

Findings from a statistical analysis of competition for pupillages at the Bar of England and Wales (2000-2004)

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Lord Neuberger's 2007 report on access to the legal Bar found that 'the profession currently suffers from at least a perceived exclusivity'¹. At the same time, the report noted that actual data availability on transitions into the legal profession was unsatisfactory to refute or support such public perceptio². The report thus recommended 'a detailed statistical analysis... to establish whether there are unexplained biases either in favour of or against particular groups of individuals'³.

This article describes the findings from the empirical analysis that followed this recommendation. I undertook this work in collaboration with the Neuberger Monitoring and Implementation Group, the Bar Council, and three of the four Inns of Court on a pro bono basis.

Method:

Data availability was the greatest practical challenge to undertaking the recommended statistical work. We required meaningful data that would allow us to answer the question of how individuals with different characteristics fare in the competition for pupillages. 'Longitudinal data' are most suited to this task: such data allow us to track what happens to individuals over-time. An example would be to study all those who applied for pupillages and then

to analyse their chances of success broken down by a range of background characteristics such as social class, type of secondary school, university grades, university type and so on. Ideally, such longitudinal data would go back even further than the point of pupillage application, perhaps to include all those who had undertaken the GDL or an undergraduate law degree. We could then also study whether there are any differences between those who wished to join the Bar versus those who wished to become solicitors. Unfortunately, longitudinal data – and 'ideal' longitudinal data in particular – are scarce. The main source of information on pupils – the pupillage survey – only captures information on those who were successful in gaining pupillages. The survey does not contain information on anyone who had tried gaining pupillage but who had not been successful⁴. We thus decided it was prudent to assemble our own, purposeful dataset from the membership records of the Inns of Courts as a way of capturing information on those seeking pupillages as well as on obtained pupillages.

Three of the four Inns supplied their records for inclusion in this study (Inner Temple, Gray's, and Lincoln's), with the actual records being anonymised for the analysis. The Inns were asked to provide information regarding all their members who had matriculated

on a Bar Vocational Course (BVC) between 2000 and 2004, resulting in information on five years of pupillage transition. More recent years were excluded to ensure pupillage success was validly captured⁵. In total, 2,178 complete individual records of British nationals were obtained from the three participating Inns. We restricted the analysis to British nationals as we wanted to ensure that the predictors of pupillage were not spuriously related to individuals returning overseas for practice. The Inns provided 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 records also contained information on members' 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 Council⁶.

Analytical Strategy:

The analysis used both bivariate and multivariate analyses. Bivariate analyses tell us about the relationship between two factors of interest: for example, showing the relationship between gender and gaining pupillage.

But bivariate analyses can lead to inconclusive or spurious findings when an important third factor drives a relationship⁷.

Findings:

The most powerful predictors of gaining pupillage were the type of university attended, and attainment at university and in the BVC.. Those with the highest attainment in their degrees and in the BVC and those who attended the most prestigious universities fared best in the competition for pupillages. There was a strong preference in pupillage allocations for Oxbridge graduates, those with a first-class degree, and with a BVC grade of outstanding. Men and women had indistinguishable chances of gaining pupillage. There was no difference in pupillage success by whether applicants had studied law as an undergraduate degree or undertaken a law conversion course.

In the bivariate analysis, ethnic minorities initially appeared to be at a disadvantage in the competition for pupillage. However, this effect became statistically insignificant in the multivariate analysis when simultaneously taking into account ethnic origin and educational attainment. In other words, the findings did not suggest that ethnic minorities fared worse than white applicants for pupillage on a like for like basis. But this finding also indicates that ethnic minorities competing for pupillages had generally attended less prestigious universities and had not always achieved as highly as white applicants for pupillages.

The most disadvantaged group in the competition for pupillage were those

aged 30 or above who were significantly less likely to gain pupillage than their younger peers even when taking into account other possible explanation for this finding, such as the type of university attended and grades achieved. In other words, older applicants secured fewer pupillages than younger applicants.

