

BOOK REVIEW

Sir Geoffrey Nice, QC, *Justice for All and How to Achieve It*, Scala Arts and Heritage Publishers Ltd, London, 2017, ISBN 978-1-78551-123-3

1 *Justice for All* is an eclectic mixture of memoir, history, ethics, politics and jurisprudence from one of England's foremost criminal QCs. It comprises 17 chapters and two appendices, the former being taken from a series of Gresham lectures Sir Geoffrey gave to an audience of practitioners, academics and interested laymen.

2 It is an easy book to read, but a difficult book to review. Largely because each of the chapters was designed as a standalone lecture for a mixed audience, it is one that can be dipped into at leisure.

3 Its centrepiece is Sir Geoffrey's experiences as a lead prosecutor for the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), followed by other historical examples of the difficulty in upholding the rule of law in theatres of war or in states of emergency. The Israel Palestine conflict looms large. The question posed is how justice can be done in what is for law quite extreme conditions—and how justice can be all when manifestly international tribunals are created for some defendants and not others. Sir Geoffrey's review of the selection of conflicts and defendants reminds us (p 12) of Robin Cook, MP (later praised for his principles) who stated that the International Criminal Court itself was "not a court set up to bring to book prime ministers of the United Kingdom or presidents of the United States".

4 The difficult questions posed in these chapters is first as to whether justice is possible when international politics determines which countries should face inquiry. Secondly, how can judges and lawyers in an international criminal justice system do justice when there is a lack of organisational independence from politics that we in the wider British legal family take for granted? Sir Geoffrey had a front row seat when the ICTY appointed a Chief Prosecutor, Carla Del Ponte, who preferred to live in the political limelight. One moment she wanted procedure ignored against Milosevic; the next moment Western political interests wanted Kosovan leaders prosecuted for crimes against Serbs. Amid this fascinating tale from the heart of major world events, Sir Geoffrey's message is that a lawyer is never too old to ring up his or her professional body for ethical guidance; and that this simple step is often the most powerful weapon lawyers have in holding firm to their duty to do justice.

5 The book proceeds into a further question of justice: can the law do justice to peoples, to recognise their collective victimhood in matters of genocide? Again, Sir Geoffrey has much to offer from the frontline of the Milosevic prosecution, and the links between the Serbian Government and Bosnian-Serb forces in Srebrenica. Although not in his professional experience, he relates how non-official tribunals such as the Bertrand Russell Tribunal on Vietnam (ch 6) or the Japanese “Comfort Women” Tribunal (ch 7) have sought to use legal method to highlight guilt for war crimes in other theatres. Whatever the merits of such tribunals—and Sir Geoffrey acknowledges that such efforts are often undermined by obvious political biases—they have a legacy in bringing events firmly into historical memory, even if the informal tribunals themselves have been largely forgotten.

6 As might be expected of a book drawn from a lecture series, the earliest chapters are the strongest. The title perhaps over-promises: *Justice for All: and How to Achieve It*. The subject matter drawn from personal experience and personal interest lacks the clear thread of a treatise—something that matters less when delivering weekly lectures to a changing audience. The political selectivity of international prosecutions creates different issues from the political corruption of actual prosecutions. Justice for individual victims against the acts of individual criminals is theoretically straightforward. But justice for a people in terms of a finding of genocide (ch 12, “Srebrenica: Genocide and Trial”) involves questions of motive—whereas the point of the law of war is that some things are simply wrong regardless of context.

7 It is in the Israel/Palestine conflict in Gaza that Sir Geoffrey faces the problem of how the law can sit in judgment on combatants if the objection is that their use of force is disproportionate or unjustified militarily. If Israel believes it is faced with an enemy which would push them into the sea, and Hamas believes it is faced with an enemy that would imprison the population forever in Gaza, how can the process of justice realistically say who is right (ch 13)? Tellingly, the writer returns in ch 14 to a case where no such issues arise in the Gaza conflict, namely, the mistreatment of passengers on the *MV Mari Marmara* when it was stopped and boarded by Israeli forces *en route* to Gaza. The requirements of justice are easier when we limit ourselves to wrongs by and against particular individuals.

8 The final chapters on “Human Rights: Whether in Europe or Out?” and “Law and Lawyers: Not all Bad?” are essentially liberal editorial pieces—although with notably greater attempts at balance than can be found with a post-judicial Lord Steyn article. It perhaps sums up the difficulty that lawyers have in writing a book which is not wholly academic: lawyers tend to have strong political and moral views, but writing as a lawyer requires a display of objectivity. If the lawyer

breaks wholly free from law into polemic, then what special insight does he offer? Caught in this no-man's land of wanting to set out what he has learned as a lawyer, but also what he believes as a liberal thinker, Sir Geoffrey ends with a postscript that says that "Justice for All" can be achieved through regard to diversity, which he sees as a celebration of difference defined by certain characteristics such as race, gender and sexuality.

9 It is a provocative idea—and veers away from the celebration of the uniqueness of the individual, which was where he appeared to be heading when he talked about how his public school kept a Welsh Communist teacher in post for no other reason than he was a good teacher (pp 286–287). Fortunately, the matter is revisited in the appendix concerning Sir Geoffrey's connection to Jersey.

