

A CHANGING FEDERALISM

(By A Correspondent)

THE Constitution bequeathed to us in 1900 owed much to the example of other federal states, and at this time when its framework is creaking ominously it may again be expedient to see what other countries have done in the interval. The three countries which, along with Australia, are treated by students of government as typical federations are the United States of America, Canada, and Switzerland, all with an experience of federalism considerably longer than our own. Although there is no universal recipe for good government, and political institutions cannot be transplanted holus-bolus from one country to another, federal systems face similar problems everywhere, and developments in these three countries may stimulate ideas for improving our own governmental structure.

In every modern state the balance of power has shifted decisively from local and regional authorities to the central government. In all federations, this takes the form of a weakening of the state or provincial governments in relation to the federal government. So it has been suggested that federations are obsolescent, and their conversion to unitary states inevitable. This view underrates the continuing importance of the reasons which were responsible for federal rather than unitary government in the first place. In Australia at least, the experience of a half-century suggests that we may expect to go on living under a federal system for many years.

Our basic political problem, then, is to find a more satisfactory set of relationships between the Commonwealth and State governments, that will bring the 19th-century Constitution into line with 20th-century realities, and yet do away with the present travesty of federalism whereby the States find themselves con-

tinually soliciting money from the Commonwealth while simultaneously snapping at the hand that feeds them.

Three principal courses of action suggest themselves for the readjustment of the federal framework. The first, and most radical, lies through the redistribution of functions between the Federal and State governments, entailing a transfer of legislative activities to the centre and the greatest possible decentralization of administration and executive responsibility with the States as component units. The second important change is the establishment of a satisfactory financial relationship, based on future as well as present needs, which will lift the States from their present financial morass. The third possibility is through the promotion of the greatest possible co-operation between the States, and between State and Federal bodies, on both the legislative and administrative levels.

REDISTRIBUTION OF FUNCTIONS

The necessity for revising the allocation of responsibilities between the central and regional governments has been recognized in the three federations of Switzerland, Canada and the United States. The best brains available have been employed to study the question, as in the United States Commission on the Organization of the Executive Branch (the Hoover Commission), and the 1937 Royal Commission on Dominion-Provincial Relations in Canada. As a result of the Commission's recommendations, (incorporated in a Report known as the Rowell-Sirois Report) responsibility for unemployment was taken over by the Canadian government in 1940.

Of the three countries, Switzerland has done most to transfer constitutional responsibilities to the central government.

The Federal Legislature consists of 2 chambers—the National Council and the Council of States. The National Council consists of 194 members—one for every 22,000 inhabitants, and is elected by proportional representation. The Council of States has only 44 members—two for every canton—and thus is more representative of the cantons. Both chambers have identical powers and duties and the consent of both is necessary before legislation can be enacted. In addition, there is the Federal Council of seven members responsible for the initiation and administration of government business in the same way as a cabinet, but unlike a cabinet, its members cannot be forced to resign. The seven members of the Federal Council constitute the seven heads of the seven State Departments, and are appointed by the two legislative bodies in light of their particular technical qualifications for their posts and not because of their attachment to any political party. They cannot be members of either of the two chambers.

The referendum is an essential part of the Swiss constitution. It prevents domination by any political party or by the legislature.

Between 1848 and 1952 there were ninety-two constitutional referenda, of which fifty were passed. In 1898, railways were nationalized. In 1908, water resources were transferred to the federal government. In 1921, all internal transport was placed under federal regulation. In 1912, a complete national civil code was approved by the Federal Assembly. **The Confederation (as the federal authority is described in Swiss official documents) can order public works of national importance to be undertaken by cantons, or encourage them by subsidy, or prohibit them on the ground of security. It is entitled to expropriate land, with fair compensation, for this purpose. The constitution also fixes subsidies for cantons with international**

Alpine highways through them; these may be withheld if the Confederation is not satisfied with the canton's performance. Other roads and bridges of national importance are subject to federal control.

Constitutional changes have also enabled the establishment of a comprehensive system of social services, including compulsory insurance against old age. The federal government is empowered to enact uniform laws on child labour, working hours, and industrial health. It is expressly instructed by the constitution to grant subsidies to the cantons for education; it may create institutions of higher learning and subsidize others. (To date the only institution so established—in 1855—is the world-famous Technical Institute at Zurich.) The Confederation is also empowered to enact uniform standards for the profession.

