THE ENGLISH ARE BEST

In this article David Williams considers the attitudes of Lord Denning M.R. as expresed in important cases over recent years. The conclusion reached is that though Lord Denning has a reputation as a revolutionary and reforming judge he may also be seen as a highly conservative judge.

Lord Denning, Master of the Rolls in the English Court of Appeal, is probably the best known English judge at present holding office. In the United Kingdom he is well known to many laymen for his Report on the "Profumo Affair" in 1963.[1] For lawyers and law students throughout the common law world he is a judge whose incisive contributions to the common law have been of great importance for over three decades.[2] He has the reputation in some quarters for being enlightened, progressive or even radical. Others see him as a maverick who has no regard for the requirement that judicial decision making should be predictable and tolerably certain.

It is clear in some of his judgments that he will do his utmost to arrive at a decision favourable to "little people" — for example, purchasers on hire purchase terms as against finance companies.[3] He has been primarily responsible for a number of novel legal doctrines which have sought to introduce a "new equity"[4] into the modern common law. Many of these doctrines have met considerable opposition from his more conservative brother judges. The doctrine of promissory estoppel established in *Central London Property Trust* v. *High Trees House*[5] has survived in the House of Lords[6] and the Privy Council[7] but in a recent House of Lords decision Lord Hailsham of St. Marylebone L.C. suggested the need to review this whole sequence of cases.[8] The deserted wife's equity in the matrimonial home established in *Bendall* v. *McWhirter*[9] was overruled by the House of Lords in *National*

1. Lord Denning's Report presented to Parliament by the Prime Minister: (1963) Cmnd.2152.
2. He was appointed a Judge of the High Court in 1944; appointed to the Court of Appeal in 1948; created a Lord of Appeal in Ordinary in 1957; appointed Master of the Rolls in 1962. For convenience I will refer to him throughout this article as Lord Denning.
3. *Karsales* v. *Wallis* [1956] 1 W.L.R. 936; *Farnworth Finance Facilities* v. *Attryde* [1970] 1 W.L.R. 1053.
4. See Sir Alfred Denning, *The Changing Law*, London 1953, p. 53 and (1952) 5 C.L. P. 1.
5. [1947] K.B. 130.
6. *Tool Metal Manufacturing* v. *Tungsten Electric* [1955] 1 W.L.R. 761.
7. *Ajayi* v. *R. T. Briscoe* [1964] 1 W.L.R. 1326.
8. *Woodhouse* v. *Nigerian Produce Marketing Co.* [1972] A.C. 741, 758.
9. [1952] 2 Q.B. 466.

Provincial Bank v. *Ainsworth*,[10] although it was restored legislatively in the Matrimonial Homes Act 1967. The doctrine of fundamental breach of contract in the broad enunciation by Lord Denning in *Karsales* v. *Wallis*[11] (a rule of law that exclusion clauses could not be relied upon by a party in fundamental breach) was disapproved of by the House of Lords in *Suisse Atlantique* v. *Rotterdamsche Kolen Centrale*.[12] Lord Denning has, nevertheless, since restated his doctrine so as to lessen the impact of their Lordships' disapproval.[13] Very recently he has sought to create a new principle of law that contracts may not be enforced in certain circumstances where there is "inequality of bargaining power".[14]

An example of the vigour with which Lord Denning's innovations have been attacked is to be found in *Scruttons* v. *Midland Silicones*.[15] Cited to their Lordships were a number of dicta by Lord Denning which tended to undermine the doctrine of privity of contract.[16] Viscount Simonds said he readily responded to the invitation by counsel to reject any proposition that impinged upon that doctrine:[17]

> For to me heterodoxy, or, as some might say, heresy, is not the more attractive because it is dignified by the name of reform. Nor will I 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.

