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HAVE WOMEN ACHIEVED PROFESSIONAL EQUALITY? 100 YEARS SINCE THE SEX DISQUALIFICATION (REMOVAL) ACT

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As I deliver this lecture there are 80 days left to the centenary of the Sex Discrimination (Removal) Act 1919¹. How many people know the significance of that Act? Many readers may think the pivotal moment in our fight for equality was when (some²) women got the right to vote under the Representation of the People Act 1918. We think of the suffragettes and suffragists and their long march to the ballot box, but did you know that until the Sex Discrimination (Removal) Act of 1919 Act women weren't recognised in law as a legal entity?

I have been granted my Jurisprudence degree. I have been called to The Bar. I have sworn my Judicial Oath. I can take out a mortgage. I can have a bank account or credit card and my passport in my own name. I am married but chose not to 'obey' in my vows, I maintained my maiden name for all purposes (professional or personal) and my children take it along with my husband's. One hundred years ago I would have been denied all those rights to professional and personal self-determination as a lawyer for no reason other than I was born a woman. In law, I did not exist as a 'person'.

A fantastically creative woman called Dana Denis-Smith (a former solicitor, international journalist and now business and media entrepreneur) conceived and set up 'The First 100 Years' project in 2014 in order to help women place themselves in history. She has been a phenomenal force in making visible the hidden achievements of women in law for generations.³ As she explained '*we need an understanding of the past to enable us to learn lessons for the future*'⁴. I agree, hence this lecture.

100 years on from this seminal piece of legislation we have a duty to examine its promise, its legacy and to laud its successes and success stories: but we do so not just to celebrate how far women have come in a century but to be clear about what is yet to be done to achieve genuine equality in the work place: because we do not yet have it.

What I intend to do in the next hour is to explore some of points that have piqued my interest in reviewing this subject. Time constraints mean this talk cannot be a comprehensive treatise on the history, politics and people of note in the last 100 years. Others have done that and there is no point in duplication. You can access the First 100 year's digital library and website for a really engaging overview of the many "firsts" in law and the academic papers on the evolution of a woman's right to self-determination would fill a library. My focus in this lecture will be on women's progress at the English Bar because that is my world. I will spotlight just some of the extraordinary women who have changed our society through their work at it. I will not deal with the enormous advances made in science, academia and other professions in the limited time I have. For that my colleague lecturers can assist. This will be a lecture of celebration, but it has a sting in its tail: we have not yet achieved equality and the coming years have to be made to count to achieve it.

¹ It received Royal Assent on 23.12.1919

² The RPA 1918 Act gave the vote to women aged over 30 but only if they were registered property occupiers of premises with a rateable value above £5 (or whose husbands did). That property requirements for men was abolished by the same Act as it was imposed on women: Men were granted the right to vote aged 21 whether or not they owned property and men who had turned 19 during their service could also vote even if under 21.

³ The First 100 Years project was created by Dana Denis-Smith, CEO of Obelisk Support. It is a truly ground-breaking history project, supported by the Law Society, the Bar Council and CILEx, charting the journey of women in law since 1919. The project is powered by [Spark21](#), a charity founded to celebrate, inform and inspire future generations of women in the profession. Dana is a powerhouse of a woman and I am indebted to her for her imagination and drive in making this a centenary year to remember. The First 100 Years the First 100 Years Project is a digital museum and historical video collection that celebrates the heroes (and heroines), commends the pioneers and charts the journey of women in law from 1919 up until 2019. I commend the website to all the readers and listeners of this lecture first100years.org.uk

⁴ Dana Denis Smith, 'The Barrister' §80 Easter Term 1919 p24



The campaign: fought by women fueled by the desire to learn and earn

Law, and particularly The Bar, was the last profession in England, apart from the Church, to hold out against women's entry. The Sex Discrimination (Removal) Act 1919 (SDRA) had a long gestation. The campaign to have the right to higher education and to advance upon a profession was the product of decades of campaign work by remarkable women, the men who supported them and the press who got behind and supported their cause. Women had been campaigning to practice as lawyers since the 1870s.

As Dr Bourne reminds us⁵, “The first evidence we have of an organised campaign challenging the male exclusivity of the profession is in 1873, when Maria Grey, an educationalist and suffragist, organised a petition demanding the right to attend lectures arranged by the Council of Legal Education. This was rejected. A more indirect challenge was made in 1860 by Maria Rye, a friend of Grey, who opened a law stationer's office to train female legal clerks. So did Eliza Orme, who managed to practise law without being professionally qualified. In 1888 Orme became the first woman to graduate with an LLB and opened a law office, where she worked for 25 years as a quasi-lawyer.”

If you were a feminist in the late 1870s onwards then seeking to study law was not just an educational thirst but also a route to seeking equality, through the law, to challenge women's restricted legal rights in society. A small number of women were able to walk this path and every one of them would have been remarkable for so doing. To read law required not just the brains but the backing of one's family. It was a middle-class issue with income excluding working class women and societal mores inhibiting access to higher education by the upper class. The Great War brutally removed many young men from the marriage market and family firms. That void gave scope for an educational and professional metamorphosis in women's access to education and the world of 'respectable' work. Universities welcomed women as students but the Inns on behalf of the Bar fortified themselves against admission: education was one thing, admitting women to a professional domain imbued with status and power was another. That was in contrast to practice in many law firms. “Father and Son” was no longer something many fathers could place on the sign of their office premises and that paved the way into the firm for many a bright daughter. Way before the SDRA 19 women were doing the work of lawyers: they simply could not call themselves that. Eliza Orme is a case in point. She was a pioneer: not only was she the first woman in England to earn a law degree in 1888 at University College London⁶ but by that time Eliza had already been working in the chambers she had set up in 1875 with a female colleague unofficially 'practicing' law. They prepared and drafted documents for property transactions, patent registrations, wills, settlements and mortgages. Eliza had wanted to be admitted as 'conveyancer under the bar' but was denied the security and standing of this position because of her sex.

As Dr Bourne explains⁷ *‘Orme's life illustrates the anomaly facing women: they could complete law degrees, which technically exempted them from certain parts of the professional exams but could not enter the profession’* their skills had equipped them for.

First (refused) Applications to the Inns of Court

The Bar withstood the challenge by women to be admitted. In 1903, Bertha Cave applied to join Gray's Inn and was rejected, despite being supported by two masters. Her later appeal was heard (and rejected) in the House of Lords, when she appeared as a litigant in person before the Lord Chancellor⁸. Other women followed in her wake. The month after Cave's hearing, Emmeline Pankhurst applied to join Lincoln's Inn and was rejected. Daughter of a barrister, Pankhurst had graduated from Manchester University with a law degree in 1906. Her intelligence could not be raised as a bar to entry: her gender was the issue. Her appeal was heard by the Benchers and was refused on 11th January.⁹ ¹⁰ ¹¹

⁵ 'Women who blazed a trail for the pioneers' 25.3.2019' <https://www.lawgazette.co.uk/commentary-and-opinion/women-who-blazed-a-trail-for-the-pioneers/5069719.article>

⁶ Leslie Howman, Eliza Orme, First 100 Years, <https://first100years.org.uk/eliza-orme-2/>.

⁷ Dr Judith Bourne is a senior lecturer - law at St Mary's University, Twickenham, London ; I commend her article to you in full, it is thoughtful and engaging

⁸ <https://www.graysinn.org.uk/history/women/women-the-beginnings>

⁹ Lincoln's Inn Black Books, vol v, p 357 1962.

¹⁰ Although we know virtually nothing of Bertha Cave's education¹⁰ Christabel Pankhurst had notably studied Law at the University of Manchester

¹¹ Miss Day: Christabel Pankhurst: Law graduate from the University of Manchester <https://www.manchester.ac.uk/discover/history-heritage/history/heroes/christabel-pankhurst/>.



