

From university to the legal Bar: how does university attended influence the chances of success for pupillages?

Introduction

Law, and in particular the legal Bar, enjoy an elite position in the professional status hierarchy (Abbott 1988, Bottero 2005). Entry to the legal Bar then requires investigation of two related questions: First, who *should* gain entry to the legal profession? And, secondly, who *actually* enters the legal profession? And, specifically, what role does prior education and specifically prior higher education play in entry to the profession? The Bar Council noted that actual data availability on transitions into the legal profession was unsatisfactory to model entry into the legal profession (The Equalities Review 2007, p. 10; Bar Council 2007, p. 93). An ‘Entry to the Bar working group’ thus recommended as an action point ‘a detailed statistical analysis... to establish whether there are unexplained biases either in favour of or against particular groups of individuals’ (Bar Council 2007: p. 11, rec. 52).

It is this action point that this paper addresses through reviewing theoretical work on access to higher education and access to professions and then through discussing the empirical findings from a study of aspiring barristers.

Theory Review

The Bar Council of England and Wales states that ‘The Bar Council is committed to equality of opportunity, and values the diversity of its membership. Discrimination on grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, age, religion or political persuasion is professional misconduct on the part of a barrister.’

The statement illustrates a strong commitment to meritocracy as the antidote to a society based on ascriptive inequalities, that is the ‘accident’ of being born with particular characteristics or into a particular group such as being male or female or being black or white (Reskin 2003). Instead, talent or merit principle in selection should replace ascribed characteristics, in influencing employment outcomes (e.g. Blau and Duncan 1967; Breen and Goldthorpe 2001).

However, this substitution has various problems. Empirical data show that no contemporary western society has yet broken the link between ascribed characteristics and educational attainment in schools (OECD 2000). Liberal democracies have thus frequently adjusted the equal opportunities requirement to mean that

'people with the same academic aptitude or ability should be given equal access to advantaged sectors of education' (Heath, 2006 p. 3).

Data and Methods

Becoming a barrister requires a three year undergraduate law degree or a one year law conversion course for graduates of other disciplines. This training is followed by a one-year long bar preparation course, called the Bar Vocational Course (BVC) or, since 2010, the Bar Professional Training Course. Afterwards, students have to enrol in a one-year long practical apprenticeship, called pupillage, at a law chamber. The bottleneck in becoming a barrister is the transition between the one-year Bar course and gaining pupillage. The present study investigates who, conditional on having put themselves forward for pupillage, is successful in the competition for a place.

The data used in the study are based on the membership records over a four year period of three of the Inns of Court. The data included members' gender, age, ethnicity, nationality, intend to practice, as well as pupillage and tenancy information. Crucially, most students had also provided their Inns with information regarding their undergraduate degree awarding university and their previous university grades and courses.

The analysis uses bivariate and multivariate (regression) analysis techniques.

Findings

The most powerful predictors of gaining pupillage were the type of university attended, and attainment at university and in the BVC. Those with the highest attainment in their degrees and in the BVC and those who attended the most prestigious universities fared best in the competition for pupillages. There was a strong preference in pupillage allocations for Oxbridge graduates, those with a first-class degree, and with a BVC grade of outstanding. Men and women had indistinguishable chances of gaining pupillage. There was no difference in pupillage success by whether applicants had studied law as an undergraduate degree or undertaken a law conversion course. *Ceteris paribus*, those aged 30 or above who were significantly less likely to gain pupillage than their younger peers.

In the bivariate analysis, ethnic minorities initially appeared to be at a disadvantage in the competition for pupillage. However, this effect became statistically insignificant in the multivariate analysis when simultaneously taking into account ethnic origin and educational attainment. In other words, the findings did

not suggest that ethnic minorities fared worse than white applicants for pupillage on a like for like basis. But this finding also indicates that ethnic minorities competing for pupillages had generally attended less prestigious universities and had not always achieved as highly as white applicants for pupillages.

Interpretation

Interpretation of the findings may vary; both meritocrats and critics of meritocracy may find their case supported in the statistical evidence. Certified talent in the form of educational credentials from particular universities and grades at university and in the BVC were the strongest predictors of gaining pupillage in the data. This could be seen as strong support for the working of meritocracy in entry to the Bar. At the same time, the pattern of what the American sociologist Ralph Turner termed a 'surface meritocracy' is also supported¹.

The idea of a surface meritocracy is that "a graduate legal profession will inevitably reflect the social imbalance within higher education"² and earlier opportunities in education and the family context. For example, previous social research has found that university choice for minority students and those from less affluent families was more susceptible to factors such as living at home and funding regimes than the decision of white and professional class students³. And, different universities provide their graduates with a different environment that, in turn, might play into chances of gaining pupillage. The finding that non-law graduates fared at least as well as the law graduates in the competition for pupillages would lend support to the idea that aside from the factual knowledge acquired during a university experience, universities provide a socialisation in cultural habits, a tacit curriculum, and access to formal and informal networks irrespective of academic discipline. Careers networks with alumni are one such formal resource and likely to facilitate at least access to mini-pupillages; informal networks and imagined communities of having attended the same secondary school or university, have been found particularly useful for getting jobs in other studies⁴.

¹ R.H. Turner, 'Acceptance of Irregular Mobility in Britain and the United States' (1966) 29 *Sociometry* 334-5.

² P. McDonald, 'The Class of '81: A Glance at the Social Class Composition of Recruits to the Legal Profession' (1982) *J. of Law and Society* 267-76, at p. 270.

³ D. Reay, M. David, and S. Ball, *Degrees of Choice* (2005) 162.

⁴ See, for example, R. Dinovitzer, 'Social Capital and Constraints on Legal Careers' (2006) 40 *Law & Society Rev.* 445-80; and B. Bernstein, *Class, Codes and Control. Vol. 3: Towards a Theory of Educational Transmission* (1977, 2nd edn.).

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