

# *The Police Foundation*

POLICE FOUNDATION LECTURE

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WHAT IS WRONG WITH THE LAW TODAY?

THE RT HON LORD DENNING

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WHAT IS WRONG WITH THE LAW TODAY?

I have chosen as my theme: 'WHAT IS WRONG WITH THE LAW TODAY?'  
There is so much wrong that it gives me plenty to talk about.  
But not as much as Henry Brougham did in the House of Commons in  
1828 - nearly 160 years ago now. He spoke for SIX hours on what  
was wrong with the law in his time. He refreshed himself with  
oranges and with port. A recent competitor only spoke for FOUR  
hours. So Henry Brougham still holds the record. But his  
peroration shows that the complaints in his time have their parallels  
today. This is how he ended:

'It was the boast of Augustus ... that he found Rome of brick,  
and left it of marble.... But how much nobler will be the Sovereign's  
boast when he shall have it to say that he -

Found law dear, and left it cheap;

Found it a sealed book - left it a living letter;

Found it the patrimony of the rich - left it the inheritance  
of the poor;

Found it the two-edged sword of craft and oppression - left  
it the staff of honesty and the shield of innocence!'

THE LAW'S DELAY

The first thing that is wrong is the thing that has been always with  
us, but is worse now than it has ever been. It is the law's DELAY.

You will remember the words of the Great Charter of 1215:

'To no one will we sell, to no one will we deny or DELAY right or  
justice.'

And the wrongs which Shakespeare set forth in Hamlet:

'For who would bear the whips and scorns of time,  
The oppressor's wrong, the proud man's contumely,  
The pangs of disprized love, the law's DELAY,  
The insolence of office, and the spurns  
That patient merit of the unworthy takes ...'

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Nowadays the delays in our Criminal Courts are appalling. Men on remand in custody awaiting trial may have to wait from SIX to TWELVE months whereas it used to be only EIGHT weeks. Youngsters / on remand under 21 have been confined in some cases for 23 hours out of 24 in worse conditions than if serving a sentence. Men on bail may have to wait up to TWO years before they are tried. Meanwhile, memories will have failed and witnesses disappeared.

Many reasons combine to cause these delays. One is the great increase in the amount of crime. The next is legal aid under which every accused man is represented by counsel at the expense of the State. They are often long-winded. The third is that trials take much longer than they used to do. The fourth is the shortage of Court rooms. Allied to this, is the unhealthy over-crowding in prisons. Can this be relieved by shorter sentences - or suspended sentences - or community service?

But the delay is not only in the criminal cases. It is in civil work, especially in London. Often it is the fault of the lawyers in not getting on with the cases quickly. Sometimes it is the complexity of the cases which need long preparation. Sometimes it is the back-log of work. It piles up so that cases of great importance have to wait for two years or more.

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What is the remedy? I leave that to the Lord Chancellor and the Home Secretary. It is their job - advised by the top Civil Servants whom they rate so highly.

More judges? More courts? More prisons?

#### THE COST OF GOING TO LAW

The next thing that is wrong is the cost of going to law. This too is always with us. It was very bad in the days of Charles Dickens. You may remember his description:

'This is the Court of Chancery where money might unwearingly chase out the right - which so exhausts finances, courage, patience, hope, that there is not an honourable man amongst its practitioners who doesn't give the warning - often give the warning - Suffer any wrong that can be done you rather than come here.'

Things have been remedied much since those days. One of the greatest reforms of our time is the introduction of legal aid. This has transformed the work of the Criminal Courts. Every accused man is protected in the court by lawyers paid by the State. Duty solicitors are on call when he is arrested. But it is in civil cases that the system fails. Legal aid is available for the low income-earners, but not for those of the middle-income range. And when one is sued by a legally-aided person, the scales are weighted heavily against him. The legally-aided person has all the resources of the State at his disposal. But the non-legally-aided person has not. Even when he wins, he can recover no costs against the Legal Aid Fund. The Judges have often said that he should be able to do so. But the executive Government do not agree.

But the thing which is under question today is the pay structure

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of lawyers. It is unsound from top to bottom. The pay of those at the top is too high. The pay of those at the bottom is too low. The fees payable to youngsters doing legal aid work should be increased. The problem is shown dramatically by the recent announcement of increased pay for Judges. Their pay is often compared with that of the top earners of the Bar. But the comparison is false. It is odious. It is, in Dogberry's words, 'odorous.' It smells.

