

Human Rights for Women: Liberation or Mere Rhetoric?

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Speaker: Baroness Helena Kennedy QC

Chair: Lady Hale

Lady Hale

Good evening, ladies and gentlemen.

It is a great day today for all sorts of reasons, the first and the most important of course is that it is International Women's Day, yes.

[CHEERS AND APPLAUSE FROM AUDIENCE]

The second is that it is, today, the second reading debate in the House of Lords of the Constitutional Reform bill, which some of us who are broadly in favour of, of course, are in favour of for reasons that mean that we can't be there to speak about it. I, as a serving Law Lord, do not think that I should be in the House of Lords at all and so those of us who take that view are on the whole doing other things this evening rather than attending and speaking in the debate. But, of course we have here, today, the person who personifies both of those two great things: she's a great woman and she's a great constitutional reformer and I have to say even the Daily Mail thinks that!

[AUDIENCE LAUGHTER]

You may know that I am persona non grata with the Daily Mail in that I was once upon a time a legal commissar subverting family values and after that I became the worst thing that had happened since the last bad thing that happened involving a woman and an important job.

Baroness Kennedy

Absolutely always.

Lady Hale

Absolutely always, but you, you are not, you see. Baroness Kennedy is, according to the Daily Mail, Liberty Bell.

[AUDIENCE LAUGHTER]

Baroness Kennedy

Only to John Mortimer though.

Lady Hale

I know, I know but even so it was in the Daily Mail and of course it is right.

Baroness Kennedy

It was. That was a triumph.

Lady Hale

Yes. You are both beautiful *and* a champion of liberty and so this seems to me to be entirely appropriate for today. We're very, very fortunate to have you here. When you were invited to be here I do not think that Professor Gearty knew that you were about to publish a book which had meant that it would be in all the newspapers recently and Baroness Kennedy's book is called "Just Law" and she explained in one of the cuttings why it was that she had given it that title. You say, "When I was called to book by a Labour whip for voting against the government he said that such concerns as mine were completely out of touch with the voters for whom questions like civil liberties and constitutionality and the rule of law and so on were just law...

Baroness Kennedy

He did.

Lady Hale

... not serious topics like health or education or the economy."

Well, today you're going to talk about just women's rights are you not?

Baroness Kennedy

And a few other things.

Lady Hale

And a few other things too. So you must all go out and buy her book *after* you have listened to her talk about it, but we're delighted to have this opportunity and we are really privileged

that you've taken time away from this very important debate to come and be with us. Thank you.

[AUDIENCE APPLAUSE]

Baroness Kennedy

There's nothing more wonderful than being introduced by our *only* woman in the Law Lords and we're so proud of you and this is a special day because we can celebrate you and your achievements too, Brenda, it's wonderful.

[AUDIENCE APPLAUSE]

Well, I always tell everyone this but my favourite way of being introduced was at a meeting some years ago where I was introduced as "Helena Kennedy, the lawyer who represents women and other criminals"

[AUDIENCE LAUGHTER]

I love it, I just love it and I always, women always love it and I expect the guys kind of think it's funny too. It's very... it's a great honour to be here and of course it's right. When Conor asked me I remember it was because Claire L'Heureux Dube who was a Supreme Court Judge in Canada was a great friend of mine, had come and spoken here at London School of Economics and Conor said, "You know, we should get you to come and speak as well" and I said "Sure and let's just fix up the date." I think that was probably the beginning of last year and I have to say that as my rage was building over what seemed to me to be happening in relation to law, civil liberties and human rights I started work on a book. I wrote it within nine months and I'm sure that around the edges you will see that is clearly the case. But I wanted very urgently to get a book out and being read, to be read by the public not by great legal brains and lawyers alone, but to be read by everybody who was interested in our democracy and what I think is happening, shamefully, in our country just now and perhaps particularly shamefully under a Labour government. I started work on that book, as I said, it's been a rush job, but there are a number of themes in it and of course it doesn't fail to address the issue of women.

Here we are today and it's International Women's Day and I just want to say that I did on Friday night go down to Wales, we had a great international women's day event, 450 women and it was absolutely wonderful and, you know, it really is great to be with huge numbers of

women all concerned about the state of the world and the position of women within it; and we were there talking about how scandalous and terrible it is that women so often are the recipient not just of discrimination as women but of poverty and of all the other stuff that affects them around the world and indeed they often are forgotten when we come to talk about human rights, the ideas of domestic violence, the ideas of sexual violation and many of the things that happen to women are not up there in headlights when we talk about human rights. But over the last six years and I had the great privilege of chairing the British Council and in doing that I've travelled around the world and I've made it that I'm not just like Princess Anne, shaking hands with folk, I give lectures on human rights when I travel as well as doing things around the arts and around English language and so on; and when I do invariably women come up to me and talk to me about the common thread that shares women's lives, about the ways in which women have struggled against being second class, either as citizens or subjects or people within their society. The way in which domestic violence, the way in which rape, has disfigured women's lives; and when I was preparing for the talk that I gave on Friday night it was just so startling to go back over those trips around the world to the nations where, you know, the fact that trafficking in women and children for sexual purposes is now at the most incredible level that we know that something in the order of two million women are being trafficked a year and many of those are not women but girls, underage women; and that's not counting the ones who are trafficked for domestic purposes, or domestic slavery.

