

CHAPTER 4

Neo-tribal Sociality in the Upper Echelons of the Legal Profession: Issues of Race

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Introduction

Exclusionary practices have constituted one of the main subjects of study in relation to the social composition of the legal profession in England and Wales. Mainly, this body of literature examines how exclusionary practices impact on issues of gender, class and more recently race. Despite attempts to conceptualise race and the way it is negotiated in the legal profession, the commodification of race has remained underexplored in the organisational context of the legal profession. This chapter examines the commodification of race as a recruitment strategy seemingly adopted by the upper echelons of the legal profession (for the purposes of this chapter, these are large commercial solicitors' law firms and commercial barristers' Chambers). It further investigates the impact of the commodification of race on legal professional identity. This chapter suggests that the commodification of race, featuring largely in the advertising material of these firms and Chambers, reproduces the creation of a predominantly white image through either referring to cultural practices

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of consumptions or merely silencing these practices. This might function as an exclusionary practice impacting on the creation of subtle racial inequalities in the organisational context of large commercial law firms and Chambers. In exposing alternative forms of exclusionary practices, this chapter deploys the theoretical framework of neo-tribal sociality, associated with the French philosopher Michel Maffesoli. Methodologically, the main objective of the chapter is qualitatively sought through an analysis of a small sample of older and more recent advertising material and websites of large commercial law firms and Chambers.

This chapter is divided into four parts. The first part introduces the theory of neo-tribal sociality and explains the reasons for its deployment in the chapter. The second part examines exclusionary practices in the legal profession and links the notion of neo-tribal sociality to the commodification of race. The third part explores how self-presentation of large commercial law firms and Chambers is now promoted and produced by reference to consumption. It explores this further by concentrating on issues of profiling through a series of identifications that seemingly extend beyond leisure activities commonly associated with lawyers, informing the presence and the absence of race. The final part provides a critique of the way the advertising material deals with race issues and exposes the juxtapositions the advertising material raises.

Neo-tribal Sociality and its Application in the Upper Echelons of the Legal Profession

The notion of neo-tribal sociality constitutes the theoretical basis of this chapter. Maffesoli's theory of neo-tribal sociality translates into voluntary movement and mobility from one consumer tribe to the next (Maffesoli 1996). According to Maffesoli, tribes are expressed through participation in cultural practices of consumptions (*ibid.*). Examples of postmodern tribes can be found in youth culture and in professional cultures. The notion of neo-tribal sociality is based on a sense of free mobility from one tribe to another and a sense of mobility from tribes towards and from the masses. The Maffesolian theory of neo-tribal sociality perceives the movement of professional and youth tribes to and from the masses as free-floating and as being part of the logic of identifications. The logic of identity disappears in the process only to be reinstated and reinforced through consumer-based identifications.

There are two main reasons why the notion of neo-tribal sociality is being deployed here. First, it addresses issues of the consumer-based nature of the upper echelons of the legal profession and the way race is renegotiated through practices of consumption. Secondly, neo-tribal sociality considers forms of cultural practices of consumption evident in the advertising material of large commercial law firms and Chambers that demonstrate the commodification of race. From this perspective, it could offer alternative insights into the way

the upper echelons of the legal profession deal with issues of diversity, while exploring alternative theorisations of race. Crucially, this alternative perspective creates different interpretations and meanings which expose different aspects of the organisational context of the legal profession. The Maffesolian theory of neo-tribal sociality does not come without criticisms regarding its application in employment contexts¹ and more specifically the context of the legal profession,² as it tends to disregard the limitations professional cultures impose. These limitations will be discussed in the context of the commodification of race at the upper end of the legal profession. The thrust of the argument will be that although large commercial law firms and Chambers seem to embrace diversity and inclusion initiatives, what they do amounts to the commodification and demarginalisation of race (Crenshaw 1989), and it is exactly through this commodification that exclusion happens on issues of race. This argument will be discussed and explored throughout this chapter.

Exclusionary Practices of the Upper Echelons of the Legal Profession: Neo-tribal Sociality and Retheorisations of Race

Exclusionary practices constitute a mechanism commonly found amongst professions and organisations to perpetuate themselves in their own image (Nicholson 2005). The legal profession is obsessed with status and elitism,³ and its social composition has been solidified using exclusionary practices and mechanisms reaffirming the reproduction of a predominantly white image (Crenshaw 1989; Harris 1993). One of these strategies is recruitment which reinforces distinctions within the hierarchy of the profession. Many commentators suggest that the upper echelons of the profession, namely the Bar and large commercial law firms, remain predominantly male, middle-class and white,

¹ One of the main criticisms that has been expressed by critics of Maffesoli's work is that the theory of neo-tribal sociality cannot apply to professional cultures. My suggestion is that it has not even been tested against professional cultures. See for example, Evans, D. (1997). Michel Maffesoli's Sociology of Modernity and Postmodernity: An Introduction and Critical Assessment. *The Sociological Review* 45(2): 221–43.

² On the application of neo-tribal sociality in the legal profession for the first time, see Chronopoulou, A. (2014). Neo-tribal Socialities in the Legal Profession: The Role of Consumption in Forming Legal Professional Identities (unpublished PhD thesis), Birkbeck College, University of London. See also Chronopoulou, A. (2015). From a professional tribe to a business no-tribe: Towards a theory of consumer-based lifestyles in the legal profession. *Athens Journal of Law* 1(1): 64–84.

