

# *Poverty, Privilege and Access to the Legal Profession: Barriers to Equality of Access for Law Students*

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## *Introduction*

How best to obtain a legal training contract? Simple . . . go to a good university, get a 2.1 and have a fantastic personality. (Clifford Chance spokesperson, *The Trainee*, May 2000)

This advice for those aspiring to a career in the legal profession, given by a spokesperson for Clifford Chance, London, rated number one law firm in the UK in 2002, raises important questions about student finance and access to legal education and training, particularly to the most prestigious universities and law schools. These questions are the main focus of this article, which is concerned with the influence of poverty and student financial support on access to higher education and training for law students, their subsequent employment and the wider implications for access to the legal profession.

For the past decade the issue of funding higher education in the UK has proved to be a political roller coaster with the consequence that most who have been subjected to the ride are feeling sick. The introduction in 1998 of annual tuition fees of £1,000, approximately 25 per cent of the average tuition cost, coupled with the conversion of student grants into loans, has made higher education, for some, a privilege.<sup>1</sup> In 1990 student loans were introduced and in 1994 student grants were reduced and then phased out, with the introduction of a new student loan scheme in September 1998. The Labour government thus shifted the funding of university education away from taxpayers and towards students and their parents. This financial restructuring reduces demands on public expenditure, while increasing private costs. The rationale is engagingly simple: graduates benefit by improved employment

prospects and higher salaries. Therefore, they should contribute towards the cost of their education, immediately (through tuition fees, although there is provision for fee exemptions and reductions based on family income) and subsequently (through repayment of student loans).

The influence of family background on access is of major concern. A review of research on ethnic minority pupils (Gilborn and Gipps, 1966) examined the suggestion that access to higher education required being 'male, attending a selective school and having parents in professional/managerial occupations'. However, the government has pledged 'increasing and widening participation, particularly from groups who are under-represented in higher education, including people with disabilities and young people from semi-skilled or unskilled family backgrounds' (DfEE, 1998). These are the very people who come from financially poor backgrounds, and who will be most discouraged by the prospect of massive student loan debt.

The mounting pressure arising out of the contradiction between the removal of grants, the introduction of tuition fees, and the commitment to widening access manifested itself at the highest political level in October 2001, when the government announced a review of the student finance system, including both tuition fees and loans. Two ministers, Estelle Morris, Secretary of State for Education and Skills, and Margaret Hodge, Minister for Higher Education, supported by officials of the Prime Minister's Policy Unit, are involved and scheduled to report in 2002.

It is anticipated that some form of grant or extended 'soft' loan, possibly linked with a graduate tax, will be announced in 2002 to encourage and support students who wish to enter higher education but lack adequate financial means. Such a package is essential if the target of 50 per cent of school leavers for widening participation is to be achieved. Whilst welcoming the review of student support, particularly if it leads to the restoration of some form of grant, this article argues that individual financial support would not, by itself, result in equality of opportunity in higher education, with access and choice of university based on merit, rather than family background. Neither would it ensure that students entering university via the widening access route have genuine access to educational opportunities required by elite sectors of the employment market.

The article focuses on the legal profession, in particular the senior and most profitable sectors of the profession: the top one hundred solicitors' practices and the most distinguished sets of barristers' chambers in London. We demonstrate that elite legal practice is restricted to socially and educationally elite students and graduates. The strength of family background as a determinant of entry to a

professional elite has been frequently demonstrated, for example by C. Wright Mills in Chicago (Mills, 1956). Superior employment opportunities for children of professionals, which sociologists call 'the circulation of the elite', is a current reality in legal education and thereafter in legal practice. It is a continuing and inevitable consequence of a policy that promotes financial support for the individual as the sole appropriate response to the present educational challenge. Adequate financial support is certainly necessary, but to regard it as sufficient, by itself, is myopic and will fail to ensure equality of access and opportunity. More imaginative policies, extending beyond financial student aid, are needed not only to ensure increased entry into higher education but to enable the less privileged to enter elite universities and law schools.

