Coercion of States: In Federal Unions

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COERCION
OF STATES:
IN FEDERAL
UNIONS

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Coercion: A Study in the Use of Force.
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COERCION
OF STATES:
IN FEDERAL
UNIONS

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The Pacifist Research Bureau is financed entirely by the contributions of organizations and individuals who are interested in seeing this type of research carried on. We trust that you may desire to have a part in this positive pacifist endeavor to aid in the formulation of plans for the world order of the future. Please make contributions payable to Edward W. Evans, Acting Treasurer, The Pacifist Research Bureau, 1201 Chestnut Street, Philadelphia, Pennsylvania.
sary to prevent the coming peace from being just another interval in a long series of wars."

To the thinking that may inspire and inform such action the present study of the Pacifist Research Bureau makes an illuminating and timely contribution. We hope that it may call forth support for the Bureau which will make it possible for our devoted staff to continue and to expand their labors.

A. J. MUSTE.

DIRECTOR'S FOREWORD

The Pacifist Research Bureau is composed of a representative group of religious pacifists concerned with domestic and international problems arising from war. It frankly bases its work upon the philosophy of pacifism: that man should exercise such respect for human personality that he will employ only love and sacrificial good will in opposing evil and that the purpose of all human endeavor will be the creation of a world brotherhood in which cooperative effort contributes to the good of all. Within this philosophical frame of reference, the Pacifist Research Bureau studies current problems and hopes to make a contribution, based on sound research, to their solution.

This booklet has been prepared by Harrop Freeman and Theodore Paullin of the Bureau staff. It is impossible in its confines to thank the many persons whose criticism, suggestions and assistance have made this study possible. Lack of mention does not signify lack of sincere appreciation. Multiplication of foot-notes and a complete bibliography of sources examined have not been considered as necessary evidence of scholarship. Footnotes have therefore been included where they will be most helpful, and bibliographical notes record only those books which will prove most profitable for further study.

This manuscript has been submitted to and reviewed by Harry Rudin, Professor of European History, Yale University; Andrew Cordier, Professor of American History, Manchester College; William B. Hesseltine, Professor of American History, University of Wisconsin. The Bureau acknowledges with appreciation their helpful criticism. The manuscript and views expressed herein are, however, those of the authors.

All booklets published by the Bureau will be uniform in style and appearance. Each is written as one chapter in the series of which it is a part and is accompanied by a three page summary. This pamphlet and its companion, Coercion of States: In International Organizations, are part of Series II: Coercion: A Study in the Use of Force. A list of pamphlets in preparation appears on the back cover.

Harrop A. Freeman
Executive Director

January 2, 1943
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COERCION OF STATES: IN FEDERAL UNIONS

INTRODUCTION

As global wars recur and as the present war spreads in extent and intensity more and more people are insisting that we need some sort of world organization to deter sovereign states from resorting to wars in the future. Most proposals suggest a confederacy, federation, or league of all or a portion of the nations of the world; few if any foresee, at the present time, a unified world state within which there shall be no subsidiary sovereignties. Much of the support for such a federation or league is based upon the easy assumption that since the United States and certain other nations have succeeded under similar types of government in knitting together a group of states, and in some cases, a host of peoples with diverse national origins, it should be possible to repeat that experience on a world scale if similar political institutions could be established. A second assumption that underlies much of this thinking is that, if police power operating upon the individual citizens of national federations is a factor in helping to uphold such government, a similar police power operating against member nations of a world federation could have like effect. Men have also watched the military efforts of concerts of nations to stop individual nations or groups of nations which are considered to be threatening the peace of the world. By analogy with local police power and by the application to a peace-time situation of a technique arranged for the prosecution of war, they have been led to assert that any world government merely needs to establish a strong enough international military force to suppress any action by any state or individual against the interest of the world organization, in order to insure the peoples of the world that war shall never again descend upon them. This is the assumption of Lord David Davies and the group urging a "league with teeth in it" and seems to underlie statements by Sumner Welles, Anthony Eden, and other British and American officials.

We face a world in which rivalries between states are the most striking feature of politics. The primary question confronting anyone attempting to plan some sort of world organization which will make war impossible in the future is: How can the world as a whole make the transition from rivalry toward unity? This process of unification characterizes the history of all federations or leagues. Is it sufficient to write constitutions,

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1 Lord David Davies, The Problem of the Twentieth Century (London, 1930); and his article, "Next Time Peace Shall Have A Monopoly of Force", Christian Science Monitor, October 9, 1942.
and to establish police powers and federal police and armies? Or is unity to be achieved through the action of more intangible forces, the elimination of causes of friction, increasing the number of fields of cooperative endeavor, growing understanding and appreciation among peoples, a determination to make the undertaking successful, and the growth of a higher loyalty that embraces the loyalties to component parts?

In this pamphlet we shall examine the historical development of national federations with respect to the forces that work toward or away from unity with particular reference to the role of physical force. In a companion pamphlet, Coercion of States: In International Organizations, we explore the same general subject in relation to the history of international organizations. These pamphlets, though first in time of preparation are third and fourth in orderly outline in a series of pamphlets treating of the use of force.

It is not intended to enter into a philosophic discussion of the terms "force," "coercion," "violence," "violent coercion," "sanctions," "enforcement" or any of the other phrases with which the subject has been confused. When we use "force" or "coercion" we are speaking of their common meaning, namely: "to compel or to constrain against the will, to prevail by the exertion of might or power, particularly in the form of the use or threatened use of armed or military power." Such force is differentiated from the use of public opinion or moral force.

"Federalism" and "federal union" are vague terms which have no universally accepted definitions. In this pamphlet we use them to apply to a system of government, based at least in part upon representation of the people, in which there is a division of powers, over both the formation of policy and administration, between a central government and the governments of component states. We have not concerned ourselves with the process of unification in such states as England and France in the late middle ages, nor in Italy in the nineteenth century, in which the desire for unity exceeded the desire for local independence, because there seems little likelihood that a centralized world government will be seriously suggested in the face of the strong nationalism which still exists. We have assumed that one of our objectives is the extension of democracy. It is highly dubious that a unified world state can be created by military force, whether by Hitler or by the United Nations; but even if it were possible, it would be a denial of the democratic rights of peoples in every one of the areas dominated by force. We have confined ourselves, therefore, to a consideration of federal unions which have developed through the union of states which had a previous separate existence, but which have joined with other states to form larger units of government, without entirely abandoning their own individual identities.

The following questions might be borne in mind in reading of the pamphlet:

1. Is the theory of federalism applicable to the present world conditions?
2. What are the cohesive forces which might create and maintain any world organization to preserve peace?
   a. Are they the intangible powers of commerce, trade, customs, communication, common interests, experience, and popular support?
   b. Are they force and coercion?
   c. When force will work is force necessary?
3. Do enough cohesive forces operate on a world scale today to render likely the success of world organization?
4. Is a league, federation or other world organization more likely to succeed when brought about by "victors" as a result of coercion and war, or when created by voluntary cooperation of all nations as equals, untouched by the attitudes of victor and vanquished?
5. Will nations or states voluntarily join an organization based on coercion of member nations by the larger organization?
6. In a federal union how should the problem of secession or withdrawal of member states be treated?
7. Can a league, federation or other world organization be maintained in which one nation or group of nations attempt to exercise hegemony over other nations by means of military power?
8. Is force necessary to cause states and nations to obey judgments, awards and decisions made against them by an international or federal tribunal?

Our research has led us to the profound conviction that out of the attempts of peoples of the world to gain partial unity lessons may be drawn to guide us in the next step toward greater unity and an ordered world.
THE UNITED STATES OF AMERICA

The political history of the United States is the story of centralization and unification of government. As the result of social, economic and ideological forces which have unified the people, the country has developed from a group of separate colonies, each maintaining its individual rights of self-government, first into a federation in which federal powers were granted grudgingly, and finally into a unified nation whose power is supreme over the states.

THE COLONIES

For a people to choose federation, there must be both diversifying and centralizing forces at work. Each colony along the Atlantic seaboard had been founded separately and for different purposes. Virginia was a commercial venture pure and simple; Massachusetts was founded by a dictatorial Puritan oligarchy, anxious to escape Anglican control; Maryland was a commercial venture and a refuge for Catholics. New York was won by conquest after it had developed an individuality based on the customs of its Dutch founders. The Carolinas were feudal estates; Pennsylvania was conceived as a refuge for persecuted people and those suffering economic hardship, and was long politically controlled by the Quakers. Much later, Georgia was established as a philanthropic enterprise—an asylum for inmates of debtors' prisons. Virginia and Massachusetts were well established communities with over a century of political experience before Georgia was founded and they were still the most important colonies at the time of the Revolution. The original diversity of the colonies was intensified as years went on. Incoming settlers tended to go to those sections where ideas were similar to their own.

Each colony had its own individuality, but they were alike in many ways too. The dominant English group in each one still thought like Englishmen, and demanded some sort of representative government. When they obtained colonial legislatures they knew how to use them to limit the power of the royal governors, just as the House of Commons was limiting the power of the King. The forms of government and the political traditions of the various colonies were essentially the same.

In the face of common problems, especially in time of war, individual colonists suggested the idea of colonial union, but any union of the colonies would have involved a limitation on the rights of local self-government so none of these plans produced any response. The British government also desired colonial union in order to simplify the problem of administration, and to bring the colonies more closely under British control. The colonists vigorously opposed all such plans, even to the point of revolution as in 1689 when they overthrew the Dominion of New England. The success of British administration would have taken from them the virtual political independence which they enjoyed. In one sense the American Revolution came about because it appeared that the British government was about to eliminate inefficiency from the colonial system and to bring the American colonies under effective control.

INDEPENDENCE AND THE ARTICLES OF CONFEDERATION

The American Revolution was a civil war as well as a war against England. Ruling colonial oligarchies may have disliked the regulations imposed upon their trade by England, but they feared even more the growing power of the poorer classes, who had been denied the franchise in the colonial period, but who were now learning the art of agitation and political action freed from the confines of old constitutional forms. When the time came to choose, the American ruling classes generally lined up on the side of England. The democratic elements were therefore able to control the revolutionary governments in the colonies, and also the Continental Congress.

As the Revolution progressed the individual colonies declared themselves to be sovereign and independent states. The idea of state sovereignty determined the nature of the Continental Congress and the Articles of Confederation, and was a limiting factor in the design of the Constitution. It has been recognized countless times by the United States Supreme Court.

The Continental Congress was not designed to be a government at all, but rather a conference of delegates dependent upon instructions from the state governments. It was conceived only as an agency for conducting the war, and its actions even in that field were merely recommendations to the states.

In the summer of 1776 the democratic element in the Congress was sufficiently strong to secure the adoption of the Declaration of Independence. This document was a statement of the democratic philosophy designed to justify the Revolution as a vindication of the rights of the common man. This group believed that these rights could best be maintained by local governments which could be more easily supervised by the people than could a distant central government.

1No one has captured the spirit of the times more vividly than Carl Becker. See especially his essays, "The Spirit of '76", and "John Jay and Peter Van Schaack", which have been reprinted in the collection of Becker's essays entitled Every Man His Own Historian (New York, 1935).
The more conservative element in the Congress desired the establishment of a more powerful national government, and a committee was appointed to draw up articles of confederation. The first draft presented by this conservative committee provided for a strong national government, but in the process of revision the democratic element succeeded in rephrasing the document so that the new government would embody their belief that power should rest in the states rather than in the nation. The creation of a weak confederation was not an unconscious mistake made by men inexperienced in politics; it was the deliberate intent of men who distrusted centralized authority in America as much as they had mistrusted it in the hands of the English, because they knew that the conservatives could use its instruments to thwart the will of the democratic groups which were at that time in control of the state governments.

The Articles of Confederation were not immediately ratified by the states largely because of conflicts over the control of western lands. In large part the story of this struggle is one of sordid self-seeking by individual politicians. Finally the larger states ceded their lands west of the mountains to the Confederation, and the rest of the states ratified the Articles. The new government went into operation only in 1781 when the Revolution was virtually over.

Although people have been accustomed to look upon the Articles of Confederation as a weak and undesirable forerunner of the Constitution, we must remember that the democratic element at that time did not desire strong central government. They saw in the weaknesses of the Confederation virtues rather than defects. There was a depression following the revolution as there has been after every war in which the United States has engaged, but by 1785 the clouds of economic adversity were lifting. Benjamin Franklin was able to say that the country was enjoying a period of great economic well-being, and that people nowhere in the world were as well off as the Americans under their new system of government. However, some groups, including the merchants who were hampered by state tariffs and trade regulations, the creditors who found difficulty in collecting debts across state lines, and the propertied interests generally who were genuinely alarmed by state inflationary movements, and especially by Shay's Rebellion in Massachusetts, feared the continued power of the agrarian democracy in the states, and desired a stronger central government which might keep it in check as the British had kept it in check during the pre-revolutionary days. From the point of view of the democrats who had drawn up the Declaration of Independence the Articles of Confederation were a success; from the point of view of the conservatives they were a failure.

The Constitution

The conservatives began to express their dissatisfaction with the new government even before it was put into operation. Beginning in 1785 they began to organize. They decided to take a leaf out of the revolutionary book and to call a convention to "revise" the Articles in such a way that a national government could be created. Finally the Congress reluctantly called a convention for the sole purpose of amending the Articles. As in the case of the earlier revolutionary bodies, the groups dissatisfied with the existing government furnished the majority of the delegates. They decided to exceed their instructions and draw up an entirely new Constitution.

This conservative group judged correctly that the minority in the Convention who favored the maintenance of state sovereignty represented the views of the majority of the people of the country who would have to ratify the new Constitution. Therefore they were willing to compromise and to give great consideration to the states rights point of view, at the same time that they were creating as strong a federal government as it was believed the country would accept. At no point was the reluctance of the people to accept a strong federal government more clearly recognized than in the refusal to grant that government the right to coerce recalcitrant states (of which more will be said on pages 10 to 17). Since the Constitution was to become operative upon the assent of nine states, rather than with the unanimous consent provided by the amending clause of the Articles, in effect the Convention was proposing a peaceful revolution.

Opposition to the ratification of the new form of government was based largely on the belief that the proposed federal agencies were too powerful. The Constitution was adopted by only small majorities in Virginia and Massachusetts over the opposition of such men as Patrick Henry and Samuel Adams, who had been leaders of the democratic element during the Revolution, and was adopted in some states only after its supporters promised to amend it to safeguard the liberties of individuals and states. The ratification by North Carolina and Rhode Island occurred after the new government was actually in operation.

