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## Access to a Career in the Legal Profession in England and Wales: Race, Class, and the Role of Educational Background

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### Abstract

*Much attention is currently focused on equality and diversity within the legal profession in England and Wales, not least because the profile of law graduates has markedly changed and diversified over the past 20 years, and yet the senior legal profession has yet to reflect the increasing number of women and Black, Asian, and Minority Ethnic (BAME) entrants over that period. A body of previous research evidence from around the UK indicates that social educational background has a major role to play in the extent to which aspiring lawyers gain entry into, progress, and succeed within the legal profession (Shiner, 1994; Shiner et al. 1999; Shiner et al., 2000; Nicolson, 2005; Thomas, 2000, Sommerlad, 2008). Law Society statistical evidence indicates that aspiring BAME lawyers are concentrated in the less prestigious parts of the higher education sector, and it has been argued that this places them at a disadvantage as regards entry into the legal profession. This chapter is informed by data collected for a study of diversity in the legal profession in England and Wales which was commissioned by the Legal Services Board (Sommerlad et al., 2010). In that study we used biographical interviews (77) to consider the barriers and choices that faced women and BAME lawyers and would-be lawyers. Using a Bourdeusian analysis, we examine the extent to which participants considered that their educational background pre-University and their course of study and institution at University level had an impact on their legal career. It explores this argument through the various themes that emerged from the data, including the profession's reliance symbolic and social capital for entry into the legal profession. In doing so, we illustrate a number of structural factors which inhibit the development and utilization of talent due to value attribution by dominant groups in the legal profession.*

### Introduction

Much attention is currently focused on equality and diversity within the legal profession in England and Wales, not least because the profile of law graduates has markedly diversified over the past 20 years, although senior levels of the profession have yet to reflect the increasing number of women and Black, Asian, and Minority Ethnic (BAME) entrants over that period (See the Law Society and Bar Council statistical reviews 2011). There is a strong body of research in the UK that establishes social stratification on grounds of class (see for example Goldthorpe, 2000; Skeggs, 1997) and there is also a pronounced link between class and race in British society (Archer, 2011; Loury et al. 2005). The results of this stratification include unequal distribution of resources (Marx, 2010; Marx and Engels, 1969), unequal life chances (Weber, 1956; see further Breen, 2005) and unequal access to occupations and thus to status (Durkheim, 1964: 371). Previous studies indicate that social and educational background have a major role to play in the extent to which aspiring lawyers gain entry into, progress and succeed within the legal profession (Shiner, 1994; Shiner et al. 1999; Shiner, 2000; Nicolson, 2005, Thomas, 2000, Sommerlad, 2008, Tomlinson et al., 2013). Further, the Milburn 'Fair Access to the Professions' Report (2009, 2012) has recognized that this stratification has a real impact on entry into professions, particularly into old professions such as law. We suggest in this chapter that the professional entry barriers experienced by BAME and lower socio-economic group law graduates would be greatly reduced were legal employers to focus on proxies for excellence more closely associated with measures of lawyer competence than of social background.

Framed using a Bourdieusian analysis, this chapter examines the extent to which participants' background pre-university and the university at which they studied had a substantial impact on their access to a legal career, as compared with their attainment at university or their legal competence. Bourdieu provides three "thinking tools" that afford a means to analyse social practices and the stratification of access to opportunities and reward: *habitus*, practice and the social field (Bourdieu, 1986; Jenkins, 2002), and we draw upon these in this chapter. The *habitus*, the habitual ways of thinking, the dispositions of those involved in the field, are developed via subliminal inculcation within familial, social and educational contexts (Bourdieu, 1986). Practice is the expression of the habitus, of the individual's and group's dispositions enacted to further (often subconscious) interests through strategies that aim to maintain or improve positions within a social field. Practice occurs within the

generative environment of social interaction and is a product of and reproduces the habitus of individuals and groups (Bourdieu, 1996: 272-3). It occurs to those within it as an objective reality, the *doxa* (Bourdieu, 1990a: 60), rather than a subjective, constructed space of power relations. The social field (in our study, the legal profession in England and Wales) is any site of contestation in which individuals seek to gain and maintain their positions viz-a-viz others with reference to the value placed on different forms of capital as understood by insiders (Wacquant, 1989: 37-41; Skeggs, 2004: 145). Capital comes in a variety of forms, principally: economic (in the form of money); social (in the form of social networks and connections), symbolic (the prestige conferred on one by others as a result of the legitimated capital one is deemed to have), and cultural capital (legitimated knowledge expressed in embodied, objectified and institutionalised forms)<sup>1</sup> (Bourdieu, 1986: 47; 1990a: 88). We argue that in a British legal professional context, hiring practices occur within a neo-liberal market that is viewed as rational, equal and justified, but as they are heavily reliant on constructed notions of talent and merit they reproduce the dominant group's position within the profession. As Jenkins notes, 'privilege becomes translated into "merit" in the eyes of those who dominate the field (Jenkins, 2002: 111). Selection practices, while applied in the same way to everyone, subtly reproduce privilege by means of the hierarchy of value placed on key legitimated goods (Bourdieu and Passeron, 1979; Bourdieu, 1973: 97-99). Our findings suggest a particular focus on symbolic and certain forms of cultural capital for entry level hiring decisions and we suggest that these discriminate against BAME and lower socio-economic group law graduates.<sup>2</sup>

