



Sommerlad, “What are you doing here? You should be working in a hair salon or something”: outsider status and professional socialization in the solicitors’ profession.
[2008] 2 *Web JCLI*
<http://webjcli.ncl.ac.uk/2008/issue2/sommerlad2.html>

“What are you doing here? You should be working in a hair salon or something”: outsider status and professional socialization in the solicitors’ profession.

Hilary Sommerlad

Leeds Metropolitan University

Copyright © 2008 Hilary Sommerlad

First Published in the Web Journal of Current Legal Issues

I would like to thank Sophie Goodeve for her research help, and Lisa Geary and Darren Shaw for their assistance and Dr. Peter Sanderson for his invaluable comments.

Summary

In the United Kingdom, as in other jurisdictions, the face of legal education has been transformed by the advent of considerable numbers of students from previously excluded groups. For several decades white middle class women comprised the majority of these ‘outsiders’, but the past few years have seen increasingly complex patterns of ‘difference’ from the norm of the white middle class male solicitor. New universities in particular take growing numbers of older students, and students from Black and Minority Ethnic and lower socio-economic groups.

The popularity of Law as a means of promoting individual and group mobility projects has not, however, been matched by a concomitant cultural transformation of the solicitors’ profession. A number of studies have identified the way in which cultural practices maintain exclusionary mechanisms. Less attention has been focused on the way in which aspirant lawyers from minority groups encounter and come to terms with these cultural practices. This paper reports on a project designed to explore the issue of professional socialization through a longitudinal study of the local legal labour market

and of law graduates from a new university which has a high proportion of non-traditional students amongst its intake.

The paper goes on to explore the need for an element of professional education which enables outsiders to address the structural and cultural barriers to their entry and / or progression in the profession

Contents

Introduction
Research Method
Findings and Discussion
The LPC
Professional Socialisation post entry
Implications for Training
Conclusion
References

Introduction

Despite the existence of definitional difficulties with the concept of profession (Freidson 1994), there is substantial agreement about its core characteristics: namely, a grounding in an articulation of cognitive and normative dimensions, producing both the ability to control a market and achieve social status and its exclusive, community character (Larson 1977) which is justified as producing a natural adherence to common ethical standards (Burrage 1996, pp71-2).

As one of the 'classical' professions, the solicitors' profession in England and Wales conforms to this paradigm: whilst its social justice ideology entails a discourse of equal accessibility and a role enactment based on demographic neutrality - termed 'bleached-out' professionalism (Levinson 1993) - traditionally it has been characterized by a white male middle class culture (Nicolson 2005), practised social closure (Witz 1992) and exercised strong pressure on its members to conform to professional norms, values and rituals. This remains the case despite the exponential increase in women solicitors: women have made up over 50% of new entrants for over 10 years, producing an 850% overall increase in the last 25 years (Bolton & Muzio 2007). Yet their participation has failed to feminise either professional structures or culture, in part because it coincided with a general expansion of the profession (Menkel-Meadow 1986), in part because the majority of these women emanated from the same socio-economic and ethnic groups as their male colleagues, and in part because child care remains highly gendered, with the result that many female solicitors have broken career trajectories. Instead, the coincidence of mass female entry with a general expansion of the profession facilitated the re-design (Sandefur 2007, p 111; Hagan & Kay 1995) and stratification of professional work, concentrating ownership and governance in fewer hands. The

resulting disjuncture between the legal profession's discourse of meritocracy and accessibility, its increasingly varied membership and its persistently male white middle class culture has recently been accentuated by the expansion of Higher Education (HE) and the resulting increase in law students drawn from other minority groups (Shiner 1997; 1999; 2000; Law Society 2004; Cole 2006). Yet the deeply stratified nature of UK HE institutions and the status nature of the professional project have meant that these developments have neither eradicated class nor produced equality of opportunity (Boon & Duncan 1990; Archer 2007).

The professional project entails control over training and qualification in order to ensure that it comprises sufficient indeterminacy to facilitate exclusion and produce professional solidarity (Larson 1977, chapter 4). Whilst this control has reduced as a result of graduate entry, it remains evident in the predominance of black letter law, the requirement for a core of qualifying subjects and the minimal input of socio-legal studies into the law curriculum (Thornton 1996; 1998; Genn et al 2006). The extensive research into diversity and education shows that the successful embedding of widening participation is associated with its full integration into an institution's strategic goals (Bagguley & Hussain 2007); the maintenance of a focus on widening participation throughout the student life-cycle; the development of institutional structures and processes which value diversity, and an approach to the curriculum, learning and teaching which reflects diversity (Thomas & May et al 2005). This approach is supported by evidence that the design of law curriculum should be approached with 'an appreciation of the ethnic dimension to learning' (Carr & Tunnah 2004). In practice, however, overt closure strategies continue to operate in law schools (see for instance Dhavan 1989; Thornton 1996; Harrington 1992); for instance, McGlynn writes: 'Gender informs many aspects of the law school, from admissions policies, to mootings, to the inclusion of gender perspectives in the .. curriculum .. to the inculcation of the values, ethics and principles of the law and legal profession and to the recruitment, retention and promotion of women academics' (1999 p. 89). Thus law curricula generally continue to embody the classed, raced and gendered nature of the legal profession, and few law schools have taken on board the stricture that to embed widening participation they must 'know (their) students .. their interests, demographic background, motivation for undertaking the subject, level of knowledge, and previous learning experiences' (O'Donnell & Johnstone 1997). Rather, the connections between professional status and determination of what constitutes legal knowledge have resulted in conservative pedagogies which accentuate the mystifying nature of legal doctrinalism: thereby compensating for the explicitly vocational dimension of the law degree.