The establishment of the new government did not settle the problem of the relation between the central government and the states. Washing-
ton's administration favored centralization; the financial program of Hamilton moved especially in that direction. Jefferson finally withdrew from the cabinet to lead the opposition, and organized a new party whose primary tenets were strict construction of the Constitution, and the preservation of states rights. (It may be pointed out, however, that later Jefferson during his own administration had to strengthen the central authority, by the purchase of Louisiana and similar acts, so strong was the pressure of circumstances toward centralization).

STATE SOVEREIGNTY AND THE CIVIL WAR

The theory of sovereignty of the states, their "right" to secede and even their right to decide whether a law of the federal government was repugnant to the Constitution have been stated from time to time by various states, in each instance to justify their opposition to a specific policy of the federal government which was believed contrary to the interest of the particular state. Virginia and Kentucky supported the political party of Jefferson which would have been suppressed under a strict enforcement of the Alien and Sedition Acts; hence, the Virginia and Kentucky Resolutions of 1798. South Carolina's nullification ordinance of 1832 was in opposition to the tariff which she believed contrary to her economic interests. Most of the Northern state officials refused to enforce the Fugitive Slave Laws on moral grounds and Wisconsin by court and legislative action went so far as to declare these laws null and void. The Southern states, fearing that they would be completely dominated by the North after the election of 1860 in which the North had elected a President for the first time without support from the South, threatened and finally attempted the ultimate argument of states rights, secession. In each instance but the last the maintenance of the states rights position resulted in sufficient modification of federal policy to prevent withdrawal from the Union.

In the famous Webster-Hayne debate of 1830 the general right of citizens of a state to rebel was conceded even by the spokesman from the North, but by that time the country generally was willing to accept Webster's constitutional argument that a state could not legally decide for itself whether an act violated the Constitution. The political power which had originally rested with Virginia and the South had gradually shifted to the now more populous North. The Civil War was the futile effort of the South to win as a separate nation the political independence which it had been unable to maintain within the framework of the federal government. Modern writers on the Civil War period are inclined to regard the war as the result of bungling and stubbornness of the political leaders on both sides. They feel that the existence of any will to compromise could easily have avoided the struggle. Certain it is that great States Rights and Federalist exponents like Jefferson and Calhoun, and Hamilton and Webster conceived of all federal government as based on compromise rather than on coercion.

The forces which were shaping the United States from a federation into a united nation had operated more rapidly in the North than in the South. The opening of new government lands and admission of states owing their formation to the federal government; the interstate migrations which blurred old state loyalties; the new democratic rise of the common man here and in Europe; the development of transportation, communication, commerce and industry—in short the new trilogy of democracy, nationalism and industrialism were shaping American History but were temporarily side-tracked in the South by the slave plantation system of that section, by its loyalty to the old national traits of localism, agriculture and aristocracy.

Actually the war was decided before it ever began. Whether the South stayed in the Union, came back into the Union as the result of a Northern victory, or gained its independence, it could not negative the forces at work.

"Its disharmony with conditions in the world at large gave the Southern cause the forlorn appearance of an heroic people endeavoring to check the inevitable sweep of the century."5

The result of the war was not what the people of the North had hoped for. The South was not willing to co-operate in the affairs of the Union. The North imposed its will upon the section by force alone, and every application of force only intensified the bitterness engendered by the war. The South rejected all policies originating in the North. The North itself was unwilling to admit the seceded states freely into the affairs of the nation—the very thing the war was supposed to accomplish. The most that can be claimed for the war was the disruption of the plantation system and the migration of northern capital and businessmen which opened the South to the nationalizing forces that had been at work elsewhere. But this would probably have come anyway; the slave system disappeared in other sections of the world without war. With slavery gone, movement southward of capital and industry would seem to have

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6Paul H. Buck, The Road to Reunion, (Boston, 1937), x.
been inevitable. On the other side of the balance sheet must be placed the creation of a politically solid South, the most poverty-stricken area in the country, with social lines hardened by fear and racial discrimination. The Civil War with emphasis on differences between North and South undoubtedly retarded rather than accelerated the process of unity. Only slowly were the effects of the division obliterated. Insofar as unity has been recreated, it has been the result of the same unifying forces which were at work before the war, which continued their pressure regardless of the momentary existence of the Confederacy.

THE MODERN TREND

In the recent period of our development economic activities have more and more disregarded state lines, business organizations have become too large to control by states, labor and other movements have leaped state boundaries. This development has forced the federal government to enter the field of economic, labor and financial legislation on an increasing scale. Then too the former American concept that the ideal government was one that let its citizens alone has given way all over the world in the face of growing complexity of economic activity. Its place has been taken by the idea that government has a duty to its citizens to furnish them services and protection against ruthless economic forces. Since the federal government can upon the resources of the whole nation, rich states as well as poor, and redistribute these resources to the citizens, it has been the agency which could most effectively raise the funds necessary to put into practice this new type of government. In the exigencies of world events and war, federal control has reached into every corner of life and the states have lost much of their significance except as administrative units.

As we review the history of the United States in an effort to discover the forces which have bound the nation together, we are compelled to conclude that they have been the intangible forces which have worked quietly and almost imperceptibly, and that at no period in this development did the coercion of states preserve or strengthen the Union. In fact, it had the opposite effect. The founding fathers realized this principle full well, and we now propose to study in more detail their wisdom and the soundness of their position.

A PLAN BASED ON COERCION OF STATES REJECTED

When the delegates to the Federal Convention met together in Philadelphia in 1787 they were concerned with framing a central government to control states which had been so much interested in advancing their own individual well-being that they had been unwilling to abide by treaties, insisted upon their sovereign right to be judges in their own cases, adopted trade policies beneficial to themselves alone, disputed over boundaries, and insisted upon the equality of states regardless of size. The delegates at the Convention wanted to overcome what they considered the evils of disunity. In their minds, this was the time to establish a system of "collective security" to prevent any one state from adopting policies detrimental to the propertied interests in the others. Both the Virginia and the New Jersey plans, which formed the basis for discussion at the Convention, authorized the coercion of the states by the federal government. But even the conservatives at the convention understood political principles too well to allow such a provision to find its way into the Constitution.

The last clause of the Virginia plan specifically authorized the federal government "to call forth the force of the Union against any member of the Union failing to do its duty under the Articles thereof." When this clause came up for debate on May 30th it aroused a storm of opposition.

GEORGE MASON OF VIRGINIA

"argued very cogently that punishment could not (in the nature of things be executed on) the States collectively, and therefore that such a Government was necessary as could directly operate on individuals, and would punish those only whose guilt required it."

MR. MADISON, on May 31st, when the clause again came up for consideration,

"observed that the more he reflected upon the use of force, the more he doubted the practicability, the justice and the efficacy of it when applied to people collectively, and not individually. A Union of the States (containing such an ingredient) seemed to provide for its own destruction. The use of force against a State, would look more like a declaration of war, than an infliction of punishment, and would probably be considered by the party attacked as a dissolution of all previous compacts by which it might be bound. He hoped that such a system would be framed as might render this recourse unnecessary, and moved that the clause be postponed. This motion was agreed to nem. con."9

9Max Farrand (Ed.), The Records of the Federal Convention of 1787 (New Haven, 1920), I, 34. All of the following quotations are taken from Madison's Notes in Farrand, which present a running paraphrase of the debates rather than the exact words of the speakers. ( ) indicates a change made by Madison.
MADISON on April 8th, in considering the efficacy of binding the states by an appeal to coercion, said:

"Was such a remedy eligible? was it practicable? Could the national resources, if exerted to the utmost, enforce a national decree against one of the states? A small proportion of the community in a compact situation, acting on the defensive, and at one of its extremities might at any time bid defiance to the national authority. Any Govt. for the States formed on the supposed practicability of using force against the (unconstitutional proceedings) of the States, would prove . . . visionary and fallacious . . . ."\(^8\)

The New Jersey plan was submitted on April 15th and in part read:

"That if any State, or any body of men in any State shall oppose or prevent ye carrying into execution such acts or treaties, the federal Executive shall be authorized to call forth ye power of the Confederated States, or so much thereof as may be necessary to enforce such Acts, or an Observance of such Treaties."\(^9\)

RANDOLPH OF VIRGINIA, in the discussion on June 16th over this New Jersey Plan, stated:

"There are but two modes, by which the end of Genl. Govt. can be attained; the first is by coercion as proposed by Mr. P's. plan. 2. by real legislation, as propd. by the other plan. Coercion he pronounced to be impracticable, expensive, cruel to individuals. It tended, also to habituate the instruments of it to shed blood & riot in the spoils of their fellow Citizens, and consequently trained them up for the service of Ambition. We must resort therefore to a national Legislation over individuals, for which Congs. are unfit."\(^10\)

ALEXANDER HAMILTON of New York on June 18th made one of the most complete analyses of the problem and in part said:

"Force by which may be understood a coercion of laws, or coercion of arms. Congs. have not the former except in few cases. In particular States, this coercion is nearly sufficient; tho' he held it in most cases, not entirely so. A certain portion of military force is absolutely necessary in large communities. Massts. is now feeling this necessity, & making provision for it. But how can this force be exerted on the states collectively. It is impossible."

\(^8\)Ibid., I, 164-165.
\(^9\)Ibid., I, 256.
\(^10\)Ibid., I, 245.

COERCION OF STATES:

It amounts to a war between the parties. Foreign powers also will not be idle spectators. They will interpose, the confusion will increase, and a dissolution of the Union ensure."\(^11\)

He also read an amended draft of the Virginia Plan which eliminated the provision for force.\(^12\)

MR. MADISON on June 19th remarked:

"The coercion, on which efficacy of the plan depends, can never be exerted but on themselves. The larger States will be impregnable, the smaller only can feel the vengeance of it. He illustrated the position by the history of the Amphictyonic Confederates: and the ban of the German Empire. It was the cobweb which could entangle the weak, but would be the sport of the strong."\(^13\)

COL. MASON said on the next day:

"It was acknowledged by (Mr. Patterson) that his plan could not be enforced without military coercion. Does he consider the force of this concession? The most jarring elements of nature, fire and water themselves are not more incompatible that such a mixture of civil liberty and military execution . . . Will not the citizens of the invaded State assist one another till they rise as one Man and shake off the Union altogether."\(^14\)

MR. MADISON'S observations are further recorded in Yates' Minutes of the Secret Debates:

"But how is military coercion to enforce government? True, a smaller state may be brought to obedience, or crushed; but what if one of the larger states should prove disobedient, are you sure you can by force effect a submission? Suppose we cannot agree on any plan; what will be the condition of the smaller states?"\(^15\)

Similar quotations are found in the debates, made by convention delegates not as well known as the above.

Since the principle of coercion of states was dropped from the Constitution, we may expect that little mention of it would be made in the submission of the constitution to the states; but so keen was the feeling on this issue, that the question was debated first by the pamphleteers of the day and then in every conference or assembly. One of the clinching arguments was well stated by Hamilton, from whom we would least expect it, for he was the most consistent advocate of a strong national government:

\(^11\)Ibid., I, 284.
\(^12\)Ibid., I, 291-293.
\(^13\)Ibid., I, 320.
\(^14\)Ibid., I, 339-340.
\(^15\)Ibid., I, 327.
"Whoever considers the populousness and strength of several of these states singly at the present juncture, and looks forward to what they will become, even at the distance of half a century, will at once dismiss as idle and visionary any scheme, which aims at regulating their movements by laws, to operate upon them in their collective capacities, and to be executed by a coercion applicable to them in the same capacities. A project of this kind is little less romantic than the monster-taming spirit, attributed to the fabulous heroes and demi-gods of antiquity.

"Even in those confederacies, which have been composed of members smaller than many of our counties, the principle of legislation for sovereign states, supported by military coercion, has never been found effectual. It has rarely been attempted to be employed, but against the weaker members; and in most instances attempts to coerce the refractory and disobedient, have been the signals of bloody wars; in which one half of the confederacy has displayed its banners against the other." 16

We cannot review the many points in The Federalist where the views of Hamilton, Madison and Jay are stated on this point with equal power. The scathing indictment of a system which must rest on coercion of states is especially interesting. 17

We observe the same question at issue in the less familiar pamphlets of this period—those of Elbridge Gerry, Noah Webster, John Jay, Malachon Smith, George Mason and others. 18

Hamilton repeated his caustic comments and more in the New York State Convention called to ratify the Constitution:

"If you make requisitions, and they are not complied with, what is to be done? It has been observed, to coerce the states is one of the maddest projects that was ever devised. A failure of compliance will never be confined to a single state. This being the case, we can suppose it wise to hazard a civil war? Suppose Massachusetts, or any large state, should refuse, and Congress should attempt to compel them, would they not have the influence to procure assistance, especially from those states which are in the same situation as themselves? What picture does this idea present to our view? A complying state at war with a non-complying state; Congress marching troops of one state into the bosom of another; this state collecting auxiliaries, and forming, perhaps, a majority against its federal head. Here is a nation at war with itself. Can any reasonable man be well disposed towards a government which makes war and carnage the only means of supporting itself—a government that can exist only by the sword? Every such war must involve the innocent with the guilty. The single consideration should be sufficient to dispose every peaceable citizen against such a government."

"But can we believe that one state will ever suffer itself to be used as an instrument of coercion? The things is a dream, it is impossible. Then we are brought to this dilemma—either a federal standing army is to enforce the requisitions, or the federal treasury is left without supplies, and the government without support. What, sir, is the cure for this great evil? Nothing, but to enable the national laws to operate on individuals, in the same manner as those of the states do." 19

Similar were the observations of Robert Livingston and others in the New York Convention.

OLIVER ELSWORTH, who represented Connecticut at Philadelphia, came before his state convention and, in defense of the system of government proposed, said:

"Still, however, if the United States and the individual states will quarrel, if they want to fight, they may do it, and no frame of government can possibly prevent it. It is sufficient for this Constitution, that, so far from laying them under a necessity of contending, it provides every reasonable check against it. But perhaps, at some time or other, there will be a contest; the states may rise against the general government. If this do take place, if all the states combine, if all oppose, the whole will not eat up the members, but the measure which is opposed to the sense of the people will prove abortive."

