

## **It's time to court women**

### **Kate Malleson**

The courts are under pressure. The Prime Minister and the Home Secretary have denounced judicial decisions on prisoners' voting rights and the registration of sex offenders. The Government is considering options for curbing the scope of rights-based decision making in the courts. A former law lord, Lord Hoffmann, has suggested that we consider withdrawal from the European Court of Human Rights.

Whatever the outcome of these debates, the reality is that the clock cannot be turned back to confine senior judges to the narrow role they occupied in the 1950s. They will continue to be asked to determine highly sensitive political and social issues and to draw on human rights principles, in one way or another, to inform their judgments. So questions about who sits in our top courts and the source of their legitimacy are more important than ever.

As unelected decision makers, senior judges cannot point to the ballot box to justify their powers. Instead, they must show that they are people of ability and integrity, who are broadly reflective of the society that they serve. Unfortunately our senior judges fail badly on the last of these counts.

The 12-member UK Supreme Court still includes only one woman, Baroness Hale of Richmond. And that looks likely to remain the case in the near future. Last week news emerged that the next two justices will be Jonathan Sumption, QC, and Lord Justice Wilson. Neither the Supreme Court nor, before it, the Appellate Committee of the House of Lords, has ever included a judge from a black or minority ethnic background. Likewise, latest figures show that the make-up of the Court of Appeal in England and Wales has not changed significantly since 2000. It, too, has never included a non-white member and when Lady Justice (Janet) Smith retires next month the proportion of women in the Court will be lower than in 2000, at 7 per cent. The top courts in Northern Ireland and Scotland are no better.

Gender and ethnicity are not the only forms of diversity that matter; but what hope is there for improvements in areas such as sexual orientation, disability and social background when so little progress has been made on the two most visible measures of diversity?

This problem is not unique to the judiciary. Many powerful public and professional institutions are under scrutiny. Lord Davies of Abersoch's recent report on gender imbalance in boardrooms has highlighted the glacial progress being made in business. While stopping short of proposing quotas he argued that change is long overdue and requires a "radical change of mindset".

Such arguments are even stronger when applied to the judges who interpret and develop our law. The experience of countries that have reformed the composition of their judiciaries, such as Canada, South Africa and Australia, show that change ultimately depends on political will. That political will appears to be lacking in the UK. The Lord Chancellor, Kenneth Clarke, recently told the Commons Justice Select Committee that the need to increase the number of women in the Supreme Court remained "a priority".

But his claim was somewhat undermined when he admitted that he could not actually remember how many women sat in the court. No more convincing was his suggestion that there was no bias in the judicial selection process because it is carried out by “competent upper middle class professionals who are utterly beyond all that”.

The past 20 years have shown that lawyers not from traditional backgrounds, that is: white, male, privately educated barristers, will not “trickle up” on to the bench until the judiciary, the Judicial Appointments Commission and the Lord Chancellor work together for “a change of mindset” on the importance of diversity. Unless they do, the judiciary will lose the public confidence on which its legitimacy rests and will find it harder to resist unwarranted attacks from politicians and the media.

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**This article was first published *The Times* newspaper on Thursday 31 March 2011**