

Tom Bingham, *The Rule of Law* Allen Lane 2010

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I grew up hating judges. It might have been because of the lunch I had with my father in the Lord Edward restaurant in Dublin when I was about thirteen, joviality all round until the arrival of a glum, spectral figure whose silent brooding dominated everything thereafter – a high court judge in search of the memory of what socialising had been like. Or maybe it was the fact that the judges were all ex-barristers and these were people I hated even more, pouring into my home town from Dublin, shouting and roaring in court, taking all the best cases, getting drunk, patronising us yokels. Then 25 years ago (my Irishness invisible in a deputation of Cambridge dons) I had lunch with, of all people, Lord Lane, the then lord chief justice of England and about to confirm that the Birmingham Six were as guilty as ... well all the other 'IRA terrorists' who had been randomly thrown in jail for walking into police stations at the wrong time or travelling to Ireland without a return ticket. My contempt for the judicial branch was complete.

Lord Bingham as lawyers know him – or Tom Bingham as he is here as he was when he unsuccessfully sought election as Oxford University's Chancellor a few years ago – is probably the main reason I have had to let my prejudices go. Of course there have been others, Harry Woolf, Peter Taylor, Stephen Sedley, Brenda Hale pre-eminent among them. But Bingham has been in the front line as a senior judge for so long, has occupied all the great positions (master of the rolls, lord chief justice and even one invented for him, 'senior law lord') and has – magnificently, unexpectedly – immatured with age, as Harold Wilson said of Tony Benn. He seems to care more about freedom and human rights now than he ever did as a senior barrister or junior judge making his name as a proper lawyer in the very serious commercial world. His has been the guiding spirit and moral force behind a series of judicial decisions which have stood up to the executive in the fields of counter-terrorism and public order policing while also transforming the law so as to improve the capacity of inquests to do justice, to inhibit the state from forcing starving asylum seekers onto the streets, and much else besides. Even when he has been wrong in the sense of being in the minority (as in some important housing cases and on control orders) subsequent cases have shown him to be right. Only occasionally has he erred – the most recent coming, in an unfortunate piece of timing, at around the date of the publication of this book, when his ruling on the controversial stop and search powers in the Terrorism Act has been effectively overturned in Strasbourg, the European judges happily spotting the 'clear risk of arbitrariness' that Lord Bingham had somehow missed.

Written in a jaunty, broad-brush style, the book is a thoroughly enjoyable excursion through the greatest hits of the common law in general, and English law in particular. It reads like the transcript of a parlour game played by a particularly precocious set of undergraduates: what are the twelve best 'rule of law' kind of things to have happened since – oh let's say 1200? Name the eight most important features of the rule of law today? (Each gets a short chapter here.) The book grew out of a lecture in Cambridge delivered in honour of the now sadly deceased David Williams, and one wishes at times for a little more of Williams's renowned sensitivity to historical nuance: with Bingham the constitution often reads like a roll call of great events that popped out of nowhere to make a marvellous difference. There is also likely to be not enough deep critical thinking to excite sceptical scholars. The contradictions between parliamentary sovereignty and the rule of law are rather glossed over for example (even though Bingham is on the sensible side in seeing that

parliament needs to trump judicial will) and the danger of the judges interpreting the rule of law in a way that legitimises oppression (stop and search for example) are simply not dealt with at all. But hey, there is only so much immaturing a man in his seventies can do.

Most of all, this book is worth reading for the insight it gives into a special kind of mind, one with a sense of logic and order so compelling that its contents spill onto the page like a kind of musical score or a well-judged poem. His judgments have the sort of beauty that a perfectly designed house has, or a precisely organised event. Tom Bingham is a Lord Denning of sorts, but one with discipline in place of egoism, a consistent rather than selective sense of right and wrong, and a sensible retirement age to make impossible the temptation to go on and on. He has been a key guiding spirit behind the unexpected renaissance which has taken the judges from the nadir of the miscarriage of justice cases to their current position of high public esteem. He will be – already is being – missed.

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