

Radio Scotland, 14 April 2024, Baroness Helena Kennedy discussing misogyny

<https://www.bbc.co.uk/sounds/play/m001y9m7> (at 1:12:20)

Fiona Stalker

The time is 12 minutes past 11. Just reminding you're listening to the Sunday show, I'm Fiona Stalker, it is so good to have you with us this morning. Now, does Scotland's legal system have a misogyny problem? While just this week a rape survivor who complained about the way a lawyer behaved towards her in court said she'd been vindicated after he was found to have abused his position. Ellie Wilson claims she was subjected to personal attacks by defence advocate Lorenzo Alonzi and felt blamed for being raped. I spoke to her on Drivetime about what she went through.

Ellie Wilson

I would describe what I experienced in court as being emotionally abused all over again. The person who raped me was someone I was in a relationship with, it was someone that I loved very much, and that was very hard for me to come to terms with. But then to be told in court that you know, this all happened because there's something wrong with you, that you're at fault here, that was awful and it was really hard for me to cope with.

Fiona Stalker

Ellie Wilson there, rape survivor and campaigner. Well, Baroness Helena Kennedy KC led an inquiry into misogyny in Scotland, I spoke to her earlier.

Helena Kennedy

At the extreme end you've got the failure, of course, in rape cases, and it's in Scotland as well as in the rest of the United Kingdom, you know, the problems of getting convictions or even getting to a stage of prosecuting, often is difficult. And, that's partly to do, I mean, at the end of the day, it comes largely to do with attitudes of mind. And we're still struggling with that. And we're struggling with it in our wider society, but it still exists inside the interstices of our institutions and the folk who inhabit them. And our judiciary at the top end is still largely male and it's been configured around male experience and it's one of the reasons why it so badly fails women. So the inquiry was to look at some of this stuff. Now, in the end, one of the things that we were looking at more regularly was hate crime because in the context of the hate crime bill that we were looking at, the creation of hate crime, a hate crime solution for women because women were left out of that piece of legislation. And so my recommendations were to actually create a specifically a bill relating to misogyny and with misogyny in its title, so that women felt there was law that specifically dealt with their experience and that there was some way of addressing the stirring up of hatred against women, the abuse that women are now experiencing, even more than in the past, because social media has disinhibited so many men, about what they can say to women, and they now feel that they can say in the public square as well as online. And so that was what came through in the inquiry. And I think it's really about...a lot of this is going to be changed by having good sex education in schools, good discussion inside schools about how we should relate to each other, how you conduct proper discussions and areas of difference, and how that can be done in a way that is respectful of the other always. And we've become, it's become ugly, the way in which public debate and challenge takes place, it's become so, so violent, the very language that's used.

Fiona Stalker

And Baoness Kennedy, I spoke this week to Ellie Wilson, and you mentioned rape trials there, Ellie's, a rape survivor who complained about the way a lawyer behaved in court. She says she's been vindicated because he was found to have abused his position, he questioned her mental health. How widespread an issue is this, do you think, this type of behaviour?

Helena Kennedy

This is one of the things that I have written about, which is that we put restrictions on the cross examination of women about their sexual history, it used to be that, you know, the barrister representing a man accused of rape would invariably try to suggest that the young woman was promiscuous, and as you slept with everybody, and if you sleep with Charlie, and so on, therefore, you're going to be sleeping with every other guy in the vicinity, as if women haven't got the ability to make selections about who they might want to have intimacy with. And that limitation meant that defence lawyers had to look for something else to attack women with and one of the ways of doing this was by suggesting a woman was flaky, that she couldn't be relied upon and that the truthfulness of her account must be called into question because of her mental health. And so accessing information about someone having had therapy, having had at some stage some kind of perhaps breakdown when they were a student or something, those things then were suddenly, I saw it happening, being dragged into the courtroom. And judges have a responsibility to hold, to constrain this stuff. And when anybody wants to cross examine about anything to do with anyone's past history or anything, or medical history, they should be applying to the judge and outlining the nature of the cross examination, in the absence of the jury, and applying to use such information. And that will be very rare that it should ever be allowed. Obviously, if a woman had previously made false allegations against a whole string of people in other cases, then that's something that you'd want to have placed before a jury because it would suggest that sometimes people do have some deep seated problem which makes them fantasise about stuff. But it's pretty rare. I mean, honestly, those sorts of suggestions in courts should be constrained by the judge, and somebody that should be stopped from even considering it. And it should be a requirement that you apply to the judge if you want to step outside of the normal bounds of cross examination and start personalising it to the history of the particular woman, complainant. So she was right, the woman was right to complain, absolutely.