We know that in India wife burning is still going on and still a tragic reality in women's lives where if it's considered the dowry wasn't enough and either husbands kill or members of the husband's family kill the wife so that he can have a second marriage. Or that the wives commit suicide, kill themselves, because they can't face the dishonour and the perpetual violence that they're receiving within the domestic setting. In Bangladesh which I visited last autumn and I particularly went there because we had made a commitment to go to countries which had big Islamic populations, to make it clear that certainly not, you know, in Britain, that we wanted our relationships to be continuing and that there were many people here as I didn't mind telling people who were against the war and that this was not something that everyone in Britain was in favour of and I'm happy to be able to say that because the British Council of course is independent of government and doesn't have to support government policy on foreign affairs and it was interesting that being there I saw for myself the alarming and real despondency that there is around the world in Islamic countries or countries which have a huge Islamic population will say to you "This is being perceived by us... what is happening in the West just now is being perceived by us as an attack on our culture, upon us" even though they do not in any way support Al Qaeda or Islamic fundamentalist terrorism

and so what we're seeing actually is the feeding of the anger of so many young people around the world and countries around the world which are concerned and alarmed about that themselves. But there in Bangladesh I met with women's groups who were involved with women who are at the receiving end of acid attacks, where the acid that's in batteries, car batteries, easily accessible is taken and poured over young women if they refuse an offer of marriage or are not receptive to endearments from young men who are interested in them or in any way are seen to dishonour their families and they are so disfigured that they are then often rejected by their own families because they become such a burden.

Female mutilation, again I've just come back from Kenya and east Africa, still a serious, serious issue of girls often between the age of four and eight being circumcised, genital mutilation, of a terrible kind causing terrible pain and suffering, there's a clinic up in north London, the North Middlesex Hospital has a clinic where they're trying to reconstruct the vaginas of women and girls when they come to have babies and cannot give birth naturally because of what has been done to them and have no enjoyment at all in their sexual relations and a practice which in fact despite the fact the countries outlaw and it's still going on and girls in *this* country are sent often home on holidays in order to have those operations done to them.

Forced marriages, something that I'm happy to say that our government has been very proactive on but are still a serious issue around the world, women forced into marriages that they themselves would not choose and that's something quite distinct from arranged marriages, but forcing women against their will to participate in marriages that they don't want; and then the whole issues of asylum and the way in which that affects women and the movement of peoples around the world, the forced movements of people, the forced migrations and then in turn the efforts those people make to seek sanctuary in countries and the discrimination which we have even within our policies in relation to those women; and then when our judges, it went all the way to the House of Lords, the case of Shah and Islam which was about wife-burning in Pakistan and when our judges made the decision, I think very courageously that it was if states, if governments did not protect women from this kind of conduct which happens even in the domestic sphere it is a form of persecution and that women should be allowed to claim asylum. When our judges did that, some of my own government ministers, outraged and appalled said our judges are being ridiculous and nowhere else in Europe are they doing this and they're out of line and it's making us a receiving point for all sorts of people, that we shouldn't be receiving, willing to see discrimination on that level towards women around the world who are being persecuted; and so what alarms me is that there is such double speak when it comes to the issue of human

rights and the human rights of women. We saw it in Afghanistan around the issue of the Taliban where suddenly many of us who'd been rather concerned about what was happening to women under the Taliban and I imagine that many of you were also the recipients of emails from women's organisations, saying we're writing letters will you sign it, can you help us to do things because of what's happening to women who are being stoned to death, who are being killed in Afghanistan under this regime because their veil slipped or because they wanted to continue practicing medicine or because they were found to do things that were unacceptable to the moral policing of the Taliban, and while nothing was done at that time suddenly when it came to the invasion of Afghanistan we heard huge amounts about the abuse of human rights of women and we heard from even President Bush and his wife, Laura Bush, and all manner of people who hadn't been terribly vocal about human rights before, about the disgrace of what was happening to women under the Taliban. I want you to know that if you read any of the reports that are coming out of Afghanistan now, you'll find that the position of women has barely changed at all and in some circumstances that is actually worse and we are not seeing that coming out of the speeches from Washington or indeed nor are we hearing very much coming from Downing Street about it.

In Iraq here we are reconstructing a country that has gone through an invasion. Although there are two women on the Reconstruction Council, there are really no women given any positions of authority and indeed we've just now seen the Sharia Law being reconstituted to deal with offences of dishonour, morality offences, the sort of thing that we know and have seen in northern Nigeria where there's the stoning to death for people for adultery or for committing offences that offend against morality or having a child out of marriage or whatever and that should be a source of alarm to those of us who are concerned about human rights.

So internationally the story is not a good one and what we also are seeing are Human Rights being used as an argument or a cover for what I consider to be baser motives. But here in the United Kingdom it would be very easy for us to look around the world and sometimes when I travel and I meet with Human Rights groups I come back thinking it would be very easy to take comfort from the fact that things are so terrific here. Aren't we lucky that we live in a developed western society where the rule of law is regarded and so on. It makes you rather worried when you see how the rule of law is being treated with disdain over the ouster clause that is causing such alarm to everyone just now, where we're actually seeing a retreat from law, where we're actually seeing the right to appeal which is a part and parcel of contemporary modern law, seeing that being removed by a government which passed a Human Rights Act in its first years of office. Scandalous and yet a Lord Chancellor who is the

current Labour Lord Chancellor when this is presented to him and he is the protector of the rule of law, the protector of the independence of the judiciary, even in the face of well-argued perspectives from our judiciary, has dismissively pushed aside concerns. So we have reason to be anxious here.

