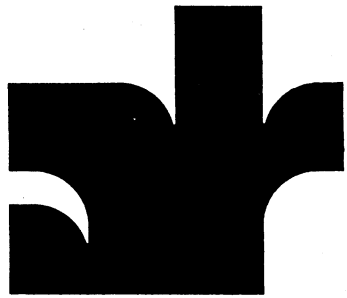

BOOK REVIEWS

W R Prest*

THE LEGAL PROFESSION IN ENGLAND AND WALES by *Professor Richard L Abel*, Basil Blackwell, Oxford, 1988, Hardcover, pp xxiii, 1-548, 1-198 (Appendices)

The Working Group for Comparative Study of Legal Professions has now produced three volumes dealing with the organisation and structure of legal practice in various parts of the world, together with two substantial monographs on lawyers in the USA and England. These last are both the work of Richard Abel, who teaches in the Law School of the University of California at Los Angeles. Practising lawyers might doubtless benefit from the opportunity to compare their occupational situation with those of their counterparts in other cultures and societies, although the main audience for these studies will almost certainly be drawn from legal academics and sociologists of the professions.

Professor Abel properly acknowledges a debt to the pioneering work of Brian Abel-Smith and Robert Stevens in their *Lawyers and the Courts: A Sociological Study of the English Legal System 1750-1965* (Heinemann, London, 1967). But Abel concentrates exclusively on the legal profession itself - or rather, the legal *professions* - since in England "barristers and solicitors effectively constitute distinct (often rival) professions with different histories and structures (if also overlapping functions)" (p 31). There are other notable differences. Although Abel claims to be presenting "a historical sociology of lawyers in England and Wales" (p 30), his chronological perspective is foreshortened to the last two centuries and primarily oriented towards understanding the present state of things rather than the *status quo ante*. To this end he marshalls a formidable array of quantitative evidence; the graphs and tables of the five statistical appendices

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occupy nearly 200 pages, or more than two-thirds the length of the text proper. Whereas Abel-Smith and Stevens tackled their subject in a commonsensical, empiricist fashion, the introductory chapter of Abel's study provides an outline of sociological theories of the professions - Marxist, Weberian and structural-functionalist - as a conceptual framework.

This may all sound somewhat forbidding. Nevertheless, Professor Abel has written a surprisingly accessible book, and one which many Australian lawyers, law students and teachers would find of interest. Of course the organisation and setting of English legal practice remain highly idiosyncratic; there are no obvious Antipodean parallels to the inns of court, for example, nor indeed to the arcane complexities of class and education *à la Anglaise*. But quite a few of Abel's key themes do strike a resonant local chord: for instance, the tendency of productive units (ie solicitors' firms and barristers' chambers) to grow larger and more bureaucratic in response to heightened competitive pressures; the questioning of traditional professional monopolies by ideologues of both right and left; the recent surge in recruitment, now effectively channelled through academic law schools, rather than via various forms of apprenticeship; and the continuing narrow social and ethnic basis of such recruitment, despite (and indeed to some extent because of) the massive recent influx of female students to university law faculties.

Abel's predilection for the Weberian notion of the "professional project", whereby suppliers of services seek to control both the provision of those services and the production of those who supply them (cf MS Larson, *The Rise of Professionalism: A Sociological Analysis* (University of California Press, Berkeley 1977), shapes the basic structure of his book. The theoretical introduction is followed by distinct but parallel analyses of barristers and solicitors, each beginning with a chapter on "Controlling Supply" (ie the means by which entry to legal practice has been restricted, supposedly in order to limit intra-professional competition and thus maintain the existing membership's socio-economic status). Subsequent chapters examine the age, class, race and gender composition of the two professions, their monopoly rights and work patterns, the structure of practice and patterns of employment, the respective roles of government and private clients, income levels, and the mechanisms of "Governance and self-regulation". After two short chapters on legal education, the text concludes with a discussion of "The trajectories of professionalism" and the likely outlook for the two professions:

> A legal services market in which the principal actors are no longer private individuals and their professional associations but collective producers, collective consumers, academic institutions, and a deeply involved state will diverge more and more visibly from the self-image of the legal profession, which

> remains strongly coloured by an idealization of its nineteenth century traditions (pp 307-308).

