March 1954

The Tidelands Oil Controversy (Ernest R. Bartley, 1953)

George John Miller
University of Florida

Follow this and additional works at: https://scholarship.law.ufl.edu/flr

Recommended Citation
George John Miller, The Tidelands Oil Controversy (Ernest R. Bartley, 1953), 7 Fla. L. Rev. 122 (1954). Available at: https://scholarship.law.ufl.edu/flr/vol7/iss1/16

This Book Review is brought to you for free and open access by UF Law Scholarship Repository. It has been accepted for inclusion in Florida Law Review by an authorized editor of UF Law Scholarship Repository. For more information, please contact rachel@law.ufl.edu.
The entire work is that of an accomplished student and is, therefore, unbiased. The book is well authenticated and the footnotes alone constitute a good cross section of the entire field of authorities that support the text from beginning to end. It is a tremendous work, and the reviewer would recommend it for the uses indicated above.

J. CARRINGTON GRAMLING, JR.
Member of the Miami, Florida, Bar


On June 23, 1947, a majority of the Supreme Court of the United States, in an opinion by Mr. Justice Black, announced a decision scraping a century and a half of constitutional law and substituting a completely new doctrine. The penchant of several of our nine middle-aged gentlemen to rewrite the Constitution of a Monday morning has become all too familiar to jurists of this day; and perhaps the belief that legal history and established principles of international law can be inverted with equal facility should no more shock the modern American than it does the Russian. "One cannot, however, ignore historical fact," observes the author (p. 31), associate professor of political science at the University of Florida.

Dr. Bartley, avid reader and prodigious worker, has produced a

[footnote]

1United States v. California, 332 U.S. 19 (1947), with decree id. at 804, Reed and Frankfurter, JJ., dissenting, and Jackson, J., disqualifying himself; see Parker, Problems in Florida and Other Coastal States Caused by the California Tidelands Decision, 1 U. of FLA. L. Rev. 44 (1948).
carefully documented work that taps all pertinent sources. The penetration of his analysis matches the thoroughness of his research. Although better known as a political scientist, he is more skillful than many an attorney in dealing with argument of counsel and judicial opinion, and he knows the difference between a holding and a dictum. He has not fallen into the error of neglecting legislative, executive and administrative action. Furthermore, he summarizes shrewdly the political maneuvers, the attitude of the press, and the potent financial factors intertwined with the basic issue of constitutional government.

The study begins, as it should, with the legal position of the Crown in relation to the marginal belt and with the rights of a sovereign under international law at the time of the Revolution. The author then discusses the status of the thirteen original states and of the later states, including the California dispute and the unique Texas circumstances; and he proceeds through the many phases of these controversies to the return of the so-called tidelands to their rightful owners. He handles adeptly the numerous legal facets of the overall problem: real property, foreign relations, national defense, conservation, circumstances of admission as a state, effects of attempted secession, implied federal powers, regulation of commerce, eminent domain, quit-claim and disposition of federal property, the difficulties in specifically designating state bays and inlets as distinct from open coastline, and, of course, the primary issue of state-federal jurisdictions and the new doctrine of "paramount rights." An entire chapter traces congressional policy; another, executive. The final chapter sets forth briefly and clearly the author's conclusions along with some sound, practical suggestions.

The remarkable feature of this treatise is its nice balance. Whether dealing with the characteristically muddled utterances of President Truman, based squarely on the philosophy that national expediency imports constitutional authority to seize without compensation,2 or with the mental gyrations of that master dervish, Mr. Ickes, or with the original opinion of Mr. Justice Douglas in United States v. Texas,3

2For an espousal of this view see the review by Professor Mendelson in 69 Yale L.J. 137, 138 (1953). As a political scientist rather than a lawyer he sees no constitutional issue: "... our international relations must be financed": the tidelands oil is of value; therefore federal expropriation must be constitutionally valid.

3339 U.S. 707 (1950), a 4-3 decision with Reed, Frankfurter and Minton, JJ., dissenting, and Jackson and Clark, JJ., disqualifying themselves. On October 16, 1950, the majority "corrected" its opinion by adhering to the original decision while deleting, of necessity, the one possibly valid reason for reaching it, 340 U.S. 848.
at least the equal of its predecessor\textsuperscript{4} in distortion of history, international law, and even the documents relied upon, the treatment is fair to the point of being charitable.

On the political front the inland states, fortunately, were not all deceived by the divide-and-rule tactics of our modern Federalist Party. They saw that if national need warrants uncompensated seizure of the oil and other products of coastal states it justifies similar seizure of the iron of Pennsylvania and the forests of Washington, in whosever hands the property may be. The battle is not yet over; one can confidently expect another attack by the Supreme Court, as presently constituted, on the Constitution and the rights reserved by it to the states and their people. For the time being, however, Congress has rectified the situation.

Dr. Bartley never loses sight of the fundamental issue; he weaves all the tangled threads into a distinct fabric. The story "moves"; it lends itself to rapid, enjoyable reading for those interested in the broad picture only. Typography and format are excellent. The careful scholar, already acquainted with the tidelands battle and the constitutional as well as the merely political and economic issues involved, will be impressed with the scope, organization and documentation of the text, as well as with the list of congressional hearings, the table of cases and a helpful index.

\textbf{George John Miller}  
\textit{Professor of Law, University of Florida}

\footnote{See note 1 \textit{supra}.}