

Britain appoints first woman Law Lord

by Sally J. Kenney

Twenty-three years after President Ronald Reagan appointed Sandra Day O'Connor as the first woman on the U.S. Supreme Court, Secretary of State for Constitutional Affairs (and Lord Chancellor) Lord Falconer announced on October 23, 2003, that Dame Brenda Hale would become Britain's first woman Law Lord upon the Honorable Lord Millett's retirement in January 2004 and one of 12 judges to sit on a proposed new Supreme Court, slated to commence in 2005.¹

The appointment of a woman, and of Hale in particular, was overdue. Legal journalists and court watchers had long tapped Hale to be the first woman Law Lord, and many felt the pressure on the former Lord Chancellor Irvine to appoint her was overwhelming. Yet, in July of 2002, he appointed Robert Walker instead. (Under the current system, the Lord Chancellor appoints judges with no legislative confirmation or review.) In its 1992 manifesto, Labour had supported policy proposals to create a judicial nominating commission and to diversify a strikingly homogeneous bench—yet the party had delivered on neither pledge after more than six years in office, despite pressures from distinguished barrister and part-time judge Cherie Booth (wife of Prime Minister Tony Blair), Solicitor General Harriet Harman, and other leading female members of the cabinet. The way was paved for change when Prime Minister Blair sacked Irvine in June 2003.

A breath of fresh air

Fifty-nine-year-old Hale is a breath of fresh air. She is a feminist or, as the conservative British press calls her, a “hard-line” or “radical feminist.” (In such papers, modifiers are required. For example “Left” must always be preceded by “hard.” Those who prefer alliteration have opted for “ferocious feminist”—papers more supportive have settled for “feisty feminist.”) Court reformers are hopeful her accession is a sign that the unduly circumscribed pool from which senior judges are chosen is enlarging. Sir Thomas Legg, permanent secretary at the Lord Chancellor's Department when Hale was first appointed to the high court in 1994, dismisses criticisms of Hale's ability by senior judges—judges whose “secret soundings” determine who rises to higher office—as contempt for Hale's background as a legal academic and law commissioner rather than oral advocate and low regard for the field of family law. (Commercial law holds the highest status and dominates the higher judiciary.) Many believe it is precisely this background that makes her voice essential on the country's highest court.

Hale's path to the bench differs from the rigid path followed by her male colleagues. Hailing from Yorkshire, Hale graduated with the single-starred first class degree of her year from Girton College, Cambridge, and also received the top exam score on her Bar finals. She began her legal career as a law lec-

turer at Manchester University, where she rose to the rank of professor. As Brenda Hoggett, she partnered with Susan Atkins to author one of the first legal texts on women and the law in Britain (*Women and the Law* [Oxford: Basil Blackwell, 1984]). In 1984, she became the youngest person and first woman appointed to the Law Commission (the official body of law reform), where she championed children's rights (resulting in the Children Act), domestic violence legislation (which became the Family Act of 1996), no-fault divorce (still not the law), and the rights of the mentally incapacitated. Such efforts earned her the labels of “anti-men” and “anti-marriage” by the right-wing press, particularly the *Daily Mail*, which, as one journalist dubbed it, has made her a “totemic hate figure” (*Guardian*, January 9, 2004).

Hale became a QC (Queen's Counsel) in 1989 and served as a recorder or part-time judge until 1993, when she became the first academic lawyer to be appointed to the

1. As reported in the September-October 2003 issue of *Judicature* (“United Kingdom's judicial system undergoes major reform”), the Labour government is rethinking its legal structure and method of selecting judges. On June 12, 2003, Prime Minister Tony Blair announced he would abolish the 800-year-old office of Lord Chancellor, which represented a role of concentrated power: the Lord Chancellor exercised legislative functions as leader and a sitting member of the House of Lords, was a member of the cabinet and advisor to the Prime Minister, and, as a barrister, exercised judicial functions as a potential sitting judge and as the sole person to appoint and discipline all sitting judges, among other functions. The government's plans include a new Supreme Court of 12, drawn from sitting Law Lords, who will not serve as legislators in the House of Lords (as they previously had) and will take over hearing cases for the Privy Council. The government has also promised to create a judicial nominating commission.

