**The more things change, the more they stay the same:
Explaining stratification within the Faculty of Advocates, Scotland**

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Abstract

Since the 1970s the legal profession has become increasingly diversified. However the inclusion of traditionally excluded social groups has not eradicated inequalities. This paper attempts to explain the contradiction between increasing diversification and persistence of inequalities by examining changes in the structure of the Faculty of Advocates in Scotland. We observe significance changes over the last 40 years, especially the increasing numbers of women entering the Faculty. Yet, women still face discrimination, and their success has largely been at the expense of working-class aspirants.

We argue that existing theoretical perspectives, namely feminism and Bourdieu, as well as new insights offered by Beck, are insufficient to account for stratification within the legal profession. We call for a new theoretical perspective which accounts for both social change and persistence of inequalities, and suggest that such an approach is best offered by a feminist reworking of Bourdieu.

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Introduction

The Scottish legal profession is divided between solicitors,¹ who have day-to-day contact with clients and do the bulk of preparation prior to court proceedings, and advocates who are specialised court pleaders, do not have a continuous relationship with clients and cannot generally be directly accessed by clients.² Until 1993, solicitors had rights of audience only in the District and Sheriff Courts while advocates represented clients at all levels of the Scottish courts.³ All Scottish advocates belong to the Faculty of Advocates, which has formally existed since 1532 when the College of Justice was established by the Scots Parliament (Wilson, 1967:235, Paterson, 1988:78).

Entry of researchers into the world of advocates is not easily obtained and the Scottish legal profession (and elsewhere) is usually examined from the perspective of solicitors, judges and clients as they are more accessible. Researchers have largely focused on the Faculty's history, relying on secondary sources (eg Carswell, 1967; Girvin, 1993). The only in-depth study of the Faculty to date was written by Nan Wilson in the mid-1960s. She revealed advocates as being typically white, middle and upper-class men:

There remains an inner group of minor gentry, sons of wealthy professional mercantile or industrial families. Sons of the manse and sons of solicitors are in particular a substantial element. Those come from an essentially Scottish professional tradition. There has been a tendency for advocates in these groups to have taken a degree at Oxford or Cambridge... (Wilson, 1967:255).

This paper draws on research funded by the Faculty of Advocates who had commissioned an economic analysis of the Faculty's position in the market for Scottish legal services.⁴ Like many others, prior to our research, we had assumed that advocates would be predominantly men from privileged backgrounds. This preconception was supported by a large body of research that demonstrates that the legal profession world-wide is stratified along traditional lines of social division, such as gender and class (Epstein, et al 1995; Kay and Hagan, 1995, 1998, 1999, 2000; Epstein, 2000; Schultz and Shaw, 2003; Phillips, 2005; Sheeny and McIntyre, 2006; Sandefur, 2007; Garth and Sterling, 2009).

Upon commencing our research, it became immediately obvious that the Faculty had changed since the late 1960s, for instance, an increasing number of women have become advocates. While it seems that the persistence of stratification may have been broken, it also became clear that the experiences of 'non-traditional' advocates differ from their peers, as one advocate remarked:

There was a lot of resentment towards me coming to the Bar... Criminal law is a very male dominant area. I am female, from the west of Scotland, Catholic and I specialise in criminal law, so I had everything against me.

This comment was made at the beginning of an interview and while we had not been commissioned to examine stratification within the Faculty, this theme was obviously central to some of its members.

This paper compares stratification within the Faculty as it existed around the time of Wilson's research, against its current structure⁵. Our research is based on 28 semi-structured interviews with members of the Faculty during the summer of 2007. We did not randomly sample but selected interviewees in order to obtain a mix of seniors, recent intrants and male and female advocates. The sample included eight silks and 20 juniors, nine women and 19 men.⁶ In addition, one Faculty Office Bearer, the Chief Executive of Faculty Services Ltd and seven clerks were interviewed. Interviews explored advocates' biographies, level of specialisation, nature of economic risks and strategies for spreading these risks. We have also drawn on publicly available data concerning advocates' biographies. This data is largely available from the Faculty's website which provides details on when an advocate was called to the Bar, when he/she took silk and specialisations.⁷

Our research demonstrates that despite the influx of new social groups, traditional inequalities have persisted. While the Faculty is specifically Scottish, the contradiction between change and the persistence of inequalities is not. This contradiction has been shown to be a feature of the legal profession across a range of Jurisdictions (Schulz and Shaw, 2003, Sheeny and McIntyre, 2006).⁸ We argue, however, that while the contradiction between increasing diversification and the persistence of inequalities has been observed, it is yet to be adequately explained.

We argue that theoretical frameworks that have traditionally been used to examine stratification within the legal profession, namely feminism and perspectives drawn from Bourdieu, do not fully account for the co-existence of change and the persistence of inequalities. We also examine whether new insights drawn from the

work of Beck, who claims that stratification is no longer tied to large-scale social divisions such as gender and class, are sufficient to explain the structure of the Faculty of Advocates. We propose a ‘middle ground’ approach which recognises that the social structure has been changed by the advent of second modernity, but nevertheless opposes Beck’s claim that large-scale social divisions no longer determine stratification. We argue that it is necessary to provide a more in-depth analysis of how inequalities are social constructed than currently provided by feminism and Bourdieu. This social constructionist approach provides a stronger understanding of how social agency is constrained or enabled and reveals social discourses that support the continuation of social inequality within the legal profession.

The Structure of the Faculty of Advocates

In order to appreciate how the Scottish Bar has changed over the last 40 years, it is important to appreciate its basic structural features. Scottish advocates should not be confused with barristers working in other parts of the UK. The need to be aware of this distinction is best highlighted by Flood (1981), who approached the Faculty in relation to research on barristers’ clerks. He received the following reply to his enquiry about gaining access:

I was interested to hear of your research . . . and have little doubt that comparison with the profession in other countries might be interesting to you. I think, however, it is of the first importance that you should appreciate that the Scottish legal system is separate, distinct, and in no sense a variant of the

English legal system. The proper method of studying it is to assume that it is different until you have received information to suggest that it is the same.

While there are obvious identities in the substantive law, there is almost no similarity in matters of procedure and organization of the profession. If you think of Scotland merely as a variant you will err exceedingly and wholly misunderstand the position (Flood, 1981:382).

At a simplistic level, the differences between the Bar in Scotland and in England and Wales may appear to be of mere nomenclature. The legal profession in both jurisdictions is split between solicitors and a specialist referral Bar who are courtroom pleaders and provide specialist legal advice: in Scotland these are advocates and in England and Wales barristers. The difference between these groups however, lies much deeper.