Beyond the academy, private practice controls first entry into the profession through its control over training contracts, and then workplace training. Research indicates that whilst many law firms have endorsed the need to increase the diversity of their members (Braithwaite, 2007), their entry requirements not only generally discriminate against graduates from new universities (Rolfe & Anderson, 2003), but also exceed simple degree and / or professional qualifications and extend to a range of attributes and practices many of which are tacit and involve insider knowledge (Sommerlad & Sanderson, 2002; Sommerlad, 2007). These attributes are likely to be so instinctive and

intrinsic to professional and organisational narratives, that employers themselves may not be aware of them. Their obscure and intangible character also makes them difficult for students to de-code or to evidence, since they generally depend on the possession of the 'right' cultural capital or appropriate ways of doing 'gender' or 'class' (Sommerlad, 2007; and Francis & Sommerlad, 2008). New university students therefore tend to suffer significant disadvantage in the legal labour market, and encounter difficulties in obtaining the training contracts which are necessary to qualify as solicitors (Halpern, 1994; Shiner & Newburn, 1995; Shiner, 1997, 1999; 2000; Vignaendra, 2001)

Theoretical and empirical work on professional socialization supports the description of professions as 'crucibles of identity formation' (Hayward & Mac an Ghail, 1997), so that even where firms' intake does become more diverse, this diversity is effectively erased. Some studies have focused on the taken for granted, micro-inequities which permeate every day practice, producing a culture which is unwelcoming to outsiders (Dryburgh, 1999). For instance Beagan's study of enculturation into the medical profession (2001) has considered how neither an institutional commitment to equality nor the implementation of anti-discrimination policies has displaced hegemonic professionalism. Drawing on Essed's concept of 'everyday racism' (1991), she notes that whilst bureaucratisation has reduced overt discrimination, 'micro level interactional processes' continue to convey the terms of inclusion into the dominant culture, thereby inducing assimilation.

The applicability of this work to the legal profession is supported by empirical studies of progression in the legal profession. For instance, Goriely and Williams suggest the persistence, despite the implementation of anti-discriminatory measures, of the traditional approach to evaluating newly qualified solicitors, which relies more on measuring them against characteristics of the suitable 'chap' than on a rational standardized approach to evaluation and appraisal (1996, pp 124-5; and see Sommerlad & Sanderson, 1998; Sommerlad, 2002; Pierce, 2002; Haslett & Lipman, 1997).

Nevertheless, growing awareness of the need for a representative legal profession and of the persistence of discrimination has produced pressure for reform at both the governmental and professional association level (eg Langlands, 2005). A concern with equity was one of the motivating factors behind the Training Framework Review (TFR) (Law Society, 2001) which proposed more diverse and less costly routes to qualification based on the assessment of outcomes, thereby challenging the traditional career trajectory. Boon et al have commented on the ambivalent nature of these proposals: on the one hand, they may be seen as part of the move towards a post Fordist system of education in that their key features comprise a neo-liberal individualization or 'flexibilisation' of learning and positioning of legal knowledge as a product of the market place. On the other hand, they are also progressive not only in their embrace of diversity and accessibility but also their emphasis on vocationalism rather than doctrinalism (2005, pp 480-6).

However the vitality of the professional status project has ensured that the professional elites (both the elite law schools and firms) have been able to resist these proposals,

stalling their implementation. Further, even if they *are* eventually implemented, they are likely to be of limited assistance in progressing diversity in the professional labour market, since it appears likely that the profession will continue to 'set informal benchmarks' in order to preserve the 'gold standard' (Wolf, 1997). The persistent equation of merit with a degree from an old university is highly effective in reproducing class hierarchies.

This paper reflects on the issues raised above through discussion of the findings of an ongoing longitudinal study of students and trainee solicitors. I consider the encounter between aspirant lawyers from minority groups and the solicitors' profession, and I pay particular attention to the processes of professional socialization those who gain entry are obliged to undergo. I conclude with discussion of the implications of these findings for professional training and the diversity agenda. I argue that the barriers 'outsiders' face need to be tackled holistically and I explore positive strategies which might both resource such students and sensitise the professional field to the needs of diverse entrants.

Research Method

The research project (which was piloted 2003-4) was begun in September 2004 and is a longitudinal study of two cohorts of part-time and full-time post-graduate students undergoing the academic stage of their vocational training (the Legal Practice Course (LPC)) at a 'new' university in a large provincial city. Cohort 1 comprised part-time students 2004-6 and full-time students 2004-5; cohort 2 part-time students 2005-7 and full-time students 2005-6. The number of students in each cohort varied slightly in each year of the study: 2004-5 30 were part-time, 57 full-time; 2005-6 33 part-time, 63 full-time). The research with the students is designed to track developments in career aspirations, perceptions of the legal professional field, levels of attainment during and after the vocational training stage and into qualification and experience of professional socialisation.

A mixture of methods was deployed: two questionnaires were administered to the student cohorts (both full and part-time) at different stages in the LPC, the first during their first week and the second towards the end of their course (therefore the administration of questionnaire 2 to the part-time students in a cohort took place a year after its administration to the full-timers). The questionnaires were designed to capture basic socio-demographic details; understandings of the profession; motivations and aspirations; the development of motivation, aspiration; and success in obtaining training contracts. The data from the questionnaires was quality checked and, where appropriate, coded before being input into SPSS for analysis. Findings from the analysis in part determined the scope and nature of the in-depth qualitative follow up work

The first questionnaire was followed by focus groups which were held about a third of the way through the full-time year (a year later for the part-timers in the cohort). Around one third of the student body participated in four groups of between 4 and 9 students, which were selected to comprise various combinations: for instance, one group was all female, one all male; one all non-white; one mixed both in terms of gender and ethnicity.

Each group was led by a different member of the research team. Amongst other topics, the groups explored views on law as a discipline and on ideal jobs and drew timelines charting and exploring their first awareness of a desire to do law through to where they saw themselves in 5, 10 and 15 years. In order to elicit internalised, and possibly tacit understandings of the profession, responses to questions were explored both in open discussion, and also by asking respondents to write descriptions and to draw what came into their minds when, for instance, they thought of solicitors. The sessions lasted around two and a half hours.