And so one of the things that I wanted to say to you tonight in talking about Human Rights and Women, and I'll turn very specifically to the position of women here in this country, is that I see a number of things happening and that's what I've thought to write about in my book, and thought to write about it in a way that I hope is accessible. But we're actually at the end of the embedded liberalism that was part of the consensus that was created at the end of World War II. That liberalism which gave us not just the welfare state, but gave legal aid, because of the belief in the right to a fair trial and the right of access to independent lawyers who would be fearless in challenging government and in challenging the state. The belief that was shared by all parties that there should be an independent judiciary, well protected by somebody who would really protect them inside the Cabinet, a voice of their own to make sure that when law and order was being argued for that justice was also argued for, and there was another voice to do that. The independence of civil servants, and my god, if Hutton told us anything, it was something about the absence of independence when it came to the Civil Service nowadays. And so my concern is that we're seeing an end to that embedded liberalism, which was part of our society in the latter half of the twentieth century.

I think that we're also being confronted with the belief that what we need is a new legal order, post September 11th 2001, in my view an erroneous position, this idea that somehow you justify Guantanamo Bay, saying you don't need to use either the Geneva Convention and the law created under it to deal with those who've participated in war, and because somehow this is not war, it's a war on terrorism and it's different. And yet, for my part, we were dealing with serious crime on September 11th. We were dealing with mass murder an atrocity of a huge and monumental kind which if anything needed the criminal law, it was that, because what we saw was crime, and yet criminal law is not to be used either, because of course that might afford too many safeguards. And so my concern is that we are seeing created a new set of legal regimes in that period now to deal with terrorism although we, ourselves, have experienced terrorism in this country, made many mistakes in trying to deal with it, but should have learned some lessons, and instead, we're going down the road, like the Americans, of actually creating legal black holes, where people do not have a fair trial, do not have open trial, do not have access to justice in the way that we have come to expect.

The other concern that I have is that globalisation has called for the creation of a uniformity around commercial law. And that makes perfect sense if you have a market which is a global market then you want contracts and trading agreements to be recognised and to be underpinned by law. And so we've even had countries like China, countries like Russia, post-communist, coming to countries like ours, to Britain and saying help us create a commercial law base that will be accepted around the world so that we can trade. And in fact we've played a very active role here in Britain in doing precisely that. The British Council acts as a conduit bringing large numbers of young, law graduates from China to Britain, they go to the School of Oriental and African Studies, of which I am the President, and they study there and they do law, and then they go and they have places in City Law Firms and they go back, bright young commercial lawyers to practice law in China. And all in the interest of the global market.

But of course we hope and we try to attach to this, the coattails of that, some of the stuff about Human Rights, about the importance of fair trials. And suddenly those things do start catching small bits of fire in the tinder and in fact, in the last few years we've seen in China a review of their criminal law, and they actually have introduced the presumption of innocence because they're trying to comply now with international conventions, slowly but surely there's movement in the right direction. And while that's going on, what do we do? We start saying, well hold on a minute, maybe some of those old notions aren't worth the candle. So those commercial lawyers, and I should remind you all that it's commercial lawyers who people our Government, not civil liberty lawyers, don't kid yourself. The guys who get the big jobs are commercial lawyers. And most commercial lawyers say, look we're creating this nice global system of commercial law, sameness everywhere, harmonisation helps the market. And the downside of the market, the underbelly of the market is illegality in terms of trading, trading in drugs, trading in arms, all that nasty stuff which crosses borders, which uses all the same mechanisms, email, electronic movement of money, off-shore banking accounts, all that stuff that the capitalist world uses, is used in precisely the same way by the criminal element who are interested in moving money. And the result of course, is that we're now having the argument made, is that what we need is, like we have commercial law to help trading, we need a globalised more harmonised, more homogenised law to deal with the underbelly. And part of the underbelly, of course, is international terrorism. With international terrorism is the scream, the rage of the impoverished in a world in which the rich and poor are becoming more and more differentiated. And so that rage, that scream of rage, which is manifest in terrorism of course, is the argument that's now being made, that there have to be new ways of policing it, new ways of trying it, and the homogenising of law across borders to deal with it. Now, I'm all in favour of finding new modality, new ways in which you can have co-

operation between nations in order to have effective legal outcomes. However, what we do not want to see is levelling down and that is what we're seeing instead of levelling up, levelling down. And in precisely the same way that our ministers were enraged by the decision in Shah, we were trying to level up, and say we should be protecting women in societies where they're not protected, and allowing them to have asylum in this country if they're being persecuted, even if it's by their brother, or their husband, or their father. But if the state doesn't interfere to protect those women then they are persecuted and legitimate asylum seekers. Where our judges were doing that they were seeking to level up, and that's the argument we should be making to the rest of Europe, but instead what we're seeing is a levelling down. Or at least an attempt to do that by our Government.

And so, my concern is that we're seeing an abandonment of the checks and balances which are absolutely inherent in our system. Because what you also get in this process of trying to homogenise, is you get legal transplants. You get cherry picking of other systems. You know they can do that in Germany, and they do in France, and they do it elsewhere so why don't we introduce that? With no reference to the ways in which that plays out if you don't consider the context from which it comes. So this whole business of denuding us of trial by jury is not just about saving money and so on and not trusting people, which is part of the thing, ordinary folk, a sort of post-democracy thing, which is that you know, we have to find out other ways of doing things, rather than by reference to the people, but actually, it's also about a feeling that you see, the rules that are required if you have a jury trial, of course, are not required in other parts of the world, where they don't have jury trial. Where it isn't juries who decide things. And so they look around and they say, do you know in other countries they put previous convictions before the court, but of course the court is the judge, and the argument is the judges are able to compartmentalise things that they hear about people. In fact the truth is that if you look in some of those places I'm not sure that it's true, but that's the argument, is that the great judicial mind is capable of that compartmentalising whereas people who are not trained as lawyers cannot do it, therefore, we find other ways to create safeguards. And so some of these changes we're seeing are actually ill-considered and taken out of context without recognising that law is cultural. That law grows out of the history of particular people. But what you don't do is appropriate elements of other systems and then bringing things in without reference to how it would impact on other parts of your system.

