

Reviews

Imperial Control of Colonial Legislation 1813-1865. By D. B. Swinfen.
Clarendon Press, Oxford. 1970. 202 pp. U.K. price: £2.50.

THIS STUDY is subtitled 'A study of British Policy towards Colonial Legislative Powers'. The period chosen extends from the time of James Stephen's original appointment as part-time legal counsel to the Colonial Office to the Colonial Laws Validity Act (1865) which finally defined — and closely confined — the vague old rule about colonial legislation not being 'repugnant' to British law. It is a period which saw a spectacular change if not (*pace* MacDonagh) 'revolution' in the role of government at home, and it is of outstanding interest to see how far the Colonial Office and other Whitehall departments tried to persuade colonists all over the world to follow the same winds of legislative opinion as those currently blowing sharply through the House of Commons — and how far colonists preferred (and were allowed) to follow their own. The resultant rich market in legislative ideas which colonists borrowed from each other as well as from the mother parliament and occasionally even placed on their statute books ahead of that august body is one of the most fascinating by-products of empire — and one which will endure long after the last British colony has cut the painter.

Not much of the excitement inherent in the subject is conveyed by Swinfen whose interests are concentrated on such legalistic issues as the technique followed in reviewing colonial laws and the legal principles which lay behind it. The general picture he assembles is one of C.O. officials conscientiously safeguarding certain fundamental imperial interests and quietly espousing liberal legislative views themselves, but otherwise increasingly tolerant of the idiosyncrasies and ineptitude of colonial legislators. This is almost certainly a fair and valuable generalization. There is value also in some of the detailed discussion of legislation which supports it, the description of the review process and the account in a final chapter (weak in South Australian sources) of the passing of the 1865 Act. But beyond that one's appreciation is spoilt by an uneasy uncertainty as to the authority of this study. It has grown out of an Oxford doctoral thesis with a significantly more restricted range: a study of attitudes within the C.O. towards imperial control of colonial legislation in the period 1826-65 'with particular reference to the South Australian crisis which led to the passing of the Colonial Laws Validity Act'.

The *caveat* has now vanished and we are offered tacitly a study of the whole empire over fifty-two years. But is it really exhaustive? Has every report on every colonial act, for example, been examined and a fool-proof pattern of policy established? Almost certainly not. Consider for a start the narrow range of sources used. The principal Public Record Office material listed in the bibliography is CO 323, 324, 381 and 386 and PC 2. There is a vague addendum: 'also C.O. correspondence arranged by geographical regions, especially CO 12 (South Australia) and CO 280 (Van Diemen's Land)', but footnote references to these series are in fact sparse. CO 323 is described as containing the reports of the legal counsel till 1860 and no exceptions are mentioned. Yet (as I pointed out in a London doctoral thesis eight years before Swinfen's) the reports on Acts, not only from New South Wales but from the eastern colonies generally, are, in fact, missing from CO 323 for the years 1839-45, important years for several of the colonies concerned. In the case of New South Wales the reports are to be found in CO 201 along with the governors' despatches forwarding the Acts concerned, and no doubt the reports for the other colonies are filed in corresponding series.

It may therefore be significant that Swinfen does not cite any Acts for these years from any of the eastern colonies, though it is also true that the number of Acts he does discuss for any colony is scanty anyway — seven for New South Wales, four for New Zealand (plus passing reference to three others), four for Tasmania, three for Trinidad, two for Newfoundland and one each for Western Australia and Ceylon. Not exhaustive, one might think. In the case of New South Wales the hiatus means that he misses such extraordinary and embarrassing examples of local legislative initiative as the 1843 'corn Law', 'Monetary Confusion Bill' and Liens on Wool Act, all consequences of that colony's reckless borrowing and severe economic depression and all exhibiting legislative ideas which were considered more or less unfashionable — and even alien and odious — in Westminster. One wonders whether there are other lacunae of the same sort.

Small gaps in research need not matter much, but one fears that in this case they falsify the overall perspective at some points and certainly lead to a serious over-simplification of highly complicated problems. For example, in the most important chapter, 'Imperial Affairs and Local Autonomy', one's confidence in the discussion of what were regarded as imperial interests is undermined by the absence of any recognition that the British Postmaster-General had been empowered to settle postal services 'throughout Her Majesty's dominions' by an Act of 1711 and, though this may have been more honoured in the breach, Australian posts were specifically placed under imperial control by an Act of 1844. Likewise, the discussion of imperial tariff policy, useful as far as it goes, fails to make absolutely clear that British Possessions Acts (not just civil servants) continued to assert imperial authority in this field, at least apropos North America and the West Indies, until well into the 1840s, and even Australian tariffs in that decade were made to conform to the same principles. As a result, Swinfen neglects the fundamental fact that a spasmodic *centralising* trend (of which Lord Stanley was a notable exponent and the

Colonial Land and Emigration Commission another expression) co-existed with the increasing deference to local legislative opinion which he describes. Nor does he speculate about the negative, inhibitory effects of imperial control on colonial law-making — on the bills which were not even introduced as a result of it.

