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Abstract

In the aftermath of the 2016 US election, where new and disturbing constructions of otherness have once more become part of society’s legal and cultural discourse, *Honorary Protestants* finds a unique and unexpected poignancy. Fraser’s book reminds us how notions of equality, identity, citizenship, and justice reflect the attitudes of both individual communities and the broader society, and can be fully realized only through action, unity, and mutual understanding. When the British North America (BNA) Act was passed in 1867, section 93 guaranteed religious educational rights. Education was divided along religious lines, comprising of both Roman Catholic and Protestant denominational schools. Catholics and Protestants in Quebec enjoyed the right to denominational schools, but those rights did not extend to any other group—particularly, the Montreal Jewish community, who had a distinct and visible minority presence.

Book Review

“Honorary Protestants”: The Jewish School Question in Montreal, 1867-1997
by David Fraser

JORY BINDER¹

IN THE AFTERMATH OF THE 2016 US ELECTION, where new and disturbing constructions of otherness have once more become part of society’s legal and cultural discourse, *Honorary Protestants*² finds a unique and unexpected poignancy. Fraser’s book reminds us how notions of equality, identity, citizenship, and justice reflect the attitudes of both individual communities and the broader society, and can be fully realized only through action, unity, and mutual understanding.

When the *British North America (BNA) Act*³ was passed in 1867, section 93 guaranteed religious educational rights.⁴ Education was divided along religious lines, comprising of both Roman Catholic and Protestant denominational schools.⁵ Catholics and Protestants in Quebec enjoyed the right to denominational schools, but those rights did not extend to any other group—particularly, the Montreal Jewish community, who had a distinct and visible minority presence.

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1. JD Candidate 2018, Osgoode Hall Law School.
 2. David Fraser, *Honorary Protestants: The Jewish School Question in Montreal, 1867-1997* (Toronto: University of Toronto Press, 2015).
 3. *The British North America Act* is officially known and cited as *The Constitution Act, 1867* (UK), 30 & 31 Vict, C 3, reprinted in RSC 1985, App II, No 5. However, because Fraser’s book covers a specific historical period and the relevant actors at the time referred to the BNA Act, I will use the same appellation.
 4. Fraser, *supra* note 1 at 34.
 5. *Ibid* at 37.

Montreal Jewry sat awkwardly in a dual national, denominational, political, and educational structure.⁶ The majority of the province's Francophone, Roman Catholic population was excluded from effective economic power, while the Anglophone Protestant minority constituted the industrial, commercial, and financial elite of the province.⁷ Jews were obviously neither Protestant nor Roman Catholic. While the vast majority of the Montreal Jewish population chose to align themselves with the Anglophone Protestant minority for educational purposes, they never fully sat comfortably, often finding themselves couched between Anglophone Protestant anti-Semitism on the one hand, and Francophone Roman Catholic Jew-directed hatred on the other.⁸ The Jewish community decided that while they had tolerated the general atmosphere of Roman Catholic anti-Semitism that had always been present among their neighbours, they simply could not live with the idea of not having a right to education for their children.

Faced with alternating periods of hostility and tolerance, the Jewish community of Montreal carved out an educational way of life based on complex and continuing negotiations with the Protestant and Catholic school boards, the provincial government, and individual municipalities. The exchanges took place in a unique social, political, and cultural context, and divisions within the Jewish community itself—as different groups alternated between cooperation and militancy—only added to this complexity. In the face of the Constitution's racial and religious bias, the Jewish population developed its own system in the shadow of the law.

Honorary Protestants is a comprehensive study that examines the challenges that obstructed Montreal Jewry's ability to educate their children in the shadow of section 93, from the 1860s to the 1990s. Written by David Fraser, a professor of Law and Social Theory at the University of Nottingham, whose research focuses on legal aspects of the Holocaust, the book departs from his others in its overarching message that oppression can lead to individual strength, communal unity, and ultimately, to the social, political, and legal defeat of anti-Semitism. Montreal Jewry embodied a degree of agency and self-constitution that was paramount in the abolishment of the Jewish School Question. This rhetoric permeates *Honorary Protestants*, as Fraser celebrates a century-long Jewish struggle as an ultimate victory of equality, identity, citizenship, and justice.

The book is divided into a total of fourteen chapters that persuasively set out the historical narrative context of the Jewish School Question. Beginning

6. *Ibid* at 402.

7. *Ibid* at 39.

