**Conversations in Social Justice:**



**Reflections on current issues in the**

**legal professions with Lady Hale**

**Podcast transcript**

Series 3. Episode 1.

*In this episode, Helen Trouille and Jan Maltby from the York St John University law school talk to Lady Hale, former President of the Supreme Court, about a number of issues in social justice, ranging from access to the legal professions for students from non-traditional backgrounds, to government proposals to repeal the Human Rights Act and pass a new British Bill of Rights. In the course of the conversation, the speakers also reflect on the heated atmosphere surrounding key cases in the Brexit process, the reporting in the print media at the time and the impact on the judiciary.*

**Helen Trouille**

Hello, and welcome to this podcast today. This is one in York St. John University's Institute for Social Justice series, Conversations in Social Justice. My name is Helen Trouille, and I'm a senior lecturer in the law school at York St. John. With me today are my colleague Jan Maltby, also from the law school – and I'll ask Jan to introduce herself in a minute - and we're accompanied by our esteemed guest, whom we're absolutely delighted to welcome, Lady Hale, who's the former President of the Supreme Court. Thank you so much for joining us today for this conversation. We're really looking forward to spending the next half hour or so together, sharing in your views on certain key issues in social justice.

**Helen Trouille**

Lady Hale, you need no introductions, but I would just like to explain to our listeners why we're particularly interested in talking to you today and why we really hoped that you would join us. So firstly, of course, you are a Yorkshire woman. But there have been lots of firsts. You're the first woman to be appointed to the Law Commission, one of the first women to be promoted to the Court of Appeal, the first woman Law Lord, and the first woman Justice of the Supreme Court, and of course, the first and only woman President of the Supreme Court. And in addition to this, you have also an illustrious past as an academic at Manchester University, which is incidentally, my alma mater. So last year, you published a book very aptly called *Spider Woman: A life*, where you wrote about some of these achievements. And we're very much hoping that you can share your experience and some advice with us today, both for our students and for ourselves. So now, Jan, can I just ask you to introduce yourself and then put your first question to our guest?

**Jan Maltby**

Yes, thank you. Hello. My name is Jan Maltby. I am a lecturer here at York St. John. I'm a former solicitor. And one of the roles that I hold at the University is career guidance in the law school. So my bunch of questions is really about access to the legal profession. So I'd like to start off on the point of accessibility, the general view of both branches of the legal profession is that it's populated overwhelmingly by white, middle class males, especially in the upper echelons, there's been a real drive to change this in recent years. In your view, is access to the legal profession becoming more achievable to sectors of the population which have been typically underrepresented?

**Lady Hale**

Well, thank you for having me to answer your various questions. It's great to be with you. One of my happiest memories is the day when I was given an honorary degree by the University of York St. John and a very memorable degree ceremony in York Minster, presided over by the then Archbishop of York and accompanied by African drumming as we left the cathedral. Something very distinctive and completely unique to York St John, so congratulations is great to be with you. Now, to get to the answer to your question. The legal profession is not overwhelmingly populated by white, middle class males. It is still disproportionately populated by people from independent schools. That is true of both the solicitors profession and the bar and the judiciary. But the proportion is going down all the time. And the diversity of the legal profession is increasing all the time. So I don't think anybody should feel put off in attempting to join the legal profession by the previous situation in which it was indeed, so dominated, because everybody with the right opportunities and the right abilities can get to the top if things go the way they want them to, which doesn't always happen, of course, there's a large amount of luck involved in this. But the one thing that is of concern is that we have more and more young people wanting to join the legal profession. Most universities have a law school. And so they are producing more and more law graduates every year. And there are also people who have got degrees in other subjects who do the conversion course so that they can qualify. So we have more and more people wanting to join the legal profession at a time when, because of the cutbacks in public funding for litigation services, and indeed advice and legal help, in some areas of legal practice, there are fewer opportunities. And so that has to be a concern. And I'm sure for Jan who is giving careers advice to your students, that is a cause for concern. It shouldn't be a cause not to try. And what I always try and emphasise to aspiring young lawyers is that there are loads and loads of different types of law job. We tend to think of the law as just self-employed barristers and self-employed solicitors, but that's very far from the whole picture. There are a lot of lawyers who are employed, and they are employed in regulatory organisations, there are loads of regulatory jobs, people tend not to think about, they're employed in local government, in the Government Legal Service, and in commerce, finance and industry, quite apart from the magistrates, advisors, service and so on. So there are loads of things to do with your legal qualification provided you can get one the big barrier is getting the training contract or the pupilage. Once you can get yourself qualified, there are many, many different varied opportunities which people should embrace. Rather than think that it's not a good thing if they don't happen to make a career in self-employed practice.

