LAW FOR NON-LAWYERS[1]

It is the rare law book whose preface omits a reference to its suitability 'also' to the intelligent or interested lay person. But, like the lectures we deliver, those books usually are not designed for or suited to readers lacking a legal education. But why should they not be? The public has a substantial stake in its laws. It has a lot of things to gain from them and much to lose by breaking them. People do need accurate information given in intelligible language about law areas which directly or indirectly affect their lives. Ignorance can lose them money, affectional relations, their jobs and their liberty. In a more positive and general sense, knowledge of the law and processes of legal reasoning aids in developing the skill of making moral judgments. It tightens up relevance. It contributes to balanced decision-making and problem-solving. But, of course, so does knowledge of ethics, pure mathematics and cricket umpiring. As a cultural discipline, as Weeramantry[2] would have it presented, law "can attract greater citizen co-operation and a greater input of ideas into the legal system from the general public."

The plainest peril of facilitating a flow of information about law to non-lawyers irradiates the phrase "a little learning is a dangerous thing." If all the legislation and reported case-law were to be magically transformed to succinct comprehensible tablets for lay consumption, there would remain the large problem of explaining the whys and hows of judicial discretion, legal presumptions and fictions, public policy, differential enforcement and a legion of other aspects of jural *realpolitik*. I am not saying that could never be done. I say that it could not be done without massive effort and trouble. And, if ever done, it would be for the edification of persons having only limited opportunities to absorb it — for persons who might be better advised to devote irregular homework periods to developing their inherent capacities in other higher-priority social and moral directions.

We might be able to help Lord Bowen's blind man searching for a black hat in a dark room[3] by giving him a stick, or better, a guide-dog. But we lack the resources to equip him with the necessary vision for his quest. (We might do him and the law a disservice if we *could* do that: without grasping the importance of current legal symbolism, he would be enabled to perceive that the appearance of logical consistency in law is a facade.) Blind men, led by dogs or not, can be guided past temptation to violate popular symbolisms. Men who see

[1] The advantages, and possible dangers, of providing instruction in law to school pupils are discussed in *Studying About Law in School* by B. J. Brown and Roger Connard, the Legal Research Foundation Inc., Auckland. 1978.
[2] 'Law as a Cultural Discipline', AULSA Conference, 1977.
[3] *Mills* v. *Stanway Coaches, Ltd.* [1960] 2 K.B. 334, 349. There, of course, his Lordship was talking about the quest for a helpful description of 'the reasonable man'.

for themselves (though as yet imperfectly) might not be.[4] Knowledge about law would seem to be sufficiently important for lay people to own, yet not important enough (and possibly dangerous) to get too much of. Too much of what? Setting aside non-lawyers with special-interest requirements (e.g. accountants, builders, probation officers, valuers), it would be a great exercise in intellectual sadism to heap the analysis of legal rules on to the general populace. For that purpose, for the needy and the interested, there exist solicitors, and other organisations — though not enough of any of them except the first.

1. *Down in the Engine Room*

The Chief thrust of law for non-lawyers should be made at what have been called the *law-jobs* and the *law-ways* of their society.

(a) *Jobs*

He is a brave jurist who would list and explicate the major functions, or jobs, of law. Law serves many pragmatic ends, and Cardozo might have agreed with Rodell that the single end of law "is the practical solution of a human problem."[5] Bravely, if dryly, Funk essays a list of seven functions (which is posited on the existence of a 'Western' state political organisation):[6]

— To legitimize governmental functions.

— To allocate governmental power in society. (To allocate 'the say'.)

— To order society by providing a framework or model for social and individual interaction.

— To control members of society by coercion and threats of coercion so as to maintain peace and order.

— To adjust actual conflicts once they have broken out (in the event of the failure of the preventive control function).

— To dispense 'justice'.

— To change the society or individuals.

(Funk notes that all these may be interrelated through their common relationship to the total legal system, although they are not necessarily related to each other in the same ways.)

I would make but one observation. Funk's list is restricted to the law's manifest and articulated functions in our type of society. In my limited experience, lay people have an active and legitimate

[4] *Cf.* Thurman Arnold, *The Symbols of Government,* (1935), p. 9. "It is of equal importance [to the requirement that the principles of an institution appear to be logically consistent] that they be loose enough to allow for the dramatisation of all sorts of mutually inconsistent ideals…. The trouble [with the schemes of advocates of sensible reforms] is that they [may] violate important symbolism. Therefore, even if the reform is accomplished it is apt to find itself twisted and warped by the contradictory ideas which are still in the background in spite of the reform."

