

David C. Hawkes: Negotiating Aboriginal Self-Government: Developments Surrounding the 1985 First Minister's Conference. Kingston: Institute of Intergovernmental Relations, 1985. 48 pages.

Negotiating Aboriginal Self-Government by David Hawkes is a clear and well written account of the Aboriginal constitutional process leading up to and including the 1985 First Ministers' Conference (FMC). In his work, Hawkes provides some important background to the constitutional process which culminated in the proclamation of the Constitution Act 1982 and the inclusion in Canada's Constitution of those sections which deal with Aboriginal matters. He also provides the reader with brief summaries of the first two FMCs on Aboriginal constitutional matters and a more indepth assessment of the 1985 FMC. The overview is accurate, and objective. It is an excellent source of secondary research material, and provides some broad conclusions (but no speculations).

As well as providing a useful overview, Hawkes offers an incisive analysis of the federal-provincial strategies involved in negotiating and attempting to achieve a self-government amendment. The analysis is, for the most part, accurate, and demonstrates a clear understanding of intergovernmental thinking. However, in the analysis, there are several key points presented by Hawkes which are open to challenge.

Though the 1984 FMC did not succeed in achieving a consensus on a self-government amendment, Hawkes' view that it was a "colossal failure" is open to serious challenge. In Canada, constitutional change has historically been a time consuming process. In particular, changes relating to the relationship between Aboriginal peoples and the various governments have been painfully slow and evolutionary, as opposed to revolutionary. At the 1984 FMC, the federal government offered to recognize, in constitutional terms, "institutions of self-government." This offer was supported by several key provinces. Between 1983 and



1984, governments had shifted their focus from identifying and defining specific Aboriginal and treaty rights, to considering an amendment which would fundamentally alter Crown-Indian relationships. The 1984 Conference put the federal government on record, with the support of several key provinces, in challenging conventional notions of Canadian federalism by proposing a constitutional amendment on self-government. This was by no means a "colossal failure"; on the contrary, it was a watershed in the multilateral constitutional process.

David Hawkes also notes that the 1985 FMC marked a turning point in the Aboriginal constitutional process because it shifted the focus from the "top-down" to the "bottom-up" approach in self-government negotiations. At the 1985 FMC, the federal government introduced an amendment which, rather than define self-government, focused on a negotiation process. At the same time, community negotiations were initiated in bilateral and trilateral forums. The introduction of the community negotiations did not serve to shift the focus from top-down to bottom-up, but provided a practical means of establishing self-government models which form an integral part of the top-down strategy. As a result of these practical arrangements, governments now have a better understanding of the nature and scope of self-government. However, these arrangements did not, and were never intended to, shift the focus away from the "top-down" strategy to a community-oriented approach.

A further comment worth noting relates to a technical interpretation of what the 1985 federal proposal was intended to accomplish. As David Hawkes mentions, the 1985 federal proposal would recognize those rights of self-government which were to be negotiated and, in addition, would constitutionally commit governments to enter into the negotiations. But Hawkes goes on to comment that "these agreements would receive constitutional protection under section 35(2) of the Constitution Act, 1982, as do treaties and land claims agreements." However, the amendment as proposed by the federal government was never intended to give



the self-government agreements protection under section 35(2). This was an issue that had been discussed, but never agreed to. The rights of self-government as set out in the negotiated agreements were to be protected under the provisions of the new proposal, but were not to be protected under the existing section 35(2). In fact, some governments had insisted that this not be the case because it might prejudice their legal view that self-government is not an existing Aboriginal right under section 35.

A final observation which should be mentioned, not as a criticism, but as a comment on approach, relates to the lack of attention given to the Aboriginal proposals. Each of the four national Aboriginal associations had tabled, at one time or another, their own self-government proposal. Indeed, the Assembly of First Nation's (AFN) "composite amendment" had been and continues to be the focal point of the Assembly's constitutional strategy. In fact, much of the political intrigue around the negotiating process appears to have involved moving the AFN away from its composite amendments, towards a more flexible approach. However, to date, the composite amendments, and perhaps to a lesser degree, the constitutional proposals of the other Aboriginal associations, remain as Aboriginal objectives in the constitutional process. Hawkes fails to adequately discuss these important Aboriginal proposals and overly concentrates on the federal-provincial elements of the multilateral negotiating process.

Notwithstanding the preceding comments, Hawkes' overview of the process of negotiating Aboriginal self-government is an excellent account of the political intrigue and intergovernmental politics leading up to and including the 1985 FMC and the June Ministerial meeting. Overall his overview is well written, accurate and objective.

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