**Jan Maltby**

As a very broad generalisation, our students at York St. John tend to come from the northeast of England - Yorkshire and Humberside - they tend to be the first in their family to go to university, to be white British, our law school has overwhelmingly more women students than men, some arrive with solid A levels, others less solid, some BTECs, and very few have got connections already within the legal profession. Most of them don't have any aspiration to go to London, they want to stay in the local area. How do you think universities such as York St. John, who tend to recruit that student profile can continue to support students to break down barriers to inclusion?

**Lady Hale**

Well, I'm sure you're doing a good job already, by admitting a comparatively diverse group of students, because I am a great believer that A Level results are not necessarily the best predictor of ability in the law, because sometimes they require different skills. And also, there are very big differences between the achievement record of different schools. And I don't know whether you go in for contextual offers, trying to look at the grades or qualifications that the student has achieved in the context of the student's educational and socio-economic background. I'm a great believer in trying to do that, although I think it's incredibly difficult to do it fairly and properly. But I still think it's a good thing. So I think you should celebrate the diversity of your students, obviously, giving them the sort of advice that we were talking about, in answer to the previous question is quite important that they should think very broadly about what possible careers will be open to them. But one of the things that you can surely do is develop good relations with the legal profession in the North East of England, cultivating the solicitors firms, and trying to persuade as many as you can, especially the large to medium size firms, because they've got more capacity to offer internships, but preferably paid internships because one of the difficulties is that these days getting a training contract or getting pupilage tends to depend on whether you have done some internships and mini pupilages. But of course, a lot of the more diverse students can't afford to do that, because they're doing jobs in order to finance their university careers, and very marginal in terms of finances. And so in order to make recruitment fair, really, firms ought to be offering those sorts of opportunities. They don't have to be well paid, they just have to be paid enough to make it a feasible thing, for your students to be doing. But that will be enormously helpful. If you can develop those partnerships.

**Jan Maltby**

We have started to do that, we're finding that the firms and the chambers in York are incredibly generous with their time to our students, and they are offering paid work experience and we're trying to build on that all the time. And it is providing incredibly good experience for the students. And you can see them growing in confidence and feeling more able to apply for the sorts of jobs that they want in the future, being successful.

**Lady Hale**

Oh, well, I'm so glad to hear that just shows that we're thinking alike on how to address this, because there is an awful lot of work out there for lawyers to do. As I was saying earlier, there's not a shortage of things that they can do. The question is trying to fit them to the right opportunities and create the opportunities for them. So congratulations.

**Jan Maltby**

As Helen said, in the introduction, you were the first woman to serve as President of the Supreme Court and one of just four female Supreme Court judges. You were also pretty heavily outnumbered as a female student studying Law at University. Today, female law graduates do outnumber male law graduates, but they are still underrepresented in the judiciary, for example, and as partners in law firms. Can you give any advice to female students, to academics, to potential employers as to how to redress this imbalance? I think crucially, are you optimistic that this can happen?

