

## Diversity, Golf, and the Rules of the (Legal Career) Game

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Bryant Garth and Joyce S. Sterling, [Diversity, Hierarchy, and Fit in Legal Careers: Insights from Fifteen Years of Qualitative Interviews](#), 31 *Geo. J. Legal Ethics* \_\_\_\_ (2018).

*Diversity, Hierarchy, and Fit in Legal Careers: Insights from Fifteen Years of Qualitative Interviews* is a new article by Bryant Garth and Joyce Sterling about the challenges for diverse lawyers (here meaning women and non-whites) in navigating career paths that lead to satisfaction and success. This is a popular topic. Garth and Sterling's article stands out because it speaks both to the broad scale difficulties reflected in frustratingly slow progress on an organizational level, and to the particular contexts that frame the experiences, opportunities, and choices of individual lawyers hoping to find fulfillment in their careers.

The article begins with a rich discussion of various theoretical approaches that scholars have used to explain the failure in the profession — and particularly with regard to the ranks of positions of power and influence in the largest and most elite law firms — to reflect the increasing diversity of law school graduating classes. Garth and Sterling begin by explaining the “capital assets theory,” which grounds their work:

[W]e see the legal field as a semi-autonomous space of struggle according to certain rules of the game that can also be contested. Actors within the field adopt ‘strategies’ oriented toward success in the field. Strategies are not necessarily chosen instrumentally or self-consciously. Actors internalize the rules of the game, such that it seems natural, and they try to build up the capital that is valued in the field or find ways to get the capital that they possess to be valued within the field. (P. 127.)

Moreover, they explain, the capital assets that are valued in one setting aren't necessarily the same as those valued in another setting, nor are the “forms of capital valued within the law and within the large law firm at the top of the hierarchy . . . static.” (P. 142.)

Rather, to understand the dynamics shaping the effort to transform large law firms into organizations that embrace and reflect diversity and inclusion, Garth and Sterling caution that we must consider the history of the legal profession in the United States and the role in that development of law firms serving corporate clients. Because corporate-focused firms are at the top of the status hierarchy, and further, because those who have led these firms historically have been white men with stay-at-home wives, the characteristics, strengths, habits and attitudes intrinsic to the white male leaders of elite law firms are reflected in their firms' assessments of what matters, what instills confidence, what makes for success. For example, “[e]lite law degrees . . . are valued not because those who hold the degrees are necessarily better lawyers, but because lawyers and clients are persuaded that preferences should be given to those with elite degrees. . . . The experience of working in corporate law firms (even if only document review), we contend, is also valued mainly as a form of symbolic capital.” (P. 132.) As Garth and Sterling explain, “the qualities for success (including stay-at-home spouses) are measured within a set of racial and gendered categories by definition subordinate to the hierarchies embedded in the law and the law firm.” (P. 142.)

The authors compare and contrast the capital assets theory to other approaches that address — from organizational and individual frameworks — the underrepresentation of diverse lawyers in elite law firms, including, among others, implicit bias (P. 134) and critical race theory. (P. 140.) Their analysis reads as a conversation between them and the scholars who have advanced alternative theories. They highlight important and sometimes subtle differences between

the various theories and, at the same time, identify points of convergence and overlap. Substantively, one recurring distinction they make is that the capital assets approach recognizes the fluidity of what is valued as a reflection of the hierarchy of the field; as that hierarchy shifts, so do the values inherent in what is considered essential for success. Status is not frozen.

At this point in reading, the Passover song, *Dayenu*, is playing in my head. Dayenu — meaning “it would have been enough” — because had Garth and Sterling presented only this insightful analysis of theoretical approaches, while simultaneously explaining the comparative benefits of the capital assets approach, their article would have done plenty. It would have offered both some consolation for the stuck feeling that the Big Law diversity and inclusion context engenders and it also would have provided some cause for hope that change may be forthcoming.

But the article goes further, offering a second dimension by applying the capital assets theory to qualitative data on lawyers’ careers, drawn from interviews conducted as part of the *After The JD* (AJD) project. Many have written about AJD, which was a longitudinal study that gathered survey and interview data about the career trajectories, satisfaction and demographic characteristics of a national sample of lawyers who passed the bar in the year 2000. To my mind, it’s one of the most important projects ever to study the American legal profession, and it continues to inform even after its funding disappeared. But most scholarship using ADJ draws on its quantitative data; the only qualitative AJD data derives from interviews – conducted primarily by Garth and Sterling over the life of the AJD – and it is these that are the centerpiece of *Diversity, Hierarchy, and Fit*. Staging rounds of interviews after each of the three survey administrations enabled them to gather intimate details from lawyers at different stages of their careers through 219 interviews (and counting).<sup>1</sup> In this article, the interviews provide unique insight into how career decisions are made, and the ways in which career decisions reflect lawyers’ perceptions of their relationships to their firms.

