



the first term in the sense of a State under international law. However, "nation" is a sociological concept", and "State" is a legal one! there may be tens of nations in one State. When in international law we speak of a State, we mean this body politic which is a direct subject of that law. We then exclude so-called states-members of a federation, and any other territorial organisation which is not a sovereign member of the international community. The unhappy term "nation State" may be also found in some popular Indian text books, and it thoroughly disorients students as well as professors; it should not be tolerated in a book by a jurist, while Prof. Hingorani makes of it a constant use all through his book. The other term "prescription", means usually either a medical ordinance, or, *in law*, acquisition or loss of a right by an undisturbed elapse of time. But, for Prof. Hingorani, it means the same as "provision", "regulations", "clause", "rule" etc. Instead of applying these four last terms, he clings to his "prescription", which might induce in error the non-yet-initiated students.

This informative book needs a thorough revision from many points of view. It certainly deserves a second, revised edition, which would also eliminate many misprints.

M. St. Korowicz

The Constitution of India, by T. K. Tope, Second Edition, (Popular Prakashan, Bombay) 1963, pp. 614, Rs. 17.50.

Professor Tope, who is the Principal of the Government Law College, Bombay, has offered in this book a clear and concise survey of the salient features of the Indian Constitution and of the case-law relating to the Constitution. He has also dealt occasionally with the political developments bearing on the Constitution. As the author remarks in his preface, the book is primarily meant for University students of law, but he has not hesitated to express his views on the several issues he discusses and to support them with cogent and forceful arguments.

His study of the constitutional status and powers of the President of India *vis-a-vis* the Prime Minister is particularly erudite and interesting. He thinks that the President represents the nation, while the Prime Minister represents merely the majority party, and that the former "will be justified in ignoring the advice" of the latter "if it is inconsistent with the interest of the nation". His reasons for coming to such a conclusion are certain alleged deviations from English



law, in the Indian Constitution, *viz.*, the absence of any constitutional obligation on the President, to obtain the counter-signature of his Ministers, while in England such counter-signature is considered essential, and the existence of an obligation on the part of the Prime Minister under Art. 78 to convey to the President all decisions of the Council of Ministers and all proposals for legislation, unlike in England, where the Queen merely receives the minutes of cabinet meetings (which seems, however, merely another way of conveying the decisions of the cabinet). Assuming that there are such differences, they may not have any decisive bearing on the question at issue; for in law, the Queen is sovereign and the restrictions imposed on her legally absolute powers, are only those imposed by conventions, and this is the case in India though some of the conventions are embodied in the text of the Constitution and others are not. The author's view that conventions are important where the Constitution is unwritten, but not so where it is written seems untenable, as conventions are unenforceable by a court unlike law, and this is so whether the law is written or not.

Once it is clear that the intention of the framers of the Indian Constitution was to adopt the British conventions regarding the role of the President but merely as *conventions* and not as part of the text of the constitution, all arguments based on the provisions of the Constitution are really pointless. All leading spokesmen in the Constituent Assembly including Mr. Nehru, Dr. Ambedkar and Dr. Rajendra Prasad, had at various times taken the view that "the President occupies the same position as the King under the English Constitution". While it is true that individual speeches in the Assembly cannot normally be used for construing the intention of the House, it is clear that there was no major conflict of view in the Constituent Assembly on this issue as on property rights. In view of this, it is submitted that arguments based on an interpretation of the provisions of the Constitution, are *ex facie* inadmissible.

The author attaches great importance to Art. 39 and reads socialism into it. In view of this it is perhaps natural that he should criticise the attempts of the Supreme Court at the artificial respiration of the property rights "guaranteed" by the framers of the Constitution, but choked out of existence by their successors in power, in the *Bela Banerjee*, *Subodh Gopal* and *Kochunni* cases. He ignores however, the fact it was the socialists who were on the defensive in the Constituent Assembly and not the rightists headed by Patel.



The author ably analyses the federal provisions of the Constitution, and comes to the conclusion that "the Centre has become very strong under the Constitution". However, it is unfortunate that he has not taken note of the political developments in this field that prove that whatever might be the theory of the Constitution, the centre had often to yield whenever regional loyalties proved intractable. Constitutional lawyers in India cannot afford to neglect such political developments which have a vital bearing on the evolution of federalism in India and to restrict themselves to the mere text of the Constitution.

The author commands a very lucid style and his analysis of the various issues is clear and forceful. The book offers an admirable bird's eye view of the entire constitutional canvas and would be of immense use to students of constitutional law.

*T. S. Rama Rao**

* Professor of International Law and Constitutional Law, University of Madras.