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From *Parker v Parker* to Pirate Kings: the legacy of Lord Denning -

A Toast[1]

BY KATIE ALLAN

Good evening and welcome to the fifth annual Denning Dinner.[2]

The *Denning Society* was founded by our esteemed Patron, Jim Corkery. Spurred on by Bond's courtroom successes - such as Bond's 2005-6 Philip C Jessup International Law Mooting team in Washington - Jim, ever the visionary, recognized the need for an annual gathering to celebrate both the contribution of Lord Denning to the law and shared experiences of advocacy.

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On Lord Denning's 100th Birthday, 23 January 1999, just one month before his death, a conference of scholars and judges met in London to celebrate his contribution to the common law.[3] The resounding legacy of Denning captured in the many tributes and analyses of Lord Denning's time on the Bench was not his English affinity for the underdog, the invention of the Mareva injunction, or development of promissory estoppel. It was his message that the law must change to suit fast moving times.[4] Why? Because law must be guided by what is just. Regardless of millionaire ambitions, billable hours or lawyer jokes, the nobility of the legal profession is preserved by the fact that it is the lawyer who stands between those who are governed and those who govern; between people and the state. This is a task which must be carried out with justice in mind.

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1 Toast delivered at the *Fifth Annual Denning Dinner*, Bond University, 7 August 2010.

2 The Denning Dinner is an annual gathering of Benchers of the Bond University *Denning Society*, a group of students and alumni who have represented the University in advocacy in international competitions, along with their coaches, advisors and mentors in the Bond University Faculty of Law. The *Lord Denning Room* - furnished by donations from Denning enthusiastis - was opened in the Bond Law School in June 2003.

3 Organised by the University of Buckingham. The conference attracted lawyers and judges from around the world, including Justice Gummow and Justice Kirby from Australia. Lord Denning could not attend but stated he '[was] delighted that such an impressive array of lawyers are now assembling on my 100th birthday.'

4 See Kirby J, 'Denning: Bold Spirit of the Law' *The Australian Financial Review* (19 March 1999).

This legacy of Denning's reminded me of my favorite Lord Denning quote. Unfortunately, it is not his most humorous. It is from a family law case called *Parker v Parker*.[5] It reads:

> What is the argument on the other side? Only this, that no case has been found in which it has been done before. That argument does not appeal to me in the least. If we never do anything which has not been done before, we shall never get anywhere. The law will stand still while the rest of the world goes on, and that will be bad for both.

From this quote, we can take two important things: first, the value of doing things not done before; second, the importance of not allowing rules, principles and values to stand still whilst the world moves on.

On the first point - doing things not done before - I think this is perhaps an opportunity to celebrate some of the amazing things the people in our small but growing Denning Society have done. It is a difficult thing indeed to ever say we have done something not done before, but what Lord Denning was alluding to, I think, was having the courage to do things not always thought possible and starting things without the assurance you will succeed. I have complete confidence that all of you, if you have not already, will do such things.

As far as academic successes go, we have amongst us many award winning advocates, several best memorials, three University Medalists, two Valedictorians and four High Court Associates. And that is just a snapshot of some of our achievements.

But whilst the argument that something has not been done before, especially when derided by none other than Lord Denning, seems unappealing and almost non-sensical, perhaps, on reflection, it is not that uncommon an argument to use.

It is ironic that Denning himself, whilst purporting to cast away tradition and do things not done before, still trawled though case books searching for something which had gone before that could achieve justice now. This idiosyncrasy of Denning's did not remain unnoticed.

Not long after Lord Denning retired, the water workers in the UK went on strike. Anarchy followed as it was illegal for anyone except council water workers to mend pipes. Denning received a phone call by a cousin of his predecessor Lord Evershed to determine if, in the event of the strike, home owners could legally fix their own pipes or use contractors. It took Denning two hours of researching[6] the defense of necessity to conclude that yes, in the circumstances of the strike, the illegality of people fixing their own pipes would be excused. His advice did not stay secret. The *Daily Express* headline the next day was 'Don't Just Sit There – Fix It. Denning's advice to water-hit Britons.'

The *Private Eye* was quick to use this opportunity to highlight Denning's often contradictory approach of encouraging new law whilst finding some old, long-forgotten precedent to support him. It ran a comical column where readers could write in with their various legal problems and

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[5] [1954] All ER 22.

