and academic disciplines to provide a forum for the discussion of general "social problems". This courageous, and perhaps foolhardy, decision involves the consequence that the editor has neither a committed group of contributors nor a predictable circulation.

The journal will be published twice a year and each issue will have a central theme. In this issue the chosen theme is the city of Sydney. R. H. T. Smith analyses Sydney's "area of influence". Ruth Atkins discusses the history of attempts to guide development within the metropolitan area. In a complementary article D. N. Jeans and M. I. Logan examine in detail the difficulties that have arisen in extending essential services to the rapidly growing outer suburbs and the social problems that have resulted from unplanned development. The materials marshalled by these writers support the argument of Miss Atkins that there must be greater co-operation among the various governmental bodies responsible for planning in this area.

The remaining articles show a change in emphasis. Norma Parker surveys the agencies responsible for child welfare in N.S.W. and gives special consideration to the relationship between the governmental agencies and the voluntary organisations. Gustav Cross, whose gloomy views were noted above, offers some facts and impressions about culture in Australia. As well as the articles, the journal includes useful abstracts of articles on general social issues which have appeared in other Australian periodicals. In this issue the abstracts extend over some sixteen pages. The only fault that can be found with the technical production of the journal is the fact that part of the contents is printed on the inside of the back cover — thus making it practically impossible for anyone to bind the journal into an attractive permanent volume.

The contributions vary in style and quality. The articles by Miss Parker and Jeans and Logan are heavy with scholarly detail but they are the most substantial contributions to this issue. In some of the other articles we may suspect that the facts have been bent beneath the weight of a crusading fervour but all the articles, whether provocative or modestly analytical, are worth reading.

D. J. MacDOUGALL*

Parliamentary Supervision of Delegated Legislation by John E. Kersell, Assistant Professor of Politics, McMaster University, Hamilton, Canada. London, Stevens & Sons Ltd. 1960. xv and 178 pp. and Index (£1/14/6 in Australia.)

This book will be of greater interest to students of government and administration than to lawyers. Nevertheless, there is much in it of importance to any lawyer who is concerned with techniques available to supervise and contest delegated legislation, other than the limited rudimentary techniques utilised by the courts in applying the *ultra vires* doctrine.

It is the avowed assumption of the author that the most appropriate institution to supervise the use of delegated legislative powers is the Parliament itself.[1] Few would dispute this assumption provided that such supervision is practicable and the procedures developed result in effective rather than nominal supervision. Two decades have elapsed since an American committee reported that "legislative review of administrative regulations . . . has not been effective where tried."[2] With the passage of time has come realisation that parliamentary control through the "laying on the table" device can be effective when it is coupled with procedures designed to ensure that incipient administrative neglect or abuse is brought to the attention of members. The very existence of reviewing procedures

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[1] At 3.

[2] Report of the United States Attorney-General's Committee on Administrative Procedure (1941) 120.

is likely to have a salutary effect on administrators; Professor Kersell's quotation is particularly apt — "it is not repeated trials of strength between the horse and the fence that keeps the horse in the pasture, but rather, the fact that the fence is there and the horse knows it."[3]

The exposition of parliamentary procedures for review of delegated legislation is no longer a novelty; and useful accounts, particularly of British practice, are to be found in most standard works on constitutional and administrative law.[4] Professor Kersell breaks new ground, however, in a comparison of techniques of control in use in the English-speaking Commonwealth countries: Britain, Canada, Australia and New Zealand. In addition, he gives a rather more complete account of British practice, including statistical data, than is available in any other single publication. A motive for the work is to be found in the author's conclusion that developments in Canada have lagged far behind those in the other countries studied.[5] It is unfortunate that no attempt is made to survey procedures in the Canadian Provinces and the Australian States; for a comparative study which purports to deal with the problem of controlling governmental authority in order to preserve the "liberal democratic way of life,"[6] must to some extent be defective when it omits to consider a large part — perhaps the major part — of the frame of reference. It is probable that the author would be much less satisfied with Australian State practice, than he is with Federal practice.

