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## SQE-ezed Out: SRA, Status and Stasis

Jessica Guth and Kathryn Dutton

### Introduction

'Widening participation' has become a mantra of the SRA and certain select law firms seeking to provide a rationale for the controversial and divisive move to the Solicitor's Qualifying Examination (SQE). This fundamentally flawed and misleading assumption presents a significant danger of not only perpetuating inequality stasis in the profession, but also of diverting attention from other reforms critical to diversity, substantive equality and justice. This paper considers the rhetoric of widening participation in relation to the solicitors profession and highlights that the SQE proposals spawned from a social field that has persistently resisted meaningful change in its defence of, and deference to, the status quo. From this context, consideration will be given to the likely effect of the SQE upon both participation in the profession and aspiring solicitors. It will be argued that the SQE is, for a multitude of reasons, more likely to increase inequality in the profession. The SQE will perpetuate patterns of subordination and silencing of already unrepresented social groups, and it is likely that the profession will in fact enter a period of regression rather than the promised increased participation and diversity. For individual, aspiring solicitors who do not conform to the status requirements of this intransigent social field the outcome is inevitably 'habitus dislocation'<sup>1</sup> and concomitant 'hidden injuries'.<sup>2</sup> This is an outcome that will have devastating effects on scores of individual lives, and have the longer term generational effect of various groups self-excluding as they conclude that the profession is 'not for the likes of them'.

In our work there is one key underlying assumption which we ought to make explicit. We believe that a diverse legal profession is not only a good thing but of crucial importance to the functioning of society and the furtherance of (social) justice.<sup>3</sup> Linked to that is our wide conceptualisation of diversity which goes beyond the protected characteristics of gender, race, religion etc but is about who we are, our socio-economic backgrounds, the contexts in which we grew up and the contexts to which we were exposed including the type of school we attended, the university we went to and the geographical location we grew up in, live in and have an affinity with, as well as anything else we individually think and feel is important to us in shaping our identities. In this paper we do not have the scope to explore these assumptions and make the case for them in any detail but they are nonetheless the assumptions from which we write.

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<sup>1</sup> See Bourdieu's work generally but perhaps in particular Bourdieu P (1984) *Distinction: A Social Critique of the Judgment of Taste*. London: Routledge; Bourdieu, P. (2005) 'Habitus'. In Hillier, J. and Rooksby, E. (eds) *Habitus: A Sense of Place*. Ashgate: Aldershot

<sup>2</sup> Sennett, R., Cobb, J. (1977) *The Hidden Injuries of Class*. Cambridge: Cambridge University Press

<sup>3</sup> SRA 'The Business Case for Diversity' (SRA 2018) available online at <https://www.sra.org.uk/risk/resources/risk-business-case-diversity.page>. A plethora of recent research has set out the importance of diverse professions including lawyers and judges in particular. See for example Hilary Sommerlad, 'The "Social Magic" of Merit: Diversity, Equity, and Inclusion in the English and Welsh Legal Profession'. (2015) 83(5) *Fordham Law Review* 2325, Webley, L. and Duff, L. 2016. *Diversity and Inclusion As the Key to Innovating Talent Management in Law Firms?* in: Mottershead, T. (ed.) *Innovating Talent Management in Law Firms* National Association for Law Placement. pp. 235-254; Webley, L., Tomlinson, J., Muzio, D., Sommerlad, H. and Duff, L. 2016. *Access to a Career in the Legal Profession in England and Wales: Race, Class, and the Role of Educational Background*. in: Headworth, S., Nelson, R.L., Dinovitzer, R. and Wilkins, D.B. (ed.) *Diversity In Practice: Race, Gender, and Class in Legal and Professional Careers* Cambridge Cambridge University Press. pp. 198-225, Erika Rackley, *Women, Judging and the Judiciary: From Difference to Diversity* (; Jessica Guth and Sanna Elfving *Gender and the Court of Justice of the European Union* (Routledge 2018).

This paper begins with a brief examination of the widening participation mantra in the context of law schools and the legal profession and solicitors in particular. It provides a snapshot of some of the diversity indicators and issues in the profession and thus begins to point towards some of the serious concerns which need to be addressed if we should indeed value and strive for diversity in the profession. We then move to a more detailed analysis of the SRA's proposals and the SQE in particular to highlight how they simply cannot address diversity concerns, neither in practical nor theoretical terms. In the final section we then aim to mitigate the impact of the SQE by considering how diversity in the solicitors profession can be more meaningfully addressed and how legal education, in its response to the current reforms, can help prepare students to navigate the unfair, unequal and complex pathways that lead into the world of work, including the work of solicitors.

### **Widening Participation, Solicitors and an Inequality Stasis**

Both Higher Education (H.E.) and the legal sector have changed significantly in recent times, growing significantly and *prima facie* showing evidence of 'widening participation' from individuals whose class and/ or background would have prevented their entry only a few decades previously.<sup>4</sup> Increased participation or itself, however, cannot and should not be heralded as a success story (as it sometimes glibly is) for diversity in either HE or the legal sector. For many, equality of opportunity remains a distant dream.

