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## Book Review: Les aspects généraux du droit public dans la Province de Québec, by Louis Baudouin

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*Les aspects généraux du droit public dans la Province de Québec.*

By LOUIS BAUDOIN, Professor of Law, McGill University.  
Paris: Librairie Dalloz. Montreal: L. B., 54-51 Durocher. 1965.  
Pp. 432. (\$10.00)

Professor Baudouin's book contains the first comprehensive analysis of the general aspects of the public law of the Province of Quebec ever to be published. A book on this subject was long overdue and it is fortunate that it is appearing at a very crucial time in the political history of Canada.

The fact that this study is written by a Frenchman, who has been a Professor of Law at McGill University for almost two decades and a keen observer of Quebec political events, enhances its value as the author's views can be more objective than if they had been those of a Canadian.

It must also be noted that the book was published in France with the financial assistance of the French "Centre National de la Recherche Scientifique" as volume XVII of the famous series entitled "Les systèmes de droit contemporain".

*Les aspects généraux du droit public dans la Province de Québec* is only volume one of a series prepared by Professor Baudouin that will include the general aspects of the private law of the Province of Quebec (vol. two) and the general principles of Canadian constitutional law (vol. three).

The book is divided into four parts. The author presents the

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constitutional framework of the Province of Quebec, proposes a general theory of statute law in the province, describes Quebec jurists and analyses the implications for Quebec of the general classification of public and private law that prevails in France. The first part is probably the most interesting one as it contains a wealth of information not readily available elsewhere. Professor Baudouin very carefully analyses the executive power in Quebec, particularly the role of the Lieutenant Governor, as he believes that it is impossible to understand the sphere of application of the law without having a thorough grasp of the governmental and administrative structures of the province. His study of the civil service leads him to advocate the creation of a special programme for the training of civil servants.<sup>1</sup> The legislative and judicial powers are analysed in turn. A fascinating and most important chapter on the role of the Roman Catholic Church in the Province of Quebec ends this part of the book. After noting that in principle Church and State are separated, Professor Baudouin points out that: "Cependant, si l'on descend dans la réalité et même si l'on se fie simplement aux apparences, on peut constater que, tant sur le terrain du droit civil que le terrain du droit public, l'Eglise Catholique Romaine s'est vue conférer de véritables privilèges juridiques et s'est taillée une place de choix."<sup>2</sup>

The part of the book devoted to the general aspects of statute law<sup>3</sup> contains a most instructive chapter on the problem of the retroactive effect of laws.<sup>4</sup> Professor Baudouin deplors the poor draftmanship involved in the preparation of the French version of Quebec laws which he says is due to the English origin of most of them. The style is clumsy and the syntax very poor. He opposes a literal translation of legal texts from one language into another.<sup>5</sup>

Part III contains a survey of the legal profession and of law schools. The chapter on notaries should be of particular interest to common law lawyers. As for the law schools the author notes that:<sup>6</sup> "Les Facultés de Droit sont en passe de devenir des centres de culture générale et non plus seulement des écoles supérieures techniques dispensant le droit comme de la science en boîte ou même en comprimé. . . ." Let us hope that this evolution will soon be complete although for the moment there are still too few visible signs of it. The author also feels very strongly that law schools and their programmes should be freed from the control

<sup>1</sup> P. 65.

<sup>2</sup> Pp. 133-134.

<sup>3</sup> Preparation of statutes, enactment, coming into force, retroactivity, amendments.

<sup>4</sup> P. 187 *et seq.*

<sup>5</sup> Pp. 181-183. See also John D. Honsberger, *Bi-Lingualism in Canadian Statutes* (1965), 43 *Can. Bar Rev.* 314.

<sup>6</sup> P. 426.

of the Bar in order to become centres of legal culture and research exclusively.

The last part is devoted mostly to some aspects of administrative law and especially municipal law and labour law. As Professor Baudouin indicates:<sup>7</sup> "Il nous semble que tant qu'il n'y aura pas de tribunaux administratifs autonomes, il ne saurait être question d'un droit administratif véritable. Aucune science juridique administrative ne pourra être établie au Canada français tant que ces éléments se dilueront dans un milieu étranger à son esprit ou à sa finalité suprême."

The author concludes by the observation that:<sup>8</sup>

"Dans les limites qui lui sont assignées par l'Acte de l'Amérique du Nord britannique, la Province de Québec se réorganise comme un Etat. Il s'agit d'un Etat au sens où l'entend la science politique, et non d'un Etat souverain puisqu'il est encore enrobé dans le fédéralisme canadien." He also emphasizes that economic planification to enable the people of Quebec to be "maître chez nous" and develop their tremendous natural resources will require a complete reorganization of all sectors of government, a true "planification administrative".<sup>9</sup>

Lawyers and political scientists in Canada and particularly those living in the Province of Quebec should be grateful to Professor Baudouin for his interesting and highly informative pioneer work. This is not the first time that he has contributed to the development of legal science in the Province of Quebec.<sup>10</sup> The quality of the first volume augurs well for the two others that will follow under the same authorship.

Professor Baudouin's general thesis is that the public law of the Province of Quebec has been influenced by English law for too long and that it is high time to do away with Anglo-Saxon legal tradition and methods of thinking to bring Quebec public law in line with the major tenets of French legal tradition, especially in the field of administrative law. There is, however, no definite evidence that the people of the Province of Quebec are prepared to adopt the French system wholly or even in a slightly modified form. The historical development of public institutions in this province, her economic structure as well as the outlook of her people would not, I believe, be conducive to such a change. It must be recognised, however, that French administrative law is highly sophisticated and that parts thereof could be used profitably in both Quebec and the common law provinces.

Professor Baudouin analyses many problems that are not necessarily peculiar to the Province of Quebec and explores many

<sup>7</sup> P. 382.

<sup>8</sup> P. 425.

<sup>9</sup> P. 426.

<sup>10</sup> See for instance, *Le droit civil de la Province de Québec, modèle vivant de droit comparé* (1950).

avenues. Some of his suggestions for improvements of the present system deserve careful study.

To sum up he has succeeded in presenting an excellent synthesis, "une vue d'ensemble" of the public law of the Province of Quebec.

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<sup>1</sup> P. 180.