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Minorities, Merit, and Misrecognition in the Globalized Profession

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MINORITIES, MERIT, AND MISRECOGNITION IN THE GLOBALIZED PROFESSION

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The focus of this Article is the effect that globalization has had on social inequalities within large corporate professional firms, in both the United Kingdom and the United States. While globalization is an imprecise term, there is general agreement about its destructive impact on traditional society. Some see this as producing a range of negative effects (such as psycho-social fragmentation and insecure employment). Others, however, have viewed it as opening up the possibility for individuals to create their own biography. This is due in part to globalization's "capitalization of everything" which, in the case of the legal profession, has transformed the large law firm from a relatively parochial organization, in which personal relations remained highly significant, into a multinational organization governed by Human Resource Management (HRM), commonly employing Diversity Management (DM) techniques and dominated by discourses of entrepreneurialism. These developments could be expected to have resulted in significant progress toward a more socially representative profession. Yet statistical surveys and qualitative research suggest that gender, race, and class remain strongly determinant of career progress in both the U.S. and U.K. legal professions, including in the globalized corporate sector. This Article considers some of the theoretical models which might explain the persistent salience of social categories for legal careers. It then draws on these models in a discussion of recent qualitative research conducted for the U.K. Legal Services Board (LSB).

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TABLE OF CONTENTS

INTRODUCTION

Globalization is not a precise concept.[1] Some authors focus on the technological innovations it has wrought,[2] while others use it to capture the "multiple, dialectical dynamics and outcomes of recent social change."[3] It has also been conceptualized as simply the latest stage of modernity, so that, rather than representing a break, it is an effect of the "capitalization of everything."[4] A primary concern of some commentators is the disruptive impact that the globalization of economic, social, and political relationships has had on "the coherence, wholeness and unity of individual societies,"[5] producing the "network society."[6] Other scholars have focused on the social inequalities globalization has generated,[7] while some connect it to psycho-social fragmentation.[8] Bauman describes a "sea of uncertainty,"[9]

1. The definition of the term I would offer is the intensification of worldwide relationships, including trade, culture, and technologies, leading to, among other things, the internationalization of large bodies of law, legal practice, and firms.

2. *See generally* JOHN B. THOMPSON, THE MEDIA AND MODERNITY: A SOCIAL THEORY OF THE MEDIA (1995).

3. *See* MATTHEW ADAMS, SELF AND SOCIAL CHANGE 2 (2007).

4. *See generally* Fredric Jameson, *Five Theses on Actually Existing Marxism*, MONTHLY REV., Apr. 1996, at 1 (describing the expansion of capitalism).

5. John Urry, *The End of Organized Capitalism*, *in* NEW TIMES: THE CHANGING FACE OF POLITICS IN THE 1990S, at 94, 97 (Stuart Hall & Martin Jacques eds., 1989).

6. *See* 1 MANUEL CASTELLS, THE RISE OF THE NETWORK SOCIETY, THE INFORMATION AGE: ECONOMY, SOCIETY, AND CULTURE (2d ed. 2000).

7. *See generally* HARRIET BRADLEY, FRACTURED IDENTITIES: CHANGING PATTERNS OF INEQUALITY (1996); BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA (2001).

8. *See generally* CHRISTOPHER LASCH, THE CULTURE OF NARCISSISM: AMERICAN LIFE IN AN AGE OF DIMINISHING EXPECTATIONS (1979); *accord* RICHARD SENNETT, THE

and writes of "liquid" times in which "the world around us is sliced into poorly coordinated fragments while our individual lives are cut into a succession of ill-connected episodes."[10]

There are, however, those who emphasize the possibilities for individual agency that flow from the increased socio-cultural diversification and individualization of contemporary societies.[11] For Mouffe, the extreme differentiations and complex organizational forms of societies generate a multiplicity of roles, creating latitude for the formation of personal identity.[12] Similarly, Giddens argues that as a result of globalization's dissolution of social categories and the erasure of tradition, the basic unit of social reproduction is now the individual who both can (and in fact must) draw on her own resources in order to decide how to live.[13]

Recent policy initiatives at both national and international levels have aimed to open up labor markets (including the professions)[14] in order to release the potential for individual transformative agency that this last group of scholars suggests globalization has created. In the United Kingdom and Europe, the result has been a range of interventions,[15]

CORROSION OF CHARACTER: THE PERSONAL CONSEQUENCES OF WORK IN THE NEW CAPITALISM (1998).

9. *See* ZYGMUNT BAUMAN, POSTMODERN ETHICS 222 (1993).

10. ZYGMUNT BAUMAN, IDENTITY: CONVERSATIONS WITH BENEDETTO VECCHI 12–13 (2004).

11. *See generally* ULRICH BECK & ELISABETH BECK-GERNSHEIM, INDIVIDUALIZATION: INSTITUTIONALIZED INDIVIDUALISM AND ITS SOCIAL AND POLITICAL CONSEQUENCES (2002).

12. *See generally* Chantal Mouffe, *Hegemony and New Political Subjects: Toward a New Concept of Democracy* (Stanley Gray trans.), *in* MARXISM AND THE INTERPRETATION OF CULTURE 89 (Cary Nelson & Lawrence Grossberg eds., 1988).

13. ANTHONY GIDDENS, THE TRANSFORMATION OF INTIMACY: SEXUALITY, LOVE AND EROTICISM IN MODERN SOCIETIES 30 (1992) ("The self today is for everyone a reflexive project.").

14. *See, e.g.*, COMM'N OF THE EUROPEAN CMTYS., GROWTH, COMPETITIVENESS, EMPLOYMENT: THE CHALLENGES AND WAYS FORWARD INTO THE 21ST CENTURY 20, COM (1993) 700 (Dec. 5, 1993) (explaining efforts to increase employment across professions); COMM'N OF THE EUROPEAN CMTYS., COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: A ROADMAP FOR EQUALITY BETWEEN WOMEN AND MEN, COM (2006) 92 final (Mar. 1, 2006) (outlining key actions to promote gender equality in professional labor markets); OECD, EDUCATION AT A GLANCE: OECD INDICATORS (2000) (stressing the importance of education in combating unemployment). The primary objective is to raise global competitiveness by encouraging the development of more commercial, managerial cultures and optimizing the use of human capital. *See* DEP'T FOR CMTYS. & LOCAL GOV'T, DISCRIMINATION LAW REVIEW, A FRAMEWORK FOR FAIRNESS: PROPOSALS FOR A SINGLE EQUALITY BILL FOR GREAT BRITAIN (2007), *available at* http://www.communities.gov.uk/documents/corporate/pdf/325332.pdf. In the case of elite institutions such as the legal profession, perceptions that they are reserved for majority social groupings and the related importance of equity in maintaining social cohesion have posed threats to their legitimacy. *See generally* ALAN LANGLANDS, DEP'T FOR EDUC. & SKILLS, THE GATEWAYS TO THE PROFESSIONS REPORT (2005), *available at* http://www.bis.gov.uk/assets/biscore/corporate/migratedd/publications/g/gateways_to_the_professions_report.pdf; PANEL ON FAIR ACCESS TO THE PROFESSIONS, UNLEASHING ASPIRATION: THE FINAL REPORT OF THE PANEL ON FAIR ACCESS TO THE PROFESSIONS (2009), *available at* http://www.cabinetoffice.gov.uk/media/227102/fair-access.pdf [hereinafter PFAP].

15. In the United Kingdom, this has entailed the expansion and diversification of higher education. *See* HIGHER EDUC. STATISTICS AGENCY, STUDENTS AND QUALIFIERS DATA

including the development of Gender Mainstreaming[16] (GM) and Diversity Management[17] (DM). One research strand suggests that these interventions have met with some success. For instance, the increased emphasis on meritocratic criteria and transparent recruitment and promotion processes has reduced the overt closure practiced by traditionally segregated graduate occupations.[18] Some research speaks of a less elitist climate, in which "new public managerialism"[19] demystifies professional practices,[20] and

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TABLES, http://www.hesa.ac.uk/index.php/content/view/1973/239/ (last visited Apr. 21, 2012) (documenting growth in education over the last fifteen years); *see also* Peter Elias & Kate Purcell, *Is Mass Higher Education Working? Evidence from the Labour Market Experiences of Recent Graduates*, 190 NAT'L INST. ECON. REV. 60, 60 (2004). These efforts have increased both the overall proportion of the population in higher education and the number of female and black and minority ethnic (BME) students. *See generally* CHRISTIAN DUSTMANN & NIKOLAOS THEODOROPOULOS, CTR. FOR RESEARCH & ANALYSIS OF MIGRATION, ETHNIC MINORITY IMMIGRANTS AND THEIR CHILDREN IN BRITAIN (2006). There have been committees of inquiry into the representativeness of both public and private sector organizations. *See, e.g.*, LANGLANDS, *supra* note 14 (considering private and public sector recruitment opportunities for graduates); PFAP, *supra* note 14 (analyzing data regarding social exclusivity and representativeness in the professions). There have also been exhortations to employers to make their organizations more accessible. *See, e.g.*, DEP'T OF CONSTITUTIONAL AFFAIRS, INCREASING DIVERSITY IN THE LEGAL PROFESSION: A REPORT ON GOVERNMENT PROPOSALS (2005), *available at* http://webarchive.nationalarchives.gov.uk/+/http://www.dca.gov.uk/legalsys/diversity_in_legal_2col.pdf. Large-scale labor market studies have also been conducted, such as Higher Education as a Generator of Strategic Competences (HEGESCO), an EU research project connected to the Life Long Learning Programme, which "addresses the needs of the main groups of higher education stakeholders who are interested in the employability of graduates." HIGHER EDUC. AS A GENERATOR OF STRATEGIC COMPETENCES, http://hegesco.org/ (last visited Apr. 21, 2012). A key goal was the development of competencies in the world of work and education. *Id.*

16. Gender Mainstreaming (GM), which began as an initiative of international organizations such as the United Nations and the European Union, requires policy makers to consider the different ways in which legislation might impact women and men. It is largely restricted to the public sector and its focus is on the moral argument for equal opportunities rather than on the business case for diversity. *See, e.g.*, Jacqui True, *Mainstreaming Gender in Global Public Policy*, 5 INT'L FEMINIST J. POL. 368 (2003).

17. The underlying logic of Diversity Management (DM) is twofold. First, that pluralism is productive, making discrimination economically irrational and the objective evaluation of performance essential. Second, that by treating employees as individuals with needs rather than as members of a particular (deficient) social category, DM is believed to extract the optimum performance out of employees. These perceived business benefits (hence its description in terms of the Business Case) has made DM the primary Human Resource Management (HRM) strategy in private organizations and generated a vast literature. *See generally* Mary C. Gentile, *Introduction* to DIFFERENCES THAT WORK: ORGANIZATIONAL EXCELLENCE THROUGH DIVERSITY, at xiii (1994); RAJVINDER KANDOLA & JOHANNA FULLERTON, DIVERSITY IN ACTION: MANAGING THE MOSAIC (2d ed. 1998); Robin J. Ely & David A. Thomas, *Cultural Diversity at Work: The Effects of Diversity Perspective on Work Group Processes and Outcomes*, 46 ADMIN. SCI. Q. 229 (2001).

18. *See generally* Jodi Elgart Paik, *The Feminization of Medicine*, 283 J. AM. MED. ASS'N 666 (2000) (describing the "opening" of the medical profession to women in the last thirty years); HIGHER EDUC. AS A GENERATOR OF STRATEGIC COMPETENCES, *supra* note 15 (concentrating on improving access to higher education to provide better access to traditionally "closed" professions).

19. New public managerialism (NPM) is the term coined to describe the range of disciplinary mechanisms introduced in the mid-1970s as part of the neo-liberal project to control public sector professionals. *See, e.g.*, Christopher Hood, *A Public Management for All Seasons?*, 69 PUB. ADMIN. 3 (1991).

suggests that contemporary professionalism has been democratized.[21] There are also empirical studies that indicate that the professions are now "more permeable,"[22] and which point to successful career strategies by "non-normative"[23] professionals.[24]

It is therefore possible to tell the story of globalization as one of incremental social change leading from pre-modern forms of social formation, characterized by relationships of authority based on ties of affinity and irrational beliefs, to rational capitalist modernity, and finally into an age of multiple identities and unbounded possibilities. In this neo-liberal narrative, individual actors are autonomous agents, free to make contracts and form associations with whomever they choose, and, in consequence, both they and social institutions are conceptualized as inherently rational. This ideal typical model is broadly consonant with common sense understandings of social reproduction,[25] and we would expect to see it most fully realized in institutions explicitly committed to economic rationality, characterized by equating professionalism with credentialed competence and informed by discourses of formal equality, justice, and meritocracy. Further, the conditions and imperatives of globalized business (exemplified by the need of professional service firms to engage with a great variety of cultures) suggest that to practice any form of discrimination would be illogical,[26] and law firms, especially multinational corporate firms, have had diversity programs for several years.[27] Nevertheless, there is evidence that these programs remain largely

20. *See* Celia Davies, *The Sociology of the Professions and the Profession of Gender*, 30 SOCIOLOGY 661, 668–73 (1996); Daniel Muzio & Stephen Ackroyd, *On the Consequences of Defensive Professionalism: Recent Changes in the Legal Labour Process*, 32 J.L. & SOC'Y 615, 624 (2005).

