a reasonable spread of cases, the authors have limited themselves to the main rubrics of Formation of Contract, Consideration and Privity of Contract, Capacity to Contract (in which infants' contracts only are treated), the Nature and Extent of Contractual Obligations, Remedies of the Injured Party (which includes the topics of Misrepresentation and Undue Influence), and Unenforceable Contracts. The selection of cases is good, although limitations of space and the inevitable British respect for authority probably prevents the authors from entirely making good their claim that they have selected not so much "leading" as "discussion" cases. The inclusion of the few Commonwealth and American cases is to be commended.

The book, however, has some defects arising from compression, which may be harmful even to the authors' own students, and, in the reviewers opinion, make it a doubtful and possibly a dangerous instrument when prescribed for study elsewhere. These defects fall under two heads; (a) The introductory and interpolated material, consisting sometimes of short notes written by the authors, and in other instances of very brief extracts from other sources, is so scanty as to be of negligible value in spite of some skill in its selection. Perhaps nothing would have been lost by the entire omission of this material, and there is no doubt the work would have been greatly improved if the authors had cast this material in their own language. Chapter 13, dealing with Initial Impossibility and Mistake, where the interpretation of the cases presents the student with special difficulties, is presented without any ancillary matter of any kind. (b) A more serious criticism arises because the authors have found it necessary to abbreviate many of the cases selected, and some are reduced to the barest summary. In some cases, e.g. the almost incredible compression of the decision in *Tulk* v. *Moxhay* to a sentence, this may actively mislead the student, and in other cases the effect may be either to deprive the material of much of its value in its primary use in the case-method system of teaching. A further risk is that such compression may provide the student with simple formulae which, when memorised, exempt him from the necessity of reading the case at all.

These defects, however, as was observed earlier, are probably attributable to publishing costs, and the reviewer congratulates the authors, and with them the Nottingham Law School, and expresses the hope that the experiment will be continued in a further and expanded edition.

K. O. SHATWELL.*

Legal Personality and Political Pluralism, edited by Professor Leicester C. Webb, Melbourne, Melbourne University Press, 1958, xvi and 197 pp. (£1/10/-).

This is a volume of eight essays, by six different authors. As its title indicates, it has two main strands, legal and political. Its starting point is what Professor Derham calls "the great nineteenth-century argument over the nature of legal personality". In Western Europe the notion of the legal personality of groups developed partly as a device by which medieval Church and later post-Reformation State could assert their authority, by claiming the right to determine what other groups should be recognised, and on what conditions. By the nineteenth century, economic groups were the ones mainly involved. In England, the 1862 Companies Act extended the status to companies, on fairly liberal terms. Trade unions had to wait a little longer; but the 1871 Trade Union Act gave them many of the privileges of a corporate body, without incorporating them.

The orthodox view of English lawyers, restated by Blackstone, was that

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"legal personality" was simply a useful fiction; it was a way of saying that certain collectivities would be treated in certain respects as though they were individual persons, could hold property, sue and be sued, and so forth. But as more and more groups were invested with legal personality the notion that they were "real" entities began to be used by the first generation of modern political pluralists, to support their theories of the proper relation between the State and other groups in society. Dr. Stoljar discusses the corporate theories of Maitland. Maitland had studied and translated Gierke, who believed that some groups were living organisms, in some sense real persons with bodies and wills of their own. Gierkean realism was already the vogue in Europe. Maitland approached the general problem of corporate personality through his early work on the "corporation sole" and the "trust" — that "liberal substitute" for what in England was a "necessarily meagre law of corporations" (Dr. Stoljar gives a good critical account of these early speculations of Maitland). From this he proceeded to more general speculation, taking as his text Dicey's statement that a body of persons acting together for a common purpose form a body "by no fiction of law, but the very nature of things".

