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**“They’re not all bastards”: Prospects for gender
equality in the UK’s elite law firms**

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Abstract

Recent analyses of gendered disadvantage within the legal profession have framed women's exclusion as a defence mechanism practised by traditional elites determined to maintain their privilege. Whilst acknowledging that women are often confined to lower paid or marginalised positions, this paper uses qualitative data collected in five corporate law firms in the City of London to question the motives for women's disadvantage and the mechanisms by which it is achieved. It argues that neo-Weberian analyses focus on internal organisational regimes as though these are separate to external factors, and simplify the complex interplay between structure and agency. As such they underplay the relational nature of the professional project. This paper unites factors occurring at the individual, organisational/institutional and macro level. It concludes that progress towards parity at senior levels in these firms is possible, but may be achieved through adjustments that are indirectly related to the pursuit of gender equality.

KEYWORDS: Equality, Diversity, Gender, Law Firm, Social Closure, Weber

Introduction

The careers of women within the legal profession have been under close scrutiny during the past thirty years (Brockman, 2001; Epstein, 1991; Hagan & Kay, 1995; Harrington, 1993; Law Society, 2004a, 2004b, 2004c; 2004d; MacCorquodale & Jensen, 1993; McGlynn, 1999; Menkel-Meadow, 1995; Rosenberg et al, 1993; Silius, 2003; Sommerlad, 2002; Sommerlad & Sanderson, 1998; Wass & McNabb, 2003). Particular attention has been centred on women practising within corporate and commercial law firms (Sommerlad, 2002; Sommarlad & Sanderson, 1998), including

those located in the 'urban glamour zone' of the City of London (Sassen, 2001, p. 275). During this period the globalisation of financial markets, along with a number of rapid changes to the legal landscape, have had a profound effect on workplace cultures at these firms.

These changes are both the cause and effect of consolidation and expansion within the sector, with the latter fuelled by the growing centrality of English law in international transactions and, until recently, a booming economy. Today the UK's top 100 leading firms (by turnover) employ almost a quarter of all solicitors practising within the UK's legal sector as a whole. This expansion has been fed by an influx of women into the profession, as a result of which the total legal staff at most elite firms is now evenly split by gender in the more junior ranks. Indeed, many of these firms nowadays recruit more women than men at trainee level, a figure that reflects the fact that more than six in ten enrolments to the Law Society and more than six in ten training contracts across the profession are awarded to women (Law Society, 2010).

Despite this, as a body of previous work has demonstrated, women typically comprise under 25 per cent of the partnership in elite firms (BSN, 2008). They also tend to be more heavily concentrated in part-time work, outside the leading commercial firms and in certain practice areas, specifically those that are non-transactional and lower paid, such as private client or employment (Bolton & Muzio, 2007). A number of scholars have employed a neo-Weberian analysis of the professional project in order to understand gendered and other forms of disadvantage within the legal sector (Abel, 1988, 2003; Ackroyd & Muzio, 2007; Muzio, 2004). This suggests that closure regimes have historically become the

'means through which theoretically inexhaustible knowledge resources become socially finite' (Larson, 1977, p. 223). Such practices are said to maximise economic rewards and the social value connected to the professions' work, and involve the enforcement of a body of covert and overt rules that legitimise monopolistic practises and sanction exclusionary dynamics (Murphy, 1988).

Building on this work, Bolton and Muzio (2007; 2008) have put forward a comprehensive and detailed analysis of gendered disadvantage within the legal sector, based on previous research conducted by a range of scholars, and on historical analysis of Law Society data (Law Society SRU, 1983 – 2003, augmented by other Law Society surveys). They argue that, despite more meritocratic entry requirements which have led to the mass feminisation of the sector, 'internal (or organizational) closure regimes (which dictate access to partnership and certain prestigious segments of the profession) are still dominated by informal and gendered criteria which facilitate the exclusion of women solicitors' (2007, p. 49). In this analysis, the ideology of women's difference is employed as an exclusionary 'defence mechanism' by an embattled profession which has lost control over who gains entry and gendered disadvantage is interpreted directly in relation to the ongoing structural reorganisation of law firms.

This article contributes to this debate, based on in-depth, inductive empirical research conducted in four of the UK's top 20 firms (by turnover) and one major US law firm, all of which are located in the City of London. This research supports previous analyses which attribute women's disadvantage within the legal profession to a range of interlocking structural and cultural characteristics. However, it deviates

from neo-Weberian analyses by questioning both the precise motives assigned to exclusionary practices in this model, and the mechanisms by which this is achieved. Two closely related themes tie these issues together. The first is that these analyses argue that women's exclusion is the result of internal (organisational) regimes, yet simultaneously conflate these regimes with a range of individual and external factors that are beyond the law firm's sole control. Second, these analyses do not sufficiently capture the complexity of structure versus agency in this arena (Syed and Ozbilgin, 2009). One result is that they mistakenly award almost limitless agency to the dominant to dictate the structure and culture of their organisations, but almost no agency to the dominated to challenge either (Sewell, 1992).

