

The Rise of a New Federalism: Federal-State Co-operation in the United States (Book Review)

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deep student of metaphysics, some passages will prove rather difficult reading. However, for the most part, the matter will prove of intense interest to the student of law who sees in his beloved profession not merely the means of satisfying his material needs in as painless a way as possible, but who regards it as one of the great fields of knowledge by means of which we may help "to secure the blessings of liberty to ourselves and our posterity."

THOMAS P. MURPHY.*

THE RISE OF A NEW FEDERALISM; FEDERAL-STATE CO-OPERATION IN THE UNITED STATES. By Jane Perry Clark. New York: Columbia University Press, 1938, pp. xviii, 347.

The "New Federalism" of which the author writes is a type of governmental co-operation which "will invite the federal government to use state agencies for the performance of federal functions under federal control with the help of a state civil service with high standards." A federal government, the author states, has within it inherent difficulties involving problems and functions common both to the state and to the federal government. The control of narcotics is a problem about which both the states and the federal government are concerned as are also the problems of unemployment compensation and child labor in industry. Some problems which were originally only state-wide and which the states attempted to control by state-wide laws rapidly became national in scope and the federal government has now come to look upon their control as a distinctly federal function. Such is the problem of the railroads and of flood control.

While in the past our governments, both state and federal, have attacked various governmental problems individually and with varying degrees of success, co-operation between the two would seem to be the ideal toward which each should strive in order to avoid duplication and possible conflict in their work. The author states that co-operation can be used (1) to co-ordinate the use of federal and state resources, (2) to eliminate duplications in activity, (3) to cut down the expenses, (4) to accomplish work which would not otherwise be carried out, (5) to make the wheels of government in the federal system move more smoothly.

The types of co-operation now in use between the federal and state governments range from the haphazard and totally unplanned type, as the informal conferences between the police officers of the two governments in the apprehension of a criminal, to the legally binding contracts and agreements for the construction of Boulder Dam. Between these two there are countless other methods whereby co-operation is obtained between the two governments. Informal agreements or understandings are used, as, for example, in the naturalization of aliens in California, the federal authorities accepting a diploma from a California state or local school as evidence of literacy. One of the most fre-

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quently used methods of co-operation is the exchange of personnel where administrative or executive problems are common to both governments. There are limitations upon this system, however, as dual job holding is frowned upon, and forbidden in certain cases. Another type of co-operation occurs when the activities of one government are made to depend upon the program of the other. As, for instance, the Lacey Act of 1900, the Migratory Bird Treaty Act of 1918, and the Black Bass Protection Act of 1930, all forbade interstate shipment of wild animals, birds and fish captured or killed in violation of the law of the state where taken. The federal government attempts to prevent the shipment of goods into states where the sale of those goods is forbidden, and in some instances turns over to the states the articles in question. For example, many states object to the sale of prison-made goods, and in compliance with their objections, the Hawes-Cooper Act of 1929 stated that prison-made goods shipped to another state are subject to the laws of that state. This was followed by the Ashurst-Sumner Act of 1935 which made it a federal offense knowingly to transport convict-made goods into any state forbidding their sale or possession. This particular type of co-operation might be used to prevent the shipment of commodities made with child labor into a state which prohibits the employment of children in industry. In line with this idea, the legislatures of New York, Missouri and Vermont have passed laws forbidding the sale in their state of goods made with child labor, hoping that Congress will pass a law forbidding the transportation of goods made with child labor, into states forbidding their sale. The author points out, however, the administrative and executive difficulties of carrying out such a law.

The most important recent examples of co-operation between the two governments have been federal credits for state taxation and the grant-in-aid system. By the former, taxes paid to the state are credited under certain conditions against similar federal taxation. It is a method used by the federal government to lure states into a desired program. It has been used in two important instances: federal inheritance taxation and the unemployment compensation taxation provisions of the Social Security Act. Both instances seem to have secured the desired result, *i.e.*, state participation in the federal program. The grant-in-aid method is not recent, having been used long ago in the distribution of federal lands to the states, but it has been developed in the recent economic depression with the federal government bearing a greater and greater share of the burden and assuming a greater and greater degree of control. The grant-in-aid is a system of co-operation between the states and the federal government in which the latter contributes a certain amount of money to a specific program if the state will comply with federal requirements, which might take the form of a state grant in equal or varying amounts or the passage of certain state laws, or a variety of other alternatives. If the state fails to comply with the federal request, the federal grant is not forthcoming.

The question which presents itself to the student of government when considering these methods of co-operation is, what changes, if any, are being made in our federal form of government? Are the states gradually losing their independence of action? Is the national government assuming an unwarranted and unhealthy control over state activities made in conformity with the co-operative program? In many cases it seems fairly close to a centralization of

power. If, in the grant-in-aid system, the states fail to live up to the requirements as laid down by the federal government the grants are withheld. In the tax credit system, as it relates to inheritance taxes, states which do not pass the desired legislation are required to pay the full amount of the federal tax, but those states having the necessary laws are credited up to eighty per cent of the federal inheritance tax. The net result in the more important types of co-operation is, therefore, that federal legislation or legislation desired by the federal government is passed and executed by the states in return for a reward. The author intimates that this may very well be "The New Federalism" wherein the federal government will "use state agencies for the performance of federal functions under federal control with the help of a state civil service with high standards."

The author makes no attempt in her book to pass judgment upon the governmental trend which she reports. She states clearly what is taking place, backs up her findings with a wealth of sources and lets the reader draw his own conclusions. In her consideration of the constitutional hurdles, both state and federal, which the grant-in-aid system and also the tax-credit system had to clear before they became widely operative, the author is lucid and interesting, especially to the student of law and government. A copious bibliography is appended.

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THE FEDERAL DEATH TAX. By John E. Hughes. Chicago: Callaghan & Co., 1938, p. 519.

Up to the present time legal treatises on the Federal Estate Tax have been rare. In fact, the "Federal Death Tax" by John E. Hughes is the first treatise on the law presented to the tax practitioner. To be sure, the legal profession has had some formal treatment of federal estate taxes in a handbook prepared by Montgomery and Magill¹ and in Volume Six of the "Procedure of Law of Surrogates Courts", a volume devoted to New York and federal estate and inheritance taxes, rewritten and enlarged by Albert Handy this year.

Since 1916 when the first Federal Estate Tax Law was enacted, the Treasury Department had been occupied with the administration of the law, the taxpayer has been busily engaged in searching and finding loopholes in the law, and Congress has been constantly changing the law and closing up the loopholes. During all this time the courts have been busy setting limitations on what Congress may or may not include in the determination of the gross estate of a decedent. After twenty years of federal estate tax administration, it is possible for the first time to speak with any definiteness of principles of estate taxation.

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¹ FEDERAL TAXES ON ESTATES, TRUSTS AND GIFTS (1935-6). See Harrow, Book Review (1936) 10 ST. JOHN'S L. REV. 401.