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Constructing The Role Of The Law Teacher In The Changing Context Of Higher  
Education Policy And Practice

Caroline Jane Elizabeth Gibby

The qualification for which the thesis is submitted is Doctorate of Education

School of Education Communication and Language Sciences

December 2017

## **Declaration**

I hereby certify that this thesis is based on my original work except for quotations and citations, which have been duly acknowledged. I also declare that it has not been or currently submitted for any other degree at the University of Newcastle or other institutions.

Signed

Dated

## **Abstract**

In the UK, Higher education (HE) has become subject to greater scrutiny, from Government, students and employers alike. Pressures to improve academic practice through teacher education are often linked to improved economic stability of the Higher Education Institutions (HEI); this culture of economic Higher education has challenged traditional teacher roles. Where there are additional external pressures and quality assurance criteria to be met, the teacher is expected to possess relevant skills and knowledge to meet the changing expectations within HE.

This study explores the tensions between HE and Legal education policy and practices and how they affect the construction of the law teacher role. Using a pragmatic, critical realist perspective, which recognises the interaction of structure, culture and agency (Archer, 1996) a mixed methods approach was used to explore changing teacher roles, types and engagement with teacher education drawing conclusions as to the opportunities to develop excellence in teaching. Data collection over a three-year period included 61 job descriptions and 15 semi-structured interviews.

Data were analysed using descriptive statistics, deductive content analysis and a constant comparative method. Findings indicate that several factors were associated with the construction of the law teacher role. Data indicate that teaching and practice-focused legal experience were least likely to be sought, whereas networking and organisationally beneficial skills, such as management were preferred.

Data from semi-structured interviews indicate that teachers felt let down by the HEI teacher education. Further, they felt that existing HEI practices did not provide relevant training, to support the development of excellence in academic and practice-focused teaching. Existing programmes of teacher development were described as ineffective, irrelevant and unsupported. This was particularly evident for part-time teachers, who were often those that delivered legal practice courses for students.

At a time when quality assurance is an important feature of HE and the introduction of the TEF, this thesis suggests that HEIs are ill equipped to provide relevant disciplinary support to new law teachers. Therefore, improvement in quality and practice appears driven by individuals or collective groups of teachers, who will construct their own role within Legal education. To address this gap, this thesis puts forward practical recommendations to support change.

## **Dedication**

To Family

## **Acknowledgements**

I would like to acknowledge the continued and generous support of Dr Jill Clark and Dr Simon Gibbs who have always been helpful, interested and patient. I would also like to thank Dr Pam Woolner, as my DPD has also been there to help me on my way.

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## Glossary of terms

<b>Abbreviation</b>	<b>Meaning</b>	<b>Description</b>
Academic Practice	Teacher Education	See SoTL below
ACLEC	Advisory Committee on Legal education and Conduct	Set up in 1991 to develop all aspects of professional education
BSB	Bar Standards Board	Regulatory Body for the Bar
CCA	Constant Comparative Approach	Iterative approach to research which has 4 stages comparing data across each CA category; second, integration of the data across all categories; third, reducing the different categories into clearer unifying categories; and finally, setting out and explaining the unifying categories.
CHE	College of Higher education	Colleges providing, HE under the 1992 and 2004 reforms
CILEX	Chartered Institute of Legal Executives	Regulatory Body for Legal executives
COP	Communities of practice	Collective method of sharing practices and understanding
ETF	Education and Training foundation	National body supporting developing teaching and learning established in October 2013, for the Further Education and Training sector
HE	Higher education	Post 18 Education from level 4
HEA	Higher Education Academy	National Body formed in 2003 to support the Higher education community in order to enhance the quality and impact of learning and teaching.
HEFCE	Higher Education Funding Council for England	Funding and regulatory body for HE formed in 1992: superseding agency Office for Students (OfS) and UK Research and Innovation (UKRI)
HEI	Higher Education Institution	Organisations which provide HE to students - state



		funded for the purpose of this study
HEPI	Higher Education Policy Institute	Policy body addressing issues in and around the development and provision of HE
HERA	Higher Education Role Analysis	Formal method of decision making tool supporting effective management decisions about All Staff roles
HESA	Higher Education Statistics Agency	Agency which collates and analyses data in relation to HE
HMI	Her Majesty's Inspector of schools - see Ofsted	Inspection Agency now OFSTED
LE	Legal education	learning and teaching in relation to law - addressing both academic and legal practice knowledge
LETR	Legal Education Training Review	2013 review addressing needs, opportunities for development within all aspects of LE
New Universities	post 92 Universities	Universities following unification policies carried out in 1992
Non-traditional Universities		Sector Universities which existed prior to 1992, but are not part of the Russell group
OFFA	Office for Fair Access to Education	NGO set up to regulate access routes within HE
OFSTED	Office for Standards in Education	As HMI
Post 92 Universities		Universities formed after the 1992 reforms - also identified as New Universities
Pre 92 Universities		Universities formed before the 1992 Reforms also identified as Old Universities
QAA	Quality Assurance Agency	National body monitoring and reporting on provision of inter alia Higher education
QLD	Qualifying law degree	law degree which is accredited as part of legal professional formation by the SRA and BSB

REF	Research Excellence framework	Quality assurance framework which focuses on the development of research
Russell Group		The Russell Group represents 24 leading UK universities which are committed to research
SLT	Social Learning theory	Theory which support the concept of scaffolded learning where learning takes place by observing
SoTL	Scholarship of teaching and learning	Four areas of teacher development which includes discovery, integration, theory and application and practice
SRA	Solicitors Regulation Authority	Professional regulator
TDF	Teacher development framework	National teacher developer framework supporting teaching standards
Teacher Education		Teacher development: also, called Academic Practice
TEF	Teaching Excellence framework	Quality assurance framework which focuses on the development of teaching
The Law Society		Representative body of Solicitors
UKPSF	United Kingdom Professional Standards Framework	Teaching professional standards framework which are linked to the HEA accreditation awards



## Chapter 1 Introduction to my research

In this chapter, I outline the rationale for my thesis and explore my position as researcher, law teacher and lawyer in the complex environment of Legal education. I set the context of my research, my background and approach to understanding the Construction of the law teacher role within Higher education (HE).

Research is driven by personal and practical experience as well as curiosity about the world I inhabit as teacher, lawyer and researcher.

So here, he was without maps or supplies,  
A hundred miles from any decent town;  
The desert glared into his blood-shot eyes;

The silence roared displeasure: looking down,  
He saw the shadow of an Average Man  
Attempting the exceptional, and ran.

W. H Auden *The Average Man*

### 1.1 Context

I began my training as a teacher by becoming an articled clerk – what is now known as a trainee solicitor. I had secured a training contract with a well-established firm, which had a close relationship with a local college of Further and Higher education (CHE). My training principal indicated that if I wanted to be a good litigator then teaching was a great start. It also subsidized my rather low income. Therefore, my teaching career began like many before me, teaching Quantity Surveyors about the law and how it related to the Built environment on an HND course.

As my legal career developed, I became a partner of a small, but busy legal practice in 1995, acting as training partner as well as teaching professional

qualifications. I enjoyed it. However, the challenges of running a legal aid practice and planning and preparing interesting practical sessions in addition to my practice soon led to the decision that I would either practice or teach. The pressures of a mainly legal aid firm in the era of swingeing cuts in government support meant that my choice was made easier, when I was offered a full-time teaching role – out of the blue.

My range of teaching has included teaching law from GCSE to postgraduate level, as well as teaching professional and vocational law, and teacher education programmes. I had become head of law at a large FE College with HE ambitions, leading on the design and development of franchised foundation degree programmes. My role had begun to change; I was involved in recruiting and supporting new members of the teaching team, quality control and quality assurance. What I knew about teaching theory could have been written on a postage stamp, my knowledge of teaching practice however was clearly very different.

As I became more aware of my need to develop as a teacher and manager, it became clear that expectations of teachers, both full and part-time, were determined by the institutional objectives. Teaching at a college was limited by the narrowness of the fixed academic curriculum and compliance with organisational mechanisms. The teaching reforms of the late 1990's meant that all teachers within Further Education needed to possess some form of teacher qualification. The founding of Further Education National Training Organisation (FENTO) mapped standards to PGCE teaching modules. Although there was significant criticism of FENTO (Holloway, 2009), its importance was the recognition of developing an understanding of teaching theory and its application to the classroom (Mather *et al.*, 2007). At the time, the college where I worked had a partnership arrangement with a University PGCE programme and we were encouraged to join it.

I investigated the options: the City and Guilds programme offered was - at that time - not seen as relevant to the type of teaching which I was doing, or wanted to move towards; the PGCE route which the college would support, had a good reputation but limited its application to school age children – 11-16. I felt that this had some significant disadvantages for me; firstly, I recognised that at the College I was teaching people who for whatever reason did not want to stay on at school and had

often felt disengaged from the process. Secondly, I was also teaching adults, vocational courses and felt even at that time, that adults brought different experiences and understandings to the classroom that I used to support my teaching strategies for contextual learning. Finally, I was going to be teaching at HE level and needed to feel that I had developed my teaching to support this – the PGCE schools programme was not going to achieve this.

I decided to take a Distance learning PGCE (a post-compulsory training and teaching course) with the University of Greenwich. I made a choice about my teaching career, which was more about the students rather than compliance. The programme was formulaic but provided me with an opportunity to develop a better, wider understanding about adult learning meeting like-minded interested educators - but sadly no law teachers.

As I became more involved in Higher education (HE), it was apparent that teachers were able to count on greater freedom and it felt that the discipline was leading the learning rather than the process and outcome. This curious combination of diametrically opposed cultures came into sharp focus when I designed, developed and taught on an HE foundation degree, whilst retaining A level and vocational law courses. The management and compliance culture within CHE did not allow for autonomy within the classroom or across the curriculum unlike HE. As such, agency and independence appeared to me to be of greater value in HE, whereas in CHE the focus was on being an automaton, wedded to practice and meeting performance targets. The frustration was this; I had just completed a teaching programme, which focused on adult learning, and was teaching adults using practices, which allowed no flexibility, on a course, which demanded it. My fellow legal educators in HE could not understand why there was so much restriction or a need to gain a teaching qualification. All they required was employment in HE, a law degree and they could teach anything.

Therefore, this brings me to my study. This research looks at the development of the legal educator. I consider the skills, knowledge and understandings, which a HEI expect from their teachers and analyse how HE policies and developments within Legal education have constructed the teacher role.

Economic, political and professional pressures are now challenging HE to provide an effective and sustainable degree programme. The leaders and developers of such programmes are likely to be the teachers. Therefore, this thesis is a timely empirical study, which explores the factors, which construct the role of the Higher education (HE) law teacher. I explore the influences and identify the challenges that legal educators face working in the fast-evolving Higher education sector (Lindblom-Ylänne *et al.*, 2006; Bloch, 2010; Owton, 2011). In doing so I bring together understandings about changes and developments across both HE and Legal education (LE) and so create a source of knowledge, which informs the debate about the challenges law teachers face meeting academic, professional and organisational expectations.

This first chapter sets out an overview of the study, beginning with an introduction to the scope of the research and my intended contribution, working definitions, research background and categories which identify factors and influences which motivate my research. Further, it sets out the research paradigm, and finally indicates how the thesis is structured.

## **1.2 The Scope of my thesis**

My thesis explores the construction of the law teacher role with specific reference to Undergraduate study of law in the UK. I focus on this level of Legal education, as its provision is located within a sector of Higher education that has been subject to transformation of not only its structure, but also its culture and those that work within it. I examine the practices and policies that have led to the restructuring of Higher education and then consider the implications for the teaching role within undergraduate Legal education.

Legal education literature sets out several assumptions about the purpose of a law degree. Firstly, that its main function is to provide a foundation for the progression to the legal profession (Ching, 2013; Gibby and Broadbent, 2015). Secondly, that law programmes should be designed and delivered to meet this purpose (Jones, 1995; Hardee, 2012). Thirdly, that the law degree has limited merit as an academic discipline alone and finally that vocational (practice) education should be delivered as a

postgraduate course. These assumptions are often repeated by careers talks and parental expectations, but do not address the value of law as a discipline, academic subject and an integral part of the evolutionary framework of society (Friend, 2014).

I contend the implementation of economic and political policies within Higher education and across the legal services sector indicate that such a narrow view of Legal education can no longer be sustained. I contend that the reforms have led to fundamental transitions in the purpose of the Law degree (Susskind 2010) which mean that teachers are expected to possess new skills and practices to meet these needs. I submit that that the resulting mechanisms which now exist within HE affect teaching, learning and work roles which change the culture of HE and the nature of those who may be employed within it. I suggest that these mechanisms, such as management controls, quality assurance, marketisation and performativity add layers to the HE teacher role that move beyond traditionally held views that focus on research, teaching and aspects of administration. Further that the transformations within the legal services sector also influence the extent of the teacher role.

Critical to understanding how and why these changes have taken place is the exploration of the tensions and complexity of organisational relationships between law schools and HEI structures (LETR, 2013; Sherr, 1988). Since the late 1980s, both Higher education and Legal education have undergone significant and dynamic change (Middlehurst, 1997; Barnett, 2000; Barnhizer, 2003; West, 2015). I suggest that these reforms have led to a fundamental re-visioning and restructuring of Legal education within HE (Stickley, 2011; Clark, 2012). As a result, traditional methods of delivering undergraduate Legal education appear outdated and overshadowed by the challenges of meeting the needs of the legal services sector, consumer-savvy students and their parents (Bok, 2003). The outcome of this has been to place pressures on HE Teachers more than ever before (Orpen, 1982; Palfreyman and Tapper, 2016).

Vital to meeting these challenges are the skills and knowledge that the law teacher brings, uses or develops for their role (Vongalis- Macrow, 2007). This is even more pressing within high profile programmes such as undergraduate law, where there has always been an uneasy relationship with HE (Sherr and Sugarman, 2000).



My thesis explores these tensions between teachers, practitioners, members of the judiciary and academics and examines the challenges that new law teachers face when they endeavour to improve the rigour, relevance and value of the law degree (Beatson, 2012). At the time of writing, this tension is reflected in consultation exercises by legal professional bodies, which could see the end of the relevance of law degree to legal professional progression (SRA, 2015). In expending time and energy on these issues, this also creates a significant distraction from the pressing need for the research into, and development of, teaching and learning practices within Legal education (Thomas, 2017).

This thesis contributes to research, which addresses the dual aspect of teacher development within Legal education, and the demands placed upon the new law teacher following HE and LE reforms. As such, it provides an opportunity to better understand an important but overlooked area of research. The remainder of this chapter will introduce key terms and their definitions that surround the research and outline the thesis structure.

### **1.3 Working definitions**

An exploration of the Legal education and HE literature indicates that there are key terms such as teacher, practice, practitioners and Legal education that are capable of different meanings (Maher, 2011). It is therefore important to set out working definitions of these contentious terms before they are further explained in chapter 2. Other terms are located in the glossary set out above.

**Higher education (HE):** refers to a system of education designed for students who learn at levels 4-8, this includes Legal education.

**Legal education (LE):** refers to learning and teaching about law and legal practice (vocational learning about legal practice) in HE – but does not include the training period known as a training contract (training as a solicitor) or pupillage (training as a barrister) nor vocational programmes, which are not within HE degree programmes.

**Law School:** refers to the department where law is taught.

**Practice:** refers to legal practice.

**Practice-focused teaching:** means teaching, which includes elements of legal practice as well as the law.

**Practitioners:** refers to legal practitioners who also may teach.

**Pre-92 Universities:** refers to Universities which had been established prior to 1992 reforms including Russell Group and Non-traditional Universities

**Post-92 Universities:** Universities that were created following the reforms in 1992 – including former polytechnics, e.g. Coventry University and some colleges of HE e.g. University of Bedfordshire.

**Teacher:** In this context, the term teacher refers to a person who teaches within a law school.

**Traditional Higher education:** refers to universities, which were established prior to 1963.

**Teacher Education:** Developing teaching staff in pedagogy, often also called Academic Practice.

## **1.4 Research Background**

The Robbins Report (1963) energised the development of Higher education. Its evolution has become an increasingly important feature of government policy (West, 2015). Its value counted not only in terms of research development but also in relation to its social, cultural and economic relevance (UUK, 2016).

Whilst there have been attempts at understanding the impacts of reform within HE, these have been largely focused on the wider issues which surround HE rather than those who work within it (LETR, 2013; Stolker, 2015). In terms of Legal education, scholarly activity has tended to focus on the development of law as an undergraduate academic subject and its integration into HE (Bradney, 1998; Twining 2014). As such the impact of changes such as the introduction and rise in tuition fees, the centralization of management structures and the rolling out of policies which

homogenise practices – such as Higher Education Role Analysis (HERA) – have been identified as having an impact on efficiency (ECC,2015). There has been little opportunity to consider how these practices may have affected teacher experience, their agency, or indeed in terms of the wider structure and culture within HE.

## **1.5 Themes within the thesis**

The following overview of themes derived from relevant literature and my own research underpin my exploration of the construction of the law teacher role. I set the scene here briefly, then examine them in chapters 2 and 3, and then explore them further in chapters 7-9.

### **1.5.1 *Changing ideologies within HE***

Higher education has been traditionally identified with an ideology, which focuses on knowledge where research and the quest for knowledge is key (Sofia Branco, 2010). Identified as mode 1 knowledge, its use has been beneficial for individual and personal growth and its strength is built on an experience that is as Barnett (1990) suggests unsettling. Lecturers were encouraged to be masters of their discipline; an individuality was encouraged throughout their experience as teachers (Trowler, 1998). As Bok, (2003) suggests the introduction of the concept of the economic value, challenges the traditionally held purpose of Higher education (Trowler, 1997; Probert, 2013). Indeed the criticism that the conflation of wealth creation with public good has been to the detriment to the quality of HE has been present and consistent (Hessels and van Lente, 2008; Moriarty, 2008).

Government influence within HE has led to a power transition, which appears to demote the value of the teacher and promote an audit-driven centralized management culture. Thornton (2012) suggests that this is has led to the development of compliance culture, rather than one which encourages criticality and autonomy. Although the transitions have been widely criticized from within HE, there appears to have been little evidence of resistance from teachers, (Bradney, 2001; Cheng, 2011; Power; 1997). This centralising of management structures, led to an homogenization of Higher education, and its characterization as a market-led entity (Bok, 2003).

My research indicates that the teacher role has been fragmented as a result of policy changes. It further asserts the application of such tools as the Higher Education Role Analysis (HERA) (ECC, 2015), which is applied to *all* levels of HE employees. This is an example of the streamlining of HE recruitment practices that focus on organisational need and create further perceptions that teachers are now mere functionaries of the HEI. HERA was designed by HEIs to meet the changing requirements within the HE sector and it focuses on skills that HR departments and central management have designated as key to any HE role, yet only one of which relates to teaching (ECC, 2015).

For Legal education, the challenge is to consider whether current curriculum content and approaches to teaching across academic and professional boundaries is desirable (Sullivan *et al.*, 2007;Stolker, 2015). The perceived threat of integration with other schools or faculties, suggests that that law's singular identity dissipates, both in its academic rigour but also its teaching has been well explained in literature (Thornton (2014). Whereas exploring the benefits of such integration on the quality of teaching and learning has been largely ignored (LETR, 2013).

### **1.5.2 Higher education teaching and diversity**

There is little doubt that the HE system within England and Wales has undergone significant structural and cultural change (Palfreyman and Tapper,2016). HEIs hold "strategic intentions and scope" (Fumasoli and Stensaker, 2013, p.157) which are set out in centralised Vision statements for the HEI as a whole. In setting out these goals, they indicate the aspirations for the development of their role and status within the HE community. These expectations are in terms of developing its position as leaders in particular aspects of teaching and learning, area and sector specialisms, but also in terms of social, economic and financial security (Brown and Carusso,2013) which it seeks to achieve. HEI diversity demonstrates different values, policies and governance (Yokoyama, 2013a). As a result, the teachers' role and their interaction within this changed structure has become more complex and transitional than ever.

### *Institutional Models*

Although it is right to say that universities are individual and unique in terms of what they deliver to students, there are common philosophical approaches that underpin what they do. I focus on two models of traditional views of HE, research and teaching-focused and then examine where the College of Higher education may fit in to these two models. It is, however; also right to say that most HEI now endeavour to carry out a balance of activities.

### *Research-focus*

Universities that have a research focus, e.g. Warwick, Lancaster, Newcastle, London and Oxbridge, indicate that their function is to develop new and disinterested knowledge through research and use it to inform and lead their teaching. In this context disinterested means objective knowledge (Etzkowitz *et al.*, 2000) that generates theoretical discussion and analysis which is not driven by a subjective perspective. Critical to this is the autonomous teacher who encourages students to become critical thinkers and skilled and knowledgeable individuals (Hodkinson *et al.*, 2007). Its purpose is in “cultivating students that is, contributing to their personal growth” (Steur *et al.*, 2012, p.863). To maintain this autonomy and independence means supporting and emphasising the social compact which Bourdieu (1998) and Maton (2005, p.9) referred to as a “belief that left to its own devices HE would meet social and economic needs.”

The teacher role within these universities relies on their ability and power to make decisions about teaching practice and research direction. The implication is that research, driven by independence, resists recognising the wider social and cultural benefits of purposeful research (Khan and Matlay, 2009). Maton (2005) and Bourdieu (2003) contend that research, seeking purely this disconnected and non-contextualised knowledge is inextricably linked to reinforcing the cultural schism within the HE sector, which reinforces a conservative social structure (Croxford and Raffe, 2015). This position is based on two premises: firstly, that the research carried out in this way has greater value to society better than other HEIs and secondly that it relies on an elitist hierarchical approach to HE. There is little doubt that improved qualitative

measures of assessing research quality challenges these positions, and literature has clearly moved on our understanding of what research is (Boyer,1991).

### *Teaching-focused*

The second method emphasises the economic and functionalist benefit of HE to society as a whole which can be “justified in terms of its contribution to economic growth” (Whiteley, 2012, p.672). This communitarian approach to HE reflects the differences between HE which are research-led environments and a more utilitarian HE (Barnett, 2000). The teaching focused HEI purpose is attuned to delivering vocational, practical programmes, which embed employability and vocational skills and practical and economic objectives, and these are seen as primary goals. However, this does not mean they do not accept the need to deliver challenging or research-informed learning, but that the focus is on students meeting outcomes aligned to contextual and societal need. The teacher role in designing and delivery needs to reflect these externalized objectives, with personal growth and self-development as secondary expectations

### *Colleges of Higher education (CHE)*

CHE are creatures of the State and as such, their role has been determined by the local needs and expectations. This means that the organisational autonomy which universities enjoyed is only now being considered by CHE (Feather, 2011a). There is no significant culture of research or indeed embedded “HEness “(Crawley, 2012), which is found in universities. Indeed, the ethos of HE in a non-university environment has been described as having a:

...traditional focus of the development of knowledge and skills which have been conceived elsewhere; where the knowledge serves the more immediate extrinsic needs of achieving a credential to move on (Lea and Simmons 2012, p 185).

As such, CHE on the face of these contentions can never have the same amount of control and decision-making about curriculum as universities. However, this does not mean they have no desire to create individual programmes at undergraduate level; it does suggest that in terms of knowledge capital, CHE may find that they do not have

the same opportunities to develop and that students are unlikely to have the same experiences at the undergraduate level (Creasy, 2012).

### *Students*

Whilst the HEI models function in a very different way, what is common to both is that they produce a programme of learning that benefits the students and society. At the heart of the teachers' role is the promotion of intellectual and practical development of the students (Haggis, 2009). The methods and practices of achieving these common aims are determined by a variety of factors and of late, quality in teaching and learning within HE has been featured significantly in policy and literature (Middlehurst, 1997; Jarvis, 2014).

My research shows that HEIs therefore possess structural and cultural conditioning, which evolve because of external influences, such as government policies, location, competition within HE, calls from employers or internal influences such as teachers, traditions as well as management structure and practices. Winberg (2014) suggests that HEIs can determine whether to change or stay the same. I turn now to explore the external influences and consider their impact on the role of a teacher.

#### ***1.5.3 HE within Law –doctrinal, socio-legal and beyond***

Research into law has traditionally focused on developing understanding of legal principles through exploration of case law - the Doctrinal approach. The reason for this is that judicial decisions have been the triggers for discussion about the law and its meaning. They have also provided the foundation of textbooks (Apel, 2011a) and case studies that support a teacher-centred approach to Legal education. Whilst this remains an important part of understanding the law as applied within the courts, it has become evident that seeing the law in such a narrow confine provides limited scope for understanding and developing critical legal thinking.

Socio-legal approaches to research appear to have been met with both interest and some encouragement (REF, 2015) Cownie, 1999). In drawing on different disciplines and new approaches to research, academics are able to explore law in a

wider context, engaging in commenting on its relevance to society as well as to lawyers. All of which is vitally important in terms of the establishing balances within legal understanding, but there is an obvious factor that has yet to be adequately addressed - how these new understandings are taught and support critical exploration of the law its purpose and application. As law is a social entity it has social value that goes beyond the decision-making within courts, research into providing the skills and knowledge to support the wider context of law – for reformers, citizens as well as practitioners had been left behind.

Despite the transitions in academic research, pedagogical research remains a low priority within law (Birks,2003). This reflects a wider view of teacher education within HE, (often titled Academic Practice) that research into teacher education and practices has little real value (Stuckey, 2007); the scholarly expertise of the teacher appears key to successful teaching (Boon and Whyte, 2007). In this thesis I assert that the rise in credentialisation of teacher qualifications (HEA, 2014), such as Higher Education Academy (HEA) Fellowships, provide limited training. As a result, knowledge about teaching and teaching practice is under-researched and so Kennedy and Carrington's (2004) worries about stagnant teaching becomes a real possibility.

Whilst government policies such as the Teacher Excellence Framework (TEF), encourage student-centred teaching and improved teaching quality, there is little evidence to suggest that teacher training is reflecting these values (REF, 2015). Therefore, a deeper understanding of teacher development, in HE and within Legal education in particular is pressing.

#### **1.5.4 *Legal profession and Legal education***

The tensions between the legal profession and legal academics have become a more important part of the debate about what is understood to be Legal education (LETR, 2013; Sherr, 1998). Bradney (1998) and Howarth (2015) amongst others have suggested that law, if it is to survive as an undergraduate degree, needs to gain greater academic status and this comes with research rather than a practice or professional focus. In doing so, research, which crosses disciplinary boundaries, such as Socio-legal research should be developed (Cownie, 1999). Whereas others



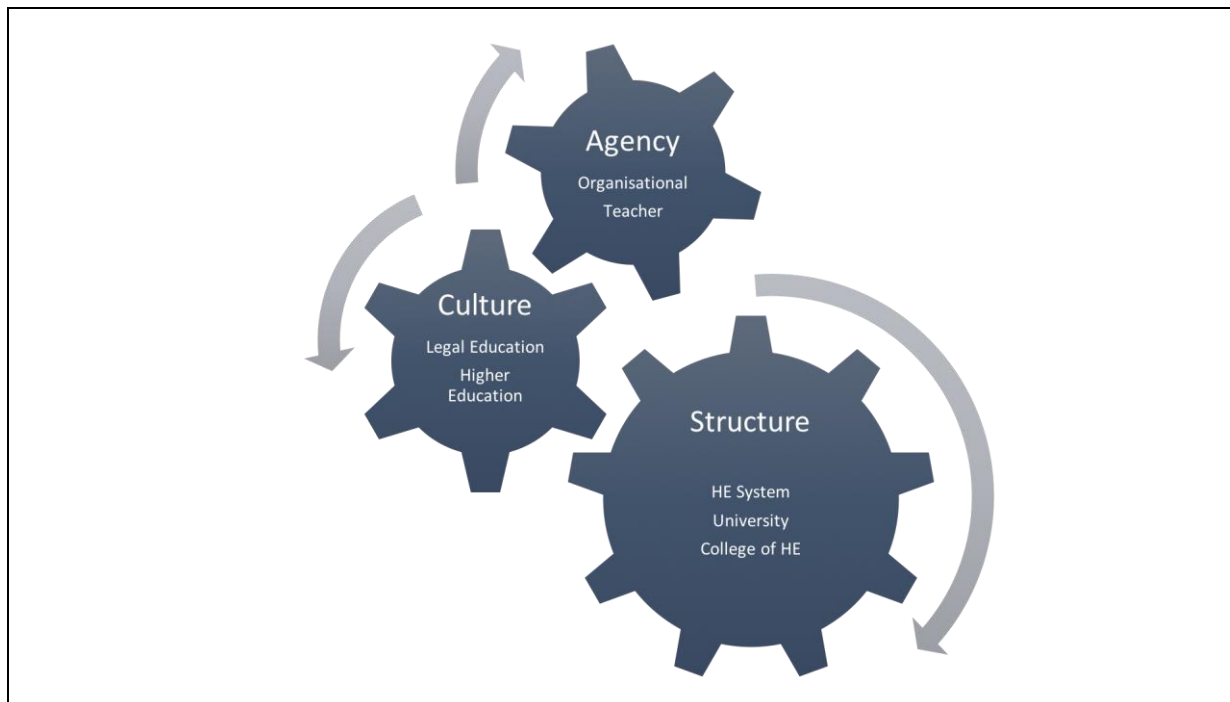
contend that, the degree should offer professional and vocational opportunities in student learning (Sherr, 1998; Maharg, 2011). Further, some legal professionals recognise the degree as an ideal starting point for learning about the law and legal practice together (Neuberger, 2013). In addition, employability policies (Kalfa and Taksa, 2017) appear to support wider contentions that the degree should include professional understandings (Law Society, 2015; Menkel- Meadows, 2012). Indeed, the deep concerns shown by the professional sector about the nature of the vocational training suggests that the degree programme has a bigger part to play in equipping students for professional progression. As economic and employability agendas drive decision making within HEI, this challenges teachers to play a greater role in curriculum development. However, the failure of meaningful teacher participation or influence in developing Legal education content, strategy and teaching approaches, unsurprisingly has found criticism (Hibbert and Semler, 2015).

#### ***1.5.5 Exploring structure, culture and agency within Higher education***

These themes indicate that there has been a transition in HE and that the role of the law teachers has moved on from being teachers, academics and administrators.

Critical to considering the effects of changes within HE - and so the law teacher - is an understanding of the HE environment where these changes take place. The methodology I use (see chapter 5) draws upon Archer's (1996a) critical realist approach to HE structure, culture and the law teacher's agency.

An important part of unpicking the construction of the role of a law teacher is understanding their working environment. As Barnett (2000) comments, HE is highly complex and multi-layered; Thornton (2012) reflects that adding the challenges and constraints of LE in HE means that teachers are faced with competing different traditions and practices. Here, I introduce the concepts of structure; culture and agency separately as set out in Figure 1.1 below, and explain them further in chapter 4.



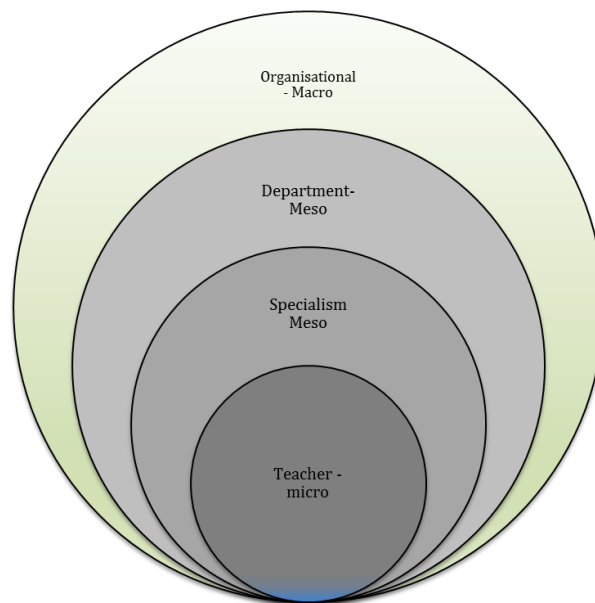
**Figure 1-1 Structure, culture and agency**

Canaan (2008) indicates that Structure can be defined as patterns that are material, social or cultural that affect how a person lives or changes within it. These patterns are often represented as rules or guidelines, which are derived from the organisation. Vähäsantanen (2015) indicates that each are supported by tangible and intangible factors, such as regulations, resources and agency, whereas Yokoyama (2013a) asserts that structures are mutable and irreducible, subject to change and influence from within and without. Kogan (2000) agrees with this and suggests that part of this flexibility is based on the role of the teachers in challenging specific structures, which they change and negotiate as a part of their life and work, such as curriculum design and working hours.

What is also evident is that the term structure is not limited to an overarching organisation; Stolker (2015) indicates that it can also relate to departments and other structures, which set their own methods and ways of working. Thornton's (2012) evaluation of the identity of individual law schools and development of mega faculties suggests that these equate to Stolker's understanding of the layers of structures within HE. As Valimaa (1995) suggests, to appreciate how rules and practices are applied within these layers and structures, an awareness of the impact of culture as well as the organisational and individual agency needs to be considered.

Archer (2003) asserts that whilst culture is hard to define, it could be narrowed to factors that influence organisational structure and individual agency. Geertz (1983) posits that disciplines, such as law, could provide these legitimate cultural foundations but that were often intermingled with other influences derived from institutional and departmental cultures. Thus, culture can include individual and collective “belief systems, value orientation”(Yokoyama, 2013a, p.68). Although Archer’s comments imply that the lack of clear definition of culture can be troubling, it also opens up the area of research and emphasises the complexity of the HE sector.

I take the position that, as Geertz (1983) suggests culture can be defined through organisational and professional systems and values, and that this can be legitimately derived from the legal profession, HE, individual institutions as well as the teachers within. It also allows human agents to shape culture, and therefore supporting the premise that agency and culture are linked as indicated in figure 1-2 below.



**Figure 1-2 Integration and influences on culture**

Fundamental to agency is the idea that agents respond and act based on what matters to them, but that this may be affected by constraints set by social structures. It is also evident that organisations and departments also show agency. As Stolker (2015) suggests this occurs, where the department takes actions and makes decisions for its benefit or mission; a law school holds agency as can a teacher. Biesta, *et al*

(2015) indicate that these actions are based on culture and structure where it relates to their capacity to carry out decision-making.

According to Emirbayer and Mische (1998), individual agency is ecological. This means that it is collated from past, present and future influences and ideas; it is ever-present, but also likely to change with circumstances and the environment. This is also linked to organisational agency and the willingness to develop capacities and competences to support the wider Institution's needs, rather than the individual's needs (Kasekende *et al.*, 2016). Therefore, for a teacher, manager or staff developer, understanding change and how it affects what they can and cannot do is dependent on context, location, what they think, who they are and their willingness to build and develop different understandings (Tomlinson *et al.*, 2013). These interactive, yet independent factors inevitably lead to tensions, uncertainty and change, and as Archer (2003) asserts no one appears able to assert dominance over the other. Inevitably, these elements cannot be isolated from the dynamics of power and social capital (Dredge, 2013 ) which relate to the sector as well as the discourse and practices of LE.

So, for teachers, their agency is situated in how they can participate in supporting change within HEI. It also means that teacher agency can be used for self, collectives and the organisation, but there is no reason to assume that it will be carried out selflessly (Priestley *et al.*, 2012). Teacher agency therefore may play an important part in their ability to affect the construction of their role. I was interested to see how agency, HE policy and practice developments within HE and LE could provide formal and informal opportunities for change (Kyvik, 2004).

## **1.6 Thesis structure**

My thesis is presented to illustrate the different stages of my research journey. Each chapter unveils the tensions present across the sectors and explores the way in which policies and practices affect the development of the law teacher role. Using theories, which draw on the relationship between structure, culture, and agency I consider how law teachers can meet the expectations of students and stakeholders whilst working within an organisation, which demands more from them than ever before.

Importantly, this thesis explores the notion that law teachers hold individual agency, it suggests that this is located not only in their teaching capacity and practice, but in additional, non-teaching or research-based categories. Whilst this is clearly valuable in terms of developing the culture of the HEI through external relationships, my research also indicates that cultural differences between Legal education and HE have led to a failure to take opportunities to develop Legal education teaching practices. With this lack of commitment to teaching development, this suggests that HE has lost opportunities to improve instructional design, but also hampers the development of academic understanding of legal pedagogy.

The subsequent chapters are arranged as follows:

## **1.7 Literature**

In chapter 2 I set the scene of the changing structures within the Higher education system, I examine how these transitions affects the culture and structure of HE as well as the organisations, which exist within it. I explore whether these policies have begun to alter the notion of HE, moving from knowledge to economic practicalities as the overall driving force to change within HE. I continue by setting the frame for my research in Legal education and examine the context of its development within HE.

