

## The Vanishing Act of Miss Bertha Cave

Bertha Cave is enshrined in historiography: the woman who, in March 1903, applied to join Gray's Inn and was rejected because of her sex. She appealed that rejection and appeared as a litigant in person before the appeal tribunal of the Inns of Court, sitting in the Moses Room of the House of Lords, chaired by Lord Halsbury, the Lord Chancellor. That appeal would later be used as a means of preventing future women would-be lawyers from entering the legal profession.

Her name is 'visible' and yet, the actual woman remains invisible. Many books mention her name, but only for a couple of sentences or at most a paragraph, and often the material is incorrect. The spotlight is directed on her as if she was a lone, solitary agent, rather than focusing on her interactions and the social and political context in which she lived. She becomes only a would-be woman lawyer, a failure, 'unsuccessful', rather than her whole story.

### **Who was Bertha Cave?**

Bertha Cave's challenge to the legal establishment was extraordinary. No woman had ever made such a direct challenge in England before (although Margaret Hall had in Scotland: see *Hall v Incorporated Society of Law-Agents* (1901) 3 F 1059). What makes her challenge even more incredible is that she was from the lower classes. She was the daughter of a servant.

Bertha Cave was born in late 1881 in Sevenoaks, Kent. The 1881 census reveals that her parents were living in Brasted Lodge, Brasted, Kent (home of William Tipping JP, 1816–1897, archaeologist, Quaker, Conservative MP, corn merchant and railway director). Her father was born in Northamptonshire in 1844, the son of a 'labourer'. Her father's occupation was recorded as a 'Butler/servant', but her mother is not recorded as having any occupation. This is not the background one would expect of a would-be-barrister in the 19th century. Her parents were from the working classes, but as a butler her father would have

been from the top of the serving class. Statistics on barristers' class in the early 1900s are hard to obtain, but Richard Abel (*The Making of the Legal Profession*, Beard Books, 1998) records that three quarters of a 10% sample of all men living in 1885 who had ever been called to the Bar were from urban middle and upper-middle classes.

The 1901 census records Bertha as living at 14 Temple Road, Croydon, with her mother (the 'head of the household'), her brother and two lodgers. Her father is not registered there, but a later newspaper report of a court case reveals that her father gave his address as the family address in Croydon. We can assume from that that they were not separated, rather living separately for work. Newspaper articles written in 1903 about Bertha Cave's attempt to join the Bar gave no indication as to her background, unlike Ivy Williams who was often described as a solicitor's daughter.

### **Bertha Cave's application to join Gray's Inn**

It is unknown why Bertha Cave held an ambition to be a barrister or how she came to be suitably qualified. Also undiscovered is how she had the confidence to make such a challenge or what support she had. None the less on 3rd March 1903 she applied to Gray's Inn to be admitted as a student member. She wrote on her application: 'I am aware that my application is most unusual and no doubt without precedent, but trust that the Masters of the Bench will give it their serious consideration and I should, in the event of a favourable reply, be pleased to conform to any special rules they may think fit to impose.' Her application was considered during a meeting of the Benchers at Gray's Inn on 13th March and, while it was supported by Master Rose and seconded by Master Macaskie, the decision was adjourned and referred for further consideration to a Pension committee.

The Pension committee sat on 24th April and considered whether it had the power to admit women as students. They decided that the regulations on details of dress and exercise, according to their ordinary and natural sense, indicated that males, and males alone, were admissible as students. They concluded that when the regulations were read in the light of the uniform and uninterrupted usage which had for so long followed them, they appeared to be conclusive against the power of their Society to admit women for the purpose of being called

to the Bar. They referred to various legal cases (none of them on point); and, so, despite her two supporters, Bertha's application was refused.

She then took an extraordinary course of action: she appealed. The appeal tribunal hearing was heard in the Moses Room of the House of Lords on 2nd December 1903. Bertha was unrepresented when she faced a formidable group of judges. She argued: 'I would urge in support of my case that, although there are no rules for the admission of [women] students, there appears to be none against', and pointed out that there were women lawyers in other countries. Despite her persistence in asking the judges for legal authority as to why they were unable to admit her, the judges countered by demanding that she provide precedent that they could admit her. As no woman had ever been admitted to the Bar, she could cite no such authority. Her appeal was rejected, and she spoke the final words: 'I am very disappointed'.