21. *See* YAOJUN LI ET AL., EQUAL. & HUMAN RIGHTS COMM'N, EQUAL. GRP., INEQUALITIES IN EDUCATION, EMPLOYMENT AND EARNINGS: A RESEARCH REVIEW AND ANALYSIS OF TRENDS OVER TIME 5 (2008); Ingrid Lunt, *Ethical Issues in Professional Life*, *in* EXPLORING PROFESSIONALISM 73, 86–87 (Bryan Cunningham ed., 2008).

22. *See* Ellen Kuhlmann & Ivy Lynn Bourgeault, *Gender, Professions and Public Policy: New Directions*, 27 EQUAL OPPORTUNITIES INT'L 5, 5 (2008).

23. Finding an appropriate term to describe individuals who do not belong to the majority group which does not either essentialize or pathologize the lower status group, is problematic. Some authors use the term "non-normative"; Carbado and Gulati speak of outsiders, which captures the closure tactics used by "insiders." *See* Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1267 n.1 (2000). I use both as seems appropriate to the context.

24. Elianne Riska & Katarina Wegar, *The Medical Profession in the Nordic Countries: Medical Uncertainty and Gender-Based Work*, *in* HEALTH PROFESSIONS AND THE STATE IN EUROPE 200, 200–01, 205–06 (Terry Johnson et al. eds., 1995).

25. My delineation of this model is an ideal type; few analysts would envisage social change as a straightforward linear process.

26. *See* David B. Wilkins, *Why Global Law Firms Should Care About Diversity: Five Lessons from the American Experience*, 2 EUR. J. L. REFORM 415, 418–19 (2000).

27. *See generally* Deborah L. Rhode, *From Platitudes to Priorities: Diversity and Gender Equity in Law Firms*, 24 GEO. J. LEGAL ETHICS 1041 (2011) (describing DM in U.S. law firms); Joanne Braithwaite, Power, Prizes and Partners: Explaining the Diversity Boom in City Law Firms (2008) (unpublished Ph.D. thesis, Queen Mary, University of London), *available at* https://qmro.qmul.ac.uk/xmlui/handle/123456789/1396 (discussing the rise in diversity in London-based firms).

ineffective,[28] leading one critic to speak of the "non-performativity of anti-racism."[29] Others suggest that DM helps to individualize difference, thereby masking the persistence of systemic inequalities within organizations.[30] In fact, research into the corporate culture of the City of London indicates that the impact of globalization on workplace cultures has been not merely to normalize but actually to intensify sex discrimination.[31] The relevance of these critiques to both the U.K. and U.S. legal professions is indicated by the evidence of their racial, gender, and class stratification. The next two parts will outline this evidence.

I. DIVERSITY IN THE U.S. LEGAL PROFESSION

Statistical surveys of the U.S. legal profession reveal that it is segmented on lines of gender and ethnicity.[32] For instance, although women represent around 48 percent of the law school population[33] and, as first year associates, enter law firms in roughly equal numbers to men, they begin to exit the profession early in their careers. This process of attrition gains momentum at each level of seniority,[34] so that by the seventh year, the percentage of women lawyers has dropped to 45 percent.[35] Those who remain are more likely than white male lawyers to be clustered in the lower echelons of the profession; on average, women constitute 34 percent of of-counsels.[36] Men are from two to five times more likely to make partner than women,[37] and in the 100 largest firms, only 27 percent of non-equity

28. *See, e.g.*, MYRTLE P. BELL, DIVERSITY IN ORGANIZATIONS 7–9 (2007) (stating that "White men . . . still remain the largest single group in the labor force"); LOUISE MARIE ROTH, SELLING WOMEN SHORT: GENDER INEQUALITY ON WALL STREET (2006); Kim Hoque & Mike Noon, *Equal Opportunities Policy and Practice in Britain: Evaluating the 'Empty Shell' Hypothesis*, 18 WORK EMP. & SOC'Y 481 (2004) (assessing whether diversity initiatives are "substantive" or merely "empty shells"); Katherine J. Klein & David A. Harrison, *On the Diversity of Diversity: Tidy Logic, Messier Realities*, ACAD. MGMT. PERSP., Nov. 2007, at 26 (describing challenges faced in implementing DM); Braithwaite, *supra* note 27.

29. Sara Ahmed, *Declarations of Whiteness: The Non-performativity of Anti-Racism*, BORDERLANDS E-JOURNAL, Oct. 2004, http://www.borderlands.net.au/vol3no2_2004/ahmed_declarations.htm.

30. *See, e.g.*, Anna Lorbiecki, *Changing Views on Diversity Management: The Rise of the Learning Perspective and the Need to Recognize Social and Political Contradictions*, 32 MGMT. LEARNING 345, 346–47 (2001).

31. *See* LINDA MCDOWELL, CAPITAL CULTURE: GENDER AT WORK IN THE CITY 1–8 (1997); Linda McDowell, *Capital Culture Revisited: Sex, Testosterone and the City*, 34 INT'L J. URB. & REGIONAL RES. 652, 653–54 (2010).

32. For a comprehensive survey of the evidence of inequities within the U.S. legal profession, see Rhode, *supra* note 27, at 1042–46.

33. ELIZABETH CHAMBLISS, MILES TO GO: PROGRESS OF MINORITIES IN THE LEGAL PROFESSION 8 (2004) (analyzing data from 2003–04).

34. Rhode, *supra* note 27, at 1042. "Attrition rates are almost twice as high among female associates as among comparable male associates." *Id.* at 1042–43.

35. NAT'L ASS'N OF WOMEN LAWYERS & NAWL FOUNDATION, REPORT OF THE FOURTH ANNUAL NATIONAL SURVEY ON RETENTION AND PROMOTION OF WOMEN IN LAW FIRMS 7 (2009) [hereinafter NAWL REPORT].

36. *Id.*

37. Rhode, *supra* note 27, at 1043.

partners and 16 percent of equity partners are female.[38] Women also take longer than white men to achieve equity status.[39] These trends have remained largely static for "a number of years despite the very substantial number of women law graduates who entered firms in the last 20 years,"[40] and despite the implementation of diversity programs.

The statistical evidence suggests that the extent to which the U.S. profession is racially integrated is similarly weak.[41] For instance, compared with white representation at partnership level, the percentage of minority partners is disproportionately low.[42] The situation is even worse for minority women (underlining the dangers of homogenizing these categories),[43] who make up less than 1.0 percent of equity partners in Chicago law firms and only 1.1 percent of general counsels in the Fortune 1000.[44] Law firm attrition rates for minority women are also higher than for any other group.[45]

This statistical evidence of disadvantage based on category and intersections of categories has been supplemented by an extensive body of academic research into patterns of subordination of female and ethnic minority lawyers.[46] This work indicates that, while overtly discriminatory

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38. NAWL REPORT, *supra* note 35, at 7.

39. *Id.* One effect of the gradual but incremental attrition is to shrink the equity partnership pool of women lawyers. Although the reasons for the low levels of women partners cannot be solely attributed to their lower numbers, it may be that the low level of female partnership itself represents a factor in women's decisions to exit early from partnership and leadership tracks. *See* Rhode, *supra* note 27, at 1044.

40. NAWL REPORT, *supra* note 35, at 7, 16–17.

41. *See* Wilkins, *supra* note 26, at 416.

42. Minority representation among partners remains less than 4.0 percent in all but the very largest law firms, and only 4.4 percent in the nation's largest 250 law firms. CHAMBLISS, *supra* note 33, at 29. Minorities are less likely than whites to begin their careers in private practice, and more likely to start off in government and public interest jobs: among 2003 law graduates, 53.5 percent of minorities entered private practice as compared to 60.5 percent of whites. *Id.* at 15. And between 1999 and 2003, national minority representation among partners has increased only 0.7 percent. *Id.* at 30 tbl. 18. Minorities are also less likely than whites to have judicial clerkships after law school. Among 2003 law graduates, 9.4 percent of minorities had judicial clerkships, compared to 12.3 percent of whites. *Id.* at 14. Clerkship rates are lowest among minority men (8.1 percent), Hispanics (6.5 percent) and Latinos (7.1 percent). *Id.* at 15.

43. Rhode's presentation of the statistical evidence clearly reveals the intersectional nature of the experience of disadvantage; for instance Asian-American women enjoy the lowest chances of promotion. *See* Rhode, *supra* note 27, at 1045.

44. CHAMBLISS, *supra* note 33, at 36, 38.

45. *See id.* at 32; *see also* Rhode, *supra* note 27, at 1045. 12.1 percent of minority women leave their firms within the first year of practice and about 75 percent leave within the first five years. CHAMBLISS, *supra* note 33, at 32 tbl.21.

46. There is an extensive literature on women lawyers. *See, e.g.*, CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW (2d ed. 1993); Cynthia Fuchs Epstein et al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291 (1995); Elizabeth H. Gorman, *Work Uncertainty and the Promotion of Professional Women: The Case of Law Firm Partnership*, 85 SOC. FORCES 865 (2006); Fiona Kay & Elizabeth Gorman, *Women in the Legal Profession*, 4 ANN. REV. L. & SOC. SCI. 299 (2008); Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1 (1994); Carrie Menkel-Meadow, *The Comparative Sociology of Women Lawyers: The "Feminization" of the Legal Profession*, 24 OSGOODE HALL L.J. 897 (1986);

practices have largely been dismantled, the legal profession remains a site of "subtle" institutional discrimination.[47] The research has deepened our understanding of the continuing salience of, for instance, race both in the profession[48] and in law school,[49] and the part played by everyday micro aggressions[50] such as "jokes"[51] in driving outsiders out and reinforcing white male hegemony.[52] It has shed light on the pressure to enact "racial palatability"[53] and conform to the conventional gender script, to negotiate the "enhanced visibility" versus invisibility dichotomy that characterizes outsiders' experience,[54] and the psychological stress this induces.[55]

Jennifer L. Pierce, *"Not Qualified?" or "Not Committed?": A Raced and Gendered Organisational Logic in Law Firms*, *in* AN INTRODUCTION TO LAW AND SOCIAL THEORY 155 (Reza Banakar & Max Travers eds., 2002); Nancy J. Reichman & Joyce S. Sterling, *Sticky Floors, Broken Steps, and Concrete Ceilings in Legal Careers*, 14 TEX. J. WOMEN & L. 27 (2004); Rhode, *supra* note 27; Deborah L. Rhode, *The Profession and its Discontents*, 61 OHIO ST. L.J. 1335, 1348–56 (2000). For discussion of gender re-segregation in law firms, see Richard L. Abel, *Comparative Sociology of Legal Professions: An Exploratory Essay*, 10 AM. B. FOUND. RES. J. 1, 37–40 (1985). For studies of ethnic minority lawyers, see Devon Carbado et al., *After Inclusion*, 4 ANN. REV. L. & SOC. SCI. 83 (2008); Linda E. Dávila, *The Underrepresentation of Hispanic Attorneys in Corporate Law Firms*, 39 STAN. L. REV. 1403 (1987); Elizabeth H. Gorman & Fiona M. Kay, *Racial and Ethnic Minority Representation in Large U.S. Law Firms*, 52 STUD. L. POL. & SOC'Y (SPECIAL ISSUE) 211 (2010); Pierce, *supra*; David B. Wilkins, *From "Separate Is Inherently Unequal" to "Diversity is Good for Business": The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548 (2004) [hereinafter Wilkins, *Market-Based Diversity*]; Wilkins, *supra* note 26; David B. Wilkins, *Do Clients Have Ethical Obligations to Lawyers? Some Lessons from the Diversity Wars*, 11 GEO. J. LEGAL ETHICS 855 (1998) [hereinafter Wilkins, *Some Lessons*].

47. Monique R. Payne-Pikus et al., *Experiencing Discrimination: Race and Retention in America's Largest Law Firms*, 44 L. & SOC'Y REV. 553, 559 (2010).