*Effects of poverty and privilege on university entrance*

Poverty limits the educational possibilities of those otherwise capable of graduating from university. People are shackled or promoted by their family histories. Important research by Halsey, Heath and Ridge (1980) demonstrated that nearly a quarter of pupils from professional backgrounds went to private schools, compared with less than 2 per cent from a manual background, confirming that 'the education of the child tends to resemble that of the parent, and that those who obtained privileged forms of education themselves are also more likely to secure it for their children' (Halsey, Heath and Ridge, 1980: 53). Croxford's research (2000) indicated a higher proportion of independent school pupils with professional and highly educated parents, while Heath and Jacobs observed:

Research had shown that pupils' chances of gaining a place at grammar school did not depend solely on their intellectual ability but was also influenced by their social origins, the type of primary school they attended and the area in which they lived . . . Pupils tended to be segregated into different types of school by their social class origins . . . Children from middle class backgrounds have always had superior chances of access to private schools and continue to do so. (Heath and Jacobs, 1999: 16)

Students in elite law schools, solicitor firms and barristers' chambers come overwhelmingly from the higher social classes. This may be, to some extent, attributable to superior educational achievement and a higher standard of education. Private schools educate 7 per cent of the nation's children, but account for one-third of students achieving three A grades at A level (Woodward, 2000). The Sutton Trust analysed access to 'elite' universities

(defined as the top thirteen universities based on average ranking in newspaper league tables),<sup>2</sup> using statistics from the Higher Education Funding Council for England (HEFCE, 1999) on actual university entry compared with benchmark statistics showing 'what the numbers should be, based on entry qualifications and subjects taught at the institution' (Sutton Trust, 2000: 4). The findings are dramatic: (i) children from independent schools account for 7 per cent of the school population and for 39 per cent of the entry to top universities, compared with a benchmark of 28 per cent; (ii) children from less affluent social classes account for 50 per cent of the school population and only 13 per cent of entry to top universities and children who live in poor areas account for 33 per cent of the population but only 6 per cent of top university entry, both much lower than the benchmarks; and (iii) the chance of getting into a top 13 university is approximately 25 times greater if you come from an independent school than from a lower social class or live in a poor area and is about double what it should be (Sutton Trust, 2000: 1).

The picture is even worse for the 'top five' universities (including Oxford and Cambridge and the three top London institutions), with pupils from independent schools (7 per cent of the school population) accounting for nearly half the entrants to the top five universities, compared with the 10 per cent who come from less affluent families (50 per cent of the school population).<sup>3</sup> Lampl, writing in *The Times* (10 April 2000) concluded that 'it is far harder to get the grades you need to get into a top university if you are at a state school and are from a less affluent background', and described this as 'a mindless waste of talent' (Lampl, 2000); the Sutton Trust study concluded that 'the field from which the country recruits its future elite turns out to be extraordinarily narrow' (Sutton Trust, 2000: 2).

The figures for law are equally disturbing: Halpern (1994: 27) showed that 45 per cent of law undergraduates at Oxford and Cambridge (Oxbridge) were from independent schools compared with 18 and 26 per cent in new and old universities respectively. At new universities 56 per cent of law undergraduates were from comprehensive and modern schools, but 56 per cent of those taking the Common Professional Examination (CPE)<sup>4</sup> at the College of Law were from independent schools. For the CPE at other institutions, the percentage is even higher (73 per cent). Nationally, 6 per cent of pupils study at independent schools and 17 per cent of university students come from independent schools, but 31 per cent of law students come from independent schools.