In contrast, this article argues that in order to develop a better understanding of the barriers to gender equality it is essential to employ a holistic approach. Both the factors that contribute to women's exclusion and those that are likely to help remove these barriers are the result of a complex interplay of processes occurring at the individual, organisational/institutional and macro level. With this in mind, the article begins by summarising previous analyses of gender disadvantage in the UK legal profession. The particular emphasis here is on Bolton and Muzio's work (2007; 2008), which itself builds its argument on a synthesis of previous scholarship. It then describes the design of this study into five elite law firms, none of which has more than 15 per cent female equity partners. The main empirical section examines how and why this situation comes about. The article concludes by discussing the prospects for change.

Structured lives or free choices in the UK's legal sector?

As noted in the introduction, during the past twenty years a substantial body of literature has focused on gendered disadvantage within the UK legal profession. This has tended to focus on the culture and effect of long hours, along with a range of exclusionary practices which support gender-typing and discrimination, and which construct the professional organisation as a gendered place. Bolton and Muzio (2007) draw on this literature alongside statistical data made available by the Law Society (Law Society, SRU, 1983-2003, augmented by other Law Society data), which captures key moments in a solicitor's career path.

According to Bolton and Muzio (2007) the influx of women into the legal sector has fulfilled a need for an expanded workforce but has simultaneously contributed towards a crisis, as an artificially constructed skills scarcity has been eroded, and traditional elites struggle to retain their existing rewards. The response has been to increase leverage ratios and surpluses, which describes a consistent and long-term tendency towards an increasing proportion of salaried professionals to partners. By exploiting more junior lawyers in this way, partners have been able to maintain a tight grip on the equity and simultaneously grow their profits. Feminised segments are said to provide a 'reserve army with lesser terms and conditions' without 'rocking the partnership promotion system' (2007: 50). Whilst the use (and abuse) of female lawyers is not considered a deliberate policy in this context, Bolton and Muzio (2007) argue that it has however been used in a defensive fashion in order to fulfil these goals.

Accepting this requires that we understand being a professional and being a women as active processes. To support their argument here, Bolton and Muzio (2007) draw on Strauss' (1975) 'process model' of the professions and Davies' (1996) 'gender as process.' The former describes a model in which the varied identities, values and interests within any one profession will coalesce in particular segments, each of which pursues different objectives in different manners. These segments are ultimately controlled by an elite group, giving a false impression of a united profession which actually represents the 'historical deposits of certain powerful segments' (Strauss, 1975, p. 21). The authors add to this an understanding that these segments are often divided along gender lines, and will therefore organise themselves according to binary oppositions of masculine and feminine qualities. In further support of this position, the authors call on Davies' (1996, p. 53) description of gender as an 'active and continuing process.'

The authors describe a typology of internal closure mechanisms within the profession. These include *vertical stratification*, *horizontal segmentation* and *sedimentation*. Vertical stratification is achieved in part through an active emphasis on the notion of commitment, which acts as a powerful auto-exclusionary mechanism for women who are unable to display appropriate levels of dedication as defined by men (Sommerlad & Sanderson, 1998). Bolton and Muzio (2007) quote Sommerlad's (2002, p. 220) finding that the profession practises a 'macho mythologizing of the heroic value of long hours' and that long hours 'are presented as natural or as evidence that its most enthusiastic exponents have balls'. They also refer to Hanlon's 'new lads culture', reference the requirement to become involved in extended drinking sessions with male clientele, and note that 'the capacity to bring in

clients and to generate business for the firm, is increasingly replacing seniority and technical competence as the main avenue for career progression' (2007, p. 56).

With regard to horizontal segmentation, again drawing on previous research (Davies, 1996; Brockman, 2001; Sommerlad, 2002), Bolton and Muzio argue that certain areas such as family and personal injury are ascribed typically feminine traits, and constructed as women's work, whilst other areas are 'cordoned off as male domains' (2007, p. 57). These latter areas are 'defined in terms of stereotypically masculine traits such as rationality, aggressiveness, ruthlessness and a cold calculating logic, and their boundaries are entrenched and fortified in a nexus of masculine rituals and symbols' (2007; 57). Sedimentation is achieved as women 'become organized, and organize themselves, into 'enclaves' and so the cycle goes on' (2007, p. 59). Whilst it is acknowledged that the process model of the professions may be sporadically disrupted, the core argument remains that female lawyers may only achieve success within the corporate sector if they 'draw heavily on the symbolic resources of the male lawyer and behave like their male counterparts' (2007, p. 60). The remainder of this paper examines these assertions.

Methodology

Scope

The research presented here focuses specifically on elite firms physically located in the City of London. This is a contrast to some previous analyses including that provided by Bolton and Muzio (2007), which take as their canvas the entirety of the UK legal profession. However, as several scholars have demonstrated though with different conclusions, the profession is not a structurally or culturally coherent entity

(Sommerlad, 2002; Silius, 2003; Hanlon, 1997). Most relevant in this context, Bolton and Muzio (2007) describe the concentration of women in family law and compare this to male dominated specialisms such as corporate and commercial law. Yet many of the women employed in family practices may never have gained entry to what Bolton and Muzio (2007, p. 57) describe as the ‘cut-throat world of commercial law.’ Though women may be concentrated in family law, and though this may not reflect their genuine preferences, this is likely to be the result of a different set of processes than those taking place within elite law firms. As a result, vertical stratification and horizontal segmentation within these leading firms should almost certainly be examined in separate terms than those used in the rest of the sector.