The value of Abel's work in assembling a mass of quantitative data and stimulating further investigation of the legal and other professions - not only in England - is unquestionable. But his book also raises important methodological issues. The Weberian/Larsonian approach to the professions achieves a high degree of theoretical elegance by asserting a privileged understanding of the true meaning of professional institutions and mores. Thus Abel tells us that while barristers claim to be more independent than solicitors, the reality of the market situation is the reverse:

> [I]ndeed the purpose of the ideology may be to mystify this reality. For instance, the "cab-rank" rule that obliges the barrister to accept each potential client in the queue may seek to mask the fact that most barristers already are financially compelled to do so. (p293)

Well, maybe and maybe not. Apart from the question of agency (that is, who exactly decides the *real* purpose of the rules), how could it be conclusively demonstrated either way? Such assertions fail the Popperian falsification test because of their excessive abstraction and seeming indifference to concrete evidence, other than that which can be cited to support a particular thesis. The critical stance which points to inequitable social realities lurking behind "ideological" professional rhetoric (such as the continued under-representation of blacks and the working class among both barristers and solicitors) is also curiously insensitive to historical and comparative contexts. (One might well ask, "Are lawyers more or less bigoted now than hitherto or than their counterparts in other occupational groups?") When all is said and done, however, such doubts and reservations cannot obscure the considerable achievement which this book represents.

Simon Hannaford*

THE LAW OF TRADE SECRETS by Robert Dean Law Book Co Ltd, Sydney, 1990, Hardcover i-xlix, 1-547, 551-591 (Appendices), 593-629 (Indices)

Robert Dean's treatise on trade secrets is a welcome drawing together of the various aspects of the law relating to trade secrets. That a book such as this has not been written during the past twenty years is, however, of some surprise given the proliferation of computers which have enhanced the ability of governments and businesses to collect, collate and store vast quantities of information and the growth of western information-based economies in the post-industrial era, which has led to the coining of the phrase "Information Age" to illustrate the importance of information to our society today.

Traditionally, businesses in competitive environments have sought to protect the secrets of their trade from their competitors in an effort to stay ahead of their rivals. Such secrets may be of a technical nature, such as secret formulae and industrial processes, or of a business concern. Business secrets in particular have assumed importance with the information handling capacity of computers, since they include collations of information (such as mailing lists) and strategic information, which is compiled by a business in relation to its own activities.

The rate of technological change has led to the rapid obsolescence of yesterday's inventions. In addition, employee mobility is commonplace and businesses are under pressure to monitor any advances competitors might make, for fear of falling behind. Legitimate methods of ascertainment exist, but the high costs of research and reverse engineering, and the sophisticated nature of industrial espionage have made the misappropriation of a business's trade secrets a common method of staying in the competitive race.

In *The Law of Trade Secrets* Dean discusses the arguments for and against the protection of trade secrets, the jurisdictional bases for those actions which do provide some protection, and the theoretical dilemmas which arise as a result of the current incomplete protection of trade secrets. Dean carefully and logically presents the various regimes of protection afforded to the "owners" of secret information such as the duty of confidence, trespass and contractual protection. Interesting chapters on the protection of computer software and on the practical aspects of trade secret litigation are also included.

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As Dean points out, although trade secrets are under threat, they are not protected by the law per se, but by a complex and incomplete framework of rights arising out of certain relationships. The secrecy or potential economic use of the information do not of themselves appear to merit protection by the law. Clearly, protection is warranted. If Australia is to remain competitive internationally, our laws must give protection to local businesses so that they can exploit new discoveries before their overseas competitors are able to ascertain their ideas by a process of reverse engineering or independent discovery. The secrecy of business information is also vital to maintaining a competitive edge. Protection also encourages the relocation of businesses from other jurisdictions. Locally, protection fosters decent standards of morality and commercial ethics in the market place. In addition, protection promotes research and development as inventors feel confident that they can recover their investment before their discoveries are legitimately replicated.

