OXFORD LAW SOCIETY

VERDICT MAGAZINE

MICHAELMAS 2016

A LETTER FROM

THE EDITOR

Dear Members,

I am really excited to present to you this term's issue of Verdict magazine. In this edition we have aimed to provide a mixture of different articles which we hope are both informative and engaging in equal measure. Special thanks must go to our guest writer Professor Andrew Dickinson for his interesting feature article discussing the importance of private rights.

We hope that our commercial awareness section will prove a useful starting point for members considering a career in law, and interesting reading nonetheless for those members who are not! Thanks also go to all of the law firms who have contributed to and sponsored Verdict, to the former Editor, Leanne, for her constant willingness to help and also to all of our outgoing executive committee, in particular, Ally for all of her guidance and support.

Joseph Gourgey,
Verdict Editor, Michaelmas Edition

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AN INTERVIEW WITH ANDREW CORLETT

SECOND DEEMSTER OF THE ISLE OF MAN HIGH COURT

LEANNE CHEN, ST JOHN'S COLLEGE

Andrew Corlett is an esteemed legal professional residing in the Isle of Man and currently holds the prestigious title of Second Deemster, the second most senior judge on the Island. Deemster Corlett is an alumnus of Pembroke College, Oxford where he studied law (jurisprudence), having matriculated in 1978 before being called to the English and Manx Bars in 1984. Since his time in Oxford, Mr Corlett has enjoyed a diverse and exciting legal career and during our conversation he imparted many pearls of wisdom.

What was it that made you choose the Bar after graduation?

Well, I went to the Inns of Court School of Law in London to do my barrister's training but I didn't practise at the English Bar. I was called to the Bar but then I came to practise in the Isle of Man (or back home, as it were!) because the Isle of Man was just taking off as a financial centre in 1982-3 and the job opportunities here were very good at that time. I wasn't particularly attracted by the London Bar – some of them could be rather pompous at times and not always particularly friendly! I then practised Manx law.

How does practising law in the Isle Man differ from in the rest of the UK?

We have a fused profession here – you become an advocate of the Manx Bar but a lot of advocates do not actually go into court, although some do essentially perform both the roles of a barrister and solicitor. This is very common in many small jurisdictions. You could move very readily from doing commercial work and you do not have to requalify to do court work.

What kind of law did you practice after you joined the Bar?

Initially my work was very general. I worked in the Attorney-General's office here and I then moved into private practice at a firm named Dickinson Cruickshank. I did a huge variety of work there, for instance, commercial transactions, civil litigation, criminal law and family law. This was because the Bar was very small and I suppose you had to do a bit of everything! Then I moved back into Government and in 1995 I became the Government Advocate, which was like the Deputy Attorney-General. During my career I have moved backwards and forwards between private practice and government work which has been very interesting. In 2001 I went to a firm called Simcocks where I mainly did civil litigation and in 2007 a job as Deputy Deemster came to be advertised. I thought I'd have a go and I'm glad I did!

What sort of work was involved as Deputy Attorney-General?

A wide variety – a lot of court work, European Community work, mainly public law based. Well, public law was always my favourite subject at Oxford! And when I started working in the 80s and 90s, administrative law was developing very quickly.

Why was administrative law developing so much in particular in that period?

Judicial review became quite a well-developed remedy and the judges became a bit more proactive in intervening, whereas they'd been a bit more timorous beforehand! Then of course we had the Human Rights Act on the horizon. In the Isle of Man ours was enacted in 2001 and I did quite a lot of work in connection to implementing that for the Government here.

So now you're the Second Deemster, how has the diversity of work changed?

I do a large variety of work from complex civil cases to adoptions and the full gamut of family work. The only thing I don't do (rather disappointing perhaps for your readers!) is criminal work. I'm glad I took the gamble in moving from private practice though. I'd chaired a couple of tribunals before but apart from that I didn't have that much experience of being a judge. The volume of work now is very considerable – I really hadn't realised how hard judges work.

You mentioned before the fact that you practise Manx law – have you found much of a difference between the Manx law system and the English Common law system in practice?

There's not much difference. We use English cases as precedents – they are persuasive, or even highly persuasive, particularly when they are Privy Council decisions. We do pass our own Acts of Tynwald though, since we have a lot of devolved powers. Essentially we can make our own law. Where there's a gap in the statute, we rely on English common law. So an English lawyer would feel quite at home here!

Now, this may be a bit controversial, but do you have any comments to make on the recent Panama Papers scandal since the Isle of Man is an offshore centre?

