THE AIMS OF THE BOOK

We are delighted and proud to present this wonderful collection of essays marking Lady Hale’s retirement from the UK Supreme Court in 2020. Adding to the tributes paid to her by Lord Reed, Richard Atkins QC, Christina Blacklaws and Dinah Rose QC at the moving valedictory ceremony held at the Supreme Court in December 2019, these chapters, comprising a mix of academic appraisals and personal reflections, take stock of Hale’s remarkable career to date. No one would be so foolish as to imagine that her career has now come to an end. There will no doubt be further chapters to write as her formal judicial retirement in the UK is followed by numerous new projects, both local and international. In particular, as someone who has analysed the law as an academic, helped to develop legislation as a Law Commissioner, and interpreted and applied legislation and developed the common law as a judge, it is fitting that she should now contribute to the making of legislation as a member of the (parliamentary as opposed to judicial) House of Lords. But there is no doubt that her contributions as an academic, Law Commissioner and judge have been extraordinary, and it is those contributions that this volume records and celebrates.

The outlines and highlights of Brenda Hale’s stellar career are very well known: a starred first from Cambridge in 1966; eighteen years as an academic at the University of Manchester (1966–84); co-authorship of a pioneering work of feminist legal scholarship, *Women and the Law*, with Susan Atkins, 1984; the first woman and the youngest person to be appointed to the Law Commission in 1984; appointment to the Family Division of the High Court in 1994; the second woman to be appointed to the Court of Appeal in 1999; the first and only woman to sit on the UK Supreme Court from 2009; and the first and thus far the only woman to have served as its Deputy President (June 2013 to August 2017) and President (September 2017 to January 2020). This makes her one of the most powerful women leaders of our time, one of only a handful of senior women constitutional figures in the UK alongside the Queen, Margaret Thatcher and Teresa May. Over almost half a century of significant social, economic, political and legal change, her law reform and decision-making had an impact on the lives of millions. Her ‘first woman’ status was not merely symbolic but resulted in material changes to knowledge, to the law and to jurisprudence. Her catalogue of firsts is particularly remarkable because at no time was she a ‘safe’ appointment closely resembling her male predecessors. Rather, she was an avowed feminist who strongly advocated for

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1 Available to view on the Supreme Court’s website: www.supremecourt.uk/news/valedictory-ceremony-for-lady-hale.html.
women’s rights, social justice and equality, and for these reasons she attracted controversy as well as plaudits. Nevertheless, Hale not only survived but forged her own path within a series of male-dominated institutions. Her story demonstrates that it is possible to make a difference through the astute use of institutional power, even in the absence of a critical mass of women or a facilitative culture. But it also promotes reflection on the shaping force and boundaries imposed by institutional cultures.

In inviting contributions to this book, we were keen to ensure coverage of each of the different phases of her career. We also wanted to ensure that sufficient attention was paid to her wider institutional and public roles as a judicial leader and her international profile particularly through (although by no means limited to) the International Association of Women Judges. While almost half of the chapters discuss the jurisprudence she developed, primarily on the House of Lords and the Supreme Court, slightly more than half take other angles on her legal lives. The range of relationships that the authors have with her meant that any attempt at a uniform mode of reference to her throughout the book would have been artificial. Instead, we have encouraged the contributors to write about ‘their’ Lady Hale – or Baroness Hale, Brenda Hale, Brenda Hoggett or Brenda, as the case may be. This adds to the rich variety of the chapters and underlines the multidimensional nature of her impact. We have not attempted to produce a word cloud from the combined contributions, but had we done so, there are a number of words that would appear prominently as they recur frequently in the chapters that follow. These include: unique, unprecedented, outstanding and distinctive. In the following discussion, we summarise the many ways in which the authors have identified Lady Hale as having been unique, unprecedented, outstanding and distinctive.