48. *See* David B. Wilkins, *Partners Without Power? A Preliminary Look at Black Partners in Corporate Law Firms*, 2 J. INST. FOR STUDY LEGAL ETHICS 15, 26–27 (1999). *See generally* Wilkins, *Market-Based Diversity*, *supra* note 46; Wilkins, *Some Lessons*, *supra* note 46; Wilkins, *supra* note 26; David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms?: An Institutional Analysis*, 84 CALIF. L. REV. 493 (1996).

49. *See, e.g.*, Stephanie M. Wildman & Adrienne D. Davis, *Language and Silence: Making Systems of Privilege Visible*, 35 SANTA CLARA L. REV. 881, 901–02 (1995); *see also* Danielle Elyce Hirsch, *Recognizing Race in Women's Programming: A Critique of a Women's Law Society*, 19 BERKELEY WOMEN'S L.J. 106 (2004).

50. For a general discussion of micro aggressions, see DERALD WING SUE, MICROAGGRESSIONS IN EVERYDAY LIFE: RACE, GENDER, & SEXUAL ORIENTATION (2010); Mary P. Rowe, Comment, *Barriers to Equality: The Power of Subtle Discrimination to Maintain Unequal Opportunity*, 3 EMP. RESPONSIBILITIES & RTS. J. 153 (1990); Rodney Clark et al., *Racism as a Stressor for African Americans: A Biopsychosocial Model*, 54 AM. PSYCHOLOGIST 805 (1999).

51. PHILOMENA ESSED, UNDERSTANDING EVERYDAY RACISM: AN INTERDISCIPLINARY THEORY 257–61 (1991).

52. JENNIFER L. PIERCE, GENDER TRIALS: EMOTIONAL LIVES IN CONTEMPORARY LAW FIRMS (1995) (describing both structural and "emotional labor" factors).

53. Carbado & Gulati, *supra* note 23, at 1307.

54. Katrina Bell McDonald & Adia M. Harvey Wingfield, *(In)visibility Blues: The Paradox of Institutional Racism*, 29 SOC. SPECTRUM 28, 46 (2009).

55. *See* SUE, *supra* note 50, at 87–109.

There is also evidence that career destinies are affected by proxies for class such as attending elite universities,[56] having the "correct" accent, knowing how to dress, and which cultural tastes to display—or, to express this in Bourdieusian terms, possessing sufficient quantities of the "right" forms of capital.[57] Thus Jewel argues:

> American legal education replicates existing class structures by assigning each law school to a tier; ranking students within a law school; and utilizing the bar examination as a gate-keeping mechanism for entry into the profession. These classification methods and entry barriers replicate existing group relations because they advantage persons who already possess cultural or economic capital and disadvantage those who do not. Specifically, persons who do not possess much cultural or economic capital are more likely to end up at low-status schools, have a low-class rank, or fail the bar exam . . . .[58]

Finally, the research reveals that one of the greatest barriers confronting the non-normative lawyer is the absence of the sort of informal sponsorship from which their white, male, middle class colleagues are likely to benefit.[59] Mentoring is the key to human capital development and therefore promotion prospects.[60] As a result, from the moment they enter a firm, the career destiny of the majority of non-normative lawyers is fixed and will entail drowning in "a sea of routine paperwork."[61]

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56. *See, e.g.*, ROBERT GRANFIELD, MAKING ELITE LAWYERS: VISIONS OF LAW AT HARVARD AND BEYOND (1992); DEBRA J. SCHLEEF, MANAGING ELITES: PROFESSIONAL SOCIALIZATION IN LAW AND BUSINESS SCHOOLS 199–204 (2006); Tom Ginsburg & Jeffrey A. Wolf, *The Market for Elite Law Firm Associates*, 31 FLA. ST. U. L. REV. 909 (2004) (critiquing current U.S. law firm recruiting processes); Debra Schleef, *"That's a Good Question!" Exploring Motivations for Law and Business School Choice*, 73 SOC. EDUC. 155 (2000) (finding that students' choices to attend elite schools were motivated by class considerations rather than professional career choice); *see also* Elizabeth Chambliss, *The Shoe Still Fits: The White Buck Is Gone from Elite Law Firms, but the Snobbery It Represented Lives On*, LEGAL AFF., Sept.–Oct. 2005, at 18, 19.

57. The term cultural capital encompasses the system of dispositions that for Bourdieu are fundamental to social reproduction and which includes "habitus," "bodily hexis," and "doxa." Habitus refers to learned schemes of perception, which are developed in response to a field's objective conditions, not only cognitively, but also through practical, embodied know-how (bodily hexis). Doxa refers to the learned, fundamental, unconscious beliefs and values which characterize the common sense of a field and which are taken as self-evident universals, that inform an agent's actions and thoughts, and therefore work to reproduce the structure of a field. *See* PIERRE BOURDIEU, OUTLINE OF A THEORY OF PRACTICE 72, 82, 164–71 (Richard Nice trans., 1977); PIERRE BOURDIEU & JEAN-CLAUDE PASSERON, REPRODUCTION IN EDUCATION, SOCIETY AND CULTURE (1977) (explaining how education is a source of cultural capital and an engine of social reproduction). Bourdieusian theory is discussed *infra* notes 94–98 and accompanying text.

58. Lucille A. Jewel, *Bourdieu and American Legal Education: How Law Schools Reproduce Social Stratification and Class Hierarchy*, 56 BUFF. L. REV. 1155, 1173–74 (2008).

59. *See* Gwyned Simpson, *The Plexiglass Ceiling: The Careers of Black Women Lawyers*, 45 CAREER DEV. Q. 173, 184–85 (1996).

60. *See* Payne-Pikus et al., *supra* note 47, at 560, 576–77; Rhode, *supra* note 27, at 1071–72.

61. Wilkins & Gulati, *supra* note 48, at 565.

II. DIVERSITY IN THE ENGLISH AND WELSH LEGAL PROFESSION

The legal profession in England and Wales presents a remarkably similar picture. On the one hand it has recently become more diverse. The percentage of female solicitors has grown tenfold since 1984: Law Society annual statistics reveal that in 2008–09, women made up 46 percent of solicitors on the Roll[62] and 60 percent of admissions to the Roll,[63] while the Bar Council reports that 34 percent of barristers in 2009 and 52 percent of those called to the Bar in 2008–09 were women.[64] There has been a similar sharp increase in the proportion of black and minority ethnic (BME)[65] lawyers. For instance, between 1999 and 2009, the number of BME solicitors with practicing certificates rose 180.5 percent.[66] The tendency, however, to aggregate minority groups in these statistics, and the highly fragmented nature of the profession, means that these figures should be treated carefully. Thus, although the percentage of BME partners is now quite high (25 percent in 2009), this reflects in part the fact that a high proportion of BME solicitors tend to work as sole practitioners;[67] only 3 percent are partners in elite firms.[68] Nevertheless, BME groups now account for a significant proportion of the profession, making up 11.4 percent of all solicitors on the Roll,[69] 10.6 percent of all solicitors with practicing certificates, and 20.3 percent of all first-year trainees.[70] Turning to the Bar, sixty-eight pupils[71] were classified as BME in 2008–09,

62. LAW SOC'Y, TRENDS IN THE SOLICITORS' PROFESSION: ANNUAL STATISTICAL REPORT 2009, at 9 (2009).

63. *Id.* at 7.

64. *Statistics*, B. COUNCIL, http://www.barcouncil.org.uk/about-the-bar/facts-and-figures/statistics/#CallStats (last visited Apr. 21, 2012).

65. The term BME is employed both by U.K. policy makers and academic researchers to denote non-white groups. It is a crude taxonomic device that fails to highlight the hierarchies of ethnicities and other intersecting forms of identity. Its use in statistical surveys of the legal profession, *see, e.g.*, *id.*, however, obliges us too to deploy it.

66. LAW SOC'Y, MINORITY ETHNIC GROUP SOLICITORS (2009), *available at* http://www.lawsociety.org.uk/secure/file/185476/e:/teamsite-deployed/documents/templatedata/Publications/Research%20fact%20sheet/Documents/megsols2009-v1.pdf.

67. *Id.*

68. HILARY SOMMERLAD ET AL., LEGAL SERVS. BD., DIVERSITY IN THE LEGAL PROFESSION IN ENGLAND AND WALES: A QUALITATIVE STUDY OF BARRIERS AND INDIVIDUAL CHOICES 6, 10 n.12 (2010), http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lsb_diversity_in_the_legal_profession_final_rev.pdf [hereinafter LSB STUDY].

69. LAW SOC'Y, *supra* note 66. This figure reflects data from 2009–10, and excludes those whose ethnicity was unknown.

70. *Id.*

71. Pupillage is the compulsory practical stage of the barrister's training. It lasts one year and is spent in an authorized training organization, generally a barrister's chambers. The equivalent for trainee solicitors is the two-year training contract. The great difficulty in obtaining pupillage and training contracts represent significant barriers to entry into the profession for those lacking social capital. *See infra* note 192.

compared with 420 white pupils.[72] In addition, there were 1,545 BME practicing barristers, as opposed to 11,721 white barristers.[73]

Yet the statistics (supplemented by an extensive body of academic and policy-based literature) also reveal the profession to be segmented and stratified on gender, racial, and class lines,[74] and a range of indicators, from pay to status, demonstrates this.[75] For instance, in top corporate law firms,

72. *Pupillage Statistics*, B. STANDARDS BD., http://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/pupillage-statistics/ (last visited Apr. 21, 2012).

73. *Practising Barrister Statistics*, B. STANDARDS BD., http://www.barstandardsboard.org.uk/media-centre/research-and-statistics/statistics/practising-barrister-statistics/ (last visited Apr. 21, 2012).

74. *See, e.g.*, LIZ DUFF & LISA WEBLEY, LAW SOC'Y, EQUALITY AND DIVERSITY: WOMEN SOLICITORS (2004) (focusing on gender); HILARY SOMMERLAD & PETER SANDERSON, GENDER, CHOICE AND COMMITMENT: WOMEN SOLICITORS IN ENGLAND AND WALES AND THE STRUGGLE FOR EQUAL STATUS (1998); LAW SOC'Y, TRENDS IN THE SOLICITORS' PROFESSION: ANNUAL STATISTICAL REPORT 2010 (2010), *available at* http://www.lawsociety.org.uk/secure/file/191440/e:/teamsite-deployed/documents/templatedata/Publications/Research%20Publications/Documents/annualstatreport2010.pdf [hereinafter LAW SOC'Y, TRENDS]; Louise Ashley, *Making a Difference? The Use (and Abuse) of Diversity Management at the UK's Elite Law Firms*, 24 WORK EMP. & SOC'Y 711 (2010) (discussing primarily class stratification and recent efforts to diversify); Sharon C. Bolton & Daniel Muzio, *Can't Live with 'Em; Can't Live Without 'Em: Gendered Segmentation in the Legal Profession*, 41 SOCIOLOGY 47 (2007); Joanne P. Braithwaite, *The Strategic Use of Demand-Side Diversity Pressure in the Solicitors' Profession*, 37 J.L. & SOC'Y 442 (2010); Robert McNabb & Victoria Wass, *Male-Female Earnings Differentials Among Lawyers in Britain: A Legacy of the Law or a Current Practice?*, 13 LAB. ECON. 219 (2006); Donald Nicolson, *Demography, Discrimination and Diversity: A New Dawn for the British Legal Profession?*, 12 INT'L J. LEGAL PROF. 201 (2005); Eleni Skordaki, *Glass Slippers and Glass Ceilings: Women in the Legal Profession*, 3 INT'L J. LEGAL PROF. 7 (1996); Hilary Sommerlad, *"Becoming" a Lawyer: Gender and the Processes of Professional Identity Formation*, *in* CALLING FOR CHANGE: WOMEN, LAW, AND THE LEGAL PROFESSION 159 (Elizabeth Sheehy & Sheila McIntyre eds., 2006); Hilary Sommerlad, *The Gendering of the Professional Subject: Commitment, Choice and Social Closure in the Legal Profession*, *in* LEGAL FEMINISMS: THEORY & PRACTICE 3 (Clare McGlynn ed., 1998) [hereinafter Sommerlad, *Gendering*]; Hilary Sommerlad, *The Myth of Feminisation: Women and Cultural Change in the Legal Profession*, 1 INT'L J. LEGAL PROF. 31 (1994); Hilary Sommerlad, *Researching and Theorizing the Processes of Professional Identity Formation*, 34 J.L. & SOC'Y 190 (2007) [hereinafter Sommerlad, *Researching and Theorizing*]; Hilary Sommerlad, *Women Solicitors in a Fractured Profession: Intersections of Gender and Professionalism in England and Wales*, 9 INT'L J. LEGAL PROF. 213 (2002) [hereinafter Sommerlad, *Women Solicitors*]; Sumitra Vignaendra et al., *Hearing Black and Asian Voices: An Exploration of Identity*, *in* DISCRIMINATING LAWYERS 121 (Philip Thomas ed., 2000); Lisa Webley & Liz Duff, *Women Solicitors as a Barometer for Problems Within the Legal Profession—Time to Put Values Before Profits?*, 34 J.L. & SOC'Y 374 (2007); Louise Ashley & Laura Empson, *Differentiation and Discrimination: Understanding Social Class and Social Exclusion in the UK's Leading Law Firms* (Cass Ctr. For Prof'l Serv. Firms, Working Paper CPSF-006, 2011), *available at* http://www.cass.city.ac.uk/__data/assets/pdf_file/0009/103221/working-paper-006-2011.pdf (considering why class discrimination in law firms occurs).

