

The Competition for Pupillages at the Bar of England and Wales (2000–2004)¹

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Fair entry into the legal profession promotes legal legitimacy and the inclusiveness of the administration of justice. This article asks which individual factors predict success in the competition for entry to the Bar of England and Wales. Using data from 2,178 British aspiring barristers, it finds that university attended and attainment at university and in the BVC were the strongest predictors of gaining pupillage. Ethnic minorities were initially disadvantaged in the competition for pupillages, but this became statistically insignificant when taking into account attainment and type of university. However, those aged 30 and above were still disadvantaged in securing pupillages when controlling for attainment and university. The article highlights the challenges of fair selection into a graduate-entry legal profession. Entry is reliant on the profile of graduates emerging from the prior education system where ascribed characteristics such as ethnicity influence opportunities concerning attainment and university type.

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- 1 The data for the study were collected between 2008 and 2009 from three of the four Inns of Court. 2000–2004 were the only years for which data for this project were made available. They were chosen for the data request as Bar Vocational Course graduates are technically eligible to secure pupillage up to five years after passing their BVC; that is, graduates from 2004 would have been eligible for pupillage up to 2009. This ensures that pupillage information is validly captured in this article.

INTRODUCTION

Law, and in particular the legal Bar, enjoy an elite position in the professional status hierarchy.² Combined with the nature of legal work, the question of entry to this elite profession provides a particularly pertinent case study for two related questions: First, who *should* gain entry to the legal profession? And, secondly, who *actually* enters the legal profession? The first question is a normative one and as such, it is largely the realm of philosophers, social theorists, politicians, and social policy makers. In contrast, the second question requires empirically grounded answers and social scientific research.

This article contributes to answering both questions by analysing a unique data set on entry to the legal Bar of England and Wales and embedding this analysis in a theoretical framework of meritocracy and a discussion of opportunity structures in contemporary English society.

It first offers a broad description of the English legal profession; secondly, it reviews the normative literature on meritocracy; and thirdly, it summarizes current knowledge of entry to the Bar. This is followed by an empirical mid-section, and the article concludes with a discussion of the findings in the light of the framing of meritocracy.

THE BAR AND LEGAL PROFESSIONS IN ENGLAND AND WALES

1. *Overview*

The legal profession in Britain is stratified vertically and horizontally. The basic vertical stratification is as follows: paralegals or clerks form the base; one level higher up are legal executives who can be trained to the same level as solicitors in one particular area of expertise. The level above that is occupied by solicitors and barristers. It is debateable whether the barrister and solicitor professions align next to each other on a horizontal axis or whether barristers are regarded as higher up in terms of prestige than solicitors. Arguably, the horizontal differences within the profession among solicitors and barristers are increasingly greater than the differences between the professions. Previous boundaries of court advocacy and progression to Queen's Counsel (QC), and judges have increasingly been opened up to both professions.³ The horizontal stratification of the legal profession in England concerns area of practice with marked differentials in earnings and the type

2 A. Abbott, *The System of Professions: An Essay on the Division of Expert Labor* (1988); W. Bottero, *Stratification: Social Division and Inequality* (2005).

3 Courts and Legal Services Act 1990, ch. 41; Department of Constitutional Affairs (DCA), *You be the Judge – Career Opportunities in the Judiciary in England and Wales* (2005).

of client being served. Internal stratifications of legal professions align partly along gender, ethnic, and religious lines⁴ as well as along values.⁵

In 2009, the solicitor and barrister professions comprised 139,666 and approximately 15,000 practitioners, respectively. This indicates that despite reforms, the Bar continues to be a relatively small, and elite group within the British legal system. Current QC and judges' appointments still strongly favour the Bar. The present article is concerned only with entry to the Bar. A recent comparison of the Bar, solicitors and other professions in terms of ethnicity and gender is available elsewhere.⁶

Becoming a barrister requires a three-year undergraduate law degree or a one-year law conversion course for graduates of other disciplines. This training is followed by a year-long Bar preparation course, called the Bar Vocational Course (BVC) or, since 2010, the Bar Professional Training Course (BPTC). Afterwards, students have to enrol in a year-long practical apprenticeship, called pupillage, at law chambers. After successfully completing pupillage, new barristers either become self-employed tenants at law chambers or enter employed practice with the government.

Leaving aside issues of prior self-selection into the BVC and the cost of training, the bottleneck in becoming a barrister is the transition between the one-year Bar course and gaining pupillage.⁷ For example, between 2003 and 2006, an average of 1,420 individuals successfully completed the Bar Vocational Course annually.⁸ During the same period, an average of 544 pupillages were filled annually, resulting in 2.6 BVC graduates competing for every pupillage. However, aggregate statistics can overestimate the actual competitiveness of pupillage: graduating from a BVC in England and Wales continues to be a transferable qualification, permitting practice in several former British territories such as Pakistan and the Cayman Islands. Many BVC graduates who are foreign nationals return overseas and hence

4 See, for example, J. Hagan, M. Huxter, and P. Parker, 'Class structure and legal practice: inequality and mobility among Toronto lawyers' (1988) 22 *Law & Society Rev.* 9–55; J. Heinz and E.O. Laumann, *Chicago Lawyers: The Social Structure of the Bar* (1982); R. Dinovitzer and J. Hagan, 'Lawyers on the move: the consequences of mobility for legal careers' (2006) 13(2) *International J. of the Legal Profession* 119–35, at 121; H. Sommerlad and P. Sanderson, *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status* (1998). Compare P. Bourdieu, *Outline of a Theory of Practice* (1977) 817.

5 K.M. Sheldon and L.S. Krieger, 'Does legal education have undermining effects on law students? Evaluating changes in motivation, values, and well-being' (2004) 22 *Behavioral Sciences & the Law* 261–86, at 281.

6 A. Zimdars, 'The profile of pupil barristers at the Bar of England and Wales 2004–2008' (2010) 17 *International J. of the Legal Profession* 117–34.

7 Since 2003, chambers have been required to pay for pupillage; in 2009, the minimum payment was £10,000. This requirement has reduced the number of available pupillages (see R. Macey-Dare, 'Economics of Pupillage' (2007), available at <<http://ssrn.com/abstract=967619>>) but has also increased the transition rate from pupillage to tenancy.

8 Bar Council, *The Statistics* (2010) at <<http://www.barcouncil.org.uk/CareersHome/TheStatistics/>>.

do not compete for pupillages in the United Kingdom. The analysis in the present article is therefore restricted to British nationals who intend to practice at the Bar, to ensure that social background effects are not confounded by the relationship between nationality and pupillage.

Another perhaps unusual feature of training for the Bar is the requirement to join one of the four ancient Inns of Courts in London. The Inns create a membership record whenever an aspiring barrister joins – these membership records include some personal details as well as information on previous education. Membership records from three of the four Inns of Court provided the basis for the empirical analysis in the present study.

2. Normative considerations and meritocracy

Law is an important profession. On the one hand, there is its economic importance with the British legal industry recently estimated to be worth £20 billion a year.⁹ But normatively more importantly, the nature of legal work means that a ‘system that dispenses justice must itself be seen to be fair’.¹⁰ The make-up of the legal profession matters particularly because ‘to a large extent, access to justice, and the quality of law and the legal process is in the hands of legal practitioners.’¹¹ Concern has been voiced, for example, whether ‘a criminal justice system, which has only limited female participation at its senior levels, is in fact able to deliver justice to women and men on an equal basis.’¹² Furthermore, experience from other countries shows that public controversies about the values apparent in selection for entry to the legal profession are particularly fierce, with a recent case

9 F. Gibb, and A. Spence, ‘Law 100: The UK’s most powerful lawyers’ *Times Online*, 22 April 2008.

10 Commission on Women and the Criminal Justice System, *Justice and Equality – Second annual review* (2006) 11.

11 D. Nicolson, ‘Making lawyers moral? Ethical codes and moral character’ (2005) 25 *Legal Studies* 601–26, at 601; see, also, S. Ahmed, ‘Is Racial Matching Sufficient?’ in *Social and Community Work in a Multi-Racial Society*, eds. J. Cheetham et al. (1981); D. Nicolson, ‘Affirmative Action in the Legal Profession’ (2006) 33 *J. of Law and Society* 109–25; S.S. Diamond, D. Peery, F.J. Dolan, and E. Dolan, ‘Achieving Diversity on the Jury: Jury Size and the Peremptory Challenge’ (2009) 6 *J. of Empirical Legal Studies* 425–49. Whether individual judgments depend upon the characteristics of the backgrounds of advocates, judges, and juries is, however, less conclusively established and substantively more controversial. For a discussion see, for example, A. McHarg, ‘Quotas for Women! The Sex Discrimination (Election Candidates) Act 2002’ (2006) 33 *J. of Law and Society* 141–59 or J. Mansbridge, ‘Should blacks represent blacks and women represent women? A contingent “Yes”’ (1999) 61 *J. of Politics* 628–57; see, also, Bourdieu, op. cit., n. 4, p. 817.