There was considerable newspaper interest in her story. The *Evening Post* of 4th December 1903 reported that the hearing had lasted just five minutes. It focused largely on her appearance:

'[Miss Cave] presented a charming appearance as she tripped through the lobby on her way to the Moses Chamber. Her lither, slight form was inhabited in a short blue walking skirt, with open coat of the same material, showing a light blue blouse underneath. Perched on her raven-locked hair was the smartest hat trimmed with black and white pom-poms. The only touch of legal austerity was a stand up collar. Below her skirt appeared a dainty pair of very high-heeled boots. A fresh blush suffused her pretty face as she tripped along and her dark eyes flashed with determination.'

This is a description of a fashionable, modern, determined woman. She is confident in her dress and would have appeared attractive to other women. She was not, of course, attractive to the judges. She understood this 'unattractiveness' and articulated it in a newspaper interview (*The Rugby Advertiser*, 26th January 1904), when she said that the exclusion of women from the professions had a bad effect on the general position of women, and that the legal profession was afraid of competition. She had played on this fear in another interview (*The Gloucestershire Echo*, 16th January 1904), when she threatened to become an 'outside lawyer'. These were general law offices which provided legal skills to both

solicitors and barristers. As they were outside the legal profession, they had the advantage of being able to advertise. (One woman, Eliza Orme – see L. Howsam (23rd September 2004), ‘Orme, Eliza (1848–1937), social activist and lawyer’, *Oxford Dictionary of National Biography* – was already working in this role.)

Further press reports quoted Bertha Cave as considering joining Middle Temple (*St. James Gazette*, 15th November 1904), but not contemplating becoming a solicitor, as it was ‘not [as] desirable for women as the Bar’ and that it lacked both ‘dignity and refinement’ (*The Daily News*, 8th April 1904). No newspaper questioned her class, and, in fact, she gave her hobbies as ‘golf and hunting’ (*The Croydon Guardian and Surrey County Gazette*, 23rd January 1904). However, they did question her ability to actually practise, not because of her sex, but because of her nervousness when public speaking during a debate with Christabel Pankhurst (*Sheffield Daily Telegraph*, 22nd January 1904), while Pankhurst was described as an ‘excellent’ speaker.

Bertha Cave never did apply to the Middle Temple, and, apart from an appearance as a guest of honour at a women’s movement dinner (*The Daily News*, 24th December 1903, which reported that she looked ‘girlish’) hosted by Lady Strachey (‘Strachey, Jane Maria, Lady Strachey, 1840–1928, suffragist’, *Oxford Dictionary of National Biography*), she disappeared from women’s struggle to join the legal profession. She did briefly appear in the press in November 1904 when she ‘represented’ her father in a civil dispute. Her father was being sued as her guarantor for the non-payment of a bicycle which she maintained was defective. It made the headlines (for example, *St. James Gazette*, 12th November 1904) because she appeared in court robed in ‘cap and gown’ and attempted to sit in counsel’s benches at the City of London Court. She is reported to have arranged her papers in the correct legal style, but when she rose to make an application on her father’s behalf, a Mr Harry Strouts, solicitor, interposed saying: ‘I am sorry but I feel bound to object to the Lady being heard from counsel’s benches’. She gathered up her papers and moved to the witness box. They lost.



### The Lady vanishes

After November 1904 Bertha Cave vanished from public record. She did not appear on the 1911 census, nor did her mother. Privately, she married Colonel Ali Altaf (Altuf) Khan on 1st December 1905 (as reported in *The Light of the World Pan-Islamic Press* (1906) Vol. II, No. 1, p. 104, A. Suhrawady (ed)). The wedding reception was held in the Savoy Hotel (family information). At the time of the marriage Altaf was 63. Son of the Chief of All Forces for Kapurthala State, a princely Sikh kingdom with treaties with British India, Altaf had fought in the second

Afghan War of 1878–1880. His bravery was honoured with an Afghan medal. He was then sent by the government to further his education at Woolwich and on 2nd May 1884 he received an honorary membership of the Royal Artillery Institution.