³ A number of accounts refer to exclusionary practices in the context of the legal profession and organisational literature in general. See by way of illustration: Thornton (1996); Francis and Sommerlad (2009); Sommerlad, Duff & Webley (2010); Webley et al. (2016).

whereas other areas of practice and the lower ranks of the profession are more varied in terms of these social characteristics (Zimdars 2010). Boon et al. argue that segmentation starts at the early stages of candidates' selection and recruitment (Boon et al. 2001), depicting law firms' and Chambers' preferences. In analyses of the profession, it is widely demonstrated that large firms, both City and provincial, and the Bar, prefer a certain type of candidate (Rolfe & Anderson 2003). Preference is shown to candidates suggestive of privileged white background, rather than to candidates who are of lower-class or other ethnic backgrounds (Baker 2003). The former may be seen as the 'best' candidates, and to recruit the best, large City firms sometimes offer to finance them through their studies (Vignaendra 2001). The focus on the transition from legal education to the legal profession and therefore a legal career is permeated with issues of race. Cohort studies (Shiner 2000; Vignaendra 2001; Webley 2016) concentrate on gaining access to the profession and the difficulties that young students face in relation to components of self-identity, such as race (Boon & Whyte 2015, 2018). Despite difficulties in the demanding entry requirements and increased competition (Rolfe & Anderson 2003), a few qualitative accounts reveal that these are suggestive of discrimination. For instance, Boon et al. (2001, 2005) suggest that differentiation and subordination that occur within the profession reflect the law firms' and Chambers' preferences as opposed to the individual young lawyer's aspirations in entering legal practice.

Socialisation into the upper echelons of the legal profession includes exclusionary practices as played out through social practices, which in turn expose issues of race and the legitimisation of whiteness (Crenshaw 1989; Harris 1993). For example, preference for the 'best' candidates means those who have been socialised in Russell Group Universities⁴ – themselves majority white institutions – which is again suggestive of a certain background. Thornton (1996) notes that homosociability, the process of socialising among groups possessing similar social characteristics, including race, is promoted and reinforced in the legal profession. More importantly personal contacts, in turn according to Harris (1993), allude to reconfirmation of race as a group and self-identity, as these are created through homosociality, in this context the creation of networks and social bonding, and homosociability. They are important in either getting a training contact or even getting access to relevant information on the profession, by either having an insider in the firm or family members in the profession (Webley & Duff 2007; Webley 2016). This means that those with

⁴ These universities have huge social, economic and cultural impacts locally, across the UK and globally. And they are responsible for over two thirds (68%) of the world's leading research produced in UK universities (see <https://russellgroup.ac.uk/about/>). The group constitutes 24 universities, the top five being Oxford, Cambridge, Imperial College London, University College London and the University of Edinburgh.

greater access to the right networks, which are usually produced through exclusionary practices, are in an advantageous position when compared to those who do not possess the necessary contacts.

Socialisation through collective associations involving cultural practices of consumption may articulate and negotiate aspects of *habitus* (Bourdieu 1990) in the upper echelons of the legal profession informing race. Reinforcing Harris's (1993) point on the valorisation of race through social networks, Skeggs (2004a, 2024b) also suggests that the conversion of race from a cultural trait and factor to an economic value occurs more effectively for those with access to social networks. Similarly, professional identity formation has been related to consumption and has been associated with professional groups. From this perspective, cultural practices of consumption associated with the upper echelons of the legal profession are capable of reinforcing status through renegotiations of race as the bearer of symbolic, cultural and economic value. For example, the study by Savage et al. (1992) draws on the notion of Bourdieu's *habitus*. It concentrates on the consumption habits of occupational groups, examining methods of identity formation within professional groups through patterns of consumption. Their research suggests that consumer-based aspects associated with high culture are permeated with consumptions associated with low culture. For instance, opera can be promoted side by side with football. Despite the focus of Savage et al.'s (1992) account on class, a similar argument can be made about race.

In the organisational context of the legal profession, the use of leisure and consumption patterns could expose renegotiations of race among the different segments of the legal profession and on an individual level. This coincides with aspects of neo-tribal sociality through exposing participation in multiple patterns of consumption. Neo-tribal sociality presupposes participation in a variety of consumer groups, or tribes, which could inform the construction of race as a component of legal professional identity. This interpretation breaks away from traditional interpretations of race in accounts of the legal profession. It suggests that the commodification of race and its renegotiation through participation in cultural practices of consumption in the context of legal practice could potentially reveal different inequalities. The socialisation process of young lawyers into the upper echelons of the legal profession ensures membership of a professional tribe, as reflected in the participation of cultural practices of consumption. This is not to suggest that young lawyers' professional identities are merely a mirror of consumer habits but, as Thornton (1996) suggests, consumption constitutes a sometimes informal and sometimes very formal infrastructure or backbone of the legal profession capable of addressing negotiations of race in the organisational context of legal employment. In this sense, the postmodern paradox does not lie in the commodification of the legal profession, extending to the commodification of race, but rather in the conceptualisation of the commodified upper echelons of the legal profession,

without addressing how the commodification of race informs young lawyers' professional identities.

The saturation of the advertising material and websites of large commercial law firms and Chambers with cultural practices of consumption alongside embracing diversity and inclusion practices sits uneasily with the theorisation of race in accounts of young lawyers in the legal profession. With few exceptions, the theorisation of the commodification of race in accounts of young lawyers in the legal profession seems to place emphasis on the socialisation processes without emphasising cultural practices of consumption.⁵ This, in a sense, exposes the law's inability to incorporate cultural practices of consumption, while at the same time, as Goodrich (2001) contends, the law reinforces the construction of white spaces through these exclusionary practices. Goodrich suggests that different cultural experiences are never quite incorporated within the organisational context of the legal profession. It is in this sense that institutions and organisations remain the same and perpetuate their image. This, however, reinforces the construction of legal professional identity as a 'white space' echoing exclusionary practices in the upper echelons of the legal profession.

On the other hand, it has long been established in accounts of youth culture that young people construct their identities through participation in cultural practices of consumption. Maffesoli (2007) argues that neo-tribal sociality entails consumer-based identifications exposed in youth groups. Consumption may well provide an alternative platform which exposes the commodification of race through placing emphasis on neo-tribalism in the upper end of the legal profession. Neo-tribal sociality exposes the importance of consumption in the articulation of aspects of race in the construction of legal professional identity. Professionalisation processes amount to the socialisation of young lawyers in the legal professional culture. Although this amounts to a form of neo-tribal sociality, it would be useful to explore how consumer-based aspects of neo-tribal sociality associated with young people's identities can be played out within the organisational context of legal practice informing racial inequalities, and, most importantly, how these aspects inform the commodification of race. This is done through an analysis of advertising material and websites of large commercial law firms and Chambers.