JURISPRUDENCE

First, there are frequent references to the outstanding qualities of Lady Hale’s thinking. Several contributors note her ferocious intelligence, formidable intellect and sharpness of mind, her legal and analytical rigour and the clarity of her thought. Many refer also to her independence of mind and willingness to question established orthodoxies. Her teaching and academic scholarship are described as interdisciplinary, critical and characterised by intellectual openness. As a judge, Lord Kerr (Chapter 13) refers to her exhaustive knowledge of the law, while several authors highlight her characteristically principled reasoning. Alan Paterson (Chapter 12) sums up her judicial approach as being one of principle before precedent, while David Feldman (Chapter 23) also describes how she combined principle with pragmatism. Alongside her clarity of thought, many authors refer to Lady Hale’s clear, accessible, engaging and persuasive writing and expression. These epithets are most frequently applied to her judgments, with Lord Kerr (Chapter 13) describing them as powerful and insightful. But Margot Brazier, Lesley Newton and Alison Raeside (Chapter 6) describe her lectures to undergraduate students at the University of Manchester in the same way, and several others give similar descriptions of her academic writing, her extrajudicial speeches and even, in Rebecca Probert’s chapter (18), her contribution to a 1979 television documentary on the legal status of cohabiting couples.

Several chapters observe the unique position that Lady Hale was in to convert her academic ideas into law reform proposals as a Law Commissioner, and then to interpret and apply the resulting legislation as a judge. In this regard, Probert (Chapter 18) and Felicity Kaganas (Chapter 20) refer to the consistency of her thinking over time (in relation to marriage and cohabitation, and her understanding of domestic abuse, respectively), while
Judith Masson (Chapter 21) and Victoria Butler-Cole (Chapter 28) show how Hale’s judgments supplemented, clarified and filled gaps in the relevant legislation (the Children Act 1989 and the Mental Capacity Act 2005, respectively). In the case of mental capacity law, this included importing aspects of her academic thinking into her judgments where the Law Commission’s proposals had not been taken up by the government. Richard Drabble (Chapter 25) also notes the important contribution Hale has made to welfare law by virtue of her pre-judicial background in the area (described in particular by Mavis Maclean in Chapter 7). Masson (Chapter 21) and Butler-Cole (Chapter 28) further illustrate her harmonisation or proposed harmonisation of the law she had drafted with subsequent developments such as the European Convention on Human Rights (ECHR) and the Convention on the Rights of Persons with Disabilities. On the other hand, Paterson (Chapter 12) describes how, in her final Supreme Court judgment, Hale with characteristic relish overturned one of her own previous decisions from the Court of Appeal, on the basis that society and public policy had now moved on.

INTRODUCTION

A second theme that recurs again and again through the chapters is Lady Hale’s commitment to (social) justice – what Lord Neuberger (Chapter 2) refers to as her exceptionally well-developed social and moral awareness. Numerous authors identify the depth of her understanding and empathy for the lives and structural position of the disadvantaged, marginalised and vulnerable, and her attentiveness to their needs and rights. As Karon Monaghan observes in Chapter 50, this is often evident in how she tells the story in her judgments, in a way that is notably different from that of her judicial colleagues. Others refer to her compassion and humanity. Several note her focus on the practical and human consequences of a decision, with a concern to solve problems, to scrutinise the impact of law (both materially and symbolically) on the most vulnerable, and to develop the law to be more inclusive and protective of the diversity of human experience. Helen Carr and Jed Meers (Chapter 26) show how Hale understood the home ‘unmaking’ implications of a number of national and local government policies and practices and strove to support the home ‘making and remaking’ efforts of those who were subject to these policies and practices, while Sandra Fredman (Chapter 27) provides a sustained analysis of Hale’s promotion of substantive equality through her jurisprudence on article 14 of the ECHR. A number of chapters highlight her consistent articulation of the realities of women’s everyday lives, and of the law’s impact on children.

