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REVIEW ESSAY

Diversity and the legal profession: A UK perspective

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Abstract

The extent to which legal professions around the world facilitate and promote the careers of a diverse range of qualified candidates has been a focus for research and debate throughout the 21st century. This essay discusses a significant contribution to this field, Robert Nelson, et. al.'s *The Making of Lawyers' Careers: Inequality and Opportunity in the American Legal Profession*, a comprehensive study of lawyers' careers in the United States that draws on extensive quantitative and qualitative data. The essay considers the book's findings in the context of the exponential rate of change in legal professions worldwide change which, however, has been constrained by the endurance of traditional features of professionalism, including its classed, gendered, and raced character. In line with the Bourdieusian stance taken by the book's authors, the essay reflects on the continuing influence of social categories and their interaction both with each other and with institutional and wider socio-economic factors in a complex and many-layered process.

I begin this essay in the 1990s with an account drawn from my own research into diversity in the legal profession, conducted in the North of England (2015): a story of Jake, the first African Caribbean heritage equity partner in a corporate law firm in the region. Despite excellent academic qualifications, Jake was unable to obtain the training contract needed to qualify as a solicitor, a common experience for Black and Asian law graduates at the time. However, he did succeed in gaining a position in a corporate firm as a paralegal. A key member of his commercial litigation team then fell ill, giving him an opportunity to step up and achieve a higher profile. Around the same time, he joined the firm's football (soccer) team, a significant arena for male

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bonding and the exchange of social capital, and in one of his first matches, when through on goal, he surrendered his own chance of scoring and passed to a senior partner, who did score. Euphoric, the (middle-aged) partner asked him what he could do for him in return, to which Jake replied, "give me a training contract." He got his training contract, a foot on the rung of the ladder to partnership, and subsequently became a prized icon for the firm, an exemplar of (and spokesman for) their diversity bona fides.

From one perspective, this is a prime example of the idiographic character of careers, each one of which is unique and shaped by an individual's personality, history, human capital, key choices, and what we think of as luck. However, if we look at it from a nomothetic angle, it is a story of the way in which one structural and cultural attribute (masculinity) trumps the disadvantage conferred by another (race), in an environment where power and success is achieved through channels and social environments outside the formal structures of human resource departments and recruitment strategies which—until recently—championed diversity, equity and inclusion.

The complex, nuanced, and multi-layered character of legal careers that Jake's story highlights is superbly illustrated by the five vignettes, which provide the narrative structure of *The Making of Lawyers' Careers*, Nelson, Garth, Dinovitzer, Sterling, Wilkins, Dawe, and Michelson's ambitious and authoritative study of social stratification in the US legal profession (2023). The longitudinal study from which these vignettes are drawn is based on a huge random sample survey, as well as three waves of qualitative interviews, and can claim to provide both a nomothetic and an idiographic analysis of the factors affecting legal career paths in the US. However it is the accounts of the individual research participants trying to find their place in the complex landscape of law work that enrich this analysis and illuminate the lived experience of social difference: the portraits are of, respectively, a white woman from a lesser ranked law school; a Latina from an elite law school; a white man from an even more elite institution; an African American male from a top 20 law school, and a Latina who studied law at night school while working as full-time social worker. These vignettes portray the persistent significance of ascribed status and ties of affinity, summed up by one of the protagonists as the "need to fit" (Nelson et al. 2023, 147). They show how the salience of gender, race, and class, and the part played by everyday microaggressions and subtle exclusions, can drive aspirant lawyers who do not fit the white male middle-class normative model of the "professional" to enact "racial palatability" (Carbado 2022, 2) and conform to the conventional gender script. While overtly discriminatory practices may have been largely dismantled, the book exposes the resilience of "subtle" institutional discrimination, and the internal conflicts which result, in some instances, in self-exclusion from the profession. However, Nelson and colleagues draw out from these accounts the role of personal agency in making careers, exemplified in choices, decisions, and self-enactment in transactional situations, such as interviews and encounters with more senior colleagues and clients. It might therefore be tempting to use the results of this analysis to identify a toolkit for solving the "problem" of "diversity in the profession," which has preoccupied so many authors (for example Rhode and Ricca, 2015); however, the trajectory of the legal profession across the globe, even prior to the current backlash against diversity and inclusion, suggests that this is a fruitless quest.