"I am for coercion of law—that coercion which acts only upon delinquent individuals. This Constitution does not attempt to coerce sovereign bodies, states, in their political capacity. No coercion is applicable to such bodies, but that of an armed force. If we should attempt to execute the laws of the Union by sending an armed force against a delinquent state, it would involve the good and the bad, the innocent and guilty, in the same calamity." 20

16The Federalist, No. 16 (4th page). Italics ours.
17The Federalist, No. 5 through 22.
18Paul Leicester Ford (Ed.), Pamphlets on the Constitution of the United States: Published During Its Discussion by the People (Brooklyn, New York, 1888).
20Ibid., II, 196-197. Italics ours.
Others rose to speak to this point as the constitution wended its circuitous and somewhat hazardous way through the state conventions and legislatures. Virginia is a good case in point. The strongest opponent to the new Constitution, Patrick Henry, and its strongest proponent, Governor Randolph, were equally vehement in condemning a system based on coercion of states. Said

GOVERNOR RANDOLPH:

"If the spirit of resentment actuates individuals, will not states be equally vindictive? What species of military coercion could the general government adopt for the enforcement of obedience to its demands? Either an army sent into the heart of a delinquent state, or blocking up its ports. Have we lived to this, then, that, in order to suppress and exclude tyranny, it is necessary to render the most affectionate friends the most bitter enemies?—set the father against the son, and make the brother slay the brother? Is this the happy expedient that is to preserve liberty? Will it not destroy it? If an army be once introduced to force us, if once marched into Virginia, figure to yourself what the dreadful consequence will be: the most lamentable civil war must ensue."

And Lee and Madison and Nicholas and Marshall made similar observations.

MADISON, drawing upon the Greek experience, said:

"But, though its powers were more considerable in many respects than those of our present system, yet it had the same radical defect. Its powers were exercised over its individual members, in their political capacities. To this capital defect it owed its disorders and final destruction. It was compelled to recur to the sanguinary coercion of war to enforce its decrees."

SPENSER, in the debates in the North Carolina convention, which refused to ratify the Constitution, said:

"I am sensible that laws operating on individuals cannot be carried on against states; because if they do not comply with the general laws of the Union, there is no way to compel a compliance but force. There must be an army to compel them. Some states may have some excuse for non-compliance. Others will feign excuses. Several states may perhaps be in the same predicament. If force be used to compel them, they will probably call for foreign aid; and the very means of defence will operate to the dissolution of the system, and to the destruction of the states."

"I do not mean to contend that the laws of the general government should not operate upon individuals. I before observed that this was necessary, as laws could not be put in execution against states without the agency of the sword, which, instead of answering the ends of government, would destroy it."

But it is unnecessary to add further evidence. The turning point in every state convention in favor of the new system to operate on individuals, as against the old system which operated on states, was the unwisdom, the political fallacy of trying to coerce states. REJECTION OF THE LEAGUE OF NATIONS FOR THE SAME REASON

The attempt to organize the world within the League of Nations, and particularly the reasons why the United States refused to join and why the League proved unsuccessful in preventing war will be treated at length in the companion pamphlet Coercion of States: In International Organizations. It is, however, interesting to note here that the Senate refused to accept the Covenant largely because of the elements of coercion of states contained in it. In his speech in the United States Senate in January 1919 in opposition to the League idea Senator Sterling of South Dakota reviewed the discussion of the coercion of states that had taken place at the Federal Convention of 1787, and made a distinction between coercion of law and coercion of arms. He rejected the League because he felt that it depended upon the latter. He concluded his speech by saying, "good will and good faith between nations and not force, are our only sure guarantees of international peace." In the long debate that followed, Article X of the Covenant, which provided for the guarantee of the territorial integrity of members of the League, was the chief issue

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\(^{22}\) Ibid., III, 117.
\(^{23}\) Ibid., III, 181.
\(^{24}\) Ibid., III, 414.
\(^{25}\) See Arthur A. Poley, _The Federal System of the United States and the British Empire_ (Boston, 1913), 44. References by many speakers to the lessons gleaned from the history of former federations are liberally scattered throughout the federal and state debates. For example see Elliot, I, 456; II, 218, 219, 234-5; III, 62, 129-32, 145, 181, 209-12; IV, 59, 195, 297, 326; V, 200, 210, 221, etc., etc. . .
\(^{26}\) Congressional Record, Vol. 37, Pt. 2, 1515-1518, Jan. 13, 1919.
of the discussion. The country was not ready to assume the obligations which membership in a coercive league would entail. There can be little doubt that this feature of the League was the chief reason for its rejection by the Senate.36

COERCION AND THE SUPREME COURT

One often hears the questions: Do not courts have to follow a method of coercion? And does not the United States Supreme Court make judgments binding on States? And does it not coerce the States? Let us see. Although we shall treat this subject much more completely in Coercion of States: In International Organizations in our discussion of a World Court, and although examples could also be drawn from the history of other nations, we set forth briefly the American experience. At no point does the Constitution give the Supreme Court power to enforce its decisions against states. The only two constitutional provisions ever urged as the basis of national power to this end are Article II, sect. 3, directing the executive to "take care that the laws be faithfully executed" and Article I, sect. 8, empowering Congress "to provide for calling forth the militia, to execute the laws of the Union, suppress insurrections and repel invasions." Whether by strained implication the right of coercion could be spelled out does not matter, for the record of history is abundant that the effectiveness of the Court itself has rested, not on coercion but upon the acquiescence of the states.

Four years after the formation of the Constitution the first case against a State came before the Supreme Court in Chisholm v. Georgia,39 and judgment was rendered that the state should pay Mr. Chisholm his debt. Edmund Randolph of Virginia, one of the framers of the Constitution and then Attorney General, presented Mr. Chisholm's case. The question of what to do if the state opposed execution was asked and Randolph completely evaded the issue.40 The State of Georgia did refuse to pay and then faced its second tangle with the Supreme Court in Cherokee Nation v. Georgia,41 steadfastly opposed the Court and passed a law that any person attempting to enforce the decision should be hanged.

In the latter case, Chief Justice Marshall said:

'The bill requires us to control the legislature of Georgia, and to

39 Dall. 419.
40 Dall. 427.
41 5 Pet. 1.

restrain the exertion of its physical force. The propriety of such an interposition by the court may be well questioned . . ." (1831)42

And Chief Justice Taney in 1860 (Kentucky v. Denison, 24 How 66, 109) stated:

"But if the Governor of Ohio refuses to discharge this duty, there is no power delegated to the general government, either through the Judicial Department or any other department, to use any coercive means to compel him."

Finally, 130 years after the adoption of the constitution, the Supreme Court in Virginia v. West Virginia (1918) 246 U. S. 565, 591, for the first time, asserted anything like a coercive power:

"That judicial power essentially involves the right to enforce the results of its exertion is elementary. And that this applies to the exertion of such power in controversies between states as the result of the exercise of original jurisdiction conferred upon this court by the Constitution is therefore certain."

But do we find the court directing enforcements? We do not. Rather it raises questions: "What are the appropriate remedies? What is the power of Congress to legislate for the enforcement of West Virginia's obligation?" and then finally sets the case for further argument (which was never necessary for West Virginia paid) by breathing this fervent prayer:

". . . we are fain to believe that, if we refrain now from passing upon the question stated, we may be spared in the future the necessity of exerting compulsory power against one of the States of the Union to compel it to discharge a plain duty resting upon it under the Constitution." (p. 604.)

Was the court safe in this prayer? Indeed it was. With the exception of the Chisholm case the States have eventually come around to the position decreed by the court sometimes willingly and sometimes only after they have shown their defiance and have been left in the unpleasant position of
of a combatant without an opponent, until since the time of Rhode Island v. Massachusetts in 1846 the states have voluntarily accepted the court's decisions without question. In fact, at the present writing, over 100 cases involving states have been decided and the decision accepted and obeyed without requiring the use of force.37

SWITZERLAND

Modern writers frequently point to Switzerland as well as the United States as an example of the desirable results that can be obtained by means of federation and union. Switzerland seems especially significant because it is located geographically in the center of Europe (rightly or wrongly considered the tinder box of the world), and is able to remain at peace when all around are at war; because it is an amalgam of peoples who speak four languages and are divided by religious and social diversities; because it is a federation which has grown from sovereign states and on numerous occasions has faced the problems of civil war and secession; because it is a nation that has maintained a high standard of living without abundant natural resources; and because it has become a symbol and center for the humanitarian efforts of the world. It seems logical to seek from Swiss history the lessons which might help to solve the world problem of creating unity in diversity.

The three forest cantons of Uri, Schwyz, and Unterwalden took the first step in the creation of modern Switzerland in 1291, when they formed a perpetual alliance to protect their freedom against the encroachments of the agents of the Holy Roman Empire, in whose jurisdiction they lay. Their alliance did not, however, found a new state or establish a federal system of government.

In the centuries that followed, other cantons and cities in the vicinity joined the original alliance but the agreements between these little states resembled those between foreign nations today. In fact, some of the territories were occupied by conquest, and were administered by the Confederation as a whole. In times of peace the administration of these dependent areas gave the confederates a common interest which worked towards unity. In time of war, the peoples of the various cantons learned to co-operate with one another on the battlefield.

Despite their common interests the cantons often engaged in wars between themselves. In the fifteenth century the cleavage between rural and urban cantons was especially marked, because the rural areas feared domination by the progressive cities. The Convention of Stanz in 1481 re-established peace. It re-affirmed the old unity, and attempted to prevent disputes between the cantons in the future, but failed to establish any truly federal principle to unify the confederates. Nor was there a common pattern of government within the cantons. In 1513, the membership of the Confederation was increased to thirteen; of these, four were complete aristocracies, three were semi-aristocracies, and six were democracies.

The Reformation added its disruptive force to the already confused relationships. Part of Switzerland accepted the ideas of the reformers and part remained loyal to the Catholic Church. In 1531 a civil war broke out between Catholic and Protestant cantons. After this short conflict, these two groups held separate diets, and Switzerland could by no stretch of the imagination be considered a nation. Actually the lines of religious cleavage were the same as those in the earlier period, between the original conservative forest cantons and the large powerful and progressive urban communities whose strength was increasing with the development of modern life.38 This conflict was to extend well into the nineteenth century, even past the time of the adoption of the modern constitution.

Even after the diets began to meet together again Switzerland still lacked any effective central government. The diets were regarded as diplomatic assemblies considering matters of foreign affairs, war, and inter-cantonal disputes. Each deputy was instructed by his canton and usually had to refer matters back to it for decision. The actions of the diets were mere recommendations to the cantons rather than law.

Imperfect as the confederation might be, it presented a striking contrast to the rest of Europe in the eighteenth century. Both Joseph Addison, who visited it early in the century, and William Coxe, who was there over fifty years later, wrote glowingly of the spirit of unity and tranquility, and of the way in which disputes between cantons were settled by moderators furnished by the confederation.39

Historians generally believe that the forces which held the cantons together in the period to 1798 were the necessity for common administration of the subject lands, the fear of invasion from without, and above

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37A masterly presentation of this complete history—elaborated by numerous other cases—will be found in James N. Rosenau, "Brutum Faliment A Precedent for a World Court," Columbia Law Review, XXV, 783.

38One is reminded here of the situation in the United States before the Civil War. The excuse for conflict in Switzerland was religion; in the United States it was slavery. In both cases, however, the real conflict was between a section that was backward economically and one which was progressive and growing rapidly.

39Joseph Addison, Remarks on Several Parts of Italy &c. In The Years, 1701, 1702, 1703 (London, 1753), 283-286; William Coxe, Sketches of the Natural, Civil and Political State of Switzerland (Dublin, 1779), 342-347, 463-466.
all the memory of a common tradition and the long experience of independence.48

In 1798 Switzerland was suddenly engulfed in Napoleon’s conquest of Europe. He established the Helvetic Republic and imposed upon it a new constitution providing for a strong central government of the French type. This constitution embodied the revolutionary idea of unity and equality among the various classes of the population and among the various geographic sections. This premature attempt at centralization failed because it came before the Swiss were prepared for unity. Although some of the Swiss who had gained greater economic and political freedom supported the constitution, its continuation depended entirely upon French military power.

Napoleon was enough of a politician to realize that his plan had failed because of lack of popular support. He held consultations with the representatives of various Swiss groups in order to discover the principles of a more satisfactory form of government. As a result of these consultations, on February 2, 1803, he issued a new constitution for Switzerland known as the Act of Mediation. The new document provided for a return to Swiss custom. The new Diet was to include one deputy from each canton, bound by cantonal instructions, but entitled to a number of votes proportionate to the population of his canton. The authority and diversity of local governments were re-established under separate constitutions. Even after Napoleon’s fall, this system of government had its effect as a codification of what had been before an unwritten constitution. Under the Act of Mediation areas where French, Italian, and Romansh were spoken were added to the original German-speaking nucleus, and Switzerland acquired the cosmopolitan character of which we talk so frequently today.

After Napoleon’s fall the victorious coalition forced the Swiss to adopt a new constitution in 1814. In keeping with the spirit of the age it was a reactionary document, going back to the pre-revolutionary system. But the influence of the new ideas could not be completely eliminated; privileges of birth were not restored; the Diet, while still weak (individual cantons had the right to conclude separate treaties with foreign states), was empowered to make treaties of commerce and declare war or peace without confirmation by the cantons. In one respect the new federal pact foreshadowed the modern state for the addition of Valois, Neuchatel and Geneva completed the twenty-two cantons of modern Switzerland.

Despite the reaction of 1815, revolutionary ideas continued to work below the surface. The new wave of revolutions that swept over Europe in 1830 affected many of the cantons. In the space of a few months old aristocracies and oligarchies were peacefully overthrown and transformed into representative liberal democracies. The Catholic cantons, out of whose territory two of these new governments had been formed, opposed these tendencies, insisted on state sovereignty, and asserted that the pact of 1815 was a treaty which could be amended only by the unanimous consent of its signatories. The new liberal governments on the other hand requested the Diet to guarantee their new constitutions. This guarantee was refused and the liberal cantons therefore formed a concordat, or “League of Seven,” for mutual defense. The conservative cantons organized in turn as the “League of Sarnen.” Switzerland was again divided into two hostile camps.

A compromise federal constitution was presented to the people for ratification in 1832, but since it satisfied neither liberals nor conservatives, it was defeated. When Basel and Schwyz of the Sarnen league attempted to coerce the two liberal groups formed out of their territory into obedience by military means, the federal Diet broke up the League of Sarnen by threat of force. It did not however dissolve the League of Seven. This partial action intensified the fears of the conservative regions, and by no means produced the desired attitude of loyalty to the federation.

