

Thus Roebuck's constitution was an alternative with in principle real possibilities for responsible and self-government. (It was certainly no worse than the Report in these respects.) The realization that it was such an alternative, and was recognized even by Durham to be a good one, should work to weaken those convictions about the Report with which this article began, for none of us can be certain about what constitutional forms, what nations and commonwealths of nations, might or might not have developed had the Report never been tabled in the form in which it was.

Nevertheless Durham won the day. The Report was tabled. Subsequently constitutional forms in the Empire underwent change and development, and a causal relationship between the Report and these later events has been claimed. Yet in terms of potential for responsible and self-government it was probably second best and the final outcome in regard to the spread of responsible and representative government in the colonies was probably the result of pressures within the colonies which were scarcely recognized let alone understood by Durham. Roebuck as the loser was castigated by his opponents and, in his own words, 'was marked as with the brand of Cain'. Subsequently, historians have been content to deal with him by consigning him to the graveyard of political failures. Consequently his story is never more than half told. Yet his opposition to the triumvirate Durham, Wakefield, and Buller, and to the Report, was well grounded in a knowledge of constitutional forms and practice, in experience under colonial governments, in concern for responsible and representative government, and in an overriding concern for the liberty and rights of persons. His opposition to Durham and the Report was neither cantankerous nor wrong-headed. Roebuck and other ultra-radicals like H. S. Chapman were in truth the ones who looked outwards to catch a glimpse of the permanent aspirations of mankind. Durham, when he looked outwards, saw only British supremacy. It was but the conceit of Victorians which made the two synonymous—a conceit which, in the end, Roebuck came to share.⁴⁵

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⁴⁵ J. A. Roebuck in House of Commons, 1851, quoted in J. W. Dodds, *The Age of Paradox*, London 1953, p. 470. See also Roebuck, *op. cit.*, p. 138.

THE NEW EMPIRE

IN 1853 and 1854 Sydney Smith Bell, a judge of the Supreme Court at the Cape of Good Hope, wrote the book known to historians as *Colonial Administration of Great Britain*.¹ He undertook it originally without thought of publication, as a study to equip him for the duties of high judicial office.² So much was the book a private affair that he did not publish it until 1859.

A man of high purpose, with a keen interest in social problems, Bell was never satisfied with easy answers; in law, colonial policy and public questions he tried to look beyond the conventional wisdom of his times. He observed and, at least as a lawyer, understood with great clarity the tremendous transformation that took place in the British Empire in the eighteen-forties and fifties when free trade and responsible government became the basic principles of British policy towards colonies capable of self-government. Less legalistic than most nineteenth century lawyers who wrote on the Empire,³ Bell combined a sound knowledge of constitutional law with a sensitive appreciation of the Empire as it looked to an intelligent, well-informed observer, both in London, where he had practised as a barrister, and in Cape Town, where he lived from 1851 to his death in 1873. In some ways his learned and readable book was the first study of the new Empire of the mid-nineteenth century, including its origins, its problems and its future.

Like Cornwall Lewis⁴ and almost any of his contemporaries interested in colonial policy, Bell looked to history, both ancient and modern, in trying to understand the significance of colonization and colonies. He was too cautious to draw conclusions beyond those that the free traders of his own days always extracted, for example, from the loss of the American colonies. The empires of the past had been heterogeneous in origin, character and experience. The only general principles deserving much notice were that it was mischievous and self-destructive to require rigid uniformity in a far-flung empire and that it was pernicious folly to enforce selfish policies such as mercantilism. Bell's account of the evils of the British policies of monopoly and protection, as experienced by the Thirteen Colonies, were of a kind better calculated to have appealed to the revolutionaries of the eighteenth century or to a free trade doctrinaire like the

¹ S. S. Bell, *Colonial Administration of Great Britain*. (Dawsons of Pall Mall (Colonial History Series), 1968, pp. xi + 470. £6 stg. 1st edition, London 1859.

² Bell became Chief Justice at the Cape in 1868. He edited *Cases decided in the House of Lords on appeal from the Courts of Scotland*, 7 volumes, London 1843-1852, and wrote *The Law of Property as arising from the relation of husband and wife*, London 1849.

