







GOKHALE INSTITUTE OF POLITICS AND ECONOMICS,

R. R. Kale Memorial Lecture, 1951.

**COMPETITIVE AND CO-OPERATIVE  
TRENDS IN FEDERALISM**

BY

**PROF. M. Venkatrangaiya, M. A.**

*Sir Phirozshah Mehta Professor in Civics and Political Science,  
University of Bombay.*

PRICE Rs. 1-8-0.

1951

Publication No. 22.

**Planning of Post-war Economic  
Development In India**

(Published in co-operation with the International  
Secretariat, Institute of Pacific Relations.)

BY

**N. V. Sovani**

1951

PRICE Rs. 8-8-0 or 5 s.

**Contents**

Foreword by Prof. D. R. Gadgil	iii-xi.
I Formation of Government Policy	1
II Development Programme of the Central Government	10
III Provincial Development Programme	32
IV Failure of Planning	44
V Major Post-war Economic Trends	59
VI The Influence of International Factors	78
Appendix I: Statistical Appendix	92
Appendix II: Achievements of Provincial Development Programmes	100

*"This is an excellent book that is both authoritative and easy to understand. It is full of facts and should create the right type of public opinion for a prosperous India."*  
—*Indian Express*

## Errata

Page	3	Toptitle	Read	Trends	for	rends
"	8	Footnote,	2nd line	omit 'pp.'		
"	11	line	4	Read	Stage	for Statge
"	14	"	3	"	Gulf	" Gufl
"	"	"	22	"	Constitution	" Contitution
"	"	"	26	"	Delivered	" Deliver
"	"	"	33	"	Pronounced	" Pronouounced
"	16	"	12	"	Governmental	" Govermental
"	"	"	31	"	Predilictions	" Predilieations
"	17	"	29	"	Passed	" Paseed
"	18	"	19	"	Constitution	" Costitution
"	19	Footnote	omit	Swisher		
"	"	"	"	"	"	"
"	20	line	12	"	to	
"	21	"	34	Add	to other	at the end.
"	23	"	22	Read	Corporation	for Co-operation
"	25	"	4	"	Consequent	" Consequenet
"	"	"	5	Add	a after in	
"	"	"	8	Delete	' that ' at the end	
"	28	"	17	Read	Legislation	for Giselational
"	"	"	26	Add	' to ' after 'relating'	
"	29	"	6	Read	Same	for Sames
"	"	"	10	"	facets	" facts
"	"	"	11	"	autonomy	" utofnomy
"	"	"	31	"	The realisation	" Ther elisation
"	"	Footnote	"	"	Audre	" Addre
"	34	line	1	"	restrictions	" testrections
"	"	"	22	"	recommended	" recommdoned
"	"	"	29	Add	by after pursued	
"	36	"	15	"	to " dictate	
"	38	"	3	"	the " in	
"	40	"	23	Read	articles	for artices

NOT TO BE

LOANED OUT.



# Competitive and Co-operative trends in Federalism

## I

All systems of government are merely arrangements and contrivances for determining the location and the use of coercive power which is needed to hold society together, to prevent and punish the unsocial conduct of individuals and groups and to promote the common good and the general welfare. As such they have only an instrumental and not a final value. They are therefore to be judged as all tools are judged by the utility and the effectiveness they possess in fulfilling the purposes for which they are the means. They are not to be considered as ends in themselves. There is therefore no reason why one should become fanatical about this or that system of government and worship it blindly as if there is something sacred about it. It is with this attitude that one should approach the study of federalism or unitarism or any other system of government for that matter. \*

The essence of federalism as a political arrangement consists in this that the power which is needed in a society to secure, maintain and promote the common welfare is lodged in and exercised by two governments each supreme in a particular sphere demarcated for it in a constitution which is not subject to alteration or modification by the unilateral action of either, and which also provides the necessary institutional safeguards against either government encroaching on the sphere allotted to the other. One of these governments is spoken of as the central or the federal or the union government and its territorial jurisdiction extends to the whole of the area constituting the federation. The other government is referred to as the state or the provincial government and its territorial jurisdiction is restricted to a portion of the area of the federation. Naturally the public in a federation have to look to the central government for the provision of some of their needs and to the provincial or state governments for the provision of some other needs of theirs. It is this division of power and responsibility between two autonomous governments in-

---

\* \* COCKBURN—*Australian Convention Debates* 1891, pp. 198-9.



stead of their being concentrated in one central government that distinguishes federalism from unitarism.

All problems peculiar to federalism arise out of this division. A study of federalism is a study of the forces that create the need for a dualism like this, the attitudes which it generates among the public towards the two governments and the effect which it produces on the extent and the quality of the general welfare enjoyed by the members of the community.

The key to a proper understanding of these problems and to a discovery of correct solutions to them lies in an adequate appreciation of the fact that under certain circumstances federalism is the only form of \* government that is appropriate to a country and to the people inhabiting it. Federalism is invariably the result of the unwillingness of the people of a country to submit themselves to one central authority in all governmental matters. It also implies an aversion to majority rule in all spheres of life. This unwillingness and aversion are the outcome of the existence of cleavages among the people due to differences in respect of race, language, religion or culture or to economic differences arising out of the vast size of the country, the unequal distribution of its natural resources and the varying levels and directions of the material development of different parts and regions in it. Whatever may be the geographical, the historical and the sociological reasons for this unwillingness of the people to submit to the rule of one central authority and the dictates of a numerical majority in all spheres of life the result is to make the federal form of government inevitable. Moreover the public will feel frustrated if a unitary form of government is established under circumstances like these. It therefore follows that the preservation of a federal system becomes an important element in what the public consider to be their common interest. It is on this assumption that federalism alone is appropriate to certain countries and under certain circumstances that the competitive and the co-operative factors that are present in it are taken up here for consideration.

Competition for power is inherent in federalism. It is not the result of federalism but it is the general atmosphere that pervades it. The material and the moral forces that make federalism a political necessity are also the forces that create this competition. Each of the two governments existing side by side in a federal system is anxious to acquire and retain as much power as possible and to exercise it without any kind of interference from the other. This competition is seen not merely as

\* ROSCOE POUND—*Federalism as a Democratic Process (Rutgers) pp. 16-18.*

between the central and state governments but also among the state governments themselves. Referring to the United States it is observed by a writer § that "inter-governmental relations . . . . . resemble foreign relations in many respects. They are characterised by conflict and competition." What is true of the United States is more or less true of the other federations. In many cases the contest is not waged directly and openly by one government against another. The conflict is really between different sections of the public—some supporting one government and some supporting another. This is quite natural and it is all the more so in a democracy and federations are possible only where democracy exists. There are certain groups and interests who get an advantage if a particular power is exercised by the State governments and there are other groups and interests who stand to gain if the same power is exercised by the centre. It is pressure groups of this sort that generate conflicts for power. The question however is not what the social forces are which influence the competitive race for power characteristic of a federal system. The point to be stressed is that there is such a race and that it is one of the unavoidable consequences of the presence of autonomous governments functioning side by side within the same area.

In all federally-organised States there are two schools of political thought and action and the constitutional history of federations is predominantly the history of controversies between them and their practical outcome. There is the school of centralisers who contend that public welfare is best promoted by more and more power being lodged in the central government. A strong centre constantly growing stronger and stronger is their battle cry. There is the other school which stands for the autonomy and the rights of the States, which believes in decentralisation and is opposed to any increase in the power of the centre. It is therefore a characteristic feature of all federations that discussions of public issues and measures are coloured by the presence of these rival attitudes among the public.\* These issues are not examined and settled directly on the basis of their merits but in many cases on the basis of the effects they are likely to have on the balance of power as between the centre and the units. These schools have influenced the course of deliberations of all constituent assemblies that framed the constitutions of modern federal states and they have continued to exercise their influence on the subsequent functioning of their governmental systems.

---

§ WILLIAM WITHERS—*Public Finance*, p. 371.

\* HERMAN FINER — *Theory and Practice of Modern Government* (1919), p. 151.

#### 4 Competitive and Co-operative trends in Federalism.

They have had their representatives among the body of citizens and in the academic circles. Political parties have been organised on this basis. In all organs of government—the legislature, the executive and even the judiciary—there are to be found the champions of centralism opposed to the advocates of States' rights. This is the main feature of the politics of the federal states.

It does not make any difference to this contest for power whether the federation is the outcome as in the United States, Switzerland and Australia of a union of states which before the union possessed all powers of government and which are therefore called upon to part with some of their powers to a central government newly created or whether it is the outcome as in Canada and India of the loosening of a unitary system under which it is the central government which previously possessed and exercised all powers that is called on to part with some of them to autonomous units newly created. In either case there is the question of parting with power and the champions of centralism and of States' rights are as active in one case as in the other. The process therefore out of which the federation emanates does not modify the intensity of the contest although it has naturally some influence on the outcome of the contest and the final distribution of powers between the centre and the units. The strong centre for which provision has been made in the constitution of Canada and India illustrates this to some extent.

To many it may appear strange that there should be a contest at all over a question which is capable of an easy and scientific solution. They are likely to point out that all are bound to accept as sound the principle that the central government should exercise control over all matters of national and general importance and that the units should exercise control over matters of provincial and local importance and that the distribution of powers should proceed on this basis. But the fact is that the principle is sound in theory while it is very difficult of practical application. It is only certain matters that wear a clean-cut national or provincial aspect. There are many more which may equally reasonably be placed within the jurisdiction of either the centre or the units. Education, labour welfare, marriage, public health, marketing, transport and unemployment relief are some of these matters. An analysis of the actual distribution of powers in federal constitutions shows how several items included within the jurisdiction of the centre in some federations are placed within the jurisdiction of the units in others and this indicates that there is room for much difference of opinion in regard to the application of the principle referred to. This taken along with the inherent dislike of majority rule which is

the force behind federalism results in the principle being made use of by each party in support of the particular stand it takes. It has not therefore proved to be of much value in removing or in weakening the contest for power.

One question round which the battle between the centralists and the autonomists is waged is where the residuary powers are to be located. The autonomists have generally been anxious to leave to the central government only a number of specified powers and grant to the units all the unspecified residuary powers. The centralists have been equally anxious to follow the opposite method of leaving to the units only a number of specified powers and locate the residuary powers in the centre. Both schools of thought invariably proceed on the assumption that the government in which the unenumerated residuary powers are located is bound to be the stronger government. This assumption played a vital part in the framing as well as in the ratification of the constitution of the United States. To the contention of the advocates of States' rights that the new federal government would in course of time grow so powerful as to supersede the States altogether and reduce them to "mere corporations" the defenders of the constitution gave an effective reply by pointing out that the new government had only specific and enumerated powers and therefore possessed no authority except in those spheres where it had received a clear and definite grant while the States had powers of a numerous and indefinite character reserved to them. || In Canada where the large volume of vocal public opinion was in favour of a strong centre, the device adopted for securing this objective was to enumerate the powers of the provinces and leave the residuary authority to the centre. So great was the significance attached to this feature by the founding fathers of the Canadian Constitution that Mr. John A. Macdonald the most famous of them all observed: "In framing the constitution, care should be taken to avoid the mistakes and weaknesses of the United States' system, the primary error of which was the reservation to the different states of all powers not delegated to the General Government. We must reverse this process by establishing a strong central government, to which shall belong all powers not specifically conferred on the provinces." \* This assumption has also exercised a large amount of influence in the making of the constitution of India. At the Round Table Conferences held in London before the Government of India Act of 1935 was

---

|| *The Federalist* (Everyman's Library), p. 287.

\* KENNEDY (ED)—*Statutes, Treaties and Documents of the Canadian Constitution*, p. 558.

passed there were fierce and bitter controversies between the representatives of the Muslims who stood for a weak centre and strong provincial governments and who consequently pressed for the location of residuary powers in the provinces and the representatives of the nationalists and of the Hindus who pleaded for a strong centre and therefore for the location of residuary powers in the central government. § No compromise between the two sections was possible and the result was the drawing of three separate lists of powers—an exclusive central list, an exclusive provincial list and a concurrent list—and conferring on the Governor General the authority to decide which of the governments should exercise power on any of the residuary matters not enumerated in the three lists. \* The proceedings of the Constituent Assembly which framed the Constitution of the Republic of India also point out how great was the importance attached by the constitution-makers to the question of the location of residuary powers. In the original resolution on aims and objectives moved at a time when there was hope of the Muslim League agreeing to a United India there was a definite statement that the residuary powers should be located in the units. † But when the partition of the country became a fact and when the need for accepting the point of view of the Muslim League disappeared the Assembly declared itself in favour of the location of the residuary powers in the centre and it is on this basis that the present constitution of India has been framed. \*\*

But all this fight regarding the location of residuary powers appears in the light of history and experience to be unnecessary and uncalled for. † There is no connection between the strength of a government and the location of residuary powers in it. The location of these powers in the units in the United States and Australia has not stood in the way of the continuous and steady expansion of the powers of the centre. Similarly, the location of the residuary powers in the centre in Canada has not contributed to the strength of the centre to the extent to which it was expected to do so by the founders of the constitution and it has not prevented the provinces from enjoying all that autonomy which the States in the United States enjoy. The history of the German Republic where the residuary

---

§ VENKATARANGAIYA—*Federalism in Government (Andhra University, 1935) Chapters III and VI.*

\* *Government of India Act, 1935, Seventh Schedule and Section 104.*

† *Constituent Assembly Debates, Vol. I, p. 57.*

\*\* *Item 97 in List I — Union List, in the Seventh Schedule.*

|| VENKATARANGAIYA—*Federalism in Government (Andhra University, 1935) pp. 105-6.*

powers were located in the units tells the same story. As was observed by the Royal Commission on the Australian Constitution: "The choice between giving the specific or residuary powers to the Commonwealth Parliament does not itself determine the relative importance or extent of the two spheres. The question depends upon the nature and scope of the specific powers."\* All the same the location of residuary powers has all along been in the fore-front of the controversies on the subject of distribution of powers.

