

On Courage

Millicent Fawcett Memorial Lecture 2018

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Lady Hale, President of The Supreme Court

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On my desk at home there is a remarkable book entitled 'On Courage'. It tells the stories of 28 holders of the Victoria Cross and George Cross – only three of them women. These are uplifting and inspiring tales of physical bravery of the very highest order. I see this as a male model of courage and worthy of great praise. But there is another model of courage – not physical bravery, although that too was often involved, but moral courage: the courage to speak up for and to fight within the law and without violence for what is right and just. That is a female model of courage - which I am sure that Millicent Fawcett had in mind when she said that 'courage calls to courage everywhere'. So I would like to explore that sort of courage in three aspects of the historic fight for women's equality with men: (1) the vote – the centenary of which we celebrate this year; (2) education and entry to the professions, including the law – the centenary of which we celebrate next year; and (3) equal pay – which is something that we still cannot celebrate today.

(1) The vote

Millicent Fawcett was the prime mover in the fight for women's suffrage. She herself was a very brave woman, so it is fitting to spend a little time reflecting on her own particular brand of courage. She regarded herself as lucky – to be born into a large family - seventh or eighth child – and never to have known either poverty or riches. Her father, Newson Garrett, was a merchant in Suffolk, with among other enterprises a malting business in Snape. In her autobiography, modestly entitled *What I Remember*, she relates how he believed himself to be a Conservative but was not in the least conservative in temperament - he embraced everything new. This included supporting his older daughter Elizabeth in her ambition to become a doctor. When he died in 1893, a piece in the *Aldeburgh Magazine* said that 'In Mr Garrett a strong will and unfailing courage were added to a temperament almost overloaded with enthusiasm, energy and activity'. Perhaps for that reason, his daughter Millicent was, as she put it, a suffragist from her cradle. And an outspoken one – she met her future husband, Henry Fawcett, at a party on the day that

news of the death of Abraham Lincoln reached London. Apparently, though only 18 at time, she delivered herself of the opinion that his death was the greatest misfortune which could have befallen the world from the loss of any one man, greater than the loss of any of the crowned heads in Europe. It is hard today to imagine how radical that must have sounded from a young woman in 1865. Her words caught the attention of her future husband, who was blind. He had previously proposed unsuccessfully to her older sister Elizabeth. But his pursuit of Millicent was more successful and they married in 1867.

Henry Fawcett too was a remarkable and brave man. He was not born blind. He lost his sight from a misdirected shot from his own father when they were out partridge shooting. He was determined to show his guilt-stricken father that this misfortune had not blighted his life. So he became hugely successful – as a Professor of Political Economy in the University of Cambridge and as a Member of Parliament – until 1874 for Brighton and then for Hackney. He was a courageous politician in the cause of what we would now call equality and inclusion. In 1873, he successfully moved his own University Bill which removed the last traces of religious exclusivity from the constitution of Trinity College Dublin. He was also a strong supporter of women's rights. When he became Postmaster General in 1880, among many other things, he developed and extended the employment of women there.

Marriage brought Millicent in touch with political circles. One friend, Mrs Grote, explained that she became a suffragist when she discovered that the purse in her pocket and the watch at her side were not her own but her husband's. Millicent had her own illustration of this: her purse was stolen at Waterloo station, the pickpocket was caught and she pressed charges – only to learn that he was charged with 'stealing from the person of Millicent Fawcett a purse containing £1. 18s 6d, the property of Henry Fawcett'.

By then she had started writing. She had also joined the women's suffrage movement. She relates how writing came more easily to her than public speaking. She was terrified by the ordeal of her first speech but scraped through somehow. Her first speech of any length was in Brighton in 1870. That was the year in which women ratepayers were given the vote in local government and school board elections. She spoke regularly at meetings organised by the suffrage movement's five regional centres in London, Bristol, Birmingham, Manchester and Edinburgh. But it became her main occupation in the 1890s after the death of her husband in 1884.

