***Denning: The Discipline of Law*, The Rt. Hon. Lord Denning, M.R., London: Butterworths, 1979. Pp. 331. $21.95 (cloth), $12.35 (paperback).**

Throughout a lengthy judicial career, Lord Denning has exerted an abiding influence on the course and development of English common law. Writing in *The Times* of 5 January, 1977, Sir Leslie Scarman, a Lord Justice of Appeal and first chairman of the English Law Commission, went so far as to say: "The past 25 years will not be forgotten in our legal history. They are the age of legal aid, law reform — and Lord Denning."[1] Irrespective of whether we share Lord Justice Scarman's view (and there are many who do not), we may welcome the publication of *The Discipline of Law* on the occasion of Lord Denning's 80th birthday: for the book provides the reader, layman and specialist alike, with a personal survey by the Master of the Rolls of some of the principal developments in English law during the past quarter of a century and more.

The theme that runs like a connecting thread through the essays that comprise the book is succinctly stated in the preface. It is "that the principles of law laid down by the Judges in the 19th century — however suited to the social conditions of that time — are not suited to the social necessities and social opinion of the 20th century. They should be molded and shaped to meet the needs and opinion of today."[2] In pursuit of this theme Lord Denning examines some of the principles where progress has been most marked and in which he himself has taken some part. He quotes extensively (and, one might point out, selectively) from his judgments. He quotes himself, he explains, "not out of conceit" but in the hope that proposals contained in the judgments which have not met with approval might "be discussed in the Law Schools: and perhaps in future years find acceptance."[3]

The book is divided into seven essays, each of which is devoted to examination of a legal principle that has developed and changed in response to the challenge of the changing social conditions of the 20th century. The topics canvassed are: the construction of documents; misuse of ministerial power; *locus standi;* abuse of "group" powers; *High Trees;* negligence; the doctrine of precedent. The *modus operandi* is identical in each of the essays. Lord Denning first delineates his problem and then proceeds to discuss the solution that it has received at the hands of the modern judiciary. He makes copious use of his judgments and other writings and connects them all together with a running

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[1]Scarman, "The Age of Reform" (London: *The Times)* Section II.

[2]Denning, at v.

[3]*Ibid.*

commentary that is replete with observations concerning recent trends and developments. The tone of the whole is unashamedly subjective and one detects a note of self-justification throughout. The subject matter, as evidenced by the list of topics canvassed, is vast. Through it all, however, sight is never lost of the underlying theme: that the law must be made fit for the times in which we live.

As Lord Denning puts his case, making the law fit for the times in which we live means rejecting a purely technical approach. In the opening essay, devoted to the construction of documents, he claims that the lawyer should not let "the words of the deed be the masters: but so construe them — adapt them as the occasion demands — so as to do what justice and equity require."[4] The argument recurs in one form or another in each of the essays in the book. It finds a metaphorical formulation in the *Romanes Lecture* delivered at Oxford in May 1959 and liberally extracted in the final essay. There Lord Denning argues that a mechanical, purely technical, approach "is all very well for the working lawyer who applies the law as a working mason lays bricks, without any responsibility for the building which he is making. But it is not good enough for the lawyer who is concerned with his responsibility to the community at large. He should ever seek to do his part to see that the principles of law are consonant with justice."[5] It appears that Lord Denning is in agreement with Plato that in a well-ordered society the law should be in accord with the dictates of equity and justice. He holds further that when the law and justice are out of step not only is the public's confidence in the law shaken, but the very stability of society itself is undermined.

The claim that the principles of law should be consonant with the demands of justice and equity involves calling into question an inflexible application of the doctrines of precedent and *stare decisis*. This Lord Denning does implicitly throughout the book; but it is in the seventh essay that the issue is met head on. With his own position that the law must be ever ready to respond to the challenge of changing social conditions he contrasts the strict constructionist approach of Lord Simonds, who incidentally figures as the *bête noire* of the entire narrative. The *Midland Silicones* case is cited. There Lord Simonds stated that he would not "easily be led by an undiscerning zeal for some abstract kind of justice to ignore our first duty, which is to administer justice according to law, the law which is established for us by Act of Parliament or the binding authority of precedent."[6] Lord Denning says that it was the inflexible attitude towards precedent and *stare decisis* of law Lords of the Lord Simonds ilk that led in large part to his decision to step down from the House of Lords. For in the House of Lords, he points out, a

[4] *Ibid.*, at 31.