Parliamentary procedures in each of the four countries are compared in relation to the following categories: publication and laying, upper chamber supervision, lower chamber supervision (almost non-existent in the Australian Federal Parliament), opportunities for debating delegated legislation, and special grievance machinery. It is apparent that proceedings in the Australian Senate and its Standing Committee on Regulations and Ordinances are more comparable to British House of Commons proceedings and practices than to those of the House of Lords, and the categorisation is to this extent artificial. The fact that the Senate is an elected chamber of review, which reflects to a greater or lesser extent the political divisions of the nation, makes it easier for the House of Representatives to assign its responsibilities as to delegated legislation. It is true, of course, that the Senate does share the advantages claimed by Professor Kersell for upper chamber review — its activities do not directly threaten the stability of the Government and it has more time to devote to consideration of such matters.

Although he does not appear to come to any definite conclusion himself, the author does canvass the perennial problem of whether the scrutiny committees established by the Parliaments should be concerned with the merits or policy of particular regulations.[7] Generally the British committees eschew consideration of policy except to the extent that extreme cases might be covered by the term of reference "unusual or unexpected use of the powers conferred by the Statute." The main objections to review on the "merits" are said to be that such review would not only trespass in the field of ministerial responsibility to Parliament, but might also place the committee in a position where it could interrogate Ministers as to policy, and intervene in government administration. The terms of reference of the Australian Senate Standing Committee[8] do appear broad enough to permit policy consideration; but in practice, Professor Kersell asserts,

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[3] At 92.
[4] *Eg.*, Griffith and Street, *Principles of Administrative Law* (2nd ed., 1957) Ch. III; Hood Phillips, *Constitutional Law* (2nd ed., 1957) 369ff; Wade and Phillips, *Constitutional Law* (6th ed., 1960) Ch. XLII.
[5] At 163.
[6] At 1.
[7] At 33ff and 50ff.
[8] At 32-33.

the Committee refrains from such activities. It does, however, draw attention under its fourth term of reference to implementation of policy by regulation where such policy was not previously authorised by Parliament. The account given of the Committee's success in relation to the imposition of import licensing does not seem to square either with the terms of reference or with the fact that film and literary censorship is operated entirely per medium of regulations.

An examination of United States practice is, of course, excluded from this study. There are some instructive facets to American experiments in legislative review of subordinate legislation. There are isolated instances of adoption of the British laying procedures in the Federal sphere and standing committees of the Congress entrusted with continuous review of the activities of Federal agencies would undoubtedly be concerned with the use and abuse of agency rule making powers.[10] It has been urged that Congressional control should be asserted through the "laying on the table" device not only to assure fidelity to statutes, but also as a means of reviewing controversial policy decisions.[11] In general, possibly because of the report referred to above, the climate of opinion is against legislative review. Professor Davis comments that "too many hurdles for administrative action sometimes means no administrative action, whatever the public interest may require."[12] A number of American States do provide for review by bodies other than the courts, despite some doubts as to the constitutionality of the procedures adopted.[13] An interesting account of the Michigan experience[14] shows that where a joint committee was established on the basis of the British scrutiny committee, but with power to consider the policy of rules, it developed a type of adversary hearing and came to exercise complete control of the reviewing process.

The importance of drafting is not overlooked in this study, and a brief summary is given of British practice, especially as to the type of control to be imposed on a delegated legislative power.[15] There are two levels of drafting however, and a very significant control can result from the practice of submitting all subordinate legislature for review by legally trained draftsmen before promulgation. In New South Wales it is an accepted procedure for the great majority of regulations and by-laws to be submitted to the Parliamentary draftsmen for examination as to form and *vires*. This should, and to a large extent does, result in well-drafted regulations clearly within the powers conferred by statute.