It has already been pointed out that the contest for power is not only as between the centre and the units but also among the units themselves. The question at issue in this connection is whether the units in the federation should have equal or unequal powers and what devices should be incorporated into the constitution in order to make equality effective. Except in the federalism of the German Empire and of India under the Government of India Act of 1935 the principle of equality was generally recognised. In the United States, Canada, Australia and Switzerland federations were on the whole the result of voluntary effort on the part of the units. The federal union was not forced on them by an external authority like the British in India in 1935. The units therefore would not have agreed to any Union unless equality in respect of the powers they enjoyed was guaranteed to them and this is what is found in those constitutions. In the German Empire certain units like Prussia, Bavaria and Saxony enjoyed powers in excess of those conferred on the other units. In the federation of India under the Act of 1935 the Indian States had more powers than the Provinces and this was the reason why that federation was spoken of as a federation of disparate units.† Much of this disparity has disappeared in the constitution of the Republic of India although on a strict analysis it is found that during what is called a period of transition the States in Part B— which are the old Indian States—are subject to greater control by the centre than the states in Part A. || In the United States and the other federations where the principle of equality was recognised the controversy turned more on the safe-guards to be provided to make the equality really effective. This was the great issue in the Convention that framed the Constitution of the United States. The small states were afraid that the centre might be dominated by the big

---

\* *Report, p. 7*

† *Joint Parliamentary Committee Report on the Government of India Bill 1935, Para 29.*

|| **VENKATARANGAIYA**—*Article on States in Para B. Indian Journal of Political Science. Conference Number, 1950.*

States with their numerical majorities and that this would undermine the theoretical equality guaranteed by the constitution. They therefore fought for equality of representation in the central legislature and succeeded in bringing about the "Great Compromise" under which they secured equality of representation in the Senate. † This example was followed in several other federations like Austria and Switzerland.

The conflict over the distribution of powers which begins in the constitution-framing assemblies does not end there. It is continued even after the constitution is framed and put into effect. The only difference is that the arena where the contest is carried and the method adopted to carry it on undergo a change. It is in the legislatures, the executive councils and above all in the courts of justice that the battle comes to be waged and the battle centres not around the powers specifically assigned or reserved to one or the other government but around the meaning and scope of the powers so assigned. Those who stand for a strong centre as well as those who stand for the autonomy and the rights of the units accept as valid the scheme of distribution of powers as embodied in the constitution but they now begin to quarrel over its interpretation. The centralisers give to it a broad meaning so that the central government might exercise authority over as wide a field as possible. The autonomists on the other hand insist on a narrow interpretation so that the sphere of the centre might be circumscribed and the sector within the jurisdiction of the units might become as extensive as possible. The contest therefore becomes a contest between the broad and the strict constructionists of the constitution, and it continues to be an unending contest. This has left its indelible mark on the development of the actual as distinguished from the theoretical distribution of powers in all modern federations and especially in the United States, Canada and Australia.

Among the statesmen of the United States in the period before the Civil War, Hamilton stood for broad construction while Jefferson was for strict construction. § Both of them relied on that clause in the Constitution which empowered the Congress: "to make all Laws which shall be necessary and proper for carrying into execution the foregoing (the enumerated) powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof". It was on the precise meaning and scope of the words "necessary"

---

† ALFRED H. KELLY & WINFRED A. HARBISON—*The American Constitution : Its Origins and Development*, pp. 1950.

§ F. G. WILSON—*The American Political Mind*, Ch. 7.

## Competitive and Co-operative trends in Federalism. 8

and "proper" that differences of an irreconcilable character arose between the two statesmen. Jefferson argued that the term "necessary" should be taken in its strict sense and not in the sense of "convenient" and that no means should be considered necessary for the execution of any of the specific powers except those without which the grant of the power would be nugatory. To this Hamilton replied: "It is certain that neither the grammatical nor popular sense of the term requires that construction. . . . The whole turn of the clause containing it indicates, that it was the intent of the Convention, by that clause, to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness. . . ." When Jefferson declared that the bill incorporating and establishing a national bank was unconstitutional on the ground that the power to incorporate anything was not delegated to Congress, that none of the general clauses of the Constitution was broad enough to authorise such incorporation and that the authority for it could not be derived either from the "General welfare" clause or "necessary" and "proper" clause, Hamilton asserted that (1) "every power vested in a government is in its nature sovereign, and includes, by force of the term, a right to employ all the means requisite and fairly applicable to the attainment of the ends of such power, (2) that it is unquestionably incident to sovereign power to erect corporations. . . . in relation to the objects intruded to the management of the government; (3) that there are "implied" and "resulting" powers as well as "express" ones; and (4) that the powers contained in a constitution of government, especially those that concern the general administration of the affairs of a country, its finances, trade, defence, etc. ought to be construed liberally in advancement of the public good."

Hamilton and his party of the Federalists were staunch believers in what came later on to be called the philosophy of the positive State. It was their faith that the State should play an active and direct part in promoting the general welfare of the community and this naturally led them to the advocacy of the doctrine of broad construction of the powers assigned by the constitution to the Central Government. The protection of private property, the maintenance of a sound system of credit both public and private, the strengthening of the bonds of national unity, the suppression of the revolutionary doctrines imported from France and found to be subversive of peace and order, an extensive use of the powers of taxation, the expenditure of surplus federal revenues on measures of internal development and above all a system of protective tariffs for the encouragement and promotion of manufacturing industries were some of the items in the programme of the Hamiltonian Federa-



lists. \* Measures for these purposes were undertaken by them and there was a steady expansion of the powers and activities of central government.

Jefferson and his party of the Republicans were alarmed by all this centralisation. They therefore organised opposition to it in the name of States' rights and autonomy. The ground of their attack was not that the measures undertaken by the centre did not contribute to the general welfare or that the State should not positively and directly undertake such measures but that they all encroached on the autonomy of the units. Even the assumption of States' debts by the federal government (although this became a common feature of federal finance in Canada and Australia later on) was attacked on this ground. And in vetoing a bill which provided for the expenditure of surplus federal revenues on the construction of roads and other works of internal development President Madison—a Jeffersonian—observed: "I am not unaware of the great importance of roads and canals and the improved navigation of water courses, and that a power in the National Legislature to provide for them might be exercised with signal advantage to the general prosperity. But seeing that such a power is not expressly given by the Constitution and believing that it cannot be deduced from any part of it without an inadmissible latitude of construction and a reliance on insufficient precedents; believing also that the permanent success of the Constitution depends on a definite partition of powers between the Central and the State Governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress as proposed in the bill, I have no option but to withhold my signature from it." Still later when the Congress passed a bill providing that the proceeds from the sale of some public lands should be divided among the states for the support of the indigent insane, President Pierce interposed a veto on the ground that if Congress had the power to provide for the indigent insane it would have the same power to provide for the indigent who were not insane and the result would be "to transfer to the Federal Government the charge of all the poor in all the States", which would be subversive of the whole theory upon which the Union of these States was founded. † Many other illustrations may be given from the history of the United States of the part played by the conflicting interpretations put on the constitution in the competitive struggle for power as between the centre and the units.

\* KELLY & HARBISON, *op. cit.*, Chapter 7.

† MAXWELL—*The Fiscal Impact of Federalism in the United States*, Prologue.

and of the inherent tendency to judge public measures not on the basis of their value in contributing to the general welfare but on the basis of the legal competence of the government undertaking them.

It is necessary at this stage to refer to one feature in the working of the federal system which has been responsible for friction between the centre and units. The opposition of Jeffersonians—and there are Jeffersonians and Hamiltonians in every federation—to the expansionist policies pursued by the central government was not always or invariably due to the abstract theories of States' rights which they held. It was to a considerable degree the outcome of practical considerations and the theories were more or less like rationalisations of these considerations. The exercise of power by central government over an extensive field and the policies which it proposed to pursue did not produce identical effects on all the units. Some states were greatly benefited by them while some others had to suffer huge losses due in the main to that heterogeneity in economic conditions which gives birth to federalism. The protective tariff, for instance, benefited the New England States with their expanding industries but it proved harmful to the agricultural south and west. Similarly the national banking system and the conservative federal monetary policy were welcome to the north-eastern merchants and manufacturers but most of the southerners and westerners were farmers and debtors and as such fought the national bank and demanded an inflationary monetary system. The expenditure on roads and canals out of the federal surplus revenue benefited the sparsely inhabited areas of the west which consequently sought increasing federal assistance for a programme of internal improvements but this meant the taxation of the north-east for the benefit of the west. The same was the case with the federal land policies. § Sectional differences it is that necessitate federalism and such differences are accentuated by the differential effects that central policies produce on the various units in the federation. This was the case not only in the United States but also in Canada and Australia later on. Several of the witnesses for instance that gave evidence before the Royal Commission on Dominion Provincial Relations in Canada pointed out how the customs tariff bore with exceptional severity on the four Western Provinces and on the Maritime Provinces; how the federal monetary policy after 1881 had seriously injured the Prairie region; how the freight rate structure discriminated against the Western Provinces; how the Dominion corporation income-tax policy prejudiced industry in Ontario; and how the Dominion personal income and Corporation income-taxes injured the

---

§ KELLY & HARBINSON, *op. cit.*, Chapter 10.

fiscal interest of the Government of Ontario and British Columbia. || Similar complaints were raised in Australia by the States like Western Australia which were adversely affected by the federal tariff. The inference to be drawn from all this is that as the federal exercise of power does not prove equally beneficial to all the units there are always certain sections among the public who become opposed to centralisation and stand for state autonomy.

In the competitive struggle for power characteristic of federalism this unequal incidence of federal policies produces consequences to which there is no exact parallel in the unitary system. Even in a unitary state, governmental policy may prove beneficial to certain regions and harmful to others. But as there is only one government to which the people of all regions look for relief there is a possibility of the inhabitants in the adversely affected areas getting prompt relief from it. The situation in a federation is different. If in consequence of central policies the economic condition of the people in a particular unit deteriorates it is from the government of the unit that the people will have to seek relief as unemployment assistance, labour welfare, etc. are generally within the jurisdiction of the unit and not of the centre. This incidentally raises the question—as it has been raised in Canada and Australia—whether under such circumstances the units adversely affected have a special claim for compensation from the centre.

One outcome of the controversy between the broad and the strict constructionists of federal powers is the nature of the remedy that the units affected by the federal policies might resort to if the harmful policies are persisted in. If the policies are felt to be the result of the exercise of power not permitted by the law of the constitution the remedy lies in an appeal to the highest court of justice for which provision exists in the United States, Canada, Australia and India. But how far this is an effective remedy depends on the view one takes of the influences under which the courts deliver their judgments—a point to which reference will be made a little later. But it may be noted here that the Jeffersonians of early days had serious objections both on theoretical and practical grounds to the judicial review of laws by the Supreme Court of Justice. † Where legal issues are not involved the remedy for harmful federal policies may be said to lie in the government responsible for such policies being replaced in a general election by another government which will be less

|| *Report, Book II, p. 280.*

† *WILSON, op. cit., p. 190.*

partisan. This is what may be called a political remedy. But here again one has to consider the limitations to which it is subject. In all federations there is the basic fact of a possible cleavage between the majority of the whole population and the inhabitants of particular units. The cleavage may even be more or less permanent. It is as a safe-guard against majority tyranny under circumstances like these that equal representation in the upper house of the legislature and other devices have been introduced. But these are not always effective. It was because they were found to be ineffective that the Southerners in United States put forward a remedy which they considered to be more effective, viz. the remedy of " Nullification " under which it was open to the legislature of any unit to repudiate an Act of the central legislature if it found it to be unconstitutional. In support of this remedy new theories of the nature of federal union were evolved. The doctrine of the sovereignty of the units was proclaimed and the claim to secession was put forward.\* The question is not whether such theories are sound or unsound. The point to be noted is that the competition for power which is inherent in federalism may even lead to secession and even to civil war as it did in the United States. It is true that the American Civil War resulted in the abandonment of the doctrine of the sovereignty of the units and of the right of the units to secede but it did not bring about the end of the controversy between the centralists and the autonomists, the broad constructionists and the strict constructionists. That controversy has continued all along and still continues.

All this detailed reference to the history of the United States is not only not irrelevant but it is also of considerable importance. The United States is usually regarded as the best model of a federal state. The issues that have been raised in the course of her constitutional development and the theories that were built around them have a universal character. They have exercised influence over the developments in several other federations also. In Canada, for instance, where almost all the Provinces were created by the federal constitution, where they exercise only a number of specified powers, where the residuary power is in the main located in the centre ( according to the original constitution ) and where the centre has a veto over provincial laws and control over provincial executives and courts, a compact theory of the constitution with its corollary of States' rights has been put forward by several publicists. §

---

\* McLAUGHLIN, A. C.—*A Constitutional History of the United States*, Chapter XXXIII.

§ SCOTT, F. R.—*The Special Nature of Canadian Federalism*, *Canadian Journal of Economics and Political Science*, Vol. XIII

Secession movements resulting from dissatisfaction with federal policies have not been unheard of in Canada and Australia. † They may raise their heads in India if the gulf between the north and the south widens.