This chapter is informed by data collected for a study of diversity in the legal profession in England and Wales that was commissioned by the Legal Services Board (LSB) (Sommerlad et al., 2010). We used a socio-biographical interview method (n 77) to explore the choices and challenges that faced women and BAME lawyers and would-be lawyers (Rustin and Chamberlayne, 2002). The study examined the practices which produce differential opportunities and career patterns in the solicitors' profession and at the Bar. It was designed to capture the meanings that lawyers and would-be lawyers, diversity managers, and others attached to their choices, and the experiences that informed them, rather than to be a statistical description of the consequences of career choices. In-depth qualitative studies have the potential to generate 'rich sources of data which provide access to how people account for both their troubles and their good fortune' (Silverman, 1993: 4). These accounts are, by their very nature, retrospective, partial, self-reflective, and egocentric, as are all personal accounts; conclusions must be reached in this context (Dingwall, 1997; Silverman, 1993; Cicourel, 1964). However, given that the Macpherson Report in the UK identified racist incidents as 'any incident which is perceived to be racist by the victim or by any other person', and while this definition remains contested and contentious, the perception of experience remains a powerful corrective to the equally problematic view that discrimination can only occur where there is an intention to discriminate (MacPherson, 1999: 74). Themes that emerged from these data include the importance placed on: aspiring law students' school and social backgrounds, their university choice, and their participation in particular forms of extra curricula and prestigious unpaid work opportunities. Socio-economic background intersected with race influenced the extent to which law graduates were deemed to have the attributes valorised by the legal profession. Our findings illustrate a number of structural factors which inhibit the development and utilization of talent within the profession in Britain, which contradict the legal profession's contention that it competes for talent on an objective basis (see Ashley and Empson's chapter in this collection). The legal profession's claim of equality is challenged by the reality experienced by many of those who participated in our study.

We begin by examining the demographics of the two major branches of the legal profession in England and Wales--solicitors and barristers-- to contextualize discussion of the field principally with reference to BAME law graduates'. We then turn to our findings, which draw upon the demographic data<sup>3</sup>, the sociology of education and our analysis of the LSB study interview transcripts situated

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<sup>1</sup> Embodied forms of cultural capital are those relating to attitudes, manners and behaviours that are taken as markers of class/power difference. Objectified forms occur in the form of social goods and activities and experiences linked to a hierarchy of culture. Institutional forms relate to acquired 'assets' such as educational qualifications and the power that they bring within a field; cultural capital is field/context specific. For a discussion see Cook et al, 2012: 1748; McPhail et al, 2010; Willis, 1977; Waters, 2006 and 2007.

<sup>2</sup> See Tomlinson et al 2013 for the effect of capital as regards promotion in a UK context and Gorman and Kay 2014 for a US context.

<sup>3</sup> Data is extant on BAME status but not as regards socio-economic group. Although this data is now being collected for those who enter the profession, the data collection is still in its infancy and it is unlikely to be possible to link this to similar data at the pre-professional stage so as to permit comparison.

within the context of Bourdieu's conceptions of the field and habitus, and the role of social, symbolic and cultural capital.<sup>4</sup> The chapter then briefly addresses recent diversity initiatives and explores how these may alleviate or solidify current inequality, before reaching conclusions about how the legal profession may develop its selection practices so as to minimize continued patterned inequality.

### The Demographics of the Social Field

Much of the data that we collected appeared to suggest that race and class discrimination, where present, were a function of the doxa, a consequence of stereotypes, use of proxies, and a lack of reflection about the competencies inherent in good lawyering. On this same basis, our chapter could rightly be criticised for its essentialist treatment of BAME lawyers and aspiring lawyers and their class credentials (see Combahee River Collection, 1994; Harris, 1997). We recognise that the catch-all category of BAME masks tremendous heterogeneity and that individuals are drawn from a wide range of backgrounds and will self-define in sophisticated and nuanced ways.<sup>5</sup> This is as true for class/socio-economic background as it is for race (Barnard and Turner, 2010). Class plays an important role in access to the professions, we have explored it here in the context of BAME status so as to demonstrate the patterned inequality that results from the intersection between being non-white and being perceived to be a member of a lower socio-economic group (Crow and Pope, 2008, 1045). Given the legal profession's historic white and elitist roots (Sommerlad, 2007), and given the data below on the demographics of the senior levels of the legal profession and the experiences of our participants, the individualised nature of BAME law graduates and lawyers' backgrounds may be misrecognised by (would be) employers in their application of proxies of merit that flow from their valuation of different types of human capital. As Fox et al (2012) explain,

“Race’ in this sense is not an essential trait... but rather the socially constructed contingent outcome of processes and practices of exclusion. It is the valorised language through which structured inequalities (measured in labour market position, differential access to scarce resources, legal status, and cultural stereotypes) are expressed, maintained and reproduced... We opt for a single racialization optique that accommodates both its colourful and cultural dimensions (Kushner, 2005: 208-9)’

Although alive to the risk of compounding an already essentialist dialogue within the profession, our use of strategic essentialism, advocated by Spivak (1988; Spivak and Rooney, 1994), is intended to give voice to our participant responses' experiences of the legal profession rather than to compound the stereotypes that they often face (Conaghan, 2000; Fuss, 1994). Indeed, the fact that there are BAME lawyers within a range of class categories in the UK, and within different sectors and at different levels of the profession assists to reproduce the status quo, as it lends legitimacy to the contention that social stratification is associated with objective rather than constructed modes of classification (Bourdieu, 1996: 272-3; Bourdieu, 1973: 97-99).<sup>6</sup> There are, of course, also White law graduates who face barriers to entry on the basis of class assumptions and we do not seek to minimise the existence of those barriers. However, strategic essentialism may be required so as to bring to the fore the subconscious biases that allow discrimination to persist, strategic essentialism may allow a disruption of the doxa.

