

THE JUDICIAL COMMITTEE AND THE BRITISH NORTH AMERICA ACT; An Analysis Of The Interpretative Scheme for the Distribution of Legislative Powers; G. P. Brown, University of Toronto Press, 1967: 246 pages.

Professor Brown states that:

"Most accounts of the Judicial Committee's interpretative scheme tend not only to confuse evaluation and analysis, but to neglect interrelationships and implications;"

The book is exactly what it purports to be, an analysis. It is not a standard legal text because it does not purport to set down the present limits of the various heads of jurisdiction. It is not primarily a history tracing the chronological development of doctrines. Neither does it compare the Canadian constitution with those of other countries. Supreme Court decisions are only treated as being illustrative.

The book is divided into four sections: Jurisprudential Assumptions; the Compartment Problem; the Ambit Problem; and the Consignment Problem.

The Compartment Problem area of the book deals with the relative priority to be given to the parts of sections 91 and 92. Professor Brown favors the three-compartment view in which the "Peace, Order and Good Government" clause is a residuary head behind the specific heads of sections 91 and 92. This choice is contrary to that of the O'Connor Report whose two Compartment view he quotes:

"Neither the Dominion nor the province were given any authority or jurisdiction, exclusive or otherwise, over any field of law. Each, instead, was given legislative authority to enact statutes *in relation to matters coming within* certain classifications some whereof might be called fields of law but even if so, by far the most whereof certainly could not. Section 91 and 92 classify, to a large extent, *government utilities and services*. The law-making authority, however, was not over the "field" or classification, but over the matter . . . which "came within" and was assignable by the court to the class, or . . . to the field, whether of service or of law, as the case might be."

Professor Brown feels that this view is neither adequately established nor capable of being an integral part of the interpretative scheme.

The Four Compartment view mentioned only in one old case resembles the Three Compartment view except that 92 (16) is deemed to match the Peace, Order and Good Government clause in deciding scope.

The Ambit Problem area of the book deals with the question of whether the heads of jurisdiction are to be generally interpreted to keep the federation flexible and adaptable or whether the heads are to be interpreted rigidly to safeguard the original compromise. In this section Professor Brown outlines the ambit of some contentious heads.

In the Consignment Problem area, the theory by which a matter is consigned to a head of jurisdiction is dealt with. Recurrent words and phrases through this area of the book are: entrenching, encroaching, ancillary, incidental, dual aspect, emergency doctrine, occupied field, dimensions doctrine, cooperation doctrine, and severability.

This is a book of complex ideas and presents some difficulty to the non-expert reader. For the expert reader also, it will likely take more than one reading to appreciate and follow the interrelation of concepts. However, such a macro-analysis should be very useful to establish an overall facility with the B.N.A. Act.

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