Among the institutions characteristic of federalism is a supreme court of justice which is expected to serve as the guardian of the constitution by keeping the governments in the centre and the units within the limits laid down for them in the constitution. It discharges this function by giving its decisions on questions that are raised by parties appearing before it as to how far any particular law enacted by the federal or the state legislatures is valid in the context of the distribution of powers as found in the constitution. The court has full discretion to declare the law to be *ultra vires* of the legislature that has enacted it or to uphold its validity. The result is that the centre and the units in a federation have in practice only those powers which the highest court says, they have. It is not therefore the scheme of distribution of powers as found in the original constitution that really determines what powers are exercised by the centre and what powers are exercised by the units but it is the interpretation put upon the scheme by the highest court that does this. \* Every one is familiar with the dictum that the constitution is what the judges say it is. |

The point however that is being considered here is the nature of the influences that determine the interpretation put by judges on the constitution. The history of judicial interpretation in the United States, Canada and Australia brings out prominently that political considerations exercised a complete sway over the minds of the judges in the judgments they deliver from time to time. As has been observed by Justice Dixon of Australia : "The Constitution is a political instrument. It deals with governmental powers. It is not a question whether the considerations are political for every question arising from the Constitution can be so described." || The contest between the centralists and the autonomists, between the broad constructionists and the strict constructionists characteristically present in the legislatures and the executives is perhaps even more pronounced in the courts of justice. In determining what powers the constitution permits the centre to

† DAWSON, R. M.—*The Government of Canada*, p. 97.

\* ZINK, HAROLD—*Government and Politics in the United States*, pp. 59-62.

|| *Federalism in Australia*, PUBLISHED BY F. W. CHESHIRE (Melbourne 1949) p. 18.

exercise or what powers it permits the units to exercise the judges are influenced not by purely or predominantly legal considerations but by the political and social philosophy which attracts them. \* Some among them consciously or unconsciously develop a bias towards centralisation while some others develop a similar bias towards States' rights and autonomy. Some therefore show a tendency to interpret the distribution of powers rather broadly and [some others quite narrowly. There are no universally agreed rules of construction or interpretation among them. Different courts have adopted different rules of construction and the same court has been found to adopt different rules at different times. The rules] adopted by the majority of judges in a court in deciding a particular case are different from those adopted by the minority in their dissenting opinions. There are no objective criteria for determining the correctness of the majority and the minority views. § As has been remarked by an eminent scholar: "The dissentients have not been fools, and their reasoning can rarely be disproved by logic. The majority or prevailing views and the dissentient views have usually been equally responsible." † The opinion held by the minority at one time is accepted later by the majority and becomes the opinion of the court. All these characteristics of judicial pronouncements on the meaning of the constitution are ultimately traceable to the fact that the judges are a part of the public even though they happen to be seated on the elevated chairs in the courts, and that like the rest of the politically conscious sections of the citizens they become by temperament, education and association champions of centralisation or of states' rights. Each of them develops a philosophy of federalism and his judgments are invariably coloured by it. The Courts consequently become the arena where contest for power as between the centre and the units is carried on and the contestants are not merely the parties to the suits to be decided—private individuals or corporations or the law officers of the centre and the units—but also the judges.

All this is illustrated by what has happened in the United States, Canada and Australia through the process of judicial interpretation. The federal government in the United States today is in possession not of the few powers delegated to it by the States in 1787 but of any number of implied and resultant powers arising out of the decisions of the Supreme

\* CARL BRENT SWISHER—*The Growth of Constitutional Power in the United States* (Chicago, 1946) p. 217.

§ HERMAN FINER, *op. cit.* pp. 148-45.

† PROFESSOR GEOFFREY SAWER—*Federalism in Australia*, *op. cit.*

stead of their being concentrated in one central government that distinguishes federalism from unitarism.

All problems peculiar to federalism arise out of this division. A study of federalism is a study of the forces that create the need for a dualism like this, the attitudes which it generates among the public towards the two governments and the effect which it produces on the extent and the quality of the general welfare enjoyed by the members of the community.

The key to a proper understanding of these problems and to a discovery of correct solutions to them lies in an adequate appreciation of the fact that under certain circumstances federalism is the only form of \* government that is appropriate to a country and to the people inhabiting it. Federalism is invariably the result of the unwillingness of the people of a country to submit themselves to one central authority in all governmental matters. It also implies an aversion to majority rule in all spheres of life. This unwillingness and aversion are the outcome of the existence of cleavages among the people due to differences in respect of race, language, religion or culture or to economic differences arising out of the vast size of the country, the unequal distribution of its natural resources and the varying levels and directions of the material development of different parts and regions in it. Whatever may be the geographical, the historical and the sociological reasons for this unwillingness of the people to submit to the rule of one central authority and the dictates of a numerical majority in all spheres of life the result is to make the federal form of government inevitable. Moreover the public will feel frustrated if a unitary form of government is established under circumstances like these. It therefore follows that the preservation of a federal system becomes an important element in what the public consider to be their common interest. It is on this assumption that federalism alone is appropriate to certain countries and under certain circumstances that the competitive and the co-operative factors that are present in it are taken up here for consideration.

Competition for power is inherent in federalism. It is not the result of federalism but it is the general atmosphere that pervades it. The material and the moral forces that make federalism a political necessity are also the forces that create this competition. Each of the two governments existing side by side in a federal system is anxious to acquire and retain as much power as possible and to exercise it without any kind of interference from the other. This competition is seen not merely as

---

\* ROSCOE POUND—*Federalism as a Democratic Process (Rutgers)* pp. 16-18.

between the central and state governments but also among the state governments themselves. Referring to the United States it is observed by a writer § that "inter-governmental relations . . . . . resemble foreign relations in many respects. They are characterised by conflict and competition." What is true of the United States is more or less true of the other federations. In many cases the contest is not waged directly and openly by one government against another. The conflict is really between different sections of the public—some supporting one government and some supporting another. This is quite natural and it is all the more so in a democracy and federations are possible only where democracy exists. There are certain groups and interests who get an advantage if a particular power is exercised by the State governments and there are other groups and interests who stand to gain if the same power is exercised by the centre. It is pressure groups of this sort that generate conflicts for power. The question however is not what the social forces are which influence the competitive race for power characteristic of a federal system. The point to be stressed is that there is such a race and that it is one of the unavoidable consequences of the presence of autonomous governments functioning side by side within the same area.

In all federally-organised States there are two schools of political thought and action and the constitutional history of federations is predominantly the history of controversies between them and their practical outcome. There is the school of centralisers who contend that public welfare is best promoted by more and more power being lodged in the central government. A strong centre constantly growing stronger and stronger is their battle cry. There is the other school which stands for the autonomy and the rights of the States, which believes in decentralisation and is opposed to any increase in the power of the centre. It is therefore a characteristic feature of all federations that discussions of public issues and measures are coloured by the presence of these rival attitudes among the public.\* These issues are not examined and settled directly on the basis of their merits but in many cases on the basis of the effects they are likely to have on the balance of power as between the centre and the units. These schools have influenced the course of deliberations of all constituent assemblies that framed the constitutions of modern federal states and they have continued to exercise their influence on the subsequent functioning of their governmental systems.

§ WILLIAM WITHERS—*Public Finance*, p. 371.

\* HERMAN FINER — *Theory and Practice of Modern Government* (1919), p. 151.







#### 4 Competitive and Co-operative trends in Federalism.

They have had their representatives among the body of citizens and in the academic circles. Political parties have been organised on this basis. In all organs of government—the legislature, the executive and even the judiciary—there are to be found the champions of centralism opposed to the advocates of States' rights. This is the main feature of the politics of the federal states.

It does not make any difference to this contest for power whether the federation is the outcome as in the United States, Switzerland and Australia of a union of states which before the union possessed all powers of government and which are therefore called upon to part with some of their powers to a central government newly created or whether it is the outcome as in Canada and India of the loosening of a unitary system under which it is the central government which previously possessed and exercised all powers that is called on to part with some of them to autonomous units newly created. In either case there is the question of parting with power and the champions of centralism and of States' rights are as active in one case as in the other. The process therefore out of which the federation emanates does not modify the intensity of the contest although it has naturally some influence on the outcome of the contest and the final distribution of powers between the centre and the units. The strong centre for which provision has been made in the constitution of Canada and India illustrates this to some extent.

To many it may appear strange that there should be a contest at all over a question which is capable of an easy and scientific solution. They are likely to point out that all are bound to accept as sound the principle that the central government should exercise control over all matters of national and general importance and that the units should exercise control over matters of provincial and local importance and that the distribution of powers should proceed on this basis. But the fact is that the principle is sound in theory while it is very difficult of practical application. It is only certain matters that wear a clean-cut national or provincial aspect. There are many more which may equally reasonably be placed within the jurisdiction of either the centre or the units. Education, labour welfare, marriage, public health, marketing, transport and unemployment relief are some of these matters. An analysis of the actual distribution of powers in federal constitutions shows how several items included within the jurisdiction of the centre in some federations are placed within the jurisdiction of the units in others and this indicates that there is room for much difference of opinion in regard to the application of the principle referred to. This taken along with the inherent dislike of majority rule which is

the force behind federalism results in the principle being made use of by each party in support of the particular stand it takes. It has not therefore proved to be of much value in removing or in weakening the contest for power.

One question round which the battle between the centralists and the autonomists is waged is where the residuary powers are to be located. The autonomists have generally been anxious to leave to the central government only a number of specified powers and grant to the units all the unspecified residuary powers. The centralists have been equally anxious to follow the opposite method of leaving to the units only a number of specified powers and locate the residuary powers in the centre. Both schools of thought invariably proceed on the assumption that the government in which the unenumerated residuary powers are located is bound to be the stronger government. This assumption played a vital part in the framing as well as in the ratification of the constitution of the United States. To the contention of the advocates of States' rights that the new federal government would in course of time grow so powerful as to supersede the States altogether and reduce them to "mere corporations" the defenders of the constitution gave an effective reply by pointing out that the new government had only specific and enumerated powers and therefore possessed no authority except in those spheres where it had received a clear and definite grant while the States had powers of a numerous and indefinite character reserved to them. || In Canada where the large volume of vocal public opinion was in favour of a strong centre, the device adopted for securing this objective was to enumerate the powers of the provinces and leave the residuary authority to the centre. So great was the significance attached to this feature by the founding fathers of the Canadian Constitution that Mr. John A. Macdonald the most famous of them all observed: "In framing the constitution, care should be taken to avoid the mistakes and weaknesses of the United States' system, the primary error of which was the reservation to the different states of all powers not delegated to the General Government. We must reverse this process by establishing a strong central government, to which shall belong all powers not specifically conferred on the provinces." \* This assumption has also exercised a large amount of influence in the making of the constitution of India. At the Round Table Conferences held in London before the Government of India Act of 1935 was

---

|| *The Federalist* ( *Everyman's Library* ), p. 287.

\* KENNEDY (ED)—*Statutes, Treaties and Documents of the Canadian Constitution*, p. 558.

passed there were fierce and bitter controversies between the representatives of the Muslims who stood for a weak centre and strong provincial governments and who consequently pressed for the location of residuary powers in the provinces and the representatives of the nationalists and of the Hindus who pleaded for a strong centre and therefore for the location of residuary powers in the central government. § No compromise between the two sections was possible and the result was the drawing of three separate lists of powers—an exclusive central list, an exclusive provincial list and a concurrent list—and conferring on the Governor General the authority to decide which of the governments should exercise power on any of the residuary matters not enumerated in the three lists.\* The proceedings of the Constituent Assembly which framed the Constitution of the Republic of India also point out how great was the importance attached by the constitution-makers to the question of the location of residuary powers. In the original resolution on aims and objectives moved at a time when there was hope of the Muslim League agreeing to a United India there was a definite statement that the residuary powers should be located in the units. † But when the partition of the country became a fact and when the need for accepting the point of view of the Muslim League disappeared the Assembly declared itself in favour of the location of the residuary powers in the centre and it is on this basis that the present constitution of India has been framed.\*\*

But all this fight regarding the location of residuary powers appears in the light of history and experience to be unnecessary and uncalled for.‡ There is no connection between the strength of a government and the location of residuary powers in it. The location of these powers in the units in the United States and Australia has not stood in the way of the continuous and steady expansion of the powers of the centre. Similarly, the location of the residuary powers in the centre in Canada has not contributed to the strength of the centre to the extent to which it was expected to do so by the founders of the constitution and it has not prevented the provinces from enjoying all that autonomy which the States in the United States enjoy. The history of the German Republic where the residuary

---

§ VENKATARANGAIYA—*Federalism in Government (Andhra University, 1935) Chapters III and VI.*

\* *Government of India Act, 1935, Seventh Schedule and Section 104.*

† *Constituent Assembly Debates, Vol. I, p. 57.*

\*\* *Item 97 in List I — Union List, in the Seventh Schedule.*

‡ VENKATARANGAIYA—*Federalism in Government (Andhra University, 1935) pp. 105-6.*

powers were located in the units tells the same story. As was observed by the Royal Commission on the Australian Constitution: "The choice between giving the specific or residuary powers to the Commonwealth Parliament does not itself determine the relative importance or extent of the two spheres. The question depends upon the nature and scope of the specific powers."\* All the same the location of residuary powers has all along been in the fore-front of the controversies on the subject of distribution of powers.

