BOOK REVIEWS

The Rule of Law: Foundation of Constitutional Democracy by Geoffrey de Q. Walker (Melbourne University Press), 1988 pages i-xxvi (including table of cases), 1-475 (including index). Price $62.95. ISBN 0 522 84347 6 (hardback).

In this large and superbly presented book from M.U.P., Professor Walker aims to revive the ideal of the rule of law and to return it to centre stage in legal and constitutional theory. For him, that ideal is no less than the central heritage of our society and 'perhaps all civilized society'. He sees the need to 'defend the ideal from its enemies and rescue it from its friends.' The former see the rule of law as an obstacle to social change. The latter equate the rule of law to the preservation of order and, by ignoring the constraints of law while attempting to preserve order, undermine both.

For Walker the rule of law is a legal and constitutional doctrine which reconciles two antagonistic drives — power and law. He spends a long first chapter searching for a more detailed definition rejecting some earlier attempts as too narrow and some as too inclusive, and finally settling for a fairly broad one. He starts with Joseph Raz's rule of law principles: laws should be prospective, open, clear, and relatively stable; government agencies should be guided by open, clear, stable and general rules and should be subject to natural justice; courts should be independent and accessible with the power to review the lawfulness of actions by other branches of government; and law enforcement officers must be prevented from using their discretion to pervert the law. However Walker adds the requirements of an independent bar, laws against private coercion (which he takes to be implicit in Raz), the general congruence of law with social values, and a general 'attitude of legality'. Unlike Raz, he requires that laws be general, applying equally to all citizens, *except* where there are 'appropriate' differences between them, in which case it is *wrong* to treat them equally.

He traces the history of the ideal that brought it to the fore in the sixteenth to eighteenth centuries. He then attacks the developments in jurisprudence, institutional practice, society and intellectual history in general which he blames for its decline.

He attacks positivism and especially the uses to which it has been put in its most debased forms. In England, Parliament was declared sovereign, a claim that Walker argues was completely wrong as a matter of case law. By this doctrine, the common law was subjected to Parliament rather than the other way around. In all Western countries, positivism's conception of law as the command of a sovereign affected the attitudes of legislators to law. As the command of the legislature rather than something that arose from the people, it was seen as something that could be changed at will. Law could be used as an instrument to change society rather than responding to those changes. At the same time the institutions of the state were taken over by a new class, 'a political-intellectual clerisy of power,' an educated elite which Walker claims has reached the summit of real socio-political power in England and Australia and whose 'vanguard' in legal affairs is the Critical Legal Studies (C.L.S.) movement. Only the 'empty symbols of power' (*e.g.* newspaper proprietorships!) are left to members of the old class. The clerisy are taken to task for their reliance on reason and for their 'culture of critical discourse' in which they require that claims be justified without reference to the speaker's social position or authority. They do not believe in the rule of law (especially that part of it that requires general congruence with social values) and have sought to remake society according to their own values through the use of law, pursuing such causes as equality among the sexes and between married and *de facto* couples. This produced a flood of legislation and the widespread overriding of common law. Consequently, law became harder to enforce for two reasons: increased ignorance of its myriad provisions; and resistance to a law which unlike the common law no longer accorded with popular beliefs and values, and no longer enforced traditional distinctions such as those between male and female, old and young, married and single, heterosexual and homosexual. Resistance builds up

and respect for law declines as exemplified in the Australian tax revolt of the 1970s. As resistance increases, the rule of law is increasingly sacrificed with more and more strict liability offences and torts, and increasing resort to retrospective legislation and administrative discretion.

The second jurisprudential theory that Walker attacks is (American) realism. He accepts that the theory can offer a framework for observation and criticism of law. He accepts that judges consciously or unconsciously slip their personal values into legal reasoning (p. 174) and the profound effect on the common law of 'the beliefs, interests and creative powers of lawyers and judges' (p. 166). Where he sees realism going fundamentally wrong and doing real damage to the rule of law is in its alleged conversion from a theory about what judges do into a prescription for what judges ought to do. This has led to the decline of the 'classical theory' of adjudication in which judges find the common law in the customs of the people and 'mediate' between the legislature and the people, acting like a 'step down transformer' to reduce what would otherwise be a lethal dose of legislation. In its place realism has given us the evils of judicial activism. Judges strike down legislation wholesale (something which, in this case, Walker does not approve), give sweeping interpretations to the Constitution and to legislation, make remedial decrees, use policy arguments, consider the effects of their decisions, and give free rein to their biases, leading to 'what some observers see as a judicial tyranny' (p. 182). These evils are aggravated by the emergence of C.L.S., which Walker sees as realism incarnated in more virulent Marxist form.