I think the Isle of Man should not be put in the same category as the likes of Panama. We have been, for many years now, a very well-regulated jurisdiction. It is undoubtedly the case that the British Government and the OECD [Organisation for Economic Co-operation and Development] has a very high opinion of the Isle of Man in this regard. We are seen as being one of the leaders in this area. We're not a jurisdiction which allows people to use instruments of fraud or hide terrorists' money or anything like that.

Do you face any challenges being a judge now?

Well, being a judge in a small community means that you have to be very conscious of your position. In comparison, as an advocate in private practice you perhaps have a little more freedom to express yourself or to behave in the way you want to behave. But apart from that, it's intellectually very stimulating and you feel like you're doing something valuable – something that really makes a difference to people.

Have you ever had to make a particularly difficult decision?

The most difficult to make are probably in the area of family law because you're making momentous decisions about the future of the child. But at the end of the day the decisions are actually quite easy to make. After I have come to a decision, I

am confident that I have got it right and I try not to worry about it. From a practical view, much of the time there is evidentiary difficulty rather than problems of law.

How much do you think your Oxford law degree has helped you in your career?

Well it certainly has helped me. I look back on the course and I think undoubtedly that it was a very rigorous degree. That was a very good foundation. I was very lucky in that I had two very good tutors at the time. My only complaint was the quality of the university lectures! Nothing really seemed to be coordinated with what you were doing at the time!

Did you enjoy your time at Pembroke?

I did. It took me a while to settle in, particularly into law. I recall that after the first term I felt that this wasn't for me at all and I thought I really didn't want to do it. I wanted to change to philosophy and a modern language. But I think when Mods were out of the way I felt a lot more confident, although I seem to remember doing particularly badly in criminal law! It took a while to get used to the language of law; the way things were put and the way that judges expressed themselves.

And how was your experience of Oxford in general?

It was lots of good fun. I ended up sharing a house with 6 other people in my final year, which was entertaining to say the least. I wasn't a rower though. It was quite out of the question for me to get up at 6am or whatever ridiculous time it was! I was much more into the music scene – punk rock and new wave. I perhaps wasn't the typical Oxford student. I didn't spend that much time punting or that kind of thing.

Do you have any final words of advice for students who are considering advocacy?

I think it's a mistake to specialise too early. Now the big law firms seem to want you to be pretty much pigeon-holed in one area for almost the whole of your career. But I think people should get as much experience in as many areas as possible. You never know what kind of thing will take your fancy! The elusive work-life balance is also a tricky one. The amount of hours worked now by people I think is terrifying. Oh and mobile technology is another thing – I'm not sure I would like to be starting off as a junior advocate now with a Blackberry in my pocket all the time. Before, when you went on holiday, you were on holiday. The difficulty with the Bar is that it can be all-consuming. Don't go into it unless you are of good mental and physical health, I would say!

COMMERCIAL AWARENESS

The term commercial awareness can be a frightening one for prospective lawyers, both studying law and not. We are told we need to have a 'good commercial understanding' if we want to work in a top law firm one day, yet we're stuck inside learning about the Constitutional Reform Act 2005 all day.

But while the need for 'commercial awareness' may seem off-putting, it simply refers to a candidate's general knowledge of business, their business experiences and, specifically, their understanding of the industry which they are applying to join. It's an up-to-date knowledge on what's going on in the business and commercial world.

Why is this so important to law firms? The current legal world revolves around business and commerce in the marketplace, between countries and regions. So to be a good solicitor, it is rather essential that you are commercially aware. To complete deals and mergers, to advise clients on multi-million pound infrastructure plans, you need to have a comprehensive idea of how the commercial industry works in that field.

There is more to a law firm than just providing legal advice to clients. There is a necessity to keep a watchful eye on its profitability and cashflow. Indeed assessment days can often test one's commercial awareness, by testing the candidate's ability to understand what's important to the client and how the law firms operate. It is important that solicitors think about the client; it's not just a case of knowing the law but knowing your client's objectives and thus tailoring your advice to these objectives.

This is not to say that you are expected to know the shipping industry inside and out before you even apply to a firm. Law firms are well aware that you are still studying academically in university, however, they will expect a certain degree of understanding and interest on the commercial side of things.

So how can you improve their commercial awareness? Traditionally, reading papers such as the Financial Times, The Times and The Telegraph have been good methods. But in this age, there are so many more options available to us. Social media is one option, and so if long broadsheet articles aren't for you, you can keep up to date with the latest business markets by reading 140 character updates on Twitter, or watching informative videos on Facebook. There are also legal publications available, such as The Lawyer and Legal Week. For those who aren't such big fans of reading, there are some great podcasts available; in particular the FT Money Show and MR University are useful. Finally, the annual reports each law firm produces are a great guide as to what happens inside the firm and helping to understand how the commercial firms operate.