Data

The following discussion is based on tape-recorded semi-structured interviews with 130 employees employed by five elite law firms, four of which are in the top twenty by turnover and one of which is a major US law firm with a significant operation in London. The interviews come from a research project examining the introduction of diversity management agendas within this part of the legal profession, in which a case study strategy was adopted. Initially, ten of the top twenty firms by turnover were approached, along with one leading US firm. These firms were not chosen on the basis of their approach to diversity and equality or, for example, to represent ‘best practice’ in respect to gender equality, but primarily for their status as elite organisations, given that in this sector of the legal profession, these issues are particularly acute.

Of this initial group, access was secured to five, all on the condition of anonymity, and the firms are therefore identified here as Firms A – E in this paper. All but one of the firms is an international firm, four of which have their headquarters in the UK. Firm A belongs to the 'magic circle', shorthand for the UK's most prestigious five firms. Firm D is a North American law firm with a significant operation in London. Four firms are in The Lawyer magazine's top 20 by turnover, with three in the top ten. They ranged in size from between 1,000 to over 4,000 employees on a worldwide basis. The percentage of female equity partners ranged from between six per cent and fifteen per cent.

In total, 130 participants across the five firms agreed to be interviewed, between 21 and 37 at each firm. They were purposively selected working with a single gatekeeper at each firm, who was either a senior member of the HR team or a diversity practitioner. Interviewees were sampled to be as representative as possible of the corporate hierarchies. The achieved sample group included 82 legal staff and 48 non-legal staff, with the total divided between 52 per cent women and 48 per cent men. In order to protect confidentiality, the responses of individuals have been anonymised. All interviews were conducted by the author face-to-face using the same semi-structured questionnaire, which covered areas including the respondents own experience of discrimination, notions of inequality and equality, work-life balance, the client/advisor relationship and the future of the modern law firm. Interviews took place on the organisations' own premises during late 2005 to 2006, and all were recorded for transcription. In addition, the researcher took detailed field notes. Interviews took approximately one hour.

Analysis

This article is based on the interview notes and full interview transcriptions, taking a 'grounded theory' approach to the analysis of the data (Glaser & Strauss, 1967).

This is considered appropriate for investigating organisational cultures (Martin & Turner, 1986, p. 144; Locke, 2001, p. 95), as it captures participants' intentions and actions, provides a holistic account of the organisational context itself, and is indicative of values and assumptions (Callan, 2007). The transcriptions and notes were coded, first using higher level categories, such as mention of 'gender issues' and 'organisational culture', which emerged from analysis of the transcripts. These were further sub-coded into core themes and categories such as 'masculine culture', 'long hours and commitment', and 'exploitation.' The framework was designed to reveal how assumptions about gender, underlying values and behaviour, were justified and explained.

Findings and analysis

In the next two sections the motives and mechanisms behind women's exclusion from top flight legal practice are examined first, followed second by the balance between structure and agency in realising change. As a number of scholars have demonstrated, the processes leading to women's disadvantage within the legal profession comprise a mixture of material and symbolic factors, some of which are summarised in the introduction above. Participants in this research confirmed that many of these factors remain salient, as I shall describe in further detail below. However, of all the challenges preventing women's full participation within this segment of the legal profession, the difficulty of combining work and life was consistently described as overwhelmingly the most important.

This attitude remained constant regardless of job type, seniority or gender and was heavily implicated in both vertical segmentation and horizontal stratification. It was summarised by a female associate at Firm B who said, “I’ve worked with a lot of partners, male and female, and they work a lot of hours ... that’s the biggest hurdle. The main thing.” The following analysis does therefore place a relatively strong emphasis on material factors whilst not suggesting that cultural factors directly and indirectly related to this structure have been overcome. However, the key argument here is that the development and perpetuation of this culture is not the result solely of an ‘internal’ closure regime and that recent developments may leave it potentially vulnerable to something more than just ‘sporadic disruption’ (Bolton and Muzio, 2007, p. 60).

Motives and mechanisms: The how and the why of gendered disadvantage

Participants reported a variety of explanations for the culture of long hours, of which profit was undoubtedly one. The current combination of billable hours, high targets, and maximum ‘utilisation’ of all assistant lawyers is an excellent means by which law firms can secure surplus value, yet it is also tailor made to ensure that individuals will work far beyond the ‘normal’ 9- 5. However, in explaining this culture, participants in this research placed significantly the greatest emphasis on ‘external’ factors, the first of which were client demands. In transactional areas it is not just the weight of work but its twenty-four hour nature that is important, as is the expectation of absolute continuity of staff on a complex deal. Meanwhile, the pace of work has quickened, legal and financial markets are global, and ever faster communications play an important role. At times, client demands are dismissed as “phoney” yet this does not

prevent them from feeling very real to those who experience them, as the following participants explained:

I was once with an investment banker who said, once we get the deal done, it's the last thing I do, I call the lawyer and say can you get this done ... I really don't think that clients care about our lives and I can't see that changing, that's the sad truth. (Male Senior Associate, Firm C)

I think there is a real propensity as a lawyer to say OK [to clients] rather than say why. But I don't think that culture is going to change any time in the near future. (Male Partner, Firm D)

Allied to client demands are strong competitive pressures. In short, saying "no" is considered too dangerous when there will always be a firm and a lawyer that says "yes." These pressures are summarised in the quotes below:

If you say to a client I'm really sorry but we're trying to be diverse and the senior associate has gone home to bath her child, the client would just say "well, fuck off! We'll get a new law firm!" You know?' (Female PSL, Firm D)

... the key thing is that we are a service industry and it's up to the client and if they are not willing to play ball there's nothing you can do about it ... they'll say great, I think your [flexible work plan] is great, and I wish you all the luck, but I'll go somewhere else because I need it by the morning.' (Male Senior Associate, Firm C)

There was relatively little evidence in this research that these hours are considered 'natural', or that they are subject to 'macho mythologizing' (Sommerlad, 2002). Instead, they were equally likely to be experienced as unwelcome and deeply regrettable. As one male senior associate in the capital markets practice at Firm A said, "we had a baby a couple of weeks ago, and it's killing me, I hardly see her ... but ... client demands are what they are."

The degree to which this structure is 'natural' and therefore insuperable has been questioned (Sommerlad & Sanderson, 1998). However, though it may be socially constructed, the current research would suggest that its existence presents a very real and relatively immovable barrier to women's participation nonetheless.

Particularly important here are the sometimes asymmetric power relationships that exist between law firms and their clients, which arguably are a direct result of the corporate legal sector's new 'commercialised professionalism' (Hanlon, 1998).

Though lawyers at leading firms are amongst the elite of this profession, their relative status in the City's particular pecking order is paradoxically considered relatively low, as a result of their position in the chain of service providers and, perhaps, their relative remuneration. In the words of one male associate at Firm D, in terms of City professionals, lawyers "are at the bottom of the pile and I think they get treated as such by clients." This has important implications for structural conditions. As a female diversity practitioner and ex-lawyer at Firm D said:

... the banks are managing to achieve work-life balance by delegating the work to the lawyers ... that's why a lot of female lawyers go in-house, because they know

they ... can leave a meeting at six and say can I have a new draft of that in the morning and some poor lawyer is going to have to sit up all night to do it.

These developments affect most practice areas at leading international law firms, and particularly the highest billing and most 'prestigious', where arguably both horizontal stratification and vertical segmentation are most acute (Sommerlad & Sanderson, 1998; Bolton & Muzio, 2007). Law firms are perhaps guilty of tolerating or even encouraging the culture that results. This would appear to fit with an interpretation in which discrimination is understood as rooted in social structures and institutions and related in part to a type of 'cultural inertia' within the sector (Sommerlad & Sanderson, 1998). In this sense, Bolton and Muzio's use of the term 'tactical opportunism' seems appropriate and useful (2007, p. 49). However it is difficult to reconcile this description with terminology used elsewhere in the same argument, ostensibly in its support. For example, male elites are said to have 'cordoned off' key areas of practice, to have 'organised themselves' into particular interest groups and to 'forge' professional practice around particular (traditionally masculine) notions of efficiency and success. These descriptions would appear at the very least to suggest some degree of deliberate intent, particularly when located as part of a defensive strategy.

Arguably, this is in part a semantic issue. A more substantive problem is that neo-Weberian analyses appear to suggest that certain 'external' developments pertinent to the legal sector are separate structures which exist 'out there' and to which the profession as a 'social collective' (Parkin, 1974, p. 3), can implement a co-ordinated response. A loss of control over the 'production of producers' is one such external

factor, to which internal 'closure' is the collective answer (Abel, 1997, 2003; Ackroyd & Muzio, 2007; Bolton & Muzio, 2007). Yet this explanation for processes occurring within the legal sector mistakenly posits external and internal processes as necessarily operating in a linear fashion, as a simple model of stimulus and response. The current research would emphasise that the process is often more complex than this. Though law firms can direct elements of their culture and structure, they do not on the other hand have complete control over their employees, clients or market (Marshall, 2004).

This has a number of practical implications, the most obvious of which is that informal and internal 'organizational closure' cannot be understood as purely the work of an elite segment of male lawyers located within the legal profession. Instead, gendered disadvantage comes about as a result of actions made by a broad range of people in a variety of organisations and institutions, situated in many different physical and temporal locations. Fundamental structural change would require co-operation and consensus from across this spectrum of institutions and actors, including those that are normally in direct competition with each other. The current situation can also be linked to a strong commercial logic which itself originates partly in what can be summarised for the purposes of this study as a marked individual and shared aversion to risk (Empson, 2001). This leads to a set of individual actions which have an important impact on the organisational and institutional context and vice versa.

