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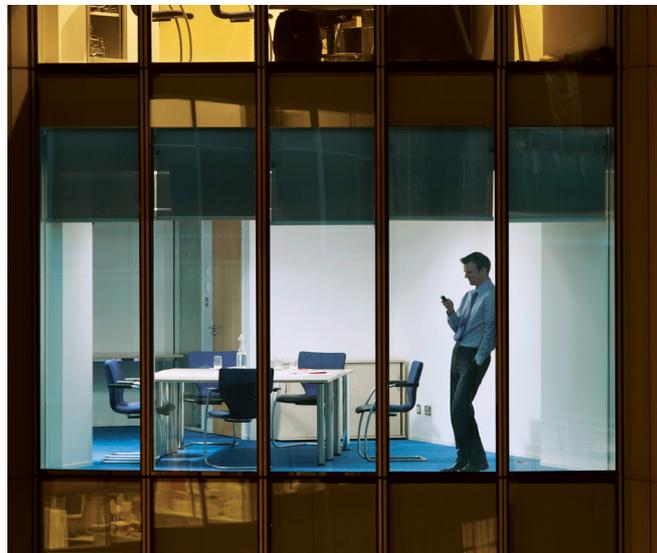
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Differentiation and discrimination: Understanding social class and social exclusion in the UK's leading law firms

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Abstract

For leading professional service firms in the UK, diversity and inclusion has become an important human resources strategy during the past fifteen years. A recent focus on social class has been encouraged by increasing governmental concerns relating to social mobility which acknowledge that elite professions, particularly the law, have become more socially exclusive over the past thirty years. Based on a detailed analysis of six leading law firms, this paper asks: *why do leading law firms discriminate on the basis of social class?* It argues that discrimination is a response to conflicting commercial imperatives, the first to attract talent and the second to reduce risk and enhance their image. The paper describes these dynamics emphasising the role played by the ambiguity of knowledge. It concludes by arguing that until these conflicting demands are reconciled, organisational and state-sponsored diversity initiatives centred on the 'business case' will achieve only limited success.

Keywords: Diversity and Inclusion, Inequality, Law Firms, Professional Services, Social Class

Introduction

In May 1997, a Labour government was elected in the UK led by Prime Minister Tony Blair. Despite its foundation on notionally socialist principles, this administration sought to avoid the topic of social class. Indeed, early in his first term Blair made a bold claim that the class war is over¹. This somewhat optimistic rhetoric was cut short ten years later with the commissioning of a review specifically examining social mobility and the professions, headed by then Labour Minister, Alan Milburn. This report, known as the Milburn Review, was a response to concern that entry into the

professions in the UK had become significantly more difficult for less privileged people during the past thirty years (Cabinet Office, 2009). For example, lawyers born in 1970 grew up in families with an income 65 per cent above the national average, compared to 38 per cent above in 1958. These issues were identified as particularly acute within the legal sector, and in the leading commercial law firms that are the subject of this study² (Sutton Trust, 2005).

Limiting access to the professions on the basis of social class has been posited as problematic for two main reasons. On the basis of social justice, writers such as Sommerlad (2007) have argued that the professions have historically acted as an important mobility project for less privileged people. It is also argued that by stifling the entry and progress of diverse talent in its ranks, the UK professional services sector as a whole is risking its reputation for dynamism, innovation and creativity (Cabinet Office, 2009; Kirton and Greene, 2007). Echoing these latter concerns, arguments in favour of widening access such as those found within the Milburn Review are positioned as part of a diversity discourse for which the 'business case' is an important driver (Cabinet Office, 2009).

A number of explanations for discrimination have been put forward. Analyses focusing on the supply side highlight the reduced social and human capital available to less privileged people (Becker, 1975; Bourdieu, 1972, 1984, 1986). As such, exclusion is seen, at least in part, as the result of processes happening in wider society (Rolfe and Anderson, 2003; Shiner, 1997, 1999, 2000). By contrast, explanations focusing on the demand side suggest that discrimination by professional service firms serves a clear business purpose. Market control theorists

focus on unequal ownership of cultural capital and frame exclusion as a defensive position practised by existing elites (Ackroyd and Muzio, 2004; Larson, 1977; Sommerlad, 2007). Hanlon (2004) sees exclusion and homology as a product of the legal sector's historical development, with similarities between client and advisor helping to build reputational capital, status and trust.

Each of these analyses offers a potentially useful but only partial explanation for this paper's key question, namely, *why do leading law firms discriminate on the basis of social class?* Based on an analysis of diversity policy and practice at six leading law firms and drawing on work by Alvesson (1993, 2001) and Empson (2001), this article argues that in these knowledge intensive firms, clients find it difficult to judge the relative or absolute quality of work and as a result, image becomes an important proxy for 'quality'. Leading law firms seek to project a 'high-class' image by appointing graduates with the requisite forms of social, human, cultural and reputational capital. Many less privileged people are unable to access some or all of these forms of capital and as a result are excluded from the profession, no matter how great their intellect. Some relatively privileged people may on the other hand gain entry despite showing limited real aptitude. In short, we contend that the sector's rhetorical commitment to recruiting only the most able graduates does not always coincide, and may often conflict, with a secondary objective to enhance their image and reduce risk. Resolving this tension will be critical if social inclusion is to be achieved within the profession.

We begin this article by reviewing the relevant literature and positioning our study against work outlined above. We then go on to describe the methodology and

provide details of the six case study law firms. The third section comprises the main empirical analysis. This shows first that the emphasis on image is relevant to each of the case study firms but second, that the precise emphasis on diverse talent versus the projection of the appropriate image differs within and between firms. We identify several overlapping characteristics which affect this balance. These include the profile of the firm's *specific client base*; the *nature of its work*; the *organisational culture*; and *the brand it wishes to project*. Paradoxically perhaps, these differences underline the consistency with which leading firms prioritise image by demonstrating that discriminating on the basis of social class is a commercial strategy rather than a structural accident. The concluding section argues that the business case for reducing discrimination on the basis of social class is highly contingent. As such, we ask whether a diversity agenda based on economic incentives can effect real and lasting change (Noon, 2007).