Numerous commentators have identified that despite an unprecedented surge in participation, English H.E. 'continues to be monopolised by those from higher socio-economic classes'.<sup>5</sup> Loveday astutely directs attention to the 2011 Cabinet Office Strategy for Social Mobility which identified: 'Almost one in five children receive free school meals, yet this group accounts for fewer than one in a hundred Oxbridge students'. The debate over class and race discrimination at England's most 'elite' institutions has, if anything, become more pronounced in recent years, with data showing that Oxford and Cambridge have regressed with regard to socio-economic diversity.<sup>6</sup> Reay et al have pointed out 'Whilst universities are reporting success in widening participation, there exists an apparent polarisation between those universities attracting working-class and minority ethnic students and those attracting the traditional university constituency.'<sup>7</sup> Not only are those from lower socio-economic backgrounds less likely to apply to go to university, they are also less likely to get accepted to prestigious institutions if they do apply.<sup>8</sup> There are a variety of reasons for this that

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<sup>4</sup> See Trever Hussey and Patrick Smith, *The Trouble with Higher Education: A Critical Examination of our Universities* (Routledge 2010). Hilary Sommerlad, Richard Young, Steven Vaughan and Sonia Harris-Short, 'The Futures of Legal Education and the Legal Profession' in Hilary Sommerlad, Richard Young, Steven Vaughan and Sonia Harris-Short (eds) *The Futures of Legal Education and the Legal Profession* (Hart 2015)

<sup>5</sup> Loveday, V. (2015) 'Working-class participation, middle-class aspiration? Value, upward mobility and symbolic indebtedness in higher education.' 63 *Sociological Review* 570-588. Spengen, Anna E., "The Experiences of First-Generation University Students" (2013). Sociology Publications. Paper 32.

<http://ir.lib.uwo.ca/sociologypub/32> . Friedman, Sam (2016) *Habitus clivé and the emotional imprint of social mobility*. *The Sociological Review*, 64 (1). pp. 129-147.

<sup>6</sup> See, inter alia: Weale, S., Adams, R., and Bengtsson (2017) 'Oxbridge becoming less diverse as richest gain 80% of offers' *The Guardian*, 19th October; Stubbs, G. (2017) 'Oxford and Cambridge universities accused of 'social apartheid' over failure to offer places to black students' *The Independent*, Friday, 20<sup>th</sup> October; and, Topping, A. (2016) 'I know all about Oxford's class problem: It starts in Schools' *The Guardian*, 22<sup>nd</sup> November 2016;

<sup>7</sup> Reay, D., Crozier, G. and Clayton, J. (2009) "'Fitting in' or 'standing out': working-class students in UK higher education" 32(1) *British Educational Research Journal* 1-19. See also Hussey and Smith n 4 above

<sup>8</sup> Hussey and Smith n4 above

cannot be fully explored here but they include factors such as: the type of qualification obtained (with A-Levels being privileged over other types of qualifications)<sup>9</sup> and the support and opportunities available to students. There is a plethora of research which confirms what Hussey and Smith state succinctly: “Class and racial inequalities stain our pre-school, primary and secondary education systems, so that the pattern is deeply engraved before the tertiary stage is reached.”<sup>10</sup>

For those that do reach University, class divisions that can be difficult to define are often deeply felt by students.<sup>11</sup> This is especially the case for those that defy the odds to reach England’s most elite institutions. Despite the discourses of diversity that are now glibly mouthed throughout much of the H.E. sector, many working-class students feel a sense of dislocation and lack of ‘fit’ that has changed little in the past decades.<sup>12</sup> These students remain the proverbial ‘fish out of water’.<sup>13</sup>

Thus, perversely, the greatest beneficiaries of the expansion in student numbers are however those with professional backgrounds with those from ‘low skilled’ backgrounds seeing only a marginal increase in young people attending university.<sup>14</sup> In short ‘the serious inequality of representation between the different socio-economic groups persists in the UK.’<sup>15</sup>

The Legal Education and Training Review (LETR) echoed the concerns outlined above in the specific context of legal education and identified the issues as follows:

“Widening participation policies over the last two decades have undoubtedly changed the composition of the undergraduate population. The law student population today is predominantly female with a proportionate over-representation of BME students relative to population norms. In that sense, the sector performs ‘well’ in terms of those diversity criteria. In other respects, progress has been more limited. As noted in the Literature Review, and in the latest Milburn Reports, progress on widening the socio-economic origins of the student population, particularly within elite universities has been slow, with consequences for social mobility and the diversity of the professions.”<sup>16</sup>

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<sup>9</sup> Petrie, K. and Gicheva, N. (2018) *Vocation, Vocation, Vocation: The role of vocational routes into higher education* Social Market Foundation Report (29<sup>th</sup> January): London

<sup>10</sup> Hussey and Smith n 4 above 11. See also Archer, L., Hutchings, M. and Ross, A. (2003) *Higher Education and Social Class: Issues of Exclusion and Inclusion* London: Routledge. Reay, D., Crozier, G. and Clayton, J. (2009) “‘Fitting in’ or ‘standing out’: working-class students in UK higher education” 32(1) *British Educational Research Journal* 1-19. Reay, D., Crozier, G. and Clayton, J. (2009) ‘Strangers in Paradise’? Working-class Students in Elite Universities 43(6) *Sociology* 1103-112

<sup>11</sup> Archer et al n 10 above

<sup>12</sup> Reay, D., Crozier, G. and Clayton, J. (2009) “‘Fitting in’ or ‘standing out’: working-class students in UK higher education” 32(1) *British Educational Research Journal* 1-19.

