(2010) 12 Ecc LJ 263–265 © Ecclesiastical Law Society
doi:10.1017/S0956618X10000402

EDITORIAL

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The Church of England is blessed with a great many religious courts and tribunals, creatures of primary legislation and the envy (perhaps) of the Beth Din and Sharia Councils who are reliant upon consensual submission of the parties for such coercive enforcement provision as may be provided by the Arbitration Act 1990. The Consistory Court, Commissary Court, Court of Arches, Chancery Court of York, Court of Ecclesiastical Causes Reserved *et al* have a long and distinguished pedigree, albeit that the reach of their respective jurisdictions has been successively reduced over past centuries. As one of the specialist contributing editors of the third edition of *Jowitt's Dictionary of English Law*,[1] published in June 2010, I was surprised by how many terms and expressions which have their origin in the ecclesiastical courts now find themselves in mainstream parlance of the English common law tradition. The drudgery of defining historic terminology in twenty-first century usage was made pleasurable by the good humour of my collaborators, Norman Doe and Russell Sandberg, and the number of entries bears testimony to the continuing relevance of ecclesiastical law in contemporary English jurisprudence.

William Allen Jowitt was the son of a clergyman. He grew up in the rectory of Stevenage where his father was rector. Appointed King's Counsel, he was elected as Member of Parliament for Hartlepool as a member of the Liberal party. He took office as Attorney General in Ramsay MacDonald's minority Labour government in 1929. He lost his seat in 1931 but was returned to the Commons in 1939, becoming Solicitor General in Churchill's coalition. He would have been very much at home in the Cameron–Clegg government current at the time of writing. As Baron Jowitt, he was appointed Lord Chancellor in the majority Labour government in 1945 and held office for the unusually long period of seven years. His achievement lay in the pruning and consolidation of the statute book. On his death in 1957, Viscount Kilmuir, then Lord Chancellor, paid tribute:

> His penetrating mind and the unequalled clarity of his exposition made him not only a formidable opponent in controversy but a help to all who wanted to understand the essential points of any subject. His warm humanity and real liking and friendship for those who came his way reflected an understanding of human problems and a very real sympathy with human suffering and human needs.

1 D Greenberg (general editor), *Jowitt's Dictionary of English Law* (third edition, Sweet and Maxwell, 2010).

It may be that these inspiring qualities are less evident in the party politicians appointed to the newly minted, and significantly less glamorous, post of Minister of Justice.

Earl Jowitt, in private life and as Law Officer and Lord Chancellor, demonstrated Christian virtues. In a witness statement placed before the Court of Appeal in April 2010, Lord Carey of Clifton sought to lend his support to an application by Gary McFarlane for his appeal to be heard by a specially constituted Court of Appeal comprising five Lords Justice who had 'a proven sensitivity to religious issues'.[2] However, the judicial oath (sworn on the bible or other holy book or affirmed) is to 'do right by all manner of people, after the law and usages of this realm, without fear or favour, affection or ill will'. Judges do not bring their beliefs into the courtroom.

Lord Carey opined that 'recent decisions of the courts have illuminated insensitivity to the interests and needs of the Christian community and represent disturbing judgments', by which I suppose he means that, were he to have been the judge, he would have determined the matters differently. In a multi-faith pluralist society there can be no special pleading for Christians. Lord Justice Laws was not persuaded by the arguments upon which Lord Carey intervened. Unusually for a permission application, he delivered a written judgment stressing that:

> ... the conferment of any legal protection or preference upon a particular substantive moral position on the ground only that it is espoused by the adherents of a particular faith, however long its tradition, however rich its culture, is deeply unprincipled.

Indeed, the courts should not merely be religiously neutral: they should not enter into matters of religious doctrine at all. A case in point is *His Holiness Sant Baba Singh Ji Maharaj v Eastern Media Group Limited and Singh*,[3] in which Mr Justice Eady considered that issues of a religious or doctrinal nature permeated the pleadings in the case. He therefore concluded that matters raised were properly categorised as non-justiciable and he imposed a stay on the proceedings. He relied on a long line of authority, most recently the decision in *Blake v Associated Newspapers*,[4] in which Mr Justice Gray stated:

> It is well established ... that the court will not venture into doctrinal disputes or differences. But there is authority that the courts will not regulate issues as to the procedures adopted by religious bodies or the customs and practices of a particular religious community or questions as to the moral

2 See *Macfarlane v Relate Avon Limited* [2010] EWCA Civ B1 at para 17.
3 [2010] EWHC 1294 (QB).
4 [2003] EWHC 1960 (QB).

https://doi.org/10.1017/S0956618X10000402 Published online by Cambridge University Press

> and religious fitness of a person to carry out the spiritual and pastoral duties of his office.

He also cited Mr Justice Munby in *Sulaiman v Juffali*,[5] who said:

> Religion . . . is not the business of government or of the secular courts. So the starting point of the law is an essentially agnostic view of religious beliefs and a tolerant indulgence to religious and cultural diversity. A secular judge must be wary of straying across the well-recognised divide between church and state. It is not for a judge to weigh one religion against another. All are entitled to equal respect, whether in times of peace or, as at present, amidst the clash of arms.

Having reviewed a number of authorities, Mr Justice Eady was able to identify and describe:

> the well-known principle of English law to the effect that the courts will not attempt to rule upon doctrinal issues or intervene in the regulation or governance of religious groups. That is partly because the courts are secular and stand back from religious issues while according respect to the rights of those who are adherents or worshippers in any such grouping. It is also partly because such disputes as arise between the followers of any given religious faith are often likely to involve doctrines or beliefs which do not readily lend themselves to the sort of resolution which is the normal function of a judicial tribunal. They may involve questions of faith or doctrinal opinion which cannot be finally determined by the methodology regularly brought to bear on conflicts of factual and expert evidence. Thus it can be seen to be partly a matter of a self-denying ordinance, applied as a matter of public policy, and partly a question of simply recognising the natural and inevitable limitations upon the judicial function.[6]

Set against this consistent line of clear jurisprudence, Lord Carey's plea for Christian judges for Christian disputes was all the more surprising. Its rejection by Lord Justice Laws was both inevitable and right. I venture that the Earl Jowitt would have thought the same.

5 [2002] 1 FLR 479.
6 *His Holiness Sant Baba Jeet Singh Ji Maharaj v Eastern Media Group Limited and Singh* [2010] EWHC 1294 (QB).