I would suggest finding something that genuinely interests you, and whether this involves a recent football takeover or a global merger between two leading law firms, you should culture this interest early on. Commercial awareness is not something you can just soak up on one day before an interview, but an understanding which grows over the years. You will not be expected to have a full understanding of the complex issues which solicitors have to deal with, but you must show an interest in the commercial aspects to a firm, and this should be started sooner rather than later.

ESSAY COMPETITION

WINNER

WHAT WOULD BE THE IMPLICATIONS FOR BRITAIN'S DEMOCRACY AND CONSTITUTION IF PARLIAMENT ATTEMPTS TO FRUSTRATE BREXIT?

WALTER MYER, HARRIS MANCHESTER COLLEGE

The 2016 referendum result has raised pressing questions on the relationship between branches of state power in Britain. The government's acknowledgement of the decision in *Miller*[1] reaffirmed the court's authority to define the limits of royal prerogative; what remains is to consider Parliament's relationship with the executive and judicial branches, and with the emerging constitutional device of referendum. This essay will argue that an ostensibly disruptive decision by Parliament to frustrate Brexit would be less radical in constitutional terms than the alternative. It would largely maintain the status quo of absolute Parliamentary sovereignty over the legislative powers of the executive and the will of the people, without risking a confrontation with the courts. Furthermore, the constitutional arrangements which spring from Parliament's decision will likely answer key normative questions about the nature of British democracy.

Parliament vs Government

In 1978, the Select Committee on Procedure produced a report claiming that the government held the 'balance of advantage' over Parliament, and that this arrangement was 'inimical to the proper working of our parliamentary democracy'[2].

Since then the pendulum has swung back, both through accountability mechanisms (departmental select committees were established in 1979) and restrictions on the royal prerogative. On the latter, it had already been established in 1920 in *De Keyser*[3] that where statutory provisions govern the same domain as pre-existing prerogative powers, prerogative powers are held in abeyance. In 1985, Lord Roskill offered a restrictive list of domains in which the prerogative may be exercised in the GCHQ case[4]. In the intervening 30 years, Parliament has begun to erase some of these; for instance, the 'defence of the realm' – on Lord Roskill's list of prerogative powers of the executive – is now conventionally conditional on parliamentary approval.

The decision in *Miller* that Cabinet requires Parliamentary approval to trigger Article 50 encroaches upon the executive's former prerogative power of treaty making. The encroachment is not a wide one: the judgment depends upon the special constitutional status of the 1972 Act, noting that (at least) European Parliamentary electoral rights would be lost by triggering Article 50. But while this means that purely regulatory treaties will remain the preserve of Cabinet, those which confer rights on citizens in combination with statute law (such as the Human Rights Act 1998) may also require Parliamentary approval for withdrawal.

The goalposts have already been shifted whether Parliament seeks to frustrate Brexit or not. Parliamentarians would need to establish a convention respecting the will of the executive on treaty matters even where rights are threatened, and explicitly cite this in permitting EU withdrawal, in order to (conventionally) reinstate executive sovereignty. This would constitute a striking concession to the executive, signalling a dramatic halt in the trend of sovereignty flowing to Parliament. An attempt to frustrate Brexit, on the other hand, would only prove what the court has already established – that Parliament is sovereign in these matters. It would furthermore accord with the pattern in recent decades of legislative ascendancy over the executive.

Parliament vs Courts

We may consider the legislative-judicial relationship on this question through the Diceyan interplay between Parliamentary sovereignty and the rule of law. While the courts may have a role to play following the vote in Parliament, it would be a radical judge who invoked the rule of law to dismiss Brexit legislation produced by Parliament. Such an act would certainly require a thicker conception of the rule of law than British courts have been inclined to adopt; something like Trevor Allan's interpretation, in which courts act to 'bridge the gap between the legal doctrine of parliamentary sovereignty and the political doctrine of the sovereignty of the people'[5]. If, as he suggests, the rule of law means that courts must consider the 'moral and social values' prevalent in British society when interpreting legislation, they could invoke the referendum result to overturn Parliamentary activism.

This will not happen, for at least three reasons. Firstly, Allan's sanguine rule of law doesn't stand up to scrutiny. It is dubious to claim that there are common 'moral and social values' in Britain beyond a minimal set, and to do so clumsily sidesteps normative questions about the theory of justice we adopt. On a certain consequentialist standard of morality, for instance, judges might reasonably deem Parliament's refusal of Brexit to conform with the rule of law on economic grounds alone. Secondly, it is not clear that the referendum result does, in fact, reflect the true will of the people (see below). And thirdly, courts have largely restricted their invocation

of the rule of law to formal rather than substantive interpretations. Thus the attempt to frustrate Brexit will not create conflict between Parliament and the courts, and their constitutional relationship will remain unchanged.