As is clear in the text, the protection afforded to businesses with trade secrets is not only incidental, but incomplete. For example, no action lies against a competitor who gains knowledge of another's trade secret in circumstances where it has been misappropriated by a third party. The action for breach of confidence is only available where a relationship of confidence is abused; it protects trade secrets incidentally when such a relationship is involved, but not otherwise. This "glaring inadequacy" in the law was pointed out by the United Kingdom Law Commission in their report, *Breach of Confidence*, and has lead some to suggest that if property were to exist in trade secrets, then adequate protection from industrial espionage might be afforded to businesses.

The Law of Trade Secrets may well become indispensable to many practitioners in the field. The writer hopes that it will also stimulate debate on the question of whether the current hotchpotch of legal protection is sufficient to sustain Australia's economic growth in light of competition from the economies of our trading partners.

Vicki Waye*

PARTIAL EXCUSES TO MURDER ed by Stanley Meng Heong Yeo, Federation Press, 1991, Hardcover, 287 pages

The notion that people intend the natural consequences of their actions underpins the whole Criminal Law. Persons will generally be held annually liable on the basis that they generally intend the consequences of their voluntary actions. While upbringing and environment are recognised as important factors for sentencing, determinism per se cannot be used as a successful ground of exculpation. The focus is upon the generic individual.

The criminal defences have not really been an exception to this generalisation in the past. Proscribed activity has been excused where the model individual, drawn from the collective perception of the "reasonable man", would have behaved in a similar manner. Originally the reasonable man was an obnoxiously bland person not subject to inherent weaknesses arising out of cultural background, let alone subject to phenomena such as pre-menstrual tension. Moderation was the expected norm and failure to comply with the law was punished, despite individual shortcomings. Gradually, however, as the concept of "reasonableness" has moved away from its homogeneous origins to take account of the variegations that make up the human personality, the connection between act and liability has been rendered less irresistible. It is significant that the most portentous refashioning of the "reasonable" individual has occurred in the context of defences which are only partly exculpatory. Given the traditional equation between volition and responsibility, one would not expect such deference to fatalism if it might lead to complete acquittal.

Partial Excuses to Murder is a set of essays which documents the tug of war between the individual paradigm and humanity as it really is. The essays are divided into four parts: provocation; diminished responsibility; excessive self-defence; and intoxication. Because of the wide ranging scope of the work of the contributors there is no overall theme knitting the essays together, although there are frequent references to the dichotomy between justification and excuse as exceptions to criminal liability. The writers highlight the confusion this dichotomy engenders, stemming as it does from a rather anachronistic and rigid view of the individual. The point is nicely illustrated in Julia Tolmie's essay on battered women who kill. Ms Tolmie writes of the difficulty battered women have in bringing themselves within the purview of self-defence, a totally exculpatory defence which tends to justify rather than excuse the use of violence. The actor is fully exonerated where self-defence applies on the basis that the survival imperative

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outweighs any breach of behavioural norms in responding with physical force. However, rather than justifying violence apparently not responsive to immediate danger, the specific social determinants of murder in this instance have been slotted into a defence which excuses behaviour because the actor was unable to exert self-control. Under provocation the actor is merely partly excused because the survival imperative is not so immediately apparent to the judge and jury even though it continues to operate upon the mind of the battered woman. If the taxonomy of justification/excuse were abandoned a more humane version of self-preservation might prevail.

David Fraser further demonstrates the dilemmas created by the paradigmatic individual in his essay, "Still Crazy After All These Years: A Critique of Diminished Responsibility". In his view, the defence of diminished responsibility merely shifts the blame attributed for prohibited acts away from the individual as a failed model citizen to the individual as a flawed model citizen. Despite good intentions, the individual is still regarded as separate and responsible. The interconnection between social and individual responsibility is submerged to the point where social factors "might have some extraordinary effects on a certain number of deviant individuals, factors only operating in a uni-directional fashion" (at 119). Thus, individual responsibility is maintained and society's complicity in the creation of its problems remains unacknowledged.