⁵ This point is also made by Collier (2005, 2006) in relation to the advertising material of large law firms but also by a number of accounts on race. See for example Braithwaite, J. (2010). The strategic use of demand-side diversity pressure in the solicitors' profession. *International Journal of the Legal Profession*, 17(3): 442–465; Wilkins, D. (2004). From 'separate is inherently unequal' to 'diversity is good for business: The rise of market-based diversity arguments and the fate of the black corporate bar. *Harvard Law Review*, 117: 1554; and Carbado, D. and Gulati, G. (2004). The law and economics of critical race theory. *Yale Law Journal*, 112: 1757–1828.

Promoting Diversity, Commodifying Race: The Ideal Candidates for the Upper Echelons of the Legal Profession

Recruitment literature of large commercial law firms and Chambers seems to promote diversity and inclusion and arguably exclusion in their advertising material and their websites. The commodification of race through replete references to cultural practices of consumption constitutes evidence of neo-tribal sociality. This section examines a mixture of older and more recent advertising material and websites to expose the way in which the upper end of the legal profession deals with issues of race while explicitly constructing the profile of potential candidates.

An older example of advertising material exemplifying the permeation of legal practice with cultural practices of consumptions and lifestyle, accentuating subliminal construction of race, reads as follows:

At Mishcon, we often talk about our client relationships extending beyond that of a legal advisor, that we care beyond the call of duty and that we make our clients' problems our own. And we mean it. As evidence of our holistic approach to client care, we have teamed up with the world's leading luxury lifestyle group, Quintessentially, to offer a 24-hour, 365 days a year, global concierge service to our clients. Our partnership enables our clients to benefit from access to an unrivalled package of privileges, preferential rates and bespoke services, saving time and money at: leading hotels, premier travel services, private clubs, fine dining restaurants, concert and theatre tickets, salons, gym and spas, shopping and personal styling services. (Mishcon De Reya 2014)

The above extract is inclusive of consumptions and cultural practices of a high-end lifestyle associated with a privileged, predominantly white elite. This reproduces the exclusion of other cultural practices of consumptions associated with different social backgrounds. Furthermore, the extract depicts a commercialised and entrepreneurial legal profession that promotes the commodification of race. It amounts to an entrepreneurial neo-tribalism, which entails a series of consumer-based identifications exposing issues of race. This is also evident in the way in which the advertising material constructs the profile of potential recruits, which is also influenced by consumer-based identifications. From this perspective, firms' and Chambers' expectations of recruits are communicated through references to aspects of consumptions and lifestyles, which in turn, reflect expectations on socio-cultural background.

One of the components that features in the legal press is the communication to the potential recruit of the experience of being with the firm or Chambers. This usually involves a recently qualified lawyer narrating their personal

experience.⁶ It is interesting to see how issues of commodification of race are played out.

The following extract is taken from *The Plum, Trainee Guide*, a magazine published by the law firm, SJ Berwin:

Culture? I have been to a screening of a film where the director took questions from the audience at the end; watched a mad-German contemporary dance festival; soaked up the summer-long jazz festival; sprawled in front of classic films at the free open-air cinema; revelled to the music in the streets; been to Ian Brown and Radiohead concerts; loved the office ski trip (whole office, brilliant, never been before); partied at all night French parties with the accent; been pirate sailing in Brittany and horse-riding in Sancerre; and sat by the pool on a weekend in Montpellier. But even the joy of staying in Paris at the weekend, riding one of the 20,000 free bikes full pelt down the Champs Elysees in the sun and dipping in and out of the museums and cafes is enough. (SJ Berwin 2008/9)

This passage depicts aspects of the young lawyers' experiences during the qualification stage of their career. On analysis, it becomes abundantly clear that professional life involves aspects of consumer-based lifestyles at an early stage and perhaps some elusive notions of constructing race as a component of professional identity through consumptions and personal lifestyles. The process of becoming a lawyer entails a series of identifications with consumer-based elements associated with young people's lifestyles, hinting at issues of race but not clearly exemplifying these. The specific objective of this passage is to attract and convince certain candidates. Therefore, it must narrate a lifestyle with which potential desirable candidates are able to identify. Significantly, although there is reference to traditional aspects of lawyer's lifestyles such as sporting events, office ski trips and cycling, there also is reference to aspects of lifestyle not usually associated with lawyers, like appealing to youth culture references such as a German contemporary dance festival and Ian Brown and Radiohead concerts. This signals a transition to a consumer-based lifestyle professionalism which is channelled through an interrelation of legal skills with consumer-based social skills, addressing in this sense a more culturally but not necessarily ethnically diverse audience.

An alternative interpretation of the extract is that it attempts to construct the legal professional self through cultural practices of consumptions and the

⁶ As part of the modernised language, Matrix regards the use of the word 'trainee' as a more appropriate term to describe pupillage. One of the successful trainees/pupils describes her experience of working at the set of Chambers: 'No need to dress in a particular way ... I was even forced to take regular decent holidays.' http://www.matrixlaw.co.uk/uploads/other/29_03_2011_05_43_28_Traineeship%20Brochure%202011.pdf.

interplay with social and soft skills required by modern-day legal practice. Although this constitutes just another strategy to attract potential desirable employees, it also accords with most of the literature on the organisation of the profession, stressing that businesses pay particular attention to those personal attributes exhibited by the ideal employee (Holmer Nadesan 1999. See also McDowell 1995: 75–95; and Collier 2005). In the extract, the employee communicates to potential candidates the qualities that the firm is looking for by promoting a consumer-based professional self that possesses the ability to both fit in and stand out within the overall culture of the firm, in turn, reflecting the ability of consumption to individualise and collectivise while addressing issues of race, alluding in this sense to the way race is being commodified and eventually becomes a selling point in the organisational context of legal employment. More specifically, while alluding to the commodification of race by taking a more inclusive approach on cultural practices of consumption, informing professional identity, the extract reflects distinctions as to the renegotiation of race as a component of personal identity by emphasising the neo-tribal nature of consumption and the free movement between the ‘tribes’ and masses.

