

**REFLECTIONS ON SIR TERENCE ETHERTON'S PILGRIM  
FATHERS' LECTURE:  
THE CONFLICTS OF LEGAL PLURALISM: SECULAR LAW AND  
RELIGIOUS FAITH IN THE UNITED KINGDOM**

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I have never seen myself as a strong writer, nor have I ever been a keen writer, so when as a first year law student I was asked to write an article for the *Plymouth Law Review*, I felt extremely perturbed. Despite my reservations I am honoured to write an article about the 25<sup>th</sup> Annual Pilgrim Fathers' Lecture organised by the Plymouth Law Society in association with the Plymouth Law Group at the University of Plymouth, an extremely popular event and one that law students, lecturers, local legal professionals and others look forward to every year.

After studying law at Cambridge, Sir Terence Etherton was called to the Bar in 1974. Sir Terence then went on to become a QC in 1990. In 2001 he became a High Court judge in the Chancery Division, where he then received a customary knighthood. Then, after 15 years in various judicial roles, Sir Terence was sworn in as Master of the Rolls (Head of the Court of Appeal, Civil Division) in 2016. As Master of the Rolls, Sir Terence has passed judgment on a number of hugely important cases and his lecture prompted me to look at four of his most recent decided cases. These are: *ABC v Telegraph Media Group*, *Aziz v Secretary of State for the Home Department*, *Various Claimants v Morrisons PLC* and *Stunt v Association Newspapers*. These cases, which I have briefly summarised below, resonate closely with the themes of Sir Terence's lecture the full transcript of which is published in this issue of the Law Review. They collectively portray contentious issues around human rights and religion and how the courts attempt to balance the rights of individuals and the media, in particular the disparity between freedom of expression under art. 10 of the European Convention on Human Rights (ECHR) and the right to privacy under art. 8.

Firstly, the case of *ABC v Telegraph Media Group*.<sup>2</sup> This concerned injunctions and Non-disclosure agreements (NDA's). In this case the Telegraph obtained information that they wanted to publish but which the claimants (ABC) wanted to prevent publication of. The Court

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<sup>1</sup> Holly is in the first year of her LLB programme. [Editor's note: Holly wrote this half way through the first semester of her first year when the cohort had only just received a couple of basic introductory lectures on human rights].

<sup>2</sup> *ABC v Telegraph Media Group* [2018] EWCA Civ 2329

of Appeal granted an interim injunction to prevent the Telegraph from disclosing information whilst the case was ongoing. In his Judgment, Sir Terence stated 'there is a real prospect that publication by the Telegraph will cause immediate, substantial and possibly irreversible harm to all of the Claimants. In the case of the Claimant companies, this may have implications for their employees'.<sup>3</sup> However, Lord Hain later exercised Parliamentary Privilege, whilst he was in the House of Lords, to disclose the name of the person in question (Sir Philip Green); information which the Telegraph were prevented from publishing due to their injunction. Lord Hain stated that he did this because it was 'clearly in the public interest'. This is a controversial case and questions have been raised as to whether Lord Hain abused his powers of Parliamentary Privilege. Barrister Hugh Tomlinson QC said the courts were the 'proper institutions for deciding the issues raised in this case'.<sup>4</sup> Other people have argued that Lord Hain was within his rights to alert the public about a businessman who was accused of sexual harassment. Lord Evans, the new chairman of the Committee on Standards in Public Life, said 'the ability to raise issues in Parliament without fear of them being brought into the court, I think is an important safeguard in our system'.<sup>5</sup>

Another case Sir Terence presided over was *Aziz v SSHD*.<sup>6</sup> Following the 'Rochdale Grooming case', nine men were charged with sexual offences committed on young girls aged between 13 and 22. The men were convicted of rape, sexual assault and other similar crimes. They had given alcohol and drugs to their victims. One of the victims reportedly received over 100 calls from men asking her for sex because of her phone number was made available by the offenders. Sir Terence presided over the case which decided whether the removal of British citizenship of four out of the nine men, after they had been found guilty, was lawful. All four men were born and had lived in Pakistan and secured British citizenship after having lived in the United Kingdom for seven years. They then took a test that they had to pass granting them the same rights as anyone who was born in the UK. In the Court of Appeal, Sir Terence came to the decision, along with his fellow judges, that it was lawful to strip them of their British citizenship. This was because the actions of the offenders were of a sufficiently serious nature to give no good ground for questioning the decision to remove their citizenship. The Court held it was 'conductive to the public good' to deprive the appellants of their British citizenship.<sup>7</sup>

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<sup>3</sup> Ibid para 51.

<sup>4</sup> BBC News, 'Lord Hain defends naming Sir Philip Green over harassment claims', (26 October 2018) Accessed 25 November 2018.

<sup>5</sup> Ibid.

<sup>6</sup> *Aziz v Secretary of State for the Home Department* [2018] EWCA Civ 1884.

