

D Fraser, *Cricket and the Law*. Institute of Criminology, University of Sydney Law School, Sydney, 1993, pp. xii + 274.

David Fraser is a law teacher with a contempt for the rigid formalism and reliance on analytical reasoning which he feels characterises Australian legal scholarship. His credo is that of a group of North Americans who call themselves the 'Critical Legal Studies' movement. Now, of course, all serious study of law is critical. But this catchphrase serves to identify its adherents as iconoclastic critics of traditional legal techniques which over-emphasise the doctrine of judicial precedent and the purity of legal reasoning. For the most part, its disciples are politically leftist, pedagogically adventurous and vociferously contemptuous of traditional hierarchies within the legal profession. They also tend to revere the doctrines of certain modern French linguistic philosophers, whose reputations are greater abroad than in their country of origin! They tend to bespatter their writings with fashionable neologisms and words whose meaning is not fathomable by dictionary consultation, such as 'hermeneutic', 'deconstruction', and 'epistemological'. Fraser's own favourite vogue word seems to be 'interpretive', which, as H W Fowler points out, is a mis-construction.

Acting on the bold supposition that 'Australian legal scholarship is boring' (p. 1), Fraser decides to add spice to it by looking at popular culture and seeking to derive jurisprudential insights for it. He goes further. He argues that scholarship into fine points of contract, or the interpretation of clauses of the Australian constitution, are 'irrelevant'. They serve only a small corporate elite. 'We learn about law through popular culture and, if we look hard enough, we learn about popular culture through law' (p. 1).

To adduce evidence for this, he then makes the seemingly preposterous claim that one can learn more about law from playing and watching cricket than from studying legal textbooks. 'When we begin to see law and life as cricket, we can begin to take control over the construction of meaning in our daily existence' (p. 273). Having passed

more than 2000 days of my life watching cricket, lamenting only that I had not spent more, I find it most agreeable to learn that my time has been professionally invaluable! It would be interesting to test Fraser's thesis with the Inspector of Taxes next June! But much as I am an advocate of the academic respectability of Sports Law, I must confess that I attend cricket events to avoid, rather than confront, the law. Sport is an antidote, a civilising, joyous antidote, to the essentially solemn discipline of law. Perhaps here, I differ from Fraser. Disputes on the cricket field profoundly upset me. If the 'spirit of cricket' is a myth, it is a myth I prefer to believe in rather than have destroyed.

For Fraser's book seems to imply that controversy and unseemliness are the daily round of cricket. 'The entire history of cricket is permeated with dramatic instances of total and public disrespect for the integrity of umpires' decisions' (p. 101). On the contrary, it seems to me that, considering the high potential for conflict, impatience and ill-feeling inevitable in a sport played for lengthy sessions in hot conditions, and requiring of batsmen and fielders concentration without respite, the ratio of reportable incidents to the number of hours played is remarkably low. Moreover, many of cricket's alleged *contretemps* are exaggerated to suit the penchant of the press for sensationalism.

On my return from watching the Australians play in Pakistan recently, I was informed by some friends that a riot had taken place and that the Australians had been forced to play on pain of death. I presume that this allusion was to a Limited Overs match at Gujranawala, the only match in the whole seven weeks tour that was marred by rain. I was there. I did not see any riot! There was a huge crowd, and some pressure on the gates, for some counterfeit tickets had been sold. The crowd, of course, wanted to see some cricket. And, to accommodate them, the teams graciously agreed to play a sixteen over a-side match, even though the ground was palpably unfit. Bowling was from one end only, the umpires exchanging positions at the end of each over. Mushtaq Ahmed bowled ambidextrously, imitating, *inter alios*, Wasim Alzram. Warne

clowned, in Chaplinesque fashion. The whole event testified to the good-naturedness of the players and the co-operativeness of the management. The day was characterised by great good humour.

The impression that a newcomer to cricket might have from first reading this book is that cricket is a pursuit riddled with conflict and ill-will. I cannot subscribe to that. That sportsmanship in cricket is a myth is itself a myth. When all is said and done, if a tennis player is the victim of a bad line call, he or she can attempt with the next point to redress the injustice, unless the error occurs on match point. But when a batsman is wrongly given out, there is no *locus penitentiae*. He is left to brood in the pavilion on the slings and arrows of outrageous fortune. Given the extreme cruelty of this position, it is perhaps remarkable that the instances of visible dissension on the cricket field, at least by batsmen, are as few as they are.