Although he claims that the ideal of the rule of law has suffered from the changes in jurisprudence and society that he identifies, he does not see it as a spent force. Not only does Walker maintain that it was the right ideal for the seventeenth century and right ever since, but he claims that intellectual developments are at last running its way and that the ideal is vital for the future. He sees the rule of law ideal as having fared badly during the age of the Cartesian/Newtonian paradigm. However, he claims that this age is drawing to a close and that the next intellectual age and its associated paradigm will be far more accommodating to rule of law ideas. He does not seek to accurately predict what the next paradigm is going to be but draws comfort from an eclectic selection of developments at the fringes of neurophysiology, paranormal psychology, studies of non-causal 'synchronicity', 'new age' settlements which are studying 'meaningful coincidences', metaphors of the brain as a hologram, gurus stopping their hearts, and so forth. There is a veritable flood of comment on a number of matters that is impressive for its range if not for its depth or co-ordination. In particular he notes the development of an appreciation of the 'inter-connectedness of things' and general systems theory which is one attempt to deal with that inter-connectedness.

In the last two chapters Walker indicates the theory of law (which he labels 'democratic') and the kind of institutions that could support a return to the rule of law. These include citizen referenda, recall of judges by popular vote, re-establishing the supremacy of common law, extensive private ownership of firearms ('the privatisation of crime prevention' — p. 393), and the introduction of a limited bill of rights. However, he does warn that such a bill might imply that other rights, namely property rights, are fair game.

I have tried to summarize Walker's thesis in neutral terms. Those who read the book may be surprised and put off by the level of abuse and invective that he delivers against the 'clerisy' and their supposed vanguard, the Critical Legal Studies movement — not to mention unionists, feminists and those who have 'unusual sexual preferences.' They may wonder at Walker's attempts to blame Auschwitz (p. 253) and the rise of the Nazis (p. 286) on the German 'clerisy.' They may be surprised to hear about the 'populist orientation of many judges in Britain and the Commonwealth (p. 272). They may baulk at a book which claims that inflation 'is a conscious act of policy on the part of government' by which it 'sets out to cheat and defraud the people' (p. 349), at the view that taxation amounts to the nationalisation of the individual's income (p. 347), and that statutory press councils amount to government control of the press (p. 381). There are real problems with such a style. It may deter most of the potential academic readership — something that he might in any case expect as so much of the book constitutes a condemnation of the 'clerisy' to which they arguably belong. More importantly, where invective is substituted for argument, the writer's thesis may be left without any real support. However it is not my concern to predict that some readers will throw down the book in disgust or that many others will be unmoved if they read on. In this review, I will confine myself to suggesting some of the real problems with his argument.

Power v. Law

The definition of, and need for, the rule of law is predicated on the antinomy of power and law. However he neither defines these concepts nor establishes the antinomy. All he tells us is that the 'pure form' of power is arbitrary might and that the pure form of law is a 'system of power checked by institutions or individual rights and channelled in such a way as to conform with a people's values and patterns of expectation' and that these are polar opposites (p. 1).

Even as stated, the 'pure forms' are not polar opposites — indeed the latter is defined in terms of the former! If we were to examine the massive and sophisticated literature on power we would find even less support. Max Weber sees power as the ability of one person to influence another to do what they otherwise would not do. Dennis Wrong sees it as the ability to influence the actions or beliefs of others.[1] Such abilities are derived from law, custom, charisma, personal empathy, perceived competence, the use of rewards and, least effectively, coercion. Talcott Parsons, someone whose conservative sociology and support for social systems theory should endear him to Walker, says power underwrites the social order.[2] It is not at all clear why a pure form of power should exclude power exercised through or with the support of law, given that this is the norm for most forms of power in most societies.

Walker's opposition between force and law is not based on modern sociology or political science. Rather it lies in a seventeenth-century conception of the problem which the rule of law was designed to address. The sovereign was seen to be applying arbitrary coercive power and was opposed by a law which was seen to emanate from the people. To modern eyes, such conceptions of power overly emphasised coercion, and failed to recognize the importance of non-state, non-coercive power. Likewise, the conception of law overstated the extent of common values, underplayed its role in preferring the values of some over others, and ignored the role of power in the formation of custom.