Chapter 3 outlines and explores relevant literature, which examine the development of Legal education and specifically undergraduate study, and identifies the dissonance between HE and LE. It unveils the challenges and limitations of existing scholarship in HE and Legal education such as lack of engagement in relation to pedagogical development, emphasis on the tensions within Legal education and the absence of contextual understanding of the development of the teacher role in the context of changing practices within HE.

Chapter 4 draws together the literature, which addresses teacher agency and culture within Higher education. I examine the development of teacher agency and consider if at all, it has been influenced by policy and practice within HEI. I then examine theories, which may have influenced the development of teaching practices.

Finally, this chapter establishes the key research questions that form the basis for the research methodology.

## **1.8 Methodology and Methods**

In chapter 4, I identify my position as a researcher, in doing so I explain the relevance of Critical realism as a research foundation and identify its value when exploring the structure culture and agency, which is found within Legal education. I then go onto consider the philosophical frameworks, which I considered, and indicate my methodological approach to research and set out the reasons for my choice of research tools. In doing so I focus on the research context and the strategy employed to gain insightful qualitative and quantitative data about the role of the law teacher within HE. In proposing the value of mixed methods, I also explore the value of using an iterative approach to research. I also address my understandings as a researcher and consider how these affected choices within my research journey.

In chapter 6, I draw on chapter 5 to explore my research design decisions. I then discuss the reasons for selecting a mixed methods approach to research and set out how I carried out my data collection. In doing so I consider the impact of the decisions I made about my approaches to data collection on the research validity and ethical conduct. I then explain how I carried out my research. The chapter concludes by addressing the validity and ethical conduct of my research.

In chapter 7, I carry out analysis on both data sets. In doing so I draw out findings that respond to the research questions, which were set out in chapter 4. The findings then inform the discussion, which takes place in chapter 8.

## **1.9 Discussion, conclusion and recommendations**

Chapter 8 explores the analysis from chapter 8 and the emerging categories in response to the research questions set out in chapter 4. In doing so I consider the different factors, which provide an understanding of the complex relationships that exist within Legal education. I examine the potential impact that unifying and centralising HE polices have had on Legal education as an individual, strong disciplinary tradition of teaching. I also consider how reforms challenge the perception of the law teacher role and seek to define the skills categories, which teachers need to demonstrate to meet organisational expectations of teachers.

My final chapter focuses on the conclusions, which can be drawn from my research, sets out directions for further research, and recommendations, which it is hoped, will provide stimulus for improvement in teaching and developing teaching practice-focused Legal education.

## **1.10 Conclusion**

Overall, this thesis identifies a series of Structural, Cultural and Agential factors, which influence the construction of the role of the law teacher. It explores the law teacher role within HE. In doing so I examine the structure and culture of Legal education within Higher education and consider whether teacher agency alters these constructions. In doing so, it challenges perceptions about teaching and teachers within HE.

## Chapter 2 Changing times in Higher education

### 2.1 Introduction

In this chapter, I explore the affect and influence of successive government policies on the development of undergraduate Higher education. I critically analyse the relationship between the state and HE sector; HE policy since the Robbins report (1963) and then focus on the effect of new public management on the organisation and structure of HEI. In doing so I consider the development of marketisation and quality assurance within HE and reflect on the implications for teaching and teachers. In doing so I am mindful that as Palfreyman and Tapper (2014, p119) comment our HE system has a “messy and fuzzy landscape” which emphasises the contested public and private identities of HEI. In the next chapter, I consider the development of Legal education and Legal pedagogy.

At the outset, it is important to draw on the different beliefs about the purpose of Higher education. Avis (2011) indicates that a student makes a private gain and (Shevellar, 2011, p.128) asserts that by “...immersing themselves in their subject they may change as a person”. Whereas Owton (2011) and Palfreyman and Tapper (2014), indicate that since the Robbins report (1963) the State views HE study differently, where universities should satisfy publicly measured criteria, in relation to quality skills development meeting the needs of employers and driving the economy.

These different functions are required to co-exist, albeit uncomfortably within HE as a result of political and organisational transformations within HE structure and culture. Firstly, HE provides a student an opportunity for personal transformation and personal gain, through acquisition in knowledge as well as improved work opportunities. Accessing HE has become a very real route to personal development and improved life chances for students. It is clear that it reaches out to different types of students and not just those following the footsteps of their parents (Robbins, 1963; Dearing, 1997; Chowdry *et al.*, 2013).

Secondly, Boggs (2014) suggests that in providing these opportunities the workforce improves, becomes more skilled and knowledgeable and therefore the



State economy evolves. As a result, the HE sector is expected to take a more pragmatic, econocentric role, which challenges the traditional structures and values within HE of autonomy and independence (Canaan and Shumar, 2008; Stech, 2011).

To explore how these different positions are reflected within HE I consider how the impact of policies have evolved to ensure that this public good is effectively managed and accountable for what it does.

## **2.2 Government Intervention in Higher education**

There is little doubt that HE has undergone significant transition since the Robbins Report (Temple, 2015). It challenged the power, protectionist and elitist culture and practices within HE when it professed HE as a public good; it set the course for fundamental practical and philosophical changes within HE (Robbins 1963, Recommendations 168 and 169).

### **2.2.1 *Background to transitions HEI***

A critical part of understanding transitions within HE is an analysis of the policies and the subsequent impact they have had on the HE structure, culture and teacher agency over time (Archer, 1990). The evolution within HE was driven by government “by ministers who lacked the deference to academe of a previous political generation” (Bauer and Kogan, 2006, p.113). There is also little doubt that as Fumasoli and Stensaker (2013) suggest, globalisation, economic crises, technological changes along with pressures to improve employment skills and opportunities affected policy decisions (Bok, 2003). However, it is not clear whether universities or academics were willing to, or could, respond to the fundamental change towards an economic model of teaching in HEIs (McCaig, 2011).

### **2.2.2 *Universities, Polytechnics and CHE***

Here I consider the stages in the development of HE Institutions, their structure and cultural framework continuing from Robbins (1963) which have seen both a democratisation and a divergence in delivery of HE. I start with a brief consideration of the type of HE provider and then explore the impact of policy.

### **2.2.3 Universities – fears for change**

Prior to Robbins, universities were largely untouched by government policies or control (Yokoyama, 2008), and this meant that the teacher agency in traditional HE was seen as being strong, where the universities “... were governed by academics .....as self-governed corporations” (Kogan, 2006, p.112). They were identified as the “Autonomous sector” Pratt (1997, p.18) where universities maintained their individuality, with few quality assurance measures in place to ensure that organisational practices as well as teaching were effective (Cave *et al.*, 1992b). The guaranteed funding for universities reduced any issues or concerns regarding competition as Decision-makers within government tended to be from the universities and somewhat protective of their traditional positions and statuses (Wyness, 2010). This social compact – or “Belief that left to its own devices Higher education will meet social and economic needs” (Maton, 2005, p.695) had protected universities for some time. However, with the change in economic climate and concern that universities were simply not producing the right type of graduates, reform was inevitable.

Robbins Report(1963) declared HE to be a “public good and therefore worthy of funding from the public purse” (Naidoo and Williams, 2015, p.210). For universities this created concerns focused on two significant areas: firstly that centralised funding would mean there would be an attack on a critical part of HE ideology – its autonomy (Brown, 2012); and secondly that new students would be unfamiliar with academic practices and expectations (Morris, 1964; Shattock, 1990; Purcell *et al.*, 2016), which would hamper and dilute the quality of the education of others.

As Maton (2005) indicates, the issue of autonomy created the most significant concerns, as proposed regulatory bodies would be focused on non-academic perceptions of the role of the HEI such as economic markers. Further, that in terms of how these outside bodies valued the role of teachers, knowledge and the acquisition of knowledge would be fundamentally different to existing practices(Stavrou, 2016). In short, it was felt that the reforms were a significant attack on HE and traditional cultural values, which were underpinned by its academic leadership.In addition, Yokoyama

(2013b) notes that as teacher agency and culture are linked through these shared values, it was also an attack on teacher agency (Locke *et al.*, 2016).

#### **2.2.4 Polytechnics and Colleges of Higher education**

CHE and polytechnics arose from dissatisfaction with the resistance of universities to deliver an economically relevant curriculum.(Brosan, 1972; Wyness, 2010; Stickley, 2011). They were creatures of the state that were subject to greater regulation and accountability (Brown, 2013b),unlike their university colleagues (Wyness, 2010).

Brown, (2013) indicates that Polytechnics provided community-based vocational HE as their emphasis mirrored the academic boundaries of the triple-tiered school system. Students with skills, more technical than academic, were encouraged to attend. Further, the lack of academic autonomy restricted development and opportunities to diversify the type of degrees, as they did not have individual degree-awarding powers. The Council for National Academic awards (CNAA) were the central awarding body, and operated much in the same was as an exam board acts with schools (Wyness, 2010). As a result, CHE were seen as lesser institutions (Adnett and Tlupova, 2008; Howarth, 2013), and as Shattock (2008) reports, were thought to provide weaker teaching because of limited engagement with research.

Furthermore, because management structures of Polytechnics remained restricted by public sector audit and control. It became clear that these control mechanisms also failed to provide opportunities to develop organisational or academic autonomy which remains an important part of HE (Lindsay and Rodgers, 1998). Restrictions on developing HE degree programmes have now been reduced and this means that curriculum development within HE is not limited to partnerships with HEI. It does not mean that the management structures are any less confining in relation to quality assurance (Stickley, 2011).

Croxford and Raffe (2013) indicate that despite the expectation that more students would attend HE as a result of reforms it became apparent that social as well as intellectual boundaries were reinforced. Attempts at addressing this divide in 1992, through the Higher education Act were rather superficial and included renaming all HEI as universities. However, in practical terms the divide had become inured within HE, for students, employers as well as academics (Douglass, 2004; Aldhous, 1991).

Indeed, the separation appears now become more fragmented with the creation of different power groups, such as the Russell group, Mission and Millennium groups each responding to policy shifts to meet their sector and Institutional ambition (Steur *et al.*, 2012).

During this period, CHE provided degree programmes, but they were few (Parry, *et al.*, 2012), and they did not deliver the same type of programme as either universities or later, polytechnics. Access to HE through the CHE system was limited to a small range of courses, which included teacher training and, therefore had a vocational focus. It was very much seen as a part of the Cinderella System of Higher education. Dixon and Pilkington (2017) suggest that CHE have neither the resources nor the expertise to provide the same experience of HE but still are expected to compete for students. Grubb (2005) indicates that whilst they have been overlooked in terms of research, this does not mean that they have not added a different dimension to HE provision. As CHE have responded to policies which focus on working within limited financial constraints by applying a budget-based approach to teaching and learning. Although this has been criticised as providing a weaker HE experience (Howarth, 2012) it still plays an important part of meeting wider vocational skills and knowledge development. Often belittled as providing poorer quality courses, these HEIs still provide a bridge between work and Higher education which focuses on second chance students (Feather, 2011b). The need for such courses have been identified as offering opportunity to upskill students who may not have been successful in progressing from school to university, or those who have chosen a work related higher qualification.

#### **2.2.5 Non-governmental influences – Academic perspectives.**

Since Robbins there had been an awareness that reform from within the HE sector itself might be the most effective way to vision its improvement. Initial attempts at quality control, such as the introduction of external examiner reviews and evaluations of programmes (Tight, 2014), created a route to assess quality of provision and standards of marking across all areas. Academics evaluating other academics provided a safe and trusted mechanism, which was internally evaluated and reviewed (Wyness, 2010).

The Leverhulme Programme of reports produced by the SRHE (Society for Research into Higher education) which encompass evaluations of HE practices also provided challenges the application of the social compact. However, despite detailed suggestions in relation to practices, developments including quality control, 'chunked' degree programmes and greater expectations for academic accountability, as Shattock (1985) reflects it was forgotten and ignored by HE ministers. As will be seen later, the academic role in setting and managing perceptions of HE seems to be a critical area of transformation within HE.

#### **2.2.6 Unification of HE**

The binary divide between polytechnics and universities continued for some time, with universities seeking to hold onto their organisational autonomy relying on the social compact to sustain their independence (Shattock, 2008). Whilst there was undoubtedly clear water between the types of course each delivered, what became evident was that polytechnics were more willing and better equipped culturally to meet employers' needs (Cave *et al.*, 1992b; Locke *et al.*, 2016). Further, students were increasingly attracted to practical, vocational features as well as academic elements of the polytechnic programmes, which were far more market-responsive than those of universities (Bathmaker, 2015).

#### **2.2.7 CHE**

Whilst there is little doubt that the rise of the polytechnics reflected a value shift in HE, it is important not to ignore the role of the CHE which remained rooted in local and vocational programmes (Fisher and Simmons, 2012). As Lea and Simmons (2012) indicate, CHE provide "an HE ethos and environment" (HEFCE, 2001, p21) in local communities. As Parry (2009, p.2) identifies, its role was to "...make Higher education available, attractive and accessible to a wider population, including working-class students". Whilst meeting the needs of the wider community, CHE also reinforces the Bourdieusian view of a stratified, hierarchical HE system, which has been defined as "HE lite" (Creasy, 2012, p.1). Unlike polytechnics and universities, CHE appear to remain subject to greater quality assurance assessment and regulation (Rapley, 2014) and CHE were organisationally subject to two different levels and types of quality assurance.

In the next section, I address the influence of policies and sector led changes on access and curriculum development within HE. In doing so I consider the challenges teachers face in adapting to a changing HE structure and consider transitions in the cultural focus of the HEI.

## **2.3 Neoliberal policies in Higher education**

In this section, I, consider major developments within Higher education post 1992. It is clear as Barber *et al.* (2013, p4) indicate:

The certainties of the past are no longer certainties. The models of higher education that marched triumphantly across the globe in the second half of the 20<sup>th</sup> century are broken

I explore the transitions within HE policy and reflect on critical drivers of change within HE. In doing so I consider how they affect change in curriculum as well as academic agency and identity.

### **2.3.1 Post-1992 developments**

The period from 1992 signalled ideological shifts from government in relation to most state owned and funded bodies, and HE was not exempt from their reach. Table 2.1 below identifies landmark reports and policies that led to the transition of HE from sector protected by its historic status, to one that was subject to the challenges of commodification and demands for accountability. They heralded the introduction of competition and private HE provision, but also the rise in regulation, monitoring of teaching and institutional activity (Molesworth, 2010).

Development of Higher Education Policy and Practice	
Year	Act/ Report
1963	Robbins report on HE
1985	Jarratt Report
1989	White Paper: Provision for student loans
1992	Further and Higher Education Act
	Dearing Report
	Kennedy Report
1997	QAA agency set up
1998	Teaching and Higher Education Act
2000	Institute for teaching and learning in Higher Education
2000	Learning, Teaching and Support networks
2003	Higher Education Academy
2004	Higher Education Act
2005	National Student Survey
2010	Browne Report
2011	White Paper HE "Students at the Heart of the system"
2013	Higher Education Review introduced
2014	Higher Education Act
2015	White paper Higher Education Success as a knowledge economy -
2016	White paper Teaching Excellence Framework: highly skilled employment outcomes

**Table2-1 Key policy developments 1963**

HEIs and universities in particular, had begun to redefine their purpose, moving beyond their traditional boundaries. The introduction of competition and accountability within HE led to radical organisational and cultural transformations (Ek *et al.*, 2013).

Policy transformations have been described as providing necessary disruption within HE (Bleiklie *et al.*, 2011). They have included structural shifts, the unification of HE, and the introduction of fees and increased regulatory provision through quality assurance and audit practices (Brown, 2011; Shattock, 2012a; Palfreyman and Tapper, 2016). The structural revision within the HE sector, which followed, has led to cultural as well as organisational transformation. These include a rise in internal control mechanisms (bureaucracy), and increased centralised accountability of output and quality of performance through measurements such as the REF and latterly the TEF (Canaan 2008 ). Further outcomes have led to the adoption of HERA (FERA) processes, which have been designed to refine and formalise staff roles and responsibilities. Finally, the development of HE as a consumer product has influenced

curriculum development and teaching practice, which prioritise the student experience as a package. Across each of these spheres, teachers have raised fears about professional and research autonomy (Carroll, 2003) as well as the quality of curriculum content (Brown and Carusso, 2013).

Despite the anxiety about dilution of quality and standards from within HE which had been expected, it is still apparent that there is a hierarchy within HE (Croxford and Raffe, 2013) albeit one which is more fragmented than before the 1992 reforms. Daniels and Brooker (2014, p 66) indicate universities need to be both the “provider of skills, and nurturer of knowledge”, how and in what way they do this now appears to draw on economic, individual and organisational demands. What has become evident is that in HE, as Barber *et al.* (2013 p.4) indicated:

The certainties of the past are no longer certainties. The models of Higher education that marched triumphantly across the globe in the second half of the 20th century are broken.

These ideological changes caused significant concerns in terms of agency but they also led to key behavioural changes within HE that affected the nature of the HEI and the way in which teachers could work within them. I shall now turn to consider the different policy focuses which led to transformation within HE.

### **2.3.2 Marketisation**

Furedi (2010) explains marketisation in Higher education as a process through which HEI adopt market-based practices which mirror private sector business methods with a consumerist approach, linked to this is performativity (Molesworth, 2010). The costs of university study are shared between the state and the student. Furedi (2010) asserts that the purpose was to create a mechanism, which encourages universities to improve their HE provisions, thereby using free market principles to drive up standards and quality in HE.

The impact of neo-liberal policies has been significant in terms of opening up HE to changing opportunities for personalising HE, increasing accountability, and enhancing the Business of HE. As Burke (2015, p.4) also indicates that marketisation



in particular has led to reshaping of HE and increasing reference to “discourses of excellence”.

In doing so, however, there were concerns that removal of direct control and of course tuition fees, inevitably changed HEI culture and structure (Molesworth, 2010). As Tomlinson (2017) indicates, policy changes purport to increase student involvement in decisions about their future. The affect being that student expectations about the nature and type of provision, as well as their role as consumers of the provision have become increasingly central to HEI decision-making.

As a result, strategic decisions it is suggested are based on safeguarding their sector and position in the HE market, whereas students look for experience and investment in their future. As Davis (2016) suggests, HEIs set targets that rely on business focused and market oriented decisions that challenge aspects of teacher autonomy and pedagogical developments. To ensure HEIs meet these expectations, different strategies and language have been developed to evidence their successes to attract the consumer (Molesworth, 2010).

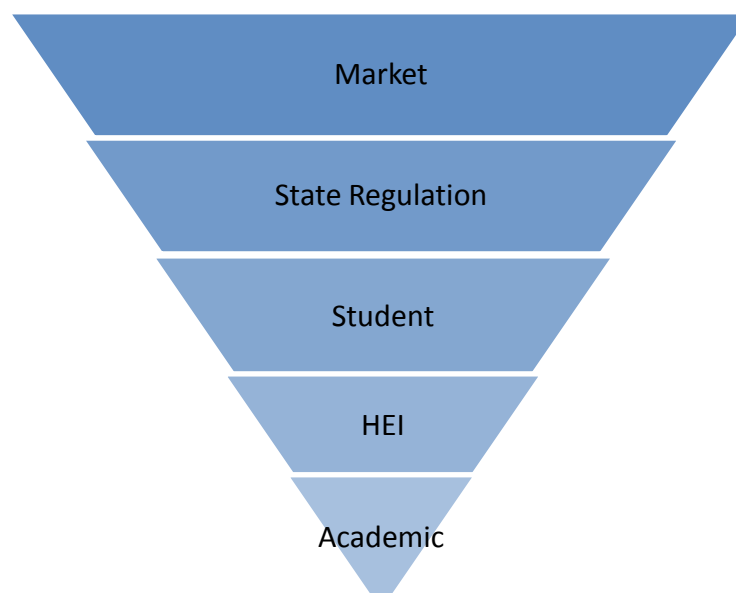
Undoubtedly, whilst HEIs transform their focus to conform with policy and market practice in terms of value for money and accountability, they also have led to philosophical shifts in the purpose of HE. Indeed Molesworth (2010, p.278) identifies that “many HEIs prepare the student for a life of consumption by obtaining a well-paid job: a mission of confirmation rather than transformation”.

Gibbs (2016) suggests that the costs of the consumer-based education go beyond superficial changes in the HE experience. The implication being that the commodification of HE, the rise of a consumerist approach to knowledge begins to affect the curriculum and teaching practices. As Haille (2008) posits, businesses are often driven by fear of losing customers and so by applying a consumer-centred approach to HE, universities may be driven by the need to provide just enough teaching to protect their customer (student) base.

To determine how this practice affects academics and what they do, I have considered Clarke’s (1983) principle of triangle of coordination as cited in Jongbloed (2003). This sets a framework for understanding the relationships between HE, the

HE Market, academics, the State and students. Whilst Clarke's frame suggests parity of influence between each element, reviewing recent literature indicates that in practice, this is no longer the case and so the framework has been revised to reflect the transition (Evans, 2004; Molesworth *et al.*, 2010; Woodall *et al.*, 2014; Gibbs, 2017). The revised triangle indicates the change in the influence of the students, taking into account the increased amount of data available to and from students in terms of decision-making. It also recognises however, that the HE experience is individual.

The development and application of TEF, indicate that students are increasingly the focus of the performance data expected from universities (Gibby and Broadbent, 2015; Davis, 2016).



**Figure 2-1 Triangle of co-ordination after Clarke, 1983 adapted by the author**

Probert (2013) asserts that the restructuring of HE has led to fragmentation of the academics' role. Teachers claim that this has led to a reduced capacity to influence HE practices, indeed De La Fuente *et al.* (2013) suggest that the sense of academic disempowerment is significant for the development of teaching and learning and the wider goals which HEI set. O'Byrne (2014) posits that this disconnection indicates that this provides an opportunity for teachers to show their individual agency to determine how they can operate under the complex division of labour within new HE. Yet there is little evidence to suggest that this occurs in practice.

However, there is evidence that UK HEIs maintain their autonomy in relation to both operational and research decisions (2017). Indeed, EU counterparts appear not to enjoy the same level of success in relation to these decision-making areas. The implication is that UK HEIs can be more reactive to sector and market needs than their counterparts. However, it is right to remember that universities in the UK cannot choose their quality assurance mechanism, unlike many of its EU counterparts as Pruvot (2017, p.31) asserts.

Whilst Ransome (2011) indicates government measures which extolled the value of audit, quality assurance processes, also enhanced the status of HE. There is little to suggest that in practice these processes provide deep-seated changes to HE Gibbs (2016) counters that there were - and remain - fundamental concerns about the real experience of the students. He contends that whilst new HE provides a more autonomous student experience; this does not mean that the teaching and learning, which is part of this, is good. Barnes and Jenkins (2014), however, suggest that despite the rise of the State regulation in the HE marketplace, there is still uncertainty about quality and student experience within HE.

Ransome (2011) also claims that the marketised approach to HE challenges universities and other HE providers to deliver an experience that encourages students' applications and retention. There is a concern, however, that this approach as Davis and Farrell (2017, p93) state, encourages students to make their choices based around their need to find "High quality and affordable education ...which prepares them for the world of work". Whilst sector leaders such as Oxford/Cambridge, which enjoy significant prestige and so, are likely to sustain their position as elite providers, others will be faced with significant challenges to seek out applications.

Brown (2012) indicates that as a result some HEIs will be torn between providing an intellectual or technical student learning experience with the latter focusing on societal needs and the former individual transformation. In doing so Furedi (2010) identifies that marketisation has led to a practical redefinition of HE as a commodity and the implication for those that teach is clear, they are required to consider their programme more than an educational opportunity but also as a product (Molesworth, 2010).

### 2.3.3 *Performativity*

Performativity is inherently linked to the application to HE, quality assurance and the marketisation practices. Lyotard (1984) introduced the term, with Marshall (1999, p.310) explaining that:

...demands of performativity mean not the pursuit of educational ideals, like personal autonomy, or emancipation but, instead, the subsumption of education under the demands of efficiency for the total social system.

It is apparent that audit and surveillance policies began to influence the structure and culture of HE, through the application of quality assurance and compliance mechanisms. Furthermore, as Ransome (2011) identifies that teaching and learning within HE has become increasingly driven by an instrumental approach, which was attuned to acquiring technical knowledge rather than theoretical knowledge. The implication being that the commodification of teaching and research according to (Barnett, 2017) had led to a more utilitarian curriculum, led by student, and employer demand. The transfer of control over HE from the Department of Education to the Department of Business and Skills undoubtedly reinforced this shift of policy towards commercialisation of HE. The rebrand was complete as Burton-Jones (1999, p.6) comments:

Knowledge is fast becoming the most important form of global capital— hence “knowledge capitalism”

Wilson and Wilson (2011) suggest that this was the most fundamental development that neoliberal policies presided over. Bourner *et al.* (2000, p.22) indicate that neoliberal and traditional knowledge values could be shown as:

Traditional...knowledge is that which has been traditionally produced in the academy separately from its use.... [neoliberal] knowledge, by contrast, is knowledge, which is, produced in-use, linked directly to the functional imperatives of the world of work.

For the traditional university teachers, used to an academic understanding of knowledge, this transition challenged how they were to work and develop curriculum.

As Bourdieu (1988) indicates the growth of HE as a commodity had become an important influence in how teacher roles were also evolving. It became apparent that teachers' skills now were more aligned to organisational aims and that this appeared to have been accepted within the Academy (Shattock, 1990; Brown, 2013b). Teachers' skills were being challenged and changed in accordance with HEI ambition, which was increasingly led by market-driven practices.

This application of both HEI and teacher agency or in Bourdieu's terms human capital – suggests that teachers recognised the move from individualism and localised development to centralisation of skills and expectations of teachers. Whilst some academics counselled against this transition (Cownie, 2011), it had become evident that most academics failed to offer meaningful resistance.

#### **2.3.4 Managerialism and management**

A consistent feature within HE reform has been the concern that organisations at all levels have become more dependent on a managerial structure (Blaxter *et al.*, 1998). Santiago and Carvalho (2004, p.428) suggest that managerialism:

... combines political, institutional and organisational assumptions with principles of rationality that apparently do not seem to be organised, but in which it is possible to detect some coherence around the notions of market, competition, individual choice, responsibility and efficiency.

Fumasoli and Stensaker (2013) indicated that where managerialism becomes critical to the organisation, teacher autonomy appears to decline rapidly and power struggles emerge. As Bleiklie *et al.* (2011) suggest these tensions often relate to research and teaching choices as well as challenges to trust and academic judgement as Brown(2013, p.7) recounted:

...there were a number of cases where academic judgements were overturned by managers concerned about the potential impact on institutional revenues or on customer reaction.

How these tensions are navigated depends on the culture of the HEI, department and of course the people involved (Mytton, 2012). However, there is little doubt that teachers see the imposition of objectives and targets as restrictive and unwelcome (Deem, 1998 Jarvis, 2014). As a result, teachers may resist the expectations, challenge or become more attuned to setting and meeting the organisation's objectives (Cave *et al.*, 1992b) rather than developing their academic research endeavour.

For teachers, this has meant that they perceived that their subject expertise was supplanted by organisational demands for flexibility in terms of what they teach or research, as well as what they do. The implication of this is that the cornerstones of the academic role have been removed and so lecturers have to carry out roles they neither wish nor have the skills to do (Gale *et al.*, 2011). In fact, Deem (1998; p47) comments:

...until quite recently, the notion that the activities and cultures of universities either required managing or were, in any meaningful sense, 'managed', would have been regarded as heretical.

Whilst there is concern that management and managerialism appear to impose an unrealistic set of demands on teachers, it is perhaps interesting to note Gordon's (2004) comments which accept that 'job creep' has always been part of the academic role. The acceptance of the need to carry out different roles indicates that teacher agency has been used to support wider management aims.

Further, Tight (2014) offers a pragmatic view of managerialism which suggests that the extremes of management practices are unlikely to be sustained within universities. He suggests that in practice, the performance measures imposed by HEI are likely to reduce the impact of poor management. Although there is little to suggest this is the case it also presupposes that management practices are supported by improved training and support. Whitchurch (2012) reflects that the tensions between managers and teachers are often exacerbated by poor lines of communication within organisations. Unlike Tight (2014), Whitchurch (2012) identifies that in HE there has been a suggestion that there is a third profession or pracademic role, which indicates the arrival of another tier of management and bureaucratic practices.

### **2.3.5 Employability**

The movement towards embedding employability and employer-ready skills within HE has become increasingly contested (QAA, 2016). Traditionally held values which professed that HE could develop the person and its function was not to educate the worker are present in many HEIs (Rae, 2007)

Attempts at defining what employability means has become a challenge, with profoundly different approaches (Williams, 2015), which can lead to a lack of curriculum clarity. The implication of this is that academics find that their teaching pedagogy is required to change, not because of developments in research, but because of organisational expediency. The demand to meet the needs of employers appearing to outstrip the needs of the student, but also the capacity of the academic (QAA, 2016).

Whilst the definition of employability has been shaped by the development of frameworks which indicate that graduates are expected to gain specific attributes (Steuer *et al.*, 2012). These attributes are often located within HEI literature and publications (QAA, 2016; Glasgow University, 2017 ). Indeed the HEA has attempted to draw together approaches from a range of different HEIs in order to come to a consistent understanding of the principles and purpose behind employability.

It is evident that there are different practical approaches to the integration of employability within HE programmes; there is also an emerging philosophical segregation about the nature of employability. Some have suggested that the wider purpose of employability is to support development of cultural capital in the student (Arora, 2015), whereas others indicate that the expectation is the transformation of the student's human capital (QAA, 2016). In both cases, the opportunity for student transformation is at the heart of the teaching and learning, and so a more nuanced way to consider the value of employability to a student is perhaps, by recognising that this is an opportunity to develop their identity.

There does not appear to have been equal support in relation to the development of the teacher to create pedagogically valid approaches which can be subject oriented

(Steur *et al.*, 2012). As Jollands *et al.* (2012) suggest, the integration of both practical and theoretical pedagogy is challenging. It is however, submitted that in law, this is less challenging; the rich stories of case law can provide many teaching points. However, the implication of these practice-focused pedagogies is the assumption that the academic has the knowledge and understanding to use case law in a vocational way.

### **2.3.6 Widening participation**

In setting targets for widening participation (WP) (DFES, 2003 ), all HEIs were required to review academic standards of entry, teaching and support mechanisms for students who had a weaker academic record (McCaig, 2011). It was anticipated that WP would democratise education and thereby reduce the “deficit model, a concern with under-represented groups” (Adnett and Tlupova, 2008, p.246). As an enticement to support the development of WP programmes, across all sectors, HEFCE centrally managed funds, which HEIs used to sustain projects to reach out to underrepresented groups, such as Aim Higher, Partners programmes. Whilst this did create and support opportunities for WP, it also created more layers of regulatory control through bodies such as OFFA<sup>1</sup> and now the Office for Students<sup>2</sup>.

Whilst the bureaucratic concerns of increased regulation did suggest that teachers were now required to focus on non-academic functions, further concerns resurfaced. Whilst Lucas (2004) indicates that new universities and CHE saw this as an opportunity to access more students and provide higher-level programmes, there was resistance from more traditional HEI. Alderman and Palfreyman (2011) indicate that some traditional HEIs academics were concerned that WP students would need a different kind of teaching which they were ill-equipped to provide (Alderman and Palfreyman, 2011; Fumasoli and Stensaker, 2013). In reaffirming a stereotype of students, it became apparent that the so-called binary divide within HE had resurfaced and more schisms in the nature and type of HE became apparent.

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<sup>1</sup> OFFA Office for promoting Fair Access to Higher Education: [www.offa.org.uk](http://www.offa.org.uk)

<sup>2</sup> OfS Office for Students [www.OfS.org.uk](http://www.OfS.org.uk)



### **2.3.7 Massification**

Closely allied to marketisation and WP, massification considers the different ways in which HE can be delivered. McCaig (2011) suggests that the decline in student numbers that HE faced in the early 1980s was met in many developed countries with concern and policy conservatism. However, in the UK, the government preferred to be proactive, whilst increasing control over HE provision, funding criteria were enhanced to support WP targets, and HEIs were also encouraged to diversify the types of programmes and levels to increase the number of students (Bok, 2003; Duberley *et al.*, 2007).

The focus resonated with the marketisation policy, and this mirrored the flexibility and efficiencies that were seen within the new universities (Clawson and Page, 2012). When demand for university places outstripped supply, certain freedoms, such as small class sizes or obscure course choices, previously enjoyed by pre-92 universities were fundamentally challenged. Technology-driven teaching and learning demanded research into new methods of teaching, which would support development of teaching tools as well as learning strategies that could work with online and other mass courses. Teachers needed to change how they thought about teaching. As yet the effect of massification has not been as significant as anticipated (Adnett and Tlupova, 2008) indeed Giannakis and Bullivant (2016, p.648) suggest that:

...the rise in student numbers has been a contributing factor to the deterioration of quality in Higher education.

## **2.4 Regulation and regulators**

Here I consider the concerns about regulatory processes and the activities of the regulators in transforming HE. Recent reviews on HE regulatory and competition practices such as Browne (2011) and reports from the UK Competition and Markets authority (2015) have led to fundamental changes in methods of regulation and management of quality assurance. In proposing a “light touch” (Raban and Cairns, 2015, p.116) reviewing mechanism this places additional burdens on internal quality

management practices which suggest a more significant perception about policing and control of teachers and teaching, let alone the HEI .

#### **2.4.1 Higher Education Funding Council for England (HEFCE)**

The Higher Education Funding Council for England (HEFCE) was established in 1992. Its initial role was to fund HE, but also to provide a process to assess the quality of HE. Over time, the function of HEFCE has become more diversified and recently its focus is in:

...evaluating, promoting and funding practices in the sector which best address the issues of social mobility, participation, retention, achievement and progression (HEFCE, 2015 p.3)

In doing so, it plays an important part in setting the direction for evolution within HE. It is also the principal regulator that purports to:

... respects the autonomy of Higher education providers and protects the interests of students' sector (HEFCE, 2015)

As part of this role, it produces key performance indicators such as university statistics and HESA<sup>3</sup> data reports. As such, it also funds research into existing practices, which include the development of teaching and learning enhancement within HE as well as exploring the accountability within HEIs. In effect, it is being charged as a buffer between HEI and government; whilst this might suggest that it resists more unusual policy suggestions (Leach, 2015 ).

However, HEFCE's recent proposals for change in managing quality assurance have led to serious concerns about the nature and the reliability of the quality assurance mechanisms (Raban and Cairns, 2015). In effect, it places the burden on the HEI to produce and police effective quality assurance practices, suggesting that the HEFCE role is more light touch. The introduction of the risk-based model (HEFCE, 2012) has been met with consternation (Cruickshank, 2016; Morgan, 2016) as well as from the QAA (2015).

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<sup>3</sup> HESA – Higher Education Statistics Agency

#### 2.4.2 Why establish the Quality Assurance Agency (QAA)?

The Quality Assurance Agency was established following the Dearing (1997) report, its function was to develop and improve HE teaching and research quality. Although there were regulatory mechanisms in the Polytechnic sector controlled by the CNAA, the unification process disposed of what had been seen as sound processes (Black *et al.*, 2015). It was seen as an answer to the failed self-regulation, quality management and an addition to the audit process such as external examining, and teaching excellence monitoring which had been introduced following the Reynolds Report (1989). Successive governments had perceived these mechanisms as weak, and selective (Hénard and Mitterle, 2010) and as a result likely to be ineffective in meeting raised expectations. Further attempts at formalisation such as the Higher Education Quality Control (HEQC) in 1994 were met with little support. Yokoyama (2013) indicates that the likely reason was that there had been limited real sector-wide consultation. It is right also to comment that certain protectionist positions of elite universities meant that post HE unification, certain HEI sought to reaffirm their independence from government control (Shattock, 1990).

Whilst in CHE such mechanisms of accountability in management and teaching had been embedded because of FE reforms, Further Education National Training Organisation (1989) accepted universities even though the mechanism voluntarily met their introduction with concern and outrage:

...On this view, teaching quality audit is a form of policing where the rules used are ones that are unacceptable to the academic community

(Bradney, 2001 p 433)

With resistance being expected, Leighton *et al.* (2001, p.389) comment:

It has to be said that it was never going to be easy to apply the QAA methodology to long established universities or, indeed, to retain the support of other institutions.

The requirement to meet common standards and expectations as well as introduce employability skills to the curriculum was expected to give confidence and encourage students to go to universities. However, for some this was seen as a dilution of the role of HE and was resisted by academics and some universities. As a result, Black *et al.* (2015) confirm that because the process was voluntary, many decided to withdraw:

In March 2001, the London School of Economics decided that it would withdraw from Quality Assurance Agency procedures.