This focus group work was followed by semi-structured interviews with students, largely drawn from the full-time cohort but including some part-timers. Interviews are now being conducted with selected members of the cohorts at staged intervals during their training contract and through into their first two years post qualification, again at regular intervals. The project is also tracking selected respondents who have not yet obtained a training contract.

Another sample comprised representatives of the local legal employment market. The research methodology adopted with these employers is similar to that deployed with the students. At the time of writing, a questionnaire, which includes many questions which correspond to those asked of students, had been administered to 50% of local law firms, and this is being followed by focus groups and interviews. To date, around 25 questionnaires have been returned and reminders are being sent out, and five employers have been interviewed.

All the qualitative research is recorded and then transcribed. The project is led by the author with the (temporary) assistance of (a white female) researcher; members of the university LPC team (one male and one female, both white) also participated.

Findings and Discussion

The LPC

The gender balance of the research sample corresponded to the national law student average (55% female). However 41% of students were drawn from Black and Ethnic Minority groups (BME) compared to a national figure for all BME students in 2004 of 23.9% (Cole, 2005). The other striking differential was the high proportion (45%) of students who could be categorised as working class. It has been argued that the increased diversity of the law student population has not encompassed class (Thomas, 2000). However the complexity of class as a result of the erosion of occupation as a basis for social categorisation has complicated the concept of class and made it possible to question this assertion. On the one hand class has been described, along with other social categories, as obsolete, a 'zombie category' (Beck & Beck-Gernsheim (2001). Yet the related proposition that we are seeing an increase in transformative agency is undermined by the decrease in social mobility in the UK. Instead, following Savage (2000), we might view class as increasingly related to cultural practice, and it may be argued that the

entire system of informal barriers and benchmarks erected by the profession turn on the resilience of the concept of class, as revealed in educational institution attended and, of course, other signifiers such as dress and speech. This is supported by the widespread failure of the elite HEIs to recruit 'non-traditional' students who are instead concentrated in the new universities (Shiner, 2000, p115), a pattern which both fits with and accentuates the lower status of new universities and their (related) greater emphasis on vocationalism and innovative pedagogical practice (Harris & Jones, 1997). Correspondingly, few old universities run the (vocational) LPC; however, private sector colleges also offer this course, and attract many law graduates from the elite HEIs, reducing the numbers who studied for the LPC at the university under study.

In order to establish the class background of the sample, we therefore deployed a mixture of indices including post code, parental occupation, students' self categorisation, school attended, patterns of familial attendance at university, and the university where the students had studied for their first degree: for only a quarter of the student body was it common for their family to have attended university; for half, either they or their siblings were first generation students, and these results corresponded with attendance at state schools; and 55% had studied for their first degree at a new university (most at the university under study). Thus, as several students observed, the status of HEI attended has itself become an indicator of class (Abel, 2003): 'you're at a disadvantage because you didn't sort of go to a .. not a proper university .. I never really thought it would make any difference where you did (the law degree) .. but it does'.

The enactment of socio-economic background in cultural practices was manifest in other ways which would make it difficult for outsider students to 'pass' as potential lawyers. For instance, the dress codes of some female students distinguished them from their middle class colleagues, resulting in an aesthetic which could be coded as 'common'. One student said of an interview at a law firm: 'they sort of looked at me as if 'what are you doing here? You should be working in a hair salon or something', and a mature student who had had a previous career as an accountant made the following observations on her colleagues:

'I can envisage some of them as being lawyers, but others I look at them and think, 'what are you doing here?' .. their whole demeanour ..some of them look very dolly birdy ..the ones that you can tell will get a training contract . the women are young, attractive, thin, blonde ..flirty, but dressed very subtly .. they are aware and confident'

On the other hand, the Islamic students' dress highlighted the additional problems they would face seeking to enter a profession which reflected 'the particular biographies, beliefs and expectations of .. white(s) ..'. (Wilkins, 1998).

Speech of course remains one of the most powerful signifiers of class. A primary function of legal training is to achieve enculturation in the profession's official language; in addition to specific legal terms and the frequent use of Latin, this includes the use of the passive voice and modal markers to signify detachment, which working class students tended to find alien (Edensor, 2000). Many such students had also become conscious of

the need to acquire a vocabulary, intonation and accent which would 'bear(s) the imprint of a professional attitude' (Lingard et al, 2003, p 612) and spoke of the disadvantage they perceived as flowing from their regional accents.

Thus, although students' reflections on law as a discipline revealed the extent to which they had internalized law's cultural paradigm and discourse, and, moreover, were aware of and took pleasure in the cultural capital this gave them, this socialisation could not compensate for the differential between these outsiders and the professional template, and, perhaps most significantly, their ignorance of the profession. Whereas many law students in old universities come from legal dynasties, and therefore not only possess a network of contacts and cultural capital, but also that intuitive understanding of what the profession requires, the knowledge of many outsiders was originally grounded in films and television programmes like *Ally McBeal* and *LA Law*. As a result of these media generated images, students lack of clear understanding was combined an impression of a limitless possibility of entry and progression (Minority and Social Diversity in Legal Education (2006) www.Scotland.gov.uk/library/5/justice/masd-02.asp, accessed 30/3/06) - which many students claimed had been bolstered by the universities at which they had studied for their degree: 'it was like, all the firms would be offering us jobs; it's such a con'. As this last remark indicates, by the LPC stage, the 'outsider' students were beginning to appreciate the difficulties in gaining entry to the profession. Unless they had established contacts through work as, say, paralegals, it was not uncommon for them to have applied to at least 50 firms without success, engendering deep anxiety and bitterness

The reasons for the difficulties in obtaining contracts varied according to professional sector. As observed above, the employment practices in the large corporate sector generally reveal a significant bias against new university students. The following comments reflected widespread experience: 'there's elitism among the institutions.. it borders on discrimination. If you've gone to a new university, not one of the red brick, top level institutions, then you're not fit to work for their firm - I've had that said to me.' This bias was especially marked on the part of the large commercial firms, virtually all of which require a 2:1 from a pre-1992 university (Halpern, 1994; Shiner & Newburn, 1995; Shiner, 1997; 1999; Rolfe & Anderson, 2003), and some of which have specific links with a particular university; for instance Bristol University was described by one employer as 'a feeding tube to **** (a 'magic circle' firm)'. Furthermore, the corporate sector's dominance of the profession extends to training contracts - nationally, 31.4% of all training contracts registered with private practice are with the small number of corporate firms with 81 or more partners, and a further 15.8% with those firms with 26-80 partners.