For the sub-sample of 504 applicants who were matched through UCAS on their schooling and social class, it emerged that neither class nor schooling were significant predictors of gaining pupillage. Initially, the analysis found a positive effect just short of statistical significance of having attended a private-school. However this was 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 observable class effects when comparing aspiring pupils on a like for like basis.

Interpretation:

Interpretation of the findings may vary; Both meritocrats and critics of meritocracy may find their case supported in the statistical evidence. Certified talent in the form of educational credentials from particular universities and grades at university and in the BVC were the strongest predictors of gaining pupillage in the data. This could be seen as strong support for the working of meritocracy in entry to the Bar. At the same time, the pattern of what the American sociologist Ralph Turner termed a 'surface meritocracy' is also supported⁸.

The idea of a surface meritocracy is

that "a graduate legal profession will inevitably reflect the social imbalance within higher education"⁹ and earlier opportunities in education and the family context. For example, the analysis found that private school educated applicants for pupillages had similar chances as their state school educated peers. There were no social class or ethnicity effects on a like for like basis. But the interpretation is not that class, schooling, or ethnicity do not matter. It just means that they do not matter at the point of applying for pupillages given their prior influence on, for example, university attendance. It is well established that private school students and those from the professional classes in particular, are most likely to attend the most prestigious universities¹⁰. It might also be worthy of further contemplation to think why the ethnic minority applicants for pupillages tended to have attained less highly than their white peers.

Previous social research has found that university choice for minority students and those from less affluent families was more susceptible to factors such as living at home and funding regimes than the decision of white and professional class students¹¹. And, different universities provide their graduates with a different environment that, in turn, might play into chances of gaining pupillage. The finding that non-law graduates fared at least as well as the law graduates in the competition for pupillages would lend support to the idea that aside from the factual knowledge acquired during a university experience, universities provide a socialisation in cultural habits, a tacit curriculum, and access to formal and informal networks irrespective of

academic discipline. Careers networks with alumni are one such formal resource and likely to facilitate at least access to mini-pupillages; informal networks and imagined communities of having attended the same secondary school or university, have been found particularly useful for getting jobs in other studies¹².

The future:

Our interpretation may not resonate with all readers. Two views collide here: the first is that whatever happens before aspiring barristers apply for pupillages is not the Bar's fault and does not require action (and besides, the Bar does better than other professions on social mobility¹³). The second position that I endorse is: there are issues concerning the make-up of the pool of aspiring barristers that are beyond the profession's direct influence. However, as one of the oldest and most influential professions in England and Wales, the Bar is exceptionally well placed to contribute to widening access, in terms of keeping awareness alive in national debates and in terms of doing its share in outreach and widening access work.

Discussions about equal opportunities need to be continuously reviewed and developed. 'In the absence of an explicit discourse' issues of equal access are unlikely to disappear and might even re-emerge¹⁴. The lack of a gender effect in entry to the Bar, for example, is noteworthy and laudable. However, complacency would be premature given the discrepancies in career exit figures later on. Similarly, there is currently no strong discourse on age and entry to the Bar or other professions. The present study suggest that, in the absence

of such a discourse, pupillages are disproportionately awarded to those with uninterrupted educational trajectories whose access to economic, social, and cultural resources early in life facilitated such early career choices. It might also be worth reflecting on equalities dimensions that are completely absent from the current equalities discourse - for example, region. With many desirable professional jobs clustered in London, region can be an important but little researched influence on career opportunities.

Recommendations:

- to further improve record keeping systems, in particular with a view to facilitating further individual level longitudinal analyses;
- to undertake further longitudinal research 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;
- to raise awareness of age as a barrier to pupillage;
- to think about how this barrier can be addresses, perhaps through training and mentoring;
- to continue increasing the pool of universities from which the Bar recruits;
- to promote transparent and accountable processes for the allocation of pupillages and mini-pupillage,
- to continue and extend needs-based scholarships for legal training as well as for setting up tenancy;
- to promote mentoring schemes for minorities to improve their performance on the BPTC.

