

over property by the lawmaking agents of a State is, as we ordinarily think of it, limited to determining, within the prescribed jurisdictional limits what rights shall exist with respect to the various kinds of property under their authority. That authority may be extensive enough to enable them to shift, by their mere fiat, the possession of property from the State to the individual, or from the individual to the State, or from one individual to another, but through all these transmutations from one possession to another, the legislature will always be an entity outside of, and distinct from, the actual possessor of the property. It is not intended of course to deny that such a body may specially provide that certain property should pass into its own possession. But it would be idle, in the present connection, to consider the effect of such an exceptional transaction.

If this view is correct, it would seem that Mr. Lefroy should have cut much deeper in his criticism than he has done. Instead of taking it for granted that "possession" might in some cases be predicated of the control exercised by a legislature, he should at the very outset have joined issue with Lord Herschel upon this point by calling in question the correctness of his Lordship's terminology. Until other authorities are produced for this use of the word "possesses" with respect to the ordinary exercise of its functions by a legislature, it appears not unreasonable to suppose that that eminent jurist has inadvertently fallen into a verbal blunder, and that the control to which he was referring was rather that which finds its active exercise in laws declaring to whom proprietary rights shall belong than that which amounts to "possession," properly so called. One reason for adopting this view is that it will enable us to escape the very formidable difficulties involved in the hypothesis that the Privy Council intended to overthrow by a sort of side-wind the doctrine which it had previously laid down as to the plenary powers of the Canadian legislatures.

The real meaning of Lord Herschel's words I believe to be merely this—that the inference of an excess of power by the Dominion Parliament in the given case necessarily