Yet there is little evidence that the corporate sector's preference is economically rational, and has been described as 'misguided' (Centre LGS, 2005): for instance QAA reviews have consistently indicated broad parity between HEIs in terms of teaching quality. In fact, anecdotal evidence suggests that there may be an inverse relationship between the status of a university and the importance attached to teaching (Chevalier & Conlon, 2003). Further, as one student pointed out, many of the lecturers at the post-1992 university she attended had themselves attended elite universities as well as having substantial experience in law practice. In fact the claimed correlation between the quality

of a law degree and the prestige of the conferring institution may be described as ideological rather than based in evaluative, comparative research. (Tong & Pue, 1999): or, as one student asserted 'a degree's, a degree's a degree'. If assessed from the point of view of producing law graduates who are most likely to perform well as practising solicitors, it could rather be argued that there are grounds for employers to consider 'outsider' students in preference to the ideal typical trainee. The gap between academic law and law in practice has been the subject of comment for almost a century (Pound 1910), and given the relatively unchanging nature of legal education (Rochette & Pue, 2001), it is unsurprising that this remains a recurring theme amongst practitioners. The attributes cited as necessary to be a good lawyer always include 'people skills', good communication, time management, and (by corporate firms) entrepreneurialism (Sommerlad & Wall, 1999; Sommerlad & Sanderson, forthcoming). Yet it appears that large firms' criteria for choosing trainees is grounded in the prestige of their university and other status indicators, and extends to the applicant's age (around 26); other life experiences which point to the possession of the above attributes tend to be discounted. As a result, a careers advisor who had worked at both old and new universities made the following comments:

'There's a pecking order .. some (employers) won't be interested in (new university) students, they look at UCAS points ...but a wiser employer might judge people on competencies, well (new university) students could compete equally on that .. here they learn good team skills, it's a less academic style teaching .. also I saw someone at (old university) and her CV is really scanty compared with students I've met here (new university) who've already had a couple of jobs so if you look carefully at their CV they've got a lot of skills .. but it's back to this snobbish ranking of universities against other universities '

This preference for universities 'marked' with class status is more than explicable if we see education as a positional good, and acknowledge the dominance of the middle class over professional education and training. It then follows that one of the primary functions of assessment and qualification is to advantage those existing class groups who have best access to prestigious institutions and professions. As Bourdieu illustrates, systems of education and assessment are effectively managed in such a way as to privilege the attributes of middle class students which are 'misrecognised' as representing some objective form of 'merit' and the concomitant capacities which are assumed to underlie it (and see Wilkins, 2007). The resulting investment which the middle class have in 'traditional' qualifications exists in tension with the modernising bent of educational policy: Human Capital theories which argue that the rational operation of labour markets precludes structural barriers to participation on the basis of characteristics like class, gender and race; and the accompanying neo-liberal discourses of competencies, arguing for modes of training of demonstrable value to work performance (see eg Bennett et al, 2000). These trends have been identified (Boon et al, 2005) as having produced the utilitarian turn in HE, with its emphasis on Personal Development Profiles (PDPs) and the need to produce workers unencumbered by tradition. As we have argued above, because both HE and the professions remain sites of class and gender privilege, these processes are being resisted, especially by Russell Group universities. Similarly with law, there is a tension between the imperative to meet the different needs of a

fragmenting professionalism and fragmenting society (Hutchinson, 1998) through production of different kinds of lawyers, and the interests of the profession in maintaining the obscure link between legal knowledge and practice. Thus the mystique of law is maintained through, for instance, the sort of practice experienced by the following student at the old university where she made her first attempt to study law:

It was very academic .. they made it feel completely alien, the first sort of thing we had to do was .. registered and unregistered land ..but you didn't really feel you could ask for help if you were struggling .. it was more a case of 'go and learn it for yourself and if you haven't understood then there is no point in your being here'.

As a result, the approach she subsequently encountered at the new university, in which there was a conscious attempt to deconstruct the mysteries of the law, to make transparent the opaque 'rules of the game': 'you were eased into it more gently from the start and .. the tutors are definitely approachable .' facilitated the evaluation of new universities by the professional elites as less rigorous, 'dumbed down' . . '

We have to date explored the persistence of structural and cultural barriers to the transitions that 'outsiders' need to make from education and training to the profession, and in the following section of the paper I will explore ways in which the lessons of these findings may feed back into the curriculum and the learning process. I would also argue that the findings of the research concerning successful entry strategies by non-traditional students are relevant to developing the learning process. A starting point is to identify the sector where, given the fragmentation of the profession, the outsider graduate may gain entry. The decline in the small firm / High Street sector of the profession extends to their intake of trainees: nationally, sole practices and firms with up to 10 partners take 37% of trainees registered with private practice (Williams & Goriely, 2003). Furthermore as a result of the partial persistence of quasi-kinship structures (Burrage, 1996) in this sector, contacts remain a primary means of obtaining a contract with the result that ethnicity and gender are far more determinant of students' chances of success. This has led to the development of niches in the market, where small high street firms or sole practices run by minority solicitors can provide a refuge for those who would have difficulty finding places with larger firms (Shiner, 2000). This strategy however is under increasing threat due to the accelerating changes in the structure of the market.

