not really come to grips with this aspect of the matter. Perhaps he would not regard it as an important factor.

Let me now summarize my views. There is a great deal in this book which is of value. The author has gone to extreme trouble in collecting materials from a diversity of sources, and from this standpoint alone the work is a valuable one. But I do not regard it as of much value in expounding the moral issues. The arguments are too one-sided, and the Christian ethic is too misunderstood, to make a worthwhile contribution from this point of view. One has come to expect from Dr Williams very high standards, and to assume that, even when refuting a case, he will be at pains to understand that case and to state it fairly before embarking on his refutation. In this instance he has travelled far outside the field of law and in my view has lapsed from this high standard. Christian theology is a difficult study, and Lecky an unreliable guide.

I regret that I should have to form this opinion, but having formed it, it is only right that I should state it. I would not, however, wish my remarks to prevent any prospective reader from investigating the matter for himself. He will find in the book much that is of value; but he should treat a good deal of it with the greatest caution. In the last resort he will have to form his own judgment.

PETER BRETT

Legal Personality and Political Pluralism, edited by PROFESSOR LEICESTER C. WEBB. (Melbourne University Press, on behalf of the Australian National University, 1958), pp. i-xvi, 1-200. Price £1 10s.

This book, one of the social science monographs published under the auspices of the Australian National University, contains essays by Australian scholars representing the fields of history, law, and political science. The connecting thread is the response of legal, political, and economic theory to the fact that humans are, as one of the writers reminds us, 'ungregariously gregarious'. For the lawyer, recent decisions in England dealing with trade unions[1] have re-stimulated interest in the legal position of groups.

Some of the essays prepare the ground for others. Thus, in one of his two contributions, Dr Stoljar explains the English and Australian cases dealing with judicial supervision of the internal affairs of groups. Mr Ross Martin examines the legal position of trade unions in England and Australia in a very thorough treatment. He offers some interesting reflections on the differences between English and Australian trade union law brought about by the differences between a collective bargaining system and a compulsory arbitration system. These two essays, together with that of Professor Geoffrey Sawer entitled 'Government as Personalized Legal Entity', show how the courts have dealt with litigation involving groups both private and public. In his essay 'Corporate Personality and Political Pluralism' Professor Leicester Webb discusses the views of Figgis, G. D. H. Cole and Laski on group-State relations and shows what they owed to Maitland and Gierke's theory of the real personality of corporations.

Douglas Pike, in his essay 'Churches and the Modern State', dealing with Church-State relations, draws on some interesting South Australian

[1] In particular *Abbott v. Sullivan* [1952] 1 K.B. 189; *Lee v. Showmen's Guild* [1952] 2 Q.B. 329; *Bonsor v. Musicians' Union* [1956] A.C. 104.

ecclesiastical history as well as recent decisions of the Supreme Court of the United States. He is concerned with the problem of how churches may function separated from the State. Is it possible to build a 'wall of separation' so that the 'property and trust deeds of all denominations should have legal protection equal to other incorporated societies' but so that 'their ritual and organization should be their own private concern'?

In his second contribution, 'Pluralism and After', Professor Webb examines the reactions of economists and political scientists to the fact that much of an individual's activity is a part of a group within the State. This leads him to a discussion of the New Deal experiment in the United States and the economic theories as to the use of groups as instruments of State economic policy.

Close examination of the nature of juristic entities is provided by Professor Derham in an essay entitled 'Theories of Legal Personality', by Dr Stoljar in his second essay 'The Corporate Theories of Frederick William Maitland', and by Professor Sawer in his contribution 'Government as Personalized Legal Entity'. Because there is no settled theory of legal personality, much interest attaches to these essays.

Professor Derham is much in sympathy with the views of Professor H. L. A. Hart. To Professor Derham, the term 'legal person' is a reference point having no significance independent of the logic of the legal system; the term 'legal person' as used by lawyers is no more symbolic than the term 'one' as used by mathematicians. Thus, a 'legal person' is the basic unit required 'before legal relationships can be devised which will serve the primary purpose of organizing the social facts'. The value of this approach is that it discloses that the quality of being a legal entity accorded by some legal systems to idols or funds is no more artificial than the legal system's recognition of a human being as a legal entity. Professor Derham's essay demonstrates that when the law says that an individual, group, or fund is a 'legal person' it is not to be taken as suggesting that there is some analogy with human personality.

Dr Stoljar, at the end of his interesting examination of Maitland's corporate theories, concludes that the appropriate legal unit in relation to unincorporated associations is the common fund. This reviewer would agree. It is necessary, however, to go further and determine how the common fund is to be distinguished from all other things. If it be said that it belongs to the members, it has no separate identity in law. It may be said that, although it belongs to the members, they are contractually bound *inter se* to regard the common fund as something different from their own personal funds, and that this makes the common fund discrete. Judging by Dr Stoljar's other essay he would probably say this. But this will not do. Only by 'attenuated logic' *(e.g.,* ignoring the situation of infant members) can contract provide the legal criterion of identity. The decisions of the courts on the property of associations can be read as showing that there is a distinct law of unincorporated associations defining a member's interest in the common fund, and that the real criterion of identity of the common fund is the purpose of the group.