It has already been pointed out that the contest for power is not only as between the centre and the units but also among the units themselves. The question at issue in this connection is whether the units in the federation should have equal or unequal powers and what devices should be incorporated into the constitution in order to make equality effective. Except in the federalism of the German Empire and of India under the Government of India Act of 1935 the principle of equality was generally recognised. In the United States, Canada, Australia and Switzerland federations were on the whole the result of voluntary effort on the part of the units. The federal union was not forced on them by an external authority like the British in India in 1935. The units therefore would not have agreed to any Union unless equality in respect of the powers they enjoyed was guaranteed to them and this is what is found in those constitutions. In the German Empire certain units like Prussia, Bavaria and Saxony enjoyed powers in excess of those conferred on the other units. In the federation of India under the Act of 1935 the Indian States had more powers than the Provinces and this was the reason why that federation was spoken of as a federation of disparate units.† Much of this disparity has disappeared in the constitution of the Republic of India although on a strict analysis it is found that during what is called a period of transition the States in Part B— which are the old Indian States—are subject to greater control by the centre than the states in Part A.‡ In the United States and the other federations where the principle of equality was recognised the controversy turned more on the safe-guards to be provided to make the equality really effective. This was the great issue in the Convention that framed the Constitution of the United States. The small states were afraid that the centre might be dominated by the big

---

\* *Report, p. 7*

† *Joint Parliamentary Committee Report on the Government of India Bill 1935, Para 29.*

‡ *VENKATARANGAIYA—Article on States in Para B. Indian Journal of Political Science. Conference Number, 1950.*

States with their numerical majorities and that this would undermine the theoretical equality guaranteed by the constitution. They therefore fought for equality of representation in the central legislature and succeeded in bringing about the "Great Compromise" under which they secured equality of representation in the Senate. † This example was followed in several other federations like Austria and Switzerland.

The conflict over the distribution of powers which begins in the constitution-framing assemblies does not end there. It is continued even after the constitution is framed and put into effect. The only difference is that the arena where the contest is carried and the method adopted to carry it on undergo a change. It is in the legislatures, the executive councils and above all in the courts of justice that the battle comes to be waged and the battle centres not around the powers specifically assigned or reserved to one or the other government but around the meaning and scope of the powers so assigned. Those who stand for a strong centre as well as those who stand for the autonomy and the rights of the units accept as valid the scheme of distribution of powers as embodied in the constitution but they now begin to quarrel over its interpretation. The centralisers give to it a broad meaning so that the central government might exercise authority over as wide a field as possible. The autonomists on the other hand insist on a narrow interpretation so that the sphere of the centre might be circumscribed and the sector within the jurisdiction of the units might become as extensive as possible. The contest therefore becomes a contest between the broad and the strict constructionists of the constitution, and it continues to be an unending contest. This has left its indelible mark on the development of the actual as distinguished from the theoretical distribution of powers in all modern federations and especially in the United States, Canada and Australia.

Among the statesmen of the United States in the period before the Civil War, Hamilton stood for broad construction while Jefferson was for strict construction. § Both of them relied on that clause in the Constitution which empowered the Congress: "to make all Laws which shall be necessary and proper for carrying into execution the foregoing (the enumerated) powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof". It was on the precise meaning and scope of the words "necessary"

---

† ALFRED H. KELLY & WINFRED A. HARBISON—*The American Constitution: Its Origins and Development*, pp. 1950.

§ F. G. WILSON—*The American Political Mind*, Ch. 7.

and "proper" that differences of an irreconcilable character arose between the two statesmen. Jefferson argued that the term "necessary" should be taken in its strict sense and not in the sense of "convenient" and that no means should be considered necessary for the execution of any of the specific powers except those without which the grant of the power would be nugatory. To this Hamilton replied: "It is certain that neither the grammatical nor popular sense of the term requires that construction.... The whole turn of the clause containing it indicates, that it was the intent of the Convention, by that clause, to give a liberal latitude to the exercise of the specified powers. The expressions have peculiar comprehensiveness...." When Jefferson declared that the bill incorporating and establishing a national bank was unconstitutional on the ground that the power to incorporate anything was not delegated to Congress, that none of the general clauses of the Constitution was broad enough to authorise such incorporation and that the authority for it could not be derived either from the "General welfare" clause or "necessary" and "proper" clause, Hamilton asserted that (1) "every power vested in a government is in its nature sovereign, and includes, by force of the term, a right to employ all the means requisite and fairly applicable to the attainment of the ends of such power; (2) that it is unquestionably incident to sovereign power to erect corporations....in relation to the objects intruded to the management of the government; (3) that there are "implied" and "resulting" powers as well as "express" ones; and (4) that the powers contained in a constitution of government, especially those that concern the general administration of the affairs of a country, its finances, trade, defence, etc. ought to be construed liberally in advancement of the public good."

Hamilton and his party of the Federalists were staunch believers in what came later on to be called the philosophy of the positive State. It was their faith that the State should play an active and direct part in promoting the general welfare of the community and this naturally led them to the advocacy of the doctrine of broad construction of the powers assigned by the constitution to the Central Government. The protection of private property, the maintenance of a sound system of credit both public and private, the strengthening of the bonds of national unity, the suppression of the revolutionary doctrines imported from France and found to be subversive of peace and order, an extensive use of the powers of taxation, the expenditure of surplus federal revenues on measures of internal development and above all a system of protective tariffs for the encouragement and promotion of manufacturing industries were some of the items in the programme of the Hamiltonian Federa-



lists. \* Measures for these purposes were undertaken by them and there was a steady expansion of the powers and activities of central government.

Jefferson and his party of the Republicans were alarmed by all this centralisation. They therefore organised opposition to it in the name of States' rights and autonomy. The ground of their attack was not that the measures undertaken by the centre did not contribute to the general welfare or that the State should not positively and directly undertake such measures but that they all encroached on the autonomy of the units. Even the assumption of States' debts by the federal government (although this became a common feature of federal finance in Canada and Australia later on) was attacked on this ground. And in vetoing a bill which provided for the expenditure of surplus federal revenues on the construction of roads and other works of internal development President Madison—a Jeffersonian—observed: "I am not unaware of the great importance of roads and canals and the improved navigation of water courses, and that a power in the National Legislature to provide for them might be exercised with signal advantage to the general prosperity. But seeing that such a power is not expressly given by the Constitution and believing that it cannot be deduced from any part of it without an inadmissible latitude of construction and a reliance on insufficient precedents; believing also that the permanent success of the Constitution depends on a definite partition of powers between the Central and the State Governments, and that no adequate landmarks would be left by the constructive extension of the powers of Congress as proposed in the bill, I have no option but to withhold my signature from it." Still later when the Congress passed a bill providing that the proceeds from the sale of some public lands should be divided among the states for the support of the indigent insane, President Pierce interposed a veto on the ground that if Congress had the power to provide for the indigent insane it would have the same power to provide for the indigent who were not insane and the result would be "to transfer to the Federal Government the charge of all the poor in all the States", which would be subversive of the whole theory upon which the Union of these States was founded. † Many other illustrations may be given from the history of the United States of the part played by the conflicting interpretations put on the constitution in the competitive struggle for power as between the centre and the units.

\* KELLY & HARBISON, *op. cit.*, Chapter 7.

† MAXWELL—*The Fiscal Impact of Federalism in the United States*, Prologue.

and of the inherent tendency to judge public measures not on the basis of their value in contributing to the general welfare but on the basis of the legal competence of the government undertaking them.

It is necessary at this stage to refer to one feature in the working of the federal system which has been responsible for friction between the centre and units. The opposition of Jeffersonians—and there are Jeffersonians and Hamiltonians in every federation—to the expansionist policies pursued by the central government was not always or invariably due to the abstract theories of States' rights which they held. It was to a considerable degree the outcome of practical considerations and the theories were more or less like rationalisations of these considerations. The exercise of power by central government over an extensive field and the policies which it proposed to pursue did not produce identical effects on all the units. Some states were greatly benefited by them while some others had to suffer huge losses due in the main to that heterogeneity in economic conditions which gives birth to federalism. The protective tariff, for instance, benefited the New England States with their expanding industries but it proved harmful to the agricultural south and west. Similarly the national banking system and the conservative federal monetary policy were welcome to the north-eastern merchants and manufacturers but most of the southerners and westerners were farmers and debtors and as such fought the national bank and demanded an inflationary monetary system. The expenditure on roads and canals out of the federal surplus revenue benefited the sparsely inhabited areas of the west which consequently sought increasing federal assistance for a programme of internal improvements but this meant the taxation of the north-east for the benefit of the west. The same was the case with the federal land policies. § Sectional differences it is that necessitate federalism and such differences are accentuated by the differential effects that central policies produce on the various units in the federation. This was the case not only in the United States but also in Canada and Australia later on. Several of the witnesses for instance that gave evidence before the Royal Commission on Dominion Provincial Relations in Canada pointed out how the customs tariff bore with exceptional severity on the four Western Provinces and on the Maritime Provinces; how the federal monetary policy after 1881 had seriously injured the Prairie region; how the freight rate structure discriminated against the Western Provinces; how the Dominion corporation income-tax policy prejudiced industry in Ontario; and how the Dominion personal income and Corporation income-taxes injured the

---

§ KELLY & HARBINSON, *op. cit.*, Chapter 10.

fiscal interest of the Government of Ontario and British Columbia. || Similar complaints were raised in Australia by the States like Western Australia which were adversely affected by the federal tariff. The inference to be drawn from all this is that as the federal exercise of power does not prove equally beneficial to all the units there are always certain sections among the public who become opposed to centralisation and stand for state autonomy.

In the competitive struggle for power characteristic of federalism this unequal incidence of federal policies produces consequences to which there is no exact parallel in the unitary system. Even in a unitary state, governmental policy may prove beneficial to certain regions and harmful to others. But as there is only one government to which the people of all regions look for relief there is a possibility of the inhabitants in the adversely affected areas getting prompt relief from it. The situation in a federation is different. If in consequence of central policies the economic condition of the people in a particular unit deteriorates it is from the government of the unit that the people will have to seek relief as unemployment assistance, labour welfare, etc. are generally within the jurisdiction of the unit and not of the centre. This incidentally raises the question—as it has been raised in Canada and Australia—whether under such circumstances the units adversely affected have a special claim for compensation from the centre.

One outcome of the controversy between the broad and the strict constructionists of federal powers is the nature of the remedy that the units affected by the federal policies might resort to if the harmful policies are persisted in. If the policies are felt to be the result of the exercise of power not permitted by the law of the constitution the remedy lies in an appeal to the highest court of justice for which provision exists in the United States, Canada, Australia and India. But how far this is an effective remedy depends on the view one takes of the influences under which the courts deliver their judgments—a point to which reference will be made a little later. But it may be noted here that the Jeffersonians of early days had serious objections both on theoretical and practical grounds to the judicial review of laws by the Supreme Court of Justice. † Where legal issues are not involved the remedy for harmful federal policies may be said to lie in the government responsible for such policies being replaced in a general election by another government which will be less

---

|| *Report, Book II, p. 280.*

† *WILSON, op. cit., p. 190.*

partisan. This is what may be called a political remedy. But here again one has to consider the limitations to which it is subject. In all federations there is the basic fact of a possible cleavage between the majority of the whole population and the inhabitants of particular units. The cleavage may even be more or less permanent. It is as a safe-guard against majority tyranny under circumstances like these that equal representation in the upper house of the legislature and other devices have been introduced. But these are not always effective. It was because they were found to be ineffective that the Southerners in United States put forward a remedy which they considered to be more effective, viz. the remedy of " Nullification " under which it was open to the legislature of any unit to repudiate an Act of the central legislature if it found it to be unconstitutional. In support of this remedy new theories of the nature of federal union were evolved. The doctrine of the sovereignty of the units was proclaimed and the claim to secession was put forward.\* The question is not whether such theories are sound or unsound. The point to be noted is that the competition for power which is inherent in federalism may even lead to secession and even to civil war as it did in the United States. It is true that the American Civil War resulted in the abandonment of the doctrine of the sovereignty of the units and of the right of the units to secede but it did not bring about the end of the controversy between the centralists and the autonomists, the broad constructionists and the strict constructionists. That controversy has continued all along and still continues.

All this detailed reference to the history of the United States is not only not irrelevant but it is also of considerable importance. The United States is usually regarded as the best model of a federal state. The issues that have been raised in the course of her constitutional development and the theories that were built around them have a universal character. They have exercised influence over the developments in several other federations also. In Canada, for instance, where almost all the Provinces were created by the federal constitution, where they exercise only a number of specified powers, where the residuary power is in the main located in the centre ( according to the original constitution ) and where the centre has a veto over provincial laws and control over provincial executives and courts, a compact theory of the constitution with its corollary of States' rights has been put forward by several publicists. §

\* McLAUGHLIN, A. C.—*A Constitutional History of the United States*, Chapter XXXIII.

§ SCOTT, F. R.—*The Special Nature of Canadian Federalism*, *Canadian Journal of Economics and Political Science*, Vol. XIII

Secession movements resulting from dissatisfaction with federal policies have not been unheard of in Canada and Australia. † They may raise their heads in India if the gulf between the north and the south widens.

Among the institutions characteristic of federalism is a supreme court of justice which is expected to serve as the guardian of the constitution by keeping the governments in the centre and the units within the limits laid down for them in the constitution. It discharges this function by giving its decisions on questions that are raised by parties appearing before it as to how far any particular law enacted by the federal or the state legislatures is valid in the context of the distribution of powers as found in the constitution. The court has full discretion to declare the law to be *ultra vires* of the legislature that has enacted it or to uphold its validity. The result is that the centre and the units in a federation have in practice only those powers which the highest court says, they have. It is not therefore the scheme of distribution of powers as found in the original constitution that really determines what powers are exercised by the centre and what powers are exercised by the units but it is the interpretation put upon the scheme by the highest court that does this. \* Every one is familiar with the dictum that the constitution is what the judges say it is. †

The point however that is being considered here is the nature of the influences that determine the interpretation put by judges on the constitution. The history of judicial interpretation in the United States, Canada and Australia brings out prominently that political considerations exercised a complete sway over the minds of the judges in the judgments they deliver from time to time. As has been observed by Justice Dixon of Australia : "The Constitution is a political instrument. It deals with governmental powers. It is not a question whether the considerations are political for every question arising from the Constitution can be so described." † The contest between the centralists and the autonomists, between the broad constructionists and the strict constructionists characteristically present in the legislatures and the executives is perhaps even more pronounced in the courts of justice. In determining what powers the constitution permits the centre to

† DAWSON, R. M.—*The Government of Canada*, p. 97.