12 C. Booth, address to the Fawcett Society Conference on Women and the Criminal Justice System, 31 March 2004.

concerning law school admission in the United States being ruled on by the Supreme Court.¹³

The importance of the make-up of the legal profession and the social values apparent in the selection process have thus recently enjoyed a wave of major recognition by various legal bodies in England. For example, the selection panel for Queen's Counsel, the Judicial Appointments Commission, and the Bar Council have provided mission statements that are indicative of their normative aspirations for entry to their profession: '... the Panel did not have regard to personal information such as the applicant's age, gender, professional status, ethnic background, disability, Inn, or chambers or firm'.¹⁴ The selection of judges states the same ideals: 'Judicial appointments are made strictly on merit regardless of age, gender, ethnic origin, marital status, sexual orientation, political affiliation, faith or disability.'¹⁵ Finally, and perhaps most explicitly, the Bar Council of England and Wales, states that:

The Bar Council is committed to equality of opportunity, and values the diversity of its membership. Discrimination on grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, age, religion or political persuasion is professional misconduct on the part of a barrister. The Bar Council has an 'Equality Code for the Bar' which recommends good equal opportunity practice to chambers – particularly in relation to the recruitment of pupils and tenants and the allocation of work. We are working to make sure that entry to the profession remains based on merit alone.¹⁶

These mission statements are, in turn, 'the closest one comes to a collective statement of the ideals, values and behavioural standards to which professions are committed.'¹⁷ Two themes emerge from the statements. First, a strong commitment to selection based on merit and, second, a strong normative commitment to selection regardless of ascribed characteristics. These two ideals and the implicit assumptions are now reviewed in some further detail through the lens of the meritocratic paradigm.

The basic idea of meritocracy is that ascription should not influence life chances. Ascription is understood as the 'accident' of being born with

13 *Grutter v. Bollinger* 539 U.S. 306 (2003). This moral or normative case for social justice in access to desirable professions is complemented by an equally strong business case for ensuring that the most talented and motivated individuals raise to leading positions in society regardless of their starting point in life. The lack of barriers in reaching top positions is also associated with beneficial social outcomes such as increases in social cohesion, trust, and political stability as well as the absence of conflict and violence.

14 Queen's Counsel, *Report of the Queen's Counsel Selection Panel for England and Wales* (2008) 1.

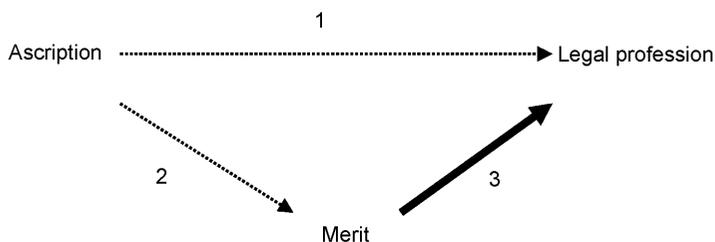
15 DCA, op. cit., n. 3, p. 5.

16 Bar Council, *Diversity* (2008), at <<http://www.barcouncil.org.uk/trainingandeducation/careers/Diversity/>>.

17 Nicolson, op. cit (2005), n. 10, p. 605.

particular characteristics or into a particular group such as being male or female or being black or white.¹⁸ An expression of this ideal is, for example, Britain's aspiration to be 'a society that is fair and free, and which provides for each individual to realise his or her potential to the fullest'.¹⁹ Liberal democratic societies have generally understood the imperative to provide opportunities for individuals to realize their potential as introducing some kind of talent or merit principle into selection for employment. This idea of merit selection is frequently graphically represented as a triangle (see Figure 1) consisting of ascribed characteristics, merit, and outcomes (in this case, entry to the legal Bar).²⁰

Figure 1. The normative framework for merit selection in pupillage



The above cited mission statements show a strong commitment for a close link between merit and becoming a barrister, becoming a QC, and becoming a judge. In other words, there is a legitimate link 3 in the triangle between merit and an outcome like entry into the legal profession. In contrast, a direct link 1 between ascriptive characteristics such as gender and ethnicity and career entry is considered illegitimate – hence the statements above refer to opportunities for career entry, irrespective of background. However, the triangle is also illustrative of a major challenge to the meritocratic model – and this is link 2 in the model which links social background with merit.

When ascribed characteristics and talent are closely associated (link 2), then the meritocracy would only be a weak or surface meritocracy.²¹ Here, the overall link between ascribed characteristics and entry into a desirable profession like law would not actually disappear but it would merely be channelled through the prior impact of ascribed characteristics on the propensity to have talent. In other words, a true meritocracy not only

18 B. Reskin, 'Including Mechanisms in Our Models of Ascriptive Inequality: 2002 Presidential Address' (2003) 68 *Am. Sociological Rev.* 1–21.

19 Equalities Review, *Fairness and Freedom: The Final Report of the Equalities Review* (2007) 1.

20 For example, P.M. Blau and O.D. Duncan, *The American Occupational Structure* (1967); R. Breen and J.H. Goldthorpe, 'Class, mobility and merit – The experience of two British birth cohorts' (2001) 17(2) *European Sociological Rev.* 81–101.

21 R.H. Turner, 'Acceptance of Irregular Mobility in Britain and the United States' (1966) 29 *Sociometry* 334–52.

presupposes but normatively requires the existence of equal opportunities for individuals from different social background to show merit or talent. This idea is graphically illustrated in Figure 2.

Figure 2. Meritocratic entrance to pupillage within an equal opportunities regime

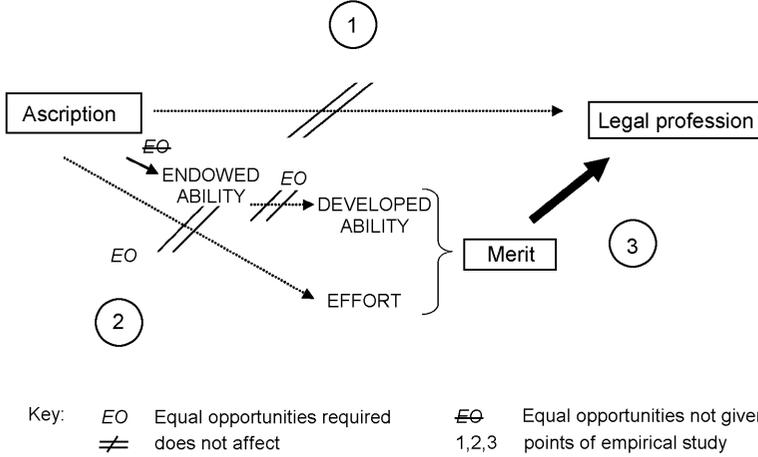


Figure adapted from A. Zimdars, ‘Challenges to meritocracy? A study of the social mechanisms in student selection and attainment at the University of Oxford’ (2007) DPhil thesis, 15.