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The respective significance of social structures such as class, race, and gender, on the one hand, and personal agency, on the other, as determining features of the social landscape, is, of course, a staple of social enquiry. In searching for a conceptual frame that explains the cultural middle ground between the two, Pierre Bourdieu (1977) and Andrew Abbott (1988, 2005) lighted on, respectively, the metaphors of field and ecology as means of tracing the constantly shifting relationships between individuals, institutions, sites of work, and wider social change. These metaphors help to give shape to the radical transformation of the profession over the past decades and the way in which these changes have affected the demography of its workforce. In both perspectives, professions are situated within their wider ecologies of inter-professional relations and are understood as social entities which, emerging from the process of constructing boundaries (which Abbott (2005, 862) understands as sites of difference within the social space of work), are processual and plastic, rather than fixed forms (Bucher and Strauss 1961; Liu 2018). For Bourdieu (1987), the profession is historically both the construction of the institutional form of a group and its symbolic representation, used to justify its status and monopoly of specific societal tasks. The loosening of that monopoly is therefore fundamental to the reconfiguration of that symbolic form and, consequently, to the extent to which the profession is open to lawyers who deviate from the traditional image of the professional.

The classical profession, whose demise was discussed by Abel (1986) 40 years ago, is now "disaggregated," its deep inequalities described as reflecting those which polarize contemporary US society (Cummings et al. 2020, 141; and see Pue 1998; and Boon, Flood, and Webb 2005). For several decades, much legal work has been de-skilled, labor-intensive, and undertaken in large, primarily heteronomous organizations; globalization and technological change have accelerated these processes, resulting in further restructuring, outsourcing, systematization, and routinization of professional work (Sommerlad and Hammerslev 2020). The consequence has been the fragmentation of the professional space into diffuse labor markets, between and within firms and other institutional homes for law work, many of which are not connected in ways that allow for the development of a "career." These markets assume a dual character, with the upper reaches of the hierarchy, in terms of status and reward, becoming even less accessible to "outsiders," while the work of those in the more open, lower-level environments of standardized document handling and process management contains few of the markers or traits which were once were held to define "professional" work, most particularly the core trait of autonomy.

In the UK legal profession with which I am most familiar, these lower levels are overwhelmingly populated by law graduates from the "new" universities (which have the largest concentration of lower class and black and minority ethnic students) who form a professional "precariat," a reservoir of salaried technicians, some of whom are paralegals, whose lower status credentials justify their lowly and insecure status (Sommerlad 2016b, 2022). By contrast, law work at the higher echelons of the profession is increasingly concerned with networking and commerciality, which generally takes place in environments that place a premium on the social and cultural capital most commonly demonstrated by white middle-class men from elite institutions.

The contemporary profession, therefore, confronts us with a paradox. The credibility of its claims to attested competence, the "fairness" of its labor markets, and its social detachment are central to the profession's global marketing strategy

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and law's capacity to sanctify an exclusionary social order by masking its material basis. The diverse demographic profile of those engaged in law work can be viewed as pivotal not only in justifying the profession's contemporary social role but also in perpetuating the myth of American opportunity (Slotkin 2024). Yet in practice, conceptualizations of professionalism and merit remain rooted in contemporary systems of social stratification, and social criteria or standards which encompass "concrete monuments to socially accepted subjective preference." (Williams 1991, 99). This point, and Nelson et al.'s evidence of the constraints on individual agency, including on the credibility of their claims to professionalism (Nelson et al. 2023, 296), pushes us to reflect on the nature of the contemporary profession and interrogate the very concept of "profession." In the specific case of the USA, the transformation over the last decades of its legal profession's tight guild structure with the consequent erosion of its image as a homogenous collection of independent practitioners, has called into question the utility of thinking of legal practice as a profession at all, as the traits that were held to legitimate its claims to exclusive authority have steadily eroded (Abel 1986, 7; Sommerlad 2025, 3–4).

Other concepts and categories that permeate the discourse on equity and diversity in the profession have similarly become less determinate. The concept of a career dates from the era of stable institutional forms, whereas the contemporary world of professional work is highly fluid and volatile (Sennett 2012). Professionalism in the context of law work is increasingly seen as a process rather than a destination, a disciplinary discourse which the individual internalizes, rather than a status. "Race" and ethnicity, particularly in their overlapping vernacular usage, are similarly problematic, recognizing that they encompass self and other-ascribed status and identity in a complex that is difficult to disentangle. Gender is equally problematic, even prior to the advent of non-binary thinking. The instability of these latter constructs is reflected in the way in which they can be foregrounded at any moment in individual transactions, where the powerful actor can choose, for instance, to sexualise and thereby de-professionalise a woman lawyer.