Theoretical context

Numerous studies have demonstrated how cultural practices within the legal sector maintain exclusionary mechanisms based on social class (Boon, Duff and Shiner, 2001; Rolfe and Anderson, 2003; Shiner, 1997, 1999, 2000; Sommerlad and Sanderson, 2002; Sommerlad 2007). Although explanations for this situation originally tended to focus on direct discrimination, more recently scholars have highlighted the many more subtle and complex issues relating to differentiation and subordination (Rolfe and Anderson, 2003). The following section examines the role played by differential access to social, human, cultural and reputational capital in relation to social exclusion in the context of the legal profession, before going on to explore the impact of ambiguity in relation to image.

Human and social capital

During the past fifteen years the number of law graduates within the UK has dramatically increased. This has been achieved partly through the creation of a number of new courses provided by the UK's 'new' universities, ex-polytechnics which became universities under the Further and Higher Education Act in 1992. Though this latter process was aimed at opening up higher education to students from a wider range of backgrounds on the basis of both ethnicity and class, leading law firms have not become more socially inclusive as a result (Cabinet Office, 2009). This can be partly attributed to the preferences of leading law firms with regard to the *human capital* of their new trainees, defined in this context as the stock of competencies, skills and knowledge demonstrated by an individual's ability to work and produce economic value (Becker, 1964). Rolfe and Anderson (2003) have shown that law firms tend to prioritise four key factors when recruiting graduates in this respect. These include high A-level grades³, attendance at an 'old' university⁴, strong academic performance, and work experience in a law firm.

These criteria may seem entirely natural as a means to test potential, and law firms often insist that the higher entry requirements of old universities mean that their graduates must quite simply be 'better' (Rolfe and Anderson, 2003). With many leading law firms faced with over 3000 applications for less than 150 trainee contracts each year, it is inevitable that law firms will exclude many applicants and discriminating on the basis of objective qualifications may seem logical and indeed fair. However, this bias adds up to a cumulative disadvantage for students from less privileged backgrounds (Reay et al., 2001). These students are not only less likely to achieve high A-level grades but are more likely to attend a new university. Studies

have shown that this is not necessarily a reflection of lesser ability but of unequal access to resources and effective teaching (Metcalf, 1997). Even where these barriers are surmounted, studies have discovered that highly qualified, but financially poor students may choose to study at a new university especially when it is closer to home, as a result of poor information or because this is perceived as less costly (Archer et al., 2007; Reay et al., 2001). They are also more likely to carry out paid employment, with implications for their performance during their studies (Vignaendra, 2001). Students educated at private or fee-paying⁵ schools are on the other hand more likely to achieve higher A-level grades and to select more traditional examination subjects, including maths, sciences, and languages, which facilitate entry to leading universities. As a result, these students gain entry in higher numbers to these institutions. For example, at Cambridge just over 40 per cent and at Oxford just under 57 per cent of full-time undergraduates during 2009/10 were educated privately, compared to seven per cent of the population (Cabinet Office, 2009). Inevitably, this bias feeds through to the law firms who recruit from these and other leading universities.

Less privileged people not only lack human capital. Closely related to this is their relative lack of *social capital*. This term can broadly be defined as the values and networks passed down from family and developed through friends (Bourdieu, 1972, 1984, 1986; Coleman, 1998). Differential ownership of social capital has an impact on an individual's ability to access a career in the law and the likelihood that they should aspire to do so (Allatt, 1993; Reay, 2005; Skeggs, 1997). Whilst it is no longer necessary to have direct personal contacts within the law to guarantee entry (Hanlon, 2004), access to a range of formal or informal social networks with experience in this

sphere does provide a clear advantage (Cabinet Office, 2009; Elias and Purcell, 2003). People from working class families are said to be disadvantaged since they are less able to establish social networks beyond their immediate circle, whilst those of middle-class and more privileged families tend to be more diverse (Department for Education and Skills, 2003; Public Accounts Committee, 2009). These networks are essential since getting into leading firms requires knowledge of what kinds of professional careers are available, along with the preferred qualifications and credentials, including choice of university and degree course (Rolfe and Anderson, 2003; Shiner, 1997, 1999, 2000).

Cultural and reputational capital

Prioritising the role of social and human capital may be read as an attempt to remove the 'blame' for discrimination from law firms, since exclusion is seen as largely the result of factors originating outside the workplace. For market control theorists however, class-based discrimination based on occupational closure is a defensive strategy practised within the professions to enable existing elites to maximise rewards by 'restricting access to rewards and opportunities to a limited circle or eligibles' (Parkin, 1974: 3). This is achieved through the imposition of a number of overt and covert rules which sanction exclusion and render finite what are, in theory at least, inexhaustible knowledge resources (Abel, 1988; Ackroyd and Muzio, 2007; Bolton and Muzio, 2007; 2008; Larson, 1977; Murphy, 1988; Parkin, 1974).

Within the legal sector, this argument has been most developed by Sommerlad (2007) who argues that, whilst law firms may place an explicit emphasis on human capital, in reality they also assess candidates according to their possession of *cultural capital*. This notion suggests that workers, and particularly high-status

employees, must display their suitability for a role through not just educational and professional credentials but also in 'embodied states' such as mode of speech, accent, style and beauty (Bourdieu, 1984). According to Sommerlad (2007), the expansion of higher education and its diversification on the basis of ethnicity and class should theoretically enable a 'weakening of the social stratification' such that new entrants may use a career in the law as a key social mobility project. However, in a context where skills and qualifications are widely available, existing elites have turned to cultural capital as a means to restrict the number of graduates notionally qualified for a career in the law, and thereby create an 'artificial skills scarcity' (Bolton and Muzio, 2007: 50). Individual attributes are important in this respect but so too are educational institutions, which are employed as a primary means of generating, distributing and indeed signifying the required cultural capital. Attendance at a post-1992 or 'new' university is itself employed as an indicator of (lower) class (Sommerlad, 2007).

In his analysis of institutional homology, Hanlon (2004) focuses on *reputational capital*. This has become central to the selling of professional services and is created through familiarity, face-to-face contact and the building of client/advisor relationships in which each party are social equals (Hanlon, 2004; Homans, 1961). Hanlon claims that, although many professional service firms are more open now than in the past, they are not meritocracies, and never will be. This is because they are predominantly based on a clan structure, originally exerted through strong family and friendship ties and now more probably through long periods of socialisation into a firm. Historically, this structure has enabled partners to act entrepreneurially, and to develop strong relationships with clients in which trust is the central feature. During the first part of

the last century reputational capital was largely possessed by individual professionals but as firms grew and consolidated during the second half of the nineteenth century, this requirement mutated such that the capital owned by the firm itself became equally if not more important. 'High status' firms which emerged during the 1980's became highly sought after by high status and potentially high status clients, as a way to send signals to important third parties.