The Jersey connection

10 For a Jersey lawyer, there is a particular interest in this book in that Sir Geoffrey was the judge in *Michel v Att Gen*,¹ where a conviction was overturned by the Privy Council due to what it found to be his injudicious conduct. Sir Geoffrey offers a vigorous defence. The *Michel* case forms four pages of the main part of the book. The writer's complaint is that the Privy Council condemned his conduct of the trial not just in terms of asking too many questions but in being downright offensive. He was (p 88) "condemned as the worst known form of judge". As the finding was by the highest court, the *alter ego* of the UK Supreme Court, there was no redress. Sir Geoffrey returns to the subject at greater length in Appendix 2, which closes the book.

11 Having previously read only the Privy Council decision, I should start by confirming Sir Geoffrey's worst fears as to the impression given of him. My impression was that, tired of a villain (Michel would plead guilty at the retrial) wasting the court's time by pleading his innocence, it seemed as if Judge Jeffreys was alive, well and trying financial crime in the Channel Islands. When teaching judicial independence to LLB students, I have used the *Michel* case as a rare example of actual bias. I will be kinder in future. Sir Geoffrey's defence is that his lengthy questioning of Mr Michel from the bench reads much worse than it actually was. The written transcript looks damning but the recording shows that it was not offensive—a possibility the Court of Appeal allowed for but that the Privy Council left unmentioned. He argues that the defence lawyer for Mr Michel's co-accused has never seen anything wrong with his handling of the trial, and, apart from one criticism by Mr Michel's own advocate, no

¹ 2009 JLR N [54]; [2009] UKPC 41 (*sub nom. Peter Michel v The Queen*).

one raised such issues at the time. The case for the judge's defence is not that he necessarily handled the trial well but he was doing his best. He had not been trying to damn Mr Michel's defence, but rather Sir Geoffrey and Jurats (p 322) "did not find the prosecutor or counsel for Michel to be raising all the issues we felt should have been raised."

12 Sir Geoffrey Nice's Appendix on Jersey is in many ways the making of the book.

13 It is only with the Appendix on Jersey that Sir Geoffrey comes to the real lesson. It is an obvious lesson. It is much repeated in history and literature. It is the lesson that Squire Alworthy teaches in *Tom Jones*: never to condemn someone without giving them a chance to explain themselves. Never lose sight of the individual who might be affected by your words and deeds: they may not deserve it. This is not to say all of the arguments are convincing: (a) I am far from sure it was right for Sir Geoffrey to write to the Privy Council judges to complain—and I doubt if the Jersey policemen criticised by the Privy Council in *Warren v Att Gen*² would have even received a reply if they had; (b) his suspicion that he was scapegoated as an outsider to Jersey is weakly evidenced—it was the role of counsel on both sides in the appeals to put their cases as best they could, not to protect the reputation of the judge; (c) without Sir Geoffrey's handling of the trial there would have been no ground to overturn the decision in the first place—scapegoating is surely about shifting the blame; and (d) a judge should never conduct a trial so that the prosecution makes a professional judgment not to defend the handling but to concentrate on the argument that the defendant was obviously guilty. However, and this is the important thing for the book, his basic point is sound. There was no need for the Privy Council's rhetorical polemic against Sir Geoffrey's handling of the case—which sits in stark contrast to the remarks of the House of Lords when overturning the original *Pinochet* decision due to Lord Hoffmann being obviously conflicted. Both the Court of Appeal and the Privy Council could justly conclude that the trial had been mishandled—but there is nothing unusual in judges lapsing into error. Convictions are overturned all the time due to judicial error. What the Privy Council should not have done was to paint a picture of the judge as a latter-day Judge Jeffreys when they knew nothing about him.

14 In an age where people rush to judgment by way of Twitter-storms, and ruin careers on a single quote, refusing to listen to apology, explanation or mitigation, these are important lessons. These are lessons which we always need to relearn—both professionally and in

² 2011 JLR 424 (Privy Council).

our daily lives. The problem is the one that bedevils human rights: we all agree with the principle but we are often so certain we are right that we lose sight of it when our own conduct is in issue.

15 For the Privy Council in *Michel*, a nice rhetorical flourish to stress the need for judicial independence casually used the judge and his reputation as a means to an end. In our adversarial system, lawyers inevitably treat witnesses in that manner. But achieving justice for all means that, in the final judgment of the law, the court asks what has really been proven before reaching a conclusion on the defendant, the victim, the witnesses, or even the judge.

Conclusion

16 This book generally contains much that is interesting, as is inevitable insofar as it provides a memoir of the professional life of such a distinguished lawyer. For those interested in the former Yugoslavia, it includes much that will be an education. For a Jersey reader, the book makes an interesting and important revision to our understanding of an important recent case. It is salutary both in terms of making us realise that Jersey's "Case of the Guilty Judge" was not as clear cut as the Privy Council led us to believe, and also in terms of how far even a distinguished career can be blighted by one bad episode.

17 In terms of the author's reputation, the reader is left in no doubt of the injustice of judging him by the *Michel* case alone. However, if the author looked at the company he keeps in being invited to give Gresham lectures, he should know that the damage to his reputation in the British legal profession was never that bad.

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