

***What Next In the Law*, The Rt. Hon. Lord Denning,
London: Butterworths, 1982. Pp. xxiii, 352, \$24.95 (cloth),
\$14.95 (paper).**

Having been trained in a Scottish law school I was imbued from the earliest with a healthy disrespect for the English law lords and particularly for those who, like Lord Denning, pretended to an understanding of the spirit of the Scots civilian tradition. Indeed I have always suspected that the Master of the Rolls often expressed admiration for the Scots-born, but English-trained, Lord Mansfield is at one with Samuel Johnson's evaluation of that great jurist:

"Much may be made of a Scotchman if he be caught young."¹

Mindful both of my own prejudice, and of the fact that I have never joined in the widespread adulation of this judge, I felt it an appropriate corrective to re-examine the three books which immediately preceded this volume² and to read again the manifold reviews of what may accurately be called the author's *péchés de vieillesse* (sins of old age).³

It can be said right away that *What Next In The Law* follows the pattern established in the preceding books and that it shares both their strengths and their weaknesses. That is, the format comprises an assessment of the old law of the chosen area; the story of Lord Denning's battle to secure reform; an evaluation of the present state of the law; and a plea for further change. In this manner the writer, following a child's guide to the biographies of Bracton, Coke, Blackstone, Mansfield, and Brougham attacks the problems associated with the use of juries, the dilemma posed by increasing costs and the provision of legal aid, the need for reform in the law relating to personal injuries, libel, confidence and privacy. The volume closes with an examination of the argument for a Bill of Rights and a re-examination of a favourite topic, the misuse of power. The epilogue is amiably quaint savoured, as it is with a little malice directed at an arch-enemy, Lord Hailsham.

As with the other books, also intended for a wide readership, this volume is eminently readable, always entertaining due to the gossip, invariably lucid and brims with vitality. But again it suffers the weaknesses

¹Boswell, *Life of Johnson*, ed. G.B. Hill (Oxford: Clarendon Press, 1934) Volume II, Spring 1772, at 194.

²The earlier works are: *The Discipline of the Law* (London: Butterworths, 1979); *The Due Process of the Law* (London: Butterworths, 1980); and *The Family Story* (London: Butterworths, 1981). Prior books were: *Freedom Under the Law* (London: Stevens, 1949); and *The Road to Justice* (London: Stevens, 1955).

³The phrase derives from the title chosen for some late minor compositions by the Italian composer Gioachinno Rossini (1792-1868).

of its companions. The unvaried staccato style does become tiresome while the unrelieved absence of humility demands the complaint that the book constitutes "an extra-ordinary paen of self praise".⁴

The tendency to exaggeration, coupled with a reluctance to avoid over-generalisation, ensures that the reader is never exposed to analysis of any depth. Yet these defects are minor when compared with the exposition of the questionable bases of the judgments of which Lord Denning is inordinately proud.

It has been suggested⁵ that Lord Denning's strengths of judgment lay in his ability to appreciate social change, in his legal and technical mastery of precedents and in his moral courage. There can be no question of his courage however it can be argued that his grasp of change in society has not been faultless and that his overt manipulation of precedent is open to challenge. The present volume confirms the devastatingly adverse opinion of Professor John Griffiths⁶ to the effect that the highly personal, idiosyncratic and unprincipled approach to judging, which has been the hall-mark of Lord Denning's judgments, is just as likely to result in "bad" decisions as it is in "good" decisions. Likewise the flaws in the notion of dispensing justice according to the robust common-sense of the Master of the Rolls has been convincingly exposed by Professor Patrick McAuslan.⁷ The latter's analysis exposes a racist attitude toward immigrants⁸ while Dr. Dugdale's⁹ reading reveals a paternalistic appreciation of the place of women in society which would enrage the most non-militant of women.

Lord Denning's attacks on decided cases has provoked despair in both Canadian¹⁰ and English¹¹ legal practitioners. It is obvious from this book and from the others that the writer has never understood the impact of his guerilla warfare against *stare decisis* on the art of "preventive lawyering". And maybe what is worse, *What Next In The Law* carries on the writer's campaign against the members of the House of Lords comfortable in the knowledge that there can be no response. Therefore what we are reading is an appeal to the people for confirmation of the rectitude of Lord Denning's decisions together with the evoking of derision for the positions taken by his adversaries and superiors.

⁴Dugdale, Review of *The Due Process of Law* by Lord Denning (1980) *N.Z.L.J.* 231, 232.

⁵Schmitthoff, "Lord Denning and the Contemporary Scene" (1974) 6 *Man. L.J.* 11.

⁶Review of *The Discipline of the Law* by Lord Denning (1979) 42 *M.L.R.* 348.

⁷Review of *The Due Process of Law* by Lord Denning (1981) 44 *M.L.R.* 233.

⁸They go to Britain for the social security, once there they bring in their relatives and go on to multiply excessively.

⁹*Supra*, footnote 4.

¹⁰Mary Southin, Q.C., "Lord Denning" (1970) 5 *U.B.C.L.R.* 1.

¹¹Powell, Review of *The Discipline of the Law* by Lord Denning (1981) 5 *Nova L.J.* 527.

In addition, this volume carries further the writer's belief in judicial elitism untrammelled by the knowledge of the fundamental issues raised and research carried out in the United States.¹² Lord Denning portrays himself as judge superior both to the elected representatives of the people and to Ministers of the Crown, at which point we are on the path to self-deification.

Nevertheless all of the above does not lead to the conclusion that Lord Denning is a bad man. Indeed his judicial record makes a decent case for a good man, but it does show conclusively that the Master of the Rolls is not a great man. There can be little doubt that he has been a reforming judge of considerable importance as this volume shows very clearly. That this review should read like the recording of the fall of an idol is due to the untoward hero-worship and uncritical adoration accorded to the author in past years.¹³ It says a great deal for the courage of the writer that he has chosen to give up the security of silence and to expose himself to the approbation of reviewers by publishing these books in recent years.

To return to the beginning of this review: if we are to engender in our students a pride and enthusiasm for their legal system surely it is misguided for us to encourage them to go awhoring after foreign gods. It is for this reason that I take issue with the opinion expressed by Mary Southin, Q.C.¹⁴ that Lord Denning is no "Little Englander". On the contrary, I have always felt that Lord Denning's enthusiasm for the achievements of Commonwealth lawyers¹⁵ be they African, Australasian, Canadian or Indian to be analogous to Johnson's appreciation of the aspirations of women to the 18th century pulpit:

"Sir, a woman preaching is like a dog's walking on his hind legs. It is not done well; but you are surprised to find it done at all."¹⁶

As is obvious from the above, *What Next In The Law* is a provocative book which will be widely read with profit.

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¹²Glazer, "Towards an Imperial Judiciary?" (1975) 41 *Pub. Interest* 104. See now Rebell and Block, *Educational Policy Making and the Courts: An Empirical Study of Judicial Activism* (Chicago: University of Chicago Press, 1982).

¹³The publication of this volume provoked considerable criticism resulting in its withdrawal for correction and prompting ultimately Lord Denning's resignation as Master of the Rolls, July 1982.

¹⁴*Supra*, footnote 10, at 12.

¹⁵Denning, "Let Justice be Done," Fifth Wilfred Fullager Memorial Lecture, Aug. 20th 1974, (1975) 2 *Mon. L.R.* 3; "Let Justice Be Done", Tenth Annual Manitoba Law School Foundation Lecture, Sept. 18th 1974, (1975) 6 *Man. L.J.* 227.

¹⁶*Supra*, footnote 1. Volume 1, July 31st 1763, at 463.

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