For the sake of simplification, Figure 2 breaks down merit into ‘ability plus effort’.²² Even using this simple idea, various problems are apparent: there are no equal opportunities in having natural ability, however controversially measured. Empirical data show that no contemporary Western society has yet broken the link between ascribed characteristics and educational attainment in schools.²³ Luck egalitarians thus argue that stratification based on ‘luck in the natural lottery’ of difference in endowed ability – and, to some extent, luck in the kind of family one is born into – challenges the very idea that meritocratic stratification is superior or more legitimate than direct (inherited) stratification by social origin.²⁴ A more far-reaching criticism also states that rewarding talent alone, rather than in conjunction with traits such as kindness or friendliness, is also not

22 M.D. Young, *The Rise of the Meritocracy, 1870–2023: An Essay on Education and Equality* (1958).

23 OECD Programme For International Student Assessment (*PISA*), *Survey of Student Achievement* (2000).

24 G. Marshall and A. Swift, ‘Social class and social justice’ (1993) 44 *Brit. J. of Sociology* 187–211; R.M. Dworkin, *A Matter of Principle* (1985).

necessarily followed by socially desirable outcomes or societies being collectively better off.²⁵

These criticisms have not been fully taken on board by modern liberal democracies. Instead, democracies have tackled the equal opportunities challenge with two tools: first, compensation and balancing; and second, adjustment of the normative requirements. Compensation²⁶ occurs when structural or systematic unequal opportunities are addressed and it is often associated with balancing the meritocratic imperative with other socially desirable goals related to the influence of ascribed characteristics on social outcomes such as employment.²⁷

Second, liberal democracies have adjusted the equal opportunities requirement to mean that ‘people with the same academic aptitude or ability should be given equal access to advantaged sectors of education’.²⁸ The resulting compromise, then, is a requirement that factors affecting how an individual’s efforts translate into achievement should be ‘regulated as to neutralize external influences’.²⁹ In other words, accepting the unequal opportunities in natural talent, liberal democracies should provide equal opportunities for schooling, education, and the development of soft skills. Under this model, the impact of ascription on entry to the legal profession is minimized but unlikely to be completely eliminated. All residual effects of ascription must be channelled through the manifestation of merit. Direct links like nepotism and allocation of jobs through closed networks (link 1) are never compatible with meritocracy.

To conclude the theoretical framing of this article in the meritocracy debate, it is finally necessary to note the inherent controversies in defining both merit and ascription: ‘merit is a malleable construct’.³⁰ Both merit and ascription show the signs of an essentially contested concept.³¹ With regards

25 J. Rawls, ‘Distributive Justice’ in *Justice*, ed. A. Ryan (1993); A. Sen, ‘Merit and Justice’ in *Meritocracy and Economic Inequality*, eds. K.J. Arrow, S. Bowles, and S.N. Durlauf (2000).

26 E. Grodksy, ‘Compensatory Sponsorship in Higher Education’ (2007) 112 *Am. J. of Sociology* 1662–712.

27 Examples include the aim to represent both men and women equally in leading positions through the introduction of quotas, targets, all-women shortlists, or tie-breaker clauses for the employment of under-represented groups. Historic contexts are crucial for understanding, for example, ethnic affirmative action policies in the United States and religious quotas in Northern Ireland. In England and Wales quotas in employment are illegal.

28 A. Heath, *Equality of Opportunity* (2006) 3.

29 J. Habermas, *Legitimation Crisis* (1976) 81.

30 M. Thornton, ‘The evisceration of equal employment opportunity in higher education’ (2008) 50(2) *Aus. Universities Rev.* 59–70, at 66.

31 W.B. Gallie, ‘Essentially contested concepts’ (1956) 6 *Philosophical Q.* 97–114; M.D. Young, ‘Down with meritocracy: The man who coined the word four decades ago wishes Tony Blair would stop using it’ *Guardian*, 29 June 2001; M. Freeden, *Ideology: A very short introduction* (2003); Dworkin, op. cit., n. 23, p. 299. Echoing

to merit, quantitative British studies, have tended simply to operationalize merit as educational attainment.³² The empirical analysis in this article is following this line of research, but the discussion will bear in mind the limitations and assumptions of the meritocratic paradigm laid out above in interpreting the relationship between ascription, merit, and entry into the legal profession.

What is regarded as ascription can also be controversial – for example, the United Kingdom’s 2007 Equalities Review provided a list of ascribed factors that must not influence opportunities. These are ethnicity, gender, age, religious belief,³³ sexuality, transgender, and disability. Notable is the absence of social class (or socio-economic status) from this list. This is more likely due to the controversy and far-reaching consequences of requiring that parental wealth, occupational status, and other resources such as social and cultural capital should not matter for life outcomes, rather than that policy makers think class is not a major determinant of life chances.³⁴ Another noteworthy absence among ascribed factors is region: in 2000–2001, about 32 per cent of the 5,162 training contracts for solicitors were registered in London³⁵ and approximately 63 per cent of self-employed barristers practise in London.³⁶ Such regional structuring of opportunities will almost inevitably have equal opportunity implications.

3. *The need for empirical analysis*

Given the importance of entry to the legal profession in particular, it is perhaps surprising to learn that current knowledge about entry to the Bar in particular, is limited. Much is based on anecdotal or dated evidence as opposed to recent research. A survey of the graduating law school class at Cardiff in 1981 found, for example, that the Bar was viewed as a ‘middle-

Marx’s dictum that the ruling ideas in any age are those of the ruling classes, the construction of merit is arguably ‘shaped by power’ (Thornton, id.). Exploring this idea fully is outside the scope of this article.

32 P. Saunders, ‘Might Britain be a Meritocracy?’ (1995) 29 *Sociology* 27–41; M. Jackson, R. Erikson, J.H. Goldthorpe, and M. Yaish, ‘Primary and Secondary Effects in Class Differentials in Educational Attainment’ (2007) 50 *Acta Sociologica* 211–29.

33 The relationship between religious affiliation and career networks or ‘inbreeding tendencies’ has been fruitfully studied in the United States context, see Heinz and Laumann, op. cit., n. 4, p. 226. It was not possible to undertake equally detailed work on the Bar of England and Wales for the present article, although the Bar Council now systematically collects data on aspiring pupils’ religious affiliation.

34 See, for example, R. Benabou, ‘Meritocracy, Redistribution, and the Size of the Pie’ in Arrow et al., op. cit., n. 24, p. 319. In fact, the subsequent report on fair access to the professions included social class as a potential barrier to fulfilling aspirations: Panel on Fair Access to the Professions, *Unleashing Aspiration: The Final Report of the Panel on Fair Access to the Professions* (2009).

35 A.M. Francis, ‘Out of touch and out of time: lawyers, their leaders and collective mobility within the legal profession’ (2006) 24 *Legal Studies* 322–48, at 333.

36 Bar Council, op. cit., n. 15.

class male preserve'³⁷ favouring those 'with a public school background or an Oxford or Cambridge degree'.³⁸ At the same time, the author noted the paucity of actual statistical data regarding the background of entrants, with the difficulty of gaining access to data on lawyers echoed in later academic work.³⁹

The 2007 report of the working group on widening access to the Bar – headed by Lord Neuberger – reiterated the sentiment from the 1980s by stating that 'the profession currently suffers from at least a perceived exclusivity'⁴⁰ while also noting that actual data availability on transitions into the legal profession was unsatisfactory to refute or support such public perception.⁴¹ The Entry to the Bar working group thus recommended as an action point 'a detailed statistical analysis ... to establish whether there are unexplained biases either in favour of or against particular groups of individuals'.⁴²

The data used in the present article were obtained by the researcher as part of meeting this action point. In return for offering data analysis free of charge to the Bar Council, the researcher retained the right to disseminate the findings in the academic community. The Bar Council further retained the right to correct errors of fact but not the right to influence the presentation or interpretation of data beyond this. This article, then, seeks to establish explicitly whether individuals with different social-origin characteristics have different chances of success when they apply to become pupils. Is selection into the legal Bar of England and Wales based on talent alone without unexplained biases either in favour of or against particular groups?

An ideal study design would undertake this task by modelling not only entry into pupillage but also entry to university (and law courses, in particular), entry to law conversion courses, and entry to the LPC and the BPTC. All these transition points should be broken down by equality group. Unfortunately, such an ideal comprehensive and longitudinal data source does not exist, although, in a first stage of the research, efforts were made to compare entrants to the Bar with appropriate population comparators.⁴³ While such analyses provide some insights into aggregate patterns of participation, this article is interested in the relative opportunities for entry to the Bar for individuals with different social-background characteristics, and is the first publicly available attempt systematically to model entry into the legal Bar of England and Wales in the twenty-first century.

37 P. McDonald, 'The Class of '81: A Glance at the Social Class Composition of Recruits to the Legal Profession' (1982) 9 *J. of Law and Society* 267–76, at 267.

38 *id.*, p. 271.