The liberal movement continued to gain strength in the Protestant cantons, and before long open conflict arose between the Catholic and Protestant elements. In order to protect themselves against a further invasion of their rights, seven Catholic cantons in 1845 formed a Bewaffneter Sonderbund, or armed separate league. After fruitless negotiation, on November 4, 1847, the Diet decreed the dissolution of the Sonderbund. A short civil war resulted. It lasted only 19 days. The leader of the confederation army made an intentionally circuitous march or demonstration during which the secessionists were allowed to reconsider their position, and fought only one brief battle. The dead on both sides numbered less than 125, and five of the seceding states permitted the entrance of Federal troops without resistance. The secession movement was not routed, it collapsed, so great had become the desire for unity during five centuries of federal experience.49

After the war the Diet was very generous to the secessionists. The rebellious cantons were forced to pay the costs of the short war, and two


were required to pay fines by way of punishment, but their war debt was paid partially by public subscription raised largely in the Protestant cantons; the secessionist governments were forced to resign, but no war guilt was fixed or "trial of Jeff Davis" demanded; the federal military forces were withdrawn from the rebellious cantons as soon as order was restored, and the evacuation was completed by the end of February, 1848. Then all cantons were invited on equal terms to participate in the formation of a new constitution without dictation by the victors.42

The Constitution drawn up in the spring of 1848 was a compromise between the small cantons desiring cantonal rights, and the large ones favoring centralization and representation on the basis of population. When it was presented for ratification, 13½ cantons voted for it, but 6½ cantons were opposed. The latter were all Catholic and conservative, and six had been members of the Sonderbund. The differences of the late civil war were not yet entirely eradicated. But the popular vote was almost ten to one in favor of the Constitution, and the Diet declared it in force on September 12, 1848. Elections were then held in all the cantons without disturbance. Switzerland was re-united under one government within less than a year of the civil war.43

The constitution recognized cantonal sovereignty, even to the extent of leaving the execution of many federal laws to officials of the cantons, and reserved to the separate cantons the powers not delegated to the federal authority. It provided security for the cantons while discouraging states rights and secession by guaranteeing the territory, sovereignty and constitutions of the cantons, by forbidding alliances and treaties between cantons, and by requiring the states to abstain from violence and arming themselves, to submit their differences to and to accept the decision of the federation. It protected both large and small cantons by a bicameral system. It minimized frictions by providing national rather than state tariffs and by insuring intercantonal migration. It extended the reforms of 1830 to the entire nation and guaranteed the rights and liberties of all citizens, who became citizens of the federation as well as the cantons. It established a judicial system, weak but more adequate than the old procedure of arbitration.44

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42Oechsli, History of Switzerland, 395-394; Denis de Rougemont and Charlotte Muret, The Heart of Europe (New York, 1941), 63-64.
43Oechsli, 396-399; Rappard, 24.
44See especially Articles 3, 5, 6, 7, 14 of the Constitution of 1848. The most convenient printing of the Constitution is that in William E. Rappard, et al, Source Book on European Governments (New York, 1937), 1, 19-54, where the Constitution of 1874 is presented, with indications of the sections which are identical with those in the Constitution of 1848.

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IN FEDERAL UNIONS

At no point was the fear of federal authority more pronounced than in the provisions concerning federal intervention and the army. No federal police was authorized; the Federation was specifically denied the right to keep a standing army and each canton was forbidden to maintain an armed force of over 300. All attempts at lodging strong military power in the Federation were repulsed. A military caste was avoided by giving the cantons power to appoint most of the army officers; superior officers were appointed by the Federation only during actual war; and aggressive war was specifically forbidden. The constitution provided in some detail for federal intervention in the affairs of cantons upon their own request in cases of internal disorder but the extent of federal intervention without such requisition was vaguely defined.45

Between 1848 and 1900 there were eleven cases of Federal intervention to meet disturbances caused by labor, political, racial and religious factions. Only three cases amounting to Federal intervention have been found since 1915. With the exception of two cases, in both of which intervention was based on private telegrams predicting disorder, intervention has been requested by the cantonal officials. In such cases the federal government sends two representatives to the area, who attempt to mediate the controversy, without the use of force. If the local authorities can maintain order no further steps are taken; if they cannot the federal representative takes over such functions of government as necessary and administers them until the local authorities are again able to control the situation. On a few occasions the federal representative has used the army to maintain order. No case of conflict between cantons has ever arisen.46

Swiss government continued to evolve after 1848. As in the United States the central government tended to gain power at the expense of the cantons. Internal migration and the development of trade within the country made it seem desirable to establish national codes of commercial, civil, and criminal law. The developments of the late nineteenth century also led to a demand for the extension of democratic rights, and the intervention of the central government in the social and economic fields. Fear of attack during the Franco-Prussian War opened the way for an increase in the military power of the federation. These centralizing tendencies found expression in the amended constitution of 1874. There was still opposition to the trend in the same sections which had rejected the constitution of 1848, but the amendments were ratified by a cantonal vote of 14½ to 7½ and a popular vote of 341,000 to 198,000.

45Articles 13 and 16.
The opposition to the new constitution was especially clear with reference to the concentration of military administration. In both 1848 and 1874 proposals that the federal government be given sole control over the army were eliminated by the framers of the constitutions because they knew that they would never receive popular approval. Even the limited powers granted to the federal government in this regard met with the strongest opposition. In 1895 the Swiss by popular vote rejected a proposed amendment which would have enlarged federal military power. However, laws of 1907 and 1935 have established greater national control over the army, but not even under pressure of the second world war have the Swiss people been willing to submit to complete centralization.47

In the recent period of Swiss history there has been an increasing tendency towards unification, especially in the economic sphere. Railroads were nationalized in 1898, patents, hydro-electricity, traffic and aviation followed. A national bank was established in 1907. Public finance under the federal customs systems has become largely national and the cantons have become "public charges of the federal revenue."

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The recognition and acceptance of federal judicial decisions in inter-cantonal disputes expanded greatly in the course of Swiss history. At the beginning of the confederation in the 13th century committees of referees, chosen as occasion demanded, foreshadowed the modern federal court. A step forward was the agreement, when Zürich joined the league in 1351, that disputes should be settled by tribunals of arbitrators. A Federal Tribunal was established by the constitution of 1848 but was little more than an adjunct of the Federal Council and had no federal law to administer until, in 1874, it was given greater powers and federal law was codified. The court is not given power to override the federal legislature but does sit in judgment on the cantons. It has no direct power of enforcement; it depends chiefly on the cantons in this regard. The history of some forty cases involving cantons which have come before it shows that coercive power has not been needed, since the cantons always accepted the decisions of the Tribunal.48

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47Brooks, 250-251; Rappard, 74-112.

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**THE BRITISH COMMONWEALTH OF NATIONS**

No understanding of the various federations, including the United States, which have grown out of the British Empire, is possible without a brief consideration of the colonial policy of Great Britain. These paragraphs are not presented as an outline for a study of the Commonwealth with a view to discovering principles for world organization—such a study will be attempted in the Pamphlet: *Coercion of States: In International Organizations.* This treatment is merely a backdrop against which to examine the British derivative federations.

The British first believed that a colony existed for the benefit of the mother country, and that it should come under the complete legislative, executive and judicial sovereignty of the crown. In practice colonial administration was so inefficient that the English settlers in colonies in which they composed the bulk of the population were allowed to set up local representative governments, which tended to become increasingly independent of the mother country. Periodically the British government attempted to place such colonies more closely under imperial control. In the American Revolution one such sustained attempt resulted in successful secession of a part of the empire. In the course of the debates and court decisions of this period the colonists formulated, and Britain partially recognized, a theory of imperial relations which was very similar to that applied today to relations between the mother country and the self-governing dominions.49

The loss of the American colonies induced the British Government to strengthen its control over its remaining colonies, and for fifty years self-government was subordinated to colonial control. But it was impossible permanently to keep Englishmen in the colonies from the same rights which their brothers claimed in England. In 1839 the Durham report on conditions in Canada marked a turning point in British imperial policy. Within fifteen years Canada had been granted responsible self-government, and very shortly it was being extended to other colonies in which the Europeans composed the predominant element in the population, that is, in the other colonies in North America, Australia, New Zealand, and Cape Colony. Under the new system local matters were largely handled by local officials responsible to elected assemblies, although foreign and imperial affairs still remained under the administration of the British government.

As early as the 1850's the British revived the old idea of uniting colonies in contiguous areas in order to achieve greater unity and efficiency
in administration. Attempts to force such unions upon the various colonies were no more successful than they had been in the case of North American colonies before the American Revolution. Gradually the policy changed to one which allowed the natural forces of unity to work within the various contiguous areas. Canada achieved a federal government under the new system in 1867. Faltering steps towards union in other colonies followed. By 1910 Australia and South Africa had also achieved union coupled with self-government.

In contrast with the developments in the colonies inhabited largely by Europeans, other parts of the British Empire still remained under direct imperial control. Some of the older colonies and most of the territories obtained in the great rush for empire at the end of the nineteenth century remained "Crown Colonies," with little or no control over their own affairs. India became, and remains to this day, a "dependency." Thus a division grew up within the empire between the self-governing dominions on the one hand and territories under direct imperial supervision on the other.50

Since 1910 the self-governing dominions together with the United Kingdom have become the British Commonwealth of Nations. Canada, Australia, New Zealand and South Africa are today independent nations, bound only by ties of sentiment to the mother country.51 This Commonwealth of Nations has come into being gradually, and most of the statements of the various imperial conferences must be considered as statements describing already existing relationships.52 After 1907 the dominions acquired power over matters previously within the purview of the British government, such as merchant shipping and even foreign policy. In the first World War the dominions were given membership in the imperial war cabinet (1917-1918), and at the end of the war they were separately represented at the Peace Conference and became individual members of the League of Nations.

The report of the Imperial Conference of 1926 recognized that:

"Every self-governing member of the Empire is master of its own destiny. In fact, if not in form. It is subject to no compulsion whatsoever."

50India has a special position within the Empire, which is too complex to be discussed here. It is not a member of the British Commonwealth of Nations, nor is it a Crown Colony.

51Ireland also achieved dominion status as the Irish Free State, but its present position within the empire is not clearly defined.

52This can be seen by reference to conferences occurring as early as 1887.

The Statute of Westminster, enacted at the Imperial Conference in December 1931, gave more specific definition to existing relationships. The dominions were declared to have complete autonomy in internal affairs, a voice in choosing Governor-Generals, representation on the Privy Council when it heard appeals from Dominion courts, freedom from the application of acts of Parliament without their own consent, and complete control over their own commercial policies. All citizens of the Dominions were to be regarded as British subjects, but their governments were to have the power to treat different classes of British subjects as they saw fit. All disputes between members of the Commonwealth were to be decided either by negotiation, or by reference to an inter-imperial tribunal without coercive power.

Percy Ellwood Corbett, Professor of Law at McGill University, in Canada and World Politics has well summarized the growth of the Commonwealth:

"We have seen the gradual abandonment of the doctrine that unity consists in the enforcement of legal rights by a central authority endowed with legal omnipotence. Experience, and particularly the experience of the Great War, has shown us that the only unity capable of standing a severe strain is that which rests upon voluntary cooperation rather than upon authority and legal sovereignty."

"The internal harmony of the Empire has been achieved and preserved by the gradual substitution of the method of consultation between equals for that of the assertion of central authority . . ."

"Yet it [recognition of the dominions] is not itself so much a 'readjustment' as a definition, so far as a definition of a phenomenon essentially sui generis is practicable, of the readjustment which had already imposed itself by the force of events."53

Whether Dominion status is the ultimate in a cooperative federation or not, we cannot fail to recognize that by slow, and mostly peaceful evolution, part of a centralized empire has been transformed into a voluntary cooperative, non-coercive league made up of the most diverse geographic areas and of peoples held together by the common realization that within its confines exist their best interests.

We can now proceed with an examination of the process of federalization within some of the constituent states of the British Commonwealth of Nations.

53Pp. 38, 41, 144.
UNION OF SOUTH AFRICA

The Union of South Africa, one of the Dominions within the British Commonwealth of Nations, has become politically a highly centralized state, in which the provinces have much less power of independent action than do the states of the United States. However, socially and culturally South Africa is not yet completely united, and people often base their political positions on whether they are of Dutch or English descent. Of late years these distinctions have been growing dimmer and a South African nation has been developing. Although geographic conditions dictated unity for the South African community from the beginning, the picture is not one of smooth progress toward that end. For the first hundred years the British Government attempted to consolidate Englishmen and the Boer by force; the result was strife, misunderstanding and the postponement of the very unity sought. Only when the British virtually withdrew from the situation and allowed the South African Boer and Englishman to work out their own destiny did the federating movement again take root.

The British first came to South Africa in 1795, when Major General Craig took military control to prevent France from using the colonies of conquered Holland as a threat to Britain's life line to India (much as Britain now occupies Madagascar). There they found Dutchmen who had lived in this area long enough to develop a local consciousness similar to the local loyalties of the French in Canada when the British acquired that colony in 1763. They did not welcome alien control.

Still smarting under their loss of the American Colonies, the British established the Cape as a Crown colony with strong imperial control and an absolute governor. This system remained virtually unchanged until 1828. In 1820 the home government sent five thousand English settlers to the Cape and more followed. The English settlers began to demand a voice in government and in 1828 the Governor's Council of Advice admitted two members nominated by the colonists. But the institutions were all of English model and not for Boer participation.

In 1835 the Boers began to trek into the back country to escape English control, to obtain new lands and to escape the Emancipation Act, which had just freed all the slaves in the British Empire. The first trek was to Natal, but when that region submitted to the British Crown in 1843, the Boers moved on to new, independent areas, and by 1854 had founded the Orange Free State and the Transvaal Republic. Although South Africa was now divided into two districts the division was not complete; the market for the new states was the Cape; blood, religion and tradition bound the Dutch settlers in the old and new sections; there existed a common native problem.

With the discovery of diamonds along the Vaal River the native problem and the problem of administration assumed new magnitude. Federation (since each of the colonies was too weak to cope with the problems itself) seemed imperative to the British, and the Disraeli ministry decided to force the issue. It proposed a conference at the Cape in 1875, which never met because of the opposition of the Cape and strong feelings against any British fostered federation in other colonies. A conference in London the following year was attended only by Natal and the Free State, but Britain pushed resolutely on and passed the South African Act in 1877 authorizing the establishment of Federal government similar to Canada.