\* ZINK, HAROLD—*Government and Politics in the United States*, pp. 59-62.

† *Federalism in Australia*, PUBLISHED BY F. W. CHESHIRE (Melbourne 1949) p. 18.

exercise or what powers it permits the units to exercise the judges are influenced not by purely or predominantly legal considerations but by the political and social philosophy which attracts them. \* Some among them consciously or unconsciously develop a bias towards centralisation while some others develop a similar bias towards States' rights and autonomy. Some therefore show a tendency to interpret the distribution of powers rather broadly and [some others quite narrowly. There are no universally agreed rules of construction or interpretation among them. Different courts have adopted different rules of construction and the same court has been found to adopt different rules at different times. The rules adopted by the majority of judges in a court in deciding a particular case are different from those adopted by the minority in their dissenting opinions. There are no objective criteria for determining the correctness of the majority and the minority views. § As has been remarked by an eminent scholar: "The dissentients have not been fools, and their reasoning can rarely be disproved by logic. The majority or prevailing views and the dissentient views have usually been equally responsible." † The opinion held by the minority at one time is accepted later by the majority and becomes the opinion of the court. All these characteristics of judicial pronouncements on the meaning of the constitution are ultimately traceable to the fact that the judges are a part of the public even though they happen to be seated on the elevated chairs in the courts, and that like the rest of the politically conscious sections of the citizens they become by temperament, education and association champions of centralisation or of states' rights. Each of them develops a philosophy of federalism and his judgments are invariably coloured by it. The Courts consequently become the arena where contest for power as between the centre and the units is carried on and the contestants are not merely the parties to the suits to be decided—private individuals or corporations or the law officers of the centre and the units—but also the judges.

All this is illustrated by what has happened in the United States, Canada and Australia through the process of judicial interpretation. The federal government in the United States today is in possession not of the few powers delegated to it by the States in 1787 but of any number of implied and resultant powers arising out of the decisions of the Supreme

\* CARL BRENT SWISHER—*The Growth of Constitutional Power in the United States* (Chicago, 1946) p. 217.

§ HERMAN FINER, *op. cit.* pp. 148-45.

† PROFESSOR GEOFFREY SAWER—*Federalism in Australia*, *op. cit.*

Court. It has become a true national government and Hamiltonianism has completely triumphed. As a distinguished writer has expressed it: "Although that government (Federal Government) is one of delegated powers, the passing years have brought increasingly broad interpretation of these powers so as to make possible the concentration of the forces of the nation both for the promotion of the general welfare in time of peace and for the waging of war. In the light of present interpretations, we have no problem of too little power in government, for the power available seems almost commensurate with the potentialities of the resources of the nation. The unanswered question is rather whether with the expansion of governmental power we have adequately maintained our traditional restraints upon the exercise of governmental authority." \* The contest between the judges inclined to put a broad construction and those inclined to put a strict construction on the constitution has finally resulted in a victory of the former.

Canada also illustrates the combatant role of the judges in determining what powers in actual practice should be exercised by the centre and what by the units. But there is one difference in this respect so far as the final result is concerned between what the Supreme Court of the United States has brought about and what the British Privy Council (the highest court for Canada) has brought about. The bias of the Supreme Court was on the whole in favour of the central government and it was a bias which was quite in harmony with the changing economic and social conditions. The bias of the Privy Council was more and more in favour of the provinces. It took on the whole an academic and unrealistic view of the constitution and interpreted it in such a manner that the provinces today are in possession of more powers and the central government is subject to more restraints than what were intended by the founders of the federation. †

In Australia also the interpretation of the constitution was very much affected by the political predilections of the judges. In the early days most of the judges of the High Court were advocates of States' rights. In delivering their judgments they took the view that the Commonwealth powers should be given a narrow construction. This process, however, underwent a change from 1920 onwards in consequence of Sir Isaac Isaacs, a firm believer in nationalism and in a strong central government having

---

\* CARL BRENT SWISHER—*The Growth of Constitutional Power in the United States* (Chicago, 1946), p. 102.

† DAWSON, R. M.—*op. cit.*, pp. 110-113.

become chief justice. The Court came to consist more and more of judges favouring a broad interpretation of the constitution and the result was a steady expansion of the powers of the centre. § This process reached its climax in the Uniform Tax Case in 1942. The net result of all this is that the States though sovereign in their sphere in strict law have in fact become subservient to the centre. As one competent critic has remarked: "Australia is in the process of ceasing to be a federation of independent groups of people, and is being changed into a Unitary State" \*

Reference has now to be made to another aspect of the competition for power inherent in federalism. Every system of government should continuously adapt itself to the changing needs and circumstances of the society whose interests it has to safeguard and promote. There must always be a certain amount of dynamism about it. Static systems lose all vitality. The dynamism that should characterise the federal system of government is of a special variety. It consists in a fresh redistribution of powers between the centre and the units as demanded by the changing needs of society. A distribution which suits one age may not suit another. Such a redistribution has become all the more necessary in recent times. The federal systems which are now functioning in the different countries of the world were established when those countries were still in the pre-industrial stage of economy. That was the stage when agriculture was the main occupation of the people, when production was carried on for direct consumption instead of for a distant market, and when the individual citizens had few wants and did not look very much to their governments for satisfying them. The family and the local community were adequate to provide all the services that the individuals were in need of. The industrial revolution through which every one of these countries passed has brought about a complete change in their social and economic structure. † An interdependent commercial economy took the place of the isolated economy of the past. Business and industry fell into the hands of trusts, monopolistic organisations and giant corporations exercising a sort of imperial sway over the workers, the consumers and general public. ‡ Economic depression and mass unemployment became the rule. Urban civilization brought with it the problems

---

§ GEOFFREY SAWER, *op. cit.*, p 19.

\* HON'BLE THOMAS PLAYFORD—*Federalism in Australia*, p. 69.

† CORRY, J. A.—*Democratic Government and Politics*, pp. 865-6.

‡ SWISHER—*op. cit.*, pp. 235-86.



of housing, slum clearance, public health, transport, etc. The growth of democracy and the achievements of technology created in the masses an intense desire for a higher standard of life. It became clear as time went on that planning of some sort or other was necessary if the national economy was to function smoothly. Above all there was the need for making preparations for wars.

All these changes in social economy called for more and still more powers being exercised by the State. It was the only organisation that had the strength, the resources and the jurisdiction required to regulate, control and plan the economy of the people with a view to remove the evils of industrialism, provide the new social services demanded by the masses and bring to the public the maximum social good out of the technological progress which became the order of the day. In all federations therefore the problem was which of the two governments should exercise the powers that were called for. And this gave an added intensity to the contest between the centralists and the autonomists everywhere.

In all federations there is the possibility of bringing about a redistribution of powers through the process of the formal amendment of the constitution. This is a more direct method of giving the needed flexibility to the constitution than the method of judicial interpretation which is also condemned by some on the ground that it leads to government by judges and therefore inconsistent with the principle of democracy. The method of formal amendment has an additional advantage in some countries like Switzerland and Australia as it gives opportunity to the electorate to directly express their views on the proposals for a redistribution of powers.

But on the whole this method has not been fruitful in giving the needed flexibility to the constitutions of the federal states except in Switzerland. Of the twenty-one amendments to the constitution of the United States no amendment had a direct bearing on the redistribution of powers, except perhaps the Sixteenth, which conferred on the Congress the power to lay and collect taxes on incomes. In Canada there was only one such amendment as a consequence of which "Unemployment Insurance" was included among the powers of the centre. In Australia ninety-one amendments relating to the transfer of powers to the central government were submitted for referenda from time to time, but of these only one—that relating to Social Services—received the approval of the people indicating thereby that even in this industrialised age the Australian electorate is not very much in favour of increased powers being granted to the

centre.\* The explanation which was given for this attitude on the part of the people by a scholar who made a special study of the subject was that the people as such "have no fixed or even long-term views about the Federal Constitution or about the distribution of legislative powers under it, because federalism and its legal implications are a mystery to the bulk of them." † But this is not convincing. If such a poor opinion is entertained about the capacity and the political interest of the people the case for democracy and federalism loses all its force. The truth of the matter is that the forces which generate the competitive struggle for power in a federation and influence the opinions and conduct of politicians, legislators, administrators and judges equally influence the electorate and the masses of the people. There is no escape from it. Speaking about the United States one writer has remarked: "Conflict and controversy over the 'proper' scope for the application of state and national powers have played a dramatic part in the political history of the United States. The unending tug-of-war between the governmental centre and circumference has been one of the principal topics of political discussion and debate since the Constitutional Convention and the Federalist Papers. Even the superior strength which forced national unity after the war between the states failed to give a final answer to the question. Nor does any final solution seem likely to be found. While the nation and its parts continue to develop in a changing world there is little reason to suppose that the balancing process between state and Federal authority will reach a permanent equilibrium." § What is true of the United States is equally true of other federations. Competition for power is inherent in federalism.

---

\* SWISHER—*Federalism in Australia, op. cit.*, p. 19

† SWISHER—*Federalism in Australia op. cit.*, p. 170

§ GARLANT C. ROUTH—*The Annals of the American Academy of Political and Social Science, January 1940, p. 93,*

## II

The competitive trends which are characteristic of federalism are seen not only in the matter of the acquisition and retention of powers by the governments at the centre and in the units but also in the way in which they exercise their powers. This exercise of powers by them produces consequences which are partly desirable and partly undesirable. Among the desirable consequences are the scope which it provides for experimentation in the political field, the services which it renders to the successful working of democracy in countries of vast size and the facilities which it secures for the adaptation of governmental policies to areas with dissimilar economic interests and to people with different kinds of culture and social philosophy. \* No detailed reference is made here to the desirable consequences like these for the simple reason that they do not raise any serious problems requiring a solution. The undesirable consequences, however, have to be considered in some detail partly because it is these that have injured the interests of the public and partly because it is as a preventive of such consequences and as one of the effective remedies for them that co-operative action has been recommended. The co-operative trends may therefore be looked at as antidotes to the evils arising out of the competitive trends. The view that the only remedy for such evils is the substitution of unitarism for federalism is a mistaken one as it ignores that under certain circumstances and in certain countries federalism is the only system of government that is appropriate and workable. The remedies proposed must therefore be in the context of federalism and not in supersession of it.

Competition in the exercise of power consists in a tendency on the part of each government in a federation to work in isolation from the other governments and in a failure to recognise that its exercise of power might adversely affect the ability of other governments to discharge the functions for which they are responsible under the constitution. This is not merely or solely a characteristic of the governments of the units. The central governments also show the same tendency. It so happens

---

\* CORRY, J. A.—*op. cit.*, pp. 380-9,

that sometimes the majorities in control of the central legislature or the central executive at any particular time are territorial majorities consisting mainly of persons representing particular geographical areas. Reference has already been made to this aspect in dealing with the rivalry between the Hamiltonians and Jeffersonians. Similar issues have arisen in Canada and Australia. Today in India there is a suspicion that the centre is dominated by the representatives of the north and the west and that the voice of the east and south are not very much heard. Fears and suspicions of this sort may be groundless in particular cases but this does not mean that the policies pursued by the central government will not produce harmful consequences to the people living in particular areas although they may be advocated in the name of the general interest.

Similarly the policies adopted by the governments of certain units may adversely affect the administration of matters which are within the jurisdiction of the centre or of the other units. This is because there is always an element of artificiality about the distribution of powers in a federation, and functions which are really inter-dependent become separated and placed under the control of different governments. † Defence, for instance, is a function of the centre while education and public health are included among the functions of the units. The capacity of the centre to get proper recruits for defence services depends very much on the way in which the units discharge their responsibilities in respect of education and health. Neglect of these responsibilities on their part may result in ill-educated and unhealthy recruits getting into the army, the navy and the air services and undermining their efficiency. Take again the regulation of foreign trade which is within the jurisdiction of the centre. In discharging this function the central government may find it necessary to determine the quality of goods exported to foreign countries. But its success in this respect depends on the way in which the units discharge their functions in regard to agriculture, forestry and other industries which are within their jurisdiction. The free mobility of labour for which provision is made in all federal constitutions raises similar issues. It is quite common for persons born and educated in one province to move provinces in search of employment. It is therefore a matter of much importance to the owners of industrial and other concerns in these provinces that the workers whom they employ should have received a sound general education and technical training of the appropriate character. Any negligence of a provincial government in matters like these

---

† VENKATARANGAIYA—*op. cit.*, pp. 175-6.

affects adversely the interests of the other provinces. § Examples like these may be multiplied to show that even when the government of the centre or of any particular unit does not intend to cause injury to the interests that the other governments have to safeguard and promote, such injury may actually result. This is the natural outcome of their action in isolation.