We tend to think that the brave members of the women's suffrage movement were the suffragettes of the Women's Social and Political Union, who were eventually prepared to break the law and suffer the appalling consequences of doing so for the sake of the cause. But the law-abiding suffragists of the National Association of Women's Suffrage Societies were the targets of quite astonishing hostility and violence from their opponents. The suffragists' big technique was to organise marches – the largest of which was the great pilgrimage of 1913. Marches started in Carlisle, Newcastle, the west country, and various towns along the south coast. They made their way to London, holding meetings in every town they passed, spreading the word.

Jane Robinson has chronicled the pilgrimage in her fascinating book, *Hearts and Minds*. She reports that the people in the northern towns and villages along the Great North Road from Newcastle and Watling Street from Bangor, Manchester and Carlisle, were generally interested in what the pilgrims had to say; in the Midlands, they were suspicious and defensive; but in parts of Oxfordshire and Buckinghamshire they were lethal. The same goes for Gloucestershire. In Cheltenham, the pilgrims' banners were snatched by a crowd of several hundred, the poles snapped and thrown away, handbells were rung during speeches so that no-one could hear, the local Minister was hit in the eye by a missile, two pilgrims tried to escape by bicycle but were chased down the street, pushed to the ground and pinned against the railings while their hats and other articles of clothing were torn from them. In Cirencester, students from the Royal Agricultural College 'rushed' the lorry they were using as a platform, some of the students dressed in drag, they tried to upturn the lorry and pummel the speakers, again tugging at their clothes before besieging them in the house to which they escaped. Millicent Fawcett herself witnessed similar incidents in Grantham, the throwing of dead rats, plump with maggots, crushing a male sympathiser, hurling the filthiest obscenities.

Some of this violent opposition was prompted by the activities of the suffragettes – for example, Emily Davison's disruption of the 1913 Derby must have spoiled a lot of people's bets. The suffragettes' militant activities were spurred on by the infamous 'cat and mouse' Act of 1913. This made it much harder for the non-militant suffragists to convince people that they were not militant. But they carried on regardless and with great courage. It was their policy to hold a meeting the day after a riot – to show that they had not been cowed and to get their message across in a more peaceful atmosphere. They deserve to be remembered and thanked, as much as, if not more than, their more militant sisters.

(2) Education and the professions

Millicent recognised that the fight for suffrage was only part of a many-sided movement for women's equality – covering education, equal moral standards for men and women, professional and industrial liberty and political status. She herself concentrated on political status, but she and her circle were also much involved in the fight for women's education.

She was, of course, also a mother – when I was at Cambridge we all knew that in 1890, a young woman had been placed above the Senior Wrangler in the mathematical tripos – that is, had got the very highest marks in the exam. But I certainly did not know that she was Philippa Fawcett, daughter of Millicent and Henry Fawcett. But despite being the best mathematician in Cambridge, Philippa could not get a degree. In *Bluestockings*, Jane Robinson has also told the story of the 1890s campaign for women's degrees. This too aroused astonishingly violent opposition in some quarters. I have a copy of a letter written by Winifred Pattinson (later Dakyns), student at Newnham College, on 23 May 1897, soon after the vote to allow women to take degrees was lost, amid astonishing scenes of violence and abuse. She writes to her mother that:

'Friday was such an intense exciting day here. On Thursday night Miss Clough [principal of Newnham] and Miss Jex-Blake [Girtonian Secretary of the Committee for Women's Degrees] were burnt in effigy by the undergraduates in the market place.' . . . 'All the MAs had to go into the court in front of the University library and there they got cards either with "placet" or "non placet" on them and then they went into the Senate House to vote - the street in front of this court was packed with undergrads and so were the windows of the houses opposite; presently the men began pelting the MAs with oranges, bags of flour, eggs and especially squibs and crackers, each of which went off with a huge report so that it sounded like heavy firing'.