Then in *Broome* v. *Cassell*[18] Lord Denning rejected a House of Lords decision as per incuriam and directed trial judges to ignore that decision. Seven Law Lords heard the appeal in *Broome* v. *Cassell*[19] and they were clearly incensed by Lord Denning's approach. Lord Reid described it as an "aberration" and Lord Hailsham L.C. said:[20]

> The fact is, and I hope it will never be necessary to say so again, that, in the hierarchical system of courts which exists in this country, it is necessary for each lower tier, including the Court of Appeal, to accept loyally the decisions of the higher tiers.

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10. [1965] A.C. 1175.
11. [1956] 1 W.L.R. 936.
12. [1967] 1 A.C. 361.
13. *Harbutt's Plasticine* v. *Wayne Tank & Pump Co.* [1970] 1 Q.B. 447; *Farnworth Finance Facilities* v. *Attryde* [1970] 1 W.L.R. 1953. Cf. Supply of Goods (Implied Terms) Act 1973 (U.K.).
14. *Lloyds Bank* v. *Bundy* [1974] 3 All E.R. 757; *Clifford Davis* v. *W. E. A. Records* [1975] 1 W.L.R. 61.
15. [1962] A.C. 446.
16. *Smith & Snipes Hall Farm* v. *River Douglas Catchment Board* [1949] 2 K.B. 500, 517; *Drive Yourself Hire Co.* v. *Strutt* (1954) 1 Q.B. 240.
17. [1962] A.C. 446, 467. See also *Green* v. *Russell* [1959] 2 Q.B. 226, 239.
18. [1971] 2 Q.B. 254.
19. [1972] A.C. 1027.
20. Ibid. at 1054 (per Lord Hailsham L.C.) and at 1084 (per Lord Reid).

A journalist has commented aptly:[21]

> To laymen, accustomed to extremes of rhetoric from politicians, these stately periods seem mild indeed. But to lawyers, who are trained in an anguished politeness to each other at all times, they are the sounds of bloody civil war.

Learned commentators have also frequently criticized the manner in which Lord Denning obscures or distorts legal principles in order to arrive at results he deems appropriate in particular cases.[22]

There are relatively narrow leeways for judicial decision making in the common law system.[23]. Given that, it may be accepted that, by comparison with most of his judicial brothers, Lord Denning has quite frequently stated the law in terms which impose new and unwelcome liabilities upon finance companies, manufacturers and others who would otherwise have the economic power to impose their will upon their customers or clients. However, it may interest readers to consider a number of cases in the field of conflict of laws and international trade in which Lord Denning appears, with respect, to adopt positions which are extremely insular and arrogant. In the recent case, *The Atlantic Star*[24] he is reported to have said:[25]

> If a plaintiff considers that the procedures of our courts or the substantive law of England may hold advantages for him superior to that of any other country, he is entitled to bring his action here . . . . The right to come here is not confined to Englishmen. It extends to any friendly foreigner. You may call this 'forum-shopping' if you please, but if the forum is England, it is a good place to shop in, both for the quality of the goods and the speed of service.

This statement caused Lord Reid to comment caustically:[26]

> My Lords, with all respect, that seems to me to recall the good old days, the passing of which many may regret, when inhabitants of this island felt an innate superiority over those unfortunate enough to belong to other races.

It is my intention to discuss a number of cases which illustrate that Lord Denning's view in *The Atlantic Star* is not an isolated statement.

The Fehmarn[27] concerned a bill of lading which contained two clauses in the following terms:

> 26. All claims and disputes arising under and in connection with this bill of lading shall be judged in the U.S.S.R.

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21. Hugo Young, in "The Sunday Times" (London), 17 June 1973.
22. E.g., R. E. Megarry, *The Deserted Wife's Right to Occupy the Matrimonial Home*, (1952) 68 L.Q.R. 379; J. F. Northey, *Contractual Misconceptions in Administrative Law*, (1969) 4 Recent Law, 224.
23. See K. N. Llewellyn's writings, e.g. *Jurisprudence*, Chicago, 1962; and *The Common Law Tradition*, Boston, 1960.
24. [1973] Q.B. 364.
25. Ibid., at 382.
26. [1974] A.C. 436 at 452.
27. [1958] 1 W.L.R. 159.