Fiona Stalker

The other observation that Ellie Wilson made was that there was a boys club culture within the legal system. Interestingly, Dr Charlotte Proudman, who's a women's rights barrister, agreed very much that that was the case not just in Scotland, but throughout the UK, do you think there is still a boys club culture within the legal system?

Helena Kennedy

All those areas of our lives which were male exclusive have that sense of camaraderie and it operates in particular places, I think. I mean, I think the criminal bar is particularly machismo in the way in which things are conducted. And for example, we had to in the English system, and I think it operates in Scotland too, is that there are now ways in which, for example, lawyers who are going to be involved in cases involving cross examination of children have to have special certificated training for doing that. And I think that we should be requiring it if people are going to be dealing with any cases of a sexual nature, about the appropriate way

in which you cross examined someone about it. And so I think there is a particular way in which some of the men who practice in the criminal bar can behave. But I think that's disappearing. I mean, certainly, I think that increasingly, and it's important that we expose it and that we call it out when we see it, when we come across misogyny and call it out with judges, you know, when judges are patronising to women in the court. It should be, it's, you know, I always remember that I once was doing a case in which I said to the judge, I asked after the jury left at lunchtime, I said, Would you wait behind I'd like to have a word with you. And I said, I felt that you spoke to me in an inappropriate way in front of the jury, because he was very short, and I said, I'm old enough to be the mother of some of the people on this jury and I really do not like the way that you spoke to me.

Fiona Stalker

How did he react?

Helena Kennedy

He nearly passed out. I absolutely...

Fiona Stalker

Wasn't used to being called out?

Helena Kennedy

Absolutely not. They're not used to being called out.

Fiona Stalker

Just finally on this issue. Given the misogyny law consultation that you're involved in, I spoke to Jean Freeman who was an SNP minister obviously, former Health Secretary, on this programme, she thought that misogyny should have been included in the recent hate crime legislation, given what had happened with the hate crime legislation, given the controversy it stirred up and how it's been implemented and she said, you know, various misunderstandings. Do you agree with that? Do you think misogyny, and hindsight's a great thing, misogyny should have been included in the original hate crime legislation or not?

Helena Kennedy

You've got to remember the history of this. The problem arose because quite a number of the parliamentarians felt that the characteristic for describing women should be sex and that's what's in the Equality Act in England, and across the United Kingdom. The advice given by Lord Bracadale, because what the Scottish bill had in it was gender, covering women, and that would have meant that it covered transwomen too. And so there was a great controversy around should the word that was being used be sex or should it be gender. I think it could have been sex and gender, you could have actually had an oblique, sex oblique gender. Lord Bracadale advised gender, and in fact, he was using the terminology that's used for hate crime law in the United States where the characteristic for women is used is gender. And it's an inclusive thing, which is that it means women but it also means those who are perceived to be women. And you've got to remember that 'perceived to be' is what, I mean for example, in racism or in the characteristic of religion, you can be convicted of the aggravated offence of an assault against someone because they are a Muslim, when in fact the person isn't a Muslim at all but is a Sikh, and so it's what the person, the hatred has to be, come from, what the offender thinks. And so if the offender thinks that somebody

is a woman, even if the person is a transwoman, then that's why Lord Bracadale felt that gender was a better word to use rather than sex and biological sex, because you could have someone being misogynistic towards someone they perceived to be a woman.

And so when I started looking at it, I mean, I wasn't going to just rehearse what Lord Bracadale had done, and decide whether it should be sex or gender, I thought this is an opportunity to create a bill which will do more and be much more specific about trying to address something which is actually experienced by over 50% of the population, which is that there isn't a woman who can't tell you of instances in which they have been harassed or abused, or experienced a sense of fear at the hands of men in public spaces. And so it seemed to me a good opportunity to deal with misogyny and to give it a standalone piece of legislation. And I think that women should welcome that as something that where we should be creating an offence of stirring up hatred against women. And stirring up is about, and it's something that's happening just now and you're seeing it happening with those Tate brothers talking about women in the most derogatory of ways, of saying that women are secondary to men and that their purpose is to be servicing of men's needs and requirements, particularly sexually. All that language is being fed online to boys and young men. And so I think that we should be concerned about the stirring up of hatred against women and an attempt to keep women very much in their place and the sense of entitlement being created amongst men about what they can expect from women. I think that we have to be much more on to that kind of behaviour and dealing with it, and a large part of that will happen in schools and in education, but some of it has to happen by letting it be known that there are lines that are crossed which may bring down the law on your head.

Fiona Stalker

That was Baroness Helena Kennedy KC there, the Labour peer.