First, the two groups developed in distinct social, political and economic environments prior to the Act of Union between Scotland and England in 1707, with the Faculty of Advocates being closer to continental Bars than that of England and Wales (Paterson, 1988:78). One of the major provisions of the Act was the maintenance of separate legal systems of the two countries. Consequently, the two branches of the legal profession in the two jurisdictions have subsequently developed along different lines.

Second, the two Bars are very much different in terms of size. From the mid-nineteenth century until the mid-1960s, the membership of the Faculty of Advocates was relatively stable, with approximately 120-130 active practitioners (Wilson,

1967:236). By the late 1970s, the number of practising advocates had started to increase. In 1973 there were only 121 practicing members, which had expanded to 460 by 2006. The Bar in England and Wales has always been significantly larger, although the number of barristers has also increased since the 1970s. The number of barristers in England and Wales in 1973 was 3,137, and in 2007 there were 12,034. Both Bars have grown 3.8 times since the early 1970s, with the proportion of advocates to solicitors remaining smaller in Scotland relative to England and Wales.

It is likely that the differences in sizes have generated different dynamics in the evolutionary paths of the legal profession in the two jurisdictions. In 1973, there were 28.7 solicitors for each advocate in Scotland, which decreased to 21.6 by 2006. In England and Wales there were only 8.7 solicitors for every barrister in 1973, and this figure was the same for 2006. Thus while barristers have remained as approximately 10% of the legal professions in England and Wales advocates in Scotland remain below 5% of the legal profession in 2006, although this has increased from 3.4% in 1973. By 2006, the population per lawyer in Scotland was 491 while in England and Wales it was 449.

Thus advocates are a smaller percentage of the legal profession in Scotland than barristers are in England and Wales. This may partly reflect the higher rights of audience traditionally enjoyed by solicitors in Scotland compared to those in England and Wales.⁹ This underlines the point made to John Flood which is quoted above. It implies that the work of advocates while overlapping with that of barristers is likely to be different. Importantly for the present paper, it is perhaps likely to make the Bar in

Scotland more ‘exclusive’ than that in England. This may have implications for the composition of the Faculty and how it has changed over time.

A further difference is the organisational structure within which members of each Bar practise. Both advocates and barristers are self-employed. However the Bar in Scotland is often described as a ‘library profession’, with advocates ‘hot-desking’ out of the Advocates Library in Edinburgh. As they have no private working space, advocates often meet their clients by ‘strolling’ in Parliament Hall, which is the lobby to the Court of Session. In interviews, advocates identified the centrality of the library as providing the Faculty with a sense of collegiality:

The Faculty has a fantastic library. There is a collegial approach in the Faculty, such is the wealth of knowledge, that you could have a world-class expert in what you want to know just two tables away.

In Scotland, advocates share administrative support in the form of ‘stables.’ At the time of our research, there were 14 stables, with most containing approximately 40 members. Stables are mostly located in the old Parliament House in Edinburgh, reflecting the location of the Court of Session which is Scotland’s highest civil court. The majority are provided clerks and secretarial and fee collecting support by a service company called Faculty Services Limited (FSL). Thus the Faculty shares many features of a co-operative.

In England and Wales barristers function out of chambers, each occupying a separate physical location (such as a suite of rooms) and is headed by a senior barrister assisted

by a senior clerk. In 2007, there were 334 chambers, each containing approximately 45 members. In addition, there were 301 sole practitioners in England and Wales (General Council of the Bar, 2007) compared to just two sole practitioners in Scotland. There is a wider geographical spread of barristers in England and Wales with numerous chambers located around provincial court centres (Blacksell and Fussell, 1994).

“The dyke was breached”: women in the Faculty of Advocates

Until the 1970s the Faculty of Advocates was clearly stratified with groups traditionally excluded from professional occupations, such as women, having little presence. The first woman to apply to practise law in Scotland was Margaret Hall in 1900. Hall argued that women had gained entry into the profession in other jurisdictions and that educational reforms made it illogical to exclude women from practicing law in Scotland. Hall’s application was rejected on the grounds that only someone defined as a ‘person’ under the *Solicitor Act 1873* could become a law agent¹⁰ and the Act had not intended to include women (Mossman, 2006:113-114).

Women were seen to be too emotional to practise law, lacked impartial judgement, and in the words of one English lawyer in 1917 ‘women have no idea of relevance, or analogy, or evidence’ (Albisetti, 2000:842). The arguments against women entering the legal profession reflect constructions of women as being naturally unsuited to legal practice and certainly proved difficult to change. The passing of the *Sex Disqualification (Removal) Act* in 1919 lifted the formal barriers to women entering the legal profession in the UK. However, it did little to raise women’s participation

(Sommerlad and Sanderson, 1998; Polden, 2005). In 1923 Margaret Kidd became the first female member of the Faculty and she was still the only female advocate in 1948 when she became a King's Counsel. Women did not start to enter the Faculty in any significant numbers until the late 1970s.

During the 1970s a number of social changes prompted the move of women into the legal profession in unprecedented numbers. The Scottish legal market was significantly expanded by the rise of legal aid which was accompanied by changes in legal education. Traditionally, solicitors had entered the profession through traineeships which acted as a barrier against women entering the profession. In 1961, the Law Society of Scotland required all solicitors and advocates to hold an LLB degree, and this change increased the number of Scottish legal professionals. In the early 1960s, there were only five Scottish Universities offering LLBs. However this increased to 11 law schools by 2006. In 1958/9, there were only 396 undergraduate law students in Scotland. This increased to 1588 by 1974/5 and to 2283 by 1991/2 (Wilson, 1993:176).

Sommerlad (1994) argues that in England and Wales the greater availability of higher education and the increase of legal aid work created new opportunities largely for female lawyers. This also appears to have been the case in Scotland. Our interviews also suggest that discrimination legislation assisted women to move through the ranks of the legal profession:

It has been to do with discrimination law... I think it is enabled women to make some progress at the Bar, a lot of progress as solicitors... At that time, I worked

with a firm with 20 partners at the time, and not one of them was a woman. And the men would just look at you in the face and say “we are not going to make you a partner”, because at that time discrimination laws did not extend to partnerships. Soon after that it changed, they had to have one or two women, and lo and behold they found that women were quite good. The dyke was breached and it gradually changed.

During the 1970s, the number of female solicitors in Scotland significantly increased. In 1975 only 9% of solicitors in Scotland were women. By the mid-1980s the proportion of male to female law graduates and new solicitors was approximately equal (Willock, 2002:157). The number of women entering the Faculty of Advocates started to increase from the mid-1980s and in 2006 29% of practicing members were women.