Maitland argued that the Fiction Theory, in denying the existence of group-personality, was a way of asserting a monistic view of the State; "*solus princeps fingit quod in rei veritate non est*". It represented a "pulverising, macadamizing tendency" which had helped to establish the modern state. But for Maitland it revolted the "morality of common sense" — "the thought will occur to us that a fiction that we needs must feign is somehow or other very like the simple truth". Dr. Stoljar directs our attention to the cautious wording of this. Maitland never became a full-blooded "realist". For him the realist metaphors seemed less misleading than others, but he was not prepared to assert that "the right-and-duty-bearing group must be for the philosopher an ultimate and unanalysable moral unit: as ultimate and unanalysable, I mean, as is the man". Dr. Stoljar in a provocative concluding paragraph suggests that the distinctive unity of a corporation is to be found not in any "person" but in a thing — "the unity of the one *kitty* employed for the common design of many interested men". (In a later chapter, at p. 82, he sees this view borne out in *Bonsor's Case*.[1])

A good deal of water has flowed under the bridge since Maitland's day. Professor Derham, writing on "Theories of Legal Personality", says that the nineteenth century argument over the nature of corporate personality is dead; for some, "because the sweep of events moved on", for others, "because it can now be seen that the great argument was misjoined . . . The wrong questions were asked". The other essays in this book follow these two new trails.

Professor Webb leads us off on one trail, in a chapter on "Corporate Personality and Political Pluralism". In 1913 J. N. Figgis, pupil and later colleague of Maitland, published his lectures on *Churches in the Modern State*. He linked the liberal political pluralism of Acton (itself derived partly from Tocqueville) with the legal speculations of Maitland and Gierke. There is still the same mixture of appeals to the facts and moralizing. To deny "real life" to the group is to do violence to history. The State is built out of other groups, and their corporateness is not historically a mere privilege conceded by the State. But it also is true that groups are a good thing. "The real question of freedom in our day is the freedom of smaller unions to live within the whole". Associations like the family, the school, the church and the trade union "mould the life of men more intimately than does the great collectivity we call the State". It is within them that individuals can best pursue the goal of self-realization; and they have their own "self-developing life". The next

[1] (1954) 1 Ch. 479 (C.A.), (1956) A.C. 104.

generation of English pluralists — of whom Cole and Laski (in their early work) were the leading figures — added almost nothing to this basic contention; produced the same mixture of empirical and ethical argument; and failed, as Figgis did, to overcome some of the contradictions into which all upholders of a realist theory of groups must fall.

Some of these are well-illustrated by the history of two types of organisation in which pluralists of this vintage were specially interested — trade unions and churches. The former are discussed in Mr. R. M. Martin's chapter on "Legal Personality and the Trade Union" and also mentioned in Dr. Stoljar's "The Internal Affairs of Associations"; the latter (not very helpfully) in Dr. Pike's "Churches and the Modern State".

Before 1871 British trade unions were regarded by the law as mere collections of individuals, which could not hold property, act by agents, sue or be sued. The 1871 Trade Union Act largely remedied the position, and gave to "registered" trade unions many (but not all) of the legal characteristics of a corporate body; the House of Lords tried to complete the process in the *Taff Vale*[2] and *Osborne Cases*,[3] which rendered trade unions liable in tort for the wrongful acts of their agents and unable to apply their funds to political objects; actions promptly neutralised by Parliament in the Trade Disputes Act of 1906 and the Trade Union Act of 1913.