8. *Ibid* at 73.

with the origins of the issue in the 1860s, the book progresses through the first Jewish School Question and goes on to explain the implications of section 93 and the case of *Pinsler*—the constitutional barrier to the implementation of Jewish public schools.⁹ The book then recounts the 1903 solution that redefined Jews as “honorary Protestants” in the educational sphere.¹⁰ A major section of the book is dedicated to the legal proceedings surrounding the Jewish School Question in court and the consequent injustice created by the decision in *Hirsch*, discussed in depth below. Fraser concludes with a description of the social and political abolishment of the Jewish School Question altogether.¹¹

The attractiveness of Fraser’s book is not just how skilfully the history is told, or the comprehensiveness of the narrative. More poignantly, the book’s contribution lies in the power of Fraser’s contextual stance on the rule of law in the face of an evolving Canadian society characterized by immigration, the formation of cultural identity, and the fight for equal rights and full citizenship. The book does much more than merely describe history. To Fraser, this story demonstrates that constitutional law is not a dead end, and that the social and political forces that frame the law are even more significant than the law itself—the Jewish community necessarily carrying out their struggles “inside, outside, and in the shadows of strict legality.”¹² Providing insight into the political and social landscapes that Montreal Jews faced, Fraser focuses on the relationship between black and white constitutional rule on the one hand, and Jewish communal agency on the other, arguing that this dynamic deserves closer attention from other legal scholars. The significance of this tension lies in a century’s worth of attempts to overrule an unjust and discriminatory legal provision that stood as a barrier to justice and equality—principles that Fraser suggests should be aspirations of the Canadian legal system. Through his study of the nuances that make up the Jewish School Question, Fraser separates himself from other academics in this area by urging his readers to understand just how crucial these dynamics are.

One of the main reasons why *Honorary Protestants* makes for such a compelling read is because the book seeks to understand human agency in the face of oppression. Its overriding focus is on real people who resisted the religious prejudice embedded in section 93 and sought to create new meanings of

9. *Pinsler v The Protestant Board of School Commissioners* (1903), 23 CS 365, 1903 CarswellQue 152 (QCCS) [*Pinsler*].

10. Fraser, *supra* note 1 at 151.

11. *Hirsch and Another v Protestant Board of School Commissioners of Montreal et al*, [1928] AC 200, 1 DLR 1040 (PC)[*Hirsch*].

12. Fraser, *supra* note 1 at 403.

education outside the rule of law; real people whose commitment to citizenship, rights, and the struggle for equality strengthened over centuries in the face of injustice. In other words, it is a story of constitutional shortcoming not as human fallibility, but as a means for strength, unity, and the creation of identity. Other academics have suggested that Canada's political and constitutional structures forced Montreal Jews to negotiate their own self-identities.¹³ At this time, exclusionary religious prejudice was enshrined as a constitutional principle in section 93 at a time before multiculturalism and cosmopolitan citizenship was the norm.¹⁴ Two distinct narratives arise out of Fraser's portrayal of the Jewish School Question: first, the rather bland legal history of section 93 and its ability to block Jewish educational equality; and second, the more poignant and interesting story of the Jewish community's efforts—through lobbying, politics, debate, protest, litigation, and negotiations—to escape the injustice imposed on them by this constitutional provision. Fraser's focus on the second, more dominant narrative, which centers on the Jews' actions outside and in the shadow of the law, is precisely why this book surpasses other authors' attempts to bring political and social insight to the Jewish School Question. For example, David Rome's series of works on the subject consists of chapters that are mostly written to trace the legal trajectory of the Jewish School Question, and any remedial measures taken.¹⁵ In contrast, Fraser emphasizes that Montreal Jewry's claims for equality were situated in a broader political, social, and legal fight for civil liberties and human rights in general, making this a story not only about the struggle for rights in law, but other struggles for equality in Canada as well. Through this contextual framing, Fraser's work is better able to present the Jewish School Question in a way that allows the reader to get a realistic, multi-dimensional sense of the events that were transpiring.

One of the major themes running through this book questions whether in this context, the law was in fact an instrument through which equality could be achieved. This question in and of itself challenges the notion that law is the best mechanism to facilitate justice. For example, at the beginning of the book, Fraser states: “[the Jews saw] litigation as a legitimate and possibly fruitful avenue to be

13. See generally Michael Brown, Daniel Elazar & Ira Robinson, eds, *Not Written in Stone: Jews, Constitutions, and Constitutionalism in Canada* (Ottawa: University of Ottawa Press, 2003).

14. Fraser, *supra* note 1 at 38.

15. *The Drama of our Early Education* (1991), Montreal, Canadian Jewish Archives (Vol 44, ISBN 0-921895-56-9, ISSN 0576-5528); *Montreal School System 1924-1931*, Brief Report of the First Private Meeting of the Special School Commission (22 October 1924), Montreal, Canadian Jewish Archives (DA 11.1, box 6).

explored in their struggles for recognition and equality.”¹⁶ However, toward the end of the book, Fraser concludes: “Nothing had ever really been resolved via the courts in the entire history of the Jewish School Question.”¹⁷ His critique of law as a solution to the Jewish School Question is shared among many academics in this field—it is no secret that section 93 and the 1903 solution only exacerbated Montreal Jewry’s already brutal struggle. But *Honorary Protestants* doesn’t end there. Instead, with the knowledge that the courts continuously failed to resolve the Jewish School Question, Fraser contemplates what exactly law’s appropriate role was in the story. In Fraser’s words, the Montreal Jews “made [their] pleas as otherwise fully emancipated and equal citizens, who had complete legal access to all rights of that status, except in relation to education.”¹⁸ Ultimately, he seems to suggest that the Jewish community was only attracted to the idea of litigation because they believed that the courts embodied British justice and afforded them rights as Canadian citizens—as British subjects, they too were equal before the law. This presumption of equality was valuable in the face of their otherwise alien status. Thus, litigation was an outlet that allowed Montreal Jews to develop a Canadian identity and argue for core Canadian values of religious liberty—an outlet that allowed them to ‘fit in’ with the rest of Canadian society.