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. Previous research on recessions has indicated that, for example, the recruitment of women can decrease during such times¹⁵.

The opportunity structure of British education is not the Bar's fault, and the Bar deserves credit for taking a strong interest in equal opportunities and selection into the profession. In doing so, the Bar will hopefully continue to 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.

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1 Bar Council, 'Entry to the Bar Working Party – Interim Report' (2007). Bar Council, April.

2 Bar Council, 'Entry to the Bar Working Party – Final Report' (2007). Bar Council, November. P. 97; Equalities Review, 'Fairness and Freedom: the final report of the equalities review' (2007). Crown Copyright, p. 10.

3 Bar Council, 'Entry to the Bar Working Party – Final Report' (2007). Bar Council, November, p. 11, rec. 52

4 The Pupillage Portal now captures information on applicants and those who are successful for approximately half of all advertised pupillages.

5 For the study years, BVC graduates were technically eligible to secure pupillage up to five years after passing their BVC.

6 There were some limitations to this research design. First, the use of existing administrative records from the Inns inevitably falls short of the information an ideal study on entry to the Bar would have collected and analysed. Inns do not keep records regarding the social class origin of their members or the type of secondary school attended (state or private). Given the importance of these two dimensions for the context of British public life, efforts were made to retrieve class and schooling information through the Universities and Colleges Admissions Service (UCAS). UCAS matched the records of 933 United Kingdom BVC graduates from Inner Temple and Lincoln's Inn with their previous university application records,

leading to 504 records being matched on all the variables of interest. However, the matching rate and the actual matched information were short of what a purposeful survey of the social class and schooling background of aspiring barristers would have asked. There were also limitations in the format and available information on university attended and degree information. No data on scholarship recipients, disability or religion, or information on intended area of practice was available. The non-participation of Middle Temple meant that only approximately three-quarters of BVC students eligible for pupillage were covered in this study. Despite these shortcomings, the data set is a unique source providing some information on the transition into pupillage for all members of three Inns who undertook the BVC course between 2000 and 2004.

7 For example, we might hypothetically find that women have a much higher success than men in gaining pupillage. But we might also find in a different bivariate analysis that women attain more highly at university than their male peers. We would then use multivariate analyses to find out whether women and men with the same attainment have the same chance of gaining pupillage. This is a 'like for like' analysis where other things are held equal. Thus, while we might conclude from a bivariate analysis that the Bar strongly favours women, we might adjust this hypothetical finding after a multivariate analysis to say: the Bar favours students with high attainment. Women attain more highly than men. All else being equal, there is no unexplained advantage for women. This analytical logic was applied throughout the statistical modelling.

8 R.H. Turner, 'Acceptance of Irregular Mobility in Britain and the United States' (1966) 29 *Sociometry* 334-5.

9 P. McDonald, 'The Class of '81: A Glance at the Social Class Composition of Recruits to the Legal Profession' (1982) *J. of Law and Society* 267-76, at p. 270.

10 V Boliver 'Expansion, differentiation and the persistence of social class inequalities in British higher education' (2011) *Higher Education: The International Journal of Higher Education Research* 61(3): 229-242.

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

12 See, for example, R. Dinovitzer, 'Social Capital and Constraints on Legal Careers' (2006) 40 *Law & Society Rev.* 445-80; and B. Bernstein, *Class, Codes and Control. Vol. 3: Towards a Theory of Educational Transmission* (1977, 2nd edn.).

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

14 Crompton and Le Feuvre, *op. cit.*, n. 77; see, also, Somerlad and Sanderson, Somerlad, H and Sanderson, P (1998) *Gender, Choice and Commitment: Women Solicitors in England and Wales and the Struggle for Equal Status*. Ashgate: Dartmouth; 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.

15 Kanter, R. M. (1977) 'Men and women of the corporation'; New York, Basic Books.