

of Durham's reservations, given the climate of opinion at that time. Robert Baldwin, in his letter to Durham in August 1838, had said 'The Imperial Parliament is the tribunal in whose hands should be retained all the powers of general legislation essential to the welfare of the Empire as a whole.' There could be no Minerva birth of the Commonwealth, and indeed perhaps Minerva has been a little too busy lately producing independent states. A self-governing dependency was indeed, in Cornwall Lewis's and now in Mr Martin's opinion, a contradiction in terms, but for the rest of the nineteenth century the anomaly worked. This was no doubt largely due, as Mr Martin explains, to the more flexible conception of responsible government worked out by Grey and Elgin; but how do we know that Lord Durham, had he lived, would not have let responsible government adapt itself to changing conditions? Mr Martin makes light of Elgin's letters to his newly-married wife on his indebtedness to her father. But when Elgin says, in a letter quoted by Walrond but not by Mr Martin, that he has 'adopted frankly and unequivocally Lord Durham's view of government', one is surely entitled to infer that this was the starting point of his policy and had probably been the basis of his discussions with Lord Grey, whose famous despatch to Sir John Harvey in Nova Scotia had been written before Elgin left for Canada.

Whether or not Mr Martin's interpretation is accepted, his final chapter on 'The growth of the Myth' contains some interesting material. Canadian Confederation, he says, 'gave rise to the first stirrings of the mythology which came to surround the Report.' It was the Home Rule controversy of 1886 and even more the South African situation after the Anglo-Boer War and the high tide of Liberal Imperialism which followed the revived interest in the Report and gave it the status of the Magna Carta of the colonies. In a well-written if rather rhetorical conclusion, Mr Martin refers to the transformation of Empire into Commonwealth and suggests as an explanation one 'which interprets the history of the Empire-Commonwealth less in terms of the brilliance of Durham's prose and more in terms of the variations of British power.' Nevertheless it may be that one result of Mr Martin's critical essay will be to send his readers back to the Report itself. It is still well worth reading.

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¹ Chester Martin, *Empire and Commonwealth*, Oxford, 1929, pp. 258, 180. The *Nova Scotian* was Howe's paper.

Sovereignty and Protection: A Study of British Jurisdictional Imperialism in the Late Nineteenth Century. By W. Ross Johnston. Duke University Press, Durham N.C., 1973. vii, 357 pp., bibliography. U.S. price: \$9.75.

STUDENTS of the imperial frontier have long needed a thorough study of the nineteenth-century concept of 'protectorate'. Professor Johnston has made a distinguished contribution to our understanding of the legal evolution and practical meaning of the term within a wide context of African, Far Eastern and

Pacific history. This is not merely a lawyer's case book, but an historian's interpretation of 'the relationship between theory, in particular legal theory, and practice in the decision-making process of the British government departments in the nineteenth century' (p. v).

The study, therefore, focuses largely on Colonial Office and Foreign Office 'extra-territoriality' rights and the subtle process which transformed 'informal' into 'formal' empire in terms sanctioned by the legal advisers to those departments and by the law officers of the Crown. Three main phases are discerned.

The first, which was marked by considerable vagueness and flexibility in the administrative content of 'protection', stemmed from the initial Foreign Jurisdiction Act of 1843 and a small number of special enactments to curb and control renegade British subjects in the Pacific, on the Cape frontier, in Natal and in the interior of Sierra Leone. In general, the attempt to use the existing colonial courts for distant cases was marked by failure; but the powers acquired by governors, colonial legislatures or the Cape High Commissioner created precedents which were useful later. The Foreign Office pursued its own brand of jurisdiction through the consular service, more particularly in the Niger Delta and at Zanzibar. On the whole, it was preferred that such powers of jurisdiction should be ceded by local rulers, though they could be conferred in the Pacific and in the Congo by parliamentary acts — but only over British subjects — even when the consent of local authorities had not been obtained. In West Africa the notion of 'British subject' had been stretched to include Liberated Africans (by an Act of 1853, not discussed in this study) and included much of the Fanti Gold Coast where 'protection' had a military as well as a juridical meaning.

The second phase, according to Professor Johnston, was marked by a 'hardening' or restriction of the sense in which British lawyers were prepared to allow jurisdiction over foreign nationals and by a formal rejection by Great Britain at the Berlin Conference of any admission of an obligation to provide 'effective administration' in protectorates. Protectorate, in the British view, was not to equal annexation. But the 'continental' view of protectorates was, argues Professor Johnston, brought to British attention. An important lawyers' debate preceding the consolidation of the Foreign Jurisdiction Acts in 1890, moreover, rejected the need for a special act to provide jurisdiction over foreign nationals.

Thirdly, from 1891 when an Order in Council for Bechuanaland provided for jurisdiction over all inhabitants, whether foreigners or not, British protectorates took on the trappings of colonial administration. And by the end of the century it was even possible for the Crown to dismiss the concept of indigenous 'ownership' of land in the East African Protectorate, in favour of the issue of land rights to settlers as administrative acts. By then, the 'paper empire made by lawyers' looked very much like the empire made by the Maxim and British immigrants.

But was the distinction between theory and practice ever quite so precise in the early phases of expansion? Was there really a 'jurisdictional imperialism', or were there simply legal techniques for legitimizing expansion for economic or strategic reasons — means rather than ends? And if approved means were not supplied, 'illegal' methods were not in short supply.