There is next another group of [undesirable consequences which result from deliberate action taken by governments of certain units in full knowledge that it will be harmful to the people of some other units and even to the country as a whole. It has, for instance, been observed both in the United States and Canada that States and Provinces are in the habit of adopting policies with a view to protect their local industries, the local trades and businesses and the local labour market by creating all sorts of inter-state and inter-provincial trade barriers. The Constitution of the United States declares that "no State shall . . . . . lay any imposts or duties on Imports or Exports, except what may be absolutely necessary for executing its inspection laws". Similar provisions guaranteeing internal free trade exist in the constitution of Canada. But all the same in actual practice so many devices which from a strictly legal point of view appear to lie within the powers permitted to the units under the constitution have been adopted which in effect have created numerous internal trade barriers. One writer has listed eight such devices in the United States resorted to by the units in exercise of their Tax and License powers, five such devices in the exercise of their police and regulatory powers and two leading devices in exercise of their corporate and proprietary powers. † Besides these, there are barriers of an extra-legal character interposed by administrative authorities. The Royal Commission on Dominion-Provincial Relations in Canada (1940) has given numerous examples of what it calls "Provincial Protectionism"—the levying of taxes which weigh more heavily on outside products than on local products, regulation of retail selling and the control of prices in a discriminatory manner; inspection and grading laws so as to hamper inter-provincial trade; and bounties to encourage local industries and propaganda in favour of buying provincial products. The Commission has also pointed out how the damage resulting from local protectionism has taken various forms, how it has led to the artificial location of industries within the national economy, how it has become responsible for the wastes of uneconomic competition and for the uncertain-

---

§ *Report of the Canadian Royal Commission, Book II, p. 128.*

† F. EUGENE MELDER—*The Annals, op. cit., pp. 56-59.*

ty of business everywhere and how it has created riva'ry and jea'ousy between provinces.\* In the light of observations like these it is worthwhile carrying on research in our country also as to what extent the State governments are trying to artificially† foster local industries and businesses through the discriminatory exercise of their legislative and administrative powers. The point to be noted in this connection is that here are certain powers conferred by law on the governments of the units but they are being frequently abused. How to prevent the abuse is the great problem.

The exercise of power in isolation has also led to competition in the sphere of taxation in most federations and this has been facilitated by the fact that there is no such rigid separation of tax sources in them as is found in the Indian federation. For a long time convention and usage were effective in bringing about such a separation in the United States, Canada, Australia and Switzerland. But with the increasing demands for expenditure by the governments both at the centre and in the units due, in the main, to the exigencies of war and the widening of the scope of state activities in respect of the provision of social services, the conventional separation has completely broken down. ‡ The result is that subject to a few limitations the same [taxes have been levied in recent years by the federal, state and even local governments. In the United States, for instance, income-taxes, co-operation taxes, inheritance taxes and taxes on gasoline, tobacco and alcoholic beverages have been resorted to by governments at all levels. The same has also been the case in respect of several taxes in Canada and Australia. The criteria laid down by the exponents of the science of public finance as regards the suitability of particular taxes for being levied by particular governments have been completely ignored in the competitive race for getting as much revenue as possible. This has led to all the evils of double and multiple taxation. It is said that before the Uniform Income-tax was introduced in Australia by the Commonwealth Government in 1942 there were twenty-six different taxes on income. § The definition of "income", the rate of the tax, the minimum income exempted from taxation, the form in which the assesses have to submit their returns, the rules of "compliance" and

\* *Report, op. cit., p. 64.*

† HAROLD M. SOMERS — *Public Finance and National Income, Chapter 22*

§ SPOONER, E. S.—*Speech at the All-Australia Federal Convention on "Changing the Constitution". Proceedings edited by C. A. BLAND (1950).*

everything else relating to income-tax varied from unit to unit in all the federations. The fault does not lie only with the governments of the units. It is found in some cases, as in the United States, that the central government had invaded the fields of taxation by resorting to taxes like the Motor Vehicle Tax, taxes on amusements, etc. which are more appropriate for exploitation by the units. \* All this has produced so serious a reaction in some of the federations that to overcome the evils resulting from them it was proposed by Mr. Spooner, ‡ a great authority on Australian finance, that "there should be only one taxing authority, and the obvious authority is the Commonwealth Parliament. The States can preserve their independence with a constitutional right to certain shares of the total revenues and the right to control their own expenditures according to their policies". The Canadian Royal Commission did not go so far but recommended the centralization of the Income, the Corporation and Inheritance taxes. Everywhere there is a realization of the harmful effects of tax competition.

There are two other aspects of tax competition to which reference has to be made. One is the use which is made of it as an instrument of local and provincial protectionism—similar to the use made of the tariff to protect national industries. This has been done in the United States through the medium of tax favours and tax exemptions as well as through punitive tax measures. All these are designed to place burdens on commodities produced elsewhere. § The other aspect of it consists in the efforts made by the governments of units to reach beyond their own boundaries for taxable resources and impose taxation on the residents of other units and the properties located in them. This feature is prominent in the levy of death taxes, corporation taxes and use taxes. A calculation that was made in the United States some years ago showed that the theoretical claims to a death tax put forward by different States would have resulted in the total tax being substantially more than the entire estate. There is also of course another feature of this competition—the desire on the part of certain units to keep their rates of inheritance taxation relatively low in order to attract the owners of wealth. Whatever it be, this kind of inter-States tax competition is responsible for various abnormalities in the functioning of governments existing side by side in a federation. It leads to mutual retaliation and recrimination. Even as an instrument of local protectionism it has not been much of a success.

---

\* SOMERS, *op. cit.*, p. 465.

‡ SPOONER, *op. cit.*

§ *The Annals, op. cit.*, pp. 62-69

The competitive exercise of power also produces certain undesirable effects on governmental borrowing. It leads to the governments at the centre and in the units bidding against each other in the same loan market and a consequent rise in the rates of interest at which they can borrow. It encourages even the poorer units in federation to start costly projects simply because they do not want to appear to be less progressive than the richer units. And when any one government defaults either in the payment of interest or the repayment of principal it is not merely that its credit that is affected but also the credit of all governments. If debts are repayable in foreign currencies it creates other undesirable complications. \*

Another undesirable consequence of the competitive trend arises out of the disparity that exists in all federations between the administrative powers and responsibilities of the units and their financial power. The burden of making provision for social and developmental services like education, highways, health, insurance against old age and sickness, the relief of the indigent, unemployment assistance, etc. is either explicitly or by implication laid on the units. This is the outcome of most of the federations having been established at a time when governments were not expected to undertake services of this sort or undertake them on the scale on which they are being undertaken today. All these are functions for the efficient discharge of which huge financial resources are required. But it so happens that the tax resources at the disposal of the units yield only a meagre amount of revenue. Some of the most lucrative taxes like customs are under the exclusive control of the centre; and some others like the income and corporation taxes can be better exploited by the centre than by the units even where the latter have the constitutional power to make use of them. The result is that even the richer units in a federation find it difficult to meet out of their own revenue the expenditure they have to incur on social and developmental services. The position of the poorer units is naturally much worse.

In all federations there is considerable inequality in economic matters between unit and unit. In some the per capita income is high; and in some others it is very low. From this several consequences follow. Some units do not make provision for all the services for which they are under

---

\* MOFFAT, ROBERT E.—*Financial Relations between the Australian Commonwealth and the Australian States*, *Canadian Journal*, *op.cit.* *Report of the Canadian Royal Commission*, *op. cit.*, Ch. IV.



a constitutional obligation to provide. It is absolutely beyond their capacity to do so. Even in respect of services for which provision is made the standards attained are comparatively low. Although it is the fact that the residents within the jurisdiction of each unit are also and primarily the citizens of federation as a whole the mere accident of their place of residence determines in large measure the adequacy or otherwise of the educational, health and recreational facilities with which they are provided as well as the protection afforded them against unemployment, old age and other contingencies. Citizens resident in poorer units are condemned to a low standard of life which becomes lower still in times of depression while those living in a neighbouring unit which happens to be richer enjoy a high standard. Such disparities among citizens of different sovereign states may have a justification but there is little justification for such disparities among citizens in the same state.

There is another point to be considered in this connection. Even the low level at which services are provided for in the poorer units requires the imposition of more burdensome taxes than what the case is in the richer units. It has been found that on the whole the poorer units tax their limited resources to a larger extent than the richer units do in respect of their more ample resources. The tax system of the poorer units tends to become heavier and more inequitable in another way. In almost all federations the units rely much more on consumption taxes than on income-taxes and consumption taxes are known for their regressive character. ‡

All this disparity between administrative power and financial power has made several people demand the transfer of the administrative powers to the central government. If this demand is conceded it will be found that most of the powers now kept within the jurisdiction of the units will have to be transferred and there will be very little left for the units to administer. It will mean an end of federalism. Even from a theoretical point of view the proposition that administrative power should be equated with financial power is not sound. The fact that certain taxes which are of a lucrative character can be better levied and collected by the central government does not mean that it has a sort of proprietorship over the revenues derived from them. If this were the case every item in the list of subjects included within the jurisdiction of the centre however insignificant it may be from an intrinsic standpoint should be given a prio-

---

‡ ALVIN H. HANSEN & HARVEY S. PERLOFF—*State and Local Finance in the National Economy*, pp. 29-84.

rity in relation to public expenditure than even the most important items in the list of subjects within the jurisdiction of the units. The preservation of ancient monuments, anthropological Survey of India and the Imperial War Museum included in the Union List in India should be given priority over education, health and agriculture which are included in the State List in the Indian Constitution. This will be a most unreasonable course. It will be as fallacious as the view that the luxuries on which a rich man can spend his income have a higher order of preference than the necessities of the poor man. The attempt to equate administrative and financial power will mean that units with richer resources should have more powers conferred on them than those with poorer resources and all federations must be federations of disparate units—a result which is contrary to the whole process of the evolution of modern federalism. Finally it should be recognised that simply because the centre has more financial power it does not automatically lead to the conclusion that it has equal competence to exercise administrative powers. This is the reason why even in unitary states certain functions are made over to local authorities; and the need for the retention of administrative powers by the units in a federation is all the greater in view of the historical, geographical and cultural considerations that are at the basis of the federal system.

The above illustrates the case of the government of a unit not exercising the powers conferred upon it by the constitution or exercising them to an inadequate extent owing to the lack of financial capacity. But there are cases where it is not the incapacity but the unwillingness to exercise powers that produces the undesirable consequences. This unwillingness is ordinarily due to the fact that unless all the units in a federation simultaneously exercise the particular powers the unit which first exercises them will have its interest affected adversely. This is illustrated by what has happened to labour legislation in states like the United States and Canada where it is included within the jurisdiction of the units. Most of the governments of the units showed hesitation in enacting laws on hours of work, minimum wages, age for employment and general conditions of work in factories for the reason that if similar legislation was not enacted by other units their industries would be placed in a disadvantageous position in competing with the corresponding industries elsewhere as their production costs were sure to go up in consequence of labour laws.\* Although every one is agreed that without such laws being enacted and enforced by the state the condition of workers cannot be effectively improved, action for the purpose was slow. What is true of labour legislation is equally

---

\* *Canadian Royal Commission Report, op. cit., p. 46,*









true of every other kind of legislation which places restrictions upon one section of the citizens with a view to safeguard the interests of other sections.

The existence of a number of competing autonomous governments exercising their powers more or less in isolation also results in a great deal of diversity in the laws of the country. It is of course true that it is to promote diversity wherever it is necessary and desirable that the federal system of government has been organised and it is in fact the justification for this kind of government. But it is quite possible that diversity which might be tolerated in an age of isolated economy may become a source of confusion and annoyance in an age of interdependent economy. In all federations trade and commerce have now attained this character. If under these circumstances each unit has its own laws regulating bills of exchange, contracts, insurance, corporations and other matters relating to business and industry the national economy is bound to suffer. This is the reason why in countries like the United States the problem of uniform legislation under a federal system has come to attract the attention of publicists and politicians.

So far reference has been made in the main to such of the undesirable consequences of federalism which are positively harmful. There are however other consequences which are not positively injurious but which stand in the way of the maximum social advantage being secured. This happens because for certain purposes joint action on the part of a number of neighbouring units is necessary but such action may not be forthcoming because of the habit of the units in a federation to work in isolation. Matters relating to the navigation of rivers flowing through several provinces, irrigation projects, hydro-electric schemes, conservation of natural resources, municipal water supply, sewage-disposal, prevention of river-pollution, the protection of the life of migratory workers and their itinerant families are some of the matters which can be effectively administered only by joint action.

From this survey it is clear that the competitive exercise of power which is the dominant characteristic of governments in federations has to be checked and regulated if the interests of the public are to be promoted to the maximum extent. And it is for securing this purpose that a number of co-operative devices have been introduced in all the federal states. The instrumental value which federalism possesses as a system of government depends very much on the nature and quality of these devices.

### III

As has been observed by an American writer, co-operative federalism "proceeds upon the assumption that the state and national governments are not necessarily antagonistic legal entities engaged in a perennial struggle for jurisdiction across a no-man's land policed by the Supreme Court. To the contrary, it assumes that they are public service agencies designed to serve the same public with whatever means be at their disposal." † The same idea was given expression to by the Canadian Royal Commission when it stated: "National unity and provincial autonomy must not be thought of as competitors for the citizen's allegiance for, in Canada at least, they are but two facts of the same thing—a sane federal system. National unity must be based on provincial autonomy and provincial autonomy cannot be assured unless a strong feeling of national unity exists throughout Canada." \* The realisation that the promotion of the public interest and the general welfare is the common goal of the governments at the centre and in the units and that they should work in concert and not in complete isolation in their efforts to reach the goal is the essence of co-operative federalism.

The idea of co-operative federalism is not new. It is as old as the modern federal movement itself. Elements of it are found in the constitution of the United States which is chronologically the first of modern federations. These elements were further elaborated in the constitutions of federations subsequently formed—the federations of Switzerland, Canada, Australia, the German Republic and the Republic of India. It is even possible to speak of a process of evolution of federalism as a system of government during the last one hundred and sixty years and to point out that the basic feature of this process is the incorporation of a larger and larger number of co-operative techniques and devices into federal constitutions. Viewed from this standpoint the constitution of the Republic of India may be said to be superior to that of any other federation. Several suggested proposals and recommendations made in other countries to

---

† DAVID FELLMAN—*Problems of Post-war World*, p. 191.

\* *Canadian Royal Commission Report*, op. cit., p. 269.



bring about a larger amount of co-operation between the centre and the units and among the units themselves have actually been included in the Indian Constitution.