Image and ambiguity

Many of the themes outlined above are captured in a range of studies examining the role of identity, image and credibility in relation to knowledge work (Alvesson, 1993, 1995, 2001; Alvesson and Author Two, 2008; Author Two, 2001). Knowledge intensive firms such as law firms have been defined for the purposes of analysis as organisations where most work is of an intellectual nature and is undertaken by well-educated, qualified employees, who produce qualified products and/or services (Alvesson, 1993; 1995, 2001; Robertson and Swan, 1998; Starbuck, 1992; Author Two, 2001). An important property associated with this type of knowledge is its ambiguity. In other words, as Alvesson (2001) demonstrates, the relative and absolute quality of knowledge work is 'very difficult to evaluate, at least for those outside the sphere of the experts concerned' (867).

This property has a number of impacts. Echoing Hanlon's (2004) focus on status and signals, one implication is that elite professional service firms are not necessarily employed by clients for their problem-solving capacity, but because 'institutionalized 'truths' (myths) say that one should do so' (Meyer and Rowan, 1977; Alvesson, 2001). Clients of knowledge-intensive companies are also encouraged to stay with

the companies of which they have experience because quality is difficult to evaluate and dealing with unknown companies would aggravate feelings of uncertainty and anxiety (Alvesson, 2001). A second implication is that, in the absence of tangible qualities for inspection, it becomes extremely important for those claiming to be knowledge-intensive to nurture an image of being so. Image becomes vital as a substitute for 'the ambiguities of the content of the skills and knowledge of the personnel, for the difficulties in finding out what knowledge people actually do and for evaluating the results' (Alvesson, 2001: 870).

For Alvesson (2001), image must be managed at the professional, corporate and individual level. Also aiming to unite the organisational and individual level of analysis, Empson (2001) has outlined a process by which professionals define and delimit each other's status and credibility with clear reference to appearance, speech and mannerisms. Individuals who do not conform to specific expectations are considered to represent a clear risk to their colleagues. She argues that at the organisational level, the continuing emphasis on recruiting from leading universities makes sense as this is considered an essential part of providing the type of 'upmarket' brand thought most likely to build trust between clients and professionals. At the individual level, professionals believe that they 'risk diminishing the perceived value of their service if they allow their image to be called into question by association with apparently 'downmarket' colleagues' (Empson, 2001: 856). Empson (2001) has named these individual and organisational orientations towards difference a 'fear of contamination.' Though Empson's (2001) and Alvesson's (2001) studies were conducted in the consultancy sector, their relevance has been demonstrated in a range of additional professional contexts. Most obviously, several studies have

found that the appearance of being a ‘professional’ is an important part of the career prospects of accountants in the UK (Anderson-Gough et al., 2001; Covalleski, 1998). These processes have also been identified within the advertising sector, where during the 1950’s large agencies displayed a preference for Oxford and Cambridge graduates, in an attempt to raise their profile and status (Alvesson, 1994; Delaney, 2007; Mcleod et al., 2009; Pearson and Turner, 1965).

Diversity and inclusion

Though coming from a number of political perspectives there are many similarities between the various analyses above. Image, status and risk can be viewed as the key features tying together separate analyses of social, human, cultural and reputational capital. Put another way, whilst not necessarily interchangeable, each form of capital is an important means through which law firms can verify their claims to knowledge. The analyses above also intersect since all have argued that there will always be an ‘othering’ within professional occupations since this is an essential means to bind a group or society together (Alvesson, 1993, 2001; Empson, 2001; Hanlon, 2004). The notion of the ‘other’ has also been an important theme in the identity politics of the past 30 years, which seek to recognise and accommodate difference (Kirton and Greene, 2007). This in turn has been incorporated within the newly adopted diversity agenda evident within the legal sector and reflected in a growing public discourse around social mobility and class (Cabinet Office, 2009).

It would appear that some leading firms are beginning to acknowledge their responsibility in this respect. According to the growing diversity rhetoric within the sector, discrimination on the basis of social class should be challenged on the basis

primarily that it is not economically rational. As a spokeswoman from the law firm Freshfields Bruckhaus Deringer said in a major public forum, social mobility is:

a particularly pressing issue for the sector to address...all the evidence shows that greater diversity delivers more creativity and innovation, so for firms anything that can help ensure they identify all possible sources of talent is strategically important. (The Lawyer, 2011)

An important solution adopted by leading firms has been to help less privileged students confront and surmount the many barriers they face including unequal access to educational advantage (Author One, 2010). State sponsored invocations to change have encouraged law firms to widen their net in order to attract and recruit talented students from a wider range of backgrounds and educated at a more diverse set of universities, supporting their argument on the notional benefits of the business case (Cabinet Office, 2009). However, this article questions the value of the business case. Whilst socially undesirable, discriminating on the basis of social class is considered an entirely rational commercial strategy by leading law firms. As such, the use of diversity as an equality strategy may be deeply flawed (Ashley, 2010; Noon, 2007). Before discussing these issues in further detail, the following section outlines the research design.

Research design

This paper draws on a study examining the introduction, development and implementation of diversity and inclusion programmes at six leading law firms, comprising a total of 174 interviews.

Sequential studies

Each of the six case study firms were selected to participate in the research for their status as leading commercial law firms located in the City of London (see Table 1). In this sector of the profession, issues surrounding diversity and social class are particularly acute. The research can be broken down into a series of three sequential studies:

Phase 1: Focused on assessing the value of diversity strategies as a means to widen access in the legal profession. The central question guiding the study was: *Can diversity deliver fair outcomes where equal opportunities has not?* It consisted of in-depth case studies of the London offices of five large leading law firms.

Phase 2: The second phase extended this analysis to other professional sectors, specifically accounting and consulting, to see how the formation and implementation of diversity initiatives compared with developments in the legal sector. This study also extended the analysis to a sixth law firm, Firm F.

