BOOK REVIEWS

The Law in Crisis: Bridges of Understanding, by C. G. WEERAMANTRY, (Capemoss, London, 1975), pp. x and 303.

This is a very important book. It is probably the most stimulating book the reviewer has read in relation to law for many years. Professor Weeramantry does not see law as one of several lubricants of society so much as a statement of society itself; a statement of the relations between people in mass society. "The life of man", he says (at p. 3), "would be a continuing disaster were it unregulated. The principal means for its regulation is the law". From this stems his thesis. He observes that the law has fallen into disrespect and disrepute. What is to be done? He sees no defence of law because few, lawyers or laymen, are aware either of the crisis or of its causes. Professor Weeramantry's book, the first of a trilogy (the others are described at pp. 9-12), exposes crisis and causes, and propounds the direction of their solution. A solution must be found if, in his view, we are not to lose our "freedom under the law".

In chapter one, Professor Weeramantry locates the causes of the crisis in a communication gap between lawyers and laymen, and in the failure of lawyers to ensure that the law develops with the changing needs of society and its development. While the latter is recognised by many lawyers, the former is almost totally ignored by them. Lawyers generally assume that if the second cause is fixed and if lawyers become more conscious of their role as servants of society, then the former will disappear. Professor Weeramantry disagrees strongly with such an attitude and argues that an effective programme of communication is needed. Such a programme, outlined in chapter two, would be aimed at ensuring that laymen understand the crucial role of law in society and also the natural limitations on what law can be expected to achieve. There follow two chapters which penetrate to the heart of lay dissatisfaction with the law: the inherent lack of predictability because law when applied depends on individual facts, and the necessary limitations and ambiguities imposed on law because it is a discipline of language. The fifth and final chapter traces developments in philosophy, social structures, economics, technology and commerce and shows the areas in which law must respond anew.

Central to the Weeramantry thesis is that the administration of justice is co-equal with the laws themselves in ensuring a just and free society. Throughout chapter one, he makes the point that outdated and bad laws may be ameliorated, even in fundamental aspects, by judicial interpretation and application. Accordingly, while he criticises many judicial attitudes, he maintains that (at p. 12)

> "The community must appreciate the importance of the judiciary as a bastion against tyranny and it becomes necessary, therefore, to examine the importance of strengthening the judiciary in every way we can. The community must be alerted against hidden methods available to the unscrupulous of undermining respect for the judiciary until it reaches the point where it is ready for destruction. This has been the traditional method of all dictators, . . ."

Looking to the past, not every lawyer would agree; judges have brought themselves very close to that point of destruction. The United States Supreme Court between 1932 and 1935 is an example of this. Judges can be all Professor Weeramantry claims for them but too often they have fallen far short of his ideal. Also, the dictator or totalitarian government can always get around such ideal judges. Once dictatorial power is ensconced it is probably too late. The point to stop such movements is

before power has been obtained and the role of judges and the law may not be so fundamental in this. The example of India tells us how easy it is for a government to become dictatorial despite a tradition of a fiercely independent judiciary, and then to retire recalcitrant judges or transfer them to obscure areas or simply outvote them by stacking the courts. No doubt Professor Weeramantry has in mind his own experiences in Sri Lanka when developing his views. Yet, the changed judicial oath in Sri Lanka has not prevented all judicial independence of government. The old oath was materially identical with that taken in Australia and the United Kingdom, while the new oath undertakes that the judge will "execute the duties of my office . . . in accordance with the Constitution and with the law". In September 1976 a High Court Bench of three Judges unanimously held the Sri Lankan state of emergency to be invalid. The case is being appealed and the decision of the Supreme Court is being awaited attentively around the world. Sri Lanka is not a dictatorship and the Court's decision fully upholds the author's faith in the judiciary. The vital question is how common is this fearless independence.

Chapter two is entitled "The Irreducible Minimum". Lay expectations of law and order in a changing society can be unreasonable if the people do not know what law can and cannot do. While basic medical knowledge is well-spread through society and finds a place in school programs, basic legal knowledge is absent. Professor Weeramantry affirms that such knowledge should and can be spread. Judicial reasonings, he says, "involve no mystique beyond the comprehension of the average man. Let these be laid bare and understood" (p. 26). Law, he sees, is powerless against the powerful unless there is sufficient public awareness and understanding of legal processes. Watergate may never have been laid so open but for intense public concern. Openness is the essential ally of justice and Professor Weeramantry's thesis at this point is vital. Yet it omits that here, again, law may be of limited use, for its prerequisite is media communication; enlightened law unknown is almost useless. The Professor's concern with public opinion appears again on a global level in achieving the abolition of injustice in other countries and the establishment of world government. Here the reviewer suggests that the author is over-optimistic. The reviewer sees little prospect of world government and views the curtailment of such things as torture as a result not of public opinion as of hard commercial bargaining and influence.