<sup>13</sup> Reay, D., Crozier, G. and Clayton, J. (2009) ‘Strangers in Paradise’? Working-class Students in Elite Universities 43(6) *Sociology* 1103-1121. See also, Bourdieu, P. and L. Wacquant (1992) *An Invitation to Reflexive Sociology*. Chicago: University of Chicago Press

<sup>14</sup> Hussey and Smith n 4 above, the language of professional and low skilled used here is taken from the publication cited and would not necessarily be our choice of terminology. See also Diane Reay, Gill Crozier and John Clayton, “‘Strangers in Paradise’? Working-class Students in Elite Universities’ (2009) 43(6) *Sociology* 1103

<sup>15</sup> Hussey and Smith n 4 above 131

<sup>16</sup> LETR report at 6.6 (references omitted)

Things have not changed, and may indeed have worsened, in the 5 years since the publication of that report. The inequalities inherent in the higher education system – the route which most still take to becoming a solicitor - are perpetuated in the profession.

The diversity data published on the SRA website<sup>17</sup> in February 2018 suggests a frighteningly similar overall picture to the one that can be presented about higher education: overall there may be some limited progress, but that progress masks deeply entrenched inequalities across the profession.<sup>18</sup> It is easy to focus on the usual data based on protected characteristics and the headline data which is used to evidence 'progress'. In relation to gender equality 48% of solicitors/other lawyers (including partners) in law firms are women and 21% come from BAME backgrounds. Of course these statistics do not tell the full story and could be unpicked to reveal some quite staggering differences between different types of solicitors firms and different locations. For example, if you filter by location the gender gap at partner levels widens slightly, as it does if you filter by type of work and look at corporate work; the gap narrows if you look at private client work. The percentage of BAME partners is greatest in criminal work and whereas 9% of partners identified as Muslim, that percentage rose to 17% if considering criminal work only. Frustratingly the data presented on the website does not allow us to look at intersections of some of these characteristics to fully understand the issues. It does, however, show a picture of polarities similar to those that can be seen in H.E. Participation has widened in 'some' areas deemed suitable, but established elites remain stubbornly entrenched elsewhere.

For the purposes of this paper, and an examination as to how the SQE will negatively impact on diversity, the information provided about schools is perhaps most telling. 22% of all lawyers in law firms attended an independent fee paying school and a further 10% attended school outside the UK. Those numbers stay relatively stable when considering partners only. However, when we look at London 26% of lawyers attended independent schools and 20% attended school outside the UK. At partner level 23% attended school outside the UK leaving only 50% of partners in London firms having been to a state school (compared to 78% in the North East).<sup>19</sup> It also seems that the bigger the firm the more likely it is that the partners are privately educated. The firms which concentrate on corporate law have the lowest proportion of state educated solicitors at 56%. Three quarters of solicitors in firms doing mainly criminal and litigation work are state educated (77 and 76% respectively).<sup>20</sup> Based on data provided by law firms regarding their 2013 graduate intake, 21% were from Oxbridge, 58% from other Russell Group institutions, 15% from other UK universities and 6% were overseas universities.<sup>21</sup> Reading this last data in the context of the persistent resistance of the U.K.'s top universities to truly provide equality of opportunity presents a very stark picture of the lack of diversity amongst this graduate intake.

Whichever way you filter the statistics it becomes clear that even taking them at face value the solicitors profession has a serious and significant diversity problem. Once you begin to unpick the

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<sup>17</sup> SRA, *Law Firm Diversity Tool* (SRA 2018) available online at <https://www.sra.org.uk/solicitors/diversity-toolkit/law-firm-diversity-tool.page> accessed 1st October 2018

<sup>18</sup> See for example Hilary Sommerlad, 'The "Social Magic" of Merit: Diversity, Equity, and Inclusion in the English and Welsh Legal Profession'. (2015) 83(5) *Fordham Law Review* 2325 add more

<sup>19</sup> All statistics in this section are taken from the SRA's Law Firm Diversity Tool n a above

<sup>20</sup> SRA, *How Diverse are Law Firms?* (SRA 2018) available online at <https://www.sra.org.uk/sra/equality-diversity/key-findings/law-firms-2017.page>

<sup>21</sup> Justin Cash, 'The Oxbridge conveyor belt – a progress report on law firms' efforts to widen the graduate recruitment pool' (*LegalWeek*, 10<sup>th</sup> July 2014) available at <http://www.legalweek.com/sites/legalweek/2014/07/10/the-oxbridge-conveyor-belt-a-progress-report-on-law-firms-efforts-to-widen-the-graduate-recruitment-pool/> accessed 1<sup>st</sup> October 2018

data, the scale of the problem becomes ever more apparent. While law firms are doing better in areas where boxes can easily be ticked, other factors such as socio-economic background are much harder to address. In other words, law firms are willing to recruit people who look different as long as they behave and act in the 'right' way and are seen to 'fit'.