High Court bench as a judge on the family division. She won *The Times* Woman of Achievement Award in 1999 and was appointed to the Court of Appeal (where she leaves just 2 female judges out of 36). She has just been named Chancellor of Bristol University.

Like Hillary Rodham Clinton, Hale is vilified for being a strong, accomplished woman who supports women's equality—not because she holds vanguard feminist views outside of the mainstream. The personal attacks on her in the press and on the Internet would make even Rush Limbaugh blush. In fact, the media's reporting of Hale's appointment is a textbook case of sexist journalism and the differential treatment about which women candidates for public office complain bitterly.

UPPA



Lady Brenda Hale, Britain's first woman Law Lord.

To be sure, Hale's appointment as the first woman merits attention. But compare the scrutiny of her childhood, marital history, and public policy views with the treatment of Robert Walker, the last appointment to the Law Lords. I learned of Walker's appointment because of a flurry of outraged e-mails on a listserv of British legal reformers who were furious that Lord Irvine had once again passed over Hale. I commented about that disappointment to Baroness Shirley Williams, leader of the Liberal Democrats in the Lords, who was visiting Minnesota. She had not heard of his appointment. I had to scour the press for a small handful of perfunctory articles. For Americans, it is hard to imagine running into Senator Patrick Leahy or Professor Lawrence Tribe and saying, "how about that new Supreme Court appointment last week," only to discover he had not heard. The incident illustrates the enormous difference between the role of the two judiciaries in the political systems and the almost complete invisibility of judges in the U.K. as individuals.

"The right signal"

Hale has been a leader in championing the cause of more women on the bench. In a 2001 article in *Public Law*, she noted that discussion of merit tends to appear only when women or minority men are considered—white men are always assumed to be chosen for their superior qualifications. She wrote, "In a democratic society, in which we are all equal citizens, it is wrong in principle for that authority to be wielded by such a very unrepresentative section of the population" (p. 502). She has called for an end to wigs and, most recently, spoke out against the expectation in judges' official lodgings that female judges retire after dinner, leaving the men to smoke, drink, and talk. (In order to "keep standards up in the provinces," judges from London must maintain a grueling schedule of hearing cases in regional courts, like the circuit-riding U.S. Supreme Court justices

used to have to do. Such a practice takes judges away from their families for long periods of time and creates considerable public expense.) Hale organized the inaugural meeting of the Association of Women Judges in June 2003 and currently serves as its acting president, perhaps inspired by the National Association of Women Judges in the U.S. (formed in 1979), or even shamed by the poor showing of English judges in a 2002 conference of the International Association of Women Judges in Dublin, where the English delegation was dwarfed by those from Canada, the United States, Uganda, and Taiwan.

Jane Hoyal, chair of the Association of Women Barristers, cheered the appointment, as did Katherine Rake, director of the Fawcett Society (an equality campaigning group), calling Hale's appointment "overdue." Janet Paraskeva, chief executive of the Law Society (the association of solicitors) also expressed her delight, saying, "This demonstrates that the most senior judicial positions are no longer out of reach for women." Matthias Kelly, chair of the Bar Council, also called it "overdue" and said, "The appointment of such an able woman is clearly on merit and sends out the right signal." Vera Baird, QC and MP (Member of Parliament), said Hale would "outshine" the other law lords and that her promotion would lead to more women being appointed to the most senior judicial office. ☞

SALLY J. KENNEY

is a professor of public affairs and law at the Humphrey Institute of Public Affairs at the University of Minnesota, where she also directs the Center on Women and Public Policy. (skenney@hhh.umn.edu)