In England and Wales, aspiring barristers must spend 12 months as a pupil training under a barrister, and then find tenancy in a chamber. Problems finding pupillage and tenancy have been identified as the largest hurdles for aspiring female barristers (Abel, 1995; McGlynn, 2003; Macey-Dare, 2007), although it has been argued that barriers against female pupils have decreased in recent years (Zimdars, 2010; 2011). In comparison, the Faculty of Advocates match trainee advocates, known as devils, with an experienced advocate known as a devil master. The Faculty also ensures that newly called advocates, known as intrants, are then found a position within a stable. An intrant cannot be guaranteed their first choice of stable but nevertheless the barriers are less relative to England and Wales (Abel, 1995).

Despite the greater opportunities for women they continue to experience gender discrimination. Female advocates appear to shoulder a 'double burden' and several female advocates discussed the problems of balancing career and childcare responsibilities. For instance:

I thought initially that the Bar would help me to balance family commitments, but looking back in retrospect I wonder if I've done the right thing. I naively thought that I would be able to spend more time at home... It is an erratic lifestyle, and I can't really make out of school commitments.

This advocate went on to explain that her childcare responsibilities limited her ability to tap into networks that are important for building a practice:

To build a practice, you need to hang out at court, even when you don't have a case, you need to socialise with solicitors... I tend to work from home rather than in the library... But in the library, you often have seniors looking for a junior for a case. Working from home, I might miss out on that. The senior might have just received instructions, and they walk through the library looking for a free junior.

In contrast, another female advocate explained that coming to the Bar had provided her with the flexibility needed to raise a young family:

And with hindsight, although this wasn't really a reason for my decision at all at the time, it wasn't a prospect, but it has worked extremely well with having a

family. I don't think I could have gone back to work if I had been in an employed situation.

This advocate, however, then recalled difficulties she faced because of the time she had taken off:

...work had gone to other people, and it was like starting again, and then, not quite like starting again because you do have the loyalty of some of your customers, but equally at the end of the day, life goes on, solicitors just want to have the work done. Solicitors, in a way, they don't have time to worry about loyalty.

In contrast, several male advocates felt that going to the Bar had provided more time to spend with their children. However, unlike those of their female counterparts, these comments were not qualified. Male interviewees did not identify problems gaining briefs through informal networking. One male interviewee explained that while he enjoys working from home as he sees his young children more often, he also appreciated being able to go into the Faculty library to interact with his peers. We also found female advocates reporting very long working hours:

I only take Friday night and Saturday off. I work Sundays and I am never in bed before midnight. This week I have not been in bed before 2am.

We did not hear similar statements from male advocates. Our findings are similar to research conducted in other jurisdictions. For instance, Feenan (2005) found that

female barristers in Northern Ireland were reluctant to apply for silk and judicial office due to their need to care for children and other dependents and that these reasons were not cited by male barristers. The impact of work-family tensions on the careers of female lawyers, not just barristers, is also well documented. For instance, Epstein et al. (1995:417) found that family commitments mean that female lawyers have less time available to cultivate clients, participate in organisation activities that are essential to building a career and they are unable to work late into the evenings in order to accumulate more billable hours. According to Kay and Brockman (1994), female lawyers report spending double the number of hours on childcare relative to their male counterparts. They also show that while male lawyers leave positions in order to improve their careers female lawyers tend to leave due to demanding hours, family responsibilities and inflexible work arrangements.

There are also other indications that gender inequalities persist. For instance, the number of female QCs at the time of our research stood at 10, whereas there were 81 male QCs. The number of female QCs represented 10% of all female advocates, whereas the number of male QCs stood at 23% of all male advocates – more than double the proportion of female QCs to female advocates. This proportion also appears to have levelled out, suggesting that women have no chance of catching up.

Female advocates were significantly more likely to identify themselves as specialists in family,¹¹ child law¹², education,¹³ and personal injury,¹⁴ law. In contrast, male advocates are more likely to state that they are specialists in commercial law.¹⁵ The specialisations identified by female advocates are relatively lowly paid and less prestigious compared to commercial law (Heinz et al., 1998; Mossman, 2006). They

also reflect types of legal work perceived to be a natural extension of women's supposedly innate nurturing traits rather than requiring any acquired skills (Sommerlad and Sanderson, 1998; Melville and Laing, 2007).

While it would seem clear that female advocates continue to experience gender discrimination, interviewees did not necessarily agree with this conclusion. Female advocates did not consider the need to take on a double burden to be related to gender discrimination but instead explained that they made an individual 'choice':

But I have made my choice. You have a choice between either dedicating all of your life to your career, or doing something else with your life. I have a life, and that has been my choice. It has had an impact on my work though... Having a family does impact on my career, but that has been my choice. If I wanted to focus entirely on my career I could have a housekeeper but I prefer to be at home. It is all down to the choices that I make.

Recently, several female advocates have gained prominence in the highest echelons of the Scottish legal profession, although this represents the success of only a very few individuals and not female advocates as a whole. Some have made public statements downplaying the significance of gendered inequalities. For instance, Lady Cosgrove, the first female judge in Scotland's Court of Session and (prior to this) the High Court, recently recalled:

I have just been in the right place at the right time, part of a generation of women for whom there have been no barriers and... have been able to reach the heights in their chosen profession (Robertson and Gosden, 2008).

The denial of gendered discrimination by highly successful women in the legal profession has become known as the 'no-problem problem' (Rhode, 1990). Other researchers have also noted that female legal professionals view their positions through a highly individualised lens. For instance, in a study involving Glaswegian professionals, including lawyers, Riley (2002) found that gender inequalities were explained by recourse to discourses of individual ability and personal choice rather than identifying gendered discrimination. Similarly, Hunter (2002) found that female QCs in Victoria, Australia, frequently dismissed gender-based barriers as being a matter of personal choice. Epstein et al. (1995) showed female lawyers are seen to make choices between family and career. When female lawyers have children, this decision is interpreted to mean that they have chosen to prioritise family over their legal careers. In contrast, male lawyers are not seen to have to make choices and instead are expected to be able to successfully combine fatherhood and their professional life (see also Sommerlad and Sanderson, 1998; Kay and Brockman, 2000).

“I worked out how much capital I would need”: The persistence of class divisions

While the number of women entering the legal profession in Scotland, and elsewhere, has dramatically increased since the 1970s this is not necessarily the case for working class aspirants. In Scotland, as well as other jurisdictions, class still appears to be a

determinant of whether someone will enter legal education and then continue into a legal career. Scottish education is often described as being historically more egalitarian relative to England, although there is a strong element of myth in this assertion. In the 1950s Scottish children were divided into streams at the end of primary school with some continuing onto a further five years of secondary education whereas others were limited to three years. This division entrenched class divisions with students who completed their fifth year more likely to come from middle-class families (Anderson, 1985:100; Paterson, 2003:131).