This process works in two ways and requires that the external, organisational and the individual level of analysis are brought together (Empson, 2001). First, there is a perceived risk that individuals who do not submit to the dominant culture and

structure will inconvenience clients who may take their business elsewhere. This is considered potentially damaging to the interests of the firm as a whole, not only the 'elite.' One argument is that the emphasis on commitment is related to the need for an alternative proxy for acceptability, following the erosion of formal screening as a means to exclude women (Sommerlad & Sanderson, 1998). Yet the current research would suggest that whilst at times this requirement is exaggerated, at others it is based on a relatively objective assessment of what constitutes effective client service in a highly competitive global market. All ambitious individuals operating in this competitive environment perceive a risk that if they do not participate in this culture, they will not be judged suitable to progress. If, for example, the most prestigious and highly remunerated areas are dominated by an (often client driven) expectation for long hours, others in less pressured or less busy teams may feel that working shorter hours only highlights their position as 'less.'

There is an argument that this cycle could be broken by those operating in a rational or objective manner, or by role models setting the 'right' example and this may certainly contribute to gradual change over time. Yet this would miss the important point that an individual's approach to their own working life is made on the basis of both objective and subjective criteria, and is often associated with conforming to the current 'norm', rather than the exception (Sommerlad & Sanderson, 1998).

Undoubtedly then, individuals act in a way that they believe will secure their own best interests, and this does give rise to organisational routines which exclude 'others' who cannot or will not act in the same way. These actions do require active engagement on the part of an individual perhaps protecting or even defending his (or her) position. However, there is little evidence that nowadays these actions are

pursued as a collective project or with the aim, conscious or otherwise, of defending male privilege against a threat posed by a clearly defined social group, in this case women (Bolton & Muzio, 2007, p. 49).

Structure and agency: Deconstructing the dominant and the dominated

This research would suggest that the structure of long hours and the culture it dictates is socially constructed. However, this situation has been achieved by a confluence of external, organisational and individual processes. Though this structure may have been convenient (Hagan and Kay, 1995) given that it is driven by actors both in and outside the legal profession, it is also not easy to reverse.

However, the current research would suggest that whether exclusion is the result of both formal and informal organisational routines, individual self-interest, external factors or - as is likely - all three, it is possible that this venture may not entirely succeed, at least on its current terms. This is because actions often have unintended consequences (Scott, 2008; Pierson, 2004).

As noted above, Bolton and Muzio (2007) place significant emphasis on both symbolic and material factors as characteristic of women's exclusion within the profession. Whilst not suggesting that either of these issues has been overcome, the current research would argue that the numerical feminisation of leading law firms has had an impact on firm cultures. For example, Bolton and Muzio (2007, p. 53) claim that the sector's masculine code is forged around 'expertise, rationality, control, predictability and commitment' and 'thus denies any qualities associated with the feminine.' Yet no respondent in this research felt that female lawyers are lacking these key 'masculine' traits in absolute terms or indeed that all men possess them.

According to a male partner at Firm B, personality rather than gender is the determining factor since “everyone has a different style and approach.” Neither are today’s female partners necessarily required to adopt male characteristics in aspects other than the notions of commitment identified above. As a female partner at Firm E explained, during the past ten years a “new wave of people ... with the softer side, the charm, they’ve managed to come through.”

This situation is undoubtedly complex and at times contradictory. As just one example, damaging assumptions continue to be made about all women’s relative commitment on the basis that they might become mothers (Lazear & Rosen, 1990). Yet to the extent that a ‘masculine code’ continues to dominate, again, it is not clear that this can be attributed to an active defence on the part of male lawyers. It is equally plausible that specific issues which are described as relatively informal or covert relate most closely to unconscious bias and stereotypical thinking. Indeed, it is the very subtlety of these processes rather than their active reproduction which makes them so difficult to challenge. In the words of a female partner at Firm A making a similar argument, “they’re not all bastards.” Space does not permit a more detailed analysis of these issues, yet it appears that although this is patchy and inconsistent, prejudice has diminished and continues to do so (Sommerlad & Sanderson, 1998, p. 159).

The culture of long hours is also not uncontested (Sommerlad, 2002; Sommerlad & Sanderson, 1998). The current research would suggest that male and female lawyers are becoming more closely aligned in terms of their aspirations and ambitions. This applies particularly to more junior members of the profession, and is

likely to result in part from the shared experience of extreme working conditions to which both are subject. Individuals voting with their feet are not enacting a clear 'usurpatory' strategy (Witz, 1992). However, it is this process which has proved most likely to provide the conditions under which the collective agency of the dominated can best be exercised. Meanwhile, the interests and objectives of the dominant elite appear increasingly disparate, as certain groups and more enlightened organisations attempt to drive forward progressive change, whilst others remain relatively conservative. It is possible as a result that in the near to medium-term, 'class relations' within the sector will become not only progressively de-gendered at the junior end, but also most clearly defined by conflict and heterogeneity within and between the current 'elite.'

Starting with the former point, Bolton and Muzio (2007) note the exploitative conditions imposed within the sector. It is also true that access to equity is outside the reach of many junior lawyers. However, this is a challenge that is not faced only by women (Silius, 2003; Sommerlad & Sanderson, 1998). Typically, less than 10 per cent of fee-earners within a firm make partnership on average, so that even if 100 per cent of those are men, this still excludes most of the total originally admitted to the firm. If then women are the "proletariat" of this profession (Sommerlad, 2002; Bolton & Muzio, 2007; 2008), they are joined in this function by many men. Like their female colleagues, the latter are not blind to the deteriorating conditions of their employment (Lee, 2000; Muzio, 2004; Muzio & Ackroyd, 2005), as the following comments demonstrate.

