

governments constitute a limitation upon the powers of the central government. *Id.* at 4.⁵

Canada's Commerce Clause, while similar to our own, has never played a major role in the country's development, being rather "an insignificant source of Parliamentary authority". Canada's Constitution, under which the country has prospered dramatically, thus has not suffered the fate of our own which, "while strictly federal in form, has, under the influence of the Supreme Court, taken on distinctly unitary characteristics," the metamorphosis being due mainly "to the wide sweep accorded the commerce clause." *Id.* at 3, 4 and 6.

The Constitution of the Australian federal commonwealth system (Act of the British Parliament, 1900), a federation of six states and numerous territories, provides that powers not granted expressly to the federal government (§§ 51-52) remain in the states (§ 107), with certain rights reserved also to the British Crown (§ 74), and it contains numerous examples of the dual exercise of power by central and local governments over the same subject matter.⁶

Significant too is the role of the Commerce Clause in the Australian system. Dean Zelman Cowan of the University of Melbourne Law School has observed:

"It is interesting to note that while the American commerce power has become a principal instrument of the extension of federal power, the substantially similar Australian commerce power has played a relatively minor role. . . . This leads further to the suggestion that at a period at which the Supreme Court of the United States is interpreting the interstate commerce power in very wide terms and is restricting the scope of constitutional limitations on that power, the judicial interpretation of the Australian Constitution in this respect is following an opposite course." Cowan, *A Comparison of the Constitutions of Australia and the United States*, 4 Buffalo L. Rev. 155, 178, 180 (1955).

In Switzerland's federal system the central government enjoys only limited and delegated powers, a result of the pre-confederation status of the cantons as independent and sovereign states which was preserved to the extent possible upon confederation. O'Brien, *Baker v. Carr Abroad: The Swiss Federal Tribunal and Cantonal Elections*, 72 Yale L.J. 47 (1962). Article 24A of the Swiss Constitution (1848)⁷ well illustrates Switzerland's use of the concept of dual regulation by federal and cantonal governments. It provides that the federal legislature shall enact general provisions concerning the public interest in the national use of water-power, and that, subject to the federal provisions, the cantons shall regulate the utilization of water-power.

As Lord Bryce pointed out, *The American Commonwealth*, vol. 1, p. 324-5 (1914 ed.):

"One [of the guiding principles of the draftsmen of the U.S. Constitution] was to restrict the functions of the National government to the irreducible minimum of functions absolutely needed for the national welfare, so that everything else should be left to the States. . . . [and it was] adopted by the founders of the present constitution of the Swiss Confederation, a constitution whose success bears further witness to the soundness of the American doctrines."

CONCLUSION

The basic concept obviously underlying the "double aspect" doctrine and the recognition by Congress of the value of state regulation (as illustrated by its regulation of petroleum pipelines, motor carriers and gas distribution companies discussed above) is, as Lord Bryce well put it, "the whole spirit of the Con-

⁵ In the case of *City of Montreal v. Montreal Street Ry.* [1912], A.C. 333, the lines of a railroad subject to federal regulation connected at several points within the City of Montreal with those of the purely local Street Railway, and the two companies had agreed to allow the cars of each railway to use the lines of the other to convey passengers from points on one system to points on the other. It was conceded readily that a good deal of this flow was "through traffic" within the meaning of the Federal Railway Act which subjected such traffic to federal regulation. The Privy Council upheld the Supreme Court of Canada in thwarting the attempt of the federal Board of Railway Commissioners to subject to its regulatory jurisdiction the "through traffic" aspects of the local railway's business by holding the federal act unconstitutional. The applicability of the Commerce Clause was dismissed summarily at p. 344 on the ground that other provisions of the Constitution specifically distributing legislative powers with respect to railroads should apply instead: "Taken in their widest sense these words [dealing with regulation of trade and commerce] would authorize legislation by the Parliament of Canada in respect of several of the matters specifically enumerated [elsewhere in the Constitution], and would seriously encroach upon the local autonomy of the province."

⁶ 1 Peaslee, *Constitution of Nations*, 93, 100, 110 (1950).

⁷ 3 Peaslee, *Constitutions of Nations*, 122.