The LETR noted that

The data discussed so far indicate a growing awareness of a continuing need to address diversity within the traditional legal professions, and the development of a range of activities intended to broaden access. However, it also highlights the continuation of selection and recruitment practices, including use of tariff scores, internships and informal work experience, which serve, at worst, to block and, at best, to slow down change, and a general lack of coordination and monitoring of diversity activity.<sup>22</sup>

Such practices remain commonplace and there seems little awareness amongst the top law firms as to how their practices actually hinder efforts to increase diversity even where they are contemporaneously appearing to engage in a range of 'diversity initiatives'. Some firms recount a progressive approach, such as this one reported in the Guardian: 'We are open minded about where people come from, as long as they are bright, motivated and capable of doing the complex work that we do.'<sup>23</sup> But even this quotation allows a glimpse at the unspoken or hidden requirements of being 'bright, motivated and capable' and leaves us wondering how these requirements are assessed and whether it is possible to do so without recourse to the familiar proxies of university attended and extra-curricular activities listed.<sup>24</sup>

When looking at law firm webpages directed at potential recruits the lack of diversity is not surprising. The following two examples are fairly typical

It doesn't matter whether you're a law or non-law student, a career changer or already studying the LPC, we welcome applicants from diverse backgrounds and at different career stages. But before you apply, make sure you have 128 UCAS points (ABB) and are expecting a 2:1 class degree (or equivalent), if you don't have one already.<sup>25</sup>

You'll need to be on track to achieve, or have achieved, a 2:1 degree and 340 UCAS points (AAB), or equivalent, and have a genuine interest in law.<sup>26</sup>

What is striking about these requirements is not the 2:1 degree but the fact that in addition the firms look back to A-Level grades without any notion that this is problematic. The research categorically shows that inequalities caused by socio-economic background, type and location of school attended and opportunities afforded during school impact on A-level results (not to mention on choice of qualification and therefore the chance of taking A-Levels in the first place) and that this

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<sup>22</sup> LETR report at 6.44

<sup>23</sup> Clare Harris, associate director of legal resourcing at Hogan Lovells, quoted in Alex Aldridge, 'Are law firms doing enough to encourage diversity?' (The Guardian Online, 22<sup>nd</sup> August 2014) available at <https://www.theguardian.com/law/2014/aug/22/law-firms-importance-of-diversity> accessed 1st October 2018

<sup>24</sup> See for example the work by Reay et al cited above. Elaine Freer, *Social Mobility and the Legal Profession : The case of professional associations and access to the English Bar* (2018 Taylor and Francis)

<sup>25</sup> <http://graduates.cms-cmno.com/opportunities/>

<sup>26</sup> <http://www.allenoverly.com/careers/Pages/default.aspx>

inequality only begins to be addressed at university level. While university qualifications begin to address some of those issues they also perpetuate some of the inequalities. Students at lower ranked and often new universities are more likely to come from poor socio-economic backgrounds, be the first in their family to go to university and have far less social capital to help them navigate the explicit, never mind the hidden expectations that come with entry into the legal profession. While many of the students at these sorts of universities might well end up in legal work, they are far more likely to work as paralegals and far more likely to spend their careers in high street firms undertaking private client work rather than work in regional, national or so-called 'Magic Circle' firms.<sup>27</sup> Ashley et al's research confirms

Despite their efforts to improve social inclusion over the past ten to fifteen years, these elite firms continue to be heavily dominated at entry level by people from more privileged socioeconomic backgrounds. This can be attributed primarily to a tendency to recruit the majority of new entrants from a narrow group of elite universities, where students are more likely to have attended selective or fee-paying schools, and/or come from relatively affluent backgrounds. In addition, elite firms define 'talent' according to a number of factors such as drive, resilience, strong communication skills and above all confidence and 'polish', which participants in the research acknowledged can be mapped on to middle-class status and socialisation.<sup>28</sup>

To be clear, we are not arguing that there is anything wrong with working in a high street firm or that certain kinds of firms are what all law students should be aspiring to, but we need to acknowledge the reality that unless these firms significantly change their recruitment practices they are excluding a very significant proportion of very talented young minds simply because those young minds cannot, by accident of where they are born and who their parents are, demonstrate the middle class status and socialisation referred to above. Pursuing a career as a solicitor therefore does not mean the same thing for all law students and we should be honest about the fact that for many their career choices are limited well before they even set foot into a university.