This latter strategy recognizes the importance of social capital, and an alternative approach is to seek to build and exploit 'bridging' social capital with 'insiders', as illustrated in the following vignette:

Michael Lee (not real name) is the son of a Chinese restaurateur, and sees a career in law as part of a family social mobility project. The family has longstanding links with the legal profession in their capacity as the clients of a medium sized local high street firm, and has been able to draw on those links in order to obtain work experience and, eventually, following a law degree, the LPC and an MA, a training contract for Michael. As a result, Michael has no sense of any disadvantage accruing from his ethnicity, but

identifies the importance of very hard work and meticulous preparation as the foundations of success. This success he sees as a stepping stone not just to professional success but to greater occupational and global mobility. This sense of strategy and the careful accumulation of social and cultural capital, not universally common for 'outsider' students, appears to be a key aspect of his success.

However, the process of accumulating bridging social capital is not accessible to all outsiders. An alternative strategy is to accumulate workplace skills and competencies in a lower status niche, and then to 'sell' those skills to a more advantageously placed firm.

Akhtar Hussain (not real name) is the son of a West Yorkshire textile worker who died at an early age from an occupational disease. He took a GNVQ in Business Studies rather than A levels and had no links with the Law – his only knowledge of the profession was accumulated through TV drama serials, which attracted him to the idea of high status litigation. He describes himself as having been a very average student who took a third in his law degree. He achieved a training contract with a firm that specialised in immigration and asylum work, where he believes he acquired the case handling and negotiation skills that he sees as central to professional success. When it became apparent to him that he was not going to obtain the range of experience that he wanted with this firm, he transferred his training contract to a firm in a prosperous regional centre and specialised in industrial disease work in which he was subsequently made up to an associate. He believes he is held in high regard because of the high level of settlements he achieves, which in turn he puts down to good organization, persistence, and the development of a style of polite assertiveness in negotiation.

The key point for this outsider appears to be his active engagement with the core skills demanded by the job – developing what Bourdieu would describe as a 'feel for the game' (2001), and developing a career strategy based on this appreciation. This feel for the game is, despite the more skills-based components of the LPC, not something which the current vocational training course on its own transmits to students, and below we will consider the possibility that it might be advantageously built into the learning process.

Professional Socialisation post entry

The 'incomplete and idiosyncratic foundation' (Boon, 1998, p 168) offered by legal education intensifies the professional socialisation process which trainees undergo during their training contracts. This traditional apprenticeship system is highly effective in effecting this professional socialisation. As experiential learning, in which practices (both technical and cultural) are modelled by the master, it serves to break trainees down and re-make them in the image of the firm. The formal training in legal skills is designed to inculcate those dispositions which embody the culture of an organization, and although full professionalism will ultimately be exemplified by certitude, initially the effect on the trainee tends to be **loss** of confidence. Numerous research studies across a range of

professions attest to the stressful nature of this process for all trainees (MacIntosh, 2003), involving the internalization of inexperience as inferiority, and the acceptance of lowly status.

Further, the process does not simply entail acquisition of practice skills but, as the following comments by employers make clear, a fully embodied new identity:

‘we look at how they walk and how they are dressed’.
‘trainees today just don’t seem to have a sense of what it is to be professional and yet that is so important – learning how to be a professional, what clothes to wear, what to say, how to say it and so on – I would say that’s almost more important than the legal skills, knowing how to behave appropriately.’

Thus trainees must learn how to display, effortlessly and therefore convincingly, a professional demeanour (Goffman, 1957; Entwistle, 2001), which, as the comments by a middle class white man, training in an expanding commercial firm, make clear, is rigidly bounded: ‘(it’s) conformist.. people believe they have to act in a certain way to be looked at as lawyers ..’. This view was echoed by a (white) trainee who, as a part-time student had also worked as a paralegal and therefore described himself as ‘already habituated’; he went on: ‘to succeed, or just survive, it’s vital to show that you fit in, play the game, mix socially and look the part’.

Nonetheless, the socialization process will differ significantly depending both on the extent of the neophyte professional’s outsider status and the ecology of the law firm in which she is based. In her study of women engineers, in which she describes a three stage process involving adaptation to professional culture, internalization of professional identity and demonstration of solidarity with other professionals, Dryburgh (1999) reveals how acquisition of professional identity requires women to enact masculine norms and values in masculine professions. The concomitant need to undergo a process of disassociation, involving the shedding of aspects of her previous (inferior) identity, in coming to terms with the gendered, raced and classed identity of the profession, is echoed in the concerns expressed by a prominent Black Caribbean barrister that black lawyers risk becoming unrecognisable to their communities (and see Wilkins, 1998a); as Carbadó has argued, black trainees must ‘act white’ or ‘cover’ and suppress aspects of their identity which mark them out as ‘other’ (Yoshino, 2007). The following account by a mature woman trainee of her experience gives a flavour of what this involves:

‘going into court with some young jerk aged 20 .. all that posturing, body language . but you have to learn to do it too.. .. it’s difficult for women especially for women coming in when they’re older because they’ve done a lot of caring work rather than all this rubbish’

This woman nevertheless stressed the importance of learning how to perform the posturing, and to speak and embody authority, to develop the ‘manner of certitude’ and confidence essential to passing as a professional (Goffman, 1957): ‘showing you’re confident is an essential skill . you must be able to assert yourself physically,

intellectually'. However the continuing question mark over women's status as 'authoritative knowers' (Thornton, 1995) is revealed in the difficulties she found in convincing others of her mastery of these attributes

most of the judges are blokes and I think sometimes they don't listen to me because I'm not a bloke - this feeling that they won't accept my argument whereas if it had been a man making it, it would have been 'oh yes Mr Prat, I see what you are saying' maybe some of the skills are irredeemably male .. a lot of women are aware of what a reasonable settlement would be and I think that constrains you, whereas the men just go for it ..'