27. All questions and disputes not mentioned in this bill of lading shall be determined according to the Merchant Shipping Code of the U.S.S.R.

The holders of the bill, an English company, brought an action in England against the German shipowners whose ship had carried the cargo involved from Ventspils (in the Soviet Union) to London. The defendants moved that the action be stayed as it breached the parties' agreement to be judged by a Soviet Union tribunal but the Court of Appeal refused their motion. In his judgment Lord Denning said:[28]

> I do not regard this provision as equal to an arbitration clause, but I do say that English courts are in charge of their own proceedings: and one of the rules they apply is that a stipulation that all disputes should be judged by the tribunal of a particular country is not absolutely binding . . . .
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> I do not regard the choice of law in the contract as decisive. I prefer to look to see with what country is the dispute most closely concerned.

The issue on an interlocutory appeal in *Tzortzis* v. *Monark Line A/B*[29] was whether the proper law of a contract for the sale of a ship was Swedish or English. The buyers were Swedish, the ship was Swedish, payment was to be effected in Sweden and the ship was to be delivered at a Swedish port. The buyers were Greek. The contract, which was a standard form agreement in use in Scandinavia and approved by the Baltic and International Maritime Conference, included an arbitration clause providing for "arbitration in the City of London". It is obvious that the contract had its closest and most real connection with Sweden but nevertheless the Court of Appeal held English law to be the proper law on the basis that *qui elegit judicem elegit jus*. Lord Denning thought that as a matter of inference it could fairly be presumed that English law was meant by the parties to be applied.[30]

Tzortzis v. *Monark Line A/B* was applied by the Court of Appeal in *Cie. Tunisienne* v. *Cie D'Armement*[31] — another interlocutory appeal in which the proper law of a contract was in issue. The contract was something of a lawyer's nightmare. It was between a Tunisian company and a French company for the carriage by sea of a large quantity of crude oil from one Tunisian port to another. The parties signed a

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28. Ibid. at 161. See the note on this case by P. R. H. Webb (1958) 1 I.C.L.Q. 599, where it is suggested that "by a generous tendency to homeward trendism the plaintiffs have had the advantage and convenience of an English trial to which they were not really entitled under the contract . . . " (at 608).
29. [1968] 1 W.L.R. 406.
30. An unfortunate comment appears in the judgment of Salmon L.J. in this case. At p. 414 he is reported to have said: "I do not think that the Greek shipowners would have very readily consented to the contract being governed by Swedish law and I fancy that the Swedish shipbuilders would have been even slower to agree to the contract being governed by Greek law." This smacks very much of a prejudice against countries of Southern Europe as opposed to Northern Europe.
31. [1969] 1 W.L.R. 1338.

standard form tanker voyage charterparty printed in English and interpolated a number of typewritten clauses. The form was quite inappropriate for a contract which the parties intended to be carried out in a number of ships over a number of voyages. An express choice of law clause in the printed form stated that the contract should be "governed by the law of the flag of the vessel carrying the goods". No single vessel was contemplated although the arbitrator found as a fact that, at the time of entering into the contract, the parties thought that ships of the French company would be used "at least primarily".[32] An arbitration clause provided for settlement of disputes in London by merchant or broker arbitrators. Here again the only connection with England was the arbitration clauses but the Court of Appeal unanimously held that English law was the proper law. Lord Denning's comment was as follows:[33]

> This seems to me to be a sensible result. It would not be at all convenient that English arbitrators sitting in London should have to listen to an exposition of French law by experts in French law; then decide that French law as a matter of fact; and then seek to apply it to the circumstances of the case. It is much better for the English arbitrators to apply English law: for it is naturally applicable to a document which is in the English language and employs words and phrases well known to English law, but unknown to French law.

