



**THE ANNUAL PILGRIM FATHERS'
LECTURE 2017
A FIRST YEAR PERSPECTIVE**

Paige Peacock and Dani Harper

The Pilgrim Fathers Lecture was founded in 1994 by the Plymouth Law Society. Since that point 24 eminent members of the judiciary have delivered this annual lecture at Plymouth University including Lord Chancellors, Lord Justices of Appeal and this year the Right Honourable Lady Black recently appointed to the Supreme Court. Lady Black was approached about taking part in these series of lectures in 2016 when she was residing as a judge at the Court of Appeal and this was her first public lecture since being promoted to the Supreme Court.



Lady Justice Black meets some of our fellow law students after the lecture

Lady Black started her career at Durham University where she studied Law. In 1976, Lady Black was called to the Bar at the Inner Temple, following this in 1994 she was appointed Queen's Council. In 1996 Lady Black became a Deputy High Court Judge and in 1999 she was a Recorder.

Shortly after, on 1 October 1999, Lady Black became a High Court judge in the Family Division of the High Court and also sat on the Queens' Bench Division Administrative Court. Between 2000 and 2004 Lady Black was a Family Division Liaison Judge on the Northern Circuit, then in 2004 she became the Chairman of the Judicial Studies Board's Family Committee, until her appointment to the Judicial Appointments Commission in 2008 as a judicial member. On 15 June 2010 she was appointed Lady Justice of Appeal and also became the Head of International Family Justice. Exactly one month prior to her Pilgrim Fathers Lecture, Lady Black joined the Supreme Court and became the second woman to ever do so.

Beginning the lecture Lady Black clearly wanted to make it as interesting as she could whilst maintaining the importance of what she was discussing. A little light-heartedness was even interjected by letting the audience know that some of the terms may be found too technical, even for today's lawyers. Interestingly and appropriately for a Plymouth audience, Lady Black compared The Pilgrim Fathers' journey from Holland, via Plymouth, to Massachusetts in 1620, to a contemporary family situation and, from a legal perspective, what may have happened then to what could happen now. As Lady Black is predominantly a judge specializing in family justice this was the topic she chose to base the lecture on.

One main point Lady Black brought up was the question; How do 'we' – i.e. the world judiciary - help address and resolve family law problems? She explained that in 2005 Lord Justice Matthew Thorpe became the Head of International Family Justice and helped create an international network of judges to solve family issues and create a point of contact around the world. Lady Black took over and became one of two Heads of this justice organization. This was very important to Lady Black as she feels very strongly about helping people in the types of situations that could have been apparent at the time the Pilgrims set sail but are still so apparent now – for example, the separation of children from their parents on divorce or when deliberately moved to another country by one parent against the wishes of the other. The only difference now is that the most disruptive move can be helped by the new technology such as Facetime, Voice call etc. so that children can keep in touch with their deserted parent. Though this can help there will inevitably be a large amount of grief for all parties involved.

Before the advance of technology, at a time when maintaining contact was tough the problem of parents taking their children to another country for a variety of reasons was rife. In 1980 The Hague Convention was created to protect children internationally from the harmful effects of their

wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access. The judiciary started out by dealing only with abduction cases, however, as time went by cases referred by individual social services crept up. Throughout the lecture Lady Black placed importance on the definition of 'habitual residence' stressing that there is grave difficulty in defining this term. Originally the courts would seek to return the child to their country of habitual residence as quickly as possible but over time the definition placed more importance on the child's happiness and well-being. Cases must be acted upon quickly as whether a child has settled in the new place can determine whether they can be removed back to the grieving parent. In such circumstances it can be difficult to resolve situations and keep all parties happy.

As the lecture went on and the links from the old to the new were brought closer to life, Lady Black discussed the 2001 Court of Appeal case of *Payne v Payne*.¹ A mother of a four-year-old child was a citizen of New Zealand whilst the father was British. After the parents separated a residence order was made in favour of the mother if she were to stay in the jurisdiction. A few years later the father applied for a residence order, and the mother applied under s 13(1)(b) of the Children Act 1989 to take the child out of the country. After the mother's application was granted the father appealed on the basis that the general principles that had been established 'should have regard to the child's welfare and should recognise the importance and support the function of the primary carer' and how this was against his human rights. The father's appeal was dismissed. In this case a four part principle was incorporated into the law to be followed for future similar cases. Lord Justice Thorpe stated the four parts to be considered were: genuine application, the father's role and potential detriment to their relationship if the child was removed, the position of the child and their feelings and the effect of the application on the mother's mental state.

Subsequently, there was discomfort with this approach especially as more weight was placed on maintaining the status quo which was based on outdated ways of parenting: the mother being the main parent. *K v K*, 10 years later, concerned an application by the mother to relocate to Canada with her two children, aged two and four.² The father opposed that application. Care of the children was conducted according to the terms of a shared residence order. Under its terms the children spent five nights with the father and nine nights with the mother in every 14-day period. The father had six consecutive days with his daughters. The mother did not work on Wednesday. On that

¹ *Payne v Payne* [2001] EWCA Civ 166

² *K (Children)* [2011] EWCA Civ 793

day, and at the weekends, she was with the children. Otherwise she relied upon a nanny. Although the mother had the children on more nights and the children spent more daylight hours in the company of the father. There was a CAFCASS report which recommended a refusal of the application. Ultimately, the judge allowed the mother's application. The father appealed. He submitted that the judge had rejected the CAFCASS officer's recommendations without proper analysis and explanation and failed to consider his case properly. The Court of Appeal also considered whether the judge ought to have directed herself by *Re Y (leave to remove from jurisdiction)*³ as opposed to *Payne v Payne*. The appeal was allowed; Lord Thorpe stated 'Payne was not to be applied in cases where the applicant shared the care of the children more or less equally with the respondent. In the instant case, given the extent to which the father had been providing daily care, the judge should have considered and applied *Re Y* rather than *Payne v Payne*'. These cases show that new problems are always arising but the law will continue to adapt to them and make sure the right person is protected. As first year students we were somewhat daunted about attending the lecture but we found it very insightful and accessible, having not studied family law yet it gave a great introduction into the law relating to international family law. Although Lady Black only spoke about a small section of this area; if family is of any interest to you then it was very illuminating with some very important facts shared with us and the audience. We thank Lady Black for being able to attend and give this lecture and only hope we might be able to achieve what she has today. After the lecture we spoke to a range of professionals and students who attended to gather their thoughts on Lady Black's talk. Their comments also underline how impressed the audience were with the lecture and included:

'Very interesting on international family justice, had a wider context on how families don't all intentionally move' (Law lecturer Hugo de Rijke and others).

'Not an area practised, the link of old and new was very interesting!' (local practitioner)

'Fantastic, family law on an international level was really interesting. Also, seeing a woman who has made it this far, to become a member of the Supreme Court, is great' (Adam Price, 3rd Year Law Student).

'Very good and easy to understand when you haven't studied family law before' (Katrina Vollenine practising solicitor in Torquay).

³ *Re Y (Children) (Removal from Jurisdiction: Failure to Consider Family Segmentation)* [2014] EWCA Civ 1287