A large portion of the book is dedicated to analyzing two specific cases in which Jews underwent formal legal proceedings. *Pinsler v The Protestant Board of School Commissioners* excluded Jews who did not pay school tax because they did not own real estate, the practical effect being that the children of the vast majority of Montreal Jews were excluded from schools simply for living in rented accommodation.¹⁹ Decades later, *Hirsch and Another v Protestant Board of School Commissioners of Montreal* clarified that Jewish students had no rights in relation to Protestant or Roman Catholic dissentient schools.²⁰ Obviously, the outcome in both cases was not ideal for the Jewish community, with *Hirsch* effectively obliterating any educational rights whatsoever. Yet, Fraser emphasizes that the law would not stand in the way of compromise, dialogue, discussion, and negotiation. It is this unique framing of the Jewish School Question that makes *Honorary Protestants* so significant, as Fraser converts what is historically viewed as a purely legal problem or cultural challenge, into a “*living process* and

16. Fraser, *supra* note 1 at 48.

17. *Ibid* at 359.

18. *Ibid* at 49.

19. *Supra* note 8.

20. *Supra* note 10; Fraser, *supra* note 1 at 333.

an often messy one at that.”²¹ Often repeating the phrase, “nothing here was carved in stone,” Fraser demonstrates how the Jewish community demanded its place in the political realm not merely through legality or in the constitutional framework, but informally outside it—in law’s shadow—through conflicts and compromises, legal defeats, and political and social victories.²²

Perhaps most significantly for present circumstances, Fraser concludes that Jewish communities were able to finally achieve school equality because “throughout the 1950s, 1960s, and into the 1970s they had presented a united voice.”²³ Education was viewed as a virtuous enterprise and no matter how internally divided the Jewish community may have been, there was always an overriding consistent voice on this front, as the ability to send their children to school meant the ability to truly become a Canadian citizen.²⁴ While Elazar, Brown, and Robinson argue that Canadian society has provided a separate space for Jews to act *between* the Roman Catholics and Protestants,²⁵ Fraser’s book argues that the Jews of Montreal found a place for themselves *within* this bi-partite, constitutional dynamic by appealing to broadly shared political and social values and convincing the two groups that “strict adherence to constitutional legal principle would not only result in a basic injustice ... but also the political and social unrest and uncertainty likely to arise from the constitution were more trouble than legality was worth.”²⁶ Thus, though educational equality was not afforded to Montreal Jews in the constitution, the Jewish School Question finally culminated because “Protestants and Roman Catholics echoed Jewish demands for democracy on the educational front.”²⁷ In the end, all parts of the divided Montreal population united together over one shared vision of community-constituted education of their children, even though the section 93 barrier remained intact. In effect, Fraser paradoxically suggests that the only way to abolish section 93 was for Montreal Jewry to act outside the law all together, convincing the Roman Catholics and Protestants to do the same. In one of his concluding passages, he states the following:

Protestants, Roman Catholics, and Jews; teachers, students, and school administrators; clergy, community leaders, bureaucrats, and elected officials – everyone had engaged in struggles through which they had constituted themselves

21. *Ibid* at 153 [emphasis added].

22. *Ibid* at 153, 218.

23. *Ibid* at 385.

24. *Ibid* at 38.

25. *Supra* note 12 at 6.

26. Fraser, *supra* note 1 at 402.

27. *Ibid* at 385.

and their communities, sometimes inside, sometimes outside, and often alongside, the formal limits of constitutional law.²⁸

Thus, though the Jewish community achieved educational equality in fact in the 1970s, they never did so in law until the constitutional amendment in 1997. Fraser suggests that remarkably, for those twenty-seven years, the illegality of Jewish educational rights made no difference, as long as the Montreal Jews were aligned with the Roman Catholic French Canadians and Protestant Anglophones on the necessity of community-controlled educational rights.

In the end, then, the Jewish School Question was defeated by universal human values and unity, even if the law did not allow it. Fraser's telling of the Jewish School Question answers his initial inquiry as to whether the law is an instrument through which educational equality could have been achieved for the Montreal Jewish community. He closes the book with a suggestion that abiding by strict legality would have never led to Montreal Jewry's eventual self-understanding, identity, and place as Canadian citizens. Instead, Jewish educational rights were eventually realized through a mutually respected vision of education with the Roman Catholics and Protestants. The book aptly achieves its goal, telling a detailed socio-political, legal, and historical story of the Jewish School Question from its origins to its ending, while simultaneously offering the reader a glimpse of hope for humanity. In society's current deeply divided state, this book's message of putting aside our differences and coming together in pursuit of shared morals for the benefit of our children is both welcome and necessary. For that reason alone, this book deserves a thoughtful reading by academics both inside and outside the legal profession.

28. *Ibid* at 384.