Professor Weeramantry makes many suggestions for filling the communication gap. Some, such as the deliberate teaching of literature and history to emphasise the role of law (at p. 59), are unrealistic. Others, such as school courses in law, are important but thus far failures in practice (the Victorian courses in Commercial and Legal Studies are far removed either from the author's aims or the needs of Law Schools). Possibly the most valuable suggestion is for articles at a general level in magazines, such as the American Bar Association's series "The Law and You" (at pp. 62-3). The reviewer would include here the author's suggestion in another context of semi-journalistic summaries distributed by government departments of legislation administered by them (at p. 140). The object of all this communication is seen by the author to be the creation of power levers for people (at p. 72).

The problem with this chapter, which may be inevitable, is that its theme is too broad and the author springs from one aspect to another pointing to problems and advancing solutions in too broad a fashion.

"The Scourge of Unpredictability" and "The Loom of Language" (chapters three and four) are brilliant essays. They are superb vehicles for introducing students to legal materials in a first-year course. Teachers in introductory law courses are teaching, in large measure, reading. The idea that the teaching of reading ceases in Grade One with the cessation of teaching what is really decoding is inimical to an educational system. Professor Weeramantry provides vital insights into the mental approach to legal materials without which they cannot be read in a lawyer-like fashion. But, as with any such successful essay, the lawyer learns much too. To write these chapters the author must go back, stripping from his mind the preconceptions of years and fashioning a new structure. He learns much of the workings of his own mind, his prejudices and assumptions, and the prejudices and assumptions of alternative analyses. The conscientious reader inevitably finds himself doing the same.

Predictability, notes Professor Weeramantry, implies consistency with a set of principles. But what set of principles? There are millions of such sets. A decision cannot be consistent with all, and so every decision is seen as unpredictable and unacceptable by a body of opinion. The author argues that this let-down is made worse by the absence of a modern *Blackstone's Commentaries*. On the other hand, the long reign of analytical jurisprudence cannot be excised. One may ask what influence on practising lawyers would a book have if every principle had to be encrusted with exceptions? Modern law has become too vast for one person to synthesise, yet synthesis by one man is of the essence, and our law has become too interdependent for a synthesis to be made subject-by-subject. This aspect of the scourge of unpredictability is, in the reviewer's opinion, inevitable.

True predictability also implies the dominance of logic in problem-solving. Professor Weeramantry discards the notion that logic is even the most important of many elements in legal decision-making. He quotes Holmes' famous aphorism and Jhering's "concepts are here to serve life" (at p. 97) and shows how these describe perfectly legal decision-making. Finally, he affirms that since law deals with living relationships it also moulds those relationships. It follows from this that legal principles and scientific principles have little in common. A point not made by the author, but which would seem to follow, is the lawyers' whole ethos and use of precedents must be re-evaluated in the light of this dynamic character of law.

Professor Weeramantry also sees predictability being lessened by the human failure of judges to articulate the real policies and principles on which their decisions are based. This may be lessened, but many of the policies and principles not articulated are sub-conscious. One may add to this that lawyers must seek to win their cases and to this end the accepted fiction is more readily adopted by a judge than the unfamiliar truth. Thus, in the reviewer's opinion, while academics may discuss an area of law in relation to observed but judicially unarticulated principles and policies they must still provide students with the equivalent argument in accepted terms. An instance appears in administrative law where the principle *delegatus non potest delegare* has been interpreted to mean that legislative and judicial powers may not be sub-delegated while administrative ones may. This involves judges in attempting to classify the power in question by reference to indefinable concepts with shifting content. In fact, analysis indicates a set of policies and principles by which a particular sub-delegation is tested for its acceptable extent. These policies and principles make sense, but it remains incumbent upon lawyer and judge to clothe their decisions in conceptual terms. This type of fictional reasoning is of the essence of the author's criticisms.