First (refused) application to the Law Society

In 1913 Gwyneth Bebb, who had read law at St Hughes, Oxford, gave her name to the case that challenged the exclusion of women from the solicitor's legal profession: Bebb v The Law Society¹². She sought to argue that she was 'a person' within the meaning of the Solicitors Act 1843. Her case had the support of many powerful men including Lord Buckmaster¹³. Bebb argued that section 48 of the 1843 Act¹⁴ (an interpretation section) which provided that words importing the masculine gender extended to females '*unless it be otherwise specially provided or there be something in the subject or context repugnant to such construction*' enabled her to be admitted. The courts response? The 'statute couldn't have meant that 'he' embraced 'she' in 1843', an interpretation evidenced by the lack of any women solicitors since 1943. Moreover with no precedent they were not prepared to make new law. Bebb appealed to the Court of Appeal and failed again. Cozens-Hardy MR, Swinfen Eady LJ and Phillimore LJ upheld Joyce's decision that women did not have the right to become solicitors, let alone sit the preliminary exams. They decided unanimously that before the passing of the 1843 Act, women were, by the common law, under a general disability by reason of their sex and so unable to become solicitors. This 'disability' was proved by inveterate usage. It was, they said, for Parliament to change the law¹⁵. The court ruled against Bebb, holding¹⁵ that women were incapable of carrying out a public function in common law: a disability that must remain 'unless and until' Parliament changed the law. The outcry, particularly from the colonies, was loud and insistent. 'Are Men Lawyers Afraid of Women's Brains?' asked the (mostly) sympathetic press. The publicity helped to mobilise a campaign for equality. A private members' bill, the Women's Emancipation Bill, was introduced in the House of Commons on 21 March 1919 by the Labour MP Benjamin Spoor. It contained three clauses: to remove the disqualification of women from holding civil and judicial appointments; to include women on equal franchise; and to allow women to sit and vote in the House of Lords. The bill successfully passed all stages in the House of Commons. During second reading in the Commons, only seven MPs spoke in opposition to the bill. Many spoke in favour of civil and judicial appointments for women, following the logical argument that if a woman had passed all the examinations for her desired profession, she was just as capable to work in that profession as a man with the same qualifications. The Government did not have its eye on the ball and the Emancipation Bill progressed at a pace that outstripped its opponent's ability to stifle it. By third reading, however, the government had decided to propose an alternative bill which addressed the issue of women's equality; they were particularly keen to remove the clause granting equal franchise to women. They responded quickly at the last stages of the Bill's passage and the Sex Discrimination (Removal) Bill, was presented to the Lords by Lord Birkenhead on 14 July 1919, and its second reading occurred only a week later, on 22 July, crucially two days before the second reading of the Women's Emancipation Bill. Although Kimberley went through with the Women's Emancipation Bill's second reading in the Lords, the peers of the realm preferred to back the government's own bill, and the earlier bill was defeated.¹⁶ The Sex Discrimination (Removal) Bill was a weak successor to The Emancipation, losing the equal franchise measures and the clause allowing women to sit in the Lords¹⁷, but compromise was necessary to get legislation on the statute books and the campaign for equality needed to win over minds of men to be successful. Why?

Firstly: because The Representation of the People Act 1918 had given women the right to vote but the age of 30 was selected deliberately to ensure that the Act did not create a female electorate majority given the carnage of The Great War¹⁸.

¹² [1914] 1Ch286

¹³ Lord Buckmaster KC, who would in February 1919 introduce the Barristers' and Solicitors' Bill, proposing that women be admitted to the legal profession. This bill failed due to the introduction of the Sex Disqualification (Removal) Bill in July of that year.

¹⁴ <https://first100years.org.uk/a-woman-is-not-a-person-a-review-of-bebb-v-the-law-society-1914/>

¹⁵ With thanks to Dr Judith Bourne for this helpful summary: full article is at <https://www.lawgazette.co.uk/gwyneth-bebb-the-past-explaining-the-present/5070047.article>

¹⁶ With thanks to Gray's Inn archive history for its resume of this history and its article <https://www.graysinn.org.uk/history/women/women-the-beginnings>

¹⁷ Women had to wait until 1928 to vote on the same terms as men, and could not sit in the Lords until 1958 as life peers, and until 1963 as hereditary peers...

¹⁸ Lord Cecil, Hansard 6.11.18 Vol 110 'it was for this reason only and nothing to do with their qualifications at all. No one would seriously suggest that a woman of 25 is less capable of giving a vote than a woman of 35'. It was not until The Representation of the People (Equal Franchise) Act 1928 that women gained electoral equality with men in Britain.

None the less, the Act added 8.4 million women to the electorate. The size of the electorate tripled from 7.7 million entitled to vote in 1912 to 21.4 million by the end of 1918 with women accounting for 8,479,156 registered voters out of a total of 21,392,322: approx. 39.6% of the



Secondly: because not only were women a minority within the electorate pool but they had only just been granted the right to sit in Parliament. The Parliament (Qualification of Women) Act 1918 was passed in November 1918 permitting women to stand for election. Of 1,623 candidates in the election, only 17 were women & only one, Markievicz, succeeded. Constance Markievicz was the Sinn Fein candidate for Dublin Street Patricks, but she followed her party's abstentionist policy and did not take her seat in Westminster. It was not until 1.12.19, Nancy Astor having been elected as Coalition Conservative MP for Plymouth Sutton on 28.11.19, that a woman took a seat in Parliament.¹⁹ That was far too late to make a difference to the Emancipation Bill that was rejected. It was too late for a woman MP to contribute in Parliament to the compromise that became the SDA (R) Bill.

The absence of women MPs meant that for women to acquire the right to take degrees and to enter fields such as law, medicine and academia, male parliamentarians had to be persuaded to vote for the rights that women demanded.

As Dr Judith Bourne points out, the litigation and campaign work were interlined *'Bebb was not a lone agent but part of an organized campaign which included Cave, Normanton and many other women and men. Specifically, she was one of a group of four, including Nettlefold, Costelloe and Ingram. This campaign was eventually successful and the legal profession was opened up to women. The First World War diminished the campaign, but did not stop it – Buckmaster's continued presentation of bills before Parliament demanding women's entry is evidence of this. The Sex Disqualification (Removal) Act 1919 was not an altruistic act by the legal establishment because of women's war work; rather, it was a response to this fierce campaign. Bebb, in particular, demonstrates the hostility women had to endure in order to achieve formal equality and the reluctance of the legal profession to admit women.'*²⁰

The 1919 Act

After repeated bills in Parliament, the Sex Disqualification (Removal) Act 1919 received Royal Assent on 23.12.19 and the legal barrier women being admitted to the legal profession was removed. It also enabled women to receive the degrees from university they had earned and, inter alia, to serve as jurors and magistrates.

The key section of the SD(R) A read

'A person shall not be disqualified by sex or marriage from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying out any civil profession or vocation, or for admission into any incorporated society (whether incorporated by Royal Charter or otherwise) and a person shall not be exempted by sex or marriage from the liability to serve as a juror'²¹

The SD(R) A was an enabling Act: it was up to the institutions themselves to await applications and determine them. The Act broke down the garden walls to the Law Society, the Inns, and the court room: but women still had walk up the garden path and knock loudly, and persistently, on the front door to demand entry to the legal professions.

What next?

Despite the increased activity relating to women and the legal profession in Parliament in 1919, the Inns of Court were reluctant to anticipate any possible legislation. In January 1919, Gwyneth Thomson (née Bebb) was refused admission from Lincoln's Inn. In April 1919, after the Barristers and Solicitors (Qualification of Women) Bill was introduced in the Lords, the Benchers of Middle Temple closely voted not to admit women to the Inn. Such

electorate. This was significantly more than predicted when the legislation was being debated "Electoral Registers Through The Years" electoralregisters.org

¹⁹ By this stage the Bill had passed its first and second stages in the Commons and passed through the Lords with amendments, the commons concluding its debates on 26.11.1919. if one reads the Hansard reports for the stages of the Bill's passage between Commons and Lords one can see that whilst the Commons were clear that the spirit of the Act had required them to pass an Act enabling women to take a seat as a Member of the House of Commons, the Lords resisted this measure for their own ranks: see Hansard 27.10.1919 vol 120 columns 349+ and the exchanges between the Houses as recorded in Hansard right up to 26.11.1919. I particularly like the comment of the somewhat disrupted Sir F Banbury who had voted (unsuccessfully against the Act who resisted the amendment to include parity for women to sit in the Lords as in the commons with the words' *The Lords are masters of their House and the House of Commons are masters in theirs. If the House of Commons likes to sit with the fair sex in their midst, and to continue their deliberations assisted by beauty, that is for the House of Commons to decide. For goodness sakes let us leave one of the Houses with the old tradition, and let there be one House where the deliberations conducted by men and not by women'*)

²⁰ <https://www.lawgazette.co.uk/gwyneth-bebb-the-past-explaining-the-present/5070047.article>

²¹ With exceptions: the judge could deem the case not fit for a female juror on grounds of its nature or evidence /



reservations were removed with the enactment of the Sex Discrimination (Removal) Act. As the legal sphere had argued that they were not ideologically opposed to women entering the legal profession, only unable to change the law to open up the profession to women, there was little (open) opposition to the new Act.²²

On 22 November 1922 *The Daily Mail* published “Women’s Call to the Bar” in which ten women law students were “screened” for call. Some continued at the bar, some left to pursue a different life or career and others became twentieth-century legal pioneers.²³

First woman to be called to The Bar:²⁴

Gwyneth Bebb (1889-1921) had been the sixth woman to study law at Oxford. Her exceptional (and undeniable) intelligence and long-term association with women emancipation marked her out as a very special women. She was the first woman to achieve a first-class degree in Law. As *The Express* had written, ‘*if a woman can take a first class in law at Oxford, what right has the Law Society to prevent her from earning her living as a solicitor?*’²⁵ Gwyneth Bebb had been expected to be the first woman to be called to the Bar but her early death aged 31 after complications in childbirth prevented that. She was studying for her Bar Finals at the time of her premature death. One of her predecessors to read Jurisprudence at Oxford had been one Dr Ivy Williams. **Ivy Williams** (1877-1966) had completed all her law examinations by 1903 but was prevented from matriculating or receiving her BA or MA until the Oxford matriculation regulations were reformed in 1920 (after the passing of the 1919 Act). In May 1922, Ivy Williams became the first woman to qualify as a barrister in England. It had taken her 19 years to get what a man could have claimed as his own by right of his gender. When Dr Ivy Williams was called to the Bar in 1922 *The Law Journal* described it as ‘*one of the most memorable days in the long annals of the legal profession*’. But Dr Ivy

Williams was not the first woman to practice at the Bar, that title was claimed by Helena Normanton.

