

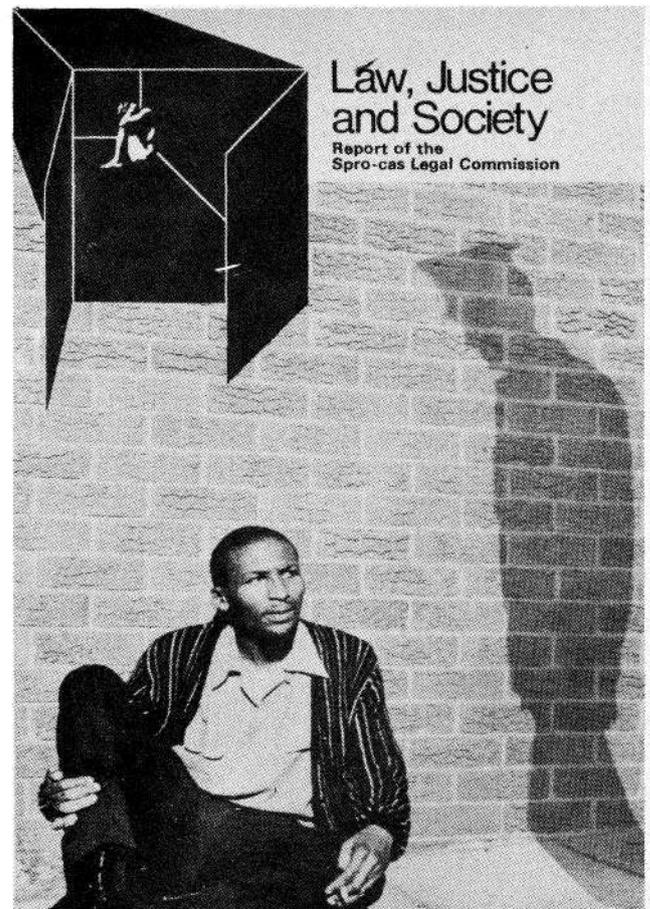
' DISAPPOINTINGLY SLENDER '

A review of the SPRO—CAS Legal Commission Report : "Law, Justice and Society."

by A.S. Mathews

Law, Justice and Society is noteworthy as much for what it fails to achieve as for its contribution to discussion about the task of reform in South Africa. The reader's greatest disappointment will arise from the failure of the work to break new ground, its conclusions and recommendations being largely predictable. Added to this is the unfortunate, but possibly unavoidable, fact that the volume is a collection of loosely related essays of very uneven quality. There is no single theme or set of themes which are consistently explored and developed, and no overall coherence. Even when allowance is made for the composition of the Legal Commission — an awkward combination of busy practitioners and over-committed academics — a profounder and more integrated report could have been expected.

Even the four best essays have their disappointments. Though studded with penetrating insights into, and deservedly sharp strictures on, white attitudes to the law, J.F. Coaker's paper does not sufficiently underline the readiness of government supporters to sacrifice all values, including legal values, on the altar of white survival. One might have expected, too, more analysis of the uncritical acceptance by most white South Africans of the ostensible purposes of the security laws. The government's achievement in this field is an outstanding example of successful mass deception. The author deserves commendation however for his hard and unblinkered look at the public's attitude to the law and its operations — a subject upon which many lawyers entertain flattering misconceptions. John Dugard's essay on the law's liberal heritage is well written and documented; but it does not explore sufficiently the clash of value systems which lies behind recent legal developments and which constitutes the dilemma of the present-day judicial officer faced with the application and interpretation of laws. A stress on a set of more specifically legal values to which lawyers of different political persuasions could give allegiance would have been preferable to the norms of western liberalism which seem unlikely to serve as a rallying point for South African lawyers. Barend van Niekerk's essay on the police squarely raises and faces all the delicate questions about police performance in South Africa. He rightly emphasizes the influence on police conduct of the laws themselves, of the ideological tasks given to the police and the poor example emanating from higher levels of government. (An example of the latter being the Prime Minister's statement after police action against students that he would have been disappointed had they not acted as they did.) This paper stops just short of an effective description of the broad social and political determinants of police mal-performance. Colin Kinghorn highlights the defects in the operation of administrative bodies in South Africa and



directs attention very pertinently to the consequences of their generally all-white composition. However, the programme of reform offered by him takes small account of developments in administrative law elsewhere with the result that his proposals are partial and sketchy.