INTERESTS, CONCERNS AND APPROACHES

Relatedly, many of the chapters refer to Lady Hale’s particular areas of expertise, interest and concern. Family law is her most obvious and well-known specialism, and, within that, she has been especially interested in the development and promotion of the concept of parental responsibility. But other specialisms include mental health and mental capacity law; welfare law; equality, discrimination and human rights law; access to justice; and children and young people’s rights, interests and agency. Stephen Gilmore, for example, observes in Chapter 22 her persistent efforts to shift the judicial gaze to a child’s rights perspective across a wide field. Less generally acknowledged but emerging clearly from a number of the chapters are Hale’s credentials as a constitutional lawyer, concerned in particular with issues of democratic government, institutional accountabilities, and
separations of powers (between courts and the executive, courts and tribunals, courts and local authorities, courts and Parliament, and the executive and Parliament). More generally, she is described as being passionate about the rule of law, and an unswerving advocate for the universality of rights. Her insistence on the state’s legal responsibilities and positive obligations to protect the rights of everyone gives this book its title – with thanks to Judith Resnik whose chapter title, ‘On Personhood for Everyone’ (Chapter 14), provided the inspiration.

As well as subject areas of particular interest to Lady Hale, several of the chapters mention characteristic approaches she adopted to addressing both legal and factual questions. The way in which she would tell the story in a case, centring the lived experience of litigants, and her preference for ground-clearing reasoning from first principles have already been noted. Two other approaches raised repeatedly throughout the book are contextualisation and relationality. In relation to the former, a number of chapters explain that (unlike her judicial colleagues) Hale avoided abstraction and instead consistently situated legal questions within their broader (often international) context, drawing on her deep understanding of the realities of contemporary society. Susanne Baer (Chapter 33) describes this as doing justice not from behind Justicia’s traditional blindfold but with her eyes open. Neuberger (Chapter 2) attributes Hale’s broader perspective, especially on social and economic issues, to her difference in background from the other Supreme Court Justices. But other authors identify this approach in Hale’s earliest academic writings. For example, Daniel Monk (Chapter 8) remarks on the extraordinarily wide range of contextual references in her textbook on The Family, Law and Society (first published in 1983), while Susan Atkins (Chapter 9) and Erika Szyszczak (Chapter 6) separately make a similar point in relation to Women and the Law (1984). Likewise, Hazel Genn and Chris Moss (Chapter 15) comment on her use of empirical research in extrajudicial speeches and writing. According to Feldman (Chapter 23) and Jonathan Herring (Chapter 29), Hale’s contextual approach resulted in decision-making that was nuanced rather than categorical. Relationality refers to a conception of human beings as essentially interconnected, existing within relationships rather than being isolated, atomistic individuals. Associated with this is an awareness of the importance of relationships in meeting individual needs, a valuing of care and caring relationships, and an understanding that autonomy is not something that can simply be exercised; it needs to be actively supported and enabled by state and social institutions (and, likewise, may be undermined or destroyed by them). Although a relational approach might be particularly valuable in considerations of children’s rights and interests, Devyani Prabhat (Chapter 24) demonstrates that Hale took a contextual and relational approach more widely in immigration and nationality law, while Herring (Chapter 29) also focuses on Hale’s relational approach in medical law.

PERSONAL ATTRIBUTES

The authors contributing personal reflections on Lady Hale provide insights into her personality which again yield a series of recurring themes and observations. One of these, especially remarked by Beverley McLachlin (Chapter 5), is her international outlook. This is attested not only by other international contributors such as Baer (Chapter 33) but also by several of the commentators on her judgments, who note in particular her frequent references to the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child. Another is her sense of humour, an enduring theme from all who have seen her ‘up close’, from former students and academic
collaborators to judicial colleagues and the many women judges she has met and befriended in the UK and internationally.