But nothing ever came of this move, for Sir Theophilus Shepstone, who had been commissioned to investigate condition in the Transvaal, on April 12th, 1877, proclaimed the annexation of Transvaal to the Cape Colony believing that this action would be welcomed by the population and would hasten federation. The British estimate of the situation was completely wrong; both Dutch and English were aroused by this high handed imperialism. They refused to allow the permissive act for union to take effect and by 1880 the whole project of federation was dead, largely because of Britain's attempt to force the Transvaal into the union.

Of this period a contemporary observer said that the

"... attempt made from outside to blend South Africa together in chains of Imperial influences, not only utterly and completely failed, but left an anti-Imperial factor—a factor in no sense necessarily anti-British, either before or after—immensely stronger than it was when the attempt began." ¹⁴

England did not interfere further for a time and halting steps were taken toward union by the colonies themselves, including a customs union between the Cape and the Free State in 1888. But Cecil Rhodes, who had long been dominant in the business and political life of the Cape, could not await the slow processes of unification, and when he became Governor of the Cape in 1890 he commenced a policy of encircling the Transvaal and the Free State with British territory to force them into a union. He sent an ultimatum to the Transvaal that it join the Customs Union. The demand was rejected and had the same effect upon opinion as earlier attempts to bring about unity by force.

¹⁴F. Reginald Statham, South Africa As It Is (London, 1897), 133.
In 1895 Rhodes attempted to aid a proposed rebellion against the government of Transvaal by foreigners who had come in to work the gold fields and had been denied political rights by the Boers. A military expedition was arranged under the leadership of Dr. Jameson to come in at the proper moment and "protect" the foreigners. The revolt failed to come off because some of the "uitlanders" could see no advantage in exchanging Boer for British master, and divided councils among them caused delay. But Jameson crossed the border anyway and was captured. In the Transvaal the Boers rallied to President Krüger, leader of the old fashioned Boer group; the Free State's sympathies were all with the Transvaal; Dutch opinion in the Cape forced Rhodes to resign; even Natal retreated from its desire for unity. Another attempt to bring about consolidation by force had failed and had left more obstacles to overcome.54

Almost prophetic, so true have they been proved by subsequent history, are the words of F. R. Statham in 1897 in his book South Africa:

"You will not, for example, get a confederated South Africa under the British flag. That will not come of itself, and if you attempt to force it the attempt will be extinguished in oceans of bloodshed. Do not, either entertain the idea that any kind of federated government will ever meet in Capetown . . . Nevertheless, there is much to be done to render South Africa more united, and the chief thing to be done is to leave it alone. So long as it is known that the Imperial Government is ready to interfere at any moment, so long will there be schemers in South Africa, large and small, who will seek to create occasions for interference."55

The Transvaal and the Free State allied, South Africa was divided into hostile camps, and gradually bad feelings hardened into war. At the end of the Boer War the British displayed a statesmanship which had been previously sadly lacking. It had long been recognized in South Africa that there was no antagonism between the Dutch and English residents and that common interests constantly drew them in the direction of federalism as soon as fear of outside control was removed. A new movement for union began to develop in South Africa sponsored by Lord Milner's commission it is true, but sponsored by persuasion, not force. Leaders of the Boers began to agree, having recognized the difference in approach. In 1906 and 1907 responsible government was granted the


54Statham, 310.

Transvaal and Free State, and since the other two colonies were already self-governing the way was open for voluntary union under Afrikaner auspices. Jan Smuts, of the Boers, finally led the movement, saying:

"I hope that politicians will recognize that our strength does not lie in isolation but in union. In that way Union will come about not as a forced thing but as a ripe fruit fallen from the tree."57

A National Convention met in October 1908 and drew up a constitution. In 1909 this was approved by three of the parliaments and a referendum in Natal, and an Act of Union was passed by the British Parliament. The new Act established a Union, much more centralized than that of the United States, in frank recognition of the major South African problem. As Lionel Curtis, a brilliant young Englishman who as a young man had much to do with the formation of the Union, recognized:

"The South African question did not arise from a conflict of races, the British and Boer, as everyone with the war so fresh in his memory was inclined to assume. The root of the trouble lay not in the conflict of races, but in the conflict of states. A country and people designed by nature to be organized into one state had been parcelled out as a number of different states . . . The only remedy was for the people of South Africa to establish one government responsible to themselves and competent to decide any question at issue between two or more of its separate communities."58

Provincial governments were set up which were a "cross between a Canadian Province and a French department" as a necessary concession to federal sentiment and the limited population. Their sphere of activity was narrowly limited; their ordinances had to be approved by the Governor General in Council, their own executive heads were appointed by the Union government, and the Union Parliament was given over-riding powers in regard to all matters. This arrangement was a frank decision to avoid the problems of state sovereignty and the necessity of coercion of states, by making the Union supreme with its laws operating directly on individuals, and by giving it an adequate, non-military, method of controlling all provincial governments. The cultural issue was determined by a constitutional provision making both Dutch and English equal and official languages, which provision "did more than anything else to create


an atmosphere favorable to Union.” The Union was accepted with satisfaction; the forces of geography and economic interest and the desire of men to live together in peace which had long worked toward unity had, when left to themselves, completed their work.

But lest it be thought that a mere paper document erased the differences heightened by an essentially “civil war” it should be recognized that the politics of the Union of South Africa had been filled with conflicts between the two groups, which have, however, become gradually less acute. Nor should it be assumed that the South Africans are any more ready for external domination. When Great Britain seemed to be backing down on the plan to give full autonomy to the Dominions in 1924 Hertzog achieved power in South Africa on a platform of secession and independence. This brought about the calling of the Imperial Conference of 1926 and the major step forward in the relations of the individual federations or dominions in the larger federation of the British Commonwealth.

The history of South Africa, although it contains many other lessons for those who attempt to solve the problems of union and federation, has been treated in such a way as to present particularly the experience in attempting to force a union, even where all factors dictate its necessity, as compared with the speedy voluntary acceptance of even greater unity.

**CANADA**

Canada, the first formed and largest of the Dominions, is one of the most interesting federated nations to study. In its English control over French-Canadians and the continuing inter-group conflict culminating in civil war prior to the formation of its constitution, Canada is most comparable to South Africa with its problem of Boer and Englishman. In economic structure, with an industrialized, wealthy cast and a sparsely populated farming west, and in the influence of “westward-ho” on its “manifest destiny” Canada most closely parallels the United States. It has, in common with all the other Dominions, a parent and an ultimate super-federation in the British Empire. But to suggest that similarities go deeper is to carry the analogy beyond historical justification. Whereas geography dictated close union in South Africa, it worked against union, even against federation, for the whole of Canada and threatened a separate regional federation for the segregated Maritime Provinces, and Newfoundland has never entered the Dominion. Whereas the English early dominated the Boers in South Africa, there was long a political deadlock between the French and the English in Canada. In the United States the people were the source of both State and Federal powers; in Canada both Dominion and Provincial powers are emanations from the Crown. Whereas in the United States the feeble powers of the federal government were the absolute maximum that could be wrested from unwilling sovereign states and people, and our history has therefore been one of gradual extension of federal powers at the expense of the state—a movement from Federation toward unity—Canada, frightened by our recent Civil war (her constitution was adopted in 1867), deprived the provinces of sovereignty, vested the residual powers in the Dominion government, and ever since has been retreating from unity toward federalism.

Canada therefore stands preeminently as an illustration of the ability of federalism to meet racial, economic and geographic diversities, of the wisdom of union by consent rather than by dictation, of the desirability of a total rather than sectional union, of the power of intangible factors gradually to overcome “racial” antagonisms and conflicts, and of the soundness of a non-coercive league and its ability to solve problems by compromise rather than force.

When English forces under Wolfe won a decisive victory over the French in Canada in 1759-60, the American problem was a part of the European war and no settlement was made until 1763, when by the Treaty of Paris, Canada was ceded to Great Britain. This left the military in control of the "transition period." Although it is beyond the scope of this writing to make detailed comparisons with present "transition period" proposals, it may be pointed out in passing that Canada demonstrates that it may be "well that the wounds of battle should be cleansed by those who had inflicted them," but it does not demonstrate that therefrom you obtain "transition" in the sense of creating desirable permanent institutions or that the military control is abandoned at an early moment. In fact the military governors continued in power for fifteen years until 1774, commercial interests flocked to the colony and supported the continuation of military rule under an "all English Plan" of government drafted in England. This plan excluded French Canadians from nearly all offices, authorized a general assembly which was never in fact called, and replaced the French with the English legal system. To

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his great credit General Murray refused to put into effect the English property laws and instead issued an ordinance for the protection of property under French law. The period was marked by legal uncertainty, by British "carpet baggers" intent on exploitation, by French-Canadian distrust of this "government by aliens."

"If the policy of 1763, instead of being abandoned, had been enforced and developed, it would have driven Canada into the American Revolution, or it would have created a new Ireland on the banks of the St. Lawrence." 61

As the clouds of the American Revolution began to roll up on the horizon England sought to placate Canada and link the most influential interests and eight were French Roman Catholics; Catholics no longer had to take the test oath; French Civil law and procedure were reinstated.

Revolt; in fact, a brief, abortive military expedition attempted to overthrow the British government and coerce Canada into the American Union. The firm control established under the Quebec Act and the method employed by the Americans frightened Canada and she remained loyal to Britain.

Upon the termination of the Revolution, nearly forty thousand American loyalists migrated to Canada, about 25,000 going to Nova Scotia and the Maritime provinces, which had been able to retain their representative assemblies in spite of repeated attacks by Britain, and most of the rest to upper Canada. Throughout this period internal proposals for a federation were being made in Canada, one of the best known being that of 1783, but no federation resulted. Soon the settlers, particularly those who had experienced representative government, could not be denied. The Constitutional Act of 1791 divided Canada at the Ottawa River into Upper (or English) and Lower (or French-Canadian) Canada and established a representative government for each. These governments were composed of an imperial governor who could give or withhold consent to bills, a legislative council appointed by the King for life, and a legislative assembly elected by the freeholders.

In 1812 at the urging of Clay, Calhoun and western Republicans for an expansionist policy and because of the movement of many United States citizens into the free lands of Upper Canada, the United States again attempted under cover of the war then raging in Europe to annex Canada by a military campaign. An unexpected cooperation of all factions in Canada in opposition to this project and Napoleon's fall in 1814 defeated this second attempt to attach Canada to the United States by force.

During this period political crises were developing in Canada. In Lower Canada the small English commercial oligarchy in control of the legislative council were not considerate of the interests of the major French population. The French demanded responsible government including an elective rather than appointed council, full control by the assembly over taxation, and abolition of plural office holding. When their demands were refused Louis Papineau led a brief rebellion in 1837.

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"Upper Canada... has long been entirely governed by a party commonly designated throughout the Province as the 'Family Compact'... For a long time this body of men, receiving at times accessions to its members, possessed almost all the highest public offices..." 62

Censured at home for his leniency to the rebels, Durham resigned in six months, but his report is a masterly survey containing far-reaching proposals which have reshaped British policy. He recommended immediate union of the two Canadian provinces, ultimate union of all British North America, and the granting of full self government. 63

The British government followed part of the suggestions, passed the Act of Union in 1840, joining Upper and Lower Canada under a parliament in which each province was equally represented. The union was avowedly to check French influence and was therefore unpopular. 64 The Lord Durham's Report on the Affairs of British North America (Oxford, 1912), 105.

"As a parenthetical comment on this period it should be pointed out that these reforms in Canada were approximately coincident with reforms in England—political (Reform Bill of 1832) and economic (Repeal of Navigation and Corn laws); and further, certain elements in the United States again took occasion to push forcibly for union of Canada with the United States by creating border incidents sympathetic to the rebellion."

64"It must be remembered that in Lower Canada union was not the deliberate choice of a free people but was superimposed on the people by a special council nominated by an autocracy. The French-Canadians had therefore no affection or respect for the system introduced." Hugh Edward Egerton, Federations and Unions Within the British Empire, 24.

union never worked well, each part was sufficiently equal to create frequent deadlocks and government became well nigh impossible.

However, out of this unsatisfactory government did come one major gain, the achievement of responsible government by a peaceful revolution in 1849. The Canadian legislature by a large majority had passed the Rebellion Losses bill compensating citizens for losses at the hands of the loyalists ten years earlier. The conservative minority appealed to Britain for intervention, a mob burned the parliament building. Britain refused to interfere and in the face of this fiery opposition Lord Elgin recognized that in domestic affairs the Canadian parliament was supreme.

Canada and the United States moved closer together during this period; a proclamation proposing union was adopted at Montreal in 1849 and in 1854 a reciprocal treaty was entered into by which Canadian natural products were admitted to the United States free of duty. But Britain's antagonism to the North during the Civil War (perhaps a sort of Balance of Power lest the North successfully woo Canada into the union) and the North's preoccupation with one dissaffected section prevented any further steps toward union of the United States and Canada.

Those who question whether unifying processes have progressed sufficiently in the world to permit the formation of a world government today may well examine the Canadian history of the 1860's to see the rapidity with which unifying forces which had been quietly operating over a long period produced a workable federation of previously disunited or incompletely united states. At Charlottetown in 1864 New Brunswick, Nova Scotia and Prince Edward Island, which had a history quite different and separate from that of Upper and Lower Canada and for which geography would dictate union with the United States rather than with Canada, were considering a regional federation for themselves somewhat similar to the partial federations which Mr. Streit and others are now urging in the world scene. Canada considering the time propitious, suggested a wider plan to include herself and a second conference was arranged at Quebec in October. A plan of federation was quickly outlined which, with slight amendments, passed the Imperial Parliament as the British North American Act of 1867—the Constitution of modern Canada.

Federation came as the logical solution of the current problems: political deadlock between racial and geographic divisions in the Canadian government; a sorely needed rail connection for Nova Scotia and New Brunswick with the rest of Canada; the stagnation of Prince Edward Island and Newfoundland caused by isolation; and the need to provide for westward expansion to parallel that south of the border and stop any aggressive designs of a strong United States, flush in military victory, which was opening railroads and expanding westward at an astonishing rate. Nova Scotia, New Brunswick, Quebec and Ontario first formed the Dominion. Prince Edward Island was admitted in 1873, British Columbia on the Pacific became a Province and in 1878 the British Government conveyed all of British North America except Newfoundland to form the territories of the North. Canada was geographically complete.