The schism between the legal definition of intention and excuse currently operating in our legal system is also attacked. Mens rea, as it is understood, promotes objective blameworthiness which is little affected by defences premised upon "reasonableness". By limiting discussion of mens rea to issues of automatism and intoxication (see here the essay by Ian Leader-Elliott, "Intoxication Defences: The Australian Perspective") and separating from them issues of provocation and diminished responsibility, our view of the individual as a person is distorted by our view of what the individual should be.

While this set of essays is not intended to be a broad philosophical critique of the Criminal Law, the microcosm of *Partial Excuses to Murder* questions some fundamental assumptions underlying our current understanding. Practitioners will also find it useful, as it examines in detail the content and scope of the defences as they are applied in our courts. In particular they may find helpful the essay written, from the standpoint of a medical expert involved in the field, by Susan Hayes. Communication between the two disciplines - law and medicine - should bring about greater comprehension of their respective roles.

Overall this set of essays will give the reader a comprehensive and illuminating view of the four defences outlined. Criminal lawyers, Criminal Law students and academics will be well served.

Sharyn L Roach Anleu*

DISSENTING OPINIONS: FEMINIST EXPLORATIONS IN LAW AND SOCIETY Edited by Regina Graycar, Allen & Unwin, Sydney, 1990, Limp, i-xi (Introduction) 1-111 (Text) 112-126 (Bibliography) 127-128 (Tables) 129-131 (Index).

This book is a selection of papers presented at the 1987 Australian Law and Society Meetings, the broad theme of which was gender issues in law. The authors are teachers of law, criminology, history and sociology, which gives the collection an interdisciplinary breadth. The papers deal with such issues as women's experience of rape, juvenile justice, equal opportunity, divorce laws, housing, women's entry into the legal profession, and legal knowledge. This publication is very timely because feminist theorisation and research is one of the most important movements in contemporary legal scholarship. Not only are more women entering the legal profession, but traditionally accepted notions of objectivity - the rule of law, legal reasoning and reasonableness - are being scrutinized as illusory and, more importantly, as reflecting or perpetuating a patriarchal social order and its legitimating ideologies. As the editor of the collection observes, even laws aimed at alleviating some of the inequalities women experience have had little effect because of the "disparate forms of inequality experienced by women which are endemic to our society" (p viii).

Given the broadness of the book's aims, it is surprising that it consists of only seven chapters, at least three of which have appeared elsewhere. The selection does not reflect the range of papers given at the conference which dealt with feminist issues. As is often the case with edited collections, this book is just that - an edited collection of diverse papers - rather than an integrated publication. While the theme is women's experience of law, explicit links between the papers are not made by either the editor (perhaps in the form of connecting discussion between the chapters, or a conclusion drawing together the issues) or by the authors themselves.

Carol Smart's paper "Law's Truth/Women's Experience" argues that law's claim to truth is part of law's power; it disqualifies other discourses, specifically women's experiences. Adopting a Foucauldian perspective she compares law with science as law sets itself above other knowledges and claims to have the method to establish the truth of events. This claim is indivisible from the exercise of power. As a consequence, law is an "alien terrain" for women, and where women contact law they are identified as

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gendered subjects. Phallocentrism "deployed to refer to a culture which is structured to meet the needs of the masculine imperative" (p 9) is illustrated in the rape trial where the man's intentions are not a priority; the whole focus is on the woman, her intentions and her pleasure, which effectively disqualifies women's experience of sexual abuse. At several points this paper lapses into universalistic statements by suggesting a real or essential woman while simultaneously recognizing the difficulty of imagining a system of knowledge outside of patriarchy. Moreover, Smart implicitly assumes that law's claim to truth goes undisputed, yet it cannot be totally powerful or else women's experience (albeit silenced) would not exist. To examine where law's claim to truth is successful and where it is not is an empirical question, rather than one of definition or conceptualization of law.

Questions of theory are at the heart of Judith Allen's essay "The Wild Ones: The Disavowal of *Men* in Criminology" where she argues that criminology has never theorised its own sex question with regard to men, even though men constitute the majority of labelled offenders. She examines major criminological theories and suggests that sex was only ever included to explain women's crime and to reaffirm the validity of purportedly general theories of crime which had difficulties incorporating women. Allen, referring to Gross, suggests that "The female body was subjected to an intensive criminological gaze; the male body was evacuated, disallowed, disavowed" (p 25).