Professor Kersell discusses in some detail the effect of complaints as to the operation of delegation legislation made through the various channels of communication: Ministers, Members of Parliament, Departments, and so on. Almost nothing is known as to the effect of such complaints, and it could well be that they have more influence than almost any other form of control. Administrators are notoriously sensitive to parliamentary criticism — and it seems that familiarity in this case does not breed contempt. A useful adjunct to existing grievance procedures is suggested by the New Zealand Public Petitions Committees.[16]

Contemporaneously with the publication of this book, the New South Wales Legislature rather belatedly followed the lead of most other British Commonwealth Parliaments in establishing a scrutiny committee. All modern New South

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[9] At 38ff.

[10] For a brief account of the American experience, see B. Schwartz, "Legislative Control of Administrative Rules and Regulations" (1955) 30 *New York Univ. L.R.* 1031.

[11] Note: "Laying on the Table", a device for legislative control over delegated powers (1952) 65 *Harvard L.R.* 637.

[12] K. C. Davies, 1 *Administrative Law Treatise* (1958), 390.

[13] R. W. Ginnane, "The Control of Federal Administration by Congressional Resolutions and Committees" (1953) 66 *Harvard L.R.* 569.

[14] D. L. Howe, "Legislative Review of Administrative Rules," in *Current Trends in State Administration* (1955-6), 167.

[15] At 84-85.

[16] At 140-143.

Wales statutes include the formula that regulations are to be published in the Gazettes, are to be laid before Parliament within fourteen days of publication, and may be disallowed by resolution of either House within fifteen days of laying. Until 1960 no machinery was established for systematic policing of the requirements, or for examination by a specialist committee. The initiative was left to the individual member.

A Committee of Subordinate Legislation was established by resolution of the Legislative Council on 27th September, 1960, charged with consideration of all Regulations, Rules, By-laws, Orders or Proclamations required by any Act to be laid on the table of the House, and to be subject to disallowance by either or both Houses of Parliament. This Committee comprises four members, including the Attorney-General. Following observations by the Attorney-General that the Committee had no jurisdiction to review Local Government Ordinances, a motion was introduced in the Legislative Council on 23rd August, 1961, reconstituting the Committee on the same basis as before, but including Ordinances in the list of delegated legislation to be considered.

The matters required to be considered on review by the Committee are an amalgam of the British House of Commons and Australian Senate Committees terms of reference:—

(a) whether the Regulations are in accordance with the general objects of the Act pursuant to which they are made;
(b) whether the Regulations trespass unduly on personal rights and liberties;
(c) whether the Regulations unduly make the rights and liberties of citizens dependent upon administrative, and not judicial decisions;
(d) whether the Regulations contain matter, which in the opinion of the Committee, should properly be dealt with in an Act of Parliament;
(e) whether the Regulations appear to make some unusual or unexpected use of the powers conferred by the Statute under which they are made;
(f) whether there appears to have been unjustifiable delay in the publication or the laying of the Regulations before Parliament;
(g) whether for any special reason the form or purport of the Regulations calls for elucidation.[17]

Two reports have so far been submitted to the Council, and the second of these revealed that one Department had failed to table fourteen sets of regulations as required by the principal Act.[18]

At a time when the New South Wales Parliament has taken steps to remedy its shortcomings in the supervision of delegated legislation, this work by Professor Kersell is of considerable interest. It is unpretentious and limited in scope, but contains a wealth of detailed information which is unavailable from other sources. What is perhaps more important is that Professor Kersell has proved his point — parliamentary supervision has come of age.

H. WHITMORE*

Attendance Centres, by F. H. McClintock, M. A. Walker and N. C. Savill. London, Macmillan & Co. Ltd., 1961. xiv and 152pp. (£2/6/6 in Australia.)

It seems to be generally agreed that in the years since the Second World War there has been a considerable increase, on an international scale, in juvenile delinquency. There are differences of opinion about the extent of this phenomenon. And despite the proliferation of new soubriquets (*Blousons noirs*,

[17] First Report of Committee of Subordinate Legislation 1960.
[18] Second Report of Committee of Subordinate Legislation 1961.
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