

Lord Denning

The Discipline
of Law



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by The Rt Hon
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Preface

In speaking of the Discipline of Law, I use the word in the sense given in the Shorter Oxford Dictionary of 'Instruction imparted to disciples or scholars'. But I have no disciples: and scholars are few. Yet I use the word so as to show that I wish to impart instruction – instruction, that is, in the principles of law as they have been, as they are, and as they should be.

My theme is that the principles of law laid down by the Judges in the 19th century – however suited to social conditions of that time – are not suited to the social necessities and social opinion of the 20th century. They should be moulded and shaped to meet the needs and opinion of today.

In pursuit of this theme I have taken some of the principles where progress has been most marked: and in which I myself have taken some part. Not, I hope, out of conceit, but because I happen to be well acquainted with them. I have put forward proposals which have had a mixed reception. Some of them have come to be accepted during my time. Some have been rejected. Others have not been accepted as yet. Most of them have found their way into the Law Reports. So recently I determined to collect them together in a book. I have arranged them, chapter by chapter, according to the subject in hand. I have quoted extensively from my judgments and connected them together by a running commentary in the hope that these proposals may be discussed in the Law Schools: and perhaps in future years find acceptance. But this book is outside my judicial work. All I write now must be treated with reserve. For I am still serving as a Judge:

Preface

and must and will keep an open mind. Views which are formed in my library may well be found to be wrong. Many a time have I changed my mind after hearing argument. Reasoning has been found to be fallacious. First impressions have been found to be wrong. Outlook has been distorted by prejudice. All these are swept away in the judgment-seat. For like the centurion in the Gospel: 'I also am a man set under authority' (Luke 7:8). Restless under authority, irked by it – when I feel it to be wrong – nevertheless it is my duty to abide by it – unless I can persuade my brethren that it is working injustice. Then when authority is shown to be wrong, the time will come when it will be overthrown: or at any rate it should be. If not by the Judges, then by Parliament – at the instance of the Law Commission. Where I have failed they may succeed.

Denning.

November, 1978

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