Several authors refer to Lady Hale’s modesty and humility, while many highlight her unpompous, unstuffy, egalitarian approach, her treatment of everyone with the same degree of respect, which finds its obvious corollary in her previously noted concern with ‘justice for everyone’. Likewise, Hale’s openness, approachability and accessibility, identified by Gita Mittal (Chapter 3) and Laura Cox (Chapter 11), find their reflection in David Cobleys portrait of her described in Leslie Moran’s chapter (32). Others note her kindness, generosity, fairness and inclusivity. At the same time, contributors as disparate as Jenny Rowe (Chapter 31), Susan Glazebrook (Chapter 4), Carol Smart (Chapter 6) and Lord Kerr (Chapter 13) describe her as relishing a challenge and as courageous and dauntless.

Many of the chapters identify ways in which Lady Hale has supported, encouraged, empowered and inspired others – both the authors personally, and groups and organisations more generally. These include law students and academics, women lawyers and women judges. Maclean (Chapter 7) documents her sustained support for the *Journal of Social Welfare and Family Law* and its editorial board, while Genn and Moss (Chapter 15) outline her less-high-profile support over many years for the Legal Action Group, National Family Mediation, RCJ Advice and a range of other organisations and activities providing access to justice or pro bono services. In a recent chapter on Lady Hale in a book on *Towering Judges*, we argued:

Lady Hale stood out but did not stand in isolation from her judicial peers or the legal or wider community. In contrast to the ‘essential individualism’ displayed by, and maybe expected of . . . other towering judges . . . Lady Hale created opportunities and space for others to flourish and realise their own potential. Nor was she interested in ‘tower[ing] over [her] peers to distinguish [herself]. Rather, she used her institutional position to redistribute power in several ways and to build ladders so that others, too, might scale the walls.2

This summation is amply attested in the chapters in this volume. In addition to her encouragement and active sponsorship of many people and organisations, a number of contributors refer to her preference for and success in working collaboratively with others, while Paterson (Chapter 12) describes her as a judicial consensus-builder. Of course, these accounts all illustrate dimensions of Lady Hale’s own relationality.

In our analysis of Lady Hale as a towering judge, we argued that her feminism was central to her praxis and that she therefore demonstrated a particularly feminist way of being a towering judge. Several of the chapters in this volume also observe the centrality of her feminism to various aspects of her academic, law reform and judicial careers. Lord Kerr (Chapter 13) and Catherine O’Regan (Chapter 16) describe her, rightly, as a trailblazer for women, but as a feminist her commitment to gender equality and women’s rights went well beyond this. This is seen, for example, in her efforts to include women’s voices in law and her promotion of judicial diversity. In her chapter on financial remedies on divorce (Chapter 19), Alison Diduck illustrates Hale’s sustained concern that the law should provide the conditions to enable women’s autonomy both within marriage and following divorce, while also noting her nuanced, relational, contextualised and substantive (and, Herring adds (Chapter 29), embodied) understanding of autonomy. Both Neuberger (Chapter 2) and Cox (Chapter 11)

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say that Hale felt responsible for acting as a role model for other women, while Paterson (Chapter 12), among others, observes her conscious intention to stand out as a woman in the House of Lords and the Supreme Court, and her embrace of the task of bringing a different experience and perspective to the court and making a feminist mark.

LEADERSHIP AND IMPACT

So, to what extent was Lady Hale successful in making a mark? A number of the chapters refer to her leadership and institution-building, and the vision and energy she brought to those roles. These include Maclean (Chapter 7) on the *Journal of Social Welfare and Family Law*, Linda Mulcahy and Peter G. Harris (Chapter 10) on Hale at the Law Commission, Cox (Chapter 11) on the UK Association of Women Judges, and Paterson’s and Rowe’s chapters (12 and 31, respectively) on the UK Supreme Court. John Eekelaar (Chapter 17) discusses the leading part she played in the reorientation of the aims and character of family law from ‘welfarism’ to ‘rights’, while Genn and Moss (Chapter 15) highlight her leadership of the Nuffield Foundation’s grants programme, which resulted in a major expansion and new directions for research in family law and access to justice.