While the expectations of large commercial law firms and Chambers from the ideal candidates are permeated with replete references to consumption in the advertising material, issues of race remain questionably dormant, or carefully sidestepped and disassociated from markers of self-identity such as race. Participation in such cultural practices serves as a medium of antagonistic tendencies in the upper echelon of the profession. This is reflected in the way in which these are communicated to new or potential recruits, emphasising the individualistic nature of the upper end of the legal profession and the individualistic nature of the professional self through consumptions. Conversely, such a technique promotes a diverse culture while silencing components of self-identity such as race, as illustrated in the following somewhat dated but pertinent examples:

The hip media luvvies at Olswang are on the lookout for bright young lawyers and have been trying to lure them by holding a bash at the Ministry of Sound for law students and trainees. Highlight of the evening will be the finals of a student/lawyer DJ competition, just to prove that the Covent Garden trendies appreciate the sort of lawyer that can sew up the contracts by day and spin the discs by night. (Legal Week 2001)

A more simplified (front cover) example reads:

London Calling.⁷ (SJ Berwin 2012/13)

⁷ This is another music reference used for recruitment purposes. *London Calling* is one of the tracks contained on the album, *London Calling*, produced in 1979 by a band called The Clash. It was also one of the anthems of the British Punk scene and

An example of the Bar's approach reads:

The Honourable Society of the Middle Temple Treasury Office
Celebration Ball. (Bar News 2008, July vii)

Disco till 1.30 am. (ibid.)⁸

Notions of hip and cool (Miles 2000; Malbon 1997; and see Pini 2001; Rief 2009) are carefully depicted here as forming youth identity and as constructing legal professional identity while exhibiting some strange connotations with race. These extracts exemplify that the amalgamation of work with music rhythms is coupled with a carefully selected 'white' vocabulary comprising phraseology widely used among young white people, to describe the successful candidate. More specifically, the reference to 'London Calling' hints at connotations with the iconic album by The Clash, a punk rock British band. The majority of the youth culture accounts exemplify that the punk scene has always been associated with homogenous and predominantly 'white' middle-class but also working-class crowds (Miles 2000; Malbon 1997; McRobbie 1994). The use of cultural practices of consumption associated with youth lifestyles as a means of promoting success and competition within the context of the legal profession denotes evidence of neo-tribalism in the upper end of the legal profession and creates distinctions in terms of race in the context of legal practice.

The constant repetition of personal pronouns in the legal press and advertising material of large commercial law firms and Chambers attests to the fact that being an individual and having personality are essential requirements within the context of legal employment. The professional self is realised and achieved through recruitment by the firm or set of Chambers.⁹ The promotion of the successful professional self through references to consumer-based lifestyles also alludes to the transition in the way the profession now represents, understands and promotes itself from the importance of character once associated with the legal profession, to the importance of personality attributes. This personality can also be consumer-based. The advertising material seems to be in accordance with the literature on cultural and organisational studies which suggest that the rise of consumer society concentrates on the importance of consumer-based personality, surpassing the importance of character (Sennett

era. Literature on youth studies accentuates the appeal of the punk music scene to upper as well as working class predominantly white youth.

⁸ On how the Inns of Court advertise life at the Bar see the discussion in Rogers, J. (2012). Representing the Bar: How the barristers' profession sells itself to prospective members. *Journal of Legal Studies*, 32(2): 202–225.

⁹ This is a recurring theme in the organisational literature. See by way of example Holmer Nadesan, M. (1999). The popular success literature and a brave new Darwinian workplace. *Consumption, Markets and Culture*, 3(1): 27–60.

1977). Goodrich (2001) claims that in practice, personal attributes and choices of lifestyle and of selfhood are open to magnification. The outsider is depicted in personalised terms. Through the exposure of details of lifestyle, the outsider is portrayed as tied to subjective qualities that escape the norm (ibid.).

More recent examples of advertising material refer to issues of inclusion and diversity by linking these notions to successful performance and client care, as seen in the quote below.

Creating an inclusive environment at Freshfields, where diversity of thought is valued, and people feel they belong and can thrive is central to making us a stronger firm and delivering better outcomes for clients. This has been a focus for us for some time, and we are proud of the progress we have made, but we need to go much further. This includes tracking our progress against ambitious targets to increase the pace of change and embedding commitments across the firm so that everyone understands the role they play. (Freshfields 2018)

The advertising material attempts to construct who successful candidates are. The analysis suggests that reference is made to certain types of social and cultural traits and this, in turn, points to a particular type of candidate. Literature on the profession suggests the successful candidates are usually the ones who fit the image of the law firm and that the profession seeks to portray (Francis & Sommerlad 2009). However, the law student population, the audience for this material, is very diverse, suggesting that they have different types of social and cultural traits to the ones that the profession seeks to portray (ibid.). Statistics from the Bar and from large commercial law firms, however, confirm that they recruit from the pool of young, predominantly white, male and middle-class, despite progress on issues of diversity (Boon et al. 2005; Whyte 2023; Shiner 2000). In accordance with the literature on the issue, the construction of the ideal candidate in the advertising material might not be as inclusive and diverse as the material suggests (Collier 2005, 2006). Another example portraying similar rhetoric as to the association of inclusion and diversity and its interplay with business and the way business is done reads as follows:

At Herbert Smith Freehills, we do not expect our people to be or think the same – indeed, diversity and inclusion drive our success and the innovative solutions we deliver with our clients. That’s why fostering an inclusive culture where our people can be themselves, contribute their perspectives and perform roles which are meaningful and aligned to our shared values is a core business priority. (Herbert Smith Freehills 2022)