In only one of the four provinces first adopting the constitution was its voyage particularly rough. In Nova Scotia the legislature, under the strong leadership of the Prime Minister, Charles Tupper, adopted the constitution. In 1868 the electors in choosing their legislators had the first chance to voice their attitude as to union. Tupper alone was elected as its supporter and eighteen were elected pledged to its repeal. The legislature appealed to the Queen, a delegation went to England to attempt to secede or gain permission to withdraw, but financial concessions and more specific promises of the railway to the west were arranged. Nova Scotia leaders joined in the Dominion coalition government and in the Nova Scotia election of 1872 only one candidate was elected on a platform of withdrawal. The Dominion had withstood its first demand for secession.

From 1871 to 1890 the Dominion faced other secession movements and minor rebellions. The methods by which it sought to meet these and the results achieved are worthy of study. When Manitoba with its English faction at Winnipeg and its French-Canadians at St. Boniface entered the union, the appearance of government surveyors caused the French-Canadians, who had no deeds to their lands, to fear for their titles. Their leader, Louis Riel, seized Winnipeg by force and the Dominion sent an army from the east (1870). Riel fled without battle, but the fear of the half-breeds was heightened by this show of force and in 1885 they recalled Riel as leader and attempted armed secession. The forcible suppression of this revolt formed the background for the next attempt of the French Catholics in the whole Dominion to protect themselves. The Manitoba Constitution, at the instance of the French, had embodied a provision to the effect that any provincial law abolishing sectarian schools might be overridden by the Dominion. In 1890, as the result of strong agitation equivalent to our abolitionist movement, sectarian schools were abolished by the Manitoba legislature, controlled by an Anglican majority. The French Catholics particularly in eastern Canada pressed for coercion of the Province by the Dominion. The
Dominion election of 1896 came on. Tupper (conservative), who had support in both the Anglican and Catholic groups, stood for election on the principle of coercion of the unwilling province. Laurier (liberal) insisted that the Dominion had no means of enforcing an order against the Province except civil war and promised compromise if elected. For the first time in eighteen years the liberals rode to power, on this issue of coercion. Manitoba thereafter made certain concessions to the Dominion, but separate schools were not restored. We must assume that these compromises met popular approval for the liberals were retained in office for fifteen years, until 1911.66

In the 1870's British Columbia, which had entered the union on the promise of a railroad being built linking it to the east, claimed bad faith because of the fact that a railroad had not been started. A strong movement for withdrawal from the union developed, but the justice of Columbia's claim was recognized. The government—first directly and then later through the Canadian Railway Company—pushed forward with the railroad project until in 1886 it was completed. So satisfactory was this quieting of secessionist sentiment in British Columbia that when the federal cabinet some years later disallowed a provincial law directed against Asians because it was likely to cause international difficulties, no murmur of secession arose.67

In 1895 Newfoundland, under the stress of financial depression, sought to join the federation. The Dominion ministry was cool to the proffered union and never again has it been renewed, to the great detriment of both Canada and Newfoundland. Migration from England, Europe and the United States into the Canadian interior has resulted in the admission of Saskatchewan and Alberta as new provinces.

French-Canadian sentiment has at all times opposed imperial wars and has gradually pervaded the entire Canadian attitude on this point. They refused to participate in the Boer War, they defeated Laurier in 1911 for his acquisition of battleships and advocacy of a navy, they remained lukewarm to the first World War, they objected to conscription in both World Wars, they defeated the war party in 1921, and until 1942 they have prevented conscription for war outside of Canada.

During the seventy years of operation under the British North American Act more court cases have passed upon the single question of whether certain matters are proper for provincial action under section 92 or are reserved to the Dominion under section 93 than on any other issue.

Yet no province has failed to obey such decisions and no right or necessity for Dominion coercion has ever been found or claimed.

Until additional powers were permitted the Dominion government in the waging of World War II (concerning the effect and permanency of which it is too early to judge) the development of the Dominion-Provincial relations was somewhat away from centralization of legislative and constitutional power and government, though the forces of union were more and more welding together the people into a greater Dominion loyalty.68

Although prior to 1867 considerable support existed for a legislative union like that of the United Kingdom, the racial exclusiveness of French Canada, the geographic isolation of the maritime provinces, and the vastness of the country to the west dictated federation. But federation of a certain kind, for the founders sought to create a stronger central government as an improvement on the American system that seemed to be disintegrating in the Civil War. Under this fear the government was more centralized than the people desired; time and judicial interpretation have altered the constitution and strengthened the powers of the provinces.

AUSTRALIA

In many important respects the United States served as a model for Australian federation. In both areas the settlers were predominantly British so there never was a language or nationality problem. In both, Britain had served as a sort of federal government during the colonial period. In America the experience of the colonial period, the fact that the country had become independent, and a sympathetic study of Montesquieu led to a deliberate separation of the executive, legislative and judicial branches under the Constitution. In Australia the early extension of responsible government to the colonies, and a more favorable relationship with England made for the acceptance of parliamentary government rather than division of powers. But in matters pertaining to relations between the states and the federal government Australia followed American precedents, and there as in the United States the leading issue in the constitutional conventions was the question of states rights.69

The first British settlement in Australia was a penal colony founded at Sydney in 1788. During the Napoleonic wars, the British

66Sir John Willison, Sir Wilfred Laurier (New York, 1926), 201-263.
established outposts in other parts of Australia in order to prevent these regions from falling into the hands of the French.

For many years the majority of the settlers in Australia were convicts, but after 1820 the British encouraged free settlement in various parts of the continent. Many of the new population centers were far from the administration at Sydney, and in those days of poor transportation and communication, control over these outlying regions was difficult. Because of local interests, a sense of local patriotism, and discontent with their place of subordination to Sydney, these people demanded decentralization of government, and gradually they got results. By 1839 Van Diemen's Land (Tasmania), Western Australia, South Australia, Victoria, and Queensland had been established as separate colonies.

In 1850 the British Parliament passed the Australian Colonies Government Act, giving the colonies the right to establish self-government and frame their own tariffs. Self-government only intensified the particularistic tendencies which were already in evidence. Individual colonies made use of their new freedom to erect tariff walls to the great detriment of inter-colonial trade.

As early as 1846 far-sighted officials had been suggesting centralization of administration. Earl Grey, the British Colonial Secretary, proposed the establishment of a general Australian assembly to have control over such matters of common concern as customs, mail, railroads, and other communications. In order to further this plan a decree was issued making the Governor of New South Wales Governor General of Australia and the governors of the other colonies Lieutenant Governors. The British Committee on Trade and Plantations made another suggestion of union in 1849. These plans to impose union from above received scant popular support, and nothing came of them. The newer colonies feared absorption by New South Wales, with its greater wealth, population and influence. Federal union could not be created by fiat in Australia any more than it could in South Africa. Time was required for a sense of Australian patriotism, as distinct from loyalty to individual colonies, to develop. 70

The gold rush of the 1850's, by increasing intercolonial interest and trade, the successful claim of the colonial legislatures in 1851 to control the gold revenues, the obstinate stand of Victoria against the royal prerogative, intensified the need for common administration. More and more people spoke of the real geographic, social, and economic unity of the country, and implied that political unity should follow as a natural consequence. Throughout this period, frequent questions of common interest were dealt with by intercolonial conferences.

But the old decentralist tendencies were still too strong for the union movement to succeed. Proposals in 1853 for a general assembly, and in 1857 for an inter-colonial conference to form a federal constitution met with only partial response. In 1865 Victoria adopted a high tariff and other colonies retaliated in kind. Not until the 1880's was any tangible progress made in the establishment of a Federal Council to act on matters of common concern. In 1883 the British Parliament enacted into law a bill to authorize the establishment of such a council. Its provisions did not create a federal union. Entrance into the Council was optional, and withdrawal at any time was permissible. The Council had no executive authorities, and its powers of legislation were narrowly limited. Western Australia, Queensland, Tasmania, Victoria, Fiji, and later South Australia joined the Council. It lasted until 1899, and throughout the period those who favored union hoped that it might serve as the nucleus for a real federation, but the opposition of New South Wales, the most important of the colonies, blasted this hope. Actually the Council never solved any important question, and never gained the confidence of the colonies.

By 1891, the forces of union were stronger; the First Australian Federal Convention was called and met in Sydney. It drew up a draft constitution which was never adopted, but which served as the basis for the work of the later Conventions. Again opposition developed. There was still a need for the education of the public to the idea of federation.

The advocates of union now shifted their agitation from the governmental to the popular field. The people were persuaded as to the real homogeneity of Australia, the advantages of common control over such matters as immigration, and the development of inter-colonial trade. By 1897 it was possible to call a second Constitutional Convention. Fortunately, unlike Canada, where scarcely any record remains of the Conference which created the British North America Act, the records of the Australian proceedings are complete. 71

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70Ernest Scott, Short History of Australia (Melbourne, 1926), 291.
These reports reveal the same problems which had plagued the members of the Constitutional Convention in Philadelphia; the unwillingness of the states to give up their identity and form a union, the question of states rights, the balance between the interests of the large and the small states, the question whether laws should operate on individuals or should result in coercion of states, the control of finances and trade. As in the United States, the states with large populations, New South Wales and Victoria, favored a centralized government, with representation on the basis of population. The others proposed equal representation. A two house Parliament was established on the American model, and a provision was made that the powers not exclusively delegated to the federal Parliament or withdrawn from the states were reserved to the states, thus reverting to the American rather than the more recent Canadian system. No authority was conferred on the federal government to coerce recalcitrant states; not even such provisions as "to guarantee a republican form of government", or "repel insurrection" were included.

The States were prohibited from maintaining a military power (Sec. 114); state laws inconsistent with the federal laws were rendered invalid (Sec. 109); while the Commonwealth was to protect the states against invasion, the only provision for the use of force internally was upon the request of the state executive (Sec. 119). The States of Australia are not "sovereign" as in the United States. The federal judiciary was consciously modeled on that of the United States, and the Federal Supreme Court has the implied power to declare State laws unconstitutional, as in the United States. The Constitution represents "an indissoluble federal union within a frame work of government in which many of the federal features of the American Constitution were successfully reconciled with principles of British responsible government."73

Cogent as the argument made by A. P. Canaway in his book The Failure of Australian Federalism, that Australia should have established a centralized national government rather than the federal system, may have been in 1930, there can be little doubt that such a proposal would have met with no response in 1897. It was always assumed, from the convention of 1891 on, that the states would be preserved, and this principle was not questioned in the second Convention.

When the proposed constitution was submitted for ratification in New South Wales much opposition developed, and it was only on the second popular vote that it was ratified. Queensland finally adopted the proposal even though it had refused to send representatives to the Convention. Western Australia failed to ratify until after the Constitution had been enacted into law by the British Parliament, and approved by the Crown on July 9, 1900. In chapter VIII of Erling Hunt's recent book American Precedents in Australian Federation, appears an excellent study of public discussion on adoption of the Constitution as revealed by newspapers. There it appears that the same objections were pressed as were pressed at the time of the adoption of the American Constitution, which we have elsewhere outlined in detail.

Since the establishment of the new government, Australia has experienced the same centralizing tendencies which have appeared in the United States, the tendency to give the federal government additional powers to deal with social and economic problems of the twentieth century.

However, Australia is by no means a unified state even today. There is still great strength in the forces of decentralization and diversity. Most of the differences arise because of the wide divergence of economic interests in the various sections of the country, and the fact that these differences correspond generally to the state boundaries. In the 1920's and again in 1934, the people of Western Australia took part in an active but peaceful movement for secession, in the latter case petitioning Parliament (as Nova Scotia had done in 1868) for authorization to withdraw.74

"Those Western Australians do not threaten idly; they would, in fact secede rather than submit to a central Government exploiting remorselessly all the resources which it can legally command. But they are ready to compromise. And from compromise there begin to emerge new methods of government which belong neither to the old, carefully balanced federalism nor to a monstrously simple unification, but which are more elusive and perhaps more effective than either."75

Thus Australia has grown towards union, not through the operation of external pressure, but through the increasing realization by her people of their common interests, and the uses of democratic processes in solving the problems of political organization.76

72They never had claimed independence, see Australian decisions holding they may be sued in tort without consent.
73Hunt, 99.
GERMANY

Perhaps if as eminent an authority as A. V. Dicey may decline to characterize the German experiment as a Federation," it may not be improper to say that the most difficult federal organization to evaluate is that of Germany. Not only is this due to the extremely extended and interwoven history, but also to the fact that its most recent experiment in federalism has been transformed into the most completely unitary government of our time, the final results of which cannot yet be judged. But because of the influence of German writers on the course of federalism elsewhere, the important position of Germany in the world, and the several lessons which can be unraveled from the tangle of German federal or "quasi-federal" experience, it cannot be entirely ignored.

From 800 to 1806 the Holy Roman Empire, which had as its basic assumption one universal religious faith and one coextensive political authority, created and maintained hegemony in Europe through a kind of unity or federalism, with a central government composed of an Emperor (in theory elected by the local principalities) and an Imperial Diet composed of representatives of the constituent states. For the greater part of its history control rested with Austria and the government was highly dynastic, but during times of crisis the principalities usually enlarged the powers of the Diet at the expense of the Emperor. In later years the increase of Prussian power led to a contest for control between Austria and Prussia and the gradual disintegration of the Empire.

Napoleon's conquest of Europe left its imprint on German political history as it did on the federalism of Switzerland. In 1806 sixteen Southern German States seceded from the Empire and formed the Confederation of the Rhine under Napoleon's protection. In order to persuade these states to join with itself and Prussia in the successful War of Liberation against France in 1813, Austria (not unmindful of the counter-balancing effect against Prussia) guaranteed the independent sovereignty of these constituent states. This led to the decision in the treaty of Chaumont (1814) and Final Act of the Congress of Vienna (1815) that Germany should be set up as a confederation of sovereign states.

This confederation was incomplete. States within it were attached to Crowns of other countries, Hanover to England, Holstein to Denmark, Luxembourg to the Netherlands. The federal diet composed of representatives of the states was hamstrung on all important

issues and controlled by the large states on many others—many issues were decided in a narrower assembly wherein eleven large states had 11 votes and the other 28 had 6; Article 7 required a unanimous vote of the whole diet (Plenum) for changing "fundamental laws, organic institutions, individual rights or in matters of religion." Austria and Germany continued their duel for hegemony within the confederation. Austria disposed of Prussia by revealing that Prussia desired to divide Germany into areas of Austrian and Prussian control; so that the small states flocked to their protector, Austria. She then disposed of the power of the Diet in the Hess and Westphalian matters, and Austria in fact became the government.

