technical and trendy expression, of a large number of instances in which section 260 (or its equivalent in New Zealand in particular) has been invoked, which I feel tends to confuse rather than clarify the issues, especially for the busy practitioner. To his credit, however, he effectively refutes the posture which Chief Justice Barwick has taken toward the operation of section 260 upon new sources of income, exemplified by his decision in *Slutzkin* v. *Federal Commissioner of Taxation.*[7]

The concluding chapter, "The Phenomenon of the Two Dollar Nominee Company as Trustee: Some Practical Consequences", was written by Professor Baxt and explores some of the potentially horrendous liabilities which might be imposed on corporate trustees and their directors by the courts of equity and by the companies legislation. It is sufficient to make all but the most fearless or impecunious recoil from assuming any fiduciary duties in relation to a trading trust. Baxt does point out though, that many of the disastrous consequences are unlikely to befall many corporate trustees or their directing minds, because of the problems creditors or beneficiaries have in enforcing their rights. He reaches an interesting conclusion:

> "A totally new approach is needed; but perhaps the cost is too great to superimpose a new system to cope with what may be a passing phenomenon. In such a case it might be simpler, and probably fairer, to ban the use of the corporate trustee except in the form of the recognized trustee companies" (page 283).

An appendix to the work consists of a number of useful precedents for a discretionary trust and a unit trust established by deed of settlement; a unit trust created by declaration; and for the acceptance by and transfer of a business to a trust.

Overall *Modern Trusts and Taxation* comes highly recommended as stimulating reading for a wide audience. The Monash University Law School merits good wishes and support in the production of other publications in this series.

ROGER HAMILTON*

Understanding Lawyers; Perspectives on the Legal Profession in Australia edited by ROMAN TOMASIC. (Law Foundation of N.S.W. and George Allen and Unwin A 1978), pp. (i-xxi), 1-505. Cloth, recommended retail price $19.95 (ISBN: 0 86861 160 3); Paperback, unpriced (ISBN: 0 86861 248 0).

"Understanding Lawyers", a recent enterprise of the Law Foundation of New South Wales and part of the "Law in Society Series" is a penetrating and refreshing insight into the state of the legal profession in Australia. It acts as a base from which avenues of reform in not

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[7] 77 A.T.C. 4076.

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only the structure of the profession but also the role it plays in the community can be drawn. The apparent intention, to be an innovative work in the general area of socio-legal studies, still in its infancy in this country, and act as a stimulus and basis for future research has, therefore, spawned a reasoned and objective review and critique of the state of the profession. Through this objective and incisive approach, the volume seems a more valuable, and indeed more readable contribution than the more furtive Australian journals purporting to achieve the same ends. This tendency toward what appears a more practical, but nevertheless idealistic approach, can only result in greater acceptance, by the profession at large, of the conclusions reached and a better understanding and insight of their *raison d'etre.*

Roman Tomasic has organised the volume into three distinct parts, each with a specific and general theme: "Choosing a Perspective" (Part A), "Legal Education" (Part B), and "The Organization and Structure of Professional Activity" (Part C). A logical progression therefore exists, from the generality of Part A and its attempts at defining a perspective from which the profession and its role can be viewed and understood, through to the descriptions, in Part C, of the state of the profession, specifically its internal organisation and interaction with the community. This progression is in the context, throughout, of reform, introspection and valuable self-questioning. The contributors reflect a wide range of opinion and experience, ranging from the academic, through the law reformer and the practitioner to the layman. As such a useful insight into the diverse approaches taken to the same problem is provided. Somewhat alarmingly, however, it also shows perhaps irreconcilable dissension. By highlighting these differences, Tomasic reveals the basic difficulties in founding not only a solid school of socio-legal thought in Australia, but also devising theories with sufficient general acceptance to act as a basis for future reforms.

Nevertheless the volume provides a carefully considered view of the problems facing not only any study of the legal profession but also recommending and achieving any of the mentioned reform. The following sample of contributions illustrates these points.

Part A is the definitive part of the volume, clarifying the perspective it is to take, highlighting alternative approaches and stressing the need for not only theoretical study in an Australian context of the legal profession and its role, but also empirical investigation of the profession.[1] The importance of the latter is stressed by Tomasic[2] and is self evident, especially in supporting the theories and categorisations he attempts.

The definitive contributions are those made by Justice Kirby (No. 1) and Professor Sackville (No. 2). The argument is that a need exists for greater study and understanding of the profession before reforms can be truly successful. Such understanding must, furthermore, be in the

[1] The Law Foundation of New South Wales has, in fact, commissioned such studies such as Tomasic, *Lawyers and the Community* (1978).