[5] *Woe Unto You, Lawyers!* (1939), 222.

[6] *23 Case Western Reserve Law Review* (1972), 257. He rejects Karl Llewellyn's contention that a manifest 'function' of law in any society is "the job of juristic method" — the maintenance of legal craft skills necessary to keep the legal machinery operating: Llewellyn in *Jurisprudence* (1962), 200.

interest travelling beyond those into the unadvertised, or latent, functions of law. Commonly, one finds evidence of the latter in the common ground of social anthropologists and practising lawyers: what counsel discuss, in hushed tones, in the robing room can be rich fodder for the formers' scholarly articles; for instance, a plaintiff's use of legal process as a means to harass a former spouse or to sabotage the business or political reputation of a rival. Another illustration may be found in the city fathers' recourse to legal definitions and courts to increase the revenue of the local treasury. Less deliberately, institutionalized disputing may serve to solidify groups or individuals in society, or prevent the formations of political factions (or facilitate the development of new ones). Sometimes the drama of the court, e.g. in *Whistler* v. *Ruskin,*[7] can be viewed as a socialization or enculturation agency — the court may become a place where other-than-legal values are tested, changed, or consolidated.

Lawyers, publicly, at any rate, hold fast to the essence of the law's manifest functions — the creation of conformity with norms and settlement of justiciable conflicts. Non-lawyers, the stuff that litigants are made of, suspect and some, through presonal experience, come to know that the ostensible functions can be transcended. The fly-overs exist and are travelled. There is no point in shielding them from general public view.

(b) *Ways*

Some lay-persons' appreciation of law-ways is more acute chiefly because, in anticipation of attacking or being attacked, they use or contemplate using the most effective measure — legal or extra-legal. They are a minority who dislike being overridden by events. They, and the majority, have a more urgent interest in winning by the shortest most direct, least bothersome and cheapest route. (Whether the cause is justiciable in the strict sense, or not, many have discovered that proto-legal procedures may be useful in sorting out their own family, garden-wall, and work place conflicts. Informal resort may be had to the law's precept of stranger-conciliator intervention (the impersonal unbiased judge model). Probably more often less deeply involved associates of the disputing parties are recruited (as are solicitors) to meet and work towards an accommodation.

As the level of social awareness increases in society, more people seek answers to the sorts of issues that Hart has described as forming a constant focus of argument about the nature of law: "How does law differ from and how is it related to order backed by threats? How does legal obligation differ from and how is it related to moral obligation? What are rules and to what extent is law an affair of rules?"[8] Lawyers, among others, have a duty to the community to look at law as a human and administrative fact and frame answers in language that the questioners can understand.

[7] *Times* Nov. 26, 27, 1878. For some other illustrations see *Roberts* v. *Hopwood* [1925] A.C. 578 (Lord Atkinson's judgment); *Newnham* v. *Muldoon,* unrep., S. C. Auckland, 1977; *Coleman* v. *Myers*. unrep, C.A., 1977 (Cooke J.'s judgment is a fine example of the phenomenon 'jural tone' hovering between and beyond the established rules and principles of law and equity).

[8] *The Concept of Law* (1961), 1-14. And see Gluckman 'African Jurisprudence', 75 *The Advancement of Science* (1962), 439-54.

Ten years ago a mission-educated Papuan asked me to show him a book that explained why the law draws other than seemingly arbitrary lines through the whole mess men call conflicts, labelling those on one side as subjects fit for the courts and those on the other as not. I am still looking for the book. Social scientists, including lawyers, have paid scant attention to a subject that causes deep concern in all societies. I refer to the aetiology and anatomy of quarrel (and especially to 'non-justiciable' quarrel).

Professional settlers of conflicts, and commentators like us, expend so much energy and blinkered vision in charting the sectors of trouble — designated unlawful, criminal, deviant, abnormal, aberrant, harmful — that we neglect the essential labour of explaining what is *normal* behaviour in our society. If we ever get around to putting the horse where it belongs — in front of the wagon of our misplaced concerns — we might find ourselves better able to answer the recurrent lay inquiry, "Why is that particular law there at all?" Other questions persistently posed by non-lawyers relate to what they suspect to be differential interpretation and application of laws. Curiosity intensifies when those processes are seen to relate to geographic or social class considerations. In some cases even the intelligent observer might be excused for thinking that different legal codes apply in the one political state to different groups and places.[9] He might be wrong or, if right, there might be satisfying explanations for the selective approaches. But who or what will put him right? It is unrealistic to expect him to wade through Julius Stone and he will not have heard of Aubert or Simonett. Almost certainly he will draw a blank with his solicitor for practising lawyers have not been trained to ask definitional questions, let alone answer them.