There's no guarantee of making it, and as a junior partner in most City law firms you get shafted, there's a lot of responsibility, you don't get that much more pay, you certainly don't get the sort of big bucks that would justify that sort of sacrifice.

So now, I think, I'm going to go. (Male Senior Associate, Firm E)

They've got a rigidly tight hold on the equity so the long-term rewards are, you know, for people like me, are even further away. I'm increasingly unsure whether it's worth the effort to be honest. (Male Senior Associate, Firm B)

As leverage ratios have increased, the pressures on more junior staff have multiplied and the relative rewards offered by partnership appear to have lessened. In the words of one female associate at Firm D, "making partner is the start of your troubles, not the end", whilst a male partner at Firm C said "the challenges of maintaining any sort of normal life ... are just perceived as too great to make it worthwhile ... there's a generation of lawyers, men and women, who are beginning to reach the same conclusion." Inherent in this situation is a possibility that, with their continuing acceptance of a relatively extreme model of work, law firms are in danger of sowing the seeds of its destruction (Hanlon, 1998). During the past ten years, elite law firms have been faced with a rapidly rising attrition rate. Indeed, though women continue to opt-out in greater numbers than their male peers, the collective impact has meant this is sometimes described in terms of a crisis, as the annual turnover exceeded 25 per cent in certain practice groups at certain leading firms. Increasingly law firms appear compelled to take more meaningful action.

Admittedly, there is no consensus here. The onset of the recession has had an impact on relative job security and attrition rates and the long-term impact remains to

be seen. Not all partners are convinced that the business imperative is such that fundamental structural change is desirable or necessary. Many individuals and firms remain resistant to alternative working patterns, which are experienced as inconvenient and costly. However, these attitudes are balanced by an increasing belief in the necessity and desirability of more substantial change. More progressive attitudes are encouraged by a range of factors. These include a growing crisis of legitimacy amongst leading organisations. The credibility of a firm may once have been damaged by too many women at the top (Sommerlad & Sanderson, 1998). However, nowadays the opposite is as likely to be true. Elite law firms have found themselves in the spotlight as institutions including the Law Society along with a vocal trade press emphasise the growing gap between the reality of gender inequality in these organisations and the rhetoric of meritocracy they espouse. Regulation has played a role as have influential clients pressing for an invigorated diversity agenda although, as noted, the imposition of tight deadlines often conflicts with these expectations. The status and agency of women has further improved since law firm elites appear genuinely to recognise that being able to select their partnership from a pool of what they define as the most skilled and talented lawyers is a genuine commercial imperative and one that may prove necessary in order to secure competitive advantage. Women are amongst this pool as the following quote suggests:

... if we could pick up all the best female banking associates who come out of [names three magic circle firms] ... we would have the cream of the talent ... that would be great. (Male Partner, Firm B)

These attitudes are not new (Sommerlad & Sanderson, 1998). However, as a result of the confluence of external and internal factors described above, they appear to be gaining some ground. The policies currently proposed or implemented have aimed to recognise the diversity of ambition between men and women throughout their lifecycle. They include four day weeks or less for all staff including partners, the introduction of extended holidays or annualised hours, and more radical forms of restructuring, including the use of a pool of contract lawyers who work flexibly and on a project basis. Some firms are seeking to make career paths less linear enabling individuals to move between more and less work intensive practice groups in order to accommodate different attitudes towards work and life at different times. Others have sought to extend the window in which individuals may become partner, thus reducing the emphasis on the sector's 'up or out' culture.

The ongoing search for new types of structural organisation has been encapsulated by one researcher as leading to a possible 'new work bargain' within the legal sector (Gaymer, 2010). This type of action acknowledges the continuing challenge likely to be imposed by the more extreme demands of certain clients and the preferences of more extreme workers, both factors which contribute to these firms' status as 'greedy' organisations (Coser, 1974). Though working within the current status quo rather than trying to fundamentally challenge it, they may also help practitioners to address a central challenge, namely how to reconcile equality with difference, by addressing this issue more fully over the length of an individual's career and lifecycle.

Summary and conclusions

The research presented in this paper supports previous analyses which relate women's disadvantage within the legal sector to a combination of material and symbolic factors, informal and formal processes (Sommerlad & Sanderson, 1998; Sommerlad, 2002). In this respect, Bolton and Muzio (2007) have also provided a valuable account of the many challenges which prevent women from achieving parity with men at senior levels or to achieve equal representation in the most 'prestigious' and highly paid practice areas. However, a key contribution of this paper is to argue in favour of a more holistic approach in order to understand both the true nature of professional closure and the prospects for change. To some extent this is achieved by neo-Weberian analyses, which explicitly reference the impact of supply-side external factors, specifically reduced control over entry to the profession, along with the impact of competition and consolidation on the structural reorganisation of the legal sector (Bolton & Muzio, 2007; 2008; Ackroyd & Muzio, 2007). Yet once these have been accounted for, the legal sector as a whole is treated as the main unit of analysis. Certain scholars have suggested that this is precisely the level at which class analysis should be conducted, since this is where occupational identity is formed, consciousness found and closure located (Grusky & Weeden, 2001). There are though several problems associated with this approach as it applies to gender.

