



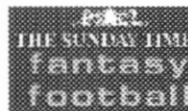
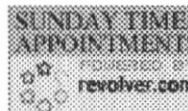
Allan Massie

Impartiality of our judges is no secret

Previous columns

There is a story of how one of the more celebrated Edwardian murderers - it may have been Seddon - recognised the judge at his trial as a fellow freemason, and made a masonic sign in the hope that this would secure him favourable treatment. It was in vain. The judge may indeed have been a fellow mason, but the man in the dock went down.

This story recurred to me the other day when I read of the case of the Fife businessman, Thomas Minogue, who is charged with housebreaking. His advocate, Derek Ogg QC, said that there were elements in the case which suggested police involvement with freemasonry. He said that it was therefore important for the public to be sure that the judge hearing the case had no links with freemasonry, and was not likely to be influenced by membership of a secret society. On behalf of his client, he argued that freemasons may not be impartial and that Mr Minogue believed that a freemason might discriminate against him as a non-member, which would be in breach of the European Convention on Human Rights.



Comment

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It's an interesting point. Actually, if the judge was a freemason, and did so discriminate, he would be in breach, not only of the convention, but of the tenets of freemasonry. According to the entry on freemasonry in John & Julia Keay's Collins Encyclopedia of Scotland, "candidates for Scottish freemasonry must believe in a Supreme Being, be of high moral character, and be respected members of their community, who abide by the laws of whatever country they happen to be in". It would seem therefore that a sheriff or judge who happened to be a freemason would be a delinquent freemason if he was not impartial.

Freemasonry in Scotland has a long history, going back to at least the 17th century, when free or speculative masons first seem to have been invited to join the long-established lodges of operative masons, that is, those who actually practised the craft. Scottish (and English) freemasonry has been, mostly, non-political and uncontroversial. Here, freemasonry, for the past 200 years at least, has devoted itself principally to charitable activities, charity beginning at home and directed to fellow masons and their families. There are several masonic schools in England - that is, schools founded by freemasons - and London's Royal Masonic hospital.

Nevertheless, because it can be regarded as a secret society, which does not publish lists of members, because masons have secret signs, by which they recognise each other, and because a mason owes certain obligations to fellow masons over and above those which he owes to the community in general - or is believed to do so - it is inevitable that many view them with some suspicion. It is certainly widely believed that being a mason helps people to get on in certain lines of business, and that masonry is rife in the police.

Mr Minogue's suspicion that a masonic sheriff might collude with masonic policemen in sending him down may seem absurd, and probably is; but if a suspicion that masonic links may influence the course of justice is widespread, or

becomes widespread, then confidence in the judicial system will be damaged. For this reason the lord chancellor has, in England, been conducting a survey of judges and magistrates and asking them to state whether they are masons. About 5% of judges and 7% of magistrates have declined to answer, but that does not imply that the refuseniks are indeed masons.

It is of course the secrecy that provokes suspicion. For this reason some English masonic lodges are, as it were, going public, employing PR firms and even, in one case (a Bradford lodge) broadcasting footage of their meetings on the internet.

Mr Minogue, however, is unlikely to be satisfied with this sort of thing. Speaking on Newsnight Scotland he called for the introduction of a public register of freemasons. No doubt he will get some support, at least from those - and there are many of them - who believe in masonic conspiracies. On the face of it, he may seem to have a point. After all, it is important that justice should be seen to be done, impartially, and without favour.

And yet . . . doubts arise. Mr Minogue claims he is entitled to know whether or not a judge hearing a case against him is a freemason or the member of a secret society. Grant that, and what else would anyone else accused of a crime be entitled to know? Suppose you were accused of procuring an illegal abortion - that is, later in pregnancy than the law permits. Would you be entitled to know whether the judge was a Roman Catholic, or whether they belonged to, or had given money to, any group campaigning against abortion? The Roman Catholic Church is not a secret society, but it doesn't publish a register of members.

What about politics? Is the man or woman in the dock entitled to know a judge's political views? Might a businessman charged with, let us say, false accounting, claim that a socialist judge was unlikely to be impartial in his case? Or might someone charged with an illegal demonstration take umbrage at having a judge connected

with the Tory party? Should someone charged with possession of cannabis be entitled to know whether the judge has ever smoked the stuff?

These may seem frivolous questions, but they are only the logical development of Mr Minogue's argument.

Justice must be seen to be done, but it equally important that we accept that judges are capable of distinguishing between their private opinions and the execution of their duties; that they can set aside private affections and loyalties; that the judge in his public role is a different being from the judge when the wig has been removed.

When Lord Mackay of Clashfern became a judge it was well-known that he was a devout member of the Free Presbyterian Church, which takes a narrower view of some social and ethical questions than other churches, or indeed than most people in Scotland today. But it has never been suggested that his religious views impaired his impartiality in any case; and anyone who knows him would regard such a suggestion as outrageous. Would it have made any difference, if his membership of that church had not been known?

Mr Minogue has raised an interesting question. Yet, if his argument is upheld, the logical consequence seems absurd. For it is none other than this: that the accused in a criminal case should have the right to judge his judges, and to refuse to "co-operate" (as Mr Minogue puts it) with the court if he thinks the judge unsatisfactory on account of his membership of this or that body, his views on this or that subject.

He says that "masons swear to give a brother mason the benefit of the doubt in interpreting all things, including the law". (He seems to know more about this so-called secret society than some of us.) But whether this is so or not, in a criminal trial, where there is doubt, it is the accused, not the crown, that will benefit. That is how the law operates; impartially.