Parliament vs Referendum

The referendum device is a relatively new one in British constitutional history. It has been used only three times, with the first two instances supporting the status quo; the 2016 referendum is the first to provide a popular mandate for political change. Given that the majority of Parliamentarians support remaining in the European Union, this provides a test for the authority of referenda.

In responding to this test, MPs will be made to answer why we have a Parliamentary democracy at all. Is it for expediency alone, or is there a positive case for Parliament? If we assume that representative democracy is only an imperfect but convenient substitute for direct democracy, and that referenda more effectively ascertain the true will of the people, then a Parliamentary rejection of the referendum result would be illegitimate (whether it is 'binding' or not). We can challenge these assumptions on two fronts. Firstly, following a campaign blighted by misinformation on both sides, we might question whether the result really does express the will of the people; particularly on readings of the popular will which connect with the long term public interest. Secondly, we might reject the idea that direct democracy is somehow more legitimate than representative democracy, and acknowledge the institutional mechanisms which legitimise Parliamentary sovereignty. These two challenges are linked: one advantage of the Parliamentary system is that it permits reasoned debate, and holds participants to account. Select committees provide a 'fact-checking' mechanism lacking from the referendum campaign, conferring a degree of legitimacy on decision-making in Parliament. A Parliamentary attempt to frustrate Brexit would need to invoke such arguments to positively affirm its institutional integrity over that of a popular vote, establishing a clear normative view of British democracy.

Parliamentary activism on Brexit would therefore see little more than an affirmation of existing constitutional arrangements, with its most contestable outcome that referenda are constitutionally inferior to the will of Parliament. But politically unpalatable as this conclusion may be, and as much as we may deplore that it wasn't clarified before the referendum, it is nonetheless perfectly compatible from a democratic and constitutional perspective with Britain's Parliamentary democracy.

[1] R (Miller) v Secretary of State for Exiting the European Union [2016] EWHC 2768 (Admin)

[2] HC 588-1 (1977-78), p. viii

[3] Attorney-General v De Keyser's Royal Hotel [1920] AC 508

[4] Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374, p. 418

[5] Allan, 'Legislative Supremacy and the Rule of Law' (1985) CLJ 111, p. 129

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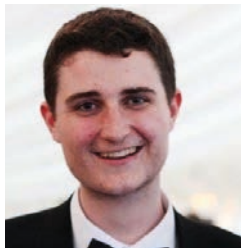

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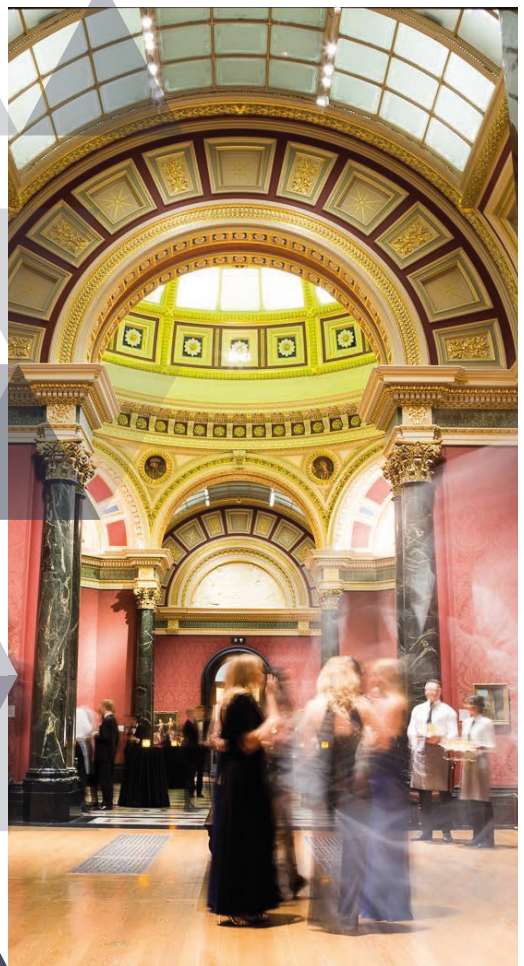