Bradney (2003, p178)

Further, Kings College London expressed concerns, when they indicated as THES cited in Bradney (2003, p179):

...we felt that the auditors didn't understand what we were talking about created significant tensions, imposed methods which were more business facing than academic facing meant that HEI were not able to meet with the information demands of the Inspectors.

The immediate result was to diminish the impact of QAA; hasty revisions were made, reducing the number of audit visits and by providing less time for each visit, the process was largely procedural, having little real influence on the university and its practices (Lucas, 2014). However, after the initial reluctance to engage, it became evident to most HEIs that funding was tied to a good QAA evaluation so compliance became more a matter of necessity (Wyness, 2010). The balance of power between government and HE had changed, the increase in the managerial and data collection mechanisms became inevitably linked to teacher's administrative skills and compliance with regulations. For teachers, this also meant that they became more accountable for the record keeping, which hitherto had been seen as incidental to their role.

In many cases, the CHE sector considered QAA as an audit method they were familiar with, following the HMI and Ofsted inspection practices (Hoecht, 2006a). Although there were well-established management information systems, they were not set to provide the information that the QAA required for its judgements (Davies,

2012). The outcome was that CHE had to contend with two very different QAA mechanisms and the quality processes that were independent of the awarding bodies used. Again, the pressure on the teacher to complete the relevant managerial and bureaucratic functions was significant; with limited training on offer, this created tensions and resistance (Feather, 2011).

Unlike pre-92 universities, who were able to influence government circles to reduce the measures of accountability (Leighton *et al.*, 2001), CHE stumbled and failed to meet the standards set (Davies, 2012 ). So as Bradney and Cownie reflect (1996: p.315):

In effect... the introduction of this type of accountability measure was one that produces commodification of the educational process

If this was the case, then CHE and the new universities arguably had an advantage over traditional universities because of their public-sector structure and culture; however, it was clear that the QAA process was seen even here to be unhelpful and over-bureaucratic.

The audit process or as Altbach (1996) called it policing of the activity of the university, department and of course the academics, was hard to accept and was perceived as a direct challenge to academic freedom and autonomy indicating that the outcome was to “industrialize academic life” (Bradney, 1996, p.316). Whitchurch (2012b) suggests that this form of transformation in terms of accountability and role change for academics reflects a fragmentation within HE itself. In doing so, she reflects that this created a so-called third space professional, which she suggests will address the concerns of teachers, that their role will become more bureaucratic in nature.

Yet the new universities and CHE recognised that, in terms of status and reputation, the only way to compete within HE was to ensure compliance of quality and performance practices (Whiteley, 2012). Whereas in practice ,fears were that the definition of quality was being moved from teaching and learning excellence to ensuring a good NSS score (Brown, 2013b).

### **2.4.3 QA reforms and the demise of the QAA**

The risk-based approach to regulation that was proposed following the Government's White paper (DBIS, 2011), placed a different emphasis on how quality was to be measured within HE. The focus was to be linked to, (DBIS, 2011, para 37) students' satisfaction and track records of HE which were to be measured using QAA analytics. The focus therefore, appeared to be to rely on a risk-based assessment mechanism which would be centred around individual HEI practices (HEFCE, 2012). Cruickshank (2016) suggests that this would reduce the effect and role of the QAA to one of overseeing processes rather than providing independent assessment.

Whilst it was felt that using this mechanism would reward compliance, which in turn would return aspects of control to HEI. It was also expected to reflect the progression that HEIs were making in relation to consumer satisfaction and therefore reputation. However, there were wider concerns. Jackson (2016, p.2) suggesting that in designing a "genuinely risk based approach" a key objective must be to improve the management of quality of HEI, but that this places a significant burden on the HEI system which might mean that assessing quality become less effective. Indeed CMA (2015)<sup>4</sup> has indicated that it does not see that students surveys can support the drive for quality. This has led to the so-called "Quality War" which have caused many to recall the issues which surrounded the introduction of the QAA (Filippakou and Tapper, 2015).

The introduction of a risk-based approach reaffirms the challenge of identifying what can be seen as quality within HE. Brown (2013c) suggest that there may be an ulterior motive behind the changes that of increasing further competition in the HE market place. Cruickshank (2016) suggests that providers with limited QA process in place would find it easier to meet the newer risk based standards. Hoecht (2006b) indicated that assessing quality using a formalistic series of mechanisms can only provide a one-way form of accountability. Furthermore, that using such a narrow methodology affects opportunities for innovation in teaching and learning, because the quality formula applied is set and monitored by non-experts, and focuses on "rituals of verification"(Power, 1997, p.5). Although Hoecht (2006) was reflecting on the

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<sup>4</sup> CMA Competition and Markets Authority

changes implemented by the introduction of QAA quality control, similar fears have been expressed in relation to the 2011 and 2015 revisions (Jackson, 2015).

#### **2.4.4 Impact of reforms**

For teachers within HE it is evident that HE reforms have changed significant aspects of their work and what is expected from them (Jarvis, 2014). The legislative change that removed teacher tenure and aligned the teacher role with other HE employees appeared to challenge trust as well as teacher autonomy and independence. The transition from collegiality to managerialism as cornerstones of workplace culture and organisation, have transformed teacher perception of their value to the HEI (Jackson, 2016). Whitchurch (2012) comments that this has led to reporting of tensions and challenges, which causes teachers to question existing practices and procedures let alone teaching changes. These concerns have led to a realignment of the power relationships within the HEIs, where teachers may feel that the new expectations detract from what they see as their role.

Turning to commodification within HEI, it is unrealistic to consider that it might be immune from the reforms. The effect of introducing market principles has led to increased accountability and demands to demonstrate that programmes offer value for money, the product works and that the consumer is happy with it. The effect is as Locke (2014, p.1) indicates inconsistent. The CMA<sup>5</sup> (2015) indicated that existing regulatory practices were complex. Further, it also indicated that relying on measures such as student choice emphasised that the HE experience was difficult to “predict, observe and define” (CMA, 2015, p.18), therefore broader ways to assess quality were needed.

External pressures have a variable effect on different types of institution and as Giannakos (2016, p.631) comments:

This has given rise to a changing phenomenon; that of the marketisation of Higher education and the perception of students as customers purchasing a service.

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<sup>5</sup> CMA – Competition and Markets Authority

Paul *et al.* (2015) indicate that the use of external performance indicators such as Unistats reinforces the importance and relevance to the HEI of student choice, based on teacher performance. HEPI- HEA<sup>6</sup> produce detailed analysis of student-driven evaluation of HEA teaching performance, based on the NSS data. Interestingly, the first return to address teacher and teaching quality directly indicates that students felt that teacher training and sector experience were far more important than research (Temple, 2015), and this was reaffirmed by Neves (2016 ). I shall turn to these issues again in chapter 3.

However, what is evident is that these new quality assurance mechanisms have wider functions than assessing teaching or research-led activities. The National Student Survey measures student experience within HEI, financial support and academic support as well as accommodation, with educational experience appearing as just one factor that students assess.

The increasing awareness of such key performance indicators suggest that students are mindful of the need to demonstrate quality of experience that goes beyond gaining knowledge. Indeed it is evident that HEI marketing materials reflect the wider experiential element of University life and inform the choices which students and HEIs make (Purcell *et al.*, 2016). This does not mean that HEIs neglect critical teaching and learning, but that staff are often required to consider the wider aspect of the programme which meets wider experiential expectations (Gibby and Broadbent, 2015).

The implication of these reforms and restructuring is that the teacher's world appears to be one which has been as Turner (2012, p.836) suggests "remade in the image of the university", but it is evident that HEIs appear to have been remade to support the knowledge economy. Vaira (2004, p.485) asserts that because of local, national and global policy developments:

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<sup>6</sup> HEPI – Higher Education Policy Institute – Independent think tank established in 2002: HEA Higher Education Academy



Higher education is witnessing a process of deep institutional change that involves the deinstitutionalization of its rooted policy and value frameworks and the parallel institutionalization of new ones.

HE policies have required HEI to become more strategically responsive to government, employers and students' needs (DBIS, 2012.). As such opportunities for HEIs to adjust their "organisational systems, practices and cultures" (Turnbull, 2008, p.21) became more important than holding on to traditional HE values. Where these structural adjustments required quality assessment practices and mechanisms, with the result that teachers had begun to raise concerns that their role was changing and this was challenging both, their academic autonomy and deeper seated power over teaching, research and learning, thereby framing their values as academics. Deem (2004) and Stowell (2016) suggest that these values have been whittled away by objective driven procedures and protocols, designed to favour uniformity and centralised compliance. As Gordon (2003) indicates, academics were not inclined to challenge the developments, but accepted that their roles could not be limited to teaching, research and administration.

These concerns were reinforced by the acceptance of the commodification of HE, and the rise in the consumer market which HE policy had begun to effect (Alderman and Palfreyman, 2011). This emphasised the strategic, hierarchical shift within HE, placing competition between providers and students as consumers at its core.

HEIs were expected to provide an outcome, which readied the student for employment, met employers' needs for knowledge as well as fulfilled the student's expectations. The rise of the consumer-driven agenda, it was felt, would lead students away from being recipients of privileged knowledge to consumers. The implication of this was that knowledge was now only part of the student experience and that HE went beyond merely personal development (Douglass, 2004). This change led to a recognition of the economic challenges within HE and thereby a revision of the working relationship between teachers and HEIs (Lucas, 2014). The transformation has therefore meant that HEIs, in following these wider agendas, reinforce the de-prioritisation of teaching and learning (Brown, 2013a) in favour of the 'hard sell' of the HEI in terms of facilities and non-academic experiences. The debate about quality

within HEI appears to be based on policy, which is set on untried foundations Jarvis (2017).

## **2.5 Conclusions**

It is evident that there has been a change within Higher education, which has provided significant structural transformations. These developments have led to different types of activity within HE being recognised as part of the core of HE moving from teaching, research and “service” towards activities which support the HEI and its need to meet QAA demands (Whitchurch ,2012).

The changes in funding regimes and the application of quality assurance practices based on audit and accountability principles have led HEIs to be more overtly accountable for the experience that they provide to students. Increasing provision of data regulation and centralised managerial controls appear to have begun to impact on the culture of HE. For teachers it also suggests a rise in teacher resistance to change and caution when developing innovative courses.

As a result, universities have become more attuned to principles that support the commodification and marketisation of the HE experience. The outcome appears to be that teachers are expected to develop a curriculum which provides a “whole package” approach to a learning experience which meets HEI bureaucratic and audit practices as well as the wider market demands. In the following chapters, I focus on Legal education, its pedagogical history and the impact of legal services sector on its development and subsequently, turn to consider teacher development within HE

## **Chapter 3 Legal education: professions, policies and reform**

### **3.1 Introduction**

In chapter 1, I indicated that my research was focusing on the skills needed to teach undergraduate Legal education rather than postgraduate professional courses. In chapter 2, I further identified that the skills and knowledge required to teach at undergraduate level appear no longer limited to academic proficiency.

In this chapter, I start by considering Legal education and the influence of the legal profession, policies and reform. I then progress to set out the methods and philosophical approaches to legal pedagogy. I consider practice and support for the development of teaching practices for law teachers. I evaluate the relationship between the educational theory and legal practice, the development of clinical and practice focused Legal education, exploring the range and impact of influences on the development of the undergraduate law curriculum.

### **3.2 Professions and Reform**

Atiyah (1987, p.36) suggested that:

...not long since the ablest intending legal practitioners were recommended to read classics at Oxford and then “pick up [the law as they went] along”.

As Birks (1995, p6) reflected:

...we will never have strong law schools in this country while the professions continue to disavow them, repeatedly declaring their preference for non-law graduates.

Legal education is a widely constructed term and focuses on the development of academic, vocational and professional skills. As has been seen in chapter 2 above, there has been fundamental reshaping of undergraduate education in the UK. HEIs in the UK now anticipate that graduates will acquire during their study graduate attributes that include knowledge but also relevant employability skills. Therefore, within Legal

education it is expected that the curriculum provide sector-relevant commercial awareness as well as work-ready skills.

In focusing on the new curriculum expectations, I do not ignore the relevance of the development and traditions of the law degree, but draw on these to indicate the challenges, which HEI and law teachers face when designing creative and relevant curriculum.

The tensions between academic and professional Legal education have existed for some time and are founded on different ideological approaches; critical to this is the role of HE in Legal education. Twining (2014) reflects that whilst there was a lack of real integration within HE, the delivery of law as both an academic and pre-professional course would always be disjointed and so the challenge was to understand what and how to provide suitable ways of drawing them together. Attempting the transformation of both HE and LE, should have been driven by joint effort across both sectors, however, it became evident that gaining consistency of messages was exacerbated by the individual sector reforms, which were carried out in isolation. I explore below the barriers to transformation, which were and remain significant. Sherr (1998, p.3) indicates:

Experience of law within universities across the world shows an uneasy relationship based on a set of dichotomies. Law, for example, considers itself “special”. Other university faculties consider law as “different”

It is evident that these two cultures were likely to clash, the management of their integration requires careful consideration. To draw together economic and professional objectives, there had been a series of reviews on Legal education that are set out below:

DATE	Name	Premise
1971	Ormrod review	Improving the degree
1978	Benson report	Legal services sector reform
1988	Marre review	Legal services sector reform
1991	ACLEC	Reviewing LE and other aspects of professional development
1996	ACLEC first report	Liberal education framework
2004	Clementi report	Competition
2005-2009	Law society	Law Society framework review outcomes based learning
2007	Law subject benchmark	Setting out criteria of delivery of degree
2008	Wood review	BSB transitions for practitioner skills
2011-2013	LETR	Review of professional training and aspects of LE
2015	Law subject benchmark	Setting out criteria of delivery of degree
2015 -2017	SRA/BSB	Review of the role of the QLD

**Table 3-1 Legal education reports**

### 3.3 Reports

For the purposes of my thesis, I start my analysis of the development of Legal education with the Ormrod (1971) report. Although there had been reviews prior to this Ormrod was the first significant joint report since Robbins (1963) and its remit was focused on the Qualifying Law degree (QLD). It also brought the undergraduate and postgraduate nexus into sharp focus.

The subsequent reports provided a vehicle for the profession's perspectives of LE within HE, but there was little evidence of its willingness to engage with HE teachers and rarely took evidence from educationalists. This is a consistent feature within LE, which reiterates the imbalance within its development.

### 3.3.1 *Ormrod 1971*

Ormrod made it clear that the segregation between academy and practice “must be eliminated by adjustments on both sides” (Ormrod, 1971, p.34). The challenge was for both to work together. Spencer (2015) reported just how difficult this was with senior members of the judiciary secretly and seriously undermining both its objectivity and freedom. This conservative attitude restricted opportunities to develop the degree and reflected the concerns were that taking a socio-legal approach would de-intellectualise the study. In addition to the voices destabilising from outside, there were no educationalists or HE experienced voices inside the committee.

The result was that whilst setting out a core degree curriculum, it did not address key content issues. As Bamford and Thornburg (2013) indicate, this failure was seen as a missed opportunity to set an academic and professional foundation for the degree. Ormrod declared that it was leaving professional educationalists to structure the curriculum but in practice was leaving the content to the profession (LETR, 2014); in reality, this was a miscalculation in that at undergraduate level law schools were increasingly focusing on doctrinal scholarship to the exclusion of practice.

Ormrod report failed to recognise that HE law schools were prioritising an academic approach to law, as they were seeking a clearer academic identity which was removed from the profession (Spencer, 2015). Furthermore, the tiered system of professional formation meant that law schools could not provide a practice-oriented experience unlike their American counterparts. The professions’ perception was flawed on two levels, firstly, that in the US, students in law schools were postgraduates and secondly that academic Legal education had taken on the cloak of the HE academy (Bradney, 1992). As such, this dissonance meant that unless there was communication between the profession and HE (Cownie and Cocks, 2009), the degree programmes were always going to fall short of reaching sector expectations (Thomas and Mungham, 1972).

Moreover, there was clearly a reluctance from the teachers to get involved in the report itself (Twining, 2011). They were either unwilling or unable to voice their views (Sabri, 2010). The opportunity to build an educationally focused framework was

therefore severely hampered (Ching, *et al*, 2013) compounded by the lack of evidence from educationalists to provide meaningful guidance.

Ormrod's hope in relying on academic contributions to improve teaching was misguided; at this time teachers were focusing on scholarship rather than the profession's needs (Sherr, 1998). Whether this lack of membership had an impact on the willingness to engage with the recommendations is unclear. Cownie and Cocks (2009) suggest that resistance to change was reinforced by the lack of clarity and meaningful engagement with content and curriculum, so control remained with the profession and it was not until 1996 that the critical features of the report were introduced.

### **3.3.2 Benson Report 1979 (BR)**

The purpose of the Benson report was to pave the way for legal professional reform. This did not mean that it did not take a view about Legal education and indeed had an LE subcommittee, albeit led by a sociologist, Dahrendorf. Twining (1994) indicates that the BR appeared to support teacher autonomy in two specific ways, firstly by encouraging an academic – non-practice -focus of the law degree and secondly by recommending a reduction of the influence of the profession on the degree programme content.

The impact of this was to respect the need for an academic grounding in the principles of Law, without addressing the practical aspect of how the law worked in practice. BR therefore placed the practice elements of Legal education firmly in the hands of the practitioners. Whilst this received muted support from the Profession, in that they were to take control of the training and development of new practitioners, it also met with concern in that there was no practice training mechanism in place. It had become apparent that the profession was eager to take advantage of the free training provided within HE whereas legal academics wanted a different autonomous curriculum. BR perhaps inadvertently supported this dissonance across the Legal services sector and HE.

### **3.3.3 Marre Report 1988**

The Marre report was once again not focused on Legal education, its focus was on the development of the profession. Transitions within HE as a whole were becoming more evident by the introduction of the Education Reform Act 1988, the significant rise in students attending University (see chapter 2 above) and law in particular (LETR, 2013).

As Leighton (2014) indicates there was significant anticipation for Marre in the wake of HE reform; its remit was too broad for it to provide a meaningful contribution to Undergraduate level LE (Twining, 2014). Once again, it failed to reflect the voice and values of law teachers when evaluating the proposed curriculum transformations. Whilst it indicates that there needed to be a more effective voice within teacher training and development, it placed this role firmly in the hands of the Law Society. Again, this was an opportunity missed to reach out to law teachers and engage them actively in jointly reforming the curriculum.

## **3.4 Confusion in the curriculum**

Although these reports represent a shift in approach to LE, they did not bridge the gap between teaching and professional expectations. Control of core elements of the law degree was retained by professional bodies, which had little interest in creating working relationships with academics (Spencer, 2015). As Sherr (1998) indicates, law schools remained somewhat aloof, being resistant to change, while relying on the traditions and status of the degree to provide protection from the implementation of change from LE as well as HE policies (Twining, 1994; Stickley, 2011).

There were calls for a unified approach to Legal education such as medical education (ME). In ME, a single tiered approach to training new doctors aligned medical professionals and academics working together within the teaching and learning environment. Proposals from as early as Ormrod to consider a medical approach to Legal education were considered but there was resistance. In practical terms the schism between the Bar and the Law Society, which expected different professional skills meant that a common degree course was resisted. Although it is right to say that integrated professional degree programmes now exist successfully, when Marre reported there was less willingness for creativity and innovation to absorb



the professional element of law. Furthermore, there was an increasing distrust between the profession and academics which heightened the reluctance of both to engage in developing teaching and learning methods and approaches (Kennedy and Carrington, 2004).

As a result, the proposed degree structure, which Ormrod, Benson and Marre provided, led to considerable concern. Firstly, that the curriculum was restricted by the demands of the profession and secondly, that it maintained a value-laden approach which limited criticality (Sherr, 2003). Whereas, the view from the profession, once again, was one that indicates that the degree failed to provide a suitable pre-professional training. Nathanson (1994, p.319) made it clear that the LE curriculum should only focus on the legal services profession:

For the legal profession to maintain its high standards and to continue to gain respect from society, law programmes must adhere to the purpose of educating students for legal practice. The future of Legal education lies in focusing exclusively on this purpose.

Nathanson (1994) expressed the view that LE had one function alone and that tampering with this had led to confusion and a reduction in standards. There is little evidence to support Nathanson's views; he reflects a commonly held view that the 1971 reforms had sorely affected the content and quality of the degree, and therefore, the work-ready capabilities of new trainees. It had become evident that "Essentially, we no longer agree on the meaning of law and therefore we cannot agree on how "it" should be taught and learned" (Thomas, 2006, p.245). These concerns led to a more dynamic response for change – ACLEC

#### **3.4.1 *Advisory Committee on Legal education and Conduct (ACLEC) 1991 and First Report 1996***

The Lord Chancellor's Advisory Committee on Legal Education and Conduct had been a key part of Ormrod's recommendations, but it took 20 years before it was created (Thomas and Mungham, 1973). Its formation in 1991 arose following an extended period of change, not only within the legal services sector, but also significantly within HE.

Its first report was to support “a law curriculum...” that would emphasise “the legal values of justice, fairness and high ethical standards” (Baron and Corbin, 2012, p.101). Across both sectors, it was recognised that the traditional model of teaching and learning needed to adapt because it was subject to “serious structural weaknesses” (ACLEC 1996, p.43) and to address this, it was felt that the:

...quality of Legal education provision would be generally enhanced if universities and colleges were given greater autonomy and consequently more freedom to decide on the curriculum and how it can be delivered... ACLEC (1996, p.58)

The implication of this statement was significant. HEIs were encouraged to broaden teaching methods, assessment strategies to reduce “rote learning...” and move “towards greater flexibility and diversity of teaching and assessment methods” (ACLEC, 1996, p.65). Yet at the same time, the committee indicated that there needed to be clear guidance as to the amount and type of law that was to be delivered within HEIs. It was evident, however, that it needed to be a course that could “stand as in independent liberal education” (ACLEC, 1996: p.3).

Underlying the significant aspect of change was the need to support and encourage HEIs to develop a more effective method of design and delivery for this new curriculum; yet as Grimes (1996,p.283) rightly pointed out there was no appreciation that these proposed strides in improving Legal education would require consideration of teaching and learning theory.

Sherr (1998) indicated that ACLEC’s recommendations opened opportunities to develop the curriculum beyond the Ormrod restrictions to create a diverse liberal law programme. There is little evidence that HEIs or teachers grasped the opportunity as Sherr (1998,p.38) bemoaned the fact that, “Undergraduate Legal education is beginning to look somewhat purposeless, or at least unclear of purpose”. The reasons for this plateau of curriculum development were laid at the door of the cautious provider. Indeed, the reason for lack of change was fear in relation to what the profession would do, with concerns about the wider, global market in HE and weak communication (Jones, 1995; Leighton, 1996).

Although much was considered about the changes that were to be implemented in the curriculum, the voice of the teachers was limited; how to achieve the change depended on improved understanding of teaching theory and practice, but this was not addressed in any meaningful way (Grimes ,1996). As Leighton (1996, p 206/7) indicated, what was necessary was a commitment that “some investment in the teachers themselves is necessary, both in terms of appointment and staff development.”

This investment by, and for, teachers in developing practice and educational theory has always been limited as Webb (2015, p.4) reflected:

These latter interventions have not, on the whole, been initiated or led by those engaged in Legal education and have seldom been actuated by a simple desire to build a superior system of education and training.

As Webb (2015) comments, the motivation for change appeared to be driven not from within the law school via educational research into how to deliver law but rather external pressures exerted by the profession or government demands for increased economic return from HE. As Sherr (2001, p.1) indicated, “Legal education is not a spectator sport” and so opportunities to lead reform should involve those that teach. As Webb (2015) suggests to achieve a balance in the development of Legal education Law teachers should be ready and willing to take part not only in terms of doctrinal research but also in terms of developing teaching theory.

The lack of research into teaching and supportive training was not just evident in law schools; wider concerns about the lack of teacher development was discussed in HE (Shattock, 1998). Whilst the need to improve teacher quality was recognised, little investment in teacher development was evident, and as Brown (2004) comments, the quality assessment process appeared little more than a tick box exercise.

Despite Ormrod’s attempts to encourage a wider curriculum, supported as Wilson (1971, p.641) indicates by “furthering co-operation between the different bodies now actively engaged upon Legal education” integration of practice and academic content still seemed unlikely within traditional HE. The expectation that the design and teaching of the degree would be removed from the amateur and placed “in the hands

of professional educationalists” (Ormrod, 1971, para 57) seemed to have been forgotten. The practical effect was that teachers had little interest in practice and even less in training to design such an integrated programme.

The Ormrod assumptions reinforced concerns that research into teaching or broader educational practices such as curriculum design was not well regarded or indeed carried out as Boyer (1990) indicates; therefore, expertise was focused on discipline research that was not based on educational theory. Teachers were therefore largely repeating their own learning experiences, which often restricted diversity in teaching approaches (Kennedy and Carrington, 2004). Law teachers now were, like many of the HE colleagues, more interested in conducting research into the discipline and gaining acceptance into HE than in teaching. The urge to fit in meant that the need to be a professional educator was largely dismissed (Sherr, 2003; Kennedy, 2004; Boon, 2007).

Critics such as Flood (1999) and Spencer (2015) suggests that this was when the academy should have gained and held on to control over the delivery and instructional design for the law curriculum. His contention that law was always and should always be a practice-led learning experience, where it uses reality as a foundation, was increasingly marginalised.

Cownie (2000) moving Flood’s views on, indicates that teaching practice was not derived from a practice focus, but rather relied on the limited approaches to teaching, such as lectures, doctrinal teaching and case book method. In using these strategies, the need for practitioners within law schools was unnecessary; traditional teaching became indicative of what was seen as exclusive and elitist thereby reinforcing the mystery of law (Kennedy and Carrington, 2004).

Where the role of the practitioner became more important, it was either as a part-time teacher or when the content to be delivered was practice-focused – such as litigation. As a result, it was more likely that teachers would be located in vocational colleges or the new HEIs. The rise of polytechnics from 1966 shifted the focus of HE and reinforced the pedagogical separateness from university teaching. As Crossland in Whitburn *et al.* (1976) and Bradney (1992, p.6) indicate, the polytechnics were designed for:

Building links with the community and especially with industries; in their commitment to the enhancement of opportunities for social mobility by catering for a wider range of social class intakes than universities and, finally, by a special commitment to the provision of part-time courses and opportunities for continuing education (Whitburn *et al.*, 1976, p.6).

The impact of this schism for LE was significant; it empowered traditional HEIs to reaffirm an approach to teaching which did not support the aims of the profession where “university law schools focused more on undergraduate teaching, mutual dissatisfaction built up” (Twining, 1994, p.31). As such, the focus of the law school was to emphasise its research rather than professional or vocational skills or teaching skills. This was very much in tune with HE teaching as craft generally was viewed less important but to be supported as part of ongoing development.

The 1992 Higher education reforms, however, provided an opportunity to address this divide with the decision to create unified HE. The integration of HE provisions, aligning the traditional HE sector with polytechnics, newly created university colleges and colleges with HE delivery. The impact for LE was the opportunity to be innovative in designing HE programmes using teaching and learning methods found in the vocational sector (Bradney, 1992; Nelson, 1992; Sherr, 1998). In drawing on the different methods of teaching found across the sectors, the potential for a hybrid legal curriculum was clear.

However, there was significant resistance to curriculum transformation; rather proposals were focused on shoring up the Qualifying law degree curriculum<sup>7</sup> rather than bridging the gap between university and practice. The influence of teachers was weak and as Beaston (2012, p.7) indicates:

British academic lawyers lacked status and prestige both with practitioners and judges and with academics in other disciplines.

As a result, the New universities and colleges focused on the development of vocationally centred programmes, relying on their strengths in teaching rather than

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<sup>7</sup> QLD – this degree programme must include the 7 foundation subjects which are part of the professional stage requirements

research to generate links within practice and professions. The affect therefore of the reforms was to create a two tier LE, where the Pre-92 traditional universities maintained their curriculum based on doctrinal teaching and curriculum and the more economically aware and politically responsive Post-92 New universities. Thornton (2012) focused on professionally oriented programmes. In doing so, for teachers once again pressures began to exert not only in terms of teaching itself but also by the changing expectations of employers.

### **3.4.2 Clementi<sup>8</sup>, Law Society Training Framework<sup>9</sup> and Wood Review<sup>10</sup>**

The Clementi Report (2004) set out critical changes in the structure and management the Legal services sector, which were implemented in the Legal Services Act 2007. The impact for HEI was twofold, in terms of marketing and devising a new more sector responsive curriculum, there was anxiety that the reforms would reduce the number of students wanting to study an academic law programme (Flood, 2012). The implication being that a more practice linked curriculum which included the vocational areas such as the LPC and Bar practice courses were likely to occur.

The Law Society Training Framework (2005) took 4 years to complete. It reinforced the value of vocational factors within the degree, and indicates that critical factors such as quality assurance within the QLD <sup>11</sup>needed to be re-evaluated, adding pressure onto universities (Boon, 2000). In leaving the critical professional conduct matters to be assessed in postgraduate study, the Law Society challenged the need for a law degree at all (Middleton and Levi, 2015). It is interesting to note at the time of writing, the SRA once again raised the issue of withdrawing the need for the law degree.

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<sup>8</sup> Clementi Report 2004 [www.legal-services-review.org.uk/content/report/report-chap.pd](http://www.legal-services-review.org.uk/content/report/report-chap.pd)

<sup>9</sup> Law Society Training Framework initiated 2001 <http://www.lawsociety.org.uk/policy-campaigns/campaigns/education-training/>

<sup>10</sup> Wood, D, Review of the Bar Vocational Course: Report of the Working Group (July 2008) BSB

<sup>11</sup> Qualifying Law Degree see note 5 above

The Wood review (2008) was the Bar's response to the Clementi Report and the drive for regulation, which was supported by the new Legal Services Board. It also reinforced the need for professional conduct and ethics to be delivered in a vocational sense, but focused on the postgraduate programmes for bar training. It reflected the growing concern of the separation of the profession from its training process.

### **3.4.3 Legal Education Training Review (LETR) 2013**

The Legal Education Training Review was eagerly anticipated as a reforming and educationally centred review of teaching, curriculum and professional practice (Leighton, 2012). Funded by the SRA, Bar Standards Board and CILEX<sup>12</sup>, it was anticipated to lead a new era in teaching law at all levels. In hindsight, this was probably unrealistic; however, it recognised that vocational teaching of law was clearly becoming relevant within HE (Ching, 2013). The development of undergraduate programmes with integrated professional elements such as a Legal Clinic, student externships and placements suggest that sector understanding is now accepted in some areas of HE. It is clear, however, that LETR was unable to address the broader issues within LE such as partnerships and curriculum development in the integration of vocational and professional learning (Ferris, 2014). It also only touched upon the development of teaching law (Leighton, 2014).

Proposals for changes in LE developed through collaborative ventures such as LETR clearly are a part of the broader picture in relation to change in Legal education. However, as Twining (2014) affirms the last three sector-led reports, Wood, the TSR and LETR have in reality led to little change in vocational outcomes-based teaching and teaching practice. Where the professional bodies have engaged with proposals for development in LE, this has often focused on professional education only (Vaughan, 2015).

It is evident there has been a lack of real willingness or engagement within the HE sector as a whole to be involved in meaningful negotiating and researching undergraduate teaching practises or curriculum development linked to LE. Therefore, the disconnect remains between the degree and the expectations of the profession;

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<sup>12</sup> Chartered Institute of Legal Executives

attempts at encouraging closer links between teachers and the legal profession have been limited and overall ineffective (Neuberger 2013).

Linking HE reforms and the expectations of the legal services sector in the case of law (McCarty and Monopoli, 2012) was supposed to produce a competitive well-skilled workforce (OECD,1995). The development of the most recent Subject Benchmark Statement indicates that there is a change in priority in terms aligning teaching to skills and practices that are supported in the employability agenda.

The message has undoubtedly filtered through to HE providers and managers (Twining, 1990; O’Connell, 2008; Simmonds, 1990). The challenge for traditional HE academics remains to design teaching and learning strategies that emphasised employability skills whilst HE focused on different values and expectations such as criticality and higher order thinking (Locke, 2009; Hornsby and Osman, 2014). The tension that traditional universities faced was compounded by the fact that work-facing skills were rarely part of the fabric of the course. As Croxford and Raffe (2015) suggest there is little opportunity to break down the iron law of hierarchy which persists in restricting introduction of wider skills into the law curriculum in some HEIs. Indeed, in many cases, the teachers could not see why or indeed how such skills were relevant to their discipline (Alford, 2009).

## **3.5 Teaching within Legal education**

### **3.5.1 *Approaches to teaching***

Most of the literature that addresses the integration of LE and teacher training is found in the US. Whilst it addresses many of the similar concerns that exist within LE in the UK, about what can be done in the class, it is important to recognise that US Legal education is based on a very different model of teaching and learning. Initially US law schools teach postgraduates which means that students are already attuned to study at HE (Hepple, 2000) and that teachers tend to be practitioners (Jennison, 2013). Whereas students in the UK will be notionally 18, and have not acquired the graduate attributes which their US counterparts already possess (Daniels and



Brooker,2014). Furthermore, unlike UK students, there is unlikely to be a structured programme of learning vocational for US Law school graduates other than through their Legal Clinic. In the UK, the vocational aspect of training is carried out in an academic environment where students are assessed on an outcomes-based mechanism. Not all Law schools in the UK are equipped with Legal Clinics, where students see live or simulated clients and in the UK; this has been seen as beyond the academic law degree curriculum (Cownie, 2011).

The gap is therefore evident; the Law degree in the UK meets much wider needs developing graduate attributes that students in the US already possess. Whilst we can gain an understanding of what works in aspects of US education, it may be unrealistic for law teachers in the UK to expect that the same practices work without revision, the students are different, the traditions and the profession are different.

### **3.6 Teacher development in HE**

In chapter 2, I explored the development of teacher education within HE and the rise of greater accountability within HEIs for the quality of and excellence in teaching practices. Vermunt and Verloop (1999, p.3) indicate that, “teaching does not automatically lead to learning”. However, what a teacher does or does not do may affect the way the learners choose to engage with the subject. Blair (2013, p.23) comments that “teaching influences learning and the type of teaching influences that type of learning that occurs”, reaffirming Kember’s (2000) views that the role of the teacher affects the learning process fundamentally.

Hénard and Roseveare (2012) indicate that the academic profession and its development provide crucial opportunities to filter ideas and practices across different disciplines. Burke (2015) indicates that exploring and developing teaching and learning becomes increasingly important. Therefore, it is important to consider what skills and knowledge teachers will need to develop to carry out this role. Kotzé and Gravett (2013, p.3) suggest that for many students, the role of their teacher and the choices they make “influence generations of law students”; therefore, seeking to explore how they carry out this pivotal role is worthy of deeper consideration. However,

it is evident that there are very few texts, which ally teaching theory with Legal education, and even less with developing teacher education to provide teaching excellence. In the following sections, different approaches to teaching and learning are evaluated and concerns about their application within the classroom are also considered.

### **3.7 Evolving HE law teaching**

Kennedy (1994) suggested that there had been little or no desire to change teaching methods; yet Laski (1954, p.1156) said about the LSE:

The whole system of teaching law here is thoroughly bad; the lack of any recognition for the barristers who become professors of law means that outside one or two posts like the Vinerian professorship [in Oxford] the law teachers are a very inferior set of people who mainly teach because they cannot make a success of the bar.

This condemnation of law teachers identifies three issues; firstly, that it is apparent that the criticism focuses on teaching for professional development; secondly that it suggests that successful practitioners are the best teachers and finally that it emphasises the schism between Profession and Academia.

Traditional teaching strategies frequently found within undergraduate law classrooms are based on approaches that have been practised within law schools in the UK for some considerable time (Hepple, 1996; Kennedy and Carrington, 1994; Maharg, 2011; Twining, 2011). They are based on the Langdellian system of teaching, which was based on an economic model of teaching, which focused on concepts familiar to HEIs today - large class sizes, few teachers and reliance on case and textbook based delivery (Kimball, 2009).

#### **3.7.1 American influence on HE teaching**

As a result the practices, which were developed and remain the US tradition, relate to postgraduate level and provide integration of academic knowledge of the law as well as theory and practice (Hyland and Kilcommins, 2009). The courses are

therefore different in terms of content, teacher and student, yet the influence of Langdell in particular remains within law schools in England and Wales.

Langdell, Dean of Harvard Law School and Dewey, an educationalist, proposed two very different methods of teaching law. Langdell's approach was driven by both the high demand for the course and limited supply of willing and able teachers (Maharg, 2007). Using teacher-centred teaching methods focused on scientific analysis of existing cases (Llewellyn, 1948-49). Students were required to access casebooks, prepared and published by the teachers that focused on key legal decisions – these were discussed in a Socratic way in lectures and then further considered in smaller seminars with problem-based scenarios for consideration. Control of the curriculum was with the teacher (Kimball, 2006). This form of scientific method to the law provided certainty and developed a common approach to teaching which purportedly encouraged students to “think like a lawyer” (Manne, 2014). The advantages of this approach were clear, it was cost-effective, lots of students to one teacher, consistency in teaching was evident, materials were produced and common standards of knowledge were repeated.