Mr. Martin has an interesting section on the complex legal position of Australian trade unions. In all Australian States measures modelled on the English legislation of the 1870's are in force; however, unions registered under the arbitration acts as well as (or instead of) under the general legislation governing trade unions are specifically incorporated in Queensland, South Australia and Western Australia, virtually so in the Commonwealth. Most States have no equivalent of the English 1906 and 1913 legislation neutralising the effect of the *Taff Vale* and *Osborne Cases*. Mr. Martin attributes this to a combination of "political accident" and "the dominant part played in Australian industrial relations by compulsory arbitration" (p. 121). The procedures surrounding compulsory arbitration have supplanted *Taff Vale* as a means of limiting strike action, and "legislatures have been less concerned with protecting the right to strike than with obviating the need for its use" (p. 121). As for the *Osborne Case*, "The ability of industrial unions to indulge in political activities does not appear to have been seriously questioned by Australian courts until a recent ruling by a State Supreme Court" (p. 121) and they have in fact hitherto done so freely. (Developments since Mr. Martin wrote his article seem likely to lead to a clarification of the law on this subject). On the question of expulsion decisions Mr. Martin concludes, after a detailed examination, that "Australian industrial courts are clothed with sufficient statutory powers to enable them to remove any rules which purport to oust their jurisdiction to examine the expulsion decisions of industrial unions" (p. 136).

Opinions still differ as to the exact degree to which a trade union is a "legal person", as is shown by the varying views of the Law Lords in *Bonsor's Case*[4] (which makes registered unions liable to damages for wrongful expulsion of members); but, in general, unions in both Britain and Australia have been more and more explicitly recognised as group-entities, both as they affect outsiders and in regard to their internal affairs.

Dr. Stoljar also touches on the latter question in his chapter on the "Internal Affairs of Associations". At one time, the "property" or "partnership" approach dominated legal thinking in this field, that is, intervention to protect members of an association from expulsion was limited to cases where a tangible property interest was endangered. He shows how, from *Rigby* v. *Connol* (1880)[5]

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[2] (1901) A.C. 426.
[3] *Osborne* v. *Amalgamated Society of Rly. Servants* (1910) A.C. 87.
[4] *Supra* n. 1.
[5] *Rigby* v. *Connol* (1880) 14 Ch. D. 482.

to *Bonsor's Case* (1955)[6] "the law has made spectacular strides in the protection of trade unionists", though "our club law has remained stationary" (p. 92).

The cases mentioned above nicely bring out one of the central difficulties in the assertion of group-claims made by the early pluralists. The more strongly that a specially privileged position (at law or in practice) is claimed by some of the many groups which constitute society, the more disposed the State and the courts will be to regulate more closely their relations with other groups, and with their own members. Their "self-developing life" may, in fact, be as much hindered as helped by "recognition". A pluralism which starts by singling out certain collectivities for special privilege may end by neatly delimiting their roles in a new monistic State system; and overmuch emphasis on the freedom to be found in group-life may drive individuals into arms from which they have in due course to be rescued.

Professor Derham thinks the whole nineteenth century argument was futile anyway. "No longer must we batter our heads against such questions as 'What is a corporation?', 'What is a right?', 'What is possession?', 'What is a legal person?', with their assumption that there is some notion or thing for which the word stands . . . . We must now ask questions about how the word is used in an appropriate context" (p. 2). To say that either a group of men or a single human being (or a Kitty) is a "legal person" is to do no more than treat them or it as a unit in the logic of the legal system with reference to whose rules the statement is made. So corporations are no more "fictional" than other legal entities, and the legal personateness of individuals no more "real" than that of corporations. This does not mean that human beings will be treated by the law in the same way as corporations, as the sum total of the legal relations into which they enter as legal persons may differ; so we may say that they have different "legal personalities" or belong to different "legal categories". A rule good for one may not be good for another. One reader at least found Professor Derham's gloss on Professor Hart's jurisprudential gloss on Oxford linguisticism hard to follow.

