

of supplying each class; and (3) competitive adequacy: rates should be designed to promote and hold the business. Mr. Welch notes that the tendency has been toward rate simplification, and he observes that rate design is the function of utility management, but he also says that the reasonableness of any proposed rate must be susceptible of demonstration. In brief, there may still be some virtue in that favorite of the bad old days, "Take the most feathers from the goose with the least squawk;" but even the squawkless goose now gets a substantial measure of regulatory protection.

Mr. Welch's book belongs in the office of every utility executive whose company may be subjected to the rigors of rate case procedure; in the library of every utility lawyer, for its insights into the whole regulatory problem, as well as its sound, practical rate case suggestions; and on the desk of the head of every utility rate department or division. It deserves to be perused, pondered, studied. More profitable reading for the gentlemen indicated could not well be imagined.

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STUDIES IN FEDERALISM. Edited by R. R. Bowie & C. J. Friedrich. Boston: Little Brown & Co., 1954. Pp. xlii, 887. \$15.

FEDERALISM, MATURE AND EMERGENT. Edited by Arthur W. Macmahon. New York: Doubleday, 1955. Pp. xi, 557. \$7.50.

BOTH these composite volumes represent the keen American interest of the last few years in the possibility of applying the notion of federalism to the problems of Western Europe. The *Studies* prepared under the direction of Professors Bowie and Friedrich were mainly done in the period July-October 1952 on behalf of a Committee of the European Movement. Upon these studies were based resolutions relating to a European constitution which in turn were adopted in November 1952 by the Committee of the European Movement. This Committee's work paralleled rather than inspired the work undertaken by the so-called Ad Hoc Assembly, itself an outcrop of the Schuman Plan organization, which produced early in 1953 a "Draft Treaty Embodying the Statute of the European Community," printed like the resolutions as an appendix to this volume.

The *Studies* themselves deal with the general theme of federalism, partly under the heading of institutions, partly under that of functions, and partly in the light of particular problems such as overseas territories and constitutional amendment. In each case the method adopted is the same: to examine how the subject is handled in the existing "classic" federations, the United States, Canada, Australia, Switzerland and Germany (in its Imperial, Weimar and Bonn phases), with occasional reference to Austria; and then to see what lessons can be drawn for a federation designed in the first instance for the Schuman Plan countries. Each chapter ends with appendices analyzing the relevant constitutional provisions and practices in the existing federations.

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Despite the fact that the movement towards a European political community received a severe check with the collapse of the EDC project in 1954, these *Studies* (first published in French in Brussels in 1953) are a contribution to the permanent literature of federalism. The worth of the volume is enhanced by Professor Friedrich's valuable introduction discussing the movement towards a European constitution, and by the bibliography of federalism with which it concludes.

The volume edited by Professor Macmahon in the Columbia University Bicentennial series consists of revised versions of papers presented at a conference on federalism held in January 1954. It offers in its final section, entitled "Supranational Union in Western Europe," further and more up-to-date versions of the views of both Professor Bowie and Professor Friedrich, and in addition important chapters on the economic aspects of the unification movement by Mr. William Diebold, Jr. and Professor Ingvar Svennilson of Stockholm.

The final section of *Federalism, Mature and Emergent* includes as well a chapter by Tom Charlton Clark on the early phases of the Schuman plan which, while useful in itself, departs in tone from what one might expect in a work published under such auspices. "[A] realism unusual for Europe"¹ is not the kind of phrase that commends itself to Europeans; nor was this perhaps the occasion for arguing that "it is also time that U.S. foreign aid stop assisting the development of an industrial self-sufficiency for each Western European nation if at the same time one of its aims is to bring about a united Europe";² or that "judged by the length of time it took to get the Schuman treaty into operation . . . all other pooling ideas should get under way without delay."³ Mr. Clark's enthusiasm for his subject can hardly have sufficed to convince all his colleagues at the Conference that while the idea of national sovereignty dies hard, "in one sense the Schuman Plan symbolizes that death," and therewith "the birth of a new sovereignty concept—that of a United Europe."⁴ Mr. Clark might well have pondered the late Franz L. Neumann's criticism of the assumption that federalism is the only conceivable form of political advance, in his paper "Federalism and Freedom: a Critique";⁵ or even more appositely, Mr. John Fischer's well-informed essay "Prerequisites of Balance," which suggests "that the problem is more difficult than the casual American observer might suspect; that the American pattern is not likely to produce a wearable political garb for other peoples without a lot of tucks and patching; and that the tailoring process may require a long time."⁶