In spite of the never-ceasing expansion of central government functions, the status and independence of the cantons remain unchanged, and they continue to be responsible for practically everything that takes place within their boundaries. **The federal government and the Federal Assembly content themselves, on the whole, with enacting general standards for the whole country and with subsidizing the cantonal governments towards the execution of various phases of their work.** In the sphere of education, for instance, the federal government is both obliged by the constitution to grant financial aid to the cantons and to observe their autonomy in the matter. Even where no such specific guarantee exists, the Confederation generally prefers to leave executive action to the cantons. All social service payments are made through the cantonal administration; in the case of unemployment relief, rates are fixed by the Confederation, and the final payment includes a contribution from the canton. Civil and criminal laws are enacted by the Federal Assembly,

be the administration of justice and penal institutions belongs to the cantons.

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OBVIOUSLY, Switzerland is a very special case from which conclusions may be drawn only with great caution; but at least it suggests that this kind of relationship between federal and state governments is a practical possibility. In spite of centralization, a recognized division of functions has steadily grown by which the Confederation is responsible for all matters of genuinely national importance, whether in the fields of economic life, education, transport, public finance, social security, health, or justice. The cantons, on the other hand, have remained responsible even in these spheres for executive action within their own borders, leaving legislation as the major responsibility of the federal government.

INTERGOVERNMENTAL CO-OPERATION

Canada and the United States, especially the latter, provide illustrations of how much can be done to resolve the difficulties of divided jurisdiction inherent in any federal structure.

In the U.S.A., much attention has been given to co-operation between state governments. The central body which exists for this purpose is the Council of State Governments, set up in 1934. The Council acts as a clearing house for research and information on governmental problems; as a medium for improving legislative and administrative practices; and as a means for improving and facilitating federal-state and state-local relations. It provides the secretariat for a number of other bodies, most of them older than the Council itself, for example, the American Legislators' Association; the Governors' Conference; the Conference of Chief

Justices; the National Associations of State Attorneys-General, of State Budget Officers, of State Purchasing Officers, etc.

The Council provides various forms of expert assistance for all officials of the forty-eight states. These include research projects referred to it by the state governments—for example, on conflicting taxation, financial policy, school systems, water resources, unemployment relief, federal-state relations, and state-local relations. Other activities are a general inquiry and information service; advice on the drafting of uniform state laws; assistance in drawing up interstate compacts; and increasingly in recent years, the organization of co-operation between the states and the Federal government. The Council publishes a monthly journal called "State Government," which is the only one of its kind in the world, a biennial volume "The Book of the States" covering all state matters, and books such as "Federal Grants-in-Aid" and "The 48 State School Systems."

The American Constitution permits the negotiation of interstate compacts with the approval of the U.S. Congress. About ninety of these compacts had been ratified up to 1950. Since 1934, compacts have generally been made through the Commissions on Interstate Co-operation which exist in each state, and which act as the liaison between the state government and the Council. A typical Commission is composed of ten members of the state legislature and five state officials. The Commissions have been active in negotiating agreements on interstate trade barriers; crime; oil conservation; wild life and fisheries; control of rivers and catchment areas; sewage disposal; road safety; marriage; uniform legislation; state boundaries; bridge and road construction; and education. In some cases permanent Commissions are set up to administer the agreement.

Since 1932, the Federal Government has played a steadily growing role in the field of intergovernmental co-operation. It was chiefly responsible for uniform laws on road safety, on narcotics, labour conditions, education, crime and parole.

The Social Security Board induced nearly all states to pass uniform legislation on unemployment insurance, by providing that so long as certain essential clauses were embodied in the state Act, residents of the state would be eligible for unemployment benefits. This was connected with the levying of state inheritance taxes; provided the state enacted unemployment, 80% of the state tax would be credited against Federal estate tax. Old age pensions, pensions for the blind, and aid for orphans were treated in a similar manner. By this means the Federal government was able to bring practically all states into line without rigid centralization or dictation. In 1950, the total of Federal grants-in-aid reached 2,500,000,000 dollars, covering health, housing, transport, conservation, agriculture, education, social security, and veterans' benefits.

FINANCIAL RELATIONS

The crucial problem of every federal country today is that raised by the ever-growing disparity between the financial resources of the federal government and those of the regional governments. In every federation, the central government now provides a substantial part of state revenues. The country whose financial problems are closest to Australia's is Canada, from whose experience we may learn much.

