
A Conversation with Lady Hale about Feminism, Law and Citizenship

Brenda Hale, Rosemary Hunter and Erika Rackley*

The following is the text of a conversation between Erika Rackley and Rosemary Hunter and Lady Hale, which formed one of the plenary sessions at the conference on '[Feminism, Law and Citizenship](#)' held in Paris in July 2022. The conference was organised by Rosemary Auchmuty and Alexandrine Guyard-Nedelec.

The questions were prepared by Erika Rackley and Rosemary Hunter and provided to Lady Hale in advance, giving her the opportunity to prepare her answers. The conversation was recorded and transcribed. This is an edited version of that transcript. The video recording of the interview is published in the same issue of *feminists@law*.

Erika Rackley:

Thank you Alexandrine and thank you Rosemary for the invitation. We are absolutely delighted to be here in such a beautiful location on such a glorious hot day. And I'm so glad that we're going first before we begin to melt into puddles by the end of the day! So, it falls to me to introduce Lady Hale.

Brenda Hale has collected many names and titles and monikers over the years. Some professional: academic, lawyer, judge, president, lady, baroness; others relate to what she's done: the first woman to ..., feminist, trailblazer, Ms Diversity. Still others are more personal: wife, grandmother, homemaker, imposter, girly swot, icon, mermaid, rock star, or more precisely Beyoncé [*laughter*], swashbuckler and of course Spider Woman. But whatever we call her, and I'm going to stick with Lady Hale, she is without doubt one of the most outstanding and celebrated jurists and most powerful women leaders of our time. She has led the way on issues such as women's ownership of the family home, mental health, mental capacity, religious freedom, equality, children's rights, employment, housing, social welfare law, domestic abuse and sexual violence.

The highlights of Lady Hale's stellar career include a starred First at Cambridge; 18 years as an academic at the University of Manchester where she authored and co-authored a number of pioneering works on social work, family law, mental health law and women and law; being the first woman and youngest ever person appointed to the Law Commission, an independent statutory body that reviews and recommends reform of the law of England and Wales, where she led ground-breaking legal reform on family and children's law. Ten years later, in 1994, she was appointed to the Family Division of the High Court and just five years later became the second woman to be appointed to the Court of Appeal. In 2004 she became the only woman in its 600-year existence to be elevated to then the most senior Court in the UK, the Appellate Committee of the House of Lords. In 2009 she became the first and for

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many years the only woman to sit on the UK Supreme Court and she later became the first and so far – fingers crossed there will be some more – only woman to have served as its Deputy President and President. By the time of her retirement in January 2020 she had cemented her position as one of the busiest and most accessible Justices. During her time in the Court she wrote more judgments, gave more extrajudicial speeches and published more scholarly articles and books than any of her contemporaries. *[Laughter and applause]* We've done the maths!

She's now a cross-bench member of the House of Lords and so she's added parliamentarian to her CV, completing what Google tells me might be called a glut (a hat trick plus two) of legal roles: academic, lawyer, law commissioner, judge, parliamentarian. I'm not sure if she's the first to do it but I'd put good money on the fact that she probably is. Her catalogue of firsts is even more remarkable because at no time was she a safe appointment in that she closely resembled her male predecessors. Rather she was an avowed feminist who strongly advocated for women's rights, social justice, equality and of course judicial diversity. For these reasons she's attracted controversy as well as plaudits from commentators and even at times her judicial colleagues. Long before her public profile reached its peak in 2019 following her delivery of *Miller II*, the so-called Brexit case,¹ she regularly appeared on women in power lists, as well as in British Vogue, on the BBC's Masterchef TV programme, and much to the delight of my own children is the subject of a children's book by Afua Hirsch.² In 2021 she published her biography aptly named *Spider Woman*,³ a wonderful mixture of personal, public and professional stories that come together to perform a unique history of a life lived for over half a century in law. It tells of Lady Hale, the law and their relationship to each other and to us. It is of course available from all good bookshops and was out in paperback just last week. She continues to criss-cross the country, and now we assume the globe, appearing at literature festivals, on the guest lecture circuit and adding an impressive number of podcasts to her media output. Also in 2021 she joined Barack Obama, John Lennon and, of course, Beyoncé in having a street named after her as the entrance to Gray's Inn in London was renamed 'Lady Hale Gate'. She is even name-checked in the revamped stage version of the hit film *Legally Blonde* which is currently playing at the open-air theatre in Regents Park in London, which has Elle Woods announcing "first we take Harvard, then we take Brenda Hale's old seat on the Supreme Court". *[Laughter]* What shoes she would have to fill! So I'm delighted today to be here with Rosemary Hunter and that we have the opportunity to talk to Lady Hale about feminism, law and citizenship.

Rosemary Hunter:

Thank you very much Erika. It's an absolute pleasure to be here and to speak with Lady Hale. And I should also add that we will ask questions, and hopefully get some interesting answers, for most of the session but there will be time at the end we hope for the audience also to ask questions and Lady Hale's generously agreed to answer unscripted questions, although the extent to which she answers them is entirely up to her.

¹ *R (on the application of Miller) v The Prime Minister; Cherry and others v Advocate-General for Scotland* [2019] UKSC 41.

² Afua Hirsch, *Equal to Everything: Judge Brenda and the Supreme Court* (Legal Action Group 2019).