Most relevant here is that neo-Weberian analyses are both too broad and narrow (Murphy, 1986). With regard to the breadth of these analyses, there are three key implications in this context. First, the analysis described at the outset of this paper takes the entirety of the legal sector and treats it as a homogeneous entity.

However, the development of the sector is such that dominant elites within large

corporate law firms are unlikely to share common cause or interest with the 'rank and file' at the lower end of the chain (Silius, 2003). Second, this analysis does not give sufficient weight to the relevance and basis of individual decision making processes, which though not designed to exclude, undoubtedly have that effect. Finally, this analysis would suggest that women's disadvantage is institutionalised across the profession as a result of some sort of tacit consensus across a range of organisations. Yet it is not clear precisely how this is operationalised and achieved. In reality, challenges such as the long hours' culture are neither entrenched nor likely to be dismantled as a result of implicit or explicit co-operation between elite law firms, but partly as a result of oppositional interests, namely their extreme competition for business and talent (Pakulski, 2005).

With regard to the more narrow focus of these analyses, this research would suggest that many of the structural and cultural factors which limit women's participation are formed and maintained at levels far wider than the organisation itself. This is not to suggest that women's disadvantage within the legal sector is a 'straightforward functional reality' (Bolton and Muzio, 2007, p. 56), that it should be taken-for-granted or that law firms are helpless pawns in the face of entrenched social and economic structures. However, positing exclusion as the result of an internal closure regime would appear to suggest that both the practice and the theory can be disengaged from an analysis of global capitalism, when this is in fact precisely where these firms are located (Marshall, 2004). Bolton and Muzio (2007) do of course name a range of 'external' factors. For example, in addition to referencing the nature of client demands the authors also claim that exclusion is 'firmly based on an economic imperative that exploits patriarchal assumptions about women's work' (2007, p. 60).

However, this is arguably a logic that is relevant in the vast majority of commercial organisations, professional or otherwise, and one that remains deeply embedded in current social structures.

Understanding why women are excluded and how this is achieved is essential in order to achieve progressive change (Sommerlad & Sanderson, 1998). Bearing this in mind, the argument presented here rejects the neo-Weberian position that a homogeneous (male) professional elite will continue to practice both overt and covert exclusionary mechanisms in order to 'defend' their position, which 'outsiders' are almost powerless to resist. Indeed, the evidence would suggest that many law firms are now responding to gender inequality. This response is at an early stage, will be slow to take effect and the transition will not be revolutionary. Adjustments will not necessarily reduce 'exploitation' if this is defined as the extraction of surplus value by the dominant elite. There may be other negative impacts, including an added impetus to the existing trend towards reduced job security (Hanlon, 1998). Yet despite these caveats, the holistic approach presented in this article does allow for a marginally more optimistic outlook than previous analyses. It suggests that further progress towards parity at senior levels is possible, but may be achieved through structural adjustments that are only indirectly related to the pursuit of gender equality.

References

Abel, R. L. (1988). *The legal profession in England and Wales*. New York: Blackwell.

Abel, R. L. (2003). *The politics of professionalism, lawyers between markets and state, from the Green Papers to the Access of Justice Act*. Oxford: Oxford University Press.

Abel, R. L. (1997). *Lawyers: A critical reader*. New York: New Press.

Ackroyd, S. & Muzio, D. (2007). The reconstructed professional firm explaining change in english legal practices. *Organization Studies*, 28 (5), 1-19.

Black Solicitor's Network. (2006). *Diversity league table*. London: Investart.

Bolton, S. & Muzio, D. (2008). The paradoxical processes of feminisation in the professions: the case of established, aspiring and semi-professions. *Work, Employment and Society*, 22 (2), 281-299.

Brockman, J. (2001). *Gender in the legal profession*. Toronto: UBC Press.

Callan, S (2007). Implications of family-friendly policies for organizational culture: findings from two case studies. *Work Employment and Society*, 21 (4), 673-691.

Coser, L. (1974). *Greedy institutions: Patterns of undivided commitment*. New York: Free Press.

Davies, C. (1996). The sociology of the professions and the profession of gender. *Sociology*, 30 (4), 661-78.

Empson, L. (2001). Fear of exploitation and fear of contamination: Impediments to knowledge transfer in mergers between professional service firms. *Human Relations* 54 (7), 839-862.

Epstein, C. F. (1991). *Women in law*. New York: Basic Books.

Gaymer, J. (2010). A new work bargain for professional firms? Unpublished paper presented at the ESRC Seminar *Conceptualising the Contemporary Professions, The Challenge of Change in Professional Service Firms*, Cass Business School, London.

Glaser, B.G. & Strauss, A.L. (1967). *The discovery of grounded theory: Strategies for qualitative research*. Chicago: Aldine.