Fraser, a Canadian who knew nothing about cricket until 1988, has embraced the game enthusiastically. He has absorbed its character, its entrancement, its science, its aesthetics. But inasmuch as he admires D Birley's book *The Willow Wand*, (which, to my mind, is the most odious book in the literature of cricket), his absorption has been perverted. Exceptions do not prove a rule in cricket. There is an ethic, there is a morality. And to suggest that this is un-Australian and wimpish is defamatory to the many Australian cricket lovers who deplore bad sportsmanship. Australian cricket fans are not all imbued with a 'macho' vitality which cultivates universal admiration for bouncers sledging and intimidation (p. 162). I have met plenty of Australians who deplore the posturings of Merv Hughes, the 'Madonna of Cricket' (p. 206). And Fraser's contempt for *laudatores temporis acts* such as the late Bill O'Reilly (p. 119), is misconceived if he is seeking to deny that in certain aspects the cricket of yesteryear was better. The facts speak for themselves. There is a famous photograph of Bradman being chaired off the field by his Queensland opponents after he had broken the record against them by scoring 452 runs. In the 1930 Lord's Test Match, 120 overs per day

were bowled. In the 1950s, spinners took two-thirds of wickets in first-class cricket. In 1960, a crowd of 90 000 watched a day's Test cricket at the MCG. The Mexican wave had not been invented! Wickets were uncovered. Helmets were not thought to be necessary. And there was no one-day cricket. These are facts, not a sentimental invocation of 'a standard position in ethical and legal discourse'.

Notwithstanding that I do not care for some of the author's stances, I cannot help admiring this book. It is closely reasoned, well researched and full of insight.

Fraser's method is evident in the third chapter, where he cites a famous cricket case in which Lord Denning rhapsodises on cricket in County Durham. Using a technique reminiscent of Heinrich Heine, he debunks the myth by dramatic irony. Quoting Simon Barnes' witty catalogue of cricketers who would be consigned to Dante's 'Inferno' ('the cheaters and the sledges, all the men who cheat, batsmen who refuse to walk'), he then proceeds through the rest of the book to defend these miscreants, on the grounds that:

(a) the law is usually unclear as to what constitutes an offence; (b) even if it is clear, there are even extenuating circumstances; and (c) the actions of the villains, at first sight totally reprehensible, are on closer examination justifiable in themselves, or excusable in the total context in which the game takes place.

The essential dilemma is between formalism and a 'higher ethic'. Are there circumstances in which the laws of the game should be bent, or even breached, to serve some higher value? Fraser convincingly argues that even the cardinal principle, 'The umpire's decision must always be followed', is inadequate to provide a universal code of conduct. And indeed, there have been cases where such deviation from the principle has been applauded. When Umpire Tom Brooks (not 'Brocks' [p. 196]) in the Centenary Test of 1977 gave Randall out, caught by Rod Marsh, that generally pugnacious wicket-keeper called him back. He had not taken the ball cleanly. This was rightly seen as an act of magnanimous

sportsmanship. But Fraser claims that it denied the infallibility of the umpire, and to that extent, demeaned Tom Brooks' stature. Another and perhaps even more sportsmanlike instance, was Visnawath's request for the recall of Bob Taylor in the Golden Jubilee Test at Bombay in 1980. For there the intervention was by the Captain of the Indian team, who had not taken the catch (p. 53). Fraser argues that it is impossible to frame a general rule of good conduct in such circumstances. The context must be examined. Both these incidents took place in a Centenary Match - a celebration of cricket, not part of a normal, competitive Test series. This, says Fraser, explains the unusual magnanimity of the participants.

