status is comparable to that of, for example, the law of contracts and torts in the middle of the last century. The influence of the classic text-book or monograph in the growth of our substantive law tends to be underestimated, but it may reasonably be predicted that Professor de Smith's book will assist greatly in the future development of a sadly neglected area of public law both in Britain and in the rest of the Commonwealth. As he himself is at pains to emphasize, this is a field in which many problems remain unresolved and in which judicial creativeness is not spent.

ENID CAMPBELL.*

Gentlemen of the Law, by Michael Birks, London, Stevens & Sons, Ltd., 1960. xi and 394 pp. (£1/14/6 in Australia.)

The role of the lawyer in society and his place in the social history of England are topics upon which comparatively little has been written, at least by serious historians.[1] With some exceptions—notably Cohen's famous *History of the English Bar*, which in any event is a study in legal, rather than social, history and, more recently, Dean Roscoe Pound's *The Lawyer from Antiquity to Modern Times*—what little that has been written has often been given a bias towards showing the lawyer either as a paragon of virtue and the protector of freedom, or as a parasite living off the misfortunes of others, his professional conduct as sharp as his scale of fees. Michael Birks, however, in *Gentlemen of the Law* has succeeded in giving an admirably balanced historical account of the contribution made by the solicitor's profession not only to English legal, but also to English social life; together with a short account of the introduction of the profession into the United States and Australia. In so doing he has shown a healthy, and often most amusing, cynicism, but one tempered by an intelligent respect for practical ideals and their solid achievement.

By the nature of things, the materials which Mr. Birks has used overlap to an extent Cohen's *History of the English Bar*, and, as the bibliographies which the author includes at the end of each chapter show, he has drawn on other secondary sources, or at least gained a mastery of them. But the book contains an original approach and a great deal of hitherto unpublished material.

The book sets out to tell the story of the solicitor, the attorney, from the thirteenth century to the present day, and the pattern which is evolved is an elegant balance between generality and detail. Mr. Birks has not set out to detail the lives of individual solicitors, or the histories of particular firms, although many established firms in England can be traced back to Elizabethan times and even beyond. This he regards, and rightly, as a task for local historians, and indeed there are a number of works in which this has been done, for example Reginald Hine's delightful *Confessions of an Uncommon Attorney* where the history of Hawkins and Co. of Hitchin is treated. For all that, the work is rich in detail, and episode; the dry bones are clothed with flesh, and they live.

In fact, the whole work is lively, and not unnaturally so because Mr. Birks has a fascinating tale to tell; but its liveliness is not due merely to the theme but also to the gusto of Birks' telling, his humour and gift for choosing the amusing anecdote. *Risqué* stories are not generally associated with works on legal history, it might be said perhaps that there are enough of those in the Law Reports, but the author has succeeded in including a number by the novel expedient of telling them in Latin. Two may be recounted as examples. The form of words to be entered on the court roll for the appointment of attorneys

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[1] See, however, recently Julius Stone, *Legal Education and Public Responsibility* (1959) (Association of American Law Schools), on which see the review by Hon. Sir John Barry *supra* pp. 486-491.

in King John's time seemingly gave one court clerk an opportunity to show his sense of humour. "A man had attorned his wife and the words *'ponit in suo loco'* (puts in his place) on the roll have been altered to read *'ponit in suo lecto'* (puts in his bed!)"[1a] Attractive looking women evidently did not appear too often in twelfth century courts. Evidently, too, in the fifteenth century not all attorneys were treated with respect, as one extract from the *Paston Letters* shows. An old friar, a friend of John Paston's, saw fit to criticise a piece of financial manoeuvring between one, John Bokking, an attorney employed by Sir John Falstaff and one, Worcester. In fact he wrote of them with some force . . . ". . . *de quibus dicitur quod singuli caccant uno ano*".[2] So much for the friar's opinion of Mr. Attorney Bokking and any advice he might give.

The author, however, tells us a good deal more of Bokking,[3] by no means an unattractive character despite the good friar's view of him, and he is merely one of the people who live and move in the book. Like many other attorneys he had a finger in many pies, including tax collecting and, in a small way, politics and political intrigue. In fact, the attorney as a man of business is one of the author's main themes. We meet the attorney as the country agent in late mediaeval England, as the scrivener, the money lender and even the grocer, as is shown by the admission in 1427 of the attorney, Ralph Stoke, to the freedom of the City of London *as a grocer*.[4] To practise only as a law agent was clearly not sufficiently profitable until comparatively recent times.