Phase 3: The third phase returned to the firm in Phase 1 which had been identified as most progressive in its diversity management practices (Firm D) to examine the impact that the firm's policies had had in the intervening period on the composition and progression of the legal workforce.

Table 1: Description of the Case Study Firms

	Type of Firm	Scale	Position in The Lawyer Top 100 (Turnover)	Case Study Firms Relative to each other (Turnover)	Phase	No of Interviews
Firm A	Magic Circle	International	Top 5	1	One	25
Firm B	Silver Circle	National	Top 20	5	One	21
Firm C	Second Tier	International	Top 20	4	One	25
Firm D	US ¹	International	n/a	n/a	One and Three	46
Firm E	Second Tier	International	Top 20	2	One	37
Firm F	Silver Circle	International	Top 20	3	Two	20
TOTAL NUMBER OF INTERVIEWS						174

Development of research questions

The purpose of this study was to understand the impact of diversity and inclusion agendas across a range of axes including gender, ethnicity and class. Consistent with the grounded nature of the study, interviewees in the first phase of the study were not asked about class directly. However, the issue was comprehensively discussed in relation to two general questions. The first was: *What is the biggest diversity challenge for your firm?* The second was: *To what extent do ethnic minorities experience challenges that white people do not in this firm?* Often, because of the intersections between ethnicity and class, the latter would come up in response to the second question. In the second and third phase of the research the issue of class was addressed directly, reflecting increasing awareness of, and

¹ Firm D is headquartered in North America where it is ranked in the top twenty according to turnover according to trade journal *The American Lawyer*. According to *The Lawyer* magazine, in 2008 it was ranked in the top twenty US firms in London according to revenue generated here.

concern about, social exclusion in the professions, through the question: *Do you think that social class is relevant at this firm?* Interviewees would then talk about this in relation to either recruitment or progression or sometimes both. Class was also discussed in the context of other people's experiences and the interviewee's perceptions of client expectations.

Data collection

A total of 174 interviews were conducted in law firms throughout the three phases of the research. At all six firms, interviewees were purposively selected to reflect organisational hierarchies. At the time this research took place, none of the case study firms were recording the background of their employees. However, using father's occupation as a crude measure, across all six firms the achieved sample group included over 90 per cent of lawyers whose fathers were managers or senior officials, or were classified as an associate professional or professional, with a heavy concentration on the latter. Using educational background as an alternative measure the differences between firms were more marked. These differences suggested a relationship whereby the firms with the highest turnover were also those with the highest percentage of fee-earners educated at private schools.

For example, Firms A and E had the highest turnover amongst the UK-headquartered case study firms and fee-earners within the sample group at both firms were most likely to be privately educated at 78 per cent and 79 per cent respectively. Firm B had the lowest turnover amongst the UK-headquartered case study firms and 30 per cent of fee-earners amongst this sample group had been educated privately. The sample group at Firm D had the lowest number of fee-

earners educated privately, at 18 per cent averaged across Phase 1 and Phase 2. One purpose of this paper is to explain these differences. The selection process and procedure was similar at the six case study firms, all of which favoured graduates from Russell Group universities and none of which had direct relationships with a 'new' university. Oxford and Cambridge enjoyed a special status, with all six firms actively courting students at these institutions. Whilst generally all firms insist on a 2:1 or above, our study found that this requirement was overlooked for students from Oxbridge⁶. All of the UK-headquartered firms had also developed particularly strong relationships with a specific sub-set of Russell Group universities from where students were not just welcome but actively encouraged to apply. It is possible that the differences in the composition of the sample group at each firm reflect their specific preferences in terms of university selection. For example, Firm A had developed strong relationships with Oxford and Cambridge and one Russell Group university, all three of which have their own middle-class bias. However, overall these firms recruited their graduates from Russell Group institutions which share a similar demographic profile and it is unlikely that differences in university preference can entirely explain the variance. Alternative explanations will be advanced in this article.

All interviews were conducted directly by the first author, face-to-face. Throughout phase one the same semi-structured questionnaire was used. This was amended slightly in phases two and three, primarily through the introduction of a question focused specifically on class. In all three phases, interviews covered areas including the interviewees' knowledge of diversity policy and approach, and their own experience within the workplace in relation to inclusion. Interviews took place on the

organisations' own premises and were recorded for transcription. In addition, the researcher took detailed field notes. Interviews took approximately one hour.

Data analysis process

While different questions were used for the different phases, the same process was followed for the data analysis, which was performed using specialist qualitative software.

Step 1: Search for all references to *social class* across all the interviews.

Step 2: Sub-divide these into those who said that social class was *not relevant* (e.g. anybody is welcome here etc.) and those who said that it was *relevant*. The majority were in the latter category, although individual respondents often contradicted themselves.

Step 3: Divide all responses into those that focused on *graduate recruitment* and those that focused on *career progression*.

Step 4: Further divide the first category (*graduate recruitment*) into various sub-categories, which mapped on to *human capital* (i.e. talent), *social capital* (i.e. access and aspiration), *cultural capital* (i.e. that mentioned accent/speech/mannerism) and *reputational capital* (i.e. contacts). Human capital was further divided into *class and risk/safe bets*, those that related to the *cost/time/resources* of recruiting from 'lesser' universities etc. Cultural capital was further sub-divided into *class and image/brand*.

Step 5: Further divide the second category (*progression*), into *class as no barrier* and *class as barrier*. Under *barrier*, these were further divided into *accent/speech/mannerism*, *'necessity to assimilate'*, *'quality'*, etc.

The framework was designed to reveal how assumptions about social class, underlying values and behaviour, were justified and explained, and the extent to which these were affected by the emergence of a diversity discourse within the legal sector. Also treated as data were relevant documentary evidence provided by the firm and by relevant agencies, which was publicly available in corporate media. The analysis followed an iterative process, repeatedly moving between extant theory on diversity and inclusion and interview data. Having organised our analysis around the codes highlighted by this approach we then reduced each category of quotations into themes that supported and challenged the categories. In the following section, we describe the findings of the research in detail, before concluding with a discussion of the prospects for more progressive change.

In the following section, we describe the findings from this research. This is divided into two sections. The first examines the relative weight applied to the forms of capital by the case study law firms. In this respect, the analysis identifies a number of strong themes across all six firms, where the ambiguity of knowledge and intense competitive pressures lead to a consistent focus on image. In the second section, we examine the subtle differences between firms and practice areas in their approach to social inclusion, caused by the precise organisational culture and brand, along with the nature of the client base and type of work. These differences show that where knowledge is most ambiguous, projecting the appropriate classed image is most important.