Indeed, looking at the intention of the volume as a whole, one regrets that those responsible for the conference were unwilling or unable to provide more representation from Europe itself. Apart from Professor Svennilson and from

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1. FEDERALISM, MATURE AND EMERGENT 472.
 2. *Id.* at 489.
 3. *Ibid.*
 4. *Id.* at 473.
 5. *Id.* c. 3.
 6. *Id.* at 67.

Professor K. C. Wheare, who gave a lucid account of "Federalism and the Making of Nations"⁷ in the light of Commonwealth experience, the participants were all Americans. One's regret stems, however, not so much from the fact that European critics of federal "solutions" could have confronted American enthusiasts for them, as from the fact that it would have been good for European enthusiasts to learn from the American experts on federalism in the United States how far-removed is federalism as a going concern from the simple institutional devices or allocations of powers that are all that constitution-mongers can offer.

Unlike some composite works on topics of this kind, *Federalism, Mature and Emergent* possesses a genuine unity of theme and presentation—largely owing to the editorial skill of Professor Macmahon, whose introductory chapters to each section admirably contrive to draw the student's attention to the most significant points. The first section deals with the federal problem in a general fashion and is perhaps chiefly notable for Professor A. A. Berle's attempt to fit "evolving capitalism" into the framework of federal thinking.⁸ But the core of the book lies in part II, "Basic Controls in a Maturing System"; and part III, "Functional Channels of Relationship." Almost every chapter of these sections, though of a different degree of generality, deserves extended and critical treatment. And equally, each reveals the number of basic assumptions upon which a working federal system rests: the political assumption that in the last resort it is one nation whose affairs are being handled; the professional assumption that each individual, whether his orbit be state or federal, wants the system to work and is prepared to co-operate to that end, as well as to safeguard the particular interests he is concerned with; and finally, and perhaps most important, the personal assumption that the people concerned speak the same language, share the same values, accept the same code of conduct. One does not need to deny the reality of the cultural heritage that the European peoples have in common, nor the existence of a European (as opposed perhaps even to an American) way of life to doubt whether these assumptions can hold good for a grouping even as geographically close as that of the Schuman Plan countries.

If we must doubt the unspoken assumptions of those who urge a federal government for Europe, we must equally resist being carried away by historical arguments whose plausibility lies in their studied vagueness. Professor Bowie writes, for instance: "It is a commonplace that Europe was united before it became divided. Europe was Christendom, for a long time bound together in theory, and even to some degree in fact, by the ties of Church and Empire. It was the abode of a common Classic-Christian civilization. The forces of the modern age shattered this unity at least in its political and economic aspects."⁹ When one looks at this more closely, and asks when and over what area was secular authority exercised by a single institution—and what else can political unity mean?—it is difficult to see what answer Professor

7. *Id.* c. 2.

8. *Id.* c. 5.

9. *Id.* at 494-95.

Bowie could give that would match his claim. Or again, what is meant by economic unity attributed to an age when nearly all production was for local markets and when such international trade as existed depended on the goodwill of a multitude of different, petty wielders of power?

The test of medieval political unity is not what some theorists in the service of Pope or Emperor may have written, but rather how far either authority could prevent the violence that has been endemic in social relations whenever no common authority has existed to repress it. It was not an accident that the growth of political unity in England was measured by the growth of the "King's peace." So far from the conflicts of "a cluster of national states" having brought war to Europe, no century in the Middle Ages was as peaceful as the nineteenth century, by which time this cluster was full developed.