Whereas, therefore, in her account, the (all white) male trainees quickly learned 'to play the game', the women, as outsiders, continued to suffer from 'imposter complex' with the result that, in the words of another trainee, they were 'always angsty'..

Consequently, for outsiders professional socialization involves learning to negotiate the various hazards intrinsic to the dissonance which exists between their professional identity and their primordial identity. Women who chose a sexualized persona could easily be viewed as weak or 'whinging', whilst 'social males' continue to risk being seen as inappropriate: 'women have to be more forceful - possibly more forceful than the men. And that can be tricky as it's easy then to be taken as too bolshy'.

Whilst a range of research reveals the specific obstacles BME trainees are likely to face in their socialization, these are of course mediated by gender and class and the firm with which they are training. Evidently the experience of the British Asian trainee in a British Asian firm will be very different to their experience in a firm where their difference is likely to be constructed as inferiority, and where therefore, like white women, to survive they must 'mimic the majority group'. (Vignaendra et al, 2000). A firm which was prepared to argue that 'everyone is given an equal chance to conform and if you don't you won't succeed .. (Asians) don't conform', encapsulates the raced nature of the field as depicted by research into white women and black men lawyers in the US (Pierce 2002). Echoing Essed (1991), Pierce's account of white resistance to the black male lawyer in her study reveals the cumulative impact of continual repetition of, for instance, devaluing remarks and 'jokes'.

However, as a status project, the maintenance of Law's classed nature is fundamental to the reproduction of professionalism. Hence, of all the intersecting forms of identity which differentiate a subject from mainstream legal professionalism, class remains the key structuring principle. Whilst middle class white and BME women and BME males can successfully adopt a professional identity, albeit at the cost of personal tensions with this role, and often within circumscribed locations or temporalities, **all** signs of working class identity must be internalized in terms of lack, intrinsically illegitimate forms of identity for a solicitor to inhabit, as the following comments confirm: 'if you were clearly working class .. that would be very difficult .. I can't think of anyone ..'; 'to be a solicitor you couldn't do it .. the persona you have to present must be a bit posh .. even if you're doing legal aid'.

Implications for Training

These findings of the difficulties non-traditional students face in gaining entry into the profession, the processes of professional socialisation those who do gain entry will undergo, which currently erase most traces of an 'outsider's' primordial identity, and the extensive evidence of the stunted career progression such entrants enjoy, suggest a poor prognosis for the widening participation / diversity agenda in legal profession. They indicate that without either an attempt to address the stratified nature of HE and / or the prejudices of the profession, its culture, especially of its elite sector, will remain largely white and middle class. As I have noted above, this has clear implications for training, both in terms of continuing professional development, and for the law degree and LPC, since they connect to the ambiguities and tensions which have long permeated legal training: namely the contradiction between the construction of what is an essentially vocational subject as a liberal art, between the need to produce trainees with practice skills and the threat vocationalism represents to the status of the professional project; between the emphasis many progressive critics of mainstream legal education place on skills and the neo-liberal agenda which would produce a narrow, technocratic form of education modelled on competences. These issues have been the subject of a protracted and extensive debate, with which this paper does not have the space to engage.

Instead, I want to suggest using the key findings of research about both the barriers facing non-traditional students, and the strategies used by those who achieve 'success,' to enhance the education and training process at the undergraduate stage in a way that will both reduce the opacity of the way in which entry to the labour market works, open employing organizations to more public scrutiny and thereby reduce the information asymmetry which market theorists would see as one of the key dysfunctions of the current state of affairs.

This could be achieved by incorporating learning elements within HEI's equality and diversity strategies in order to enhance the employability of all students, but particularly those from minority backgrounds, and to raise the profile of 'outsider' students with the profession and sensitise it to diversity issues. This might be accomplished by embedding within degree or professional qualifications a pedagogical instrument which combines research, similar to that reported here, into the student body (in order to acquire the necessary in-depth knowledge of their demographic background, their motivations and aspirations), tutor led work to improve students' critical understanding of the legal profession, together with exercises also designed to engage law students in critical reflection about the legal profession. This last dimension could comprise student research into the profession's structure and culture, including an analysis of skills and other attributes it requires; student link or mini-placement with a firm, and the development of a personal career strategy including practical steps to meet not only those employer needs which are explicitly stated, but also some of the implicit unstated expectations. This pedagogical instrument could take the form of either a dedicated professional employability module or modifications to existing PDP activities, or

elements of these embedded across the law degree, and would thus combine the research methods described above with tutor led input and student research exercises.

Conclusion

The current focus on equality and diversity and widening participation, which is shared by HEIs, government and the professions, makes this a crucial moment to interrogate what is entailed in transforming both HE and the professions into genuinely diverse and open institutions. The fact that traditional pedagogies and philosophies of education are also facing significant challenge enhances the potential for change. However, it is possible that the potential for a more diverse legal profession will either be eroded by the processes of professional socialisation, or distorted to produce a stratified and deskilled occupation by the dominance of a narrow competency model applied to vocational training. I have sought in this paper to contribute to the debate over how we can realise the potential for encouraging diversity, not just in the sense of widening entry, but also in the sense of rendering the profession as a space more open to the contributions of different kinds of lawyers (and see the arguments of Erica Rackley (2007) in a similar vein in relation to the judiciary) by using opportunities for curriculum innovation to create a bridge between the profession and non-traditional aspirant lawyers.

