REVIEW ARTICLE*

The Legal Profession in England and Wales, by RICHARD L ABEL. (Oxford: Basil Blackwell Ltd, 1988), pp i-xix + 1-548. Cloth recommended retail price 40.00. (ISBN 0 631 14111 1).

In 1980, the International Sociological Association's Research Committee on Sociology of Law formed a Working Group for Comparative Study of Legal Professions, under the convenorship of Professors Richard Abel of UCLA and Philip Lewis of Oxford.

Out of that project has emerged a great mass of literature, particularly in (but not limited to) the English-speaking countries. The University of California Press has published a three volume series of essays, looking at the legal professions of the common law and civil law worlds, and offering theoretical and comparative perspectives.[1] Professor Abel himself has published a monograph on the American legal profession,[2] and there are similar volumes on the Canadian and Australian[3] professions now available.

In *The Legal Profession in England and Wales*, Abel is able to explore his theses on professional formation and power in considerable depth. In particular, Abel focuses on market control as a defining feature of professions, following on the tradition of the leading sociology-of-work theorists such as Larson, Freidson and Johnson (and, of course, Weber and Marx). This is not a fun read, but it is a most valuable contribution to the literature about professions.

The book divides almost evenly in two: the first 308 pages offer a cogent textual analysis of the practising profession (or, more properly, professions) in

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1 RL Abel and PSC Lewis (eds), *Lawyers in Society: The Common Law World* (Vol 1, 1988); *The Civil Law World* (Vol 2, 1988); and *Comparative Theories* (Vol 3, 1989).

2 R L Abel, *American Lawyers.*

3 D Weisbrot, *Australian Lawyers.*

England and Wales. The last 240 pages contain the mass of empirical and bibliographical material upon which the analysis is based. The first half re-affirms Abel's reputation as one of the pre-eminent socio-legal scholars. The second half is a mine of information for those wishing to pursue further scholarship in this area, and it is all to the credit of the publishers that they were willing to print all of this material.

The first half of the book is itself divided into five sections, dealing with theories of professions, barristers, solicitors, legal education and the conclusions. As resistant as many lawyers are to the theory, it is important to read the first chapter before proceeding to the discussion of the two branches of the profession, as it explains Abel's methodology and concerns.

Abel's central thesis is that the defining characteristic of a profession is its endeavour to control the market for its services. This variously involves restricting entry into the profession, restricting (internal and external) competition, creating demand, and resisting government or other outside regulation. Success requires a high degree of professional solidarity, which is achieved through a combination of social homogeneity, socialisation and commonality of interests. Thus it is not surprising that the common subject headings in the chapters on barristers and solicitors are: control of supply; numbers; social composition; control of production; structure; work patterns; income; and governance.

Abel points to considerably more evidence of supply control efforts in Britain (and, parenthetically, in many other places) than could be found in Australia. In large part this is because the Australian profession was relatively small until recently, and then the profession lost control over training (and therefore entry) to the universities even as it began to grow concerned about the threat of over-supply. As a 'cheap' but prestigious discipline, universities have been very quick to establish new law schools under the Dawkins regime of higher education based on autonomy through penury. At the same time that Griffith University has come under siege from the medical profession for daring to contemplate the establishment of Australia's tenth medical school, at least ten *new* law schools have been formed, with more on the drawing-board.

Having lost the battle for supply control in Australia, the profession has been occupied principally with maintaining monopoly areas of practice (such as conveyancing, in the Eastern states, and probate); limiting competition through a range of restrictive practices (such as bans on fee advertising and fee splitting with non-lawyers, the 'two counsel rule', and other measures); creating demand for legal services; developing new areas of work (witness the recent emergence of immigration law, communications law, and professional negligence); widening the scope of services offered (through the development of national and international 'mega-firms' at the top end and networks at the bottom); rationalising overheads, and enhancing income.

All of these efforts are themselves contingent upon the profession maintaining the present high degree of freedom from outside regulation.

However, professional self-regulation is under serioius challenge in Australia and elsewhere. At the moment, the Trade Practices Commission is conducting an inquiry into the regulation of the market for professional services, including legal services. The South Australian Attorney-General, Mr Chris Summer, has released a Green Paper on the Legal Profession. The New South Wales Attorney General, Mr Peter Collins, has launched a review of the delivery of legal services, commencing with conveyancing practice. The New South Wales Law Reform Commission is conducting an inquiry into the disciplinary system for lawyers in private practice and the accountability of public legal services. The federal Parliament's Senate Standing Committee on Constitutional and Legal Affairs is in the midst of a major inquiry into the Costs of Justice, and the Victorian Law Reform Commission has a major reference on Access to Justice.

As mentioned above, Abel's book (like most of the challenges to professional hegemony in this century) is grounded in the left-wing sociology of law movement which challenges the right of a powerful private institution to pursue its self-interest, under the colour of State authority, on the (controversial) basis that this likewise best serves the general public interest. This critique has had some practical effect in the past few decades, leading to: the establishment of publicly-funded, salaried, legal aid systems; the community legal centres movement; a small degree of public participation in the regulation and governance of the profession; moves for greater social equity in admission to the profession; the discovery of the existence of the interests of consumers of legal services; and broader notions of professional responsibility and misconduct.

Despite the force of the analysis, however, this approach ultimately could not match the political power of the profession and failed to achieve significant structural change. Having opened up the issues for public discussion and softened up the profession in the process, the supremacy of the profession ironically is now under much greater threat from the dominant *right*-wing ideology of deregulation of labour markets.

Abel's book was published in 1988, and details the successful resistance of the profession to change until that point. In the following year, however, the Thatcher Government asked the Lord Chancellor to apply a free market analysis to the delivery of legal services. Three Green Papers were produced in January 1989,[4] leading to a White Paper by July.[5] Legislation followed shortly thereafter[6] which achieves the most substantial restructuring of the legal profession for some time. Among other things, the new legislation provides for: conveyancing and probate services performed by non-lawyers; rights of

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4 The Lord Chancellor's Department, *The Work and Organisation of the Legal Profession* (Cmnd 570), *Contingency Fees* (Cmnd 571), and *Conveyancing by Authorised Practitioners* (Cmnd 572).

5 *Legal Services: A Framework for the Future* (Cmnd 740).

6 *Courts and Legal Services Act* 1990 (UK).

audience for persons other than barristers in the higher courts; conditional fee agreements; multi-disciplinary and multinational practices; monitoring of professional discipline by a lay Legal Services Ombudsman; and the establishment of a high level Advisory Committee on Legal Education and Conduct with a majority of non-lawyers.

Despite the admiration expressed by many Australian lawyers and professional associations for a free market economy, similar changes will be bitterly resisted by the legal profession here.

There already has been one rather churlish review of Abel's book, by a Lord Justice of Appeal and a partner in a London firm,[7] indicating the clear professional unhappiness with this line of inquiry. Abel is variously castigated for being a sociologist in lawyer's clothing (or perhaps the reverse?), for being an American and daring to write about the English profession, and even for using social science style references in preference to the good old footnote. Apparently, the biggest sin of all is that "there is not much law in what he writes". This is true - there is no exegesis of appellate court cases on the interpretation of terms in the Solicitors Acts, there are no "war stories" about classic cross-examinations, or any of the other material which features in the writing of the profession when it examines itself.

Abel is not interested so much in the substance of lawyering as in its political economy, and this book is more of a CAT-scan of the legal profession than a portrait in oils. The latter is no doubt more appealing to the eye, but the former certainly reveals more about the inner workings and state of health of the subject.

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7 (1989) 105 *LQR* 611-666.