The demographics of the legal profession indicate that BAME lawyers are concentrated within the less prestigious parts of the legal profession (see The Ouseley Report, 2008: 7; further Law Society, 2010: 4) and they have greater attrition from the legal profession, relative to their White counterparts. BAME solicitors are proportionately more likely to be in sole practice than are White solicitors; this may be due, in part, to the greater difficulties they face as regards entry into and progression within the more lucrative and established parts of the profession (Webley, 2013a). The relative absence of senior BAME lawyers in medium and large law firms and in barristers' chambers may have an impact on the value attached to particular forms of human capital with a resultant impact on hiring and promotion decisions. Attrition may be illustrated thus:

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<sup>4</sup> For a discussion of our findings with regard to progression within the profession see Tomlinson et al, 2013; and for the role of the different forms of capital in senior level hiring in boardrooms see Krawiec et al. and within the legal profession in the US Gorman and Kay, both in this collection.

<sup>5</sup> For a discussion of the heterogeneous nature of BAME participation at HE level, and in law in particular see Connor et al, 2004.

<sup>6</sup> Ashley and Empson's chapter in this collection provides a detailed discussion of the intersecting roles of class and race and their role in social stratification within the UK context.

Solicitors Stage <sup>7</sup>	% BAME	Total	Barristers Stage <sup>8</sup>	% BAME	Total
Qualifying Law Degree	32	c. 17,000	Qualifying Law Degree	32-25	c. 17,000
Legal Practice Course	c. 31*	15,166/ 6,067*	Bar Professional Training Course	44%*	1,793
Training Contract	22	5,441	Admission to the Bar	41%	1,852
Admission to the Roll	22	8,480	Pupillages	13%*	955
Partnership	[Figures unclear although disproportionately greater numbers are partners in sole practices, and smaller in large firms]		New QCs	10% (total 4%)	(total 120 (total 1,318))
Overall	12	121,933	Overall	10%	15,270

The UK BAME population is recorded as 14% (UK Census Data 2011; it has increased from 9% in 2001 and 6% in 1991); however, the proportion of law graduates who self-define as BAME is about 32% of the graduating population. Thus, law is a strong choice for BAME aspiring professionals.<sup>9</sup> In most instances, upon completion of the professionally recognised LLB law degree<sup>10</sup> a law graduate must undertake a one year educational vocational course (the Legal Practice Course to aspire to be a solicitor, the Bar Professional Training Course (BPTC) to aspire to be a barrister) prior to beginning a period of compulsory work-based training (a two-year supervised training contract to become a qualified solicitor; two six-month supervised pupillages to become a fully qualified barrister). At each stage there is a selection process, with progressively fewer places available. As regards would-be solicitors, the point of attrition is evident at the work-based training contract stage, when the BAME population drops from over 30% at the educational vocational stage of training to 22% at the in-firm phase of training; this point is controlled, in the main, by law firms through their selection practices. In most instances it is not possible to become a fully qualified solicitor unless one has successfully completed a training contract in a law firm or similar organisation.

The picture is more nuanced with regard to would-be barristers. A large number of overseas Commonwealth nations' law graduates undertake the British BPTC as a qualification pathway to legal practice in their home jurisdiction; thus, the BAME population swells from over 30% at law degree graduation stage to over 40% at the educational vocational stage with the inclusion of overseas law graduates from India, Pakistan and Hong Kong, for example. This trend is also reflected in the 'call to the Bar' qualification point which occurs for barristers straight after successful completion of the BPTC, as opposed to at the end of the training contract for solicitors, although in truth this is not full qualification as one is not able to practice alone until post pupillage. There is a stark reduction in

<sup>7</sup> 2011 figures, the Law Society. Figures marked with a \* are tentative as they have been derived from a Law Society database that does not record part-time enrolments in the same way as full-time enrolments.

<sup>8</sup> 2009-10 figures, the Bar Council. Figures marked \* are 2008-09 figures, which are the most recent available.

<sup>9</sup> It is considered that approximately 10% of law graduates on qualifying law degrees are overseas students, some of which will self-define as BAME although it is unclear the extent to which this affects the figures presented above. Further, not all LPC/BPTC and training contract/pupillage applicants will have undertaken an undergraduate LLB degree. Approximately 5,000 students a year undertake the Graduate Diploma in Law course, which is an intensive graduate programme that one may take following successful completion of a non-law undergraduate degree. For a discussion of this route see Webley, 2010b.

<sup>10</sup> The LLB is a 3 year undergraduate law degree, similar to the JD qualification. All LLB degree programmes must be approved by the Joint Academic Stages Board, which has a similar function to ABA accreditation. LLB degrees are classed as qualifying law degrees, meaning that once a student has successfully attained an LLB (Hons) degree s/he may continue on to the one year vocational qualification required to train to be a solicitor (the Legal Practice Course) or a barrister (Bar Professional Training Course). After that a would-be solicitor would need to secure a two-year training contract in a law firm or equivalent and undertake some final examinations, and a would-be barrister would need to secure two six-month pupillages. Training contracts and pupillages are forms of heavily supervised paid practise that operate similar to apprenticeships. Post completion of a training contract or the pupillages the solicitor or barrister is fully qualified but is still required to work within a supervised context for an additional three years before they have full practice rights or the opportunity to practice solo.

