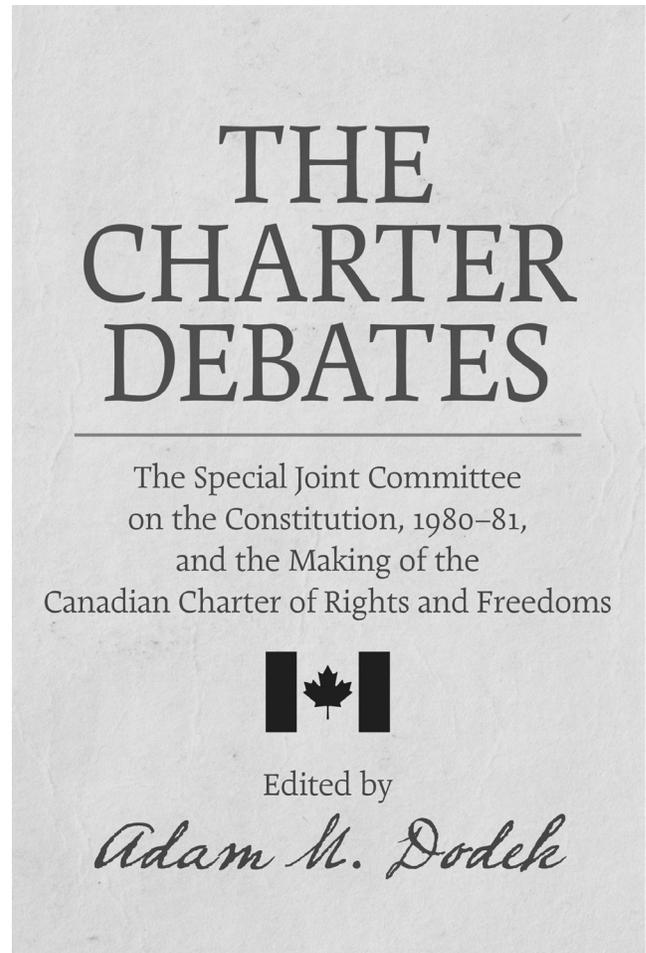


Parliamentary Bookshelf: Reviews

Adam M. Dodek, *The Charter Debates: The Special Joint Committee on the Constitution, 1980-81, and the Making of the Canadian Charter of Rights and Freedoms.*

In *The Charter Debates*, Adam M. Dodek has resurrected the forgotten history of the debates over the Canadian *Charter of Rights and Freedoms*. This book examines the activities of the Special Joint Committee of the Senate and House of Commons on the Constitution, 1980-81 (Joint Committee), which studied the proposed *Charter* for three months from November 1980 to February 1981. The Joint Committee held 106 meetings over 56 sitting days and spent 276.5 hours hearing from experts and witnesses representing various groups. According to Dodek, this was “the first time that ordinary Canadians became participants in constitutional change rather than mere observers or silent subjects of it.” (4) This in turn legitimized the process and set a precedent for future constitutional questions. Dodek’s main argument is that the deliberations of the Joint Committee matter. They matter not only to constitutional history, but they should also be considered by courts as legitimate sources of Charter interpretation.

Dodek argues that in the years following the adoption of the Charter, decisions by the Supreme Court of Canada dismissed this important part of Charter history. In the case of the *BC Motor Vehicle Reference* (1985), the Supreme Court severely limited the use of the minutes from the Joint Committee. In this case, the court decided that accepting the statements made in committee deliberations would in effect “freeze” the rights contained in Charter at the moment they were adopted. This “originalism” contrasted with the “living tree doctrine of constitutional interpretation,” which allows for the rights in the Charter to grow and adapt over time. Dodek views this as a “false dichotomy” (11). The author is not suggesting an originalist view of the Charter. Rather, he argues the debates of the Joint Committee should inform the court in a similar manner as do philosophers, social scientists, or foreign case law.



The Charter Debates is organized in two parts. In part one, Dodek contextualizes the broader history of the Charter deliberations. Chapter one explores the history leading to the creation of the Joint Committee, including the 1968 policy paper, *A Canadian Charter of Human Rights*, the extensive consultative work of the Molgat-MacGuigan Committee, and the ill-fated but prescient *Victoria Charter*. The 1978 white paper, *A Time for Action*, was later turned into a failed government bill. Among the proposals was to turn the Senate into a new House of the Federation.

Although he had given up in 1979, Pierre Trudeau renewed his efforts at constitutional reform upon his return to government and the failure of sovereignty-association in the 1980 Quebec referendum.

Chapter two examines the cast of characters found at the Joint Committee. This includes the “contrasting mavericks” in the two co-chairs, Senator Harry Hays and then MP (now Senator) Serge Joyal. The Joint Committee had 25 members altogether. This included government Liberals who were likely picked in consultation with the Prime Minister’s Office, and the opposition Progressive Conservatives who opposed unilateral patriation while supporting measures aimed to strengthen some of the *Charter* provisions. Represented in part by rookie MP Svend Robinson, the NDP sought to expand the scope of the *Charter*’s protections. The Joint Committee heard from various government witnesses, including Minister of Justice Jean Chrétien and other senior members from the Department of Justice. They also heard from a variety of groups representing different parts of Canadian society, including women’s organizations, civil liberties groups, and Indigenous communities. Chapters 3 and 4 outline the narrative of the Joint Committee’s work, both during their deliberations and afterward.

In part 2, Dodek’s analysis gives way to a careful selection of transcripts taken directly from the minutes of the Joint Committee. Chapters 5 through 15 are divided into the particular sections of the Charter that aroused the greatest discussion, including legal rights, equality rights, and language rights, among others. Each chapter includes a brief

contextual introduction and the precise text of the *Charter*, both before and after the Joint Committee’s deliberations. In highlighting the discussions between parliamentarians and the witnesses who appeared before the Joint Committee, Dodek provides insight into the role of experts and groups influencing the language of the *Charter*. At the same time, he notes that many groups were excluded from the process. There were also clear instances where the influence of witness testimony was limited. For example, gay activists Peter Maloney and George Hislop appeared before the Joint Committee to argue for the inclusion of sexual orientation in the equality rights section. Maloney argued that the protection with respect to “sex” was not sufficient to protect lesbians and gay men. Robinson later raised this question to Chrétien, who replied “that will be for the court to decide.” (268).

This book is an excellent resource for anyone interested in the history of the *Charter*. I also recommend *Charter Debates* for anyone wishing to gain insight in the deliberative process of parliament. Academics, legal researchers, teachers, and students will find this book insightful. Dodek’s argument is clear and written in language accessible to broad audiences. The legal concepts he explores will provoke insightful discussions among students in various programs in the social sciences and humanities. The use of primary source material makes this a treasure for historians wishing to explore the *Charter* in their classrooms.

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