Professor Sawer, writing on "Government as Personalised Legal Entity", expresses doubts about such attempts to assimilate legal relations to logical relations. He thinks this over-emphasises the abstract quality of legal rules; and also ignores the fact that "much of the law's abstraction is like that of a statistical average, not like that of a system of symbolic logic. Furthermore, the abstractions are constantly being restated and modified, and this process likewise is due more to the influence of observed brute fact than to considerations of logical structure" (p. 159). Value judgments, expediency, and so forth, often disguised as abstract concepts or analogies, influence adjudication. Professor Sawer illustrates this in the rest of his chapter by showing how the widespread feeling that government, as law maker, must in some sense be superior to the law, has hindered the development of a general unifying theory of the legal responsibility of government. Here such things as the "personal analogy" may have their practical uses, however much academic lawyers may wish to analyse them away. "Judges who think of government and its offshoots as morally responsible persons may at least find it worth while to scold those persons; if they think in terms of 'legal entities', the result may be a formalism devoid of moral standards, and even of common sense". (p. 177). It seems a pity that Professors Derham and Sawer appear to have written their chapters without reference to each other — though both take their starting point from the remarks on corporations in H. L. A. Hart's important inaugural lecture. "Definition and Theory in Jurisprudence".[7] It is hard to be sure what the difference between them really comes to.

In a concluding chapter Professor Webb discusses how the political theory of group-State relationships has fared since Figgis. There is an interesting

[6] *Supra* n. 1.
[7] (1954) 70 *L.Q.R.* 37.

parallelism between what the last generation of political pluralists have been doing and what the newest jurisprudentialists are trying to do. For both, the great cloudy generalisations about group-personality, legal or otherwise, are suspect. The Professors of Jurisprudence are trying to analyse them away. The Professors of Political Science and Sociology are investigating the practical workings of group-life in society, and showing how much more complex they are than was assumed by earlier pluralists. Particular emphasis has been laid on the existence of overlapping group memberships, and some have seen in them the true basis of the relative stability of political and social systems, the so-called "consolidating influence of multiplicity" that stops any one group from taking its members all the way with it. Some modern pluralists, such as David Truman in his *The Governmental Process,* still retain traces of a monistic view in which "rules of the game" or "systems of belief" or "a general ideological consensus" are also believed to be important in explaining the cohesion of States and societies.

Professor Webb concludes by sketching an interesting view of his own about the role of the State and of law, based on the proposition of many modern pluralists that "problems of social order are residual problems left over from the action and interaction of social groups". It is a pity that he had no space to develop this view sufficiently to leave a wholly clear impression with the reader.

R. N. SPANN.*

The Advocate's Devil, by C. P. Harvey, Q.C., London, Stevens and Sons Ltd., 1958, Sydney, Law Book Co. of Australia Pty. Ltd., xi and 166 pp. (17/9 in Australia).

Mr. Harvey's work is on of a novel *genre,* a happy farrago of reminiscences, criticism and suggestions for reform. The Devil here incarnate is of a malignant kind with insidious habits and as many aspects as the hydra. For the burden of Mr. Harvey's book is that advocates are inevitably devoted to making the worse appear the better cause. To this end they have as their masters or servants the lesser devils Low Cunning, Suppression of Evidence, Histrionics, Browbeating, Sycophancy and Wooing of Solicitors' Clerks.

Now all these more worldly aspects of the advocate's calling are examined with relish, reminiscence, *raconte* and regret by the author, who is obviously unhappy at being unable to defend the profession against the reputation which it has "enjoyed" among the admiring public of many centuries. Indeed as a result of the author's five-finger exercises even the common law is seen to be a klavier less well-tempered than one had previously assumed.

Yet it may be suggested that heart-searchings of this kind, though well-meaning, are not likely to arouse much in the way of vehemence or emotion. The author himself is, if he will pardon the allusion, Draconian in only a preparatory sense. For, granted his main theme be true, granted that advocates often give the impression of arrogant wielders of power and that in the minds of the public a clever lawyer is a surer asset than a sound case, to what is our attention to be directed? Should we claim, or rather be able to claim, that a man becomes classified *homo sapiens et iustus* as soon as he is at the Bar? Or does a man shuffle off his mortal coil when he dons a robe or coif and become a perfect justice-machine? The answers, of course, are 'no' in each case and, to the present writer at least, the miracle is that there are rules of conduct for advocates at all, especially when the character of the client is automatically outside their terms of reference. We may put the case more strongly than this

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