Within Wales a similar pattern of educational disadvantage exists. Gorard (2000) examined inequality in Welsh schools, including analysis of differences

in attainment of Welsh school pupils by social class.<sup>5</sup> More recently, he and Taylor analysed participation of Welsh students in higher education (Gorard and Taylor, 2001; Taylor and Gorard, 2001), drawing on a study by the Higher Education Funding Council for Wales (HEFCW, 2000) and their own analysis, both comparing the 'actual' number of students from different areas of Wales with the 'expected' number from that area (based on national averages). This shows vast differences between different areas of Wales: Taylor and Gorard (2001) calculate that in 1995/6 wards with the greatest percentage of 'income deprived' households had only 51 higher education students per 1000 population, compared with 155 in wards with the smallest number of 'income deprived' households (Taylor and Godard, 2001: 67).<sup>6</sup>

*University law schools and their students*

In Wales there are five degree-awarding law schools: Aberystwyth, Cardiff, Glamorgan, Swansea and Swansea Institute. In October 2000, one of the authors, with colleagues, published a survey of 550 first-year law students in these institutions (Rees, Thomas and Todd, 2000). Students at Aberystwyth and Cardiff had the highest percentage of graduate fathers (38 and 35 per cent respectively) and graduate mothers (27 and 26 per cent). At Swansea Institute, on the other hand, the figures for graduate fathers and mothers were 16 and 8 per cent. Parents in social class I constituted 33 per cent at Aberystwyth compared with 9 per cent at Glamorgan and 7 per cent at Swansea Institute. In terms of geographical mobility, only 30 per cent of Aberystwyth students have permanent addresses in Wales, whereas the Wales-based law students at Glamorgan and Swansea Institute represented 67 and 84 per cent of the student cohort. The pattern indicates that the older and more prestigious law schools select from a pool that is geographically more widely based, but more limited in terms of family background, with students from social class I more dominant than in other Welsh law departments.

More generally, evidence in *Social Trends* (2000) shows that young people in Britain aged sixteen or over, whose parents were in professional and managerial occupations, were far more likely to be still in general education than those whose parents were in unskilled manual occupations (89 per cent compared with 60 per cent). An article in *The Times* (O'Leary, 2001) showed that the participation rate of young people from professional homes has increased over the years from 61 per cent in 1995 to 72 per cent in 1998. However, the participation rate of lower social groups in higher education has more or less

remained unchanged. In 1994 only 1.7 per cent were accepted to degree courses from social class V; this figure remained effectively unchanged in 1998 (Tonks, 1999).

In summary, entry to university, particularly to the more prestigious law schools, is not an automatic process based exclusively on educational attainment. Poverty impacts negatively on opportunity and development. It is capable of defeating knowledge, ambition and ultimately achievement. Poor families are not the same as rich families – and the difference is not merely that they operate with less money. At the start of the new millennium poverty remains a national disgrace. A UNICEF survey of child poverty in industrialized nations (UNICEF, 2000) showed that nearly 20 per cent of children in the UK are rated as living in relative poverty, with 29 per cent living in families with incomes below the official poverty line. While the number of children in poverty has remained stable in other industrial nations over the past twenty years, it has tripled in the UK. Children in lone families are nearly three and a half times more likely to fall prey to poverty and a child living in a household where there is no working adult is four times more likely to experience poverty. In our survey, a Cardiff student commented that ‘the introduction of tuition fees, alongside the abolition of grants inevitably leads to an even bigger class divide and results in more people being unable to even contemplate university as an option’. Such is the challenge facing the current government with its commitment to widening participation into higher education.

#### *Law student performance and vocational training*

There is evidence that law degree results reflect consistently higher marks at Oxbridge and at the old universities than at the new universities. Oxbridge law students are eight times more likely than new university students to gain a first-class degree, while law students at old universities are twice as likely as those from new universities to obtain a first-class degree.

After graduation all students wishing to practise law, as either a solicitor or a barrister, are obliged to complete successfully one year of vocational training. This is followed by either pupillage of one year (for a career as a barrister) or solicitor’s training for two years. Both these periods now attract a compulsory employment salary, but the period of vocational training is not supported by state grants. The high private costs of undergraduate studies (estimated by the National Union of Students (NUS)) to be around £22,000 outside London for 2001) leave many graduates with large debts. Average debt is estimated by the NUS to be between £10,000 and £15,000. In addition, law students must also

finance a fourth year of vocational training. The Bar Council has estimated that this pushes up indebtedness to as much as £25,000. Given the magnitude of this debt, and the fact that the main source of financing undergraduate studies is now parental contributions or student loans, the low representation of law students from underprivileged backgrounds is understandable.