Moreover, ostensibly sociological theories often made assumptions which turned out to be biogenic or psychogenic in tenor, thus frustrating general theoretical objectives. Allen also criticises feminist criminology for disavowing men and focusing on masculinity. Despite its extended criticisms, the discussion does not clarify what a theory would look like with the variable "sex" specified, nor does it address the problems of biological determinism. Is it that previous criminological theory is "blinkered gibberish" or that its generality has never been established empirically? The generality of Allen's own theoretical statements can be questioned by the selectivity of the criminological theories she discusses. She focuses on one stream of criminological theorizing, namely differential association and functionalist theories of the 1950s, but ignores labelling, critical and Marxist perspectives.

In the third paper, "Sweet Dreams: Deinstitutionalising Young Women", Adrian Howe examines the Victorian government's policy changes aimed at reducing the number of young people in institutional care by means of deinstitutionalisation and community reintegration, through the development of community based services. This policy change parallels a shift from the traditional focus on the welfare principle, of "best interests" of the child, to a concern with justice and rights for offending, neglected, and abused young people. Howe's specific concern is with the meaning of the planned shift for

young women at risk of criminalisation and/or state "protection". First, she argues that Community Services Victoria has ignored critiques of the "justice" movement which suggest justice actually means more punishment not less, and that it involves "net-widening" and the extension of state social control mechanisms. More importantly, the whole notion of deinstitutionalisation ignores the fact that family and community constitute a web of social control around young women not comparable to that around young men. The family is a site of control and oppression for women, not an arena of liberty and autonomy. Howe argues that these injuries are not private individual issues but are socially created in a gender-ordered society. She then proposes a "social injury strategy" which prioritises young women and provides them with agency, that is an ability to exert influence and power. While Howe recognises the importance of avoiding a victim mentality, the chapter does not make clear the processes whereby young women will become organised and oriented to adopt the social injury strategy.

Regina Graycar's paper, "Equality Begins at Home", makes two important points: first, that equality measures potentially gloss and perpetuate inequalities between men and women in areas of social life not readily identified as the "public sphere"; and second, the ideology of equality and claims of discrimination have been appropriated by fathers' rights groups. Graycar examines child custody cases and observes a perception on the part of Australian courts that men and women are equally involved in the occupational structure and the household. She then makes some suggestions for the Australian context drawn from overseas experiences. The adoption of apparently neutral criteria in determining child custody (that is, economic criteria rather than presumptions about the nature of motherhood) has meant that fathers are increasingly granted custody because of income differentials between men and women. Graycar admits that there is little evidence of this trend in reported Family Court cases. Even so, there has been agitation on the part of fathers' rights groups for the practice of joint custody. The paper suggests that this factor, combined with the Child Support Scheme, re-establishes the model of the nuclear, albeit fissured, family. This chapter invites very little optimism; it seems that nothing has ameliorated women's situation, and before the effects of corrective legislation can be felt, reactionary forces erode the potential impact of legislation and lead to the further disempowerment of women, especially those with children.

Along similar lines is Sophie Watson's chapter, "Erratic Bureaucracies: The Intersection of Housing, Legal and Social Policies in the Case of Divorce". Watson views state practices and policies as contradictory and fragmented. She examines how the *Family Law Act* 1975 (Cth) represents a locus of complex intersection of the housing system, the legal system and labour market policies. While the *Family Law Act* has benefited many women in the area of housing after divorce, its operation is circumscribed by federal

and state housing policies which have tended to favour the nuclear family household. Often, dependence on a male partner is necessary for women's access to home ownership, the dominant form of tenure in Australia. Additionally, she argues that new Social Security legislation which imputes housing equity as income will further marginalise women's income and employment status as well as increase their dependence on the state for income support. The significant contribution of this chapter is its caution against analysing divorce law in isolation from the operation of state housing policies and markets.