However, class represents, I would argue, the most significant vector, intersecting with and transforming the meaning of other social categories and determining an individual's trajectory. Despite being described as a "zombie" category (Beck and Beck-Gernsheim 2002, 173–202), irrelevant in the post-modern world where it is alleged that individuals are now free to make their own destiny and identity, in practice, it is difficult to think of an institution that class does not continue to permeate. This is transparently true in the UK, with its ruling elites drawn from such narrow social and educational backgrounds, but as Bourdieu and Passeron (1977) have shown, it is central to the transfer and maintenance of power within and across generations and is capable of being instantiated in numerous ways, including through the significance of embodied attributes or cultural (as opposed to human) capital (Skeggs 2004). Nelson et al. also elucidate how career destinies are affected by these proxies for class (attending elite universities, having the "correct" accent, knowing how to dress, and which cultural tastes to display—that is, possessing sufficient quantities of the "right" forms of capital). Thus, legal education replicates existing class structures by assigning each law school to a tier in a hierarchy; ranking students within a law school; and utilizing examinations as both gate-keeping and socialisation mechanisms for entry into and progression

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within the profession (Lempert 2011, 683, 715; Webley et al. 2016). All of which converges in, and is justified by, the supposedly neutral quality of merit (Sommerlad 2015, 2326-7, 2347).

In summary, the way we conceptualise professional success and careers has been problematized by the last few decades of dramatic transformation and diversification. As Carter and Carter (1981) argued many years ago, the extent to which outsiders have been able to gain entry to the legal profession can be largely attributed to its transformation, but this in turn means that they will not share the traditional trajectories, culminating in partnership status, of their predecessors and therefore may not be recognised as professionals. So, an apparent anomaly is that the rapid and extensive change experienced in the legal labor market has resulted in the social hierarchy of the profession preserving an extraordinary degree of continuity.

This can be explained not simply by the intimate relationship between the legal profession and the socio-economic structure in which it is embedded, but also because this processual quality was its original, primary feature. As Larson (2013) argued, while the profession was a foundation stone of the modern state, providing its architecture and language, it preserved in its social and symbolic trappings key elements of the post-feudal society from which it emerged. This is particularly apparent in the UK, which, like other major Western countries in the 19th century, saw the development of a composite elite in which significant aristocratic elements survived (Kocka & Mitchell, 2020, 3–15). Thus, the UK's official and professional elements turned themselves into a kind of hereditary caste or new aristocracy, grounded in education, which was, however, an aristocratic education that derived its authority in part from pre-modern institutions and symbols. Yet at the same time, the profession needed to ground its legitimacy in the middle-class discourses of merit and achievement. The UK profession therefore derives its authority and legitimacy both from relics of pre-modern status, such as the paraphernalia of wigs and gowns in the theatre of the courts and the "gentlemanly" character of City firms, but also its fit with the modern world, and its capacity to respond to social, economic, and technological change.

The implication of these reflections, which the book's nuanced account reveals, is the overlap of temporalities that contour social change. In other words, the merit of a lawyer who, by virtue of their class, "race," gender etc is not a natural "fit" can at any moment be "misrecognised" (Bourdieu 1991, 1–31, 43–65) and de-professionalised through the citation of archaic discourses which evoke the "gender script" (Butler 1990, 136–141; 1993, 225–227) or its classed or raced equivalent. And, despite the rationalisation of organizational processes which has supposedly taken place with the transformation of these firms into professional service firms, the core skills required to be chosen as a partner remain opaque, as is attested by "James" in one of the book's vignettes; rather, one must "possess some quality that existing partners recognize but cannot define" and ideally have a stay-at-home wife (Nelson et al., 2023).

In other words, the ostensible rationalisation of professional culture, centring on credentials and merit, can be regarded as a palimpsest overlaid on the deep structures of patriarchal, raced and classed relations—such as persistent homosocial networks and practices, most noticeably in the informal patron-client relations which permeate the profession, especially at elite levels, while this combination of change and stasis means that those who are not part of the upper echelons of legal practice cannot be

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described as professionals in the classic sense of the term. Their inequality is thus inherent to the structure and culture of the profession.

None of the above is meant to imply that we should regard the stratification of the contemporary profession as entirely determined—as I stated above, systems are porous, and there are always fractures through which outsiders can enter. Nelson et al. find that the extent to which structures are determinative varies according not only to the (intersectional) identity of the individual practitioner, but also to the type of firm, legal specialism, etc., and the different levels within the profession's hierarchy (2023, 354). In other words, it illustrates the complexities of the deep structures which condition individual agency: the results of, on the one hand, gender and "race" being "baked into" the structure of the profession and wider society, and, on the other, the role of luck and an individual's capacity to seize opportunities and, sometimes, to instrumentalise their diversity, in generating "success." Numerous empirical studies and statistical surveys (Norwood, 2023; Lasseko-Phooko and Mahomed 2021; Choroszewicz and Kay 2022, for example) point to the same conclusion.