The other major issue discussed in terms of predictability is the relationship of law, morality, and religion. Professor Weeramantry discusses the interrelationship of the three and shows how a law, such as that against public drunkenness, may take its origin in religion or morality but find that in time the moral and religious purpose has disappeared leaving a law relating to a social problem which has no necessary relationship to legal regulation. This raises the vexed question of how far law should go in regulating personal conduct which has no substantial and close effect on others, a question which is unusually prominent when a law is either not based on current accepted morality or ceases to be so based. Unenforceable laws out of touch with current morality defeat the integrity and respect for law in general. In the reviewer's opinion our society is being pushed rapidly into enacting just such laws. Proposed laws relating to smoking may well be neither based on current morality nor enforceable; repetition of the disaster for law and order which was prohibition looms.

Professor Weeramantry is a lover of language. It is fitting that his chapter four on language should form the apex of the book. The author sets out eight language-related problems suffered by legal propositions (at pp. 134-137): they are directed both to experts and the layman, they exist apart from their authors who cannot be consulted for clarification, they deal with relatives not absolutes, they have an independent existence and power, their terminology is inevitably inexact, they require complex formulation to be useful, they often refer to abstractions, and they depend for their vitality on wide public appreciation. The second, fourth, and seventh problems are closely related. As the author says (at pp. 163-4)

> "Words are not the equals of the things they represent. They may indeed be likened to coverings or wrappings in which ideas are enclosed for transmission between two persons. But they are only wrappings and the recipient must not mistake the wrapping for the contents. All too often, unfortunately, the wrapping above obscures the substance below. Senders no doubt should choose their covering with care, so that their contents glow forth as through a translucent skin, but rarely is the effort a complete success."

Administrative lawyers familiar with the life of Lord Atkin's formulation of the availability of certiorari will say "amen" to that. The "Atkin dictum" sums-up all the problems of language in the law. Words become alive. They are examined for nuances that usually do not exist. They lead to obsession with classification which does little but mislead. Yet Professor Weeramantry finds no solution, only an amelioration through the abandonment of gobbledygook and the improvement of communication with laymen through knowledge and appreciation of lawyers that law exists only for the people.

The author's final chapter is entitled "The Expanding Canvas". Here he returns to the major themes of chapter one, examining the motive forces of legal development and the changing situations on which they must operate. Although he does not make it clear, Professor Weeramantry would appear to see the motive forces as sufficient to meet the changing situations. He criticises the attitude of judges to trade unions for much of the period since they came into being as based on "the detached attitude of the judges, who tended to stand apart from the great social questions of their time" (at p. 207). This, the author affirms, they cannot do. Not only does such detachment lead to greater divergence of law from social reality, but it is also bad for the primary purpose of law for it inevitably favours the strong and the vested interest. Equality of legal principle is not necessarily equity. However, the author recognises that if judges are to be involved in social questions then their judgment must be firmly based. He finds this base in natural law and Benthamite principles. These he sees as adequate to guide decision-making in three crucial areas: in movements of power (whether public as in the welfare state without adequate avenues of review, private as in property ownership without a concept of abuse of right, or quasi-public as in industrial relations based on power alone), in movements of commerce (such as multi-national corporations or the changing role of contract in commercial relations), and in movements of science. With respect to these last movements Professor Weeramantry speaks vigorously of the dangers to society in pollution, diminished natural resources, medical advances, and so on. As compared with his discussion of other movements, emotion seems to be close to the surface here. He sees problems but gives no hint of the way in which his philosophy may give rise to appropriate law. Professor Weeramantry is both a great pessimist and a great optimist. He is pessimistic that the worst will almost occur but optimistic that at one minute to midnight the ring will be re-formed.

The Weeramantry view of the role of law would appear to be as follows. Society is the mass description of the relationships of people. Law is the regulation of those relationships to provide the greater benefit to the greater number with the greatest freedom and equity. Courts are the means by which this regulation is put into practice. Each of these statements is subject to caveats but remains true broadly speaking. Thus, law is inextricably part of society and the latter cannot exist without the former. If law is seen as the oil of mass personal relationships, then judges are the engineers of this machine. Professor Weeramantry sees two vital areas of concern. First, the machine which requires the oil has and continues to change its character. Our existing oil is no longer adequate. The oil is unable to stop many moving parts rubbing against each other, scoring one anothers' surfaces, so that greater effort is required to keep the machine working at its past speed. The time is approaching where our motive force will cease to be able to move the machine. New oil must be found which is adequate, but we have not yet gauged the trend of change and compared it with potential developments in oil. Secondly, even if the right oil can be found, it will have to be applied to different parts of the machine and in an unaccustomed manner. A new type of engineer is required. The great fear is that we

neither have at hand nor in immediate prospect either the oil or the engineers, and we seem to see no immediate need to find them.