First woman to practice at the English Bar:

Helena Normanton (1882-1957) She was the first woman to be issued a passport in her maiden name (1924) though she used Mrs. for work as it was better for business reputedly. A former suffragette, she was a committed campaigner for rights of women. She had the courage of her conviction and wasn’t afraid to make her views known. Responding to a piece in *The Strand* magazine in 1932 in which Margot Asquith had claimed that ‘*a judicial mind is not the strongest part of a woman’s intellectual equipment... few of us would want to be tried by a female judge*’ Normanton told the editor ‘*{Your magazine} will rapidly disappear if you publish inaccurate articles of a frumpish and out of date point of view*’. That same year, 1932, Helena’s Normanton’s book ‘*Everyday Law for Women*’ was published. As she gained notoriety for her feminist activities, she faced difficulties from members of the legal profession who accused her of advertising. In the press in 1933, she was referred to as the ‘*senior practising woman barrister in England*’ and was urged by the general council of the bar to make it clear she did not describe herself as such.²⁶ However, she continued to succeed and achieve many more notable ‘firsts’. Not only was she one of two female silks appointed in 1948, but she went on to be the first woman to lead the prosecution in a murder trial in an English court in 1948.²⁷

First BAME barristers called in England:

²² With thanks to Dr Daniel E Golsing for his article which takes us through this period so succinctly and expertly (23.6.17 Women : The Beginnings’

²³ Theodora Llewellyn-Davis, Helena Florence Normanton, Monica Mary Geikie Cobb, **Auvergne Doherty** Ethel Bright Ashford, Elsie Wheeler, Naomi Constance Wallace, Lillian Maud Dawes, Beatrice Davy, Dr Ivy Williams

²⁴ A full and helpful summary is found in Dr Daniel Gosling’s article “Women: The Beginnings ‘Gray’s Inn June 2017 here: By the end of January 1920, each of the Inns of Court had admitted their first female students. Helena Normanton was first, admitted at the Middle Temple within forty-eight hours of the Sex Discrimination (Removal) Act, on Christmas Eve 1919. She had previously applied (unsuccessfully) to the Middle Temple in 1918 after the enfranchisement of women became law. Then, in January, Theodora Llewellyn Davies was admitted to Inner Temple (9 January), Marjorie Powell was admitted to Lincoln’s Inn (16 January), and Mary Selina Share Jones was admitted to Gray’s Inn (27 January). On 10 May 1922, Ivy Williams became the first woman called to the Bar, followed shortly by Helena Normanton, called on 17 November 1922, the first practising female barrister. The first woman called to the Bar at Gray’s Inn was Edith Hesling, admitted on 14 October 1920 and called 13 June 1923

²⁵ Gwyneth Bebb, <https://first100years.org.uk/gwyneth-bebb-2/>

²⁶ <https://www.oxforddnb.com/view/10.1093/ref:odnb/9780198614128.001.0001/odnb-9780198614128-e-39091>

²⁷ <https://london.ac.uk/helena-normanton>



Cornelia Sorabju (1866-1954), from India, was the first female graduate from Bombay University, the first Indian woman to study at Oxford, the first woman of any nationality to read law at Oxford (Somerville College) and became the first woman to sit the examinations for Bachelor of Civil Law in 1892. However, she could not be awarded her degree for another three decades. She returned to India in 1894 and, along with her work as an advocate for individual women and children, she became an advocate of social reform, campaigning in particular for education for girls, for legal rights for women subject to segregation (purdahnashins), for abolition of child marriage, and for protection and support for widows yet despite her success she could not be recognised as a barrister. She was finally admitted to Lincoln's Inn and called to the bar in 1923 after the 1919 Act aged 55 and was the first woman to practice formally as a barrister in India.²⁸ A bronze bust of Cornelia was presented to Lincoln's Inn in May 2012 by Dr Kusoom Vadgama.

Stella Thomas (1906-1974) was born in Lagos but came to the UK to further her education in 1926, was admitted to Middle Temple in 1929 and called to the bar 1933, making her the first female barrister called from West Africa.²⁹ 'No stranger to activism, Stella Thomas was also a founding member of the League of Coloured Peoples (LCP), which was established in 1931 by Jamaican Dr. Harold Moody to bring together minority interests (Asian, Caribbean and African) under one banner. Thomas' activism reached its highest renown on March 24th 1934, when she attended a lecture delivered by historian Dame Margery Perham, at the Royal Society for the Arts in London. The Hall was filled with a distinguished audience during post-lecture question period, Thomas rose up and delivered a stinging diatribe in which she dismantled the notion that a solution to Africa's problems could be provided without the consultation or involvement of Africans. She then focused on Lord Lugard directly and criticised his dual mandate policy in Africa in strong terms, which she lambasted "for making puppets of African Chiefs". In a brutal but level-headed outpour, she went further to argue that "there must be real cooperation and real understanding, at present the British were dictating to them and the Africans had to do what they were told". Her measured, unflinching statement won her huge acclaim amongst African activists and the Nationalist movement.³⁰ She returned first to Sierra Leone where she was registered at the Supreme Court of Sierra Leone in October 1935 and a month later to Nigeria where she was enrolled in November 1935. After seven years of practice, in 1943 she was appointed a magistrate, becoming the first Nigerian woman to sit on the bench.³¹

First silks:

In 1948 two English women were named as Queens Counsel in England: **Helena Normanton** (see above) and **Rose Heilbron** (1914-2005).

Consider: The Daily Mail 29.6.1938 letters page from a Mr. Hervey Middleton on the question of women barristers: '*not only were women unable to see that there were two sides to every question*', their '*righteous indignation*' meant they would never be able to remain sufficiently cool to open a case. Added too which their physical attributes were an obstacle: '*how would a woman wear a wig?*' asked Middleton '*if she waves her hair and puts a wig on top of it, she looks like she is carrying a beehive Alternatively if she wears a close fitting wig over short, straight hair she looks like a female convict when she takes it off*'³²

Heilbron was the perfect comeback to such sexist idiocy. By 1939, Rose Heilbron became Britain's youngest woman barrister. Her call to the Bar attracted press interest '*I am no blue stocking*' she told the Daily Express. '*The general impression of a woman lawyer seems to be a sober old maid. I have not adopted the law as a hobby. I am serious about my career, but that does not mean I shall give up dancing, swimming, golf or tennis. Legal problems will not keep me from other jobs I love-housekeeping and gardening. When I marry I intend to continue as a barrister. I have many men friends. Some have possibly fallen in love with me, but I have no plans for marriage. I am not in love. That does not mean I am sacrificing my life for my career. I am a home lover*'³³

Heilbron married in 1945, had her daughter Hilary on 2.1.49 and 6 weeks later she was back in court. Eight weeks later the letter from the Lord Chancellor arrived. She took silk at the age of 34, she and Normanton the first women appointed, the youngest women appointed, the third youngest ever KC appointed.

²⁸ <https://www.lincolnsinn.org.uk/library-archives/archive-of-the-month/july-2018-cornelia-sorabji/>

²⁹ <http://nsibidiinstitute.org/notable-nigerians-stella-jane-marke-nee-thomas/>

³⁰ With thanks to Emeka 'Ed' Keazor for this insight: <http://nsibidiinstitute.org/notable-nigerians-stella-jane-marke-nee-thomas/>

³¹ <http://nsibidiinstitute.org/notable-nigerians-stella-jane-marke-nee-thomas/>

³² see below

³³ I would like to thank Rachel Cooke for her fabulously entertaining book "Her Brilliant career: Ten extraordinary women of the Fifties" where she talks about Heilbron and from whence I took these two quotes Cooke brings the women and the times they lived in alive with her words.