75. LAW SOC'Y, GENDER AND EARNINGS IN PRIVATE PRACTICE: FINDINGS FROM THE 2008 SALARY SURVEY (2009), *available at* http://www.lawsociety.org.uk/secure/file/180469/e:/teamsite-deployed/documents/templatedata/Publications/Research%20Publications/Documents/gender_finalreport.pdf; LAW SOC'Y, ETHNICITY AND EARNINGS IN PRIVATE PRACTICE: FINDINGS FROM THE 2008 SALARY SURVEY (2009), *available at* http://www.lawsociety.org.uk/secure/file/180468/e:/teamsite-deployed/documents/templatedata/Publications/Research%20Publications/Documents/ethnicity_finalreport.pdf; LAW SOC'Y, ETHNIC DIVERSITY IN LAW FIRMS: UNDERSTANDING THE

women represent 23 percent of partners and BME solicitors approximately 5 percent.[76] In addition, there is some evidence that women and BME lawyers leave the profession in disproportionately high numbers. As in the United States, however, this statistical evidence of the barriers faced by non-normative professionals should not be read as suggesting that they represent a homogenous group. In practice, their experiences are highly nuanced—not only by the multiple and intersecting sources of their own identities, but also by such external variables as their employing organization, practice area, and geographical location. For instance, the research indicates that white graduates from higher socioeconomic groups are over-represented in large City firms and at the Bar. In contrast, in the top 100 firms, BME solicitors represent only 8 percent of trainees, and BME women from lower socioeconomic groups are concentrated in small High Street practices.[77]

III. THEORETICAL EXPLANATIONS FOR THE PERSISTENCE OF GENDER, RACIAL, AND CLASS STRATIFICATION

As in the United States, the pattern of white male upper-middle-class dominance of the English profession outlined above has remained remarkably static, given that it is now several decades since women and then other outsiders began joining the profession in large numbers. In 2009, the evidence of the persistence of gender, racial, and class structural inequalities prompted the Legal Services Board (LSB), the overall regulator of legal services in England and Wales, to commission a qualitative investigation into its causes. The research aim was expressed as: "to enhance market knowledge and understanding of the drivers of the diversity of legal services professionals in England and Wales and identify potential policy options to increase future diversity."[78]

The LSB emphasis on "drivers" (reinforced by a requirement that the research explored individual choices) suggests that they, like most policy bodies, leaders of the profession, and employers,[79] favored a supply-side

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BARRIERS (2010), *available at* http://www.lawsociety.org.uk/secure/file/189202/e:/teamsite-deployed/documents/templatedata/Publications/Research%20Publications/Documents/BME%20solicitors_final.pdf; LAW SOC'Y, TRENDS, *supra* note 74.

76. Jonathan Rayner, *'Long Way to Go' on Diversity, Warn Lawyers*, LAW SOC'Y GAZETTE (Nov. 17, 2011), http://www.lawgazette.co.uk/news/long-way-go-diversity-warn-lawyers (reporting that BME and female lawyers "remain under-represented in the higher echelons of the profession, with most high-flyers white men").

77. LSB STUDY, *supra* note 68, at 6, 10 n.12; *see also* Michael Shiner, *Young, Gifted and Blocked! Entry to the Solicitors' Profession*, *in* DISCRIMINATING LAWYERS, *supra* note 74, at 87. *See generally* MICHAEL SHINER, ENTRY INTO THE LEGAL PROFESSIONS: THE LAW STUDENT COHORT STUDY, YEAR 5 (1999).

78. LEGAL SERVS. BD., RESEARCH SPECIFICATION: DRIVERS BEHIND THE DIVERSITY EXPERIENCE OF THE LEGAL MARKET IN ENGLAND AND WALES (Feb. 9, 2010), *available at* http://www.legalservicesboard.org.uk/what_we_do/research/Publications/specifications.htm. *See generally* LSB STUDY, *supra* note 68.

79. Most recently, the Advisory Panel on Judicial Diversity adopted a similar approach. *See* REPORT OF THE ADVISORY PANEL ON JUDICIAL DIVERSITY 2010 (2010), http://www.justice.gov.uk/publications/docs/advisory-panel-judicial-diversity-2010.pdf; *see*

explanation for the profession's slow progress on diversity. Such a human capital/rational preference approach assumes labor markets to be rational and hence gender- and race-neutral, and segmentation to be primarily the result of individual choices (such as deciding not to invest in one's careers to the same extent as those who "succeed")[80] rather than structural and cultural forces. This theoretical approach, which is also termed the deficit model, is therefore congruent with the reflexivity proposed by Beck and Giddens, discussed above.[81] In the United Kingdom, it has characterized the work of sociologist Catherine Hakim, who argues that the primary cause of women's lower professional status is their lesser commitment to their careers.[82] In the United States, Richard Sander similarly attributes men's dominance of partnerships to women's reluctance "to take on . . . the hours and intensity associated with promotion,"[83] while the failure to mentor black lawyers (which he terms "benign neglect") is attributed to black lawyers' human capital deficit.[84]

There exist a range of alternative explanatory models relevant to investigations of the resilience of white male middle-class hegemony in the legal profession in the face of the globalization and the managerialization of firms, equal opportunities legislation, DM, and the agency of both individual female and BME lawyers and minority networks. For instance, discrimination (also termed stratification) theory[85] focuses on structured barriers that produce labor market distortions, positioning women and other outsiders in strata characterized by inferior rewards in terms of social status.

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also Rhode, *supra* note 27, at 1047 (discussing firm leaders' use of supply-side explanations).

80. GARY S. BECKER, HUMAN CAPITAL: A THEORETICAL AND EMPIRICAL ANALYSIS, WITH SPECIAL REFERENCE TO EDUCATION (1964) (analyzing the kinds of human capital, and the effect of investment in human capital, particularly education, and its economic effects); Gary S. Becker, *Human Capital, Effort, and the Sexual Division of Labor*, 3 J. LAB. ECON. S33 (1985) (focusing on human capital investment and labor among married men and married women).

81. *See supra* notes 11, 13 and accompanying text.

82. *See generally* CATHERINE HAKIM, KEY ISSUES IN WOMEN'S WORK: FEMALE DIVERSITY AND THE POLARISATION OF WOMEN'S EMPLOYMENT (2d ed. 2004) (describing and applying preference theory to explain women's choices regarding the home and careers).

83. Richard H. Sander, *The Racial Paradox of the Corporate Law Firm*, 84 N.C. L. REV. 1755, 1816 (2006).

84. *Id.* at 1821. This deficit model explanation was recently enunciated by Jonathan Sumption, Queen's Counsel to the Justice Committee on the question of diversity in the judiciary:

> Clearly, the diversity of appointments is extremely sensitive to the profile of the higher reaches of the legal professions. My own impression—I can't say that it is more than an impression but it is based on a fair amount of experience—is that the quality of BME candidates entering the legal profession now has continuously increased over a number of years, just as the quality and number of women entering the legal profession continuously increased over a substantial period a generation ago.

JUDICIAL APPOINTMENTS COMM'N, EXAMINATION OF WITNESSES, http://www.publications.parliament.uk/pa/cm201011/cmselect/cmjust/449-i/10090702.htm (last visited Apr. 21, 2012).

85. Discrimination theory and stratification theory refer to the same theoretical framework, and hereinafter I will use "discrimination theory" to refer to both.

This occurs in spite of any act of will or choice on the part of outsiders[86] and results in gender and race stratification becoming embedded in work organizations.[87] In this theoretical approach, bureaucratic structures and processes are viewed not as neutral but rather as indirectly discriminatory, because they inevitably favor the dominant occupational group. For instance, Acker speaks of "gendered" organizations,[88] and Dickens, Itzin, and Newman argue that these are the product of subtle practices, processes, and discourses which represent what Kanter termed a "shadow structure," and which defeat even well-developed equal opportunity initiatives.[89] In this perspective, the disproportionate percentages of women in, for example, family law can be attributed in part to the interaction between organizational structures and processes and sex-differentiation in parenting roles, which makes possible a way of working (such as very long hours) based on the ideal of the "unencumbered" worker, which is in turn grounded in assumptions about "natural" roles.[90] Thus Rhode writes of the "well-documented, often unconscious role" played by stereotypes in the profession.[91]

Studies of the impact of these stereotypes and discriminatory structures note the constraints these exert on individual agency. For example, Carbado and Gulati have written of the "homogeneity incentive," which produces a pressure on minorities to conform to (and thereby reinforce) the dominant culture.[92] Other Critical Race theorists argue that, while one effect of globalization has been the marginalization of overt expressions of racism (based on biological inferiority), the insinuation that "race" no longer has a categorical meaning is not only false but deeply ideological. Thus, Dalal remarks that the denial of racism is itself a fundamental element of modern racism and, echoing critiques of DM, that such denial facilitates the individualization of what are in fact the results of systemic discrimination.[93]

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86. *See, e.g.*, DONALD TOMASKOVIC-DEVEY, GENDER & RACIAL INEQUALITY AT WORK: THE SOURCES & CONSEQUENCES OF JOB SEGREGATION 38–55 (1993).

87. *See generally* CHARLES TILLY, DURABLE INEQUALITY (1998).

88. Joan Acker, *Hierarchies, Jobs, Bodies: A Theory of Gendered Organizations*, 4 GENDER & SOC'Y 139 (1990).

89. ROSABETH MOSS KANTER, MEN AND WOMEN OF THE CORPORATION 164–65 (1977); *see also* Linda Dickens, *What HRM Means for Gender Equality*, 8 HUM. RESOURCE MGMT. J. 23 (1998). *See generally* Catherine Itzin & Janet Newman, *Introduction* to GENDER, CULTURE AND ORGANIZATIONAL CHANGE: PUTTING THEORY INTO PRACTICE 11 (Catherine Itzin & Janet Newman eds., 1995).

90. Such assumptions generate a circular process of gender categorization, which in turn sustains "status value" and "gender value beliefs." Cecilia L. Ridgeway, *Interaction and the Conservation of Gender Inequality: Considering Employment*, 62 AM. SOC. REV. 218, 221–23 (1997).

91. Rhode, *supra* note 27, at 1050.

92. Devon W. Carbado & Mitu Gulati, *The Law and Economics of Critical Race Theory*, 112 YALE L.J. 1757, 1762 (2003) (reviewing CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY (Francisco Valdes et al. eds., 2002)).

93. *See* Farhad Dalal, *Institutions and Racism: Equality in the Workplace*, *in* RACE, IDENTITY & BELONGING: A SOUNDINGS COLLECTION 123, 134 (Sally Davison & Jonathan Rutherford eds., 2008). Dalal's insights are echoed in critiques of New Labour's re-branding of Britain as "cool Britannia," a multicultural (meritocratic) state, which claim that in

A third explanatory model is offered by Pierre Bourdieu's theory of social fields.[94] Defined as a structured social space or network with its own rules, forms of common sense, and so on, a field is the locus for the production of specific forms of capital—economic, social, symbolic, and cultural—over which actors struggle and power relations crystallize. For Bourdieu, to conceptualize social action within a field in terms of the choice/constraint dichotomy is misleading; instead, he speaks of "symbolic domination," the effect of which "is exerted not in the pure logic of knowing consciousness but through the schemes of perception, appreciation and action that are constitutive of habitus[95] and which, below the level of the decisions of consciousness and controls of the will, set up a cognitive relationship that is profoundly obscure to itself."[96]

As a result, the characteristics of a field are produced and naturalized through its cultural practices, and, in particular, through its actors' interrelationships and struggles over the economy of symbolic goods (that is, the various forms of capital). The valuation of these symbolic goods, however, rests with a field's elites, leading Bourdieu to argue that "[t]he particularity of the dominant is that they are in a position to ensure that their particular way of being is recognized as universal" and that definitions of excellence are "charged with masculine implications."[97] While this proposition misses the significance of class and race, Bourdieu's conceptualization of these "taken for granted" notions as representing a form of "symbolic violence" is nevertheless extremely powerful in illuminating how existing hierarchies within the legal field can remain in

practice, "race" retains its centrality and institutional racism remains pervasive. Arun Kundnani, *'Stumbling On': Race, Class and England*, 41 RACE & CLASS 1, 5 (2000); *see also* DAVID GILLBORN, RACISM AND EDUCATION: COINCIDENCE OR CONSPIRACY? 27–28 (2008); JANET FOSTER ET AL., *Assessing the Impact of the Stephen Lawrence Inquiry*, HOME OFFICE RESEARCH STUDY 294 (2005), *available at* http://rds.homeoffice.gov.uk/rds/pdfs05/hors294.pdf.