Educational reforms in the 1960s removed this system and educational opportunities for working-class students improved. In 1960 middle-class school leavers were five times more likely than working-class school leavers to reach the threshold for university entry. By the 1990s this ratio had dropped to less than three to one. In addition, by the end of the 1960s the number of Scottish students entering university had significantly increased (Paterson, 2003). From 1980 to 2000 the number of students in higher education in Scotland more than doubled (Scottish Executive, 2001:7).

This expansion, however, has not completely opened up university education for working-class aspirants. Competition for university positions has increased (Paterson, 1988; 1992) with lower high school performance persisting as the main reason for the relative lack of working-class students in Scottish universities (Forsyth and Furlong, 2003), especially for boys (Biggart, 2000). Working-class school leavers are also less likely to apply for university places, reflecting concern about going into debt, lack of

confidence and lack of awareness of the financial and career advantages of obtaining a degree (Paterson, 1992; Forsyth and Furlong, 2003).

The relative closure of higher education to working-class students is even more acute in Scottish law schools. From 1971-1979, 77% of Glaswegian law students had parents who were managers or professionals and from 1976-1980, 68% of Edinburgh law students had parents in the same categories (Paterson, 1988). The under-representation of students from lower socio-economic groups in Scottish law schools has failed to improve in recent years (Anderson et al., 2003). Recent studies show that the majority of legal professionals still have parents who are managers or professionals and that this trend is increasing (Robertson and Robertson, 2006:15). Qualitative research shows that admissions officers in Scottish law schools have little engagement in widening participation practices and believe that 'lowering the bar' for disadvantaged students would introduce, rather than eliminate, inequalities. Working-class school leavers are also deterred from applying due to stereotyped views of legal professionals as being privately educated and middle-class (Anderson, et al. 2003).

The barriers do not decrease once a working-class student has entered law school. In 1981, aspiring solicitors and advocates were required to complete a Diploma in Legal Practice as well as train in a solicitor's office. The cost of the Diploma compares well with the cost of professional training courses in England and Wales and up to 60% of Scottish students received a grant (Maharg, 2004:951). Nevertheless, the costs of studying for the Diploma have been shown to deter significant numbers of students (Anderson et al., 2003).

Once someone has qualified academically to enter the Bar further barriers await, although the ways in which these barriers are dealt with have changed. Wilson (1965:227) suggests that in the past advocates needed sufficient economic capital to carry them through the nine month devilling period when fees cannot be collected. Intrants also needed time to build a client base and faced a lag before fees start to come in.

The costs of going to the Bar do not appear to have changed substantially over the last 40 years, although the ways in which intrants may meet these costs appears to have changed. All of our interviewees explained the need to access capital in order to move to the Bar:

...the first thing that I did was I sort of worked out how much capital I had in the firm... So I worked out how much capital I would need and I looked to see if that would be enough to keep me going over the period over the devilling period.

In England and Wales, most barristers enter the Bar directly from law school, and the most important pre-requisite to entrance remains the need to first obtain pupillage and then tenancy. Newly called barristers need enough financial capital to take them through these early stages (Abel, 1995; Macey-Dare, 2007), as well as the period when they are still building a clientele and earnings are likely to be low. In Scotland, our data suggests that advocates in the 1970s also went directly to the Bar following law school. However, this has changed and most of the advocates interviewed had worked as solicitors prior to entering the Faculty. For many advocates, having worked

previously as a solicitor provided the necessary economic capital to make the move to the Bar, and other forms of capital, such as having built up a successful client portfolio had become more important (see further discussion below).

The barriers that face working-class aspirants to the legal profession appear to exist also in other jurisdictions. For instance, in 1975 only 32% of practicing lawyers at the Chicago Bar had non-professional fathers, compared to a rise to 57% in 1995. This increase, however, is diminished when the overall decline in non-professional jobs is factored in (Heinz et al., 1998). In addition, US lawyers with non-professional fathers are also more likely to end up in governmental positions compared to those with professional fathers who are more likely to work in private law firms (Wilkins et al., 2007). Similarly, an Australian survey showed that in 1982 70.5% students attending the Law School at the University of Monash had fathers with professional or paraprofessional backgrounds. This had risen to 76.7% by 1990 (cited in Goldsmith, 1995:278). Canadian research show that while other social groups have increasingly gained access to law schools students from lower socio-economic groups had not made significant gains (Chartrand et al., 2001). There is also evidence in England and Wales that working-class students continue to face significant barriers in gaining access to the Bar (Zimdars 2011).

In the same way that female advocates minimise the gender inequalities that they face, it appears that advocates also dismiss economic barriers. Several advocates used the phrase “I was lucky” in describing their access to capital that facilitated their move into advocacy:

I was lucky. When I was in London I had some support from a) my family and b) a scholarship. But when I came up here, it was basically money borrowed from the bank.

To make the switch, I had saved money, which I could do as I had worked for so long. We sold the house in Glasgow and bought a smaller place here. And the money from the sale saw me through. I was lucky enough to get work right away. The criminal work started out slowly, but still it paid fairly quickly. I was living on savings, on capital.

It could be argued, however, that access to economic capital is hardly a matter of ‘good luck’ and this individualistic understanding of structural barriers suggests further discourses of denial.

“People already knew me”: stratification and new forms of social capital

Economic capital, however, is not the only form of capital needed for a successful career as an advocate. According to Wilson (1967), advocates traditionally hailed from dominant legal families and until 1967 aspiring advocates who had passed their entrance exam still had to face a ballot of members which determined whether they were accepted into the Faculty. Consequently, membership of the Faculty was limited to aspirants who had the ‘correct’ personal attributes, as Wilson (1967:255) states:

Professional and intellectual competence have not guaranteed admission as a right. Moreover, toughness of moral fibre has been required of each successive social group to gain acceptance into the faculty.

Abel (1995) describes even further ascriptive restrictions in England and Wales. By the beginning of the 19th century, entry to the Bar was entirely at the discretion of the four Inns of Court who favoured prospective pupils with aspirations to become ‘gentleman’ and possessed desirable university contacts. Formal examinations were introduced in 1872, although the pass rate of 80 to 90% meant that technical knowledge was hardly a main criteria for entry. Abel (1995) explains that the requirement for technical competence has now increased. However final decisions concerning pupillage and tenancy still lie with the heads of chambers. This means that ascriptive characteristics, rather than merit, are still central to gaining entry to the modern Bar and have ensured that working class aspirants (as well as women) continue to face significant barriers.

