

LE PARTAGE DES POUVOIRS

by Gerald A. Beaudoin

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The end of 1980 is a frustrating time to finish a text on the Canadian constitution. In any other field of law a work of this magnitude would be regarded as a treatise of enduring value. However Professor Beaudoin must face the prospect that a major constitutional revision will make much of his book obsolete in a matter of years.

The author accepts this fate with good grace. As he points out in the introduction, before revising the division of powers it would be helpful to know what is being revised. Throughout the book he supplements his discussion of the actual division of powers with references to the various proposals for constitutional reform.

The book begins with a brief introduction to the Canadian constitution and two introductory chapters on the role of the courts in interpreting the division of powers and the doctrines of constitutional interpretation. The remaining fifteen chapters deal with the various headings of federal and provincial power. A brief conclusion presents some of the author's suggestions for constitutional change.

A reader from English Canada is immediately struck by the Quebec perspective which pervades the book. English Canadian writers have traditionally favoured a larger role for the federal government and have tended to deplore the restrictions the Privy Council placed on federal powers. Professor Beaudoin, on the other hand, regards the decisions of the Privy Council as a desirable attempt to introduce some equilibrium to what was originally an over-centralized federalism.

This difference of perspective is particularly evident in the chapter on the federal general power. The residual and emergency theories of the power are discussed in detail. With respect to the emergency power, the author supports the view advanced by Mr. Justice Beetz in the *Anti-Inflation Act Reference*¹ that the exercise of the power amounts to a temporary, unilateral revision to the division of powers by the federal parliament.

By contrast, the national dimensions theory is scarcely dealt with at all. The author only mentions the theory to express the opinions that Quebec jurists have always regarded it as a serious defect in the federal system and that the *Anti-Inflation Reference* amounts to a virtual rejection of the doctrine. However, he does admit that the judgement of Chief Justice Laskin leaves the door open to the revival of the doctrine. In light of this admission a more extensive discussion of the theory would have been helpful.

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1. *Reference Re Anti-Inflation Act*, [1976] 2 S.C.R. 373.

The quality of the discussion of the various specific heads of power varies with the amount of case law available. Topics such as taxation, economic regulation, property and civil rights, and transportation are dealt with at length. On the other hand politically significant but judicially neglected fields such as health care, social welfare and culture are dealt with very briefly.

The chapter on economic powers is particularly thorough. The author begins by discussing the uncertain boundary between the federal trade and commerce power and the provincial power over property and civil rights. He then proceeds to discuss the application of these two powers, and various more specific powers, to particular subject areas.

The chapter on international affairs is also valuable. The author combines a study of treaty implementation with a discussion of the controversy between Ottawa and Quebec as to the provincial treaty making power. In addition to Canadian case law he considers international law and the practice of other federal states. His own solution, presented in the conclusion of the book, is that the provinces should be allowed to participate in making treaties relating to matters within provincial authority but they should be subject to federal supervision in the interests of a uniform foreign policy.

For the next few years at least, this book will be valuable to students of constitutional law both as a review of the existing division of powers and an introduction to Quebec thought on the subject. The extensive footnotes and bibliography included with each chapter also make the book a useful reference tool.

An English translation would be welcome but meanwhile the author's clear and straightforward style should be well within the reach of anyone with some university French and a basic knowledge of constitutional law.