It is difficult to appraise the work of twenty-seven different authors, but it may properly be said that the authors of the eleven papers constituting the first part of this volume maintain the standards of scholarship and impartiality which might properly be expected in a volume sponsored by the American Historical Association. These papers are historical in character, and present an interesting background of the political, social, and economic conditions which affected the framing of the Constitution. Of particular value are the first two papers, that by Professor Charles H. McIlwain on "The Fundamental Law behind the Constitution of the United States," and that by Professor S. E. Thorne on "The Constitution and the Courts: A Re-examination of the Famous Case of Dr. Bonham."

The third part of the volume is composed of nine papers which discuss the influence of the Constitution of the United States in other countries. These papers are well done and present in brief space a picture of the Constitution abroad, with emphasis on federalism.

The second part of the volume is composed of six papers classified under the general heading of "The Constitution and Its Influence upon American Thought." This portion of the volume is neither scholarly nor impartial, and clearly bears out the statement of Professor Read, the editor, that it was no easy matter "to find the scholars competent to participate" in the program. Such scholars were not found. The character of this portion of the volume is typified by the statement of Mr. Max Lerner on page 199: "Scratch a fervent believer in judicial supremacy and like as not you will find someone with a bitterness about democracy." There is much inaccuracy and attempted cleverness in this portion of the volume, directed toward propaganda rather than toward scholarly discussion. One turns with pleasure from this portion of the present volume to Frankfurter's little volume on Mr. Justice Holmes, in which the author presents in many respects the same point of view as that here represented but in which the author shows knowledge of his subject and applies that knowledge honestly and fairly. Here we have, in at least several of the papers, a lack of knowledge or a lack of fairness which is not creditable to the American Historical Association. An author is entitled to his view that the framers of the Constitution did a bad job and that judicial construction made it worse, but he is not entitled to misrepresent the historical facts in support of such a view.

What has just been referred to is a defect of commission. Through defects of omission substantially no attention is given in this volume to the most important phase of our constitutional history—the adaptation of the Constitution to new economic conditions, more particularly in the field of interstate commerce.

WALTER F. DODD*  


Whether he be a student with the specialist's interest in the Indian constitutional problem or not, the reader of even such a scrupulously detached legal tome as the one under review cannot escape a sense of the overwhelming complexity of the federal constitutional scheme into which the Government of India Act,² 1935, attempts to mold.

* Member of the Illinois Bar.

² 26 Geo. V. c. 2.
a subcontinent seething with a variety of races, languages, and religions. The author's objective is twofold: he wishes to present a legal interpretation of this Government of India Act, and a study of the structure of the Indian constitution before and after the federation which is to be created on the basis of this enactment. The "Federation of India" does not exist yet, for reasons which clearly reveal the uniqueness of the Indian federal problem: this constitution is, neither directly nor indirectly, the creation of the people who live under it, but it is a statute of the British Parliament. Furthermore, today the India of the Confederation is, strictly speaking, only a geographical unit. The Indian States (with roughly two-fifths of India's area and one-fourth of its population), unlike "British India" in the technical sense of the word, are not subject to Parliament's legislative authority; their membership in the federation-to-be depends upon the voluntary surrender by "instruments of accession" of what remains of their "internal sovereignty" after more than one hundred years of British "paramountcy." Not before the rulers of states entitled to half the seats of the projected federal upper house, the council of state, and jointly representing one half of the population of all the states have declared their accession, may the King-Emperor, upon address of both houses of Parliament, declare the federation to be established. This condition has not, as yet, been fulfilled, in part probably because there is an increasingly articulate body of opinion in both the British Indian provinces and the states which holds that, without the establishment in these more or less absolute monarchies of elective and truly representative institutions, the contemplated federation would be thoroughly unacceptable.2

This is, then, the federal constitution of a dependent community; the constituent units of the federal union are of two fundamentally different types,3 the extent of federal authority is correspondingly variable; and this constitution is not a living constitution, but, as far as the federal establishment and its powers are concerned, in a state of suspension. Only if he bears these essentials in mind, can the American student of constitutional law and comparative government hope to derive some benefit from a study of the new Indian constitution.

Such an approach is facilitated by the author's discriminating use of comparative materials, drawn from dominion, English, and American experience in which he never fails to stress the perturbing relevance of elementary differences. He wistfully remarks:

In other parts of the world a federal state has come into existence as a result of the compact arrived at by the peoples of the federating units. It is the people of the federating units that have determined the nature and the powers of the new federal State . . . . When self-governing British colonies like the States of Australia or the Provinces of Canada have formed themselves into a federal union, it is true that the sanction of an Imperial Parliament was necessary to legalize that union; but the principle holds good even in these cases that the essential features of the constitution . . . . were determined by the people of the federating units themselves.4

Mr. Ramaswamy presents his interpretation along fairly conventional lines. A rather useful introduction adequately summarizes the post-war constitutional changes in the British Empire and demonstrates that the new Indian constitution does not represent a full or partial grant of dominion status to India which had so long been promised. The governor general retains control over the federal departments of de-

3 Not to mention the infinite variety of size and resources.
4 P. 92.
fense, external, and ecclesiastic affairs; numerous restrictions over Indian legislative powers persist; and further, among various other restraints, the fact that the recruitment for the important public services of India thus far remains in the hands of the secretary of state for India is symptomatic of dependence.