**Lady Hale**

Well, to answer the last question, first, I'm pretty optimistic. Because there have been such strides in recent decades, in this century, basically, in the participation of women in the legal profession, and the judiciary. We are now up to women being nearly 40% of the judiciary. And when you get to 40%, and my ambition always is at least 60/40 either way. It's not healthy, if it's more than 60, in either direction, men or women. And equally, obviously, 40 is the is the corollary of that. So we're nearly up to that in the judiciary. But of course, it is weighted in favour of the lower ranks of the judiciary. So when it comes to the higher ranks, we're not yet up to 30%. But we're getting close in the High Court and Court of Appeal, we're getting very close. The Supreme Court is a particular problem, which I don't think we should worry too much about, although, of course I do. But for the general run of people, what we need to worry about is the more senior positions. And of course, you're also right to say that while more women are entering the solicitors profession than men, and they're doing very well in training contracts and the junior and associate jobs, there are fewer partners and even fewer equity partners. We don't have the figures for those. But we're all pretty clear that there are fewer profit-sharing partners. Part of this is the attrition that all professions suffer. The medical profession does, I'm sure pretty sure accountants do, with women who find themselves wanting to reduce their proportion of time spent working outside the home, because they're spending more and more time working inside the home or on domestic responsibilities. They're both work, but they're different kinds of work. And so many women, especially when they get to their late 30s, early 40s - so they're quite senior, have got a lot of experience under their belts - nevertheless do want to cut back on... well, in some solicitors firms, it's the long hours culture, in barristers chambers, particularly in provincial common law practice, it's the uncertainty of where you're going to be the next day and how long you're going to have to be in court and so on. So there are problems with that. But this is why I emphasise how many other things that are for people to do. Moving sideways into a salaried employment is something that a lot of women do. So they should be encouraged to think of the wide range of opportunities and to manage their careers as suits them best. I also try and push this thought to the Judicial Appointments Commission, to the effect that they should also be looking to recruit the judiciary from other than self-employed barristers and solicitors, because there's a lot of able talent out there. And often it's women. And also often it's people from ethnic minorities, as well. And we've got the intersectional problem of women from ethnic minorities who suffer a double whammy sometimes in the difficulty of securing the opportunities that they want. So we have to be thinking more broadly. So that's why I'm optimistic because I think we are thinking more broadly. I think the pattern has changed, really quite dramatically during this century. And I hope it'll continue changing.

**Helen Trouille**

So in your role as President of the Supreme Court, you were confronted with quite a challenging time for the courts. There was notably the case of the prorogation of Parliament, in which the Supreme Court found that Johnson's government had acted unlawfully in suspending parliament, that was in the autumn of 2019, roundabout the time of the general election there, and there was the ruling by Lord Chief Justice Lord Thomas, that article 50 could not be triggered to notify the EU of the UK’s intention to leave the EU without a vote in Parliament. And that was earlier on. And I think that led to the Daily Mail headlines that the judges were the enemies of the people. And we just wondered what it was like for you to be making important judgments, for judges in general to be making important decisions such as those at that time, and what did you feel about the backlash?

**Lady Hale**

I'm sure that it was no different for me, as the only woman involved, from well, certainly, in the earliest of those two cases, from how it was for any of the other senior judges involved. We were all of course, thoroughly aware that there was an extremely heated atmosphere, both amongst the politicians, and amongst the general public, there was a lot of demonstrating going on, people felt very strongly in both directions. And we were confronted with two very important cases for the constitutional law of this country. But these were not cases about whether Brexit was a good thing. They were not cases about whether Brexit should or should not happen. They were all cases, both of them cases, about the relationship between government and Parliament, when something very important to the life of the nation was happening. As far as the first of those cases, while you mentioned what happened when the High Court decided that the government needed parliamentary authority to trigger the process of leaving the European Union. And that is when the Daily Mail labelled the three, three very senior judges in England and Wales, as enemies of the people, which is a terrible thing to do. But to my mind, rather more terrible, was the fact that the member of the government, who had sworn an oath to protect the rule of law and the independence of the judiciary did not immediately stand up for the judges. And it wouldn't have been difficult to do that. Because it's quite easy: I write the script, we have a free press, you can say what you like, within the limits of the law, but it's my duty, given my role in government, to tell you that you are wrong. These are not enemies of the people, these are people being true to their judicial oath to apply the law of this land, without fear or favour, affection or ill will. And if they have got the answer wrong, there is an appeal to the Supreme Court and the Supreme Court will tell them so. And in fact, there was an appeal to the Supreme Court. And the Supreme Court agreed with the High Court as to what the outcome was. The argument moved on, rather, it was much more complicated when it got to us. But we agreed in the result. And to the government's credit, they were much more supportive of the outcome when it got to us. I think there was a general feeling that the Daily Mail had gone too far in its criticism of the judges at that stage. And it probably led to a rather more supportive atmosphere. But we were very conscious, couldn't be unconscious, of fact that there are all those demonstrations going on in Parliament Square. And of course the court was packed, we had to have a ticketing system in the court, which we don't normally have to have, because our hearings are not usually that interesting. Of course, it was being broadcast, which our hearings are which is a very good thing. Because people could understand that we were not dealing with Brexit, no Brexit, sort of Brexit, dealing with any of that, we were dealing with the relationship between government and parliament. And I think that fed through to the second of the cases, the prorogation case, because again, the atmosphere was quite intense, but I think not as intense as it had been in the first of the cases. And probably, at least once people started watching, there will have been an understanding that the High Court in England and Wales had reached one conclusion. And the Court of Appeal in Scotland had reached a different conclusion. One had said we can't touch the matter. It's too political. And the other had said, we can touch the matter. It's constitutional. And moreover, what you've done is unlawful and of no effect. They couldn't both be right. So we have to be deciding between the two. And I think that because we were televised, people could see that that was what we were doing. And there was a much less febrile atmosphere to my mind in the second one than there had been in the first. Of course, there was a backlash, but as I understand it, most of that was on social media. And I don't do social media. I don't know any of my colleagues who do, on the whole the print media were altogether different.

