

# Book Notes: The Lawmakers: Judicial Power and the Shaping of Canadian Federalism, by John T. Saywell

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# BOOK NOTES

*THE LAWMAKERS: JUDICIAL POWER AND THE SHAPING OF CANADIAN FEDERALISM.* BY JOHN T. SAYWELL. TORONTO: UNIVERSITY OF TORONTO PRESS, 2002. Pp. xx + 453. Index. \$37.50 cloth, \$29.95 paper.

BY TIMOTHY FITZSIMMONS

This authoritative and engaging book examines the evolution of Canadian federalism, as affected by the interpretation of the Canadian Constitution by the Supreme Court of Canada and the Judicial Committee of the Privy Council.

Sections 91 and 92 of the *British North America Act* were modelled on two sections of the Quebec Resolutions, the 1865 agreements on the division of legislative power that were intended to harmonize a discordant population. In *The Lawmakers*, Professor Saywell argues that after the passage of the *BNA Act*, provincial superior courts interpreted this new legislation in clear and coherent rulings that affirmed the framers' intention to create a strong central government. However, these decisions were often further appealed to the Judicial Committee of the Privy Council, beginning what the author terms "the long imprisonment."

In the decisions of Lord Watson, Viscount Haldane, and Lord Atkins, the Privy Council interpreted the Canadian Constitution with little reference to Canadian history and language or to the framers' intent. Moreover, the Privy Council severely reduced the powers of the federal government. After Lord Atkins' "watertight compartments" decision in *Labour Conventions*, Canada abolished appeals to the JCPC on December 10, 1949.

The Supreme Court of Canada did not abandon this judicial philosophy until 1978, when the Court held that Privy Council decisions were not binding. Yet in the interim, the Court began to forge its own jurisprudence that was not blind to context or external evidence. It made increasingly frequent references to scholarly texts, and formulated a philosophy that began a slow breach of Atkins' "watertight compartments." By the early 1980s, the Court was increasingly asked to confront political and constitutional issues. It responded by upholding a type of federalism that was apparent in the Quebec Resolutions—the constitution did not create a compact of provinces, not of two nations, but of a strong and balanced federal government.

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