This is reflected in the theory of law which Walker suggests at the end of the book. This 'democratic' theory equates law to the 'living' or customary law of a people. This law invalidates any conflicting legislation, reducing it to 'power, force and suppression' (p. 362). It is one thing to make this claim for a law which is uncertain and subject to tendentious interpretation. It is quite another to do so against the institutions of representative democracy on the pretext that they have been taken over by the 'clerisy' and interest groups (especially where the main evidence for that takeover is alleged conflict between that legislation and the claimant's interpretation of the living law!). Walker says that this theory is 'compatible' with his notion of the rule of law but denies that the rule of law depends on it. In fact the very reverse is true. To establish the antinomy, it is necessary to adopt contentious views of power and law. Those views are hinted at when he sets up the antinomy, and inform his whole discussion.

The Negative Definition of the Rule of Law

Walker is motivated by what he sees to be denials of the rule of law ('it is only when we confront our opposite . . . that our real consciousness springs into fire', p. xxv). His definition is likewise negative. The rule of law 'manifests itself as an absence rather than a presence, rather like those other great negatives peace and freedom . . . it imports an absence of arbitrary coercion by governments or by other individuals or groups' (p. 3). Consciousness of opposites may well be a well tried method of firing up the troops, but there are real dangers for academic discussion in basing definitions on negatives.

One danger is that we may take a personal, national or class view of what is absent. Some see the last forty years as years of peace because *they* have not had to fight the war they feared. Others see this as a free country because *they* are not constrained in the pursuit of their goals. Similarly some may be moved to say that we live under the rule of law because *they* are not subject to arbitrary power, but others may be subjected to arbitrary power, especially non-state, non-coercive power, that is not subject to any control by law.

[1] Wrong, D., *Power: Its Forms, Bases and Uses* (1979).

[2] Parsons, T., 'Some Reflections on the Place of Force in Social Process' in Eckstein, H., (ed.), *Internal War: Basic Problems and Approaches* (1964).

An even greater danger lies in the attempt to define an ideal about the state, let alone the 'foundations of our constitutional democracy,' on the basis of what the state should not do. It is a virtue for an institution to refrain from punishing without trial, for example, especially when similar institutions freely indulge. However if that were its only virtue it would be better not to have the institution at all. The point of an institution must lie in something that it does or can do. The danger of a negative definition of the rule of law is that those positive things that the state can do will be forgotten or defined out of existence. It may be very important that it does those things and no more. But even an ideal of limited government cannot rest on the concept of limitation, it must look to the kind of government that should exist within those limits.

Of course, there will be endless debate as to whether it is a virtue or a vice for the state to aim for, say, equality of opportunity and a reasonable life for all. But debate should not be pre-empted or distorted by a definition of the rule of law that ignores the positive things that a state can do or sets up presumptions against state action.

The Combination of Ideals

Raz warns against incorporating too many ideals within the rule of law. There are other virtues of law — democracy, justice, equality, human rights and respect for persons.[3] Like the rule of law, these have a claim to be a key part of the (beneficial) foundations and heritage of the west, dealing with the content and sources of law rather than their form. Raz takes the International Commission of Jurists to task for incorporating 'every political ideal that has found support . . . in the post war years.'[4] Although Walker repeats the criticism, he combines ideals about the source of law (congruence with popular values and/or, as it turns out, judge made law) and its content (laws against private coercion) along with further ideals about form.

Walker has incorporated traditional ideas of the rule of law and other features of Western liberal democracy that appeal to him. This serves to make his ideal seem more attractive and opposition seem less reasonable. By making the ideal more comprehensive it also makes it easier for him to offer the rule of law as the foundation of constitutional democracy rather than one of several potentially competing virtues.