Heilbron herself was willing to challenge societal norms and not just through her work. An article in the Daily Mirror in March 1952 describes how Heilbron strongly defended in a talk at Manchester University *'the right of professional women to resume their careers after having children'* stating it would be *'wasteful to the community that a qualified woman should almost certainly be lost to her profession on the advent of a family'*.

First Judges:

Dame Heilbron became England's first woman judge having been appointed a Recorder of Burnley in 1956. She as the first woman to be appointed a Commissioner of assizes by the Lord Chancellor in 1962. But she was not the first High Court judge: that accolade went to Elizabeth Lane QC in 1965. Dame Elizabeth Lane became the first judge of the county court in 1962 and the first High Court Judge in 1965.

Heilbron sat at The Old Bailey in 1972 as a Recorder, another first and it made the news with the press and public in attendance in force on her first day sitting. The Liverpool Daily Post noted the fact that Heilbron was still *'imprisoned by masculine curiosity. The Gossip columnists see more interested in finding suitable adjectives for her smile at prosecuting counsel- it is enough to strain the quality of anyone's mercy'* .

First Leader of a Circuit:

Heilbron was the first female leader of the Northern Circuit. In 1974, under a new Lord Chancellor, Heilbron was made a high court judge and, despite her criminal career, she was assigned to the Family not the Queen's Bench Division (*something of a theme running through the appointments of the women elevated to the Bench until the last decade or so*). Heilbron sat on the High Court bench for 14 years.

First Head of Chambers:

Barbara Calvert QC (1926-2015) studied at the London School of Economics where she took a degree in economics. She was called to the bar in 1959 aged 35 when fewer than 5% of barristers were women. She joined the chambers of John Platts-Mills QC, an outspoken and much-admired left-wing QC, and built up a practice and reputation in family law, but determinedly extended her reach to personal injury cases and trade union work. In the 1970s, increasingly concerned about the number of young people who were unable to get a place in chambers from which to practise, she decided to do something about it: in 1974, she set up her own chambers, Four Brick Court, to help those starting out, so becoming the first female head of chambers. Four of the chamber's founding members were women. Calvert's chambers sought specifically to represent those who could not afford, or did not have access to, legal aid and counsel. In 1986 she became the first female QC to be appointed a full-time chair of Industrial Tribunals (having been a deputy since 1974). In 1978 Calvert was made a Queen's Counsel and was the first female QC to take a case to the European Court of Human Rights arguing that the UK government was in breach of the convention by failing to give parents any legal right to apply for contact with their children who were in the care of a local authority. This successful challenge, in 1987, led to a change in the law. In 1977, still concerned about the young barristers who were unable to obtain seats in chambers, she supported an application by six of them to set up their own chambers, 2 Plowden Buildings. She also sat as a recorder and deputy high court judge. In 1982, Barbara was elected a bencher (a senior member) of Middle Temple. None of her other achievements gave her as much pleasure as that. She became hugely popular with the students and her fellow benchers, serving on several committees. She was appointed reader in 2001 and delivered her reading, "Sex – Does it Really Matter?" on the history of women at the bar, concluding by answering that question with: *"Yes in your private lives but no longer in your professional lives. There is no height a woman cannot scale"*. She was the first female QC to be elected a bencher of the Inns of Court of Northern Ireland and was also a freeman of the City of London

³⁴

First Black female silk and a woman of firsts Patricia Scotland, Baroness Scotland of Asthal PC QC (1955-) in 1991 became the youngest and first black woman to ever become Queen's Counsel. She was also the first black woman to be appointed Deputy High Court Judge, Recorder and Master of Middle Temple. In 2001, she became the first black woman ever to be appointed as a minister in a UK government when she was appointed Parliamentary Secretary for the Lord Chancellor's Department. In June 2007, Patricia Scotland became the first

³⁴ <https://www.theguardian.com/law/2015/aug/12/barbara-calvert>



woman to take up the position of Attorney General for England, Wales and Northern Ireland since its foundation in 1315. She the first black woman, and indeed the first black person to be elevated to the post. She was in office from June 2007 until May 2010 when the Labour party lost the general election, after which she became the shadow Attorney General until 2011. At the 2015 Commonwealth Heads of Government Meeting she was elected the 6th Secretary-General of the Commonwealth of Nations and took office on 1 April 2016. She is the first woman to hold the post.

First Black High Court Judge:

Dame Linda Dobbs (1951-) was called to the Bar in 1981 and developed a mixed criminal practice, in later years specialising in fraud and professional disciplinary tribunals taking Silk in 1998. Those dates belie the discrimination she experienced as a junior trying to get established. When interviewed by the Chambers Student Magazine³⁵ in May 2019 by Leah Henderson she was frank about being a black woman in chambers in the early 1980s and its challenges, namely the clerks: *“Their default position was that the men were better than the women. They’d allocate work to the male pupils and then the female pupils.”* She did her fair share of sexual assault and murder cases (*“they always gave the sex cases to the women”*) before specialising in fraud and regulatory work. She took silk in 1998. In 2003, she became the chairman of the Criminal Bar Association where she set up the first Diversity and Equality Committee. She was appointed as a deputy High Court judge in February 2003, without having previously held appointment as a recorder. In 2004, *“I was tapped on the shoulder by the Lord Chancellor [then Charlie Falconer] who had me into the House of Lords and said: ‘I want you to be one of Her Majesty’s judges.’”* But she recalls *“It was a difficult decision for me,”* she explains. *“I was a silk doing well. Going into this organisation, the judiciary, I’d be at the bottom of the pile, the baby, and treated as such.”* She continues: *“I looked at the Bench and I thought ‘I don’t really know anybody there, therefore it’s not an environment that will embrace me.’”* She became a High Court Judge in 2004, assigned to the Queen’s Bench Division without having sat as a deputy High Court judge. *“I felt – and I hope it doesn’t sound pompous – I felt a sense of duty to take on the job,”* she says. *“And knowing that I would be the first black High Court judge, I thought that would open up the floodgates.”* *“It took seven years for the next BAME appointment, so it was hardly floodgates.”* Since her appointment in 2004, just two BAME people have joined the senior judiciary: Sir Rabinder Singh in 2011 and Dame Bobbie Cheema-Grubb in 2015. *“Women have fared better, and lower down things are better too,”* Dobbs points out, *“but there’s a long way to go, especially with senior BAME judges.”* Dissecting the statistics, Dame Dobbs observed: *“If you lump the whole of the judiciary together, the figures don’t look so bad because the tribunals’ judiciary is far more diverse than the courts’.* Dame Linda Dobbs has been named in the past as one of Britain’s most powerful black women and one of the 100 Great Black Britons. In 2013 she stepped down early from the High Court Bench to pursue her various interests, which includes the training of judges and lawyers internationally (in particular, in the Caribbean and Africa). She’s involved with several charities and projects in South Africa, where she has a home. Outside of Cape Town, there’s a school for boys who’ve been excluded – Dame Dobbs supports a third of them financially.

Before moving onto the extraordinary woman that is Brenda Hale, I pause to note that I have not named women to applaud as being ‘out and proud’ within our profession: something to be explored in my lecture in November with input from colleagues. Nor is disability covered. Visibility is an important part of progression and challenging stigma and I would welcome contributions to give credit when it has been so hard earned and richly deserved.

A Feminine and Feminist Fistful of Firsts: Lady Hale (1945-)

After graduating from Cambridge in 1966 with the only starred first in her year, Brenda Hale taught law at Manchester University from 1966 to 1984, also qualifying as a barrister (with the highest marks in her year in her Bar Finals) and practising for a while at the Manchester Bar. She specialised in Family and Social Welfare law, was founding editor of the Journal of Social Welfare and Family Law and authored a pioneering case book on ‘The Family, Law and Society’. In 1984 she was the first woman to be appointed to the Law Commission, a statutory body which promotes the reform of the law. Important legislation resulting from the work of her team at the Commission includes the Children Act 1989, the Family Law Act 1996, and the Mental Capacity Act 2005. She also began sitting as an assistant recorder. In 1994 she became a High Court judge, the first to have made her career as an academic and public servant rather than a practising barrister. In 1999 she was the second woman to

³⁵ <https://www.chambersstudent.co.uk/where-to-start/newsletter/the-big-interview-dame-linda-dobbs>



be promoted to the Court of Appeal, before becoming the first woman Law Lord. In January 2004, Lady Hale became the United Kingdom's first woman Lord of Appeal in Ordinary. In October 2009 she became the first woman Justice of The Supreme Court. She was the first female Deputy President appointed in June 2013 and became the first female President of The Supreme Court in September 2017. She has become such an iconic figure that she is (probably) the only female judge to have T Shirts with her face emblazoned on them, the only judge to appear in Vogue, the only judge to appear as a judge in Master Chef (appearing in the 2018 semi-final which celebrated 100 years since women got the vote), she is about to have a children's book published about her to inspire young girls to be remarkable **(Legal Action Group are publishing 'Equal to Everything: Judge Brenda and The Supreme Court' on 10th October 2019 based on the life of Lady Hale.)** and just last week inspired a spider emoji and generated a brooch craze. She is unique. She would rather she wasn't as she actively promotes equality and would want other women to follow and succeed her. She is remarkable.

