

The state of the nation

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The state of the nation: diversity and the British legal academy

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As a law student, I am not sure I ever really thought about the make-up of my professors. A young gay man, I certainly hoped that some of the better looking male lecturers were also gay, but I cannot recall ever taking a step back to look at those who taught me and to ask whether they were a diverse group or not. I remember a number of female lecturers (none of them, at the time, professors), but cannot bring to mind a single ethnic minority lecturer. In practice in the City, and at Oxford, my working class (Scouse) accent marked me out as an outsider. Several pointed comments meant that, somewhat consciously, I began to lose the dulcet tones of the town of my birth. On one law firm vacation scheme, and after a rather lovely lunch at a rather fancy restaurant, my mentor commented that he was so pleased that I had eaten my bread roll “properly”. I smiled at him, having no idea what he was talking about, having no idea there were correct and incorrect ways to eat bread. He said, “I liked that you took your roll, you broke into pieces, you took a chunk of butter, and then you buttered each chunk of bread as you ate it. I can’t abide people who just break the thing in half and slather butter everywhere.” As an academic, and no doubt informed by who I am and by my background, I research diversity in the legal profession. But I have also come to be interested in diversity in the legal academy, and curious as to why so little has been written on this topic. Is it that so few people care? Or are we too busy looking outwards to stop and look at ourselves?

In this short piece, I set out briefly what we know about the challenge of diversity in the legal academy from existing scholarship. That field, in the UK at least, is sparse. I then go on to set out a snapshot of the legal academy using data from the Higher Education Statistics Agency (HESA). I do this as the start of a much larger project on diversity and the legal academy that I plan to undertake over the next year. My argument is rather simple. The diversity of the legal academy reflects neither the diversity of our law student bodies nor the diversity of the wider population. Such diversity is vital for a number of reasons. My hope is that this piece can be the start of a dialogue on an important and largely ignored topic, and that further research will be done in this area.

Work on diversity in the legal academy

The reasons why a diverse legal academy might be thought to be important should, I feel, be self-evident. Amy Lai, writing in a recent edition of *The Law Teacher*, summarises these reasons succinctly as follows:

“Scholars have long agreed upon the interrelated rationales for a diverse law faculty, which include the recognition of the value of multi-perspective and multicultural education and scholarship, the promotion of non-discrimination and prevention of discrimination in the legal academy and legal community at large, and the benefits of minority mentors and role models for minority students.”¹

¹ A. Lai, “From affirmative action hiring to the globalisation of legal academia.” (2015) 49 *The Law Teacher* 3-21. In a similar vein, Fiona Cownie has argued that, “the behaviour, attitudes, and values of legal academics have implications for the future development of the discipline of law. Members of the academic tribe which inhabits the territory of law will have a profound effect on the research which is carried out and valued, the subjects which are taught, the people who are influential in this sphere.” See: F. Cownie, “Women Legal Academics: a new research agenda?” (1998) *Journal of Law and Society* 102-115, at p.103. See further the

In her work, Clare McGlynn echoes the importance of female role models: “If women students are to learn to act like lawyers, but the only role models they have are junior women, or women who are marginalised, they may themselves be imbued with a sense of the woman lawyer not as authoritative lawyer, judge or academic, but as handmaiden.”² There is an additional, regulatory driver for a diverse legal academy. Universities in England & Wales are subject to the public sector equality duty (PSED) found in The Equality Act 2010.³ The PSED creates an obligation to advance equality of opportunity between people from different groups, and to eliminate unlawful discrimination, harassment and victimisation and other prohibited conduct.⁴

As Fiona Cownie has recently argued, “our knowledge of the (professional) lives of women legal academics and their contribution to the development of the discipline of law is particularly scant.”⁵ Scant for women legal academics in the UK, and non-existent for other minority academics. Like Celia Wells, I am struck by our lack of self-interest and self-analysis.⁶ There is, by comparison, a much larger (non Law specific) literature on diversity and academia more generally, showing pay, promotion and other forms of difference among women and minority academics,⁷ as well as differences relating to success rates for funding applications.⁸