References

- Abel, R (2003) *English Lawyers between market and state: the Politics of Professionalism*, Oxford, Oxford University Press
- Archer, L (2007) 'Diversity, equality and higher education: a critical reflection on the ab/uses of equity discourse within widening participation', 12, 5 & 6 *Teaching in Higher Education*, 635
- Bagguley, P and Hussain, Y (2007) *The role of higher education in providing opportunities for South Asian women*, York, Joseph Rowntree Foundation
- Beck, U & Beck-Gernsheim, E (2001) *Individualisation: Institutionalized Individualisation and its Social and Political Consequences* London, Sage
- Beagan, B (2001) 'Micro Inequities and Everyday Inequalities: "Race," Gender, Sexuality and Class in Medical School', 26, 4 *Canadian Journal of Sociology*, 583
- Bennett, N, Dunne, E & Carre C (eds) (2000) *Skills Development in Higher Education and Employment*, Buckingham, Open University Press
- Bolton, S & Muzio, D(2007) 'Can't live with 'em; can't live without 'em: gendered segmentation in the legal profession, 41, 1, *Sociology*, 47.
- Boon, A (1998) 'History is past politics: a critique of the legal skills movement in England and Wales' 25, 1 *Journal of Law & Society*, 151

- Boon, A & Duncan, N (1990) 'An elite profession and elite institutions facing demographic change' (Spring) *Journal of Access Studies*, 47
- Boon, A, Flood, J & Webb, J (2005) 'Postmodern Professions? The fragmentation of legal education and the legal profession' 32, 3 *Journal of Law & Society*, 473
- Bourdieu, P (2001) *Masculine Domination*, Cambridge, Polity Press
- Bourdieu, P & Passeron, JC (1990) *Reproduction in Education, Society and Culture*, Cambridge, Polity Press
- Braithwaite, J (2007) 'Explaining Diversity Policies in Large London Law firms' unpublished paper presented to *Law and Society in the 21st Century Conference*
- Burrage, M (1996) 'From a gentlemen's to a public profession: status and politics in the history of English solicitors' 3, 1/2 *International Journal of the Legal Profession*, 45
- Carbado, D (2007) 'Acting White' unpublished paper presented to *Law and Society in the 21st Century Conference*
- Carr, H & Tunnah, E (2004) *Examining the effectiveness of the undergraduate law curriculum in black Caribbean students for entry into the legal profession*, UKCLE
- Centre LGS (2005) *Response to the DCA's Consultation Paper: 'Increasing diversity in the Judiciary'*, Kent, Centre LGS
- Chevalier, A & Conlon, C (2003) *Does it pay to attend a prestigious university?*, London, Centre for the Economics of Education
- Cole, B (2005) *Trends in the Solicitors' Profession: Annual Statistical Report, 2004* London, Law Society
- Cole, B (2006) *Trends in the Solicitors' Profession: Annual Statistical Report, 2005* London, Law Society
- Dhavan, R (1989) 'Legal Education as Restrictive Practice: a sceptical view' in W. Twining, N. Kibble and R. Dhavan (eds) *Access to legal education and the legal professions*, London Butterworths
- Dryburgh, H (1999) 'Work hard, play hard: women and professionalisation in engineering - adapting to the culture, 13, 5, *Gender and Society*, 664
- Edensor, T (2000) 'A welcome back to the working classes' 34, 4, *Sociology*, 805
- Entwistle, J (2001) 'The dressed body' in *Body dressing*, eds J. Entwistle & E. Wilson (eds) *Body dressing*, Oxford, Berg

- Essed, P (1991) *Understanding everyday racism: an interdisciplinary theory*, New York, Sage
- Francis, A & Sommerlad, H (2008) Access to legal work experience and its role in the (re) production of legal professional identity, unpublished paper presented at *Annual Conference of Social Legal Studies Association*, Manchester, March
- Freidson, E (1994) *Professionalism Reborn: Theory, Prophecy and Policy*, Cambridge, Polity Press
- Genn, H, Partington, M & Wheeler, S (2006) *Law in the real world: improving our understanding of how law works*, London, Nuffield Foundation
- Goffman, E (1957) *The presentation of self in everyday life*, New York, Doubleday
- Goriely, T & Williams, T (1996) *The Impact of the New Training Scheme, Research Study No. 22*, London, Law Society
- Haas, J and Shaffir, W (1991) *Becoming Doctors: the adoption of the cloak of competence*, Greenwich, JAI Press
- Hagan, J & Kay, K (1995) *Gender in Practice: A study of lawyers' lives*, New York, Oxford University Press
- Halpern, D (1994) *Entry into the Legal Profession – The Law Student Cohort Study, Years 1 & 2*, London, Law Society
- Harrington, M (1992) *Women Lawyers: Rewriting the Rules*, New York, Alfred Knopf
- Harris, P & Jones, M (1997) 'A survey of Law Schools in the United Kingdom, 1996' 31 *Law Teacher*, 38
- Haslett, B and Lipman, S (1997) 'Micro Inequities: up close and personal, in N. Benokraitis (ed) *Subtle Sexism: Current Practice and Prospects for Change*, Thousand Oaks CA, Sage
- Hayward, C and Mac an Ghail, M (1997) 'A man in the making': sexual masculinities within changing training cultures', 45, 4 *The Sociological Review*, 576
- Hutchinson, A (1998) 'Legal Ethics for a Fragmented Society' *International Journal of the Legal Profession*
- Langlands, A (2005) *Gateways to the professions: a consultation paper*, London, DES

Larson, M S (1977) *The Rise of Professions: a sociological analysis*, London, University of California Press

Lave, J & Wenger, E (1991) *Situated Learning: legitimate peripheral participation*, Cambridge, Cambridge University Press

Law Society (2001) *Training Framework Review: Consultation Paper*, London, the Law Society

Law Society (2004) *Delivering Equality and Diversity: A Handbook for Solicitors*, London, the Law Society

Levinson, S (1993) 'Identifying the Jewish Lawyer: Reflections on the construction of professional identity' 14 *Cardozo Law Rev* 1577;

Lingard, L, Garwood, K, Schryer, C & Spafford, M (2003) 'A certain air of uncertainty: case presentation and the development of professional identity' (2003) 56 *Social Science and Medicine*, 603