Thus, we can read the story of my interviewee Jake, with which we began, as exemplifying the persistent significance of patron-client relationships in a lawyer's trajectory. The combination of sporting prowess, luck, and quick thinking enabled him to gain entry into his firm; his subsequent acceptance was largely grounded in the opportunities afforded him by his patron. Other research that I have carried out into the profession in the UK over the last twenty-five years (Sommerlad and Sanderson 1998; Sommerlad 2011, 2016b; Sanderson and Sommerlad 2024) confirms the paramount importance of such personal sponsorship, attesting in turn to the archaic, kinship structure of many firms. Most powerful positions are still occupied by white men who see merit in those who resemble them; the majority of women and non-white lawyers are less likely to be sponsored and included in the sort of work which will lead to progression, unless—like Jake—they are able to instrumentalise their diversity.

Counterintuitively, a further factor in the resilience of gender hierarchies within these firms relates to the erosion of barriers to their entry. The mass entry of women has met the transformed profession's need for a workforce that is highly skilled, but also transient. Nelson et al.'s chapter on hegemonic masculinities provides an excellent description of the subtle micro processes by which this type of "career" is established, through the affirmation of women's lesser value, which starts in law school (Nelson et al. 2023, 278–299). Their advertence to the fact that gendered difference was and remains fundamental to society and hence to the profession recalls for us the value of Bourdieu's theory of social reproduction (Bourdieu and Passeron 1977). As Bourdieu argues, masculine domination is one of the oldest and most resilient of social dominations since it depends on the naturalisation and eternalisation of what is in fact cultural (2001). We can see this occurring at every stage in a lawyer's trajectory, evidenced by such facts as the instantiation of the pay gap at the very start of a woman's career, demonstrating, as Nelson and colleagues note, that women work within a gendered social order that is deeply embedded in organisational structures. And, further, as they go on to point out (citing Messerschmidt 2019), this then legitimates unequal gender relations more generally.

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This depiction of how the logic of patriarchy patterns individuals' work lives underlines the reciprocal processes between macro-level hierarchies and the profession. As chapter 12 argues, quoting Padavic et al. (2020), 81: "the work/family script is a hegemonic narrative that is a pervasive, uncontested, seemingly natural account that makes singular sense of an array of personal experiences and is resilient to countervailing evidence": "it is an overarching strategic story that preserves dominant cultural meanings and power relations and reproduces them" (cited in Nelson et al. 2023, 296). It is also manifest in multiple ways, which serve to de-professionalise women. An example which jumped out at me was the reflection by the subject of one of the authors' vignettes that she might not have been "pretty enough" (Nelson et al. 2023, 145). This recalled for me the recommendation to women that they use their 'exotic/ erotic capital' as an advancement strategy (Hakim 2010), and how one of my interviewees, a former equity partner in a large UK corporate firm, had explained to me that the ongoing attrition of women lawyers was not really problematic since once they had worked for a firm for around 5 years, the firm had already recouped the money spent on training them and by that time they were not such good 'eye candy' (Sommerlad 2016a, 76).

The richness of *The Making of Lawyers' Careers* means that my remarks here barely skim the surface of what could be said. However, from a UK perspective, despite the stress on the significance of the status of educational institution attended, the role of class seems relatively underplayed: could this be related to the power of myth in the American imaginary? The emphasis on individuals' agentic power is reminiscent of Slotkin's work on how the myths that have shaped US society included the particularly powerful vision of America as "a wide-open land of unlimited opportunity for the strong, ambitious, self-reliant individual to thrust his way to the top" (Slotkin 1973, 5). This (highly masculinized) idea of the power of the individual to reinvent themselves appears pervasive, encompassing virtually all US institutions. Its counterpart is the discourse of choice, which allows failure to be attributed to the individual because of, for instance, their failure to work hard enough. The legal profession is exemplary: its claims to meritocratic, economically rational labor practices and its high social status mean that it is inevitably viewed as a primary site of social mobility. And its transformation into a mass industry and consequent need for large numbers of legal practitioners, and the marketisation of legal education, have simultaneously made entry possible and indicated that this will lead to high status. In reality, I would argue, the road to a form of professionalism which resembles the traditional understanding of the term—namely, high skill, autonomous, high status—remains closely bordered, with entry continuing to depend to a great extent on macro-level status hierarchies.

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