39 P.A Thomas (ed.), *Discriminating Lawyers* (2000) xi.

40 Bar Council, *Entry to the Bar: Working Party Final Report* (2007) 1.

41 Equalities Review, *op. cit.*, n. 18, p. 10; Bar Council, *id.*, p. 9.

42 Bar Council, *id.*, p. 11, rec. 52.

43 See Zimdars, *op. cit.*, n. 4, and Table 1 below.

METHODS

The data used for the analysis were assembled by the Bar Council of England and Wales, with the help of the statistics department of the Bar Standards Board. The Bar Council asked the four Inns of Court for access to their membership records for the purpose of the study. Three of the Inns supplied their records (Inner Temple, Gray's, and Lincoln's; Middle Temple did not participate in the study, based on data protection concerns). Inns of Court were asked to provide information regarding all their members who had matriculated on a Bar Vocational Course between 2000 and 2004, resulting in information on five years of pupillage transition. More recent years were excluded to ensure pupillage success was validly captured.⁴⁴

In total, 2,178 complete individual records of British nationals were obtained from the three participating Inns. The Inns provided self-reported data regarding gender, age, ethnicity, nationality, intent to practice, as well as pupillage and tenancy information. Two of the three Inns also provided information on BVC attainment. Most students had also provided their Inns with information regarding their undergraduate degree-awarding university and their previous university grades and courses, but this information was not consistently collected or entered. The accuracy of records in relation to pupillage and tenancy was manually checked by the Bar Council.

Inns do not keep records regarding the social class origin of their members or the type of secondary school attended (state or private). Both social class and schooling are considered crucial cleavages for monitoring equal opportunities in Britain, frequently dwarfing discussions of race and gender that have perhaps more salience in other national contexts. Research has repeatedly suggested that the highest echelons of professional life in Britain continue to be disproportionately the preserve of the private-school educated and most privileged in the social structure.⁴⁵ Given the importance of these two dimensions for the British context, efforts were made to retrieve class and schooling information through UCAS.⁴⁶ UCAS matched the

44 BVC graduates are technically eligible to secure pupillage up to five years after passing their BVC. In practice, the vast majority of students secure their pupillages during their BVC year, even before the outcome of their BVC course is known, and it is uncommon for BVC graduates to secure pupillages several years after completing their BVC.

45 Sutton Trust, *The Educational Backgrounds of the UK's Top Solicitors, Barristers and Judges* (2005); Sutton Trust, *The Educational Background of Leading Journalists* (2006); Sutton Trust, *The Educational Backgrounds of Members of Parliament in 2010* (2010).

46 All applicants for study at United Kingdom universities (British and overseas nationals) apply centrally through an admissions clearing house. The application form asks for the occupation of the applicant's head of household at the age of 14. Information is also captured as to whether the applicant's school was fee-paying or a state school. The matching with university records was imperfect because UCAS was unable to match records for those who had applied to university before 1997.

records of 933 United Kingdom BVC graduates from Inner Temple and Lincoln's Inn with their previous university application records, which contained social class and schooling information. The timing of the submission of Gray's Inn – about one year after the other two submissions – meant that such matching with UCAS was no longer feasible. Unfortunately, overall only 504 records were obtained where information on all variables of interest was complete. The UCAS data management system has since then changed, thus promising to provide higher matching compatibility for university entrants from 2000 onwards for potential future research.

The above research design inevitably has limitations that must be born in mind when interpreting the findings. First, using existing administrative records is relatively cost-effective for studying the Bar⁴⁷ but the detail of data provision inevitably falls short of that for which an ideal social science study would ask. Information on schooling and social class was incomplete and the format was imperfect. It would have been desirable to have systematic and complete attainment on university degree records and information on whether students had received a scholarship from an Inn (indicating exceptional potential for the Bar). The data lacked information on other background characteristics, notably disability and religion, and information on intended area of practice. Intent to practice was captured at the point of entry to an Inn; however, information on intent to practice during the BVC would have been useful. Second, the non-participation of Middle Temple meant that only approximately three-quarters of BVC students eligible for pupillage were covered in the study presented here. Full coverage of all BVC students would have been desirable as little is systematically known about the relationship between Inn membership and success in gaining pupillage. It is also worth pointing out that the data-use agreement with the Bar Council did not extend to breaking down analyses by Inn or by BVC provider.

Despite these shortcomings, the data set is a unique resource which, for the first time, allows an academic researcher to study entry into one of the most elite professions in contemporary England. It covers all members of three Inns who undertook the BVC course between 2000 and 2004 and is thus a first opportunity to learn more quantitatively about entry to the contemporary Bar.

Individuals who had changed degree courses or for whom several individuals with the same name had enrolled at a university could also not be uniquely matched.

47 M. Chalkley, 'A framework for statistical analysis of entry to the Bar', appendix 5 in the Bar Council, *Entry to the Bar Interim Report* (2007).

OPERATIONALIZATIONS

This section describes the different variables used in the statistical analysis. First, gaining pupillage (yes, no), gender (female, male), and having studied law as an undergraduate degree (law, not law) are operationalized as dichotomous variables. Social background is operationalized through social class, ethnicity, and age; education is operationalized through university, school, degree class, and BVC attainment. The social background and education variables are explained in more detail below.

- (i) *Class*: This is a categorical variable derived from the UCAS matched files. Class here represents aspiring barristers' head of household's employment status at the age of 14. It has three valid values: professional class, intermediate, and working class.⁴⁸ Although family income is a commonly used research indicator in many other countries, it is not as customarily asked in the United Kingdom and this information was not available to the study.
- (ii) *Ethnicity*: This variable has four categories, namely white, black, Indian, and Bangladeshi or Pakistani.
- (iii) *Age*: A categorical variable was used with three values: 25 and younger; 26 to 30; and 31 and older.
- (iv) *University*: This is a categorical variable that takes four values: Oxbridge, Russell Group, Golden Four, and other. In the stratified higher education sector in the United Kingdom, the universities of Oxford and Cambridge are outliers in rankings of endowment and prestige and have a special place in the national consciousness,⁴⁹ offering a unique educational experience based on a one-to-one tutorial system.⁵⁰ Oxford and Cambridge are part of the 20-member strong Russell Group, which is a self-selected group of research-led universities – the operationalization of the Russell Group in the present article excludes Oxbridge. The golden four – St Andrews, Durham, Trinity College Dublin, and York – are as prestigious as the Russell Group and score highly in league tables such as the *Times* university ranking. Their focus on teaching or geographic location⁵¹ means that they are ineligible for Russell Group membership. The category 'other'

48 D. Rose and D.J. Pevalin, *The National Statistics Socio-economic Classification: Origins, Development and Use* (2005).

49 A.H. Halsey, 'Oxford and the British Universities' in *The History of the University of Oxford, Vol. VIII*, ed. B. Harrison (1997) 577.

50 D. Palfreyman (ed.), *The Oxford Tutorial: 'Thanks, You Taught Me How to Think'* (2008).

51 Up to 2003, thus including the years under study, a law degree from the Republic of Ireland was also considered a qualifying law degree allowing direct entry onto the BVC course, with Trinity College Dublin being a prestigious provider on par with the Russell Group. The majority of graduates from the Golden Four come to the Bar through the conversion course route.

comprises the remaining over 80 other universities in the United Kingdom.

- (v) *School*: This is a binary variable (private/state school) derived from the UCAS matched files. More nuanced information on schooling, for example, school selectivity, OFSTED reports or the percentage on free school meals was not available.
- (vi) *Degree class*: Based on United Kingdom degree classifications, the values are (in descending order) 'first', 'upper second', and 'lower second and below'. The Inns' membership record do not contain detailed information on the decile of degree performance which would have permitted a more nuanced analysis.
- (vii) *BVC grade*: Grades for the BVC are (in descending order): outstanding, very competent, and competent. A missing category was also included in two ways. First, BVC information was not received from Gray's Inn; these cases are thus system missing. Second, some individuals did not disclose their BVC grade to their Inn. This behaviour is associated with low attainment as those individuals are likely to have failed the BVC course at their first attempt and had to resit some of the examinations. Responses in this category are captured within the 'valid missing' category.

RESULTS

1. *Pupillage by social background characteristics*

First, Table 1 simply shows the percentage of all British individuals with different social background characteristics among BVC graduates and then their representation among all pupils (cases with missing observations were excluded listwise from the analysis).