BAME representation within the Bar at the pupillage level, from around 32% of the graduating law population down to 13% of those with pupillages. This stage is largely controlled by barristers' chambers through their selection practices. In 2010-11, more than a third (34.5%) of pupillages were awarded to elite educated Oxbridge graduates, and this figure appears to be increasing although publicly available data on this only permits a comparison with the previous year, making it difficult to confirm or refute this (23.7% were Oxbridge educated in the previous year: see the Bar Barometer 2012). Further, there is evidence that the Bar is drawing its pupils from an increasingly privileged class background (see further Zimdars, 2010). The solicitor's profession is not immune from this charge, either, as a recent Law Society study of BAME solicitors and prospective solicitors concluded:

Having completed the Legal Practise Course, B[A]ME candidates believed that they would be on a 'level playing field' with all other LPC graduates and that, irrespective of their gender, ethnicity or social background, they would have the same chance to succeed. However, this had not been the case and the dawning reality of the actual situation had hit many B[A]ME participants hard. ... It was clear to participants that firms judged capability by academic qualifications and attendance at particular institutions. A misguided view, by firms, of what constitutes excellence meant that, for many participants, good, able solicitors are being passed over because of their social background. (2010: 4)

Although the two main legal professional bodies (equivalent to the American Bar Association in the USA) have noted these concerns, they have been more inclined to encourage measures that aim to raise the aspirations of BAME school pupils to attend elite law schools rather than to challenge the prevailing view amongst legal employers that elite schooling necessarily indicates lawyer excellence. The newly established legal profession oversight regulator, the LSB, which sits above the legal professional bodies, has been given a statutory obligation to encourage an independent, strong, diverse and effective legal profession, and further to support the constitutional principle of the rule of law (sections 1(1)(f) and 1(1)(b) Legal Services Act 2007). It has interpreted the relevant provisions in the Legal Services Act 2007 to encompass the need for the legal profession to demonstrate that it is not unlawfully discriminating against those seeking to enter and progress within the profession, given that adherence to the rule of law is fundamental to its legitimacy, and the rule of law embodies equal treatment by the law.<sup>11</sup> The non-discrimination requirement is also an ethical precept of regulated legal professionals and is contained within professional conduct rules. The LSB has indicated that if the legal professional bodies do not improve the profession's diversity statistics it may be minded to intervene so as to require reforms to the way in which lawyers are trained and/or accredited so as to force more equal representation within the profession (Edmonds, 2010). This would have a profound impact on the legal professional bodies, as it would remove an even greater proportion of their self-regulatory powers than had previously been removed through the enactment of the Legal Services Act 2007. As threats go, it is a very powerful one.

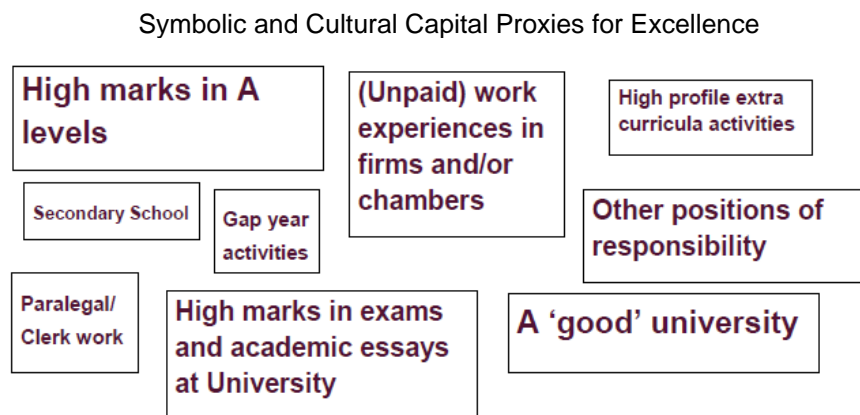
### **Social, Symbolic and Cultural Capital: Reproduction and Exclusion**

Our analysis of the LSB data reveals a range of hiring proxies are used to determine suitability to practice, which are not clearly connected to the key skills and knowledge that are the mark of legal competence. For large firm recruitment, symbolic, objectified and institutionalised cultural capital is prioritized through the use of application forms that rely heavily on open questions that target extra curricula activities such as: experiences undertaken during gap years between school and university; membership of clubs and societies; school and university attended; participation in unpaid internships (which are offered competitively on a similar basis to entry level positions); with some but not particularly strong reliance on grades attained at UK law schools (Webley, 2013b). Institutionalised cultural capital is important: grades attained at school level are often considered to be objective measures of ability, but university grades are seemingly not prioritised over school grades. This may, in part, stem from the fact that the standard model of grade classification for UK undergraduate degrees is a four category scale of third, lower second, upper second and first class awards rather than a GPA score that has a greater degree of granularity, or an assessment of class rank. Having said that, each student will have a percentage grade for each module that they have studied, and were firms so minded they could request the graduate's transcript that displays all the grades (this is

<sup>11</sup> For a discussion of professionalism and requirements linked to the ability to maintain professional autonomy see Larson, M. (1977) 'The Rise of Professionalism; A Sociological Analysis Berkley: University of California Press and more specifically Abel, R.L. 'The Rise of Professionalism' (1979) Vol. 6 British Journal of Law and Society 82.

very rarely requested by the profession in Britain). Some smaller law firms and barristers' chambers, still make use of resumes, which are asked to address many of the proxies above. What is clear is that few organisations employ selection mechanisms that specifically target the accepted 'day one outcomes' that have been nationally agreed by the legal profession as the competencies expected of solicitors and barristers on the first day as a fully qualified practitioner.<sup>12</sup>

As part of our analysis of the interview transcripts, we noted both the frequency with which and the weight apparently attributed to particular proxies for merit. We cannot claim that we have developed a quantitatively robust measure of their importance, but in impressionistic terms we have attempted to represent their importance through the size of the type face used in the diagram below:



The discussion that follows addresses these proxies with reference to their capital value.