There is more in this objection than a quibble about the role of 'men-on-the-spot' or 'local developments or idiosyncrasies' which are, at the outset, expressly excluded from the study (p. vi). It is hard to see how any theory of 'jurisdictional imperialism' can be formulated without an account of the administration (formal

or informal, 'recognised' or not) which such jurisdiction implied and which, indeed, it occasionally arose from, as on the Gold Coast or in the Niger Delta. It is the great merit of this book to have lucidly demonstrated that Great Britain, despite the well-known reluctance to acquire territory, nevertheless acquired rights which were stamped with legal approval. But the 'imperialism' which such rights entailed when they were exercised, it could be argued, sprang from other causes.

A few examples will make this point clear. Professor Johnston has some difficulty over the 'classification' of the Niger Delta as a 'protected area' from the 1840's to the 1870's (p. 68). The consuls had no such problem; and although they were prohibited from using Lagos courts, naval assistance and communities of palm-oil merchants enabled them to prosecute imperial ends (usually illegally under the terms of the 1872 Order). Professor Flint and the late Professor Anene are taken to task (p. 197) for not noticing the illegality of the Royal Niger Company's assumption of jurisdiction over foreigners and Africans. They may be forgiven, when it is remembered that historians of Africa are well aware the Company and the consuls created their own jurisdiction and that this work was continued by Consul Johnston and Commissioner Macdonald in ways which paralleled the Bechuanaland Border Police and the South Africa Company Police which Bramston, at the Colonial Office, successfully 'legitimized' in 1891. Or, finally, it should be noted that if 'administrative efficiency' is postulated to explain the change in legal theory towards colonial protectorates, this entails a very curious interpretation of the deposition of Ja Ja of Opobo on the grounds he obstructed 'progress' (pp. 325-7). A simpler explanation is that this African chief was progressive enough to enter the export trade in competition with Delta merchants who used the consul to have him removed.

In short, there was no 'jurisdictional empire', but rather areas where imperial agents exercised power, influence and rights acquired in the political bargains struck with Delta Africans, Zanzibar Arabs, Malay princes or sultans of the Porte. Practice preceded theory, just as the notion of 'protectorate' itself had hardly been noticed in British legal textbooks, before Hall's *International Law* (1890) and his *Treatise* (1894).

One may express a doubt, too, whether legal advisers to the Colonial Office or the Foreign Office were quite so free from a desire to please their political masters. It is true that 'no records exist to prove this conclusively' i.e. that 'political pressure' was brought to bear on the lawyers to come up with the 'correct' legal answers. But a close reading of Foreign Office legal exchanges 1888-90 suggests that the parliamentary counsel, Sir Henry Jenkyns, was very willing to have an opinion from Salisbury and the Cabinet, via Pauncefoot, on whether jurisdiction over foreigners was required or not; and on at least one occasion he suggested the law officers be given an indication of the direction in which legal opinion was desired (Jenkyns to Pauncefoot, 27 November 1888, F.O. 97/562).

There are some small points which might be corrected in a subsequent re-print. There seems no good reason to use the term 'Otaheiti' for the well-known island taken under French protection in 1842 (not 1843 p. 39). There are some important omissions from the notes and bibliography — in particular, Dr A. Sillery's work on the Bechuanaland Protectorate and Roland Oliver's study of Sir Harry Johnston. It might have been noticed (p. 119) that France had created a 'protectorate type of solution' in the Pacific by the date of the period being considered.

But with this well-documented work we are deeply in Professor Johnston's debt for an insight into the legal workings of the Victorian 'official mind' and, less certainly, for a change in the connotation of that unscholarly word which we all use.

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Imperialism and Free Trade: Lancashire and India in the Mid-nineteenth Century.

By Peter Harnetty, University of British Columbia Press and Manchester University Press, 1972. ix, 137 pp. U.K. price: £3.

PROFESSOR HARNETTY has chosen to make a book out of most — but not all — of the articles which he has published over the last decade or so. The original articles were undoubtedly meticulously researched, and Professor Harnetty has made them hang together well in book form. But some readers may still find this volume slightly disappointing — and that not only because they have seen most of it before. Professor Harnetty appears here as a disciple of Robinson and Gallagher in their 'Imperialism of Free Trade' phase. Again and again, whether he is discussing the removal of Indian import duties on cotton goods, or government encouragement of the cultivation of raw cotton for export to England, Professor Harnetty returns to his theme: Lancashire saw to it that 'pure' notions of laissez-faire simply did not apply in India, even in the mid-nineteenth century years of the supposed triumph of free trade. But the laissez-faire of many nineteenth-century Englishmen, working in many spheres — notably the laissez-faire of the political economists themselves — was, in fact, remarkably 'impure'. India was not merely an exception to a rule. Furthermore, Professor Harnetty is almost certainly too single-minded in his emphasis on the role of economic interests. One continues to suspect that, even in the case of Lancashire and India, the mid-century 'imperial' story was somewhat more complex; a reading of Sabyasachi Bhattacharyya's *Financial Foundations of the British Raj* (Simla, 1971) to some extent reinforces this suspicion. One must add that the picture which is beginning to emerge from the work of Morris David Morris, and also from the most recent work of Professor Harnetty himself ('Cotton Exports and Indian Agriculture, 1861–1870', *Economic History Review*, August 1971 — an article which is neither included nor prefigured in this book), is that, no matter what government policy may have been, Lancashire interests probably had remarkably little practical effect on the Indian economy in the middle and later years of the century. In spite of opposition from Lancashire, the modern Indian cotton industry got under way in that period. The extent of the impact of Lancashire competition on the old Indian handloom industry — or at least on the production of coarse cloth — has probably been exaggerated in the past. And, if Professor Harnetty's latest article is to be believed, in the sixties of the last century, anyway, increased cotton acreage in India did not necessarily mean a diminished acreage under food crops.

It is a pity, then, that this book displays only the work of Professor Harnetty in a rich but somewhat over-cultivated area of what is essentially English history.