With regards to social background, it is noteworthy that the representation of those of white ethnicity is increased among pupils compared to BVC students. Whites are 80.3 per cent of all British BVC graduates, but 86.9 per cent of pupils. Conversely, minority representation is decreased among pupils compared to BVC students – for blacks, from 5.6 to 3.1 per cent, for Indians, from 4.6 to 3.0 per cent, and for the Paksitani and Bangladeshi group, from 9.4 to 6.9 per cent. Reductions in representation also occur with regards to age, with the youngest group of those up to and including 25 increasing their representation from 57.9 to 63.7 points and those aged 31 and older losing over 7 percentage points in representation among pupils as they are down from 20.9 per cent to 13.8 per cent. There are only very slight gender differences when comparing all BVC graduates with pupils – men gain 1.2 per cent in representation and women, conversely, lose 1.2 per cent.

Turning to the description of education factors, we can see that the university attended as well as degree class and the type of degree

Table 1. Social background and educational characteristics comparing BVC graduates and pupils (British nationals with no missing information only)

Count all (pupillage)	Social background and education	Per cent All (n = 2,178)	Per cent Obtained Pupillage (n = 954)
	Sex		
1,122 (503)	Male	51.5	52.7
1,056 (451)	Female	48.5	47.3
	Ethnicity		
1,750 (829)	White	80.3	86.9
123 (30)	Black	5.6	3.1
100 (29)	Indian	4.6	3.0
205 (66)	Pakistani/Bangladeshi	9.4	6.9
	Age		
1,262 (608)	up to 25	57.9	63.7
461 (214)	26–30	21.2	22.4
455 (132)	31 and older	20.9	13.8
	University		
387 (284)	Oxbridge	17.8	29.8
675 (347)	Russell	31.0	36.4
1039 (284)	Other	47.7	29.8
77 (39)	Golden 4	3.5	4.1
	Degree Class		
316 (234)	First	14.5	24.5
1284 (594)	Upper Second	59.0	62.3
578 (126)	Below	26.5	13.2
	Degree type		
1388 (549)	Law Degree	63.7	57.5
790 (405)	Not Law degree	36.3	42.5
	BVC grade		
53 (49)	Outstanding	2.4	5.1
894 (584)	Very Competent	41.0	61.2
429 (104)	Competent	19.7	10.9
802 (217)	Missing	36.8	22.7
Count all UCAS matched (pupillage)	UCAS matched Social class and school	Per cent All (n = 504)	Per cent Obtained Pupillage (n = 288)
	Social Class		
237 (139)	Intermediate	47.0	48.3
126 (82)	Professional	25.0	28.5
141 (67)	Working class	28.0	23.3
	School		
322 (172)	State	63.9	59.7
182 (116)	Private	36.1	40.3

differentiate the pool of all BVC graduates from those who were successful in gaining pupillage. Oxbridge graduates gain in their representation among pupils by 12 percentage points. The representation of Russell Group and Golden Four graduates is also increased but those who attended universities outside the Russell Group fall in representation from almost half of BVC graduates (47.7) to under a third (29.9) of pupils. Those with first-class degrees gain 10 percentage points in representation, which is largely explained by the decrease in representation of 13.3 percentage points from those with attainment of a lower second and below. Non-British readers might be surprised to see that those who studied law as a first degree rather than undertaking the one-year conversion course decrease in their representation among pupils. Those with law degrees are 63.7 per cent of all BVC graduates but only 57.5 per cent of pupils. This observation may be less surprising for British readers as it is anecdotally known – especially among the middle classes – that future lawyers do well to study ‘what they like’ as undergraduates and to receive their legal training during the conversion course.

Finally, a limited number of 504 aspiring pupils are matched on their social class and schooling. Here, we see slight effects with the professional class increasing their representation from 25.0 to 28.5 per cent among the pupils and the working class decreasing their representation from 28 per cent to 23.3. Private school students also increase their representation by 4.2 percentage points with state school educated students conversely dropping in representation among pupils.

In summary, Table 1 shows the gross effects of social background, education, and attainment factors on gaining pupillage. There are significant differences in the group of pupils compared with all BVC graduates in terms of their ethnicity, age, university attended, degree type, and grades. An obvious shortcoming of Table 1 is that it does not take into account that there is likely to exist a relationship between social background characteristics, university attended, and university grades akin to link 2 in the meritocratic paradigm presented in Figure 1. It is to this bivariate relationship that the discussion now turns.

2. Bivariate analysis of background and education

Table 2 explores the relationship between sex, ethnicity, age, university attended (Oxbridge, Russell Group, Other, Golden Four), degree attainment, and BVC grade. Where the representation of a group is significantly higher or lower than expected by chance, this is indicated by asterisks. For example, looking at the relationship between gender and Oxbridge attendance, we can see that 63 per cent of Oxbridge graduates in the study were male. The asterisk indicates that this figure is significantly higher than we would have expected by chance, given that only 51.5 per cent of all BVC graduates in this study are male.

Table 2. Relationship between social background characteristics and degree class and type of university attended (British nationals with no missing information only, n for ethnicity, sex, and age = 2178, n school and class = 504)

	University Attended					Attainment at University			BVC attainment		
	All	Oxbridge	Russell	Other	Golden Four	First	Upper Second	Below	Outstanding	Very Competent	Competent
Sex											
Male	51.5	63.0*	47.7*	48.4*	68.8*	63.1*	48.6*	51.7	56.6	52.7	45.9*
Female	48.5	37.0*	52.3*	51.6*	31.2*	36.9*	51.4*	48.3	43.4	47.3	54.1*
Ethnicity											
White	80.3	93.0*	85.6*	71.3*	90.9*	93.0*	82.6*	68.3*	90.6^	87.2*	62.0*
Black	5.6	1.8*	2.5*	9.3*	2.6	1.6*	5.2	8.8*	1.9	3.0*	10.7*
Indian	4.6	1.6*	4.1	6.3*	1.3	1.6*	4.6	6.2*	1.9	3.1*	6.1
Pakistani/ Bangladeshi	9.4	3.4*	7.7	13.1*	5.2	3.8*	7.6*	16.6*	5.7	6.6*	21.2*
Age											
up to 25	57.9	65.6*	67.0*	49.3*	57.1	59.5	64.4*	42.7*	60.4	61.3*	43.8*
26–30	21.2	22.7	20.1	20.5	31.1*	23.7	18.5*	25.6*	22.6	21.8	27.5*
31 and older	20.9	11.6*	12.9*	30.2*	11.7*	16.8	17.1*	31.7*	17.0	16.9*	28.7*
Social Class											
Intermediate	47.0	49.1	49.0	43.6	44.4	50.6	46.9	43.8	41.4	48.6	44.4
Professional	25.0	37.7*	26.0	15.7*	27.8	30.9	25.1	18.8	31.0	26.9	17.7*
Working	28.0	13.2*	25.0	40.7*	27.8	18.5*	28.0	37.5*	27.6	24.6*	37.9*
School											
State	63.9	38.7*	65.4	79.7*	44.	49.4*	65.9	70.0	48.3^	62.0	73.4*
Private	36.1	61.3*	34.6	20.3*	55.6	50.6*	34.1	30.0	51.7^	38.0	26.6*

*: adjusted residuals significant (± 2.0) ^ borderline significance ($\pm 1.8/1.9$)

Table 2 shows striking associations between social background and university attended. With regards to gender, men are particularly over-represented among Oxbridge and Golden Four graduates and among those with a first. They are under-represented among low-attaining BVC students. Turning to ethnicity, there is a pattern whereby white BVC students are much more likely than all British minorities to have attended Oxbridge, to have obtained a first, and to have attained more highly than minorities on the BVC. White students are also generally over-represented among the Russell Group and the Golden Four. The increased representation of all minorities – particularly black minorities and those of Bangladeshi and Pakistani origin – among low-attaining students is marked. Finally, older age groups are over-represented among the low-attaining students and among graduates outside Oxbridge, the Russell Group, and the Golden Four.

For the small sub-section of 504 BVC graduates for whom schooling and social class information was available, we can see that professional-class students are over-represented among Oxbridge students and under-represented among graduates from other universities. The reverse is true for working-class students. Working-class students are under-represented among those who attained a first-class degree and over-represented among those with low attainment at university and in the BVC. State-school educated students are less likely than their privately educated peers to have attended Oxbridge and more likely to have attended other universities. Private-school students had also attained more highly at university than state-school students and they are under-represented among those with low attainment on the BVC.