*Vacation and semester employment*

Underprivileged students are more likely to undertake paid employment during term time than those from better-off families.<sup>7</sup> It is generally accepted among teaching staff that those students who are obliged to juggle paid work and university studies will often achieve poorer results which reflect the difficulties of this juggling act (see, for example, Humphrey, 2001). A recent study by a Scottish university (Cuthbert and Parmar, 2001) found that working more than ten hours a week affects a student's academic performance. The Welsh law school study (Rees, Thomas and Todd, 2000) indicates that 65 per cent of law students at the University of Glamorgan intended to undertake part-time employment while they studied, compared with 36 per cent in Aberystwyth, which, as already noted, reported a significantly higher percentage of students (77 per cent) from social classes I and II than the University of Glamorgan.

Professionally relevant vacation work experience is increasingly perceived by employers as an early but important sign of commitment to legal practice. Students gaining work experience with a solicitor or barrister, often unpaid or low paid, are most commonly from independent schools and Oxbridge; students whose parents have a degree or professional qualification are most likely to gain legal work experience (Shiner and Newburn, 1995). Furthermore, this study, conducted on behalf of the Law Society of England and Wales, demonstrated that 63 per cent of those who gained vacation experience with a solicitor were offered a training contract. Of those who had taken a mini-pupillage with a barrister, 62 per cent were subsequently offered pupillage. Another study (Bermingham and Hogson, 2001) reveals that 59 per cent of solicitors are employed in the firm where they trained. However, the Law Society's cohort study (Shiner and Newburn, 1995) reveals that 43 per cent of students did not take up legal work experience because of financial constraints. Instead, they were obliged to undertake paid employment during the vacations at a market salary.

When we examine the percentage of students offered a training contract, we find a bias in favour of those whose parents obtained a degree or

professional qualification, as well as those from independent schools, Oxbridge and old universities. The study shows that 88 per cent of Oxbridge graduates were offered a training contract compared with 32 per cent from new universities, while 70 per cent of students from independent schools and 66 per cent of those whose parents had a university degree or professional qualification were offered a place, compared with 48 per cent of those whose parents did not have a university degree or qualification. The statistics are similar to those securing pupillage. Oxbridge graduates on average constituted half the number of applications for pupillage, of whom 82 per cent gained a pupillage, whereas only 37 per cent of graduates from new universities secured a pupillage. (Shiner and Newburn, 1995).

*Subsequent employment in the legal profession*

Examination of the background of law graduates and their subsequent employment destinations in the legal profession reveals that students from state schools whose parents did not have a degree or qualification are more likely to work in High Street practices than in City of London or large provincial firms (Shiner and Newburn, 1995). This finding is supported by work undertaken on the wider graduate employment market by the Institute of Fiscal Studies which concluded: 'while test scores do not matter, family background and local neighbourhood characteristics do' (Dearden, Ferri and Meghir, 2001). Thus, as the above data indicate, Oxbridge law graduates are sixteen times more likely to be in City firms than those from new universities. Trainees from new universities are five times more likely to be in High Street practice compared with their Oxbridge counterparts.

These recruitment patterns are not new. A survey by Brunel University in the late 1980s (Ahrends, 1990) indicated that one-third of articled clerks in commercial firms in England and Wales graduated from Oxbridge, whereas only 6 per cent of articled clerks in commercial firms came from polytechnics and colleges, which produced 30 per cent of law graduates in England and Wales.