The way that the profiling of potential successful candidates is constructed in advertisements from large commercial law firms is explicitly linked to recruitment, revealing evidence of Maffesoli’s neo-tribal sociality in the legal

profession.¹⁰ Although profiling is linked to recruitment, representations of race are ambiguous in the advertising material. More specifically, the persistence in the all-inclusive rhetoric amounts to the disappearance of race rather than the realisation of race as a component of self-identity in a Maffesolian sense. Instead, the professional self is realised through the logic of identifications with an all-inclusive and diverse culture of the firm, in the course of business. References to race are reduced to mere expression of firms' and Chambers' diversity policies, reflecting adherence to the SRA standards and Equality Act 2010 with which they must comply. One example from a top barristers' Chambers reads:

Matrix is committed to creating a safe environment where everyone is able to be themselves. (Matrix 2018)

Using images of lawyers of diverse racial backgrounds creates the impression that black and ethnic minority people are fairly represented in the profession and that self-identity matters. Analysis of images and text, however, creates scepticism and invites comparison with the reality of everyday legal practice (Vaughan 2014, 2017) as to whether or not initiatives such as scholarship schemes have the potential to challenge the stereotypical composition of the upper end of the legal profession at partnership (Whyte 2023) and QC levels.

39 Essex Chambers is deeply committed to the implementation and promotion of equal opportunities. We are particularly proud of the number of female QCs we have and the diverse socio-economic background of our barristers. (39 Essex Chambers 2018/2023)

A closer look at the statistics provided by the Chambers suggests that the gender ratio is 33% which translates to 58 women barristers as opposed to 67% for male barristers, which translates to 118 male barristers. The advertising material portrays a willingness to embrace changes in the legal profession in terms of its social composition, which constitutes an element of neo-tribalism in law as it reflects distinctions within the sectors of the legal practice. When compared to studies of the racial makeup of the profession, it becomes apparent that black and ethnic minority lawyers are underrepresented in the higher echelons of the profession, in large law firms and Chambers in particular (Shiner 2000) and are overrepresented in less prestigious branches of the profession (Vignaendra et al. 2000). An example of the willingness to embrace diversity as reflecting not just the core values of the firm but also the change in society comes from Clifford Chance:

¹⁰ According to the Maffesolian interpretation, neo-tribal sociality entails a series of identifications that emerge out of participation in different consumer groups performing cultural practices of consumption.

At Clifford Chance we see inclusion as a core value of the firm and also of the law. We understand that diversity and inclusion are good for our staff and their families, our firm and our clients, and society. We believe that to help achieve these values we have to be champions of, and campaigners for them across our firm, with our clients, and in the world.

We see inclusion as an intrinsic value of our firm. It is a matter of justice. It is also a core part of our identity. Our history as a firm has been anchored in innovative and diverse cultures and approaches which have both disrupted traditional attitudes and set global standards. (Clifford Chance 2022)

Statistically if compared to other large commercial law firms, Clifford Chance appears in the UK top 25 UK law firms with the highest percentage in BAME partners, with only 1.2% (this compares with Freshfields at 2% and Linklaters at 1%) (Patel 2021a). These findings are supported by the Law Society's Report (2022: 8, 11) on diversity in the legal profession which, while acknowledging changes in composition and matters of inclusion, concludes that the proportion of black and ethnic minority lawyers in higher positions remains low (see also Sommerlad et al. 2010; and Whyte 2023). Recruitment literature suggests that the upper echelons of the profession prefer graduates from certain universities (Vignaendra et al. 2000; Sommerlad et al. 2010; Webley et al. 2016) whose student body is predominantly white. This raises further concerns about the advertising material examined above, as to whether issues of race are truly tackled in the material, or whether they constitute just another commodity in the legal services market, reflecting the commodified character of the legal profession (Wilkins 2004; Collier 2005; Braithwaite 2010). Although this challenges certain issues on the inclusion of diversity, it concurs with the suggestion that race has become commodified within recruitment and within selection processes in the upper echelons of the profession (*ibid.*; and see Carbado & Gulati 2004).

The example above taken from Clifford Chance exemplifies how issues of race and ethnicity are kept at a distance from cultural practices of consumption. The stance taken in the material is that legal professional identity is negotiated through issues of consumer-based identifications, which constitute evidence of neo-tribalism in legal practice. What seems to be at odds with this portrayal is that race does not seem to be included in issues of consumption in the same way that other markers of social identity are. The material creates the impression that issues of race are usually treated as promoting social sensitivity and awareness coupled with an acceptance of difference. Socialising plays a significant role in the neo-tribalism of the profession, and a key part of this revolves around the consumption of alcohol. Nevertheless, the material is entirely silent on what the experience will be like for those who, for cultural or religious reasons, abstain from alcohol (Francis & Sommerlad 2009). This echoes a similar suggestion put forward by Goodrich (2001) that cultural

practices of consumption can create white spaces within the legal profession and legal practice. Goodrich suggests that different cultural experiences are never quite incorporated within the organisational context of the legal profession. It is in this sense that institutions and organisations remain the same. This, however, reinforces the construction of legal professional identity as a 'white space' (ibid.) and is also reminiscent of the exclusionary practices of the legal professional project.

Criticisms, Absences and Contradictions in the Advertising Material of Large Commercial Law Firms and Chambers

The analysis of the advertising material has shown that cultural practices of consumption and lifestyle and their interplay with issues of race are closely associated with the ways in which the upper echelons of the legal profession promote themselves. It has also demonstrated that the upper end of the profession seemingly encompasses the promotion of diversity and inclusion rhetoric. The commodification of race, diversity and inclusion as portrayed in their advertising materials raises several issues. Firstly, despite the constant reference to an all-inclusive culture, reference to cultural practices of consumption persist in the construction of large commercial law firms and Chambers as predominantly 'white' spaces. Secondly, these references to cultural practices of consumption need to be examined within the parameters of the everyday reality of legal practice at the upper echelons, in order to expose the performance and performativity of race in this legal employment context.

