



Women in Law

Opening sequence:

“The truth, the whole truth and nothing but...How does the defendant plead? Not guilty! The law pretends to be so politically correct but really it’s an incredibly sexist world. I was really shocked - the lawyer turned out to be a woman! Guilty!”

Gary Slapper:

Hello! I’m Gary Slapper, Professor of Law at the Open University and with me is Frances Gibb, Legal Editor of The Times.

A hundred years ago, women played virtually no role in the law or the legal machinery. By contrast today, women occupy a very significant position in law. How far though does that adequately reflect the experience of 50% of humanity?

Frances Gibb:

Well Gary, it’s a very good question. I think as you say a hundred years ago women were virtually non-existent in the law, by comparison with that, yes, they’ve come a very long way. But also they are still very poorly represented at the top of the profession.

We have had in the last few years the first woman President of the Law Society, in 2002, Carolyn Kirby. We’ve had the first woman Chairman of the Bar, we’ve had the first woman in the Court of Appeal, and we’ve had the first woman, and still do have the first woman, Brenda Hale, in the House of Lords, and now as it is the Supreme Court.

But those are still actually very tiny figures aren’t they?

Gary Slapper:

Yes, it seems to be backed by empirical evidence that girls tend to do better than boys in high school. It’s certainly true on the last tranche of empirical research to say that females do better than males at university. There’s a higher proportion of firsts and 2:1s awarded to females than are awarded to males at British universities. At the point of entry to the legal professions there are now equal numbers of females and males. Then it slips off.

Frances Gibb:

I actually think there are slightly more women now entering both branches of the profession than men, the big question is, then what happens? And are they facing discrimination or are they finding something about the legal profession and the lifestyle and the way of working that’s not palatable to them?

Gary Slapper:

The evidence looks like that is the case of about 1,500 QCs. I think only about 160 are female and the last appointments round in 2010 of 129 people appointed, only 20 were female. It looks like there is something dissuading people from applying. Only 40 or so people applied for those 20 successful places.

Frances Gibb:

That's right. So when we talk about progress of women in the law, yes you can measure it from the very poor state whereas you said at the beginning where women were virtually not seen. And you can say, yes, they've made great strides, but what's going to happen now? It almost seems to have hit the buffers doesn't it?

I just heard Baroness Kennedy, Helena Kennedy, the other day, talking. And of course she's a great criminal barrister and a great feminist and so on. And she was recounting her early days at the Bar, when you would be the only woman in chambers very often. Some chambers wouldn't take women at all. They'd say, we don't do women, or they'd say, oh yes, we do women, we've got one. And it's still a bit like that, and she was making the point, the Supreme Court is still like that, they do women but they've got one. So where are the others?

Gary Slapper:

It must have effect. There must be the absence of an effect of that experience which you could say is 50% of human experience from informing decision making. I suppose people could say, well human experience is human experience. It surely doesn't matter what's the sex of the person making a decision, if it's human experience. Eleven good men and one good woman is the same as six of each gender. Do you think that's a convincing argument?

Frances Gibb:

No I don't. I think it's a bit like the House of Commons, that it is a very male atmosphere. It's like a male club. Particularly the Bar, and I think women have to reach a critical mass before you begin to slightly disturb that.

I remember again Eileen Pembridge she was the first woman Law Society Council member if I'm not wrong. There were no loos for her to use, and they had to actually install special loos in the Law Society. I know that's just a physical manifestation but it shows how it was a very much a male club and they hadn't contemplated what to do. It's a bit like women in the robing robes, where are they to change? Although I don't think these changes are necessarily particular to the legal profession.

Gary Slapper:

That's a very interesting point. That's also borne out by the experience of Brenda Hale. She said that the House of Lords corridor when they were there, didn't have any female toilets she has observed, in some ways not to be made to feel welcome and to be part of something natural, must have an effect. And even if you, as I'm sure she did, overcame that particular difficulty, it's still something which is unnecessary anachronism.

Frances Gibb:

It's emblematic isn't it? Of the complete atmosphere. And so even a small number of women has actually changed things a bit, but I think in greater numbers it will change not just the whole atmosphere, the way the place works, and this is the same in any workplace, but perhaps the content of the law as well. The way things are looked at, don't you think?