In Scotland, the importance of family ties have diminished and the practice of balloting has been eradicated. Until recently, members of stables have not participated in decisions about placing devils and intrants. Instead all qualified aspirants have been found places in stables. This does not mean, however, that all advocates will be equally successful at the Bar. Instead, interviewees stressed that being known by the local solicitor community has become the key form of social capital to a successful career. As one advocate explained:

I was not too bad getting established. ... I could do this as I had been an Edinburgh solicitor. People already knew me. They had come across me on the other side of cases. For newly called advocates, these contacts are important...

This suggests that the importance of social capital has not diminished, and instead new forms of social capital have emerged. Other studies have also identified new forms of social capital which are essential to building a successful legal career, such as having personal contacts with institutional clients, memberships of organisations, involvement in professional activities (Epstein et al., 1995; Kay and Hagan, 1995, 1998, 1999).

In its response to a Scottish Government consultation on regulation of forms of business organisation in the Scottish legal profession, the Dean of the Faculty of Advocates has stated that more than 85% of intrants in recent years have previously practised as solicitors¹⁶. In fact in 2011 of the twelve intrants to the Faculty ten (83%) had been solicitors and the other two were English barristers. In 2005 two thirds of intrants had been solicitors while in 1995 the figure was 48%. Of the five intrants in 1985 only one had been a solicitor.¹⁷

In relation to the Faculty of Advocates, the shift in the types of social capital may be one of the factors that explain the persistence of gender inequalities. Female solicitors are still predominantly concentrated in the lower rungs of the profession and so would have less access to important contacts and as our interviews revealed, networks quickly break down should a solicitor take time out to care for children. This finding accords with Dinovitzer (2006), who argues that the importance of social capital does

not eliminate all traditional forms of social inequality. While access to social networks have assisted some social groups traditionally excluded from the profession, such as Jewish lawyers, lack of access to social capital for other social groups, such as women, has further cemented inequalities.

Most advocates explained that they were attracted to the Bar as they would be able to exercise greater independence and flexibility. For instance:

I always thought that I would go to the Bar at some point because of the independence of it. But when I sort of got into working and became a partner, the money was quite good, I felt that the income and the security was more important and that is what kept me there. But luckily in the last couple of years of being a partner,... found that being in partnership was, well I will use the term restrictive, but not in the terms of restrictive practices, I mean that I did not have the freedom that I would have wanted.

There has been debate in Scotland concerning whether advocates should have the option of working in partnership (Scottish Executive, 2006), although none of our interviewees considered partnership to be attractive. Instead, the highly individualised and self-sufficient nature of the Bar was one of its most compelling features:

For me, the attractive thing about the Bar is ploughing your own furrow. You decide, you do the work, you get paid for the work you do, the reward is there for your labour, and not for the labour of others, that's what I find attractive.

It would also appear that the self-sufficient nature of the Bar has become more intense in recent years. Advocates explained that they received little help in developing their careers and instead they were largely left to their own devices in order to build up a client base. In England and Wales, clerks assist barristers to develop their careers (Flood, 1981) and Wilson (1965) suggests that Scottish clerks took on a similar role in the 1960s. Our research, however, reveals that Scottish clerks now take a less active role in supporting intrants. In fact, some clerks admitted to not recommending a newly called advocate for fear of damaging the stable's reputation.

Another possible source of support for an intrant is their devil master. However, several devil masters made it clear that their role was also limited:

Once they have finished, they have come to the stable, then I don't give them anything. It sounds like I should because they have been hanging onto my coat-tails all that time but I don't give any. I don't give pass-on to them.

I would never say to my clerk 'I have too much on, would you pass this on to Bloggs, who is my devil'.

Newly called advocates appear to rely on a combination of individualised effort and luck. Several senior advocates recalled cases that acted as a catalyst that propelled their careers. For instance:

I have been instructed at half past 9 for a 10 o'clock motion. And I spoke to the agent¹⁸ afterwards, I went for a coffee with him, and he then instructed on something that proved to be quite big. There is a large element of luck in it.

“You get very, very nervous”: anxiety within the Faculty of Advocates

The need to rely on individualised effort and luck appear to leave advocates feeling anxious that they will be successful at the Bar. Obtaining a client base is merely the first step to becoming a successful advocate. Once an advocate has established a client base, they must then maintain it. One of the strongest themes in the interviews was the insecurity that advocates, even some that were well established, felt in terms of holding onto clients. Ironically, while many had come to the bar in an effort to gain control over their career the degree of control that advocates possess over their client base is limited. As one advocate acknowledged:

The major disincentive is not financial. It is the uncertainty of it, if you'll make it. It is ironic considering the context, the bar is the ultimate free market, if you don't work you don't eat. There are no barriers to competition. We are all competitors. And so people don't make it.

Advocates are generally not allowed to directly approach a client and instead rely on solicitors as intermediates. This reliance often leaves advocates in a precarious position. For instance, an advocate may have a good relationship with a solicitor over a long period of time, but then the solicitor 'goes cold' without the advocate knowing why. As one advocate stated: 'Sometimes solicitors simply cease to pass on work, and

you don't know why.' All advocates, regardless of experience, said that they get worried if the work becomes light. As one clerk explained:

You get very, very, nervous when the diary starts to look empty. When they start to not get as many cases as a few months ago. But it is a feast and famine sort of job. Any of them who have been here for any length of time knows that.

Despite these anxieties, the need to become established, reliance on a fickle client base and competition are not new features of the Faculty. While there has been a significant increase in advocates during the last 40 years, there have also been fluctuations in memberships in the past. According to Paterson (1988:83), the number of admissions from 1660 to 1880 was approximately 60 per decade but then jumped dramatically at the end of the 19th century reaching 180 per decade. While many left the Bar, presumably due to a lack of work, Paterson (1988:83) claims that the competition for work remained high.

The creation of solicitor-advocates is also not the first time that the Faculty has lost an aspect of its control over the legal services market. Paterson (1988) traces the origins of advocates to small group of procurators during the sixteenth century who had exclusive rights to appear before the court. These procurators served the double role as agents (now solicitors) and advocates. As workloads increased, they started to delegate non-advocacy work to clerks of the Signet, who were responsible for affixing the Signet Seal of the King's Secretary of State to legal documents. The clerks, who had organised themselves into the Society of the Writers to the Signet by 1594, then started challenging the procurators for work and eventually eroded their monopoly as

agents. By the end of the 18th century the Faculty had conceded its agency work completely and members were acting exclusively as advocates.