While it might appear a sound economic model of teaching, there were significant areas of concern. It produced a static curriculum, which meant that students were often lacking in new knowledge and new cases (Lloyd, 2014). The implication of this was the student's ability to apply the law from one studied decision to another was limited and “...has stifled them in learning how to act and respond like a lawyer to real client situations” (Jennison, 2015, p.672). In short, that in failing to link learned decisions with legal practice the blend of theory and practice was never addressed in terms of teaching or learning.

Dewey's approach was very different and focused on smaller class sizes, student and technical with a more mechanistic approach applying “the factory school “method” Dewey (1904, p32). Unlike Langdell, Dewey's approach was with knowledge interlinked to skills and practice. Dewey was keen to develop a teaching method, which broke down the barriers between teachers and student, by creating as Bernstein (1998, p.77) suggests a ‘transactional relationship’, As Ferris (2009, p.112) indicates Dewey's:

...understanding of the learner and the learning process allows legal scholars to approach the necessary task of curriculum renewal with ideas of how change might improve, rather than simply disrupt, legal teaching

Doctrinal teaching reinforces the control, which the teacher has on learning content and outcomes, and this affirms teacher authority and autonomy over the learning experience. In creating this control over learning, Kimball (2009) asserts teachers exerted a scientific and analytical approach in their teaching and analysis of case law. This reinforced the gap between practice and academic study of law (Manne, 2014). Langdell's approach prevailed, as it enabled universities to recruit high numbers, with minimal staff overheads (Maharg, 2007). Whereas Dewey's factory method was expensive in terms of materials and human resources at a time of economic decline. It was apparent that universities were perhaps unwilling to commit their limited budgets (Llewellyn, 1948-49).

### **3.7.2 *Retreat from Langdell***

As a result of the concerns, which had been bubbling under the surface of US Legal education, challenges on the reliance on Langdellian teaching began to emerge (Shulman, 1987). The Carnegie (1985) and Arthurs' (1983) reports indicated that casebook methods were deprofessionalising teachers as well as limiting students' ability to think critically and reason beyond the classroom and the curriculum (Jennison, 2015). Whilst it was recognised that these limitations needed to be addressed not just to improve the profession, there was the ever present factor of ratings and competition amongst US Higher education (Jennison, 2013). Success and higher rankings would ensure continued graduate recruitment and progression, so a retreat from the doctrinal (casebook) method appeared necessary, as was a change in the curriculum content.

US Law schools established Legal Clinics which were supported by part-time law teachers (Chemerinsky, 2011). Fundamental reviews of US Legal education such as the Carnegie Report and the 2007 Best practices Review, sought to reconnect law teaching to practice, bringing together once again the professional and academic elements of legal study. It is unclear whether the American experience of reform has been anything more than an exercise (Lloyd, 2014). What is evident is that the Langdellian method affected not only the method of teaching but also the curriculum

design and content of the law programmes. However, the reconnection with practice has meant that changes have occurred in the curriculum, but very little has occurred in the development of teaching strategies meaning that lectures and seminars are still favoured at the initial stages of teaching. Attempts to encourage Law schools to look at different sector approaches were largely ignored, favouring the development of clinical Legal education programmes to address professional skills gaps.

The application of doctrinal teaching strategies in England and Wales had a similar impact on learning, using the casebook method provided curriculum content, which was identifiable, and concise which was advantageous to students and teachers alike. It ensured, however, that the law and its teaching remained disconnected from the profession (Sugarman, 2011). As a result, no matter how the degree was delivered the profession refused to accredit the University degree as effective preparation for professional practice. Therefore, whilst HE accepted lectures and Socratic teaching methods as the academic approach to learning the law, in terms of legal professional education it failed to blend the theory with practice, vital to effective practice.

Whereas Dewey's method was labour and teacher intensive, it appears more connected to professional expectations of practice-based learning (Maharg, 2007). It failed to get support within HE in England and Wales. (Llewellyn, 1948-49; Baron and Corbin, 2012). As Eraut (1994) reflects, this sort of vocational approach focuses on deeper learning and transformation that HE is expected to provide but which places practice knowledge at its heart. Once again, the differences between the Higher education and Legal education are highlighted. Each influenced teaching theory and practices, which in turn linked to different disciplinary traditions. Where the role of the teacher is to provide learning experiences with Dewey appearing to have a far greater influence on the professional vocational sector teaching strategy, but for undergraduate LE, it appears that elements of Langdell remain relevant. However, the tensions that these approaches create when combined are evident in development of Clinical Legal education, where academic approaches to teaching and learning are applied within a practice-based environment (LETR, 2013).

### **3.7.3 Doctrinal Teaching**

Hall (2011) indicates that doctrinal teaching is separated into two approaches; Black Letter and Analytical law each with very different functions.

The Black Letter approach has been identified as being techno-centric, which focuses only on “teaching law as a series of black letter rules” (Butler and Madhloom, 2015, p.166). The student learns the specific “state of the law” (Hall, 2001, p 42). As such, it provides a very limited opportunity to encourage students to develop critical understanding of the principle being explained – it is perceived to be an unshakable premise.

Black Letter teaching is applied at the outset of a course or programme of learning; this means that students are introduced to a didactic teaching method that limits the opportunity to become both creative and critical learners. As a teacher-centred methodology Ribstein (2011a) suggests that it provides certain advantages: sessions can be taught to large groups, where a significant amount of knowledge can be disseminated in a consistent way, however, what is not clear is the engagement of the learner in deep learning and its transformational effect.

The Analytical approach supports an outcome-based curriculum design, driven largely by instructionalist principles and is used where students are required to change and develop behaviours (Kaliannan and Chandran, 2012). In doing so, students develop their understanding of law which is driven by knowing and understanding how the law was applied in specific cases through analysing existing case law. They are expected to “think like lawyers” (Baron and Corbin, 2012, p.103) a clarion call in LE.

### **3.7.4 Signature pedagogy**

Shulman (2005,p.52) identifies analytical doctrinal teaching as “signature pedagogy”. It focuses on problem-solving skills, and relies on the assumption that law is applied consistently. As such, there is no need to look beyond the law. According to Highet (1950, p.88):

Here the teacher does not talk. He asks questions, and the pupil talks. But the questions are so arranged as to make pupil conscious of his own ignorance and guide him toward deeper truth, which he will hold all the more firmly because it has not been presented to him ready made but drawn out of his own mind

This approach relies on casebooks and case materials and was famously depicted in the drama “The Paper Chase” (1973) and “Legally Blonde “ (2001). In each of these films, students were selected and then directly challenged to explain the law, from their reading of casebooks by domineering autocratic lecturers. Fish (2008) holds that this method of teaching is appropriate, as it encourages an ‘objective’ understanding of the law- in that students are expected to distil principles, which are then applicable to any contextual environment.

However, it is much criticised as a teacher-centred approach to learning, where the teacher controls the information as Highet (1950) reflects, it reinforces the power of the teacher. Apel (2011b) also suggests that using this approach in the early stages of Legal education reinforces the perception that the casebook law is right. Further, it is unreasonable to expect students to have the depth of knowledge or reasoning skills to question the law, which is set out as an absolute. As a result, it encourages a neutral analysis of the law, which means that the opportunity to develop the language of critique and reform is missed (Twining, 1997).

Secondly, it creates knowledge in isolation. According to Apel (2011, p.701), “Reliance on the casebook method is the hallmark of traditional LE, part of its “signature pedagogy” and is “a passive way of learning that removes the student as far as possible from the realities of law practice”. Whilst this presupposes that learners want to go on to practice, which is another question, the key here is that learning is passive. As Ribstein (2011b) suggests this removes the student from the process of learning about the purpose of the law.

As Liu (2012) indicates this also has practical implications for the teacher, where they are not used to the extent of this control within the classroom as well as curriculum. Twining (1997) further asserts there are issues of contextual management and content that is limited, often old and excerpt focused (Leighton, 2012). Johnstone

*et al.* (1998) and Trowler (2001) also indicate that when teaching is carried out in lectures, there are limited ways to assess just what type of learning is occurring. The development and use of modular based programmes (Goldschmid and Goldschmid, 1973) which are designed to support individual student learning were expected to create opportunities to build skills and knowledge incrementally.

The role of the student becomes more relevant and apparent in their interaction with content and as (Richardson and Radloff, 2014) suggest the value of this is often affected by the relationship with the teacher. In developing building blocks for students to gain knowledge (Boyer,1990) indicated that teachers have a responsibility to understand not only the content they are delivering but also to build bridges with students. The implication of this is that teachers need to be prepared to move beyond traditional teaching practices to support a collaborative approach to learning. However, it is not clear just how this has been adapted to teaching law as it is still taught through lecture and workshops, with few opportunities to develop in-depth detailed understandings. Thornton (2012) and Stolker (2015) suggest that there has been little willingness to move beyond traditional teaching in Legal education. However, where there does appear to be a willingness to develop new teaching approaches is where the law is contextualised.

I shall now turn to explore new methods and perspectives in law teaching which reflect how legal educators have responded to the policy drivers' challenges, which were identified in chapter 2 above. In doing so, it becomes clear that opportunities to develop excellence in teaching practices appear linked to approaches that contextualise undergraduate law teaching.

## **3.8 New Ideas in teaching law**

### **3.8.1 *Socio-legal approaches (SLA)***

There has been a significant growth in the interest in widening the way in which law is identified; in many ways, this is part of the movement to academise law. Its rise encourages teachers to broaden and deepen their understanding as well as



application of law in context (Guth, 2014). The approach is designed to re-draw the way in which students acquire and apply their understanding. In developing a social legal approach this encourages *understanding about* the law, whereas, doctrinal law demands an *understanding of* the law. As such, the role of the teacher is to explore the law and its location within society.

This means that for SLA, the teachers' experiences as well as research will enhance the learning process (Kotzé and Gravett, 2013). In terms of law, this means that practitioners can use their skills, knowledge and to provide context to the law. These "war stories" or narrative pedagogy provide key learning moments where students can transfer the law into real client situations, reaching the "hidden curriculum" (Nelson and Trubek cited in Rowe *et al.* 2012, p.121).

SLA is built on the philosophical premise of legal realism, which opposes the rigidity of the positivist position of doctrinal law. It explains that law is "irrational, indeterminate, unpredictable, and contextual" (Hall, 2011, p.43). Therefore, when the socio-legal teachers consider strategies, they are therefore more likely to look at sources outside law to support their teaching and may include reference to different legal theories and concepts. However, the capacity to draw on different approaches to learning may be lost on those who have experienced the signature pedagogy described above.

Using this approach therefore provides an opportunity to deliver the programme using the teachers' experiences as well as the environment and culture (Cownie, 2004). This inevitably includes the organisation where the teachers work, but also the nature and type of teacher training they undertake (Feliú and Frazer, 2012; Liu, 2012; Broadbent and Sellman, 2013; Hobson and Morrison-Saunders, 2013).

### **3.8.2 Applied law teaching Bar and Solicitors programmes**

Legal education has been criticised for failing to produce work-ready graduates (Nathanson, 1994, LETR 2013) as explained earlier, there are few Law degrees which offer an integrated professional skills and practice study programme (Feliú and Frazer, 2012). Therefore, when lawyers indicate that their new trainees do not meet the standards they expect they are challenging both undergraduate and postgraduate programmes there is another layer of professional education that they complete post-

graduation. The implication for HEIs are that they are not meeting the expectations of employers, students and the HE market. Tomlinson *et al.* (2013) suggest this means that HEIs should focus on ensuring that their teachers can teach and design the courses, which provide sector relevant skills as well as knowledge. This approach has resonance with new universities and CHE as their course are likely to include legal skills, Government policies (DBIS, 2012.) and professional sector (LETR, 2013).

Although teachers need to have a comprehensive knowledge of the law using applied teaching means, context, content and wider socio-legal understandings are combined to ensure that the law can be understood and fairly applied. It therefore expects expertise in planning, preparation and of course teaching to ensure that learning needs are met across each area. I explain four of the more well-known methods below.

### **3.8.3 Problem-based learning (PBL)**

The term problem-based learning has evolved across different discipline areas, but mainly derived from medical and business education (Jennison, 2013). Students engage in diverse and potentially complex problem-solving activities which are designed by their teachers whilst they work according to (Hung, 2011) in complex learning environments.

In medical PBL, students observe, evaluate and then, when ready, come to a decision diagnosis, treatment options and outcomes (Li, 2013). The students have already obtained sufficient medical knowledge to allow them to come to an informed decision. When they approach 'real' clients, they will have already had some role-play or simulated client activity, which prepares them for live client problem solving. Whilst Legal education is often linked to a medical model of learning and students are expected to be able to answer an examination question that relates to a likely real-life legal question (Grimes, 2014). However, not all Law schools have access to a Law Clinic nor a simulated client experience, and so this means that their experience is somewhat differentiated from their medical counterparts.

In business school problem-based learning models, students work on case histories and develop their problem-solving skills through the analysis of existing solutions. Learning occurs in groups, which provides a wider scope for development

and construction of understanding than when the student works on their own. The premise of collegiality and criticality is co-constructed with colleagues, which also provides for personal as well as knowledge development. However, if Legal education is designed to support and provide a route to a legal career, it could be suggested that this group approach to learning does not provide students with an individual, autonomous understanding of the Law. Students are, after all, expected to think like **A** lawyer, rather than rely on a group to help them come to their decision (Clough and Shorter, 2015).

In terms of undergraduate Legal education, what appears to have evolved are two very distinctive forms of PBL, which provide different teaching and learning routes and opportunities. The first I shall designate as problem based learning which relies on teacher created client scenarios, the second, focuses on client-based issues and development is practice focused, I shall explore how these are differentiated but still linked to student centred learning.

Problem-based learning changes the dynamic of a formal taught session where the teacher is in control of the learning experience- where teaching is focused on transactional aspects of law, such as a contract dispute (Boud and Feletti, 1997). It focuses on the development of the students own decision-making skills combined with application of law to complex situations. In doing so, it appears to bridge the gap between case law and real life (Sylvester *et al.*, 2014). Yet it, like doctrinal law has some specific problems in its introduction to students. Firstly, the students are expected to learn through problem-solving and so they are expected to navigate complex areas of law, and to come to a clear conclusion (Barneveld and Strobel, 2009). There are concerns that a real understanding of the subject is placed secondary to the finding of a solution. Secondly, that the role of the teacher is one of facilitator rather than controller of the learning process (Boud and Feletti, 1997). As with the doctrinal approach it appears that success is dependent on the capacity of the student, rather than the teaching they receive (Martin, 2003). However, Barneveld and Strobel (2009) indicate that both teachers and students need to be instructed in the PBL process. Whilst this may seem organisationally unusual, (one would assume that most people know how to listen and take notes), talking about learning and teaching creates a rich vein of discourse that promotes professional behaviour. It therefore requires students

to be shown how to learn in this way and for teachers to develop their skills, which go beyond traditional teaching methods.

Winjen *et al.* (2017) indicate that although this approach may support scaffolded and situated learning experiences; there are some real concerns about the capacity of teachers to plan the curriculum and activities carefully. They remark that because of the importance of the teacher in this process that “serious attention is given to teacher training before the implementation” Winjen *et al.* (2017, p3) and further that ongoing training should be made available to address any concerns which arise during the teaching sessions. In organisational and practical terms, this places significant burden on teaching development, but also requires that the trainers have a clear understanding of the reasons and methods of teaching (Babacan and Babacan, 2015).

Practical elements of the PBL scenario reflect the multi-layered nature of legal problems, which is again beneficial in terms of developing softer, less easily measured skills. However, as Hung (2011) reflects, this also creates challenges where human factors such as student and teacher engagement, may impact on the latter’s confidence and competence in setting tasks. Kirschner *et al.* (2006) suggest that for problem-solving PBL, students make connections with their learning at a deeper-seated level and that for developing professional and practice-ready skills; PBL is more effective than traditional teaching mechanisms. However, there is a clear note of caution, students and teachers need to learn how to do it and need to design learning activities carefully. If this does not happen then there is inconsistency as well as weak learning (Barneveld and Strobel, 2009), when applied in an academic subject context.

#### **3.8.4 Practice-focused teaching**

Practice-focused teaching and learning within law can be separated into two different approaches, each offering different forms of integration of academic and practice knowledge, drawing on principles of experiential learning Eraut (2002) examined how these concepts could scaffold practice based learning. These can be loosely defined as client facing: clinical (real-life) and simulated learning (Perlin *et al.*, 2008) and sector facing: where programmes address aspects of legal practice

management and innovation, such as Northumbria University's Innovation, creativity and entrepreneurship in legal practice module or where there is an integrated vocational qualification.

In both cases, the focus of the learning experience is student-centred, with the teacher in most cases providing strategies designed to support a student's understanding of the law, but also legal practice. Both have similar aims and objectives: to develop students' understanding of practice, client skills as well as ability to transform complex law into accessible knowledge and to work within a competitive sector that is governed by academic, professional and vocational paradigms. The combination of academic, professional and vocational teaching strategies requires investment in research, practice and exploration, which is not easy to come by (Perlin *et al.*, 2008).

The development of learning theory so far as it relates to practice-focused education in the UK is limited. However, this is growing as a result of teacher-led development of journals such as the International Journal of Clinical Legal education and conference pathways. They draw on vocational learning and professional learning theories. In addressing these areas, I explore the principles of each, and in doing so, draw together common understandings to identify the challenges that the law teachers face.

### **3.8.5 *Simulated learning***

This process can be driven by a range of activities, such as moots – or mock trials, other activities that focus on the transactional nature of law, such as client interviewing, and negotiations. The advantage of these processes is that they are practically oriented and have a flavour of 'real' law (LETR, 2013). They therefore provide an opportunity for students to move beyond their casebooks and address issues, which are real life. As with PBL above, the process is within a controlled environment, unlike PBL the risks in terms of the students are low, in that the safety net of the tutor are present throughout. For the teacher, the application of the law to the scenario is consistent and therefore the outcome can be assessed in the conventional way.

### **3.8.6 Clinical Legal education – live client work**

Marson (2005, p.30) indicates that this type of Legal education is vital to ensure that students can gain:

... an understanding of the legal environment which awaits them upon graduation and as a means to instil professional values and a sensitivity to the concept of justice.

Its popularity within law schools is mixed; as Marson (2005) indicates, it provides a quasi-training experience, which embeds professional as well as academic knowledge. It is therefore reliant on teachers with the skills and knowledge of both academic law in-depth as well as practice (Katz, 2014). Criticisms of this approach to teaching are focused on costs and safety, in relation to assuring that the advice given to the client is accurate and right in the law (Bezuidenhout and Karels, 2014). However, what is evident is that where students wish to pursue a career in law this method of learning can provide them with practice and practical skills, which would not appear in doctrinal or socio- legal methods of learning.

## **3.9 The Teacher**

In the middle of these tensions are teachers, who are often pulled and pushed into meeting objectives designed with policy compliance in mind. Teachers are expected to balance professional outcomes-based education and strategic positioning of their HEI whilst maintaining academic challenges (Sommerlad *et al.*, 2015).

It is evident that the expectations envisaged within curriculum change require new ways of instructional, demanding delivery. The need to offer learning in ways that are innovative and creative, but also linked to the world of work, which many law teachers have not faced (Fasterling, 2008). The vocational response to curriculum reform challenges designers, teachers and students to rethink how they teach and create learning opportunities. Unlike substantive law subjects such as Contract, Criminal and Tort law, practice-focused contextualised law teaching encompasses all aspects of law as well as key communication and soft skills, such as empathy that students need

to demonstrate wherever their career lies (Fasterling, 2009; Johnson, 2013; Bliss *et al.*, 2014).

The reforms within HE as a whole, let alone within the law curriculum indicate that Twining's suggestions that teachers have five broad functions as educator, lawyer, scholar administrator/politician, may still be accurate. However, Twining (2014) also posited that these roles are realigned over time, depending when and where the teacher is in their career path. The demands of HE reform appear to suggest that teachers need to possess all of these characteristics and more from the outset of their career. Furthermore, there is limited opportunity to take time to design effective materials and to build good teaching practices that provide effective and meaningful learning. The implication is further that teaching and learning is deprioritised in favour of developing skills that the wider HEI demands of the new teacher. As such, it appears that the traditional role of a teacher in HE, who focuses on teaching, researching and a bit of administration, may now no longer hold true. As a result, their ability to deliver the programme they want is limited by the pressures placed on their changing role within the HEI.

### **3.10 Conclusions**

As can be seen from this chapter, the development of Legal education has been confused as a result of tensions between the legal profession as well as reforms within Higher education. Attempts at defining a joint curriculum that supports professional sector expectations as well as the challenges of developing law as a pure academic discipline have yet to provide a clear understanding of the function of the undergraduate law degree. The development of the subject benchmark from 2007 has seen a subtle but recognisable change in relation to the wider skills students are expected to gain from the course.

The outcome of this is that the undergraduate experience has provided teachers with an opportunity to draw on a rich variety of teaching methods to support learning. However, it is clear that the willingness to develop new teaching methodologies appears limited to clinical and practice focused teaching. Whereas attempts to develop

diverse teaching strategies within the “academic” programmes appear lost in the literature and within reform. This appears to reflect the transformation from academic-centred learning, to a more practice-rich approach to learning within HE. There is little doubt that the depth and variety of the undergraduate curriculum supports student choice in terms of how the programmes are taught. In the next chapter, I explore the literature that surrounds teacher agency and change mechanisms. This provides a framework to navigate the teacher role within HE and explores the implications of reform on the nature of teaching within HE.



## **CHAPTER 4 Teacher agency and change mechanisms**

### **4.1 Introduction**

In this chapter, I explore the development of teacher agency within Higher education, examining the way in which teacher agency can transform and has been transformed by policy and practice within HEIs. I then consider the different mechanisms that have played a part in teaching development and finally examine different theoretical elements to the development of teaching within HE

### **4.2 Agency**

#### ***4.2.1 Agency and identity***

In this section, I explore the relationship between teacher agency and identity and consider their impact on teacher participation in the construction of their role. Identity derives from the tools and skills that the teachers possess; whereas agency can be how, and in what ways, teachers choose whether to use or indeed to develop them.

The concept of agency has been rooted in social sciences, but is not limited to this domain (Archer, 2003; Giddens, 1998). It is often applied within educational literature to the implications in terms of what they do in the classroom rather than within the organisation (Sinclair, 1997; Carrillo, 2011). As Yokoyama (2013) indicates, agency within HE can also be divided into academic agents – those who teach and are linked with students and non-academic agents – those who manage and facilitate. It is not clear that this separation is consistent but does reflect that there is a differentiated agential role within HE. Whitchurch (2012) suggests that the implication of this change in role of the teacher is to focus on mediating issues and decision making which cross academic and organisational boundaries. Teachers within HE have increasingly reflected that they are expected to carry out organisational roles, which detract from their development as teachers as well as researchers. The implication of this third

profession is that it connects with the application of teachers' emerging ecological agency, which supports the wider HEI organisational need.

Eteläpelto *et al.* (2013, p.46) suggest that agency means “active striving, taking initiatives, or having an influence on one’s own life situation” and is more than a sociological concept; rather as Biesta *et al.* (2015) contend, it involves an issue of social action. This provides a route to explore teacher agency in terms of not only their skills - which can be problematic as they focus on the individual actions - but also what they do with them. As Priestley (2015) indicates agency has an emerging concept based upon context, thereby reflecting not only the individual but also where the individual finds themselves.

Archer (1992) indicates that agency can be understood through exploring structures and cultures where individuals find themselves. Emirbayer and Mische (1998) building on Archer (1992) indicate that an ecological model of agency can only be understood when considered in terms of the past, present and the future. This “chordal triad” (Emirbayer and Mische, 1998: p.970) has resonance in the way the teacher engages with change and as Tomlinson *et al.* (2013) indicate that they are bound by situations as well as experience which are temporally linked.

Although Biesta *et al.* (2015) identify a framework for understanding agency, in context, Vähäsantanen (2015) explores these ecological criteria in terms of professional agency. Robinson (2012, p.234) describes this as:

...control is achieved by a group of teachers, and is reliant upon the dialogical relationship between external constraints and structures and the political and economic environment, in balance with the individual and collective life experiences of the group.

The assumption is that this agency is applied individually and collectively and, as Vähäsantanen (2015) suggests, that this also has three spheres, each temporally influenced. The first indicates the power that the individuals have to, and the opportunity to, influence their work; this could be through negotiating terms of contracts often exercised prior to employment (Vähäsantanen, 2015). It may be exercised in terms of curriculum content development, where they bring an expertise

to the law school. The second focuses on the decisions regarding whether to engage with reforms and generally making changes work within their work environment. This is again important in terms of teachers' conscious stance to reform and the deliberate activities that they take either to accept change or to challenge it. In either way, a teacher demonstrates agency. However, the third reflects the importance of the relationship between identity and agency. Here, it is necessary to recognise that the relevance of socio-cultural, vocational and historical practices exists for both agency and identity (Biesta *et al.*, 2015).

The nature of law teachers' professional identity is multi-tiered; they are identified as academics and research-driven or professional lawyers, or both, each based on their individual skills and interests, views and individual aspirations (Sherr 1998). Unlike traditional HE teachers, it is suggested that law teachers, with defined discipline and subject-centred socio-cultural practices have additional layers to their identity. Therefore, how they choose to engage – demonstrate their agency – with reforms is likely to be affected by personal and professional histories and how they decide if they can renegotiate these identities. Sabri (2010) and Henkel (2000) affirmed that academic identity is alive and well; however, because of structural or cultural developments within HE, it was evident that as Vongalis- Macrow (2007, p.430) indicates a “ new form of teacher was in the making, but the question of how that form was taking shape and place remains uncertain”.

#### **4.2.2 Agency and culture within Higher education institutions**

Canaan (2001) reflects that the reconfiguration of HE has led to fundamental shifts in HEI culture and structure. As a result, it is likely that this has affected teacher agency (Emirbayer and Mische, 1998). The role of a teacher within HE has become more complex as Blaxter (1998), Winberg (2014) and Gale (2011) indicate to encompass more centralised, stratified and bureaucratic functions that teachers appeared little equipped for, or secure in. This imposition of a top-down management structure suggests that, as Morrish (2010, p.6) indicated, academics have found that:

...their careers have unfolded in an era of constant crisis accompanied by urgent calls for 'change', 'efficiency' and 'modernization'.

This reflects that national policy practices also sought a change in the power dynamic between HEIs, teachers and students, which were driven by the development of a student-centred curriculum. However, Archer (2003) suggests this also means that teachers can decide how to adapt or engage with the reforms, creating opportunities for them to influence cultural or structural change (Canaan and Shumar, 2008). Therefore, when organisational and managerial changes affect teachers, such as setting out new roles, guidelines and expectations, these material transitions affect how they can use their agency in relation to the organisation. Archer (1990) reflects that agency is not something that is static; as Yokoyama (2008) indicated, agency is always present but the individual decides how and where to use it.

Teachers can hold both individual and collective agency, which means that their engagement can be individual as in perhaps their academic autonomy (Garratt and Hammersley-Fletcher, 2009) or a part of a larger group action. This can be as part of learning networks or discipline groups and this social agency often plays a significant role in cultural change in organisations (Biesta *et al.*, 2015). It also reflects that when teachers access these networks, they can also provide opportunities for integration within the HEI and the teaching practices of the law school.

New teachers, however, also have agency, and this is more likely to be individually used when negotiating contractual terms; however, as they do not yet know Bourdieu's (1998, p.29) "rules of the game", they have very limited agency at the start of lived experience of being an academic. As will be seen later, this can and does, change over time.

When there is an accepted collective understanding of the role of a teacher (Gale, 2011), it sets the context of the teacher agency. In law, the teaching role was expected to involve, lawyering skills and practice, scholarly activity, politician/administrator and teaching activities (Twining, 2011). The anticipation is that different emphasis is placed on each depending on the stage of career and location of the teacher. Discipline-specific discussion about the teaching role is linked to the debates about teacher identity, which is largely constructed around the individual (Winter, 2009). On the other hand, teacher agency, as Bandura (2001) identifies, is explained as the actions of an individual that are influenced by planning, intention, motivation and self-regulation.

Archer (2003) contends that the important factors that affect agency include the wider environment and the rules that they learn to use and adapt. This means that an individual can have different forms of agency, such as existential, where teachers look at their potential and capacity for self-development; pragmatic where teachers do what is necessary when change occurs; and identity, where they rely on patterns of habit. In these forms, individuals become socially accountable for what they do and as such are affected by the restrictions that their social culture sets. On the other hand, the final broad category of agency is life course, which is more about the individuals taking a decision to control their actions and directions; in many ways, this might be described as ambition.

Linked to the development of agency is the way in which new teachers can also draw on symbolic capital. Deem and Lucas (2007) refer to three types of capital – economic, social and cultural - which can be developed whilst in HE. For new teachers their development as teachers and their integration within the HEI will focus on how they can build social capital – the networks, which will support how they learn how to teach (Stoll *et al.*, 2006). However, for HEIs, the development of economic and cultural capital, which focus on external credibility, is perhaps their priority to sustain and grow their HE reputation. I explore how teachers develop their social agency through communities of practice and teacher training later in this chapter at para 4.6.

Understanding the role of a teacher can be personal, divergent and dependent on individual factors that often go beyond the foresight of the recruiters (Clegg, 2008). It is therefore more than merely a job description and role analysis.

#### **4.2.3 Organisational Agency and the Higher education Institutions**

As Blaxter *et al.* (1998) suggest, policy shifts challenged the security of the social compact (Maton, 2005) and led to practices that attempted to balance economic realities with traditional perspectives within HE. Whilst policy appeared to affirm that academic autonomy had been once guaranteed, the implication of changes in HE structure cast doubt on this (Kogan *et al.*, 2000). As Shattock (2006, p.139) confirms:

The rhetoric of current policy is to encourage greater institutional autonomy through a more marketised funding regime but the result may be a sector more subordinated to government imperatives.

It was also clear that the structure of HE and HEIs was changing to meet different expectations (Kogan *et al.*, 2006). Obvious examples are of development related to the establishment of management structures that reduced the role of the academics in organisational decision-making. These management mechanisms were designed to look beyond the ambition of the academics "...who run them in their own interests" (Cave *et al.*, 1992a, p.82). They began to change the structure of HEIs to meet different sets of goals and objectives.

In this context, organisational agency becomes a factor that reflects how individual agency could be managed. Stolker (2015) suggests that this is defined as positional – how the organisation is structured and managed to achieve its objectives – and secondly, relational – how the university prioritises knowledge for the sake of knowledge over other factors such as economic gain / social mobility, which are more likely to affect teaching.

Where there is a reduction in both aspects of agency, HEIs become subject to external pressures, which can restrict how teachers exercise their agency, and this affects their ability to deliver change. As a result, there is a reprioritisation at the organisational level, which causes ripples across the HEI, departments and teaching staff. An example is the impact of changes in funding methods led by Education Reform Act 1988, a result of which universities needed to be more aware of setting goals and objectives and the need to meet them. Therefore, they had to start making overall aims clearer, because of which teachers faced a change in how they could engage with change and felt threatened. This was also not helped by policy decisions that were based on a version of autonomy, which was inconsistent (DBIS, 2011, p.70), where DBIS indicated that HEI providers were recognised as autonomous, but at the same time accountable to students. This reflects a policy that failed to grasp what autonomy meant to teachers and universities:

We know that the unique success of our leading institutions owes much to their historic freedom to determine their own mission and pursue it energetically and creatively without the burdens of excessive compliance. We want universities to be autonomous and primarily accountable to students. This creates the room to cut back unnecessary red tape (DBIS, 2011, para. 6.17, p.70).

As a result, HEIs and universities in particular were faced with external pressures that affected their agency and how they would engage within the HE structure (Cheng, 2012). Blaxter *et al.* (1998) indicate that these policies led to a sea change in HEI structure with a growing managerialism and audit culture, which reinforced teachers fears that traditional values of HE would be limited (Blythman *et al.*, 2002).

#### **4.2.4 Colleges of Higher education (CHE) autonomy**

CHE have never had the same amount of organisational autonomy as universities; at present, only a few may award their own degrees and tend to work in partnership, awarding degrees from their partner HEI (Feather, 2011a). There is no significant culture of research or indeed embedded “HEness“( Lea and Simmons,2012,p1), which is found in universities. Indeed, the ethos of HE in a non-university environment has been described as having a:

...traditional focus of the development of knowledge and skills which have been conceived elsewhere; where the knowledge serves the more immediate extrinsic needs of achieving a credential to move on (Lea and Simmons, 2012, p.185).

As such, CHE on the face of these contentions can never have the same amount of control and decision-making about curriculum as universities. However, this does not mean that they have no desire to create individual programmes at undergraduate level; it does suggest that in terms of knowledge capital, CHE may find that they do not have the same opportunities to develop and that students are unlikely to have the same experiences at the undergraduate level (Creasy, 2012).

### **4.3 Applying agency**

The instability of HE is clear as explained in chapter 2 above; what is less evident is the depth of its effect on teachers’ roles (Parker, 2008; van den Bos and Brouwer, 2014; Raffe and Croxford, 2015).

#### **4.3.1 Working with the organisation**

According to Kogan (2000), a critical issue in relation to teachers using their agency is their inability or unwillingness; it is not clear which limits their engagement with change. However, when there is such limited engagement, policy-makers see teachers as “agents, self-interested and incapable of acting for the common good” (Sabri, 2010, p.202). This perception that teachers are resistant and unwilling to be involved in organisational change suggests that there are fundamental structural barriers that reduce opportunity for agency to be applied. Further, the different power positions that schools, faculties as well as teachers hold are often forgotten and this is likely to affect the reception which using agency has (Archer, 2008).

As has been explained earlier, teachers have been reluctant stakeholders in the development of the macro and meso visions for the law school (Sherr, 1998a). The focus of individual teachers is placed on what they can do in their micro-environment and that the failure to engage at the broader levels, organisationally as well as in terms of teaching development, becomes accepted but frustrating (Laine *et al.*, 2010).

#### **4.3.2 Teacher engagement in change**

There is an abundance of literature about the identity of the HE teacher, somewhat less on the reality of what they do with it. Hargreaves *et al.* (1996), Gale (2011) and Blaxter *et al.* (1998) indicate that professional agency (and with it autonomy) remains vital, which “is about the right to exercise professional judgment – rather than bureaucratic rule – in the process of providing a service” (Ahlbäck Öberg and Bringselius, 2015, p.502). This has been embedded within traditional HE along with five features – the priorities in a traditional HE according to Blaxter *et al.* (1998, p.294):

...teaching, researching and managing, plus writing and networking –which, in differing combinations, make up academic work and academic careers.

Gale (2011) suggests that each HEI sets individual and different types of demands on teachers’ role according to its own structure and culture and further, that they are dependent on its ambitions and strategies as set out in HE’s mission. The implication



of this is that the expectations for the new teacher and the lived experiences are very different.

Becher and Trowler (2001) explore academic autonomy indicating that each discipline creates 'disciplinary powers' and practices, which determine teaching and learning practices (Neuman, 2003) and from which teachers feel unable to deviate. The tribe and territory concepts work well with the principles of social learning and situated learning theory, in that they emphasise the relevance of community in determining what as well as how teachers develop within their specific learning community (Blaxter *et al.*, 1998). The importance of teacher involvement within their community provides an opportunity to grow their social capital that in turn supports the value teachers place upon it. The rise in learning and teacher networks and the awareness of such a disciplinary autonomy help to generate agency for the teachers; when these disappear, or reduce, agency also begins to change.

Becher and Trowler (2001) suggest that these tribes create clear territories that limit change and teacher development, so that they only meet clearly defined needs. When the territories change because of policy shifts, then opportunity for development occurs. The outcome for the teacher is that their role reflects the new environment, such as where departments merge, an increase in non-teaching roles, which may be very different to previous experiences (Foster, 2005). Further that because of continuing change, the work environment becomes more diverse and more open to additional changes. The introduction of new teaching technologies, changing organisational culture, ideologies and globalisation have been identified as catalysts for development, yet there is very little to indicate how HEIs support teachers in navigating these opportunities (Trowler, 2015).