If some may regard Professor Weeramantry's insights and proposals as the products of an over-zealous mind, it must be said that in adapting society and law only the zealots have proved to be the moving forces. The frontpiece of the book features Hugo Grotius. Chapter five builds on Bentham. They lived roughly two hundred years apart. It is almost two hundred years since Bentham wrote his *Fragment on Government*. Where is today's moving force?

G. D. S. TAYLOR

The Football Revolution, by GEORGE W. KEETON, (David and Charles (Publishers) Limited, Newton Abbot, Devon, 1972), pp. 196. £2.95.

"Football" in the title means Association Football, often known by the abbreviation "Soccer". The author is a distinguished equity scholar. The subject matter is a sport, the watching and playing of which has very agreeably consumed a fair part of my leisure time over the years.

The combination was irresistible. I acquired the book for delectation. But it convinced me that there is an urgent need for research into legal aspects of sport.

Professional football in the United Kingdom and most other European countries is an organized industry, employing thousands and watched by millions. The most skilful modern footballer is capable of earning prodigious sums, and can be the subject of a barter and sale unheard of since the abolition of slavery. But his career can be truncated by one foul tackle by an opponent. In these circumstances can he sue his opponent? Or does the principle *volenti non fit injuria* prevent him? If he succeeded what would be the measure of damages?

An accomplished defender is acquired by the manager of a fashionable and wealthy club, and signs a five-year contract. One year after his acquisition, the manager is replaced by another, who does not have quite the same opinion of the defender's ability. The defender is dropped to the reserve side. He suffers a substantial loss of wages. Can he sue the manager? Can he require the club to transfer him to another club?

It is interesting to speculate on the possibility that selection committees might be sued for unfair discrimination against players. Professor Keeton does not refer to any case where this has been done, but he does suggest that the modern footballer is likely to become more conscious of legal remedies in the future, and might be expected to use the courts to determine them. The surprising thing is that footballers, not a notably modest breed, have been ready in the past to accept the decisions of disciplinary committees and other informal bodies, who often act with scant respect for natural justice.

Anyone who has represented a soccer club before a controlling body knows that, constitutionally or not, the principles of the Security Council tend to operate rather than those of the General Assembly. The more successful clubs arrogate to themselves a veto over the proposals of those lower placed. Professor Keeton queries the constitutions of the various governing bodies of football in England, and the internal organisation and management of the clubs themselves. Of the 92 league teams, only one, Nottingham Forest, is an incorporated association. The writer, who, on his 21st birthday, was given 5 shares in the club of his boyhood loyalty, Bury, can testify to Professor Keeton's acid observations on the rights of shareholders. The last time Bury F.C. paid a dividend was 1897, and I have not yet received notice of any Annual General or other meeting since I acquired the shares!

Some extremely nice questions will probably arise in connexion with the increase of "sponsorship" which is such a feature of modern sport. Sponsors want value for their money, but I for one am aesthetically offended by the gaudy sports equipment

increasingly displayed by professional teams for advertising purposes. I was astonished, watching "Match of the Day" recently, to see West Ham United appear in shirts which reminded me of the blouses worn by Velasquez's Mellizas in the painting in the Prado.

A cursory look at these issues, some, but not all, discussed by Keeton, will demonstrate that legal problems of organised sport have been neglected. Those connected with the organisation, management and playing of any sport would benefit from reading such scant case-law as there is, carefully presented and discussed in this book. The issues have implications for sports more popular, in Australia, than Association Football.

Those are my observations on the legal aspects of the book. To me, however, a soccer *aficionado*, a great part of Keeton's appeal is as a piece of literature. Unlike cricket, association football is not graced by a high literary standard. Most writing in English is ephemeral and journalistic. Perhaps this is in the nature of the game, which is too fast for the contemplative prose of a Cardus or Robertson Glasgow.

Keeton's more expansive chapters I found delightful. A first-class legal brain is writing in a rather quaint legal style about matters on which every football lover has some opinion. I found myself on his side in some of his opinions, but against others. Surprisingly, he accepts cursorily the chauvinistic view that the English taught football to the world. The fact that the game is, or was, known as *balompié* in Spanish countries and *calcio* in Italy suggests that football is almost part of natural law. It is in fact the most naturally simple of ball games and I incline to the view that England has no unique claim to its origin.

As soccer in Australia prepares for a new era—a national league having just been formed—one wonders whether it can ever supplant the codes that hold sway in the various states. The sociological aspects of soccer in Australia await a researcher. I would venture to suggest that soccer is uniquely capable of providing a bond between ethnic groups and native born Australians.

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