#### *Social and Family Background and Cultural Capital*

There was some evidence that the value placed on embodied cultural capital is mediated through the lens of race and class. A few of our participants provided evidence of racial or social stereotyping, suggestive of employer misrecognition of their talent due to sub-conscious yet powerful notions of merit associated with preconceptions about what it is to be non-white and what it is to be lower class:

Resp1: Another example was a solicitors [firm] that was trying to go into schools to motivate Black and Asian children to think about law and someone said to me that there was no point and they would be better suited to bus driving or being plumbers. He said that there would be no way that they would make it in a career in law (d female BAME Asian solicitor, North of England).<sup>13</sup>

Resp 2: Yes, well I think in Yorkshire they would struggle to have a career in law, quite frankly. (d female BAME Black solicitor, North of England).

Resp 1: Yes and the same man identified a colleague as the exception, who was Asian, and said he was the exception and had made it out of the ghetto and into the profession. The greatest irony was that the person he referred to wouldn't even know how to get to the ghetto! He is certainly not from the ghetto! So even though they have worked together and are both equity partners together he was still making statements like that. He just thought that everyone's roots were the same and he actually was happy to say that to my face. I was sitting there as a Black woman with my jaw on the floor and I couldn't believe he would actually say that to me. There was no inkling that he had said the wrong thing... He just carried on talking and didn't even register that that was an unacceptable thing to say.

I can't say, you know, that I've felt discriminated against openly. If anything, I think, it helps that ... I'm both female and my background some people actually say, well, gosh that's really good and sort of, not to be cynical but you know, that helps, I think, it ticks a couple of extra boxes, which helps. So I can't really say that, but ... when I was applying for my training contracts because I've got a Greek surname, ... every time I applied with the Greek one I didn't get a single interview. And then I decided let me try with my [other] last name, and then all of them, I got interviews for. ... my uncle's had trouble with

<sup>12</sup> See Legal Services Board (2011) *Qualified Lawyers Transfer Scheme: Map of England and Wales Solicitor Day One Outcomes against a Barrister of England & Wales on Completion of Pupillage* [http://www.legalservicesboard.org.uk/what\\_we\\_do/regulation/pdf/3.pdf](http://www.legalservicesboard.org.uk/what_we_do/regulation/pdf/3.pdf) for details.

<sup>13</sup> Transcripts have been coded so as to indicate the interviewer, the interview number for that interviewer, self-defined gender and ethnicity and branch of the profession and seniority.

having a foreign surname. And so that's why he said just try with the American one and nobody can tell where you're from. (b2 female BAME (Black & White) Assistant Solicitor In-house London).

In these recounted experiences, it appears that the value placed on the embodied capital of some BAME would-be lawyers may rule them out as legitimate professionals in the context of localised conceptions of habitus; those that succeed may have had to compensate for their lack of embodied cultural capital with higher levels of other forms of capital, such as objectified or institutionalised capital. The second excerpt is suggestive that there is misrecognition of talent via the attribution of low value to the embodied cultural capital of seemingly 'foreign' prospective lawyers; when her last name changed so did her stock of capital. This may be a reproduction of past practice which draws upon the profession's raced and classed roots. And the fact that some non-White lawyers have been successful within the profession seemingly legitimises the doxa as an objective meritocracy (Bourdieu, 1973: 97-99), when the second extract would suggest that it is anything but. Subjective attribution of merit appears to indicate that value is accorded very differently to those perceived to be within the dominant group than to those without. The Law Society in England and Wales has, at the insistence of its Equality and Diversity Committee, been required to undertake selection for its internal positions with the name of the applicant redacted, such is its concern about potential misattribution of value. This remains subject to lively debate within the Law Society and has yet to be rolled out to the profession as a whole.

Embodied capital is not only assessed within firms and chambers but by recruitment agencies too.

I went to a recruitment agent and she said I was too common to be put forward ... for a stand-alone role, which was on a specific case and it was for six months ... . And she said, oh you have to appreciate the way you speak is very common, and these are very educated people, and so you may not fit in. □ (e1 female BAME Solicitor)

Accent, as a marker of class and thus of status, will not be evident at the initial stages of a selection process if conducted by a firm or a set of chambers, but it will be obvious at a first sift telephone interview carried out by a recruitment agency. Here accent, as embodied cultural capital, is conceptualised as an indicator of merit based on assumptions about suitability and knowledge. The important role of recruitment agencies in filtering out inappropriate applicants has been previously recognised (Duff and Webley, 2004). But their role in the reproduction of the field does not appear to have been examined. We have relatively little data upon which to draw in this instance, but it is a site of contestation that deserves further study.

Forms of objectified cultural and symbolic capital also appear to play an important role in hiring decisions:

The Head of Chambers said: 'I want him, he comes hunting and shooting with us and...my clients like him, my Greek shipping clients like him because he has everything that they are looking for, he's been to a certain public school and then to Oxbridge and he presents the right image.' These were the criteria. He hadn't actually, at that point, passed his Bar exam. So it was not the quality of his work that was important, it was the fact that he fitted. □ (d13 female White barrister North of England)

This interview extract may be read as a privileging of the social capital of the applicant, but on closer examination it appears to be an assessment of symbolic capital (prestige related to attendance at an elite school and university) and objectified cultural capital (via pursuits accorded high status on the cultural hierarchy) as the pupil barrister does not appear to be relying on his network, nor introducing a network, but instead is deemed to be someone who will fit well within an established network and who will bring with him prestige. But social capital does have a role to play, and within certain sections of the profession, such as the Bar: the participant above was asked in her first week as a pupil in London who her father was, 'I just sort of looked at them as if to say, why would you know who my father is!? They expected to have heard of my school!'. There is an expectation that people will be socially connected or know of each other via mutual contact, although there is limited evidence in our study that social capital for its own sake plays a particularly strong role in selection for initial roles within the legal profession (it is more pronounced as regards promotion: see Tomlinson et al, 2013).