Numerous authors detail Lady Hale’s influence and impact, not least in the areas of substantive law discussed in Chapters 17 to 30. In this context, it is interesting to note the cases which are referred to most frequently across the different chapters. In an interview with *The Guardian* on her retirement,3 Lady Hale nominated three Supreme Court cases as her ‘desert island’ judgments: R (on the application of Miller) v. The Prime Minister4 (Miller No. 2); ZH (Tanzania) (FC) v. Secretary of State for the Home Department;5 and Yemshaw v. London Borough of Hounslow.6 These three judgments are indeed mentioned by several authors, and in the order of priority she gave them: Miller No. 2 in seven chapters, ZH (Tanzania) in six chapters and Yemshaw in five chapters. However, the most frequently mentioned of Hale’s judgments is R (on the application of Carmichael and Rourke) v. Secretary of State for Work and Pensions,7 which appears in eight chapters. This was a case about the effects of the Coalition government’s cap on housing benefit, popularly known as the ‘bedroom tax’. Various categories of claimants argued that the application of the bedroom tax in their circumstances violated their right to non-discrimination under article 14 of the European Convention on Human Rights (ECHR), in conjunction with article 8 and/or article 1 of the First Protocol. The case was significant doctrinally in terms of the test to be applied in determining whether discrimination was justified, and it was also significant politically as a challenge to the government’s austerity-driven welfare reforms, which had serious adverse effects for many people reliant on state benefits, the majority of whom are women. In her dissenting judgment concerning a claimant, A, who was a victim of domestic violence occupying a house which had been adapted for her protection under a sanctuary scheme, Hale delivered what we have previously termed one of her ‘feminist set pieces’.8 While the majority of the court expressed sympathy for A but considered that the possibility of

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discretionary housing assistance from the local authority meant that A’s rights were sufficiently protected, Lady Hale provided a detailed and empathetic account of A’s experience as a victim of violence which demonstrated why the replacement of secure housing with the uncertainty of a discretionary payment substantially undermined A’s safety, exacerbated her trauma, and hence could not be justified in the circumstances. Hale would also have found that the Secretary of State breached his Public Sector Equality Duty under the Equality Act 2010 in A’s case.

Two other of Hale’s dissents in welfare reform cases receive frequent mention: R (on the application of SG) v. Secretary of State for Work and Pensions9 and R (on the application of DA) v. Secretary of State for Work and Pensions.10 Both cases concerned the application of the benefit cap to lone parents of young children. In SG, while the majority upheld the regulations, Hale held that their discriminatory effect on this group was not justified because the best interests of the children affected had not been properly taken into account. In DA, she similarly held the discriminatory effect of the revised regulations to be unjustified because the ‘incentive’ to work more than sixteen hours per week in order to escape the cap would result in severe damage to the family lives of very young children and their lone parents.

In Lady Hale’s specialist area of family law, the most frequently cited case is Stack v. Dowden11 in six chapters, followed by Radmacher v. Granatino12 in five chapters, Re D (A Child) (Abduction: Rights of Custody)13 in five chapters, and Miller v. Miller; McFarlane v. McFarlane14 in four chapters. It might not be surprising that several family law cases receive frequent mention given that we devote six chapters to Hale’s jurisprudence on family law and children’s rights. However, it is notable that these mentions are not restricted to the specific family law chapters. Indeed, Re D is cited by two international contributors (Glazebrook (Chapter 4) and O’Regan (Chapter 16)) and by Genn and Moss (Chapter 15) in relation to access to justice, as well as by Eekelaar (Chapter 17) on family law and Gilmore (Chapter 22) on children’s rights.

