

## REPLY TO TOMASIC

To answer each of Tomasic's criticisms would involve a full-fledged article by the authors of both books. As I stated in my book it was not intended as a definitive study of the law reform process. I believe it is the first work of its kind in Australia and it was intended to meet the needs of a varied audience. It is an introduction to the problems and concepts in the area. I tried to use what C. Wright Mills called "sociological imagination". This approach involves at times using one's intuition, synthesizing from one's own experiences and even being dogmatic. It means that the traditional intellectual paradigm which is based on reason and science (adopted by Tomasic) is at times rejected. It also means that opinions are given freely because it would take years, if ever, to obtain certain "objective" data to "scientifically" prove the opinion expressed.

I have stated the following in a review I did. "It is true that in the Sixties social scientists were seeking to establish a genuine 'scientific method', but at the same time physical scientists were questioning whether the basic assumptions in their own disciplines could ever be neutral or objective (see T. S. Kuhn, *The Structure of Scientific Revolutions* (2nd ed. 1970). Since then the social scientists have largely accepted the fact that they cannot establish a genuine 'scientific method'. A prominent English sociologist, Anthony Giddens, has stated that 'those who still wait for a Newton of the social sciences are not only waiting for a train that won't arrive they're in the wrong station altogether.'"

Obviously a book that is meant for a varied and wide audience will frequently not impress academic "theoreticians" who for example reject references from newspapers as being unworthy sources of data and ideas. Tomasic in his review is at times inconsistent in applying the traditional paradigm by being too involved in trying to make all the pegs fit into the neat model he has set up to attack the book. For example in reference to page 6, he says I see "significant law reform which would also seek to eliminate 'tensions and conflicts' existing in society. This is a grand vision, even if it is based upon an instrumental view of law and a consensual social goal. This seems to be hopelessly unrealistic for it both assumes that law is somehow separate from society and that conflict can be eliminated from society, rather than being an essential and inevitable aspect of all social life." On that page I said in reference to my definition of law reform that law reform would be used to eliminate "some of the tensions and conflicts that exist under our economic system" (emphasis added). It is obvious that I have been quoted out of context and this is done throughout the review not only with my book but also with Sexton and Maher. In fact in various parts of my book, especially in the last chapter, I attack the instrumental approach and debate the problems in trying to achieve consensual social goals. For example, the book ends with my saying that the mobilisation of the

law reform process is only one of the important tools in the struggle for reform.

By stringing together various quotes out of context Tomasic has made it difficult to deal with each one of his points, point by point. He is truly a master of the "art of omission" which also shows that he still has retained the traditional lawyering abilities which seem to have overcome the veneer of his sociological training. I can only hope that people will read the book and compare what they find in it with what Tomasic has stated in his review.

Stan Ross

*Advertising Regulation*, by SHENAGH BARNES, LL.M. (Syd.), Barrister of the Supreme Court of New South Wales; Lecturer in Law, University of New South Wales and MICHAEL BLAKENEY, B.A., LL.M., (Syd.), Barrister of the Supreme Court of New South Wales; Senior Lecturer in Law, University of New South Wales. (The Law Book Company Limited, Sydney, 1982), pp.i-li, 1-612, with Table of Cases, Table of Statutes and Index. Recommended retail price P/B \$45.00. (ISBN 0 455 20545 0).

Some recent outstanding books have tried to deal with legal rules in social and economic context (Atiyah's *Accidents, Compensation and the Law* (3rd ed. 1980) being perhaps the first English or Australian example): and some go further, by collecting from the traditional pigeon holes of legal scholarship the rules relevant to an area of social activity for which there was no corresponding legal pigeon hole, and analysing those rules in context. Cranston's *Consumers and the Law* (1978) is such a book. Barnes and Blakeney attempt to write in this tradition, taking the area of advertising regulation. We have already seen Armstrong's work on the law of broadcasting in Australia, which attempts to take a similar role, and other "new" areas, such as occupational health and safety and the operation of electronic information technology, will no doubt soon attract the attention of legal scholars in similar vein.

In *Advertising Regulation*, Barnes and Blakeney take a functional approach to the operation of legal rules and other forms of regulation, an area of social and economic activity which has attracted considerable attention from politicians and government. This attention reflects the social and economic importance of advertising in modern society. The authors point out that in 1979 estimated annual advertising expenditure in Australia was \$1,689,925,000. Yet how many Australians are aware of the magnitude of the phenomenon? Advertising, like "accidental" injury, is economically important. It quite clearly warrants legislative attention. Yet this is the first major study of the regulation of advertising in Australia. The earlier works by Collinge and Livermore are more in the nature of handbooks of legal aspects of marketing; their analyses of both law and social context are less thorough, and in any case are not confined to Australia.

Advertising, in its modern form, emphasises promotion of the sale and consumption of goods and services. It goes beyond its traditional role, which is simply to inform the public of the availability of goods and services. As Barnes and