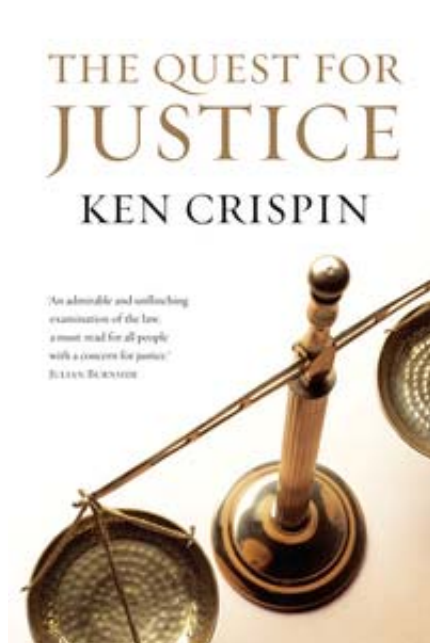


The Quest for Justice



The Quest for Justice
Ken Crispin
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This is above all a thoughtful work. The author assumes the reader to be intelligent and he treats the reader with respect. It is not a dispassionate book – Ken Crispin’s hopes and aspirations for society are clearly stated. He also expresses little patience with those who would impose their prejudices and bigotry on others.

The excellent introduction (22 pp) is essential reading, as it clearly summarises what the entire book is about. It could well stand alone as an essay on the subject and, on its own, would be valuable for high school legal studies students as well as those commencing a law degree. The introduction sets the tone for the book as well as introducing the author to us. I wish more authors of non-fiction would go to this

trouble to take the reader by the hand and say, “This is what I am going to write about and these are some of the conclusions I will come to and here are some of the arguments.”

Ken Crispin has been a barrister and a judge, rising to the pinnacle in the latter career as president of the Court of Appeal in the ACT (Australian Capital Territory). On the evidence of this book, he would have been a fair and compassionate judge, with a keen sense of history and the role of the law in a civilised society. He would also have experienced the frustration of having to pass judgement on the basis of laws he did not agree with.

I need to declare that I was trained as a lawyer and spent much of my time in practice working with and for people who were considered and who considered themselves as being the victims of inequalities in society and of unfair laws. I bring that background and my tendency to become angry at injustice to the reading of this book.

Although the five chapters build on each other, each can be read on its own, as each clearly discusses the issues, gives historical background, gives arguments for and against propositions and makes it clear where the author stands. Thus, in the first chapter – ‘The Law: does it reflect our values?’ – Ken Crispin sets out some of the origins of our current (Australian) legal system and laws, and tussles with the issue of whether our laws should reflect a moral position or simply set rules to try and keep citizens safe from harm and from interference in their pursuits. He asks questions about the nature of rights and to what extent the State should be allowed to curtail those rights and their expression. There is also the question of whether laws should simply express the wishes of the majority, or take account of the needs and aspirations of minorities.

Ken Crispin is critical of the tendency for politicians to make ever more laws in order to be seen to be doing something in response to those who clamour for something to be done about *it*. He mentions some of the ludicrous outcomes of this and points out that often the existing laws are more than adequate to deal with new situations. He also clearly tackles the huge disparities between people’s perceptions and realities in such areas as how much crime involves violence and how many people, once charged with an offence, are subsequently acquitted.

In Chapter 2 – ‘Our system of Justice: is it just or just adversarial?’ – the author continues his analysis of the working of the Courts as instruments of our society. While admitting that the adversarial system is not perfect, he is of the opinion that it works well as a test of the available evidence. He enjoys pointing out how much better it is than trial by combat or trial by water (if you

float you are guilty, if you sink you are innocent). In this chapter, Ken Crispin discusses issues of the nature of truth, legal ethics, problems of evidence and the costs to society and individuals (financial and emotional) in getting it right. He argues that there need to be some compromises, because the cost of pursuing absolute truth (even if it were possible) would be prohibitively expensive.

He spends a substantial part of this chapter examining issues around prejudice (and pre-judging) and perceptions (often formed by inaccurate or lazy journalism) that too many people who are guilty of a crime are getting off on technicalities. This theme of bad reporting, allied with cynical political ambitions, comes up again and again in the book. People's perceptions, when surveyed, have little resemblance to the actual situation: in the state of the law and its ability to cover possible criminal activity; in the amount of violence perpetrated against people; in the rate of convictions; in the severity of sentences; and in the costs to individuals and society of taking away from judges the discretion to deal with each case in the best way, taking all known factors into account.

Issues relating to sentencing are dealt with very clearly in the third chapter – ‘Sentencing: have we lost our way?’ Again, much of the blame for people's misconceptions is laid at the feet of the media and over-zealous politicians. The author deals clearly with even the most difficult questions, including capital punishment, preventative detention and sentencing people with mental illness. He is open about where his own preferences lie. He is against mandatory sentencing and against capital punishment; the former because it precludes judges from making just decisions in the light of the evidence in and the circumstances of individual cases and the latter as being hypocritical (the idea that killing someone teaches people not to kill) and fraught with error (the number of condemned people subsequently found to have been wrongly convicted).

The real value of this book lies in the fourth and fifth chapters – ‘The War on Drugs: are our strategies sound?’ and ‘The War on Terror: or a surrender of rights?’ In these Ken Crispin launches into a critical appraisal of what is wrong with our approach to both. The first three chapters are important, in that they give us an insight into how the author thinks about the role of the law, justice, the media and law-makers, as well as giving essential context and information about the history and workings of our legal system, with comparisons to the USA and the UK.

The main thrust of Ken Crispin's writing about the use and abuse of drugs, is that personal use should be treated as a social issue, and a medical one when use leads to harm, as is the case in a growing number of countries. He argues that decriminalisation of personal use would take supply out of the hands of criminals and stem much of the flow of money currently going to those criminals and to the terrorist organisations they fund. He calls for an end to the dogma that “this will send the wrong message”. He quotes the research in other countries that shows the wisdom of decriminalisation and asks politicians to do what is right rather than what is expedient to win elections. He argues bluntly that prohibition is not effective and he gives evidence to back up those arguments.

In the final chapter, Ken Crispin roundly condemns the governments of Australia, the USA and the UK for steadily and cynically eroding individuals' rights in the name of preserving them. He argues that to treat some people as falling outside the law on no more than a suspicion that they may have done something wrong plays into the very hands of the terrorists who would undermine the way of life we enjoy in our ‘free’ societies. After all, these countries hold themselves up as bastions of human rights and the rule of law and, at least in the case of the USA, would impose these attitudes on other countries. As the author points out, this is the height of hypocrisy and completely counterproductive. He also condemns any use of torture, as well as incarceration without an independent and fair trial.

Ken Crispin warns us, in very strong language, to be very careful if we do not want to lose those rights and freedoms we have come to expect and for which so many people have struggled and fought for hundreds of years in order to drag us out of the Dark Ages. He hopes, as do I, that it is not too late to reverse this trend of erosion of rights and freedoms in the name of protecting our way of life. As he points out, it is in situations where that way of life is being threatened that we need to staunchly hold on to our nerve and apply our civilised principles fairly and honestly.