Among the techniques for co-operative action that are to be found in federal constitutions the first place is to be given to the principle of concurrent as distinguished from exclusive powers. The idea of exclusive powers emanates from an exaggerated importance being attached to the independence and autonomy of the two sets of government in a federation although in certain matters exclusive jurisdiction is the only reasonable course. The principle of concurrent powers proceeds on the assumption that it is only in certain spheres that governments should be completely autonomous while in many others they should work conjointly. There is also another idea involved in the scheme of concurrent powers. It is the idea that there are different aspects to every subject on which governments have to undertake legislation and that only some of these aspects have a national significance and have therefore to be dealt with by the governments at the centre while other aspects have only a provincial or local significance and should be left for being dealt with by the governments of the units. It follows from this that it is not appropriate to assign subjects as wholes either to the centre or to the units. ‡ They should have concurrent jurisdiction over such subjects and each should regulate particular aspects in relation to them. There are various elaborations of this idea of aspects. One such elaboration consists in the centre being given power to enact normative legislation and lay down the general standards while the units are left with power to apply such standards in the light of varying local conditions and circumstances. \* Another elaboration consists in the centre fixing what may be called the minimum and the units being left to do anything they want by way of adding to the minimum.

The importance of this technique of co-operative action through a list of concurrent powers has been increasingly recognised in recent times. The number of items included in the concurrent list was small in the earlier constitutions but in the constitution of India there are forty-seven such items and they deal with many essential matters like Civil and Criminal Law, Labour and Social Legislation. § The Canadian Royal Commission (1940) recommended the inclusion of Fisheries, Employ-

---

‡ ARTHUR W. MACMAHON—*Article on "Federation" in Encyclopædia of Social Sciences.*

\* *Constitution of the German Reich (Weimar Republic) Articles 8-11*

§ *Seventh Schedule—List III Concurrent List.*

ment Offices, Social Insurance, Transport and marketing in the list of concurrent subjects. It also expressed the view that the Dominion Government might fix basic standards in regard to minimum wages, maximum hours of work and the minimum age of employment leaving to each province the power to impose such higher standards as it desired. § 4.

Another device for bringing about co-operation between the centre and the units ( and also among the units in some cases ) is inter-governmental delegation of powers. It has already been pointed out that one of the drawbacks of federalism consists in an inappropriate allocation of powers. It some times happens that a power which in the interests of uniformity should be exercised by the centre has been allocated to the units in the original constitution and experience might suggest the need for a transfer. This can be effected directly through constitutional amendment. But for various reasons the method of amendment is found to be difficult. It therefore becomes necessary to have a more flexible method of effecting the transfer and provision for delegation of powers found in some federal constitutions is of great service in this connection. † It is quite possible that the units do not want to part with the particular power for all time. They may be anxious to find out on the basis of experiment as it were how far the transfer would be really useful, and this kind of exploration is easier if there is provision for delegation. An outright amendment of the constitution may be disliked because it means the transfer in perpetuity. It may also be that only some of the units are in favour of the transfer and if there is provision for delegation the centre will be in a position to undertake legislation applicable only to those units. They will not be put to the necessity of waiting till unanimity in favour of the transfer is secured from all the units. It is considerations like these that induced the Canadian Royal Commission to recommend the incorporation of a provision for delegation of powers in the Canadian constitution. \* One refinement that it has suggested is that it must be open to the centre also to delegate any of its powers to the units.

The powers of delegation may be made use of in another way. It has been found from experience that in respect of several matters it will

---

§ *Report, op. cit., Chapters II and IV.*

† *Commonwealth of Australia Constitution Act, Section 51, Item XXXVII.*

*The Constitution of India. Article 252.*

*Report, op. cit., pp. 72-75.*

be enough if legislative power alone is exercised by one or the other government while the administrative power in the matter of enforcing the legislation is delegated to the other government. This was a feature of German Federalism \* and it is still a feature of Swiss Federalism to leave to the units the administration of several laws enacted by the centre. ‡ This also served the additional purpose of reconciling the units to the inclusion of many items in the central jurisdiction. In Australia in days when both the states and the central government levied an income tax, the central government administered its own tax as well as the state tax in Western Australia while it delegated to the governments of other five States the power to collect the central income tax along with their own taxes. Some of the states also solicited the services of the federal government in the administration of entertainment taxes. In Canada the Central Government collected, in addition to its own income tax, similar taxes for Ontario, Manitoba and Prince Edward Island. In six of the nine provinces the enforcement of provincial as well as Dominion statutes in regard to Police is entrusted to the ( Central ) Royal Canadian Mounted Police under agreements between the Dominion and the provinces concerned. § Even in a country like the United States which is known for its " dual federalism " there is now a tendency to make use of state officials for putting into effect federal policies and programmes. The device is considerably used in connection with the vital statistics work of state and national public health authorities, the enforcement of national and state game laws, work connected with the national guard, and certain branches of emergency relief work. † During the second World War it was through the state governments that the federal government administered the Selective Service Act, the system of rationing and price control and Air-raid protection. The arrangements then introduced have come more or less to stay. Referring to this aspect of co-operation one writer remarks : " This has not come about because the states demanded a share in the war programme, but because the national government found that local units could be extremely useful in doing many things that had to be done expeditiously and with some due regard for local sensibilities and regional varia-

---

\* *Constitution of the Reich. op. cit., Article 14.*

‡ A. L. LOWELL—*Government and Parties in Continental Europe, Vol. II p. 183. For recent developments, however, see Adde Siegfried—Switzerland ( 1950 ) pp. 160-64.*

§ *Report, op. cit., pp. 177-78.*

† LEONARD D. WHITE—*Introduction to the Study of Public Administration ( 1948 ) Chapte X.*

tion. ‡ There are many who think that there is no justification for the commonly held view that central administration is more efficient than administration by units and they consequently welcome administrative powers being exercised by the units. \* It goes without saying that unified administration in several cases whether it be under the control of the centre or of the units is conducive to economy.

Several co-operative devices are being used and some more have been suggested to mitigate the evils arising out of competition in the field of taxation and of borrowing. One such device that is in use in the United States is the system of Tax Credit and Tax Deduction. Under this system the amount collected by one government is allowed as a credit against the amount due to the other if both state and federal governments are using the same tax. This is an inducement for all the states to levy the taxes to which the credit system is applied in preference to other taxes. It has the merit of enabling the state to share in the tax while limiting the burden on the tax-payer and removing some of the injurious effects of double and multiple taxation. † Another co-operative device is the surrender by the units of their right to levy certain taxes on condition that they are levied by the centre and the proceeds distributed among the units. A third device is for the units to surrender their right to levy certain taxes on condition that the centre compensates them for the loss of their revenues through special grants. In Australia the States surrendered their rights in respect of income-tax in 1942 and have been receiving special grants in return. § It was on these lines that the Canadian Royal Commission recommended the surrender by the Provinces of their right to income, inheritance and corporation taxes and they formed the basis of the agreements that were subsequently entered into by the Dominion with some of the provinces. || It is not to be concluded from this that the devices referred to have finally solved all the problems of inter-governmental finance. For, as a matter of fact, they have created some new problems. But they all indicate that it is only through co-operative action that they are capable of being solved although there are several who object to the various co-operative devices on the ground that

---

‡ DAVID FELLMAN—*op. cit.*, p. 191.

\* HARTLEY LEIST LUTZ—*Public Finance*, pp. 111, 308-9.

† HARTLEY LEIST LUTZ—*Public Finance*, p. 308.

§ *Grants Commission Report*, 1950.

|| DAWSON R. M.—*op. cit.*, pp. 180-35.

they involve too many restrictions being placed on the autonomy of the units.

Among the institutions that have been created for prevention of competitive bargaining in the matter of governmental loans the Australian Loan Council deservedly occupies the most prominent place. It is a body consisting of the Commonwealth Prime Minister and the premiers of the various States and it has practically the final voice in determining the amount that should be raised each year by way of loans by the Central and State Governments and the conditions under which they should be raised. Mr. Spooner's suggestion that there should be a single taxing authority for the whole federation is merely an extension of the principle on which the Loan Council is based. A similar suggestion that all taxes should be levied and collected by the Federal Government has been made by some other writers also. ‡ The Canadian Royal Commission has recommended that the Finance Commission proposed by it should be entrusted with the function of examining the soundness of the provincial loans under certain circumstances. \* The Finance Commission provided for in the Constitution of India is empowered to make recommendations on almost all financial matters of an inter-governmental character. † The United States Congress Committee on Federal, State and Local Government Fiscal Relations (1943) and the United States Treasury Committee have recommended the establishment of a "Federal-State Fiscal Authority" for promoting financial co-ordination.

The system of central grants to the units which is a characteristic of modern federalism is a co-operative device which is most effective in remedying a great many of the undesirable consequences arising out of inter-governmental competition. It is useful, for instance, in providing relief to the units which are adversely affected by the policies pursued by the central government in the general interest and reconciling the minorities to majority rule. Several of the units in Australia and Canada have put forward their claims for special grants on this ground although there are always difficulties in making an exact estimate of the losses sustained by any particular unit in consequence of central policies. The Canadian Royal Commission considered it to be a matter of simple equity and justice to pay grants to areas that have become impoverished by national economic policies which enriched other areas and which were

---

‡ SOMERS—*op. cit.*, pp. 472-3.

\* *Report, op. cit.*, p. 124.

† *Articles 280-81.*

adopted in the general interest.

Grants also serve as an instrument for stimulating the activity of the units in matters which according to the constitution are within their jurisdiction but which have a direct or indirect bearing on matters within the jurisdiction of the centre. If, for instance, the efficiency of defence depends on the way the units administer education and public health and if it is found by the centre that these matters are not administered by the units in accordance with recognised standards they may be stimulated to pay adequate attention to them through a system of central grants. This has in almost all federations determined the selection of items for which grants are given. Highways, public health and education have generally been among such items because these have more bearing on many of the functions that the centre has to discharge. It is on this principle that grants are being given now-a-days for the conservation of natural resources. In all these cases grants serve as a reward for local effort. \*

Grants are also used to mitigate the evil effects due to the disparity between administrative power and financial power. It has already been pointed out that the units lack in most cases the financial resources needed to efficiently administer the functions for which they are responsible under the constitution while the centre which has the necessary financial resources has no jurisdictional control over such functions. The system of grants and subsidies gets over the difficulty arising out of this situation and brings about something like a combination between administrative and financial powers. One idea that has been responsible for the increasing attention paid in all federations to this aspect of grants is that of a national minimum. It has come to be recognised that the fact that under federalism there are two governments instead of one for promoting public interest should not result in lowering the standard of life of any section of citizens simply because they happen by accident to reside in particular areas or units and that every citizen is entitled to a certain minimum in respect of all essentials of life, of health, education, relief in times of sickness and unemployment and assistance in old age. This idea of a national minimum can be put into effect only when the centre makes grants to the units and enables them to provide the necessary social services to their citizens. In determining the amount of special grants to be made to the various states the Australian Grants Commission has adhered to this principle. § The Canadian Commission has also stated that grants should

\* HAROLD M. GROVES—*Financing Government*, pp. 605-6.

§ *Report, op. cit.*, 1987.

be designed with a view to make it possible for every province to provide for its people services of average Canadian standards. †

The system of grants not only implies that the centre co-operate with the units in enabling them to discharge their responsibilities but also that the richer units are under an obligation to come to the assistance of the poorer units. Looked at from this point of view the centre is merely an instrument for transferring the wealth and income of the richer units to the poorer ones which are in greater need of them. This is an extension of the well recognised principle of modern taxation that it should be utilised to bring about more equitable distribution of wealth in society.

There are several who criticise the system of central grants on the ground that it leads in a variety of ways to an encroachment by the national government on the autonomy and rights of the units. There is some truth in this criticism though it is often exaggerated. Through grants the centre is in a position to dictate the units not only how they should spend the moneys it pays them but also the expenditure they incur on other services. The functions for which aids are given by the centre acquire a preferred position. The Governments of the units are induced to favour activities relating to such functions at the expense of others equally meritorious. As Professor Harris puts it: "Consider, for example, the effect of Federal aid upon expenditures for highways and old-age assistance. An impartial student of public finance would be forced to admit that these activities have been placed in a highly preferred position, and that other governmental functions equally important have suffered because of the diversion of available state and local funds into these and other activities which are federally aided." \*

But the question to be considered is what the alternatives are to a system of grants and whether those alternatives help the maintenance of the autonomy of the units to a greater extent. As has already been pointed out most units will in the absence of grants not be able to provide their citizens even with that minimum of social services which it is their duty to provide. In consequence of this they will lose all prestige and their citizens will not care to preserve an autonomy which has no meaning for them. It raises the same issues as those raised in connection with the nineteenth century liberalism by the advocates of negative versus positive freedom. The second alternative is to transfer to the central

---

† *Report, op. cit.*, p. 125.

\* *The Anna's, op. cit.*, p. 19.

government the responsibility for the administration of all those services which the units are unable to finance. This will mean outright centralisation and the disappearance of all autonomy.\* Neither of these two alternatives is therefore helpful in preserving states' rights and independence. Moreover, the criticism that the acceptance of federal aid is also an acceptance of all the conditions imposed by the centre expresses only a half truth. There are conditional and unconditional aids and the movement today is more and more in favour of the latter. When conditional aids are administered through an independent Grants Commission as in Australia and as has been recommended by the Canadian Royal Commission the grants become more and more unconditional and the units receiving them will be in a position to discharge their responsibilities without the need to surrender their discretion in policy-making. What is, therefore, required is systematisation of grants on a scientifically calculated basis. It is the absence of such a basis and of an institution to work it out that accounts for the large volume of criticism of federal aid in the United States. All the same, federal grants have come to stay; and they afford one more illustration of the co-operative trends in contemporary federalism.

