

Allens Intersectionality Panel Event – Key Note Address

BORIS JOHNSON AND DIVERSITY

The Honourable Justice H Dhanji¹

Wednesday, 22 February 2023

- 1 We are here many floors up, but the ground to which we are affixed was for tens of thousands of years the land of the Gadigal people of the Eora nation. The last 250 years or so is a blink in time by comparison. I pay my respects to Gadigal people, their elders past and present.
- 2 I thought I would begin this talk about intersectionality with Boris Johnson.
- 3 There is a reason for that. Much has been said about the desirability that the legal profession reflects the society it serves. The relationship between values and judicial decision-making – an exercise of State power – means that law, in particular, is an area where that reflection is of fundamental importance. The exercise of State power, uninformed by the values of the people it serves, cuts at the legitimacy of the exercise of that power and the institution exercising it. But I have spoken on this topic, and while it can be addressed in various ways with different degrees of emphasis, it is, I think, uncontroversial.
- 4 And that is why I wanted to begin with Boris Johnson. Boris Johnson was, as you know, until sometime last year, the Prime Minister of the United Kingdom. There is nothing surprising about that. Boris is white, male, straight (perhaps prolifically straight, having fathered seven children). I have not done research on his domestic arrangements, but the number of children, alongside his parallel career, suggests he may have undertaken a somewhat traditional male role with respect to at least some of them. He was schooled at Eton and then studied at Oxford.

¹ I wish to acknowledge my tipstaff, Alice Loveday, for her invaluable contribution to this speech.

- 5 Boris Johnson was, of course, in many senses, the model of a Conservative Prime Minister. Of the 30 Conservative or Tory prime ministers of the United Kingdom, 11 were educated at Eton and 5 at Harrow. Given that is more than half, these schools are either exceptional or the children attending them are at a very significant advantage. I suspect the latter.
- 6 If I can jump back a few years to another conservative prime minister, Winston Churchill. Churchill was a Harrow man, as they would say. Of course, they are all men. He apparently made it into Harrow on his third attempt; the two failures were of intellect and not of means; he does not seem to have been academically gifted.
- 7 There is a modern tendency to lionise Winston Churchill. His obstinance in opposing fascism has made him a hero. In the UK, Conservative politicians, particularly Johnson and Thatcher, have obtained significant political mileage by aligning themselves with him. Thatcher referred to him as “Winston” and emulated him by going hard after the unions and taking advantage of circumstances to make herself a wartime leader. Johnson emulated Churchill by writing books about Churchill; that is, Churchill wrote about himself while Johnson wrote about Churchill. To be fair, I understand Johnson is now writing about himself.
- 8 My point is the lionising of Churchill, including by a very recent prime minister, tends to suggest the Conservative Party in United Kingdom is a party that still looks up to a born-to-rule racist with what might be described as a religious belief in empire.
- 9 So, what is the relevance of this to tonight’s subject? It is this: when Boris Johnson resigned, there was a field of 11 candidates to replace him. From what I have said thus far, it would be legitimate to expect that the Conservative Party would throw up a field dominated by men, at least outwardly straight (it being best not to dwell on the sexuality of the English upper class), and of course, white, and probably not just white, but Anglo-white. But that is not what

happened. As you are probably, at least generally aware, the field was markedly mixed.

As it happened

- 10 Of the 11 candidates put forward to replace Boris Johnson, only two were white men. Six were members of ethnic minority communities. Three were born to immigrant parents, two were born overseas (in Pakistan and Iraq), and one was brought up in Nigeria. Four of the candidates were women, leaving the two white men in a distinct minority (a position they were likely quite unfamiliar with).
- 11 It has been suggested that the party has diversified itself “at the top by the top.” Interestingly, while UK Labour has managed to have greater diversity in its parliamentary caucus, the Tories have achieved greater diversity in the higher ranks of their party.
- 12 So, rather than focusing on why having different faces, genders, and sexualities at the top of our public institutions is important, a step in the right direction, and something we can all agree is relatively uncontroversial, I thought it would be interesting to consider how this has been able to happen in a party historically underpinned by conservatism, racism and elitism.
- 13 Our researches have suggested there is not one single answer to this question, but rather a few factors may have played a part.
- 14 Firstly, it could merely be that the new age of British conservative politics aligns with certain upwardly mobile minority groups. However, political alignment does not wholly account for the practical inclusion of people from different backgrounds within the party, particularly in a historical context of racism and exclusion.
- 15 Secondly, it could also be that, as one of the most electorally successful parties in the world, the Tories have more seats and electoral positions available and, therefore greater scope for diversity within their ranks. However, this does not

explain why the top of the party is more diverse, and the grassroots remain largely white.²

