Constitutional and International Law, University of Saskatchewan.

Glen Coulthard, *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition* (Minneapolis: University of Minnesota Press, 2014)

Glen Coulthard's book, which has already received significant early attention, is an important work of Indigenous political theory that ultimately challenges key aspects of Canadian constitutionalism. Coulthard's take on theoretical approaches to recognition and attempts at reconciliation is that these concepts continue to operate within structures of colonial state power that entail a system of structured dispossession of Indigenous peoples from their lands and their cultures. Drawing on work by theorists ranging from Karl Marx to Frantz Fanon, Coulthard shapes his argument into a cohesive theoretical position. In doing so, he offers a work that can help many readers to better understand the voices of Indigenous resistance.

Coulthard's work is framed partly around the particular challenges and questions faced by the Dene Nation in the vicinity of the Mackenzie Valley, and one of the central chapters of the book offers an account of practical issues regarding that First Nation. Later chapters return to a theoretical attack on any notion that Indigenous communities' perspectives can be adequately addressed through a liberal "politics of recognition," with one chapter arguing that Indigenous communities are justified in offering resentment rather than forgiveness to colonial institutions. Coulthard takes great care to show that Indigenous politics are complex, giving due attention to the contemporary Indigenous contexts of urbanism, gender issues, and so on.

Coulthard's argument, though, is not a simplifying one for those who think recognition of Indigenous communities will be enough. Coulthard offers a more radical Indigenous political theory and, in doing so, certainly represents a part of Canada's Indigenous rights movement. Those grappling with issues of Canadian constitutionalism and Canada's Indigenous communities can read Coulthard's work in order to understand some of the perspectives to be considered and the differences to be bridged.

Carolyn Harris, *Magna Carta and its Gifts to Canada: Democracy, Law, and Human Rights* (Toronto: Dundurn, 2015)

Seldom does this journal carry reviews of books that contain glossy pictures. However, some of Dundurn's recent publications intended for a more general audience have caught attention in legal circles, with Adam Dodek's *The Canadian Constitution* (Toronto: Dundurn, 2013) being a noteworthy example as a book written at an introductory level about the Canadian Constitution and receiving attention for its accessibility. Now, Carolyn Harris carries on this trend with a glossy book about the Magna Carta.

The book traces the history leading up to formulation of the Magna Carta, its decline in political practice, and its revival in the commentary of Sir Edward Coke. It then seeks to trace the Magna Carta's influence on the Royal Proclamation of 1763, the American Revolution, the French Revolution, and Canadian Confederation. Throughout a short text of just over a hundred pages, the prose is accessible and lively. The text is scantly footnoted, with essentially just a few suggestions for further reading apparent at the end. However, for a simple introduction to the history and lore of the Magna Carta, this book stands out as a highly accessible, Canadian-oriented account.

Deborah Hellman & Sophia Moreau, eds., *Philosophical Foundations of Discrimination Law* (Oxford: Oxford University Press, 2013)

This recent book is a set of philosophically-grounded essays on discrimination law, with the work specifically seeking to go beyond the traditional areas of scholarship that have developed in pertinent contexts, such as general philosophical writing on equality and narrower philosophical writing on affirmative action. That said, some of the pieces, such as Denise Réaume's opening chapter, arguably ground themselves in that broader writing on equality, albeit partly with the aim of signalling some of the directions in which the scholarship and jurisprudence ought to have moved. The book itself reads swiftly, with the next chapter, by Hanoch Sheinman, immediately getting into the wrongs of discrimination in different ways. The editors, Deborah Hellman and Sophia Moreau, offer their own chapters in which they consider the possibility of shifting from an equality-based understanding to a liberty-based understanding of when discrimination is wrongful.

Later parts of the book consider questions of how to implement any theory on discrimination: for example, an interesting interplay of chapters between George Rutherglen and Tarunabh Khaitan explores how closely the law should or should not track the theory; Patrick Shin considers whether any unitary conception of discrimination is possible; and, Lawrence Blum analyzes some problems with a categories-based approach. The last part of the book, containing four additional papers, considers theoretical lessons to be derived from some of the jurisprudential experience with attempting to implement anti-discrimination norms in different ways.

This book is a challenging, but tremendously important, contribution to the complex theoretical and jurisprudential questions concerning the objects of and approaches to anti-discrimination law. As Canada's courts and lawmakers continue to struggle with some of the very concepts that were constitutionally entrenched in the equality rights guarantee, this sort of deep theoretical scholarship contributes in very significant ways to the possibilities of better understandings.