³ E.g., A. Mills, *Colonial Constitutions*, London 1856; A. Todd, *Parliamentary Government in the British Colonies*, Boston 1880 (2nd ed., London 1894). H. Merivale, *Lectures on Colonization and Colonies*, London 1841 (2nd ed., 1861) is an exception. The lectures were delivered at Oxford while Merivale was Professor of Political Economy and later he was Permanent Under-Secretary at the Colonial Office, 1848-1859.

⁴ G. Cornwall Lewis, *An Essay on the Government of Dependencies*, London 1841.

third Earl Grey than to historians of our own day, who have grown professionally cautious in passing such judgments.

If any part of Bell's book were to be prescribed reading for historians of the British Empire in the nineteenth century, it is Chapter V on 'The Omnipotence of the Parliament of Great Britain over her colonies'. With some violence to history, Bell argued that there had been an apparent and tremendously significant dichotomy in the constitutional history of the British Empire. 'Great Britain . . . was a free country . . . [But] the whole government of the British colonies has been at every step, as it seems, a denial of this and an exercise of power which had for its foundation despotic will and nothing else.'⁵ The supremacy of Parliament throughout the Empire, which as a judge Bell knew to be the law, he regarded as being formally at odds with the fundamental freedom of the British constitution. He reconciled the law with practice by emphasizing that Parliament would never act despotically or capriciously towards the colonies. His answer to the legal problem of how Parliament could be omnipotent in an empire where some colonies were self-governing was that Parliament always distinguished between what it had power to do and what it ought rightfully and properly to do in exercising that power. He even used sound Whig doctrine, just as Chatham had done, to argue (quite incorrectly in law) that there were fundamental laws of the British constitution, such as Magna Carta and the Bill of Rights, that Parliament could not properly amend or repeal.

His clear account of how legislative and executive authority were distributed in practice in the British Empire is still a model of its kind and contains lengthy and useful comments on the leading case of *Campbell v. Hall*,⁶ decided in 1774. Bell's learned chapters were, of course, published six years before Parliament enacted the Colonial Laws Validity Act of 1865 and could be used to explain how that widely misunderstood measure had been needed long before judicial eccentricities in the colonies prompted its introduction.

Bell's view of the Empire is mercifully almost free from what ought to be known as the great Durham illusion. Naturally, his discussion of the coming of responsible government, as a part of the constitutional history of Canada, seems over simple to the modern historians, for he recognizes neither its autochthonous aspects in the Canadas themselves nor the complexities in deciding when responsible government became a convention of the constitution in Britain. Bell was clearly mistaken as were some other well-informed contemporaries, in regarding Lord John Russell's 'tenure of offices' despatch⁷ of 1839 as amounting to a

⁵ *Op. cit.*, p. 84.

⁶ *Campbell v. Hall*, Cowper, *Reports*, I, p. 208f. Printed in A. Shortt and A. G. Doughty, *Documents relating to the Constitutional History of Canada, 1759-1791*, Part I, Ottawa 1918, p. 525f. Lord Mansfield's judgment, from which Bell's argument may be followed, is in A. B. Keith, *Selected Speeches and Documents on British Colonial Policy, 1763-1917*, London 1961, p. 35ff.

⁷ Russell's circular despatch of 16 Oct, 1839, C.O. 42/297. Printed in W. P. M. Kennedy, *Statutes, Treaties and Documents of the Canadian Constitution, 1713-1929*, 2nd ed., Toronto 1930, p. 524f.

concession of responsible government. We now have the conclusive judgments to the contrary of Russell himself, of Sydenham, Bagot and Metcalfe, of Robert Baldwin and Lafontaine and of Lord Grey.⁸

But Bell was fundamentally right in treating Lord Durham's recommendation of responsible government as of little or no importance in shaping the course of events then or later. Grey's orders for the introduction of responsible government into Nova Scotia, Canada and elsewhere have to be attributed, as Bell saw, not to Durham's persuasive eloquence, but to changing political conditions in Britain and North America. Bell's recognition of the true direction of events probably owed something to his careful study of Grey's apologia, *The Colonial Policy of Lord John Russell's Administration*,⁹ that was published in 1853 and went through two editions in a few months. Bell referred to it at many points in his own book, not always to agree with it.

