

EDITORIAL

WILL ADAM

That questions of religious doctrine were not justiciable by the courts of England and Wales was well established by the time that the case of *Blake v Associated Newspapers Limited* [2003] EWHC 1960 (QB) came before Mr Justice Gray in the High Court in 2003. In staying the claimant's action for libel the court held that 'doctrinal disputes or differences' were areas into which courts would not venture. Then, this year, the Supreme Court heard an appeal in the case of *Khaira v Shergill* [2014] UKSC 33. The unanimous judgment of the court was that, contrary to the long-held assertion affirmed in *Blake*, courts may have to wade into judging doctrinal disputes in order to decide cases that rely on them.

What effect this will have in the longer term on legal disputes with a doctrinal character is unclear as yet. However, the judgment in *Khaira* may be seen to be part of the trend, noted before on numerous occasions in the pages of this *Journal*, that religion is neither dead nor fading into obscurity. Religious faith is protected as a human right and, for those who profess faith, goes to the heart of the believer's self-understanding as a human being. It is unfortunate, but not surprising, that religious questions find themselves the subject of litigation. Perceived offence against or transgression of the tenets of religious belief has the habit of exciting strong reaction and vigorous protection.

In this issue we are fortunate to have another article by a senior member of the judiciary, following on from Sir James Munby's article in the last issue. Sir Terence Etherton, Chancellor of the High Court, examines the development of the law in recent years in the areas of race, sexual orientation and religion as examples of how the legal and constitutional framework of England and Wales has changed, particularly in the era since the Second World War. Sir Terence takes as his starting point the Protestant uniformity that can be seen threading through the constitution and in particular the Coronation Oath. In another article, Professor Peter McCullough of Lincoln College, Oxford, outlines some of the history of the Reformation settlement that brought this about. Professor McCullough points out that in the development of the Church of England from the reign of Elizabeth I it has been a hallmark of what became known as 'Anglicanism' to attempt, not always successfully, to hold together difference and resist fragmentation.

The recent history of the Anglican Communion has seen the principle of holding together despite difference stretched almost to breaking point. In England, this summer's developments in the journey towards the ordination of women as bishops has been one illustration, as has the introduction of same-sex marriage – a topic revisited in this issue by Professor Rex Ahdar, with examples from jurisdictions other than our own.

Societies made up of human beings, no matter how divinely inspired and empowered, all require proper fora for the resolution of disputes. It is not surprising that cases involving disputes around the interpretation of religious doctrine (particularly where other factors, such as trusts and the management of assets, depend on such interpretation) end up in court. Whether one sees the promotion of justice and the protection of the vulnerable as the will of God, as the outworking of a universal self-evident virtue or as merely the enforceable will of the sovereign power, people will continue to seek justice and protection, and the legal system – in particular the courts – will continue to be the place where they carry out that search.