Cultural capital may also be a product of one's social capital as the next extract demonstrates. There is some evidence here that the respondent considered social capital to be important so as to allow a would-be lawyer to accrue experiences to build their embodied and objectified cultural capital pre-



university and then to use that capital to realise their goal to attain a place at an elite university so as to increase their symbolic capital to assist with entry to the profession:

Because you make networks at a very early stage and you grow up with these people. This is a school which is... you know, it's very expensive, you have to be of a certain class background to be able to send your children there. In the summer times, you know, you're going to the houses of MPs [Members of Parliament] and whatever else and... they can pull strings for you and open doors for you....when you went to an exceptional school ... you are destined for great things and ... it's easier for doors to be opened for you because you're now sitting in front of someone in the City who may have gone to the same school as you and... or gone to the same school as your father so as a result, the fact that you got a Third [class degree], we can ignore that. ...

The main goal posts were I guess, working very hard at school from 11 onwards, choosing the right GCSEs, in particular ... and then choosing the right A levels. And obviously working hard at university. Though, to be honest with you, by the time you got to my university, Cambridge, you know you were in a very good position to do very well in a legal career. ...none of my [immediate] family went to university or school... obviously no one really had an idea about that. ... so I had very little knowledge or support. But at school I was looking at getting a scholarship to a private school, so I had very good support from teachers. ... So I made a really conscious effort to work towards that. Probably because I came from a very poor background, I had to... Every choice I made would be an important choice, there was no fall back option. I didn't have the luxury of making mistakes in those choices (e10 Male BAME Assistant Solicitor).

Early opportunities provide a means by which one's stock of capital can be augmented, as attendance at the right kind of school changes one's embodied capital and may in some circumstances add symbolic capital if the school is very well regarded by those in the field. This may raise social capital, which in turn provides access to experiences which increases one's ledger of embodied capital as a result of learned behaviours and manners associated with the dominant group in the field. The interviewee is clear that good grades at school are very important so as to gain entry into the right kind of university, but he suggests that the grades achieved at an elite university may be of secondary importance in hiring decisions given the existence of high levels of other forms of capital.

It could easily be argued that educational attainment in national standardised exams is a relatively objective measure of 'merit' for a knowledge based profession. But, the complex relationship between educational attainment and social class, race, and sex with regard to national GCSE and A level examinations<sup>14</sup> has been demonstrated, and thus attainment needs to be contextualised before conclusions about a student's ability can reliably be drawn (see Khattab, 2009, Connolly, 2006 for example).<sup>15</sup> As a result of competition for law degree places in elite institutions, relatively small variations in A level grades, attributable in part to school attended (Kirkup et al, 2010) and to social class (Hirsch, 2007), contribute to a reproduction of the existing social hierarchy, with BAME law students concentrated within the less prestigious universities (Connor et al., 2004). A key recent large-scale study by Kirkup et al. (2010) observed that the link between social background and educational attainment does not remain constant, and thus snapshots of attainment at different stages of educational progress will give very different insights into a student's academic ability and competence.<sup>16</sup> Snapshots of attainment at school are more heavily influenced by background, than are snapshots taken on graduation. Yet legal employers revert to school attainment, without reference

<sup>14</sup> In England and Wales the vast majority of school children study for standardised national exams. GCSE exams are usually undertaken at around 16 years old, A Levels are usually undertaken at around 18 years old. A Levels grades are the one most usually used by universities when making decisions as to which students will be offered places to study law.

<sup>15</sup> For a discussion of the connections between capital, class, race and education see further Modood, 2004; Nash, 1990; Rethon, 2007.

<sup>16</sup> A level examinations are national examinations that are undertaken by the vast majority of students in England and Wales who intend to go to University. They are usually sat in the academic year in which students reach 18 years old, and students usually study for two years leading up to the examinations, which are broadly subject specific. In most instances students will study at least three A level subjects and university offers have historically related to grades to be attained from three A level subjects. Grades range from A\* (highest) to E the lowest passing grade. Selective universities often require students to achieve grades in the A-B range across all three subjects. The Sutton Trust research (Kirkup et al., 2010) indicates that state school pupils apparently under perform in national examinations (A levels) as compared with public/private school pupils, but then achieve similar grades as their privately education peers at University. Pupils from state schools who achieved grades of ABB, from fee-paying schools who achieved grades of AAB and from elite fee paying schools who got AAA achieved similar marks on the same course at the same institutions on undergraduate degree graduation.

to context, as if definitive evidence of merit. Worse still, elite universities also select largely on the basis of school attainment without reference to context, which reproduces rather than disrupts social stratification:

The sociology of educational institutions and, in particular, of higher education institutions, may make a decisive contribution to the frequently neglected aspect of the sociology of power which consists in the science of the dynamics of class relations. Indeed... probably none have been better dissimulated and, consequently, better adapted to societies which tend to reject the most patent forms of hereditary transmission of power and privileges, than that provided by the educational system in contributing to the reproduction of the structure of class relations and in dissimulating the fact that it fulfils this function under the appearance of neutrality (Centre for European Sociology, 1972: 11-12)

Unlike some other jurisdictions such as the USA (Wilkins and Gulati, 1996), the UK does not operate positive discrimination/affirmative action programs within universities, and the one attempt to do so became so mired in controversy (and may have been unlawful, given the UK legislative framework) that it was swiftly terminated. As the next section demonstrates, elite university selection decisions became instantiated as badges of symbolic prestige by legal employers, although they occur to them as markers of greater ability and competence as a lawyer. With school attainment accorded similar weight to university attainment, and yet influenced in more pronounced terms by class, those with lower capital reserves on entry into university struggle to make up any ground as against their more privileged peers.