The 1937 Royal Commission recommended, first, the transfer of income tax, company tax and inheritance tax from the provinces to the Dominion Government; secondly, the taking over of provincial public debts; thirdly, the payment of subsidies ('national adjustment grants') to

provinces in financial need; and finally, the taking over of responsibility for unemployment by the Dominion. Payment of subsidies was to be administered by a permanent Finance Commission.

Most of the recommendations sound familiar to an Australian ear, and the Report acknowledged the Royal Commission's debt to the work of the Commonwealth Grants Commission.

A conference between the Dominion and the Provinces met in January, 1941, to consider the Report, but no agreement could be reached. In April of the same year the Dominion Government proposed that for the duration of the war and one year afterwards, the provinces should vacate the income tax field (including company tax), in return for reimbursements. The latter could be either the revenue collected by the province from this source in 1940, or the province's annual debt payment for the same year, minus its revenue from inheritance taxes. A special grant based on financial need would also be paid if shown necessary. The provinces all accepted and signed agreements, four of them taking the second option.

Together with the other subsidies and grants normally paid in peacetime, the provinces thus received about one-third of their annual income in payments from the Federal government. In 1943 these totalled 140 million Canadian dollars.

At the end of the war, negotiations were resumed in an attempt to find a permanent basis for the retention of income tax by the Canadian Government. The two largest provinces, Ontario and Quebec, refused to co-operate, but all the others entered into individual five-year agreements with the Federal government during 1947, after almost two years of negotiation. As a result the Canadian provinces were able to obtain favourable terms after the war, whereas the Australian States were constrained to accept

an amount determined solely by the Commonwealth Government. Secondly, the Canadian 'escalator clause' is more generous to the provinces, and more cognizant of their needs, than the comparable provision in the Australian scheme. Finally, the Canadian provinces are permitted under the agreements to tax the profits of mining and lumber companies, as these are exploiting wasting assets for which compensation should be allowed.

It is true that the financial position of Canadian provinces is better than that of the Australian States. They are entitled to levy taxes on gasoline, on liquor, and on retail purchases (that is, sales tax). Consequently, they levied lower income taxes than most of our States. Moreover, railways, which are not the responsibility of the provinces, account for the greatest part of State indebtedness in Australia. In spite of these advantages, there is no doubt that the political wisdom manifested in the Canadian taxation agreements has been sadly lacking among Australian politicians. Mr. K. J. Binns, who investigated the Canadian System for the Tasmanian Government in 1947, observes:

"One must be impressed by the statesmanlike approach of the Dominion Government and also of certain of the provinces to the problems of Dominion-Provincial financial relations. The scheme evolved in Canada . . . recognizes the

financial requirements both of the Dominion Government and also of the provinces, not only at the present time, but also as far as the future is concerned."

LESSONS FOR AUSTRALIA

IT is true that Australia has also made progress in the directions illustrated by these three countries, and in some respects—notably the work of the Commonwealth Grants Commission and the Loan Council—has produced unique achievements. In spite of this, government and administration are in a state of crisis, and will continue to be so until federalism in Australia can be made to work on a genuinely co-operative and voluntary basis. Many of the necessary measures — rational distribution of revenue sources, development of regional self-government, re-allocation of constitutional powers, Commonwealth subsidies towards railways, administrative decentralization, etc.—have already been explored both on the official and unofficial levels. Federalism in Australia, as in other countries, can only survive so long as it is realized that the relative functions of Commonwealth, State and local authorities have radically changed and that only an equally radical revision of the political structure, unobscured by party slogans and parochial considerations, will meet the case.



The author of this article has a distinguished record in education, government and business. At the age of 33, he was appointed President of Trinity College, Connecticut. During the war, he served as Special Assistant to Donald M. Nelson, Chairman of the War Production Board. He became President of the New York Stock Exchange in 1951 and, on taking up this appointment, relinquished directorates in seven important companies, including General Foods Corporation and B. F. Goodrich Company.



G. KEITH FUNSTON

MR. FUNSTON has led a campaign to make the work of the Stock Exchange, and its indispensable function of mobilising the savings of millions of investors for use by American industry, better known to the American people.

If industry in Britain and Australia is to be adequately nourished with new risk capital in these days of heavy taxation, it will be compelled more and more to draw upon the savings of millions of small investors. It is most important, therefore, that the activities of the stock exchanges here and in Britain should be understood and appreciated by the great mass of the general public. For this reason the article which Mr. Funston has kindly sent to "Review" is especially relevant at the present time.