The SRA has acknowledged some of the concerns in relation to diversity<sup>29</sup> and it has particularly noted that the cost of qualification as a solicitor is prohibitive to some. This clearly exacerbates inequalities as 'less privileged students... tend to be most concerned about getting into debt.'<sup>30</sup> There is also a growing, albeit complex, body of psychological research suggesting significant class differences to risk, especial financial.<sup>31</sup> Reay et al, concurring with earlier research by Archer and

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<sup>27</sup> See SRA *Law Firm Diversity Tool* n x above. For an exploration of legal professions other than solicitors or barristers see for example Francis A. 2018. *Legal Executives: Education, Training and Professionalisation*. In: *Jahrbuch der Rechtsdidaktik 2017 / Yearbook of Legal Education 2017*. Germany: BWV / Berliner Wissenschafts-Verlag, pp. 325-346. Francis A. 2016. *At the Edge of Law Emergent and Divergent Models of Legal Professionalism*. Routledge

<sup>28</sup> Louise Ashley et al, *A qualitative evaluation of non-educational barriers to the elite professions*. (Social Mobility & Child Poverty Commission 2015) 6

<sup>29</sup> See SRA *Business Case for Diversity* n x above; Liz Walters, 'Can the Solicitors Qualifying Examination help social mobility?' (SRA 16<sup>th</sup> February 2016) available at <http://www.sra.org.uk/sra/policy/training-for-tomorrow/sqe-blog/can-the-solicitors-qualifying-examination-help-social-mobility-.page> See also the contribution by Julie Brannan in this issue

<sup>30</sup> Hussey and Smith n 4 above. See also J Brennan et al, *Survey of higher education students' attitudes to debt and term-time working and their impact on attainment* (Universities UK 2005) available at [http://dera.ioe.ac.uk/5866/1/rd15\\_05.pdf](http://dera.ioe.ac.uk/5866/1/rd15_05.pdf) accessed 1st October 2018

<sup>31</sup> Kish-Gephart, J. (2017) 'Social class and risk preferences and behavior' 18 *Current Opinion in Psychology* 89-92. See also, Lareau, A. (2003) *Unequal Childhoods: Race, Class and Family Life* UCP: Berkley

Hutchings, note that working class student narratives of higher education were “narratives in which both risk and costs are foregrounded.”<sup>32</sup> Arguably, those from the most disadvantaged backgrounds will be those least willing to incur educational and financial risks.<sup>33</sup> The current routes to qualification are expensive.<sup>34</sup> Students must pay for a degree and if that degree is not in law they then need to pay for a conversion course. Then there is the LPC which those at highly ranked institutions and with the appropriate background often get paid for by the firms at which they have secured training contracts, but for which those who have either secured training contracts at smaller firms or who are taking a gamble on being able to secure a training contract at a later date will have to take on more debt. The situation is clearly unsatisfactory. The SRA has suggested that the introduction of the SQE will help address these concerns. However, as already pointed out in the editorial to this special issue, it is far from clear that the new route will be significantly cheaper. The next section examines the SRA’s proposal in the context of the LETR’s recommendations on equality and diversity and shows why they will not work.

### **The SQE – doing violence to diversity?**

The SRA stated at the beginning of their consultation process that

If the SQE were introduced:

- All candidates would sit the same assessment - testing their competence to be a solicitor more rigorously than under the current system.
- The SQE would level the playing field between different routes to qualification. It would provide an opportunity for people who had qualified through attending less fashionable universities or through new routes, like apprenticeships, to demonstrate that they are just as good as individuals who had qualified through traditional routes or having attended more prestigious universities.
- The assessment would not, of itself, get rid of prior educational and social disadvantage. However it might shine a light on any differences in attainment between different groups, so we could focus attention on doing our part to address the problem.
- Information on training providers could offer employers a new way to target their recruitment and widen their talent pool by looking beyond a narrow group of universities.<sup>35</sup>

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<sup>32</sup> Reay, D., David, M., and Ball, S. (2005) *Degrees of Choice: social class, race and gender in higher education* Trentham: Stoke on Trent at pg. 87. See also, Archer, L. and Hutchings, M. (2001) “‘Bettering Yourself’? Discourses of risk, cost and benefit in ethnically diverse, young working class non-participants’ constructions of higher education” 22(4) *British Journal of Sociology of Education* 555-575

<sup>33</sup> Ibid. See also, Kish-Gephart, J. (2017) ‘Social class and risk preferences and behavior’ 18 *Current Opinion in Psychology* 89-92.

<sup>34</sup> After paying for a degree or a degree and conversion course the LPC will cost aspiring solicitors who cannot secure a training contract with a firm who will pay it for them an average of just over £10000 based on figures from the 2017/18 academic year. See <https://www.chambersstudent.co.uk/law-schools/legal-practice-course/lpc-providers-compared>

<sup>35</sup> Walters n x above

If taken at face value the points make welcome reading for those of us concerned about diversity issues. A context where access to becoming a solicitor is based on a level playing field where everyone knows the rules and no one is barred from playing is a laudable aim. However, there are a whole host of assumptions and claims in these few bullet points that need careful consideration and unpicking. The first is that the SQE does in fact test a candidate's competence to be a solicitor and that if it does, it does so more rigorously than the current system. While we disagree with that claim, that is not the focus of this particular paper and others have already made that case.<sup>36</sup> The second is that the SQE levels the playing field between different routes to qualification. It can only genuinely do so if the SQE tells employers all they need to know about a potential employee. This assumes that law firms will recruit purely on the basis of SQE scores and that the SQE therefore tests all the knowledge, competencies and attributes law firms care about and look for. Clearly this is nonsense. Law firms will continue to look for markers of excellence or even merely competence on the basis of what they know, understand and are, as a community, comfortable with. Law firms now do not recruit on the basis of LPC scores for example, nor do many of them feel able to look beyond A-level scores in spite of outstanding educational achievement at degree level. It stands to reason that the SQE will make no difference here. The LETR recognised this in relation to apprenticeships when it stated:

Secondly, it is questionable how much difference the route will make in diversity terms, or whether employers will tend to use it as a mechanism for recruiting high calibre A-level students directly into paralegal roles. If this is so, then apprenticeships may do very little to interrupt the pattern of social disadvantage that is already present by the end of secondary education, and limit its continuation into the professions.<sup>37</sup>

The third claim presumes that the SRA can, in its role as a regulator of the profession, do something to address the prior social or educational disadvantage if it could only understand it more fully. However, the SRA has so far done very little to help remove obvious barriers (like the reliance on A-level grades) to facilitate wider access and the claim sits somewhat at odds with the previous one about levelling playing fields which seems to suggest that the SQE does in fact address the disadvantage. If it does not, then one of the key justifications for the introduction of the new regime is shown to be invalid.

Finally the fourth point suggests that data about training providers offers employers a new way of widening their talent pool.<sup>38</sup> In making the statement the SRA is clearly assuming that there will be training providers but under the SQE model there is no (regulatory) need for them. It is not clear what data would be provided and how the training provider or route that leads any particular candidate to the SQE would be recorded in any meaningful way. Even if it could, it would say very little about the training provider or the candidate because it records a brief snapshot of that

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<sup>36</sup> See for example the Association of Law Teachers' responses to the Training for Tomorrow consultations available at <http://www.lawteacher.ac.uk/alt-activities.asp> accessed on 1st October 2018 as well as many of the contributions in this issue

<sup>37</sup> LETR report at 6.136

<sup>38</sup> Presumably by providing employers with information about how well each of the training provider does in terms of pass rates and scores. The SRA did initially indicate scores and pass rates would be published but at a roundtable event on 11<sup>th</sup> September 2018 held in Leeds indicated that what information beyond pass/fail would be published or made available to candidates was still being considered.

candidate's journey to the SQE only and their SQE success or otherwise cannot be down to what can be captured in that snapshot alone. It also wholly undermines the notion of the SQE as levelling the playing field because if it truly does so, then candidates should be selected purely on the basis of their score; the training provider or route to the qualification in the level playing field scenario must be irrelevant to the employer. The employer only needs information about a training provider if where or how someone prepares for the SQE is to become some marker of or proxy for quality. If the presumption behind this is that the training provider will be a university it seems strange to suggest that employers will treat them any differently to the way they now view LPC providers. The university that counts is the university where candidates completed their degree, that, along with A-Levels, is the trusted proxy of quality and there is absolutely no evidence to suggest that the SQE would change that. Nonetheless the SRA holds on to the claim that the 'proposals to introduce a centralised assessment for would-be solicitors could lead to improved diversity in the profession and increased social mobility.'<sup>39</sup>

As we have shown above the basis of that claim is flawed and does not stand up to logical reasoning. It is also problematic because much of the claim was, at least initially, based on the SQE route being cheaper. The SRA noted that

If training is included as part of a degree, then there will be no additional charge. However, there is likely to be an additional charge for the SQE assessments. We anticipate that there will be training courses that are not part of a degree by the time the SQE is introduced. These have not yet been launched, so we do not know how much these will cost.<sup>40</sup>

While it is clear that the widening access claim based on lower costs can be dismissed, that claim also draws our attention away from other perhaps even more problematic issues. So let us assume, in spite of the evidence to the contrary, that the cost of qualification is less if students take an 'SQE ready' (or at least focused) degree which aims to prepare them for the exam. Let us further assume, though this is far from likely, that a degree programme can adequately prepare a student for the SQE. And then let us ask a series of quite simple questions: which universities will offer such degrees? Who will the students be who take these SQE ready degrees? Who will recruit the graduates from those degrees? The Law Learned Associations, in responding to the consultations on the SRA proposals,<sup>41</sup> repeatedly pointed to these issues as needing serious consideration. They summed up their concerns in a submission made to the Legal Services Board:

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<sup>39</sup>SRA, *SRA proposals could create more opportunities* (SRA 24<sup>th</sup> March 2017) available at <https://www.sra.org.uk/sra/news/press/bridge-group-report-sqe.page> accessed 1<sup>st</sup> October 2018. The report cited however begins with the caveat that it is neither a review of the proposed SQE reforms, nor an equality and diversity impact assessment. See The Bridge Group, *Introduction of the Solicitors Qualifying Examination: Monitoring and Maximising Diversity* (The Bridge Group 2017) available at <https://www.sra.org.uk/sra/policy/sqe/research-reports.page> accessed 1st October 2018

<sup>40</sup>SRA, *How much will the SQE training cost?* (SRA, no date) available at <http://www.sra.org.uk/faqs/sqe/01-general/how-much-will-the-sqe-training-cost-.page> accessed on 1st October 2018

<sup>41</sup>All responses are available on the Association of Law Teacher's Website at <http://www.lawteacher.ac.uk/alt-activities.asp> accessed on 1st October 2018

Students of modest means, predominantly from low and marginal socio-economic groups, and disproportionately from BAME communities, are likely to take vocationally-oriented law degree programmes producing SQE1-ready students who will not be sought after by most law firms [...]. Although this is unfortunate in many ways, it is also understandable, since firms will continue to seek students with a sound intellectual education as well as vocational knowledge and skills.<sup>42</sup>

Evidence so far suggests that the only institutions considering introducing SQE focused degrees are law schools based in new universities or those, usually lower ranked, schools which have traditionally had a vocational focus.<sup>43</sup> As with previous reforms of legal education, very little changes for the Russell Group institutions who, despite some efforts to increase the diversity of the student body, continue to select their students from a relatively narrow socio-economic group and funnel them into elite jobs which remain closed to others.<sup>44</sup> The SQE does not change this.