What I'm also concerned about is that arguments have been made for abandoning the adversarial system and here you get one of my real concerns, which is you get the hijacking of the women's movement and the arguments that we as women have made for a fairer

system, the arguments that were made by the victim's movement which came out of the women's movement, the hijacking of that, and the same language that we used being used in a subversive way, in fact, to achieve ends which are actually not going to be in any of our interest. But what is argued is that we have to do these things for the victim, we have to do these things for women, and therefore, the price that is to be paid by defendants in general is justified on the basis of it being done for us.

And so women and victims are used as a Trojan horse to erode civil liberties in ways that I think are alarming and I'll come to deal with that in a little bit more detail in a second.

But we're also seeing the abandoning of Human Rights and the rule of law in ways that really have an impact not just for us here but our underworld. Because if you are a human rights activist in Indonesia or you are a human rights activist in Burma or in places in which human rights are trod all over, then I can assure you that when they see the argument being made by David Blunkett in India that we actually might have secret trials, that we might lower the standard of proof, that we might have lawyers who are hand picked by the Government and that, indeed, the judges themselves should be vetted is a very alarming message to be sending to parts of the world where the governments are only too happy to hear those messages.

So those are areas of my concern and I think that many people have not noticed this stuff happening, because it has happened almost by stealth. But it's happened with government – and governments always do this – with government saying to us, we're doing this for you. It's because we want to protect you, we're concerned about your security and the inculcation of fear and the language that's used to fire and increase fear amongst the population means that we end up writing a blank cheque to government, thinking it's other people's rights that are being eroded. But, all I'm saying to you is that them, in fact, is us. And that when we sacrifice the rights of, we imagine our brown-skinned people who are being arrested because they're considered to be supporters of Al Qaeda it is our rights, everybody's rights, and we should not sit tranquilly trading the rights of those who we consider to be other.

I hope that we can start some kind of real campaigning movement around what's happening, because I think it's so serious, I really do. But tonight, I wanted to talk a bit about the way in which women, we as women have been struggling around many issues, about the law's failure in really providing justice for women. And I wrote about this, and I in fact produced a book about it some twelve years ago now, and in fact inspired by this great woman who's sitting to my right, who had really cast her eye on other areas of the law, and then I, as a

mere criminal lawyer, started thinking, well these things are going on in my area of the law too. And when I wrote the book in 1991, about the law's failure in relation to women particularly around domestic violence, around rape and around the way that women were dealt with as defendants in the courts and we often forget this, but don't forget it because when you look at the numbers of women, fourfold increase in women going to prison since 1995, this Labour government has overseen the biggest increase in women being jailed in the last hundred years. I mean, it is just a disgrace. Women who end up in prison in conditions in which so many of them are now drugged, because it's the only way that they can actually deal with their incarceration, and end up with the highest level of suicides that there has been I think probably in the last two decades. So let's not think that things are altogether terrific, because we have larger numbers of women in Parliament than ever before, or because we have a few female Cabinet ministers. I, in the book, give credit to the fact that Harriet Harman is doing good things around domestic violence. I believe that she really is and her heart's in the right place. However, she also makes some very serious mistakes, because she allows the guys around her to persuade her of things that I think are highly suspect.

When I made the arguments back in the late eighties, early nineties about what happened to women, what I was saying was that law had been created from a male perspective, it was inevitable if you didn't have senior women in the judiciary helping to make law, or significant numbers of women in Parliament making law, and significant numbers of women in academia making and creating and arguing for a woman's perspective in law, then it's not surprising you would get very male law. And so it wasn't surprising you would get failure of law to deliver justice for women. So that was what one was seeking to look at. We had all, in the early days argued for law's neutrality, that somehow if law dealt with men and women really in the same way that somehow that would deliver justice for women. Then we began to realise that that actually didn't work either. And we also thought that just reforming law would do the business. But that doesn't work either. And what of course, we were talking about are cultural shifts, the ways in which you have to change attitudes and mind sets in order to get a different kind of justice. And what we see happening now are many of the things that happened, I think oh, that's terrific, and then I see how they actually are carried through, and it's not so terrific in the reality.

I'll give you an example of it just now. Domestic violence legislation going through which I had been arguing for, for a long time, that we had to make sure that there weren't long delays, that women often withdraw, it's one of the frustrations for the police, women withdraw their complaints against their husbands or their partners who batter hell out of them, because

there's too much time delay, and by the time the case comes up, the women would have been persuaded to drop the charges and whatever. And yet it wouldn't stop her being beaten yet another and another and another time. So you need to have the system working very effectively and quickly, after a woman has been battered. And so what one wanted to see was that the police were able to arrive at a scene and they went in, and even if the woman hasn't got terrible injuries, but if she says yes, that she'd been hit, that they could arrest there and then. Rather than the old thing which was that the police would say to the woman, well, if you go along tomorrow, you can go to the magistrate's court, love, and ask them to issue a summons and it'll be sent round to your husband and he'll be asked to turn up at the court in a month's time, because that was just not working. And so what we wanted was the power of arrest when there was a clear incidence of domestic violence having taken place, even if it wasn't terrible injury. But what we get in the bill, is that all common assault, not just common assault related to domestic violence in that particular set of circumstances, but all common assault is now going to have a right to arrest attached to it. And you can be sure that, that will mean that wee boys on street corners who get involved in a bit of fisticuffs and so on, the police will come in and nick them there and then, because they then have the power to do that. And we will see that being used as a power of police arrest in circumstances well beyond domestic violence, but it has been put through on the strength that we as women wanted that.

