

## BOOK REVIEWS

NATURAL RESOURCES AND PUBLIC PROPERTY UNDER THE CANADIAN CONSTITUTION. By Gerard V. La Forest. University of Toronto Book Press. 1969. Pp. xiv and 230. \$11.50.

Professor, now Dean, La Forest, has been enriching our understanding of Canadian constitutional law by his monograph and periodical contributions for well over a decade. His study in 1955 of "Disallowance and Reservation of Provincial Legislation",<sup>1</sup> and his monograph in 1967 on "The Allocation of Taxing Power under the Canadian Constitution"<sup>2</sup> were valuable additions to the meagre specialist literature on the Canadian Constitution. His latest book, a reworking of a series of lectures delivered in the Faculty of Law, University of Montreal in 1962, brings another particular area under scholarly scrutiny.

The subject of the book concerns in part the blend of colonialism, and later of federalism, with the feudal remnants of Crown authority in relation to property and revenue from property. Principally, however, it provides a detailed examination of the interaction of the legislative power of Parliament and the proprietary authority of the respective Provinces under the concurrent distribution of law-making power and of the property and revenues of the confederating Provinces, effected by the British North America Act. The problems raised by this distribution and their treatment by the Courts are pithily sketched in the four page introduction. What follows in the book puts historical and analytical flesh on the issues.

In some degree, the realism of the Confederation Act in speaking of property "belonging to" Canada or to the Provinces was modified by judicial obeisance to the concept of the indivisibility of the Crown, a concept which, for federal purposes at least, had to yield to a differentiation between the personal Crown and the executive Crown. Whatever doubts there may be whether the British North America Act put public property (albeit formally vested in the "Crown") beyond discretionary, executive disposition, the fact is that whether the property be federal or provincial, it is the respective legislatures that have the controlling authority.

What property and what pre-Confederation revenues were left with the Provinces and what passed to the new Dominion is not today much in doubt, even conceding some hazy areas in respect of public harbours and offshore mineral rights. The central questions relate to the effective power which property ownership bestows where legislative power is, apparently, wanting. For the Provinces, this invites consideration of economic policies on resource exploitation, policies which may collide with federal exercise of authority over international and interprovincial trade. For Canada, this invites consideration of the exercise of its spending power and its lending power as indirect means

<sup>1</sup> La Forest, *Disallowance and Reservation of Provincial Legislation*, (Ottawa) 1955.

<sup>2</sup> La Forest, *The Allocation of Taxing Power Under the Canadian Constitution*, (Toronto) 1967.

(perhaps, they are no longer to be regarded as indirect) of regulating activities to which they have been judicially denied straight access.

Dean La Forest has carefully narrated the course of post-confederation distribution of public resources as related to those Provinces that became part of Canada after 1867 and particularly, as related to those federal territories out of which the Provinces of Alberta and Saskatchewan were carved. Federal Government retention of natural resources in those Provinces and in Manitoba was at variance with the position in the other Provinces, but relative equality was restored by The Natural Resources Agreement which became effective in 1930. For British Columbia, too, the balance was restored by federal surrender in 1930 of the so-called railway belt and Peace River block that had been granted to Canada by British Columbia in connection with the railway undertaking that was a term of British Columbia's entry into Confederation.

Similarly, the book canvasses the scope or meaning of the various property clauses of the Constitution; for example, what passed to Canada under the phrase "public harbours" and under "rivers and lake improvements"; and what remained to the Provinces under the designation of "royalties" (a great deal, as it turned out, under the Privy Council's interpretations).

Two chapters in this aspect of the study deserve special attention; one is on offshore submarine resources, the subject of a recent judgment on a reference to the Supreme Court of Canada;<sup>3</sup> and the other is on property in Indian lands, a subject that has peculiar complexities, fed partly by reason of the assignment to Canada, as an exclusive legislative head, of power over "Indians, and Lands reserved for the Indians".