To date, the primary focus of existing UK scholarship on diversity in the legal academy has been on gender.⁹ We know, for example, from Cownie’s biographical work that Claire Palley was the first woman appointed to a Chair in Law (in 1970 at QUB).¹⁰ But who knows who was the first BAME, the first LGBTQ, the first disabled (etc etc) Chair in Law? Who was the first Chair from a socio-economically deprived background? The US scholarship on diversity in the legal academy is rather more broad, with work Asian-American,¹¹ Latino and Latina,¹² Black,¹³ LGBT,¹⁴ and disabled Law

review in: C. Wells, “Women law professors – negotiating and transcending gender identities at work” (2002) 10 *Feminist Legal Studies* 1-36, at p.3-6.

² C. McGlynn, “Women, Representation and the Legal Academy” (1999) 19 *Legal Studies* 68-92, at p.87.

³ For a more general review of the Equality Act 2010, see: B. Hepple, “The new single equality act in Britain.” (2010) 5 *The Equal Rights Review* 11-24.

⁴ See here for guidance from the Equality and Human Rights Commission on compliance with the PSED: <http://www.equalityhumanrights.com/publication/essential-guide-public-sector-equality-duty-0>

⁵ F. Cownie, “The United Kingdom’s First Woman Law Professor: An Archerian Analysis” (2015) 42 *Journal of Law and Society* 127-149, at p.130.

⁶ Wells, *supra* n.1, p.2.

⁷ For example, see: H. Rolfe, P. Stevens, and M. Weale, *Recruitment and retention of academic staff in higher education* (London, DfES Publications, 2005). R. McNabb and V. Wass, “Male-female Salary Differentials in British Universities” (1997) 49 *Oxford Economic Papers* 328-343; A. Brooks, *Academic Women* (Buckingham, Open University Press, 1997)

⁸ For example, see: <http://www.rcuk.ac.uk/RCUK-prod/assets/documents/skills/RCUKDiversityNarrativesanddata.pdf>

⁹ Cownie, *supra* n.1 and n.5; Wells, *supra* n.1; McGlynn, *supra* n.2. R. Collier, “‘Nutty Professors’, ‘Men in Suits’ and the ‘New Entrepreneurs’: Corporeality, Subjectivity and Change in the Law School and Legal Practice” (1998) 7 *Social and Legal Studies* 27-53; C. Wells, “Working out women in law schools” (2001) 21 *Legal Studies* 116-136. Richard Collier has done some work on class and the legal academy. See: R. Collier, “Identity Matters: Class, Culture and Legal Academics” in F. Cownie (ed) *Stakeholders in the Law School* (Oxford, Hart Publications, 2010). Wells (*supra* n.2) also makes passing reference to other forms of difference in her work.

¹⁰ Cownie, *supra* n.5.

¹¹ P. Chew, “Asian Americans in the Legal Academy: An Empirical and Narrative Profile.” (1996) 3 *Asian LJ* 7-38.

¹² R. Ediberto and C. Carbot, “Freeriders and Diversity in the Legal Academy: A New Dirty Dozen List?” (2008) 83 *Indiana Law Journal* 10-19; S. Wildman and L. Gaines, “Wise Latina/os Reflect on Role Models, Acting Affirmatively, and Structures of Discrimination: In Honor of Richard Delgado.” (2015) 33 *Law & Inequality* 459-480.

¹³ See, for example: E. Jordan, “Images of Black Women in Legal Academy: An Introduction.” (1990) 6 *Berkeley Women’s LJ* 1-21 (and, more generally, the other papers in this volume of *Berkeley Women’s LJ*); D. Kennedy, “A Cultural Pluralist Case for Affirmative Action in Legal Academia” (1990) *Duke Law Journal* 705-757; J. Russell,

School academics,¹⁵ alongside a significant body of work on gender and the legal academy.¹⁶ The general themes, from home and abroad, are of marginalisation, exclusion, isolation, difference and the challenges of promotion.¹⁷ Margaret Thornton has suggested that women academics are the “fringe dwellers” of the legal community.¹⁸ There is nothing to suggest that other minority academics, or women academics with minority characteristics, occupy wildly different positions. Scholarship on diversity and the legal academy is important, to borrow a phrase from Richard Collier, as it renders visible aspects of the institutions of legal education.¹⁹