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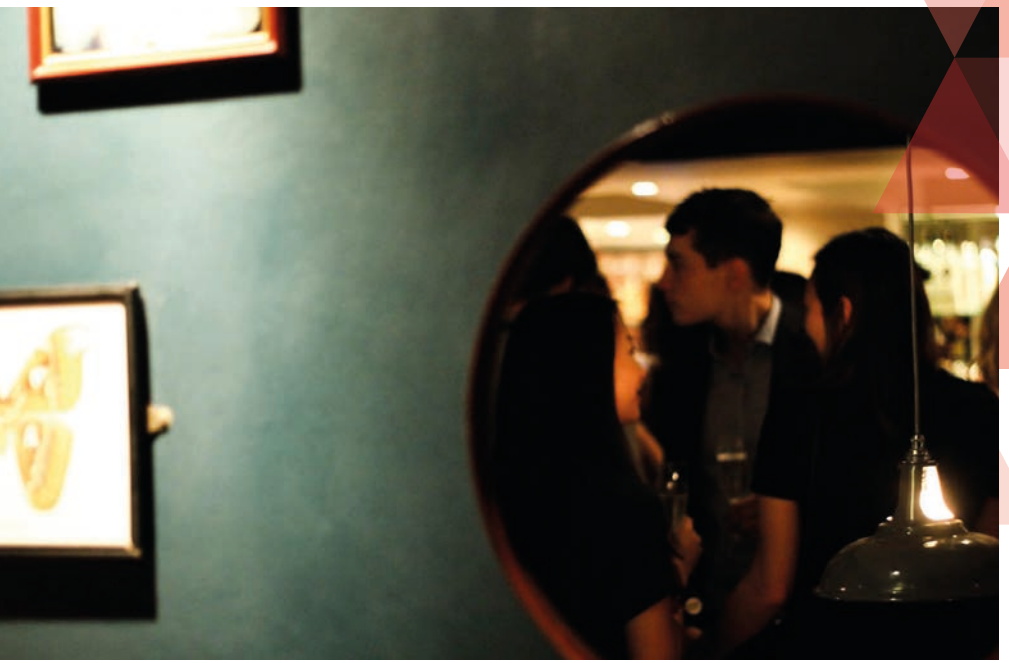

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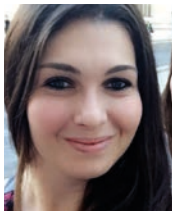


I look back at my time on the Oxford Law Society committee with incredible fondness. It has been four very busy terms, full of a lot of law and a lot of fun.

As is the case every Michaelmas, it has been a very busy term for the Law Society. We have held 23 events, including presentations, dinners and cocktail events, as well as our ball at the National Gallery. It wasn't always easy; there were the rare times when Josie and I questioned whether being vice-president and president respectively as law finalists had been the wisest decision for our degree, but looking back on the term, I can safely say we wouldn't have had it any other way.

I have been lucky enough to meet some of my closest friends since joining LawSoc committee and have learned an incredible amount along the way. Each committee position from membership secretary to president has endowed me with new skill sets (I never imagined being able to organize a ball!) and of course, attendance at presentations and events has given me the commercial awareness and knowledge of law firms that is so important for everyone interested in a career in law.

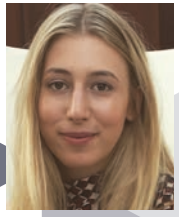
We have, therefore, worked hard to provide our members with a variety of events and presentations, from Pizza & Prosecco to Lawyers' Den, in order to ensure that there was something that would appeal to everyone, whether they were a law or non-law student, graduate or undergraduate student. I hope these opportunities have proved valuable for our members.

Thank you to our sponsors including Weil, Gotshal, & Manges who have sponsored Verdict magazine's essay competition this term, Hogan Lovells and Herbert Smith Freehills, as well as the many other law firms who have supported the Oxford Law Society this term.

Thank you to committee for all of their help and constant support throughout the term. Michaelmas term wouldn't have been nearly as successful without them. And a special thank you to the rest of my executive committee: Josie, Tom and Harry, for their tireless work in helping me organize one of the busiest term's in the Society's history.

LawSoc has been an important part of my time at Oxford, and I will be sad to leave, but I know next term's executive committee have a fantastic Hilary term ahead of them. I wish Chantal, Leanne, Hena and Madeleine all the best of luck.

JOSIE LEVICK
VICE PRESIDENT



As my time as Vice-President comes to an end and I look back over the 3 terms I have spent on committee, I really do have much to be thankful for. I am so glad I've had the opportunity to be a part of the Law Society, and from it I have some brilliant and lasting friends and memories.

One of the best experiences, amongst our many glittering events, has been organising, along with the exec, our ball at the National Gallery. It will certainly be a night to remember for all lucky attendees.

I wish the best of luck to the incoming exec, who I know will do a brilliant job of making Hilary Term a success. I also want to thank all of those with whom I have worked on commitee, and wish the Society every success going forward.