94. *See* PIERRE BOURDIEU & LOÏC J. D. WACQUANT, AN INVITATION TO REFLEXIVE SOCIOLOGY 94–115 (1992). For work on the legal profession that draws on Bourdieu's theoretical framework, see JOHN HAGAN & FIONA KAY, GENDER IN PRACTICE: A STUDY OF LAWYERS' LIVES (1995); SOMMERLAD & SANDERSON, *supra* note 74; Fiona M. Kay & John Hagan, *Raising the Bar: The Gender Stratification of Law-Firm Capital*, 63 AM. SOC. REV. 728 (1998); Hilary Sommerlad, *"What Are You Doing Here? You Should Be Working in a Hair Salon or Something": Outsider Status and Professional Socialization in the Solicitors' Profession*, WEB J. CURRENT LEGAL ISSUES, http://webjcli.ncl.ac.uk/2008/issue2/sommerlad2.html (2008).

95. The concept of habitus, the foundation of Bourdieu's dispositional theory of social action, refers to "systems of durable, transposable *dispositions*, structured structures predisposed to function as structuring structures, that is, as principles of the generation and structuring of practices and representations which can be objectively 'regulated' and 'regular' without in any way being the product of obedience to rules." BOURDIEU, *supra* note 57, at 72. Thus, since the habitus is both the internalization and generator of a field's objective social structures, it and the field are interdependent. It is also an embodied formation. *Id.* at 94. Bourdieu also speaks of the "doxa" of a field, which are the tacit beliefs and values which inform agents' actions within a given field. *See supra* note 57. All of these dispositional elements can and do constitute objects of exchange in any given field.

96. PIERRE BOURDIEU, MASCULINE DOMINATION 37 (Richard Nice trans., Stanford Univ. Press 2001).

97. *Id.* at 62.

place, despite the impact of globalization.[98] Thus social categories, contrary to the characterization of them as obsolete—in Beck and Beck-Gernsheim's terms, "zombies"[99]—retain their significance: even while their meaning and expression have changed, they remain strongly determinative. An extensive body of work has explored this argument. For instance, Skeggs shows how not all individuals have the same resources for "self-making" and that social categories are reproduced in daily interactions.[100] Applied to the legal profession, this means that we might attribute its gender, racial, and class stratification, and the barriers to changing this stratification, to people's "common sense" understandings of, for instance, "appropriate" gender roles, ways of conducting business in the profession, and relatedly, what constitutes merit and professionalism.

Neo-Weberian theories of the professions represent a fourth conceptual framework that can assist in understanding resistance to diversification, reminding us that the professional project rests on boundary maintenance. Thus an elite (and therefore once exclusively white male) profession negotiates the threat to its status represented by the influx of less prestigious groups by developing a range of exclusionary strategies,[101] which may include the construction of new hierarchies. This practice of closure locks "outsiders" into lower tiers.[102] The allocation of individuals to particular hierarchies is legitimated through their correspondence (or lack of it) with the conventional professional model: people are judged according to what Gergen terms "conventions of warrant" based on performances currently enacted in the work place.[103] Consequently, the ideal lawyer possesses attributes already deemed appropriate, which are only comprehensible in terms of social categories. Evidently, this perspective is congruent with the Bourdieusian concepts of the doxa of a field, its habitus, and cultural capital.

Finally, following Foucault, we could focus on the discourses that circulate within a field, including those which are inserting new forms of knowledge into organizations, producing new institutional practices which

98. This emphasis on the capacity of social classes to preserve their social privileges across generations through the workings of social fields, despite formal moves to establish equality, opportunity, and diversity, is central to Bourdieu's work.

99. BECK & BECK-GERNSHEIM, *supra* note 11, at 202–13.

100. Bev Skeggs, *The Making of Class and Gender Through Visualizing Moral Subject Formation*, 39 SOCIOLOGY 965, 973–75 (2005).

101. *See generally* ELIOT FREIDSON, PROFESSIONALISM: THE THIRD LOGIC (2001) (describing the various ways in which professions legitimize their efforts to maintain exclusivity, among them requiring specific credentials); MAGALI SARFATTI LARSON, THE RISE OF PROFESSIONALISM: A SOCIOLOGICAL ANALYSIS (1977).

102. For example, Sandefur discusses the reconstitution of work and the elongation of professional structures. That is, work is "de-composed" such that routine parts are assigned to particular workers. The systematization of such a process would create new hierarchies of work, with those in lower strata doing more routine tasks. *See* Rebecca L. Sandefur, *Staying Power: The Persistence of Social Inequality in Shaping Lawyer Stratification and Lawyers' Persistence in the Profession*, 36 SW. U. L. REV. 539 (2007).

103. Kenneth J. Gergen, *Warranting Voice and the Elaboration of the Self*, *in* TEXTS OF IDENTITY 70, 74 (John Shotter & Kenneth J. Gergen eds., 1989).

govern "the conduct of conduct"[104]—notably, the penetration of the profession (especially its large firms) by the Human Resource Management (HRM) discourses of diversity and entrepreneurialism. Evidently, these are fundamental to the prioritizing of the economic over the legal, inserting a neo-liberal logic into the field so that commercialism now constitutes its primary rationale. As noted above,[105] a diverse workforce is viewed as adding to commercial creativity in the globalized profession; thus, DM should contribute to the conversion of lawyers into enterprising workers, each of whom is responsible for their own profits and costs.[106] This new "truth" is supported by the introduction by HRM experts of techniques of governance (Abbott's avatars[107]) designed to re-shape the conduct of organizations through, for example, formal, ostensibly objective recruitment and promotion practices and training.[108]

The colonization of the legal profession by this new knowledge (a direct result of globalization) is part of the re-creation of law firms as markets in which diverse entrepreneurs of the self come together to advance both their individual interests and those of the organization. This should facilitate the progress of those outsiders who are able to function effectively as entrepreneurs, though a Foucaultian analysis also alerts us to the need to recognize the persistence of earlier forms of rationality, which are part of the context within which these new discourses operate. As a result, traditional understandings of, for instance, gender in terms of binaries continue to link women with the imperative of reproduction[109] and militate against their claims to be regarded as successful entrepreneurs.[110]

The following part summarizes the LSB study's research design,[111] and then reflects on some of the data it generated in the light of these various theoretical models.

104. Colin Gordon, *Governmental Rationality: An Introduction*, *in* THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY 1, 2 (Graham Burchell et al. eds., 1991).

105. *See supra* notes 26–27 and accompanying text.

106. Hilary Sommerlad, *The Commercialisation of Law and the Enterprising Legal Practitioner: Continuity and Change*, 18 INT'L J. LEGAL PROF. 73, 76–79 (2011).

107. The concept of avatars is integral to Abbott's theory of linked ecologies—that is, a social structure that is unified to some extent, similar to Bourdieu's concept of social fields. An avatar is a representative of one ecology that is then inserted into another, thereby linking the two ecologies. *See* Andrew Abbott, *Linked Ecologies: States and Universities as Environments for Professions*, 23 SOC. THEORY 245, 265–69 (2005). Thus, as the main text suggests, the legal profession and the field of HRM can be seen as linked ecologies resulting from the now-commonplace insertion of HRM personnel into, and mainstreaming of, HRM discourses in large law firms.

108. *See* LSB STUDY, *supra* note 68, at 15–18.

109. Elisabeth Prügl, *Diversity Management and Gender Mainstreaming as Technologies of Government*, 7 POL. & GENDER 71, 78 (2011).

110. *See* Sommerlad, *supra* note 106.

111. For a full description of the study's methodology, see LSB STUDY, *supra* note 68, at 21–24.

IV. THE LSB STUDY

The LSB study (conducted in 2010–11) was an in-depth qualitative research project with seventy-three female and BME practicing or aspiring legal professionals, the aim of which was to explore the experience, perceptions, and career decisions of under-represented groups. The sample, which was based in London and West Yorkshire, was obtained through trade press advertisements, social network sites, and the snowball technique.[112] The enthusiastic response made it possible to select the seventy-three participants in order to maximize the sample's diversity in terms of race, class, sector, and type of firm, among other characteristics. A questionnaire was used in order to obtain descriptive statistics, followed by focus groups and interviews. An additional nine interviews were conducted with diversity managers working in large law firms. The research questions explored with the sample were:

- Do career patterns and opportunities for women and BME lawyers differ from those of white men and if so, how and why?
- How do women and BME lawyers experience and perceive the profession? To what extent and in what ways can their opportunities be attributed to bureaucratic structures and formal processes and to what extent to informal, cultural practices?
- What strategies do individual practitioners adopt? What are the main drivers affecting their career and life choices?

A. Summary of Findings

The study's findings[113] suggested that the greatest barriers to individuals producing their own biographies or configuring themselves as successful entrepreneurs are not the profession's tangible features such as its long working hours,[114] but rather its informal cultural practices that revolve around the making and sustaining of personal bonds. These bonds work to reproduce status hierarchies and exclusionary power networks, and are therefore highly significant in struggles over the field's symbolic goods. As in the United States, they involve powerful white men seeing merit in, and therefore mentoring, junior white men, while misrecognizing the capacity

112. Snowball technique refers to the form of non-probability sampling where existing respondents recruit other respondents from among their acquaintances, or through advertising within their networks, thereby growing the sample group like a snowball.

113. It is important to underline the difficulties of generalizing from this study, not only because it was qualitative, but also because the legal profession today in England and Wales is very fragmented—there are strong regional and sectoral differences, as well as the gulf between the large corporate sector and High Street General Practices. Nevertheless, as discussed in the main text, the context for the results is the dominance of white, middle-class males of the profession's elite sectors and power structures, and second, the data revealed strong commonalities in respondents' experiences.

114. Of course, this is not to deny that excessively long hours are a barrier to gender equality in the profession; they are also extremely significant in reproducing the normative unencumbered worker.

of the non-normative to have merit.[115] Consequently, these personal bonds depend upon and naturalize cultural stereotypes[116] that retain their currency through the repeated citation of traditional discourses, thereby essentializing "difference."

These characteristics of the profession can therefore be read as evidence for Bourdieu's theorization of fields as networks of objective power relations. Equally, as both discrimination and neo-Weberian theories suggest, they can be conceptualized in terms of Kanter's "shadow structure," the result of existing power elites' active resistance to diversification.[117] The legacy of the profession as an elite, male institution shapes the terms of this resistance: despite the democratic, meritocratic discourses generated by globalization and DM, the United Kingdom's distinctive political economy of class means that archaic symbols continue to constitute cultural capital. In practice, this supports the demands of the global law firm, since it justifies the allocation of certain types of work to people who are effectively assumed to be lesser professionals. Consequently, far from enhancing diversity within firms, globalization appears to be accentuating pre-existing patterns of inequality.

B. The Cultural Legacy of the Profession's All-White, Male History

Entry into the legal profession has rarely depended on the simple possession of credentialed, esoteric knowledge, for professionalism is something which is enacted;[118] as Bourdieu would express it, professional culture is inscribed upon the body and reproduced, unthinkingly, in personal deportment.[119] Thus human capital alone is merely the necessary pre-condition of the claim to professionalism; for that claim to be recognized, the non-normative professional must give a convincing enactment of professionalism, which will reference a recognizable repertoire of personal conduct and characteristics.[120] The data suggest that in many ways this repertoire remains strongly marked by the profession's exclusively male history; as one woman pointed out, "the traditional male partner with a wife at home still forms the majority."[121] The data also revealed the persistence of archaic discourses of, for instance, femininity and masculinity, which position women as "always (actually or potentially) mothers and naturally attached to households, families, and

115. *See* BOURDIEU, *supra* note 57, at 164–65 (explaining that established orders "reproduce . . . by securing the misrecognition, and hence the recognition, of the arbitrariness on which they are based").