The same thing has happened in relation to previous convictions. Women arguing that when it came to rape trials, that if women were going to be cross examined about their sexual history, why shouldn't men then have their sexual history put before the court? And of course, then it became that the argument was spread out, and it became that we should have previous convictions of everybody before the court even if it meant that they'd had ten previous convictions for theft of mobile phones. The problem about that is that the police round up the usual suspects and if somebody's got a lot of previous convictions for stealing mobile phones then they arrest them and it's very difficult for that person to ever get off, because they're convicted on the basis that they are somebody who steals mobile phones. And that's the problem about it, is that very often the arguments we've made are subverted in ways that we would not have imagined.

The same thing has happened in relation to stalking laws. We argued for stalking laws, they're now being used against people who are picketing because they returned to the same place repeatedly, stalking laws are being used against people who are picketing and perhaps a factory where there's been sackings and so on. So you can see what I'm talking about is that women's issues, women's arguments are being subverted and used to erode

civil liberties. And what we've got to recognise is that there is a way in which there's a rebalancing of the system that somehow protecting women and children has to mean less for the people who are standing trial. That is not justice. We cannot buy justice for women and children at the expense of those who are accused. And for us to take that argument about rebalancing the system, there is no rebalancing the system, it's about taking more power to the state, and we should be very clear that power is not going to go to the victim, it's going to the state. And so, there is so much dishonesty around the ways in which these things are argued.

But another area that I'm concerned about is, that it's now being argued for us as women, that the provocation defence should be got rid of, because all these men go out there and they find out their wife's been having an affair and they just go round and kill her. And none of us want that. However, the problem about it is that it did take a long time and provocation, as I argued ten years ago, provocation was a defence that was not made with women in mind. However, because we did persuade the judges of that, now in the criminal courts, I can tell you when I represent women who after years of battering, kill their husbands the judges are very sensitive to the fact that, that kind of history can have a serious effect on women and it's like the snapping of freed elastic. It's not a rage, but it's a despair that leads to her act of violence under long-term provocation. And so, this idea that somehow it's a defence that only now works for men is an old argument which we've been remedying. Now the provocation defence has become very complicated now, with a very difficult direction expected of the judge to the jury, but what they're talking about now is just getting rid of it altogether.

And I saw an article by a woman solicitor in the Guardian only a week ago, saying that she wanted to see the legitimisation of pre-emptive strike killings by women, and I have to tell you my heart sank into my boots, because this idea of pre-emptive strikes, we saw it in Iraq, but we're also seeing it being put forward by our Home Secretary. He wants to see pre-emptive strikes against people who he thinks just might be terrorists. He says, we can't lock them up and convict them and send them to jail for life, that doesn't work because they kill themselves, and we don't get the satisfaction of sending them to prison for life, because they do it for us. So we've got to do something else, we'll arrest them pre-emptively, so that if we think they just might some day become a terrorist, we're going to lock them up. And, of course, you know why that will come about, it will be about intelligence, it will be the use of intelligence, and somebody will have heard somebody in the mosque say, oh, I'm gonna join Al Qaeda and I'm gonna be a suicide bomber and they'll find the police round at their door

the next day, because of course, it will be on information that this kind of thing would happen.

It hasn't come from nowhere this idea of pre-emptive strikes, even in our domestic environment. For two years now the Government has been talking about introducing pre-emptive arresting of the mentally ill. And the Royal College of Psychiatrists has been in battle with the Home Office to prevent it being introduced in mental health legislation. The idea that somebody doesn't have to have done anything, but if somebody says, I think that person's a bit of risk and he just might be capable of going out and killing somebody, oh, we'll lock him up anyway. And the psychiatrist says, well, we're not prepared to rubber stamp such a thing and refused to do it. But we are moving into *Minority Report* world, if you ever saw the film, which is about trying to work out the kind of person who might commit a crime and locking them up before they do it. So I don't want this business of pre-emptive strikes entering our law in any form, even in support of women who have been battered, I really think it is a misconception and not the way forward.

So what I'm saying to you all tonight is, women are still considerably disadvantaged in the law, that I am clear about. However, you do not achieve fairness for women at the expenses of fairness for us all. We have to find a better way, and the sacrificing of Human Rights and Civil Liberties is not the remedy.

So I'm sorry that I have a despondent message to you all but it comes with a firm belief that law matters, that law matters to our lives and that Civil Liberties and Human Rights matter. And that instead of this Government engaging, they've introduced that Human Rights legislation and it could have been a whole way in which they could talk about the ethics of the way that we should live together in our communities, the way in which we should have relationships. They could have expanded this great conversation on Human Rights to say, of course it's about remedies against the State but it's also in fact about the way which each of us conducts our lives in relation to our neighbours, in relation to our lovers, in relation to our partners. That if you respect the human dignity of somebody else, it should be happening in your own home, in your own work place, it should be in fact the values which we are living by in our daily round, not just something to do with our relationship with the State. And instead of engaging the wonderful humanity of that argument they see it purely as some bureaucratic, technocratic thing that gets in their way now and that even thinking of challenging international refugee conventions and trying to get them changed because really their commitment on Human Rights is less than one would want it to be.

So I express all my concerns to you, I think we've got a difficult fight on our hands but I'm relying on you all to be with me in taking it on.

Thank you.

[APPLAUSE]

Lady Hale

I have been told that we have time for questions, and I have also been told, which is more important, that our speaker is prepared to answer some. And so we have a little bit of time, and I'm sure there will be lots of people who will want to ask questions. Yes?

Q1.