³ Lady Hale, *Spider Woman – a Life* (Vintage Publishing 2021).

So, to begin by connecting to the themes of this conference and with a very broad question perhaps: what do you see as the relationship between feminism, law and citizenship? And what do you see as the importance of that relationship?

Lady Hale:

Well, thank you very much for inviting me to be here. It's a huge pleasure to be here. I learnt a few things about myself that I didn't know from Erika's introduction so that's wonderful. Thank you.

Now to the subject of the conference. I asked myself when looking at the title of the conference 'well, what do we mean by citizenship?' It's a very broad term and I can think of three possible things that it might mean, and there are no doubt more. Firstly, belonging to a nation state, and that's actually the word used in some national constitutions – whether people 'belong'. It means 'are they citizens?' Secondly, participating in the governance of that nation state, whether in parliament or in the government or in the judiciary. And then, thirdly, it can mean relating to the other people in that nation state. I think it means all three of those things and I think the subject matter of the papers in this conference relate to all three of those things. So we're going to have a lot to talk about are we not?

But, of course, if you relate each of those concepts to feminism... Belonging. Well, it's not so very long ago that a married woman lost her own citizenship and became a citizen of the nation of which her husband was a citizen. It's within my professional lifetime that that has changed in UK law. The capacity to hand on your citizenship to your children, again that's taken even longer to catch up. So there's all sorts of law of that nature, let alone migration law where there are feminist issues to be addressed.

Participation. Of course, the extent to which women participate in parliament, in government and in the judiciary is a vital issue and I have been banging on for years and years and years about the importance of diversity in the judiciary, starting with gender diversity because that's the most important in the sense that it's the numerically most important. We are half the human race, actually 51%, so we really ought to be better represented in the senior echelons of the judiciary in every country. In the UK we're not doing badly, we have made huge progress this century so things are getting better, but there's still a way to go and I'm sure there's a way to go in many other countries in the world as well.

And then this whole question of relationships and society and how are women placed in society and how are we still regarded as principally wives or live-in lovers and mothers and how much are we seen as equal participants? But I think that's a big question for men as well because I look forward to the day when men can be described as husbands and fathers just as much as participants in the world of work outside the home because I believe, of course, that what goes on in the home is just as much work as what goes on outside the home. Right, so that's my answer to your first question I think. Is that good enough?

Rosemary Hunter:

It will do. [Laughs] So as a follow-up, you talked about the three senses of citizenship in relation to the nation state but of course the concept of global citizenship has also gained

currency more recently. So, what does it mean to be a feminist global citizen? And, more importantly perhaps, how do you think you've done that?

Lady Hale:

Well I quite agree with you that citizenship has got a worldwide element as well as a nation state element, but one of the wonderful things about feminism is that we can learn to make relationships across national borders. My principal contribution to that has been with the International Association of Women Judges (IAWJ) because that has women judges as members from most of the countries in the world, it is quite remarkable, not all of which would count as democracies it has to be said, but one of the great things about getting together across those national boundaries is that you realise just how much judges have in common. We are doing a very similar job. We're not necessarily doing it under the same laws or the same procedures, but we are doing a very similar job and the commitment of those women judges from all round the world to trying to do that job properly is palpable. One of the most touching, but also frightening, things that we in the UK did was that we sponsored Afghan women judges to come to the IAWJ conferences. They did, of course, have qualified women judges in Afghanistan because they have a continental European system where you do the judging exams and then you go into judging, which is not what happens in common law countries, but that's what they had. They had qualified women judges and then of course these women became really, really under threat once the Taliban took back over and the IAWJ has been doing wonderful things with the International Bar Association, which is another forum for women to get together globally, to rescue those women judges and find them a life somewhere outside Afghanistan. But it's really, really difficult. So, I think that's an example of how we have got to stand together and do our best for one another.

Erika Rackley:

Lady Hale, my questions move on to focus a little bit more on you and your career. During your career you've often been a or sometimes the only representative of women in various institutions. And so I wanted to ask you how it's felt to be in some of those institutional roles and how you've navigated them, whether you found any particular difficulties about doing it, if there's any sources of pride (this is a long question!), whether there's been any differences between working in those institutions as a woman?

Lady Hale:

It's quite a difficult question to answer because I've been around so long that when I first started out in the law there were very few women. There were very few women studying law in Cambridge when I went up there. There were rather more studying it in Manchester when I went to teach in Manchester, but I was only the second full-time permanent member of the law faculty staff in Manchester, we're talking 1966 here, so I've been the second rather more often than I've been the first. There's a wonderful thing about being the second, you can be so grateful to the first, because she hasn't pulled up the drawbridge, she has facilitated rather than frightened the horses etc, etc. So I think I can say that the academic world was undoubtedly the least difficult because more and more women were coming into law and legal studies and anyway academics are on the whole I think rather more free thinking and

open to new ideas and open to developments and so on than other parts of the profession, so I think that was the easiest.