The advertising material provides information on the social life of the firm and Chambers, creating the impression that the working environment is highly sociable and friendly, and promotes close cooperation between members of the firm or set of Chambers. An analytical narration of what these events include, with particular emphasis on certain cultural practices of consumption, usually associated with youth culture, creates the appealing impression of an all-inclusive workplace and culture. The advertising material presents an overall contrast to most of the major studies of the legal profession. These studies fail to address the importance of cultural practices of consumption and the way in which they inform negotiations of race. The advertising material is inextricably linked to the way in which the high end of the profession now promotes, understands and presents itself as a diverse profession, more specifically as leaders for inclusion, whereas statistics suggest that less than 2% are BAME partners in these firms. An illustrative example of how diversity is sold by one of the top large commercial law firms reads as follows:

Our approach to diversity and inclusion is driven by the principle of 'Leading for Inclusion', a strategy which sets out our vision to be the leading global law firm for diversity and inclusion. We recognise

the power of diversity and inclusion as a driver of innovation, collaboration and positive business outcomes. By enabling our people to be their unique selves every day – we are Leading for Inclusion. (Herbert Smith Freehills 2022)

Nevertheless, the advertising material of large commercial law firms and Chambers is exactly that, merely advertising material. As such, it is designed to allure and impress, but it is not necessarily designed to portray the reality of the high end of the legal profession regarding its social composition. For example, the advertising material focuses largely on certain aspects of lifestyles and cultural practices of consumption rather than others, which sit at odds with the constant references to the rhetoric of the promotion of inclusion and diversity selling an ethnically diverse working environment to the potential recruits. Similarly, the absence of reference to the use of these aspects of lifestyles in legal practice challenges the relationship between the image the high-end sector of the legal profession would like to portray and the reality of the performance and negotiation of race in everyday legal practice. Narratives describing the reality of race in everyday legal practice suggest that black and other racial minority lawyers are deliberately included on client pitches and are then later excluded, or are merely used as a selling point on advertising materials of the firm in order to attract clients from a diverse ethnic background (see for example, Patel 2021b).

Although the advertising material seems to promote cultural practices of consumptions associated with the upper end of the legal profession, these remain confined to the portrayal of predominantly ‘white’ aspects of lifestyles. This again promotes the construction of ‘white’ spaces through the tactful avoidance of reference to different lifestyles which would eventually challenge that ‘whiteness’. This could mean that certain lifestyles hinting at certain social characteristics are more acceptable in the profession than others. Alternatively, it could indicate that the search for eclectic, postmodern new recruits that large commercial law firms and sets of Chambers so desperately seem to pursue, merely constitutes another advertising trick. This complements the recent findings of the Advertising Standards Authority report (2022a) on the reproduction and reinforcement and even creation of new stereotypes through advertising (2022b), amounting to what Myers-Lamptey (2021), when referring to the process of inclusion of race as a selling point in advertising, sums up as mere ‘race-washing’.

Current advertising material only portrays the large commercial law firms’ and Chambers’ perspective emphasising the promotion of their all-inclusive policies on diversity and inclusion, therefore converting race to a commodity. However, scant attention is paid to how it is used by lawyers regarding networking or their progression in the profession and how this exposes ethnically diverse communities within the context of everyday legal practice. In a profession obsessed with hierarchies, the advertising material does not offer

information on how consumerism challenges or simply conforms to normative patterns of race. More importantly, although filled with constant references to success and progression, the material provides limited information on the impact of consumer-based lifestyles on the progression and success of those who have alternative lifestyles and bear social characteristics different to the norm. One of the few examples on this comes from Linklaters, the first large commercial law firm hinting at lifestyle choices, in addressing issues of race by signing up for the Halo Code, a UK campaign advocating for ending hair discrimination for black employees:

At Linklaters we are committed to being home to a culture and environment in which racial, ethnic, cultural and religious identities are celebrated and individuals feel comfortable to bring their whole selves to work. We pride ourselves on our values of respect, integrity and inclusion and stand against all forms of racism and discrimination. (Edwards 2021)

Yet again the above example provides limited information on how these aspects of lifestyle are viewed by the ones who exercise control over the appointment of others to their overwhelming white majority. This makes the attempt of the upper echelons of the legal profession to assert the importance of the interplay between issues of race and cultural practices of consumption and lifestyles in legal practice even weaker. At the same time, it exposes once again the inability of law to address, accept and expose different individualities and collectivities, which consider social markers of individual and collective identities such as race.¹¹ From this perspective, the reproduction of law in its predominantly white image, at least at the top of the profession, is based upon the subtle erasure of race through the very commodification and promotion of race portrayed in the diversity and inclusion policies of large commercial law firms and Chambers.

Conclusion

This chapter explored how the upper echelons of the legal profession, large commercial law firms and commercial Chambers, promote and deal with issues of race, diversity and inclusion in recent and slightly older advertising material. The analysis of the chapter examined alternative ways of theorising race through the dynamics of cultural practices of consumption evident in their advertising material. It also examined the transition in the advertising material from an emphasis on cultural practices of consumptions and issues of lifestyles to a rhetoric of the promotion of diversity and inclusion of these bodies. The analysis of the advertising material coupled with accounts of the

¹¹ This is also reminiscent of Goodrich's argument as to whether or not law can successfully address the question of lifestyles.

organisational literature on the upper echelons of the legal profession exposed exclusionary practices and racial inequalities as they are subliminally and occasionally emphatically played out in the way these entities now understand and promote themselves. More specifically, this chapter suggested that the commodification of race through the incorporation of cultural practices of consumption reinforces exclusionary practices suggestive of racial inequalities in the organisational context of modern-day legal practice. Arguably, these reinforce the ability of the upper echelons to promote and reproduce their own image, predominantly white, while seen as persistently promoting diversity and inclusion and adhering to legal standards. Even more importantly, this chapter revealed the law's inability to fully address the question of cultural practices of consumptions and lifestyles and the way they express different lived cultural experiences at the top end of the profession. This again alludes to exclusionary practices reminiscent of the creation of a white legal professional project and legal professional identity at the pinnacle of the profession.