To summarize, the analysis so far has first shown that the group of those who gained pupillage was different from the group of BVC graduates who did not gain pupillage. Table 2 then showed the association between social background and education factors. Given the framework of the present article to investigate whether social background matters over and above the relationship social background has with education, the next step in the analysis is a multivariate analysis. A binary logistic regression model is used. This technique allows us to model the net impact of social background characteristics. Based on the meritocracy in Figure 1, the net impact simply means the remaining unexplained impact of social background, taking into account any relationship between social background and education. For example, Table 1 showed that the representation of minorities drops when comparing all British BVC graduates with those who gained pupillage. Table 2 then showed that minorities also attend less prestigious universities and attain less highly. The multivariate analysis can test whether the observation that minorities attend less prestigious universities and attain less highly explains their lower representation among pupils. This is a possible explanation, but it is also possible that minorities with the same university attendance and degree grade fare better or worse than their white peers. The

previous bivariate analyses are insufficient for answering this question, thus establishing the need for the subsequent multivariate analyses.

3. *Multivariate analysis predicting pupillage*

Table 3 shows the results of a multivariate analysis predicting pupillage. The table presents two sets of three models – models 1, 2, and 3 on the left-hand side of the table and models A, B, and C on the right. The three models on the left are based on the 2,178 British BVC graduates with no missing information when social class and schooling are not included in the model. Models A, B, and C are based on the sub-sample of 504 graduates where valid social class and schooling information was supplied. Models 1 and A show the gross effect of social background on obtaining pupillage, models 2 and B shows the net effect once university attended and degree class are taken into account, and models 3 and C extend the respective previous model to also take into account BVC attainment. Model 1 thus repeats the findings from Table 1, that minorities have a lower chance of gaining pupillage than white graduates and that those older than 31 fare worse than their younger peers. However, when taking into consideration that minorities are less likely to attend the most prestigious universities and are less likely to attain highly, model 2 shows that there is no negative net effect of being a minority on the chances of gaining pupillage. Model 3 shows that taking into account BVC attainment reduces the ethnicity effects further. Moreover, the university effects and degree-class effects are reduced, thus pointing towards a collinearity between the different attainment variables with Oxbridge graduate with a first also more likely to be high attainers on the BVC. The age effect is initially reduced when taking into account attainment factors but remains significant and increases again when BVC attainment is taken into account in model 3. The model-fit statistic indicates that the university type and degree class as well as BVC attainment are important additions to the base model.

Models A, B, and C repeat the same conceptual approach of first modelling only social background and secondary school effects and then the impact of social background, taking into account higher education factors. The model does not detect statistically significant social class or schooling effects, although the private school effect is just short of showing a statistically significant positive association with gaining pupillage. However, no background effects can be detected in models B and C when taking into account university attended, degree class, and BVC attainment. The large error term around the prediction of pupillage among those aged 31 and above in this latter two models is likely to be a function of the smaller size of the older age group being matched on class and schooling through UCAS.⁵² The

52 UCAS was only able to match university application files received during or after 1997. The majority of those older than 31 had attended university prior to this period and were thus not among the 504 matched on class and schooling.

Table 3. Multivariate (binary logistic) analysis predicting pupillage

Predictors reference categories in brackets	All British nationals applying for pupillage (without missing information)						British nationals applying for pupillage, only those with valid data on social class and schooling					
	Model 1 Demographics		Model 2 Model 1 + University		Model 3 Model 2 + BVC attainment		Model A Demographics		Model B Model A + University		Model C Model B + BVC attainment	
	B	S.E.	B	S.E.	B	S.E.	B	S.E.	B	S.E.	B	S.E.
Sex (male) – Female	-.10	.09	.07	.10	.08	.10	-.18	.19	-.11	.22	-.12	.23
Race (white)												
Black	-.88**	.22	-.36	.23	-.16	.25	-.47	.47	.00	.56	.23	.56
Indian	-.84**	.23	-.40	.24	-.28	.26	-1.29**	.51	-.91	.55	-.66	.58
Pakistani/Bangladeshi	-.66**	.16	-.11	.17	-.08	.19	-.65^	.35	-.03	.41	.19	.43
Age (25 and younger)												
26–30	-.04	.11	.02	.13	-.08	.14	-.49^	.28	-.62^	.35	-.47	.36
31 or older	-.81**	.12	-.46**	.14	-.54**	.15	-.84*	.42	-.38	.48	-.23	.50
Social Class (intermediate)												
Professional							.17	.24	.14	.27	.11	.28
Working							-.33	.22	-.01	.26	.00	.27
School (State school) – Private University (Russell Group)							.34^	.20	-.15	.24	-.21	.25
Oxbridge			1.50**	.15	.74**	.16			1.02**	.34	.92**	.35
Other			-.81**	.11	-.61**	.12			-1.01**	.24	-.87**	.25
Golden4			.79**	.25	.11	.27			-.47	.54	-.66	.55

Degree (Law degree) not law			.17	.11	.30 [^]	.12			.08	.28	.13	.29
Degree Grade (Upper Second)												
First			1.84**	.17	.95**	.16			1.85**	.43	1.60**	.44
2:2 and below			-.83**	.12	-.76**	.13			-1.66**	.32	-1.53**	.34
BVC Grade (Very Competent)												
Outstanding					1.25*	.55					1.20	.79
Competent					-1.19**	.15					-1.17**	.27
Missing					.16	.55					~	~
Not supplied					-1.65**	.12						
Constant	.11	.08	-1.55**	.15	.73**	.13	.20	.33	.88*	.41	1.10	.42
Model information												
-2 Log likelihood	2885.34		2548.91		2297.46		659.117		536.22		510.90	
Cox & Snell R Square	.05		.18		.27		.06		.26		.30	
Nagelkerke R Square	.06		.24		.36		.08		.35		.40	
Chi-square	100.45**		436.88**		688.34**		29.25**		152.15**		177.47**	
Df	6		12		16		9		15		18	
N	2,178		2,178		2,178		504		504		504	

** p < .001 * p < .05, ^ p < .10. ~ cannot be estimated. The improvement in chi-square between models 1 and 2 of 336.43 (6 df) is significant at the .001 level. The improvement in chi-square between models 2 and 3 of 251.46 (4 df) is significant at the .001 level. The improvement in chi-square between models A and B of 122.90 (6 df) is also significant at the .001 level. Finally, the improvement in chi-square between models B and C of 25.32 is significant at the .001 level.

BVC effect in model C behaves in a similar way to the shift from model 2 to model 3 by reducing the university and degree-class effects in size but not in statistical significance.

To sum up, the multivariate analysis shows that attainment and the type of university attended are the strongest predictors of gaining pupillage. Those with the highest attainment in their degrees and in the BVC and those who attended the most prestigious universities fare best in the competition for pupillages. However, net effects of origin remain with regards to age. Policy makers might also wish to note the changing significance of the ethnicity effect and the relationship between ethnicity and attainment. Notable is the absence of gender effects on gaining pupillage.

DISCUSSION

This article sought to provide an empirical investigation of entry to the contemporary Bar of England and Wales and to situate the findings in the literature of meritocracy and the context of contemporary Britain.

The analysis was based on membership data from three of the four Inns of Courts concerning all British nationals who completed the BVC between 2000 and 2004. This resulted in 2,178 complete entries for analysis. Inevitably, transactional data⁵³ are limited as the original purpose for compiling information had not been the same as the aim of the present analysis. For example, it would have been desirable to include detailed social class and schooling information and to establish whether pupillage had been secured through networks or genuinely open competition. Attempts were made to augment the Inns' data with UCAS information on social class of origin and type of secondary school attended; however, this endeavour enjoyed limited success resulting in only 504 complete records. These data limitations have to be born in mind when interpreting the findings. Still, despite these shortcomings, this is the first longitudinal study of entry to the legal Bar of England and Wales in the twenty-first century and the Bar should be recommended for making this data available for external use.⁵⁴

The findings can be summarized as follows: education, measured as university attended and attainment at university and in the BVC was the most powerful predictors of gaining pupillage. Gender had no impact on gaining pupillage. Ethnic minorities initially appeared to experience a disadvantage in the competition for pupillage; however, this effect was no longer statistically significant when simultaneously taking into account the lower educational attainment and the type of university attended by minority students. However, those aged 31 and above fared worse than their younger

53 M. Savage and R. Burrows, 'Some further reflections on the coming crisis of empirical sociology' 2009 43 *Sociology* 762–72.