The Law Commission, I was the first woman at the Law Commission. The Law Commission of England and Wales is a statutory body which was set up to promote the reform of the law, so it's a sort of public body but independent of government. It's five senior lawyers who get together to work out what's wrong with the law and how we might put it right and make recommendations to parliament as to how it might be put right with a decent chance of parliament actually doing it. Most of the things that I did at the Law Commission got put through, so I was very, very fortunate. I certainly felt as the first woman there a serious case of imposter syndrome when I first turned up. We didn't call it imposter syndrome in those days but I think that's now a worldwide term isn't it for wondering why you're there? 'What am I doing here?' 'Can I do it?' 'Surely I'm an imposter', etc, etc, all of those things. I certainly felt that when I went to the Law Commission because I was younger than the others, I was the only woman and they were such big brains and such confident big brains, you know how some of these people are? And the way I handled that, and I have done I think throughout my life, was to say well, *I* may not be sure why I am here but somebody thinks I should be here, somebody has put me in this position and it's my job to try and convince them that they were right, but if I can't do that it just shows that they were wrong. It's not my fault. [*Laughter*]

Erika Rackley:

And quite right too. So, it's quite interesting when you talk about the feelings of being an imposter because for so many people you're a role model. And I wondered whether when you first became aware of that and how that felt to now be a role model? And also as a supplementary question, did you have any role models when you were coming into the law?

Lady Hale:

Well I can answer the second question first. I think looking back, and I imagine that quite a few of the women at least in this room will share that view, my mother was a role model. My father died when I was 13 and she had two young teenage children to look after. She was a qualified teacher but had had to give up teaching in the 1930s when she got married because there was a marriage bar in teaching in the 1930s. But she picked herself up, dusted off her qualifications and got herself a teaching job, and she did it so that we could stay in the same village with the same friends and the same school. So looking back, that was a model of resilience. It also taught me the importance of education, qualifications, independence, and my younger sister and I, I think, never were dependent throughout our lives. So I think that's my number 1 role model really.

There were teachers at school who in retrospect, you didn't think much of at the time, they were impossibly elderly, usually maiden ladies because that's how teachers were in girls' schools when I was young. But just again looking back at them, the forward looking-ness and the expectation that we would go to university if we could, when only 2½% of the young women in my generation went to university, to have that as an ambition in the tiny little school that I went to, is also good.

When I went to Manchester and became a barrister we had of course the foremost woman barrister in England practising in the North West of England, that's Rose Heilbron who was

the star barrister. She was so famous she appeared in murder trial after murder trial after murder trial, she was all over the newspapers, so she was very definitely a role model and I think that's one of the reasons why there were more women at the bar in the North West of England was because she was a role model. And she became a High Court Judge as well but there were also High Court judges who were role models, so yes, I did have enough role models.

I don't know when somebody said that I was a role model. *[Laughs]* I think it was probably when *Legal Cheek* did call me the Beyoncé of the legal profession. Legal Cheek is a website that does all sorts of cheeky things, it's well worth looking at, it does all sorts of fun things. It had a feature about 'Lady Hale's brooches' long before my brooches became famous, you know they're famous. They also did a wonderful thing where they put that software where you work out what people are going to look like in 20 years time onto all the Supreme Court Justices! That was quite funny. So I do recommend Legal Cheek as quite an amusing website. But they were the ones who named me the Beyoncé of the legal profession and then I thought "oh my goodness me, there seem to be a lot of young people who actually read my judgments". And I think that's what it is – I think I'm getting a few nods from academics from the UK – the students in the UK do tend to read my judgments, and I think that the reason for that is that they're comparatively short, comparatively clear and maybe just have a few ideas that resonate with the young, so those three things. And I suspect that that is because I was a university teacher for so long. So I think that's how I became [a role model] and it's a great burden, I can tell you that. *[Laughter]*

Erika Rackley:

And Rosemary's going to be asking you more about your judgments shortly. I'm sorry it's a burden. I think another label that's kind of stuck with you over the years is 'Ms Diversity' in response to the way you've so consistently spoken out about the importance of a representative judiciary. So we could ask you why you think that's important but I think a more interesting question is whether your views have changed over the years as to why it's important and why you keep talking about judicial diversity?

Lady Hale:

No. My views have not changed. The reasons why it is so important were incredibly well articulated by Beverley McLachlin who was for many years the Chief Justice of Canada and a very great woman and Judge, and she came and gave a talk to the Association of Women Barristers and the Association of Women Solicitors in about 2002. It happened to be held in a committee room in the Houses of Parliament. She gave four reasons why gender diversity in the judiciary was so important. One was democratic legitimacy, another was embodying the values of the law which include equality, another was equality of opportunity for all those brilliant young women going into the law, and the fourth and the most controversial was that from time to time we might actually make a difference to the decision-making. Now I could expand on those but those are the four reasons and I still think that they're very important. The only way in which my views have changed - well they haven't changed, they've developed - is that those four reasons are just as valid for other dimensions of diversity than gender, so ethnicity is of course particularly important and a key issue in the United Kingdom, but I also think socio-economic background is an important issue, professional

background, all of those things feed into each of those four reasons. So that's the way my thinking has developed.

Rosemary Hunter:

Moving onto specific questions about your judgments, but I suppose beginning with the role in which you made many of those judgments, you were not only the first and thus far only woman President of the UK Supreme Court but the first and thus far only feminist, openly feminist President of the UK Supreme Court. And so we wanted to ask you a little bit about the qualities of feminist leadership and how you might identify them?

