

Sir Terence Etherton

President, Master, Graduates and Graduands, Guests, and Colleagues

Today it is my great honour to welcome Sir Terence Michael Elkan Barnet Etherton to a College Fellowship at Birkbeck, University of London.

Sir Terence is a champion of law, justice, and equality. As Master of the Rolls and Head of Civil Justice – a position that dates back to at least the 13th century – he is the second most senior judge in England and Wales. He is also formidable, conscientious, and inspirational.

Born in 1951, Sir Terence attended Holmewood House School in Tunbridge Wells, followed by St Paul's School (Barnes) and Corpus Christi, Cambridge, where he studied history and law.

Etherton's legal career has been exceptional. He was called to the bar in 1974 and within 15 years became a Queen's Counsel. A decade later, he was appointed a High Court judge, assigned to the Chancery Division. This meant that Etherton became Sir Terence. In 2006, he was appointed Chairman of the Law Commission, where his job was to "ensure that the law is as fair, modern, simple and as cost-effective as possible". In other words, it was his responsibility to recommend reform of the law. Two years later, he became Lord Justice of Appeal and appointed to the Privy Council. From 2013 to 2016, he was Chancellor of the High Court, the head of the Chancery Division of the High Court of England and Wales. Then, in October 2016, he succeeded Lord Dyson as Master of the Rolls, or the judge who presides over the Court of Appeal (Civil Division). He is responsible for running the Court of Appeal and is head of civil justice from a judicial perspective; he has pastoral responsibility for all 38 judges of the Court of Appeal and has operational responsibility for the Civil Division of the Court of Appeal. He also chairs a number of committees, including the Civil Justice Council.

It was a tumultuous time to serve in these positions. Just in June this year, Sir Terence, Sir Stephen Irwin and Sir Rabinder Singh found that ministers had breached British law when

they “made no concluded assessments of whether the Saudi-led coalition had committed violations of international humanitarian law in the past, during the Yemen conflict, and made no attempt to do so”. The UK government suspended new arms deals with Saudi Arabia.

Sir Terence speaks eloquently about diversity in the judiciary: the law needs to reflect the diversity in the population. He speaks about the need for judges to be candid about their principles and prejudices if fairness is to be done and seen to be done. In the words of Lady Hale, President of the Supreme Court of the United Kingdom, “one man's common sense is another woman's hopeless idiocy”. He believes fervently in “certain inherent values in the law: those of certainty, consistency, accountability, efficiency, due process and access to justice”. He writes passionately about “the need for laws which are just, up-to-date, and accessible to all who are affected by them”. This is just one of the reasons why he is a supporter of modernizing court processes, including the digitisation of systems across jurisdictions and streamlining processes to make the system easier to navigate. In writing this oration, I watched him on the YouTube Channel for the Civil Division of the Court of Appeal – one of his innovations. It was a lesson in the way our justice systems work – and work for all who need it.

Clearly, the rule of law is dear to his heart. He has reflected on the way that the Holocaust was facilitated by the German judiciary, who often enthusiastically enforced Nazi laws and regulations. He has speculated that their unquestioning application of the law was the consequence of their “positivist” training, which required judges to give effect to legislation passed by legitimate lawmakers. He asks some difficult questions: Would our constitutional arrangements be able to stand up to a concerted attack by an anti-democratic power? Would British judges be willing to use the common law to “defeat a tyrannical regime enacting laws with due procedure but abhorrent purpose and effect”? These are big and important questions.

Sir Terence is a man who seeks to make a difference outside of the law as well. There is no time to list all his activities (after all, there are still people waiting to graduate), but he is passionate about health and welfare. He has served on the Riverside Mental Health NHS Trust and chaired the West London Mental Health NHS Trust as well as Broadmoor Hospital. He is interested in education, active not only within Royal Holloway College, Corpus Christi College (Cambridge), and Kent University, but also here at Birkbeck, where he has been a Visiting Professor of Law since 2010, giving generously of his time. Birkbeck students have been awed by his lectures on topics such as the law of contract and diversity in the judiciary. He is also Patron of the [Birkbeck Law Review](#).

Who is the man? His grandparents arrived in the East End of London from the pale of settlement in Russia during the early years of the 20th century. If they thought they had arrived in a land without anti-Semitism, they could not have been more wrong. Evading prejudicial treatment, his great uncle, Schliama Borrenstein, persuaded Etherton's great grandfather to change the family surname to Etherton and Schliama himself changed his name to Seddon Llewellyn Delroy Ryan Etherton. It was a "complete identity makeover", Sir Terence told the [Jewish Chronicle](#).

He has a sister (who is a criminal QC) and two brothers. His childhood was difficult, since his parents' finances were often rocky. But they made his schooling a priority and he flourished. His love of sport found an outlet at school. From 1977 to 1980, he was a member of the British Sabre team. Better than that: he was selected to compete at the Olympics in Moscow in the summer of 1980. As many of you will know, that was the year that the Soviets invaded Afghanistan. Many countries – including the US, West Germany, Japan, China, the Philippines, Chile, Argentina and Canada boycotted the games entirely. In the UK, the government supported the boycott but left the final decision about participation to individual athletes. Terence took the decision that he could not morally attend.

Sir Terence is gay. He met his husband 41 years ago. If the personal is political, the political is also personal. As Sir Terence later recalled, there was an unspoken policy in the judiciary that gay men would not be appointed to the bench. In his words, “it was thought that they would be open to blackmail, even after the 1967 Act”, which decriminalised homosexuality. The policy was only changed by Lord Mackay of Clashfern, the Conservative lord chancellor, in 1991. Sir Terence’s appointment to one of the highest offices of the judiciary shows, in his words, that “diversity in sexuality is not a bar to preferment”.

But this does not mean it was clean sailing. In October 2016, Sir Terence was one of three judges (the other two were the then lord chief justice, Lord Thomas, and Lord Justice Sales) involved in proceedings concerning the use of the Royal Prerogative for the issue of notification in accordance with Article 50 of the treaty on European Union. They ruled that, following the EU referendum earlier that year, the UK government could only trigger the process for leaving the European Union via a vote in Parliament. After the ruling, the Daily Mail published the notorious “Enemies of the People” headline, referring to the then lord chief justice, Lord Thomas, Lord Justice Sales, and the master of the rolls, Sir Terence. The full headline read: “The judges who blocked Brexit: One founded a EUROPEAN law group, another charged the taxpayer millions for advice and the third is an openly gay ex-Olympic fencer”. While Sir Terence maintained a dignified silence, hundreds protested against the Daily Mail and the headline was removed (with no apology given). If being gay and a former Olympian is the worst thing the Daily Mail can say about a person, then that person must be doing something right.

In 2006, Sir Terence entered into a civil partnership with Andrew Stone and, on 10 December 2014 they married in a Reform Judaism ceremony at West London Synagogue, where he was Senior Warden. Sir Terence became the first Master of the Rolls to have a husband in its 730-year history.

Speaking to his friends, the same themes appear time and again. Sir Terence is warm and a loyal friend. He is sincere, optimistic, honest, and tenacious. His friends tell me about his huge

sense of humour, “as dry as blotting paper”. He is dedicated to public service more than anything.

Sir Terence’s coat of arms features not only sapphires but also a sword, evoking his earlier life as a swordsman. His motto is written in Hebrew lettering: the single word “hineini” — “here I am” — Abraham’s response when God tested his faith. Sir Terence asks that people accept him for who he is and announces to the world that he is keen to service.

We are deeply honoured that he is a Fellow of Birkbeck.