### *University Attended and Cultural Capital*

There is now incontrovertible evidence that many large law firms and barristers' chambers have a limited list of preferred universities from which they shortlist applicants. Some firms' lists have been published via the legal press; others are not in the public domain, some firms hold 'milk round'<sup>17</sup> hiring events at specific universities so as to actively pursue law students from particular universities and to exclude others. There are firms with online application systems that make it very difficult to apply if you cannot select your institution from a drop-down menu of recognised universities held within their database. Some human resources professionals within law firms indicate anecdotally that applications from some sectors of the university market are filtered out at the first sift. This is not true of all firms and chambers, but we did come across this perception in our study.

Firms in the City will do the milk round at these various institutions. They wouldn't necessarily go to what was a former polytechnic and is now a City university or whatever they want to call themselves. So, if I am Clifford Chance and I have to do the milk round why am I going to go to hundreds of institutions when I can go for the top ten and get the clone that I want?' (c4 Female BAME Equity Partner).

Given the importance accorded to the university that one attends within the calculation of symbolic capital, BAME law students concentrated within the less prestigious 'new' universities—former polytechnics—face a palpable barrier to entry to the profession regardless of their level of attainment at university, a barrier which is heightened due to the intersection of class and race (see Ashley, 2010; Archer, 2011, Tomlinson et al, 2013). We have coded university attended as symbolic rather than institutionalised cultural capital as it has less to do with an assessment of legitimated knowledge in the form of the award of an educational qualification (given the discussion above) than it has to do with an assessment of prestige and honour. Even attendance at a high ranked and well respected institution may not be sufficient against the symbolic cachet associated with Oxford and Cambridge Universities, but a degree from a Russell Group institution (similar to the Ivy League) is likely to provide a range of job opportunities:

I also went [for an interview] to Leeds University, where I got on extremely well with the woman there. She gave me an offer of three Cs. She just absolutely loved me ... But she did say to me, do you have any relations in the law? I said, no. She said, well then I think it's going to be extremely difficult for you to get articles [a training contract], and that was the view, and that was why the [name of law firm] articles were great, because you know, in those days, people from UCL [the university she eventually attended] didn't get to Magic Circle firms<sup>18</sup>. I mean, it wasn't called Magic Circle, but you didn't go to [top 10 law firm A] and [top 10 law firm B] unless you'd been to Oxbridge, pretty much, and it was our

<sup>17</sup> The Milk Round occurs annually and it is the process by which elite law firms visit the law schools of elite universities so as to try to recruit their students. Usually law firms target second year law students with a view to employing them post-graduation.

<sup>18</sup> Magic Circle law firms are the top ten elite and large law firms that operate in the City of London.

year that produced... I think five people found themselves a combination of [UK top 10 law firm B] and [UK top 10 law firm C] and [UK top 10 law firm A] and this was regarded as a huge strive for [a] Redbrick University<sup>19</sup>. (c Female, Solicitor Salaried Partner).

The institutionalised capital associated with educational qualifications from the elite universities is far greater than for others. Some may argue this to be a function of the greater ability of their students, although the UK's external examining practices, which require independent academic oversight of all university grading, would suggest that differences in attainment within the university sector are not so marked as to justify the exclusion of some universities from consideration. And further, given race and class stratification within the UK higher education sector, and the research evidence above, it would be unwise to conclude that attendance at an elite university necessarily presupposes that a student is educationally more gifted than those in the less prestigious parts of the higher education sector.

We found some evidence that it may be possible to overcome an apparent lack of embodied and objectified cultural capital by attending the right kind of university but it should be noted that these examples were relatively unusual and associated with studying at very highly ranked institutions,

I think a barrier for ethnic minority lawyers may have been a cultural aspect ... especially if they're the first, second generation from parents who have emigrated to this country; they just don't have the culture at home which socialises you and educates you into the world of the race horses, for example, ... And also, not being given guidance; you just don't get the guidance at home, which is a given from educated middle class white, to use that phrase, background. I used to think it was a barrier, but I think in the age of the internet, if you're smart and you can get your three As at A level, and you can get yourself into university, I do think that there's so much information out there; maybe that's different to the cultural aspect ... Though, to be honest with you, by the time you got to my university, Cambridge, you know you were in a very good position to do very well in a legal career. (e5 Male BAME Solicitor).

University attended is a powerful indicator of a law graduate's chances of successful entry into the legal profession, whereas university attainment, institutionalised capital, appears to become relevant only once the applicant has been awarded a threshold of symbolic capital due to attending an elite institution. High marks in a law degree from the wrong kind of university will rarely ease a graduate's passage into the profession; the greater institutionalised capital does not often make-up for the lack of symbolic capital in this regard.

#### *Other Instances of Cultural and Symbolic Capital*

We also found evidence that objectified cultural capital is acquired through participation in certain forms of extra-curricular activities, those mostly associated with middle and upper middle class backgrounds. It was difficult for working class law graduates to have acquired some of these forms of cultural capital, as the opportunities were not available through their state school experience (unlike in many fee-paying schools) and so had to be sought outside of the school environment (and paid for by the family).