(c) *Proposal*

I consider there is a need to be filled—at least in those persons who feel it — for the provision of some frank explanation of law functions (latent as well as manifest) and functionings (official and *sub rosa)* in the broad social context of their society. The law's mystique does not have to be divested of its camouflage: it would suffice to examine the reasons for resorting to disguise.

A book would go some of the way to supplying the need, as would classes of a university extension type. Either might prove devilish hard to do. In both cases the effort must be made to communicate in ideas and language comprehensible to the audience. Without devoting much thought to the question, I would deem it dangerous for any educational institution to provide courses for non-lawyers (in this paper's meaning of the term), which lead to the award of diplomas or certificates in law generally, or in particular law subjects.

[9] Simonett, 'The Common Law of Morrison Country,' 49 *American Bar Association Journal,* (1963), 263-5. Simonett, a practising lawyer, writes "Never a day passes but new volumes appear off the presses, but all of them deal with the first two great branches of the law (Statute Law, Common Law), never the third [The 'common law' or 'lore' of Morrison County where he was practising].

2. *Servicing the Specialty*

(a) *Interests and Concerns*

As stated at the beginning of this paper, a case may be made for the provision of instruction in specialist branches of law to non-lawyers who do not propose practising law. Numerous services could be more relevantly rendered were their operatives conversant with the pertinent laws. For instance builders, valuers, and real estate agents, journalists, social workers, and in the area of crime, probation and police and prison officers. More generally, captains and lieutenants of commerce and industry and the officials of trade unions can derive benefit from suitably orientated extension courses and writings. All such persons are not usually inclined or able to give up work or leisure time to the pursuit of legal knowledge as a discrete intellectual exercise: they seek informational servicing stations that are tightly related to their occupational activities.

It is not hard for university lecturers to teach or write about their subjects the wrong way for non-lawyers. Other lay special-interest groups include civil libertarians, women's rights and protection lobbyists for concerns ranging from censorship, homosexuals, psychiatric patients, foetuses, solo fathers and the physical environment. All would seem to have an entitlement to purchase accurate comprehensive and comprehensible publications dealing with law relating to their concerns. Some such works are available.

(b) *Law for the Governed*

In the so-called 'developed' and 'developing' societies an increasing reliance is placed on public law. State government has come to assume a large responsibility in social welfare and insurance, the ownership and conduct of industry and in major national and local utilities. In many countries the state, together with its regional and local authorities, has become the largest employer of labour.

Decade by decade substantial segments of private law are lost through gradual erosion, seige and capitulation, or by statutory *blitzkrieg*. Old champions like Dicey and Hewart should roll in their coffins — would not such activity give rise to grave administrative repercussions ! At the local, regional and national levels, the public have never been quite so comprehensively subjected to executive governance; and that can come very close to home. Lawyers, belatedly, have come to read the signs. But, by and large, the subjects (including some who rank among the divers species of 'governors') are left languishing in a mid-nineteenth century haze where 'the law' was still the materialised creature of Parliament and regular courts.

People have little excuse for unawareness of the dangers. Any amount of red-light literature is flashed at the market. Some of it is well-informed and informative. But an understanding of public law requires something more than recognition of the endangerment of 'civil rights'. As well as other less publicised minefields, there is as much hospitable green in this ever-enlarging portrait and even more of the equivocal shades of grey. For the most industrious professor or practitioner of 'public law' the total picture must have become a confused one (and one that has long since burst its traditional frame of the constitutional, the administrative, and the criminal laws).

Portraying 'law-government'[10] to non-lawyers would seem to require of authors and teachers all the skills, and the empathy, of the exercises I have described in 1 and 2 (above).

Certainly this subject would have to form an integral part of any study of law-jobs and law-ways. Many of the special-concern groups mentioned under *Category 2* recognise a need to monitor the law and decision-making activities of public bodies. Numerous non-legally qualified servants of those bodies (national and local) would be the beneficiaries of accurate accounts of public law and legal control of administrative action: the majority have a detailed knowledge of their departments' particular law work but probably little idea of its place in the broader design.[11]

In the third category of study (below), law-government must be accorded a prominent role because, as noted earlier, it has invaded most of private law's traditional preserves.