Altaf was simultaneously admitted to Lincoln's Inn on 16th May 1884, but left London suddenly and returned to India, where he became the highest ranking officer of the Kapurthala State Artillery Forces. In 1900, by now a widower and grandfather, he returned to England and was re-admitted to Lincoln's Inn on 1st August 1900, and called to the Bar on 24th June 1903.

### **India, return to England and emigration to Canada**

After their marriage in 1905, Altaf and Bertha travelled to India, where Altaf was admitted as Advocate to the Chief Court of the Punjab in 1907. There he practised law in Lahore, Murree, Calcutta and Lyallpur, and had a huge estate in Lyallpur.

However, by 1912 the marriage was over and both Altaf and Bertha returned to England: he lived at 19 Kensington Garden Square, Bayswater, and she at 43 Loftus Road, Shepherds Bush – Altaf owned both properties. He returned to India alone in 1913, while Bertha lived in Hackney from 1918 to 1920. On 16th June 1920 she was elected as Fellow of the Royal Microscopical Society. Possibly this was to prepare her for her emigration to Canada, which she undertook on 18th November 1920, with her mother. Her declaration described her as a widow (though Altaf did not die for another ten years) and a bacteriologist and said that she intended to practise the same profession in Canada. She said that they were going to her brother in 'Mobane', Innisfree, Alberta. She was in possession of £50. Her religion was described as Church of England.

They remained in Innisfree until at least 27th January 1922. Bertha wrote to Simon Flexner, Director of the Rockefeller Institute for Medicine, New York, enclosing a research paper, which he unhelpfully returned. In 1930 she was recorded as living in Montreal, when she wrote again to Flexner regarding an unpublished paper 'The Lifecycle of the Filterable Viruses' but to no avail. By 1933 she had moved to Toronto, recorded on the 1935 electoral register as a widow, 'Mrs Alec Altof'. Bertha was to have one last unsuccessful foray into the law when she complained about a Crosse & Blackwell soup competition: again she lost.

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Bertha Cave died in 1951 (J. Bourne, 'Cave [married name Altof], Bertha, 1881–1951, campaigner', *Oxford Dictionary of National Biography*).

### **100 years too early**

Bertha Cave's appeal in December 1903 was just over a hundred years before Brenda Marjorie Hale, Baroness Hale of Richmond, was appointed the United Kingdom's first woman Lord of Appeal in Ordinary in January 2004. Lady Hale had been called to the Bar at Gray's Inn in 1969. In September 2017 she became President of The Supreme Court and before that (June 2013) she was Deputy President. Lady Hale's appointment also troubled the establishment, for example, *The Guardian* (Clare Dyer, Legal Correspondent, 9th January 2004) reported:

'These are unsettling times for the Law Lords, the 12 judges who make up Britain's highest court. The radical Lord Chancellor, Charlie Falconer, is hell-bent on turning them out of the Palace of Westminster and setting them up as the country's first Supreme Court by the end of the year, even though he has not yet found a new home for them.

And to top it all, next Monday the first woman to join their ranks – a self-confessed feminist who has declared that she wants "to see changes in the way society is organised, rather than wanting women to conform to male-determined roles" – takes up her post.'

Clearly women continue to 'trouble' the law.

### **Context to Bertha Cave's application**

Lords Halsbury et al used their position to sustain sex and class inequality. They were a wall of powerful men against a solitary, uninfluential young woman. This maintained the establishment's position. Their decision should not be viewed in isolation. The 1900s were a period of great change. Those judges had no intention of allowing women to enter the Bar: they did not want, and could not afford, to lose control. The establishment, ie men, were being challenged by loss of control from all directions. England was moving from a 'great' Victorian era towards an 'imperial sunset'. The Empire was being threatened by defeats such

as the Boer War, trouble in Ireland, India, the new dominions of South Africa, Canada and Australia, and New Zealand was heading that way. There were military threats from Germany over territories in Africa, and the British had signed the Entente Cordiale alliance with France to counter that threat. By 1903 there was great social change: cars on the road, planes in the air and new technology (telephone, radio, cinema), and there was also royal change, Victoria died in 1901 and Edward VII was King.