A learned commentator has suggested that the parties in the present case might have had two separate purposes in mind: either to choose an English arbitrator because English arbitrators have had much experience and are capable of dealing with foreign systems of law; or to choose an English arbitrator for the purpose of having any dispute which might arise governed by English law. He preferred the first alternative as the reputation of English arbitrators has always been a very high one in the shipping world.[34] With respect, it is submitted that the first alternative is indeed more convincing and foreign law is daily being proved before the large number of international trade arbitral bodies in London. Further, it should be noted that Lord Denning did not advert to any difficulty concerning proof of Soviet Union law in *The Fehmarn* proceedings. It is suggested that the experienced London merchants or brokers who were arbitrators in the instant case would be more conversant with French law and commercial custom than High Court judges would be with the law of the Soviet Union Merchant Shipping Code.

A few months before the *Cie Tunisienne* case was decided in the Court of Appeal there was the decision in *Whitworth Street Estates* v. *James Miller*.[35] That case concerned a building contract in the standard

32. In actual fact in the first four months of the contract the six ships chartered were Norwegian, Swedish, Liberian (2), French and Bulgarian.
33. [1969] 1 W.L.R. 1338, at 1344.
34. Note by P.V.B.[aker], (1970) 86 L.Q.R. 14, at 16.
35. [1969] 1 W.L.R. 377.

form of the Royal Institute of British Architects between an English company and a Scottish company to carry out work on the former's factory in Scotland. When a dispute arose arbitration was held in Scotland, with a Scottish arbiter and in accordance with Scottish forms and procedure. The question of law before the Court of Appeal was whether Eveleigh J. was right in deciding that the arbiter was bound to apply Scottish law. The Court reversed Eveleigh J. on the ground that the R.I.B.A. form had so many connections with English law[36] and that its arbitration provisions are inadequate except on the footing that they are reinforced by the provisions of English law. Lord Denning argued that while Scotland was the country with which the contract had the closest connection, the system of law with which the transaction had the closest connection was English law.

Both the *Cie Tunisienne* and *Whitworth Street Estates* cases proceeded to the House of Lords and the Court of Appeal was unanimously reversed in both.[38] In the former case their Lordships held that French law was the proper law and rejected the view that the mere fact that arbitration is to take place in England is decisive as to the proper law and requires an English court to hold that the proper law is the law of England.[39] *Tzortzis* v. *Monark Lines* A/B was not overruled but it was seriously doubted and the reasoning of the Court of Appeal in that case and in the instant case was criticized. Lord Wilberforce said:[40]

> . . . this language is too strong, too absolute. Neither authority nor commercial reality supports the necessity for so rigid a rule. An arbitration clause must be treated as an indication, to be considered with the rest of the contract and relevant surrounding facts.

In *Whitworth Street Estates* the House held that the curial law of the arbitration was Scottish law, even thought by a 3-2 majority it was held that the proper law of the R.I.B.A. contract was English law.

The problem of the proper law arose again in *Coast Lines* v. *Hudig & Veder*.[41] The contract in question was a charterparty between an English shipowner and Dutch charterer for the sea carriage of goods from Rotterdam to Drogheda (in the Republic of Ireland). All members of the Court of Appeal agreed that on the closest and most real connection test there was an even balance as between the Netherlands and English law. The decision was in favour of English law (Stephenson L.J. *dubitante*) because the law of the flag of the ship was English law. The question then arose as to whether the Court should exercise its discretion to give leave to serve the writ out of the jurisdiction on the Dutch company. Lord Denning noted that it is a strong thing to force

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36. Ibid. at 381 (per Lord Denning M.R.).
37. Ibid., at 384 (per Widgery L.J.).
38. *Cie d'Armement* v. *Cie Tunisienne* [1971] A.C. 572; *James Miller* v. *Whitworth Street Estates* [1970] A.C. 583.
39. [1971] A.C. 572, at 584 (per Lord Reid).
40. *Ibid.*, at 600.
41. [1972] 1 All E.R. 451.

someone to come to England to contest a case against them, and then he continued:[42]

> If the Netherlands courts were free to apply the proper law of the contract (i.e. English law), I would not be disposed to grant leave to serve out of the jurisdiction. But the Netherlands courts are not free. They are compelled by the Netherlands law to apply a special law of the Netherlands (i.e. art. 517d), which is not the proper law of the contract and which is out of line with the maritime law of all other countries. The Netherlands courts are compelled to apply a law which is contrary to the general understanding of commercial men. In these circumstances, I do not think we should send the English shipowners to the Netherlands courts. We should retain the case in these courts where we can and will apply English law, which is the proper law of the contract.