McGlynn, C (1999) 'Women, representation and the legal academy', *Legal Studies*, 68

MacIntosh, J (2003) 'Reworking Professional Nursing Identity' (2003) 25, 6 *Western J of Nursing*, 725

Menkel-Meadow, C (1986) 'The comparative sociology of women lawyers: the 'feminization of the legal profession' *Osgoode Hall Law Journal*, 987

Nicolson, D (2005) 'Demography, discrimination and diversity: a new dawn for the British legal profession?', *International Journal of the Legal Profession*, 12: 2, 201-228

O'Donnell, A & Johnstone, R (1997) *Developing a cross-cultural law curriculum*, Sydney, Cavendish

Pierce, J (2002) 'Not Qualified?' or 'Not Committed?' A raced and gendered organizational logic in law firms', in R. Banakar and M. Travers (eds) *An introduction to Law and social theory*, Oxford, Hart

Pound, R (1910) 'Law in Books and Law in action' 44 *American Law Review*, 12

Rackley, E (2007) 'Judicial diversity, the woman judge and fairy tale endings' 27, 1 *Legal Studies*, 74

Rochette, A & Pue, W (2001) 'Back to Basics?' University Legal Education and 21st Century Professionalism', 20 *Windsor Yearbook of Access to Justice*, 167

Rolfe, H & Anderson, T (2003) 'A firm choice: law firms' preferences in the recruitment of trainee solicitors' 10, 13, *International Journal of the Legal Profession*, 315

Saks, A & Ashforth, B 'Organizational Socialization: making sense of the past and present as a prologue for the future' (1997) 51, *J of Vocational Behaviour* , 234

Minority and Social Diversity in Legal Education (2006) www.Scotland.gov.uk/library5/justice/masd-02.asp, accessed 30/3/06

Sandefur, R (2007) 'Staying power: the persistence of social inequality in shaping lawyer stratification and lawyers' persistence in the profession' 36, *Southwestern University Law Review*, 101

Savage, M (2000) *Class analysis and social transformation*, Buckingham Open University Press

Shiner, M (1997) *Entry into the Legal Profession – The Law Student Cohort Study, Year 4*, London, the Law Society

Shiner, M (1999) *Entry into the Legal Profession – The Law Student Cohort Study, Year 5*, London, the Law Society

Shiner, M (2000) 'Young, Gifted and Blocked! Entry to the Solicitors' Profession in P.Thomas (ed) *Discriminating Lawyers*, London, Cavendish Publishing Ltd

Shiner, M & Newburn, T (1995) *Entry into the Legal Profession – The Law Student Cohort Study, Year 3* London, the Law Society

Sommerlad, H & Sanderson, P (1998) *Gender, choice and commitment* Aldershot, Ashgate

Sommerlad, H & Sanderson P (2002) 'Exploring the limits to the standardization of the expert knowledge of lawyers: quality and legal aid in the United Kingdom', 54, 4 *Syracuse Law Review*, 987

Sommerlad, H & Sanderson, P (forthcoming) *Training and Regulating those providing legal advice services: a case study of civil provision*, Report for Ministry of Justice

Sommerlad, H & Wall, D (1999) *Legally Aided Clients and their solicitors: qualitative perspectives on quality and legal aid*, London, the Law Society

Sommerlad, H (2002) 'Women Solicitors in a fractured profession: intersections of gender and professionalism in England and Wales, 9, 3, *International Journal of the Legal Profession*, 213

Sommerlad, H (2007) 'Researching and theorizing the processes of professional identity formation', 34, 2 *Journal of Law & Society*, 190

Thomas, P (2006) 'Legal Education: then and now', *Law Teacher*

- Thomas, E & May (2005) *From the Margins to the Mainstream, embedding widening participation in HE*, UUK, London
- Thornton, M (1996) *Dissonance and Distrust: women in the legal profession*, Oxford, Oxford University Press
- Thornton, M (1998) Technocentrism in the Law School: why the gender and colour of law remain the same' 36, 2 *Osgoode Hall Law Journal*, 369
- Thornton, M (2001) 'The demise of diversity in legal education: globalisation and the new knowledge economy', 8, 1, *International Journal of the Legal Profession*, 37
- Tong, D & Pue, W (1999) 'The Best and the brightest? Canadian Law School Admission', 37, *Osgoode Hall Law Journal*, 843
- Vignaendra, S (2001) *Social Class and Entry into the Solicitors' Profession*, London, The Law Society, Research Study 41
- Vignaendra, S; Williams, M & Garvey, J (2000) 'Hearing Black and Asian voices – an exploration of identity' in P.Thomas (ed) *Discriminating Lawyers* London, Cavendish Publishing Ltd
- Walkowitz, D (1990) 'The making of feminine professional identity: social workers in the 1920s', 95: 4 *American Historical Rev*, 1051
- Weiss, C and Melling, L (1988) 'The Legal Education of Twenty Women', *Stanford Law Review*, 40, 1299
- Wilkins, D (1998) 'Fragmenting Professionalism: Racial Identity and the ideology of Bleached out lawyering', *International Journal of the Legal Profession*
- Wilkins, D (1998a) 'Identities and Roles: Race, recognition, and professional responsibility' 57, 4 *Maryland Law Rev*, 1502
- Wilkins, D 'Bridging the Diversity gap: five lessons from the US experience' June, *Diversity League Table 2007*, 16
- Williams, T & Goriely, T (2003) *Recruitment and Retention of solicitors in small firms*, London, Law Society
- Witz, A (1992) *Professions and Patriarchy*, London, Routledge Kegan Paul
- Wolf, A (1997) 'Growth stocks and lemons: diplomas in the English 1976-1996', *Assessment in education: principles, policy and practice* 33

Yoshino, K (2007) *Covering: the hidden assault on our civil rights*, New York, Random House