[INAUDIBLE]

Baroness Kennedy

Over the last ten years, a large part of my practice has been women who kill in a domestic situation, and in fact I've seen a huge change taking place, and it's actually now quite rare if women are defended properly, it's quite rare for women to be convicted if there's a long history of domestic violence, and battered women syndrome is on the whole accepted by the courts, there's no difficulty in getting the courts to accept it, as long as there is psychiatric evidence to support it. And the truth is, in most circumstances, the women who have experienced domestic violence and who end up killing their partners, there is psychiatric evidence to support it. And so what you're describing, in fact, is the reality now in practice. In fact, so much so that when the judges see me talking to their wives at parties they get very worried. [LAUGHTER] So it is working. I will be making arguments to the Law Commission on this issue. You see, what we ought to be doing of course, is looking at the whole issue of homicide, and that's why I don't want it to be rushed through. And there's some pressure just now, where Harriet Harman feels that there's a window of opportunity, there's a domestic violence bill going through, let's quickly deal with this. You can't do a quick and dirty thing on this. This is the most serious crime in the calendar, murder, and, if we're going to reform this area of the law, it should be looked at with great care. And most of us, I think, who are in this area would say, one of the first things you have to do is remove the mandatory life sentence for murder. There are many different kinds of killing that would fall within the definition of murder, and they're so different that in fact, of course, it's reflected in the tariff in how much people spend in prison. But, in fact, it would be far better if the public knew and if the opportunity was available to judges to make those distinctions and declare them publicly, so

that then if a battered woman wasn't able to avail herself of battered women's syndrome, because a psychiatrist said she actually wasn't suffering from it, but there was still evidence that she had been abused and battered, that it was open to a judge to pass a sentence that really reflected her culpability in a much fairer way, and that the sentence wouldn't be very high. In the same way, in relation to you know, the children of people who are dying of some terminal disease, where they see their parent suffering and the parent saying, help me to go, and there have been those cases before the courts, and usually, you know, psychiatrists cobble together a defence and say that they were depressed at the time, or something, or juries are very sympathetic, and usually come back with a manslaughter if you can get, you know, put together some sort of argument. But what should happen is that the judges should have the opportunity...however, having said that, that is not going to be part of any debate just now because David Blunkett won't have it. And I've been told that. You can't raise the issue of possibly getting rid of the mandatory life sentence because David Blunkett does not want judges to have more discretion. He wants them to have less discretion, so we can't have a proper debate around this issue of homicide unless we open that up, and yet that's one of the areas that is taboo at the moment, because David Blunkett, the Home Secretary, won't have it. That's disgraceful.

Q2

[INAUDIBLE]

Baroness Kennedy

Well, first of all, there's not an awful lot of votes in prisoners rights, that's the first thing is that, on the whole, prisoners are somewhat invisible. The other thing is that, even though people on the whole feel more sympathetic to women in prison than they do to men, the reason why we've seen this huge increase is not about being particularly discriminatory against women, it's because we've seen an increase in sentences for low level crime. We've seen also a new way of approaching sentencing, being encouraged amongst the magistrates and amongst the lower level judges which is that you have to assess risk. So how that's interpreted by magistrates and by the judges in the Crown Courts is that, if you think that somebody's likely to commit another offence, for example because they're a drug addict or an alcoholic, and that therefore by sentencing to something in the community it's not going to solve the problem, they're going to be back before the courts in a few months time, then because of the risk of further offending, they're sent to jail. And so part of it is that thing of risk assessment, and of course, what one would want to see is that those people, many of whom have drug problems, and I mean, very high percentages of women in prison have problems of abusing substances, alcohol, drugs and many of them are women who have

serious problems because they have been abused themselves, they've been the victims of crime. And what is really needed are very good community projects, very well supervised by good probation officers. The probation services have been very under-funded over the last period, we have seen arguments about community service, but very little real resourcing put into it, whereas much more money has been spent on building prisons. And we also have this dissonance which is that if you have a rhetoric coming from a Home Secretary which is about punishment, all the time, and you have the magistrates and judges not knowing which way to jump, because quietly they're told maybe they should be thinking of community service, but loudly the message which David Blunkett gives all the time for the tabloid press, is that we want to be tough on crime. So there's a real problem for police and for magistrates and for judges in that there's a schizophrenia in government in the way that they articulate what they want, and as a result there is actually a ratcheting up of sentencing. So you see, when David Blunkett says, let's you know, life mean life and he talks about heavy sentences for serious crime, what he ends up doing is he narrows and eliminates the space for creative things to be done, because people become fearful of being creative, because they fear that they too will be put in front of the Daily Mail and they will be named and shamed for being soft on criminals. And they will be vulnerable to attack if they're seen to do things that don't fit, and so it's that dissonance in the messages that are coming out of government which in fact leads to a continuation of sending people to prison inappropriately. And women are the most vulnerable to that, because women on the whole don't commit serious crime.

Lady Hale

And you had another question didn't you? Do please. Yes?

Q3

Do you agree that women's rights and human rights in general is a universal concept and not a cultural issue?

Baroness Kennedy

Absolutely. Absolutely. Don't believe in cultural relativism, when it comes to women I'm not having that. Sorry. Don't want to hear it. [APPLAUSE]

Lady Hale.

Yes. Yes indeed.

Q4.