Lady Hale:

I think almost everybody in this room is better qualified to answer that question than I because yes, I've never made any secret of the fact that I'm a feminist and I've explained what I mean by that. One of the things that I find most frustrating is senior women who clearly do believe in the equality of women and the importance of women's experience in shaping and applying the law starting every sentence with "I'm no feminist but...". Now that's one of the things I really want to fight. I think I want to get these senior women who are still doing that to acknowledge their inner feminist, so that should be a slogan shouldn't it for everybody? Embrace your inner feminist. But, of course, there are plenty of men who are feminists too, it's not a sex or gender related role. There are plenty of male feminists and in fact women would never have got anywhere if it hadn't been for men who sympathised with them and who understood how, if the world treated them as unfairly as it treated women, they would think it was really, really unjust, so maybe the women have got a point.

So I don't know, people do say that on the whole women's style is more collaborative than dictatorial, but then we can all think of a lot of women managers who've been incredibly dictatorial, and we can also think of cases in which women have reached the top of a particular occupation and the men whom they are leading have complained that they are too dictatorial, whereas they would not have complained of a man behaving in exactly the same way. We've got several examples in the police forces in England where that has happened, women chief constables have been attacked for being just like men basically. So I think that's the biggest challenge for women when they reach leadership positions. There are other challenges along the way as well but that's one of them: how you can combine the collaboration that's expected of women with the actual putting your foot down on occasions when it's necessary.

But I didn't have to do much of that because the Court that I was leading was on the whole a very friendly Court and a very collaborative Court, witness the fact that we could get eleven of us to agree on a judgment in the space of three days.⁴

Rosemary Hunter:

So moving on then to think about feminism and judgments. Over the years a number of your judgments have been described by us, among others, as feminist. What do you think makes a judgment feminist?

⁴ This is a reference to the *Miller (No 2)* judgment (n 1), in which all 11 Justices agreed.

Lady Hale:

Well I think that's a very unfair question because you're the people who've labelled the judgments feminist and you're the people who have identified what in your view makes for a feminist judgment in all these lovely books rewriting famous cases from a feminist point of view, which are a wonderful read. So I think you say things like telling the story, sometimes telling bits of the story that are not entirely relevant to the legal reasoning in your decision but nevertheless make it clear that you have understood the story from the participants' point of view, and I think I've definitely done that. Another thing, of course, is interrogating assumptions, looking at things through a woman's eye, asking the woman question, which I think I learnt from a few feminist scholars, but it's a fairly obvious thing to do, isn't it? So I think I've done that. I think that's a bit of a feminist judgment thing.

Now what else? There were three things that you said about it, so one was telling the story, one was looking at it through a woman's eyes, and what was the third thing? Yeah, you can't remember either! Anyway, so it's things like that. And I think also being clear and not obfuscating an issue. Now this may not be something that is apparent to those of you who come from legal systems that are not the common law. In a common law legal system of course you don't have 'whereas, whereas, whereas, whereas' style of judgments, you have a much more discursive style of judgments and that can contribute to some very long, very boring and really quite difficult to understand judgments. Sometimes I wish we did do the 'whereas, whereas, whereas', it would be a lot clearer, but obviously I don't really think that because it's not the way the common law works. But I think that you can have really quite long and complicated judgments in common law cases where at the end of the day the reader says "well what did that all mean?" I think that's right isn't it? Yes. Well, so I think a feminist judgment, you would know exactly what it meant at the end of the judgment.

Rosemary Hunter:

Thank you. So following on from that there are a number of judgments that again we have identified as your feminist 'set pieces' or, you know, very famous feminist judgments such as the case of *Radmacher v Granatino*⁵ and the *McDonald* case⁶ in which you disagreed with other members of the Court and did so in fairly trenchant terms and drew attention to the specific gender issues involved in the case. But what was it that made you write a feminist judgement in those cases and perhaps not in others? When did you decide that it was important to write, say, a dissenting feminist judgment or to lay down a feminist marker in a particular case and not in other cases?

Lady Hale:

Well thank you Rosemary. You've given examples of when I did. You haven't given me examples of when I didn't. It would be easier to answer the question if you could think of an example of when I didn't do what I should have done, clearly, because then I would be able to try and work out why I did and why I didn't. Dissent is allowed in common law systems, which again distinguishes them from quite a lot of civilian systems, but we don't dissent just

⁵ *Radmacher v Granatino* [2010] UKSC 42.

⁶ *R (on the application of McDonald) v Royal Borough of Kensington and Chelsea* [2011] UKSC 33.

for the sake of dissenting, you dissent if you really feel a degree of outrage at what your colleagues are deciding. So I think it's the level of outrage that produces it. The *Radmacher v Granatino* case was a case about the validity of pre-marital agreements which the common law has always said are contrary to public policy because in effect what they are doing is predetermining the result should a marriage break down in circumstances where, as I pointed out in that case, the purpose of doing that is always to reduce the entitlement of the less advantaged person. It's never to increase that person's entitlement, it is always to give them less than they would otherwise have. The *Radmacher v Granatino* case happened to be a marriage between a German heiress and a Frenchman who was, when they married, an investment banker, so I think he probably thought he could sign away any rights that he might have to participate in his future wife's inheritance without too much trouble because he was always going to be well-off. And then he decided to become a research scientist instead and the marriage broke up, etc, etc. So the case was about whether the German pre-marital agreement which they had signed, without the sort of safeguards that a common law jurisdiction would have required, was enforceable in English law. Well, the answer is it's not binding on the Court in English law, but my colleagues decided that it was actually binding on the parties, which is a bit weird. They didn't have to decide that, it was a completely out of the blue thing, so I'm afraid I was outraged and I said so. And I pointed out that there *was* a gender dimension to this, it just happened to be that the less advantaged person in the case was the husband but that's very rare, but I did think that there was a level of sexism involved in this. One of my colleagues when we were discussing the case said that he thought the husband was a cad for even beginning to bring this claim. Now that's about the most sexist thing I can remember any of my colleagues saying when I was a judge, so I think that's part of what outraged me. I won't talk about *McDonald* because that outraged me even more. [Laughter] If you want me to later I will.