References

- 39 Essex Chambers. (n.d.). Diversity and Inclusion. <https://www.39essex.com/about-us/social-responsibility>
- Advertising Standards Authority. (2022a). ASA summary report on tackling harmful racial and ethnic stereotyping in advertising. <https://www.asa.org.uk/resource/asa-summary-report-on-tackling-harmful-racial-and-ethnic-stereotyping-in-advertising.html>
- Advertising Standards Authority. (2022b). Findings on racial and ethnic stereotyping in ads. <https://www.asa.org.uk/news/findings-on-racial-and-ethnic-stereotyping-in-ads.html>
- Baker, C. (2003). Chain reaction. *Law Gazette*, November.
- Bar News. (2008). July vii, a supplement to *Counsel Magazine*.
- Boon, A., Duff, L. and Shiner, M. (2001). Career paths and choices in a highly differentiated profession: The position of newly qualified solicitors. *The Modern Law Review*, 64(4): 563–594. <https://doi.org/10.1111/1468-2230.00339>
- Boon, A., Flood, J. and Webb, J. (2005). Postmodern profession? The fragmentation of legal education and the legal profession. *Journal of Law and Society*, 34(2): 473–492. <https://doi.org/10.1111/j.1467-6478.2005.00333.x>
- Boon, A. and Whyte, A. (2005). From public service to service industry: The impact of socialisation and work on the motivation and values of lawyers. *International Journal of the Legal Profession*, 12(2): 229–260. <https://doi.org/10.1080/09695950500226599>
- Bourdieu, P. (1990). *The logic of practice*. Cambridge: Polity Press.
- Braithwaite, J. (2010). The strategic use of demand-side diversity pressure in the solicitors' profession. *International Journal of the Legal Profession*, 17(3): 442–465. <https://doi.org/10.1111/j.1467-6478.2010.00514.x>

- Carbado, D. and Gulati, G. (2004). The law and economics of critical race theory. *Yale Law Journal*, 112: 1757–1828. <http://dx.doi.org/10.2139/ssrn.409360>
- Chronopoulou, A. (2014). Neo-tribal socialities in the legal profession: The role of consumption in forming legal professional identities (unpublished PhD thesis), Birkbeck College, University of London.
- Chronopoulou, A. (2015). From a professional tribe to a business neo-tribe: Towards a theory of consumer-based lifestyles in the legal profession. *Athens Journal of Law*, 1(1): 64–84. <https://doi.org/10.30958/ajl.1.1.5>
- Clifford Chance. (n.d.). Inclusion and Diversity. https://www.cliffordchance.com/about_us/inclusion-and-diversity.html
- Collier, R. (2005). Be smart, be successful, be yourself...? Representations of the training contract and trainee solicitors in advertising by large law firms. *International Journal of the Legal Profession*, 12(1): 51–92. <https://doi.org/10.1080/09695950500081366>
- Collier, R. (2006). Peter's choice: Issues of identity, lifestyle and consumption in changing representations of corporate lawyers and legal academics. In: Greenfield, S. and Osborne, G. (eds.) *Readings in Law and Popular Culture*. London: Routledge. pp. 31–64. <https://doi.org/10.4324/9780203963838>
- Crenshaw, K. (1989). Demarginalising the intersection of race and sex: A black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. *University of Chicago Legal Forum*, 1: 139–167. <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>
- Edwards, B. (2021). Linklaters becomes first magic circle firm to support Afro hairstyle campaign. *Global Legal Post*, 11 March. <https://www.globallegalpost.com/news/linklaters-becomes-first-magic-circle-firm-to-support-afro-hairstyle-campaign-57418054>
- Evans, D. (1997). Michel Maffesoli's sociology of modernity and postmodernity: An introduction and critical assessment. *The Sociological Review*, 45(2): 221–243. <https://doi.org/10.1111/1467-954X.00062>
- Francis, A. and Sommerlad, H. (2009). Access to legal work experience and its role in the (re)production of legal professional identity. *International Journal of the Legal Profession*, 16(1): 63–86. <https://doi.org/10.1080/09695950903204961>
- Freshfields, Bruckhaus and Deringer. (n.d.). Diversity and inclusion. <https://www.freshfields.com/en-gb/about-us/responsible-business/diversity-and-inclusion/>
- Goodrich, P. (2001). The law of the white spaces: Race, culture and legal education. *Journal of Legal Education*, 5(1): 15–38. <https://doi.org/10.1080/17521483.2007.11423724>
- Harris, C. (1993). Whiteness as property. *Harvard Law Review*, 106(8): 1707–1791. <https://doi.org/10.2307/1341787>
- Herbert Smith Freehills. (n.d.). *Diversity and inclusion*. <https://www.herbertsmithfreehills.com/content/diversity-and-inclusion>