Women lawyers in twentieth century Canada is the focus of Mary Jane Mossman's paper: "Women Lawyers in Twentieth Century Canada: Rethinking the Image of 'Portia'". She carefully documents some of the issues debated in the Canadian courts concerning women's right to practise law. The rationale for women's exclusion revolved around the judiciary's narrow conception of "persons" and ideas about differentiated gender roles and "separate spheres" for men and women. For example, one British Columbia judge stated,

> this fact that no woman has ever been admitted in England, is conclusive that the word "person" in our own Act was not intended to include a woman. (p 85)

Even though women have entered the legal profession, lessons can be learned from the past as "maleness" remains the standard in legal education and practice. The challenge, then, is to remove the male standards embedded in law and legal education by redefining the law in women's interests and by incorporating women's experiences. Nonetheless, the inclusion of women into the profession and the development of female approaches to lawyering may not herald greater equality. Despite numerical gains, the legal profession remains segmented as women often enter less prestigious and lower paying firms with few opportunities for advancement and practise in such areas as family law, which may be more amenable to negotiation, compromise and a concern for others. Moreover, the notion of male (and female) standards of lawyering glosses over differences within those categories.

In the final paper, "Affirmative Action and Legal Knowledge: Planting Seeds in Plowed-up Ground" Mari Matsuda proposes specific action to end apartheid in legal knowledge; apartheid which is manifested in books shelved, journals read, citations used, and material adopted for classes. Outsiders' perspectives are ignored in legal scholarship. She calls for a conscious effort on the part of the affirmative action scholar to include the work and perspectives of women and people of colour by going beyond the bounds of "*usual*" legal scholarship and seeking knowledge from diverse authors and sources. Affirmative action demands that the knowledge base of

law schools change. Opening the doors to "outsiders" is insufficient. Matsuda writes,

> [t]rue affirmative action in law schools requires that the perspective of outsiders is considered as a matter of course in all discussion of doctrine and policy, and is expressed freely without fear of being labelled irrelevant or unrealistic. (p 101)

In conclusion, this volume offers a starting point for the student seeking knowledge on women's experience of law. It offers a mixture of Australian and overseas analyses written by local and foreign academics. What it offers in broadness and eclecticism, however, it lacks in depth and continuity.

Anthony P Moore*

STRATA TITLE MANAGEMENT AND THE LAW by Alex Ilken, Law Book Company, Sydney, 1989, Limp, i-xxxiii, 1-294, 295-464 (Forms), 465-485 (Glossary), 486-504 (Index).

It is now thirty years since strata titles first appeared as part of the armoury of Australian property lawyers. All Australian States and Territories have enacted legislation to provide for the registration of such titles and to apply to strata titles statutory rules overcoming limitations resulting from the common law. Most jurisdictions have adopted second stage legislation which upgrades and generally makes more flexible the strata title systems. Further variations have also appeared - the prime example of which is the *Community Land Act* 1989 (NSW). In keeping with a tradition of academic disdain for significant developments actually occurring in the world of Australian real property, academic comment on strata titles has been sparse. Again, Australian legal innovation has not received proper recognition. New techniques offered by strata title legislation for resolution of disputes between neighbours have been largely ignored. Sociological study of the significance of the developments of strata titles for the continued level of home ownership has also been limited.

Strata titles are now used across the range of urban land uses - residential, commercial, and industrial. Texts on strata titles naturally come from the most populous States, but if Victoria has the most flexible legislation, New South Wales is the home of strata title material. This material has, to a considerable extent, been generated by the establishment of workable strata title dispute resolution mechanisms. Matters can be taken to the Strata Titles Commissioner, Strata Titles Board, and ultimately to the Supreme Court. A lot more material is, therefore, available as to the interpretation of the New South Wales legislation.

