BOOK REVIEWS

Australian Lawyers and Social Change Proceedings of a Seminar at the Law School Australian National University, 23rd-25th August, 1974, edited by David Hambly and John Goldring, (Law Book Co. Ltd, Australia, 1976), pp. i-xxiii, 1-392. Price $17.50.

[Because of the wide implications of the subject of the seminar, Professor Dening's challenging non-legal perspective is a necessary counterpoint to academic legal reviews which have already been published (*e.g.* in Australian Law Journal, September, 1976).]

As I prepare this review of *Australian Lawyers and Social Change*, edited by A. D. Hambly and John Goldring, Sir Robert Menzies has declared his opposition to the constitutional change for the retirement of judges. The television media, obviously enjoying the opportunity to get free advice from lawyers, sought to interview wigged and gowned lawyers bustling in and out of the Victorian Supreme Court. Some of the lawyers in fits of carefulness scuttled past the cameras with faces averted or muttering, 'no comment'. Others preferred a facetious remark, some saying twenty five years, others a hundred years, should be the proper age of retirement. Still others stopped and gave courteously, if solemnly, their pros and cons to the argument. All of them contrasted strongly with the television vignettes of ordinary citizens in blue rinses or in jeans, with tangled hair or in business suits who protested clearly, almost every one, their admiration of Sir Robert and then registered their differences of opinion. It was not the conservatism of the one group and the progressivism of the other that struck me. It was that the lawyers, conservative and liberal, all of them, invested the question and the asking of it with all sorts of properties, clothed the moment with role-playing, made distinctions with a gesture, saw consequence on consequence in a proposition. I wondered as I took up the book on lawyers and social change how a group so preoccupied with role and significance could ever take the gambles, act on the half certainties, that directed social change demands.

There is some sense of irony in reading the papers and transcripts of discussion of this seminar held in August 23-25 1974, with a preface dated November 1975. Among the eleven professors, the eight justices, the nine Queen's Counsel and solicitors, the seven academics, the two politicians, the six legal officers and the one Governor-General who were participants, there were many names of people who were concerned with, were much affected by or who had much to say about a constitutional and social change that none of them — one presumes — at that moment dreamed about. Sir John Kerr had to protest a little in his paper that his high office prevented him from speaking too concretely about 'Australian Law and Lawyers: Instruments or Enemies of Social and Economic Change?'; a topic he inherited from the Prime Minister, Mr Whitlam, who for some reason could not deliver it. 'My approach', he said, 'must necessarily be less provocative than that open to a Prime Minister'.[1] Mr R. J. Ellicott thought that Mr Gareth Evans' paper had a 'basic premise which prevented it from being a purely intellectual discussion of the problem — that "the High Court should be in some way an instrument of centralism" '.[2] And Mr Evans replying to the strong attacks on his paper, especially by Mr Sharah of the Treasury who thought it 'a rallying cry to the faithful and an invitation to cast votes',[3] said that he would very much like to believe with Professor Sackville 'that the desired changes in the High

[1] Hambly and Goldring (eds.), *Australian Lawyers and Social Change*, 5.
[2] *Ibid.* 103.
[3] *Ibid.* 113.

Court attitudes can be achieved over time by sustained and informed criticism alone. But I am just not sure that I can'.[4]

I am not competent to judge the papers of the seminar professionally. There were six main papers: Sir John Kerr's, Gareth Evans on the High Court, Geoffrey Sawer on 'Who Controls the Law', D. E. Harding on the 'Regulation of Economic Activity', Maureen Brunt on 'Competition Policy', J. E. Isaac on 'Industrial Relations', and Julius Stone gave his reflections on the seminar. To me the topics were unexpected, their coverage precise and narrow and, despite the protests of the editors, not very interdisciplinary at all. They were unexpected because I had expected to discover who Australian Lawyers were and in what way they promoted or prevented social change. Instead, as the participants saw it, lawyers were those who sat behind the benches of the courts not those who stood in front of them. The only nod in the other direction came from Geoffrey Sawer who said that if you read what sociologists and anthropologists said about lawyers you would get no surprises and only banalities. Indeed only Gareth Evans had an interest in who the High Court judges were and how who they were affected their approach to social change. All the rest were interested in what judges said, not why they said it. It is not surprising that those who deal so closely with the instrumentalities of the law should see the issue of social change in terms of the way power is exerted from above. That no one should have asked about the ways in which a legal vision of the world is reified in our institutions, in our universities, in our corporations, in our governments, belied their interdisciplinary protests. Social change has as much to do with perceptions, and value systems, as with structure and power. I am not convinced that a seminar on Australian lawyers and social change that has no discussion of Magistrates Courts, or police, or Royal Commissions, or legal education or courtroom injustice or institutional legalism or law institutes or legal symbols was about social change at all. It was about that highly ritualised activity of the courts which produces *Homo Legalis*, a species like *Homo sociologicus, Homo economicus, Homo psychologicus* in that he exists only because each discipline creates him in its own image. It is when he becomes real that he becomes a monster. Lawyers with power who believe that Man is some encapsulated idea under a judge's wig and the World is that tidy social reality of a court, tend to make institutions and social relations according to their image. Gareth Evans, the only one who seemed half way sceptical about the reality of *homo legalis*, raised a storm at the seminar for suggesting that the High Court should take us more directly along the road of social change. While accepting the notion that being apolitical has been a very political stance, I am suspicious of lawyers, right-wing, left-wing, centrists, as instruments of social change. The U.S. Supreme Court has been effective in social change only when its *homo legalis* corresponded to the perceived realities of large segments of the American community. When they made 'lawyers' men' out of bussed children they provoked conflict, not allayed it, they delayed change, distracted attention from the social issues. Geoffrey Sawer in his paper said that on the whole it is preferable that lawyers as lawyers are not important in social reform. I would go a little further. Whenever lawyers, politicians, economists, sociologists, psychologists, bishops, professors play at their different roles, they are least to be trusted as reformers. They always mistake their partial, special definition of man for the whole.

G. M. DENING*

[4] *Ibid.* 117.

* Ph.D. (Harv.), M.A.; Max Crawford Professor of History, University of Melbourne.