The defects of the remaining papers are more serious. Jack Unterhalter's discussion of law, apartheid and justice opens with a curious collection of quotations about law, including Gilbert's line about law being the true embodiment of everything that is excellent which is quoted in an inappropriately serious context. The quotations have a small bearing on the ensuing discussion of the relation between law and justice and of the violation of justice by the laws of apartheid. N.M. MacArthur opens his discussion of apartheid, the courts and the legal profession with a lengthy description of apartheid which, to this reviewer at least, has no relation whatever to the ensuing discussion. That discussion, moreover, is little more than a hodge-podge of apartheid provisions and decisions with no unifying theme. The analysis by W. Lane and A.P.F. Williamson of difficulties experienced by blacks in exercising their rights seriously understates the inadequacy of legal aid. (It is not enough that the courts, like the Ritz Hotel, are open to rich and poor alike) and does not acknowledge sufficiently the failure of the South African legal profession to discharge its wider social responsibilities. Donald Molteno's

historical review of the central problems in the relation between law, justice and morality is learned and impressive; but its place in an essay entitled "Change and Methods of Change" is questionable. Even his discussion of the minimum moral content of law does not seek to explain the apparent contradiction between the sanguine assumption that law without such a content is unenforceable and the continued and successful application of apartheid laws in South Africa. The essay concludes with a recommendation for the adoption of a rigid constitution with a bill of rights.

The real achievement of the report of the Legal Commission is to reveal the dimensions of the chasm between South African apartheid law and the precepts of justice, between the society's democratic and Christian pretensions and its legal system. Much of this is, however, an elaboration of what was already known. What is badly needed, and what the report does not offer, is a graduated programme of reform which takes account of relevant social and political realities. Without this the Commission's positive contribution is disappointingly slender. □

THE WETSWINKEL OF AMSTERDAM

by Churton Collins

Most people who come to Amsterdam are immediately struck, or (as it was in my case) moved, by its spirit. It is not scientific or even strictly rational to speak of spirit, but who can describe an experience of love except in such terms? . The people there are friendly and unified in the sense of being relaxed and tolerant. The middle aged bank teller deals with the freak without suspicion and it is a common sight to see long-haired school children helping the pensioner land his fish from the green turgid depths of one of the canals.

It is in this atmosphere that a number of institutions have sprung up whose only aim and object is to provide aid to those who need it — or to put it another way, to help those who are oppressed.

I had heard from certain Dutch friends whom I had met elsewhere in Europe, that in Amsterdam, the Hague and Rotterdam new organisations — called Wetswinkels — had been set up by law students. They told me about these after I had spoken of the dilemma facing me and other law graduates returning to South Africa — the dilemma being that entering conventional legal practice would take one into a select conclave with little immediate contact with those who really needed legal help and did not have the money to obtain it.

So in Amsterdam I went to the Wetswinkel in Onze Huis, Rosenstraat, where I was welcomed and shown round. The Wetswinkel was situated in a large old house and most of the action seemed to be taking place in a room where people were typing, writing, looking up files and just talking. It was then explained to me how the Wetswinkel was run.

It opened for 2 to 3 hours on three afternoons a week. The public were first taken to the Balie (the controller of the business) who asked for names, addresses and then simply what the nature of the problem was. As soon as he had ascertained the essential nature of the problem and that it was not entirely trivial, he would send them through to a large waiting room.

When the time came the client would be taken to a particular "consultant" who would be an expert in the branch of the law in which that client was involved.

In fact the Wetswinkel was divided into five sections each controlled by a "consultant". The sections were:

- (1) Family law
- (2) Housing and Lease
- (3) Consumer Law and Law of Purchase and Sale
- (4) Employment Law and Insurance
- (5) Criminal Law and miscellaneous.

The consultant would then freely discuss the problem with the client and the main details would be noted down. The consultant would then either give advice on the spot or else tell the client that an answer would be forthcoming in a few days.

It was then after the winkel closed that the real work would begin. Each section consisted of a group of about six people and these people would meet as a group to resolve the various problems as they arose. Advice was often solicited from members of the university legal staff and members of the legal profession who had pledged their support to the winkel.