As explained in chapter 2, economic and organisational factors, such as funding, quality assurance mechanisms and the National Student Survey, play an important role in underpinning accountability in HE (Cheng, 2012). As for the teachers, they face a range of changes in their own understanding of their role, which is not easily explained or defined. These relate not only to teaching but also to how they identify and engage as researchers, income creators and managers. It is also evident that new teachers are joining a system where there is low morale with the "...least satisfaction

with academic work of any of the countries in the survey” (Walker 2015, p.63). The opportunity therefore to find out how to encourage teachers to engage in change seems timely.

#### **4.3.3 Higher Education Role Analysis (HERA): Further Education Role Analysis (FERA)**

As Gordon (2003) suggests, HE reforms led to an informal redrawing of the role of the teacher but how these have affected teacher agency within their teaching as well as their wider roles is not clear. The reach of these changes for the law teacher, needs to consider the additional factor of the pressures placed on them by external regulatory bodies, to which other subject areas are not subject, such as the SRA<sup>13</sup>, or BSB<sup>14</sup>.

The use of HERA/ FERA<sup>15</sup> tools developed by ECC<sup>16</sup>—a consortium of HE providers—sets out the range of organisational and disciplinary demands for specific job roles. Therefore, the implication is that early career academics, who are newly appointed to HE posts, have already demonstrated a range of categories and skills that experienced teachers may not. These roles indicate a separation between teaching and non-teaching expectations.

The HERA/FERA job description model has been applied since 2005 (ECC, 2015). Its arrival was purported to enhance decision-making for recruitment and development HE employees. Its purpose was to streamline and homogenise decisions about departmental needs for new employees. The HERA/FERA process defines a series of 14 elements that structure the nature, extent and level of the role skills the organisation expects new employees to show.

What is apparent is that the factors make little reference to teaching or indeed disciplinary Practice-focused experience see below Table 4-1. It is therefore possible

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<sup>13</sup> SRA- Solicitors Regulation Authority

<sup>14</sup> BSB –Bar Standards Board

<sup>15</sup> HERA – Higher education Role Analysis FERA- Further Education Role Analysis

that applicants new to teaching will be perplexed that the skills the organisation prioritises focus on bureaucratic roles rather than teaching. The impact of this is that in using this common selection criterion, i.e. one that applies for all roles within HE, the teaching role has been levelled within an administrative process where the teacher is simply another employee (Department, 2015). The teacher role therefore appears fragmented within the HEI, with teachers expected to have a range of attributes beyond teaching, writing and researching (Gale,2011).

<b>Position on Criteria list</b>	<b>Criteria</b>
<b>1</b>	<b>Communication</b>
<b>2</b>	<b>Teamwork and Motivation</b>
<b>3</b>	<b>Liaison and Networking</b>
<b>4</b>	<b>Service Delivery</b>
<b>5</b>	<b>Decision Making Processes and Outcomes</b>
<b>6</b>	<b>Planning and Organising Resources</b>
<b>7</b>	<b>Initiative and Problem Solving</b>
<b>8</b>	<b>Analysis and Research</b>
<b>9</b>	<b>Sensory and Physical Demands</b>
<b>10</b>	<b>Work Environment</b>
<b>11</b>	<b>Pastoral Care and Welfare</b>
<b>12</b>	<b>Team Development</b>
<b>13</b>	<b>Teaching and Learning Support</b>
<b>14</b>	<b>Knowledge and Experience</b>

**Table 4-1 HERA criteria (ECC, 2015)**

The teacher role is increasingly defined through general organisational competences rather than specific expectations of a teacher – that of teaching, research and some administration (Croxford and Raffe, 2015). The effect of this suggests that teachers are required to be more attuned to delivering a product that meets the standards through the QAA process and performativity rather than the “pursuit of educational ideals, like personal autonomy or emancipation” (Marshall, 1999, p.310).

#### **4.4 Teaching Transitions**

HE policies on teaching practice centre around developing a student-centred approach within HE (Bok, 2003; van den Bos and Brouwer, 2014). Traditional methods of HE teaching are seen as being entrenched within the disciplines or subject (Shulman, 2005) and the idea of change is viewed as an attack on autonomy and

agency (Mathieson, 2011). Support for development through teaching practice or training has received little enthusiasm- unlike research (Cagliesi and Hawkes, 2015).

Opportunities to encourage change in teaching practice has also been encouraged by the development of the Scholarship of Teaching and Learning (Boyer, 1990). The link between scholarship and improving learning has always been subject to tensions (Henard,2012) , in particular where the sector has a very specific discipline-focused teaching approach. However, as Kreber (2015 p.1) reflects, “teaching without scholarship ... at the University level could be called bad teaching”. In a traditional context though, scholarship reflects the subject, not scholarship in teaching. However, the implications of the Teaching Excellence Framework may lead HEIs to fundamentally revisit this (Austin, 2002; Stes *et al.*, 2010; Spowart *et al.*, 2015).

#### **4.4.1 Developing Teaching**

Whilst there has been a recognition of the value of support to improve teaching, there has been resistance as to how this should take place (Laughton, 2003). Two models have appeared, one, which is focused on management and the other through informal organisational structures (Heinrich, 2013). However, what also became clear is that this desire was not equally felt within the academy and was seen as unnecessary and a challenge to HE teachers’ agency, professionalism and autonomy. Any change, especially one linked to added administration, personal non-subject focused work as well as bureaucracy, which appeared to offer no obvious benefit was met with resistance (Cagliesi and Hawkes, 2015). It was undoubtedly fuelled further because of the lack of status of teaching within HE. However, in some cases Bronkhorst *et al.* (2014b, p.82) suggest:

...some degree of friction and accompanying resistance to teacher education pedagogies seems to be unavoidable no matter what pedagogies are employed. The issue is how that friction can be used to support change in teacher education rather than diminish it.

#### **4.4.2 Learning and Teaching support networks (LTSN)**

Learning and Teaching Support Networks (LTSN) were loosely connected to subject disciplines, part of the QAA’s assessment programme (2013), and in 2004,

they were integrated into the HEA. There were 24 subject centres that were funded as three- and five-year projects, designed to cultivate, capture and share good practice in teaching and learning. The HEA was set up and funded with the intention, as Priestley (2003, p.178) indicated:

... to promote high quality learning and teaching and transfer good practice across disciplines.

The principle, based on Lave and Wenger's (1991) premise that collective Communities of Practice could support teachers and teaching where their organisational structure and culture was weak. Dearing and Kennedy (2004) indicate that there was no clear overarching structure for change, development or effective scholarship of teaching (SoTL). Further, that there were few centres or resources, which could support teacher development. HEIs were not carrying out this function; funding for research into teaching was inconsistent, and therefore, this national set of networks was important.

Natural anxieties about attacks on teacher autonomy seemed to be overtaken by the willingness to engage with the subject content (Williamson *et al.*, 2001). In fact, many saw this as a wider commitment to the discipline that enhanced teacher agency and provided a place for specialisms to be respected and built upon (Priestley, 2003). This led to the hope that this teacher-infused group would offer a sea change in teaching and learning across HEIs. Whilst it reinforced the social nature of teaching, which hitherto had been largely identified with school teaching (Dill, 2004), its impact in relation to increasing the quality and type of teacher education had been unclear. The anticipation was that this would provide a 'go to' source for teachers in developing their practice; however, it is not clear whether they led to significant changes within teacher development in a formal, tangible way.

It was anticipated that LTSNs, coupled with Dearing's (1997) curriculum reform proposals, would engage both HEIs and teachers in developing more student-centred approaches to learning (DBIS, 2011). In doing so, the space was cleared to redesign not only the teaching practices but also learning experiences within HEIs. It was anticipated that teacher training would encourage teachers to move away from traditional or discipline-centred delivery, however, it became evident that the lack of

relevant scholarship to show the way led to significant tensions (Parker, 2008). HEIs had been expected to find funding to take over the LTSNs when the central funding was removed (Trowler, 2014); however, this was not the case, and in most instances, LTSNs folded as formal entities when funding ran out in 2011.

The impact of this was that the opportunity to develop innovative curricula was limited by organisational overarching policies, which was led by cautious managerial decision-making that focused on short-term goals. The natural conservatism within HE to invest time and money in reform meant that teachers were resistant to engage with revisions, which placed unrewarded pressures on them (Evans, 2008). The opportunity for a cultural change in HE practices appeared to be faltering, with teachers using their agency to resist fundamental change.

#### **4.4.3 Higher Education Academy**

As indicated in chapter 3, teacher training within Legal education has been limited to generic teacher training or informal support mechanisms. Indeed, the opportunity for cohesive and detailed research into improving and developing legal education was also seen as weak and often likely to reinforce traditional pedagogical approaches (Kennedy and Carrington, 2004). Following the 1997 Dearing report, the HEA was created to formalise support for teacher education across Institutions. Its function was not to design qualifications but rather to accredit work-related performance (Stewart, 2014; Hibbert, 2015). Its centralising function was anticipated to also provide an opportunity to develop research into teaching.

A critical part of the HEA role is to develop a framework that would “improve the quality of teaching and learning support, and ultimately, to enhance students’ learning experience” (HEA, 2016, p.1). The introduction of the United Kingdom Professional Standards Framework following the Government White Paper in 2003 “The Future of Higher Education” focused on identifying values and practices within teaching in HEIs. As Peat (2014, p.3) comments, the value of the HEA fellowship process is “open to vigorous debate.” It does not by itself direct the applicants to any change in their practice, research activity or engagement with deep-seated learning about teaching and learning theory. Henard (2012) reinforced the need to foster teaching quality was critical for curriculum development and this needed time and planned support and

effective professional development. Critical to this development was effective dialogue within the HEI department. However, Hibbert (2016) reported that the impact of UKPSF standards had directly:

Changed the design of subject materials, the institutional framework for professional development and internal policies and strategy documents in many institutions.

Whilst this indicates that there has been some development in the benefit of using the HEA fellowship programme in improving material, there are concerns in relation to the survey data itself. As HE (2013) recognised that a significant proportion of the responses came from a small number of HEIs, it is important to take care when drawing broad conclusions about the success of the HEA process. HESA (2016) indicates that the take-up of HEA accreditation has become a measurable part of HE, which can contribute to identifying the take up of the HEA process.

However, there is evidence to indicate that acceptance of the HEA mechanisms is at a centralised managerial level and that this has not clearly filtered through to those that are directly involved in supporting teachers (Hibbert and Semler, 2016). However, as Parsons (2012) indicates there is a resistance which is present within teaching disciplines, there was a concern that formalising teacher development reduced opportunities for research and affected teaching commitments.

Further as Ashwin (2012, p.123) indicated, segregating teaching practice from discipline fails to understand that professionalism is “located in the relations between their disciplinary scholarship and their teaching, not simply in their teaching”. In effect, Ashwin (2012) referred to the benefits of the LTSN that were situated in the discipline areas as indicated earlier. Therefore, unless the HEA can encourage engagement in research across disciplines, it appears that the value of the HEA is more beneficial for the HEI rather than the teachers.

On the other hand, generic PGCE programmes focused on introducing new members of staff to basic educational methods and theories as a part of a university-wide approach to teaching (Wells, 2001). These programmes were often neither linked

to the department, nor did they include signature pedagogies and as a result were not well supported or developed within departments or individually.

#### **4.5 Mentoring and Higher Education Academy – Management approach**

An important strategy anticipated by the HEA process and LTSN<sup>17</sup> was that new teachers and existing teachers would build a mentoring framework that would support teacher development. As Heinrich (2013) suggests, when this was adopted as a formal management process, it creates tension in terms of the managerial role. The premise is to provide an initial understanding of the culture of the organisation, but also that this is a way to share significant amounts of professional information (Luna and Cullen, 1995).

However, when this mentor framework is applied to specific disciplines and involves senior staff as managers and mentors, the power relationship changes (Darwin, 2009). In cases where there are one-to-one relationships, it is not clear whether there is a benefit to either user (Darwin, 2009). It becomes evident also that HEIs who wish to use mentoring need to devote and develop time in terms of introducing it at this level, and therefore, few organisational structures and cultures can support this (Heinrich, 2013).

#### **4.6 Communities of Practice – Organisational approach**

It is well known that ad hoc teacher development continues through informal groups – explained as Communities of Practice (Lave, 1991), where those interested in supporting and mentoring can come together to share ideas and practices with others. Gordon (2003) reflects also that this sort of development is led by a cultural rather than an enforced process, and in HE, this provides yet another example of autonomy and self-organisation that reinforces the agency status of the teacher (Kember, 2009). Indeed this is connected Runhaar *et al.* (2013) that for some time

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<sup>17</sup> LTSN: learning and teacher support network

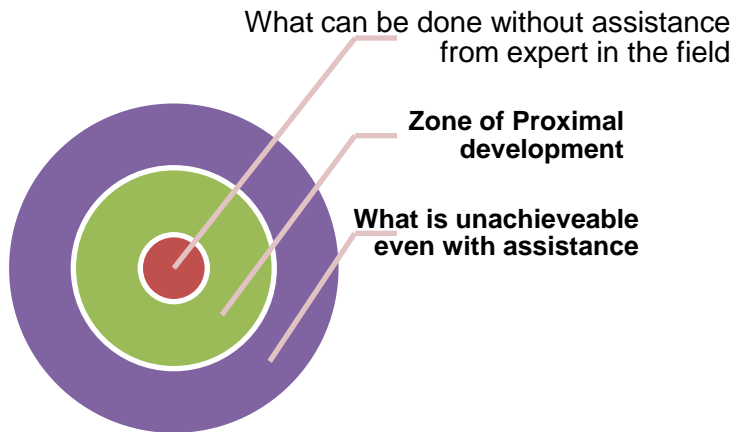


HEIs have been able to take advantage of the work which teachers do outside their job descriptions.

When COP are informal, it is difficult to identify or indeed to measure improvement of teaching in terms of impact, quality and sustainability. However, when there is a formalisation such as LTSN, the value in terms of motivation and social learning is important (Ashwin, 2015).

#### **4.7 Social learning theory (SLT)**

The methods that HE relies on to develop teachers is closely allied to SLT (Bandura, 1977; Arends, 2014). Here, new teachers learn how to teach using methods such as observation, informal mentoring approaches or through reflecting on and applying their own experience as a student (Lave, 1991; Hanna, 2013; McNicholl, 2013). The use of such informal processes creates opportunities for teachers to develop safely within their department with colleagues for support and can be explained in terms of situated and SLT, drawing on Vygotsky's (Warford, 2011) zone of proximal development (ZPD) to explain the transformation that the new teacher undergoes (Bruner, 1984) and the concept of legitimate peripheral participation (Lave, 1991). Here, the new members of a community – new teachers – can participate within the community at “the level of their current competence” Johnston (2012, p.563). In accepting new teachers in their way, they can begin to feel part of the HEI, but also part of a smaller more connected group. When this occurs, then this means that new teachers are able to consider how to negotiate their role within the group and therefore exercise their ecological agency.



**Figure 4-1 Zone of Proximal Development after Vygotsky (1986)**

In providing this safe place, teachers can begin to see how they can use their agency within the workplace. As indicated in Figure 4 1 above, the key here is that the development in the ZPD is not dependent on others, but is a part of a maturation process controlled and managed by the individual teacher. The principles of SLT as identified by Bandura (1977, p.11), suggest that:

...people are neither driven by inner forces nor buffeted by environmental stimuli. Rather, psychological functioning is explained in terms of a continuous reciprocal interaction of personal and environmental determinants

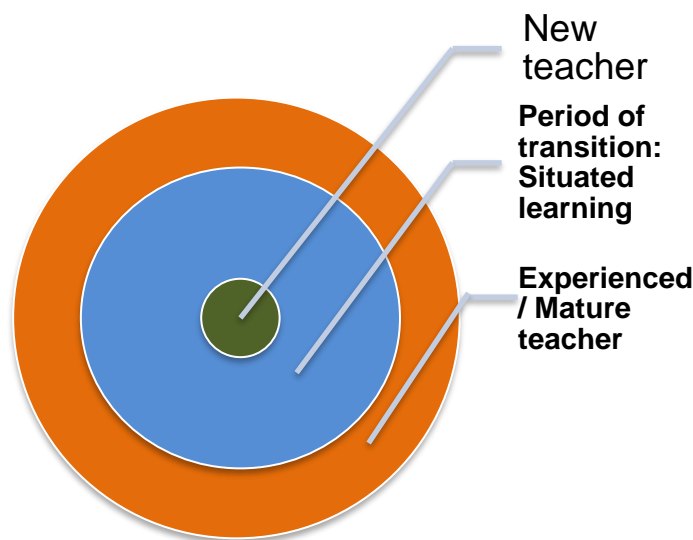
As such, SLT requires an active and iterative process of learning that encourages engagement with cognitive, behavioural and environmental influences. This form of learning is especially relevant where there is an informal environment that supports learning from peers and sector practices. It is, therefore, very relevant to teaching where there is a community involved in similar practices.

When there are such communities to support development and integration within the department, teachers move from Vygotsky's (Daniels, 2012) outsider to an insider by working and learning from more experienced others.

## 4.8 Situated learning Theory (SLT)

SLT requires a form of modelling to structure learning and understanding. It places greater emphasis on the location and in the case of teaching, the discipline from where the new member of staff is placed. As such, the development as a teacher becomes more focused on gaining an understanding of specific focused practices that occur within the community (Colley, 2005).

Integral to situated learning is the relationship between the environment, community and culture where the learning takes place (Korthagen, 2010). In this context, the informal process of professional learning that exists within HE reflects the influence of each element on the development of the new teacher. Where there is a supportive community new teachers are able to access relevant information and guidance about their environment as well as teaching practice. In doing so they also gain confidence in their ability to participate in their new working environment. An important factor that supports this participation is the interaction with COP; when the training and support is, clear and embedded within the department, the collaboration with colleagues is more likely to occur as indicated in Figure 4.2 below.



**Figure 4-2 Transition of new teacher**

What is evident in these practices is the self-organisation and the control over the different stages of development that the teacher demonstrates. However, the informality of this process is likely to limit its impact and, in some cases, merely

reinforces practices that are ineffective (Kennedy and Carrington, 2004). Moreover, they may not be attuned to changes in organisational goals and outcomes, often set by external factors such as HE policy and professional sector expectations. The development of new teaching practices need to be focused on student-centred strategies that are linked to revised curricula, and this indicates that this informal process is somewhat limited (DBIS, 2011). Hibbert (2015) suggests that there is a greater need to centralise and regulate training, to meet the various demands of government, students and employers. Teachers within HE have voiced serious concerns that this approach dilutes and de-professionalises teaching practices and so is met with reticence from teachers rather than from the HEI (Peat, 2014).

#### **4.9 Resistance – The application of agency**

Changes in any organisation require careful management and recognition of the fact that challenges will be encountered, and HEIs are no different (Shattock, 2012b). When the challenges occur, there is resistance, which is often assumed detrimental to the organisation; however, in practice this may provide useful ways of demonstrating agency.

Cownie (2004, p.206) suggests that law teachers exist in a “culture of academic law and the professional identities constructed within it display a great deal of resilience to change”. It therefore supports traditions and values, which provide a consistent recognition of the value of the methods of teaching law. Bradney (2001) also asserts that it is an imperative almost to resist the rise of bureaucracy in the teachers working life. Yet what is evident is that in practice resistance has been limited.

In traditional HEIs, resistance is measured in two ways; firstly, in relation to the response to management authority (Shanahan, 2002). Thornton (2012, p.132) indicates, “Academics are expected to do what they are told by administrators”. This displacement is felt even further by the fragmentation of the role of a teacher as Thornton (2012, p.137) indicated, employers are “expecting more and more from recruits”.

Where identity and individuality of teachers begins to change, this occurs because they may have access to others skills sets. The anxiety stemming from this is that

teacher access to their own discipline decreases reducing the opportunity for collegiality and potentially de-skilling teachers (Giroux, 2010). The opportunities therefore to gain discipline knowledge, develop support mechanisms for learning about teaching disappear as does the cultural differences between areas and departments. In effect, this means that valuable discipline social learning and situated learning is reduced, and that new horizons outside the familiar dilute the traditional teaching. Again, this presupposes that existing teaching methods do not need to be reviewed, which is an uneasy assumption as Kennedy and Carrington (2004) as well as LETR (2013) indicate.

Whilst it might appear that managerial restructuring and organisational change mainly affect traditional HEIs, it is important to consider the implications for new universities and CHE. Initially, the expectation might be that the new HE sector already has managerial control and structures and therefore, opportunity as well as need for resistance is unlikely (Rapley, 2014). However, it is not clear whether managerial control and a compliance culture means that the type and relevance of teacher education is not questioned (Feather, 2011b).

Boud and Brew (2012) suggest that resistance to teacher education relates to three factors: first, the formalisation of the process; secondly, the method of imposition; and finally, and most importantly, the limited contextual relevance to the discipline. The implication drawn from all three is that when teaching practice interventions are largely derived from the limited engagement with or discipline content research, it appears irrelevant and unnecessary – see (Bronkhorst *et al.*, 2014a).

As a result, contrary to general education policies regarding teaching qualifications in schools and colleges (Bryan, 2012), no teaching qualifications are currently required within HE. It is inevitable that unless a teaching qualification is made conditional on appointment, HEIs could select a teacher based on no, or very limited, teaching skills. Whilst this may not be inappropriate, it is a risk then to place new teachers in charge of a class where they do not have experience or evidence of aptitude (Liu, 2012).

## 4.10 Conclusions

The triggers for change lie in neoliberal policies designed to provide a more cost-effective and econocentric learning experience. As Locke (2012, p.269) indicates, “the (teaching) profession is becoming increasingly differentiated, even stratified”. The unification of the HE sector has opened access to vocational practices from polytechnics and colleges (Eraut, 1994). In doing so, it has created the opportunity to redesign and revise HE especially in relation to ensuring that curricula prioritises employability and work-related skills, linking academic understanding to external worlds such as the professions (Parpala and Lindblom-Ylänne, 2007). The transformation of the curriculum, to provide these career-sustaining skills and its delivery clearly needs to be supported by an equally transformational method of training teachers.

The introduction of the HEA and the development of teaching qualifications has also challenged the professionalism of teachers within HE. Policymakers have been careful enough not to impose teaching qualifications and have encouraged HEIs to look at their own teacher training and deliver it within staff development programmes. Using this form of recognition and accreditation process to demonstrate teaching skills and abilities has been successful and appears to be a path of least resistance for academics. As a result there also seems little willingness to engage in developing it further (Stewart, 2014). What this will mean in terms of the development of the TEF is unclear.

A concern is that, as Etzioni (1988) suggests, forced compliance is likely to enhance resentment and the programme of learning and development is resisted in a more entrenched way. Therefore, if teacher education is to be seen as valued, then research into how it is to be carried out is a necessity – after all, we can be reminded that “teaching without scholarship is simply bad teaching” (Elton, 1992, p.253). To achieve this in terms of teacher education means that research should inform training, which then is relevant and contextual. When there is little relevant research or indeed expertise in the domain, which is valued as expertise, teacher education and changes in teaching practices are unlikely to occur (Young, 2001).

Teacher training programmes are developed with a broad focus on generic skills, which teachers indicate are not relevant to the subject, content or level of students. Further, in many cases, teacher training is identified as a part of overarching staff development, coupled with understanding office practices and protocols. There is little doubt that teacher education in a formal sense is unpopular as a generic programme. When it focuses on local Communities of Practice, using skills learned from within such as accredited HEA programmes and Communities of Practice, there is greater acceptance. The concern is that engaging in teaching and learning theory will remain in the hands of a few, and that curriculum development and innovation in teaching will be limited and perhaps less creative than it might be.

Teachers might consider that they are no longer in control of their teaching output and that the accountability factors that they are required to consider suggest the de-professionalization of the teacher role. When changes are imposed by a management structure that is distant and disconnected from the teaching practice itself, teachers are likely to challenge and resist what they consider as an attack to their autonomy.

Having identified and explored key areas of literature I am drawn to consider the way in which the teacher role within HE and Legal education has been influenced by policies and practices. As law teachers sit across academic and professional sector boundaries the pressures to meet the needs in both cultures, is significant. I set out my research questions and aims to identify how policy and practices support or challenge the law teacher in their role.

#### **4.11 Research Aim and Objectives**

My research aim is to identify the construction of the law teacher role and in doing so I set out three different objectives. These objectives are framed as questions and have been drawn from relevant literature as well as my experiences as a law teacher during the transitions within HE, LE and approaches to teaching. Having worked in different sectors of HE, I realised that my struggles to learn how to teach more effectively and to understand the broader changes in my role were not ones that I was facing alone. Moving from different sectors allowed me to share understandings with

colleagues; however, the diversity in expectation and pressures within the role has been significant.

Using this experience and carrying out an extensive literature review has enabled me to synthesise my research questions are set as follows.

Research Question 1:

How are the prevailing roles of law teachers defined within HE?

Research Question 2:

Where can law teachers access understanding of LE theory?

Research Question 3:

What are the implications of the development of practice-focused learning for law teachers, law teaching and LE?

The golden thread that runs through each element is the relationship between the teacher and the HEI, which is bound by the expectation that teaching within HE seeks to achieve excellence. In the next chapter, I explore my philosophical approach to my research.



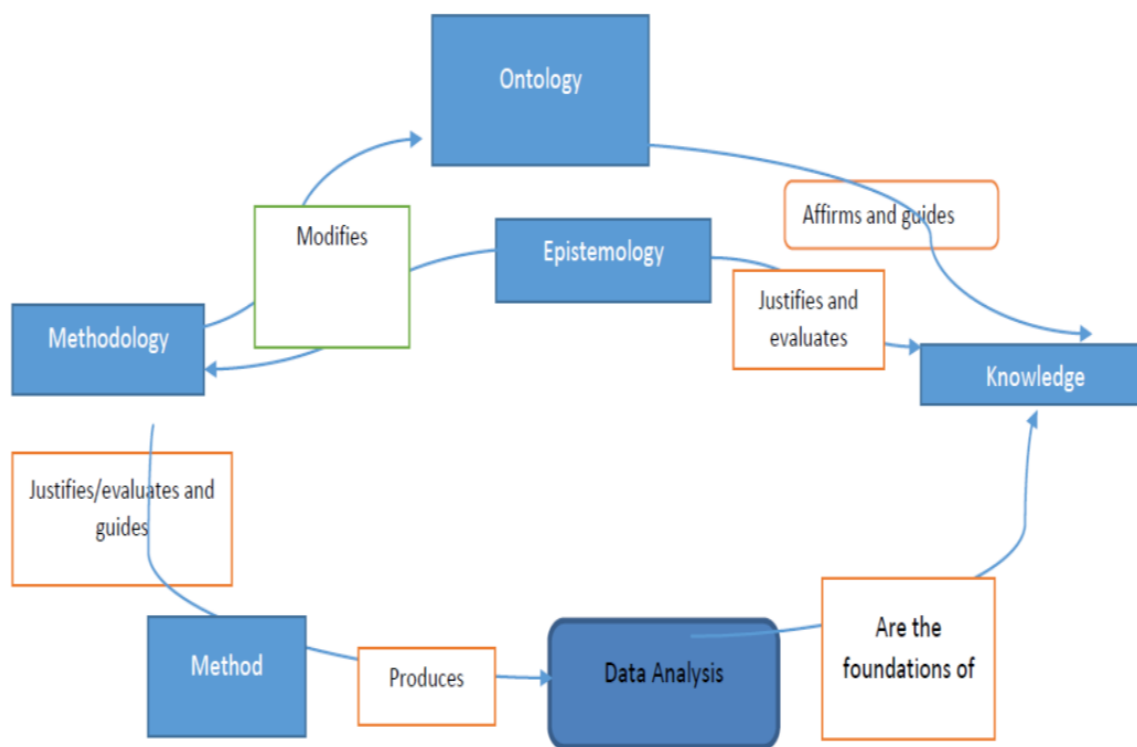
## **Chapter 5 Philosophical framework**

### **5.1 Introduction**

In this chapter, I explain my approach to research, my research framework and the decisions made in relation to determining research tools, data collection and analysis. My research crosses Higher and Legal education, structural, cultural and agential boundaries and requires a framework, which recognises the complexities of each area, rather than replicating known research models. It also provides a guidance to others who may be carrying out research across similar HE and professional boundaries such as accountancy. Throughout the chapter, I refer to my personal perspective and discuss my position as a researcher within a sector to which I am deeply connected.

### **5.2 Perspectives and Paradigms**

An important part of any research project is to explore how the researcher approaches the research and the research questions. Whilst there is no clear “right or wrong philosophical stance”, (Holden and Lynch, 2004, p.12) when deciding on a rationale I should explore different approaches to my research area. To understand this I needed to unpack how I construct reality; thinking about how things really are (ontology); how I come to know about these realities (epistemology) and what tools I can use in order to know and understand the realities (methodology) Abbott and McKinney (2013). To begin to answer these questions, I reflected on my thinking about the research area and this helped to narrow down my research lens.



**Figure 5-1 Research design relationships**

The importance of making these decisions was to reflect the relationship between my philosophical position, my research aims and my selection of approach to the research, as set out in figure 5.1 above. What follows is a discussion of my approach and addresses ontology, epistemology and my methodological decisions. My choice of method and data analysis will be considered in chapter 6 and 7.

### **5.3 Critical Realism (CR)**

An important aspect of any research is being able to justify what is claimed from it and to provide a foundation for this I considered my own position in relation to epistemology and ontology. To help me to me to unpack my understanding of both of these philosophical positions I drew on two concepts: positivism and constructivism. I found my understanding lay somewhere between positivism—which means that my research relies on events, observations and experiences to understand the real world

(Cohen, 2008); —and constructivism—which suggests that it is not possible to understand the real world clearly because everyone interprets it differently.

Epistemology provides a way to explain and demonstrate how the understandings and beliefs gained from research can be justified (Modell, 2009). Whereas, Ontology according to Cohen (2011, p 33) is identified as “the nature of reality” it recognises that this can be shaped by events, beliefs and values, which are socially constructed. Importantly reality can as Scott (2014, p.31) indicates exist “independently of human cognition or the individual’s ability to know them.”

CR accepts that there is a reality which goes beyond my own knowledge or perception of what this might be (Zachariadis *et al.*, 2013). Archer et al. (1986) indicate that this reality which goes beyond what is known, is the *intransitive* domain whereas research, the creation of knowledge requires “details and processes of production” (Zachariadis *et al.*, 2013, p.856) is the *transitive* domain. As such CR allows for an expectation that new knowledge is created and provides opportunities that enable me to “look beyond/beneath the immediately observable” (Quinn, 2012, p.47). Figure 5-2 below unpacks these domains and suggests that there are three levels or strata, which explain how a CR approach can address reality and indicates the interdependence of epistemology and ontological perspectives. For some this is identified as an epistemic fallacy , where knowledge and the way of knowing are so interdependent they cannot be separated. In my research I accept that this relationship exists, but regard them as being two sides of the same coin; separate but connected.

## **5.4 Ontology and Critical Realism**

Ontology is a central aspect to CR, and can be explained as the study of the way the world appears or the way of being in the world. Therefore, the CR researcher looks at not only what can be seen, the material, but also to consider what might have a causal effect on understanding the world. It enabled me to examine the structures and agents within HE and LE (Schiller, 2016) and “to reach beyond the obvious and explore deeper levels of reality” (Quinn 2012, p.47), and this is explored below.

## 5.5 Stratification

CR relies on the acceptance that reality is based on a stratified understanding of the world and the objects within it. These objects can include people and organisations; each have properties, which include causal power. As Scott (2014) indicates adopting this approach helps to separate the known from the unknown and thereby explore the way in which structures and agents can influence change. The three strata are set out below- real, actual and empirical.

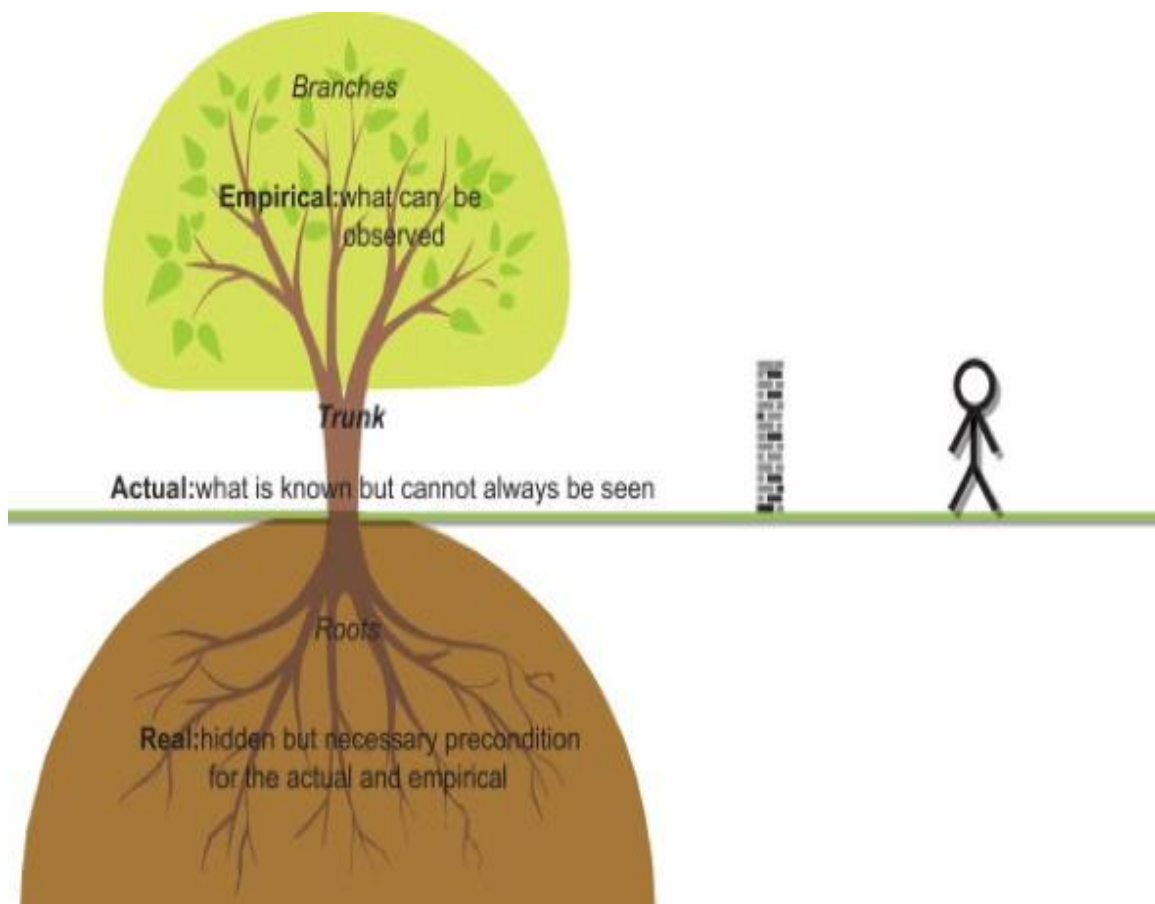


Figure 5-2 Strata of Critical Realism after Walsh and Evans (2012)

The real strata indicated in Figure 5.2 includes values, beliefs and structures that are unknown or hidden to the researcher and generate phenomena which can influence each of the other strata (Modell, 2009).

Accepting this premise also allows for interaction between contextual causal links or tendencies, which are particularly helpful in understanding the complexity of HE structure, culture and agency. This combination can lead to outcomes derived from

social or political action and create dynamic change which is dependent on context and agency (Modell, 2009).

The actual or lived strata relates to phenomena or events, which are knowable, but not always evident. It is immaterial whether they affect an individual; they still exist. In the context of my research, the actual world is the environment, the day-to-day events which challenge and change teachers as agents within HE, whether they are aware of specific issues or events is immaterial. As such whether the teacher knows about policy changes or practice developments within law or indeed education is irrelevant, what is important is how this may or may not affect their way in the world, their agency as well as the structure they find themselves.

Finally, the empirical strata Bhaskar (1989) indicates, is the human perspective of real and actual events and can be observed. In my research, this includes the HE environment where the participants are located, and perception of change or development in their HEI or indeed law school. This is transitory knowledge; it is fluid and changeable (Pratt, 2011).

Using a critical realist approach provides a method where understanding of structure, culture and agency explores the influence of mechanisms of change and powers arising from the different strata. As Scott (2005 p.640) indicates, "...appropriate methodologies need to be developed and used that allow understanding of the relations between them". I now turn to consider how critical realism is used to generate an understanding of my research area, using Archer's Morphogenesis model.

## **5.6 Morphogenesis/stasis and Critical Realism**

Archer's (1996) understanding of critical realism focuses on the relationship between structure, culture and agency. Case (2015) identifies that structure and culture are linked, and that structure relates to materialistic features of the world, such as goods, status and position, whereas culture focuses on ideas and beliefs. Agency is the human interaction with structure and culture, these three elements influence and are influenced by each other and are temporally interconnected, but also independent of each other.