116. *See* Rhode, *supra* note 27, at 1052–53 (discussing individuals' tendency to internalize negative stereotypes about themselves and noting the destructive effect this has on their self-belief and performance).

117. *See* KANTER, *supra* note 89, at 164–65.

118. *See generally* HOWARD S. BECKER ET AL., BOYS IN WHITE: STUDENT CULTURE IN MEDICAL SCHOOL (1961).

119. *See* BOURDIEU, *supra* note 57, at 85–87, 94.

120. *See generally* ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE (1959).

121. LSB STUDY, *supra* note 68, at 39.

reproduction."[122] Similarly, the new discourses of cultural difference[123] can be seen, on closer examination, to evoke stereotypical tropes of the outsider,[124] as the following account suggests:

> I have been asked before, by colleagues, "won't your parents mind you being out late?" I said I am a thirty year old woman and they stopped telling me what to do a long time ago. It's older colleagues and there is not malicious intent. It's completely ridiculous, it is stereotyping that you should be at home with other responsibilities.[125]

Thus, while DM discourses conceptualize difference as something positive, in practice an ensemble of discourses circulate within the workplace, including ones which, as in the above example, explicitly pathologize certain subjects, and can be read as micro aggressions[126] or forms of symbolic violence. The respondents' accounts suggested that, as a result, those with the power in the profession to allocate rewards and status did not need to discriminate deliberately since their misrecognition of the capacity and quality of outsiders precluded the possibility of Asian women, or women of any ethnicity with children, being viewed as capable of achieving significant status on the basis of merit. The following account is exemplary:

> I'd go into . . . the major courts in the area [North East of England] and be the only ethnic minority face and . . . my first experience of going into a family court . . . the court staff said to me "are you the interpreter?" "No" "Are you the client?" "No" "Are you the solicitor?" "No"; and then I said "I'm counsel" and they were completely taken aback. This was

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122. Prügl, *supra* note 109, at 78 (citing BARBARA EHRENREICH & DEIRDRE ENGLISH, FOR HER OWN GOOD: TWO CENTURIES OF THE EXPERTS' ADVICE TO WOMEN (2005)). Conversely, men continue to be positioned as "naturally" primarily associated with the world of work, and therefore overt concern with work-life balance is likely to be regarded as "deviant." RICHARD COLLIER, MEN, LAW AND GENDER: ESSAYS ON THE 'MAN' OF LAW 152–94 (2010).

123. Multiculturalism has engendered a reification of culture, enabling a "new racism" to crystallize within the British national psyche. *See* ROBERT MILES, RACISM 62–66 (1989). The growth of Islamophobia on the grounds of cultural difference typifies this development. *See generally* David Tyrer, *The Others: Extremism and Intolerance on Campus and the Spectre of Islamic Fundamentalism*, *in* INSTITUTIONAL RACISM IN HIGHER EDUCATION 35 (Ian Law et al. eds., 2004). Thus Archer emphasizes that while African-Caribbean identity within British society has been reduced to that of "race," South Asian identity has been reduced to culture. *See* Louise Archer, *'Muslim Brothers, Black Lads, Traditional Asians': British Muslim Young Men's Constructions of Race, Religion and Masculinity*, 11 FEMINISM & PSYCHOL. 79 (2001); *see also* Avtar Brah, *Travels in Negotiations: Difference, Identity, Politics*, 2 J. CREATIVE COMM. 245, 246 (2007) (discussing the "clashes of culture" for South Asians in Britain).

124. *See generally* Tariq Modood & Fauzia Ahmad, *British Muslim Perspectives on Multiculturalism*, 24 THEORY CULTURE & SOC'Y 187 (2007); Rhode, *supra* note 27, at 1050–53.

125. LSB STUDY, *supra* note 68, at 41 (quoting an Asian barrister).

126. The concepts and categories evoked by the various discourses currently in circulation in the profession are not fixed, but rather, following Judith Butler, can be seen as encompassing a sliding scale that combines various ideas and (competing) myths. For example, both this data and data from other research indicate a number of tensions between the new entrepreneurialism and the traditional paradigm within the discourse of professionalism. *See* Judith Butler, *Sexual Politics, Torture, and Secular Time*, 59 BRIT. J. SOC. 1 (2008).

> 2004/5. I'm still very conscious of the fact that as an Asian woman I'm in a minority.[127]

Again, this experience echoes Rhode's discussion of stereotyping in the U.S. profession, which also highlights the inter-sectionality of disadvantage: "The special stigma confronting all women of color is apparent in the frequency with which they are still mistaken for court reporters, interpreters, or secretaries."[128]

The accounts of other respondents in the LSB study told of direct discrimination as well as misrecognition, and were also suggestive of the white male sense of property rights in professionalism:

> One of my colleagues was sitting in an office with a glass front on it and he was sitting with two other members of the department and as I walked down towards the office, he could see me coming, and I knocked on the door and went in and as I walked in he joked that he thought I was one of the cleaners because all the cleaners were black and they didn't have any other black lawyers in the firm.[129]

We might conceptualize these racist and sexist myths, stereotypes, and practices in terms of a politics of recognition[130] and as exemplifying the heightened visibility versus invisibility problem;[131] either way, they operate to refuse outsiders' claims on professionalism. They can also be interpreted in terms of what is capable of valorization as cultural capital, and recall too Kanter's insight into how power is reproduced in corporations through homo-social practices, leading people to recognize merit in those who resemble themselves.[132]

C. Merit

One of the primary policy responses to the needs of a globalized economy was to expand and diversify higher education in the United Kingdom.[133] The potential threat this expansion offered to the reproduction of class and the family group[134] has been countered by a middle class

127. LSB STUDY, *supra* note 68, at 41 (quoting a female Asian barrister).

128. *See* Rhode, *supra* note 27, at 1050.

129. LSB STUDY, *supra* note 68, at 42 (quoting an African-Caribbean female solicitor).

130. *See generally* Nancy Fraser, *Rethinking Recognition*, 3 NEW LEFT REV. 107 (2000) (arguing that despite tensions between projects seeking redistribution and cultural struggles for recognition, in practice economic and cultural forms of social ordering are intertwined).

131. *See generally* McDonald & Wingfield, *supra* note 54 (arguing that individuals from minority groups working in white-dominated organizations tend to be either inconspicuous or excessively conspicuous to dominant groups, with both states revealing their outsider status).

132. *See generally* KANTER, *supra* note 89 (describing managers who promote those who resemble themselves); Rhode, *supra* note 27, at 1053 (describing in-group biases).

133. *See supra* notes 14–15 and accompanying text.

134. *See* Pierre Bourdieu & Luc Boltanski, *The Educational System and the Economy: Titles and Jobs*, *in* FRENCH SOCIOLOGY: RUPTURE AND RENEWAL SINCE 1968, at 141, 142–43 (Charles C. Lemert ed., 1981). *See generally* BOURDIEU & PASSERON, *supra* note 57 (explaining Bourdieu's theories of such social and kinship reproduction in greater detail).

mobilization of its material and cultural resources,[135] resulting in the hardening of pre-existing hierarchies within the university sector[136] and the raising of academic requirements for entry into the profession.[137] As a result, the cultural capital of an Oxbridge degree and other archaic signs of privilege have increased in value, and, justified by invoking an increasingly selective client, are read as synonymous with merit.[138]

At the same time, the expansion of higher education has devalued professional knowledge per se, and consequently HRM looks for lawyers who are capable of engaging in a range of different forms of labor, including what Nickson et al. term "aesthetic labour," meaning a "'style' of service encounter deliberately intended to appeal to the senses of customers" like "'looking good' or 'sounding right.'"[139] The idea is that "employers are seeking employees who can portray the firm's image through their work."[140] As mentioned earlier, this social construction of professionalism and its entanglement with attributes and appearance entails a pre-conception of the ideal worker: "Certain potential employees will be excluded from these 'style' labor market jobs, and indeed more general employment involving interactive service work . . . because employers determine who is aesthetically acceptable during recruitment and selection processes . . . ."[141]

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135. *See* Douglas I. Smith, *Changes in Transitions: The Role of Mobility, Class and Gender*, 22 J. EDUC. & WORK 369, 385–86 (2009).

136. This "massification" of higher education therefore appears to have done little to raise social mobility. *See generally* DIANE REAY ET AL., DEGREES OF CHOICE: SOCIAL CLASS, RACE AND GENDER IN HIGHER EDUCATION (2005); SUTTON TRUST, THE EDUCATIONAL BACKGROUNDS OF LEADING LAWYERS, JOURNALISTS, VICE CHANCELLORS, POLITICIANS, MEDICS AND CHIEF EXECUTIVES: THE SUTTON TRUST SUBMISSION TO THE MILBURN COMMISSION ON ACCESS TO THE PROFESSIONS (2009) [hereinafter SUTTON TRUST, EDUCATIONAL BACKGROUNDS], *available at* http://www.suttontrust.com/research/educational-backgrounds-for-submission/; SUTTON TRUST, SOCIAL MOBILITY (2009) [hereinafter SUTTON TRUST, SOCIAL MOBILITY], *available at* http://www.suttontrust.com/public/documents/social_mobility_topline2009.pdf; Louise Archer, *Diversity, Equality and Higher Education: A Critical Reflection on the Ab/uses of Equity Discourse Within Widening Participation*, 12 TEACHING HIGHER EDUC. 635 (2007).

137. *See* PFAP, *supra* note 14, at 69–73.

138. Andrew Francis & Hilary Sommerlad, *Access to Legal Work Experience and Its Role in the (Re)production of Legal Professional Identity*, 16 INT'L J. LEGAL PROF. 63, 63–65 (2009); Sommerlad, *supra* note 106, at 74; *see also* Marc Galanter & Simon Roberts, *From Kinship to Magic Circle: The London Commercial Law Firm in the Twentieth Century*, 15 INT'L J. LEGAL PROF. 143, 168 (2008) (referring to the "class cachet" conferred by an Oxbridge degree); Ginsburg & Wolf, *supra* note 56, at 954–56 (suggesting that the significance of an elite institution is even higher for U.S. law firms). *See generally* Ashley, *supra* note 74 (giving various examples from London firms); Ashley & Empson, *supra* note 74 (describing firms' use of elite universities to "upbrand" themselves and attract a new clientele, and how clients rely on the degree as a substitute for information about actual work performance).

139. Dennis Nickson et al., *Bringing in the Excluded? Aesthetic Labour, Skills and Training in the 'New' Economy*, 16 J. EDUC. & WORK 185, 185 (2003); *see also* Sommerlad, *supra* note 106, at 86.

140. Nickson et al., *supra* note 139, at 185–86.

141. *Id.* at 186.

Implicit in the above is the subjectivity of the technology of merit, which is, in practice, as discrimination theory suggests, a social artifact informed by a system of values permeated by assumptions about gender, class, and race.[142] Consequently, as the data discussed above indicated, normative judgments about professional competence and hence the capacity to become a partner are over-determined by meanings ascribed to a person's social category. In other words, the substance of conventions of warrant will be based on predictions of an individual's capacity to deliver future performances that match those currently enacted within workplace, legitimating existing practices and performance of "skills." Thus the ideal worker should possess attributes already deemed appropriate not only to this construction of merit-worthy professionality, but also to their gender and race. As a result, while a particular practice area may seek assertiveness, this quality in a woman can be read as aggression and hence inappropriate.[143] Or, to express it in Bourdieusian terms, the doxa of the field ensures that, as discussed with regard to Asian women, the merit of those who embody difference is likely to be misrecognized, while the cultural capital of traditional status markers is not merely maintained but actually enhanced. The increased commercial value of these markers is exemplified in the following account by a white woman:

> The Head of Chambers said: "I want him, he comes hunting and shooting with us and . . . my clients like him, my Greek shipping clients like him because he has everything that they are looking for, he's been to a certain public school and then to Oxbridge and he presents the right image." These were the criteria. He hadn't actually, at that point, passed his Bar exam. So it was not the quality of his work that was important, it was the fact that he fitted.[144]

D. Kinship Culture of Firms and Personal Relations

Another example of tradition's resilience, both generally and with regard to the legal profession, is the persistence of what Burrage described as a kinship culture.[145] A recent study of Magic Circle firms[146] argued that this

142. As Young has argued, the myth of meritocracy legitimizes societies that in practice remain based on ascriptive inequalities. *See generally* IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE (1990); Barbara F. Reskin, *Including Mechanisms in Our Models of Ascriptive Inequality*, 68 AM. SOC. REV. 1 (2003). Empirical data show that no contemporary Western society has yet broken the link between ascribed characteristics and educational attainment in schools. *See, e.g.*, OECD, *supra* note 14.