<sup>7</sup> Ibid para 35.

As Master of the Rolls, Sir Terence hears cases on a wide range of issues. Another recent case was *Various Claimants v Morrisons Supermarket PLC*.<sup>8</sup> In this case, 5,518 employees took legal action against Morrisons for breaches of the Data Protection Act. Morrisons had given payroll information of 100,000 employees to a senior IT auditor who then uploaded a version of it to the internet. The supermarket chain was found not to be directly liable but they were found vicariously liable by the High Court. The Court of Appeal upheld the High Court ruling. Morrisons was therefore ordered to pay compensation to each of the claimants.

The last of Sir Terence's recent cases is *Stunt v Association Newspapers*.<sup>9</sup> The claimant brought an action concerning articles that the defendant had published, arguing that the articles were in breach of the Data Protection Act 1998, and further that section 32(4) of the Act was incompatible with the claimant's rights under the EU Charter of Fundamental Rights. This case considered whether the Court of Appeal should interpret s32(4) of the Data Protection Act so it is compatible with EU law. The Court held that it was not incompatible, finding that s32(4), which provided for a stay of proceedings concerning the processing of personal data in relation to the publication of new material by journalists, was compatible with Directive 95/46 art.9. Section 32(4) was part of the balancing exercise required by art. 9, which required Member States to restrict exemptions for the processing of personal data carried out for media purposes only where that was necessary to balance the right to privacy with the freedom of expression. The court decided that s.32(4) fell within the margin of appreciation given to the UK Parliament to protect the right of freedom of expression by a measure of narrow application designed to prevent the stifling of journalists publishing stories.<sup>10</sup>

The title of Sir Terence's lecture was: The Conflicts of Legal Pluralism: Secular Law and Religious Faith in the United Kingdom. Sir Terence considered the nature of the legal system in the UK. He highlighted the difficulties when it comes to combining EU law with the English common law system. European law uses a civil law system, whilst England and Wales use a common law system. Civil law is referable law created by codes and statutes originated from Roman Law; whereas, common law has developed over history through court judgments. Some countries, such as South Africa, use a mixture of common and civil law and it can be difficult to combine both systems. This difficulty comes from having to combine opposite values from different systems. Sir Terence then discussed and defined pluralism, which was helpful and informative. Legal pluralism means having more than one legal system, such as civil and common law, that applies to one country or state.

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<sup>8</sup> *Various Claimants v Morrisons PLC* [2018] EWCA Civ 2339.

<sup>9</sup> *Stunt v Association Newspapers* [2018] EWCA Civ 1780.

<sup>10</sup> *Ibid* para 92.

The UK incorporated the European Convention on Human Rights 1950 in 1998 when the Human Rights Act was passed. The Article of particular relevance to Sir Terence's lecture was Article 9 concerning freedom of thought, conscience and religion. Sir Terence gave examples of interesting Article 9 cases. Sir Terence discussed in the lecture the Denbigh High School case, which looked at the individual's right to wear religious clothing.<sup>11</sup> In this case a student at the school wanted to wear the jilbab. The case went to the Court of Appeal which ruled in favour of the girl by saying she had been denied her religious freedom. However, the House of Lords unanimously overturned the decision by saying the uniform policy respected Muslim beliefs.

Since the first year law students have started to study Human Rights and particularly the ECHR, Sir Terence's lecture was one of relevance and of interest. He mentioned cases that have been brought up in our lectures and also ones that many non-law students would have heard of, such as the 'Gay Cake' case. This case involved a Christian couple who owned a bakery in Belfast, Northern Ireland. A customer, who was also a gay rights activist, sued the couple who refused to adhere to his request to write 'Support Gay Marriage' on a cake. The case travelled through the High Court, Court of Appeal and then eventually went to the Supreme Court.<sup>12</sup> In the Supreme Court the decision was unanimous in favour of the bakery, the reasoning for this was that there was no breach of article 9 or 10, because the refusal was not to serve the man, but to write the message. Asher's bakery was entitled to refuse to write anything they deemed unsuitable. Both the cases before the Court of Appeal and the ones Sir Terence referred to in his lecture demonstrate the tensions between the Convention rights of parties and the court's role in upholding justice.

This short report has discussed and reviewed the lecture given by Sir Terence Etherton. From the lecture I was able to appreciate the complexity of the legal system with many case examples, first hand from a member of the judiciary. This provided me, and I am sure many other students in the audience with a compelling contrast to the legal theory that we are currently studying. I would encourage law students to take advantage of lectures such as this which can be inspirational and demystify the often hidden world of the judiciary.

See photograph below of Sir Terence Etherton meeting students after the lecture with Holly first on the left.

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<sup>11</sup> *R (o/a Begum ) v Headteacher and Governors of Denbigh High School* [2006] UKHL 15

<sup>12</sup> *Lee v Ashers Baking Company Ltd and others* [2018] UKSC 49