The "special law" was a mandatory provision in the Netherlands Commercial Code applying the Hague rules to carriage of goods by sea from the Netherlands whether the carriage be under a bill of lading or a charterparty. Lord Denning however wished to assist an English shipowner to avoid the balance of commercial interests which the Hague Rules are intended to be, and to rely upon a clause exempting it from liability for providing an unseaworthy ship.

One learned commentator has described Lord Denning's observations as chauvinistic and has pointed out that the Hague Rules mandatorily apply to all bill of lading shipments from English. He suggested that a persuasive case can be made out for not distinguishing bill of lading shipments from charterparty shipments.[43] As to being out of line with the maritime law of all other countries, one should note, for example, that Australia, New Zealand and Fiji mandatorily impose their own law as the proper law for all shipments from their own ports to a foreign port under "any bill of lading or document relating to the carriage of goods" and any stipulation or agreement to the contrary shall be of no effect.[44]. Moreover commercial men would be well aware that the United States' Hague Rules legislation (the Carriage of Goods by Sea Act, 1936) requires United States' courts to apply their legislation to "every bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea to or from ports of the United States in foreign trade . . . ". Thus, notwithstanding a clause paramount making a contract subject to another country's

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42. Ibid. at 456.
43. A. Bissett-Johnson, "A Fruitless Assertion of Jurisdiction", (1972) 21 I.C.L.Q. 530, at 532.
44. Australia: Sea Carriage of Goods Act 1924, s.9 (1); New Zealand: Carriage of Goods by Sea Act 1940, s.11A (1) (inserted by the Carriage of Goods by Sea (Amendment) Act 1968 — thus restoring the position obtaining prior to the 1940 enactment); Fiji: Sea-Carriage of Goods Ordinance, 1926, s.7 (1). There may well be similar provisions in other countries. It will be noted that documents relating to charterparty contracts appear to be covered.

legislation and whether or not the proper law of the contract is American, the United States' Act must be applied.[45] Lord Denning may be quite content that laissez-faire principles should permit English shipowners to exempt themselves from liability, but it is suggested that his criticisms of the Netherlands law are unfair.[46]

The final case to note is *The Atlantic Star*[47] from which passages have already been cited. It concerned an application to stay proceedings in an action *in rem* brought in the Admiralty Court. The Court had jurisdiction because an admiralty action *in rem* may be brought against any ship within English waters regardless of where the cause of action arose.[48] Here the cause of action arose from a collision in Antwerp between a Dutch ship (the Atlantic Star) and two barges, one Dutch and the other Belgian. It was accepted by all concerned that the Commercial Court of Antwerp was the most convenient forum but the plaintiffs (the Dutch barge owners) believed they might get a more favourable result in England and they therefore initiated an action *in rem* when a voyage of the Atlantic Star took it to Liverpool. Counsel for the defendants argued that the Scots doctrine of *forum non conveniens* should be applied and sought to distinguish English authorities which stated that a stay would be granted only if the plaintiff was being "vexatious or oppressive". Brandon J., at first instance, somewhat reluctantly felt bound by Court of Appeal decisions to refuse to grant a stay. In the Court of Appeal, Lord Denning and Cairns L.J. were perfectly happy to permit the plaintiff to continue his action, and Lord Denning made the statement cited earlier[49] that the English forum was an excellent forum to shop in. Phillimore L.J. would have decided the case the other way if the matter was *res integra*, but felt bound by a previous Court of Appeal decision. The House of Lords reversed the Court of Appeal by a 3-2 majority. The majority (Lords Morris of Borth-y-Gest and Simon of Glaisdale) agreed with the approach of Cairns L.J. who, in language somewhat less flamboyant than Lord Denning, followed the existing English authorities. The majority (Lords Reid, Wilberforce and Kilbrandon) did not adopt the Scots doctrine (although two of them being Scottish, they were not unnaturally tempted to do so). Their decision was that the "rather insular doctrine" affirmed by Lord Denning should be re-examined[50] and they interpreted the notion of "oppressive or vexatious" more liberally. Thus the whole