Despite this, the idea that one man could stand in the shoes of another to act in his name appears to have been recognised at an early date in British history, though its origin is far from clear. However, it is clear that the Norman kings regarded the right to appoint such a person as a royal privilege which the king could accord to his subjects, in the same way, it would seem, as he might grant the right to a royal inquisition, or jury. This certainly was the case in relation to the appointment of general attorneys, and natural enough in light of the personal nature of feudal obligations, but different considerations applied where it was sought to appoint a special attorney for the purpose of litigation.[5] It was this type of appointment that eventually gave rise to the solicitor's profession and it is by describing the attitude of the thirteenth century courts towards such appointments that Mr. Birks begins his account of the profession's growth. In his view the other Common Law courts may well have adopted the early Exchequer practice, or at least been influenced by the fact that in the Exchequer Court a royal sheriff might have a deputy *(responsalis)* appointed to have his accounts taken when the sheriff was busy collecting other royal debts in his county. Whether or not this is the origin of the special attorney, Birks shows that by the thirteenth century agents for litigation could be appointed in the royal courts. The formalities of appointment were very important and Birks cites several variants in method, but woe betide the attorney who could not prove his appointment, for the possibilities of sharp practice where one man's act can bind another were as apparent then as now—more apparent perhaps, since it was accepted as one of the facts of mediaeval life that all court officers, from the judges downwards, were open to bribery.[6]

The author goes on to show that, despite the dangers inherent in the practice, it grew steadily, and it became customary for individuals to act as attorneys at law, at first perhaps in the great religious houses where certain members tended to specialise in this function.[7] Interestingly enough, although

[1a] At 15.
[2] At 66.
[3] At 63-67.
[4] At 52.
[5] See generally c. i, 10-27.
[6] At 58.
[7] At 29.

the author does not connect the two, this development would appear to have been co-incident with the growth of the practice of appointing hired champions in trials by battle.[8] Just as in trial by battle the champion was appointed to suffer or succeed for his principal, so too no clear line was drawn between principal and attorney and a luckless attorney might well suffer for the faults of his master.

Attorneyship frequently fell upon, or was taken on by, the court clerks, who do not appear to have been discouraged by the hazards of the office. These grew less as the position of attorneys came to be regularised from the time of Edward I onwards, and the numbers in the profession grew with the breaking down of the feudal structure, which brought the King's Courts within the reach of humbler people.[9] By the fifteenth century the attorneys profession had become an accepted, if not altogether reputable, portion of English society, its members for the most part having the social status of small tradesmen.

From these beginnings, deftly described in his first four chapters, Mr. Birks goes on to trace the growing venality of the profession in the sixteenth and seventeenth centuries[10] — ". . . if there was one subject in a divided and bigoted age, upon which all writers were agreed, it was their opinion of the lower branch of the legal profession".[11] There follows an account of the fruitless attempts of the judges in Stuart times to control the profession,[12] the emergence of the Society of Gentlemen Practicers and the Law Society,[13] the gradual definition of professional ethic and the growth of the profession down to the present time.[14]

In his concluding chapter, "Solicitors in the Twentieth Century",[15] Birks reaches some interesting conclusions. As he points out ". . . the history of the solicitor's profession in the last sixty years reveals some odd contrasts". During the period, for example, ". . . the Law Society has steadily extended its grip on the profession and today the activities of solicitors are more strictly regulated than those of any other profession";[16] further, in the field of social welfare, it was the Law Society scheme that was embodied in the English Legal Aid and Advice Act, 1949.[16a] As against these examples of what Birks describes as "progressive" thought may be offset the opposition early in this century to the admission of women to the profession, and the fact that the actual services that solicitors can offer to the public have not kept pace with changing circumstances. "The Victorian looked upon his solicitor as his man of business; today it is the accountant or even the bank manager who is more likely to qualify for this title."[17] This comment would appear to hold good in Australia, as it does in Britain.

Birks, however, in discussing this matter does so with considerable historical sense, ". . . the nineteenth century attorney cannot claim all the credit for his initiative, any more than the twentieth century solicitor is entirely to blame for lack of it".[18] The growth of other professions has contributed to the decline in the generality of solicitors' practice and, while in the nineteenth century a balance between contentious and non-contentious work could be struck, the decline of litigation resulting from the 19th century reforms, has

[8] See generally M. J. Russell, "Hired Champions" (1959) 3 *Am. Journ. of Legal History* 242.
[9] At 45.
[10] Cc. v and vi.
[11] At 113.
[12] At 132, "The root of the trouble was that fact that anyone could dabble in legal matters and call himself a solicitor".
[13] C. vii, 132-60.
[14] Cc. viii, ix, x, xi.
[15] C. xiii, 270-96.
[16] At 270.
[16a] 12 & 13 Geo. 6, c. 51.
[17] *Ibid.*
[18] At 278.

led to many firms relying on conveyancing as the backbone of their work. This in turn has narrowed down the average solicitor's "contact with a wide range of affairs",[19] and at the very time when the commercial affairs of joint stock companies have come to bulk more important than the management of estates in land. In Birks' view the profession has not been astute enough to move with the times in this matter, particularly in relation to the content of the solicitors' examinations. The author considers that changes in this direction should be made and he suggests that in the syllabus for solicitors' examinations real property and trusts might well play a less prominent part, making room for more commercial law subjects.[20] He clearly agrees with Professor Gower that ". . . in the present-day planned and regulated community no lawyer can hope to advise his client adequately if his knowledge is restricted to the old private law subjects . . .".[21] "Leading members of the profession are well aware of the need to bring solicitors abreast of the times",[22] but as yet not enough has been done.