The current changes are also not the first time that stratification within the Bar was dramatically altered. Initially, the Bar consists of members drawn from the highest social strata. However, by the end of the 18th century members were increasingly drawn from the middle classes. This change is partly attributed to the rise of private colleges and the appointment of Chairs in Law at universities in Edinburgh and Glasgow. Traditionally, advocates had attended continental universities whereas now they had a less expensive route into the Faculty. Even more significantly, the Scottish Enlightenment had resulted in the Faculty changing its admission procedures with a greater acceptance of achievement over ascription (Cairns, 1986; Paterson, 1988:81). Paterson (1988:80-81) argues that the decline of financial and social barriers to entry to the Bar at this time resulted in a loss of “its homogeneity, its corporate identity and self-esteem.”

Nevertheless, some recent changes have occurred which have possibly increased advocates’ sense of insecurity. The number of advocates has increased significantly and the proportion of solicitors to advocates has declined. As a result, advocates appear more aware of the need to market their services. In the past, the majority of stables were set up along the same lines – they did not focus on any particular specialisations and stable membership was decided by the Faculty. Since mid-2007, all except one of the stables have ‘devolved’, which has involved stables moving out of the umbrella control of the Faculty. Several stables have become more specialised

and members are now selected on merit. For some advocates devolution was clearly associated with a sense of unease:

Although things are changing, the Faculty is still collegial, but stables are devolving. They may become more competitive, like English chambers. Stables can now regulate entry, there is no automatic right to a place in a stable. I am not sure if that is a good thing. We are being driven more by market forces.

Insecurity may also have increased due to the erosion of advocate's monopoly over audience rights in the higher courts. This monopoly was broken in 1993 when solicitor-advocates acquired the same rights of audience as advocates. While the impact of solicitor-advocates in England and Wales is relatively minor (Boon and Flood, 1999), the different structure of the Scottish court system has allowed solicitor-advocates to make major inroads into advocates' work. The Sheriff Courts in Scotland have a wider jurisdiction in both civil and criminal matters compared to the lower courts in England and Wales. Consequently, solicitors in Scotland have traditionally had more court experience than their counterparts in England and Wales, which may have allowed solicitor-advocates to have a greater impact in Scotland. Previous research showed that, by 1999, solicitor-advocates were representing approximately 12% of criminal cases in the Scottish higher courts, and were becoming increasingly active in commercial actions and drafting (Hanlon and Jackson, 1999:558-9).

Our research also suggests that solicitor-advocates have made significant inroads, especially in criminal matters. As one advocate explained:

There is huge penetration into the criminal field... The solicitor is the gatekeeper. The clients go to the solicitors. The solicitor selects counsel. In the past, High Court appearance rules meant that they have to have an advocate, and the client would have no idea about any of this. But now, with solicitor advocates having rights of appearance, they can do it themselves. They have to, in theory, tell the client that they could use an advocate but this is a rather perfunctory conversation with the client, and the client doesn't ask.

While solicitor-advocates appear to have had less impact on commercial matters, there were suggestions that some larger solicitor firms in Edinburgh were increasingly using in-house solicitor-advocates. Several advocates also explained that solicitor firms are using solicitor-advocates as a means of boosting their client referrals:

Solicitor-advocates have changed the rules. As an advocate has nothing to give but their services they are limited. If a solicitor rings and says I want you, then that's fine, you develop a relationship. But you can only offer them your services, but can't give anything back. But solicitor-advocate A can instruct solicitor-advocate B, then the next time the situation is reversed. There is a direct financial incentive for them to keep the work between them. For advocates, there is no referral back. It has distorted the playing field.

Accounting for change and persistence of inequalities: theoretical perspectives

The structure of the legal profession has dramatically changed over the last 40 years. Some social groups traditionally excluded have now successfully infiltrated the legal

profession, although this has not produced equality of experiences and opportunities. The apparent contradiction between increasing diversification occurring alongside the persistence of inequalities has been observed by previous studies into stratification within the legal profession, although it has not necessarily been adequately explained.

To date, two main theoretical perspectives have been used in order to explain social stratification within the legal profession. First, feminist perspectives have been used to account for the persistence of inequalities (eg Menkel-Meadow, 1989; Sommerlad, 1994; Thornton, 1996; Albisetti, 2000; Epstein, 2000; Hunter, 2002; Bogoch, 2003; Melville and Laing, 2007). Feminist authors have observed that while women have increasingly entered the profession numerical equality does not mean that women's experiences are equal. For instance, Epstein et al (1995) showed that the career progression of female lawyers has fallen short of that experienced by male lawyers. These findings are consistent with a growing body of feminist research showing that female lawyers continue to face institutional barriers, such as being paid less relative to male lawyers, working in lower esteemed fields of law and predominantly occupy the lower rungs of firms (eg Rhode, 1990; Kay and Hagan, 1995; Epstein, 2000; Mossman, 2005, 2006; Phillips, 2005).

Although feminist researchers have revealed the persistent of gender discrimination, it has been argued that they have made little inroads in explaining inequalities. Silius (2003) argues that the study of gender within the legal profession has largely presented empirical findings without necessarily providing explanations. She contends that this problem is partly an outcome of feminist researchers wanting to address the gender blindness of mainstream perspectives on the legal profession, as

well as the dominance of Anglo-American researchers who tend to be more empirically driven than their European counterparts.

The lack of explanations of gender inequality is only one problem with feminist perspectives on the legal profession. While feminist research has shown the continuation of gender inequalities, gender is only one aspect of stratification. There has been significant consideration of the increasing entry of women into the profession. However, there has been little focus on the continuing exclusion of working-class men. This is an important oversight and, as our research highlights, the increase of women into the legal profession has made it increasingly difficult for working-class men to enter the profession. The lack of attention towards the interaction between gender and class is not isolated to research on the legal profession; rather it is a problem within feminist theory more broadly. Traditional class analysis, which has sought to fit people into pre-ordained classifications based on father's occupations or has only considered division of labour as it occurs within the public sphere, has been rejected by many feminists. According to Skeggs (2004:20), these problems have resulted in the neglect of class within feminist theory.

Feminist examinations of stratification within the legal profession have also been criticised for being overly deterministic. For instance, Hull and Nelson (1998) argue that feminism does not adequately examine the choices that are available to female lawyers and the nature of structural constraints. Similarly, Menkel-Meadow (2006) argues that feminist researchers have often reified gender differences within the legal profession. She argues that there is a need for an in-depth investigation of how the social construction of gender difference within the legal profession has been

transformed by social change. Again, these problems are not necessarily isolated to the study of gender within the legal profession. Feminism more broadly has been criticised for not fully engaging with the relationship between structure and agency (McCall 1992).

