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l'époque[7]. Certaines de ses héroïnes sont connues et ont laissé leurs marques, comme Emily Stowe, première Canadienne à pratiquer la médecine, ou Clara Brett Martin, première avocate du Commonwealth. D'autres étaient inconnues, comme Suzanne Pas de nom-Connolly, une Amérindienne crie dont le mariage célébré *à la façon du pays* fut validé par la Cour supérieure de Montréal en 1867 et permit ainsi à ses enfants d'hériter de la fortune de leur père blanc, malgré son mariage subséquent à une Blanche. Ensuite, l'approche féministe se manifeste dans la diversité culturelle des héroïnes. Dans la mesure où les archives judiciaires le lui ont permis, l'auteure tient compte de l'expérience de toutes les femmes, non seulement blanches, de la classe moyenne, mais aussi immigrantes et membres des Premières Nations de cette époque. Il ne peut y avoir une seule histoire des femmes — celle des femmes blanches, comme il ne peut y avoir une seule théorie féministe. Enfin, contrairement à un courant en histoire qui veut que l'historienne rapporte et analyse les faits de manière neutre et objective, sans porter de jugement de valeur, parce que ces valeurs sont le fruit de l'époque de l'historienne et non celles de la période étudiée, Constance Backhouse n'hésite pas à porter des jugements sur ses héroïnes. Elle justifie son approche pour éviter que les erreurs de ces dernières ne se reproduisent. Elle ne se gêne pas pour dénoncer l'antisémitisme de l'avocate Clara Brett Martin[8] ou la position ambiguë de la médecin Emily Stowe par rapport à l'avortement[9]. D'ailleurs, quelle historienne peut clamer écrire l'histoire de façon impartiale et neutre, alors que le seul choix d'événements reflète ses valeurs et préjugés ?

Enfin, l'ouvrage est féministe aussi dans ses conclusions. Par ses recherches, l'auteure dénonce le contrôle exercé par le système judiciaire sur la sexualité des femmes de cette époque et le double standard qui leur est appliqué, condamnant les prostituées et non leurs clients, accusant les femmes d'infanticide plutôt que de les aider financièrement, donnant la garde des enfants au père à moins que la conduite de la mère ne soit irréprochable.

Évidemment, ces héroïnes n'ont pas tenté de remettre en question le système judiciaire et sa façon de traiter les femmes, comme on peut le leur reprocher aujourd'hui. La contestation des procédures, comme l'a fait Esther Forsyth Arscott pour avoir été emprisonnée injustement[10], était exceptionnelle. Cependant, déjà à cette époque, les femmes faisaient face au dilemme qui habitent les féministes d'aujourd'hui : tenter d'être pareilles aux hommes, ou plutôt tenter de valoriser les différences des femmes ? Peut-être les historiennes du XXIe siècle reprocheront-elles aux femmes du XXe siècle d'avoir si peu contesté les institutions judiciaires.

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7. *Id.*, p. 81 et suiv.
8. *Id.*, pp. 323 et 324.
9. *Id.*, p. 166.
10. *Id.*, p. 244 et suiv.

GORDON BALE, **Chief Justice William Johnstone Ritchie : Responsible Government and Judicial Review**, Ottawa, Carleton University Press (Carleton Library Series, n° 165), 1991, 382 p., ISBN 0-88629-134-8.

Thomas Ritchie was called to the Bar of Nova Scotia some time between 1795 and 1798. Five of his sons, eleven grandsons, five great-grandsons[1] and three great-great-grandsons followed his footsteps and became lawyers. This book[2] is about one of his sons, William Johnstone Ritchie (« W.J.R. »), the second Chief Justice of the Supreme Court of Canada.

W.J.R. was born on October 28, 1813 in the Province of Nova Scotia where he grew up. He received a classical liberal education

1. One great-grandson was Roland Almon Ritchie, a judge of the Supreme Court of Canada from 1959 to 1984.
2. This book is the first volume from the Supreme Court of Canada Historical Society.

(Greek and Hebrew, logic, moral philosophy and natural philosophy) at the Pictou Academy from which he graduated in 1831.

W.J.R. then decided to study law in Halifax with his elder brother John William Ritchie[3]. W.J.R. became an attorney on May 2, 1836 and a barrister one year later. W.J.R. and John William left Halifax in 1837 to set up practice in Saint John, New Brunswick. At that time, Saint John was the third largest city in British North America (after Montreal and Quebec) with a population of approximately 12,000.

During the first six months of his practice, W.J.R. sat without a single client and after one year, he had only one case. He earned five pounds during his second year of practice but eventually built up a very extensive and lucrative practice in Saint John, mostly as a commercial lawyer.

In September of 1845 W.J.R. married Martha Strang, the daughter of an important shipping merchant. The marriage took place in Scotland, although the bride and groom and most of the relatives lived in New Brunswick or in Nova Scotia. The Ritchie couple had one son and one daughter but, unfortunately, Mrs. Ritchie died in May of 1847, a few months after giving birth to their daughter. W.J.R. was a widower at thirty-three.

