be a starting point to assess a person's history and development, which must be taken into account in any measurement of individual merit. Numerical indicia do not tell us much about the character and worth of persons who must face and overcome societal obstacles such as racial or gender discrimination. Someone who starts from behind and makes significant progress has demonstrated enormous talent and hence merit. Such progress can be more revealing of intelligence and ability than the numerical education-based measurements of present achievement alone.

Under this view of merit, then, present-day race-based affirmative action is merit-based because it takes into account societal obstacles that might otherwise skew objective criteria of individual merit. And if lower-scoring minority applicants can be recognised as 'meritorious' in this way, then the later uses of diversity to fill a class with representative groups may not be so objectionable. At that point, admissions officers are filling the class with diverse and 'meritorious' applicants of different racial groups, in much the same way as they choose among qualified applicants on the basis of geography. Diversity preferences for racial minorities can no longer be attacked as letting in 'unqualified' people.

A merit selection based on overcoming obstacles can be used not only as a principled basis for existing race-based affirmative action criteria; it can also serve as a distinct race-neutral selection category to support affirmative action for other groups facing social discrimination on such grounds as gender, class, sexual orientation, or physical disability.

For an educational institution truly devoted to the ideals of diversity, the category of overcoming obstacles seems a more intellectually coherent way of ensuring diversity. By requiring an assessment and articulation of a person's experience of overcoming obstacles, the category avoids the problem of essentialism. This emphasis can help us to focus more acutely on the underlying social conditions of oppression. The word 'obstacles' continues to remind us of the harm society has done to individuals, particularly in the form of group-based discrimination. If we are required to consider group-based harm in our admissions process, we as a society may be more sensitised to the discrimination that still exists and all the negative ramifications that may entail.

A broader recognition of merit, beyond grades and statistics, can include race as a part of a person's social and cultural history and a starting point to discuss an individual applicant. This broadened merit may also support an umbrella category of diversity: people who have faced and overcome group-based discrimination. Admission will depend on the application's individual merit, demonstrated by the efforts exerted to overcome these obstacles.

What do the latest anti-affirmative action developments mean for educators? For one, educators need to reassess the goals of education and the goals of affirmative action both nationally and, more specifically, in our particular institutions. This means that we must cast off the false distinction between affirmative action and merit, and point out that selection through affirmative action is selection on the merits. Certainly, one way of appreciating the individual merits of minority applicants is to understand the progress and potential demonstrated by their overcoming the obstacles of discrimination.

GENDER ISSUES

Women legal academics — a new research agenda?
F Cownie
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It is a truth almost universally acknowledged that there is very little research which examines the position of British women academics. One reaction might be that this is unsurprising, because such research is of little interest or value. There are a number of reasons why this view is mistaken. Most fundamentally, there is the Aristotelian view that the search for knowledge is part of being human but there are many other reasons for pursuing research in this area. Information about legal academics is important in terms of the development of the university as an institution.

In the same way, the behaviour, attitudes, and values of legal academics have implications for the future development of the discipline of law. Members of the academic tribe which inhabits the territory of law will have a profound effect on the research which is carried out and valued, the subjects which are taught and the people who are influential in this sphere.

A common theme among commentators when writing about women academics is that they, of all women, should in theory have the best possible chance of succeeding in their career to the same extent as male academics. However, there is plenty of evidence that the position of women in academia is far from equal to that of men, and that the higher one goes up the academic ladder, the fewer women one will encounter. In 1994/95, of all full-time academic staff in the UK, women made up 7 percent of professors, 15 percent of senior lecturers, 10 percent of lecturers and 32

percent of other grades. However, gathering similar data on women legal academics is not so straightforward.

One of the benefits of studying women legal academics is that it might tell us more about the nature of the university itself. A new research agenda might use an examination of women legal academics to explore issues relating to the notion of cultural capital. In the late 1980s and the 1990s there have been repeated attempts to impose managerialism and bureaucratic control on universities. In considering the effects of institutional bureaucratisation, it would be particularly interesting to discover more about the role women legal academics may play in resisting the process.

Studying women legal academics may contribute, not only to knowledge of the university as an institution, but also to our knowledge of the discipline of law. The relationship between women legal academics and the discipline of which they are part arguably has particular resonance in terms of gender. Law, it is often argued, is a particularly masculine domain. A research agenda such as that outlined here has the potential to contribute much to the challenging of masculinity, not only within the law school, but within the university as an institution, by exposing areas where oppression is greatest, as well as those where resistance is already well established.

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INDIVIDUAL SUBJECTS/ AREAS OF LAW

Introducing legal reasoning

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The elements of judicial decision-making are teachable and, therefore, they ought to be taught purposely and forthrightly. How courts solve law problems is not best left to the intuition of beginning students, or to their memory, or to osmosis. Understanding legal decision-making results from learning how logic and rhetoric operate in the specialised area of legal thinking and problem-solving. Chiefly, it results from learning that the law possesses both external and internal logic and then from learning the dynamics of these breeds of logic. Finally, it results from learning how judges justify legal outcomes on non-legal grounds.

Teaching how judges decide law cases means insisting up front that the legal system under consideration be a cohesive system. One requires at a minimum that the system's parts fit together to promote some species of justice. Such a system can be said to possess external logic or is said to be valid on account of its regard for coherence. What essential elements of the legal system should students consider when beginning an inquiry on legal decision-making? What elements bestow upon a legal system that system's external logic? Three elements come to mind: the rules that operate within the system; courts and judges; and tradition coupled with jurisprudence.

One would expect judges presiding within a legal system to decide cases in accordance with the rules operating in that system. One hopes as well that all the cases occurring in the system would fall within the ambit of established rules. But when a controversy arises to which no existing rules attach, a judge may fashion rules or select rules from outside sources, provided that the rule fashioned or selected coheres to the system's aims, purposes and traditions. Students should know, therefore, that judges may legislate in certain situations — variously called hard cases, interstitial cases or penumbral cases.

Students should understand that our legal system's traditions and jurisprudence have provoked sharp controversy about what judges do, what they ought to do and what they are permitted to do. For instance, the naturalist school of jurisprudence insists that the law be imbued with morality and that judges should strive to reach morally right results. The positivist school argues that there need not be any connection between law and morality. Simply put, the law is what it is. Legal realists make up yet another school, which regards positivist thinking as retrograde and archly formalistic.

Getting started on learning how judges decide cases within a legal system requires an insistence that the system be cohesive and coherent, that it possesses external logic. But what of the system's internal logic? How do courts identify controversies? How do they determine which rules to apply? How do they decide outcomes in a logical fashion? How do they justify outcomes once the outcomes are decided? What, in sum, are the dynamics of legal problem-solving? To help students answer such questions a discussion of induction, analogy and deduction may be helpful.

The first step in legal problem-solving is legal induction or issue spotting. Problem-solving begins with the experience the problem-solver brings to bear on a controversy. Answers which are experientially based are