Knowledge of strata title law has become important not only for lawyers but also in particular for those specialising as managers of strata title units. The range of persons having need for this knowledge is recognised by Alex Ilken in the preface to his work. The work is arranged to take the reader through the steps of obtaining a strata title for a parcel of land, establishing the strata corporation, managing the financial affairs, and resolving disputes. The book is well organised, clearly set out and provides much practical information. There is, for example, a letter from the Australian Taxation Office which outlines office policy in relation to the lodgement of tax returns (p 169). Overall the author has done a splendid job of providing a readily comprehensible guide to complex material. His capacity for illuminating examples must be admired. Similarly, paragraph numbers are used to assist

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the reader in understanding the structure of any segment of the book. If the emphasis of the book is upon practicalities, relevant legal argument is set out but without loss of clarity.

A prospective interstate reader may ask whether much can be learnt from something concerned solely with New South Wales practice. To make use of the book the reader will need a knowledge and understanding of the legislation in the jurisdiction with which the reader is concerned. Differences between the jurisdictions are many and can be on major or minor points - explanations for those differences will not be readily found. The reader with sufficient local knowledge to appreciate points of difference will find much guidance either by way of reinforcement or contrast.

The role of such a book is not to evaluate, and so for international readers seeking an insight into the strengths and weaknesses exposed by Australian experience, there is only little reward. Perhaps times of trade imbalance and recession provoke despairing thoughts, but there seem to be so many lost opportunities and the export of legal ingenuity is one of them. The aim of the book is to assist those involved in strata title management. Therefore the book's starting point is that a strata title scheme has been chosen. Consequently the place of such schemes in the overall order of things is not discussed. Just as company lawyers should guide those seeking to know whether to incorporate so strata title lawyers should guide property owners and their lawyers as to the pluses and minuses of strata titles - especially as the range of titles grows. This reviewer has the impression that for those living in strata title premises, expenses for administration and maintenance are higher because persons are paid to do what might be done personally or because some risks as to insurance cover cannot be taken. But evidence is hard to find. Some statement of the weaknesses of the system would assist in making an appropriate assessment.

The title of this work does accurately reflect what it is about - strata title management. Within that scope the qualities of clear presentation, setting out, and illuminating examples make this a valuable work.

Anthony P Moore*

CONSUMER CREDIT LAW IN AUSTRALIA by SW Cavanagh and S Barnes, Butterworths, Sydney 1988, Hardcover, i-lxxviii (Tables), 1-725 (Text), 727-746 (Indices)

REGULATED CREDIT: THE CREDIT AND SECURITY ASPECTS by AJ Duggan, SW Begg and EV Lanyon, Law Book Co, Sydney, 1989, Hardcover, i-ix (Tables), 1-753 (Text), 759-776 (Appendices), 777-848 (Index)

THE CREDIT TRAP by M Roberts, McCulloch Publishing, Melbourne, 1991, Limp, i-xii (Tables), 1-100 (Text), 101-111 (Glossary), 112-123 (Resources)

The discussion of uniform consumer credit laws in Australia continues. Promises that a breakthrough is imminent have been part of the political scene for the past twenty-five years. To a substantial extent uniformity has been achieved, but now a new uniformity in simpler terms is promised. South Australia was the pioneer of modern consumer credit legislation in Australia. Its early scepticism about uniform legislation was justified by the ten years and more taken by the other States and Territories to act. Its more recent reluctance is also justified by the complexity, both in its language and its operational administration, of the legislation in force elsewhere. The defects of the legislation were convincingly demonstrated in this journal by the then Director-General of the South Australian Department of Public and Consumer Affairs, Michael Noblet in "Consumer Credit Law Reform and Uniformity" (1985) 10 *Adel LR* 131. Whatever their deficiencies of substance, the *Consumer Credit Act* 1972 (SA) and *Consumer Transactions Act* 1972 (SA) are stated in simple and generally readily understandable language. The operation of the legislation is not dependent upon individual exemptions and particular regulations.

Both *Consumer Credit Law* and *Regulated Credit* provide learned commentaries on the current consumer credit legislation. The scope of the books is similar; they both contain separate chapters on pre-contractual disclosure, insurance, guarantees, unjust contracts and termination. Both books are thorough and handle complexity confidently. Both will provide most worthy references for any reader seeking guidance on a matter within their coverage.