143. *See* Jo Silvester, *Questioning Discrimination in the Selection Interview: A Case for More Field Research*, 6 FEMINISM & PSYCHOL. 574, 577 (1996); MARGARET THORNTON, DISSONANCE AND DISTRUST: WOMEN IN THE LEGAL PROFESSION 220–22 (1996); Sommerlad, *supra* note 106, at 94–95.

144. LSB STUDY, *supra* note 68, at 43.

145. Michael Burrage, *From a Gentlemen's to a Public Profession: Status and Politics in the History of English Solicitors*, 3 INT'L J. LEGAL PROF. 45, 53–55 (1996) (describing the "kin"-like relationships in the history of pupillage and clerkships).

146. The Magic Circle refers to the biggest international firms, based in the business part of London (known as the City). These firms dominate the corporate law sector in the United Kingdom.

culture has been eroded, as "understandings about recruitment grounded in 'family' and 'personal networks' [have given way] to those associated with certified educational merit," leading to diversity and inclusion.[147] By contrast, the accounts of our respondents emphasized the continuing primacy of social capital; the following description by a white female equity partner of the lawyer's work was typical: "[I]t involves knowing the law and technical skills, but it's also about building personal relationships."[148]

There are two main aspects to the key significance of relationships for the profession: the need to form bonds within the firm (and most importantly with a potential mentor or patron), and to develop personal links with clients. An obvious example of the importance of relationships is their continuing value for gaining entry to the profession in the first place, as a female barrister explained in connection with gaining a tenancy: "Knowing somebody helps . . . there's a certain amount of nepotism. Generally, I think, probably impressing people during your pupillage in one way or another, either making contacts and networking [is helpful]."[149]

The homo-social facet of this networking—and the obvious fact that, as discrimination theorists argue, it is structured around the traditionally male (unencumbered) worker—was identified by another solicitor:

> I think it can be an issue for all sorts of personalities, unless you're relatively clubbable you're going to find it difficult . . . . Clubbable: it's the sort of person who will go to the bar afterwards on a Friday evening with them and that sort of thing, and generally enjoy sort of fairly relaxed social chit chat with the other people . . . if you've got a larger firm where you've got say a tradition of going out for a drink together on a Friday, and you've got some members there who've got family responsibilities, or who don't want to do that, they're nearly always going to be female, and they're going to be left out of that bit. And that's going to affect it, I think, it has to affect their visibility.[150]

The following observation by a BME practitioner that legal practice being "so much about personal relationships" places people who "'are the wrong gender, wrong colour' at a great disadvantage" evokes Carbado and Gulati's discussion of racial palatability and homogeneity.[151] The significance of cultural differences, highlighted by the "New Racism,"[152] was apparent in concerns about the central role played by drinking in the social life of the profession, leading to comments by Muslim lawyers that they were being "tested . . . simply because [they] don't drink—there's . . . a lot of pressure to go out drinking."[153] Others similarly indicated that the

147. Galanter & Roberts, *supra* note 138, at 154.
148. LSB STUDY, *supra* note 68, at 43.
149. *Id.* at 43–44.
150. *Id.* at 44.
151. *Id. See generally* Carbado & Gulati, *supra* note 92.
152. MILES, *supra* note 123, at 62–66.
153. LSB STUDY, *supra* note 68, at 44.

terms of acceptance included participating in these events, and that lack of participation made them—rather than racism—the problem.

Like the internal firm networking, business development also continues to revolve around events that tend to be highly exclusionary. Golf days were offered as the typical example:

> [T]he men play golf and they all go out on golf days and they are spending the whole day out of the office, then get drunk at dinner afterwards and then spend several days talking about it and it's very unusual to have a female at these events . . . the only reason I know what it's like first hand is that my husband is a solicitor and I would join him at the dinner afterwards—there would be one female for every 25 men.[154]

The career consequences could be highly detrimental for those who could not participate because of the exclusionary nature of such events, because of caring responsibilities, or because they were constructed by discourses of cultural differences as being incapable of joining in. One female Asian barrister explained that "'the old boys' network was alive and well in the sense of being instructed by a certain network which they were part of," but because she was not part of this network, she ended up assisting barristers junior to her instead of receiving the work directly.[155]

E. Unofficial Mentoring and Patronage

The importance of establishing personal networks for career success is exemplified by the persistence of informal mentoring systems.[156] As an equity partner in a High Street law firm said that "you have to develop a special relationship with an equity partner who is going to trumpet your cause."[157] As one respondent observed, however: "it's harder for people in black minority ethnic groups to actually have a network of people within the law, because . . . there's definitely less people in it."[158] Her point is echoed in an extensive literature which documents the gender, racial, and class character of such systems,[159] and which shows how this character forms part of the process of misrecognition—for it works in turn to reinforce stereotypes about the merit of particular groups, which then reduces the likelihood of them being mentored. The interdependence of a

154. *Id.* at 45 (omission in original).

155. *Id.* at 44 (quoting an Asian female barrister).

156. The vital importance of informal networks for career success is well documented. *See, e.g.*, KANTER, *supra* note 89 (describing relationships among men and women in corporations); Gail M. McGuire, *Gender, Race, Ethnicity, and Networks: The Factors Affecting the Status of Employees' Network Members*, 27 WORK & OCCUPATIONS 501, 502–03 (2000) (explaining that the status of informal network members is important for employee success and advancement).

157. LSB STUDY, *supra* note 68, at 45.

158. *Id.* at 44.

159. *See, e.g.*, JOHN SCOTT, SOCIAL NETWORK ANALYSIS: A HANDBOOK 479–80 (1996) (explaining the social network analysis research framework); David A. Thomas, *The Impact of Race on Managers' Experiences of Developmental Relationships (Mentoring and Sponsorship): An Intra-organizational Study*, 11 J. ORGANIZATIONAL BEHAV. (SPECIAL ISSUE) 479 (1990).

field and its habitus is exemplified by the circularity of assumptions that women are less competent than men because of their lower structural positions.[160]

As a result, mentoring tends to be a "cloning" process,[161] and, as the following comments suggest, homo-social reproduction is seen as particularly characteristic of solicitors' partnerships*:* "Whether you get on is a question of whether you get on with people and whether your face fits"; "there was an atmosphere within the department that if your face fitted then you would be all right, and if it didn't, then you wouldn't."[162] The significance of trust and rapport in these informal relationships[163] emerges in the following account by another respondent:

> [W]hen I was in private practice . . . there were a couple of partners there that gave me work or took me on particular meetings or supported me. And later in my career, again, working for particular partners, there have been a couple of individuals that have helped in giving me interesting work and included me in on things and stretched me. . . . But I didn't have that rapport with everybody; it was a bit hit and miss really. I had a first couple of seats that were quite negative in a way.[164]

The key significance to developing human capital[165] by establishing links with powerful mentors means that the lack of a mentor plays into other aspects of the contemporary professional career—possibly confining the destiny of the non-normative lawyer to low-grade work, for instance in a support role.[166]

F. Self-Management of Career: Self-Promotion and Access to Work

One of the features of the legal career today is that it must be self-managed. A recent article in the U.K. trade press warned aspiring lawyers of the need to have a "winning mentality" by "playing a role in business development, both by way of contributing to the financial wellbeing of your firm and building the sustainability of your own career."[167] This advice encapsulates the insight that the contemporary career depends on nurturing one's own "employability" through networking and developing

160. *See* Gail M. McGuire, *Gender, Race, and the Shadow Structure: A Study of Informal Networks and Inequality in a Work Organization*, 16 GENDER & SOC'Y 303, 307 (2002).

161. *See* Carbado & Gulati, *supra* note 92, at 1825; *see also* Gerard Hanlon, *Institutional Forms and Organizational Structures: Homology, Trust and Reputational Capital in Professional Service Firms*, 11 ORGANIZATION 187 (2004) (describing professional service firms' use of clan structure and bureaucratic methods to control change over time).

162. LSB STUDY, *supra* note 68, at 45.

163. *See* McGuire, *supra* note 160, at 317.

164. LSB STUDY, *supra* note 68, at 45.

165. *See* Payne-Pikus et al., *supra* note 47, at 560, 576–77; Rhode, *supra* note 27, at 1071 (discussing mentoring programs).

166. *See* Wilkins & Gulati, *supra* note 48, at 565.

167. David Harvey, *Friendly Advice*, LAWYER 2B (Dec. 9, 2010), http://l2b.thelawyer.com/friendly-advice/1006372.article.

entrepreneurial skills.[168] In other words, each employee is now their own profit and loss center. An Asian male equity partner in a Magic Circle firm summed it up thus:

> [I]n a professional services firm, where initiative, self drive and motivation are really important factors, I think you make of it what you choose to make of it. That's the sort of thing I encourage people who I'm responsible for to do . . . which is, don't wait until someone says to you "this is your path, that's what you should do," because these are highly intelligent, highly motivated people so the issue is not about motivation—it's about finding a path that suits them . . . it's a meritocracy and you make your own way.[169]

The discourse of a level playing field articulated by this lawyer is, however, belied by the intensely competitive nature of the profession's internal labor markets—described by one partner as "cut throat"[170]—evoking Bourdieu's conceptualization of fields as networks of objective power relations amongst social positions in which agents are engaged in a constant struggle to capture the different kinds of capital the field offers. But, as argued above, the valuation of the capital that outsiders bring to a field is likely to be low, making self-promotion even more essential for the female and BME lawyer.[171] This is problematic because as Rhode notes, self-promotion that is acceptable for men is viewed as unattractive in women,[172] and while men are culturally conditioned to take credit for their achievements and to compete, women are not.[173]

Further, in order to be able to undertake self-promotion at all, the practitioner must have access to good quality work, returning us to the key significance of mentoring. Because the allocation of work to trainees and junior solicitors is generally at the discretion of departmental partners, handing out good work is one of the main ways in which a partner can assist his mentee.[174] Thus one woman recalled: "[A] partner (J) had two protégés, two men who did commercial litigation; the really big work came from J and he always gave it to the two men."[175] Another woman spoke of how her work opportunities had been restricted by a partner who said "he didn't think that women should get the international work because they liked to stay at home . . . close to their families . . . at the time I didn't even

168. *See generally* Luc Boltanski & Eve Chiapello, *The New Spirit of Capitalism*, 18 INT'L J. POL. CULTURE & SOC'Y 161 (2005).

169. LSB STUDY, *supra* note 68, at 46 (quoting an Asian male equity partner).

170. *Id.*

171. *See supra* notes 84, 95–98, 165 and accompanying text.

172. *See* Rhode, *supra* note 27, at 1051.

173. Savita Kumra & Susan Vinnicombe, *A Study of the Promotion to Partner Process in a Professional Services Firm: How Women Are Disadvantaged*, 19 BRIT. J. MGMT. S65, S71 (2008).

174. *See* Wilkins & Gulati, *supra* note 48, at 590–91.

175. LSB STUDY, *supra* note 68, at 46. This female academic explained that one of her main reasons for leaving practice was because of the poor quality of the work she was being given, and the fact that good work was being given to her male colleagues (who were less qualified than her). *Id.*

have kids and had just come back from Hong Kong!"[176] The significance of traditional discourses of, for instance, gender, highlighted by this last comment, in framing the assessment of people's potential, is underlined by the explanation offered by another female respondent for differences in attitudes toward women and part-time working as rooted in male partners' own domestic arrangements.[177]

Thus, the data reveal the circular nature of the problem—that is, the synchronicity between a field and its habitus. Discourses of cultural racism, women's essential domesticity and, conversely, men's natural authority and rationality, make it less likely that women and BME lawyers will be mentored or be included in high level work. This failure to acquire symbolic capital then legitimizes assumptions about outsiders' lesser competence.

G. The Long Hours Culture and Emphasis on Commitment

An important effect of globalization has been to extend working hours significantly, and law firms in particular have been described as "greedy institutions."[178] While HRM discourses articulate long hours as voluntary, others have described them as obligatory, a key component of the cultural logic of flexible capitalism,[179] which is characterized by the assimilation of work and play.[180] The equation with commitment of a willingness to "work hard and play hard," by, for instance, engaging in the after-hours business development and general socializing discussed above, may be

176. *Id.* (omissions in original).

177. As Prügl comments, while the "contemporary apparatus of gender has loosened . . . the link between women and the imperative of reproduction," it is not severed. Prügl, *supra* note 109, at 78. Thus, Thornton has argued that merit is masculinized, invalidating women's capacity to be "authoritative knowers." *See* THORNTON, *supra* note 143, at 2, 163–65 (explaining that women are only accepted as authoritative legal knowers as long as they conform to the standard of the "benchmark man"); Margaret Thornton, *'Otherness' on the Bench: How Merit Is Gendered*, 29 SYDNEY L. REV. 391 (2007) (arguing that merit in judicial appointments in Australia has been "masculinized" and is not objective).