From the standpoint of federalism, the most significant parts of the book are the last two chapters, entitled respectively "Federal Legislative and Executive Power" and "Provincial Legislative and Executive Power". In the first of these the author assesses, *inter alia*, federal legislative authority in relation to activities on federal property (it is comprehensive), the reach and regulatory effect of the spending power (a power which has deep political implications in the way and the extent to which it is used), the exercise of federal legislative power to subject provincial property to federal policies, and the question (which needs extensive examination) of expropriation of private as well as of public property by or under the authority of the federal Parliament. The chapter concludes with a brief treatment of section 125 of the British North America Act, immunizing lands or property of Canada or any Province from taxation.

The parallel chapter on provincial legislative and executive power exhibits on the one hand the far-reaching authority of the Provinces over private property therein and, on the other hand, the limitation of their authority as respects federal public property. Case law has revealed particular problems for the provincial expropriation power where federal companies are concerned but I doubt whether the late Chief Justice Lett's judgment in the *British Columbia Power* case<sup>4</sup> can be regarded

<sup>3</sup> *Re Offshore Mineral Rights of British Columbia* [1957] S.C.R. 792.

<sup>4</sup> *British Columbia Power Corp. v. Attorney-General of British Columbia* (1963) 44 W.W.R. 65.

as settling them. As Dean La Forest observes, the authorities relied upon in that case "are certainly open to another interpretation".

This is a thoughtful and fully researched study. Teachers and students of constitutional law should be grateful for the collection and organization of the statute law and case law on the property sections of the Constitution. The way has been cleared for the kind of further assessment that is the function of the scholarly article in a periodical.

—BORA LASKIN\*

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LE CONTROLE JUDICAIRE DE L'ADMINISTRATION AU QUEBEC. Par Rene Dussault. Quebec: Laval University Press. 1969. Pp. xxv and 487. (\$8.75)

L'ouvrage du professeur Dussault est de grande actualité. Les gouvernements contemporains confient d'énormes responsabilités administratives et quasi-judiciaires à des bureaux et des régies spécialisés. Pour des raisons d'efficacité et d'économie, ils tentent de soustraire autant que possible l'opération de ces agents administratifs au contrôle judiciaire. Les parlements deviennent impuissants à surveiller les multiples activités de leurs administrateurs. L'intérêt collectif, tel que conçu par l'administration, entre souvent en conflit avec les intérêts, et parfois avec les droits, des particuliers.

L'auteur présente une étude historique de ce développement. Il a fait des recherches profondes sur la jurisprudence qui le touche, non seulement au Québec mais au Canada, en Angleterre et sur le continent européen. Les tribunaux judiciaires assurent l'application de la "rule of law", ou de la suprématie de la loi, pour éviter les injustices et assurer au citoyen le respect de ses droits d'après les normes juridiques traditionnelles. Reconnaisant la souveraineté du Parlement dans le domaine qui lui est propre, les Cours admettent le pouvoir des agents administratifs de rendre des décisions finales, même au détriment des individus, à condition que leur juridiction soit exercée légalement. Elles n'interviennent, par les brefs historiques de certiorari, mandamus et prohibition, et dans Québec, d'après les dispositions du Code de Procédure civile, que dans les cas d'absence ou d'excès de juridiction. Ceci est vrai de toutes les Provinces du Canada.

L'oeuvre de Me Dussault est d'un intérêt spécial pour la profession légale, juges, avocats, étudiants. Elle sera également utile aux législateurs, aux administrateurs et à tous ceux dont les actes et les droits sont affectés par des décisions administratives.

De lecture facile et agréable, bien imprimé et relié, le texte de Me Dussault emprunte des divisions classiques et logiques: deux parties principales, l'existence du pouvoir de contrôle judiciaire et son exercice. Ces parties se divisent en deux titres de deux chapitres chacun, qui sont à leur tour subdivisés en deux ou trois sections. L'historique de chaque aspect du sujet, ses particularités sont donc faciles à suivre et l'exposé en est clair et logique.

Il ressort de cette oeuvre que le problème, loin d'être restreint au Québec est d'actualité partout. Les décisions de la Cour Suprême du