[2] *Id.* 99.

context of such reforms. Both contributors point to the inherent limitations placed upon any type of law reform. Kirby, for instance, considers the internal constraints placed upon the profession adjusting to the demands of a rapidly changing society—legal education, the traditions of the legal system and the profession's own preconceived idea or view of its own role. Any adjustment will, of necessity, be slow.[3] The implication, in the context of the volume, is that if the profession better understands itself and the role it plays, such changes would be more rapid and effective. Sackville, in overt references to law reform, emphasises the external constraints upon the profession in this area, namely the structure of the legal system. Somewhat despondently he notes the limited utility of the courts and the various law reform bodies in existence, and exhorts the idealistic lawyer and reformer toward a more pragmatic and patient approach to the problems faced by that legal system.[4]

The remaining contributors, in light of these limitations upon law reform and the legal profession, present alternative perspectives, ideas and methodologies useful to a study of the profession.

Fitzgerald (No. 3), in noting the limited studies of the legal profession in Australia undertaken from a sociological perspective, attempts a description of "the lawyer", which acts not only as a stimulus to but as a basis for future sociological studies. Studies of this nature are viewed as being essential for the following reasons, which, in fact, echo the apparent policy of the editor.

(1) The need for rational self-reflection.

(2) A need to reveal the workings of the legal system, the efficiency of its operations and its relationships with society.

(3) As such, studies are a necessary precondition to effective reform or change within the profession.

These exhortations are echoed in the contributions made by Tomasic (No. 4) and Halliday (No. 5), for the same apparent reasons. Tomasic attempts a typology of lawyer's roles which could be applied, through further research, in determining the significant attributes of the profession. In the same vein, Halliday attempts a comparison of legal associations with other professional associations, highlighting the essential characteristics of the lawyer.

The aim of Part A seems to be adequately fulfilled and succeeds, therefore, in setting a perspective developed in later parts. The use of Blackshield's jurimetric analysis in this part (No. 7), however, seems somewhat mystifying. An attempt is made at analysing the performance of the High Court in the early seventies, by applying a statistical model. In terms of increasing the reader's understanding of the legal profession the substance of this contribution appears, at first, to be divorced from that which precedes it. Nevertheless it illustrates an alternative approach —the use of behavioural assumptions, statistical methods and a mathe-

[3] *Id.* 18-19.
[4] *Id.* 40.

matician's mind—to describe the profession. The utility and reliability of such an approach is to be doubted, however, as accurate quantification and prediction of what is an infinitely variable quantity, human response and behaviour, is difficult, if not impossible to achieve.

Part B in considering the nature and role of legal education, follows the lead set by Part A. Greater insight into the education of tomorrow's profession leads to greater insight into that profession. Article No. 8,[5] for instance, highlights the socialising effect of traditional legal training institutions and the limitations placed upon the lawyers perspective of his role in society and of reforming the legal system. By following the changes in attitude of a sample of law students in eastern Australia over a period covering late school and university years, through to early professional life, the study emphasises the importance of the ingraining effect of legal education. The product is a graduate viewing himself more as a mechanic, developing practical skills with few intellectual demands, who is attracted to the profession by the apparent social prestige and economic security it provides. Despite the fact that the study was commenced in the mid-sixties, when different social conditions prevailed and the character of tertiary institutions differed from those evident today, its value and conclusions are obvious. Clear limitations upon the process of law reform do exist, therefore, not only from the external constraints envisaged by Sackville, but also by factors pertaining to the character of the profession.

The subsequent contributions show the stark disparity in approach and methodology noted earlier. Churchman (No. 10) and Redmond (No. 9) consider the interaction of the lawyer with client, layman and other professional, and the objectives—both actual and desired—of legal education, respectively, from a non-traditionalist perspective: viewed from a reformist perspective, they regard the lawyer, implicitly, as only one agent to be used in solving what are not purely legal but social problems. The final two contributions[6] reflect an essential acceptance of the status quo and an attempt at increasing the efficiency of legal education vis-à-vis the demands placed upon the legal profession. Both appear to view the lawyer's mind as attuned only to legal problems with the consequence that a solution on legal lines solves all problems. The contrast in these two attitudes portends difficulties in achieving an effective consensus at the base of any development not only in legal education but also in the study of the profession.

Part C provides a wide range of descriptive contributions as to the structure of the profession and the role of the lawyer in the community, for instance in the Planning area (No. 20), Legal Aid (No. 21) and in Government (No. 19). These contributions act as a basis for the types of studies the contributors in Part A envisage, and act, therefore, as a stimulus to further empirical investigation.

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[5] "Law and the Making of Legal Practitioners" by Anderson, Western and Breham.

[6] No. 11 "Legal Education in Tasmania what does the Practitioner Want" by Norman Dunbar and No. 12 "Planning Tools and the Growth of the Legal Profession in New South Wales" by Beed, Campbell and Milligan.

Conclusion

Therefore the volume not only recommends further inquiry at the empirical and theoretical levels, but also provides examples of such studies. The essence is a multi-disciplinary approach to a better understanding of the profession and provision, therefore, of a more solid basis for reform work. Such an approach may be difficult in light of the diverse opinions and perspectives the volume reveals, but, it may be argued this is perhaps a characteristic of any academic study in any social science.

The aim of the volume is, therefore, achieved. It is eminently attractive, thought provoking and, I feel, essential reading for not only the practitioner and the layman, but also the student in developing an adequate understanding and perception of the lawyer in society.

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