

390

PENGUIN BOOKS AUSTRALIA LIMITED

THE SLUMBERING SENTINELS

BY PROFESSOR C.G. WEERAMANTRY

FOREWORD

PENGUIN BOOKS AUSTRALIA LIMITED

THE SLUMBERING SENTINELS

BY PROFESSOR C.G. WEERAMANTRY

FOREWORD

The Hon Mr Justice M D Kirby, CMG

Chairman of the Australian Law Reform Commission

In an earlier Penguin book, Science and Human Values, that great science communicator the late Professor Jacob Bronowski, wrote in 1975:

To think of science as a set of special tricks, to see the scientists as the manipulators of outlandish skills — this is the root of the poison mandrake which flourishes rank in the comic strips. There is no more threatening and no more degrading doctrine than the fancy that somehow we may shelve the responsibility for making the decisions of our society by passing them to a few scientists armed with a special magic.

This book is about a new jurisprudence and a new sociology for the world of science and technology. Professor Weeramantry, a man who has practised, administered, judged and taught the law, brings a message which is specially relevant for our time. Readers may question some of the institutional solutions he offers. But none may doubt the importance of developing effective social responses to the new technology. Nearly a decade has passed since Bronowski issued his warning. We confront more problems. Yet we have developed few new means to offer the solutions.

Scattered through these pages are various references to the relevant work of the Australian Law Reform Commission. In almost every task given to that Commission by successive Australian Governments since 1975, the implications of science and technology for society and its laws have had to be tackled.

- \* In an early report on criminal investigation, the Law Reform Commission proposed the use of sound and video recordings to set at rest disputes about confessions to police. The use of photography for identification parades and the provision of arrest and search warrants by telephone were other features of a report seeking to adapt the law on police procedures to available modern technology.
- \* In a report on Breathalyzer laws, proposals were made for the use of modern breath analysis equipment and other scientific means to detect intoxication including by drugs other than alcohol.
- \* In a report on human tissue transplantation, the Commission had to address the definition of 'death' for legal purposes and the many other bioethical questions posed by surgical transplant procedures, some of them reviewed in this book.
- \* In a report on defamation law reform, it was necessary to suggest adaptation of Australia's defamation laws to cope with the new technology of radio and television, telefacsimile and the rapid distribution of print media, all of which argue for a new, national approach to defamation law reform.
- \* In a report on sentencing of Federal offenders, it was necessary to examine the use of computerised statistics on sentencing, in order to secure greater uniformity in the judicial punishment of offenders.
- \* The current project on privacy protection requires examination of the impact on individual privacy of the growing computerisation of personal information. The advent of optical and listening devices and techniques of telephonic interception all endanger individual privacy. They too are under consideration.
- \* The current work of the Commission on evidence law reform requires examination of the modifications of the laws of evidence, necessary to adapt our trial system, long infatuated with oral evidence, to a world in which vital decisions will increasingly be made based on computerised data.
- \* Even a project on Admiralty jurisdiction, seemingly remote from the world of science and technology, requires the Australian Law Reform Commission to reconsider Admiralty law to ensure that new 'ships' such as hovercraft are embraced within it.

These projects illustrate, and Professor Weeramantry's book elaborates, the way in which Australian law and society is adapting to scientific and technological change. Unhappily, it must be confessed that the number of the problems being presented and the urgency which attends their resolution, far outstrip the present capacity of our lawmakers, and those who advise, them to respond.

Three remarkable technologies have flourished in the past decade or so. They pose acute dilemmas for our society. Some of these are illustrated in this book:

- \* The new energy sciences present specially dangerous problems. The chief dangers arise out of the development of nuclear fusion. Professor Weeramantry cites an opinion suggesting that there is a five to 10 percent chance of a serious nuclear accident before the end of the century. Thermal energy has dangers for the eco system. Petroleum involves the risks of serious oil spills and pollution. The world's rain forests are being destroyed to produce wood, some of it used for energy. The possibility of criminalising 'ecocide' is raised in these pages.
- \* The new information technology is perhaps the most pervasive of the technological developments of our time. The impact of computers linked by telecommunications for privacy and for evidence law have already been mentioned. Numerous other information technologies are examined in this book for their impact on human values in and the vulnerability of modern society.
- \* But the problems of biotechnology are perhaps the most puzzling, precisely because they touch the most basic human facts of life and death. The dilemmas of transplantation have been studied. The quandaries of in vitro fertilisation ('test tube babies') are now under consideration by no less than five enquiries in Australia alone. But who is examining the problems of human cloning, DNA experimentation, mind manipulation, surrogate parenthood, community testing of new drugs, 'farming' of foetal tissue and the many other bioethical riddles outlined in this book?

Not content with cataloguing the problems, Professor Weeramantry lists a program for action to repair the inadequacies of our social response to science and technology and to assure the survival of the rule of law in the age of science. Suggestions include establishment of a Science Court and a Science Commission. Whether these or other institutional solutions are appropriate is the basic question posed by this book. It is timely to remind ourselves again of Jacob Bronowski's warning:

The world today is made, it is powered by science; and for any man to abdicate an interest in science is to walk with open eyes towards slavery.

This book seeks to open the eyes of a generation, so dazzled by technological innovations, that it is often blinded to the social and human dangers that need to be seen.

SYDNEY

M D KIRBY

MARCH 1983