Forms of capital – social, human, cultural and reputational

The requirement for exceptional levels of human capital was repeatedly cited in this research as the justification for recruiting predominantly from a small group of leading universities. In the words of Firm F's graduate recruitment manager:

The predominant thing that [the partners] are looking for is intellectual ability...clarity of thought and expression...thinking like a lawyer. (Graduate Recruitment Manager, Firm F)

As such, educational attainment is presented as an objective basis for exclusion whereby entry into leading universities is seen as a proxy for the very highest 'quality' graduates. In this respect, a clear hierarchy of applicants was identified, with the quality of the candidates being directly related by interviewees to the entry requirements and prestige of the university they attended.

However, though presented by interviewees as uncomplicated and non-ambiguous, these arguments concealed considerable complexity and contradiction with regard to the meaning of 'quality' and the particular role that academic ability and training play in a legal career. Though the majority of interviewees acknowledged that intellect is a non-negotiable requirement for entry into the elite professions, there was considerably less certainty about precisely how able candidates should be, how this can be measured and where exactly this talent is located. A number of interviewees argued that talent could be found at a wide range of universities including the new universities. In this latter respect, the impact of less access to social capital amongst less privileged people was regularly mentioned, with interviewees acknowledging that

potentially excellent candidates may be prevented from reaching leading universities by their circumstances:

If you're living in a deprived area where the education and the opportunities just aren't that great...the practicalities do push against actually getting to the starting line. (Partner, Firm B)

For people to have academic qualifications and legal qualifications and if society is only producing people from a fairly narrow strata with those...there's little we can do unless we have social change...we do have our hands slightly tied in terms of the type of people we can employ. (Senior Associate, Firm A)

Others explained that privately educated students from leading universities may at times be less intelligent and ambitious than individuals with less good qualifications who had overcome more barriers during their educational career. This argument was put in most robust terms by Firm F's diversity manager:

We're recruiting kids in a sense who are already fat. They're not hungry...we should wise up to the fact that actually, if we continue to recruit second rate people from top universities, then we will be a second rate firm within a generation. (Diversity Manager, Firm F)

An association between academic qualifications and aptitude was also undermined by the number of successful partners who acknowledged that they would not gain entry to their firm today:

...not a hope, and I know that because I choose half the people who come here I'm afraid. I wouldn't even have been looked at. I guess we are looking for people

who are academically strong. Although that might sound slightly odd against my background. (Graduate Recruitment Partner, Firm F)

Interviewees also argued that human capital acquired at leading universities was not always indicative of aptitude for the job. Some claimed that the most highly qualified or technically adept students are at times relatively unsuited to a career in leading commercial law firms on the basis that they lack sufficient common-sense, commercial nous or practical organisational skills. A partner at Firm C said that being a superb technical lawyer is “not the complete product.” A partner at Firm D argued that whilst it is important to have good technical legal skills, “I don’t think it’s the be all and end all.” A colleague at the same firm argued that though the firm had recruited heavily from Oxbridge, these trainee intakes:

...were the shittest we ever had - it turned out they had no commonsense or ability to do the job whatsoever. (Senior Associate, Firm D)

Evidence such as this appears somewhat at odds with a law firm rhetoric in which recruitment efforts are presented as a hard fought but relatively straightforward “war for talent.” If this were true, it might appear that the ‘rational’ solution would include employing more students from a wider set of universities, perhaps even those outside the Russell Group. However, it would appear that graduates from leading universities are included whilst others are excluded for reasons not related to their commercial approach or even their intellect and ability. At the corporate level the preference of leading law firms for students educated at leading universities conforms to a societal-wide myth or assumption that these institutions are themselves capable of selecting only the very best talent. This belief reassures law

firm managers and reduces perceptions of uncertainty and risk, which is further reinforced where law firms favour students from universities with which they are familiar. Though this strategy was acknowledged by interviewees as likely to limit diversity, they emphasised that it offered a number of other more important benefits. For example, a partner at Firm E argued that it delivered a series of “known quantities”, a partner at Firm F claimed that these students recruited via this method represented a “safe bet”, whilst a senior associate at Firm D argued that it was a “safe approach”.

In turn, this strategy sends an important signal to both clients and competitors that a high level of advanced knowledge – also defined as human capital - is present within the organisation. At the corporate level, the more prestigious the university from which leading firms recruit their graduates, the more secure and defensible this relationship appears to be. This analysis suggested that any individual or firm wishing to act ‘rationally’ with regard to talent may be discouraged by the knowledge that doing so is unlikely to challenge the assumptions and associations outlined above and as a result will damage their brand. This dilemma is summarised below:

...people feel that...they're more likely to get a quality person if they come from Oxbridge because it's a quality university...I disagree. [But] as a law firm doing the sort of work we do, charging the way we charge and our economics and our client base, we have to be seen to be recruiting academically at least at the level of our peers. (Partner, Firm D)

At the individual level, graduates from leading universities are also considered more likely to possess the type of cultural capital which enables leading law firms to

present an upmarket image and therefore compensate for the ambiguity of knowledge. This matters because, in the words of a senior associate at Firm D:

Image is everything in the law...it's all we've got, our product...and unless your product is good, very good, the best that it can be, then you're not going to make a good lawyer. (Senior Associate, Firm D)

Product here refers to accent, speech, mannerisms and dress, all of which are considered essential as a means to convince the client of a lawyer's claim to expertise (Sommerlad, 2007). Graduates of Oxbridge were considered particularly "polished and sophisticated" according to a partner at Firm D. However, interviewees at each of the case study firms emphasised the necessity to conform to middle-class characteristics and appearance, no matter what your educational or social background:

If somebody comes in with a slightly different accent, has clearly had less advantages, do I think that sometimes adversely impacts upon them? I think it does...because you're trying to judge how this individual will come across with clients and how they will fit into the firm. (Graduate Recruitment Partner, Firm F)

Client expectations were repeatedly referenced in this respect. In a highly competitive marketplace, where knowledge is both ambiguous but also widely available, it is essential that legal advisors differentiate themselves from their peers by developing strong relationships with their clients:

You could have ten law firms doing an equally good job and the distinguishing feature is...how well you get on with that particular contact...that's what's going to

make the difference between whether they come back to you or go somewhere else. (Associate, Firm D)

Lawyers get very hung up about how brilliant they are and how clever they are and how good they are at law [but] that's actually not really the point. What it's about is alignment, empathy, commerciality and all those things and though I would prefer that this was not the case, that does have an impact when you get into this all-singing, all-dancing diversity game. (Partner, Firm B)

It is important to note that alignment between client and advisor does not necessarily require that they share precisely the same background. Though often orientated towards the City and large commercial organisations, leading law firms serve a variety of markets and clients may come from a range of backgrounds. As one partner at Firm B pointed out:

Our clients are probably less middle class than we are...because you don't have to have that formal level of education probably to get on in business, you just have to have a good business brain, and you can pick up a good business brain frankly working on a street market, rather than going to Oxford. (Partner, Firm B)

It is notable that this partner makes a direct connection between university attended and social class. However, where equal social status cannot be guaranteed, it appears most acceptable for the advisor to be (or appear to be) of a higher social class than the client, in order to reflect the latter's expectations of the typical City lawyer. As one privately educated senior associate at Firm E said:

If you go into a room full of commercial directors...and meeting people from a different background, slightly less, whatever, they draw solace from the fact that we are the way we are, we talk a certain way, and look the way we look. It's expected of a lawyer. (Senior Associate, Firm E)

Image and ambiguity

Whilst seemingly applicable to most leading law firms, the argument above should not conceal the important differences which exist between these organisations. In this section we demonstrate that there is variability amongst leading law firms and between practice areas within the same firm with regard to social inclusion, depending on a number of factors. The first of these is *culture of the organisation* and the *brand it wishes to create*. The second is the specific *profile of the client base* which is closely related to *the type of work*. These demonstrate that, though image is regularly used to compensate for the ambiguity of knowledge, the precise impact of this relationship does differ. In order to demonstrate these themes, the analysis centres on data collected at Firm D and Firm F, during phases two and three of the research. These firms have been selected because, in addition to defining each other as direct competitors and peers, they share a number of important characteristics. Both were established as Jewish firms, designed to accommodate aspirant Jewish lawyers who were not welcome elsewhere (Zweigenhaft and Domhoff, 1982). As such, both may be defined as 'outsiders', historically at least. The founder members of Firm F and the founder members of Firm D's London office also appear to have come from relatively less privileged backgrounds than might be considered typical for the sector. For example Firm F's origins were described by one partner as "resolutely middle-class...more grammar school than public school⁷." Interviewees at Firm D

used similar terms to describe the demographic profile of their own firm, with one partner describing its fee-earners as “from red bricks⁸ as opposed to Oxbridge.”

Despite these similarities, these firms are positioned somewhat differently from each other with regard to social class, as the following analysis shows.

Organisational culture and brand

The particular approach to social inclusion practised by a firm can be related in part to its organisational culture and the brand it wishes to create. Firm F is defined here as representing an ‘aspirational’ brand. An important rhetorical question was asked by the firm’s marketing manager:

It’s a chicken and egg thing though isn’t it? What comes first, your reputation or your technical ability? (Marketing Manager, Firm F)

Like others at the firm, he argued that Firm F’s current partners appeared relatively diverse on the basis of social class. Not all had been educated at Oxbridge and not all had been educated privately. However, at the point that this research took place, Firm F was pursuing an active strategy to recruit its trainee lawyers more heavily from Oxbridge and a relatively small group of leading Russell Group universities. Though a number of interviewees described this objective as a means to enhance the ‘quality’ of their fee-earners, the firm’s diversity manager saw this process in somewhat different terms:

The partners are socially out of their depth...so...they...make an effort to lose their regional accent, they aspire to having successful rowing teams, and sailing and rugby and all the rest of it and it’s a ridiculous facade. (Diversity Manager, Firm F)

This firm's diversity manager describes this process as relating to social insecurity and an aspiration to compete for clients with the most prestigious firms, particularly the 'magic circle.' As a result, the firm appeared to experience an imperative not to compete solely on technical ability – which had arguably already been established - but on the basis of reputation and image. Though Firm F had become successful by utilising the talents of partners from a relatively wide range of social and educational backgrounds, this diversity was now being replaced by graduates from a small set of leading universities.

This process is not however inevitable. At Firm D there was, in the words of one partner, "slight disagreement...on what it is that we need with regard to graduates." This disagreement is largely framed in terms of Oxbridge educated partners versus those educated at a wider range of universities. Both groups wished to recruit in their own image, which if left unchecked would result in trainee lawyers from somewhat different backgrounds. This could of course contribute to diversity within the firm. However, it is important to note that the more inclusive approach favoured by the latter group extended only to a marginally wider set of universities than those preferred by the first group and was limited to the Russell Group. This was because a continued focus on image necessitated that Firm D replicate the strategy of its competitors and peers, even where this was acknowledged to conflict with the attraction of talent:

You're potentially harming yourself [by not recruiting from new universities] because you're not getting the best people...but on the other hand we wouldn't [recruit from new universities] because actually we have to have the best people...that's the conundrum. (Partner, Firm D)

The single thing I could do to make my team more ambitious and successful is...to hire...B+ students from state schools rather than the A students from private schools because they are probably more hungry I think and they're probably more intelligent - and I mean street intelligence more than academic intelligence. [But] we have to recruit from Oxbridge because our competitors are.
(Partner, Firm D)

Partners at Firm D aimed to remedy this dilemma, in part, during the selection process. Graduates from Russell Group universities were still favoured but within these limitations, the firm appeared to maintain a relatively open approach to social class, particularly as it relates to individual characteristics such as background and speech:

What we look for...that kind of motivated hungry person...that's the characteristic that is really going to make a difference, and that's the characteristic when you look at what we do that actually clients respond well to...And that's much more important than social background. (Partner, Firm D)

This approach relates in part to Firm D's organisational culture and history. Firm D's London office, where the research was conducted, is a relatively young office, whose founder members established it with the express intent that the organisation would not replicate its 'magic circle' competitors or clients in every respect. As one partner from a less privileged background himself put it:

It's quite scrappy [here] and the managing partner slightly embodies that – [the] outsider who wants to win on his merits. He's made the firm in his image really...and that means a lot to me. (Partner, Firm D)

Being part of a major US firm with its own distinctive approach may also offer a licence to do things differently. As one senior associate said, American law firms in London:

are looked at differently...you know, we are what we are and we're respected for professional ability not necessarily for the kind of person you get. (Senior Associate, Firm D)

These specific characteristics appear to allow the firm to build a competitive brand which is based more clearly on technical ability, along with entrepreneurialism and commercial focus.