A Zollverein or customs union had been formed by Prussia in 1818 by agreement among all the German states except Austria, Hanover, Oldenburg and the three Hansa cities, establishing a joint control over tariffs, taxes and weights. German economic unity had preceded political unity but this functional union (which bore the same, or perhaps less, relationship to the Federation than the International Labor Office does to the League of Nations) held through war and strife between the states, and proved one of the most important factors in Bismarck's later unification of Germany.

In 1848 when revolution was sweeping Europe, the old ministries, but not the Princes, in the various states fell, a national assembly met and proposed a constitution setting up a central authority with an imperial regent elected by the Diet. But so nearly equal in power were Prussia and Austria, and so strong was the desire of the Prussian king to uphold authority of the separate Princes and prevent the creation of a federation derived from the people, that no new federal government could be formed. Superficially the proposed constitution of 1849 failed of adoption because of the opposition of the Princes, but basically their opposition succeeded only because the vast bulk of the population was still indifferent.

But "Germany" was rapidly changing from an agrarian to an industrial country; railroads, communications and education were unifying the people, and in 1859 a strong union movement developed under the name of the German National Union.

After the failure of the 1849 convention, Prussia attempted to form a league of Germany but was prevented from doing so by Austria. Austria made a similar attempt but was balked by Prussia. The old Federal Parliament struggled along until 1866 when Bismarck induced it to call on Prussian arms, ostensibly to protect Schleswig and

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77A. V. Dicey, Law of the Constitution p. 35.
Holstein from being forcibly annexed by Denmark. Prussia and Austria fell out over the terms of the subsequent peace. Prussia gained the advantage, and Austria persuaded the federal diet to mobilize an army against Prussia, contrary to the constitutional provisions requiring friendly attempts at reconciliation and mediation before sanctions could be employed against a state. Prussia dissolved the Confederation, defeated Austria in war, and by the peace terms assured a new organization of Germany without the Austrian empire.

Prussia and the small states of northern Germany formed the North German Confederation under a constitution in 1867. Although Prussia had the strength to coerce the southern states into the federation, Bismarck wisely advocated inclusion only of such states as desired voluntarily to unite. He therefore reconstituted the old customs union to which they had all belonged; and gradually economic unity ripened into political unity. In 1870 he induced the southern states to join in the Franco-Prussian War, and in the confederation, which now was composed of twenty-five states, four kingdoms, thirteen duchies and principalities, three free cities.

After the war with France, the confederation became the German Reich and an Imperial Constitution, almost identical to that of the North German Confederation of 1867, was adopted April 16, 1871. By this Constitution sovereignty continued to reside in the federating governments whose organ was the Reichsrat or Bundestag in which Prussia had 17 out of 43 votes. The King of Prussia was to be Emperor, and the direction of the affairs of the federation was placed in the hands of a chancellor nominated by the Emperor. The body representative of the people, the Reichstag or Bundestag, was chosen by universal and direct franchise; it could be dissolved by the Reichsrat with the approval of the Emperor. The heads of various departments were entirely subordinate to the chancellor and responsible to him, not to parliament.

From this period forward the German government was more concerned with foreign policy than with developing the principles of federal-state relations. Both in the states and the empire the political influence of the Conservatives and Clericals increased. For a time, Bismarck was able to stifle the opposition of the working class by adopting a broad system of social insurance, but as that class became more strongly organized, it became increasingly hostile to the existing political order. Experience with popular government was arousing more interest and placing more control in the people, both in the state and national forums, but after Bismarck’s dismissal from office in 1890, the Emperor was almost completely responsible for the formulation of policy. The declaration of war by Germany in 1914 may be said to mark the zenith of the power of the Emperor and Princes; even the marked opposition in the Reichstag had no effect upon the decision.

During World War I the expansion of the control by the Reichstag increased. During the summer of 1918 the Reichstag adopted a peace resolution and compelled the appointment of a new chancellor, Max von Baden on October 2, to negotiate on the basis of Wilson’s fourteen points. Wilson’s reply was interpreted to require a restriction of the Emperor’s power and the placing of the Reichstag in responsible control of all federal matters. The Reichstag, therefore, resolved on October 26th that its consent was necessary for the declaration of war and making of peace, and that the Imperial Chancellor must have the confidence of the Reichstag to carry on government. The Emperor consented to this and it looked as though the German constitution and theory of government had been changed by peaceful means. But on November 3rd revolution broke out, on November 9th the Emperor and Crown Prince renounced the throne and the Social Democrats proclaimed a Republic. By November 25th new individual state governments had been set up and had sent representatives to Berlin. There it was decided that a National Constituent Assembly should be elected to frame a constitution.

The new Weimar Constitution embodied some social reforms, but as a necessary compromise and concession to the strength of the old line parties no substantial political changes were made from the old federal procedure as it existed immediately prior to the revolution and definite imperial protections were included. An elected President replaced the Emperor, the Chancellor was responsible to the Reichstag as the Emperor had conceded in 1918, parliament was still a single chamber, a Reichstag of representatives of state administrations was again created—this time to be advisory merely. Changes were made to take away from the Reichstag the right to dissolve the Reichstag, to permit the formation of new states or the amalgamation of states (used in only three cases since), to provide for proportional representation, to authorize government by Presidential decree in emergency (a power used several times by and before Hitler).

*President Wilson’s reply required the evacuation of the occupied districts of France and Belgium and the change of the German political system by “the destruction of every arbitrary power anywhere that can separately, secretly, and of its own choice disturb the peace of the world.”

*Of the elected representatives 165 were majority socialists, 22 independents, and 236 old Bourgeois parties, the Clericals, the Conservatives, et cetera.
The extremists of both the revolutionary and reactionary parties attempted to overthrow the constitution:

Kapp (Director of the Agriculture Credit Institute), and Generals in a conservative Putsch in 1920,

The Communists by general strike in the Ruhr in 1920,

The Communists in Saxony and Thuringia in 1921,

Hitler by the Munich Putsch in 1923.

The Social Democrats were in a hard position; they had assumed responsibility for the government without having control, and its defects were laid to their program rather than to the central parties who were really the deciding factors in all decisions.

Proportional representation made for a large number of parties (there were some 30) and necessitated that any government, since it must control a majority of the Reichstag, would have to be a coalition. The parliamentary system began to break down. Chancellor Bruening, in an attempt to meet the economic distress of the 1930's, resorted to Article 48 and governed by Presidential decree. Germany had not completely abandoned the feudal system and large estates in Prussia; Bruening asked President von Hindenburg to decree that these should be broken up and opened to the unemployed, but the President (himself an estate owner of Prussia) refused. Von Papen succeeded Bruening, called an election in July 1932 and, since Hitler's National Socialists received 230 out of 608 Reichstag seats so that he could unite and cause the majority of Dom Pedro II to be declared. Von Papen could not get a majority and resigned. Von Schleicher, who was appointed could not get a majority and resigned. Von Hindenburg invited Hitler to form a cabinet, which he did by coalitions with the Nationalist Party of Alfred Hugenberg. A new election was announced for March 5th; after the Reichstag fire of February 27th the Communists were arrested and their paper suppressed. The National Socialists and their National coalition allies received 52% of the seats. On March 23rd the Reichstag majority virtually set aside the Weimar constitution, leaving dictatorial powers in the Hitler government—the Nazi Revolution was on. We know that it has swept away the old division of Germany into states, has set up a centralized, one party government. What this may presage for ultimate German Federalism one can only speculate.
described as “by temperament and conviction a pacifist”, was internally Brazil’s most progressive and fruitful period, and internationally most cordial.

The history of the emancipation of the slaves and the amalgamation of the races during this period is in marked contrast to the history of the United States. In 1831 Brazil had agreed with Great Britain to stop the slave trade, but this was not done until 1853. During the ’60s great agitation developed for the abolition of slavery. The South was predominantly non-slave and the North predominantly slave. Although the government was controlled by those who opposed slavery, they recognized the sentiment of the plantation owners in the agricultural or Northern states which were talking of secession and concluded from the experience of the United States not to use coercion to abolish slavery because they felt that such action would create a permanent fissure in the Union, but to employ moderation and compromise. No governmental steps were taken until 1871 when a bill for gradual emancipation was passed by parliament. This provided that all children thereafter born of slave mothers should be free. The abolitionists were then persuaded to take their cause to the people rather than to press ahead of public sentiment. A brilliant young abolitionist lawyer in 1883 wrote a most remarkable book, *O Abolicionismo*, whose plan was not to arouse opposition to the slave owners but to persuade slave owners and non-slave owners that slavery was poisoning the national life. Gradually some of the borderline and then some plantation provinces began decreeing the abolition of slavery and finally on May 13, 1888, a federal law directed complete emancipation of all bondmen without compensation to their owners. In 1872 the census showed about 3,800,000 “whites”, 8,800,000 “mixed bloods”, 2,000,000 Africans, and Indians estimated at about 1,000,000; which proportions have substantially obtained since. Throughout its history Brazil has attracted many immigrants, a system of courts was created and the national court has decided numerous controversies involving boundaries, debts and tariffs without ever having the power or necessity of "enforcing" its judgments upon the states.

A military clique, in 1889, took advantage of the extreme unpopularity of Isabella, the heiress to the throne and her husband, and the popular undercurrent demand for republican federal government, to overthrow the empire. For the next fourteen months Brazil was ruled by a military autocracy.

Although this autocracy could not, in 1891, completely control the strong public sentiment for federation and had to permit a constituent assembly to adopt a constitution modeled closely on that of the United States, they never got over this taste of power and have caused most of the revolutions, rebellions and disturbances since. Deodora da Fonseco, leader of this military group and first President under the new constitution, at loggerheads with Congress, forcibly dissolved it and became dictator on November 3, 1891. But loyalties to federation had developed far since 1815; so widespread was the opposition that he had to resign on November 23rd. Vice-President Floriano, another of the military rebels, who had little more understanding of the constitutional process, operated as a dictator and was overthrown in 1893. The period from 1891 to 1894 was marked by secession and threat of secession from a dictatorial government by the various states. These “civil wars” did not give rise to a split in the country because the revolted states were not championing their own rights against sister states but the right of all states to demand that the central government operate within the constitutional framework. The army’s action against the states cannot therefore, be construed as coercion of states by a federal government. The states were very willing to reenter the union when civilian republican government was placed in power in 1894. From 1894 civilian government has had to cope with attempts of the military group to seize power. The military was successful by election in 1910, unsuccessful by revolt in 1922, 1926, and 1930, and on other minor occasions. These revolts have represented opposition to the federal government by a group of individuals, not by states.

By the constitution adopted in 1891, all powers not expressly denied them were reserved to the states, a bicameral system was created with a Senate of three Senators from each state and a Chamber of Deputies based on population, the President was to be elected for four years, and could not succeed himself, and interstate tariffs were forbidden.

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It is interesting to note that because of the strong control by the military clique a provision was inserted in the Constitution which was in none of the earlier constitutions of Brazil, and the “use or abuse” of which “constitutes one of the most delicate of the questions touching upon the relations between the federal government and the state in Brazil today—a provision which some believed conferred and some assert limited federal intervention.”

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Article 6: "The federal government shall not interfere in matters pertaining peculiarly to the states, except:
1. To repel foreign invasion or invasion of one state by another;
2. To maintain the federal republican form;
3. To reestablish order and tranquility in the states upon request of their respective governments;
4. To insure the execution of federal laws and judgments."

There is reason to believe that this was intended as a limitation: in its first Decree (No. 1, of Nov. 15, 1889, Art. 6) the military government, as a part of its consolidation of the revolution, asserted the right to intervene by force wherever it believed the local government was not republican or not capable of maintaining order, and the use of this decree aroused much opposition; the provision is couched in negative language and the grant of powers to the Executive (Art. 48) contains no similar provision; as an exception it should be strictly construed; the section does not state the method of intervention (which might be judicial or legislative as well as coercive); the report of the Committee of 21 reporting to the Senate considered that this did not confer power on the President otherwise they "should have not the president of a republic but a veritable dictator." 81 The provision was admittedly modelled after the United States Constitution Article 4 sec. 4 and Art. 1, sec. 8, par. 15 which certainly do not grant the power of coercion. As one scholar has said:

"In theory it is scarcely distinguishable from the American prototype; various factors have contributed to its much more extensive application." 82

In fact this section has been used as an authorization by which the national government has controlled states and maintained itself in office.

Another power in the constitution which has been widely exercised for the same purpose 83 is the so called "estado de sitio" or state of siege, permitting the federal government to take unusual measures and do away with civil rights or other constitutional protections. It is not unlike the German provision of government by presidential decree. Although the constitution provides for its use "in the emergency of aggression by foreign forces or of internal commotion" (Art. 34, sec. 21) and "in cases of foreign aggression or grave internal commotion" (Art 48, sec. 16) or "when the security of the republic demands it, in case of foreign aggression or internal commotion" (Art. 80), the actual practice in its use is thus described by Dr. Silva Marques:

"Now, the truth is that all the states of siege, save in the period of Marshal Floriano, have been decreed in virtue of disturbances provoked by the police at the command of the government itself.

"The congress has always voted the measure without real cause, through cowardice or subordination to the executive, and the president of the republic, in the absence of the congress, has many times been led to abuse the state of siege by pressure of ministers or advisers anxious to prosecute adversaries or to realize with convenience lucrative enterprises without the protest of a free press." 84

Against this picture of federal coercion, amounting in substance to dictatorship, one of the hopeful signs is in the federal court system where numerous controversies involving boundaries, titles, debts, tariffs between the states have been decided without ever having to use a power of "enforcing" its judgments upon the states.

In spite of many disruptive forces, particularly in the form of political uprisings and abuse of power by the government, there are forces working for unification. The increase of commerce, education, and means of communication, have greatly strengthened independence and central government; and further centralization has recently occurred to meet the need for social and economic legislation and the demands of war. The cement of common interest sets slowly, but one may already begin to see that it sets extremely strong.