Co-operative devices for preventing the growth of inter-state trade barriers and for bringing about uniform state laws and uniformity in their administration are also to be found in several federations. They are more numerous in the United States than in other countries. This is due to the fact that in that country there are as many as forty-eight units and the disadvantages arising out of trade barriers and diversity of laws are more serious. The need for counteracting them is correspondingly much greater. In addition to this the economy of the United States is a more highly integrated and interdependent one. Interest therefore in freedom of internal trade and in uniform laws and administration is naturally more wide-spread. All this accounts for the large number of institutions in that country created for the purpose of securing the needed freedom and uniformity.

Among these institutions the Council of State Governments deserves the first place. It is composed of the members of Commissions or Committees on Inter-State Co-operation established in each of the forty-eight States. Typical Commissions consist of ten members of the legislature and five administrative officials. The Council thus constituted serves as (1) a clearing house for information and research, (2) a medium

---

\* HANSEN AND PERLOFF *op. cit.*, pp. 124-25,



for improving legislative and administrative practices of State Governments, (3) an instrumentality for encouraging full co-operation among the states in solution of inter-state problems both regional and national, and (4) a means of facilitating and improving federal-state relations. Several associations like the American Legislators' Association, the Governors' Conference, the National Association of Attorneys General, etc. work in close collaboration with it. It also co-operates in the legislative programme of the National Conference of Commissioners on Uniform State Laws. †

Organisations like these have succeeded in removing many of the trade barriers and in "ironing out conflicts among the States in other fields, including water resources, conservation of fisheries, liquor control, conflicting taxation, inter-state parks, motor vehicle regulation, and crime control." § The National Conference of Commissioners on Uniform State Laws has been responsible for drafting about one hundred model and uniform acts by 1948. Most of them have been designed to facilitate ordinary business operations across state lines through uniform legislative requirements in all States. The response of the state legislatures to the efforts of the Conference has not been as encouraging as it ought to be, but there is a general recognition of the value of its work. The habit of "Legislative Copying" which induces the framers of state constitutions and the drafters of state statutes to frequently take similar documents from convenient sister states or from the Federal Government as models for their efforts, the propaganda carried on by lobbying organizations, which is a common feature of public and political life in the United States, and the pressure which the central government is able to exercise on States through the machinery of grants have also helped the creation of uniform laws. \* Another device for concerted action among the States is the conclusion of inter-state compacts for which provision exists in the Constitution. By 1946 as many as eighty such compacts were entered into in relation to boundaries, cessions of land, water supply, crime control, bridges, tunnels, parks, control of fisheries, port development, river-valley development and so on. ‡

In Canada a most useful purpose has been served by the Inter-Provincial and the Dominion-Provincial Conferences. Of the two the latter are

---

† *The Book of the States : 1950-51, ( Vol. III ), pp. 3-6.*

§ *The Annals, op. cit., p. 103.*

\* *The Annals, op. cit., pp. 80-81.*

‡ WILLIAM ANDERSON—*American Government, p. 241.*

of greater value. They are conferences of the prime ministers of the Dominion and of the provinces and of the leading members of their cabinets. Almost all questions in the field of Dominion-Provincial relations in which there is scope for uncertainty and friction come up for discussion in them. The results of these conferences have been found to be so fruitful that the Canadian Royal Commission recommended that they should be held more regularly with an agenda settled sufficiently in advance. In emphasizing the superiority of this kind of co-operation over the alternative of centralization it observed: "It is in the interest of provinces themselves that efficient methods of co-operation be devised. The tendency in most federal states has been towards centralization at the expense of the provinces. In so far as matters requiring uniformity of treatment, or concerted action can be dealt with by co operation among the provinces, or between the Dominion and the provinces, the case for additional centralisation to promote efficiency or uniformity will not arise." †

Concerted action is also promoted in Canada through Conferences of administrative officials in similar departments of Dominion and provincial governments and through special inter-departmental committees. The Royal Commission has suggested the establishment of a representative tribunal to enquire into complaints about the setting up of trade barriers through discriminatory legislation and administration. It has also recommended the creation of representative appeal boards to review decisions on matters relating to unemployment aid. The point that deserves special attention in these and in similar other cases is the increasing importance attached to institutions representing the Dominion and provincial governments for undertaking co-operative action wherever necessary. This has a close analogy to the method by which reconciliation is brought about under democracy between the freedom of the individual citizen and the need for the expansion of state activity which naturally infringes on that freedom. This method is to give to the citizen a share in the power to formulate state policies through his elected representatives sitting on the legislatures and other governing bodies. In the same way the freedom of units in a federation has to be reconciled with the needs of uniform action over the whole area of the federation, needs which have become larger and more urgent. And this need is being satisfied by the establishment of new institutions representing the governments of the centre and of the units.

The most important institution working for concerted and co-operative action in Australia is the Premiers' Conference. "This body, con-

---

† *Report, op. cit., p. 70.*

sisting of the Prime Minister of the Commonwealth and Premiers of States, meets at least twice every year and takes joint informal decisions on important financial, as well as non-official, matters affecting Federal State relations. These decisions are subsequently confirmed by means of Federal-State agreements and/or simultaneous legislation. The Conference provides an eminently suitable ground for the ventilation of grievances and opinions on matters in dispute or on matters of collective federal significance and enables both the Commonwealth and States to shape national policies in accordance with agreed decisions." \* Most of the matters coming before the Loan Council are previously discussed at the Premier's Conference. A National Works Council composed of one representative of each of the governments with the Prime Minister of the Commonwealth as Chairman was created in 1948 to determine post-war works policy in the general scheme of post-war reconstruction. ‡

Political parties are so integrally and vitally connected with the working of democracies and representative governments that there is no need to make a separate reference to them as agencies in promoting co-operation between the centre and the units in all federations. Their role in this respects is a dominant one.

There are numerous provisions in the Constitution of India for bringing about concerted action between the government of the Union and the governments of the States that make up the Union. Reference has already been made to the articles in the constitution under which two or more states can delegate to the Union Parliament the power to enact legislation on a matter which is within their exclusive jurisdiction. The President is empowered to establish an Inter-State Council for enquiring into disputes arising between States, for investigating and discussing subjects of common interest to the Union and the States or to the States themselves and for recommending a better coordination of policy and action with respect to matters so investigated. There is provision for the institution of a joint Public Service Commission for two or more States and for the Union Public Service Commission serving the needs of any particular State, and all this is to be worked on the basis of mutual agreement. In the field of finance the scope for co-operative action is wide and it assumes several forms. Certain duties are levied by the Union but collected and appropriated by the States. There are several taxes levied and collected by the Union but whose proceeds are assigned

---

\* NEHRU-ADARKAR—*Report on Australian Finance* (1947), p. 10.

‡ NEHRU-ADARKAR—*Report on Australian Finance* (1947), p. 10.

either wholly or partly to the States. There are provisions relating to the making of grants by the centre to the units and they cover unconditional as well as conditional grants. All details regarding the sharing of tax-proceeds and the making of grants are worked out by an independent Finance Commission. The Union is also empowered to grant loans to the States. The constitution also envisages close co-operation in administrative matters.

Conferences between the representatives of the Governments of the Union and of the States have also been quite common and frequent. There have been conferences of Governors of States, of their chief ministers and ministers holding similar portfolios. Conferences of departmental heads and officers have also been held. As in other federations there are many departments at the centre which are engaged in the collection of statistics and of information and data on a variety of matters and the results of their work are passed on to the states for being utilised by them.

From this survey of the competitive and co-operative factors in federalism the conclusion emerges that although competition for power is inherent in it the co-operative trends have become stronger and more active in recent years and they have succeeded to a considerable extent in counteracting several of the undesirable consequences arising out of the competitive struggle for power. There is, therefore, no need to think of centralization as the only remedy for overcoming the defects of federalism. The federal system of government has shown its capacity to adjust itself to changing needs and circumstances and this process of adjustment has in all federations been facilitated by the growth of co-operative devices. If these co-operative trends are strengthened federalism will continue to be an ideal system of government for countries like India, the United States, Canada and Australia—countries which are vast in size and which consequently develop geographical, economic, social and cultural diversity.

( Lecture delivered on 24 February 1951. )

---

*Printed by Mr. C. P. Modak at the Bharat Mudranalaya,  
344/45 Narayan Peth, Poona 2.*

*and*

*Published by Prin. D. R. Gadgil, M. A., M. Litt., at Gokhale  
Institute of Politics and Economics, Poona 4.*



## **R. R. Kale Memorial Lectures.**

- 1938—The Social Process. By Dr. G. S. Ghurye, Professor of Sociology, Bombay University. Price As. 8.
- 1939—Federation Versus Freedom. By Dr. B. R. Ambedkar, M.A. PH.D., D. SC., M. L. A., J. P., Bar-at-Law. Price Re. 1.
- 1941—The Problem of Aborigines in India. By A. V. Thakkar, L. C. E., Price Re. 1.
- 1942—A Plea for Planning in Co-operation. By Vaikunth L. Metha, B. A., Price As. 12. (Out of print).
- 1943—The Formation of Federations. By S. G. Vaze, Price Rs. 1-8.
- 1944—Central Banking in India : A Retrospect. By Sir Chintaman D. Deshmukh, Governor, Reserve Bank of India. Price 1-8-0.
- 1949—Public Administration in Democracy By D. G. Karve. Price Rs. 2 or 3s.
- 1950—Policy of Protection in India. A Retrospect. By H. L. Dey, Price Re. 1 or 1s. 6d.



## **Forthcoming Publications.**

- 1 Social Survey of Kolhapur City,  
Part II—Industry, Trade and Labour.
- 2 Poona : A Socio-Economic Survey  
Part II—Sociological.
- 3 Sholapur : A Socio-Economic Survey.

---

Agents for the sale of our publications in the United Kingdom:  
B. F. Stevens & Brown Ltd.  
New Ruskin House, 28-30 Little Russel Street,  
LONDON, W. C. 1.

**Publications of the Goahale Institute of  
Politics and Economics Poona 4.**

- No. 1 :—The Salaries of Public Officials in India. By D. R. Gadgil, 1931 ( Out of print )
- No. 2 :—Imperial Preference for India. ( The Ottawa Agreement Examined ). By D. R. Gadgil, 1932. ( Out of print ).
- No. 3 :—A Survey of the Marketing of Fruit in Poona. By D. R. Gadgil and V. R. Gadgil, 1933. ( Out of print )
- No. 4 :—A Survey of Motor Bus Transportation in Six Districts of the Bombay Presidency. By D. R. Gadgil and L. V. Gogate, 1935 ( Out of print ).
- No. 5 :—Urban Handicrafts of the Bombay Deccan. By N. M. Joshi M. A. 1936. ( Out of print )
- No. 6 :—Legislative Protection and Relief of Agriculturist Debtors in India. By K. G. Shivaswami, 1939. ( Out of print ).
- No. 7 :—A Survey of Farm Bussiness in Wai Taluka. By D. R. Gadgil and V. R. Gadgil, 1940. ( Out of print ).
- No. 8 :—The Population Problem in India—A Regional Approach. By N. V. Sovani, 1942. ( Out of print ).
- No. 9 :—Regulations of Wages and Other Problems of Industrial Labour in India. By D. R. Gadgil, (Reprint 1945). Price Rs. 5 or 10s.
- No. 10 :—War and Indian Economic Policy. By D. R. Gadgil and N. V. Sovani, 1944 ( Out in print ).
- No. 11 :—The Aborigines—"So-called"—and Their Future. By G. S. Ghurye, Professor and Head of the Department of Sociology, University of Bombay. 1943. ( Out of print ).
- No. 12 :—Poona—A Socio-Economic Survey, Part 1 : Economic. By D. R. Gadgil, Assisted by the Staff of the Institute. Royal 8vo. pp. 800. 1945. Price Rs. 15 or 30s.
- No. 13 :—Federating India. By D. R. Gadgil, Demy 8vo. pp. 117, 1945. Price Rs. 6 or 12s.
- No. 14 :—The Socio-Economic Survey of Weaving Communities in Sholapur. By R. G. Kakade, Demy 8vo. pp. 221, 1947 Price Rs. 10 or 20s.
- No. 15 :—The Federal Problem in India. By D. R. Gadgil, Demy 8vo. pp. 208, 1947. Price Rs. 8 or 16s.
- No. 16 :—Bombay Finance—1921-1946. By T. M. Joshi, Demy 8vo. pp. 220, 1947. Price Rs. 7-8-0 or 15s.
- No. 17 :—Economic Effects of Irrigation ( Report of Survey of the Direct and Indirect Benefits of the Godavari and Pravara Canals). By D. R. Gadgil, Demy 8vo. pp. 184. Price Rs. 8 or 16s.
- No. 18 :—The Social Survey of Kolhapur City : Part I : Population and Fertility. By N. V. Sovani, Assisted by the Staff of the Institute. Demy 8vo. pp. 86, 1948. Price Rs. 4 or 8s.
- No. 19 :—Some Observations on the Draft Constitution. By D. R. Gadgil. Demy 8vo. pp. 112, 1948. Price Rs. 3 or 6s.
- No. 20 :—Reports of the Commodity Prices Board. Edited by N. V. Sovani, 1948. Royal 8vo. XX+286, Price Rs. 10 or 15s.
- No. 21 :—Post-War Inflation in India—A Survey. By N. V. Sovani, 1949, Royal 8vo. pp. 100, Price Rs 5 or 7s. 6d.
- No. 22 :—Planning of Post-War Economic Development in India, By N. V. Sovani, 1951, Demy 8vo. XI+102. Price Rs. 8-8-0 or 5s.