Gary Slapper:

Yes, I can't imagine that the way that law in relation to things like custody and divorce, separation, the distribution of property, would have developed in the way that it has done if this had been an exclusively male preserve over the last 50/60/70 years. I think that there is a discernable impact of the female mind and experience on the law. And in a way it stands to simple reasoning that if the experience of women which is demonstrably different from men in many key respects, is not part of the legal reasoning.

For example, the old law of provocation. For a great many decades, running into centuries, it was the law that if a man caught his wife in bed with another man, and he killed that other man and/or the wife, he would have a defence of provocation. Whereas the exact obverse situation, if the wife caught their husband with another woman, she could not avail herself of that defence, a demonstrably indefensible position, but one that the law adopted and you can't help think that had there been females on the bench, that would not have occurred in that way.

Frances Gibb:

I think that's right. I think having Brenda Hale with her background, in family law will have an impact over time in the Supreme Court, and already - not in that area - but in judgements, when you read her judgements, she sometimes is the only one who actually focuses on the personal aspects. I've noticed that before. And it's interesting, it's just a different way of looking at it.

Gary Slapper:

And is every bit as important, valid segment of human experience as the male part.

Frances Gibb:

Just to come back to your point about why more women are not reaching these levels. Why do you think? I'm not sure now that there really is much discrimination. I'm sure there's a bit, but I think it's more to do with the nature of the job. For example if you're in the bar and you've got to try to be self-employed and run a very busy practice and then you've got to look after small children. Those kinds of problems, going out on circuit if you apply to be a judge. What do you think?

Gary Slapper:

Absolutely, I entirely agree. Whereas some parts of the working environment in society at large in the organisational work for example can cater reasonably well to people who want to have flexible working time and adaptable arrangements and job share and that sort of thing. I think it's much harder to transpose those sort of flexible arrangements into the world of the individual professional. And there was research from Kings College London in 2010 from Professor Janet Walsh who interviewed 800 women that suggested that nearly half, 44% of the people that she spoke to had thought that utilising flexible working arrangements, your rights if you like at work was itself a reason among the higher officers of a firm, the partners, for having a negative impact on promotion.

Frances Gibb:

Yes. On the one hand you get the right, or companies provide the flexible working or part time working, but then if you exercise the right, it's held against you, or so women perceive. So you are in a kind of double bind.

Having said that, and obviously we often still see cases of sexist allegations made from women in the City or whatever, bit City firms. Those still happen. But I think generally workplaces have improved. And that's across the board, in my own workplace we don't any longer have the kind of people who, I can remember one in particular used to take great delight in pinning my bra strap. Those kinds of people aren't in the workplace any more. They'd be drummed out I think.

Gary Slapper:

Yes, Attitudes have changed. I think that's a very vivid illustration of how far that we've come from a social circumstance where that sort of behaviour, or bottom slapping or something would have fitted into the general way of doing things. And wouldn't have been regarded as

improper by probably a majority of people to a time where it would be quite an egregious way for anyone to behave, bordering on the illegal.

Frances Gibb:

Exactly, we all have heard of horror stories about the way pupils are treated by their pupil masters at the bar, these are trainees. But those kinds of instances, which still exist and I think a recent report on pupillage found one pupil was required to go and sit at her pupil master's home to wait for a plumber to arrive. Those kinds of instances I think are the minority. Very much the minority now.

But I do think that despite that improved kind of atmosphere and improved attitude, the actual job is sometimes in the law is not very conducive to women and we've just mentioned it, and the judiciary in particular.

Gary Slapper:

Yes, because there's still the case that the higher up the judicial pyramid you go, the fewer women you find. So the atmosphere is more intellectually rarefied, but only with 50% of human experience reposing in that apex of the pyramid.

Frances Gibb:

Going out on circuit involves staying away from home for up to 6 weeks at a time in a Crown Court centre, it might be Newcastle, or Swansea or something. Well if you've got small children that really is impossible isn't it? So there are things like that I think have to be changed before they're really going to make the career attractive to women and get more women up at the top levels.

Gary Slapper:

Thank you so much Frances.

Closing Announcement:

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