Rosemary Hunter:

Yes. And that is a case that repays reading, so I'd certainly suggest that people who aren't familiar with it go and have a look at that one, but it's a very interesting case of disagreement between members of the Court.

Erika Rackley:

It's me again. So now we'd like to move on and talk a little about your life beyond the bench. And I wonder whether you could say a little bit about whether you experienced tension between your formal and institutional roles and your personal life? Other judges have spoken about the need to have an outlet, whether it's going home and having a glass of wine or being able to sort of decompress, and I wondered whether you could say a little bit about that?

Lady Hale:

Well, I think the most important way of resolving any tension that there might be is to have the right partner. Ruth Bader Ginsburg always said that the most important decision that she ever made in her life was to marry Marty. And she was right about that in the sense that he was one of those, in my experience comparatively rare, very clever men who didn't mind being married to a very clever woman and was prepared to take something of a backseat and do all the cooking, which he did. In fact their daughter I think was known to say, "in our house papa does all the cooking and momma does all the thinking". [Laughter] That actually wasn't true because he was a very distinguished tax lawyer and a lovely man, but the point is,

if you are fortunate enough to have a supportive partner who understands the importance to you of the work that you're doing, it makes all the difference and I have been fortunate in that respect. When I had my child, I only had one – actually probably only having one child is probably quite a good idea too because one knows, Erika has twins, so it's much more pain when you have them but it's much less pain later on, whereas I've observed so many professional women who have managed to carry on after their first child but have found it much more difficult after their second and even more difficult after their third, although there are women who manage to do it. So not having a lot of children is probably a good way of resolving these problems, but there we go. But I remember that my husband, when I said "well I'm going to carry on working", said "well I wouldn't give up now that we've got a child so I don't see why you should if you don't want to". So it's that sort of thing. I think that's the way of resolving it, not not working. It's better to have somebody that you can sit in the same study with and be doing similar things, that's wonderful, you know, and exchanging views and ideas, "well what are you thinking about at the moment? What do you think about this?" That's great, yeah.

Erika Rackley:

Linking to one of the themes of the conference, in academia in the UK we talk about 'citizenship' to describe all the things we do informally that aren't necessarily a formal part of our jobs but are things that sort of help and support, advance the discipline or other people's careers. You've done plenty of this too, you've mentioned the Association of Women Judges and the impact that that's had both nationally and globally, I wondered whether you could say a little bit more about why that's important to you and how it's been important to you?

Lady Hale:

I think it's one of the things about being in a minority, but a minority whose influence is growing, so linking up with other women has always been important. Other women and other feminists, sorry [*laughs*], other people, who are interested in the same things, that's always been important. And I think again it goes back a bit to having an academic background because as an academic you do lots of stuff don't you? You get out and about, you don't just sit in your study and write articles and books and things. It's part of being an academic to relate to other people. And I've always wanted to relate to people outside. I mean the higher judiciary in England and Wales is quite a small club and it's very clubby. I used to describe my male colleagues as the 'quadrangle to quadrangle to quadrangle boys' because they went to boys' independent boarding schools, many of which have quadrangles, they then went to Oxford or Cambridge, which are full of quadrangles, and then they went to the Inns of Court in London, which are also full of quadrangles, so their lives had been bounded by these squares basically, whereas my life had never been bounded by squares. And so I think that was a difference between us and I was very conscious of the need to get out and about and not just stick with the quadrangles.

Erika Rackley:

And so thinking about internationally and thinking about getting out and about, I wondered whether you could say a bit about what you think are some of the most pressing issues today, internationally, for women?

Lady Hale:

Well how long have we got? I'm sure this conference is going to explore quite a lot of those.

The two that instantly come to mind are, first, rape and sexual violence as a weapon of war, which is a huge issue and a huge problem in which everybody should be trying to work out solutions and ways of trying to reduce it. The other is the renewed attempt in places that ought to know better to subjugate women's reproductive capacities, in other words what's going on in the United States at the moment. Those seem to me to be the two biggest issues. My solution to the overturning of *Roe v Wade* is that the women of America should go on strike. They should do a Lysistrata. You all know the Greek play where the women of Athens went on sexual strike because they didn't like what the men were up to. That seems to me to be the obvious solution to all of this, if you won't give us control over our own bodies we'll take it back [laughs] and we won't give you any control over our bodies. But I know that's a joke but it isn't a joke in a way, it's a question of thinking about comparative power and how we try and fight back against this wave of attempts which is really, really frightening. So those are the two issues I think that are the most important and I don't have serious solutions to them either.