#### THE PAY OF THE JUDGES

The Judges are at present reasonably well paid. So far as I know, they have not complained nor sought an increase. They hold positions of dignity, independence, integrity and honour. This is recognised by the conferment of Knighthoods, membership of the Privy Council, and of the House of Lords. So far as I know, no top member of the Bar - however large his income - has refused appointment at present levels. And I know many top men in industry who would pay vast sums to acquire such honours. But they are not for sale.

There is, however, one good reason for the increase in the pay of Judges. If the top men in the Civil Service - who wield the executive arm of Government - are to receive an increase in pay, then certainly the Judges should be increased likewise. In modern times the standing of a person is often shown by his scale of pay. The Judges should not take second place to the Executive.

My feeling is that it was impolitic and unwise of the Government to increase the pay of the top Civil Servants so much at this time - a feeling which is shared by many.

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THE STRASBOURG COURT OF HUMAN RIGHTS

The third wrong of which I would speak is the way in which the executive Government have given away the sovereignty of our own Courts and put us under the subjection of the European Court of Human Rights at Strasbourg. I am not speaking of the European Court at Luxembourg. Community law is by statute part of our law. I don't mind that Court at Luxembourg declaring what the Treaty means. But I do object to the European Court of Human Rights at Strasbourg. It is only in the last 10 years<sup>that</sup>. Time and time again a person who has failed to gain redress in our own Courts under our own law has gone off to Strasbourg. He has alleged that we have infringed his human rights as laid down in the Convention. Time and time again that Court has held that our Courts - and our Parliament - have failed to give him his due. They have in effect told our Government to legislate to give effect to their views. And our Government has meekly done so.

STRIKING EXAMPLES

Let me give you three or four striking examples. First, the Sunday Times case, where the newspaper published articles about the drug Thalidomide - whilst litigation was pending. The House of Lords held that this was unlawful and granted an injunction against the newspaper. The newspaper took the case to the Court at Strasbourg. It held that the House of Lords were wrong. The Government had to amend the law in the Contempt of Court Act 1981.

Next, the case of the three railwaymen. They refused to join the Trade Union and were dismissed by British Rail. They complained to the Court at Strasbourg. It held that the legislation of our

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Parliament was contrary to human rights. We had to legislate to conform to this ruling.

Another was about telephone tapping. A man whose telephone had been tapped by the warrant of the Secretary of State complained to the Court at Strasbourg. It held that our law was defective on the point. We had to legislate to put it right.

Yet another is about corporal punishment in schools. It was lawful under our law. But the European Court at Strasbourg held that it was unlawful except with the parents' consent. Our Government felt it had to legislate to conform to that ruling. They brought it before Parliament. It was rejected.

Yet another case concerned the Immigration Rules. The Court at Strasbourg has held that our statute and rules offend against the Convention. So we have had to legislate to conform.

The most worrying case is yet to come before the Court at Strasbourg. It is as to the powers of the Court of Criminal Appeal in passing sentence on a man who has lodged a frivolous appeal. If the Court should hold that to be contrary to human rights, I for one would be mightily offended. So, I should imagine, would the whole of the English judiciary.

#### WHAT IS TO BE DONE?

The whole procedure puts our Parliament and our Courts in a most humiliating position.

What then is to be done? One of two things. In two years' time we shall be at liberty to withdraw our submission to that Court. We could withdraw it. Alternatively, we could incorporate the European

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is not a temporal thing. It is eternal, a thing of the spirit. The nearest approach to a definition that I could give is 'Justice is what the right-thinking members of the community believe to be fair,' simply that. You and I represent the right-thinking members of the community, doing as best we can what is fair; and in these days what is fair, not only between man and man but between man and the State. It is brought out well by the oath which every judge in England takes on his appointment:

'I swear by Almighty God that I will do right to all the manner of people after the laws and usages of this Realm without fear or favour, affection or ill-will.'

Take each phrase of that oath. 'I swear by Almighty God.' Hereby he affirms his belief in God and hence in true religion (or he may affirm). 'That I will do right.' That means 'I will do justice,' not I will do law. 'To all the manner of people.' Rich or poor, capitalist or communist, Christian or pagan, black or white, to all manner of people I will do right. 'After the laws and usages of this Realm.' Yes, it must be according to law. 'Without fear or favour, affection or ill-will.' Without fear of the powerful or favour of the wealthy, without affection to one side or ill-will towards another, I will do right.

Last of all, I would remind you of the oath which the Queen herself takes at her Coronation. The Archbishop asks her - 'Will you to your power cause law and justice, in mercy, to be executed through your Dominions?' The Queen answers - 'I will.' Now the Judges are the delegates of the Queen for the purpose to do law and justice in mercy. And how shall they be merciful unless they have in them something of that quality which as Shakespeare says - 'droppeth as the gentle rain from heaven upon the place beneath'?