The Bar also feared competition, with many complaining that the profession was overcrowded. In the 1860s barristers bemoaned that their profession would become less prestigious if the lower classes were allowed to join. They were feeling threatened and rightly so. Changes were happening. Lower class men were becoming more vocal, calling for universal male suffrage and employment rights. Politics was changing, there was a new Prime Minister and also a new political party in the shape of the Labour Party, founded in 1900, having grown out of the trade union movement and socialist parties. It would overtake the Liberal Party and become the main opposition to the Conservative Party in the early 1920s. The working classes were encroaching and challenging the professional classes. The 'natural' order was changing.

Those judges were hiding behind a veil of supposed authority, *The Mirror of Justices*, a medieval treatise written in the 14th century (Maitland wrote an introduction for the 1895 publication). It declared: 'the law will not suffer women to be attorneys, nor infants nor serfs.' This prohibition excluded many later women would-be lawyers until the passing of the Sex Disqualification (Removal) Act 1919. *The Mirror* was used simply as a device to control entry to the Bar.

The elite establishment controlled the Bar; it had its own internal cultural script. Only men – and the right sort of men at that – could become barristers. It was rare (if you were a man) to be refused admission, provided you had references from two practising barristers and were not engaged in trade. Clearly the Inns were selecting and admitting those in their own image. As men were the only sex allowed to practise law, the culture of the Bar was masculine. This is evidenced by many practices and traditions at the Bar: the circuit court system, dining, the uniform of the courts, and behaviour, such as not shaking hands. These were traditions women were excluded from because they were denied access to male spaces: schools, universities, clubs, sporting practices or shared coffee and conversation after dinner.

Women threatened that order and culture.

But there was a growing women's movement. For almost a century before the vote was achieved in 1918 women had been organising themselves into groups to campaign against injustice. For example, in 1825 women formed a network to call for the abolition of the slave trade, 'The Female Society for Birmingham'. This pattern of organisation was repeated by other campaigns. For example, the first organised movement for British women's suffrage was the Langham Circle, established in the 1850s, led by Barbara Bodichon and Bessie Rayner Parkes. Their campaign extended beyond the vote, demanding improved female rights in the law, employment, education, and marriage.

This women's movement extended to a call for women to join and work within the legal profession. By 1860 Maria Rye (J. Collingwood, 'Rye, Maria Susan (1829–1903), social reformer and promoter of emigration', *Oxford Dictionary of National Biography*) was operating as a Law Stationers in Lincoln's Inn. In 1873 Maria Grey (P. Levine, 'Grey [née Shirreff], Maria Georgina (1816–1906), educationist and writer' *Oxford Dictionary of National Biography*) a well-known educationalist, suffragist, and founding member of the Women's Education Union organised a petition, signed by 92 women, to attend lectures arranged by the Council of Legal Education at Lincoln's Inn, which was rejected. On 2nd January 1904 Christabel Pankhurst applied to Lincoln's Inn and was refused. In 1914 four women challenged the Law Society in *Bebb v Law Society* [1914] 1 Ch 286 and were similarly refused. Likewise Helena Normanton applied to be admitted to Middle Temple in February 1918 and again was rejected. Women were not for turning, even after Bertha Cave's public rejection.

## Conclusion

What does this history tell us? It informs us that a simple narrative that Bertha Cave and the other women were rejected because of simple misogyny is false. Gray's Inn refused to admit Bertha Cave because she threatened the future of the Bar. This is a history of fear of change and competition. If women were allowed entry then so must men from the non-professional classes, and there was barely enough work for the barristers already in practice. Bertha Cave threatened competition and challenged the established traditions and culture of the Bar.

Bertha Cave disputed men's entitlement to the legal profession. This in turn threatened the rigid class system which controlled the whole of society. Women did not just threaten the status quo of the legal profession but of everything. They threatened the established order. Why did Bertha Cave, a servant's daughter, for example, hold such a strong and unyielding ambition to become a barrister? What is the explanation for her challenge to the male exclusivity of the legal profession? We may never know the answer to that, but her seemingly solitary public attempt to be admitted was not such a lonely place. She was supported and celebrated by the growing women's movement. Her application and appeal furthered the women's movement's cause because she placed a spotlight on the legal profession, and in return became an aspect of change for all women; this in turn inspired and created Bebb, Costello, Nettlefield, Crofts and Normanton and the other women who would go on and become lawyers in the 1920s. Bertha Cave is an icon of resilience and bravery.

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