Later on, after the vote was lost, they had an 'excitement' at Newnham College: 'Between two and three hundred undergraduates rushed up to Newnham dragging an effigy of a woman on a bicycle' . . . 'They began to hurl themselves against our precious gates . . . some of the men began to climb in at the windows but the gardeners threw them out' . . . 'then they tore the effigy to pieces in front of the gates and threw the pieces through' . . . 'The gardeners were so indignant

about it – they said that they had never seen men mob women before, and a craftsman was heard to say “Well, I thought the toffs was fonder of the females than that”.

Miss Pattinson found it all awfully funny – one of the men had gone up a ladder which was placed against a tree and pasted a ‘No Women’ placard up there – but a garden boy took the ladder away while he was up there so he had to scramble down and then the boy went up the ladder and tore the placard down. But the excitement was not over: ‘At 10 o’clock they came and fired on us with squibs and broke three windows – what they would have done if we had won I cannot think!’ After that, there was a bonfire and fireworks in Selwyn College just across the road, where every now and then they shrieked out ‘down with women’ – but Winifred thought it most kind of them to provide them with so much amusement – and she was sorry for Girton – two miles down the road – having all the disappointment and none of the fun and excitement. She also felt ‘sad that they hate us so’.

What strikes me is that, although she made light of it, this must have been a terrifying experience for those brave young women bluestockings and their teachers. It took until 1948 – only 15 years before I went up myself - for Cambridge to give women proper degrees. Until then they had to call themselves ‘BA (tit)’ – for titular (but you can imagine the sniggers).

Other battles for women’s education succeeded earlier and do not appear to have provoked quite such violent opposition. But it still took courage to fight them. We have all heard of Gwynneth Bebb’s fight to join the Law Society and become a Solicitor. Perhaps fewer have heard of Bertha Cave, a butler’s daughter, who in March 1903 wrote to the Benchers of Gray’s Inn asking to be admitted as a student, with a view to being called to the Bar. She was the first to do so – Christabel Pankhurst tried Lincoln’s Inn the following year. Her application was rejected on two grounds. First, a single Inn of Court could not admit a woman – their power to admit students and call them to the Bar was delegated to them by the Judges and subject to their control (*R v Benchers of Gray’s Inn, ex parte Hart* (1780) 1 Doug KB 353, (1780) 99 ER 227). Second, that according to two well-known Scottish cases, women were not ‘persons’ within the meaning of the law (*Jex-Blake v Senatus of the University of Edinburgh*, 1873 M 784; *Hall v Incorporated Society of Law Agents*, 1901 F 1059, 1901 9 SLT 150). Those cases were later confirmed by the judicial House of Lords in *Nairn v University of St Andrews* [1909] AC 147. Thus apparently gender-neutral terms relating to membership of the Inns should be read as referring only to males. It took until

1930 for the Judicial Committee of the Privy Council to rule that women did indeed count as 'persons' in the eyes of the law (*Edwards v Attorney-General of Canada* [1930] AC 124).

Nothing daunted, Miss Cave appealed to the Judges, and appeared before the Lord Chancellor and other Judges in the House of Lords in December 1903. The *New York Times* for 5 December (for which reference I am indebted to the Hon Michael Beloff QC) described the proceedings thus:

'Clad in a navy blue walking suit with a bolero of the same material trimmed in white, and balancing a rather piquant black hat on her head, she carried her comely self into the presence of the august Judges. She deposited a purse and a package that looked like corsets on the table, and then pleaded her case. There was no question of ability raised, it was solely a matter of sex. So she told the Judges what other countries were doing for women who desired to practice law.

The Judges listened smilingly, and when Miss Cave was through promptly advised her that there was no precedent for admitting women students at any of the Inns of Court, and that they did not feel justified in creating one. "I wish your lordships good morning." said the little woman frigidly, and picking up her purse and her corsets she quitted the judicial presence and went out in the cold, cold world.'