54 Compare Thomas, *op. cit.*, n. 38, p. xi.

peers in the competition for pupillage and this was not explained by their attainment or university attended.

For the sub-sample of applicants who were matched through UCAS on their schooling and social class, it emerged that neither social class nor schooling were significant predictors of gaining pupillage. The positive private-school effect was initially just short of significant, but it was completely mediated through the higher attainment of private-school students and the higher prestige of the universities they had attended. While working-class students were under-represented among Oxbridge graduates and those with firsts, there were no residual significant class effects. The highly self-selective character of applicants for the Bar, combined with the crude UCAS measure of class, make it problematic, however, to arrive at conclusive social-class inferences from the present study.

Turning to the interpretation of the findings, the lack of a gender effect at the point of career entry in the twenty-first century Bar is both unsurprising and surprising. It is not surprising because equalizing opportunities by gender – at least up to the point of family formation – is easier than equalizing opportunities across other ascriptive dimensions.⁵⁵ However, the effect is also surprising because among the self-select group of aspiring barristers, women had attended Oxbridge less frequently and had attained less highly than their male peers. This is in itself noteworthy as women and men are roughly equally represented among Oxbridge entrants, and women attain more upper seconds and above nationally than their male peers. But interestingly, the differentials in education measures for men and women do not translate into differential chances of gaining pupillage.

The ethnicity findings are more complex to interpret. In aggregate statistics, the legal Bar is at least as diverse as all professional-class employment, if not more so. The Bar thus does not have a problem in terms of the absolute number of minorities entering the profession. In terms of relative chances of gaining pupillage, there was also no statistically significant difference in minority students' chances of gaining pupillage compared with white students, matched on degree grade and university type. However, returning to the development of the meritocratic framework in the introduction, it is problematic to observe that while there was no direct link between ethnicity and gaining pupillage (link 1), there is a close relationship

55 This is because gender is not systematically related to parental social class. Educational researchers have found, for example, that middle-class women were the first to benefit from the opening up of educational opportunities, before working-class males and females: J.H. Goldthorpe, *On Sociology: Numbers, Narratives and the Integration of Research and Theory* (2000). Evidence from the legal profession in Germany suggests that the first women who entered the legal profession came disproportionately from lawyer families but that chances equalized as more women entered the profession: R. Dahrendorf, 'Zur Soziologie der juristischen Berufe in Deutschland' (1964) 14 *Anwaltsblatt* 216–34.

between ethnicity, degree class, BVC attainment, and type of university (link 2). These issues warrant further interpretation.

1. *Ascription and merit*

Turner's observation that where merit and ascription are closely linked, the result is a surface rather than a deep meritocracy was quoted earlier.⁵⁶ Put malignly, this is a meritocracy in which merit merely serves as a legitimizing mechanism to translate ascription into outcomes such as entry to the legal Bar in a socially acceptable manner. The present study confirmed the theoretical literature and prior empirical findings showing an association between the prestige of universities, university attainment, and the ethnic and other social composition of the student body. White, privately-educated and professional-class students tended to be over-represented among the most prestigious universities. The reasons for these patterns are manifold. Boudon categorized these into primary and secondary effects⁵⁷ with primary effects being the – controversial – impact of origin on innate ability and secondary effects being the effects of origin on educational attainment over and above ability.

Private schools provide the means for affluent families to convert their economic capital into human capital, with research suggesting mediocre children perform better in private schools than they would have done in state schools.⁵⁸ Perhaps unsurprisingly then, private schools provide a disproportionate share of high grades in their school-leaving examination, the A-levels. There is a growing body of research which suggests that attainment by private-school students indicates lower potential to achieve a first-class degree at Russell Group universities – including Oxbridge – than the same grades achieve in less advantageous state schools,⁵⁹ again suggesting that private schools can inflate certified credentials over and above the levels warranted by natural ability (see, again, Figure 2). The lack of a statistically significant net effect of private school on pupillage thus does not mean that secondary education does not matter. It just means that the advantage of having attended a private school is mediated through the greater propensity of private school students to attend the best universities.

The same mechanism is at play with regards to minorities. Minorities' initial disadvantage in the competition for pupillages disappeared once the

56 Turner, *op. cit.*, n. 20.

57 R. Boudon, *Education, Opportunity, and Social Inequality: Changing Prospects in Western Society* (1974).

58 A.H. Halsey, A.F. Heath, and J.M. Ridge, *Origins and Destinations: Family, Class, and Education in Modern Britain* (1980).

59 T. Hoare, *So what do you mean by widening participation?* HEA research seminar series (2009); T. Ogg, A. Zimdars, and A. Heath, 'Schooling effects on degree performance: a comparison of the predictive validity of aptitude testing and secondary school grades at Oxford University' (2009) 35 *Brit. Educational Research J.* 781–807.

modelling took into account that they attend worse universities and attain less highly.⁶⁰ Choice processes for minority students are more susceptible to factors such as living at home and funding than the decision of their white peers⁶¹ and, as a result, inequalities arise ‘from lack of information and general perplexity and confusion about post-compulsory education’ for minorities and other non-traditional students.⁶² Thus, ‘higher education has a particular potential for reinforcing inequalities’,⁶³ especially as the economic returns to participation in different types of higher education are not equally distributed across universities.⁶⁴ These observations echo earlier work on the power of education not only to improve life chances but to reproduce and reinforce other social cleavages as certain individuals exclude themselves from places from which they are excluded.⁶⁵

This article, then, echoes earlier work on the legal profession which concluded that ‘a graduate legal profession will inevitably reflect the social imbalance within higher education’.⁶⁶ In the present study, there was no additional statistically significant disadvantage for minorities in entering the Bar, given their prior lower likelihood of attending Oxbridge and Russell Group universities. However, and again in line with previous research, such ‘direct discrimination . . . would seem almost superfluous, since the structure of education and professional entry in this country is quite sufficient to account for the social composition of the profession’.⁶⁷

In the study of aspiring barristers, certified talent in the form of educational credentials from particular universities and grades at university and in the BVC were unevenly distributed among social groups. Aside from the symbolic capital gained from an elite university,⁶⁸ different institutions also have a particular habitus and hidden curriculum through which tacit skills are conveyed.⁶⁹ Specifically, successful barristers will have skills

60 See, also, M. Shiner and T. Modood, ‘Help or Hindrance? Higher Education and the Route to Ethnic Equality’ (2002) 23 *Brit. J. of Sociology of Education* 209–32.

61 D. Reay, M. David, and S. Ball, *Degrees of Choice* (2005) 162.

62 *id.*, p. 5.

63 L. Archer, M. Hutchings, and A. Ross, *Higher Education and Social Class: Issues of Exclusion and Inclusion* (2002) 2.

64 A. Chevalier and G. Conlon, *Does it pay to attend a prestigious university?* CEE discussion paper 33 (2003).

65 P. Bourdieu, *Distinctions* (1984) 471; see, also, S. Bowles and H. Gintis, *Schooling in Capitalist America: Educational Reform and the Contradictions of Economic Life* (1976).

66 McDonald, *op. cit.*, n. 36, p. 270.

67 *id.*, p. 272; see, also, the ‘effectively maintained inequality’ argument: S.R. Lucas, ‘Effectively Maintained Inequality: Education Transitions, Track Mobility, and Social Background Effects’ (2001) 106 *Am. J. of Sociology* 1642–90.

68 See, for example, R. Dinovitzer, ‘Social Capital and Constraints on Legal Careers’ (2006) 40 *Law & Society Rev.* 445–80.

69 B. Bernstein, *Class, Codes and Control. Vol. 3: Towards a Theory of Educational Transmission* (1977, 2nd edn.).

beyond pure academic merit that make them successful in their chosen profession. Qualitative work on pupillage selection, for example, found that having the ‘x-factor’ increases chances of gaining pupillage.⁷⁰ Other tacit skills or cultural habitus will be important for success, a specific habitus that enables coping ‘with the unforeseen and ever-changing situation ... and makes possible the achievement of infinitely diversified tasks’.⁷¹ A detailed qualitative or mixed-method study would be able to illuminate how cultural capital influences success in the BVC – especially in parts of the BVC assessed through videoed performance and practical exercises – and could provide further insights into how ascription might influence the development of the right kind of merit for the legal Bar. It would also be interesting to understand in more detail how and why the non-law graduates in the present study fared at least as well as the law graduates in entry to the legal Bar.