It seems to the reviewer that the technical function of legal entities in the logic of the law is seen only after one asks the question, 'why does the legal system require legal entities?' The prime reason is the need to ascertain the object against which the legal system may exert power in the course of regulating the affairs of men. Whether the law will act

against a particular object is a matter of policy. The power of the legal system may be exerciseable against human beings or against property. In a case where the outcome is either acquittal or imprisonment, without any alternative or concurrent dealing in property, the object-entity in question is a human being. If, on the other hand, the power of the legal system could be made evident by a dealing in property directly enforced by the legal system, the object-entity in question is that property. Under most legal systems there will ordinarily be a question, in a given case, as to whether the power should be exercised. It is necessary to have adversaries who may debate that question. Where, as is the case in some American jurisdictions, it is possible to sue a trustee in his representative capacity, the trust fund is the object-entity, while the trustee is merely a representative-adversary. In the ordinary action for damages, the object-entity is the defendant's property, and the defendant, by the rules of ownership, is the appropriate adversary to represent it. A statement that one of the parties to particular litigation is a corporation implies that a particular enterprise is not only an object-entity but for convenience has been fictitiously endowed with the capacity to be its own representative in litigation. The fact that some enterprises are to be treated as their own adversary-entities does not disqualify other enterprises in the form of organizations of property from being object-entities represented by human adversary-entities. Thus, the only substantial question in relation to unincorporated groups is whether their funds should, as a matter of policy, be amenable to suit.

The fact that much litigation is really a question of whether the legal system should visit liability on a fund is obscured by the fact that English legal procedure makes English law appear to be very much a law of persons. The adversary rather than inquisitorial character of English trial procedure, which is remarked on by Professor Sawer in his essay, has tended to put the player in the forefront and to obscure the part played. This result has also been contributed to by the trust. To a legal system which sets great store by having proper adversaries, the trust for a group must have seemed of great benefit, since it fitted so well into the law of persons. There was no need to think of the trust fund as an entity. At common law the trustee was personally liable. But the trustee was more representative than he needed to be. In relation to groups the much-vaunted trust was really only a makeshift. The imperfections flowing from improvisation were felt most acutely by a third person, injured by acts done in furtherance of the group purpose. That he could make the trustee personally liable would in some cases leave him less well provided for than if the trust fund were liable directly to him.

Attempts to make the trust fund liable have been hampered by the notion that it is owned by all the members. Thus, in order to make it liable, the plaintiff has to prove that all members are personally liable. The doctrines of agency and indemnification in this area are such that the liability of a member is ordinarily limited to his subscription, but at the same time the trust fund is not liable at the suit of a third person.

It has been suggested that unincorporated groups are the 'spoilt darlings of English law'.[2] They are given facilities for existence by law, but from the viewpoint of an injured stranger it is as if they do not exist. The kind of confusion fostered by improvising with trusts is seen in relation to the passing of the Trade Disputes Act 1906 in England. Associations

[2] Paton, *A Text-Book of Jurisprudence* (2nd ed. 1951) 343.

(common funds) not affected by the Trade Union Acts of 1871 and 1876, and the interpretation thereof in the *Taff Vale* case,[3] enjoyed immunity from suit not on any meritorious basis but because of the inadequacy of legal theory. Insofar as the demand for the immunities given by the Trade Disputes Act was based on a claim that trade unions should have the immunity enjoyed by other associations, it lacked merit. This does not exclude the possibility of other more substantial reasons for the passing of the Trade Disputes Act.

In the course of an essay containing much interesting comparative material on administrative law, Professor Sawer points to the difficulties raised by our law of persons in the area of governmental liability. For instance, if the emphasis is on adversaries the theory of the indivisibility of the Crown seems to cause difficulty. An action by the State of Victoria against the State of New South Wales appears to make nonsense of that theory. But can it not be said that when the Commonwealth Constitution impliedly authorizes such an action it is really providing that in certain litigation a court can declare that the treasury of New South Wales should be reduced and that the treasury of Victoria should be correspondingly increased? The Constitution authorizes the treatment of the treasury of New South Wales as an object-entity. The trial of the action is really an inquest over a fund, but the inquest is conducted for the most part according to the same rules as would apply if the plaintiff and defendant were human beings. The theory of the indivisibility of the Crown should create no difficulty at this level since the two funds are discrete, in the sense that they are dedicated to different purposes; one is dedicated to the good government of the territory of New South Wales, the other to the good government of the territory of Victoria. A Minister of the Crown in each State is the adversary-entity representing each fund. The theory of the indivisibility of the Crown is relevant only to the adversaries. The fact that each adversary is a delegate of a common principal should be no more embarrassing than if A, a sole permanent Nominal Defendant, is himself injured by a hit-and-run driver and seeks to recover from a government-provided fund of which he is ordinarily the guardian.

It is apparent that the lawyer's concept 'legal person' or, more aptly, 'legal entity', contains little nourishment for political scientists and philosophers. This is not intended to deny that there may be much interest for them in the reasons which prompt the legal system when it selects or rejects possible object-entities. Consideration of these reasons will involve canvassing the policy judgments of the law, the balancing of competing interests, and the special implications of human personality.

These essays, which are a stimulating example of joint scholarship, will do much to lay bare the real problems of group privilege and group responsibility.

H. A. J. FORD

An Englishman Looks at the Torrens System, by THEODORE B. F. RUOFF, Solicitor of the Supreme Court of Judicature in England. (The Law Book Company of Australasia Pty Ltd, Sydney, 1957), pp. i-ix, 1-106. Price £1 5s.

This is a collection of essays, mostly reprinted from legal journals in various parts of the British Commonwealth. The first chapter reminds us that 1958 is the centenary year of the original Torrens legislation in

[3] [1901] A.C. 426.