

THE STATE AND TRUSTEESHIP.

3. It is frequently asked whether trusteeship is a fit and proper sphere of activity for the State to enter upon. In most democratic countries in modern times we see an extension of the functions of the State—national, local, and municipal—not merely on the political side, but on the economic side as well, so that these latter activities of the State are constantly the subject of the keenest discussion. There are those who strenuously oppose any State enterprise, or, at the most, would permit it only within the most restricted areas.

In considering this question it seems to me that the functions of the State may be conveniently characterized as necessary or optional. The former, mainly political, are those functions which are deemed inseparable from the very notion of the State, and without which it could not prolong its existence. Concerning such as these there can be little or no dispute. Any other functions undertaken by the State are to all intents and purposes optional. These are, for the most part, economic in character, and it is in respect of them that the controversies have been and still continue to be, fiercely waged. These activities are frequently denounced as “pernicious,” “unfair interference,” “unfair State and bureaucratic interference in private enterprise,” or in similar terms. Whilst the controversy is an important one, it is beyond the scope of this report or my province to deal with it here.

It may, I think, be safely said that State intervention is justified in cases where the action of self-interest and competition does not sufficiently protect the individuals—as, for example, where the individuals, though knowing their interests, are not sufficiently strong to enforce them, or where the individual is under a disability, as in the case of children or mental defectives. Moreover, as has been well said, “The validity of State intervention must be determined not by fixed and abstract principles, but by the test of social utility and community service. It is not necessary that there should be an overwhelming probability that the social advantages introduced will more than counterbalance the incidental drawbacks.” Judged by these standards, I am convinced that trusteeship plainly provides a very suitable field indeed for State operation.

Beneficiaries and other interested parties are often ignorant of their rights, or by reason of disability, such as tender age, old age, or inexperience, quite incapable of asserting them. From its very nature, then, in what field of human activity is there greater scope for betrayal, loss, or default, than in fiduciary work? Here competition and self-interest must frequently fail as safeguards. As an economic writer dealing with this point recently said, “The sphere of the Public Trust is clearly one in which competition cannot be relied on entirely to maintain quality of service and reduce costs, so that on that ground it is appropriate for State operation.” So far as I can see, there are inherent in trusteeship no qualities rendering it an activity which it would be undesirable to conduct under Government auspices.

The need for a State official to conduct administration and trustee duties has been widely felt in many countries throughout the world. The idea of such an official is not a new one. An Official Trustee has existed in India since 1843; the Public Trustee of New Zealand was established in 1872; and in 1880 a similar official was set up in South Australia. Since then the system has spread to other parts of the Empire. The most notable example is that of the English Public Trust Office which was created by the Public Trustee Act, 1906, and commenced to function on the 1st January, 1908. As early as 1884 the late Sir Howard Vincent in the course of a visit to New Zealand was very much struck with the working of the system here, and on his return to England in 1886 introduced the first Public Trustee Bill—as the preamble set out, “To meet the difficulty which public bodies and private individuals frequently experienced in finding suitable trustees.” Considerable spirited opposition to the measure was exhibited, and it was not until the end of 1906, after almost annual attempts, that it was finally passed. In the words of the father of the Bill, it placed it “in the power of testators and settlors of property, while living, to ensure that provisions for their widows, children, kindred, and persons or institutions they wish to benefit shall be cheaply, securely, and effectively carried out, and the many cases of heartless robbery of the capital which have been so common in the past, bringing loved ones to starvation and ruin, be guarded against.”