The final frequently cited judgment in the book is Ghaidan v. Godin-Mendoza,15 a housing law case on equality for same-sex couples. Although Hale did not write the leading judgment, her concurrence is memorable for its firm, clear and incisive explanation of exactly why ‘[t]he traditional family is not protected by granting it a benefit which is denied to people who cannot or will not become a traditional family’, and why discouraging homosexual relationships generally ‘cannot now be considered a legitimate aim’.16 It is notable that this judgment was written in her first few months in the House of Lords – it was her tenth published judgment as a Law Lord. She was clearly starting out as she meant to continue, and the repeated references to the judgment show how well it has stood the test of time.

All of these frequently mentioned cases are from the House of Lords or the Supreme Court, and that is also not surprising. These are the cases that have the highest profile and the greatest precedential value. But it is interesting to observe that the earliest of Lady Hale’s cases cited date from 1995, 1997 and 1998 when she was a judge of the Family Division of the High Court.

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16 Ibid [145].
The earliest case, Re S (Hospital Patient: Court’s Jurisdiction),\textsuperscript{17} was a case on mental capacity which, Butler-Cole observes (Chapter 28), followed closely on her recent work on the subject at the Law Commission. In two other instances, she was ‘acting up’ in the Court of Appeal, and both are early examples of feminist judgments. In Re D (Contact) (Reason for Refusal),\textsuperscript{18} discussed by Felicity Kaganas (Chapter 20), she attempted to call a halt to the judicial demonisation of mothers who were deemed to be ‘implacably hostile’ to contact by observing for the first time in a reported case that mothers’ opposition to contact might be based on genuine and rational fears for their own safety and that of their children. In SRJ v. DWJ,\textsuperscript{19} discussed by Alison Diduck (Chapter 19), she articulated, again for the first time, the theory and rationale for compensation for relationship-generated economic disadvantage in the division of matrimonial property on divorce, which would find its way into law as one of the three principles of property division in the Miller, McFarlane case. The other two early cases appear in Kate O’Regan’s chapter (16) on references to Lady Hale’s judgments by South African Courts.\textsuperscript{20} Both were decisions under the Hague Convention on the Civil Aspects of International Child Abduction 1980. Their citation indicates that, even as a first instance judge, her expertise and authority in this area were recognised internationally.

But there are many other instances of Lady Hale’s impact beyond her influence on English (and foreign) legal doctrine. Both Atkins (Chapter 9) and Szyssczak (Chapter 6) refer to the impact of her academic writing, especially of Women and the Law. Indeed, the Brenda Hale Bibliography we provide alongside the Table of Cases and the Table of Legislation, which catalogues references throughout the book to Hale’s academic writing and speeches, indicates just how extensive those references are. Apart from the remarkable number of reports and working papers produced during her time at the Law Commission and discussed by Mulcahy and Harris (Chapter 10), the bibliography includes six books (three of which ran to multiple editions), sixteen journal articles and book chapters, and thirty speeches. A glance at the listing of speeches on the Supreme Court’s website\textsuperscript{21} gives an indication of just how active, accessible and publicly engaged she was as a Justice of the Court, and even more so during her time as Deputy President and then President. In our article on ‘Judicial Leadership on the Supreme Court’,\textsuperscript{22} we noted that up to the end of the 2014–15 judicial year, Lady Hale had published more speeches on the Supreme Court website than any Justice other than Lord Neuberger.\textsuperscript{23} By the time of her retirement in 2020, we have no doubt that she would have outstripped all of the other Justices past and present. The scale of her community outreach activities clearly placed her as a leader of the Court in this regard from its inception.