The women whose histories are now being claimed as part of the rich history of the last 100 years were pioneers but they were clearly thought to be exceptions to the rule rather than illustrative of what women could and should do without equivocation or masculine demur.

Other Acts

The SD(R) A 19 was significant but the compromises required to have it passed in the Commons and The Lords, left tasks for others to take up. The development of the law through legislation is too vast a subject for this lecture but I commend The Women's Legal Landmark Project to you³⁶. It is a unique interdisciplinary collaboration involving over 80 feminist legal and history scholars identifying, researching and producing critical accounts of key legal 'landmarks' (events, cases and statutes) for women in the UK and Ireland. Each landmark marks an important stage or turning point in women's engagement with law and law reform. Together they cover a range of topics, including the right to vote, sex discrimination, marital property, forced marriage, prostitution, rape, twitter abuse and the ordination of women bishops as well as the life stories of a number of women who were the first to undertake key legal roles and positions. The Project was led by Erika Ruckley and Rosemary Auchmuty. Readers will want to look at Acts such as the Matrimonial Causes Acts of 1923 and 1937³⁷ and of course the Sex Discrimination Act in 1974 which made it unlawful to discriminate against women or men in employment, education, goods, facilities, services and premises.

My journey to The Bar: 'We stand on the shoulders of Giants'

If anyone reading this wants to understand the SDA (R) as a piece of social history, then there are many texts and sources one can turn to. I have read and learnt from many in the course of preparing this lecture. I have rewritten this lecture after reading an excellent twitter thread by Caoilfhionn Gallagher QC this week talking of an inspiring weekend celebrating Women in law at Cambridge, its sister seminar at Oxford, and reflecting on comments made to me by young women thinking of entering the legal profession or in the earliest stages of their career at it.

What has been so striking about session I have been part of - such as the Oxford celebration of Suffrage last year, the interviews conducted by Lucinda Ackland under Dana Denis Smith's superb leadership as part of the First 100 Years campaign, the panels I have joined talking about diversity in the profession and problems yet to be overcome - is the importance of women in the profession, particularly women who have attained some seniority, talking openly about their experiences, successes and disappointments for the benefit of those who will follow in our footsteps to take up the Next 100 Years challenge.

It took commitment and sheer bloody mindedness for women of my generation, who didn't have any 'professionals' in the family let alone any knowledge of or contacts at the Bar, to assail the Temple walls with the brazen confidence of courage born out of ignorance of the obstacles we faced. Without St Anne's as my academic pedigree, as a child of a single parent family from a comprehensive school, I wouldn't have got off the career

³⁶ <https://womenslegallandmarks.com/>

³⁷ With the enactment of the Matrimonial Causes Act 1923, women could, for the first time, petition for divorce on the basis of their spouse's adultery. This put men and women on an equal footing. The Matrimonial Causes Act 1937 introduced 'matrimonial offences' – cruelty, desertion and incurable insanity. Each allegation had to be proved by oral evidence. However, despite some progress, Parliament also included a provision which prevented divorce within the first three years of marriage



starting blocks at the Bar. In fact, I was advised against it because of my lack of social standing. And when I persisted, I was told I would have to get a First to overcome that disadvantage and ‘tone down’ my personality to stand a better chance to get in. I did neither. I secured a pupillage whilst still in my second year at university by writing to any chambers in London that had a pupillage fund and asking to be given an interview. Through the arrogance of youth and ignorance of circumstance (and bloody mindedness I suspect) I secured an offer for a 12-month funded pupillage before I had got my degree, let alone gone to Bar School and passed my Bar Finals. In my application to join Middle Temple in 1985 there was a section requiring me to complete headed ‘Father’s profession’. I did not have any man worth the name of ‘father’ and a place on that form. I had an awesome mother. I saw no reason for any parentage section in my application to join an Inn (a prerequisite for being Called to the Bar and practicing as a barrister) still less the male line, and I told my then Head of Chambers so (Graham Eyre QC). He took up my cause. My form was submitted with the section crossed out. I joined Middle Temple. The forms were subsequently changed.

Every step matters. Every stance taken can count.

I was called to the Bar in 1986. When I look back at those early years, on reflection, few women stand out as being role models that I could associate myself with. Lady Hale had started her ascent to judicial success by being appointed to the Law Commission but that was outside my sphere of knowledge and her career was yet to galvanise the Bar with accolades such as ‘the Beyoncé of the legal profession’³⁸. I had to wait until 1988 to see the first woman appointed as a Lord Justice of Appeal (the indomitable Dame Elizabeth Butler-Sloss who later became the first President of the Family Division in 1999). These women seemed very remote from me and my background and they were. Not just in terms of their background and how they talked but what they wore. My state of dress in the 80’s caused some judges to take issue. At this stage women barristers were still not allowed to wear trousers in court. It took a sustained campaign by The Association of Women Lawyers for that frankly ridiculous and sexist position to change in 1996.

I was not the Sloane “pie crust collar” type. I wore Mao type fitted suits enlivened by bold Butler and Wilson jewellery. Covered by a gown I thought nothing of it until a judge told me he ‘could not hear me’. Confused, I could not conceive why. I asked. The judicial eyebrow raised and the silver brooch on my right breast was singled out the offending inappropriate article. Quite why my chest, swathed in black polyester was of any interest I do not know. But it was. Taken aback I asked why a silver brooch was offensive when my opposing barrister’s visible and very arresting bold red braces were not. My case was put back. I was by that time I was a tenant at Took’s Court: a radical set populated by men and women of individuality, intelligence and ‘attitude’. After a telephone call with my Head of Chambers Mike Mansfield and I agreed I would appear sans brooch so as not to put the client’s case at risk but a letter of protest would be sent by Mike to the judge. Since the judge was as offended with me and I was by him, letters were indeed exchanged. I preferred Mike’s.

I wasn’t alone in experiencing this focus on my presentation: As Helena Kennedy wrote in, *Eve was framed: Women and British Justice*:

“When I was a novice at the Bar, I had a judge ask me to put my hair up in a chignon because he thought I was flicking my ponytail at the jury and gaining advantage. Even after I became a Queen’s Counsel, a judge wrote to my head of chambers to complain about my bracelets, which he considered inappropriate for court... (Male barristers festooned with fold watch-chains would never raise an eyebrow.)”³⁹.

I have always failed to see why my marital status would be of any interest to a judge. I have never signed in counsels slip as “Mrs”, nor permitted it to be submitted and on any judgment I am named in or give, I am “Ms”. It was not until 2004 that Alison Russell QC was appointed as a judge of the High Court of Justice, assigned to the Family Division. She became the first judge formally addressed as ‘Ms’ Justice, which made the news (not in a flattering way).

I have often wondered where I have compromised my gender by my drive to succeed at the Bar.

Consider this text from a 1978 Careers Advice Book which advises readers that ‘*an advocate’s task is essentially comparative, whereas women are not generally prepared to give battle unless they are annoyed. A woman’s voice, also, does not carry as well as a man’s.*’

³⁸ Katie King, ‘Lady Hale acknowledges ‘Beyoncé of the legal profession’ comparison’, *Legal Cheek*, 25th October 2017. URL: <https://www.legalcheek.com/2017/10/lady-hale-acknowledges-beyonce-of-the-legal-profession-comparison/>

³⁹ *Ibid.* p.54.



Women like myself and other I have long admired, like Helena Kennedy, do not just ‘give battle’: we invite it, revel in it, and fight to win it. The women I know go not only into battle but do so with panache and skill. We dance with words and when compared to a man we can proudly adopt this line (apropos Fred Astaire’s skills): ‘*Sure he was great, but don’t forget that Ginger Rogers did everything he did, backwards and in high heels.*’

But the voice? I acknowledge I have created a different court voice from that given me by birth or used when I am with friends and family. It’s now an automatic switch: deeper and slower than my Finchley accent. Why did I do that? Because voices matter in court and male voice got ‘heard’ more easily than a woman’s. But I do not seek to emulate masculine traits. As a 5 ft. 2 woman that would be ridiculous. I wear statement jewellery that I buy myself. I have multiple ear piercings to put more jewellery in (!). It has not been till this year, and this month, that the significance of what we women choose to wear has been embraced publicly by the most senior members of our judiciary: consider Lady Hales spider broach (which now has emojis to its credit). Lady Arden reported to have said in Cambridge recently that the broaches worn by the Supreme Court Justices are ‘*a symbol we don’t have to conform*’.⁴⁰ I welcomed that comment. Dare to be different.