Erika Rackley:

And, of course, another consequence of you stepping outside the quadrangles is that you're now a celebrity, you're appearing on mainstream TV programmes, you're much more widely known as a judge than many other judges. I use the word 'celebrity' deliberately. I wondered whether you feel you are? If you do feel you are whether that's been a help or a hindrance in terms of part of the motivations of why you're wanting to step out in the first place and talk to people?

Lady Hale:

Well you say celebrity but actually I was pretty well known in the legal community, obviously, because of being first woman this, first woman that, being a senior judge, and so the legal community in the UK and in one or two other places did know about me. But a journalist who interviewed me very recently said "well nobody had heard of you until the 24th of September 2019" and I felt a little bit affronted by that. I thought lots of people had heard of me but she meant nobody she cared about, you know, nobody in her world had. So I think it's only because of that judgment that I could really count as any sort of celebrity and that will die, you know; sooner or later that will diminish which I think is a good thing. I don't wish to be any different from any other senior judge, except in the role model department. If I can do good by encouraging young women, other young people from less obviously advantaged backgrounds to think that they too can come into the law and make a success of a legal career, if I can do that, well that I do want to do. So role model I'm happy to be, celebrity I'm much less happy to be and I hope it doesn't last very long. And I'll tell you the story about Boris the Spider if you want.⁷

⁷ 'Boris the Spider' (1966) was a song by The Who about a spider who comes to a sticky end. Lady Hale has said that if she'd known about the song before she came to deliver the *Miller (No 2)* judgment she would not have worn that particular brooch.

Rosemary Hunter:

There's an invitation to an audience question if ever I heard one. Obviously we know that you have probably many years to go of making a difference in the world in what's going to happen next, and we'll talk in a minute about what you might do next, but you also are at a point where you can perhaps look back and see the things that you have created and that might have a lasting influence. So my first of two final questions is, what do you see as your legacy?

Lady Hale:

[Sighs] Well the trouble with legacies is they do tend to get overtaken by other people's legacies, so one should never be too vainglorious about anything like this. There are some decisions that I hope have changed how people think about things, not so much the dissents, although they were important, but the ones where I was able to carry the Court with me. We had a case about female genital mutilation. Obviously everybody agreed it was persecution but did a woman who feared female genital mutilation count as a refugee, and that depended upon whether she was a member of a "particular social group". Now it's fairly obvious isn't it that if you fear female gentle mutilation it's because you're a member of a social group that practices female genital mutilation, it's blindingly obvious, and yet it had to get to the highest Court in the UK for that to be recognised. So there are one or two judgments like that that I'm really quite pleased about.

And there is a legacy involved in having been the first to do this, that and the other, and the first woman to reach the top of the judicial structure in the United Kingdom. One doesn't want to be the last, so the legacy has to be that other people are going to follow on, which I'm sure will happen in due course. So I think that's what I'd say. But otherwise ... plug ... please read my book. *[Laughter]*

Rosemary Hunter:

And then our final question, what are your plans for the future? So after your biography we know that you're working on another book, so what's next?

Lady Hale:

Well I'm having a great deal of fun. I think fun is quite important in life, I've always thought that, and I think women are quite good at having fun, which is one of the benefits of womanhood. But yes, I am working on another book but it's really difficult. Erika mentioned a children's book, which was not written by me but it was motivated by my career.⁸ It's a wonderful book aimed at children between the age of about 4 and 10, it's got wonderful illustrations and it's all about a little girl who comes from my home town in North Yorkshire and who goes on a school trip to London and as part of the school trip they visit the Supreme Court and their teacher has told them that the President of the Supreme Court comes from that same home town and so, surprise surprise, they're in the café at the Supreme Court and I turn up, and we have conversations and we talk about a few cases which really resonate with

⁸ Hirsch (n 2).

young kids. So that's a book that tries to get young people interested in the law and the justice system as something that matters to them. So what I really want to do is to write a book aimed at the general reader and older secondary school students to try and get over the fact that the law is important and should matter to them. And not just the criminal law. When most people think of the law, they know about the criminal law and they're interested in crime stories and, of course, crime stories are quite dramatic, some of them, but there's so much more to the law than that. So what I'm trying to do is tell a few stories in a different way. It's really hard. It's going to take some work, and I'm not sure we could find an illustrator as good as Henny Beaumont who did the illustrations in the children's book, but it's basically an equivalent of that book for an older readership. That's the current plan anyway, whether it will happen I don't know. I'm having too much fun as well.

Rosemary Hunter:

When Lady Hale says fun, you know, when we asked her when we met up yesterday, 'what have you been doing for the last week?' and we know that when we had seen her recently at the launch of our book of essays in honour of Lady Hale to mark her retirement from the Supreme Court⁹ and she had given us a long list of speeches and events and things that she was appearing at, and then similarly in the last week she's been extremely busy and still being extremely generous with her time. As well as appearing at literary festivals and various other occasions in order to talk about her own work, she's still giving an awful lot of her time to other people's causes and events and that's something that has marked her leadership in a way, being very open and very willing to engage with a huge range of people and events and occasions. So now is the opportunity for you to engage with Lady Hale, so we're very happy to welcome any questions from the audience.