On the specific problems that the project of West European federation raises, the degree of awareness is unequal as among the several contributors to these volumes. Professor Macmahon points out the difficulty of discovering where Europe begins and ends and urges elasticity: "The postponement of the main question seems justified by the assumption that a galvanizing hope within many minds in the eastern countries, going beyond mere relief from existing regimes, is the thought of membership in a united Europe."¹⁰ Apart from the abortive talks among the exiled governments in wartime London, there seems little evidence for this assumption. Indeed, it would seem far more probable that were the Russian incubus lifted the result would be a new outburst of national passions.

A far more important problem is evoked by the reminder in *Studies in Federalism* that the West German Basic Law provides already for the incorporation of East Germany into the Federal Republic as soon as it is free to choose its own form of government.¹¹ Assuming that East Germany desires reunification with West Germany, would it not then come automatically into any European federal scheme? And would this not vitally affect the balance between France and Germany, which Mr. Fischer rightly sees as the heart of the political problem?¹² It is true that the issue of the internal balance, so much in the minds of the American Founding Fathers, has never been the dominant one in the history of any other modern federation (except possibly in Imperial and Weimar Germany), but no modern federation has started with such a legacy of suspicion as would a European federation. Professor Friedrich may be right when he says that the primary issue "is not internal but external security and defence."¹³ But can we expect even the external issue to seem the same to France and to Germany, even to a Germany united within the Oder-Neisse frontier?

Must we then agree with Professor Wheare that "there are no Europeans"?¹⁴ Certainly he is right if Britain is included in a definition of the

10. *Id.* at 410.

11. *STUDIES IN FEDERALISM* 756.

12. *FEDERALISM, MATURE AND EMERGENT* 66.

13. *Id.* at 520.

14. *Id.* at 40.

European community; yet it is difficult to believe in the promise of European institutions from which Britain (and with her Scandinavia) stands aloof. And even within such institutions as she can work with there is, as Professor Macmahon shows, the still unsolved difference between the OEEC and the Strasbourg approach, between an open and a closed economic system for Europe. Hence the whole question of the general economic policy of any inclusive federation would be wide open; and there would remain the inherent tendency towards protectionism by the units—which, as is shown in *Studies in Federalism*, is almost universal. The price of maintaining a common market would be eternal vigilance and perhaps coercion; could such a federation stand it?

Obviously much of the effectiveness of a federation would depend on the formation of a class of administrators who would put the federation first in their loyalties. The Schuman Plan has provided some encouragement in this respect, but as things grew would not more come to rest on questions of language and basic training? How much importance should we give to the fact that in 1947, not a single Canadian government department was headed by a French-Canadian, despite the fact that the Cabinet as well as the legislature is a federal one?¹⁵ Or to the very one-sided meaning that Canadian practice gives to the notion bilingual—where French Canadians need English but the English Canadians need no French?¹⁶

The authors of Study V in *Studies in Federalism* take a very high line about the difficulty of permitting individual members of a federation to belong to international organizations in their own right, suggesting that they should be replaced by the federal government and that they should in fact have no international contacts other than on matters reserved to their jurisdiction. This suggestion goes much further than the relevant part III, chapter III of the Draft Treaty. On the other hand, it is difficult to gainsay the wisdom of the proposal, in view of the difficulties that both Canada and the United States have experienced with international conventions despite their relatively tight-knit structures. In his essay in *Federalism, Mature and Emergent*,¹⁷ Professor Noel T. Dowling takes the view that it is only the Executive's policy, and not its power, that is affected by internal disagreements in the case of the United States, and that all is well so long as the President appreciates that one of the duties of which he must be aware when negotiating internationally is that of preserving the federal system. In a relatively mature political society, this may be so—though Senator Bricker would dissent—but the executive of a European federation would hardly be entrusted with such extensive foreign relations powers as is the American President, nor be able to wield them if he were. It looks as though, whatever the internal merits of the scheme, the proposed federation would be an uncomfortable member of the society of nations.