Philippe Lagassé: (1) D. Michael Jackson & Philippe Lagassé, eds., *Canada and the Crown: Essays on Constitutional Monarchy* (Kingston: Institute of Intergovernmental Relations & McGill-Queen's University Press, 2013); and (2) Michel Bédard & Philippe Lagassé, eds., *The Crown and Parliament / La Couronne et le Parlement* (Cowansville: Éditions Yvon Blais, 2015).

Philippe Lagassé is making major contributions to understandings of Canadian parliamentary governance, including to understandings of the Crown. Two co-edited collections in recent years show him and other editors pulling together sophisticated commentary by a variety of authors engaged with themes and issues related to the Crown, with both books containing English-language and French-language chapters. The first of these, a 2013 collection with Michael Jackson, contains the more foundational set of essays which explore a variety of fundamental themes in a somewhat more structured manner. The second, though, a 2015 collection with Michel Bédard, sees authors going into enormous depth on a number of often under-examined issues. Many Canadian constitutionalists are not thinking as actively as they ought to about details on

the role of the Crown. Both of these collections, in which Lagassé has played a leading role in renewing attention to these topics, are extremely worthwhile additions to the library of any Canadian constitutionalist.

Robert Leckey, *Bills of Rights in the Common Law* (Cambridge: Cambridge University Press, 2015)

Robert Leckey's new book offers a fascinating comparison of aspects of rights review in Canada, South Africa, and the United Kingdom, cutting across different types of bills of rights within particular Commonwealth contexts. The book is a monograph rather than a textbook, and it pursues several very specific arguments rather than trying to offer any comprehensive comparative analysis. Leckey is particularly interested in constitutional remedies, and they are for him a prime example of how legal culture always affects what happens with legal text, which becomes a major substantive theme of the book.

The book is interesting, in part, for how Leckey gets to those arguments. His methodology is specifically framed as an internal legal approach, one which is thus in contrast with philosophical and political science approaches to the law. Leckey gives a distinctive role to specifically legal reasoning and to the specialized meaning of judgments to legal readers. He recognizes that they are not philosophical expositions, yet they cannot be considered simply in terms of votes and outcomes. In pursuing his monograph on these terms, Leckey implicitly calls for a return to sophisticated legal scholarship of a sort that has sometimes been considered philosophically or politically old-fashioned, even unfashionable. Through his practice of this methodology, Leckey admirably exemplifies how legal reading has something to contribute to understanding the law — strange as it may be that we need reminding of that point.

Regarding the complex ways in which courts operate, the constitutional text's options on constitutional remedies do not tell us all we need to know. Constitutional remedies function in complex ways across jurisdictions like the three Commonwealth contexts at issue. Leckey ultimately frames and pursues a fascinating and challenging argument that judges may be underutilizing their possible constitutional remedies and are thus falling prey to a culture of legal caution. His argument will not convince every reader, but those on all sides of this question can be grateful for the ideas Leckey offers in this marvellous scholarly contribution.

Sylvia McAdam (Saysehwahum), *Nationhood Interrupted: Revitalizing nêhiyaw Legal Systems* (Saskatoon: Purich Publishing, 2015)

The limited writing on Indigenous legal traditions in Canada has received an important addition this year with Sylvia McAdam's book, in which she seeks to capture in writing some dimensions of *nêhiyaw* or Cree law, which has traditionally been only orally transmitted. McAdam writes from the unique perspective of being one of the four founders of Idle No More, so the book ultimately speaks more broadly of not just Indigenous law, but of her perspective on Canadian law in relation to it. The book is not written in the form of a typical, detailed legal treatise, but it is, of course, effective in its unconventional form.

The aim of the book is to engage in the task of *nêhiyaw wiyasiwêwina,* or talking about Cree law. This aim is grounded in the worldview that Cree law is a sacred gift from the Creator and that it is ultimately a spiritual form of law that needs to be respected for society to be well-ordered. Some of the middle parts of the book turn, for instance, to the complex *wâhkôhotowin* of the Cree language, which include matters such as ways in which particular individuals are addressed and spoken to, which ultimately reflects on kinship connections.