They frame the interview data around the notion of “fit.” They explain: “Fit is a way for embedded histories and power relationships to make it more difficult for people who do not possess the cultural capital represented by golf . . . to succeed in particular settings . . .” (P. 127.) The reference to golf relates to an image they include in the article, showing four men on a beautiful golf course, mountains in the background, posing with their golf clubs and wearing golf gear. Garth and Sterling note that the men in the photo are “diverse” — they include two who “are white, one of whom appears to be Asian, and another who appears to be black — dressed the same and posing on the golf course. It is a perfect illustration of the fact that, at the elite level, the ‘fit’ required of minorities entails much more than doing quality legal work. Golf is in part a symbol of what is required and a factor that comes into play in real careers.” (P. 125.)

Golf — playing golf, wanting to play golf, and understanding why golf matters — is a factor, both real and metaphorical, of what Garth and Sterling dub an “On-Broadway” career path, one that includes “the elite track of large law firms, . . . [and] the advantages that come from possession of the most highly valued credentials in the legal profession.” (P. 127.) Garth and Sterling explain that the On-Broadway career path favors white men with stay-at-home wives: “there are countless almost imperceptible ways that the capital value structure affects success directly—credentials and ability to work long hours, for example.” (P. 129.)

Next up are career tracks in the “regional theater” mode, which follow the general contours of On-Broadway and Big Law but in smaller firms, or in alternative positions to the partnership track, or both. (P. 127.) An example is a female lawyer who moved from an elite firm to a firm in her hometown, where she eventually was appointed head of litigation. Nonetheless, by her third interview she had stepped away from partnership status to focus on her children. Garth and Sterling see these sorts of trajectories as possibly “presaging changes that will take place in the large corporate law firms. But . . . they [also] are providing outlets that make it so the large corporate law firms can change very slowly, especially with respect to gender. In a way, they protect the ‘cultures’ of the corporate law firms while allowing those who do not fit to find a good position outside.” (Pp. 161-62.)

Last is the “Off-Broadway” experience of lawyers who developed their careers in patterns where diversity is valued differently. One example is an Arab-American lawyer who started working at an elite firm, but found the environment extremely difficult after 9/11. He temporarily left law practice, but eventually returned and, on the return, developed a

network of contacts with Arab-Americans who were active in the healthcare industry, and this enabled him to build a practice in that field. Garth and Sterling explain: “He managed to make what he possessed — a set of contacts within the medical community among Arab-Americans — valuable. Indeed, this new addition to his own portfolio of marketable capital assets made him attractive to law firms as a partner. As of 2017, he had joined a prominent regional firm as a partner, focusing on corporate law and the health care industry.” (P. 162.) Generally, the Off-Broadway track offers opportunities for “[i]ndividuals [to] turn a lack of fit — related to social class, identity, or even non-elite law school credentials — within the traditional corporate law firms into very successful careers that build space for new consumers of legal services and for diverse attorneys who generally have trouble talking to corporate law firms.” (Pp. 168-169.)

By weaving these three alternative tracks together, Garth and Sterling send a strong message to diverse lawyers and law students: identifying one’s own strengths, and identifying the capital assets valued by the profession or by a particular firm, allows lawyers both to identify the gaps and to envision strategies and steps towards a practice setting where one’s characteristics and identity will be recognized as assets. It doesn’t do much good to be the best singer in the play if there is no role for a singer. There might be value in joining with various theater companies to gain particular skills and experience, but before long the singer needs a role that will allow her to sing. That might involve developing community relationships in order to build a new theater company that prefers musical theater, or a move to a new neighborhood or city where musical theater opportunities are abundant, or singing in another venue apart from traditional theater. But without that musical role to enable the singer to shine, her talents will be wasted. It’s the same for lawyers: those who carry different capital assets from what is rewarded within the legal profession’s hierarchy must escape the diversity-stagnation surrounding the highest status career trajectories (On-Broadway) and chart their course towards organizations and opportunities that recognize and reward their differences, whether those differences relate to gender, race, ethnicity or an international identity (as Swethaa Ballakrishnen and I explore in [recent](#) and ongoing work<sup>2</sup>). Garth and Sterling brilliantly hone in on the ways in which these lawyers can exert some control over their destinies, whether or not On-Broadway, and in so doing, they offer a positive message for the profession and its future.

1. Among their interviewees, 20 lawyers were interviewed at two different time periods, and 27 were interviewed at three time periods.
2. Carole Silver and Swethaa S. Ballakrishnen, *Sticky Floors, Springboards, Stairways & Slow Escalators: Mobility Pathways and Preferences of International Students in U.S. Law Schools*, 3 **U.C. Irvine J. Int’l, Transn’l, & Comp. L** 39 (2018), available at [SSRN](#).; Swethaa S. Ballakrishnen and Carole Silver, *A New Minority? International JD Students in US Law Schools*, **?Law & Soc. Inquiry** (forthcoming).

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