- Holmer Nadesan, M. (1999). The popular success literature and a brave new Darwinian workplace. *Consumption, Markets and Culture*, 3(1): 27–60. <https://doi.org/10.1080/10253866.1999.9670329>
- Legal Week. (2001). Where the cool kids hang out. <https://www.law.com/international-edition/2001/11/07/where-the-cool-kids-hang-out/>
- Maffesoli, M. (1996). *The time of the tribes: The decline of individualism in mass society*. London: Sage. <https://doi.org/10.4135/9781446222133>
- Maffesoli, M. (1996). *The contemplation of the world: Figures of community style*. Minneapolis: University of Minnesota Press.
- Maffesoli, M. (2007). Tribal Aesthetic. In: Cova, B., Kozinets, R. V. and Shankar, A. (eds.) *Consumer tribes*. Oxford: Butterworth-Heinemann. pp. 27–34. <https://doi.org/10.4324/9780080549743>
- Malbon, B. (1999). *Clubbing: Dancing, Ecstasy and vitality*. London: Routledge. <https://doi.org/10.4324/9780203026458>
- Matrix Chambers. (n.d.). Core values <https://www.matrixlaw.co.uk/csr/core-values/>
- Miles, S. (2000). *Youth lifestyles in a changing world*. Buckingham: Open University Press.
- McDowell, L. (1995). Body work: Heterosexual gender performances in city workplaces. In: Bell, D. and Valentine, G. (eds.) *Mapping desire: Geographies of sexualities*. London: Routledge. pp. 75–95. <https://doi.org/10.1177/0309132515585>
- McRobbie, A. (1994). Shut up and dance: Youth culture and changing modes of femininity. In: McRobbie, A. (ed.) *Postmodernism and popular culture*. London: Routledge. pp. 155–176.
- Mishcon De Reya (2014). Quintessentially.
- Myers-Lampsey, D. (2021). Time to ditch the ‘race-washing’ in ads. *Campaign*, 27 October. <https://www.campaignlive.co.uk/article/time-ditch-race-washing-ads/1731554>
- Nicholson, D. (2005). Demography, discrimination and diversity: A new dawn for the British legal profession. *International Journal of the Legal Profession*, 12(2): 201–227. <https://doi.org/10.1080/09695950500246522>
- Patel, V. (2021a). ‘They used me for a pitch, then excluded me’: How major law firms are using their black lawyers to mislead on diversity. Law.com, 16 November. <https://www.law.com/international-edition/2021/11/16/they-used-me-for-a-pitch-then-excluded-me-how-major-law-firms-are-using-their-black-lawyers-to-mislead-on-diversity/>
- Patel, V. (2021b). Rankings reveal which law firms have the most black lawyers in the UK. Law.com, 25 May. <https://www.law.com/international-edition/2021/05/25/rankings-reveal-which-law-firms-have-the-most-black-lawyers-in-the-uk/>
- Pini, M. (2001). *Club cultures and female subjectivity: The move from home to house*. Basingstoke: Palgrave Macmillan. <https://doi.org/10.1057/9781403914200>

- Rogers, J. (2012). Representing the Bar: How the barristers' profession sells itself to prospective members. *Journal of Legal Studies*, 32(2): 202–225. <https://doi.org/10.1111/j.1748-121X.2011.00213.x>
- Rief, S. (2009). *Club cultures: Boundaries, identities and otherness*. London: Routledge.
- Rolfe, H. and Anderson, T. (2003). A firm choice: Law firms' preferences in the recruitment of trainee solicitors. *International Journal of the Legal Profession*, 10(3): 315–334. <https://doi.org/10.1080/0969595042000228784>
- Savage, M., Barlow, J., Dickens, P. and Fielding, T. (1992). *Property bureaucracy and culture: Middle class formation in contemporary Britain*. London: Routledge. <https://doi.org/10.4324/9781315884349>
- Sennett, R. (1977). *The fall of the public man*. London: Penguin.
- Shiner, M. (2000). Young gifted and blocked! Entry to the solicitors' profession. In: Thomas, P. (ed.) *Discriminating lawyers*. London: Cavendish. <https://doi.org/10.4324/9781843140184>
- SJ Berwin. (2008–9). *The Plum*.
- SJ Berwin. (2012–3). *The Plum*.
- Skeggs, B. (2004a). *Class, self and culture*. London: Routledge. <https://doi.org/10.4324/9781315016177>
- Skeggs, B. (2004b). Context and background: Pierre Bourdieu's analysis of class, gender and sexuality. In: Adkins, L. and Skeggs, B. (eds.) *Feminism after Bourdieu*. Oxford: Blackwell, pp. 19–34.
- Sommerlad, H., Duff, L., Webley, L., Muzio, D. and Tomlinson, J. (2010). *Diversity in the legal profession in England and Wales: A qualitative study of barriers and individual choices*. Legal Services Board.
- Sommerlad, H. (2011). The commercialisation of law and the enterprising legal practitioner: Continuity and change. *International Journal of the Legal Profession*, 18(1–2): 73–108. <https://doi.org/10.1080/09695958.2011.619852>
- The Counsel Bar News. July 2008.
- The Law Society Report. March 2022.
- Thornton, M. (1996). *Dissonance and distrust: Women in the legal profession*. Melbourne: Oxford University Press.
- Vaughan, S. (2014). Going public: Diversity disclosure by large UK law firms. *Fordham Law Review*, 82: 2301. <https://ir.lawnet.fordham.edu/flr/vol83/iss5/6>
- Vaughan, S. (2017). Prefer not to say: Diversity and diversity reporting at the Bar of England and Wales. *International Journal of the Legal Profession*, 24(3): 207–226. <https://doi.org/10.1080/09695958.2016.1181076>
- Vignaendra, S. (2001). Social class and entry into the solicitors' profession. *Research Study 41*. London: The Law Society.
- Vignaendra, S., Williams, M. and Garvey, J. (2000). Hearing Black and Asian voices – An exploration of identity. In: Thomas, P. (ed.) *Discriminating lawyers*. London: Cavendish Publishing. pp. 121–154. <https://doi.org/10.4324/9781843140184>

- Webley, L. and Duff, L. (2007). Women solicitors as a barometer for problems within the legal profession: Time to put values before profits? *Journal of Law and Society*, 34(3): 374–402. <https://doi.org/10.1111/j.1467-6478.2007.00397.x>
- 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. (eds.) *Diversity in practice*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/CBO9781316402481.007>
- Whyte, A. (2024). Do prizes have any point? The potential for diversity initiatives to change the ethnic profile of the solicitors' profession. In: Whyte, A., Tuitt, P. and Bourne, J. (ed.) *The long walk to equality: Perspectives on racial inequality, injustice and the law*. London: University of Westminster Press, pp. 77–112.
- Wilkins, D. (2004). From 'Separate is Inherently unequal' to 'Diversity is good for business': The rise of market-based diversity arguments and the fate of the black corporate bar. *Harvard Law Review*, 117: 1554. <https://doi.org/10.2307/4093260>
- Zimdars, A. (2010). The profile of pupil barristers at the Bar of England and Wales 2004–2008. *International Journal of the Legal Profession*, 17(2): 117–134. <https://doi.org/10.1080/09695958.2010.530881>