The book then turns to interpretation of Treaty 6, grounded in an understanding of Treaty 6 as a covenantal relationship in which the *nêhiyawak* adopted the Queen and her children. McAdam describes Treaty 6 as intended to preserve the *nêhiyaw pimâcihowin,* or Cree livelihood, and articulates extensive unfinished treaty business arising from a view that the Treaties did not cede or surrender land. This leads to her final chapter reflecting on Idle No More and her perspective that many actions taken by the Canadian government are illegitimate and in violation of Aboriginal and/or Treaty rights.

The book obviously has different starting points than much Canadian constitutional scholarship. Indeed, McAdam appears not to identify as a Canadian citizen but simply as a citizen of the *nêhiyaw* Nation with resulting birth rights from that status. That starting point may limit the traction of this book in many circles, but it is what makes *Nationhood Interrupted* deeply informative as to the views of some Indigenous actors with whom Canada is in an ongoing dialogue. Although the distance between understandings that is highlighted by this book emphasizes some of the challenges in ongoing

Canadian Aboriginal relations, a better understanding of some Indigenous legal concepts and perspectives cannot be anything other than helpful to all sides.

Peter J. McCormick, *The End of the Charter Revolution: Looking Back from the New Normal* (Toronto: University of Toronto Press, 2015)

That a book published a scant few months ago concerning the basic approach of the Supreme Court of Canada is arguably already outdated is a fascinating state of affairs, but this reality makes the book itself no less valuable. In *The End of the Charter Revolution*, Peter McCormick argues that the Dickson and Lamer years were ones of significant *Charter* activity, but that most *Charter* issues have since been resolved, leading to the more deferential McLachlin years. The book offers important material in support of this argument, including both a qualitative discussion of case law and statistical material.

The latter, statistical material continues Peter McCormick's longstanding work in offering statistical analyses of Canadian courts. Some of it shows a shortening lifespan for *Charter* decisions, such that the typical *Charter* case cited by the Supreme Court of Canada is tending to be newer than ever. That statistic fits with an intuition that the McLachlin court has had a distinctive jurisprudence, one that is no longer as engaged with the early *Charter* cases.

However, that distinctive jurisprudence has arguably become less deferential than what first appeared to be the case. Where the early McLachlin years saw the court quieting debates about judicial activism through the careful application of relatively-settled law, the later years have shown the Court striking out in new directions on matters like prostitution, the right to strike, and euthanasia — all while deliberately eschewing precedent.

In some respects, McCormick's book now describes the legacy that Chief Justice McLachlin might have had. But there is room for a sequel.

Roger Tassé, *A Life in the Law: The Constitution and Much More* (Cowansville: Éditions Yvon Blais, 2013)

This book, available in both English and French, is, in part, a memoir of a long legal career that began with a humble upbringing in Quebec and saw Roger Tassé climb to the highest echelons of legal power. While Tassé has not always

been a prominent figure in the public eye, he was significantly involved as a legal advisor in patriation and in later attempts at constitutional amendment.

During patriation, Tassé played a central role as Deputy Minister of Justice, working alongside Minister Chrétien, so his recollections of that period add a unique perspective that will be of value to legal scholars. The second half of the book, in particular, will be an important addition to the history of recent Canadian constitutionalism and will help shed light on some of the aims and aspirations of those developing the constitutional text. In that respect, Tassé's book joins an important, emerging collection of works on the period that will illuminate the meaning of modern Canadian constitutionalism.

Jeremy Webber, *The Constitution of Canada: A Contextual Analysis* (Oxford: Hart Publishing, 2015)

Part of Hart's *Constitutional Systems of the World* series, Jeremy Webber's latest book undertakes the challenging task of summarizing Canadian constitutionalism in under three hundred pages. That overall limit, and the challenge of explaining the various foundational elements of Canadian constitutional government, severely limits the space for each topic. The *Charter*, for instance, gets under fifty pages.

The book covers some historical background, each of the branches of government, and issues surrounding federalism, human rights and the *Charter*, and Aboriginal rights. In many ways, it is an impressive, succinct survey. Webber manages to say a great deal at a general level. Both foreign readers and Canadian readers will find this book a helpful, though abbreviated, introduction. In a Canadian context, its manageable length could well make it a useful introduction for undergraduates or even beginning law students, and it is a reasonably sophisticated book in the context of its inherent succinctness.