I wear red lipstick as part of my work uniform. It is a trademark. When I didn’t wear it during parts of the Hillsborough inquests, I would receive texts and emails from families asking if I was OK. But what I wear, as long as it is within our Code of Conduct, is a matter for me. Whether I wear makeup is up to me to decide. I am aware from discussions with junior members of the Bar that if they wear a ‘full face’ of makeup they are subject to criticism that they aren’t serious about the job. If they wear no makeup at all: they haven’t tried hard enough.

It is about time that men and women release that they have no right to judge a woman’s commitment to and ability to do her job based on her appearance. Live and work at a time when an MP (now the Prime Minister) thought it OK to call a man as “Big Girls Blouse” as an insult and the former PM a “Big Girly Swot” to ridicule and undermine him. Those comments were sexist and puerile. But for long as they raise a titter we have work to do.

Are we nearly there yet?

Legal history was made in October 2018 with the first female majority on a Supreme Court case.⁴¹ (*D (A Child)* [2019] UKSC 42 - heard in 2018 but judgment handed down just last week). Lady Hale, Lady Black and Lady Arden sat with Lord Carnwath and Lord Lloyd-Jones. The addition of Lady Arden in October 2018 made this breakthrough possible: can we say we have now broken through the glass ceiling⁴²?

Quite simply: ‘No.’ While increasing numbers of women have entered the profession over the past two decades, high numbers of women are leaving the Bar post qualification and practice.

What the stats say: “Diversity at the Bar 2018: A summary of the latest available diversity data for the Bar” (February 2019)⁴³ (note: I am focusing on gender on at this stage: in my next lecture I will review the lack of diversity at the Bar not just in terms of gender but also ethnicity, class and sexuality).

Gender

- The percentage of female pupils has decreased by 1.3pp but there is still a greater proportion of female pupils in comparison to male pupils (51.7% vs. 48.3%).
- As of December 2018, women constituted 37.4 per cent of the Bar compared to an estimate of 50.3 per cent of the UK working age (16-64) population in England and Wales (as of Q3 2018).
- The proportion of female QCs has increased, from 14.8 per cent in December 2017 to 15.8 per cent in December 2018. However, it should be noted that the overall proportion of female QCs is low (15.8%) in comparison to the percentage of female barristers at the Bar overall (37.4%).
- 29% of court judges and 46% of tribunal judges were female⁴⁴

⁴⁰ Barbara Rich, ‘Lady Justice and the cult of the “girly swot”’, Medium, 30th September 2019. URL: <https://medium.com/@abarbararich/lady-justice-and-the-cult-of-the-girly-swot-3736119d83ce>

⁴¹ *D (A Child)* [2019] UKSC 42.

⁴² **I am going to develop this issue in my next lecture on 28.11.19: this is just a foretaste of what it to come**

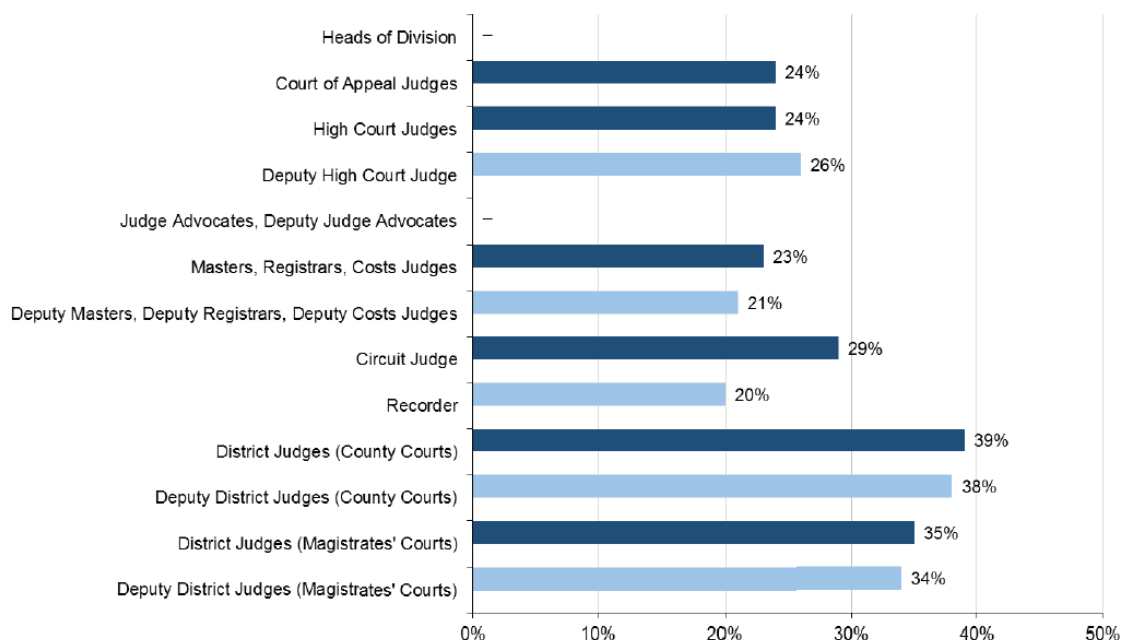
⁴³ https://www.barstandardsboard.org.uk/media/1975681/diversity_at_the_bar_2018.pdf

⁴⁴ [Judicial Diversity Statistics 2018](#)⁴⁴



- In court judges, senior roles showed lower representation of female judges than in less senior roles (see Fig 1).

Figure 1: Female representation among court judges, by appointment, 1 April 2018



Those stats have changed in 2019 and yesterday marked the welcome appointment of another woman to the Family Division: Francis Judd J.

We now have: 6 women (of 17) High Court Judges in the Family Division; 19 women High Court Judges (of 68) in the Queen’s Bench Division; 1 woman (of 14) in the Chancery Division; one female Head of Division (of 5) (Dame Victoria Sharpe DBE: President of the Queen’s Bench Division), 9 Lady Justices of Appeal (of 39: But Lady Hallett is still included in this figure and she has just been made a Cross Bencher in the Lords), and 3 women in the Supreme Court⁴⁵.

Which means the points I made in my Gresham lecture in October 2017⁴⁶ still hold true despite the elevation of some remarkable women to senior judicial ranks: we have roughly equal number of women entering the Bar at pupillage stage but we lose them from practice leading to a smaller number of silk applicant from a smaller pool of eligible candidates and a smaller number of judicial appointments out of that smaller senior and silk pool (with a smaller selection at the higher ranks) **Put simply: the independent Bar bleeds potential and the talent it retains plateaus at a lower level.**

Where are the woman at The Bar? The illusion of inclusion

⁴⁵ Judicairy.uk website updated 1.10.19

⁴⁶ https://s3-eu-west-1.amazonaws.com/content.gresham.ac.uk/data/binary/2531/2017-10-05_JoDelahunty_WomenLawyers.pdf



As Helena Kennedy said in “Eve Was Framed”⁴⁷: ‘...for those determined to go into legal practice, the majority are steered towards public service law, by which I mean fields largely funded out of legal aid.... Women invariably do the ill-rewarded work in all walks of life and what follows is a lowering of the esteem of that professional activity’⁴⁸

Women are also sought to act for men in rape and other sexual assaults, because of the involuntary endorsement they give to the male defendant. A recurring moan of pain is uttered in the women’s robing room at the Old Bailey by female barristers who are force-fed a diet of sexual offence cases to the exclusions of all else. The men either make themselves scarce or say they can’t back it if children are involved. In a skewed effort to flaunt their professionalism women not only find themselves conducting these cases but sometimes do them with as much machismo as any man’⁴⁹

That funnelling of women into certain areas (in terms of remuneration and status) has not changed in terms of gender distribution of practice even within the ‘select’ practice areas.

According to a review published this summer by Beatriz Veyrat⁵⁰ court statistics paint a stark picture of male dominance having considered data on the gender divide at the commercial Bar, listing the top ten busiest male and female barristers at the Commercial Court by number of cases in 2019.

The war of attrition at the Bar

Women are more likely to leave if they experienced discrimination or harassment, if they are BME or if they have primary caring responsibilities for children. The Bar Council Report of 2015 found the main reasons for women leaving were current and future income, the impact of criminal legal aid cuts, child caring responsibilities (mainly those aged 35-44) and an increase in expected pro bono work. That has not changed according to the most recent data analysis. We have lost 4 years and more women in the meantime.

Why should they stay when women are more likely to be victims of harassment and bullying⁵¹? That is a statement now beyond dispute given the contents of the International Bar Association published report of May 2019 ‘*Us too? Bullying and Sexual Harassment in the Legal Profession*’⁵². It analysed the results of the largest ever survey on bullying and sexual harassment in the legal profession. Data from 6,980 respondents from 135 countries was collected. The resulting statistics indicated that bullying was rife in the workplace (affecting one in two female respondents and one in three male respondents) and sexual harassment is also common.

