The Slumbering Sentinels

Professor   C.G.Weeramantry - Penguin,
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Professor C.G. Weeramantry of Monash University presents a simple but sweeping thesis in his book subtitled "Law and human rights in the wake of technology". "Science and technology" he says "have burgeoned in the post-war years into instruments of power, control and manipulation. But the legal means of controlling them have not kept pace" (p.xi). Part of the reason, he argues, is that lawyers are more out of their depths with new technologies than sociologists, philosophers and others. So the "sentinels" that Professor Weeramantry looks to - legal institutions and lawyers - are slumbering.

Much of the book concentrates on nuclear technology and biotechnology, but in this short review I will only attempt to deal with the third, technology considered information technology, and with the solutions Professor Weeramantry proposes his sentinels should adopt to cope with all three.

It would be reasonable to expect this book to offer some discussion or analysis of the nature of the new information technology and the likely parameters of its future development, but other than such commonplace assertions that "there is an increasing dependence on the computer to assemble, classify and store information which is too vast to be dealt with efficiently by people" (p.97) this is not to be found.

As for the future, we are told on the authority of the Encyclopaedia Brittanica 1974 Edition that "Despite the advances in electronics ... the electronic brain may never entirely replace humans. Its limitations are too numerous to make this possibility anything but fanciful for the moment, although an entirely new computer, built as an analogue to the human nervous system, may bring us close to this" (p.98). It is true that the potential of artificial intelligence systems or "5th Generation Computers", as they are often called, is very controversial, but with the Japanese Government committed to invest (US)$900 million in the area over the next 10 years, serious discussion of the implications of such systems is necessary.

The book also suffers from unsupported generalisations.- We are told that "Clearly, computers will turn out results which are slanted in favour of those who control them" (p.97). An interesting hypothesis, perhaps correct, but certainly not "clear" without argument.

The main threat by computers to privacy is perceived to be that if information about individuals which is held on previously separate data systems is "put together, that information is a complete dossier on each individual" (p.99). Nothing new in that, but is it happening? Professor Weeramantry warns that "the trend toward centralisation means that the merging of these data banks in different government and commercial departments is inexorable" (p.99), but this is question-begging unless he informs us precisely what "trend towards centralisation" he refers to. His examples are misleading. "In the U.K. and Australia" he says, "there is already a nexus between data banks maintained by customs offices, motor registration branches, income tax boards, and the police" (p.99). It is true that each of these systems has connections with at least one of the others mentioned, but there is no connection, to my knowledge, between the tax office and the motor registry offices, but this what he implies. Similarly, he says that "In the

private sector, data on people collected by credit agencies, insurance corporations and employers can also be collected in a central repository. People's credit ratings are established from just such centralised information" (p.99). Unless Professor Weeramantry has unearthed practices in other States totally different from those in New South Wales, such central repositories simply do not exist. Credit bureaux do not collect insurance information, and whilst they do record where a credit applicant has worked, they obtain this information from the credit application, not the employer. Attempts to establish such general purpose data systems have, in the past, foundered after discussions with the Privacy Committee, and in Queensland S16 of the Invasion of Privacy Act would make the provision of credit reports for insurance purposes illegal. In the same vein, we are told that "large volumes of Australian credit data are stored in computers in Singapore" (p.101), which, if it is true, certainly illustrates an objectionable trans-border data flow, but as no footnote or other details are given, how is one to know what this refers to?

The remedy for problems of information privacy according to Weeramantry is simply the adoption of the eight principles for fair information practices adopted by the Organisation for Economic Co-operation and Development and advocated locally by the Australian Law Reform Commission. Unfortunately, we are not told whether these principles should be enacted in the form of universal mandatory standards, implemented piecemeal with detailed industry - specific regulations, or left to voluntary codes of conduct. Nor is the relationship between administrative enforcement, personal civil remedies for non-compliance, and criminal sanctions discussed. Without discussion of an enforcement mechanism, supporting fair information practices is not much more than a pious gesture.

Professor Weeramantry goes on to discuss computer crime and an alleged inadequacy of the criminal law and law of evidence, surveillance techniques and how devices installed at Melbourne intersections for the Commonwealth Heads of Government Meeting (CHOGM) were left operating after CHOGM departed; telephone monitoring systems; personality tests; and media monopolies. Interesting anecdotes are scattered throughout.

Some worthwhile questions are briefly raised, but never pursued. "Outmoded concepts of private property in knowledge" (p.28) are mentioned, but there is no analysis of how the law of information and especially property rights in information should balance the interests of the individual and society. Similarly, it is suggested that there is a "need to give people an understanding of computer methods or at least the elements of information about programming, so that they would not be at the mercy of experts" (p.115), and the control of technology is said to enable "multi-national corporations .... to continue the economic and political victimisation of the poor" (p.208). But on the question of whether the control of information in a post-industrial world is likely to be exercised by anyone other than those who control tangible assets in an industrial society, the book offers no answers.

The final chapter of solutions, "Agenda for Action", is even more disappointing, as it offers a smorgasbord of forty-three reformative mechanisms, with no indication of which ones the author prefers. In the main, they are a plethora of advisory committees and commissions The

Book reviews (continued):

establishment of some of these might be helpful, but some of Professor Weeramantry's suggestions seem to be the type of anti-democratic elitism he elsewhere warns against. What else are we to make of a legislative "chamber of scientists elected from the ranks of scientists by scientists themselves" so that "a scientific measure would have to pass through this legislative house" (p.219), unless he means that it would not matter whether this house passed the scientific measure or not. Professor Weeramantry also suggests that Courts should have a delegated authority to impose moratoriums on scientific activities, but what value could there be in an

unaccountable judiciary exercising this very political function rather than an accountable legislative or executive?

Professor Weeramantry concludes by hoping that "some of the principles discussed ... may provide the basis for a new jurisprudence for science" (p.236) but at least in the area of information technology this is certainly not so. Perhaps he is more convincing in the areas of bio-technology and energy, which occupy a substantial part of the book. In fairness, it is entertainingly written, with a wealth of anecdotal examples, and, at least for the reader not particular familiar with the new technologies, it would make interesting reading.

► Graham Greenleaf

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Editorial

I hope each of you reading this first issue of "Computers & Law" finds lots of interest and something to inspire you to write a contribution of your own for the second issue. The newsletter will appear approximately quarterly in 1984. The deadline for contributions to issue number 2 is: Friday 2 March 1984.

I intend to produce issue number 2 by the same printing technique as that used here. Accordingly manuscript presented typed with both edges justified in columns 47/8" or 12.5 c.m. wide may not have to be retyped at all. When submitting manuscripts please specify how you wish to be described as the author.

Looking over the manuscript for this issue I see that almost all the items contributed by outside authors have been written by my fellow lawyers. It would be an excellent development if the computerist members of the various societies contributed more articles for some number 2 and I look forward to receiving manuscripts from you.

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Advertisements are welcome and revenue raised will be applied to production costs of the newsletter. We propose to charge as follows: $50 per quarter page, $90 per half page and $150 per full page. Measurements and details of presentation will be provided on request.

Comments and Criticisms

Please don't hesitate to suggest improvement or make constructive criticisms about this inaugural issue. Experience gained for this issue on technical and production problems will enable me to concentrate more on style and consistency in subsequent issues.

Thanks

Many thanks to everyone who helped the newsletter out into the world. My special thanks to David Lewis, Solicitor; to Helen Fitzgerald, Commercial Artist, for Graphics; to Butterworths, for assistance with artwork; and to the Law Book Co. for technical advice and encouragement.

► JILL MATTHEWS
EDITOR