To explore this Archer constructed an analytical framework: morphogenesis. The framework assumes that there are pre-existing influences, which support existing structures –known as structural conditioning. In my research, this relates to the HE system, but also teacher roles and responsibilities and the HEI. Interventions, such as HE policy changes, implementation of management, training or individual development create social interaction and where this takes place structural elaboration or change may or may not take place. The cycle then continues which means that potential changes in structure and so culture and agency are possible, but not guaranteed. As indicated in figure 5.3 below, Archer’s framework focuses on how changes occur as a result of interaction with external factors, such as policy or management changes within HE. She suggests that there are two potential outcomes – a transformation or a stasis where time, as well as interaction, plays an important role.

Figure 5.3 reflects that the relationship between the structures and agency are affected in complex ways. In doing so it takes into account the way in which agency is formed, such as power relationships, communities and lived realities which are expressed through structures where the agent finds themselves. In my research these structures are departments, faculties and law schools. Each impose different aspects of development which evolve over time.

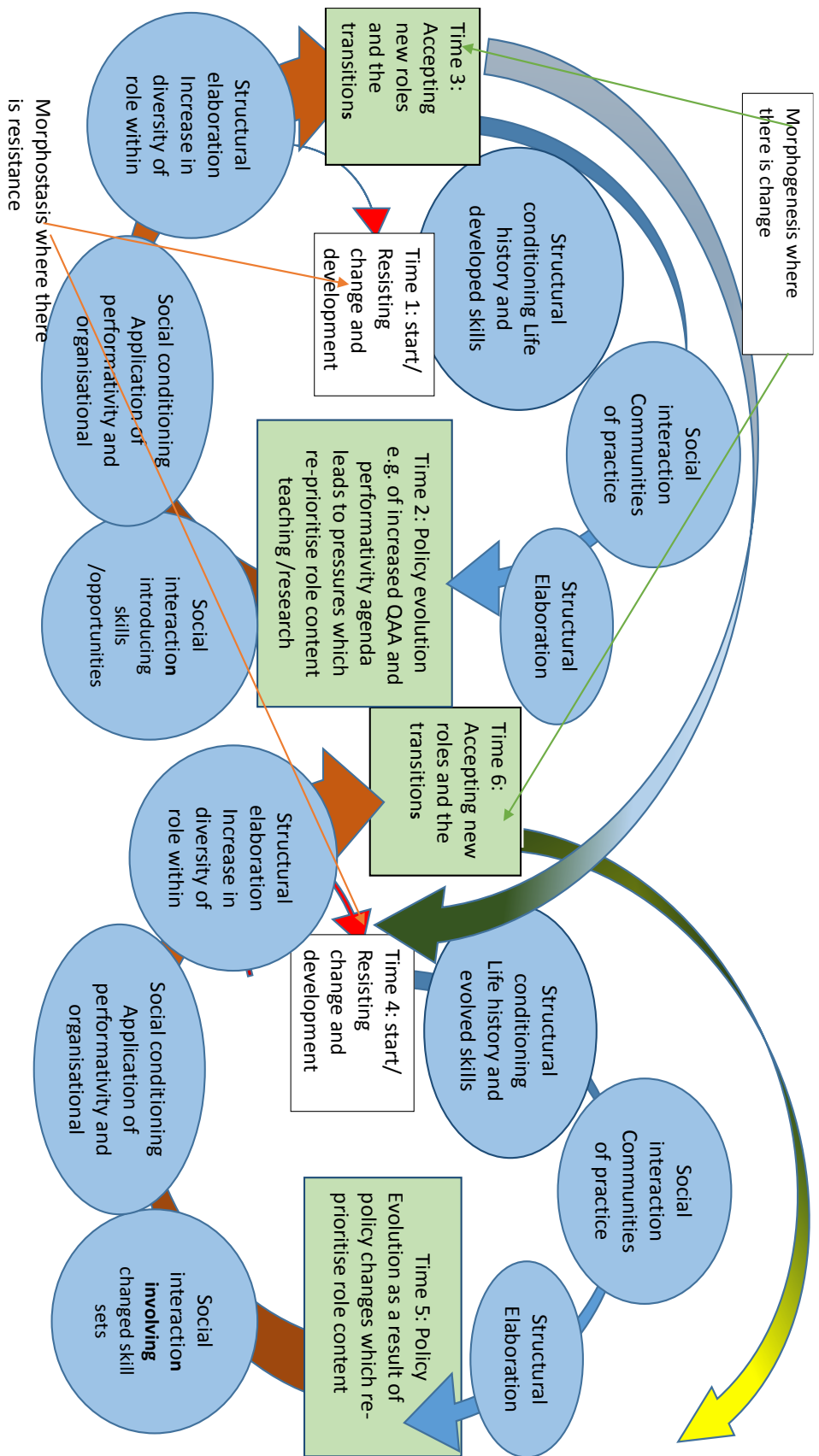


Figure 5-3 Stages of Morphogenesis/stasis (after Archer (1990))

I am interested in assessing whether HE policies and practices have led to a transformation of the law teacher role. Archer's Morphogenesis model provides a helpful lens to explore teacher agency drawing on structural and cultural factors, which form part of conditioning elements. Archer (1990) makes it clear that conditioning does not always mean change or evolution, but rather carries the potential for change. In doing so this enables individuals, groups or indeed departments to exercise agency in deciding to act or not to act in response to organisational change. Case (2015) suggests that where change does take place there is likely to be some form of dissonance or contradictory aspect, which can be linked to structure or culture. I am interested in exploring the agency exercised by departments in their recruitment of new teachers, as well as the extent of individual agency shown by teachers, staff developers or indeed senior managers.

Archer (1996) suggests that teacher actions and agency are contextual and so are conditioned by the individual, the structure and the culture which envelopes them. It is this conditioning, which aids understanding of whether this leads to transitions in agency have occurred (Case, 2015). In this way using and developing an understanding of the wider HE system provides an opportunity to explore the liminality and more uncertain aspects of teacher transformation (Ward, 2013).

## **5.7 Why use Critical Realism?**

As Archer (1996) and Case (2015) suggest, critical realism allows for the recognition that changes occur across official and unofficial boundaries and may affect deeper seated transitions in structure and culture. In my research, I wanted to capture an understanding of these transitions within HE and to consider how they can lead to the construction of the HE teacher role in the context of Legal education.

I identified that HE and LE have diverse structural and cultural influences and that within these there are hidden cultures (Nicolson, 1994) and rules Bourdieu (1998) CR, provides an approach that recognises these hidden realities. Therefore, as Leibowitz et al (2012) suggest CR, through the lens of Morphogenesis can provide an appropriate framework to explore these hidden factors within HE and LE.



Critical realism has been applied in HE teaching (Leibowitz et al 2012), medicine (Wilson and McCormack, 2006) and nursing (Schiller, 2016) which all have their own social, material and cultural underpinnings. However, as yet it has had limited application within Legal education. As CR is open to exploring complex voices within HE and LE, it provides a framework that allows for an analysis of the causal factors which unpack the complexity of the teacher role (Venkatesh *et al.*, 2013). It can address the external influences that affect Legal education (Maharg, 2007) as well as the views of those who work within the sector as educators who adapt to the developments within LE. As Zachariadis *et al* (2013: p.858) indicate CR and its interpretation of causality in research provides for a “different mode of inference” which means that in this research, it is possible to move from the known to indications of the unknown. For my study, this means that identifying the relationships between generative mechanisms, such as policy and cultural changes within HE and LE and the construction of the law teacher role, is a realistic outcome of the research. Using CR in this way provides a way of drawing inferences from events or actions, which do not have obvious immediate direct effect on the role of the teacher, but may affect what they do in practice.

Adopting a pragmatic and humanist approach to my research links well to critical realism. These each require an understanding of the environment where the research is conducted and encourage the recognition of the influence of diversity (Dewey, 1904; Maharg, 2007). Further Vick (2004, p.168) comments that “Members of a discipline, like members of other discrete social groups, develop their own distinctive ways of thinking, communicating, and operating”.

The relationships between teachers, managers and the legal profession coupled with the influence of competition and regulatory aspects suggest a complex lived reality within HE. Therefore, to capture this Pandora’s Box of Legal education within HE and CHE, a linear research design was unlikely to provide the rich picture, which I was hoping to identify and explore.

Whilst CR clearly provided an approach which explored the lived reality of teachers within Legal education research. I explain below my consideration of different approaches to my research.

## 5.8 Decisions about Methods and methodology

### 5.8.1 *Ethnography and Grounded theory*

Ethnography provides an approach to research which reflects and respects the researchers relationship within the context and environment (Reeves *et al.*, 2008).

There were two real concerns with using this methodology.

#### *Practical*

Ethnography requires ready access to the environment and subjects of research, it should also be open free and transparent (Frankham and Smears, 2012). Whilst my own lived experiences and personal contacts within the Legal education environment appeared to suggest that this was possible there were two practical issues, which affected my choice. Firstly, my connections within Legal education were mainly within FE colleges albeit teaching HE thereby accessing HE providers would need to be negotiated and at the outset of my research, I was not sure how my request would be accepted.

Secondly, that as a full time student at the university, in carrying out education-based research there was little opportunity to create research relationships with law departments within HE and CHE. As a result, there were no clear links open or available and my initial attempts at contact with prospective subjects were met with stoney silence. At the time, I expected that it would be hard to access the environment in which I could become a conduit for research.

#### *Academic*

The value of ethnography is founded in the 'real world' which it explores and the willingness to empower the participants to be the experts (Reeves *et al.*, 2008). To be able to contextualise my research was critical to gathering a real world perspective. Using traditional research methods such as participant observation, narrative interviewing and gathering personal histories could provide important personal perspectives which give meaning to participants' understandings of the teacher role (Frankham and Smears, 2012). It could also offer perspectives on the development of the Legal education curriculum as well as drawing on the broader perspective, which

would help me to respond to my question. The opportunity to look for patterns and to describe and make sense of HE and the law school were identifiable aims for my research.

I had several concerns, firstly, the duration of ethnographical research is often for an extended period of time, my research time frame was not unlimited and I was concerned that a long term engagement would be practically very difficult (Dey, 2002). To resolve this, I considered using case studies over short periods of time and this seemed an appropriate way to address this concern. Secondly, the wider issues surrounding my research indicated that to capture the reality of transformation in teacher perspectives, my concern was that in bringing the stories together I was likely to capture limited voices and this was unlikely to provide the comparative data I was hoping to draw upon.

A further approach to research, which I had contemplated, was grounded theory (GT). Recent literature (Glaser, 2017; Fram, 2013b) within grounded theory has explored the application of GT and CR, much in the same way as ethnography and CR. Both theories address the real world aspect of the research, but there are crucial differences: firstly, that ethnography focuses on a specific culture, rather than the wider context. Secondly, that in terms of practical organisation, sample sizes and selection, for grounded theorists, there is an expectation of structure and analysis which is different and so sampling is often purposive (Kaman, 1995). Finally, that the conceptual nature of grounded theory anticipates an exploration of the data which leads to development of theory (Charmaz, 2017) whereas ethnography is more descriptive in its approach (Reeves *et al.*, 2008).

Whilst ethnography and GT provide for a rich research culture, my research approach required flexibility to address the interpretation of very different data sets. Neither of these approaches on their own provided sufficient diversity of frameworks or platforms, in tandem with CR. However, applying Charmaz's (2017) expansive definition of GT, provides the researcher with a greater scope to use a range of different approaches to research.

### 5.8.2 *My rationale*

Choosing a methodological approach is important in terms of not only its viability, but also its credibility (Coffey, 2006; Scott, 2014). The development of a mixed methods framework posits that whilst qualitative and quantitative approaches have different philosophical underpinnings, these do not have to be mutually exclusive. Cohen *et al.* (2012) indicate that a mixed methods approach supports opportunities for both strategies to be employed and so allows and anticipates different viewpoints to be revealed and thereby providing compelling research evidence (Johnson. *et al.*, 2007).

It also supports the pragmatist paradigm, which, Johnson, *et al.* (2006) indicate reduces the impact of the researcher's identity and affiliation. Indeed, using a pragmatic approach to research allows data to reveal a real worldview and "the truth in the present to be identified" (Ferris, 2009, p3).

It is, however, not a catchall methodology. Denscombe (2008) indicates that this type of approach is pluralistic and eclectic, drawing on "fitness for purpose" (Cohen *et al.*, 2012, p.23). Adopting a flexible approach to research, the danger of facing an issue or failing to affirm the research validity will always be present. This is particularly important when trying to draw together different views and perspectives relating to how the teacher's role is constructed. As this study crosses different boundaries, addressing the HE system (Lea and Simmons, 2012) and the legal services sector, the complexity indicates that a flexible approach for research would provide the best way to explore of the different structure, agency and cultural nuances (Scott, 2014).

Cohen (2013) identifies that there are concerns in using an approach that combines quantitative and qualitative data collection methods and interpretation. In practical terms, there is a possibility that the researcher could be swamped with contradictory data, which means that refining and drawing conclusions from the analysis may rely too heavily on one method or another. However, Feilzer (2010) suggests that researchers using a mixed methods approach will be able to make decisions about the data, based on triangulation principles.

Furthermore, as Venkatesh et al (2013) identifies that literature is beginning to grow in this area, the calls for creative ways to research complex environments are increasing (Zachariadis *et al*, 2013.). Whilst there are numerous models for mixed methods research (Shannon-Baker, 2016) there may still be some concerns about its validity, rigour and reliability. However, these questions arise whatever the research paradigm chosen and this is not a reason to dismiss an approach (Coe, 2012). What is important is being mindful of the nature of the data, research field and how this was to be reflected in my research design (Venkatesh *et al.*, 2013).

## **5.9 Conclusions**

In this chapter, I have set out my philosophical approach to my research. I have indicated that my approach accepts that it is appropriate to use different methods to support the different aspects of my research into the law teacher role within HE. I indicate that I intend on using Archer's approach to transformation and change as it provides scope to take into account policies, individuals as well as unknown factors.

In the next chapter, I turn to the planning and decision-making involved in the research design and then explore data gathering. In doing so I draw on the philosophical underpinnings, which I have explained, but also reflects on the implications, which this had on my research.

## Chapter 6 Research design and Data Gathering Rationale

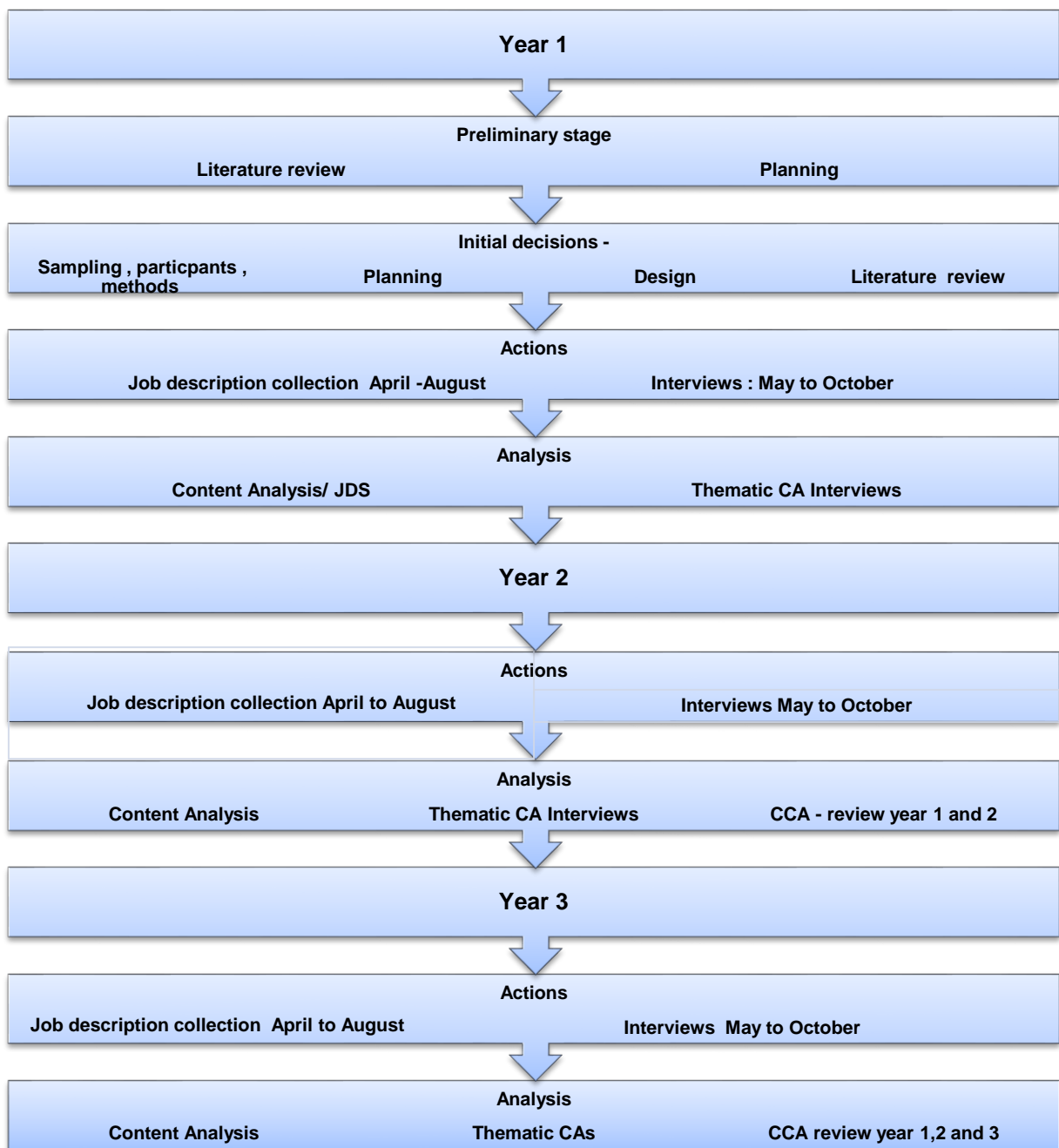
### 6.1 Introduction

In this chapter, I explore my research design rationale and then my data gathering and collection methods. Using CR and a mixed methods approach meant that my decisions about potential methods of data collection provided freedoms and challenges. The research design and research activities needed to provide a systematic approach, which would provide a clear pathway for another researcher to replicate my study.

In selecting methods, I was mindful of Yokoyama (2013) and Archer's (1988) description of HE, which relies on an understanding of developments, which occur within HE by addressing its structure, culture and agency. Therefore, to capture an understanding of how the teacher role is constructed within HE, the methods needed to support an investigation into HE structure, culture and agency.

#### 6.1.1 *Planning my research*

My research was planned to take place over a three-year period, and as the data sets were interconnected I decided to adopt an iterative, sequential approach – allowing for, as Flick (2009, p.133) suggests, “an element of circularity” to be a part of my planning process. A linear approach, as Cohen *et al.* (2013, p.223) indicate, “...does not reflect the underpinnings of CR”, indeed, Schon (1995, p.233) also identifies that this type of research can be “messy”. My research flow is set out below:



**Figure 6-1 Research flow**

Further, as this was a relatively small-scale project, the planning needed to reflect the practicalities and limitations of this type of research. The planning had to consider my time, my competence as a researcher, the types of access that I might be able to get and my own views and beliefs (Strauss, 1998; Brennen, 2005). Research that has a qualitative focus should have both as Maxwell (2005) and Cohen *et al.* (2013 p.226) describe, a “practical focus” and “intellectual” goals. In setting these goals and

expectations, the planning and tools required to complete the study should be easier to identify.

Therefore, my research design required consideration of various factors, which are set out below in Figure 6-2 below.



Research design elements	Thesis chapters	Considerations and decisions			Where should I look ?	
<b>Context</b>	<b>1 to 4</b>	AIM Identify the influences of change in the construction of the law Consider the development of HE/ Structure/ culture Factors which influence the development of the teacher role			Literature review HE/ HE policies Grey and wider data	
<b>Questions</b>	<b>2 to 4</b>	How are law teachers roles developed within HEI ? What are the common frameworks / are there common frameworks Have they changed ?  Where do teachers learn about teaching and learning ? Consider departmental / organisational ,National and personal factors  How can I investigate the implications of policy, practice and professional changes in HE and LE on developing teaching and learning ?  Which methods are relevant ?			RQ1 How are the prevailing roles of law teachers defined within Higher Education?  RQ2 Where can law teachers access understanding of legal education theory? RQ3 What are the implications of the development of Practice - focused learning for law teacher, law teaching and LE?	
<b>Methodology and methods</b>	<b>4 to 6</b>	Epistemological and methodological framework :	What type of researcher am I ?	Mixed methods but mainly qualitative		
		How long is the research period ? Short or extended period ?	Pragmatist/ socio legal / Humanist / Critical realist approach	Content analysis	Quantitative approach : chi test for high level overview	
		What are the likely costs in terms of time and other expenses	Transformation and changes through internal and external factors	Deductive approach		
		How easy is it to get access to participants ?	Relevance of structure, culture and agency	Constant Comparative Analysis	Semi structured interviews	
		Who should I be talking to	What do I look for to understand the issues?			
		Participants : sampling decisions				
<b>Research Flow</b>	<b>6 to 9</b>	Timing and duration Scoping stage Literature review Data Collection: two data sets : Job descriptions and Participant interviews over a period of 3 years Data Analysis Discussion Conclusions and Recommendations				
<b>Feasibility</b>	<b>4 to 6</b>	Feasibility and risks	Collection/ Timing	Potential risk of researcher bias as a teacher/ teacher educator	Addressed by Ethics committee  continuous evaluation	
			Lack of access to / continuation of access to participants /changing developments within LE and HE changes perceptions and structures within HE			
		Ethical considerations	Confidentiality	These have been assessed by researcher, supervisors and ethics committee		
		Timetable	Research to run over 3 years	Ensure that data collection approaches are consistent over the period of research	Ensure that Data Analysis is consistent over the period of research	
<b>Distribution</b>		Part of Ed D Requirement : Conferences : Publication				

Figure 6-2 Research considerations

## 6.2 Data Gathering

As my research design indicates, I wanted to access two data sets: one, which provided an opportunity to identify transitions in HEI sector expectations of the law teacher role and the other, which focuses on the development of the law teacher.

### 6.2.1 *Data Set One – Teacher role*

In this section, I address my first research question and outline my choices in relation to gathering and analysing my data.

As indicated in chapter 3 above, common features of the teacher role include teaching; researching; and administration (Gale, 2011). However, it is evident that teachers do more than this often transitioning into roles within HE on an informal basis. Where this takes place, teachers are likely to use their agency to renegotiate their roles (Gordon, 2003).

In identifying what HEIs expect of teachers I wanted to explore both the formal and informal understanding of the teacher role and its development. The first stage was to locate a common frame, which explains the teacher role. Turner (2012, p.836) indicates, "... the active role that universities have played in making the conditions in which we now work", means that identifying how universities and HEIs set these conditions is important when exploring the construction of the teacher role.

To achieve an understanding of HEI perspectives I considered the following approaches. First, contacting and surveying university Human Resources (HR) departments to ascertain policies and practices. This could have provided a rich vein of data across the HEI sector, but there would be no guarantee that they would respond or the nature of the data that would be produced. Second, using data from HEPI that focused on existing employment contracts to identify the different types of work contracts that universities declared. Again, this could provide rich data, but this would not provide opportunity to dig into what the university expected from the employee in real terms. The contractual information provided is limited to broad functions such as research only; teaching only and therefore would not provide the depth of data, which would support my research aim.

Alternatives to locate the detail of nature and type of work a law teacher could be found in accessing data planned and designed by the HEI, such as job descriptions and advertisements. Here the content is easy to access, and set out clearly what the HEI expects when recruiting new staff members (Gold and Gotti, 2012). These provide a common approach to setting out the teacher role, the data is easily accessible and the collection methods would be easy to repeat and consistent. It would also provide a rich source of data that reflect the transitions in HE, formalisation of the language and terms that are used to describe the teacher role. I was, however, mindful that whilst the methods may be consistently applied, the sampled years might not always provide access to the same amount and type of data.

### **6.2.2 Sampling Strategy Rationale- Job description**

The sampling strategy was based on a purposive non-probability approach (Teddlie and Tashakkori, 2012). Using this approach meant that I “hand pick(ed)” (Cohen, 2011, p.156) cases based on my judgement about typicality for the study. The advantage of this approach is that it provided depth and a rich data source, which revealed practical findings (Teddlie and Yu, 2007). The danger, however, was that by applying specific criteria and using my judgement alone based on the conditions for the selection, the analysis is limited and thus the findings may have less impact. However, bearing in mind the nature of the data and that this approach had been carried out in similar studies (Gold and Grotti, 2013), I concluded that this method was appropriate to my research.

This enabled the selection of job description at the level of teachers I had identified from the sectors that I wanted to explore. As my research focuses on undergraduate law and the development of contextual law teaching within these programmes, the identifying criteria for selecting the job description were as follows:

Location: England and Wales
Stage: Beginner lecturer (lecturer) / Teacher
Subject: Undergraduate law
Foundation subjects only
Employer: HE or colleges of HE

**Table 6-1 Job description sampling criteria**

The Sampling criteria set out in Table 6.1 reflect that in most cases, beginner level lecturers teach a mixture of subjects, both foundation subjects (content set by external agencies) and non-foundation subjects, which are specific to the academic specialist. In some cases, where CHE offers franchised courses, they are subject to QAA from the HE franchisor organisation, the control resting with the franchisor.

### **6.2.3 Collecting the data**

I collected data in three tranches: 2013, 2014 and 2015, over the same recruitment period April to August in each year. I also used the same sampling criteria and databases. I planned the job description data collection at this stage as it provided early analysis of this data that would inform my decisions in relation to the second part of my research – the semi structured interviews (SSIs). Whilst this appeared to represent an appropriate strategy, in practice the first series of SSIs were carried out with limited reflection of the early Job description analysis and I will consider this in my data analysis and discussion.

To gain access to job descriptions from the widest possible sources, I used three searchable databases containing job advertisements that focused on HE within England and Wales. The three sources were a general academic recruitment

database widely used for recruitment purposes—[www.jobs.ac.uk](http://www.jobs.ac.uk)—and two others, Times HE—<http://jobs.timeshighereducation.co.uk/> and [www.fejobs.com](http://www.fejobs.com)—, which focused on FE college recruitment selection, – see Figure 6-3 below. I had initially considered only [www.jobs.ac.uk](http://www.jobs.ac.uk), but found that this did not include colleges recruiting for HE lecturers. Therefore, I extended the search to the other sites to gain the widest possible pool for job descriptions.

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**Salary**

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**Locations**

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 Midlands of England     South East England     Asia & Middle East  
 Northern England     South West England     Australasia  
 Northern Ireland     Wales     Africa  
 Republic of Ireland     North, South & Central America

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**Location:**

Location:       Distance:

**Contract/Other:**

<p><b>Contract Type:</b></p> <p>All <input checked="" type="radio"/></p> <p>Full time <input type="radio"/></p> <p>Part time <input type="radio"/></p> <p>Term Time <input type="radio"/></p>	<p><b>Contract Term:</b></p> <p>All <input checked="" type="radio"/></p> <p>Permanent <input type="radio"/></p> <p>Temporary <input type="radio"/></p>	<p><b>Employer:</b></p> <p>All <input checked="" type="radio"/></p> <p>Schools, Colleges or LAs <input type="radio"/></p> <p>Agencies <input type="radio"/></p>	<p><b>NQTs Considered:</b></p> <p>All <input checked="" type="radio"/></p> <p>NQTs Considered <input type="radio"/></p> <p>NQTs Not Considered <input type="radio"/></p>
<p><b>Date Posted:</b></p> <p>All <input checked="" type="radio"/></p> <p>Today <input type="radio"/></p> <p>Last 7 days <input type="radio"/></p>			

**Figure 6-3 Job databases**

Note that figure 6.3 above sets out the databases in the following order [www.jobs.ac.uk](http://www.jobs.ac.uk), <https://www.fejobs.com/> and [www.timeshighereducation.com/unijobs/](http://www.timeshighereducation.com/unijobs/)

I downloaded each job description following a database search, which redirected the user to the prospective employer site. Each job description was then added to an Excel spreadsheet, which indicated the date, type of HEI and role as well as the content.

Job description structures were often differentiated by HE sector and dependent on whether the job was for a full or part-time role. Over the research period, I identified nine part-time roles, and three asked for a CV rather than the completion of an application form. In the cases where there was no job description specifically mentioned, I used the job advertisements, as they described aspects of the role. CHEs applied the same job description for part-time and full-time posts.

All of the part-time job descriptions have been included in the data and they represent 12% over the whole period. I shall consider the part-time teacher role in more detail in the discussion chapter that follows.

#### **6.2.4 Job descriptions: Why choose content analysis?**

The first stage of my research was to identify an organisational understanding of the law teacher role across HE. This therefore required a data collection tool and analysis method which would provide as Dieronitou (2014,p.8) asserts an “...objective, systematic, replicable and quantitative” description of the law teacher role. I determined that using Content Analysis (CA) would provide both consistency and reliability in the analysis of the data.

The traditional approach to CA (Krippendorff, 2013) is inductive. It allows for a “systematic and objective means of describing and quantifying phenomena” (Elo and Kyngäs, 2008, p.108). The flexibility of the method is especially relevant when there is limited previous knowledge of the phenomena. However, as there were categories about teacher skills within HE and law in particular, it became evident that an approach that reflected these broad categories would be helpful. Therefore, I determined to follow a deductive approach using Twining’s skills categories described earlier as educator, lawyer, scholar and administrator/politician.

At this point, it is also important to recognise the difference between the terms themes, categories and characteristics, which I apply in my research. CA is an approach, which deconstructs and then reconstructs data, in doing so I look for patterns or themes to emerge. Characteristics, in this case the terms in the job descriptions, are the coded data, which are linked by common factors. These common factors are defined as categories, such as networking. I then use the categories to consider what overarching themes appear from the research.

CA requires the application of a coding process (see Appendices D and E) and the development of a coding dictionary, which acts as the rulebook for the researcher (Gold and Grotti, 2013). In doing so, I explore and develop the categories arising from the job descriptions, which I refine and then further refine to gain an understanding of overarching themes derived from the data (Mayring, 2000).

#### **6.2.5 Applying Content Analysis**

CA provides an ideal mechanism to identify patterns and replicate data collection (Krippendorff, 2013). It is a blunt tool, which does not allow for interrogation

of the meaning of the data, and only ever provides for sampling accessible text. Therefore, it was important to consider alternative approaches to inductive CA.

As I was looking for an organisational understanding of the teacher role, it would have been possible for me to adapt CA, by using a thematic approach to the coding of the job descriptions. Recent studies have suggested that this approach has merit where broad understandings of the job role have been defined (Gold and Grotti, 2013). Although Krippendorff (2013, p.102) suggests that there is a contextual challenge which means that using this approach “sets limits on the information” which can be gained from the data source.

It became apparent that categories derived from literature about teacher roles within HE and LE were similar but not the same. Twining (2011, p.166) identified the following disciplines and practices in legal education: “lawyers, educators, scholars and administrator-politicians”. Whereas in HE Winberg (2008), Gale (2011) and Blaxter (1998) focus on the individual rather than disciplinary identity as “Teacher, Researcher, Writer, Administrator and Networker”. Whilst there is a crossover, the literature does not address the relevance of disciplines, experience nor the nature of hidden curriculum or praxis (Nicolson, 1994). Literature that focused on professional courses such as medicine does provide an understanding of the teacher role within that sphere. However, the emphasis was often on the medical professional qualification as being paramount to teaching skills, whereas this does not appear in HE literature or indeed in legal education.

Moreover the literature relied on narrative research methods to derive categories (Cownie, 2004), and only from the teacher, rather than from a wider organisational perspective. So they often simply replicated existing understandings, rather than offer insight into structural, cultural or organisational changes.

In looking at other thematic frames to support my analysis, I considered using the UKPSF<sup>18</sup>, which was introduced by the HEA. Again, whilst this offered a framework for identifying skills, these were also generic and more focused on educational development, rather than the organisational skill sets. It does not address specific

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<sup>18</sup> UK Professional Standards Framework



disciplines and therefore is broad and generic, and as Parsons (2012) suggest is not implemented as it rarely moves away from the desk of managers. The implication of this is that the UKPSF is too challenging to implement in terms of time and or complexity.

The HERA/FERA criteria were developed by ECC<sup>19</sup>, a not-for-profit group formed by HEI and FE colleges, designed to clarify common skills and understandings that HEI would apply to all new employees. Undoubtedly this general approach to identifying roles within HE would have created a common framework, but I was not clear about how widely used this was in terms of job descriptions and job role analysis. Further, the HERA criteria do not reflect a teacher-only frame for recruitment and selection, and this was something that I wanted to capture. It also meant that using this would stay true to the literature and allow for a picture of change to be identified.

I also rejected the approaches to teaching inventories (ATI) developed by Prosser and Trigwell (1999) and considered by Postareff *et al.*, (2007). This explores the skills that are needed to teach effectively, which are clearly important, but are somewhat narrow in their application to gaining an understanding about the wider HE law teacher role. Further consideration of self-efficacy in teaching as explained by (Postareff *et al.*, 2007), also provides explanation of attributes which teachers develop whilst teaching, was also rejected. In both cases, ATI and self-efficacy inventories, the attributes may be gained from training or from evolution whilst teaching, this does not allow for recognition of different skills and knowledge acquired before appointment. In teaching contextualised law, these different skills provide a blend of understandings, which support teaching vocational and professional as well as academic content (Lindblom-Ylänne, 2006). As I am exploring practice focused law teaching at undergraduate level, these skills are of significance.

#### **6.2.6 Using Constant Comparative Analysis Method with Content Analysis**

It became evident towards the end of my first tranche of data collection that there were some changes in the formula and constructing of job descriptions. There was a decrease in the number of conditions and more structure in the presentation of job

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<sup>19</sup> [Http://www.ecc.ac.uk/](http://www.ecc.ac.uk/)

descriptions. I wanted to explore the causes of this change, across the HE sector. To try to capture the nature of the change I decided to use CA with a constant comparative analysis method (CCA) (Fram, 2013).

There are four stages to CCA (Cohen *et al*, 2012): first, comparing data across each CA category; second, integration of the data across all categories; third, reducing the different categories into clearer unifying categories; and finally, setting out and explaining the unifying categories.

CCA is a flexible method of analysis (Hewitt-Taylor, 2001) and is especially relevant where data are derived from documents as well as other materials as it provides opportunities for different pictures to emerge over time. In doing so, it creates different patterns of understandings to challenge pre-existing beliefs. As a result, two types of understanding appear, first that which the researcher holds and secondly that which the researcher constructs.

O'Connor *et al*, (2008) cited in Fram (2013, p.2) indicates that, “all data are systematically compared to all other data in the data set”. It therefore provides an avenue to ensure that categories do not overpower the meaning of the data and to draw out similarities and differences over time. It allows data to reveal new categories and develop existing categories (Cohen *et al* 2011, p 558).

CCA therefore allows for refinement of categories, which use an existing coding process and further interpretation of the data to take place (Fram, 2013). This method supports and generates rather than tests theories. In using CCA this way a constant comparison of incidents draws on and identifies differences and similarities from the data (Green, 1998).

Using CA and CCA allows revision of the data over the research period. Whilst this allows the nuances to be revealed, there are concerns about consistency in coding. As a sole researcher, there are no checks and balances in how I create and apply the coding process. To address this, I concluded that it was important to use an established framework to ensure greater consistency in interpretation and thus gain greater reliability of the data analysis. Using a coding dictionary ensures that all words and key phrases are identified and defined within the context. As Cohen *et al*. (2012)

suggest, note-taking provides reflexivity in the research and supports confidence in the consistency of my research approach. I therefore made sure that I kept a log that I could refer back to during my analysis, as I demonstrate in chapter 7.

In addition to crosschecking that I had captured common terms and phrases, I wanted to gain a visual representation of the job description. Wordle is a freely available visual tool that creates a “special visualization of text in which the more frequently used words are effectively highlighted by occupying more prominence in the representation” (McNaught and Lam, 2010, p.632). It therefore fits well with CA methods. It identifies and highlights terms and phrases used to support and to review the coding process. This also provides a real and visual representation of the content of the data (Viegas *et al.*, 2009). Wordle is a supplement to carry out analysis and provides a different dimension to understanding the data (see Figure 7-1 Wordles of the job descriptions for 2013 and 2015 at p145).

### **6.3 Data set 2: deciding on the data – teachers**

Here I explain how I gathered data, which would address

Research Question 2:

Where can law teachers access understanding of LE theory?

Research Question 3:

What are the implications of the development of practice-focused learning for law teachers, law teaching and LE?

