

that he is fully conversant with the *Strauss Case* of 1957-58, which raised important issues concerning communications between backbench members of the House of Commons and Ministers, and that he is not content to serve up a potted version of *Erskine May*. There are other meritorious contributions on difficult and large themes—for instance, the general principles of constitutional interpretation, the foundations of judicial review and the constitutional conventions governing the exercise of the discretionary powers vested in the Head of State.

On some matters the author has allowed eclecticism to get the better of him. It is not easy to justify 64 pages of commentary on article 20, which contains the rules against retroactive penal legislation and double jeopardy and the privilege against self-incrimination. Nor is it apparent that any useful purpose is served by quoting articles of the constitutions of Danzig and Costa Rica. Moreover, the method of presenting non-Indian material sometimes evinces a lack of discrimination. The account of judicial review of administrative action in England is unnecessarily inflated by digests of the facts of large numbers of relatively unimportant and peculiarly English cases; it would have been more economical of space, though more difficult, to present the English law in the form of a selective narrative. And where an author appears to be offering an exhaustive statement of another country's rules of law his few errors and omissions stand out more sharply; one obvious illustration is the failure to appreciate that the decision of the House of Lords in *Smith v. East Elloe R.D.C.* is unaffected by section 11 of the Tribunals and Inquiries Act, 1958 (U.K.). What he has to say about Australian constitutional law is relatively modest in scope, but he makes good use of Australian authorities in discussing the constitutionality of the delegation of legislative power. There is no reference in the first two volumes to the constitutions of Nigeria or Cyprus, which include many features worthy of mention in a comparative study.

But this is primarily a treatise on the law of the Indian Constitution to be used by Indian practitioners and judges. As such it has earned very high commendation, and its reputation is likely to be enhanced by the author's adoption of a more critical approach to decided cases in the present edition. In looking into difficult points of interpretation of the Indian Constitution I have not always begun with *Basu*, but I have usually ended with him. His treatise should be in all self-respecting Australian law libraries, and indeed in all libraries which seriously attempt to cover federalism, bills of rights or modern government in Asia.

S. A. de SMITH*

The British Cabinet, by John P. Mackintosh. London, Stevens & Sons Ltd., 1962. xi and 546 pp. (£3/10/0 in Australia.)

Professor Mackintosh's book might be called a collateral descendant of the late A. B. Keith's *The British Cabinet System*. When a second edition of that work was published in 1953 under the editorship of N. H. Gibbs, several reviewers questioned the necessity for this step in view of the fact that Sir Ivor Jennings' standard work on *Cabinet Government* had gone into its second edition in 1951. No such caveat is likely to be entered in the case of Professor Mackintosh's book, which was originally intended as a third edition of Keith. Instead of revising Keith, he has written a new book, which differs significantly

* M.A. (Cantab.), Ph.D. (Lond.), Professor of Public Law, London School of Economics and Political Science.

from its predecessors and can take its place as a substantial contribution to the literature of British cabinet government.

Like an artist delineating his subject with a few bold strokes of the brush, Professor Mackintosh lays out his approach to the matter in hand in his very first paragraph. The task of the student of government, he tells us, is "to discover where power lies in any society and to describe the government's share in its operation". The Cabinet remains, as Keith described it, the effective centre of political power, and an analysis of its workings should therefore reveal "the process by which decisions are made and power exercised in this country". This preoccupation with Cabinet as the most important decision-making body in Britain runs throughout the book, and distinguishes it sharply from the works of Keith and Jennings, which may without injustice be described as contributions to constitutional law and constitutional history rather than political science. Jennings, by his masterly account of the development of conventions since 1841 (which he regards as the decisive year, when the Tory party accepted the principle of the responsibility of Cabinet to the electorate), emphasizes the continuity of Cabinet as an institution. Keith, in describing the evolution of the "Cabinet system" since 1660, posited an even longer continuous existence for this "system". Professor Mackintosh is at some pains to minimize this stress on continuity. He argues that the conception of a "system" took shape during the period bounded by the second Reform Act of 1867 and the outbreak of the first world war in 1914. During this period, Britain stood at the peak of its political, economic, and cultural influence; in particular, it was a period when British parliamentary institutions were the envy of the whole world. (It may be recalled that even Marx and Engels were prepared to believe that Britain might prove an exception to their theory of revolution, and attain socialism by parliamentary means.) Constitutional writers like Dicey and Maitland contributed to the picture of Britain as a country with an unbroken history of constitutional development since the Witenagemot.