But that can and must change and, in the last 18 months, there has been a concerted effort by many individuals and organisations at the Bar to call this out. I believe the tide may be turning away from the cultural acceptance of such behaviour. Movements and Organisations such as The Temple Women’s Forum⁵³, Behind the Gown⁵⁴, The AWB, the Western Circuit Women’s Forum⁵⁵, Women in Crime⁵⁶ and, significantly, the Bar Council, have taken up the challenge to make the problems visible and have proposed ways of dealing with it.

Today the Association of Women Barristers (AWB) will publish their report authored by Lynne Townley and HHJ Kaly Kaul QC *In the Age of ‘Us too?’: Moving towards a zero-tolerance attitude to harassment and Bullying at the Bar*⁵⁷. Discussions held by the AWB in November 2018 revealed recurring issues of particular concern to practitioners included the following:

- Power imbalances creating vulnerability e.g. during pupillage and with instructing solicitors.

⁴⁷ Helena Kenney, *Eve was framed: Women and British Justice*, revised edition 2005

⁴⁸ Helena Kennedy, *Eve was Framed*, p.2.

⁴⁹ Ibid. p. 34

⁵⁰ Lawyer (2019) July/August Pages 22-23

⁵¹ ⁵¹ The recent survey by the International Bar Association indicated that women and non-binary members of the legal profession internationally were more likely to have been sexually harassed. Of the 14 survey respondents who identified as non-binary or self-defined, 71% had been bullied and 43% had been sexually harassed. Kieran Pender, ‘Us Too? Bullying and Sexual Harassment in the Legal Profession’ (2019, the International Bar Association).

⁵² Kieran Pender, ‘Us Too? Bullying and Sexual Harassment in the Legal Profession’ (2019, The International Bar Association)

⁵³ Including The Temple Women’s Forum (established in 2012 initially by Middle Temple, then joined by Inner Temple) and Lincoln’s Inn Women’s Forum.

⁵⁴ See <https://behindthegown.com>

⁵⁵ <https://westerncircuit.co.uk/womens-forum/>

⁵⁶ The Western Circuit Womens Forum⁵⁶ was set up in 2015, with Women in Criminal Law launching in 2018⁵⁶.

⁵⁷ © 2019 Association of Women Barristers. Published online on and available to download from the website of The Association of Women Barristers <https://www.womenbarristers.org>



- Unequal treatment around the distribution of work and inequitable briefing - for example, overlooking women barristers for leading-briefs.
- Inappropriate behaviour in robing rooms and bar messes.
- Barristers being bullied by other barristers and a lack of awareness of the effects of bullying by some barristers.
- Poor facilities available for women and non-binary people at court centres.
- The existence of a culture of fear around reporting bullying/harassment and gender stereotyping.

The report published today is a vitally important piece of work and the AWB are to be congratulated for generating it.

I entirely endorse Amanda Pinto QC's, Chair-Elect of the Bar Council of England and Wales, welcome of the report:

'The eradication of harassment and bullying at the Bar will inevitably lead to a better, more inclusive and sustainable profession, benefiting the public at large in the delivery of justice.

I am sure that the ability to maintain confidentiality is a huge incentive to victims of inappropriate conduct in reporting bullying/harassment. When a young barrister and subjected to such behaviour myself, I believed that if I told anyone about it, I would be viewed as a troublemaker and the end of my career would inevitably follow.

Although there are still concerns over behaviour at and towards the Bar, strides to change norms have already been made even since the AWB 2018 roundtable: the BSB now accepts that a victim of bullying/harassment does not commit a regulatory offence by not reporting serious professional misconduct; the Bar Council has lobbied the BSB to extend that exception to those the victim may speak to in confidence; also, in September 2019, it has launched a new tool (Talk To Spot) by which a barrister can make an anonymous contemporaneous record of their experiences easily, without the need to decide whether to make a formal report at all. Calling out wrongful conduct is imperative. The Bar Council has also re-launched its confidential helpline supporting barristers faced with discriminatory or inappropriate behaviour. Together with closer liaison between the Bar and the judiciary to stamp out bullying and harassment, I am hopeful that we can change behaviours affecting barristers. I congratulate the AWB not only on reporting on these problems but suggesting and promoting solutions to the difficulties regrettably faced by some, often female, barristers. By acknowledging and addressing the issues we are far more likely to retain a genuinely diverse and inclusive profession.'

Action is needed: we all agree that, but deeds must follow fine words by those who regulate us and those we work with. As Amanda says, the Bar Council have been proactive behind the scenes as well as fronting up the issue. In September the anonymous recording tool 'Talk to Spot' was trialled in print⁵⁸. It is a recording mechanism that can be used by a victim of abuse or witness to it which can work in tandem with the Bar Council helpline support⁵⁹. Spot is a link that, when accessed, enables you to click on a link to 'Make a report' which can be submitted to make a complaint or kept as a date stamped private record should you wish to retain a contemporaneous record in the event you might want to make a complaint later. The Spot AI has been trained to recognise 'bar' language and if you wish to 'submit a report' the AI software will direct it to the Bar Council. The Bar Council want to emphasise the user retains control of their identity at all times. It is an anonymous record of an incident (unless the person chooses to be named) but the value of submitting a report (which is not the same as a complaint) is that it gives the Bar Council the ability to build up a map of offender incidents. If repeat types of conduct, or names, crop up the Bar Council can use that anonymously submitted data to inform training on types of conduct (or intervention with the person named) and/ or can make contact with the subscriber via Spot (the email and name is not visible to the Bar Council) to let you know that you are not alone and to see if you wish to take the matter further. No human (not even the Spot team or Bar Council) will see what a barrister submits via Spot, unless they decide to submit a report - but even then, it can be anonymous. It has come on stream today.

The Spot recording tool in the first instance deals with the consequence of inappropriate behaviour. We need to tackle the causes of such abuse of power. Spot can be used to target that if it's taken up because it is the Bar Council intention to use the data to target training and direct intervention. The AWB have some other suggestions:

FIVE KEY INDICATORS FOR CHANGE AND RECOMMENDATIONS

⁵⁸ <https://www.barcouncil.org.uk/media-centre/news-and-press-releases/2019/september/bar-council-launches-anti-harassment-and-bullying-online-tool/>

⁵⁹ 0207 611 1426



1. Changing the dialogue

- Male ‘champions’ and mentors to help change the culture⁶⁰.
- Established networks and groups advocating for the interests of women, BAME and other under-represented groups to work together and share good practice⁶¹
- Specialist anti-harassment/bullying panels to be set-up on all circuits for sharing of best practice and establishing of a national awareness event (e.g. an ‘anti-bullying month’).

2. Codes and policies

- Chambers to put in place anti-harassment/bullying policies (which must be kept under review to ensure that they remain fit-for-purpose).
- Chambers to adopt better and more flexible policies in relation to maternity leave and related policies.
- Chambers to enable more flexible clerking regimes to be developed – to take into account part-time working, term-time working, and putting in place appropriate plans for maternity leave and return.

3. Training

- Training to be introduced for judges, barristers and clerks on (i) awareness about bullying/harassment and what constitutes this sort of behaviour, (ii) unconscious bias, and (iii) equality and diversity.

4. Long-term support for those who experience/report harassment and/or bullying.

- Introduction of an agreed ‘flow chart’ detailing the process to be followed and actions that should be taken by someone who has experienced harassment or bullying and the introduction of a dedicated counselling ‘hotline’.

5. Better facilities for women and non-binary people at court centres

- HMCTS to ensure that they have appropriate facilities in place for women who are breast-feeding and for non-binary people

Progression at the Bar:

Statistics from recent QC appointments indicate that even though women applicants are more likely to be successful in the competition, the number of female applicants remains low and that is because the pool from which they are drawn to is small (because of the departure of women from the profession as 10+ years call) and because women wait until they are confident they have crossed all the ‘ticks’ in the application criteria rather than applying, as men do, on the basis of what they have done even if they haven’t done everything required. If current trends continue, the proportion of women QCs will consistently lag behind the number of women entering the profession. Moreover, since the higher ranks of the judiciary are largely drawn from the silk band, fewer female silks leads to fewer judicial appointments.⁶²

Some words ring true across the generations. Some 25 years ago, Helena Kennedy QC, Baroness of The Shaws said: *‘As in other professions, there is a glass ceiling for women, which means that getting to the top floor involves a detour out through the window and up the drainpipe, rather than a direct route along the charted corridors of power.’*ⁱⁱⁱ

While progress has been made, change is happening far, far too slowly. How long can the situation be tolerated?