On the economic side, we have the powerful argument by Professor Svennilson that one cannot effectively limit economic integration to a multiplication

15. STUDIES IN FEDERALISM 76.

16. *Id.* at 93.

17. C. 3.

of Schuman-type "pools": "In my view, the realization of the fundamental importance of the payments problems lays bare the *sine qua non* without which all work on economic integration is rather futile: If countries are not prepared to coordinate their whole economic policy, all integration will stop half-way."¹⁸ And this is reinforced by the strong plea in *Studies in Federalism* that full powers over currency and credit be vested in the federal government;¹⁹ there must, in other words, be an acceptance by all the participant states of the principle of mutual responsibility for economic welfare—defined, presumably, as full employment at rising standards. Mr. William Diebold argues that "a federation may function satisfactorily in spite of considerable diversity of conditions in its parts."²⁰ The federation itself may also under certain conditions aid in diminishing such diversity: in the United States "in the decade ending in 1951 the spread between the states with the highest and lowest per capita income dropped from the ratio of 1:4.8 to 1:2.7."²¹ This is not so far from the Italian-Belgian ratio of 1:2.3. But will the policies of levelling be accepted so readily in a European federation as they were in the United States?

Both an institutional and a functional approach to the problem of balancing the powers of the federal state and its component states are offered by the essays on American experience in federalism. On the one hand, there is the constitutional division of powers between the states and the federal government, and the question of its judicial interpretation. Here consideration of historical experience, particularly that of the antebellum decade in the United States, and the current "segregation" issue suggests to Professor Paul A. Freund the question "whether the pragmatic institution of judicial review is possible in a federal system only where deep philosophic cleavages do not exist."²² On the other hand, more illuminating still is the approach from the functional side. In dealing with labor relations,²³ Professor Paul R. Hays shows Congress to be ready to devolve upon the states powers that the Supreme Court is willing that Congress should itself exercise exclusively. Political tact can thus on occasion do more than law to keep the balance healthy. Professor Macmahon shows²⁴ how much is in fact done by methods of collaboration on both the vertical (state-federal) and horizontal (inter-state) axes, and how one level may invest the other with powers for the sake of convenience. The extent to which this has been done has differed over different historical periods. There has been no one-way shift towards the center, as Professor John M. Gaus shows in his chapter on agricultural policy and administration.²⁵ In an essay on "Decision-Making in a Federal System"²⁶

18. FEDERALISM, MATURE AND EMERGENT 467.

19. STUDIES IN FEDERALISM 422.

20. FEDERALISM, MATURE AND EMERGENT 454.

21. *Id.* at 275.

22. *Id.* at 171.

23. *Id.* c. 12.

24. *Id.* c. 14.

25. *Id.* c. 15.

26. *Id.* c. 19.

Professor Edward W. Weidner argues (in a manner that would have been made more convincing if some sociological jargon had been pruned) that in the United States actual clashes between the federal government and the states have been rare indeed; and in his chapter on trade regulation,²⁷ Professor Milton Handler argues that federalism can do the job, with an optimism that Professor Macmahon himself finds rather overdone.²⁸

Scepticism about the applicability of the American experience to Europe arises not so much because this optimism may be misplaced or because more weight should be given to other fields where experience has been less happy,²⁹ but rather because the success of a federal system depends, as has been said, on certain unstated assumptions to which one more may be added: that the system is one which has grown up over the decades, and with which a nation has grown up, so that each person within it, whether representing the state or the federal government, knows on the whole how far his particular allegiance will allow him to go. To echo Chief Justice Marshall, it is a constitution, not a treaty, they are working.