I think I've always done things to enhance my CV; so things like, I studied abroad, and I think that ... sometimes just helps my CV to stand out off the page; and just done things like travelling, and being a prefect, being a house captain, and different things like that. And also I studied Japanese at A-level, so I just think it's just the different extra things that have helped. Also just general work experience, I think, has helped (e13 Female BAME Trainee Solicitor).

Some of our participants worked hard at university to augment their stock of extra curricula activities ahead of applying to firms or chambers. Internships, clerking opportunities and other forms of unpaid legal and quasi-legal work experience also counted towards applicants' reserves of cultural capital and sometimes also their symbolic capital if the internship was considered to be prestigious. Our participants appeared to consider these more appropriate forms of assessment for suitability, given that they were more closely associated with legal practice. However, there was a perception that it was easier to get this kind of work if one had good social capital, although many internships are now awarded on more transparent terms, albeit with reference to assessments of cultural capital.

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<sup>19</sup> Redbrick universities are the universities established in large cities around England in the late 1800s and early 1900s. They often form part of the Russell Group (similar to the Ivy League in the US) but are distinguished from Oxford and Cambridge universities by their relative youth.

I did get asked, why haven't you been a paralegal already, why haven't you done more work experience. And I'd already done quite a lot compared to other people I knew, whereas mooting, yes, it's available at university, I never did it, but I never got asked why I didn't do it; I was continually asked, why don't you have more work experience on your CV. And the expectation is often that you should have done unpaid work experience, because that's often what you [do]; there are lots of paralegal positions that are going now, for even nothing, with a view to maybe turning into a training contract, or they are going for like, £14,000 a year (e4 Female White Trainee Solicitor London).

Long-term unpaid internships were more difficult to undertake for those who needed to work in paid employment alongside their studies than for self- or family-supported students. Thus, the proxies used and the way they are used to select would-be solicitors and barristers by law firms and chambers disproportionately affect those from lower economic groups and thus, given the correlation between class and race in the UK, those from non-White British backgrounds. Unless the work experience is sufficiently meaningful such that it provides a genuine and relevant training opportunity that produces a candidate much more qualified for a role, the need to have undertaken multiple and long-term work placements acts as a form of indirect discrimination contrary to section 19 of the Equality Act 2010. There are other ways of reaching hiring decisions that are less likely unlawfully to discriminate against those from lower socio-economic groups and those from non-white backgrounds. For example, in Germany, greater weight is placed on academic attainment at university in the subject for which one is seeking professional qualification. Less weight is placed on pre-university experiences and attainment and on open questions that seek information about background and social status (see Ashley and Empson, 2013). Enacting such policies in the UK would require solicitors and barristers to be willing to consider that university and school attended are not markers of excellence in themselves, nor are periods of work experience or participation in cultural and social activities, but a function of a complex web of factors linked to class background.

### **Conclusions: Challenges for the Legal Profession in England and Wales**

Following on from our LSB commissioned research, and a LSB consultation, the LSB now requires that all legal organisations collect diversity data from their members and return results to their professional bodies, who in turn must publish aggregated diversity data. This appears to have accelerated the growth of diversity schemes within the legal profession. Many of these initiatives aim to raise the aspirations of BAME school pupils so as to encourage them to consider law as a career (see for example the *Prime* scheme<sup>20</sup>). Universities have also adopted the 'widening participation' agenda, given the incentives (or rather the disincentives) set out in this regard by government. Diversity schemes in universities and law firms are seeking to address BAME underrepresentation; however, there is little progress at the elite ends of either and this, in part, misses the causal problem.

There is no reliable evidence to suggest that law graduates with excellent grades from non-elite institutions are any less lacking in merit as would-be lawyers than their counterparts from elite institutions, even if they may have lesser cultural or symbolic capital. And there is some evidence to suggest that the relatively minor school level grade differences between students within the elite and the middle tiers of law schools, reveal more about the students background than educational ability. An ability to row, shoot, play rugby or a musical instrument provide little insight into a prospective lawyer's ability to convey a house, draft a will, cross examine a witness, or mediate, unless the student is able to use those experiences as a means through which to explain the attributes and competencies s/he has that are suggestive of drafting, advocacy or mediation skills. While we continue to focus on raising BAME participation in elite schools (positive though that may be), the habitus reproduces to the benefit of those already privileged by the field. Definitions of merit and the contention that merit is objectivity defined remains unchallenged. Internships are now being advertised and offered on a more systematic and transparent basis, due to the efforts of the Law Society and the Bar, and this is a real step forward. This reduces the chance of social capital playing a key role in obtaining those opportunities. But if university attended and pre-university attainment remain potent drivers for hiring decisions, the ability to secure such a placement is likely to remain marginal to job prospects, unless it acts as a catalyst for firms and chambers to reassess their perceptions of 'outsiders' who attend non-elite law schools. More likely lawyers from minority groups who succeed in the profession will be used as evidence that merit will triumph regardless of

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<sup>20</sup> This is a scheme that has been championed by the elite law firms to encourage talented young people from state schools (US public schools) to consider a career in the law. Law firm visits are offered, as our short periods of work experience. For more information see: <http://www.primecommitment.org/home>

background. Real change is unlikely until the current proxies are recognized as subjective constructions of merit, ill-designed to provide a meaningful assessment of legal ability and skill, until they are replaced with a more sophisticated competencies-based method of assessing potential lawyering ability. Job descriptions and person specifications are standard practice in most other professions, even old professions. Application forms that prompt applicants to reflect on key competencies could limit the crude application of proxies and may inject a degree of reflection within the profession's habitus. In time this may disrupt the status quo. Only then is it likely that the profession's rhetoric about equality and the search for talent can hope to be realised.

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