⁶⁰ In June 2019 the Association of Women Barristers introduced a mentoring scheme encouraging both male and female barristers to participate and to act as positive role models for the profession. See: <https://www.womenbarristers.com/mentor>

⁶¹ For example, in June 2018 the AWB and the Society of Asian Lawyers (SAL) held a joint QC applications event to address under-representation of both groups in those taking silk. The SAL, WCWF, WICL and the Temple Women’s Forum all participated in the AWB roundtable.

⁶² **Note:** Christina Blacklaws, President of the Law Society of England and Wales, wrote this April⁶² that whilst in 2017 women accounted for 20.2 per cent of practising certificate holders as solicitors, out of 30,000 partners in private practice only 28 per cent are women. There is a superb report published in March 2019 by the Law Society (which I will return to in later as I am focusing on Women at the bar for this lecture) called *‘Women in Leadership in Law Report: Findings from the women’s roundtables “Influencing for impact: the need for gender equality in the legal profession,”* which amply substantiates Christina’s point



As Dana Denis-Smith has said, *'Diversity is not just about what you can see in terms of race or gender ... it can be found in the details of the challenges and struggles they have experienced to get where they are today.'* The clarion cry she sounded was this: *'One Hundred Years ago the battle was for participation in the legal system. With more women than men now entering the profession what we need now is equal numbers of men and women in leadership positions, receiving the same remuneration.'*

Dana and I are in accord when we say that *'culturally we seem to need our female leaders to be perfect and at the top of their game while mediocre men climb the ranks all the time by simply being capable of doing their job'*.ⁱⁱⁱ

Visibility matters

It's not just current senior women whose visibility is important. We should embrace our history and make it visible to the young it can inspire

Civic Statues: Where are the women?

Heilbron was one of several high-profile women who wrote to The Times in 1958 arguing that there should be a national monument to Christabel Pankhurst⁶³. In 1930, a statue of Emmeline Pankhurst was unveiled in Victoria Tower Gardens. In 1958, a plaque was added to the statue honouring Christabel as well, following her death. It's notable that the statue was not erected in, and was never moved to, Parliament Square, which is home to the great statues of famous statesmen. The colours of the WPSU are still left by visitors to the monument. It wasn't until 2018 that a statue celebrating a women could finally be seen in Parliament Square. Millicent Fawcett's statue now stands proudly after great campaigning for a number of years by Caroline Criado Perez.⁶⁴ Fawcett holds a banner which read the words 'Courage calls to courage everywhere'.

Street Names: Where are all the Women?

In 2018 this announcement was made by the remarkable Caoilfhionn Gallagher QC: "This week, a group of us who are women working in London's Bloomsbury are... launching a campaign called 'Where are all the women?' We work at Doughty Street Chambers and we are proud to be based in Bloomsbury, with its rich history of inspirational women leaders from politics, law, journalism, and art. Within a few hundred metres of our Chambers are buildings where the suffragettes built their campaigns, as well as the former home of the first woman barrister in England and Wales, Helena Normanton QC. However, our public spaces are dominated by men: statues of men, blue plaques commemorating men, and even the street names themselves honouring men. We have decided to reclaim - and rename - local streets, to mark the lead-up to International Women's Day on 8 March 2018 and the centenary of women's suffrage in 1918. For eight days, from 1 to 8 March, we will recognise and celebrate some of the amazing local women in Bloomsbury who are too often forgotten. We are reimagining our streets renamed."⁶⁵ By way of example: Doughty Street was renamed Lyons Street in March 2018. Jane Lyons ran a 'Private Hotel and Boarding House' on Doughty Street. As the proprietor to the boarding house she gave shelter to suffragettes.'

This is an inspired idea: I hope it spreads.

Wikipedia: Where are all the Women?

Women in Red: a movement to make women's achievements visible. Women in Red (WiR), is a WikiProject whose objective is to turn "red links" into blue ones. An idea conceived in October 2014 when only 15.53% of the English Wikipedia's biographies were about women. Founded in July 2015, WiR strives to improve the figure, which has reached **18.04%** as of 23 September 2019. But that means, according to WHGI, only 299,330 of our 1,659,498 biographies are about women. That matters because, as WiR explains "'Content gender gap" is a form

⁶³ Who had been refused admission to the Bar in 1904?

⁶⁴ <https://www.bbc.co.uk/news/uk-politics-43868925>

⁶⁵ Caoilfhionn Gallagher QC, 'Are Street Names Sexist? Renaming London's Streets', The Huffington Post, 02.03.18. URL: https://www.huffingtonpost.co.uk/entry/are-street-names-sexist-renaming-londons-streets_uk_5a97f715e4b03afbcf9031f7?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2x1LmNvbS8&guce_referrer_sig=AQAAAFbHscwP-wjWx-c4okB4rzP5VMZAQG6vNKgHaDJSJeqnhsi8XTpbYAuxG23Jrs52R5zhCLjdG6SXtiUE8yWqdNYNB6MinL7pgZRAWcF32gw1AujkXUKTv4DZffeC2RmZpfeTV1sdv-1Tk6WQRYdKmwFg7sDOit4gzlrwSAOH



of systemic bias, and WiR addresses it in a positive way through shared values. September 2019 was its Law month. Very timely.

We don't just look at the past: we look ahead: The Next 100 Years

Ahead of the curve, The First 100 Years project are launching the Next 100 Years⁶⁶. This is the project which will focus on 'building on the achievements of women over the last centenary to create a more equal future for women in law'.

Concluding remarks

The task I believe we face in this hundredth anniversary year is to identify and tackle barriers to gender advancement. We need to look at unconscious bias. We need to confront sexual harassment and male bias power politics. We need to be prepared to hold inhibiting factors such as allocation of briefs, chances to be led and to speak at professional seminars (at the Bar) and non-family compatible court room working practices up to the light for scrutiny and accountability.

Just as important is the duty to take actions oneself: not simply look to others for leadership.

I strongly believe that it is the responsibility of those who have climbed the ladder not to knock away the rungs but to lean down and pull others up it

I am not alone in that belief. The AWB has launched a mentoring scheme. Other institutions will follow. It makes a difference to have a senior woman as a champion and guide. Baroness Ruth Deech QC (Hon) was the person who encouraged me to apply for this professorship. My personal and professional life has been enriched by it. I used it initially to explain the working of the family justice system to a public who knew little of it but deserved to understand it, the cases we undertake, the principles we apply. Latterly I have made use of this unique platform to talk of issues not fully and openly aired about the flaws in our working world and the justice system. I have done so because I believe that those who have attained some professional status have the ability (I would say a duty) to give a voice to those who don't have the autonomy to speak up and out. And this isn't just a duty on women for women. Equal treatment should be expected for both men and women at all levels. As Christina Blacklaws said, *'Of course women need to support other women to achieve this but men raising their awareness, taking responsibility and being accountable for gender equality is also critical to achieving true diversity and inclusion in the profession.'*⁶⁶

The women I have celebrated tonight haven't risen to prominence by being quiet and avoiding controversy.

Men and women can, and should, lead from the top and by example: it is crucial for leaders to be aware of their bias to prevent it from influencing career and work place decisions and for colleagues to call it out if they are in a state of ignorance. We can acknowledge that we have biases (individual and institutional) which creates a culture of awareness that is the foundation for change. We can raise awareness as a starting point in discussion with colleagues in chambers, in professional associations, in the Inns and with the judiciary. We can participate in surveys when asked to do so! Most importantly, we can offer our time and name by being mentors (or simply by being visible and vocal) to the less senior members of the Bar.

It is a non-delegable duty to act.

We need men and women to take up their batons and march towards the Next 100 Years with renewed energy to claim professional equality. Many are. Listen out: the call for deeds not just words is now a clamour.

*Copyright Professor Jo Delahunty QC
4 Paper Buildings
Temple*

⁶⁶ <https://first100years.org.uk/what-we-do/next-100-years/> twitter @Next100Years.



Next lecture

Thursday 28 November 2019, 6pm, Barnard's Inn Hall

100 Years of Women in Law <https://www.gresham.ac.uk/lectures-and-events/100-years-women-in-law>

A Gresham lecture that Delahunty gave in November 2017 was one of the first public identifications of the exodus of experienced women from the self-employed Bar. That loss impacts on the number of women who take Silk and that, in turn, drains the pool from which judges are largely drawn. 2018 saw the Bar Council and Specialist Bar Associations acknowledging the issue and a “Retention of Women at the Bar” survey was launched. It’s now 2019 and time to look at the results and test how the legal profession has responded to the challenge.

ⁱ With thanks, again to Rachel Cooke for that aside

ⁱⁱ Kennedy H *Women and British Justice* (1992) pp 344-45

ⁱⁱⁱ March 2019 *Solicitors Journal* p 18

^{iv} Women and Equality in Law: a century on’ April *Family Law* April 2019 Vol 49