Audience question:

My question returns to your three elements of citizenship: belonging, participation and relationship. I wonder whether rather than starting with 'belonging' it would be better to think in terms of 'membership'.

Lady Hale:

Well thank you. I think we've got to start with belonging because that is the basis of citizenship as the law understands it. So we have to start with that, we are lawyers after all. I think when I talked about participation I meant the same as you meant by membership, so being recognised as well, as real belonging, as opposed to the belonging that for so long was the case which depended upon who your father was or who your husband was. So, the real membership which gives you the right to belong in your own right is something for which we should be obviously fighting. And we are mostly there but not completely there, certainly not throughout the world. And that bleeds into the participation in the polity of whatever nation state we're talking about. So these things all, and the relationships also, they all come together but I thought it rather important to start with the foundational concept of citizenship which is nationality basically, belonging.

⁹ Rosemary Hunter and Erika Rackley (eds) *Justice for Everyone: The Jurisprudence and Legal Lives of Brenda Hale* (Cambridge University Press 2022).

Audience question [abridged]:

Is citizenship a constitutional matter?

Lady Hale:

Of course it is. And in fact one of the roles of the judges of the Supreme Court of the United Kingdom is also to be judges in the Judicial Committee of the Privy Council, which was originally the final Court of Appeal for the whole of the British Empire. And it is still the final Court of Appeal for about two dozen small jurisdictions, smaller jurisdictions, some of which are completely independent, some of which are still British Overseas Territories. We won't get into the Chagos saga,¹⁰ though I would love to do so, but most of them have got constitutions, in fact they've all got constitutions. When I talked about belonging I was thinking of the Constitution of Bermuda because one of the principal cases about constitutional interpretation in UK law relates to a case about Bermuda and about who belonged to Bermuda, and that meant citizenship and it's in the Constitution. The case was about whether a child of unmarried parents counted as belonging to Bermuda and the Privy Council held yes, even though at that stage a child of unmarried parents was not normally included in the definition of the word 'child'.¹¹ So it was a good example of purposive and forward looking, broad-minded constitutional interpretation. But that's where I got the thought about belonging from, but of course citizenship is the foundation. How do you define the people for whom you've got this constitution? By citizenship. So I think it is the foundational thing. Now there was something else that I wanted to say but I've forgotten what it was. It will come back.

Audience question [abridged]:

Question regarding the sale of citizenship, the misuse or abuse of the concept of belonging, and the way in which citizenship might be manipulated by some countries.

Lady Hale:

All of which is very just comment and I think there maybe the odd session later in this conference which is going to look at these issues, so it would be presumptuous of me to try and answer everything that you have raised. The thing that I was going to mention earlier which is something that is probably...I mean just about...sitting there in the UN Convention of the Rights of the Child is the right to be counted, the right to have your birth recognised, registered, officially acknowledged. That's the foundation to citizenship and belonging isn't it? So, this right to be counted and identified, I think is really, really important. It is just

¹⁰ The Chagos Islands are an archipelago in the Indian Ocean south of the Maldives. They were formerly a dependency of Mauritius, but in the lead-up to Mauritian independence they were reconstituted in 1965 as the British Indian Ocean Territory. The Chagos Islanders were expelled from the territory between 1967 and 1973 to enable the United States to build a military base on the largest island, Diego Garcia. Mauritius continues to assert sovereignty over the islands and the Chagossians have engaged in an ongoing struggle to return to their homeland. These claims have given rise to extensive litigation both in the UK and in international tribunals.

¹¹ *Minister of Home Affairs v Collins Macdonald Fisher and Eunice Carmeta Fisher (Bermuda)* [1979] UKPC 21, [1980] AC 319.

sitting there in the UN Convention on the Rights of the Child, but it's not sitting there in every constitution which it should be, so that's the foundation.

Yes, you can have dual citizenship and there are circumstances in which you can actually buy dual citizenship. There's a certain amount of controversy, shall we put it that way, within the European Union about the extent to which you can get yourself a visa, which is the route to citizenship, through major investment in the country in which you want to have your say. Well, that's a controversy in England as well; it wasn't until recently but it is now for fairly obvious reasons.

But the counterpart to that is the deprivation of citizenship which is a really serious question. There's an international treaty that says you can't deprive somebody of their citizenship if it will leave them stateless and that's what UK law says, but what do you mean by stateless? And we have got at the moment, of course, a very, very well-known case of a schoolgirl who was groomed along with fellows to go to Syria where she married, had three children, all of whom died. She's a British citizen who wants to come back to the UK, but the UK want to deprive her of her UK citizenship because they say she's a citizen of Bangladesh. Bangladesh is busy saying no she isn't a citizen because they don't want her either. So there she is, you know, sitting in a refugee camp in Northern Syria which is not a good place to be. And there are lots of stories like that and that's another really serious issue which I think has only become recognised and acknowledged in recent years.

So citizenship is a big question with all of these sorts of issues and if we're thinking as feminists, obviously the people who are able to buy citizenship are far more likely to be men than women. And the reason I raise Shamima Begum is that she's a vulnerable young woman and she has been deprived of her citizenship. She was a child when she went, and although she is challenging it, it's very difficult to challenge it from afar. I wouldn't like to say that the deprivation risk is greater for women than it is for men, I'm not sure that it is, but nevertheless there are definitely gender issues sitting there. So thank you.