One further theoretical perspective that has attempted to address stratification within the legal profession is that provided by Bourdieu. Insights from Bourdieu have been used to explain the types of social, cultural and economic capital required to build a successful legal career (eg Hull and Nelson, 1998; Dinovitzer, 2006) and to explain the persistence of class (eg Granfield and Koenig, 1992; Dinovitzer and Bryant, 2007; Jewel, 2008). These studies have also shown how changes, such as the move to higher education credentials as the main pathway into the profession, have created new forms of social capital that ensure the continuation of inequalities (Dinovitzer, 2006; Garth).

Whereas feminism has neglected class, Bourdieu's analysis of gender has been criticised for being unclear (McCall, 1992) and for conceptualising gender as a universal and normalised category (Skeggs, 2004). Critics also assert that Bourdieu does not adequately deal with the opening up of opportunities and that he slips into determinism (Jenkins, 1982; King, 2000; Schatzki, 1989, 1997). It has been argued that Bourdieu creates a dichotomy between structure and agency and in so doing erects a "determinism that makes significant social transformation seem impossible" (Sewell, 1992:15).

One theoretical alternative, which purports to explain both change and the persistence of inequalities, as well as overcoming the problem of determinism, is that offered by Beck¹⁹. Beck's theoretical insights have not been previously applied to the legal profession. In *Risk Society* (1992) Beck argues that industrial societies have moved from an earlier stage of modernity, called 'first' or 'simple modernity', to their current state known as 'second' or 'reflexive modernity'. In Anglo-Saxon academia, Beck's work has largely been associated with the rise of the risk society. *Risk Society*, however, offers a second line of argument concerning the nature of stratification within modern societies (Lash, 2001). This theme was further developed in *Individualization* (2001), which Beck wrote alongside Elisabeth Beck-Gernsheim⁸.

According to Beck and Beck-Gernsheim (2001), simple modernity is characterised by the centrality of the nation state and its supporting social institutions, including the welfare state, industrial regulation, the stable nuclear family and full employment arising from Fordist industrialisation. Boundaries delineating social groups are strictly differentiated and people's lives are largely constrained by their social positions at birth. During the late 1960s and early 1970s, market expansion, legal universalism, and welfare reforms associated with the intensification of modernisation lead to the advent of reflexive modernisation. In relation to women, employment opportunities improved following the expansion of higher education, market demand for more flexible labour and the implementation of anti-discrimination legislation. As a result, women living in western industrialised nations were released from direct family ties and into the labour market. They gained more power in both the public and private sphere. The changes associated with the rise of reflexive modernisation certainly

appear to be responsible for the increasing diversification within the legal profession, especially in relation to the increased number of female lawyers.

Under reflexive modernity individuals become 'dis-embedded' from their ascribed roles and 're-embedded' into lives that have greater scope for individual choice. Individuals' biographies are increasingly shaped by everyday activities rather than the overriding determinism of the social structure, although this freedom is also accompanied by a growing sense of insecurity. Beck (2001) controversially argues that social categories such as class and gender become 'zombie categories' which are no longer able to explain social stratification. This does not mean that social inequalities are eradicated. While individuals are offered an unprecedented level of choice, for many it is still constrained. Rather than being able to blame the social structure for these limitations, responsibility for opening up choices (or failing to do so) lies with the individual. In addition, instead of acting collectively to address inequalities, as was attempted within simple modernity, individuals are increasingly left to their own devices.

Our research, however, shows that stratification based on class and gender remain strongly ingrained within the Faculty of Advocates. Barriers facing law graduates entering the Bar may have decreased due to advocates being able to draw on economic and social capital gained while working as solicitors, nevertheless working-class students are less likely to apply to law schools in the first place. Female advocates primarily work in areas of law deemed 'women's work'. They struggle to balance the double burden of family and career. To Beck, the process of individualisation renders categories such as gender and class incapable of explaining

stratification. Our research, however, demonstrates that while social actors may not use these categories to explain their experiences they nevertheless remain determinants of advocates' biographies. Our findings are also consistent with other empirical studies, that show the continuation of structural inequalities (eg Tulloch and Lupton, 2003; Smart and Shipman, 2004; Atkinson, 2010).

Thus, it would appear, social stratification within the legal profession cannot be adequately explained by feminism, Bourdieu or new insights offered by Beck. Whereas perspectives drawn from feminism and Bourdieu have been criticised for being overly determinist, Beck has been criticised for overemphasising agency and overlooking structural constraints (Atkinson, 2010). Some authors have called for a 'middle ground', which examines the ways in which social stratification has been changed by the advent of reflexive modernity but also recognises that biographies continue to be shaped by the social structure (Mythen, 2007). Beck has rejected these efforts insisting that his 'paradigm shift' does not allow for reconciliation between individualisation and structural explanations of stratification (Beck, 2007, see also Woodman, 2009). In reply, Roberts (2010) has argued that, despite the opposition of Beck and his supporters, a middle ground perspective best fits with empirical observations.

We agree with Roberts (2010) and our data suggests that social change has occurred largely in line with the rise of reflexive modernity. Nevertheless, it is also clear that these changes have not eradicated the importance of social determinants such as class and gender. We argue that a more useful way forward may be to look for parallels between feminism and Bourdieu which would allow for an examination of the

intersection between gender and class. An example of research which provides a Bourdieusian feminist perspective is provided by Kay and Hagan (1998). According to Kay and Hagan (1998), female lawyers have limited access to the types of social and cultural capital that are seen to be aligned with law firm's monetary goals. This accounts for the lack of women being promoted to partnership level. Not all female lawyers, however, are denied opportunities. Kay and Hagan (1998) show that partnership decisions are based on gendered constructions of being a 'good' lawyer. Prospective female partners are expected to break with convention and prioritise work over family. In contrast, in order for a male lawyer to be promoted to partner they must demonstrate a commitment to traditional family values.

Kay and Hagan (1998) largely draw on Bourdieu's concept of capital to investigate stratification, although they provide a rather static picture of the legal profession. According to Bourdieu (1984), capital becomes legitimised by its relation to the underlying social structure. Our analysis reveals that as the social structure has shifted so have the types of capital that are necessary to become a successful advocate. In the past, family connections had been necessary to build a successful career at the Bar but now the Faculty of Advocates' exposure to a competitive market for legal services means that it is becoming increasingly important for advocates to be able to draw on connections to solicitor firms.

Capital is also only one component of Bourdieu's work and it has been argued that Bourdieu's framework cannot be simply extended to feminist objects of enquiry. Instead, some feminists have argued that Bourdieu's explanatory tools need reshaping (McCall 1992, Tori 1991, Lovell 2000). For instance, McNay (2004) and Fowler

(2004) reject Bourdieu's universalisation of gender and suggest gender should be analysed as a form of symbolic violence (McNay 2004, Fowler 2004). Bourdieu defines symbolic violence as "violence which is exercised upon a social agent with his or her complicity" (Bourdieu and Wacquant 1992:272). Our analysis reveals powerful social constructions have facilitated the continuation of structural inequalities. Advocates use discourses of denial with social opportunities being seen to be open to anyone with the necessary skills, personal drive and luck, rather than being constrained by social background. These discourses could be conceptualised as a form of symbolic violence through which advocates become complicit in maintaining stratification, sometimes to their own disadvantage.