What he does for the other parts of our heritage is to 'co-opt' them to his cause. As in the co-option of erstwhile opponents, what is done is to take on board the minimum possible, and that which does no harm to the co-opter's cause. As to content, he has incorporated the 'night-watchman state' (laws against private coercion) but left out the rest. As to source, he has co-opted democracy by saying that the rule of law must be congruent with social values and customary law. This hardly gives full faith to democracy — especially when we see that his detailed proposals involve enforcing judges' unresearched beliefs about social values, reducing the power of the most effective and coherent forms of democratic expression and subjecting them to the least effective and coherent form of democracy (which happens to be the one that has been most successfully manipulated by conservative pressure groups). Even Walker's full blown 'democratic theory of law' offends on two democratic grounds. First, the current practices that constitute 'living' or customary law are, at least in part, based on the practices and preferences of dead people who would not be accorded a vote under any democratic constitution. Secondly, non-state power has an important role in the formation of custom (and, to a lesser extent, its continuance) and that power is not equally distributed. Thus the rule of law promises to protect ourselves from the power of the state and delivers us to the power of individuals.

Walker's Attacks on Opponents

Walker launches all out attacks on positivism, realism and Critical Legal Studies which he blames for the decline in the rule of law. Many objections can be raised about the way he attacks these theories and those who adhere to them. First, he lumps together those whom he attacks, and attributes the views of some to all. This allows him to either accuse all of holding the extremist or untenable views of a few members, or to assert inconsistency between an individual's stated views and the

[3] Raz, J., 'The Rule of Law and Its Virtue' (1977) 93 *Law Quarterly Review* 195, 196.
[4] *Ibid.* 195.

views she is supposed to hold as a member of that group. Secondly, in setting out theories with which he disagrees, he tends to quote their critics rather than those criticized and only discusses the most debased and distorted variants of the theories attacked.

Walker's characterisation of his opponents produces some strange bedfellows. Realists and critical legal scholars are all called positivists. Julius Stone is said to have brought realism to Australia (p. 175). Walker admits that Stone was a sociological jurisprude but says that this was just a variant of realism. This is nothing less than an historical and intellectual travesty. First, it was sociological jurisprudence that preceded realism and not the other way around. Secondly, Roscoe Pound, the acknowledged leader of sociological jurisprudence and the greatest influence on Stone, vigourously attacked realism, and realists defended themselves against him with equal vigour.

These travesties are important to his arguments. Walker claims that realism has had a malign influence on the Australian judiciary. The problem with this claim is that Australia never possessed any realists of note who could be said to have influenced our judiciary. Stone was one of the very few legal jurisprudes who did. Similarly the limited number of Australian adherents jeopardises Walker's claim that C.L.S. has a malign influence here. Hence anyone who is critical of Australian institutions is labelled C.L.S.. For example, Stan Ross's *The Politics of Law Reform*[5] is referred to twice as 'a C.L.S. work' (p. 262) and once as a 'C.L.S. influenced work' (p. 265) despite the fact that Ross does not describe himself as such, and in his entire book does not even cite a single person who does.[6] Perhaps the most remarkable combination is that of the 'clerisy' (which seems to comprise almost every graduate employed by the government) of which C.L.S. is the legal 'vanguard'. The collection of such a diverse group and the ascription of common purpose is astonishing.

After combining opponents in this way, Walker feels free to assert that the views of some are the views of all. He criticizes C.L.S. for its general acceptance of 'Marxist dogmas and solutions, despite the world's practical experience of Marxism from the Kronstadt dockyard atrocities of 1921 onwards' (p. 259). He ascribes to them the crudest of class-instrumentalist theories of law (*e.g.* 'the present legal system, even if it occasionally brings about justice, does so only for the purpose of legitimating an overall network of exploitation and oppression' — p. 257). This is despite the fact that such views are rejected by all modern western Marxists, let alone C.L.S., whose adherents generally eschew Marxism. He accuses them of wanting to impose their ideology on an unwilling and resisting population by force and hankering after the conditions of the Chinese cultural revolution (p. 258). Nothing could be further from the views of Unger, the pre-eminent Critical Legal Scholar, who attacks imposed or even preconceived solutions.[7]

Ascribing views to large and diverse groups of people allows Walker to claim inconsistency wherever the stated views of one contradict the ascribed views of all. However, some of the alleged inconsistencies are not even established. For example, Walker says that in the 1960s the clerisy

> proclaimed the end of the institution of marriage and waged a successful campaign for the acceptance of cohabitation outside marriage, arguing that people's sexual lives were no concern of the law. Now they have turned 180 degrees and are arguing for the imposition of legal obligations, similar to those under marriage, on people who have lived together but have specifically chosen not to undertake marital obligations. (p. 307).