3. *Everyman's Legal Omnibus*

The third, and largest category of non-lawyer in quest of legal information represents the real danger zone. For one thing, this is the main sector of potential commercial exploitation — 'The Law For Laymen In A Nutshell' sector. Solicitors have their faults (some of which have been sown by their teachers), but most of us would agree that where an issue is justiciable, or arguably so, (and informal bromides have failed), the prospective plaintiff or defendant is well advised to consult one. What then is the *raison d'etre* of the 'Know All The Law' type of publication? It sells well — and usually as a slim single booklet. One would expect that a reliable version should run to ten or twenty volumes. It is possible to pick up more dangerous information from a 'Lay-Lawyer's Pocket Encyclopedia' than from an entire LL.B. degree course.

But the damage that can be wrought by the 'bush lawyer' is often over-estimated. However zealous or malevolent, he is unlikely to create the same havoc as say Auntie Maude or John Reginald Halliday Christie[11a] under the influence of a do-it-yourself medical digest. And, like them, the amateur lawyer 'gives it a go' regardless of the non-availability of self-service literature. Sooner, rather than later, his clientele, or adversaries, make tracks for someone who knows 'a good solicitor'. I condemn the kind of manual I refer to, or those I have looked into, as a waste of money. They tend to be selective, superficial, misleading, jargon-ridden and over-priced. This is not to "rubbish" the need for the sound well-written omnibus work for non-

[10] Llewellyn's term. See *Jurisprudence* 167, 200 n.j. (1962) "today I should see not Law, but Law-Government, as the more useful area for analysis. . . ."

[11] Just two illustrations of the non-legally qualified officials I have in mind are Ministry of Works administrators, and social workers. They, like many other public servants, operate with a Cyclops eye trained on such legislation as is directly relevant to the day-to-day functioning of their departments. They may achieve an intimate familiarity with those enactments and regulations — and with the leading judicial interpretations of them. However, it is my contention that they — and the client public — would be the beneficiaries of a book (or books) which sets their departments' activities in the broader, and hopefully less impersonal, perspective of, say, 'Social and Public Uses of Land' and 'Social Welfare Law: You and the State'.

[11a] Christie was the notorious English murderer of several women, some of whom were lured to his house by his pretended knowledge of medicine.

lawyers — even if it should run into twenty pocket volumes. Members of the public want accurate information about their rights and duties, their powers and liabilities. If their neighbour's tree is overhanging their properties, or keeping out the light, it might be prudent of them to raise the matter with him in a reasonably informed way, or perhaps even to point out the relevant passage in the book. What might prove sufficient action could be taken in a comparatively amicable atmosphere: preferable surely to "My solicitor says... *or else."* In five cases out of ten, clear close-to-hand information should persuade the would-be complainer to keep quiet because his neighbours or motor car mechanics are not in the wrong or because it would be impossible to prove that they are. Such booklets would stress the importance of seeking professional advice in areas of uncertainty. But where otherwise he would not recognise his legal position is plainly right,[12] it does seem desirable that the complainer's confidence in making an informal overture should be boosted by a well-qualified author's view. Without the opportunity for such reassurance, there must be a temptation either to seek advice from friends, which might be wrong, or to rush to a solicitor, which could result in an escalation of minor domestic or parochial friction and an escalating fee.

"Get some advice, old chap, before you go running off to a lawyer", says a cartoon caption. A growing number of people would concede there is as much wisdom as humour in that. Some, like me, had to shop around before they found a satisfactory service. No booklet publishable in Singapore would presume (or dare) to tell the public about the specialist strengths, short-falls, and track-records of the practising profession. So most of us will continue to rely on hearsay or resort to sticking pins in the Law List. But there are palliatives. Readers of a realistically blunt, non-particularising booklet on legal services could be informed of available complaints procedures and of how to make a clean break with a solicitor whom one has come to suspect is dilatory or incompetent. Groundlessly suspicious clients could save themselves and the lawyers' time, expense and embarrassment by first checking their layman's book on the area of law in question and then ventilating the matter with him before taking what might be hasty and ill-considered action.

Why should not such a series of booklets beset readers with the same problems as those which clog many of the existing ones? Unless exquisite care is taken over their contents, presentation and general editorship, they would. Preferably, preparation and publication should be undertaken by a non-profit-making body like the Law Society. An organisation of such prestige and experience could be relied upon to guard against the major hazards including that of stimulating 'bush lawyerism' and legal hypochondria. It would be a laudable if perilous enterprise. Would it sell? Yes. There is a market for the already published works in other countries and the public could look forward to superior products at lower cost. Most purchasers would buy the book (or books) treating their immediate interest or concern. Libraries would invest in the series.