I consider the ethical considerations and then explain the decisions I made in relation to gathering data. I then address the collection of the data and the data analysis methods, which I used.

#### **6.3.1 Ethical considerations**

Research in ethics crosses many areas, and the more complex the area, the more challenging ethical considerations become. As identified earlier, I have worked and continue to work within LE in various capacities. The result is that I am an insider not only as a teacher, but also as a teacher, educator and programme developer for both teacher education and law.

Undoubtedly, my insider knowledge in relation to CHE helped me to understand the language and setting when addressing CHE matters. In relation to HEIs, however, the position was different. HE and CHE have very different cultures and approaches to HE: one focuses on knowledge for knowledge sake, whereas the other sees knowledge as a commodity and education as a business. Organisationally, CHEs operate on a departmental, demand-led complex management structure (Creasy, 2012; Rapley, 2014), and within CHE it is unusual for law teachers to be permanent staff. The effect of this was that I understood Bourdieu's hidden rules, but when it came to HEIs, I had yet to get a "feel for the game" (Bourdieu, 1988, p.27). Clearly, I understand the community in a way in which an external interviewer does not; my concern was that this might affect how the participant saw me and so affect how they responded to the questions.

As a result, I made conscious decisions regarding how I would select participants for the interview stage. I did not want to involve any of my work colleagues, teachers who knew me and had been aware of my reasons for my research, as this might have restricted their willingness and freedom to share their views. Additional steps were taken which included the preparation of a guidance sheet for the potential participants (see Appendices A and B) to reassure them that the study had gone through the Newcastle University ethical review process and had been approved.

The guidance indicates that participants would have their confidentiality and anonymity assured throughout the research process indicating that any identifiers within the data would be removed during reporting of the research. I stressed that participants would be able to withdraw from the research at any time. Prior to the interviews, each participant was asked to sign a consent form, which was provided with the guidance sheet that indicates what was expected of them; participants were also assured that their own names would not be used, as they would be identified by a pseudonym. After the interviewing process, all the participants were asked to review the transcripts of the interview and were given time and opportunity to review and revise. In one case a participant did decide to review and expand on areas of the interview.

The foundations for the semi-structured interview questions were derived from the content analysis of Job descriptions but also the literature review. These relate to the understandings about:

- Where do teachers access teacher education?
- If they gain knowledge about teaching, what is it and can they use this knowledge in their day-to-day working activity?

### **6.3.2 Accessing the data types and decisions**

I wanted to access the lived reality of teachers. My focus was to gain an understanding of how they accessed training and secondly the implications of this on the development of practice-focused teaching. To achieve this I considered different research tools, which included questionnaires, focus groups, case studies and interviews (Galletta, 2013b).

Whilst I had experience of designing and analysing questionnaires, I was concerned this would not produce the real story of the individual, nor would it provide scope for discussion (Kvale 1996). Whilst focus groups would provide different perspectives, the issue here was that certain voices might be heard more loudly. The implication being that rather than gaining an individual lived reality (Elo and Kyngäs, 2008) the focus group would reflect a collaborative reality which was not what I was seeking (Cohen, 2011).

Case studies are an important method of research investigation, which focus on real life phenomenon, where multiple sources of evidence may be gathered. This seemed an appropriate method to use, which was relevant to my research aim and questions as well as a CR approach to research (Fletcher, 2016). Further as Yin (2014) suggests they can be used where boundaries between the phenomenon and the context are blurred. This seemed especially relevant bearing in mind the complexity of the research area.

It was also apparent that a case study approach could be used effectively in HE research as well as in similar public sector areas. It would provide opportunities to investigate real life experiences of participants offering insights into contexts and offer opportunities to answer “how” and ‘why’ questions in research (Algozzine and

Hancock, 2016). The case study approach can also provide a longitudinal approach to research contexts, and therefore provide a picture of the evolution of teacher and teaching development across a range of sectors. The case study is an appropriate tool for a critical grounded approach to research offering an opportunity to investigate different contextual aspects of each sector. The case studies would be designed to gain a stratified understanding of different HEIs, by capturing experiences of senior academics, staff developers and new lecturers over a longitudinal period.

Whilst this appeared to offer opportunities to collect data that would give a sector-led focus, there were some concerns about the practicality of this method. As my research design was for a longitudinal study, it was important that I would be able to continue the relationship with each participant. However, there would be no certainty that I would have access to the same participants over time, since individual participants may move to a different HEI.

As there are different types of interview the selection involved consideration of the needs of the study as well as my own skills as a researcher. I hoped that teacher stories would evolve, but I also had quite specific areas that I wanted to investigate. Using a purely narrative approach to interviewing may not be conducive to accessing the part of the lived reality, which I was interested in perhaps because it was not relevant to the participants' lives at the time of the interview (Cohen, 2011). Further, I was also aware that in some cases I would have access to some of the participants only once, so setting out defined aims for the interview was an important factor (Bernard, 1988).

The semi-structured interview format provided a defined structure, which I controlled and managed, which provided a focus for my meeting my research aims. There were inherent concerns about this, firstly that my questions might not allow for the participant's authentic voice to appear (Galletta, 2013a), the power and control of direction rests with me; secondly, that my own position as a law teacher might also provide a barrier to my interpretation of the meanings and values drawn from the comments. As I have been a law teacher for many years, it was possible that I would not be open to nuanced responses or to impose my own meanings on terms or phrases that were unclear.

Finally, to ensure reliability and consistency I planned to carry out the interviews using the same framework (Cohen, 2013). Accordingly, the mechanisms I developed comprised a common interview framework; question structures; interviewee guidance and communication with each participant before and after the interviews (see Appendices A and B). However, the interviews themselves were not carried out in exactly the same way, I consider the implications of this later in chapter 7 at para 7-3.

## **6.4 Question design**

Interview questions were designed to support research questions 2 and 3 and finished with an open-ended final question. Whilst each question was specific, I offered the interviewee the freedom to consider and contextualise their response (Galletta, 2013b). This would provide confidence in terms of replicability and consistency, but also would give an opportunity to gain access to personal experiences, which I could not anticipate in the design of the specific questions. This approach addressed concerns about capturing the participants' lived experience.

I divided the questions into two different groups: those that allowed for (facts) confirmation or challenge to findings and those that allowed for the opportunity for differing perspectives to emerge. Each of the questions flowed from one contextual situation to another, each linked to the categories derived from the first stage of the research. However, the final question I left open for comments and discussion, which the participant led (Appendix B). I placed no time limit on the interview, but gave a guide time of 45 minutes.

It was also important that the location, time and medium for interviews was safe and comfortable, supporting the creation of a rapport with the interviewee. I produced an individual interview timetable, which was sent to each participant. This set out proposed times and locations for the interview, which they were asked to agree. In conjunction with this, I produced a guide that ensured that each interview would have the same structure and sent these to the participants prior to the interview. I also explained in the introduction at the start of the interview that their views were encouraged and valued.

## **6.5 Selecting interview participants – Sampling strategy**

I identified four different HEI groups: CHE; non-traditional universities; new universities and Russell Group universities based on HESA criteria. My aim was to select participants from each, in this way I would have a range of views across the sector.

A typical way to approach organisations is through gatekeepers. Whilst this method causes concerns about the representative nature of participants, there were also issues of access. This related to the fact that I was a researcher, without the label of researching through a law school. Therefore, I decided to join a range of societies and organisations, attend conferences and enquire there for research participants. This meant that my decisions about sampling reflected a pragmatic approach to gaining access to participants, which other methods may not have allowed. It also has implications for the application of my findings that I address here and in chapter 9.

My strategy was based on the following factors: firstly, it was important for me to ensure that I could access participants who would provide a range of views. Rubin and Rubin (1995, p.74) indicate that when considering the sampling strategy, looking for “similarity and dissimilarity” should be an important feature of participant selection. Further, when the dissimilarity may produce unexpected factors, it reflects differences in views and perspectives (Kvale, 1996; Rubin, 1995).

I therefore set out the additional guidelines to support consistency in my decision-making process; these are set out below in Figure 6-4 below.



I needed to ensure that the sample size was manageable.
The sample should be selected from a range of backgrounds and contexts. To include teachers, trainers
Participants should include beginner teachers and those with greater experience within teaching in both HE and CHE.
Participants should be those teaching law at HE level
No preference should be given to full-time teachers.

**Figure 6-4 Sampling decisions Job description**

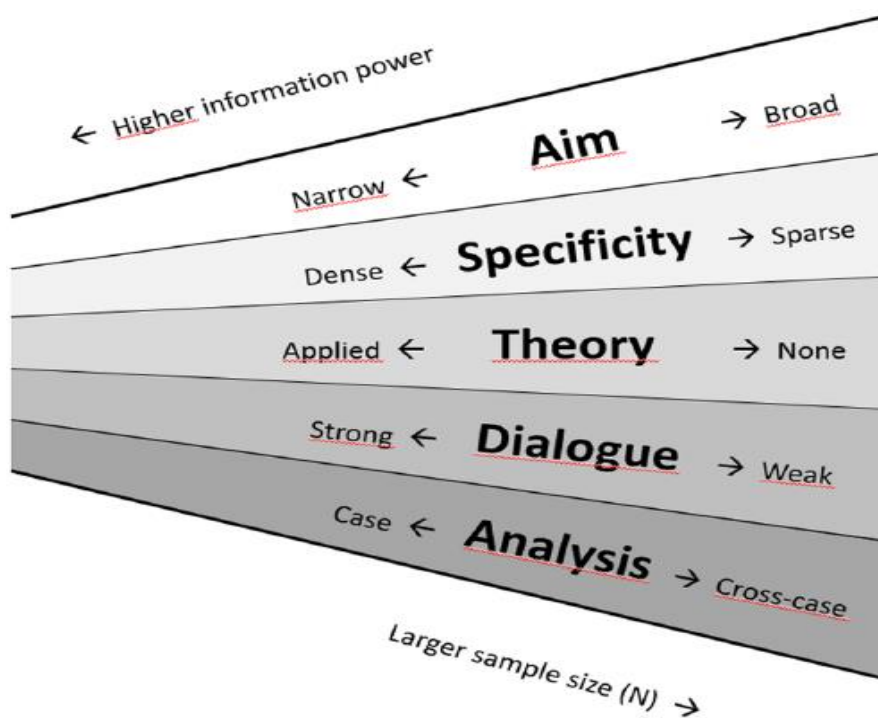
I was concerned that I might not be able to achieve what Rubin and Rubin (1991) describe as saturation; however, as they indicate, this is not dependent on number. They indicate that if saturation is not achieved then this causes questions about the quality of the research as well as its validity.

Confidence that research has reached saturation can be achieved where no new information has been gathered (Cohen *et al.* 2013) and when it is no longer possible to code (Mason, 2010). According to Guest (2006) in Mason (2010), there is no need to determine a specific number of samples for qualitative research, however, his view was that fifteen was the minimum required.

For the qualitative researcher, the fact that there is no numerical absolute that indicates when saturation takes place means that there is an uncertainty about the quality and generalisability of the research (Guest, 2006). There have been different methods of exploring how to address the concept of saturation within mixed methods research in particular, most of which focus on the rigour of the planning and skills of the researcher (Fusch and Ness, 2015). However, what is evident is that there is no hard and fast rule, in terms of research often the lead principals' or supervisors' experience play the most important role.

However, Malterud *et al.* (2016) confirms this and repeats the unhelpful comment that the sample needs to be neither too small or too large. Kvale, (2006) identified a different approach, which looks at the quality of the research design as set out below. Here Malterud *et al* (2016) identify five factors, which influence decisions about what

equates to saturation in a study. They suggest that as indicated below, where there is a narrow research objective, which is supported by clear links to theory the sample size does not need to be large, further that where the participants are within a set target group and there is effective communication between them and the researcher, again the sample size is usually small. They place the focus on what the researcher *does* in terms of ensuring that there are sufficient responses to present patterns, which are relevant to the study aim.



**Figure 6-5 Information power after Malterud *et al*, (2016)**

My study was exploratory; it was well structured and had clear aims and objectives, which were focused on specific target groups, although not specific individuals. My interview sampling strategy was based on convenience sampling, which meant that I was able to access participants who I was connected to through membership of Teaching and LE special interest groups (Table 6-2 Research Participants). My method of data analysis was relevant and carefully selected to ensure that a range of voices provided sector relevant perspectives on the teacher role within Legal education. Therefore, applying the Malterud *et al.*,(2016) approach, supported by Mason (2010), my research sample size seems appropriate. As Fusch

and Ness (2015) confirms sampling is not objective or indeed an exact science, what is most important is the justification of the decision to stop/continue gathering data. In my research, I set out boundaries in terms of time to carry out interviews, I was also limited in relation to accessibility to participants, but was able to interview my target group.

My participants' details are set out in Table 6.2 below. It indicates that they were lecturers, senior academics within LE and teacher educators and that they were involved in teaching and staff development within HE and CHE.

**Table 6-2 Research Participants**

Number of participants	CLE TEACHING	Stage Year 1,2, 3	Sector	Level	Initial	Years' Experience within Higher education	HEA fellowship accreditation	PGCE or equivalent qualification
1	X	1	Russell	Senior academic	R1	20	P	x
2		1	Russell	Staff developer	R2	14	P	P
3		3	Russell	Senior lecturer	R3	16	P	x
4		2	Russell	New lecturer	R4	6 months	x	x
5		1	Non trad	Senior academic	NT1	24	P	x
6		1	Non trad	Staff Developer	NT2	11	P	x
7		3	Non trad	New lecturer	NT3	6 months	x	x
8		2	New un	Senior lecturer	Nu1	17	P	x
9		3	New un	Staff developer	Nu2	9 years	P	P
10	X	2	New un	New lecturer	Nu3	3 months	x	x
11		3	New un	New lecturer	Nu4	6 months	x	x
12		3	Che	Senior manager	Che1	24	x	P
13		1	Che	Staff developer	Che2	23	x	P
14		2	Che	Senior teacher	Che3	18	x	P
15	X	3	Che	New teacher	Che4	6 months	x	x

## **6.6 Collecting the data: Arranging and carrying out the interviews**

All contact with every participant was by email and was carried out as initial contact and then followed up with further information. The process is set out below.

### *Initial contact*

I provided details of the research as set out in Appendix B and included information on consent, interview, and university ethics.

I explained the purpose of the interviews, as part of the introduction to seeking the commitment and consent of each participant. I reaffirmed confidentiality and their anonymity in writing and then orally throughout the research process. I informed all participants about how their contribution to the research would be addressed and I assured them that identifying factors would be removed. Finally, it was made clear throughout that the participant could leave the study at any time.

### *Interview contact and follow up*

Email correspondence was once again used to set up each interview session at agreed times. Reminders of ethical guidelines were also included to remind participants of the study and that they could always remove themselves from the process.

I indicated that interviews would be recorded using password protected devices such as an I-pad or via SKYPE. In one case, an interviewee asked not to be recorded and instead agreed to me taking handwritten field notes. In a number of other cases, technical problems or location of the interviews meant that my recordings of the conversations were poor. As a result, nine interviews were carried out where the technology worked, and in the other cases, the technology failed or background noise made recording hard to manage. In all cases, my notes or copies of the transcripts were provided to each participant to verify their content and accuracy. Each interviewee was assigned a code, which would support their anonymity as well as address issues of confidentiality. The interview durations were between 45 minutes and 1 hour 15 minutes. I used email correspondence to address any follow-up questions that arose. All data were collected and stored in accordance with university ethical procedures.

The selection of interview participants meant that in some cases, they had known each other and therefore, it would be impossible to guarantee complete anonymity in all instances and in one case, a participant revealed their identity voluntarily to another, who reciprocated after the interviews had taken place. Nevertheless, I was assiduous in ensuring that the identity of the participants and their comments were anonymised, remain confidential and have been subject to university ethical principles and procedures.

An important feature of the interview process is the fluidity of the discourse between the parties, ensuring that meanings and interpretations are clarified. The outcome I hoped for was an agreement of the shared understandings gained from the conversation. This was vital to ensure that the real-world position of each participant is captured. By using an interviewing plan and providing the questions to the participants, I could guide and probe for additional emerging categories that had perhaps not been anticipated.

## **6.7 Conclusions**

In this section, I have set out my data collection and analysis methods. It is apparent that my methods have a qualitative focus, which sits well with critical realism providing opportunities to gather the lived reality and explore how HE and LE policies and practices have affected the Law teacher role. It is also helpful to apply Archer's (1990) Morphogenesis model to analyse and unravel transformations and changes to agency, structure and culture within HE. I have identified and explained the overarching iterative approach to the data analysis and the reasons for those choices.

In the following chapter, I explain how I analysed both data sets and identify emerging findings from them.

## **Chapter 7 Results and data analysis**

### **7.1 Introduction**

In this chapter, I present my results and analysis. In the first section, I begin by examining how job descriptions have changed between 2013 and 2015. In particular, taking into account the periods of transition, and the shift in demand for teachers experienced in research to those with organisational skills. I also explore the changes with references to policy and professionally led demands in relation to teaching over the research period.

I then examine the interview comments and consider their responses in relation to the research questions 2 and 3. In doing so I explore how my interviewees regard formal teacher training and the HEA accreditation process as not relevant to their current work. Finally, my conclusion explain how my findings support the argument that the traditional perception of the law teacher is changing.

As indicated in chapter 6, I collected my data from four HE sectors: CHE; new universities; non-traditional universities and the Russell Group of universities. My analysis focused on two distinctive data sets - job descriptions and interviews, to provide different perspectives on my research questions (Hsieh and Shannon, 2005a; Simpson, 2011). I analysed each data set using the following approaches: job descriptions using Content Analysis (CA) in conjunction with Constant Comparative Analysis Method (CCA); interviews with CCA, where the categories were derived from literature and job description analysis as explained earlier.

### **7.2 Job Description Data analysis**

I collected a data set of 61 job descriptions from three national recruitment databases as set out in chapter 6. As Table 7-1 shows, my data covered the four HESA recognised HE sectors and the three years 2013 to 2015.

Sector:			NON- TRADITIONAL	RUSSELL	
Year:	CHE	NEW UNIVERSITY	UNIVERSITY	GROUP	TOTAL
2013	4	8	5	6	23
2014	4	7	2	7	20
2015	3	7	6	2	18
TOTAL	11	22	13	15	61

**Table 7-1 Breakdown of the job descriptions collected**

In this section, I explain how I used coding to analyse the job descriptions I collected and what my findings show.

### **7.2.1 Coding the job descriptions**

Here I explain how I used CCA that Fram ( 2013a,p3) describes as a “process of reducing the data through constant recoding”, using open, axial and selective coding (Appendix C). My open coding categorised the data using the categories derived from the literature, such as the terms “lawyer”, “scholar”, “educator”, and “administrator/politician” used by Twining (2011) and educationalists Blaxter (1998), Gale (2011) and Winberg (2014). Whilst open coding produces a close scrutiny of the data, it also often means that the data produced fits the originating concept rather than providing scope for different perspectives to be revealed (Gorra and Kornilaki, 2010). Whereas axial coding offers the researcher an opportunity to analyse the individual elements around each category (Kelle, 2007), in so doing it provides “depth and structure to existing categories” (Gorra and Kornilaki, 2010, p.3). Therefore, my second stage involved using axial coding to explore the potential connections between these terms and categories. It identifies causal conditions or events that lead to the development of the category such as the introduction of a new term or characteristic.

Selective coding was used to identify and select a central category, which was then systematically linked to the other categories. Whilst this method helps to formulate a theory, I had to be mindful that there are often some elements of the data which might be left behind at this stage (Böhm, 2004).

As a result of reviewing the coding, I identified three additional categories not previously examined in terms of the law teacher role within Legal education literature. These are manager, networker and vocational qualification, although there has been an indication that there are these wider roles and expectations within LE (Gordon, 2004 and Twining, 2014). The data drawn from the Job descriptions indicates that these skill sets are relevant and sought for by HEI. The introduction of the requirement or willingness to obtain vocational qualifications was refined only to include teaching, rather than legal qualifications are set out below in Table 7-2. These new categories enabled me to examine my findings from the organisational viewpoint as well as the teacher perspective.

Finally, I drew on the findings to identify broad themes, which related to the relationship each category had with teaching practice, this led to the development of the overarching themes of teaching and non-teaching categories, which are set out below.



Sources		Literature		Research				Revised categories														
Categories	Twining	Blaxter / Gale	Winberg Generation 5	Findings leading to revised categories				Lawyer														
	Lawyer , practitioner	no equivalent	Professional Practitioners	longer in practice	non HEA / SEDA/PGCE PGCAP	Teacher	Teacher	Lawyer														
									Lawyers, legal professionals, practitioners, full time/ part time no longer in practice													
	Educator	Teacher , tutor	Teacher	No Equivalent	Teaching experience in sector	Teacher / consultancy and external training developer	Researcher	Teacher														
									No Equivalent	Published writer, scholar	Researcher / funded researcher through non HE sources											
												Researcher : autonomous										
	Scholar	Writer	Researcher : autonomous role	Researcher / funded researcher through non HE sources	Manager	Staff management and development	Networker	Administrator														
									Administrator / Politician	Administrator	Manager	Staff management and development	Networker	Administrator								
	No Equivalent	no equivalent	Administrator , manager: dealing with process and compliance within HE	Administrator	Reduced teaching	Reduced teaching	Training in the role ; centralised services and training	Centralised relationships within HEI	Manager													
										Networker	Reduced scholarship	Reduced teaching	Relationships within Specialism and sector	Networker								
Innovator															Reduced scholarship	Reduced teaching	External relationships within the community	Networker				
																			Community Developer	Some training responsibility within HEA	Reduced teaching	Vocationally qualified teacher
HEA/ SEDA / PGCE	some aspects of design and mentoring	Vocationally qualified teacher																				

Table 7-2 Categorisation development

These new categories enabled me to examine my findings from the organisational viewpoint as well as the teacher perspective. Finally, I drew on the findings to identify broad themes, which related to the relationship each category had with teaching practice, this led to the development of the overarching themes of teaching and non-teaching categories.

Continuity and consistency are crucial to the coding process. Unless each job description is analysed on the same basis, there is a risk that categories might appear to emerge between the years when in fact this is simply due to my evolving understanding of the data. To ensure that my coding was consistent across each job description, I initially coded each one on Microsoft Excel in order to compile a coding dictionary. I then transferred my data onto Nvivo<sup>20</sup> so that I could code the data afresh using the dictionary I had compiled.

By coding each job description initially on Microsoft Excel, I noted that new categories began to emerge during the process. In particular, I found that the categories I had identified from the literature matched closely the data I had collected from 2013. By the time I began to code the 2015 data for the first time, these categories no longer closely matched the job descriptions and other descriptors around networking skills and management attributes were more evident. Using the educator category as an example, the italic text below shows how the terms I began to code, such as 'lecturer' or 'qualified', began to be supplemented by the terms in bold italic, such as mentor and standardisation manager which were found in the job descriptions.

***educator:*** *teacher, lecturer, researcher, tutor, workshop tutor, seminar tutor, curriculum developer, supervisor, learning manager, student manager, course leader, programme leader, teaching team leader, mentor, coach, curriculum manager, experienced, planner, practitioner, qualified, unqualified, course designer, course developer, tutor mentor, teaching innovator IT and technology developer, standardisation manager, setting, marking and reporting assessments*

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<sup>20</sup>NVIVO is a software program that supports qualitative and mixed methods research

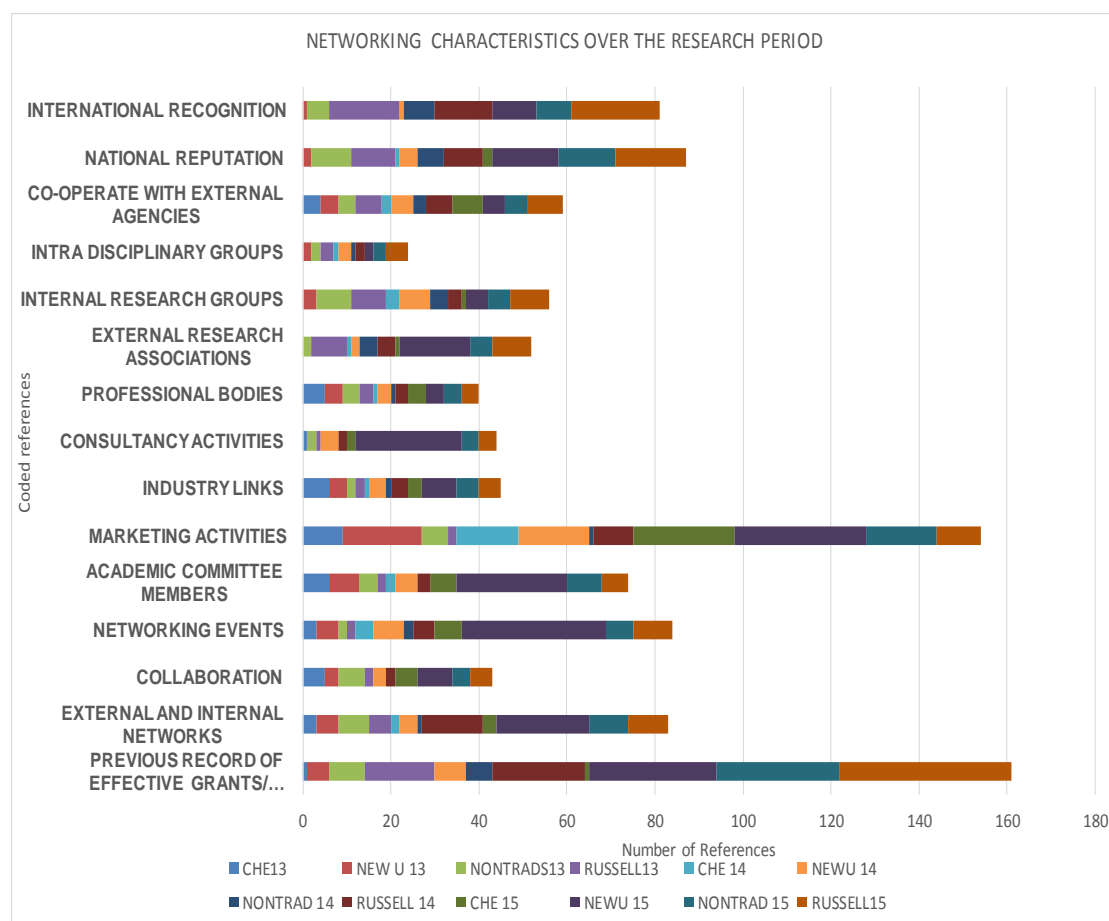
I therefore undertook a second iteration of coding on Microsoft Excel to confirm whether these categories were evident in the earlier job descriptions. My second iteration identified a further category around the re-defining of the educator category. The text in italics shows the terms I had originally coded – such as personal tutor and selection panels began to be supplemented by the terms in bold, such as commitment to values.

**Roles:** *outside but **connected to teaching outcomes:** attend conferences, attend and deliver teaching sessions for marketing purposes, attend student development meetings, personal tutor, pastoral tutor **attend marketing meetings**, exam board meetings, selection panels, student recruitment sessions. IT literate, understand the working environment, **implement and design strategic objectives for the department**, **commitment to values**, comply with all reasonable requests*

As a final check of consistency before analysing the data afresh on Nvivo, I used an on-line tool, Wordle, to confirm that my coding dictionary reflected both the earlier and later job descriptions. The visual representations of the job descriptions from 2013 and 2015 are set out below. The graphics show how references to students and teaching were much more prevalent in 2013 than 2015, and instead skills, knowledge, experience and ability are more prominent in 2015.



It became evident to me from the coding dictionary I had compiled that a number of the characteristics I had identified no longer matched to the categories used by Twining (2011). By reading the job descriptions again and reviewing the literature, my iterative approach of axial coding enabled a number of categories to emerge. Gale (2011) had referred to the category of networking and this clearly appeared within my coding characteristics. I therefore included a networker category, which represents the requirement for applicants to demonstrate they can build and maintain external relationships as indicated in Figure 7-2 below.



**Figure 7-2 Networker category by sector over research period**

The categories of 'manager' and 'vocational qualification' evolved from those characteristics that did not fall under those I had already identified. These two categories represent the requirement for experience in managing programmes, staff and students; and the need for a teaching qualification, such as SEDA or HEA.

Table 7-3 below shows how the additional categories I identified changed my coding of terms. Using the 2015 job descriptions to illustrate this difference, this shows that the three new categories accounted for some 51 per cent of the terms I had coded. The greatest reductions were in the educator and administrator categories as can be seen in Table 7.3 below. This is because many of the terms from the job descriptions were more relevant to the manager category.

2015 Job Descriptions	Initial coding iteration		Second coding iteration	
	Number of coding references	%	Number of coding references	%
Educator	830	36	416	18
Scholar	401	17	301	13
Lawyer	142	6	122	5
Administrator	956	41	312	13
<i>Sub-total</i>	<i>2,329</i>	<i>100</i>	<i>1,151</i>	<i>49</i>
Manager			321	14
Networker			583	25
Vocational qualification			274	12
<i>Sub-total</i>	<i>0</i>	<i>0</i>	<i>1,178</i>	<i>51</i>
<b>Total</b>	<b>2,329</b>	<b>100</b>	<b>2,329</b>	<b>100</b>

Table 7-3 Number of coding references by category

My selective coding categorised each term by characteristic under the seven categories I had identified. This enabled me to create a clearer picture about the way the role of the law teacher is specified in the job descriptions I had collected over the 3-year period. As table 7-3 above shows, the seven categories I identified were relevant to each of the three years 2013 to 2015. As there are a much greater number of references in 2015 than the earlier years, my subsequent analysis converts these codings into percentages to enable effective comparison. Nevertheless, the raw data show that the three new categories that I had identified were distinct and separate from the original four specified by Twining (2011).

### 7.2.2 Analysis of job descriptions

Having coded 61 job descriptions (Table 7-1), this section outlines the results of my analysis for each of the three years 2013 to 2015. The data shows that the lawyer and vocational teaching qualifications are less relevant to selection in 2015 than 2013 (Table 7.4 below).

Year	Categories							Total no of references
	Educator	Scholar	Lawyer	Administrator	Networker	Management	Vocational Qualification	
2013	341	246	53	245	263	214	73	1435
2014	196	164	40	131	244	162	66	1003
2015	416	301	122	312	583	321	274	2329
Total number of terms coded	953	711	215	688	1090	697	413	4767
Average for category	318	237	72	229	363	232	138	1589

**Table 7-4 Summary of Job Description Analysis by category**

I then focus on those job descriptions relevant to contextualised practice-focused teaching to examine whether they reflected the skills required to design and deliver such teaching summarised in chapter 3.

#### 2013 Job descriptions

The period 2013 represents my baseline measure and provides an understanding of sector requirements. I reviewed the 23 descriptions in this first recruitment period specified Table 7-1 in above. Overall, I coded 1435 characteristics. As can be seen from below, the educator category was the most prominent, representing 24% of the characteristics. This indicates that at this time HEI placed value teaching on experience and academic excellence.

The other category that plays a prominent role within the job descriptions is that of the 'networker', representing 18% of characteristics, which is second in prominence to educator. The prominence of this category can be seen in Figure 7-2 below.

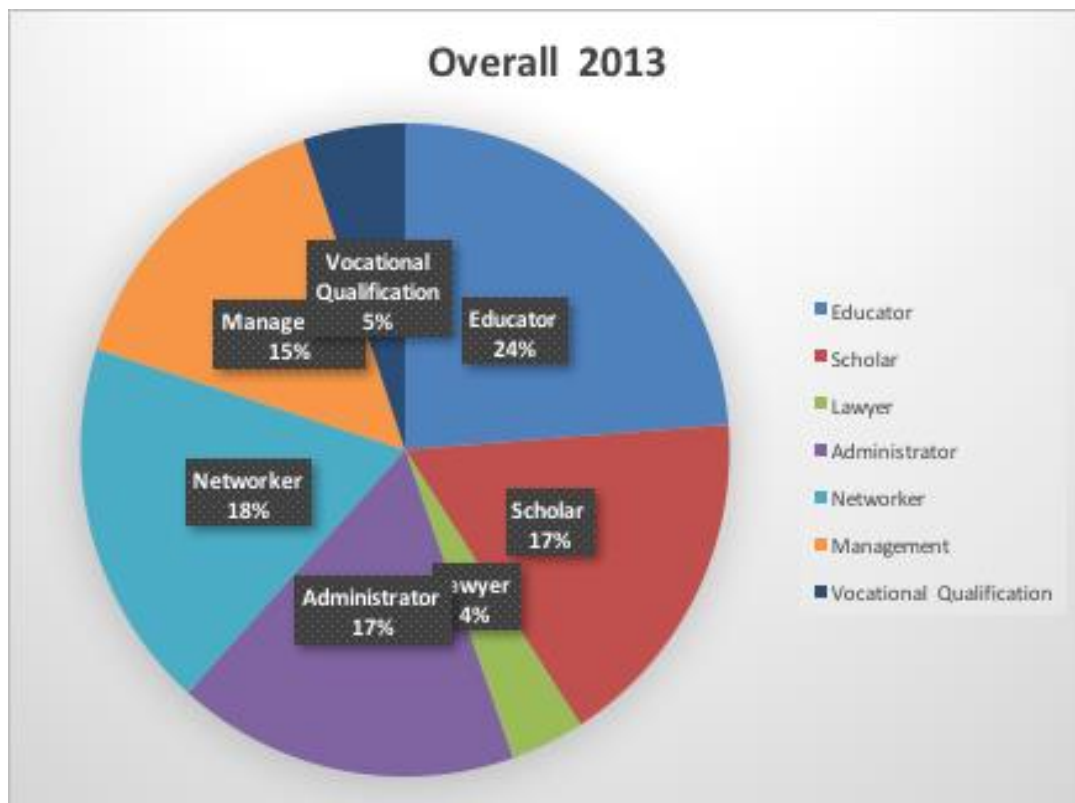
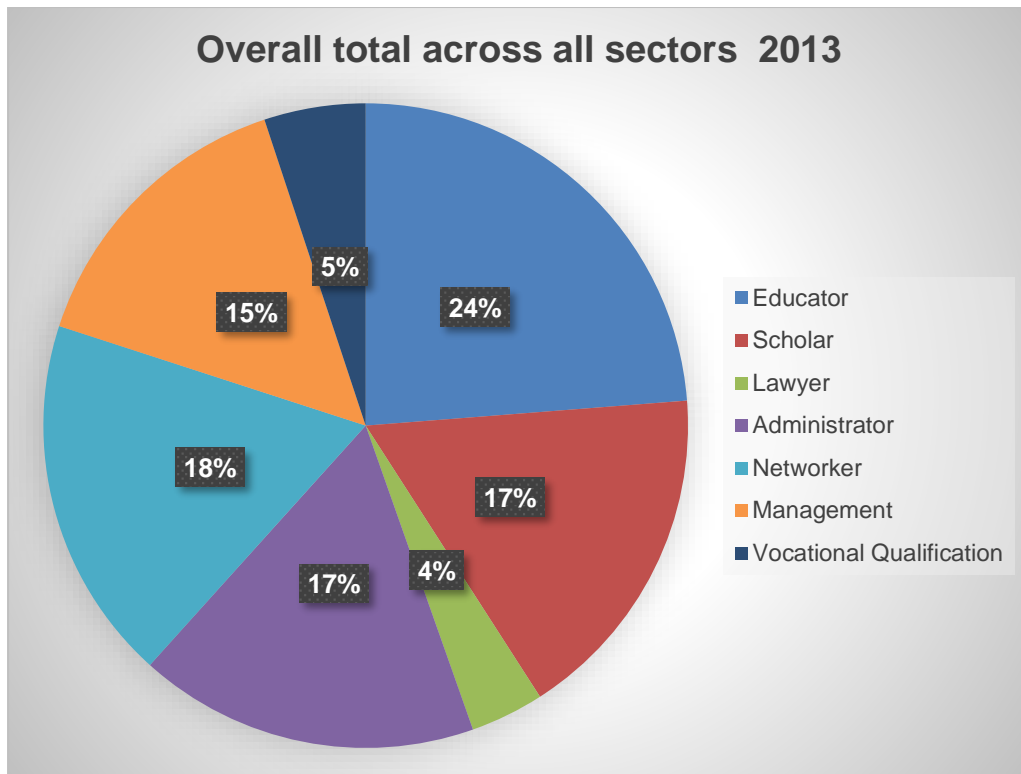


Figure 7-3 Overall data 2013

Here the requirement in 2013 job descriptions for external membership of research groups, sector-reporting bodies e.g., Law Society working groups, and collaborative practices including conference memberships is evident. Figure 7.4 below breaks down the data further across the four sectors. The data demonstrates that each sector prioritises different categories. The only category consistently referenced was the administrator role.





