

## BOOK REVIEW

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*Australian Lawyers and Social Change*

Law Book Co. 1976, \$17.50

It is not often that a reviewer has the opportunity to complain about the title of a book; however, *Australian Lawyers and Social Change* is a complete misnomer. From a book with this kind of title one might have expected some fairly detailed sociological analysis of the legal profession's practical and attitudinal response to social change, both specifically and generally. But such is not the case — indeed, this book's most obvious characteristic is the lack of any distinctive thematic approach. To some degree, this was inevitable as *Australian Lawyers and Social Change* represents the proceedings of a seminar conducted by the Law School of the Australian National University in August 1974 and seminar organisers frequently have little direct control over the material presented.

In essence, apart from opening and closing remarks, and some general reflections by Prof. Julius Stone, the seminar proceedings fall neatly (though possibly accidentally) into two groups, each containing three papers and associated commentaries. The first, comprising papers by Sir John Kerr (the then Governor-General of Australia), Mr. Gareth Evans and Prof. Geoffrey Sawer, deals with general aspects of social change as it affects lawyers; the second, comprising papers by Prof. D. E. Harding, Prof. M. Brunt and the Hon. J. E. Isaac (Deputy President of the Australian Conciliation and Arbitration Commission) deals with specific aspects. Unfortunately, the selection of topics in this latter group leaves much to be desired, as all three are concerned with the economic, commercial and industrial area. There is no detailed discussion of the interrelationship, which seems to me to be of obviously increasing importance, between law and the behavioural sciences. This is a glaring *lacuna* and one which significantly reduces the value of the book for anyone who wishes to obtain a balanced perspective of the issues which the general topic raises. Two papers, one on *Lawyers and the Regulation of Economic Activity* (Prof. Harding) and one, *Lawyers and Competition Policy* (Prof. Brunt), on the same broad area and none on law and the behavioural sciences clearly unbalances the work as a whole. Further, for a reader who seeks such information as there is in the book on the relationship between law and the behavioural sciences as they relate, say, to criminal law or family law or the daily practice of the law,

his task is made even more difficult as *Australian Lawyers and Social Change* has not been provided with an index.

Again, as one might expect, the quality of both the papers and comments is rather mixed. The outstanding contribution to the work is Evans's *The Most Dangerous Branch: The High Court and the Constitution in a Changing Society*, which contains so much of value that it is hard to do justice to it in a review. His comments are percipient, accurate and substantiated — one can scarcely say more of a piece of legal writing. The suggestions which he makes for the reform of the High Court have much merit, even though, in the present politico-legal structure, there is scant chance of implementation. The more so when the mandarin (though, perhaps, 'Robber-baron' might be a more appropriate metaphor) class and their flunkies deny the existence of the condition, let alone desire a remedy. In view of the value and scholarly analysis present in Evans's paper, the implicit sneer in the previous Commonwealth Attorney-General's comment about the isolation of academics is significantly disturbing (at p. 106) and, I was pleased to see that he was soundly taken to task by Prof. Sackville (at p. 107). Inevitably, one of the major bases of the dispute was the intractably divergent views of the centralist (Evans) and the anti-centralist (Ellicott). Both regard themselves as political realists and, presumably, regard the other as being out of touch — Ellicott commented (at p. 106), for instance, that Evans was thinking in 1940 terms. He went on to say (at p. 107) that lawyers had a 'tremendous part' to play in relationships between state and federal governments. One wonders who is out of touch or living thirty years in the past; the relationship between state and federal government is seen increasingly, particularly in the current economic climate, by both parties and by the general observer, in financial terms. What is more disturbing, of course, is that this dispute can be (and is already being) used by greedy and unscrupulous men and organisations to increase their own wealth. What 'tremendous part' is the lawyer playing in resolving this issue? Cynically, one might well ask, 'What Price the Lawyer?'. As the world political scene continues to develop, lawyers might do well to note the example of the ostrich, and bear in mind that burying one's head in the sand may result in the remainder being blown off!

