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Rose Heilbron (19 August 1914 – 8 December 2005)

Laura Lammasniemi

Landmark

Dame Rose Heilbron QC, barrister and judge, became the first woman appointed to the senior judiciary in England, when she became Recorder of Burnley. She was also one of the first two women barristers (with Helena Normanton) to be appointed King's Counsel, or 'take silk' as it is termed.

Life

Rose Heilbron was born 1914 in Liverpool, the younger daughter of Max and Nellie Heilbron who ran a boarding house for Jewish immigrants. After attending a grammar school, the Belvedere School, she studied law at the University of Liverpool, where in 1935 she graduated with a first-class honours degree, the first woman to do so at that university in law. She was awarded the Lord Justice Holker scholarship to join Gray's Inn and in 1937 received an LLM. Despite her merits, she was turned down for pupillage explicitly because of her sex on at least one occasion.¹ In 1939, she joined chambers at 43 Castle Street in Liverpool and during the Second World War she launched her career as a criminal barrister. In 1945, she married Nathaniel Burstein and their daughter, Hilary Heilbron, was born in 1949.

Only months after Hilary's birth Heilbron, aged only 34, became one of the first two women King's Counsels (KC) together with Helena Normanton. In 1955, the *Manchester Evening Standard* asked 'will Rose Heilbron one day become Britain's first woman judge?'². Many in the legal profession believed she would eventually achieve this goal, and the *Daily Telegraph* argued that if Heilbron became a judge, it would be the first time a judge could be called 'charming'.³ Following a great deal of speculation, on 26 November 1956, it was announced that Heilbron was to become Recorder⁴ of Burnley and the first woman in the senior judiciary in England. She went on to become the second woman High Court judge in 1974.

Throughout her career, she led a number of high profile criminal trials which gave her a celebrity status in national press. Heilbron always practised in her maiden name, and when appointed a judge, she was known as Mrs Justice Heilbron. In 1985, Heilbron was elected treasurer at Gray's Inn and spent the final years of her career in London. In addition to her accomplishments in law, she was also an active member of Soroptimist International, a professional women's organisation.

Context

As a daughter of Jewish small business-owners from Liverpool, Heilbron was exceptional in the legal profession in the 1950s. Access to the Bar and obtaining tenancy was difficult for

¹ Hilary Heilbron, *Rose Heilbron: The Story of England's first Woman Queen's Counsel and Judge* (Hart 2012) 20.

² *Manchester Evening News* (Manchester, June 1955).

³ 'The Woman Who Might Be a Judge, *Daily Telegraph* (London, September 1955).

⁴ A recorder is a part-time judge who was assigned to a particular city's Quarter Sessions. Quarter sessions were abolished when the Courts Act 1971 replaced them with crown courts, and Heilbron became the recorder of the crown court.

women and for those outside of the middle and upper classes; family connections were particularly important for women.⁵ Although anecdotal evidence would suggest that the absence of men during the war gave way for women like Heilbron to enter the profession, statistical evidence does not support this. Throughout the 1920s-1930s women constituted 2-6 per cent of all those called to the Bar and similar to men, fewer women were admitted to the Bar during the War.⁶ In 1957, a year after Heilbron was appointed Recorder of Burnley, only 68 women were nominally at the Bar and out of those, only 45 were actually practising.⁷ Heilbron was the only QC, Normanton having recently died. Gower and Price found in their 1957 study that significantly fewer women were in the legal profession in UK than for instance the United States but insisted it was not true that 'nothing short of war will secure them an interview for a vacant post'.⁸

Thus, while Heilbron's judicial appointment was not a great surprise, it was by no means a certainty. After the enactment of Sex Disqualification Act 1919, many women sat as magistrates and by 1947, there were no fewer than 3700 women Justices of Peace.⁹ The progress of women to judiciary was significantly slower. The women who paved the way for Heilbron's judicial career, namely Sybil Campbell as the first stipendiary magistrate in 1945 and Dorothy Dix as deputy recorder of Deal in 1946, had faced a great deal of prejudice publicly and privately.¹⁰ When Heilbron made an application to become a Recorder, Hartley Shawcross, previous Attorney-General, wrote to her expressing his support but said her sex might prove an obstacle with the Conservative Lord Chancellor, Lord Kilmuir, who might not be willing to depart from tradition.¹¹