Other aspects of Lady Hale’s influence and impact include Susan Atkins’s (Chapter 9) reflection that her experience of working with Hale influenced her own later practice as a policymaker and ombudsman. Mulcahy and Harris (Chapter 10) observe the enduring impact of her work at the Law Commission – something not many Law Commissioners can claim quite so clearly or extensively. As a judge, several of the international contributors mention the impact of her decisions in jurisdictions beyond the UK. Other authors notice how often Hale’s dissents and criticisms of the law were later vindicated by legislative amendments, decisions of the European Court of Human Rights and other forms of

\textsuperscript{17} Rosemary Hunter and Erika Rackley, ‘Judicial Leadership on the Supreme Court’ (2018) 38 Legal Studies 191.
\textsuperscript{18} ibid 214.
\textsuperscript{19} See www.supremecourt.uk/news/speeches.html.
\textsuperscript{20} See www.supremecourt.uk/news/speeches.html.
\textsuperscript{21} www.cambridge.org
acknowledgement. Lord Kerr (Chapter 13) pays tribute to her impact in shifting the law away from male-dominated views, and also identifies her influence on the arguments made by counsel in cases coming before the Supreme Court. In his view, by providing a receptive audience for arguments on behalf of the marginalised, vulnerable and disadvantaged, Hale empowered the advocacy of counsel representing such litigants. Genn and Moss (Chapter 15) point to improvements in access to justice as a result of her judgments, while Drabble (Chapter 25) sums up by observing the impact of her judgments on many people’s lives. At the same time, some of the authors highlight the limits on the ability of a law reformer and judge to achieve change, for example where she was unable to persuade other judges to agree with her analysis, whether to reach a majority in particular cases (as discussed by Paterson (Chapter 12) and Feldman (Chapter 23)), to have her decisions upheld on appeal (as discussed by Masson (Chapter 21)) or in relation to an area of law in general (as discussed by Diduck (Chapter 19) and Kaganas (Chapter 20)). Further, Kaganas (Chapter 20) notes that where implementation of the law relies on actors who are resistant to the aims of legislation or a particular decision, then the outcomes can be less than satisfactory.

This leads to consideration of the instances where Lady Hale attracted controversy and criticism. Atkins (Chapter 9) notes that an early paper on marriage resulted in a journalist who heard it labelling her an enemy of the family. Similar opprobrium followed some of the reports and proposals she produced at the Law Commission. The media outrage at the Law Commission’s proposals for no-fault divorce, and the personalisation of that outrage in the figure of Hale, are well known. But Mulcahy and Harris (Chapter 10) also recall the reception of her draft Bill on decision-making for mentally incapacitated people, which was wrongly portrayed by the tabloid press as advocating legalised euthanasia and organ-snatching. And Laura Cox (Chapter 11) outlines the hostile response from male (and some female) judges to the establishment of the UK Association of Women Judges. Of course, much of the criticism was directed towards Hale’s feminism and this came to the fore again upon her appointment to the House of Lords – thereby confirming the validity of feminist critiques of male-dominated institutions and the continuing need for feminist advocacy of women’s equality.

More recently, some of Lady Hale’s judgments attracted criticism from a variety of sources. Several authors mention academic criticism of her decisions in the constructive trusts cases of Stack v. Dowden24 and Jones v. Kernott,25 which adapted the law of trusts for the determination of the property interests of former cohabitants. Masson (Chapter 21) and Gilmore (Chapter 22) also refer to academic criticism of some of her child protection judgments, which were thought to be insufficiently protective of children (e.g. Re S-B (Children)26 and Re J (Children) (Care Proceedings: Threshold Criteria)27) or of parents (e.g. Williams v. London Borough of Hackney28). Nonetheless, it must be noted that these decisions also had strong academic supporters. Other decisions proved controversial with different audiences. Some of her Supreme Court colleagues found her judgment in R (on the application of McDonald) v. Royal Borough of Kensington and Chelsea29 hard to stomach, and expressed their disagreement in unusually vehement terms. Paterson (Chapter 12) also identifies cases such as O’Brien v. Ministry of Justice30 and P v. Cheshire West and Chester Council 31 which