Bell was most right, if such an expression may be admitted, in his sensible recognition that no one had planned the course of the British Empire. The modern fashion of finding in Imperial history a grand progression from representative government to responsible government, from colonial status to dominion status, from British Commonwealth of Nations to Commonwealth of Nations, as though these changes were all inevitable, or intended, products of British statesmanship would find little to support it in Bell's sober and sensible analysis. He shared the widespread doubts of his contemporaries whether the Empire would endure. The later chapters of his book carefully weighed the difficulties of keeping the Empire together and contrasted them with the advantages of not parting with the colonies. Bell regarded it as true statesmanship for Britain to indicate by statute that she would not oppose the emancipation of any self-governing colony; but he also looked to the possibility that the Empire might not disintegrate and proposed reforms of the existing system so as to diminish friction by guaranteeing freedom and encouraging growth.

It is interesting that, in doing so, he rejected specifically some of Lord Grey's paternalistic notions, but preserved an aristocratic bias from which Grey had never needed to free himself. Bell hoped, as did some colonists in both Australia and North America, that emancipated or semi-emancipated colonies might have their own sovereigns and orders of nobility, derived, perhaps, from collateral branches of the royal family and impoverished nobility, who would be endowed ('outdoor relief for the upper classes?') with grants of Crown Lands. As similar views were expressed in Australia much later, this suggestion should be remembered for its fundamental liberality rather than passed over lightly as a mere period piece.

⁸ Some published discussions of Russell's despatch include J. R. M. Butler, 'Origins of Lord John Russell's Despatch of October 16, 1839, on the tenure of Crown Offices in the Colonies', *Cambridge Historical Journal*, II, 3, 1928, p. 248f.; and O. A. Kinchen, 'The Stephen-Russell Reform in Official Tenure', *Canadian Historical Review*, XXVI, no. 4, 1945, p. 382f.

⁹ Henry George, third Earl Grey, *The Colonial Policy of Lord John Russell's Administration*, 2 vols., London 1853.

Bell's book, now republished (as a photographic reprint of the original of 1859) is the clearest contemporary exposition of the constitutional relationship between Britain and the self-governing colonies on the eve of the Colonial Laws Validity Act.

The book has had the undeserved fate of being little cited and less read. A companion work in Dawsons' Colonial History Series, J. A. Roebuck's *The Colonies of England*,¹⁰ first published in 1849, has never been forgotten. Roebuck, by profession a barrister, was a protégé of Joseph Hume and one of the 'philosophic radicals'. He won the confidence of many of the Canadian reformers in the eighteen-thirties and, for a time, represented in Parliament the interests of the Assembly of Lower Canada. He certainly earned a rather substantial salary in this capacity as he was incessantly active in the Commons and in Downing Street on behalf of the reformers, although embarrassed by their differences with one another and inclined to discredit himself with responsibly minded ministers through reckless talk of rebellion and disloyalty. In 1838 he pressed advice on Durham and a long section of the book consists of the memorandum that Roebuck claimed to have written for Durham on the eve of his departure for Canada.

In 1849, when he published *The Colonies of England*, he was respected for his knowledge of the Empire, and recognized both as an inveterate critic of the Colonial Office and as an ardent advocate of colonizing and colonies. But he was in a lonely position, for he differed both from the Colonial Secretary, Lord Grey, and from many of Grey's determined critics among the so-called Colonial Reformers. Politically, he was already of declining importance.

Roebuck was disappointed with the results of colonization, whether from the standpoint of Britain or of the colonies themselves, and was constantly fearful that the North American colonies, in which he was principally interested, might be driven into the arms of the United States. In some respects his *Colonies of England* was an answer¹¹ to Edward Gibbon Wakefield's *A View of the Art of Colonization*, which also was first published in London in 1849.

So much is clear, but the book itself, as C. A. Bodelsen pointed out,¹² is not everywhere easy to understand. Roebuck agreed with the critics of empire that, under existing systems of administration and policy, the British colonies were an unnecessary burden and an unprofitable expense. If they were to be mismanaged for ever, Britain would be better off without her Empire. But, if the colonies were properly managed, the benefits to them and to Britain in prestige, wealth and power would be enormous. Having thus given hostages to both sides in the debate among his contemporaries over the future of the Empire, Roebuck complicated

¹⁰ John Arthur Roebuck, M.P., *The Colonies of England: A Plan for the Government of some portions of our Colonial Possessions*, Dawsons of Pall Mall, London (Colonial History Series), 1968, pp. xi + 248, map. £3.75. 1st ed., London 1849.