Even if a change of mind over 25 years is a cause for criticism, no such cause is made out here. Both of these arguments can be clearly seen as applications of the principle that the fact of marriage should not affect the treatment of couples — either during the course of the relationship or at its dissolution. Walker perceives an inconsistency because he sees the earlier argument as a demand that cohabitees should not be punished and the latter argument as a demand that they should be punished. He claims that the imposition of 'liabilities to maintenance, transfers of property and most of the other incidents of a divorce settlement . . . punish[es] . . . extra-marital cohabitation in a way not done even at the height of the Victorian age.' The obvious flaw in this argument is that if the imposition of such liabilities constitutes punishment for cohabitation, then the imposition of the same liabilities on couples who have married punishes marriage. In fact neither constitutes a punishment

5 Ross, S., *The Politics of Law Reform* (1982).

6 For those who are curious, I do not regard it as libellous to call me an adherent of C.L.S. — merely grossly inaccurate: see Sampford, C.J.G., *The Disorder of Law* (1989) 143 ff.

7 'Critical Legal Studies' (1983) 96 *Harvard Law Review* 563.

for entering or terminating the relationship; they attempt to distribute the costs and benefits arising out of the relationship to the parties on termination.[8]

Walker does not attack the most prominent and well-regarded theorists from the schools he criticizes. Despite taking much of his definition of the rule of law from Raz, Raz is not even mentioned in Walker's dismissal of positivism. Similarly, we hear virtually nothing of the views of Llewelyn or Unger — the jurisprudential giants of realism and Critical Legal Studies. We do not even hear the views of Stone whom Walker has included within realists. Those cited tend to be lesser lights, or fellow critics. Among positivists, we only hear about Austin and the crudest of command/sanction theories. His summary of Critical Legal Studies is that of a critic (Louis Schwartz pp. 261-5). Walker's central criticism of realism, that it was converted into a theory about how judges should decide cases, is not supported by a single citation from a known realist, but from one of their most savage critics. He does not mention Llewelyn's insistence on the separation of the 'is' and the 'ought' and his sensitive analyses of judging in *The Common Law Tradition*.[9] Even in quoting critics he must be selective — English jurisprudes like Hart have always criticized realism for their *lack* of a theory of adjudication!

Walker attempts to justify this practice by arguing that it is the most distorted and debased versions of novel legal theories that have the most influence, not the theories in their more qualified, prudent and scholarly form. However this does not absolve us of the academic responsibility of tackling the most defensible versions of the views attacked, let alone license us to add to the distortions. It would of course be possible to take the same approach towards Walker's piece, distorting and debasing it (and only quoting critical reviews like Michael Kirby's[10] and this one). However, as Walker believes that it is the distorted and debased versions that have the most influence, that would merely help proselytise it. Indeed the reader may sometimes wonder whether Walker has already acted on that belief!

An Idea for the Future or One for the Past?

There is an inherent difficulty for a conservative theorist to convincingly appeal to past ideals on the basis that they are the key to an entirely different future. It is resolved in an essentially unhistoric way; according to Walker, 'we were right all along.' Francis Bacon, Descartes, Newton, the Oxford legal philosophers, virtually every common law judge over the last 200 years, and most of those with a tertiary education were wrong. We should all be prepared for the possibility that an idea backed by so great a weight of opinion is wrong. However, we would expect that error to be demonstrated by some new idea or collection of ideas rather than the elevation of an old one. If Walker's ideas do not find favour among today's intellectuals it might be because he is ahead of his time — but there are other possible reasons!

I am not able to comment on all of the eclectic range of ideas which he claims point towards a new paradigm. However, the one to which he attaches most attention, general systems theory, is not so much the idea for the coming age, but is on the way out in sociology. He says that law and social science has been completely innocent of serious thought on the subject (p. 70) but in fact there is a considerable literature on the subject in sociology and even some on law.[11] The heyday for systems theory in sociology was in the 1960s and there were a few attempts during the 1970s and early 1980s to apply it to law. However, under the weight of deconstruction both wilted. Embarrassingly for Walker the leading exponent of systems theory in jurisprudence is Niklas Luhmann, a conservative German positivist who argues that the increasing differentiation of societies and their need to respond to a rapidly changing international and physical environment means that the positivisation of law is the only answer.[12]

8 The ideas that laws operate exclusively, or even generally, through punishment, and that every legal consequence that imposes a cost on an individual constitutes a punishment, are so long discredited that it is surprising to find a jurisprude who still clings to them. It is especially surprising to find it coming from one who is so critical of crude command theories of law.