[5] *Ibid.*, at 292.

[6] *Ibid.*, at 290.

dissenting opinion is of little effect; while in the Court of Appeal it can be of some good. As examples of instances where a dissent in the Court of Appeal pointed the way for new development the cases *inter alia* of *Conway* v. *Rimmer*[7] on crown privilege, *Padfield's* case[8] on ministerial responsibility and *Candler* v. *Crane, Christmas*[9] on negligent statements are listed.

As one might guess, Lord Denning applauds the 1966 Practice Statement by the House of Lords. He regrets, however, that the statement was not meant to apply elsewhere than in that House. He argues that even intermediate Courts of Appeal, on special occasions and in the absence of higher authority on the subject under consideration, should play their part in ensuring that the law keeps pace with contemporary conditions and contemporary thought. Which is not to say that the Master of the Rolls is opposed to the doctrine of precedent. He is not "All that I am against is its too rigid application . . . . . [*sic*] My plea is simply to keep the path to justice clear of obstructions which would impede it."[10]

What one misses amidst all this talk of bringing the law into harmony with justice is an analysis of the principles in accordance with which justice is to be understood. The issue is raised nowhere in the book, though it is central throughout. In an earlier work, *The Road to Justice,*[11] "Lord Denning did provide some indication of the kind of thing he might have in mind. He said: ". . . justice is not something you can see. It is not temporal but eternal. How does man know what is justice? It is not the product of his intellect but of his spirit. The nearest we can get to defining justice is to say that it is what right-minded members of the community — those who have the right spirit within them — believe to be fair."[12] This is hardly a penetrating analysis; and perhaps it is not fair to demand an ontology of justice from Lord Denning. For he is a member of the practicing judiciary, concerned not with the academic jurisprudential niceties, but with the concrete application of legal principles to complex contemporary problems. However, one cannot help but think that the absence of a closely-reasoned conceptual analysis is a failing. Certainly it makes Lord Denning an easy mark for critics who would claim (though to my mind wrongly) that his talk of justice is a convenient cloak for judicial caprice and arbitrariness.

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[7][1967] 2 All E.R. 1260 (C.A.).

[8][1968] A.C. 997 (H.L.).

[9][1951] 1 All E.R. 426 (C.A.).

[10]Denning, at 314.

[11](London: Stevens, 1955) 118 Pp.

[12]Denning, at 4.

Comparisons are odious and, more often than not, unenlightening. Is Lord Denning the greatest judge of the day, as Lord Justice Scarman seems to think? Or does this honour belong to Lord Reid? Do his judgments display the breadth of vision and legal acumen of an Atkin? Will his influence be lasting; or will it be ephemeral? "Questions such as these are overly simplistic; if asked at all they are better left to a time when the obfuscating clouds of controversy that have surrounded the man have lifted. What one can confidently say about Lord Denning is that he has been actuated throughout his judicial career by a desire to see that the law is brought into conformity with the demands of contemporary conditions. This goal, no matter how strongly one may disagree with his perception of the time and of the dictates of justice, deserves our commendation.

CHRISTOPHER P. CURRAN*

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*B.A., M.A. (Memorial University of Newfoundland). LL.B. candidate, Faculty of Law, University of New Brunswick.

Environmental Law Commentary and Case Digests,

Robert T. Franson and Alastair R. Lucas, Toronto: Butterworths, 1978. Pp. 400. $15.50 (paperback).

This book is a bound edition of Volume I of the authors' 6-volume looseleaf service "Canadian Environmental Law".

The scheme of the 6-volume service is such that Volume I provides a written text describing and analyzing the subject matter of environmental law. The second part of Volume I contains digests of environmental law cases.

Volumes II to VI of the service contain the text of various statutes and regulations dealing with environmental matters. These matters are sub-divided by jurisdiction.

The 6-volume service has been well received which is not surprising given the eminence of its authors and the utility of a service which is updated four times each year. Since its publication, eleven updates have been issued.