¹¹ See W. P. Morrell, *British Colonial Policy in the Age of Peel and Russell*, Oxford 1930, p. 483.

¹² C. A. Bodelsen, *Studies in Mid-Victorian Imperialism*, London 1960 (1st ed., Copenhagen 1924), p. 40.

matters by making a special case out of Canada and doing so in a way that justifies Bodelsen's complaint. For Canada, he could see two alternatives, or, perhaps, three: the first was annexation to the United States, an end that he abhorred; the second was friendly independence as a great 'Northern Confederation of British American Provinces'; the third, offered obscurely, was something short of complete separation from Britain, possibly approximating to dominion status.

Roebuck's book is better remembered for its savage reflection on the Colonial Office—'the dark nooks of that favourite resort of tortuous politicians'¹³—and its attitude to Canadian independence than for its plan of colonization. In this he showed little originality, proposing a system based on the American North-West Ordinance of 1787. When he endeavoured to lay his plan in elaborate detail before the Commons in 1849, he was refused leave (116 votes to 73) to bring in his Bill.¹⁴

More than most other mid-nineteenth century writers on the British colonies, Roebuck was keenly aware of the significance to the British Empire of the United States, not merely as a threat to the integrity of Canada, but also as an example of successful colonization outside the Empire. John W. Cell's study¹⁵ has given special attention to the American aspects of Roebuck's work. Dr. Cell has in this way given a welcome corrective to the tendency of British Imperial historians to underestimate the significance of American influences, American examples and American experience in the evolution of the self-governing colonies. Mid-nineteenth century commentators, like Roebuck or the Canadians with whom he worked, never doubted that the westward movement in the United States was highly successful colonization and some of it aggressive colonization, based on conquest and on the subjugation of the Indians. For well over a century after independence had been won, money and emigrants from Britain played a large role in the colonization of what is now the United States. The rapid success of the Americans made Canadians (and some British observers) wonder whether American systems of government and programmes of colonization might not be superior to British. The heavy calls made on Britain for capital and manpower to be used in the United States may even have retarded the growth of the British self-governing colonies, although this is not an easy or obvious calculation.

The basis of Dr. Cell's book is an enquiry into 'what political scientists have called the "decision-making process" in the making of British colonial policy between about 1840 and about 1870'.¹⁶ It is no reflection on Dr. Cell's purpose or on his achievement to note from the beginning an important reservation in one reader's mind. It may be stated most simply as a question: Were any decisions taken in British colonial policy in this period that were anything other than

¹³ *Op. cit.*, p. 220.

¹⁴ Morrell, *op. cit.*, p. 484.

¹⁵ John W. Cell, *British Colonial Administration in the Mid-Nineteenth Century: The Policy-Making Process*, Yale University Press, New Haven 1970, pp. xvii + 344. \$U.S.10.00.

¹⁶ *Ibid.*, p. xi.

necessary, almost forced adjustments of policy to changed circumstances? No one knew which way the Empire was going—to disintegration or to closer unity, to formal empire or informal empire, to extension or to contraction, to a larger or a smaller share in British trade and investment, to the new idea of self-governing colonies (that Lord Grey, at least, foresaw might come to include the Gold Coast, now Ghana, and similar countries), or to indefinite extensions of Crown Colony and Colonial Office government. The task of statesmanship was to find the smoothest course in troubled seas, not to steer for any particular port. Dr. Cell plainly recognized this difficulty in his enquiry, when he wrote in the Preface of his book:

At any given moment there is not so much policy as policy formation, an unsettled and changing set of responses by government to the continual interaction among men, forces, ideas and institutions. Policy in the present is a thing in flux and it is this sense of its uncertainty that I have tried to convey.¹⁷

Whether any individual reader will regard this as a sufficient *caveat* depends more on his political ideas and his personal understanding of mid-nineteenth century Britain than on any demonstrable aspect of Dr. Cell's well-informed discussions.