Narrow research affects other areas too. For instance, a 'Statistical Table of Colonial Acts 1813-1865' (compiled from PC 2) gives annual figures for the Acts referred to the Privy Council and the outcome. A more valuable series is CO 325 which shows, for example, that altogether 980 Acts from 39 colonies were reported on between the end of June 1848 and the end of 1849. Of these 770 were recommended for confirmation, eighty-five were referred to the Treasury, ninety to other departments, and only thirty-five were judged to require amendment. These figures not only give a more concrete idea of the dimensions of law reviewing. They also show much more clearly that only a small proportion of colonial Acts were interfered with and indicate the precise degree to which the Treasury and other departments were also involved in the process. A pity, too, in this connexion, that Swinfen did not read Saxe Bannister's highly critical eccentric, pamphlet of 1844 about the Privy Council.

Beyond the P.R.O. the only archival collection used was apparently the Murray Papers in the National Library of Scotland: no use of the Bathurst, Goderich, Grey, Goulburn, Catton or Huskisson Papers, for example, all of which contain much relevant material. The notion that colonial history (or even Oxford doctoral theses) can be written from Chancery Lane (or the Land Registry) is nowadays, one would have hoped, impossibly anachronistic, and a trip to Edinburgh is hardly amends enough. Nor, it seems, has any use been made of major recent studies by Helen Manning, D. J. Murray, Peter Burroughs, J. J. Eddy and others (some from the same publisher as Swinfen) nor of the whole harvest of pertinent theses since 1955. Even in the strictly constitutional field (where the author seems most at home) it is surprising to find Martin Wight's seminal study of the development of the legislative council missing from the bibliography. Moreover, despite the appearance there of A.C.V. Melbourne's early constitutional history of New South Wales, Swinfen fails to point out that his generalizations about the applicability of British law hardly apply to this colony since it had no legislature at all till 1824, and applicability was in fact extended to 1828 so that advantage could be taken of the major British legislative reforms of these years.

Finally, it must be said that, all too often, the C.O. law officers expressed themselves much more succinctly than their historian. 'It is not the right function of the Government here to be writing doctrinal Despatches', Stephen once observed. 'It is fitter work for a College Professor'. But his confidential reports on colonial legislation were an astonishing feat of concentration and endurance (he reckoned in 1840 that he had reported all told on 21,000 Acts), informed by critical intelligence, expressed in superb prose. His successors could be pithy, too: witness Frederic Rogers's summary in 1854 of the uses to which the Royal disallowance had been put, a concise statement of the ideals and fears of C.O. paternalism in the period (and strangely ignored by Swinfen).

Altogether, this book provides a paradigm of the criticisms commonly heard about Oxford doctoral theses. By the same token occasional gaffes tolerable in a thesis (who can claim without a blush not to have perpetrated any?) have no place in a scholarly book from a scholarly publishing house: for example, the description of Wilmot Horton as 'Permanent Under-Secretary' (page 22), and assertion that 'no more convicts were sent to New South Wales after 1840' (page 141) and (page 30), George Higgin Botham [sic]. If this review has been severe it is precisely because Swinfen is clearly an intelligent scholar and his book could have become authoritative with further research. Alternatively its limitations should have been made explicit. As it is the book claims an authority it does not really possess.

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The Colonial Office, 1868-1892. By Brian L. Blakeley. Duke University Press: Durham, N.C. 1972. xvi, 195 pp. U.S. price: \$9.50.

PROFESSOR BLAKELEY'S book is a study in administrative history. He has delved deep into the correspondence in the general department of the Colonial Office records and produced an interesting book in a field where a dull man could easily write a dull one. The warp in the pattern is the personnel of the Office, especially R. G. W. Herbert, who joined it as assistant under-secretary in 1870 and fifteen months later became permanent under-secretary, a post he held for twenty-one years. Dr Blakeley gives a good sketch of Herbert and his chief colleagues, especially Sir Robert Meade, who ultimately succeeded him. The woof is civil service reform. Gladstone's curious combination of reforming zeal and a passion for economy inspired his subordinates to do some odd things. Dr Blakeley calls his second chapter 'The Formation of the New Office, 1868-1872'. Three years saw the retirement of several senior officials and an internal reorganization designed to reduce the size and cost of the Office but the same time increase salaries to attract abler men. The principal saving was to come through a gradual reduction in the number of upper division clerks from twenty-six to eighteen. As the work was steadily increasing, especially the African work, some of the senior clerks were under severe strain — lessened perhaps by the fact that they still only worked a six-hour day. The abler men were to be secured by open competition, but the reduction of staff meant that no 'competition wallah' entered the office until 1877, when C. P. Lucas and R. L. Antrobus were appointed. The gentle, scholarly Lucas became one of the best-liked members of the staff and Antrobus, a bugbear to both Lugard and MacGregor and no doubt to other governors, one of the least popular. The trouble was that the new men 'generally regarded themselves as the intellectual superiors of the men serving in the colonies'.