[INAUDIBLE]

Baroness Kennedy

Well, it's very interesting you should raise that, because I've spoken to Islamic women around the world now, on this, and there are some who would present that view that Human Rights are a western concept and therefore it's not going to be listened to by people who are from the Muslim tradition. And yet, I often meet others who say something quite different to me, which is that in fact it's the interpretation of Sharia law which they are very concerned about, and that they do want to have the community of interests internationally coming together to really talk about the rights of women, and that they value the support that is given by women from other places, and for example, there's a wonderful woman who just received the Nobel Peace Prize, an Iranian lawyer who has been absolutely at the forefront of arguing for the rights of women, and not with disrespect for the Islamic tradition. So, I mean, I really think that there is an issue here and obviously the best people to make the arguments are progressive Islamic women themselves, with us giving support, and it's not for us to be saying this is what you ought to be doing. I agree with that entirely, but the support should be there, and we should not be listening to male elders in communities telling us that there's cultural difference. I want to have that discussion with women, not with the male elders of communities to tell me what women think.

May I just say one thing. One of the great things is, if you go back to reading Eleanor Roosevelt, who was you know, I mean this great....I mean, if we're talking about heroines along with Brenda Hale, Eleanor Roosevelt's up there. And she was there, you know, she had a little flat in Washington Square, and in 1947 she held meetings there for the drafting of the Universal Declaration of human rights. I mean if you look at who went to those meetings, you know there was a Roman Catholic Brazilian, there were Stalinist communists from Russia, from the USSR, and there were people from the Islamic tradition. And the idea was to get together a set of values that cut across all traditions, and so that you had something that was not ideologically driven, that was not specific to one religion or one culture, and that actually was shared by all cultures. And that's the magic of it, is that it has that universalism, and so when I speak to Islamic women in other countries, I find that that resonates with them, they know that in fact there is a commonality in the experience of women that we should talk about and share. And I just was on this task force on terrorism, and a wonderful international lawyer, woman from Kuwait, traditional Islamic woman, and she was wonderful on that Commission, and I think that she has my belief that Human Rights for women is something that we should all talk about and commit ourselves to together.

Lady Hale

There was a gentleman at the back and then there's a gentleman here. Yes?

Q5

[INAUDIBLE]

Baroness Kennedy

OK. I mean, what you're really saying is, how can we see a way out of this, you know, the situation is horribly depressing and it doesn't look good. But what I'm hoping is that if enough people could be heard saying, this is not what we want, this actually doesn't speak to the better part of the people of the United Kingdom, that we're actually seeing an engagement with the less wholesome parts of our society in wanting to punish, in wanting to take away people's rights, and wanting to just lock up anybody that we think just might become an Islamic terrorist. If we can make that argument well enough and enough of us make it, I do think that you can affect government's policies. I actually, at the moment, think that Blunkett is slightly in retreat, I think that he did mind the fact that people said, we're outraged at the idea of lowering the standard of proof. And I think that he was told by the Attorney General and by the new Director of Public Prosecutions, that this was not a runner and that it wasn't going to be possible under the Human Rights legislation and that nobody would wear it and I do think, we can if we really put our minds to it, really set up a pulse for a shift in policy, and I do think that you know, we've got to try and make that happen.

Q6

[INAUDIBLE]

[LAUGHTER]

Baroness Kennedy.

Oh, that's great. We do believe in the importance of the discourse you know. Well, let's go back to the business about talking to elders in communities. I mean one of the things that has concerned me is that I've done a number of cases, particularly over the last decade, I mean since taking silk, you're often asked to do sort of leading cases where there are serious and difficult legal issues. And a number of times, I've been asked to do cases where I really have a sense that in our effort to be, and I'm happy about it, celebratory of diversity, and I mean one of the great strengths I think of our country is that we have many new nationalities and so on, and it enriches us and that's terrific. However, one of the things that doesn't happen so successfully is that in trying to I think, do business around diversity, women themselves are not the people that government ministers go and speak to and very

often the people that they do go and speak to are men whose attitudes towards women would be as questionable as those of some of our judiciary. And they need to be persuaded, they need to you know, to be drawn in, but if you were to talk to some of the women's organisations like Southall Black Sisters and Newham Women's Rights Groups, women working in minority communities, those women will tell you they are not the people who are gone to for advice on things. And they are not the people who are gone to to deal with things like, for example, forced marriages and they resented that and had to force their way into the room to be heard on the subject. In the same way, in the many of the, for example, northern cities a lot of the Labour-controlled local authorities turned a blind eye to girls being taken out of school at the age of fourteen because their families felt that education for young you know, Asian women, or even young Jewish women in very fundamentalist communities in certain places, that in fact weren't being sent to school after a certain age. And that is an entitlement, as far as I'm concerned, the education of women is absolutely at the heart of women's liberation and not enough was done to ensure that those girls were given a chance to go to school, because it was felt it would create conflict with the leaders of the community.

I had a case last year, and I mention it in my book of a young girl who was fourteen, a young Bangladeshi girl and she was brought to Britain when she was thirteen, having been left behind with her grandmother in Bangladesh, she was brought to Britain and she was not sent to school, Tower Hamlets, and she was a skivvy, and she ended up being made pregnant by one of her mother's brothers because she was at home all day working and cleaning and so on, and she didn't tell anybody because she was so frightened that she was pregnant, nobody seemed to notice, and she gave birth in the middle of the night in a tower block in Tower Hamlets, and I mean, having given birth, threw this newborn out of the window. The miraculous and extraordinary thing is that the baby survived with a fractured skull, but it did survive. She was charged with attempted murder. She told about what had happened to her, she'd been sexually abused, her own mother didn't accept that her brother would have done such a terrible thing. And the brother disappeared into the community and is still to be found. And so the protection of him happened, my little girl was ejected from the home, is not being accepted by her family, the father wanted her returned to Bangladesh because she's now dishonoured everybody, and she ended up being the person in trial at the Old Bailey. And I am happy to tell you that she ended up being, through some negotiation, being charged with attempted infanticide, I don't think there is such a charge but we cobbled it together, and then, she was given a conditional discharge because the judge was enlightened and felt that it was ridiculous what was going on. But when I spoke to the senior prosecutors about it, their answer was, but we have to send out a message that people can't just throw babies out of windows. Well, the message I would have liked sent out

was, that men can't go around sexually abusing fourteen year old girls, who aren't being sent to school because their human rights don't matter. So we really do have to try to engage in a different way about some of those issues.