Client base and work types

The impact of the client base and work type can be demonstrated by comparing banking with corporate finance at Firm D. Corporate finance was widely regarded by interviewees in this research as the practice area which is perhaps the least tolerant towards working class people, whilst banking is more so. According to one senior associate at Firm D, corporate finance is:

...filled with a lot more white, middle class English whereas if you go to [banking and] finance in any law firm you find a much greater mix of people.

This was related partly to the history of each area of specialism. In corporate finance there is:

a really established career route and probably a disproportionate representation of people that went to...the top public schools and...private schools underneath that. (Partner, Firm D)

Certain parts of investment banking are thought to have a more limited history and tradition with less time to establish stereotypical notions of who can 'be' a professional. According to a partner at Firm D securitisation in particular is "relatively new...there isn't any real cache around it." These factors are thought to contribute towards a more diverse set of clients. These differences may affect the profile of their advisors because as one partner at Firm D said "you have to have something in common with your client so you tend to mirror-image each other." It was also argued that a higher proportion of banking specialists were not born in the UK and may themselves be less aware of the extremely subtle class distinctions which exist.

Related to the client profile is the nature of the work. Advisory work within banking and finance is described as relatively process driven. Securitisation in particular is considered highly technical, and to some extent the quality of the work is measurable according to clear outcomes. Corporate finance on the other hand is not only less tangible but also has a more sales-driven culture, in which verbal communications play a larger role. This ensures that ownership of the appropriate cultural capital by individual lawyers becomes significantly more important in areas such as corporate finance than might be the case elsewhere:

[Corporate finance lawyers] have to stand up in a room, command someone's attention and tell them what they're going to be doing...[which means that] having somebody who is more polished...[who] speaks in the correct accent, and looks the part is actually quite important...[however] presentation skills are much less important...when there is actually a technical legal issue that people can understand, that's being solved or not being solved. (Partner, Firm D)

[Corporate finance lawyers need] a good nose for risk, and you have to be able to draft and you have to know the law. And that's kind of it [so] brand differentiation becomes incredibly important - because we're all selling a Volkswagen...if you go to a bank...let's say on a equity derivatives desk...they want simply the best mathematicians. (Partner, Firm D)

Again, the centrality of image in determining attitudes towards social class is underlined when considering not only the similarities but also the differences between the case study firms.

Summary and conclusions

The purpose of this paper has been to ask: *why do leading firms discriminate on the basis of social class?* In answering this question we built on previous analyses by showing why this issue is acute in the legal sector and why it has become more so over the past 30 years. We have argued that the ambiguity of knowledge within leading law firms encourages a strong focus on image. Demonstrating the differences between law firms and practice areas only serves to underline the relative consistency of this focus. During the past 20 years, leading law firms have expanded and consolidated and the market has become increasingly competitive. As a result, we argue, aspirational law firms and those already established within the elite must work harder to develop their brand and differentiate their product from less prestigious peers. It is likely that this has caused an additional emphasis on image during a period in which educational opportunities for less privileged people have become less available. Similar themes have been widely identified within the consulting, accounting and advertising sector (Alvesson, 1993, 1994, 2001;

Anderson-Gough et al., 2001; Empson, 2001; Grey, 1998; Mcleod et al., 2009). The particular contribution of this research is to demonstrate that these processes are equally relevant to the law, and to connect them specifically to social exclusion. Of course, the ambiguity of knowledge is not the only explanation for discrimination on the basis of social class within the legal sector. For example, a number of scholars have identified that most discrimination occurs through cognitive processes that are automatic and unconscious (Ibarra, 1992; Roth, 2004). It is likely that the tendency of law firm partners to recruit individuals with a similar background to their own relates in part to their unconscious desire to recruit people who are like them. Where these elites have historically been privileged and middle-class they may wish to replicate these characteristics in future intakes. Nevertheless, this does not explain why firms with similar demographics adopt different strategies with regard to social class, a process which is more easily explicable with regard to the management of image. Understanding discrimination in this manner helps to draw together themes relating to social, human, cultural and reputational capital, all of which are important means by which leading law firms verify their claims to knowledge.

A number of previous studies have focused on unequal ownership of social and human capital as the determinant factors in gaining access to legal careers, the proposed solution to which is to reduce inequality and improve educational outcomes for less privileged people. Recognising that this objective is some distance from being achieved without tailored intervention, this project has been taken up by a number of policy bodies. Educational charity the Sutton Trust's *Pathways to Law* scheme aims to identify up to 750 less privileged students per annum and support

them with mentoring, support, information and advice from selecting the right A-levels and degree course, through to applying for vacation schemes and eventually jobs.

By acting as proxy social networks for less privileged people, the Sutton Trust and other organisations offering similar programmes, such as the Social Mobility Foundation, undoubtedly offer a progressive means to assist less privileged people navigate a multitude of barriers. However, though valuable in their own right, we argue that this approach is not sufficient. These programmes can only play a small role in securing social mobility in a society where educational opportunities for the less privileged are seriously limited. More importantly perhaps, these programmes concentrate too heavily on *how* law firms discriminate rather than *why* they do so, which has been the focus of our study. As a result, they are ill-equipped to challenge negative attitudes towards social class which exist within the legal sector. Mutch (2002) has argued that those who break through occupational class barriers may perform better than others, as a result of the challenges they have been forced to overcome. However, where individuals from less privileged backgrounds are selectively employed as a social experiment it is also possible that they will be subject to extreme pressures to conform and perform. This may cause some to opt-out or lead to lesser performance amongst others, thereby perpetuating the belief that lawyers from non-traditional backgrounds are less able.

