

EDITORIAL

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I hold to the view that *Donoghue v Stevenson* is the most cited but least read case in English jurisprudence.¹ I venture that the same might be said of the Archbishop of Canterbury's lecture 'Civil and religious law in England: a religious perspective', delivered at the Royal Courts of Justice in London on 7 February 2008 under the chairmanship of the Lord Chief Justice. Even before Dr Williams had reached the lectern that evening, certain individuals were calling for his resignation.² The coverage in the print and broadcast media was highly personal, deeply abusive and – above all – misinformed. I am therefore delighted that Dr Williams has consented to the text of his lecture being reproduced in full in this *Journal* together with the illuminating questions and answers that followed.

Accommodation of religious difference has long been a feature of liberal democracies and there was nothing novel in Dr Williams' comments, as I said in a letter published in *The Times* on 9 February 2008. However, the editor saw fit to delete the final sentence of my letter, which had read as follows: 'The threat to social cohesion lies not in the moderate orthodoxy of the Archbishop, but in the misleading and mischievous misreporting of his words in the media'. I hope that this *Journal* may provide a vehicle through which the actual words spoken by the Archbishop may be placed more firmly in the public domain for further reflection and better informed discussion. With that in mind, two complementary pieces also appear in this issue. First, a substantial article commissioned from Dr Samia Bano of the University of Reading, considering the nature of Islamic law with particular reference to the civil law of the United Kingdom; second, a brief comment from Professor John Witte of Emory University, providing an American reflection on some of the issues raised in the lecture.

On a more mundane – but equally important – note, the debate on clergy terms and conditions of service continues and has become more sharply focused in the light of the draft Ecclesiastical Offices (Terms of Service) Measure and subsidiary regulations. These pieces of legislation, and the

1 For those who do wish to read it, it can be found at [1932] AC 562, HL. The case was recently discussed in this *Journal*, in R Castle, 'Lord Atkin and the neighbour test: origins of the principles of negligence in *Donoghue v Stevenson*', (2003) 7 Ecc LJ 210.

2 A selective reporting of comments made by the Archbishop of Canterbury on BBC Radio Four's *World at One* programme earlier in the day had created a false expectation of what he might say. A transcript of the interview is available at <<http://www.archbishopofcanterbury.org/1573>>, accessed 8 June 2008.

related policy issues from which they emerge, were the subject of a series of presentations made at the Ecclesiastical Law Society's day conference, held in London on 8 March 2008 under the title 'In the service of the saints'. A number of members of the Society requested that the content of these presentations be reproduced in this *Journal* and I am grateful to the distinguished participants, each of whom provided a text for inclusion. My particular thanks are due to Professor David McClean for revisiting his contribution and producing a more substantial and detailed legal analysis of the background and methodology, which helps set the other pieces in context. Beyond the contemporary governance of the Church of England, Professor Ian Leigh takes stock of the emergent jurisprudence on the new offence of stirring up hatred on the grounds of sexual orientation, and how this relates to free speech and religious liberty.

And there is yet more Church of England legislation for the ecclesiastical lawyer to consider. The Marriage Measure 2008 comes into force on 1 October 2008, widening considerably the categories of persons who will henceforward have a legal right to be married in their parish church. Less certain but more pervasive will be the effect of the Dioceses, Pastoral and Mission Measure 2007. This is the longest and widest-ranging piece of legislation to come before the General Synod since the early 1980s and focuses on the twin themes of mission and ministry. The Measure extends to areas of the life and legislation of the Church of England as diverse as its provincial and diocesan structure, the delegation of episcopal functions, diocesan administration and the processes for making changes to local church organisation, including closing churches for regular public worship. It also provides the legal framework for the new bishop's mission orders, which are intended to provide endorsement, supervision and support for a wide and growing variety of new mission initiatives, without undermining the traditional parochial structures.

Pressure of space prevents inclusion in this issue of Ingrid Slaughter's scholarly introduction and overview to this legislation but it will be published online shortly after the publication of this issue and will be included in issue 11(1) in January 2009. The *Journal* can be accessed at <<http://journals.cambridge.org/action/displayJournal?jid=ELJ>> and online access is free to members of the Society. User names and passwords appear on the address slip under which each issue is mailed out. I would welcome comments from readers upon how best the online facility can be used in the future to improve the immediacy of communication where the content of the *Journal* is time sensitive.

I cannot conclude this Editorial without reference to Nick Richens, Deputy Secretary of the Ecclesiastical Law Society, whose untimely death earlier this year has been deeply felt by friends and colleagues alike. Though only an

occasional contributor to this *Journal*,³ his commitment behind the scenes was immeasurable, ensuring an easy transition to Cambridge University Press and maintaining useful links through the Society's website. His advice was often forthright but invariably correct. His knowledge of the law of education and church schools was second to none and, beneath his pedantry and the occasional acerbic remark, he combined pastoral concern and pragmatic decisiveness that made him the epitome of the ecclesiastical lawyer. He will be much missed.

3 See N Richens, 'The heathen are come into thine inheritance: reverter of school sites and the House of Lords decision in *Fraser v Canterbury DBF*, (2006) 8 Ecc LJ 458.