**Helen Trouille**

Thank you for your thoughts on that. I think also, all have these really big cases have brought courts and the judiciary into people's homes an awful lot more and to hear your reflections on the broadcast and televising of the procedures in the Supreme Court, it makes it so much more accessible well, for would be lawyers, I guess there's large numbers of the general public who still don't go there and who still have their own ideas and preconceptions as to what actually goes on and what you were talking about. Sometimes we still get these suggestions then that the courts are actually overreaching themselves. Maybe that's based on a misunderstanding as to what you actually do. Again, today, we've got big media coverage about the Rwandan flights for the asylum seekers and refugees, and the discussion is emerging, again, about the relationship between the UK courts or domestic courts and the European Court of Human Rights in this case. Can you share your views with us on how those relationships are shaped and where the limits are to each of them? And what your feelings are about perhaps the furore that's brewing at the moment with regard to these issues.

**Lady Hale**

Well, that's a lot of questions.

**Helen Trouille**

Yes, it's a lot of questions.

**Lady Hale**

In my view, the courts are doing what they have always done, and have done for centuries, which is to attempt to ensure that the government, public authorities, act within the limits that the law allows them. The only sovereign body in our constitution is Parliament. The government, obviously, to some extent, controls Parliament, and so it can get its way with Parliament should it so wish. But a government is governed by the law. That's what the rule of law means. It means that the law governs what everybody does. And that includes the prime minister. And it includes you and me, your students, everybody, they're all governed by the law - and the courts’ job, at the incidence of people who bring cases, courts don't initiate cases, we have to decide the cases that come before us - but at that incident, it's the courts’ job to ensure that governmental bodies stay within the law. And I do not think that the courts have been overreaching themselves at all, they have been doing their job. Part of their job, of course, currently, is that the Human Rights Act makes the rights contained in the European Convention on Human Rights into rights protected in UK law. And that inevitably brings the courts more into considering whether the actions of public authorities are compatible with the Convention rights, which adds a list of questions for the courts, which there weren't there before, on the whole before the Human Rights Act. But when the UK courts reach a conclusion about a Convention right, there isn't an appeal to the European Court of Human Rights in Strasbourg. What happens is, it doesn't often happen these days, but it can happen, is that the person, the individual who loses in the UK courts, complains to the Strasbourg Court that the United Kingdom as a whole has not complied with its obligations under the European Convention, which is an international treaty, which are to respect the Convention rights. And so that's what happens when there is a case going to Strasbourg. And there is an emergency procedure. I think it's article 39, under the Convention, whereby somebody can ask the Strasbourg Court to ask the UK Government to suspend what it's doing, pending the hearing of a case before the Strasbourg Court. Now, they don't often do that. And they very rarely do it in relation to the UK. But my understanding is, and I haven't yet read today's newspapers, still less sort of found out anything more about it. But that is likely to be what has happened, that somebody has asked Strasbourg to invoke those interim powers to get the United Kingdom to hold its horses until the full case can be decided. I know nothing at all about what the arguments were in the case that came before the High Court because it was only on Friday, wasn't it? And then it went to the Court of Appeal on Monday. And then yesterday, the Supreme Court refused permission to appeal. So I don't know what the arguments were. I can't comment on that. But I do know what the relationship is. And that's why things have happened in this dramatic fashion.

**Helen Trouille**

I suppose perhaps that overlaps a little bit into our final question. The government claims that it's pursuing reforms which are designed to rebalance the relationship with between the government, Parliament and the courts, and that's a commitment which they made in the 2019 manifesto. And this has proposed restrictions to judicial review and the Interpretation Bill, I believe, which would give MPs the power to overturn court decisions that the government doesn't like, and a review of the Human Rights Act, which has been, I think, brewing for a while. So to members of the general public, these measures can sound quite dramatic, I suppose the question is, really, are they that dramatic? Are they touching a nerve? Or what are your feelings if you're able to express your feelings?