In fact the SQE potentially makes the inequalities inherent in the legal education system worse in a number of ways. How it does so can be highlighted by asking a further series of questions: What will be taught on an SQE focused degree? Who will teach on an SQE focused degree? How will SQE focused degrees be assessed? Considering the statement of underpinning legal knowledge<sup>45</sup> and the day one competencies<sup>46</sup> outlined by the SRA as the basis of the SQE, an SQE focused degree looks dull.<sup>47</sup> It also looks incredibly full. In order to cover the content which deals with substantive legal knowledge, practical application of that knowledge and procedural matters, a genuine SQE degree will have to push all other options aside. There is no space for critical examination of issues, for jurisprudence or legal theory or fanciful options like Gender, Sexuality and the Law, Legal History, the Sociology of International Law or Environmental Law.<sup>48</sup> In addition to the violence this does to law as a discipline,<sup>49</sup> this also undermines the intellectual education associated with law degrees, it rips out the very essence of what makes them valuable degrees both from an individual perspective and in an employment context.<sup>50</sup> To the non-traditional, risk averse entrant to H.E., however, an SQE focused degree may appear to be a lower-risk, more financially accessible option. This will only serve to exacerbate the problems recognised throughout this article, with working class students yet further encouraged to

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<sup>42</sup> Association of Law Teachers, Society of Legal Scholars, Socio-Legal Studies Association and Committee of Heads of University Law Schools, *Statement to the Legal Services Board by the Learned Associations* (ALT January 2018) available at <http://www.lawteacher.ac.uk/alt-activities.asp> accessed on 1st October 2018

<sup>43</sup> As the nature of degree programmes is potentially commercially sensitive information law schools are not generally sharing information about their plans publicly. What we know we know from conversations with colleagues and informal chats. In order to protect those we have spoken to we cannot give further details here.

<sup>44</sup> See Legal Week article above,

<sup>45</sup> SRA, *Statement of Legal Knowledge* (SRA no date) available at <http://www.sra.org.uk/solicitors/competence-statement/statement-legal-knowledge.page> accessed 1st October 2018

<sup>46</sup> SRA, *Statement of Solicitors Competence* (SRA no date) available at <http://www.sra.org.uk/solicitors/competence-statement.page> accessed 1st October 2018

<sup>47</sup> Dull in the sense that it is content heavy and limited in terms of the range of legal topics that can be covered

<sup>48</sup> This is a completely random list of possible subjects that popped into our head as we were writing – it could just as well be a different list of possible topics that are not on the SQE list

<sup>49</sup> See editorial and Luke Mason's contribution to this Issue

<sup>50</sup> Personally we are not at all concerned with what employers are looking for and are sceptical about the employability agenda and we acknowledge an inherent tension for us here. We care about helping students make their minds their own and education for education's sake but we also recognise the realities in which we currently have work and engage with our students.

end up in universities seen to be 'second class' both by themselves and others. And as Bourdieu (1999, p. 423) asserts, 'after an extended school career, which often entails considerable sacrifice, the most culturally disadvantaged run the risk of ending up with a devalued degree'.

And, we might add, a degree that makes it less likely that they have acquired any of the types of 'social and cultural capital' still used by many law firms as a criterion of the 'brightest and best'.

Even from a purely legal practice perspective, pushing out all options to make room for SQE topics and preparation seems absurd. The bread and butter areas of legal services undertaken by many high street firms just do not feature. What about Family Law, Employment Law, Social Welfare Law and Equality Law? The lack of space for consideration of these issues is problematic from a practice point of view – law firms will have to provide additional training for their employees (or recruit students with non-SQE degrees who have a more rounded knowledge and understanding of the law and its underpinning concepts like the rule of law; or at least the ability to think). It is devastating for those with an interest in those practice areas. The message is clear: this is not what solicitors do, at least not proper ones and if you want to do this sort of work you need to grapple with the important world of rich man's law<sup>51</sup> first so that we can be sure you are a 'goodun'.

### **Conclusions: Finding a reality that can make sense to all**

The discussion above suggests a bleak picture. It would be easy to conclude that the inequality stasis is here to stay and that the cycle cannot be broken. Indeed, it is difficult to see that these seemingly intransigent problems will be addressed any time soon. It is even difficult to see that there has been any *real* engagement with attempts to understand or address many of the issues presented herein. There are some clear and obvious practical steps that could be taken. For example: introducing genuinely background blind recruitment practices that make it impossible for employers to know which school and university someone went to; a reduction in the reliance of work experience and vacation placements as markers of commitment and quality;<sup>52</sup> and, not introducing the SQE and instead thinking carefully about where the problems with legal education and training really are and addressing those.