Audience question: [abridged]:

Thank you for such a stimulating plenary. The last question and response raises for me a question about the intersection between feminist laws and international relations. These are very complicated questions. There are examples where women's voices have been raised, for example in relation to sexual violence, but what about issues relating to foreign policy – for example in Libya, Syria or even Yemen after the Arab Spring? What would be a feminist legal judgment and how could feminists, feminist legal experts and feminist Arab experts work together to criticise foreign policy that impacts so terribly on women?

Lady Hale:

No. There is no simple answer to that question and I think it's one that my two colleagues here who are working on an international feminist judgments text might have more things to say about than I have. But I think that the answer, I'm afraid, is that these are questions that generally are answered by politicians rather than by legal structures. There are international legal structures, and they work in certain contexts, but they don't work in others and I think some of the issues that you've raised, it's fairly clearly political answers that are needed. So the role of feminists is to make sure the politicians understand the perspective and the impact. I think that is probably what your role, even my role might be. And to get together to

workshop, to ask what's going on so that it can be made more public, because it's very easy to ignore these aspects of things – just listen to political debates, that's not what they're often about. As you say they are about rape and sexual violence, yes, that is on the political agenda, but the much deeper way in which wars and aggression impact upon women in many ways more or differently from the way in which they impact upon men, that's a much deeper issue that I would say the politicians need educating about.

Audience question [abridged]:

Thank you very much. You've talked about reasons for having more diversity in the judiciary, but I wondered what you think about the importance of religious diversity?

Lady Hale:

Well that's another fascinating question, to which I haven't yet devoted enough thought. But my initial thought is that if it is a country in which there is a constitution, and there is the law, and the law is by and large a secular law, well then there is no problem about religious diversity in the sense of people of all faiths and none becoming judges as long as they recognise that their duty is to the constitution and the secular law and not to their religious persuasion. I think that is what I would have. I would welcome religious diversity rather than the reverse. But, of course, I come from a country where the law is secular law, as indeed I think it should be, and judges take an oath to do right to all manner of persons according to the laws and usages of this realm without fear or favour, affection or ill will. That's an oath I've sworn several times and I find it very moving and I think it sums up what being a judge in the United Kingdom is all about. If somebody is prepared to swear that oath and mean it, well then it doesn't matter what their religious beliefs are. But if of course you want to start going into a different sort of constitution where a particular religion is embedded in the constitution, well then you get into much more difficulty. And it's difficult obviously to have diversity ...but it can be done.

I'm just thinking about Israel, which is the obvious example. It all depends what you mean by Jewish, of course, but, you know, Israel is established as a Jewish and democratic state and there are people who say "well how can you say both of those things? How can you reconcile them?" Well they have managed to reconcile it on the whole, by and large under some very distinguished judicial leaders, certainly in the recent past. And so it can be done but it can be very, very hard. So I don't envy those countries where they've got much more to confront in reconciling the two.

We're the least religious country I think probably in the Western world in England, which on the whole is a good thing. Now of course in the United States they have got a constitution where it's avowedly not religious but they are one of the most religious countries *[laughs]* and it shows. I mean it shows...well we could get back to certain recent decisions but it shows. And so yes, religious diversity is fine provided people are prepared to subscribe to secular principles.

Audience question [abridged]:

This is a follow on from the previous question: is it un-feminist to have political appointments to the judiciary? Is it more feminist to have judicial schools where people learn to be judges?

Lady Hale:

I mentioned the distinction earlier between the common law way of doing it, which is that you have a career elsewhere in the law and then you become a judge, and there are a variety of ways this might happen ranging from non-party political election, party political election through political appointments and recommendations, through non-political appointments and recommendations, through merit-based independent recommendations (which is what we have in the UK). So there's a range of ways and a range of arguments about it. On the other hand, of course, we have the general practice in civilian countries which is you do a law degree and then you decide whether you're going to become an academic, a practitioner or a judge, then you go and do judging and judging exams, and that of course has resulted in a majority of the junior judges being women in countries like France, Spain and Italy.

But we do tend to find that if we look at the profile of the judiciary, the higher you get in the judiciary the proportion of women seems, under the common law system and under the civilian system, to be remarkably similar, in other words not 50/50, not even 60/40, more like 30/70, 35/65 – which is improving in the UK, it's improving in other common law countries, definitely, of course, in Canada where they made a distinct attempt to do that. There are, of course, all sorts of reasons for this, one of which is mobility, women tend to be less able to move wherever promotion will take them; one of which is balancing domestic and professional responsibilities, which again women tend to have to do more than men have to do; and some of it is discrimination *[laughs]*. I think those are the three main reasons. And those are universal, you know, throughout developed Western democracies whether they have a common law or a civilian tradition.

So I think the feminist take on this is we need more women at the top, and we need to address the systemic barriers to women achieving the top rather than necessarily change our entry level practices, because some of us think it's rather a good idea to have had a life outside Court, you know, before you start judging other people's cases. Some of us think that that's a good idea. We may or may not be right but that's what we think.

Erika Rackley:

Okay. Thank you. It's time to draw our questions to a close. Thank you for all your questions and it just remains for us to thank Lady Hale for talking to us today before we go over to coffee and maybe find out the answer to what happened with Boris and the spider. So, thank you very much Lady Hale for talking to us.

[Applause]