An important question is how the sector can be persuaded to adopt a more open approach. As the Milburn Review makes clear, 'no single lever can prise open the professions' (Cabinet Office, 2009: 7). However, it is reasonable to ask whether clients can play a role here, given their role in shaping behaviour and beliefs within

these firms (Anderson-Gough et al., 2001, 1152). It is possible that image may not be as important to clients as law firms believe, although the available evidence here is uncertain. A number of studies have suggested that clients within FTSE250 companies increasingly complain that leading law firms are not sufficiently commercial in their approach to work and indeed their fees. However, these high status clients continue to use leading law firms for their most complex work, apparently because this is a low risk strategy (Eversheds, 2009). Arguably this underlines the emphasis on image across the sector, since only the most prestigious firms are trusted to perform 'elite' tasks and this provides a safe and defensible position should things go wrong (Hanlon, 2004). More promising perhaps is a trend for FTSE250 companies to hand the purchasing of legal services to procurement specialists. Potentially less concerned with reputational or cultural capital and more concerned with performance and price, these teams may be more resistant to knowledge claims based on image and 'myth.'

Myth is an important theme in the Milburn Review which aims to dispel a series of irrational beliefs circulating within the sector and society at large and replace them with objective truths. These include the belief that providing fair access to the professions will involve 'dumbing down', or that the children of the middle-class are just more intelligent (Cabinet Office, 2009: 43). These are laudable aims which unfortunately do not acknowledge that 'competing rationalities' exist within the sector (Healy et al., 2010). In other words, discriminating on the basis of social class is felt to make commercial sense for leading law firms and for the individuals within them. In addition to the reassurance this provides to clients, various 'myths' are upheld for a number of additional reasons. First, the notion that entry into leading universities is

secured solely according to merit is unlikely to be challenged by individuals who attended those universities since doing so could substantially undermine their own self-image. Second, for current partners who are able to send their own children to fee-paying schools, a comprehensive challenge to this 'myth' would arguably damage the ability of financially privileged groups to buy their children a positional advantage via their education (Allat, 1993; Sommerlad, 2007). Even where organisations and individuals do wish to change their approach, the risk of one firm acting alone is considered too great given the relational nature of this project.

Government policy and rhetoric within the sector may claim that the attraction of diverse talent leads to competitive advantage. However, unless a critical mass of competitor firms commit to change at a similar pace, any single organisation will be prevented from implementing a new approach to recruitment for fear that only their brand will be compromised. The introduction of a more progressive approach may therefore depend on changing diversification from a high risk to a low risk strategy.

During spring 2011, five of the UK's most prestigious law firms led by Allen & Overy met to discuss a number of strategies which could be jointly pursued in order to change the status quo. In theory, these firms could act together to provide an alternative role model, showing collective leadership around social inclusion and providing reassurance to clients and peers that diversification is a worthwhile strategy. As such, they could change taken for granted notions associating only the relatively privileged by dint of educational and/or social background with legitimate claims to knowledge. However, it remains to be seen whether rhetoric in favour of progressive change can be translated into action or whether programmes to secure social inclusion introduced by charitable bodies and leading law firms will act only to

obscure rather than solve related problems. History would suggest that overt discrimination against minority groups including women and ethnic minorities has been most substantially reduced as a result of legislation. Though by no means sufficient, structural interventions are the most effective means to change predominant cultural assumptions and challenge a relative passivity around exclusion. The current government has shown little appetite for legislating on the basis of social class and given the subtlety and complexity of the issues at stake, this would be a challenging task. Nonetheless, it remains possible that discriminating on this basis is likely to appear the high risk option only when there are clear penalties enshrined within law for doing so.

¹ Speech to the Labour Party conference in September 1999.

² Throughout this article the term 'leading law firms' refers to the UK's top twenty firms by turnover ranked by leading trade journal *The Lawyer*. These firms have a turnover, average profit per equity partner (PEP) and average revenue per lawyer (RPL), which is considerably above the UK average. They include the 'magic circle', an informal term often used to describe what are generally regarded to be the five most prestigious UK-headquartered law firms. These include Clifford Chance, Allen & Overy, Freshfields Bruckhaus Deringer, Linklaters, and Slaughter and May. They also include the 'silver circle', a term created by *The Lawyer* in 2005 to refer to leading UK-headquartered corporate law firms which are commonly regarded as the main competitors of the magic circle. These include Ashursts, Berwin Leighton Paisner, Hebert Smith, Macfarlanes, SJ Berwin, and Travers Smith. The remaining firms within the top twenty are referred to here as 'second tier'.

³ In the UK students take their General Certificate of Secondary Education (GCSE) at sixteen and may continue their studies for an additional two years, typically leading to Advanced Levels (A-levels). These, or equivalent qualifications such as the International Baccalaureate, are required for access to higher education.

⁴ 'Old' universities are pre-1992 institutions which are commonly considered more prestigious than post-1992 or 'new' universities. The Russell Group is a formal consortium of twenty leading old universities including Oxford and Cambridge (Oxbridge) which is often used as shorthand for the UK's most prestigious universities, a designation relating in part to their strong research output and higher entry requirements. Throughout this article, 'leading universities' refers to Russell Group universities unless specified otherwise.

⁵ Approximately 93 per cent of children in the UK attend state-provided schools which are free of charge to students. Schools outside the state system are commonly referred to as independent or private schools and are attended by approximately seven per cent of children in the UK. Sometimes for historical reasons private schools are also referred to as public schools although this term is generally used in relation to a small set of the largest, most prestigious and oldest private schools.

⁶ Undergraduates at UK universities receive a degree classification based on the average of the assessed work a candidate has completed. This is divided between a First class honours degree (1st), a Second-class honours, Upper Division (2:1), a Second-class honours, Lower Division (2:2), a Third-class honours (3rd) and an Ordinary-degree (pass).

⁷ Between the mid-1940's and the 1960's a tripartite system of state funded secondary education operated in England and Wales. Grammar schools were designed to teach an academic curriculum to the most able 25 five percent of the school population, selected by the Eleven Plus examination. The

remaining 75 per cent of students attended either secondary-modern or secondary-technical schools which had a more vocational curriculum. In 1976 this system was formally abolished and most parts of the UK moved to introduce non-selective comprehensive schools. Grammar schools have been defined as an engine of social mobility by enabling bright working class students to access excellent educational opportunities

⁸ The term Red Brick University refers to six universities in the major industrial cities of England, all of which achieved university status before WW1. All six are members of the Russell Group. They include Birmingham, Liverpool, Leeds, Sheffield, Bristol and Manchester.

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