Both the volumes under consideration have been prepared with obvious care, the more remarkable in view of the shortness of time available to the authors of *Studies in Federalism*. Errors of fact are gratifyingly rare. It is perhaps going too far to suggest that Mr. John Fischer's revival of the "safety-valve theory" of the American frontier comes under this head; but it is scarcely historically accurate or practically helpful to say "when a factory worker felt intolerably oppressed, he did not plot revolution; he simply moved beyond the Alleghenies and took to farming free land."³⁰ Professor Berle would have been on even stronger ground if he had noted that it was not *four* but *thirteen* months after election that a new Congress used to meet.³¹ The difficulties of European constitution-making would have been even greater had Luxembourg's population only been 70,000 as Professor Friedrich has it, instead of 300,000.³² The election of a President has fallen to the House of Representatives in the United States only twice, not "several times."³³ The statement that in Australia "the State Cabinets communicate directly with the British Colonial Office in such questions as the appointment of State governors and changes to State Constitutions"³⁴ can hardly be sustained. The Colonial Office has no role in relation to the fully self-governing members of the Commonwealth. The Governors of Australian states are appointed by the Queen on the advice of her ministers in the United Kingdom who consult with the

27. *Id.* c. 18.

28. *Id.* at 296.

29. Professor Charles McKinley can find little that is encouraging in American federalism's record in the field of conservation and is strongly hostile to the quasi-federalism of the proposed Missouri River interstate compact with its provision for equal representation of all participants. *Id.* c. 16.

30. *Id.* at 63.

31. *Id.* at 70.

32. *STUDIES IN FEDERALISM* p. XXX.

33. *Id.* at 11.

34. *Id.* at 272.

Premier of the state. Again, it is not the Foreign Office but the Commonwealth Relations Office that deals with the Commonwealth government on matters concerning the federation as a whole.³⁵ The chronology of the Secession movement in the United States on the eve of the Civil War has got curiously tangled up.³⁶ The decision of the United Kingdom Parliamentary Select Committee not to receive Western Australia's petition to secede did not so much deny "the right of secession in either Canada or Australia" as make it plain that it could not be done by one state or province acting on its own.³⁷ It is true that there is no document explicitly recognizing the right of a member of the Commonwealth to secede from it; but there are a number of authoritative statements which make that right absolutely clear, at least since 1949. Similarly, although no right of withdrawal is included in the United Nations Charter, the San Francisco Conference adopted a "Declaration of Withdrawal" which put the right effectively on record.

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ISRAEL'S EMERGING CONSTITUTION 1948-1951. By Emanuel Rackman. New York: Columbia University Press, 1955. Pp. xvi, 196. \$3.00.

RABBI Rackman, a member of the Faculty of Political Science at Yeshiva University, has written a very timely study of the difficulties that faced the political leaders of the new State of Israel in the task of drafting and adopting a written constitution. It should prove of great interest and value not only to specialists in Jewish history and culture but also to those students of the broad subject of comparative constitutional law who are concerned with the practical problem of implementing democratic principles and forms of government in newly independent and self-governing countries.

One special feature of constitution-making in the new State of Israel, in comparison to similar experiments in, say, Ireland, India, or Pakistan,¹ is the availability of an extraordinarily broad and varied body of jurisprudential experience—a consequence of the immigration during the postwar years of vast numbers of refugees and displaced persons from most of the European countries and even from Asia and Africa. It is indicative of the high quality of technical skill and the wide range of legal backgrounds available to the Israeli government that the first draft of a constitution was the work of a former German constitutional lawyer, Dr. Leo Kohn, who years before had assisted in similar work for the government of Ireland, then newly independent from the United Kingdom and looking around, in the inevitable reaction against all things Eng-

35. *Ibid.*

36. *Id.* at 764-66.

37. *Id.* at 766.

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1. See, generally, McWhinney, *The Courts and the Constitution in Catholic Ireland*, 29 TUL. L. REV. 69 (1954); *Democratic Constitutionalism in South-East Asia—Constitution-making in India, Ceylon and Pakistan*, 1 HOWARD L.J. 149 (1955).