45. R. C. Colinvaux (ed.), *Carver's Carriage by Sea*, (11th ed., 1963) Appendix 4, para. 1633-1635.
46. By way of general comment it is suggested that Conference lines and large shipowning interests will favour laissez-faire principles. However, nations dependent upon foreign trade but also dependent upon foreign shipowners to carry their trade may justifiably legislate to assist economically less powerful interests which are dependent upon the shipowners.
47. [1974] A.C. 436.
48. For a detailed discussion of this unusual form of action see F. L. Wiswall Jr., *The Development of Admiralty Jurisdiction and Practice since 1800*, Cambridge, 1970, Ch. 6.
49. Cf. footnotes 24 & 25 ante.
50. [1974] A. C. 436, at 453-4 (per Lord Reid), at 468 (per Lord Wilberforce).

circumstances of having the trial in England were so inconvenient to the defendant as to be oppressive or vexatious "within the morally neutral meaning which these words should . . . in this context bear."[51]

In each of the cases I have discussed there has been some disagreemnt among the judges involved or there has been adverse comment by learned commentators. It is clear that all these cases are within the area of "open texture"[52] and that something persuasive may be said for and against each decision. The remarkable fact is, however, that in every single case Lord Denning has come down, in his customary vigorous styue, in favour of English law and/or English courts. However tenuous the connection may be with England, however inconvenient it may be to hold the trial in England, however technical may be the point of law — still in all cases Lord Denning happens to arrive at whatever conclusion permits the English courts to retain jurisdiction in the litigation and, if possible, ensure that English law will be applied. This consistency of Lord Denning may be compared with the "voting record" of the other six judges who took part in two or more of the six cases. In none of their judgments are there the dogmatic chauvinistic statements which pepper Lord Denning's judgments. All of them appear to have been swayed one way or the other depending upon the material facts of the case and counsel's argument, but without any apparent predisposition in favour of English law or courts. Lord Wilberforce, in fact, may be said to have consistently been prepared to permit a foreign law or a foreign court to determine the issue but there is nothing in his judgments indicating a predisposition against English law or courts. The following table gives the details on this point:

	Case	Fehmarn	Tzortzis	Tunisienne	Whitworth	Coast Lines	Atlantic Star
Judge	Decision in favour of law or court which was						
Lord Denning	Foreign						
	English	x	x	x	x	x	x
Lord Hodson	Foreign				x		
	English	x					
Lord Morris	Foreign			x			
	English	x					x
Megaw, L. J.	Foreign			x			
	English					x	
Viscount Dilhorne*	Foreign			x	x		
	English						
Lord Reid†	Foreign			x	x		x
	English						
Lord Wilberforce	Foreign			x	x		x
	English						

* Viscount Dilhorne (and Lord Hodson) were in the majority in **Whitworth** which held English law to be the proper law of the contract but that the curial law of the arbitration was Scottish law.

† Lord Reid being Scottish may be said to have preferred the local law and court rather than the foreign by his approach in **Whitworth.**

51. Ibid., at 478 (per Lord Kilbrandon).
52. See H. L. A. Hart, *The Concept of Law*, Oxford 1961, p. 120 *et seq.*

The judgments of Lord Denning which have been discussed should not surprise one, because in his extra-judicial writings he has made clear his opinion of the English common law. In his preface to *The Changing Law* he maintains that Lord Coke so staked out the common law as to make it fit to control the course of the community for the next 150 years, that Lord Mansfield so laid the foundations of commercial law as to make it fit to control the commerce of the world, and that, provided it did not stand still, the common law would retain its place as the greatest system of law that the world has even seen.[53] Then in *The Road to Justice* he cites with approval the statement that "If justice had a voice, she would speak like an English Judge."[54] It is true that English judges are accustomed to receiving what has been described as "a whole symphony of cloying praise"[55] — for example the statement of the Lord Mayor of London in 1953 that "Her Majesty's judges had a greater understanding of human nature than any other body of men in the world."[56] It is respectfully submitted, however, that it is a little presumptuous for an English judge to echo the praise.