In fact, as Professor Mackintosh emphasizes, this period of over 50 years was exceptional. The "Cabinet system" which then existed was part of a unique pattern of circumstances that has no counterpart in British history before or since, and in each historical period the "system" must be considered in relation to the circumstances characteristic of that period. Professor Mackintosh divides his study into four such epochs. In the period from the Restoration to the first Reform Act (1660-1832) there was a "Cabinet council", which arose from the necessity for a group of men charged with maintaining harmony between Parliament and the Crown. Between 1832 and 1868 there existed the "early Victorian Cabinet". The Reform Act led to a great increase in the power and importance of the House of Commons, whose kaleidoscopic changes of temper meant that no ministry could command a majority for long, and Prime Ministers had to spend much time wooing the large number of independent members (whom Derby once defined as members that could not be depended on). With the second Reform Act of 1867, which increased the number of voters by 88 per cent., a whole series of new influences came into play. The relation between Cabinet and parliament changed rapidly in favour of the former. In 1867, Walter Bagehot could still write that most Englishmen did not know the name of their Prime Minister, and that the average London cabman did not know the way to 10 Downing Street, but by 1900 it was Cabinet which dominated the political scene. It was during this period that Cabinet came to be, in Laski's words, a committee of the majority party in the Commons.

Professor Mackintosh's largest section, which occupies more than one-third of the book, deals with "the modern Cabinet"—that is, since 1914. He shows, in considerable detail, how the operation of Cabinet was transformed during

the Lloyd George ministry and suggests that the system of Cabinet government as we know it really dates from that time.

Throughout the book, Professor Mackintosh sets the decision-making power of Cabinet within the context of a whole set of institutions and groups wielding power and influence—political parties, the Press, the houses of parliament, the Crown, the civil service, and organized interest groups. This is a real advance on previous accounts which have presented Cabinet as a self-contained system, and it enables the author to demonstrate the effect of political changes, like the widening of the franchise, on the working of Cabinet government. Nevertheless, in this reviewer's opinion, the book does not go far enough in this direction. Since 1945, the role of interest groups in British politics has expanded spectacularly, and their impact on the decision-making process has been considerable. Professor Mackintosh has not, unfortunately, made much use of the growing body of literature on this topic. Similarly, he dismisses the nationalized industries in a few sentences, yet here again there is a large volume of material which suggests that the functions of ministers, and the relations between government and parliament, have been profoundly affected by the large-scale growth of public enterprise since 1939. Like previous writers on Cabinet government, Professor Mackintosh gives us a picture from the inside looking out, whereas his avowed aim in the book is to correct this usual bias and to set Cabinet in its wider context. Partly because of his reliance on the store of political biographies which abound in Britain, Cabinet government still appears in terms of the doings of individuals; the author's aim, which is to present it as the focus of a complex set of institutional relationships, remains only partly fulfilled.

Another *lacuna* that will be specially noticed by students of law is the absence of any reference to delegated legislation and the growth of administrative discretion. There is no reference to the *Crichel Down Case*,¹ which opened up the whole question of the individual responsibility of a minister for acts done in his name, nor to the report of the Franks committee,² although the adoption of its recommendations has meant that, for the first time, the wisdom of departmental policy can be questioned, if only to a limited extent, before a semi-judicial body. This is particularly disappointing because Professor Mackintosh devotes much space to stressing the inability of parliament to exercise any real control over the actions of Cabinet. Yet events such as the setting up of the Council on Tribunals, and the current agitation for an Ombudsman, reflect the existence of public concern over the growth of Cabinet autocracy which can no longer be checked by traditional parliamentary methods, and for which new checks and balances need to be devised.

S. ENCEL*

Oxford Essays in Jurisprudence, edited by A. G. Guest, Fellow of University College, Oxford, Oxford U.P., 1961. xviii and 292 pp. (£2/12/0 in Australia.)

The word "jurisprudence" is a compendious name for a wide range of scholarly tasks to be performed in relation to law. Traditionally, the most valuable English contributions have been confined to one part of this range: the exposure of specific concepts of law to a careful logical analysis, which

¹ *Crichel Down Enquiry* (Cmd. 9176 (1954)).

² *Report of the Committee on Administrative Tribunals and Enquiries* (Cmd. 218 (1957)).

* M.A., Ph.D. (Melb.), Senior Lecturer in Political Science, School of General Studies, Australian National University.