- 16 Thirdly, the conservatives have a history of firsts in the UK. They had the first Jewish Prime Minister in Benjamin Disraeli, the first, (and second) female prime ministers, and now they have elected the first with an Asian heritage. There may be something to be said about the conservatives being in a position to bring forward necessary development without political backlash.
- 17 Fourthly, a more concrete factor identified has been an active decision by the central office of the Conservative Party to bring forward candidates from diverse backgrounds. In particular, there appears to have been explicit support from the central offices of the party to pull potential candidates from diverse backgrounds up through the ranks of the party, a sort of “sponsored mobility”.
- 18 In 2005, there were only two non-white MPs in the Conservative Party. In the lead-up to the next election, the party’s central office circulated a list of what were described as “A-list candidates” for local districts to consider, forcing the grassroots of the party to consider candidates from different backgrounds.
- 19 At the next election, the number of conservative ethnic-minority MPs increased from 2 to 11, the number of conservative female MPs increased from 17 to 49, and the numbers have continued to rise in subsequent elections.
- 20 As I have said, there are a number of factors that may have played a role, but it is certainly the case that one factor has been the intentional effort at the top of the party to bring forward candidates from different backgrounds. These efforts have contributed to a situation whereby the British Cabinet, at least looks, much more like the people it purports to represent.

² Mile End Institute and Queen Mary University, *Grassroots Britain’s party members: who they are, what they think, and what they do* (January 2018) p 7.

Educational and economic privilege in the party

- 21 While the changing faces of senior Tories is a positive step, there remains a number of barriers to entry. Importantly, economic and educational privilege and disadvantage remain real issues. Returning to the statistics, immediately following the 2019 election, 39% of the British Cabinet attended a fee-paying school,³ compared with less than 7% of the general population.⁴ Similarly, 57% of the British Cabinet attended Oxford or Cambridge,⁵ compared to less than 1% of the general population.⁶ It is likely those universities would say that they attracted the best students, but, nonetheless, it remains a surprising figure.
- 22 Speaking in general terms, many of the conservative politicians from diverse backgrounds who have been successful within the party often have the benefit of privilege in other areas. These include, for example, intergenerational wealth, a fee-paying education and a top-level university education. The current Prime Minister, Rishi Sunak, fits this mould, attending a fee-paying school (albeit not Eton or Harrow) and attending Oxford.
- 23 This shows that while there may be changing faces in the British Cabinet, educational and economic privilege remain continuing barriers to entry. This is something that is exacerbated by levels of intersectional disadvantage.

These interrelated factors of privilege are relevant in our legal context

- 24 Unlike politics, the legal profession has specific entry requirements, including a university education. An individual's ability to obtain entry to and complete a university degree is impacted by their socio-economic position, alongside other factors. On top of entry requirements (noting that ATARs are affected by socio-economic factors), the cost of university education is now at least \$40,000 plus \$10,000 to complete Practical Legal Training, thousands more if one wishes to

³ Sutton Trust and Social Mobility Commission, *Elitist Britain 2019* (2019) p 17.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

complete the Bar Practice Course and even more to purchase those tangible reminders of our law's English roots: the wigs and robes.

- 25 With these things in mind, despite increasingly seeing people from different backgrounds making their way through the ranks of the legal profession, it remains the case that one's socio-economic background, when combined with other factors including race, gender and sexuality, can make it difficult to find pathways into the profession, and, in particular to the higher ranks of the profession.
- 26 Beyond these economic limitations, there are also aspects of the profession that can be challenging and unwelcoming for people from diverse backgrounds. For example, the law, with its jargon, formalities, theatrics, and traditional dress, can be especially isolating for those not exposed or accustomed to it.
- 27 A second challenging aspect of our profession is the prevalence of unconscious bias. This unconscious bias manifests not only in hiring processes but also occurs with respect to the profession's assumptions as to the desirability of particular leadership and communication styles, a view that preferences "self-promotion and assertive direct communication while undervaluing and misinterpreting quiet reserve, and deference and respect for seniority".⁷

So what can we take from this?

- 28 Firstly, there is a need to question assumptions about what a lawyer looks like, thinks like, talks like and particularly leads like, and a consequent need to understand that we are ignoring valuable traits and values by conforming or expecting others to conform to some outmoded image of how a lawyer should be.
- 29 Secondly, displacing those assumptions will inform the active effort required to facilitate growth for lawyers from diverse, not limited to ethnically diverse backgrounds. While we have greater diversity coming through our law schools,

⁷ Chin Tan, 'Diversity in the Legal Profession – William Lee Address' (Speech, Australian Human Rights Commission, 5 June 2019).

looking at what can be achieved through action, such as that taken by the UK conservatives, suggests that rather than just waiting for people to rise to the top, the top needs to be proactive.

30 Finally, of course, it is a pipeline. Access to education and pathways into the profession are critical. These are issues which are, to some extent, beyond the profession, but, aside from what can be done within our ranks, diverse lawyers making themselves visible to young people who may not otherwise consider our profession is a start.

31 There is, I think, room for optimism. But to rely on optimism and time alone is, I think, a mistake.