178. LEWIS A. COSER, GREEDY INSTITUTIONS: PATTERNS OF UNDIVIDED COMMITMENT (1974) (describing "greedy institutions" as those that demand virtually open-ended commitment from their employees); *see also* FIONA ANDERSON-GOUGH ET AL., MAKING UP ACCOUNTANTS: THE ORGANIZATIONAL AND PROFESSIONAL SOCIALIZATION OF TRAINEE CHARTERED ACCOUNTANTS (1998); CYNTHIA FUCHS EPSTEIN ET AL., THE PART-TIME PARADOX: TIME NORMS, PROFESSIONAL LIVES, FAMILY AND GENDER 24 (1999) (discussing macho displays of long working hours); ERVING GOFFMAN, ASYLUMS: ESSAYS ON THE SOCIAL SITUATION OF MENTAL PATIENTS AND OTHER INMATES (1961) (describing asylums as "total institutions" that require inmates to redefine themselves in accordance with institutional needs, changing their behavior and thinking); Fiona Anderson-Gough et al., *In the Name of the Client: The Service Ethic in Two Professional Services Firms*, 53 HUM. REL. 1151 (2000); Gerard Hanlon, *A Profession in Transition?—Lawyers, The Market and Significant Others*, 60 MOD. L. REV. 798 (1997) (describing the ways in which firms are restructuring to serve different needs); Kay & Hagan, *supra* note 94 (noting the relative importance of docketing hours for men and women).

179. SENNETT, *supra* note 8, at 85.

180. Andreas Wittel, *Toward a Network Sociality*, 18 THEORY CULTURE & SOC'Y 51, 71 (2001).

viewed in neo-Weberian terms as an exercise in professional closure, and a gendered discursive device which serves to "other" the outsider.[181]

This interpretation is supported by respondents' recurring complaint about the way in which this model of working tends to set the standard for evaluating practitioners' contributions generally, even in practice areas that do not involve global transactions or the need for fast, overnight turnarounds. The resulting difficulties for women (and an increasing number of men) of combining a legal career and children is encapsulated by the remarks of a female salaried partner: "[W]e lose lawyers as they have children."[182] Her comment tends to endorse a gender discrimination argument made by another woman that the profession remained a male institution so that "women have to adapt . . . to the way things are . . . so they have to become different people in order to function in the workplace."[183] These insights are supported by a recent research finding that, conversely, any indication by men of a desire to achieve work-life balance is viewed as unnatural and a disqualification for partnership.[184] As discussed above, the resilience of such traditional discourses which naturalize women's role as domestic and men's role as "breadwinner" and, relatedly, construct the properties of professionalism, drastically restricts women's access to the most powerful positions,[185] relegating them to feminized specializations[186] which are less remunerative and offer fewer opportunities for career progression.[187] The "natural" equation of corporate law (the most lucrative and prestigious practice area) with masculinity has been accentuated in recent years as a result of the exponential increase in working hours resulting from globalization.

It is therefore possible to perceive a nexus between the structural properties and practices of the profession, such as long working hours and obligatory (alcohol-fueled) socializing, mentoring, and rainmaking, and the outsider's (voluntary or involuntary) lesser participation in these practices. Lack of participation confirms her as a professional outsider, or, if she does participate in such practices, as transgressive,[188] either of which may disqualify her from being considered merit-worthy.

CONCLUSION

The introduction to this Article suggested that the story of globalization could be narrated as one of incremental progress towards a meritocratic future in which, following Giddens, it is possible for individuals to make

181. *See* Sommerlad, *Gendering*, *supra* note 74 (discussing the patriarchal character of commitment).

182. LSB STUDY, *supra* note 68, at 48.

183. *Id.* (omission in original).

184. *See, e.g.*, COLLIER, *supra* note 122; Sommerlad, *Women Solicitors*, *supra* note 74.

185. *See generally* ANNE WITZ, PROFESSIONS AND PATRIARCHY (1992).

186. For a discussion of "nurturing roles" and their impact in the practice areas, see generally PIERCE, *supra* note 52; Margaret Thornton & Joanne Bagust, *The Gender Trap: Flexible Work in Corporate Legal Practice*, 45 OSGOODE HALL L.J. 773 (2007).

187. *See* THORNTON, *supra* note 143, at 275–86; Bolton & Muzio, *supra* note 74, at 58.

188. *See* Rhode, *supra* note 27, at 1051.

their own luck.[189] This is the discourse of the classless, post-racial, post-gender society, which finds its counterpart in human capital explanations of labor market segmentation. In support of this approach, it could be argued that the multicultural nature of globalized businesses and their clients should, as DM suggests, encourage a genuinely positive valuation of "difference." Indeed, globalization and DM have made diversity a key criterion for establishing the legitimacy of social institutions. Another direct result of globalization has been the opening up of higher education, thereby diversifying the legal profession's supply base. Globalization has also transformed the corporate legal sector, introducing capitalist relations, new discourses of meritocracy, diversity, and new practices, including competency frameworks, designed to reduce discretionary practices and widen participation.

Other students of globalization, however, point to the increased inequalities it has generated, and suggest that its benefits are reserved for an elite few.[190] For instance, Sennett argues that the flexible capitalism generated by globalization has resulted in a world of work that for most people is highly unstable.[191] The relevance of his argument for the legal profession in both the United Kingdom and the United States is supported by research evidence of the impact of globalization on work processes—which includes restructuring, outsourcing, systematization, and routinization. As a result, whereas law work at the higher echelons of the profession is increasingly concerned with networking and commerciality, placing a premium on social and cultural capital, at the bottom there are a large number of "McJobs." In the United Kingdom, these jobs are being filled by law graduates from the "new" universities (which have the largest concentration of lower class and BME students), who, as a result, may never gain the training contract that they require if they are to qualify as solicitors.[192] Instead they form a professional "precariat,"[193] a reservoir of paralegal workers with technical skills and knowledge, but whose "inferior" credentials[194] legitimate their lowly and insecure status and identity.[195]

189. *See* GIDDENS, *supra* note 13, at 30.

190. *See generally* BAUMAN, *supra* note 10; Barbara Ehrenreich & Arlie Russell Hochschild, *Introduction* to GLOBAL WOMAN: NANNIES, MAIDS, AND SEX WORKERS IN THE NEW ECONOMY 1 (Barbara Ehrenreich & Arlie Russell Hochschild eds., 2002).

191. SENNETT, *supra* note 8, at 9–10.

192. In order to qualify as a solicitor in England and Wales, a law graduate must also undertake vocational training, which is accredited by the Law Society (the professional body). This comprises two stages: the Legal Practice Course and the training contract. The Legal Practice Course is a full-time, one-year course. After completing the course, the aspiring solicitor must complete a two-year training with an accredited legal employer, generally a law firm. These training contracts are the equivalent of the pupillages, which the aspiring barrister must obtain in order to qualify. The great difficulties in obtaining both forms of vocational training make them major barriers to qualification. *See* Francis & Sommerlad, *supra* note 138, at 66–68.

193. *See generally* Loïc Wacquant, *Logics of Urban Polarization: The View from Below*, *in* RENEWING CLASS ANALYSIS 107 (Rosemary Crompton et al. eds., 2000).

194. The evaluation of these qualifications as inferior, and, correspondingly of credentials from elite institutions as unquestionably "meritorious," and certainly the assumption that these credentials signify one's potential success as a lawyer, is open to challenge. *See*

Higher up in the law firms' hierarchies, we find women and BME lawyers from higher-ranked universities who also remain locked out of the top positions.

We could draw on all five of the theoretical frameworks outlined earlier to interpret this labor market segmentation. Thus we might explain it in terms of lawyers' active choices and/or capital deficit, and respondents *did* describe many acts of agency. For instance, an African-Caribbean woman explained that her experience of discrimination at a large corporate law firm had caused her to leave for a small legal aid practice where she felt she would be treated more fairly.[196] This account, however, also evokes discrimination theory's argument that gender, racial, and class processes and practices work to frustrate equal opportunity initiatives. Additionally, it exemplifies how elites can actively resist challenges to their positions through professional closure. The data also support Bourdieu's insights into how the logic of a social field results in the misrecognition of outsiders' merit, reproducing and legitimating existing hierarchies.[197] Or we might give primacy to the role of traditional discourses—which construct non-normative lawyers in terms of, for instance, their culture, or their "biological destiny," making them incapable of being considered for the highest positions[198]—in allocating McJobs and other routine forms of work to these lawyers and paralegals.

In the case of the English profession, these various explanatory models of the persistence and exacerbation of inequality in the profession should be supplemented by emphasizing the cumulative and contested nature of processes of social change. Globalization has not erased traditional authority and social closure[199]: the modern discourse of merit rather overlays it like a palimpsest. Consequently, the character of the contemporary corporate sector of the solicitors' profession in England and Wales is a complex mix of the old and the new.[200] The (often successful) resistance to diversification mounted by dominant groups exercising traditional authority means that modern approaches to recruitment and promotion not only coexist with pre-modern, and therefore apparently

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Wilkins & Gulati, *supra* note 48, at 526–27. *See generally* Sommerlad, *Researching and Theorizing*, *supra* note 74.

195. *See* Sandefur, *supra* note 102, at 540.

196. LSB STUDY, *supra* note 68, at 25.

197. *See supra* notes 94–98 and accompanying text.

198. *See generally* Bronwen Rees & Elizabeth Garnsey, *Analysing Competence: Gender and Identity at Work*, 10 GENDER WORK & ORG. 551 (2003) (describing how female managers' qualities and contributions may not be properly recognized under current methods of review, resulting in inequitable selection for promotion).

199. As Abbott argues, futures, pasts, and presents are interwoven; the present is therefore composed of a range of temporalities. ANDREW ABBOTT, TIME MATTERS: ON THEORY AND METHOD (2001).

200. This interaction between the inequalities generated by globalization and, in the United Kingdom, a reinvigoration of the significance of class, suggests that we cannot generalize about the character and future development of the globalized legal profession. Therefore, our understanding of how the claims of non-normative professionals are being resisted should be informed by comparative research into diversity in the corporate legal sector in the United Kingdom and United States.

antagonistic, forms of social organization, they may even strengthen them. It is therefore possible for globalized institutions and cultural practices to be permeated by residual elements of patronage, where obligation and affinity do not merely trump merit, but are actually taken as representing it. As a result, modernizing initiatives such as DM cannot be read as purely progressive; in practice, they are capable of sustaining existing power relations and disguising the class, gender, and race relations on which these rest. The capacity both for individual reflexivity and institutional democratization is in conflict with the imperative to deny that the social order is anything but inevitable,[201] a position that depends on the conceptualization of outsiders as inherently inferior and unsuited to higher professional jobs.[202]

In summary, to remake one's identity as a successful legal professional in the globalized profession requires the possession of both "excellent" human capital and cultural resources. The valuation of resources, however, as representing cultural capital remains in the hands of existing power elites. Clearly, some exceptional individuals who give convincing evidence of their differentiation from their category are able to establish the cultural value of their resources, and exploit the discourses of meritocracy and DM associated with globalization. For subordinated groups in general, however, globalization is not generating social mobility and equality. Instead, outsiders' diversity is constructed as "deficit," qualifying them to be lesser professionals who constitute the reservoir of transient labor that the globalized legal professionalism requires.

201. *See generally* LOIS MCNAY, GENDER AND AGENCY: RECONFIGURING THE SUBJECT IN FEMINIST AND SOCIAL THEORY 29 (2000).

202. In a final example, it was reported in November 2011 that the proportion of female partners in Magic Circle firms has barely changed in five years, rising from 22 percent to 23 percent. *See* Jonathan Rayner, *'Long Way to Go' on Diversity, Warn Lawyers*, LAW SOC'Y GAZETTE (Nov. 17, 2011), http://www.lawgazette.co.uk/news/long-way-go-diversity-warn-lawyers. *See generally* SUTTON TRUST, SOCIAL MOBILITY, *supra* note 136; SUTTON TRUST, EDUCATIONAL BACKGROUNDS, *supra* note 136; Rachel Rothwell, *Gazette Survey: Work-Based Discrimination Still Rife, Say Women Solicitors*, LAW SOC'Y GAZETTE (Apr. 14, 2011), http://www.lawgazette.co.uk/news/women-solicitors-work-discrimination-still-rife.