Following Heilbron's first appearance as a judge at the Old Bailey, the *Daily Mail* wrote that it 'would be misleading to compare her appearance at the Old Bailey with Nancy Astor entering the Commons, or Margaret Bondfield the Cabinet. Hers has been a steady, if determined, climb up the legal ladder'.¹² Heilbron's climb was certainly determined but not one without difficulties as she had to overcome a great deal of prejudice from colleagues and even clients especially at the start of her career.¹³ George Kelly, the defendant in her perhaps most famous murder case, is reported to have initially said he wanted a 'fella' and 'whoever heard of a Judy defending anyone?'.¹⁴ Although convicted, Kelly later praised Heilbron and the high profile case, known as the Cameo case, launched her career in silk and led Heilbron to be named 'Woman of the Year' by the *Daily Mirror* in 1949.

What happened next

⁵ Richard Abel, *The Making of the English Legal Profession* (Beard Books 1998) 68.

⁶ *ibid* 80.

⁷ LCB Gower and Leolin Price, 'The Profession and Practice of the Law in England and America' (1957) 20(4) *Modern Law Review* 317.

⁸ *ibid*.

⁹ Thomas Skyrme, *The Changing Image of the Magistracy* (2nd edn, Palgrave Macmillan 1983) 17.

¹⁰ Patrick Pullock, 'The lady of tower bridge: Sybil Campbell, England's first woman judge' (1999) 8(3) *Women's History Review* 202.

¹¹ Sir Hartley Shawcross, quoted in Heilbron (n 1) 191.

¹² Vincent Mulchrone, 'My Lady of the Old Bailey', *Daily Mail* (London 5 January 1972).

¹³ Heilbron (n 1) 20-22.

¹⁴ Heilbron (n 1) 78; some papers have reported the words as 'I want no Judy defending me', see 'Dame Rose Heilbron' *The Telegraph* (London, 10 December 2005).

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Considering Heilbron's achievements, first as a KC in 1949 and then as a Recorder in 1956, it took a relatively long time – not until 1974 – for Heilbron to be appointed High Court judge. She was only the second woman to hold that position, following Elizabeth Lane, but many felt that had she been a man, she would have been appointed earlier.¹⁵ Once she was appointed, she was appointed to Family Division of the High Court despite being one of the leading criminal lawyers in the country. Lane, another criminal lawyer, had also been appointed to Family Division as was Margaret Booth who in 1979 was appointed the third woman High Court judge. It is clear that those who appointed her felt that women belonged in the family division, leaving the more masculine commercial and criminal work to the men. While happy for Lane's advancement, Heilbron was naturally disappointed not to be the first woman High Court judge.¹⁶ When she was finally appointed to High Court in 1974, she was 60 years old and so unlikely to be appointed to Court of Appeal. It was not until 1988 that the first woman - Dame Elizabeth Butler-Sloss - was appointed to the Court of Appeal.

Heilbron was not, however, instantaneously followed by other women to senior judiciary. Of the 122 women that were called to the Bar in the 1930s with Heilbron, only 5 were still practising in the 1960s.¹⁷ Although more women joined the bar in the 1950s and 1960s, only 20 per cent were still in practice a decade later. The low retention rate undoubtedly has had impact on judicial appointments also and in 2016, only 21 per cent of High Court and Court of Appeal judges are women. Lady Hale is the first and so far, the only female judge in the Supreme Court.¹⁸

Significance for women

According to Hilary Heilbron, her mother never intended to be a pioneer for women;¹⁹ yet, her status and work had a significant impact on women's legal rights. As a judge, Heilbron presided over a important cases dealing with gender and women's rights such as *C v S*²⁰ denying a man any right to prevent his wife from having an abortion. She also chaired an influential Advisory Group on rape following the infamous *DPP v Morgan*²¹ ruling which set a precedent that defendant's belief in the consent of the victim had to be honest and genuine but not reasonable. Drawing from years of experience on criminal trials, the Advisory Group argued that criminal trials differed from other trials due to the 'reprehensible feature of trials of rape' that allowed complainant's sexual history be brought out in the trials.²² They put forward a number of recommendations, among them, most importantly, anonymity for complainants in order to 'protect the victims from hurtful publicity' and to encourage reporting.²³ Her work as a judge, therefore, was influential in particular shaping law on evidence in sexual offence trials. As a High Court judge, Heilbron could not impact law and practice as much as her successors such as Lady Hale, our most senior woman judge today, has done. Yet, Heilbron's work and success

¹⁵ Cherie Blair in Heilbron (n 1) vii.