**Lady Hale**

On the extent that I can express any feelings at all on matters. I don't wish to comment on party political matters. But I can comment on constitutional matters. I think this term rebalancing is very interesting. Because to most of us constitutional lawyers, we would have thought that there was a pretty good balance at the moment: Parliament passes the laws, government runs the country, the judges interpret and apply the laws. And that's pretty simple, pretty clear, the government is usually likely to be able to get its own way because it is chosen because it can control the House of Commons. That's why it's the government. And so there are, some people would say, not enough checks on what the government can do. And maybe it's Parliament and the courts that need to have more power rather than the other way round. Whereas, of course, one guesses, that the notion of rebalancing was actually with a view to giving the government even more power than it already has. And I think there are a lot of people who are concerned about that, and are wondering what we might do to improve our current constitutional checks and balances. As far as the specific things are concerned, there was an independent review of Administrative Law, which basically concluded that very little needed to be done in relation to judicial review of administrative action. It made one or two proposals which have been enacted, but they were quite minor proposals. And most of us would not see anything too threatening, in that, at the moment. The idea of giving MPs power to overturn court decisions that the government doesn't like, well, they already have that power, in the sense that if Parliament does not like a decision that the courts have made, Parliament by legislation can reverse it. And occasionally it does. But rather, more surprisingly, it very rarely does it, but it's always got that power. So it there's nothing dramatic about giving Parliament the power. Although one would always hope it would be done by primary legislation, which requires proper parliamentary scrutiny, rather than by delegates which gets nothing like the same degree of parliamentary scrutiny. The more worrying thing would be a bill that gave ministers the power to overturn judicial decisions. And some of the press that I read suggested that that was what they really had in mind. But to the best of my knowledge and belief that hasn't happened yet. Because obviously, it would be very, very controversial and run into a lot of trouble. As far as the Human Rights Act is concerned, the government set up an independent review of the Human Rights Act, which did a lot of consultation, focus groups went around the country, and again, came up with a very long, carefully argued report, which suggested that not a lot needed to be done with the Human Rights Act. Okay, some suggestions, which I agree and some in which I didn't agree, but it was a very sensible piece of work. And then, of course, the government came along with its consultation paper about replacing the Human Rights Act with a British Bill of Rights, which ignored most of what the independent review has said, was much more radical. And although it still says we are committed to remaining members of the Council of Europe, and therefore, of the European Convention on Human Rights, which also means that they have to accept the jurisdiction of the European Court of Human Rights and Strasbourg. So that's what it says right at the outset. And so the new Bill of Rights is going to reenact all the same rights that are in the Convention, it's just going to do some things, or at least what they're proposing, is to do some things around the processes and around the possibly around the powers of the courts in relation to ensuring that rights are complied with. Well, we shall see. We shall see what happens. I mean, my own view is that it's very unwise to replace one piece of legislation with another piece of legislation which is designed to do much the same thing, because it's going to lead to all sorts of arguments, a lot of litigation and more trouble than it is going to be worth. And if they want to make changes, the better way to do it is by amendment to the Human Rights Act, though I myself, of course, think that the Human Rights Act has been working pretty well for the benefit of the general public of this country, who have had the benefit of the rights that it contains now for more than 20 years, and it has resulted in, I think, improvements, to the way in which the country is run. So I very much hope we don't replace it. Or if we do replace it, we replace it with something that does much the same job that it did.

**Helen Trouille**

Thank you. There's a really, really interesting thoughts, particularly your comments regarding the Bill of Rights and our relationship with the European Court of Human Rights. I found that absolutely fascinating and your reflections on for whom or who benefits from these rights. I think that's probably the big question, isn't it, underlying the proposed changes, it's who benefits in which situation. So thank you very, very much. We've come to the end of the time allotted for this conversation now. We'd really like to thank you very much for spending this time with us. There's a lot of food for thought in what you've shared with us today. We can see that there's uncertain times ahead. There's probably some more turbulent times for the courts, and the judges probably can expect to be on the front pages of the newspapers a little bit more in the coming weeks anyway, but hopefully that's going to have the knock on effect of encouraging our students to renew their energies in the classroom and become the best lawyers that they possibly can. Thank you also to our audience today for listening to this encouraging and thought-provoking conversation. We hope you've enjoyed it as much as we have done.

**Lady Hale**

Thank you for inviting me to take part in this conversation. I've thoroughly enjoyed it. I add my good wishes to those that you have already expressed to your listeners.