[12] Is it ever that plainly right? Prospective authors of such books might derive a crumb of comfort from a Lon Fuller footnote: "the word 'law' contains a built-in bias toward the black-and-white". *The Morality of Law* (1969) Rev. ed., 192, n.11.

4. *Conclusion*

Non-lawyers have a right to learn about all the facets, moods and vicissitudes of law. But it may be safe to say that they do not need to, they do not want to, and that it would be an unlikely sort of national polity that promoted such a socially and cerebrally debilitative extravagance. Realistically, we have to answer questions about what kinds of law, and how much, and in what detail and at what depth people need and desire reliable digestible information.

I have mentioned three such 'interest and need' categories:

(i) facilitating an appreciation of what law is, how it works and what it aims to achieve in our society;[13]

(ii) supplementing or complementing non-lawyer tradesmen's job efficiency and providing social-concern groups with relevant law information;

(iii) furnishing everyman (including Auntie Maude) with material designed for non-special interest groups which covers a broad range of law subjects.

The first of two obvious problems is to achieve a balance between the benefits and dangers of the enterprise. If I have erred, it has been on the side of benefits. Some of the main dangers have been listed in this article, but, as I have suggested: the hazards of 'home-lawyering' tend to be overblown. Secondly, there are considerable logistical obstacles. Is there in Singapore enough of the right kind of talent to produce books, pamphlets, radio and T.V. features, film clips and teaching courses to meet an awakened demand? I have considered only printed materials and have concluded (tentatively) that there might be. But the skilled writers might not have time for such work and, if they are university teachers, they may think their career prospects would benefit more from penning articles for lawyers than for non-lawyers. A further possible impediment is that those who could be seduced into authorship, due to their professional insulation, might be too far distanced from the public to realise effective communication. The right kind of talent? That is the rub! But, as you will have gathered, that is not the only rub.

Addendum: Drafting Legislation and Reporting Cases. Looking at the fashioning of law — by Parliament and subordinate legislative agents and by the courts — one has to concede that the 'original products' are presented in language which must baffle most consumers. Those of us with seats up front know there are reasons for much of this seeming semantic eccentricity. The people in the 'gods', or those who turn up hopeful of elucidation, generally find legal phraseology obscure, unduly compressed or flatulently otiose, anachronistic and little related to contemporary concepts or idiom. The language of law ignores the fact that most people can read.

[13] The two areas of fundamental importance, both pregnant with possibilities of simplifying 'legal language' for non-lawyers, are (a) legislation and (b) judicial pronouncements. Because law teachers seldom get the opportunity to participate in such operations, T have dealt with those topics in the *Addendum* rather than in the body of the paper.

Exercises in clearer simple legislative communication have been conducted in several countries including the newly independent state of New Guinea. Public understanding of our statute law could be improved by the (comparatively inexpensive) publication, with the Acts, Regs., or whatever, of 'Explanatory Notes' along the lines of those which now accompany Bills.

When a subject lends itself to the legislative statement of guiding principles, e.g. planning and environmental legislation, their expression in straight-forward English would be most desirable. Sir Ivor Jennings' jibe "Fabian socialism without socialism" at the stated principles of the Indian Constitution should be taken with salt. As well as aiding interpretation, their crispness makes for a readable introduction to an instrument of great complexity. The reader is turned on, not off. Another noteworthy 'Indian invention' is the hypothetical illustration included in the text of enactments (e.g. with the definition of the defence of necessity in the Penal Code: the legal position of 'A' who survives by pushing 'B' off his raft is more readily comprended than it could be from the definition itself, or from the teleological ramblings on that issue by half-a-dozen American and English judges). A striking illustration of this device is found in the (U.K.) Consumer Credit Act, 1974. Judges, sentenced to serve much of their professional lives judicially noticing statutory words and phrases, do not — and for sound reasons will not — accord primacy to establishing effective lines of communication with the general run of mankind. When, on occasion, some modification of that position might be justified (e.g. in a charge to the jury), an enforced insulation from unpolished society impedes the injection of an authentic 'common touch' into their language. There are exceptions.

Editors of law reports have less excuse for corsetting their vocabularies. Head-notes admit of improvement in the sense under discussion and could become an open door of direct unaffected information for the interested layman. Without loss of accuracy, the notes could be expanded (perhaps with the approval of the judge in all, or most, cases) to provide a brief summary of the legal context in which the case was decided.

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