In 1998, Cowie sought to “set out a possible new research agenda” on women law academics,²⁰ but this (sadly) never appeared to take off. In 1997, McGlynn surveyed 75 UK law schools,²¹ finding that women comprised 22% of all Law deans/heads of department/school, the figures being broadly similar for old and new universities. This was a relatively high figure, in view of the number of women professors (14%). McGlynn commented that, “The fact that women hold 14% of chairs is a positive result, in that across the university sector as a whole, women comprise only 8% of professor.”²² Her 1997 survey showed that almost 40% of legal academics were female, with “a greater representation of women in all grades in new universities.”²³ Around the same time, Wells undertook questionnaires and interviews with 37 women law professors.²⁴ Wells began her paper by noting the lack of women appointed to the bench-marking panel for Law in 1998.²⁵ Interestingly, the same QAA review in 2015 was Chaired by a woman, and 13 of the 19 members (including the Chair) were women.²⁶ Some progress has been made. However, whereas the Law sub-panel for REF 2014 had a woman as Chair and Deputy Chair, only 6 of the 18 sub-panel members were women (2 of whom were not legal academics).²⁷ A third of Well’s research participants had been privately educated, a similar number having attended Oxford, Cambridge or a London university. However, they held posts in a much wider range of institutions. As Wells notes, “The elite universities that educated these bright women showed a marked reluctance to appoint them as professors.”²⁸ The interviewees all believed they took on more pastoral work in their universities than their male counterparts,²⁹ and Wells found a “marked politicisation” in the promotion of women law academics.³⁰ Echoing patterns of difference in the legal profession (where women earn less, and are

"On Being a Gorilla in Your Midst, or, the Life of One Blackwoman in the Legal Academy." (1993) 28 *Harv. CR-CLL Rev.* 259-262; P. Alexander, "Silent Screams from Within the Academy: Let My People Grow." (1998) 59 *Ohio St. LJ* 1311-1332.

¹⁴ A. Tweedy, "A Bisexual Perspective on Law School Hiring." (2015) 31 *Columbia Journal of Gender and the Law* 82-86; J. Howarth, "Recruiting sexual minorities and people with disabilities to be dean." (2008) 31 *Seattle University Law Review* 751-763.

¹⁵ Howarth, *ibid.*

¹⁶ For a recent review of this scholarship, see: M. Hart, "The more things change... Exploring Solutions to the Persisting Discrimination in Legal Academia" (2015) 31 *Columbia Journal of Gender and the Law* 1-196.

¹⁷ For detailed reviews, see the above cited literature.

¹⁸ M. Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Oxford, Oxford University Press, 1996), at p.3-4.

¹⁹ R. Collier, 'Masculinism, Law and Law Teaching' (1991) 19 *International J. of the Sociology of Law* 427-451, at p.428 and p.429.

²⁰ Cowie, *supra* n.1, p.103.

²¹ McGlynn, *supra* n.2.

²² McGlynn, *supra* n.2, p.77.

²³ McGlynn, *supra* n.2. p.82.

²⁴ Wells, *supra* n.1.

²⁵ Wells, *supra* n.1., p.1.

²⁶ See: <http://www.qaa.ac.uk/en/Publications/Documents/SBS-consultation-Law-15.pdf>

²⁷ <http://www.ref.ac.uk/panels/panelmembership/>

²⁸ Wells, *supra* n.1, p.9.

²⁹ Wells, *supra* n.1, p.16ff.

³⁰ Wells, *supra* n.1., p.20.

more likely to work in certain practice areas),³¹ Wells also found that the women law professors were more likely to research Family Law, Public Law and Socio Legal Studies than they were Property, Trusts or Commercial Law.³² Such differences are, and should be, of concern.

The HESA data

In this section, I set out what we know about the composition of the legal academy in the UK. This data was taken from the Higher Education Statistics Agency’s (HESA) database of staff.³³ Some of the HESA data is freely accessible (to those with an approved log-in) and other data can be purchased.³⁴ The below refers to the freely accessible data, for the year 2013/2014 (the latest period for which data is currently available). I have also purchased a complete data set with information on around 11,000 individuals who have held Law related contracts with UK universities. I plan to analyse this larger data set towards the end of 2016. Watch this space.