Whilst we would urge law firms and the SRA in particular to consider some of the above, many of these factors are outwith our immediate control. Whilst we would be thrilled to be wrong, we are not expecting change in these areas in the near future. So, as University law teachers, we want to positively focus on the role that university law schools and we as law teachers have in this context, and the influence we can exert to improve opportunities for our students.

The introduction of the SQE has been interesting to observe in terms of what it tells us about the relationships between the solicitors profession and university law schools and the power dynamics between them. It has been a little disappointing, though not surprising, to see a lack of engagement from many elite institutions and frustrating but understandable to see some other institutions do exactly what the SRA clearly expects universities to do. If we assume that the SQE is coming, it does still not follow logically that universities have to do anything at all in response. We appreciate that university law schools are concerned about their ability to attract law students and are therefore devising strategies to help them with continued recruitment and give them an advantage in the

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<sup>51</sup> We use this phrase deliberately. See also the Learned Associations' responses to the various consultations which have made this point repeatedly.

<sup>52</sup> See for example Francis A. 2015. Legal Education, Social Mobility, and Employability: Possible Selves, Curriculum Intervention, and the Role of Legal Work Experience. *Journal of Law and Society*. 42(2), pp. 173-201

market. However, we have already outlined why we think SQE focused degrees are a mistake and why they will exacerbate inequalities. Instead, we believe university law schools should focus on what university law schools do best – providing a (legal) education. Our focus should be on encouraging students learn about law, on helping them to think about complex issues and critique them and on helping them make their minds their own.<sup>53</sup> We accept that there are a variety of ways to do this and that law schools do and should differ in their approach to law, legal knowledge and learning and teaching. This is a good thing and one which is explicitly acknowledged and supported by the QAA benchmark statement for Law.<sup>54</sup> There is no one right way to teach law. It might therefore be argued that SQE focused degrees provide just another way of teaching law. However, while there is no one right way to teach law at university level, valid approaches which are based on both subject and pedagogic expertise have certain elements in common: They are about deep learning and coming to a deep understanding of issues; they are about the ability to think critically about issues and question accepted norms; they are about logically constructed building blocks and about assessment which encourages learning and is meaningful; they are about threshold concepts and the examination of foundational ideas, in short, they are about habits of mind.<sup>55</sup> In our view it would be difficult to design an SQE ready degree which meets all of these requirements and as we have suggested above, it is generally these things which are valued by employers.

While we think that there is room for a variety of types of law degrees, we are concerned that those which focus particularly on ‘employability’ and unquestioningly accept the narrative of aspiration and by implication those that will focus on the SQE sell something to students which is ultimately damaging. It suggest that in order to be acceptable to the profession or to be employable in general those students need to fundamentally change who they are.<sup>56</sup> At the same time those law schools fail to really teach the skills or provide them with the cultural capital law firms are insisting on. We would argue for law degrees which are essentially liberal arts degrees set in the context of law. Ashford and Guth suggest that

The role of a liberal law degree must then be to make sure that even those students who are intent on entering the legal profession and are studying law for only that reason, are not merely trained fools but are compelled to engage with theoretical questions, forced to think about, discuss, write about and explore a variety of legal issues.<sup>57</sup>

We would go further than that here and suggest that the role of liberal law degrees is to make sure that students really are making their minds their own, that they develop the skills needed to navigate the complex world beyond university and that they begin to understand the inequalities inherent in the education system, the legal professions and society more generally. Liberal law degrees can, in our view, help students overcome the injuries inflicted by an unequal society and profession by providing them with frameworks from which they can start to understand the world around them and giving them choices about the ways in which they can construct their personal

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<sup>53</sup> M. Nussbaum, *Cultivating Humanity: A Classical Defense of Reform in Liberal Education* (Cambridge, MA, Harvard University Press, 1997) p. 293.

<sup>54</sup> QAA Benchmark Statement for Law available at [https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/sbs-law-15.pdf?sfvrsn=ff99f781\\_10](https://www.qaa.ac.uk/docs/qaa/subject-benchmark-statements/sbs-law-15.pdf?sfvrsn=ff99f781_10) accessed on 1<sup>st</sup> October 2018

<sup>55</sup> Rebecca Huxley-Binns, *Tripping over thresholds: a reflection on legal andragogy* (2016) 50(1) *The Law Teacher*. QAA Benchmark statement n 54 above

<sup>56</sup> For more on this see Loveday, V. (2015) ‘Working-class participation, middle-class aspiration? Value, upward mobility and symbolic indebtedness in higher education.’ 63 *Sociological Review* 570-58

<sup>57</sup> Jessica Guth & Chris Ashford (2014) *The Legal Education and Training Review: regulating socio-legal and liberal legal education?*, *The Law Teacher*, 48:1, 5-19, DOI: 10.1080/03069400.2013.875304

professional identities. Liberal law degrees can and should help us all to make sense of a post SQE world that removes the SQE from our thinking about legal education and lets us focus on the things that matter.