9 Llyewelyn, *The Common Law Tradition* (1961).

10 'Overshooting the Legal Runway', *Age* (Melbourne) 26 December 1988.

11 Discussed in Sampford, C.J.G., *op. cit.* Chapter 5.

12 Luhmann, N. (trans. King, E., and Albrow, M.), *A Sociological Theory of Law* (1985).

Failure to Address the Real Problems for the Rule of Law

There are real values behind the rule of law. However there are real problems with traditional concepts of it.

What do you do if it is not possible to 'find' the law and hence provide certainty? Can we ignore the fact that different judges reach different conclusions based on the same legal source material, especially when those conclusions are influenced by their atypical backgrounds, beliefs and broad political philosophy? The rule of law is supposed to provide a guide for behaviour, but what do you do where citizens do not wish to be guided by the law but seek to defeat its operation by seeking unintended consequences of the legislation? Much of the argument for the rule of law is based on criminal statutes. Does it apply to the bulk of laws which are not criminal and do not involve sanctions, and if so, does it apply in exactly the same way? As any change in the judicial interpretation of the law will operate retrospectively on the parties, can retrospective legislation be justified if undertaken for similar reasons?

The greatest criticism of, and disappointment with, the book, is that Walker fails to deal with any such problems. Indeed, his definition of the rule of law, and the requirements he claims to derive from it, exacerbate and add to them. For example, his insistence on general laws creates problems in a highly differentiated society. His inclusion of notoriously vague 'people's values' in the notion of the rule of law makes certainty extremely hard to achieve. His preference for judge-made law makes generality and coherence of law more difficult. His stand against a representative bench, the appointment of the once politically active, and his exclusion of the bench from the use of 'sociology' mean that it is extremely difficult for judges to really determine the 'living law' of the population.

Many of the theories that he criticizes respond to these problems either by abandoning the rule of law or by amending or supplementing its principles and institutions. Realism responded to the problems with the classic theory that judges 'find' the law. Much of the support for parliamentary sovereignty was moved by the severe reservations about workability and desirability of regulating a modern society on the basis of the common law. However, Walker attacks such responses as if the problems they attempt to address do not exist, even where he has acknowledged those problems himself. For example, his reply to those who argue for a bench that is more representative on the basis of sex, age or upbringing is that: 'under classical theory these factors are irrelevant; all that matters in a judge is integrity, judicial temperament and expertise in the law' (p. 196) and quotes Gibbs as saying that only 'merit' was relevant (p. 39). Judges are appointed to make decisions. As expertise and merit are not the only factors that affect the decisions, appointment criteria and procedures that ignore those other factors hardly seem rational. *Pace* Gibbs, this does not imply that every WASP male is assumed to have the same views or that the aim is to achieve a partial, biased bench. Given the inevitability of bias, the idea is to minimize its overall effect by balancing its potential sources.

One of the greatest problems in jurisprudence is to explain how it is that different judges (or academics) of equal ability can come to diametrically opposed conclusions using the same materials and techniques yet still feel constrained by those materials and techniques. The two most singularly unhelpful approaches are those that ignore the different results and those that ignore the constraints. Walker takes the former approach and spends a great deal of time attacking those whom he claims, at least in debased form, take the latter. Walker's ritual burning of straw men and women does nothing for the jurisprudential debate that goes on between those who recognise the problem.

Conclusion

In his Preface, Walker sets out his intention to defend the rule of law from its enemies and rescue it from its friends. Walker's effort may well make more enemies and his friendship may be a mixed blessing to those who value the ideals behind the rule of law and would hope that some legal philosopher could make something of them. When some philosopher does attempt to do so, Walker and those whose interests are supported by his arguments (such as the tax avoiders he so admires for their resistance to the clerisy) will constitute yet more friends from whom it must be rescued.

This is a great pity. The subject is important, there are important values to be noted somewhere beneath the rhetoric, and there are problems with the ideal that need to be addressed. A true friend of

the rule of law would recognize those problems and recast the ideal in a form suitable for society as it is now, not society as it was idealised to be.

CHARLES SAMPFORD*

* B.A.(Hons), LL.B.(Hons) (Melb), D.Phil.(Oxford), Research Fellow, Monash University, Senior Lecturer in Law, University of Melbourne (on leave).