The coverage does differ, and for South Australia the difference is vital. *Consumer Credit Law* deals exclusively with the so-called uniform consumer credit legislation. *Regulated Credit*, on the other hand, deals with all jurisdictions. For South Australians the result is a detailed and penetrating

analysis of their legislation. Nonetheless, for readers generally the price of this analysis must be questioned as the flow is disrupted and virtually nothing is gained by way of cross-feeding. For *Regulated Credit* readers there is the further handicap that the sales aspects of credit transactions are covered in the separate book by Tony Duggan. The advantage of one chapter in *Consumer Credit Law* on the sales aspect is considerable. On the other hand *Regulated Credit* does contain separate chapters on the disclosure of the cost of credit and on variation and assignment, and this separation does assist understanding.

Comprehensibility is probably the major issue relating to the use of these texts. The subject matter does not lend itself to bedtime reading, and the depth of treatment of both books means that they cannot readily be used by students seeking an initial understanding of the subject matter. The use of the books, therefore, must tend to be by practitioners and students seeking elucidation of a particular point. Here distinct advantages must be acknowledged in favour of *Consumer Credit Law*. The book's setting out provides guidance as to where to go and how the pieces fit together. *Regulated Credit*, on the other hand, tends to launch into detailed analysis with little introduction or contextual reminders. The degree of mastery of the subject matter needed to make one's way into the analysis will frustrate many readers. Too often segments are introduced by a quotation of statutory provisions whose meaning is then considered. This weakness is particularly true of some of the chapters on the scope of the legislation. The authors do set out a valuable diagram on page 42; it is unfortunate that the text does not sufficiently reinforce the interrelationships thus established.

The books also provide little evaluation of their subject matter. In the foreword to *Regulated Credit*, Tom Molomley and Richard McGarvie tell us that uniform credit legislation is to unshackle credit providers from random legislative provisions and to provide practical legislative protections to compensate consumers for their bargaining inequalities. Both books provide histories of the development of consumer credit law in a relatively statement-of-fact form. The only broader evaluations are those involved in the functional classification of credit transactions and the functional appraisal of the truth in lending policy, both in *Regulated Credit*. Even the history fails to emphasise the radical innovations by mostly conservative governments of the hire-purchase legislation of the late 1950's and fails to ask why it happened. Because the books work within the scope of the legislation, consumer credit transactions such as pawnbroking are swept aside. Similarly the battle between banks, finance companies and retail stores is not explained. Privacy issues posed by the credit reference industry are ignored. Both works provide most valuable guidance as to the consumer credit legislation with which they are concerned, but once outside that legislation, the reader is left, as it were, to fall off the edge. Since both books are

detailed, some guidance as to where to seek assistance would have been helpful.

Both books are probably overly legalistic. Both discuss a mortgagee's action for the deficiency after repossession without any acknowledgement of the significant burden for consumers or even a brief discussion of the work of the Australian Law Reform Commission on the issue. By contrast, practical concerns are the foreword in the book written for consumers by Margaret Roberts. Here a little more of an overview is found. The subject matter changes significantly. Bankruptcy, debt recovery procedures and credit references all receive detailed treatment. Unfortunately the complexities of different laws in eight jurisdictions mean that some caution should be expressed about some generalities based on Victorian law. Nonetheless the book is extremely readable and for financial counsellors it makes for essential reading. Even lawyers who counsel troubled consumers will benefit from reading this work and from reading cover to cover. The practical illustrations give sensible direction. The need for such guidance from an independent source grows as banks are reorganised to become competitors for each dollar profit from both deposits and loans. It is interesting that the one chapter shared by this book and the two credit law texts is that on guarantees - the policy issue raised is whether guarantees of consumer loans should continue to be allowed.

Readers will find some broader conceptual issues raised by *The Credit Trap*. The role of credit in society, the implications of a cashless society and the treatment of those in financial difficulties are amongst the issues discussed by the author. How is the balance to be drawn between increased consumption made possible by credit and the future instability and unproductivity of those who have overused credit? How do those who have made plans for credit repayment cope with changes in macro-economic policy? Since even a decision to forego credit is a decision concerning credit, reading this book is a valuable exercise for everyone.