Conclusion

The structure of the legal profession has dramatically changed over the last 40 years. Some social groups traditionally excluded have now successfully infiltrated the legal profession, although this has not produced equality of experiences and opportunities. The apparent contradiction between increasing diversification occurring alongside the persistence of inequalities has been observed by previous studies into stratification within the legal profession, although it has not necessarily been adequately explained. Previous theories have been located largely within theoretical frameworks or insights drawn either from feminism and Bourdieu. While these approaches provide strong accounts of the persistence of social inequalities, they are less able to explain social change. In contrast, new insights located in the work of Ulrich Beck lean too heavily towards unconstrained social agency and while Beck can account for change he is unable to explain the how inequalities remain tied to traditional social structures.

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We have argued for a middle ground which involves a feminist reframing of Bourdieu's work in order to examine the way in which the legal profession has changed over the last 40 years, although at the same time traditional determinants of stratification have remained. Applying a feminist-Bourdieu framework, we demonstrate the rise of new forms of social capital and discourses of denial which act as a form of symbolic violence. We argue that this framework offers the best theoretical tool for explaining the persistence of social inequalities despite the advent of social change. This framework also suggests a future research agenda for studying stratification within the legal profession more widely.

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¹ Most other jurisdictions, such as the US and most of continental Europe, do not have a divided profession.

² There are some exceptions, mainly legal professionals, public authorities, voluntary organisations, recognised charities, public limited companies regulated by the London Stock Exchange.

³ Under Section 34(1) of the *Law Reform (Miscellaneous Provisions) (Scotland) Act 1990*, qualified solicitor-advocates have rights of audience in the higher courts.

⁴ The views expressed in this paper and in that Report (Stephen and Melville, 2008) are those of the authors and not of the Faculty of Advocates. We would also like to acknowledge research assistance provided by Ann Richter, PhD Candidate, School of Law, University of Manchester.

⁵ This paper analyses the importance of class and gender inequalities, although previous studies highlight that influence of other determinants of stratification, such as ethnicity (eg Kidder, 2004; Sanders, 2004; Wilkins and Gulati, 1996; Wilkins, 2004) and religion (eg Dinovitzer, 2006) have persisted despite the influx of minority lawyers over the last 40 years. Some studies have suggested that other factors may have become more important, such as the status of a graduate's law school (Lempert et al, 2000). Data concerning ethnicity was not available for the Faculty of Advocates. We had devised a rather innovative method to analyse the importance of the Catholic/Protestant divide. Scottish Catholics have historically faced institutional discrimination in Scotland and contemporary research suggests that they continue to experience lower life chances relative to Protestants (eg Abbott et al, 1998). Most of the Scottish Catholic population have their roots within Irish migrant communities (Walls and Williams, 2003:636) and several researchers have used Irish surnames as a reliable marker of Irish heritage and also religious affiliation (Abbot et al, 1998; Williams, 1993). Having an Irish surname does not automatically mean that someone is a practicing Catholic. However, it is not so much religious practice that we are interested in as much as the influence of relation between religious background and socio-economic status. One limitation to this methodology is that surnames are predominantly patrilineal and so it becomes difficult to trace married women from an Irish heritage who have taken their Protestant husband's surname. This problem, however, appears to be minimal in Scotland, due to the persistence of Catholic endogamy until at least the 1970s (Walls and Williams, 2003:636). This method did not elicit any clear differences between advocates based on surname and therefore religion. Interviews suggested that religion may still be a determinant of inequality. However, our data is not sufficient to draw any reliable conclusions and so we decided to exclude religion from our main discussion.

⁶ Newly called members advocates are called 'intrants' and senior advocates with 12 or more years experience are awarded 'silk' and become known as Queens Counsel in recognition of their skills and experience.

⁷ Self-identified specialisation could not be quantified in terms of how many cases or hours an advocate may take on in that field. Those that did not list any area of specialisation included around half of the ten highest earners from criminal legal aid, who might be regarded as criminal trial specialists.

⁸ These include Argentina (Gastiazoro 2010), Australia (Thornton, 1996; Hunter, 2002), Brazil (2003), Canada (Kay and Hagan, 1995, 1998, 1999, 2000; Mossman, 2005; Dinovitzer, 2006), England and Wales (Sommerlad and Saunderson, 1998; McGlynn, 2003; Melville and Laing, 2007; Sommerlad, 2008), France (Boigeol, 2003), Germany (Schultz, 2003), Israel (Bogoch, 2003), Japan (Kaminaga and Westhoff, 2003), the Netherlands (Ietswaart, 2003), New Zealand (Murray, 1987), Northern Ireland (Feenan, 2005), Poland (Fuszara, 2003) and the US (Epstein et al, 1995; Granfield and Koenig, 1995; Wilkins and Gulati, 1996; Heinz, 1998; Epstein, 2000; Kidder, 2004; Wilkins 2007).

⁹ The legal professions in Scotland and England and Wales have evolved very differently and there are numerous factors that may account for these differences. We do not have the scope within this paper to fully examine the reasons behind these different evolutionary tracts.

¹⁰ The term law agent is often used in Scottish legal parlance to refer to a solicitor. See Chambers Twentieth Century Dictionary: 'agent.....**law agent** (*Scot.*) a solicitor – any qualified legal practitioner other than an advocate'.

¹¹ $\chi^2=13.636$, $df=1$, $p=0.000$.

¹² $\chi^2=11.9000$, $df=1$, $p<0.001$.

¹³ $\chi^2=6.238$, $df=1$, $p<0.05$.

¹⁴ $\chi^2=4.958$, $df=1$, $p<0.05$.

¹⁵ $\chi^2=5.932$, $df=1$, $p<0.026$.

¹⁶ At p. 5 of the covering letter from the Dean to Cabinet Secretary for Justice in Faculty of Advocates (2008).

¹⁷ These figures are the authors' calculations based on information in profiles of individual advocates on stable web pages of members of the Faculty in 2012.

¹⁸ See fn. 10, above.

¹⁹ Beck is not the only social theorist to assert that modern industrialised societies have entered a new epoch and that large-scale categories have been eroded by individualisation. In particular, see also Giddens (1991), Bauman (2001), Pakulski and Walters (1996).