Grusky, D. & Weeden, K. (2001). Decomposition without death: A research agenda for the new class analysis. *Acta Sociologica*. Vol. 45 (3), 217-221.

Hagan, J., & Kay, F. (1995). *Gender in practice: A study of lawyers lives*. Oxford: Oxford University Press.

Hanlon, G. (1997). *Lawyers, the State and the Market: Professionalism revisited*. Basingstoke: Macmillan Business.

Hanlon, G. (1998). Professionalism as enterprise – service class politics and the redefinition of professionalism. *Sociology*. 32 (1), 43-63.

Harrington, M. (1993). *Women lawyers: Rewriting the rules*. New York: Alfred A Knopf.

Larson, M.S. (1997). *The rise of professionalism: A sociological analysis*. Berkeley: University of California Press.

Law Society (2004a). *Equality and diversity: Women solicitors*. Research Study 48 Vol. 1 (Joe Slems, Strategic Research Unit). London: Law Society.

Law Society (2004b). *Equality and diversity: Women solicitors*. Research Study 48 Vol. II (Liz Duff and Lisa Webley, University of Westminster). London: Law Society.

Law Society (2004c). *Career choices in law: A survey of trainee solicitors*. Research Study 51 (Louise Norman). London: Law Society.

Law Society (2004d). *Women solicitors*. Fact Sheet Information Series. London: Law Society.

Lazear, E. & Rosen, S. (1990). Male-female wage differentials in job ladders. *Journal of Labor Economics*, 8, S106-S123.

Law Society (2010). Trends in the solicitors' profession: Annual statistical report. (B. Cole, N. Fletcher, T Chittenden, J. Cox, Research Unit) London: Law Society.

Lee, R. (2003). From profession to business: The rise and rise of the city law firm. *Journal of Law and Society*, 19(1), 31.

Locke, K. (2001). *Grounded theory in management research*. Thousand Oaks: Sage.

MacCorquodale, P. & Jensen, G. (1993). Women in the law: Partners or tokens. *Gender & Society*, 7 (4), 582-593.

Marshall, J. (2004). A shift to a post-structuralist analysis of the legal profession. *International Journal of the Legal Profession*, 11 (1&2), 21–30.

Martin, P.Y. & Turner, B.A. (1986). Grounded theory and organizational research. *Journal of Applied Behavioural Science*, 22 (2), 141–57.

McGlynn, C. (1999). *The woman lawyer*. London: Butterworths.

Menkel-Meadow, C. (1989). Feminisation of the legal profession: The comparative sociology of women lawyers: Theories of gender and social change. In R. Abel, P. S. C. Lewis (Eds.), *Lawyers in society*. Comparative Theories Vol 3. Berkeley: University of California Press.

Murphy, R. (1988). *Social closure: The theory of monopolization and exclusion*. Oxford: Clarendon Press.

Murphy, R. (1986). Weberian closure theory: A contribution to the ongoing assessment. *British Journal of Sociology*, 37 (1), 21–41.

Muzio, D. & Ackroyd, S. (2005). On the consequences of defensive professionalism: The transformation of the legal labour process. *Journal of Law and Society*, 32 (4), 614-42.

Muzio, D. (2004). The professional project and the contemporary re-organization of the legal profession in England and Wales. *International Journal of the Legal Profession*, 11 (1-2), 33-51.

Pakulski, J. (2005). Foundations of a post-class analysis. In E. A. Wright (Ed.), *Approaches to class analysis*. Cambridge: Cambridge University Press.

Parkin, F. (1974). *The social analysis of class structure*. London: Tavistock Publications.

Pierson, P. (2004). *Politics in time: History, institutions, and social analysis*. Princeton, NJ: Princeton University Press.

Rosenberg, J., Perlstadt, H. & Phillips, W. R. F. (1993). Now that we are here: Discrimination,disparagement and harassment at work and the experience of women lawyers. *Gender & Society*, 7 (3), 415–433.

Sassen, S. (2001). *The global city: New York, London and Tokyo*. Princeton: Princeton University Press.

Scott, W. R. (2008). Lords of the dance: Professionals as institutional agents. *Organization Studies*, 29, 219–238.

Sewell, W. H. (1992). A theory of structure: Duality, agency, and transformation. *American Journal of Sociology*, 98 (1).

Silius, H. (2003). Making sense of gender in the legal professions. *International Journal of the Legal Profession*, 10 (2), 35-48.

Sommerlad, J. & Sanderson, P. (1998). *Gender choice and commitment: Women solicitors in England and Wales and the struggle for equal status*. Aldershot: Dartmouth-Ashgate.

Sommerlad, H. (2002). Women solicitors in a fractured profession: intersections of gender and professionalism in England and Wales. *International Journal of the Legal Profession*, Vol. 9, No. 3.

Strauss, A. (1975). *Professions, work and careers*. London: Transaction Publishers.

Syed, J. & Ozbilgin, M. (2009). A relational framework for international transfer of diversity management practices. *The International Journal of Human Resource Management*, 20 (12), 2435-2453.

Wass, V. & McNabb, R. (2003). Discrimination and the law: pay, promotion and parenthood?

Witz, A. (1992). *Professions and patriarchy*. London: Routledge.