The main outlines of the book follow fairly enough the present state of knowledge of British Imperial policy in the mid-nineteenth century and report with learning and discernment the state of current research. Part I, 'The Machinery of Colonial Administration', contains an excellent account of the Colonial Office and a useful summary of 'The View from Government House'. As Dr. Cell has not used many articles published in Australia,¹⁸ he has missed material on Grey, Newcastle, FitzRoy and Denison, but in general his erudition is both extensive and sound. There are some minor slips; for example, James Stephen retired to the Regius Chair of Modern History at Cambridge, not Oxford.¹⁹

Part II, entitled 'The "Revolution" in the Second Empire', is principally about responsible government, its coming, its working and its implications. Here again Dr. Cell has been interested in the relevance of American experience, not only the loss of the Thirteen Colonies but also as both 'the most advanced example of . . . the universal trend towards democracy'²⁰ and, in Gladstone's words, 'the great source of experimental instruction, so far as Colonial institutions are concerned'.²¹ On the Durham Report Dr. Cell is less impressive, for he notes problems without solving them and gives the Report more respect than its due by suggesting that there is still room for enquiry into its intellectual origins. Was not the Report, so far as it recommended responsible government, merely, as Dr. Cell knows, an eloquent statement of views that had been developed systematically in British North America for over a decade by the two Baldwins and their

¹⁷ *Ibid.*

¹⁸ Among those missed are articles in the *Journal and Proceedings* of the Royal Australian Historical Society, *Historical Studies* and the *Australian Dictionary of Biography*.

¹⁹ *Ibid.*, p. 15.

²⁰ *Ibid.*, p. 88.

²¹ Quoted, *ibid.*, p. 89.

associates, had been advanced with some clarity in Lower Canada 30 years before Durham and were supported in Nova Scotia by Joseph Howe?

The most significant questions, as Dr. Cell notes, are, not why Durham recommended responsible government, but, first, how far his account of responsible government in Britain itself was accurate and, second, why anyone should have imagined that so sophisticated a political system would work in Canada, where distance, disunity and disorder were powerful contra-indications. There are unresolved questions also about the case for the autochthonous development of colonial constitutions that James Stephen and Howick (later third Earl Grey) were willing to countenance for Canada in the thirties, but which was rejected entirely by most politicians (including Peel, Russell and Gladstone) and by nearly all officials.

Dr. Cell concludes his valuable chapter on the coming of responsible government by noting that its introduction into Nova Scotia and Canada was ordered by Lord Grey. No more than anyone else who has written on the subject so far, has he been able to account satisfactorily either for the change of Grey's views on responsible government, which he had opposed as late as 1841, or for Grey's apparent willingness to push ahead with a revolution in policy, although not clearly supported by Cabinet and certainly opposed by the Queen and the great weight of parliamentary opinion that had supported Lord Metcalfe's determined effort to prevent reform. These are questions that may soon be answered—tentatively at least. Similarly, Dr. Cell's excellent account of the transfer of power in the fifties and the early working and implication of responsible government, with its perceptive comparisons between events then and the transformation of the Commonwealth in our times, will also be broadened and deepened by later research, mainly along the lines that he himself has noted.

Part III of Dr. Cell's book, 'Interdepartmental Relations', contains two interesting case studies: the management of eastern communications, 1855-1861, and the Coolie Convention of 1861 and the annexation of Lagos. Unpretentious, competent and well-considered, these studies are well designed to show how, if not necessarily why, a particular decision was taken. One of the more interesting conclusions to which Dr. Cell has been led is that, at least in the vast matter of eastern communications, the Colonial Office was more parochially minded than the Treasury:

Indeed it was not until the revolution in communications, managed by the Treasury, had brought Great Britain and her overseas possessions into closer proximity that a Chamberlain or a Milner could think of 'imperial unity' as a subject fit even for dreams.²²

Even if the conclusion means no more than that advancing technology tended to affect the Empire through the Treasury before it made any impact on or through the Colonial Office, it is obviously significant.

²² *Ibid.*, p. 253.

Dr. Cell has described his book as an 'essay'²³ and made graceful acknowledgments to his predecessors in the study of British Imperial history in the nineteenth century. His tribute to W. P. Morrell is both just and memorable:

I wish to single out the fine book of W. P. Morrell, *British Colonial Policy in the Age of Peel and Russell*, a classic to which I found myself continually referring even while attempting to take an independent line.²⁴

How true those words ring! Is there any historian, who has written since 1930 on British colonial policy under Peel and Russell, who has not discovered that in his freshest insights and his most pioneering research he has been preceded by Morrell?