Two solutions to the general problem of nature of practice present themselves to any firm, or to the profession as a whole, Birks contends—increased specialisation, or a widening of professional interests. On the whole the author favours the second solution on the ground that "there is a lot to be said in favour of a profession which . . . does not specialise too much in a world which is rapidly subdividing every profession into even more specialised professions".[23] It would seem, however, that this may well be a statement of Birks' own wish rather than a possible answer to the present situation, and he is not unaware that ". . . specialisation seems likely to increase",[24] however much this is to be deplored.

The chapter concludes with a discussion of the regulation of the numbers in the profession,[25] professional earnings,[26] staffing problems in solicitors' offices,[27] the working of poor people's legal aid,[28] and an interesting discussion of the relationship between barristers and solicitors.[29] As in other jurisdictions, so in the United Kingdom ". . . periodically the question of fusing the two branches of the profession comes up for discussion . . .". "So far as England is concerned, opinion (remains) overwhelmingly in favour of the present system",[30] even though for financial reasons, notably the decline in private incomes and increased taxation which robs the successful of much of their rewards, "the Bar as a profession seem to be in some danger of becoming extinct".[31] However, now that solicitors in England can, for the most part, match the Bar in influence there is a tendency for the two branches to draw closer together, and, interestingly enough, it is being suggested at present in England that all law students (not merely those reading to become solicitors) should have a period of training in a solicitor's office,[32] hence in effect adopting a type of legal education similar in this respect to that at present undertaken by University law students here in Australia.

In relation to all these current issues Birks is as thought-provoking as he is instructive and entertaining when dealing with his historical themes.

One chapter which will be of particular interest to readers in Australia is the chapter entitled "Colonial Attorneys",[33] in which the author gives a brief

[19] *Ibid.*
[20] At 280, 281.
[21] L. C. B. Gower "English Legal Training" (1950) 13 *Mod. Law Rev.* 137.
[22] At 281.
[23] At 283.
[24] At 284.
[25] At 284-86.
[26] At 286-88.
[27] At 288-290.
[28] At 290-93.
[29] At 293ff.
[30] At 294.
[31] *Ibid.*
[32] At 295.
[33] C. xii, 251-269.

sketch of the early growth of the profession in the United States, and in Australia. Again his treatment of these topics is lucid and entertaining—and for the most part accurate. It is a little surprising to find, however, that in his bibliography of principal sources at the end of the chapter[34] he cites *The American Lawyer* by Blaustein and Porter, but fails to cite Dean Roscoe Pound's *The Lawyer from Antiquity to Modern Times*,[35] in which a much fuller treatment is given of the growth of the profession of law in the United States. It should be noted that, as far as the Australian scene is concerned, Mr. Birks makes one positive error. He speaks of New South Wales as a jurisdiction, ". . . where no attempts have been made to fuse the two branches of the profession".[36] This, as it happens, is incorrect, since in 1931 the Attorney-General of New South Wales, the Hon. A. A. Lysaght, introduced into the Legislative Assembly an Administration of Justice Bill, under which, *inter alia*, the two branches of the profession were to be amalgamated and no wig, gown or other distinctive robes were to be worn by barristers or solicitors in any court in New South Wales. The bill, however, was dropped after the Judges of the Supreme Court had been consulted and had given their opinion that no beneficial results would flow from it.[37]

The only other matter of substance in the book upon which the reviewer would join issue is that in Chapter 2 when dealing with the office of sheriff the author, unintentionally it is conceived, gives the impression that the sheriff (a royal officer) collected *all* feudal dues.[38] In fact he collected those due to the Crown, other feudal lords had to make their own arrangements, though in fact they might sometimes employ the sheriff. But such criticisms are small and ungenerous.

All in all, Michael Birks has written an eminently readable and scholarly book, and this reviewer thoroughly enjoyed it. It is a book which will have a wide appeal—to the lawyer, the historian, the social scientist and the general public. There are few who can write "popular" history, history with a wide appeal, without making it "vulgar". Mr. Birks has shown himself to be one of that favoured few.

R. W. BENTHAM*

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[34] At 269.

[35] Both of these works form a part of the American Survey of the Legal Profession.

[36] At 269.

[37] See R. W. Bentham and J. M. Bennett, "Fusion or Separation: Historical Notes on the Division of the Legal Profession in New South Wales" (1960) 3 *Sydney L. R.* 284 at 290.

[38] At 31.

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