W.J.R. entered politics in 1842 when he contested the Saint John riding as a Liberal. He lost the election but was elected in 1847. As a politician, W.J.R. was a reformer from day one. On August 17, 1855, W.J.R. became a puisne judge of the Supreme Court of New Brunswick. This ended his political career. His appointment was praised by his Liberal supporters but was received with contempt by his political foes who alleged that his appointment resulted from « dubious political dealings » between W.J.R. and the Attorney General of New Brunswick.

Within a year of his appointment, W.J.R. married Grace Vernon Nicholson. Together they produced twelve children, seven sons and five daughters.

In November of 1865, W.J.R. became the Chief Justice of the Supreme Court of New Brunswick. W.J.R. was appointed to the Supreme Court of Canada in September of 1875 and was one of two maritimers appointed to the court, the other being William Alexander Henry of Nova Scotia[4]. W.J.R. became Chief Justice of the Supreme Court of Canada on January 11, 1879 after Sir William Buell Richards retired. Prime Minister Macdonald acknowledged, when appointing W.J.R. as Chief Justice, that the appointment was based on merit and not politics. He wrote :

> Ritchie was an anti-confederate and a strong one, but he is a good lawyer and makes a good judge [...] I am strongly of the opinion that the Supreme Court should be comprised of judges who have had judicial training in courts of the first instance[5].

W.J.R. presided over the destiny of the Supreme Court of Canada for thirteen years. He died on September 25, 1892 at the age of seventy-nine, having sat as a judge for thirty-one years.

Although the book purports to be a study of W.J.R., it is, to a great extent, a study of the beginnings of the Supreme Court of Canada. In my view, this is what makes the book worth reading[6].

The establishment of the Supreme Court of Canada began in 1868 with Sir John A. Macdonald. A draft bill appeared in 1867 which was opposed on various grounds. The draft was sent to judges and lawyers throughout Canada for comments and criticism. W.J.R., as Chief Justice of New Brunswick, responded to the Prime Minister's request

3. One of the fathers of Confederation.

4. The other appointees were Telesphore Fournier, Jean Thomas Taschereau, Samuel Henry Strong and William Buell Richards, the first Chief Justice of the Supreme Court of Canada.

5. G. BALE, *Chief Justice William Johnstone Ritchie : Responsible Government and Judicial Review*, Ottawa, Carleton University Press, (Carleton Library Series, n° 165), 1991, p. 197.

6. G. BALE, *op. cit.*, note 5, ch. 12.

for comments. His response appears as Appendix 2 to the book and provides clear evidence of W.J.R.'s skills in legal drafting and of his knowledge of the law.

A second bill was presented by Macdonald in March of 1870 in response to the criticism to the original bill. One of the most objected to provisions of the original bill was dropped in the second bill. This provision would have given the Supreme Court of Canada original and exclusive jurisdiction to determine the constitutionality of provincial legislation. As a result, judicial review would have to go through the proper channels, that is from first instance to the Court of Appeal and then to the Supreme Court of Canada.

Following the tabling of the second bill, an issue was raised as to whether the intention of the government was to make the Supreme Court of Canada the final court of appeal for Canada thus displacing the Judicial Committee of the Privy Council. The Prime Minister's position was that Canada did not have the power to deprive British subjects of their right of appeal to the Judicial Committee.

The bill did not make it to legislation and one of the reasons was that the bill did not have any support from the province of Quebec. Neither the original bill nor the second one provided for minimal Quebec representation on the Supreme Court of Canada.

Macdonald was defeated in 1873 but the attempt to constitute the Supreme Court of Canada was carried on by the new Prime Minister, Alexander Mackenzie. The new Prime Minister entrusted this mandate to Telesphore Fournier, his Minister of Justice.

Fournier's Supreme Court bill, based on Macdonald's previous drafts, was sent to Parliament in 1875 and became legislation. The bill did away with the Supreme Court's original jurisdiction (Macdonald's original bill gave the Supreme Court original jurisdiction in revenue, admiralty and other matters where the federal crown was a potential party) which was transferred to a new court, the Exchequer Court of Canada. The judges who would sit on the Exchequer Court would be the judges of the Supreme Court of Canada. Two of the Supreme Court of Canada judges would have to be from Quebec. Thus, eight and a half years after Confederation, Canada had a national court of appeals.

However, the issue of appeals to the Judicial Committee of the Privy Council was not dealt with. This matter was then as emotional and as symbolic to many canadians as the Canadian Bar Association proposal at its 1978 annual meeting (in Halifax) to abolish the monarchy for Canada. The issue was resolved by compromise in 1876 and as a result, the Judicial Committee remained the final Court of appeals for Canada.