The background and employment placement of law graduates means that the underprivileged face a paradox when seeking to join the legal profession. Elite law firms and chambers do not seek actively to discriminate in an unlawful manner in their recruitment. An article in *Legal Week* observed that 'Nobody is suggesting that law firms overtly discriminate against . . . those from less privileged backgrounds . . . but certain factors make it more difficult for those without private means to enter the legal profession' (Bedlow, 2000:



42). This does not imply that law firms are, or should be, driven by affirmative action or social engineering. They seek to appoint people who will be effective in the workplace. Nevertheless, in practice, their criteria for selection ensure dominance of a privileged group. Legal work experience in vacations, a good university, high grades, education at independent schools, personal self-confidence at selection interviews: these characteristics and opportunities are strongly associated with a certain class of university entrant, as the evidence presented above demonstrates.

Another article in *Legal Week* (Blanchard, 2001) claims that ‘once you actually get into practice, no-one is interested in where you studied or what your qualifications are’. However, considering the impact of poverty and social disadvantage on opportunities and the performance of law students, together with current recruitment practices in the legal profession, certain groups of students are effectively excluded from elite legal practice that leads to the highest incomes and the greatest opportunities to join the ranks of the judiciary. This is particularly undesirable within the legal profession, which deals with all sectors of society. A working party of the General Council of the Bar wrote: ‘whilst we do not consider it imperative that the Bar should mirror society demographically in some precise and quantifiable way, it does appear to us important that the Bar should not be socially or culturally isolated from the people with whom it deals’ (Goldsmith, 1998: 20).

### *Conclusion*

Socio-economic disadvantage has a definite impact upon a student’s choices and ultimate achievements. Recognition of this suggests that there should be special provisions for entry into good-quality universities and thereafter the provision of appropriate support within the institution. Having identified that the solution to achieving widening participation is not solely a question of financial support for poor students – whether in the form of grants or subsidized student loans – we must ask what more could be done. The law school at Bristol University has embarked upon a bold experiment. It ring-fenced a limited number of places which are reserved for students from underachieving local schools. For students who display commitment and interest, but who fail to achieve the demanding A-level grades required to enter that law school, the points requirement is lowered, and extra pastoral support is offered to them. It is too soon to draw categorical conclusions on the outcome of this experiment, but interim results are encouraging.<sup>8</sup> If it is established that such students graduate from this elite law school with marks

that compare favourably with those of entrants from independent schools, with higher A-level grades, then a case can be made to expand the experiment into other elite law schools and, indeed, other disciplines. This scheme seeks to provide opportunities for the underprivileged to enter an elite law school and thereafter the elite branches of law. The alternative scenario is that widening participation in higher education will result in the underprivileged being educated only in those law schools that are ignored and undervalued by elite practitioners. Not only will the students remain undervalued: the legal profession itself will be the loser.

### Notes

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<sup>1</sup> This conflicts with the International Covenant on Economic, Social and Cultural Rights, art. 13.2 (c), which states that access to higher education should be determined by individual capacity and equal access should be secured through the progressive introduction of free education.

<sup>2</sup> These include Oxford and Cambridge, Imperial College and University College London, London School of Economics and the Universities of York, Warwick, Bristol, Nottingham, St Andrews, Birmingham, Edinburgh and Durham.

<sup>3</sup> See also Jary and Thomas (2000).

<sup>4</sup> These are graduates who take a one-year conversion course in law in order to qualify for Part Two of the Professional Training Examinations.

<sup>5</sup> See the Reviews Section of this issue for a review of this book

<sup>6</sup> See Taylor and Gorard (2001) for definitions, and see the *Western Mail*, 11 April 2000, for a report on the HEFCW (2000) study.

<sup>7</sup> See, for example, 'Hard Labour', *Guardian Education*, 30 October 2001.

<sup>8</sup> See *Socio Legal Association Newsletter*, 31, August 2000, 13.

### References

- Ahrends, J. (1990). 'The Oxbridge advantage', *The Lawyer*, 4 (25), 13.  
Bedlow, D. (2000). 'Brave new world or old school tie?', *Legal Week*, 2 (38).  
Bermingham, V. and Hogson, J. (2001). 'Desiderata: what lawyers want from their recruits', *Law Teacher*, 35 (1), 1.  
Blanchard, C. (2001). 'Scotching the Oxbridge myth', *Legal Week*, 3 (12) Supplement (Student Special), 35.