Prof. Sawer's paper, *Who controls the Law In Australia?: Instigators of Change and the Obstacles Confronting them*, concludes by saying (at p. 140) that, 'My general conclusion is that he who wants to make major changes in social relations should work through politics and not law'. This is all very well, if one really accepts the notion of a strict demarcation between law and politics, particularly, as Sawer himself points out (at p. 140), when one considers the number of lawyers actually involved in political life. Although massive structural change has normally taken place outside of the traditional legal framework (probably in spite of it), the law and its agencies may play a crucial part in consolidating and implementing that change. Quite apart from the revolutionary situation,

which only the very committed or very naive see as happening in the short term, there is no reason why the law, if administered by a forward looking and socially dedicated profession, could not, in the future, prove to be as a strong force for class justice and progress as, in the past, it has been for inequality and reaction. Sawyer's comments in relation to the social role of the profession and specific subject matter are of particular interest in this respect. 'On the whole', he writes (at p. 137), 'the parts of the law most resistant to change, or left without much attention from reformers are those of special concern to the wealthier kinds of client, advised by the silvertails among the solicitors, represented by the fashionable silks and administered by the snootier grades of judges'. This is a valuable point, but it is disappointing that Sawyer did not elect to examine it in more depth, for it touches on many areas of crucial importance. The reason for the static nature of legal areas such as company law and other commercial areas is, in these terms, not far to seek: both the clients and their representatives referred to by Sawyer find the laws as they exist suit their personal and financial interest very well. Reformers who do seek to interest themselves in these areas are attacked, either on political grounds, or, particularly in the case of reformers from academic life, as being unaware of the realities of the business world. If the matter ended there, it would be serious enough, but it does not. The whole process is perpetuated by exclusivity, continually urged by some of the profession, and the allied attitude towards legal education which exists amongst many of the practising profession. Indeed, the absence of any serious discussion of legal education in the context of social change is another omission which renders *Australian Lawyers and Social Change* less valuable than it ought to have been.

The exclusivity issue is one which has been well raised in a recent article (S. Robertson, 'Lawyers To Burn' *Rydge's* April 1977), which suggests that academic empire building and inertia have created a glut of lawyers in Australia. Although it is certain that there is competition to enter the areas of practice mentioned by Sawyer, the equally plain fact, at the other end of the scale, is that some essential community work which can best be done by lawyers is simply not being done. If there are too many lawyers (which I doubt), then their distribution throughout the subject areas is so unequal as to be a naked scandal. The matter is too serious to make it simply a matter of fault attribution, but the attitude of many members of the profession (*vide*, many comments reported from the recent Australian Law Convention) who see their role solely in terms of the administration of the mechanics of capitalism cannot be totally ignored. Indeed, I would go so far as to say that one of the social responsibilities of those of us involved in legal education is positively to divert at least some of our potential graduates away from the traditional, lucrative areas towards community work. This is, at least, one of the major issues in modern legal education and ought to have been dealt with in a book with this title.

The papers on economic and industrial change and the comments on them are, in general, quite interesting and contain (particularly in the case of Prof. Harding) a useful consideration of the literature. However, I cannot help but think that this area is rather overrepresented and I have already noted the book's unbalanced appearance. An additional disappointment was the fact that the commentaries and discussion failed to contain contributions by non-lawyers. Thus, contributions by officials of trade unions and employers' organisations to Isaac's paper *Lawyers and Industrial Relations* were conspicuous by their absence. In such an important contemporary issue as *Lawyers and Social Change* a totally false picture is likely to be presented if it is only lawyers who are allowed to participate. There is nothing magical about the law — though those who cling to its more outmoded trappings must surely think there is — and *Australian Lawyers and Social Change* does little to bring the lawyer (in whatever sphere he operates) closer to the mainstream of modern social and attitudinal change.

*In toto*, this book is a great disappointment. By its very content, it perpetuates some of the archaisms which it should be seeking to expose — its excessive emphasis on the general commercial area is sufficient evidence of that. The lawyer or layman who is looking for enlightenment as to how the law and its practitioners are dealing with developing knowledge in many areas, particularly in the social and behavioural sciences, will be almost totally frustrated. Whole essential and contentious areas have been excluded from consideration — crime, family law, accident compensation, provision of legal services and so on and so on — and, hence, the book cannot be regarded as a significant contribution to the study of the sociology of law in Australia, which study has scarcely emerged from the womb. Not only does *Australian Lawyers and Social Change* merely scratch the surface, it only rarely scratches the right place.

*Frank Bates*