Turning to specific chapters of the book I especially enjoyed chapter 10 entitled « Judicial review and Confederation ». In this chapter, the author points out that the *British North America Act*, 1867 (« *B.N.A. Act* ») did not expressly provide for judicial review of laws enacted either by Parliament or by a provincial legislature. In other words, who was to determine whether a law was outside of the powers assigned to the two orders of government pursuant to sections 91 and 92 of the *B.N.A. Act*. One group was of the view that the judiciary was the designated umpire to review legislation. However, another group was of the view that the matter should be resolved by the federal imperial power of disallowance. Appendix I of the book is the opinion of Judge Steadman of the York County Court which was delivered in 1868 precisely on this issue. According to Judge Steadman, the courts did not have the power to declare invalid laws enacted by Parliament or by the provincial legislatures. In Judge Steadman's view, had it been intended to give the judiciary the power to determine the validity of laws enacted by Parliament or provincial legislatures, no doubt specific provisions to that effect would have been inserted in the *B.N.A. Act*.

All in all, this is a good book. My only criticism is in respect of chapter 15 (« Judicial ethics and the double sitting ») and chapter 19 (« High art and law church ») which take up about thirty-five pages of the book and

which, in reality, only deserve five or six pages. The subjects dealt with in those chapters are not interesting or important enough to take up so many pages and so much of the reader's time. I say this considering that chapter 17 (« The Ritchie Court, its critics and character ») comprises only sixteen pages and is without doubt, of much greater interest. We are left with the impression that the author could and should have told us more about the Ritchie court.

In concluding, I would suggest to the reader that he read this book in conjunction with James G. Snell and Frederick Vaughan's *The Supreme Court of Canada : History of the Institution*[7].

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Jacques-Yvan Morin et José Woehrling, **Les constitutions du Canada et du Québec du régime français à nos jours,** Montréal, Éditions Thémis, 1992, 978 p., ISBN 2-920376-98-5.

Un bien beau livre en effet, qui a toutes les apparences d'un lingot d'or, tant de par son teint que de par sa taille, lingot frappé aux armes héraldiques des monarchies anglaises et françaises. Et la réalité du contenu est à l'avenant. Même s'il se présente pudiquement comme un recueil de textes commentés (voir l'avant-propos), cet ouvrage est bel et bien un traité de droit constitutionnel, pensé et écrit par deux spécialistes chevronnés. Alors que 337 pages reproduisent des documents constitutionnels, 573 pages présentent effectivement de façon systématique le droit constitutionnel canadien et québécois. Bienvenue donc au troisième traité de droit constitutionnel contemporain publié au Québec, après celui de Gérald A. Beaudoin (1990) et celui de Brun et Tremblay (2e éd., 1990).

Ce nouveau traité ne couvre toutefois pas l'ensemble du droit constitutionnel, du moins de façon détaillée. Les auteurs en préviennent d'ailleurs les lecteurs dans leur avant-propos. Deux chapitres importants du domaine du droit constitutionnel reçoivent ainsi un traitement sommaire : le partage fédératif des compétences entre le fédéral et les provinces (57 pages) et les droits de la personne (4 pages). Ces deux sujets, annonce-t-on, feront l'objet d'un ouvrage ultérieur. C'est donc dire, par le fait même, que certains autres sujets constitutionnels reçoivent une attention dont la substantialité interdit désormais que l'on puisse à leur propos ignorer l'ouvrage. Tel est le cas par exemple des institutions fédérales (91 pages), et plus encore des questions que soulève l'amendement de la Constitution (111 pages).

Mais ce qui fait surtout le propre de l'ouvrage des professeurs Morin et Woehrling, c'est sa volonté affirmée d'aborder le droit constitutionnel canadien et québécois par l'intermédiaire de l'histoire. Il se présente à cet égard comme les traités français présentent typiquement la première moitié de leur contenu : les constitutions de la France, des origines à nos jours... Or cette approche à la française convient singulièrement à la compréhension du droit constitutionnel d'un Québec qui a connu six constitutions depuis 1759 sans qu'il n'y ait jamais eu de rupture complète entre chacune d'entre elles. Aussi l'idée de consacrer la première partie d'un traité de droit constitutionnel aux régimes constitutionnels ayant précédé l'actuel nous apparaît-elle comme une riche innovation. De même d'ailleurs que l'idée de consacrer un chapitre important de cette partie à la constitution de la Nouvelle-France, question de ne pas perdre de vue certains enracinements.

Il eût probablement mieux valu situer également dans cette première partie de l'ouvrage les éléments historiques relatifs à la constitution actuelle et réserver la seconde partie pour l'étude de l'état présent du droit constitutionnel. L'idée de vouloir dire les deux choses sous la bannière unique de « l'évolution constitutionnelle » semble en effet avoir conduit à une appréhension textuelle et analytique de la matière constitu-

7. J.G. Snell and F. Vaughan's, *The Supreme Court of Canada : History of the Institution*, Toronto, The Osgoode Society, 1985.