¹⁶ Heilbron (n 1) 265.

¹⁷ Abel (n 5) 83.

¹⁸ Judiciary of England and Wales website, <<https://www.judiciary.gov.uk/about-the-judiciary/who-are-the-judiciary/diversity/judicial-diversity-statistics-2016/>> 'accessed 1 December 2016'.

¹⁹ Heilbron (n 1).

²⁰ [1988] QB 135 (QB).

²¹ [1976] AC 182 (HL).

²² Home Office, *Report of the Advisory Group on the Law of Rape* (Cmnd 6352, 1975) paras 153-157.

²³ *ibid.*

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have undoubtedly been significant for women in law and in the words of Lady Hale enabled others to 'follow where she had led'.²⁴

Heilbron also was a role model for women due to her visibility.²⁵ The press followed her every trial and affectionately, if patronisingly, called Heilbron the 'woman judge pin up girl'²⁶ and the 'housewife who is Britain's Portia'.²⁷ These representations, possibly due to the fact that she fitted conventional notions of feminine beauty and presentation and that she was very careful not to appear overtly feminist, might have been the key to her mainstream popularity as they made her seem less threatening, gentler and perhaps less judicial. It was also in stark contrast to how women in law were represented in the past – for instance, Sybil Campbell was labelled as the 'Beast of Belsen' by the press.²⁸ Heilbron showed that women could combine highly successful career and happy family life without being pilloried by the press, but only if observing the correct decorum. Behind the scenes, through her work with the Soroptimists and other organisations, she acted as mentor and inspiration to many aspiring professional women.

Her positive treatment in the press and by her legal colleagues did not, however, translate into either the immediate or long-term breaking down of barriers for women in the legal profession and access to judiciary. Women have remained disadvantaged not only in terms of progression but also in terms of access to power and judicial positions. While nearly equal numbers of men and women join the Bar today, it is still rare for a woman to head her own chambers – as Heilbron did in the 1940s – let alone to rise to the judiciary.²⁹ Yet her appointment as the first woman senior judge in 1956 was important not only as a legal landmark but also for women at the time as demonstrated by the queues, consisting particularly of women and girls, to see the first opening of Burnley Quarter Sessions after Heilbron's appointment. Her success and brilliant career had a positive impact on women entering the profession and still in 1994, of the six women High Court judges in England, five were from the Northern Circuit.³⁰

Further reading

Cooke R, *Her Brilliant Career: Ten Extraordinary Women of the Fifties* (Vigaro Press 2013)
Hale B, 'Rose Heilbron' in Goldman L (eds) *The Oxford Dictionary of National Biography 2005-2008* (OUP 2013)
Heilbron H, *Rose Heilbron: The Story of England's first Woman Queen's Counsel and Judge* (Hart 2012)

²⁴ Brenda Hale, 'Rose Heilbron' in Goldman L (eds) *The Oxford Dictionary of National Biography 2005-2008* (OUP 2013).

²⁵ Heilbron (n 1) vii.

²⁶ 'Woman Judge Pin-up Girl of British Courts' *Rockhampton Morning Bulletin* (Rockhampton, 1957).

²⁷ 'Housewife Who is Britain's Portia!', *Durban Sunday Tribute* (Durban, June 1955).

²⁸ Erika Rackley, *Women, Judging and Judiciary: From Difference to Diversity* (Routledge 2013) 115.

²⁹ Rachel Cooke, *Her Brilliant Career: Ten Extraordinary Women of the Fifties* (Vigaro Press 2013) 278.

³⁰ Hale (n 24).