The HESA data set out below needs to be taken with two pinches of salt. The first pinch relates to the “rounding strategy” that the agency adopts.³⁵ Of particular relevance for this paper is that HESA rounds all numbers to the nearest multiple of 5, and any number lower than 2.5 is rounded by HESA to 0.³⁶ The second reason for caution is that data is taken from the Law “Cost Centre”; this may or may not equate to the Law School at a particular institution.³⁷ Equally, the level of granularity is rather poor, and the HESA ‘report function’ (which generates the data sets) clunky to use. Despite this, some initial, and interesting, broad brush themes emerge. In due course, my research using the 11,000 individualised entries will paint a more accurate, and more nuanced picture.

Table 1 shows a broadly equal gender split among Law academics, with slightly fewer women in Russell Group Law Schools. 80% of Law academics self-identified as White, reflecting the wider population.³⁸ However, only 6% of Law academics have a known disability, which is much lower than the national UK average;³⁹ and those in Russell Group Law Schools are much less likely to have a known disability than those outside the Russell Group.

Table 1: Academic Staff – Law (2013/2014)

	Gender		Ethnicity					Disability		
	Female	Male	White	Black ⁴⁰	Asian	Other	Unknown	Known Disability	No Known	Unknown
All	2,600	2,655	4,180	145	275	215	440	320	4,725	205
RG	830	985	1,425	30	90	75	200	60	1,675	85

³¹ For this data, and changes over time, see the various Law Society Annual Statistical Reports:

<http://www.lawsociety.org.uk/support-services/research-trends/>

³² Wells, *supra* n.1, p.23.

³³ <https://www.hesa.ac.uk/free-statistics>

³⁴ For an overview of how HESA collects its data, see: <https://www.hesa.ac.uk/intros/staffintro1314>

³⁵ <https://www.hesa.ac.uk/component/content/article?id=146&limit=&start=0>

³⁶ This is potentially particularly problematic where, for example, there might be a single, female, ethnic minority professor in a Law School. This person would come up as ‘0’ in the HESA reports (but would show in the individualised data I have purchased).

³⁷ Despite this, and for ease of reference, I will talk about “Law Schools” in the following discussion.

³⁸ See: <http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-local-authorities-in-england-and-wales/rpt-ethnicity.html>

³⁹ See: <https://www.gov.uk/government/publications/disability-facts-and-figures/disability-facts-and-figures>

⁴⁰ These are the categories used by HESA.

When we compare these characteristics with those of our law students (Table 2), it is clear that Law School academic staff do not reflect the profiles of their student bodies.⁴¹ Academic staff in Law Schools are more likely to be male, white, and have no known disability, than their law students.

Table 2: Law Students (2013/2014)

	Gender		Ethnicity			Disability		
	Female	Male ⁴²	White	BAME ⁴³	Unknown	Known Disability	No Known	Unknown
All	54,010	35,200	44,385	21,505	1045	7,655	81,560	5
RG	15,415	10,115	12,245	3,110	190	1,625	23,910	0
Million +	4,860	3,480	3,480	3,670	85	750	7,590	0

Just over 70% of Law School academics are on permanent contracts (the same for the Russell Group and the wider Law School population); of these, 54% are women. 22% of academics in Law Schools earn “Contract Salary Range 6” (more than £57,032); this is 34% for the Russell Group, and is higher than the national university average where 17.1% of all academics are paid Range 6.⁴⁴ 49% of Russell Group Law academics hold a doctorate as their highest qualification; this drops to 35% for the entire Law academic population. A third of Law School academics (and 27% in the Russell Group) are over 50, and 44% aged between 35 and 49. Just 3% of Law academics are aged over 66. This Law School age profile broadly reflects the national university averages.⁴⁵ 32% of Law School academics are on “Teaching-only” contracts (27% in the Russell Group); with 54% of those on “Teaching-only” contracts women. Representing 101 different nationalities, 72% of all Law School academics are British. This drops to 62% for the Russell Group, where Law academics are more likely to be from elsewhere in the EU, or outside the EU altogether.