Aside from the human, cultural, and symbolic capital provided by participating in particular forms of university education, universities are also a strong source of formal and informal social capital. Careers networks with alumni are one such formal resource – and likely to facilitate at least access to mini-pupillages. But informal networks are also crucial. Granovetter famously showed that weak ties – such as the imagined community⁷² of having attended the same secondary school or university – are particularly useful for getting a job, as weak ties have access to different information from our own.⁷³ Research on the English legal profession has indeed suggested that entry to the legal profession is more a reproduction of a general middle-class habitus than a reproduction of lawyers’ children choosing law.⁷⁴ This might indicate weak ties at work rather than straight-forward reproduction from parents to children.

Previous work on American lawyers identified that the relationships formed during legal training ‘and the tendency to favor colleagues from one’s own school [*that is, university*] appear to have remarkable persistence’.⁷⁵ Anecdotal evidence from the United Kingdom also suggests that at least certain part of the legal profession are network based. For example, ‘the world of private equity can be notoriously cliquy and alpha male-dominated’.⁷⁶ Gendered legal networks can quickly lead to gender inequality in work assignments and earnings as shown for Canada⁷⁷ and

70 J. Rogers, ‘Pupillage: the reproduction of the barristers’ profession’ (2010) DPhil thesis.

71 Bourdieu, *op. cit.*, n. 4, pp.72, 95.

72 B. Anderson, *Imagined Communities* (1983).

73 M.S. Granovetter, *Getting a Job: A Study of Contacts and Careers* (1974).

74 McDonald, *op. cit.*, n. 36, p. 273.

75 Heinz and Laumann, *op. cit.*, n. 4, p. 226.

76 A. Spence, ‘Charlie Geffen: “You don’t have to be that clever to be a lawyer” – Ashurst’s head of private equity on what it takes to reach the top, his firm’s future and where the market is heading’ *Times Online*, 8 November 2007.

77 Dinovitzer and Hagan, *op. cit.*, n. 4, p. 128.

Australia.⁷⁸ For the English Bar, gender is not a factor in career entry, but being female is predictive of career exit linked to the challenge of combining self-employment and child care. While female representation is increasing in the senior levels of the legal system such as the judiciary, it still lags behind that of their male peers.⁷⁹

It is increasingly well documented that if selection processes lack in transparency and accountability, biases – consciously or unconsciously – can enter the process.⁸⁰ Selectors tend to default into selecting in their own image by displaying homophilic tendencies.⁸¹ It is thus recommended that non-academic criteria should have increased transparency – alas, neither the Bar Council nor the vast majority of individual chambers publish lists of criteria for awarding pupillage, beyond the commitment to selection based on talent. And, as we have seen, talent and merit are complex ideas that constantly require definition in order to be specific and meaningful.

It is important for discourses about advantages and disadvantages to stay alive and to be continuously evaluated and developed as, for example, ‘in the absence of an explicit discourse of gender equality, it is all too easy for ingrained discriminatory attitudes to persist’.⁸² While gender did not emerge as a predictor of entry to the Bar, this quote could also apply to age. In the absence of a discourse on age and entry to professions – be it to the Bar, or the medical profession or even the academy – the default model seems to prefer those with uninterrupted educational trajectories who made their career choices relatively early in life. This default mode advantages those with access to economic, social, and cultural resources early in life to facilitate such career choices. It might also be worth reflecting on equalities dimensions that are completely absent from the current discourse – such as, for example, region. With many desirable professional jobs clustered in London, region can be an important but little researched influence on career entries.

78 R. Crompton and N. Le Feuvre, ‘Gender, family and employment in comparative perspective: the realities and representations of equal opportunities in Britain and France’ (2000) 10 *J. of European Social Policy* 334–48, at 346.

79 Commission on Women and the Criminal Justice System, op. cit., n. 9, p. 11.

80 R. Fernandez, *What Do Employers Do? Networks, Race, and Gender in the Labor Market* (2009).

81 R.M. Kanter, *Men and Women of the Corporation* (1977); M. McPherson, L. Smith-Lovin, and J. Cook, ‘Birds of a feather: Homophily in social networks’ (2001) 27 *Ann. Rev. of Sociology* 415–44; P. Lazarsfeld and R. Merton, ‘Friendship as a Social Process: A Substantive and Methodological Analysis’ in *Freedom and Control in Modern Society*, eds. M. Berger, T. Abel, and C. Page (1954) 18–66.

82 Crompton and Le Feuvre, op. cit., n. 77; see, also, Somerlad and Sanderson, op. cit., n. 4; S. Bolton and D. Muzio, ‘The paradoxical processes of feminization in the professions: the case of established, aspiring and semi-professions’ (2008) 22 *Work, Employment & Society* 281–99.

2. Future work

One result of undertaking this piece of work has been that the Bar Council has identified organizational gaps in record keeping and has taken steps to improve their record system. From 2011 entry onwards, it should be possible to link individual students from the Bar Course with their subsequent pupillage applications and outcomes. The forms themselves have been improved to include detailed social-class information as well as other inequality groups such as religion, sexuality, and caring responsibility. These data might again be made available for academic research and will provide more improved insights into the composition of the twenty-first century Bar than the present article. The Bar deserves credit for making this resource available and for being responsive enough to alter their current administrative record keeping to aid future analyses. It is hoped that future data will also be made available for independent review.

Contributions to our understanding of the legal Bar could also be made through longitudinal studies of career progression and career exit. Career exit data from the Bar indicate that women and minorities disproportionately leave the profession. Another area of interest concerns the (self)-selection processes into different areas of practice. This article neglects these issues although work is currently ongoing to link the unique data used here with area-of-practice information. More detailed work, perhaps using qualitative methods or mixed methods, would be able to assess the role in pupillage places of networks based on kin, friendship, and university attended. It will also be of interest to monitor the changing entry to the Bar during the recession years, with previous research suggesting that inequality cleavages can heighten in times of a contracting labour market.

Finally, comparative work – perhaps using the American ‘after the JD’ data set and other suitable international comparison data sets – could test other social theories such as the Featherman-Jones-Hauser hypothesis. This states that there is convergence in mobility pattern in industrial nations regardless of institutional contexts,⁸³ meaning that we would expect similar effects of social background on entry to the legal profession across different liberal democracies.

CONCLUSION

Entry into pupillage at the Bar of England and Wales among 2,178 BVC graduates (2000–2004) was predicted mainly by the type of university attended, attainment at university, and BVC attainment. There was a strong

83 D.L. Featherman, F.L. Jones, and R.M. Hauser, ‘Assumptions of social mobility research in the U.S.: the case of occupational status’ (1975) 4 *Social Science Research* 329–60.

preference for Oxbridge graduates, those with a first-class degree, and with a BVC grade of outstanding. There was no gender effect on pupillage, and the disadvantage experienced by minorities was accounted for by their graduation pattern from less prestigious universities and their lower attainment than their white peers. However, a disadvantage by age for those aged 31 and above remained unaccounted for by differences in education. A sub-sample of 504 aspiring barristers did not find any remaining effects by social class or type of secondary school.

The discussion embedded the findings in the context of persistent inequalities in Britain in the twenty-first century with regard to opportunities to attain highly and to attend the most advantageous universities. The main drivers behind unequal entry into pupillage are previous differences between groups with regards to attainment and type of university attended. This article also suggests that the Bar does not contribute further to inequalities at the point of selecting new pupils – apart from the case of older aspirants for the Bar. While problems with entry to the Bar thus largely lie within the structure of the prior education system, the Bar is still in a good position to influence further improvements to the pipeline leading to pupillage⁸⁴ – for example, by recruiting from a wide range of universities, by having transparent and open processes for the allocation of pupillages and mini-pupillage, and by providing needs-based scholarships for legal training as well as for setting up tenancy. Mentoring schemes for minorities to improve their performance on the BVC may also be fruitful. The opportunity structure of British education is not the Bar's fault, but the Bar can still play a significant role in moving Britain closer towards a society where joining even the most ancient and prestigious of professions is within the realistic reach of everyone, regardless of background.

84 D. Lammy, opening speech at the 'No bar to the Bar' launch, Inner Temple, London, 2 December 2009.