[6] Of this research, Lord Denning noted, 'At once on the Sunday afternoon I looked up the books in my library. It took me two hours … it took me less time than it might do others.' *The Closing Chapter* at 68.

receive a Denning-like response. Denning included these amusing responses in his book, *The Closing Chapter*.[7]

The first was quite topical to the times and read:

> Dear Lord Denning,
>
> I've no water in my home for 6 weeks. Am I within my rights to call in Private Contractors to ensure the supply to my home?
>
> Denning's response: *Yes you are. I have looked up my law books and in 1311 it was decreed that each freeholder has the 'right to mend ye conduits and ye pipes'…That is the law as I understand it.*

Moving from the practical to the ridiculous, another read:

> Dear Lord Denning,
>
> We are commuters on the Southern Railway and we find ourselves increasingly irritated by the failure of British Rail to run the trains on time. With some friends of ours, we have just made our own train and we intend to run a service between Seven Oaks and Charing X. Is this legal?
>
> Denning's response: *Yes it be so. I have consulted my books and discovered a statute from the days of King Ethelbarg in which he states 'any journeyman, scrivinger, franklin or merchantman, can in full righteousness of legalitee fashion unto himselfe a railway engine and drive it up the and down the Southern Regione without lette or hindrance.'… That is the law.*

But going back to the point, how often have we been tempted to conclude that it simply cannot be done? The fact that we're all gathered here tonight means that whenever you wondered 'maybe I can't do this, because it can't be done', or 'this just can't be done, because I'm incapable of doing it', you have rejected this argument, helped by teammates, coaches, advisors and friends. Together, we have found that argument is not appealing in the least. We have concluded it will not get us anywhere.

* * * * *

The second aspect of the quote from *Parker v Parker*, was that the law cannot stand still while the world moves on. Principles, rules which we hold dear, become inappropriate and unpractical in changing social conditions. Lord Denning's opening in *Rank Film Distributors Ltd v Video Information Centre*,[8] captured these changing times:

> 'It is, it is a glorious thing, to be a pirate king', said W S Gilbert. But he was speaking of ship pirates. Today we speak of film pirates. It is not a glorious thing to be, but it is a good thing to be in for making money.[9]

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[7] Ibid 74.

[8] [1982] AC 380.

[9] Ibid 403.

Denning's successes are legacies. However, Lord Denning's failure to identify, for a few years, that his own views about certain matters had stood still, whilst the world moved on were, in Denning's words, his 'Achilles heel'.[10] Denning said of these mistakes, many of which were misinterpretations and mistakes of fact, 'farewell to my greatness'.[11]

But, of course, no greatness was farewelled. Lord Denning, both his name and spirit, serves as a constant reminder to law students and the profession that the law must not forget justice. Perhaps Denning's dedication to justice within a changing world is actually made all the more sincere and real by the fact that he too knew the struggle of doing this, the sting when you have been found not to, and therefore the greater effort that we strive for it. Two days after Denning announced his retirement, Hugo Young of the *Sunday Times*, wrote 'when all the raucous headlines have been forgotten, and the last regrettable calamity has passed insignificantly into the dustbin, Denning's greatest works will endure forever. To any one who believed law should liberate, not enslave, he is a beacon.'[12]

* * * * *

When thinking of something to say for this speech, I became worried that in the Denning Society's five year history we have covered the majority of Lord Denning's most humorous judgments in speeches, poems and song. I wasn't sure what I was going to say and I wasn't sure there were any highly amusing judgments left to recite. Upon reflection, I think I should be exceptionally grateful as a young person to have the opportunity to speak to my peers, mentors and best friends and without someone mandating the topic or limiting me to argue one side. I should use the opportunity to make a point I wanted to make.

Well, I'm not quite sure I've made any particular point. But I do hope I've done what we come here each year to do. That is, welcome new Benchers to the *Denning Society*, celebrate our achievements and thank all those who have helped us to achieve them, and most importantly, remember Lord Denning, learn a little more about him and relate his words and wisdom to our own shared experiences.

Please charge your glasses and let us toast to Lord Denning.

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[10] See Lord Denning's passage in the *Closing Chapter* at 6 – 13.

[11] From the soliloquy of Cardinal Wolsey, *Henry VIII*, Art III, Scene 2.

[12] *Sunday Times* (30 May 1982). Hugo Young was political editor of *The Times* and *The Guardian*. Mr Young, who had read law at Oxford and often wrote about the 'neglected defence of liberty' in political context of growing tension between politicians and lawyers, was fascinated by Lord Denning. He began a study into the life of Lord Denning. Hugo Young died in 2003 and was not able to complete the study. See Obituary, *The Guardian* (23 September 2003) at <http://www.guardian.co.uk/media/2003/sep/23/pressandpublishing.obituaries>.