The body of the work begins with a brief history of constitutional developments since 1600 which is entirely based on a few standard treatises. This is followed by a fair, if formalistic, appraisal of the constitutional structure which grew out of the post-war legislation, Montagu-Chelmsford reforms, and a lucid analysis of the legal status of the Indian states. There are three chapters on the general aspects of Indian federalism and the new constitution, and twenty-five more which cover, always in judicious and rarely in a politically realistic fashion, the various parts and chapters of this detailed constitutional instrument.

Granted the fundamental discrepancies, the reader encounters familiar federal problems throughout. There is the question of the proper distribution of legislative authority between federal governments and federated states or provinces—greatly complicated here by the need for clarifying their authority with relation to that of the Imperial Parliament first. The distribution of powers follows neither the American and Australian method with its enumeration of federal powers nor that of the British North America Act which enumerates provincial powers and leaves the residue to the central legislature. The Indian solution is novel. Lists of powers reserved to the exclusive competence of either the federal or member governments and a third list enumerating concurrent powers of legislation have been provided, with a special provision for the resolution of inevitable conflicts. Since it is taken for granted that unclassified subjects of legislation will be found to exist, the governor general is called in as arbiter in such cases. The reason for this elaborate arrangement is due in no small measure, we are told, to the conflicting interests of the Hindu and Mohammedan communities which precluded a simpler solution.

The supreme court holds a key position also in this federal scheme. It is given original jurisdiction in disputes involving "two or more of the following contestants, that is to say the federation, any of the provinces or any of the federated states." The court also has appellate jurisdiction involving constitutional questions; it is charged with the rendering of advisory opinions, and finally with such civil appellate jurisdiction as the legislature may impose. It may be noted in passing that the constitution, while prescribing a sixty-five year age limit for the judges of the federal court, fails to determine their number.

One of the most important aspects of federal intergovernmental relationships, the question of the "immunity of instrumentalities" receives a detailed and illuminating treatment at the hands of the author. He concludes that a general doctrine of immunity should not apply to the new constitution. This opinion is based on the reason-

---

5 Pp. 217 ff.
6 It is subject to certain restrictions, when a federated state is a litigant.
7 Pp. 364 ff.
8 As it was first formulated in this country in McCulloch v. Maryland, 4 Wheat. (U.S.) 316 (1819).
9 Pp. 97 ff. Ample use is made in this connection of comparative legal materials.
ing that, as far as the provincial governments10 are concerned, a contractual element is lacking in the relationship; the additional fact that the constitution does make specific provision for the mutual tax exemption of federal and provincial properties and incomes "leads to the inference that no limitations not expressly provided for in the act itself can be permitted to curtail the powers which the federation and the provinces are to have...." The same he holds to be true for the more uncertain and complex relation between the federation and the federated States. Although here a contractual element is given, no implied limitations should be allowed beyond the explicit provisions of the various "instruments of accession," which permit adjustments for the states by an insertion of special clauses, and the constitution.

These considerations, however, lead into the realm of suggestive legal construction, thus far entirely unsupported by judicial determination. For the most part, this book contains unadorned but valuable materials and can be a welcome reference work for the constitutional lawyer who wishes to explore some novel solutions of ancient problems. Whether these solutions will endure in their Indian setting is a question which involves the very existence of the British Commonwealth of Nations as we know it.

WOLFGANG H. KRAUS*

10 Formerly, at least according to the written law, simply subdivisions of a unitary government, British India.

* Assistant Professor of Government, Smith College.
THE LAW STUDENT'S AID
BALLANTINE'S
PROBLEMS IN LAW
for
LAW SCHOOL COMPREHENSIVES AND BAR EXAMINATION REVIEW. A COLLECTION OF CONCRETE PROBLEMS WITH SOLUTIONS
by
THIRTY-THREE OUTSTANDING LAW PROFESSORS ON EVERY FIELD OF THE LAW INCLUDING ALL THE SUBJECTS COVERED BY THE ILLINOIS BAR EXAMINATION

Get Your Copy at the
UNIVERSITY OF CHICAGO BOOKSTORE
5802 ELLIS AVENUE

Ready in May
STEWART'S TRIAL STRATEGY
By
WM. SCOTT STEWART
Prominent trial lawyer of Chicago

How to obtain and keep clients
How to prepare and try law suits
Extremely valuable to all lawyers
Nothing like it has ever been published

Sent on 10 days' examination
A large volume, $10.00 postpaid

THE FLOOD COMPANY
159 North Michigan Ave. Chicago, Ill.

STATE ADMINISTRATION OF CHILD WELFARE IN ILLINOIS
By ELIZABETH HAYWARD MILCHRIST

The development of the Division of Child Welfare from its beginnings in 1905 against a background of legislative developments of the period.

"There are some very pertinent conclusions drawn which emphasize the need of continued forward-looking plans and the necessity of careful leadership and the development of trained personnel. This monograph deserves careful study."—C. W. HATHCOY, Head, Department of Social Studies, State Teachers College, West Chester, Pennsylvania, in Social Science.

130 pages, planographed, 75 cents

THE UNIVERSITY OF CHICAGO PRESS

Please mention the REVIEW when answering advertisements