24 [2007] UKHL 17.
had huge financial consequences for central government and local authorities, although the latter decision is praised by several authors in this volume. Finally, there has been the legal and political controversy surrounding Lady Hale’s constitutional decisions, most notably Miller No. 2, although once again, as Moran (Chapter 32) observes, this decision was as much praised by those who agreed with it politically as criticised by those who did not. Several of the authors here rise to Lady Hale’s defence against some of these controversies. Lord Kerr (Chapter 13) argues that she always maintained an appropriate line between legal reasoning and the pursuit of political or policy goals, and between the roles of the executive and the judiciary. While Hale did not shy away from controversial topics in her extrajudicial speeches, Genn and Moss (Chapter 15) document the care that she took to avoid the expression of a personal view. And in discrimination law cases, Monaghan (Chapter 30) describes her promoting equality to the best extent possible within the parameters of the law, while sometimes being constrained by it to arrive at a result which she clearly considered to be unsatisfactory.

CONCLUDING THOUGHTS

It would be surprising indeed – and rather disappointing – if someone with such a long and distinguished career, such a range of activities and such a variety of legal lives as Lady Hale should not at times divide opinion. Nor is it easy to sum up that career – or to do justice to the great breadth of perspectives encompassed within this volume – in a few short sentences. Rather than attempting to do so, we turn to the last section of the book to draw out a final theme which emerges from those chapters, that of Lady Hale as simultaneously an outsider and an insider, as someone who shook up institutions – the legal academy and legal scholarship, the Law Commission, the law and the judiciary – but at the same time deeply respected those institutions and was deeply committed to their fundamental values. She set out not to destroy them but to ensure that they actually delivered on their promise of justice for everyone.

This point is in fact introduced early in the book by Celia Wells and her co-authors (Chapter 6). Wells observes that Hale was an exceptional academic who saw beyond the traditional curriculum and narrow objectives of legal education as professional training, while Brazier, Newton and Raeside (Chapter 6) add that her modernising tendencies and her embrace of scholarship not confined to black letter law helped to fan the winds of change in law schools, but that her skills of meticulous legal analysis remained the foundation stone of all of her work. Fast forward forty years and Jenny Rowe (Chapter 31) describes the transformation of the Middlesex Guildhall into the new home for the Supreme Court as a combination of continuity and change. The change, importantly, included incorporation of the presence of women, and a beneficial infusion of Lady Hale’s egalitarianism, but there was continuity with legal tradition as well. In a similar vein, David Cobley’s portrait of Hale, discussed by Leslie Moran (Chapter 32), is replete with traditional symbols of office but is also different from the other portraits hanging in Gray’s Inn Hall. Sitting on Hale’s desk in the portrait is a container holding practical red biros, recalling the comments made by other authors about her unstuffiness and her concern with the everyday reality of women’s lives. And it is also unconventional in that, unlike the portraits of her male predecessors, she is smiling. The smile is picked up by Susanne Baer (Chapter 33), who notes that a smile can...
mean many things – context is important in visual as well as legal interpretation! When the smile is combined with the other, very serious, attributes of her office, it signifies not a feminine stereotype but a welcoming openness, an infusion of warmth, an indication that justice is indeed for everyone ... and it also signifies her much-remarked-upon sense of humour.

Hence, we have chosen to end the volume with a smile. The ‘Music to Honour Lady Hale’ was sung in her honour at an event at Yale Law School in 2017, shortly after she became President of the Supreme Court. It would have been sung again at the event we were planning in March 2020 to mark her retirement from the Supreme Court and to bring together the contributors to this volume, had Covid-19 not intervened to put a halt to the festivities. While it presents a light-hearted perspective on Lady Hale’s influence and impact, it represents another way in which she can be seen as unique, unprecedented, outstanding and distinctive, and another example of her combination of continuity and change – new words to an old tune. We hope this volume will bring enjoyment as well as reflection not least to its subject but also to the many students and practitioners of law – past, present and future – who, whatever their opinions of Hale’s legacy, may be interested in getting beyond the headlines and learning more about the jurisprudence and legal lives of this remarkable woman.