The contextual approach to moral issues is even more starkly illustrated by the extraordinary sequence of events that took place in Perth in the series between Australia and Pakistan in 1978/79. A whole chapter entitled 'Mankad, Javed, Hilditch, Sarfraz and this Rule of Law' is devoted to the series. The 'Mankading' of Sikander Bakt and the dismissal of Andrew Hilditch for 'handling the ball' when he obligingly handed it back to the bowler, Sarfraz Nawaz - these incidents, says Fraser, cannot be understood in a vacuum. They occurred after an acrimonious previous match at Melbourne. And, says Fraser, racial aspects and previous history of Pakistan/Australian animosity must be culled as well.

The myth of the impartiality of umpires is challenged by Fraser in several places in the book. For example he argues (pp. 65 and following) that Umpire Robin Bailhache's excessively formalistic attitude led to a blatant discrimination against Mushtaq Ahmed for running on the pitch in a match between Victoria and Pakistan in 1990 - when the Pakistanis left the field in protest.

It must, I think, be conceded that the pretence of infallibility of umpires has now been seen to be a fairy tale by the innovation of a third umpire and perhaps by that of the match referee. These innovations, to my mind, are destructive of the authority due to umpires. In September 1994, watching a Limited Overs match between Sri Lanka and Australia

in Colombo, I derived malicious satisfaction when the third umpire called on to adjudge on a run out of Mark Taylor, was obliged (after a 5 minute delay) to rush on to the field to inform the field umpires that the camera had not been switched on! Taylor stayed, in circumstances where, without the availability of the electronic device, the human umpire might very well have given him out. The existence of a third umpire encourages pusillanimity! More significantly, the frequent use of it throws retrospective doubt on the concept prevalent before 1993 that the umpire was always right.

At Rawalpindi in the following month, I watched a Limited Overs match between South Africa and Pakistan. On this instance, the match referee had the temerity to cause an umpire's signal for a leg-bye to be revoked, on the ground that the television replay had shown that this batsman had hit the ball. Interference of this kind is surely a form of defection.

Fraser examines the contextual ambivalences of other infamous incidents and controversies. Sledging, intimidatory bowling, 'walking', illegal throwing - they are all subjected to an analysis which seeks to show that there are no verities. Fraser takes what he calls a 'post-modern' approach which, so far as I understand that fatuous term, amounts to a rejection of rigid morality. Perhaps the most convincing example of this is that concerning the lbw rule discussed in a Chapter entitled 'Leg Before Wicket Causation and Meaning of Life' (ch. 9). The text of the law is subjected to careful consideration. Fraser highlights the similarities of the umpires' dilemmas with those confronting a judge in a case of negligence or crime on the problem of causation and the difficulty of deducing from what did not happen that which would have happened had it not been prevented from doing so. (Compare an attempt to commit a crime, which is itself a crime). Apart from being poorly drafted, the present lbw law, in my view, prejudices the leg break bowler.

The leg bye rule, by which a run is disallowed if the batsman has not attempted to play a shot, also raises the most thorny questions of

intention and *mens rea*. It requires Solomonesque judgment from an umpire. It goes without saying that these matters, according to Fraser, cannot be resolved and appreciated without a complex appraisal of the context in which they are made. For instance, according to Fraser, some umpires are likely to be more severe on tail-end batsmen, and on vociferous bowlers! And, of course, according to Fraser, national and class biases and racial prejudices enter into it! He even suggests that New Zealand umpires, statistically shown to have given more lbw's against New Zealand, may have been motivated by 'native Kiwi politeness' (p. 103).

Discursive and allusionary as this chapter may be, Fraser has correctly pointed out the poor quality of draftsmanship in the lbw law - a criticism that may be validly made about some of the rest of the laws of cricket.

This is certainly the most stimulating book ever written on sport from a legal standpoint. It is witty, pithy and full of hard-hitting argument. It may be enjoyed by lawyers and lay persons alike. And the reader should on no account omit to read the notes, which, apart from testifying to the wide reading of the author, contain much essential argument.

Has Fraser succeeded in his grandiose claim that cricket has more to teach about law than legal textbooks? I cannot decide this until I have taught from the book. Can I persuade my Faculty that it should be prescribed reading for Law students? The chances are slim!

It would, however, be a great challenge to construct a jurisprudential course based on it. For every page bristles with issues debated at length by legal philosophers over the ages. And, for the most part, their writings *are* more boring than the book of David Fraser.

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