That decision meant that it was inevitable that Miss Pankhurst's application would be turned down by Lincoln's Inn the next month. Why was there such opposition? Miss Bebb and Miss Pankhurst both had first class University degrees, so there could be no doubt about their intellectual ability. By then, thanks to the pioneering efforts of Millicent's sister, women were able to qualify as doctors. So the old ideas that the law would offend women's delicate sensibilities surely would not wash. (It might of course have offended men's delicate sensibilities about what women should be like, but that's another matter.) The Gray's Inn archives suggest another reason: qualifying for the Bar involved eating a great many dinners – 36 when I was called in 1969 – and it was thought unseemly that men and women should take their meals together, either because the men would vie for the honour of sitting at a woman students' mess or because they would resent the women's presence. The latter attitude prevailed long after women were allowed to join the Inns and become barristers: when I joined the Northern Circuit in 1969, women were still excluded from the Bar mess, and our inclusion was resisted on the ground that we would spoil the men's fun. But these were the sixties and good sense prevailed.

That we could be barristers at all was the result of the Sex Disqualification (Removal) Act 1919. This meant that women could join the Law Society and the Inns of Court, qualify as barristers or solicitors and eventually hope to become Judges. But the early pioneers still faced extraordinary hostility.

Ivy Williams was the first woman to be called to the Bar in 1922: she stole a march on Helena Normanton and the others who joined the Inns of Court soon after the 1919 Act came into force because she passed the Bar Final Examination with first class honours, which gained her two terms' exemption from eating dinners. But in 1904, her complaints about the refusal to admit women to the Bar had been regarded as a 'threat' by the *Law Journal* (34, 1904, 1-2). She had declared that "The legal profession will have to admit us in their own defence... a band of lady University lawyers will say to the Benchers and the Law Society "Admit us or we shall form a third branch of the profession and practise as outside lawyers"". Indeed, she had originally hoped to practise by offering free legal advice to the poor. The *Law Journal* characterised this as 'a futile attempt of a persistent lady to gain admission to the Bar'. Even when the same publication grudgingly marked her call to the Bar in 1922, it noted that she did not intend to practise and from this concluded that the admission of women 'was never likely to be justified by any success they will achieve in the field of advocacy' (tell that to Rose Heilbron, one of the two first women to become King's Counsel, and some of the star women advocates of today!). By the time of Ivy's call she was 42 and she must have felt the moment for practising had passed. Her subsequent career as an academic at St Anne's College (the first female law tutor in Oxford), was also vital work for the advancement of women in the legal profession.

(3) Equal pay

In those days, of course, there was no thought of equal pay for women. Those doing the same work as men – mainly in the public sector – were routinely paid less. Those not doing the same work as men – mainly in the private sector – were segregated into lower paid women's work. The Trade Unions reinforced this – being concerned to protect the levels of male wages. Indeed, they felt themselves compelled to do so. So the story of Anne Loughlin, an early woman trade union official, is another story of remarkable female courage.

Born in Leeds in 1894, her mother died when she was 12 leaving her to look after her younger siblings. Her father died when she was 16 and she became the family breadwinner. She went to work in a Leeds clothing factory for 3d an hour. At the age of 21 she became a full-time organiser for her union – the National Union of Tailor and Garment Workers. She was elected to the TUC general council in 1929 from the organization's women's group. She joined the main leadership of her union in the 1930s and had a number of important roles in the war: she was on the advisory panel for the production of army clothing and served on the Ministry of Labour and National Service subcommittee on the wholesale clothing trade. In 1942 she was only the second woman to be elected as chairman (as it was of course then called) of the General Council of the TUC and the first to preside at the annual conference.

Anne Loughlin's union post involved travel throughout the country, and her task was made difficult by falling wages, rising unemployment, and the hostility of the union men to women members. Union tactics were to hold limited strikes in order to establish union rates and conditions, town by town. It was alleged that when Anne Loughlin appeared in any town, employers immediately called a meeting to plan defensive action. They would be faced by all 5 feet of a severely but stylishly dressed woman with fair hair, innocent blue eyes, and a schoolgirl complexion, who would tell them in an incisive way exactly what she intended to do.