Lady Hale

Yes?

Q7

<INAUDIBLE> But I wanted to ask if it's true that women are reinforcing the misogynist paternalist culture and what it is that we can do about it.

Baroness Kennedy

Well, you know the answer really. I mean, you know that of course, there is in many ways, it becomes for women too painful to address, that huge business of what their own lives have meant if they have basically lived their lives in accordance with, if you like, the male rules, and so it's too hard to confront all of that for many women. And in fact, when the suffragette movement was taking place, it always made me laugh that Mrs Humphrey-Dunn led a movement to oppose votes for women, and there were many middle class and privileged women who signed up and said, we don't want the vote, we don't think we're smart enough to have the vote, we think men should do that. And so, you know, you will always get that going on, and it's because for women, it's too painful to address what it would mean in their lives to actually, you know, to challenge the overriding assumptions. And so for my little girl's mother, it was about, how could she challenge those menfolk around her who were saying, she's a little slut, somebody's got her pregnant, and it wouldn't be your brother, you know, and so on. How do you challenge all of that if you're a woman who's life has been about being, you know, subservient and second class. So it's too hard, and so it's a process and it happens slowly, and then you know, we start seeing how our mothers suddenly burgeon and become more and more feminist the older they get. My mother's as feminist as you like, whereas when I first started to say all this stuff, you know, when I was you know, twenty, and she would have been fifty, she thought I was going to hell in a basket! [LAUGHTER] So, you know, that's how it is, you know. But we know why, and we just have to slowly try to make the argument.

Lady Hale

How do you know you're not going to hell in a basket?

[LAUGHTER]

Yes, I think, the young man with the beard at the back there, was next.

Q8

I saw a quite good cartoon once, which was at a long table loads of men sitting round and the caption was "The conference for women's rights is about to begin". In the judiciary, what do you think about quota-ed places?

Baroness Kennedy

Oh, I think that we've seen how that can work, there can be a backlash against that, if you do it that way. And I think that what you have to do is have fair systems. It's why we would argue a judicial appointments commission, where you have transparent processes and well laid down criteria, and you do it in that way and make the invitation attractive enough. I mean an awful lot of women you know, decide not to become judges because they think that the life is hellish, and not, you know, accommodating enough of the rest of life. So the invitation should be become different, the way in which work is done should become different and of course, much more open processes, and that's how to do it, and I think that when you say quotas, you end up getting the backlash, the whole thing that it's all been done, designed to bring in, to dilute the port, to make it all sort of, less good. They're all arguing about merit in the House of Lords tonight, oh, we mustn't have traditional appointments commissions, because of course, you know, we'll get much less good people coming in. And they mean us. They mean me. They mean, you know.....[LAUGHTER]

Lady Hale

No they don't, they mean me.

[LAUGHTER]

But it is an extraordinary thing that merit always comes up when the talk is of trying to widen the pool, and extend it from the people who've traditionally done the job because the people who've traditionally done the job are the people who personify merit, and the idea that there might be other merits that could usefully be included in this splendid profession, is rather difficult to grasp. It's taking a long time.

Baroness Kennedy

I know.

Lady Hale

Yes. We've got a tiny bit more time, for say two more questions. Yes? We'd better have another woman now, I think.

Q9

Just very briefly really to continue with what you said a thought occurred to me, well, this thought occurred to me... what would you say that, the situation which seems to be one of conflicting liberalisms, where it would seem that maybe, when we try to get a right proportion of people represented in whether it's Parliament or the House or Lords or anything else, there seems to be a trend to get the proportion of ethnic minority people, right, let's get 10% or whatever there, but not for the idea that perhaps we ought to have 50% of women. Do you have any comment on that?

Baroness Kennedy

The business of having institutions more reflective of the world out there, seems to me a seriously good thing. It creates much greater confidence and trust in those institutions, if we look at institutions and they look like us and the you know, the real world, then that seems to me a good thing. Getting there is always a problem, and I don't think it's a bad thing if one's saying, when one comes to appointing or creating a panel of people, that one should say, well, look we want this panel to be like the world out there, we must make sure that there are people from all sorts of different bits of it there. The idea of measuring quantities and saying 5% of the population are black therefore we have to have 5% of the people on this ten men, ten person panel seems to me not the way to do it. But what one does want to do is create institutions that are reflecting the world as it is. That I want. How do you go about it, then we can talk about 'til the cows come home, but we have to find ways. And so it goes back to the thing, I'm not keen on quotas, I think it creates backlashes and so on, I think an incredible thing happens where, you know, they'll say well, we ought to have some women on this and you know, on shortlists and so on, and women are now finding that actually they're there almost as make weights, because they're not going to get the job, but they think well, we better have a woman on the shortlist, you know, to make it look good, and that looking good stuff is terrible. So there are problems in changing this thing, but we'll get there and it will stop being as it is now.

Lady Hale

Well, isn't that a good line on which to finish.

Baroness Kennedy

Alright.

Lady Hale

We'll stop there, it isn't going to be as it is now. Thank you so much, you've given us such a rich number of things to think about it, you've done it with your usual style and charm and you've wiped the floor with all the men here present.

Baroness Kennedy

Oh, no.

Lady Hale

In the nicest possible way. Not in any aggressive or horrible way, but just as things should be done. We're most grateful to you. Thank you very much.

[APPLAUSE]

[END]