Its succinctness, however, is a double-edged sword in that this book is often both insufficiently detailed and slightly too perspective-laden for its lack of detail. The constitutional law cases cited in the book are arguably sparse relative to the constitutional jurisprudence, and they have some peculiar omissions — some of which are arguably the leading cases on various topics.

At the same time, the book rather strongly pursues the claim that no fundamental vision unites Canadian constitutionalism and that "agnostic constitutionalism" is the appropriate interpretation to adopt. That claim will

be unhelpful to the foreign reader and arguably undermines a unified vision that might have been found through a more detailed engagement with the case law that has become more cohesive over time. The book is, of course, a major contribution simply for what it is. But, it could have been something far greater.

Review of Constitutional Studies/Revue d'études constitutionnelles

Editor-in-Chief
Peter Carver

Managing Editor
Patricia Paradis

Book Review Editor
Dwight Newman

Editorial Board
Eric Adams
Benjamin Berger
Alexandra Dobrowolsky
Robert Leckey
Steve Patten
Margot Young

Advisory Board
Richard Bauman
Judith Garber
David Schneiderman

Editorial Assistants
Nicholas Beauchesne
Marjolaine Deschênes
Audrey MacKay
Dorian Simmoneaux
Justin Sully

Production
Amy Timleck
Herb Ratsch, Art Design Printing Inc.

Review of Constitutional Studies/Revue d'études constitutionnelles is published twice yearly by the Centre for Constitutional Studies.

The opinions expressed herein are those of the authors and do not necessarily reflect the views of the Centre for Constitutional Studies or the editors of *Review of Constitutional Studies/Revue d'études constitutionnelles.*

Subscriptions
(Individual or Institutional)

Canadian orders:
$63.00 CDN (includes 5% GST) per volume (two issues)

US and other international orders:
$60.00 US per volume (two issues)

Payment can be made by cheque, money order, or credit card (Visa or MasterCard). Subscriptions may be invoiced upon request. Send subscription orders to: ccslaw@ualberta.ca, or phone: (780) 492-5681.

Indexing
Review of Constitutional Studies/ Révue d'études constitutionnelles is indexed in: Index to Canadian Legal Periodical Literature, Index to Canadian Legal Literature, Current Law Index; it is available in Academic Search Complete, CPI.Q., LegalTrac, and HeinOnline.

Copyright
Canadian Publication Mail Product **Registration No.** 40064496

Copyright © 2016 978-0-9869365-9-3
Authors may use their own material in other publications provided that the *Review* is acknowledged as the original place of publication.

The Centre gratefully acknowledges the continuing financial support of the **Alberta Law Foundation**.

Review of Constitutional Studies/Revue d'études constitutionnelles

The *Review* publishes original scholarly works in English or French, from a variety of disciplines, on subjects of constitutional concern. Book reviews and review essays are also welcome. Submissions should be made electronically in Microsoft Word.

All article manuscripts are subject to a double-blind peer review process. The final decision about publication rests with the Editor-in-Chief. Articles submitted for consideration must not have been previously published or be under review elsewhere.

Word Limit
7800–9000 words. Exceptions to this word limit are made in some circumstances. All submissions should include an **abstract.**

Style Sheet
The official style sheet for *Review of Constitutional Studies/Revue d'études constitutionnelles* is available at:

http://ualawccsprod.srv.ualberta.ca/ccs/images/documents/Review-style-sheet-for-submissions.pdf

Format
The text of all manuscripts should be doublespaced, with margins of at least 1 inch on all sides.

Citations
Follow the *Canadian Uniform Guide to Legal Citation* (McGill Guide), 8th ed., using footnotes rather than endnotes.

Spelling
Follow the *Canadian Oxford Dictionary* for English spelling; for French spelling, follow *Multidictionnaire de la langue française*, 5e éd.

Usage and Style
For submissions in English, follow *The Chicago Manual of Style*, 16th ed.; for submissions in French, follow *Multidictionnaire de la langue française*, 5e éd.

Manuscripts that do not conform to the fundamentals of this journal's style may be returned to the authors for revision.

Article Submissions
Peter Carver, Professor
Editor-in-Chief
Faculty of Law, Room 443
University of Alberta
Edmonton, AB T6G 2H5

pcarver@ualberta.ca
Phone: (780) 492-3313

Book Review Submissions
Dwight Newman, Professor
College of Law
University of Saskatchewan
15 Campus Drive
Saskatoon, SK S7N 5A6

dwight.newman@usask.ca
Phone: (306) 966-4847