By way of a general conclusion, it is suggested that Lord Denning may well be "England's most revolutionary judge",[57] but that is not to suggest that he had done anything more than promote a number of reformist policies in certain areas of law. In so far as his attitude to legal systems of foreign countries is concerned it must be concluded that he holds views which are ethnocentric. These views were commonly held by the English ruling class in "the good old days" which Lord Reid refers to — the days when England was an imperialist power and the dominant economic power in the world. One of the hangovers from those days is that London is still a leading centre for the arbitration of international commercial disputes. It is undoubtedly still true that international trade contracts commonly specify English law as the proper law of the contract or London as the place of arbitration in the event of a dispute even though there is no intrinsic connection with England. Nevertheless, as Lord Wilberforce mentioned in *The Atlantic Star*,[58] there are now in existence in other maritime countries courts with comparable experience. When such courts are presented as the alternative forum there is no reason to insist upon the English forum. Indeed it is possible that a chauvinistic insistence upon English law in English courts might well discourage disputants from continuing to place confidence in London arbitrations. At any rate, as a matter of international comity, all courts in all countries ought to respect the principle of equality of states and it is submitted that all judges ought to reject any notions that their legal system is superior to that of other countries.

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53. Sir Alfred Denning, *The Changing Law*, London, 1953 p. viii.
54. Sir Alfred Denning, *The Road to Justice*, London, 1955, p. 10.
55. B. Abel Smith & R. Stevens, *Lawyers and the Courts*, London, 1967, p.290.
56. Idem.
57. The headline for Hugo Young's article in "The Sunday Times" (London) 17 June 1973.
58. [1974] A.C. 436, at 469.

Finally, it should be stated that Lord Denning, like everybody else, is a product of the social and political environment in which he was brought up. This environment is conditioned by the economic basis of a society. Lord Denning was brought up in, he earned his reputation as a lawyer in, and he was appointed to be a judge in a Britain which was still the world's most powerful capitalist and imperialist power. As a judge he is required by his judicial oath to uphold the existing social order. On certain issues there may be arguments between judges as to whether to maintain the law as it has been or to reform it a little, and Lord Denning has the reputation of having been on the reform side of most of those arguments.[59] This article's modest aim is to point out that there have been occasions when Lord Denning has been conservative or even reactionary, and to afford some evidence that, far from being a radical or revolutionary judge, he is a conservative member of the English ruling class.[60]

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59. For an article in praise of Lord Denning see C. Schmitthoff, "Lord Denning and the Contemporary Scene", (1974) 6 Manitoba L.J. 11, in which Professor Schmitthoff writes: "Future generations will remember him as one of the makers of the common law. Legal historians will say of him what Holdsworth says about Lord Mansfield: 'he succeeded in infusing a new spirit into the common law . . . ' ".

60. By way of an epilogue it may be relevant to note that my interest in the reactionary aspect of Lord Denning's views was sparked by listening to him addressing University of Dar es Salaam law students in 1973. He mentioned how in 1959 or 1960 he had chaired a committee which inquired into the need for legal education in East Africa. As a result of this committee's report the Dar es Salaam Law Faculty was established in 1961. Lord Denning's description of this was in terms of how he came to "darkest Africa" and as a result of the committee's report the light of legal education in the English common law was then lit to illuminate this darkness, and had now brightened into the present thriving Law Faculty! In Tanzania they described that sort of attitude as *kasumba* — the colonialist mentality.

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