- Clifford Chance Spokesperson, *The Trainee*, May 2000.
- Croxford, L. (2000). 'Inequality in attainment at age 16: a home international comparison', CES Paper no. 19, Edinburgh, Centre for Educational Sociology (CES).
- Cuthbert, M. and Parmar, D. (2001). 'The fallout from debts', *The Times*, 16 October.
- Dearden, L., Ferri, J. and Meghir, C. (2001). 'The effect of school quality on educational attainment and wages', London, The Institute for Fiscal Studies.
- Department for Education and Employment (DfEE) (1998). *Higher Education for the 21<sup>st</sup> Century*: Response to the Dearing Report, DfEE Press Release, 581/98, 16 December.
- Gilborn, D. and Gipps, C. (1996). *Recent Research on the Achievements of Ethnic Minority Pupils*, London, Office for Standards in Education.
- Goldsmith, P. (1998). *Investing in the Future: Report of the Working Party on Financing Entry to the Bar*, London, General Council of the Bar, Education and Training Committee.
- Gorard, S. (2000). *Education and Social Justice: The Changing Composition of Schools and its Implication*, Cardiff, University of Wales Press.
- Gorard, S. and Taylor, C. (2001). *Student Funding and Hardship in Wales: A Statistical Summary*, Cardiff, Independent Investigation Group on Student Hardship and Funding in Wales.
- Halpern, D. (1994). *Entry into the Legal Profession*, Research Study No. 15, London, The Law Society.
- Halsey, A. H., Heath, A. F. and Ridge, J. M. (1980). *Origins and Destinations: Family, Class and Education in Modern Britain*, Oxford, Clarendon Press.
- Heath, A. and Jacobs, S. (1999). 'Comprehensive reform in Britain', Working Paper No. 72, Oxford, Centre for Research into Elections and Social Trends (CREST).
- Higher Education Funding Council for England (HEFCE) (1999). *Performance Indicators in Higher Education 1996–97, 1997–8*, Bristol, HEFCE.
- Higher Education Funding Council for Wales (HEFCW) (2000) *Participation Rates for Welsh Students in Higher Education within the UK during 1997/8*, Cardiff, HEFCW.
- Humphrey, R. (2001). 'Working is a class issue', *Times Higher Education Supplement*, 19 January, 16.
- Jary, D. and Thomas, L. (2000). 'The case of Laura Spence: elite universities in the UK', *Widening Participation and Lifelong Learning*, 2 (2).
- Lampl, P. (2000). 'The scandal of bright children turned away by our top universities', *The Times*, 10 April.
- Mills, C. W. (1956). *The Power Elite*, New York, Oxford University Press.
- O'Leary, J. (2001). 'Students to pay extra tax if grants restored', *The Times*, 4 October, 14.
- Rees, A., Thomas, P. A. and Todd, P. (2000). *Law Students: Investing in the Future*, Cardiff, Cardiff Law School.
- Shiner, M. and Newburn, T. (1995). *Entry into the Legal Profession*, Research Study No. 18, London, The Law Society.

*Social Trends*, 2000. London, The Stationery Office.

The Sutton Trust (2000). *Entry to Leading Universities*, London, The Sutton Trust.

Taylor, C. and Gorard, S. (2001) 'Participation of Welsh students in higher education, 1995/6 to 1998/9', *Welsh Journal of Education*, 10 (2), 55–71.

Tonks, D. (1999). 'Access to higher education, 1991–1998: using geodemographics', *Widening Participation and Lifelong Learning*, (2).

UNICEF (2000). *Child Poverty in Rich Nations*, New York, United Nations Children's Fund (UNICEF).

Woodward, W. (2000). 'Top universities waste state school talent', *Guardian*, 5 June.