Nearly four decades (and as many books) later, Morrell has published a 'partial sequel'.²⁵ This term is his own and the limitations that it implies are significant. Whereas the earlier work was global in its breadth of interest, the sequel is limited to three colonies and those have been chosen, partly because Professor Morrell returned to New Zealand after the Second World War and spent a year at Rhodes University, Grahamstown, in 1951, partly because of the nature of the policy problems that they raised. New Zealand received representative government in 1852 and then almost immediately demanded and received responsible government. The Cape, which received representative government in 1853, 'did not demand responsible government or obtain it for nearly twenty years'. The West Indies were included so that 'the differing course of self-government in the colonies of mixed colour'²⁶ might be studied.

It is not ingratitude to Professor Morrell to state that *British Colonial Policy in the Mid-Victorian Age* is an important and scholarly book, but unlikely to have the lasting impact on scholarship of its predecessor. The reasons are many and have nothing to do with the author's tremendous range of learning and mastery of a wide range of diverse sources; these are as remarkable in the book published in 1969 as in that published in 1930.

The years covered in the earlier book were the critical years of British Imperial history, for they did see the swift, unplanned emergence of the new Empire of free trade and responsible government, in which the relations between Britain and her self-governing colonies were transformed decisively and irreversibly. The years from 1852 to about 1870, with which the later volume is concerned, saw merely the working out of the great changes made under Peel and Russell.

In considering those later developments Professor Morrell has provided an important introduction ('Issues: Personalities: Changing Opinions') and then considered in much detail the histories of the three colonies that he selected for special treatment. Among the topics that recur in the three sections are constitu-

²³ *Ibid.*, p. xi.

²⁴ *Ibid.*, p. xiv.

²⁵ W. P. Morrell, *British Colonial Policy in the Mid-Victorian Age, South Africa, New Zealand, The West Indies*, Clarendon Press, Oxford 1969, pp. xii + 507. \$13.30.

²⁶ *Ibid.*, p. vii.

tional reform and the problems of indigenous and other coloured peoples. The New Zealand section contains also a magisterial study of the withdrawal of the Imperial garrisons, and the West Indies section concludes with a chapter on Asian immigration with special reference to British Guiana.

Some of these subjects have been much written on before (and here is another difference from the earlier book). Professor Morrell is properly courteous to those of his predecessors who have made important contributions, but at all points takes his own stand on his own reading of the evidence. On the Maori Wars, for example, his interpretation is nearer to that of B. J. Dalton than to those of Keith Sinclair and Harold Miller, but he does not agree with Dalton everywhere and, as he says, 'the emphasis is . . . different'.²⁷ Similarly, in writing of the Governor Eyre controversy arising from the Morant Bay rebellion in Jamaica, he has used extensively Bernard Semmel's valuable study,²⁸ but observes how it 'exaggerates the extent to which the active participants [in the work of the Jamaica Committee] . . . were influenced by . . . reform agitation'.²⁹ At some points Morrell in 1969 notes his own change of mind from views that he expressed in 1930; for example, his view of Sir George Grey's 'policy of pacification and amalgamation in his first governorship' of New Zealand is 'no longer so favourable as it was in 1930'.³⁰ Morrell's account of Grey in New Zealand and the Cape Colony is coolly analytical and uneloquently persuasive.

'These mid-Victorian years', to quote Morrell, 'are not an exciting period in the history of British colonial policy. The all-important concession of the principle of responsible government belonged to the past; the lush growth of late Victorian imperialism was not yet discernible.'³¹ On Morrell's view, that the history of British colonial policy is mainly the record of British official action in colonies and its consequences, this is a fair comment and he has sustained it with learning and judgment.

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²⁷ *Ibid.*, p. viii.

²⁸ B. Semmel, *The Governor Eyre Controversy*, London 1962.

²⁹ *Op. cit.*, p. 425, footnote 1, referring to Semmel, p. 96.

³⁰ *Ibid.*, p. 474, footnote 1.

³¹ *Ibid.*, p. 478.