**UK Association of Women Judges**

**Supreme Court**

**21 March 2019**

**Celebrating 100 years of women in the legal profession -**

**the contribution of women judges**

**Lady Hale, Baroness Butler-Sloss and Justice Teresa Doherty**

The United Kingdom of Women Judges was delighted to welcome over 100 people to the Supreme Court in London in the evening of 21 March 2019. It was an iconic venue for the opening event in this series celebrating 100 years of women in the legal profession looking at the particular contribution of women judges. After a brief introduction from the main organiser, Sue Williscroft, and a welcome from our Vice President, Sarah Asplin, we moved on to the main event – examining the careers of Lady Hale, Baroness Butler-Sloss and Justice Teresa Doherty.

It is perhaps worth remembering how recent the “firsts” achieved by the three are. Elizabeth Butler-Sloss was only the fourth woman appointed a High Court Judge in England and Wales, it was not until 1988 that she became the first woman in the Court of Appeal and 1999 when she was the first woman to be appointed President of the Family Division. Brenda Hale was appointed to the Court of Appeal in 1999 and in 2004 became the first (and only) woman serving on the Judicial Committee of the House of Lords. She was the first woman to be appointed to the Supreme Court, and subsequently to be its Vice President. In 2017 she became the first female President of the Court and it was only in that year that another woman was appointed to join her. Teresa Doherty was the first woman to be appointed to judicial high office in the South Pacific, in Papua New Guinea, and in 2003-2005 she served as a Judge of the High Court and the Court of Appeal of Sierra Leone.

The careers and contribution of each was presented from the perspective of a law academic. Her Honour Judge Sonia Harris, who, before her appointment to the bench, was at Birmingham University, looked first at the career of Elizabeth Butler-Sloss. She outlined how instrumental Baroness Butler-Sloss was in the development of modern child law and emphasised her unwavering commitment to families and children and the removal of any unnecessary interference in the autonomy of individuals. In looking at her contribution to advancing diversity she echoed what has been said elsewhere, that she made it look normal.

When considering whether the gender of a judge matters and whether it makes a difference she looked at the question of democratic legitimacy and the fact that the judiciary should reflect the society it serves. Equality means that there should be fair and equal opportunities for all who work in the profession. The application and development of the law can only be enhanced and improved by those working within it bringing a diverse range of experience. There can be no presumption that women will speak with one voice any more than male judges will.

Sonia Harris outlined the core themes of feminist literature, that a female judge will empathise differently with parties to litigation and have a better understanding of gendered roles, she will tend to focus on the ethic of care with a focus on context and practicalities. She then applied those themes to the work of Baroness Butler-Sloss, by reference to the Cleveland report and certain influential judgments.

Sonia Harris said that it was fair to reflect that Baroness Butler-Sloss had always been quietly unassuming both about her gender and her pioneering role. Embedded in her work were many themes of concern for women. She had shown a healthy scepticism of authority and a respect for the autonomy of individual decision makers within families. She commented that Baroness Butler-Sloss was able to make a difference without any of male colleagues noticing what was happening beneath their noses.

Baroness Butler-Sloss perhaps spoke for all three judges when she said that sitting through an analysis of her work was absolutely terrifying. She emphasised that what had been missed by critics of the Cleveland report was that the issue concerned children rather than their parents and the need to remember that children are people, not packages.

Baroness Butler-Sloss said that she had not thought much about gender save that when she was originally appointed to the District Bench she was told that it was felt that they needed, “a married woman with children”. There was an issue when she was appointed to the Court of Appeal about what she should be called and initially she was referred to as Lord Justice Butler-Sloss. It required the taking of legal advice before the decision was made that she could be addressed as, “Lady Justice”. That led to an announcement one morning that Lord Justice Butler-Sloss would now be Lady Justice Butler-Sloss and a newspaper headline about a “sex change judge”.

Throughout her career she had been called “sensible” and certainly felt the pressure of being a pioneer meant that she should not make waves and lead people to think that they had one woman and did not want any more. She was also conscious that those who followed her were less likely to think in that way. She was clear that it is not only women who are capable of empathy and we should beware of underestimating our male colleagues. She emphasised that the main reason women should be judges is a very simple one - we are half the population and the public is entitled to have both men and women judging them.

Professor Erika Rackley of the University of Kent concentrated on the contribution made by Lady Hale. She started by pointing out that Brenda Hale had spent much of her life in male dominated institutions. At the time of her appointment she was the youngest Law Commissioner ever. She is known particularly for her work on children and mental capacity and for two significant pieces of legislation, the Children Act 1989 and the Mental Capacity Act 2005.

Erika Rackley spoke about being vitally conscious of Lady Hale’s role as a woman and as a feminist and about the feminist judgments project. It was her view that Lady Hale was the first self-avowed feminist to hold a senior position and she went on to examine how, in her view, this could be seen in her judgments. An early example was in her first year in the House of Lords when she gave a dissenting judgment in a prosecution for sexual assault which failed because the all male majority considered that the failure to prosecute within the twelve month time limit for the offence was an abuse of process. Lady Hale in her judgment addressed the fact that there was no doubt about the defendant’s guilt and that the issue of procedural unfairness impacted on both sides. She considered that the only delay which should be taken into account was one which would prejudice a fair trial.