In 1944, the government set up the Royal Commission on Equal Pay and Anne was one of the four women members. The majority of the Commission (including one of the women) agreed with the employers' views on the justification for paying women less than men. They claimed that women were:

- naturally less robust, and subject to the demands of menstruation, pregnancy, child bearing and rearing;
- more prone to sickness absence than men;
- less adaptable, so poor at dealing with sudden crises or changing conditions, and less able to carry out machine maintenance – so requiring more supervision and back-up;
- less committed to the work and of lower 'career value' because likely to leave after a few years on marriage. Those continuing or returning gave priority to home and family;

- limited by legal restrictions on their employment, such as the prohibition of night work in factories and exposure to certain poisonous substances.

For these reasons, women were less efficient, so deserved lower pay.

Three of the four women, including Anne, dissented. They argued that:

- the importance of physical strength was being eroded by modern techniques and machinery; and anyway less than half the pre-war male labour force were employed in the so-called 'heavy industries';
- the claim that women were less adaptable seemed linked to their wartime experience of learning completely new jobs from scratch, with little or no training. There was plenty of evidence to the contrary;
- if in general women tended to leave employment earlier, or have higher absence rates than men, this did not justify different rates of pay at a particular level of skill;
- there was little evidence that women's lower wages reflected their lower efficiency. It was certainly not true of the public services. In occupations with equal piece rates, their earnings were generally lower, but other factors – hours worked, nature of the work allotted, lower average age and therefore experience – meant that women were not necessarily less productive.

It followed that the main cause of women's low earnings was their exclusion from trades in which they could, given training, be efficient; and their weak trade union organisation. Equal pay in a situation of full employment would tend, through competition, to level up their wages in fields like nursing. Opening all occupations to women would increase efficiency because the most suitable applicant would be chosen, regardless of sex.

An important part of the men's argument was that low wages would drive women into marriage which was a good thing. The dissenters pointed out:

‘ . . . the majority seem to have fallen into a major inconsistency. They hold that the introduction of equal pay would tend to exclude women from industry; to be consistent, therefore, they should surely advocate equal pay, for total unemployment would be a more powerful incentive to marriage than mere low earnings.’

Equal pay was adopted by the civil service and in the teaching profession and local government during the 1950s, although not fully implemented until the 1960s. But it was a fundamental principle of the Treaty of Rome establishing the European Economic Community. Legislation came with the Equal Pay Act 1970, originally limited to like work or work rated as equivalent, but later extended to work of equal value. Even now, however, it takes courage to fight for what is right, as the dinner ladies of St Helen's found. They were sent a letter by the employers warning them of dire consequences if they persisted in their claims for equal pay. As the employment tribunal explained:

"The letter . . . contained what was effectively a threat. It spelt out a danger that the applicants might deprive children of school dinners, and that they might cause redundancies among their colleagues. . . . It was more than a matter-of-fact reminder of what might happen if they went on with a complaint. . . . It is directed against people who were in no position to debate the accuracy of the respondents' pessimistic prognostications. The reaction to such a letter may be, even where there is a well-justified belief in the justice of one's case, surrender induced by fear, fear of public odium or the reproaches of colleagues. . . the letter was intimidating."

Not only this, the warnings of dire consequences had also been sent to all their fellow workers in the catering department and incurred for them "some odium" from colleagues in consequence.

As I put it when their complaint reached the judicial House of Lords (*St Helens Borough Council v Derbyshire and Others* [2007] UKHL 6, [2007] 2 AC 31, para 32):

‘This is a classic case of "blaming the victims". The victims of long-standing and deep-seated injustice should not be made to feel guilty if they pursue their claims for justice. But it is all too tempting to try to do so, especially if their success may have far-reaching consequences. Women workers have suffered injustice in the labour market for centuries. This is not only because they tend to have more interrupted working lives than men. They have been paid less than men for doing the same work. They have been segregated into "women's work" which is paid less than men's simply because it is women's work. There is still a gender pay gap which is far larger than it should be.’

It takes courage to stand up to such bullies. Even in an advanced liberal democracy such as ours, there are still battles to be fought, and we must still have the moral courage to fight them – for Millicent’s sake. But just as she pronounced that ‘courage calls to courage everywhere’, we must not forget that there are many other women in the world who are far worse placed than we are and we must reach out to and support them too.