OTHER FEDERATIONS

We are not unaware of other federations, some presently existing and others historically important. But space does not permit an analysis of each; rather we must content ourselves with brief characterizations. The present South American federations of Mexico, Argentina, Colombia, and Venezuela, and Austria and Russia which are sometimes considered federations, are not examples of federation as a process of unification; they are to an even greater extent than Brazil, demon-

81 Barbalho, 24.
82 Herman G. James, The Constitutional System of Brazil (Washington, 1923), 19.
83 Used in 1891, 92, 93, 94, 97, 98, 1905, 10, 14, 17, 18, 22, 24, 28, 29, 30, 31, 33, 35.
84 Quoted by James, 161-162.
strative of federation by decentralization. As particularistic or local tendencies develop, or when an increase in local tendencies will further the interests which the central government seeks to foster, a common or unified state has sometimes set up a federal system. In most instances there have at some time in the nation's previous history been strong local organizations which may therefore be revived.

RUSSIA

Russia is typical of this process. Even before 1500 the old tribal organizations, princes and boyars (landed aristocracy like feudal lords) were represented in an assembly or veche and during the period of the Tsars the Duma was a recognition of principalities and sectional organizations, but throughout this period the country was highly centralized. In 1923 the Union of Soviet Republics was formed, not to accomplish the desire of the people in sovereign states to unite as a means of lessening friction between those states, but rather to express the new Soviet policy of separating the domain of cultural activities from those of government proper, to decentralize the former while retaining a centralized government, thus serving the accomplishment and consolidation of a social revolution. The strongest force in the unification of Russia is not race, for its races are legion; not creed or language, which are extremely varied; not even common commercial interests, trade and communications, for they have until recently been singularly absent. The strongest unifying force, as it is in Germany, is the one party political system. Again we must remark, as we did in the case of Germany, that it is too early to foretell the result of the one party, centralized system.

We may properly differentiate between the practice and the technical framework of government. In framework Russia, like the British Commonwealth, contains federations within a federation. It even presents a union in which the states are sovereign and from which they may withdraw (secede) at will. Yet in practice the sub-federations are unimportant and no sovereignty, except as permitted by the central committee, is exercised by the constituent states. Creation of paper constitutions does not create federations.

GREEK FEDERATIONS

The other federations which are not presently existing but are historically interesting and which therefore deserve brief treatment include the Old Greek Federations, and the Hanseatic League.25

25Iceland, Holland and New Zealand are also of interest but will not be discussed though bibliographies will be given.

As early as the 8th century B.C. we find a kind of federalism in Greece—the Amphictyon, semi-political associations of communities centering around a shrine (e.g. the Delphic Amphictyon of twelve tribes around Thermopylae) by which representatives of member states met in council to care for sacred lands, provide for sacred games and celebrations, and other matters of mutual concern. Very early these councils concerned themselves with "civilizing" the barbarities of war (e.g. Delphic Amphictyon provision that a city should not be cut off from water—a regulation of blockade similar to our present attempts to construct international law). The transition from the earliest of these religious associations to political leagues which are properly termed "federations" was gradual. Thessaly is found acting as a whole in 511 B.C.26 The history of these federations was the most important source material for the American founding fathers in 1787.

We know quite clearly that all these associations, though in form federations, were operated in most instances for the selfish benefit of a single city which maintained hegemony, were established in several instances by force, and attempted and failed to maintain federation by coercion of the states. In some cases they began to learn from this experience but disappeared before putting this lesson into full practice. On the average they lasted not over eight years.

A. H. J. Greenidge, lecturer in ancient history at Oxford, summarized this period:

"The forces which had been silently working for unity in the Greek world, but had hitherto found voluntary expression chiefly in religious association, now led, under the pressure of enemies from without or tyranny from within, to the acceptance of a political organization which saved by infringing the independence of the city, and which, looked to as the last safeguard of Greek city life, was consciously thought out and carefully elaborated. But the highest political unity which Greece attained was still singularly incomplete. Even if we except the recalcitrants and the waverers, and neglect the stubborn resistance of Sparta and the proud isolation of Athens, we find that the history of the two leagues [Aetolian and Achaean] is one of conflict: that their method of conversion to the new political faith is persuasion tempered by annexation: that even Achaean is willing to

26Other federations of this period were Boeotia, Acarnia, Olymthus, Arcadia, Aetolia, Achaean, and Lyca.
spread her propaganda by the sword: that Aetolia is a shameless plunderer, ready to share her spoils with Macedon or Rome."**89**

Although we find a gradual movement from more severe coercion toward lesser forms and at times an abandonment of coercion, A. E. Freeman in drawing from these federations a lesson for the United States at the time of the Civil War said:

"A Federation, though legally perpetual, is something which is in its own nature essentially voluntary: there is a sort of inconsistency in retaining members against their will. What is to be done with them when they are conquered? They can hardly be made subjects of the other States; are they then to be compelled at the point of the bayonet to recognize their conquerors as brethren, and to send, under the penalties of treason, unwilling Senators and Representatives to Washington? Either alternative is utterly repugnant to the first principles of a Federal Union. Surely the remedy is worse than the disease. The revolted State, as a foreign power, may become a friendly neighbor; as an unwilling Confederate, it will simply be a source of internal dissension and confusion. A State will hardly think of Secession as long as it is to its manifest interest to remain in the Union. When it ceases to be its manifest interest to remain, there may at least be grave doubts as to either the justice or the expediency of retaining it by force. The Achaian League was weakened, indeed we may say that it finally perished, by nothing so much as by the attempt to retain members in the Confederation against their will."**88**

We may therefore observe that our forefathers in 1787 did well to learn the Greek Federation lesson that coercion cannot establish or maintain a sound federation.

**THE HANSEATIC LEAGUE**

The Hanseatic League was not so much a political federation as a commercial league like the German Zollverein which exercised some political powers. It existed from 1358 to 1669. The Hanse or fellowship obtained certain trading privileges in England or France or other locality and guaranteed these to the cities or communities which joined the league. It operated a system of government with a Diet—largely controlled by the powerful cities and


particularly by their merchants—local assemblies in various areas, a method of taxation and regulation of tariffs. When it finally changed from a cooperative undertaking to an imperial expansion program (opening Norway and capturing the key positions on the North-South and East-West trade routes) it began to decline and soon lost its privileges and ceased to exist.

From the point of view of this study it is important to note that though the league waged war without, it never used military coercion within the league, but did use a form of economic sanction, effective in this case because of the federation ownership of the economic privileges without which the member cities could not exist.**89**

**CONCLUSIONS**

If this study of *Coercion of States; In Federal Unions* is to have any value for us in our thinking about the problems which currently face the nations of the world, it is necessary that we draw certain conclusions from the brief histories presented.

**FEDERATION GROWS AS THE RESULT OF INTANGIBLE FORCES**

We take heart from a review of this paper that, though tariffs, and national differences and dominant control by one group, and racial antipathy, and even war preceded the attempts at organization of unions and federations,**89** "more perfect unions" were in fact created and were made to cohere as the result of intangible and sometimes previously unappreciated forces which had by then developed to fruition. These might be: geographic, economic and cultural interdependence; the increase in the number of fields of cooperative endeavor; the elimination of causes of friction; the growing understanding and appreciation among people; the development of transportation, communication, trade, industry, education, interstate migration, industrial and labor unions; the common experience with political institutions, and therefrom a determination to make the

89"The ban of the Huns was more potent than that of pope or emperor. A town that fell under it lost its commerce at once. Thus for example, Bremen, bestrong and stiff-necked, anxious to play an undue part in the Hansa League, saw itself shut out in 1356, because one of its burghers had traded with Flanders at a time when such trading was forbidden. The municipality, called upon to punish him, took his part, with the result that for thirty years the town was "unbanned," thirty miserable years, during which 'the city was impoverished, grass grew in its streets, and hunger and desolation took up their abode in its midst,' so writes a contemporary eyewitness. Reinstated at last, Bremen, had to take up heavy responsibilities in atonement for its misdeeds." Helen Zimmern, *The Hansa Town* (New York, 1899), 83.

89In the cases of the United States, Australia, Switzerland, South Africa, and Canada especially, the most severe period of conflict immediately preceded the formation of the federal governments.
undertaking successful—all resulting in a new and higher loyalty that embraced the component parts.

A combination of all or some of these forces brought about and assured the success of the various federations studied. And this is true whether they had to overcome strong state sovereignties and the schism caused by two inconsistent economic systems as in the United States; or religious, national and language diversities as in Switzerland, Canada, and South Africa; or hegemony by strong states—the experience of Germany, Australia, and Switzerland. One person may emphasize the common origin and tradition in the United States or fear of external aggression in Switzerland, or geography in South Africa, or westward expansion in Canada, or social reforms in Brazil, or necessities of trade in the British Commonwealth or labor movements in Germany, or education in Australia as the important factor for unification. But we are sure that a reexamination of each of the federations will show some combination of the forces outlined at work toward union.

Perhaps we can best point up these observations by a quotation from John Dewey:

"I think no reasonable person will hold that the coercive force of the federal government is chiefly or in any large degree that which keeps the various states together; or that it is a factor of any great importance as compared with the bonds of common tradition, habit of mind, beliefs, information, inter-communication, commerce, etc., which tie the people of the states together. Nor can I imagine any sensible person today who, when he looks at rivalries of interest and latent friction between sections which still exist, would urge as a remedy the strengthening of coercive force exercised from above upon them. (We tried 'force bills' after the Civil War.) I cannot imagine such a person proposing anything but means which will positively intensify the bonds of common interest and purpose which exist among sections. Laws that are enforced are enforced because there is a community consensus behind them. The threat of force does not bring about consensus."91

COERCION IS A DISRUPTIVE NOT A COHESIVE INFLUENCE

The last quotation not only emphasizes the importance of cooperative forces working toward unity, but also discards force as a cohesive power, in fact, brands it as a cause for disruption. Does this stand the test of our analysis of the various federations? Let us recapitulate: Greek Federations are said by authorities to have perished chiefly as a result of attempting to establish and maintain them by the sword. Switzerland brought some of the cantons into the federation by force, and these were largely responsible for its later civil wars; under Napoleon all the cantons felt the heavy hand of dictated and coerced unity which, however, fell upon "withdrawal of French military support". But Switzerland had means of comparison. The severity of federal coercion upon member states in the civil wars from 1531 to 1712 was equaled by the resulting schism—even to the extent of separate Diets. By 1847 the unifying forces had progressed to the point where a conflict collapsed with a slight use of, or show of, force and the seceding cantons were included in the new union on absolute equality. (It may be that the continued opposition of the seceding cantons to the constitution as revealed by the votes on the adoption of the 1847 and 1874 constitutions was due to the application of coercion and the freezing of the attitudes of the two parties before the unifying forces had progressed far enough to work out a completely acceptable compromise).

South Africa stands as a special object lesson. For a hundred years, and on at least four occasions the might and statecraft of England attempted to unify Englishmen and Boers by force. This not only "utterly and completely failed" but left opposition to such union "immensely stronger than it was when the attempt began". The policy changed; union was allowed to wait on popular desire. Did it wait long? No, about five years and then the English and the Boers together established the greatest unity of any of the federations. So obvious was it that this would be the history in 1897 that a newspaperman on the spot advised "If you attempt to force [federation] the attempt will be extinguished in oceans of bloodshed... Nevertheless, there is much to be done to render South Africa more united, and the chief thing to be done is to leave it alone."

The United States has a preeminent contribution to make to our conclusions. Those who formed our Constitution were fully aware of the previous examples of coercion and after considering it from all angles categorically rejected a system based on coercion of states. So indelibly was this written on men's minds that the Supreme Court never tried, and for one hundred and fifty years did not claim the right, to coerce States. At least three secession controversies were successfully met in the spirit of compromise and adjustment. In the
Civil War historians find not a "preservation of the union" by force but a "bungling by statesmen" that nearly cost us our union, a demonstration that the Southern cause was bound to fail with or without war because it was against the sweep of the century, and a proof that only after the North ceased to attempt force in the reconstruction period did any ties of reconciliation develop.

Canada also demonstrates the disruptive rather than cohesive contribution of force. It reemphasizes the lesson of the United States, that in transition periods under military control you get "carpet baggers" who will plague your efforts to reconstruction thereafter. It shows a country, which many forces dictated should unite with the United States and in which there was a strong movement for this purpose, being driven from union by our repeated coercive attempts to hasten it. It marks in its mid-passage, the rejection by popular vote of the principle of coercion of states. It presents a Constitution giving greater powers to the central government than intended for fear that the question of secession and coercion of states might otherwise arise.

Brazil points with startling clarity to the ability, when there is that desire to solve a problem like slavery without secession and civil war and with vastly better results. At the same time it illustrates the difficulty of keeping constitutional government going when a military group uses or misuses constitutional provisions to interfere in the internal affairs and to coerce member states.

The history of all the federations pushes us irresistibly to the realization of the truth of the remarks of John Dewey which opened this section and the conclusions recently framed by Dr. L. P. Jacks:

"What Hamilton opposed and dismissed as impossible was a coercive union of States endowed, under the terms of the union, with the right to make war on one or any of its own members, and armed with a collective preponderance of strength for that purpose. Such a union, he argued, would be a contradiction not only in logic but in fact. It would contain the seed of internal conflict and therefore no union at all . . . Are these principles applicable to the questions concerning us today? If coercion was a mad project then has it become a sane project now? Is the principle of national sovereignty less deeply rooted among the nations of the modern world than it was among those thirteen States? . . . These questions may all be summed into one. Are the difficulties of union among the European States today, hard set in the assertion of national sovereignty, and armed to the teeth for asserting it, greater on the whole than those successfully overcome by the American statesmen of 1787? The answer is—they are immensely greater for those who would base the League of Nations on coercion . . . But for those who would embark the League on more profitable forms of cooperation, with a view to reducing the likelihood that these nations will 'want to fight', the difficulties are less. Forms of international cooperation, and the means for achieving it, unknown and undreamed of in 1787, are now awaiting a statesmanship wise enough to make the most of them. It will be a tragedy if they are neglected, and the attempt made to restore the principle of coercion into a League of sovereign States each armed and still arming in the determination not to be coerced in any form or from any source . . . The result is that the British Commonwealth of Nations on the one hand, and the United States on the other, stand before the world today as object lessons revealing the only principle on which an enduring League of Nations can ever be founded. Both have solved the problem which the League of Nations has yet to solve on a greater scale. Both are non-coercive Leagues of Nations."92

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UNITED STATES OF AMERICA


SWITZERLAND


BRITISH COMMONWEALTH


SOUTH AFRICA

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