Erika Rackley outlined examples of Lady Hale’s jurisprudential leadership. Her judgments demonstrate her approach which includes and respects women’s lived experiences and their relative economic bargaining power. She is a leader on and off the bench. In the years between 2009 and 2015 she contributed to more judgments than any other justice making her one of the busiest and, as a result, very visible and a beacon for others.

In her reply, Lady Hale spoke about the article which Erika Rackley had written examining the position of the woman judge using fairy tale and myth which she felt said a lot about women who join a male dominated profession. Should you try and be like the men or do you keep a low profile as Baroness Butler-Sloss believes she did or do you try and demonstrate that you can be a woman and its all right, there is nothing to fear. Whilst Lady Hale acknowledged that she had been the first woman on a few occasions she had also, on others, been the second and she felt she owed a huge debt of gratitude to the first, including Baroness Butler-Sloss, who had clearly not put people off the idea of appointing women.

Lady Hale expressed a nagging anxiety that perhaps the reason it had taken so long for another woman to be appointed might in some way be down to her. She had been warned to be careful and not rock the boat too quickly. She reflected on why people should see her in that way and thought that, in part, it was because she had never hesitated to call herself a feminist. It is not a term of abuse and should not be an embarrassment, “I consider it the moral normative view that women are equal to men and that we lead women’s lives - we have no choice”. She acknowledged that we would not have made progress without those men who were supportive of the need to appoint women.

Lady Hale said that she did not set out to decide cases in a particular feminist way. Diversity is incredibly important. Women are half the human race and should be half the judges. There are of course other areas of diversity which need to be addressed. She reflected on the fact that one of the ways in which she is different from may of her colleagues, apart from being a woman, state educated and a poor person’s lawyer is that she has been employed all her life. That experience does contribute to an understanding of what its like to be employed including in discrimination issues.

Professor Rhona Smith of Newcastle University then introduced Justice Teresa Doherty who was, perhaps, the least well known of the trio because her most notable work has been outside the United Kingdom. In 1988 she was the first woman to hold high judicial office in Papua New Guinea and remained the only one for over a decade. She was later appointed by the United Nations as Presiding Judge in Sierra Leone from 2005 and is now the Vice President of the residual court dealing with war crimes.

One of the things which Justice Doherty’s experience highlighted was the need for legal aid so that rights could be enforced and have some meaning. During her work in Papua New Guinea she highlighted concerns about the conditions in which women were incarcerated and the implications of the way the prisons were run on women maintaining contact with their families because of the distances involved when they were sent to the few institutions allocated to them.

In 1988 she was appointed to the Supreme Court of Papua New Guinea and had to deal with bribery and corruption issues. There had been a lengthy civil war following independence from Australia and resulting war crimes trials. She was conscious that the application of customary laws and practices often oppresses women and she worked to address those issues. Judges must make decisions even when there is no relevant law or there is a need to counter customary norms. Many of her judgments continue to be cited, and include her use of the prohibition on slavery to rule against the handing over of the daughter of a man convicted of the unlawful killing of a woman in reparation for his crime.

In Sierra Leone Justice Teresa Doherty had to address the problems created by the recruitment of child soldiers and the use of rape and sexual slavery as a weapon of war. The prosecution of the head of state, Charles Taylor, proved that no one was above the law.

Rhona Smith considered whether Justice Teresa Doherty being a woman had made a difference. She highlighted her championing of fairness for all, her deep sense of justice, the careful crafting of her arguments, her articulation of the impact on women of gender based crimes, her robust response to rape and her systematic drawing on international human rights law to challenge customary law and practice

Justice Teresa Doherty said that when she first read what Rhona Smith had written about her she did not recognise herself. On the question of child soldiers she said that she was conscious of what had happened to children in Northern Ireland during the troubles and the impact that had had on their lives and that informed her approach.

She spoke about a case in which she had been involved when she was asked to act for a group of women who had been arrested for playing an illegal game. The

riot squad had come for them at 6 a.m. and were being held in prison. One of them was nearly at full term in her pregnancy. Teresa Doherty was asked to try and get the women released. She went through every single National Gazette from the date of the passing of the Act which was being relied on to the date of arrest to find out what games had been specifically scheduled as illegal and found that not a single one had. She challenged the arrest and the women were acquitted. It had a huge impact because women did not expect to win legal cases and as a result of that decision 200 other people had to be released. She had show that women could stand up to the system and that meticulous research and preparation is essential.

Included with her duties as a judge was a responsibility for prison inspection which she made sure she did unannounced at all times of day. She found many great injustices, particularly involving women convicted by village courts. One memorable example concerned a 15 year old charged with murder because she had been pregnant and had a miscarriage. She was charged because it was contrary to custom to be pregnant out of marriage and had been remanded in custody for a year before her release.

On moving to Sierra Leone there were no women on the bench and no senior female counsel. All the women barristers were addressed as, “Sir” and she was called, “My Lord” (but not for long). Whilst in Sierra Leone she became concerned about adoptions of children into the US because they did not conform with the relevant legislation, there were no police reports and the consent orders bore a striking similarity. She refused the orders and passed the information to the US Embassy which investigated what had been going on and found that the children were being trafficked.

The evening ended with some time for questions and discussion, and an opportunity to socialise, reflect on the evening, enjoy some wine, canapés and the ambience of the Supreme Court.

One thing which perhaps summed up what the three women had in common was being the right person in the right place at the right time with some sympathetic people and saying yes to offers of jobs, “I thought I couldn’t do”.

Margaret Glentworth

31 March 2019