As set out above, in 1997 McGlynn found that 14% of law professors were women. The data for 2013/2014 is, as Table 3 shows, a little more promising, with 30% of Law School professors women. If we step back, 14% of those in all Law Schools, and 24% of those in Russell Group Law Schools, have the title of Professor. This is significantly higher than the national average, where 9.6% of all academic staff held professorial roles.⁴⁶ Across all subjects and in all universities, 78.3% of professors are men.⁴⁷ As such, while Law Schools are hardly beacons of professoriate equality, we appear to be doing better than a number of other departments.

Table 3: Law Professors by Gender (2013/2014)

	Female	Male
Professor (All Institutions)	230 (30%)	525 (70%)
Professor (Russell Group)	135 (31%)	305 (69%)

When we drill down, and cross tabulate Law School title with ethnicity, we see that whereas 3% of Law School academics are Black, only 1% of law professors are Black; and that whereas 5% of Law

⁴¹ Of course, some Law School staffing groups will more closely reflect their student bodies. Such closer examination would be worthy of further study.

⁴² For gender, there is also the choice of “other” for students, which does not appear open to staff. 15 students were “other” in 2013/2014.

⁴³ For students, HESA groups the data onto ethnicity into White and BAME (whereas for staff, the data is broken down into White, Black, Asian and Other).

⁴⁴ ECU, *Equality in higher education: statistical report 2014* (London, Equality Challenge Unit, 2014), at p.52.

⁴⁵ *ibid*, at p.90ff.

⁴⁶ ECU, *supra* n.44, p.37.

⁴⁷ ECU, *supra* n.44, p.333.

School academics are Asian, only 3 of law professors are Asian. More widely in UK universities, 8.5% of White staff are in senior contract levels, compared with 6.1% of Black, Asian and Minority Ethnic (BAME) staff.⁴⁸ Across all universities in the UK, the proportion of Black staff who are professors (4%) is lower than for any other ethnic group.⁴⁹

Table 4: Law Professors by Ethnicity (2013/2014)

	White	Black	Asian	Other	Unknown
Professor (All Institutions)	630 (84%)	10 (1%)	20 (3%)	30 (4%)	60 (8%)
Professor (Russell Group)	365 (84%)	0 (0%) ⁵⁰	15 (3%)	10 (2%)	45 (10%)

While there is a 49:51 gender split (women:men) among Law School academics, only around a third of Law academics paid “Contract Salary Range 6” (more than £57,032) are female. This may have some connection with title, with a similar number of women professors as those women paid the highest HESA salary banding. Similarly, whereas 9% of Law academics paid Band 6 are BAME, 12% of the overall Law School academic population are BAME (and 8% of Law professors BAME). At my request, the individualised data set I have purchased from HESA has my own salary bands (in £10,000 increments up to £100,000, and then a >£100,000 band). It will be interesting to see whether, at this more granular level, more significant differences emerge in the pay of Law School academics. I expect they will.

Looking forward

The data offered up in the preceding section was blunt and rather thin. I did not talk about sexuality, or religion, or gender identity. I did not talk about socio-economic backgrounds, or about interaction effects between multiple forms of difference. I did not talk about Law School roles, and whether we might see difference between those taking on pastoral duties (as Wells showed in her 2002 study).⁵¹ The HESA free-to-access data covers none of these important matters.⁵² I also only showed the most basic of cross-tabulation of the data on offer. Much more can, and should, be done. We need both a more accurate numerical picture of what is going on in Law Schools (staff and students), and further qualitative work to unpick the nuances and complexities of diversity and the legal academy. I am personally committed to doing further research in this area, and hope others will join me in my endeavour. In so doing, I hope to make difference more visible, and to add power to the marginalised and the excluded.

⁴⁸ ECU, *supra* n.44, p.187.

⁴⁹ *Ibid.*

⁵⁰ This number is wrong (in that there *are* Black law professors in the Russell Group), and is a good example of how the HESA rounding strategy paints an incomplete picture.

⁵¹ Wells, *supra* n.1.

⁵² I should note here that the Annual Reports by the Equality Challenge Unit do speak to sexual orientation and religion among university staff. See: <http://www.ecu.ac.uk/>