**Figure 7-4 Overall data across sectors**

The need to demonstrate teaching skills appeared to be greatest in the CHE sector, which supports the view that CHE prioritise teaching experience over research. The other three HE sectors appeared to require teaching

skills, and the educator in equal measure as set out in Figure 7-5 below.

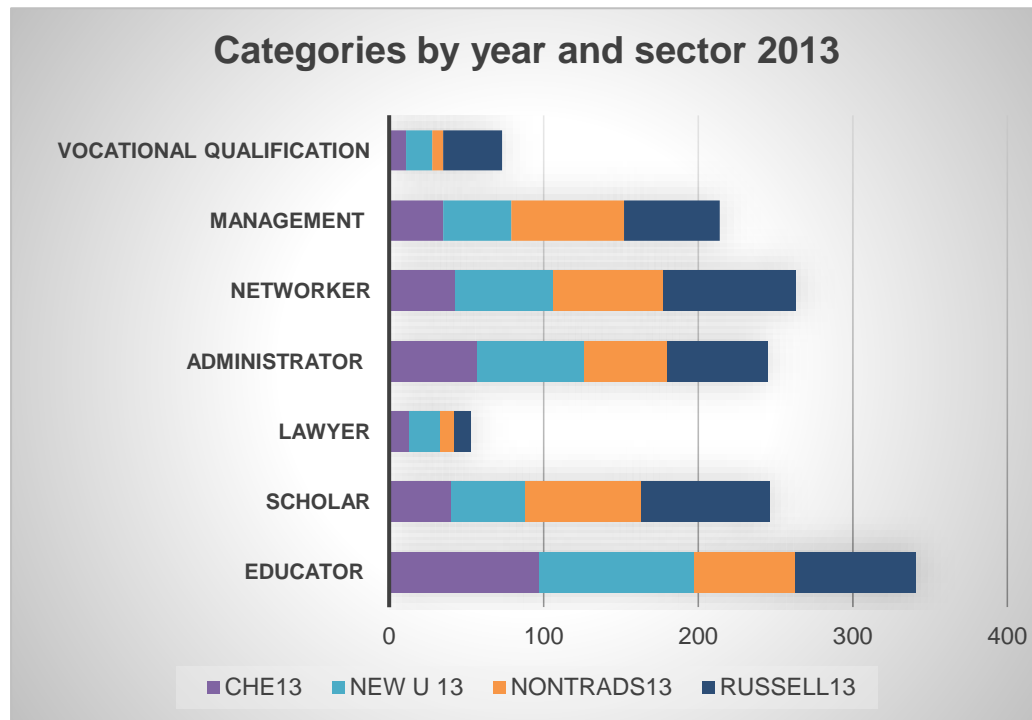
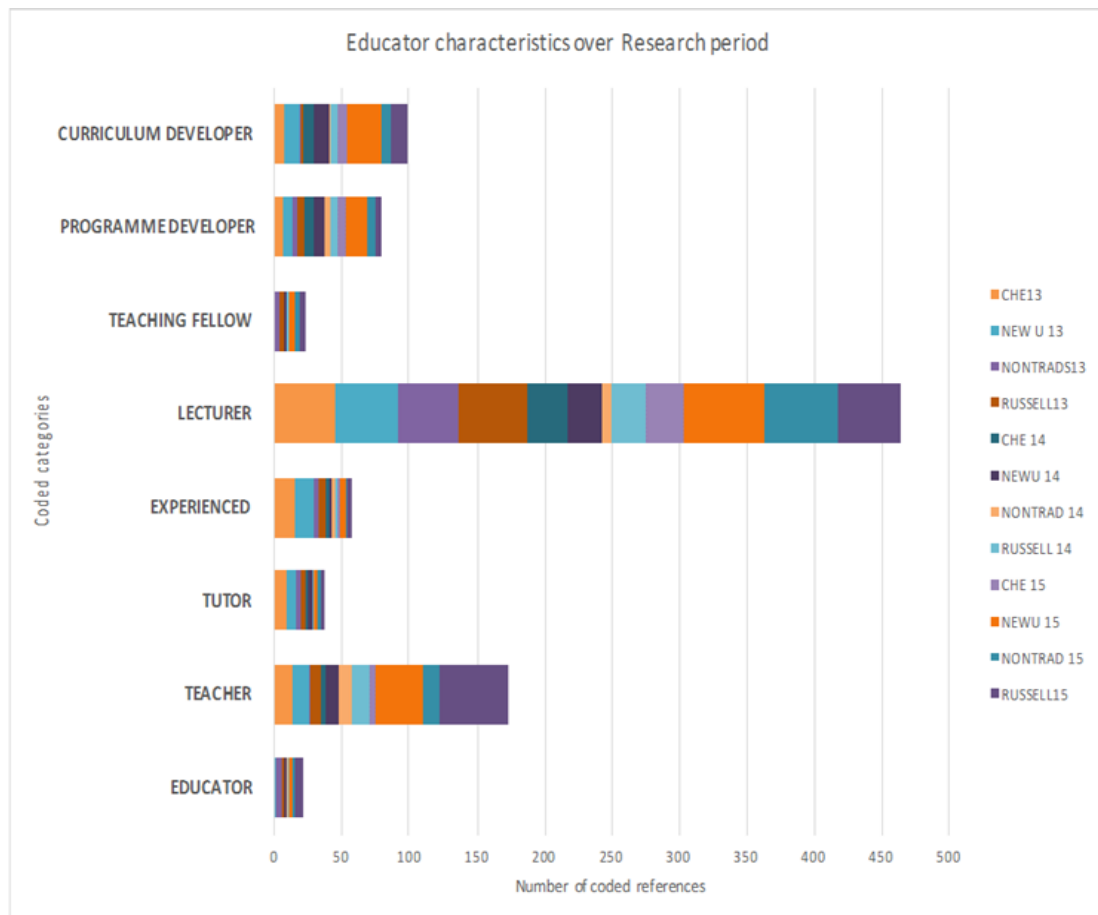


Figure 7-5 Categories by year and sector 2013

The results from figure 7.5 above also demonstrated that the scholar category was more prominent amongst the job descriptions for non-traditional and Russell group universities than CHE and new universities. This might be because they actively seek researchers who teach rather than legal professionals who teach.

Government policies (DBIS, 2012), the introduction of the HEA fellowship process as well as sector-led reports (LETR, 2013) indicate that HEIs should encourage a student-centred focus in teaching. The base line position in 2013 indicates that the educator category was more prominent in the new university sector than in the non-traditional universities. This confirms the argument put forward by Locke (2014) that the Russell group and non-traditional universities were more interested in subject expertise than teaching skills. It is not possible to draw any conclusions about the quality of teaching in any of the HEIs from this data.

Within the educator category, teaching experience remained relevant across all sectors, whereas teaching qualifications such as HEA accreditation were rarely specified. As identified in Figure 7-6 below.



**Figure 7-6 Educator category development**

The balance between teaching skills (educator, scholar and vocational teaching qualification) and non-teaching skills, (management, networking, administrative and legal practitioner status) within the period 2013 was 46% to 54% see Figure 7-4. In this period, educators formed the most significant proportion of the terms at 24% across all sectors.

### *2014 Job descriptions*

I analysed 20 job descriptions for 2014, as indicated in Table 7-1 above. There were 1003 references to terms across all the sectors, over 400 fewer than in 2013. I considered whether I had not properly coded the data in accordance with my coding dictionary (codex). I revisited the original data,

recoded it using the revised codex, and found that there was still no difference in the outcomes from the original codex. I therefore concluded that there must have been a material change in the approach to preparing job descriptions by the HE sectors. I logged my concerns in my CCA diary and returned to this in the last stage of the research cycle.

It was evident that the job description content was more structured, and on average, there were fewer characteristics specified, the average, per job description reducing from 63 in 2013 to 50 in 2014. Further, part-time job descriptions tended to be shorter and limited in relation to the categories that were required – see Table 7-5 below. Nevertheless, whilst in 2014, these accounted for four of the sample size (20%) of, compared to only two (9%) in 2013, it was not clear that this had affected how the characteristics required affected the development of new categories. To adjust for the difference in the number of characteristics between 2013 and 2014, my analysis is based on the percentage of characteristics per job description within each category.

Period	Status	Educator	Scholar	Lawyer	Administrator	Networker	Management	Vocational Qualification
2013	Full time	25	17	2	16	20	15	5
2013	Part time	17	20	18	25	5	13	3
2014	Full time	21	17	1	14	26	17	5
2014	Part time	14	14	18	10	18	15	12
2015	Full time	17	13	5	14	26	14	12
2015	Part time	32	12	14	9	9	11	14

**Table 7-5 Full and Part time JDs new categories by percentage by year all sectors**

My data suggested that there was a movement away from the teaching skills in 2013 to non-teaching roles in 2014, as is set below in figure 7.7 and 7.8 below.

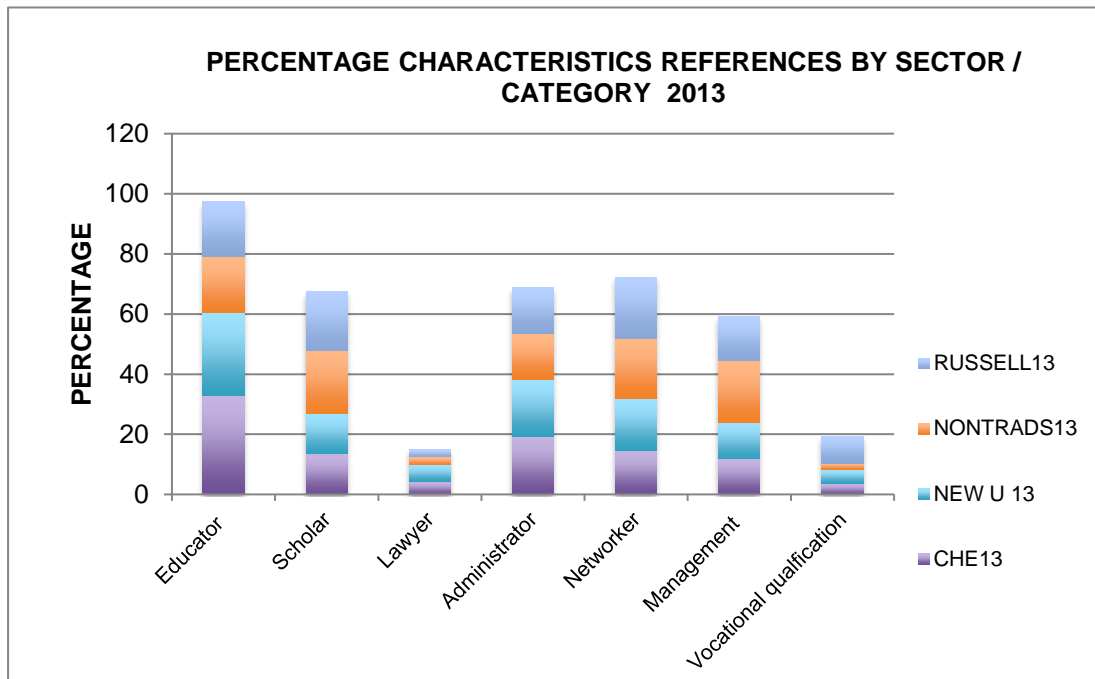


Figure 7-7 Characteristic references by sector

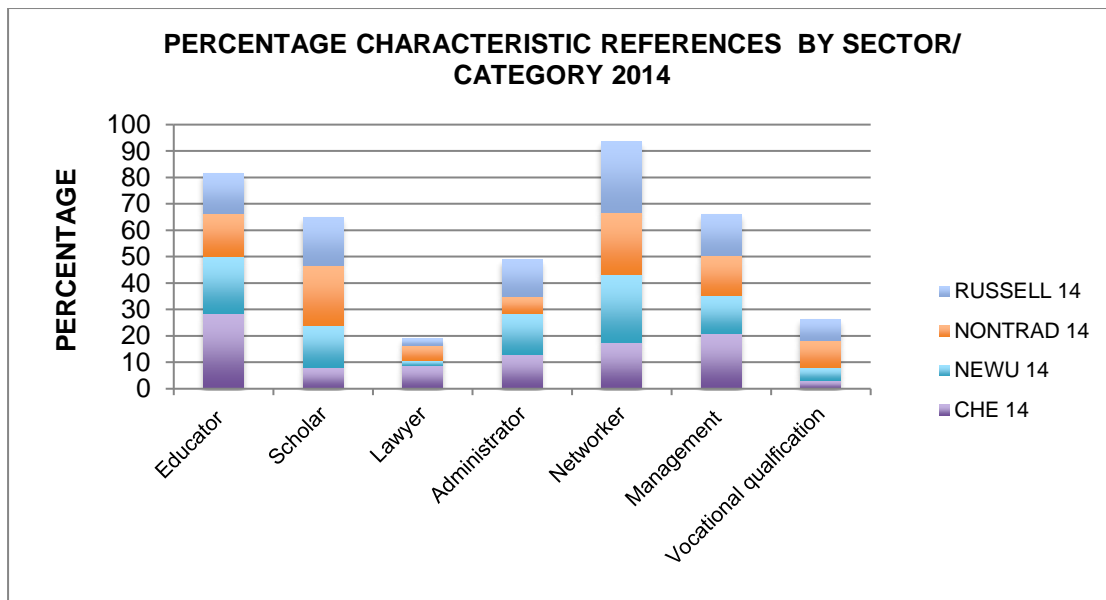


Figure 7-8 Characteristics references by sector 2014

The implication for this was that there two overarching themes about teacher roles were beginning to emerge - teaching and non-teaching. The teaching theme comprises the educator, scholar and vocational training

qualification categories, whereas the non-teaching role comprises the management, networking, administrative and lawyer categories. The teaching role has fallen from 46% of characteristics in 2013 to 42% in 2014, whilst the non-teaching has risen from 54% in 2013 to 58% in 2014, largely due to the networking category as seen in Figure 7-8 above.

I undertook a Chi square test to see if there was a relationship between the non-teaching and teaching themes between 2013 and 2014.

	Non-Teaching	Teaching
Observed		
2013	775	660
2014	577	426
	1352	1086
Expected		
2013	796	639
2014	556	447
	1352	1086
CHI TEST 2.96		P VALUE .085

**Table 7-6 Chi test teaching and non-teaching 2013/2014**

The result gave P value of greater than .05 as indicated in Table7-6 above. Consequently, I could not reject the null hypothesis, meaning that there is no significant difference between the teaching and non-teaching categories. As the results of my Chi square test indicate that there does not appear to be a significant difference between 2013 and 2014, there is therefore no statistical evidence to demonstrate that HEIs have given more prominence to non-teaching characteristics in their job descriptions. Once I began to look at the

underpinning data within the teaching and non-teaching categories, however, there do appear to be more sizeable differences. I did not undertake a Chi square test here, as there were insufficient data in all the categories for the analysis to be meaningful. Table 7-7 shows that the networker category was the most prominent in 2014, accounting for 24% of average characteristics in 2014, compared to 18% in 2013. Whilst the average number decreased for CHE and non-traditional universities, it increased noticeably for the other two sectors between 2013 and 2014. In comparison, the educator category was specified less on average per job description in 2014 (20%) than in 2013 (24%). This is because the CHE and new universities averaged only 52 and 63 characteristics in 2014 respectively, compared to 97 and 100 respectively in 2013.

Categories	Educator	Scholar	Lawyer	Administrator	Networker	Management	Vocational qualification	Total	%
HEI Sector									
CHE 14	52	15	16	24	32	38	6	183	18
NEWU 14	63	46	6	45	75	42	14	291	29
NONTRAD 14	26	36	9	10	37	24	16	158	16
RUSSELL 14	55	67	9	52	100	58	30	371	37
Total	196	164	40	131	244	162	66	1003	
<i>Percentage</i>	20	16	4	13	24	16	7		100

**Table 7-7 Overall coded references by category 2014**

Whilst the shorter job descriptions in 2014 might account for the reduction in the average number of characteristics for the educator category, it does not explain the increase for the networker category. The higher prominence of the networker category, therefore, suggests that there has been a shift in priorities by the new universities and Russell group universities. This might be because they were seeking applicants who could demonstrate international collaborative

potential and experience in research, although I was surprised that non-traditional universities did not show a similar pattern. I noted this in my CCA log for consideration of the 2015 data to see whether this pattern was repeated.

Stolker (2015) and Thornton (2012) comment that there was evidence that the pull of attracting funding through external networks and partnerships has become increasingly important for law schools. Furthermore, I had expected that LETR 2013 with its championing of teaching practice and professional ethics from the practitioners' perspective would have led to evidence of a slight rise in the lawyer category in 2014. Although LETR accepted that ethics is not only a lawyer-based concept, it is often seen as a practitioner domain, where students are encouraged to think like lawyers be the best lawyer that they can. It also challenges teachers and students to engage with the wider sense of ethical behaviours, such as the virtue ethics principles. Whilst LETR encouraged a broader perspective of ethics, it is inevitable that bearing in mind employability agenda, changing curriculum and the influence of the legal services sector that Law schools might look to the practitioners to engage students in ethical debate. As was stated in Subject benchmark statement (QAA, 2015, para 1.4):

Law schools will determine for themselves how ethics are addressed in the curriculum, but it is expected that students will have opportunities to discuss ethical questions and dilemmas that arise in law and to consider the features of ethical decision-making.

Hence, I thought HEIs would have considered increasing the weighting of future recruitment towards those with lawyer characteristics who could deliver professional ethics and skills. This is part of the "hidden curriculum" Del Mar (2013, p123) which supports not only professional development but also employability skills.



There is little doubt that the number of undergraduate teachers who are also practitioners has reduced over time. HEPI (2015) and other data reflect that in comparison with medicine the number of practitioners in Legal education is low. LETR (2013) affirmed this so the lack of even a small increase of these characteristics in the job descriptions between 2013 and 2014 in the lawyer category raises questions over the timeliness of the HE response to the LETR recommendations, in addition to urgent sector-driven calls for improved undergraduate relevant employability skills.

Table 7.7 above suggests that the sectors differ in relation to their need for vocational qualifications. Whilst this category is relatively prominent in the job descriptions for the Russell group, it is not for the others. In particular, this category only averaged six references in CHE job descriptions. This may be explained in two ways; firstly, government reforms in the CHE sector meant that teachers in substantive vocational areas needed to have or be working towards teaching qualifications to be able to teach in the programme. In many cases, the FE colleges that are linked to CHE would make it a part of a condition of employment that the individual would take at least a level 3 basic teacher programme. Secondly, teacher education programmes are often delivered in CHE; this meant that the basic level of teacher qualification could be delivered in house and would capture government funding. The same uplift occurred with the introduction of the foundation degree; CHE would be able to draw on funding to train staff and at the same time show that they had buoyant teacher training programmes.

### *2015 Job descriptions*

I analysed 18 job descriptions for 2015, as indicated in Table 7-1 above page 140. There were 2329 references across all the sectors, over double those in 2014 and nearly 900 more than in 2013. As I had already re-checked the consistency of my coding, I concluded that the increase was probably due to the impact of the HEA and UKPSF<sup>21</sup> on selection criteria and that HEIs were

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<sup>21</sup> United Kingdom Professional Standards Framework

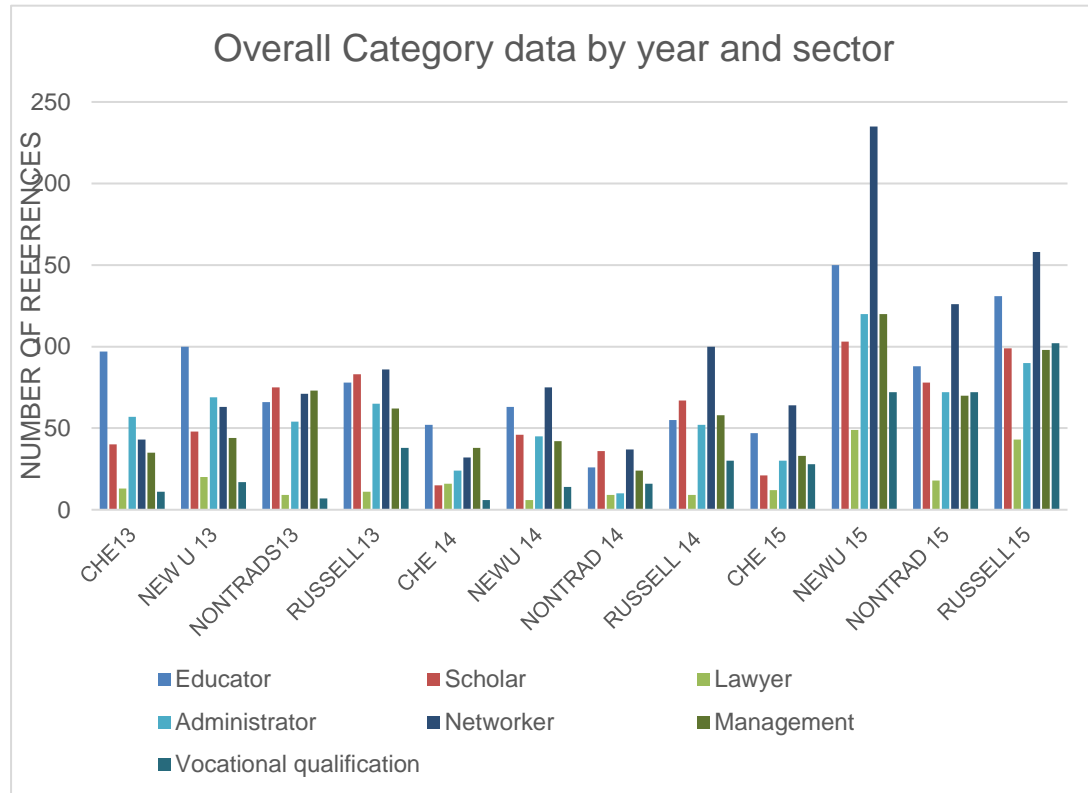
becoming more aware of the need to recruit applicants with a pre-existing HEA qualification.

As with the 2014 data, I undertook a Chi square test to see if there was a relationship between the non-teaching and teaching categories across the three years 2013 to 2015. The result gave P value of greater than .05 – see Table 7.8. Consequently, I could not reject the null hypothesis, meaning that there is no significant difference between the teaching and non-teaching categories.

	Non-Teaching	Teaching
Observed		
2013	775	660
2014	577	426
2015	1338	991
Total	2690	2077
Expected		
2013	796	639
2014	556	447
2015	1314	1015
Total	2666	2101
CHI TEST 4.99		P VALUE .086

**Table 7-8 Chi square test 2013-2015**

Despite the continued absence of a statistical difference between the teaching and non-teaching categories, the underpinning data on characteristics show sizeable variations.



**Figure 7-9 Overall Category data by all years and sectors**

As Figure 7-9 indicates there has been a doubling of the number of job criteria linked to vocational teaching qualifications between 2013 and 2015. The increase was seemingly at the expense of the requirement for scholarship. This is the first time that scholarship, such as the requirement of PhDs or similar, have been less in demand over the research period. This seems counter-intuitive, as experience in scholarship is anticipated to bring in funding through the REF<sup>22</sup> guidance, but also in terms of grant funding. However, bearing in mind the rise of networking, this could be recognition that scholarship is now being superseded by consultancy activities. In relation to professional qualification or legal practice experience, what is evident is that there is a slight increase across all the sectors.

<sup>22</sup> Research Excellence Framework

Teaching and scholarship categories appear to be playing a noticeably diminishing part of the new teacher role. Further, whilst teaching experience remains relevant, the rise in the vocational teaching qualification indicates that there is a shift towards credentialing that experience. This is especially the case in Russell group universities. When I examined my data for 2014, I was surprised that there had not been an increase in the characteristics under the networker category similar to those for Russell group and new universities. The data for 2015 shows that numbers have since risen considerably, suggesting that there was a timelag in responding to this issue. More generally, the requirements for non-traditional universities on all the other categories have also risen noticeably between 2014 and 2015. This suggests that this sector is placing significant demands on their applicants. As a result, the application process may be more complex and detailed for the applicant to navigate, it may also be that in order to meet the specific expectations that the job descriptions criteria fit across more than one category, such as teaching and consultancy work.

The call for improved student skills has been one which the legal services sector consistently demands (Ching, 2013), and therefore, the profession expects that teachers can meet those needs through applying strategies in the curriculum, such as practice-focused teaching. If these skills and understandings are not present, then relevant curriculum development would be challenging.

To address these additional questions, I revisited my job descriptions analysis. In doing so, I sought to identify any transitions or changes in evidence support for the integration of practice-focused teaching and learning.

### **7.2.3 *Practice-focused Teaching (PFT)***

As Austin (2002) and Johnson (2013) indicate there has been a drive for the application of a practice-focused approach to LE for some time. As explained earlier this is carried out using simulated learning experiences (Apel, 2011), as well as legal clinics or student law Offices (Antoniou and Hassan-Morlai, 2014) where teachers who are practitioners support student

development whilst providing advice and guidance to real clients. These opportunities have become important following curriculum changes (Subject Benchmark statement, 2015) which identify practice-based skills as relevant to the undergraduate programme within HEIs. It is evident that this has led to a growth in contextualised approaches to law teaching and law clinics (Bleasdale-Hill and Wragg; Drummond and McKeever, 2015).

Flood (2010) and Ching *et al* (2013) indicate there is recognition of the value that practitioners bring to undergraduate teaching as well as practice-focused teaching. Indeed, the revised subject benchmark indicates that sector relevant skills must be part of the curriculum. PFT's purpose is to support learning outcomes that focus on legal professional practice, such as professional and ethical conduct and aspects of specific areas of practice. To develop this sort of activity within the curriculum, teachers need an understanding of how to produce the right environment for this type of learning. Accordingly, I wanted to see if this was reflected within the characteristics found in job descriptions and if so, what appeared to be the skills that were required.

Using content analysis, I searched for evidence where job descriptions had referred to requirements around legal and education. The key terms from literature and job descriptions include legal, professional lawyers, legal executives, solicitors, barristers and legal practitioners, teachers, lecturer. They also include terms that are related to teaching methods and identities such as clinical Legal education, problem-based learning, legal practice, live client, client, clinic, professional development, standardised client and simulated learning, practice-focused, practice and vocational-based learning. These terms are mainly located within the educator and lawyer categories, although they also featured within the networker category, where links within practice are identified as important for enhancing teaching and learning experiences.

I recoded the data to capture these common terms and phrases under each category. Out of the 61 job descriptions only 10 (14%) indicate that there was an element of practice-focused teaching involved in the appointment, such as legal clinic or simulated client work. The 10 Job descriptions linked to practice-

focused teaching covered all four HE sectors. Three were part time, of which one required a CV only application; all the others used the similar format for job descriptions as for non-practice-based lecturing roles, within their HEI. All 10 indicated that the applicants would be required to deliver formal, core law subjects in addition to the practice-focused roles.

There appears to be little demand across the HE sector to recruit practice-focused teachers in law. As Alford (2009) indicated, there has been a sense of resistance to integrate practice-focused teaching within Russell group universities, because they rely instead on traditional research and doctrinal teaching within the programme. Whilst this is not an unexpected finding for this sector, given the Russell group's cultural emphasis on research, it may indicate a lack of direct response to government policies on employability (DBIS 2012), as well as application of the subject benchmark statement and the LETR (2013) recommendations.

I had thought that the job descriptions for other sectors, in particular, new universities would have focused more on PFT, but this may be explained by a focus on other priorities such as building their REF-based work. Whilst it might also be suggested that new universities have sufficient PFT within their curriculum, this is not necessarily borne out by the data.

#### **7.2.4 Summary of my findings on the job descriptions**

My analysis shows that there has been no significant difference in the overall weighting between teaching and non-teaching within the job descriptions for 2013 to 2015. Nevertheless, the relative weighting and thus prioritisation across the seven categories I identified has noticeably changed.

As Table 7-9 demonstrates, whilst the lawyer category has remained the least prominent the networker category rose up the ranking in 2014 and the educator and scholar categories fell.

	Order of prominence	2013	2014	2015
HIGH	1	Educator	Networker	Networker
	2	Networker	Educator	Educator
	3	Scholar	Manager	Manager
	4	Administrator	Scholar	Administrator
	5	Manager	Administrator	Scholar
	6	Vocational qualification	Vocational qualification	Vocational qualification
LOW	7	Lawyer	Lawyer	Lawyer

**Table 7-9 Prominence of categories**

My examination of the job descriptions by sector have confirmed that there were more characteristics and thus demands on applicants in 2015 than in the two previous years. What appears to have happened in terms of breadth of skills and experiences required is as follows:

- Non-traditional universities have extended the breadth of skills and categories that they want from applicants in their job descriptions; this sector has seen the greatest rise across all characteristics.
- Russell group universities have increased their focus on the Scholar category over the period, but the networker category remains the most sought after skill set. The vocational qualification and lawyer categories have remained the least important.

- New universities in 2014 considerably increased the number of characteristics within their job descriptions from 2013, in particular the networker category. As with the Russell Group, the lawyer and vocational qualification categories remained the least important for this sector.
- CHE have also increased the references under the networker category in their job descriptions largely at the expense of the administrator category.

There are three other categories that HEIs routinely include in their job descriptions. These three new categories focus on networking skills (the networker category), management experience (the manager category) and a professional teaching qualification (the vocational qualification category). By 2015, the networker category had become the most prominent of the seven (see Table 7-9 Prominence of categories above). The vocational qualification did not feature as much, which indicates that the HEI were willing to accept responsibility for teacher training and development of new recruits.

The next stage of my research sets out the results of the interviews I conducted to explore teacher development in the light of these findings.

### **7.3 Interviews**

Each interview addressed how teachers access educational theory, teacher training, staff development and the role of the law school in meeting the needs of beginner lecturers. As has been reflected, law schools and law teachers have demonstrated a resistance to engage in formal or recognised teacher training practices (Alford, 2009). My analysis of job descriptions indicates an increase in expectation that new starter teachers would gain the HEA accreditation as part of their role within the HEI. Appropriate training mechanisms needed to be identified to meet the HEA criteria and so improve teaching quality as new members of staff increasingly are less likely to have teaching experience. Therefore, decisions would need to be made as to



whether HEI central services or through the law department would have the responsibility.

I was keen to find out where law teachers learned how to carry out their role, and what role, if any, law schools play in this process.

### 7.3.1 Coding the data

I transcribed every interview into an Excel spreadsheet. Each participant response was set out in columns that linked to the question that elicited the response as indicated below and further in Appendix G Sample Transcript Analysis.

	NU1	R1	NT1
What role does teacher training play in the law school?	I don't really know about this side of things as I have had little if any training. I do know however that my colleagues who are new to the University have to undergo some training. In my Institution, we are encouraged to take a PGCE (HE) based so that the academic can be trained and if you get over 70 in your dissertation then this will be used to make an application for HE fellowship status.	TT does happen in the Law school for new lecturers in response to the Uni wide policy for new lecturers , they complete the <i>University</i> and <i>Sector</i> programme	Teacher training plays a very limited role within the school. Indeed what happens is that new teachers are asked to complete a University programme which is more like going through the hoops rather than anything useful which is a shame because there is a lot of academic work based on and about legal pedagogy but the courses are simply not relevant and so they are pointless

**Table 7-10 Sample Excel interview transcript**

I created columns of text that were then easily comparable with other participant responses. Using CCA (constant comparative approach) as explained in chapter 6 (para 6.2.6), I then began to code the interviews. Each interview was read and re-read and comments were coded across and recoded iteratively over the research period and at the selective coding stage were colour-coded for ease of reference. This iterative process allowed for themes and sub-themes to emerge and are identified below:

1. Teacher training
2. Influence of the law school and change
3. Employment Status

### **7.3.2 Teacher training**

In this section, I consider the participant comments in relation to formal and informal teacher training. I address the university sectors then CHE, and then draw my common categories together. The codes, which identify the participants, are set out in Table 6-2 above at p.136.

#### *Formal*

##### **Full-time**

The initial interview questions focused on the role of the law school and teacher training. What became apparent was that across all university sectors:

*Teacher training plays a very limited role within the school.*

NT1<sup>23</sup>

When asked to explain this further, it was evident that the understanding of teacher training was linked to the idea that this was similar to school teacher training. Further, that there was recognition of the disengagement of the law school with the training. Indeed, a senior lecturer in a Russell group university stated that the training programme was an organisational need distinct from the law school:

*Teacher training is something, which the law school does not really get involved with ...all new starters need to complete an HEA fellowship application ...*

R3

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<sup>23</sup> Participants codes are set out earlier

This position was confirmed across other sectors, indicating that the relationship between the law schools as teacher education was limited. Where training was identified as important to the university law school, it was more likely to be linked to subject or was discipline-led. This is not surprising as the nature of HEI is to prioritise subject rather than teaching development as Cherkassky *et al.* (2009) suggest

When asked about the formal training that teachers encountered, all participants indicated that it was centrally managed. Further, that unlike CHE, in universities there had been a transition from formal qualifications, with structured study to short introductory programmes:

*... Well when I started at the University we were expected to take the PGCHE course during our probationary period...we only do a short intro now ... for new starters ...*

NU2

For new starter teachers, they anticipated that the introductory sessions would provide significant support and that they were eager to use the learning; however, they found it hard to connect it to their teaching:

*...well it was very broad and left me with more questions than answers... Well at this point in time as a lawyer new to teaching, anything would help...*

NU3

The frustration of this new teacher is evident but also there is a hint of desperation here: “*anything would help*”. The expectations appeared to be for hands on support, some mentoring as well as training; but for this new teacher, this did not happen. This picture was reflected across all other sectors. Often it was reported that both the content and teaching staff were disciplinarily out of touch and that the language of privilege created a gulf between teacher and trainer:

*... I don't need to know theory... I am a law teacher; I need to know the law ... they need to help me to teach my class... that's practical not theoretical ... some of my colleagues have PhDs but that does not mean that they can teach the way the law works in reality*

NU3

This again reflects that for this teacher, the practice aspect of the law is important to their teaching rather than theory. Furthermore, NU1, a more experienced teacher, distanced themselves from the knowledge gained from the HEA fellowship process by indicating that they do not have time to touch on the ideas.

*Informal*

*Full-time*

Twining (1994) indicated that informal small group training, coaching and mentoring is a strength in legal education. However, the opportunity for such training in HE at the time of writing is less clear, indeed Twining (2014) reflected his disappointment in its lack of development. Indeed, the implication from the data was that opportunities for to develop excellence in teaching were often dependent on individual rather than departmental commitment. The relevance of the manager's role is clearly important and in some cases appeared to affect the new teacher's attitude to the training process:

*None other than encouraging us to go... my line manager is really keen on this.*

NT3

The lack of commitment from senior managers/managers was evidenced by claims that for them it was "*irrelevant*" and inapplicable to their teaching. Where this occurs this indicates that new teachers are likely to distance themselves from formal training.

Additional pressures relating to both teaching and non-teaching roles that new teachers carry out suggests that informal support becomes far more

important. The urgency of getting on with their job suggests that formal teacher training is informally deprioritised. Yet new members of staff indicate that formal, subject teacher training is very important to them and that whilst staff developers supported this they also claimed a lack of commitment from Law departments:

*...we would like them (Law departments) to have greater buy in... but they don't ...it's a bit like them and us...*

R2

Thornton (2012) and Stolker (2015) affirm that the need for teacher training is ongoing. Whilst this may be the message that is presented in some HEIs, some participants reflected that this did not happen. The claim was the centralisation of staff development services meant that they felt that organisational training such as compliance and quality assurance, was placed on the same level as teacher training and was seen as yet “*another process*”. Senior managers felt that in some cases this approach was likely to directly affect the culture of the law school. The comments from the participants to some extent reflect the “them and us” R2 comment above, which mirrors Sherr’s (2001) frustration with attitudes within law schools. It also reflects the comments from new law teachers about a lack of organised support.

It became apparent from the interviews that where the participant came from a separate law school, it was felt that law teachers were the best to support other law teachers by informal rather than formal teaching methods. Indeed, it was evident that in some cases the collegiate approach to teaching in CLE provided more scope for this type of informal support:

*We do meet fairly regularly as a team...and have a chat about how we teach ...this helps but it doesn't happen in any of the other areas*

Nu4

However, this was unlikely to happen because of time and teaching pressures:

*...I don't have the time to support junior or new colleagues...they just have to get on with it*

NT1

Where participants were based with other discipline areas such as Business or Social Sciences, they also supported the need for teacher training but did not feel that the training provided was helpful. Indeed, a new member of staff (NU4) in a new university indicated that it was “*unconnectable*” to their teaching; and that the formal teacher training offered, often as a one-off introduction, was weak, irrelevant and often more disconcerting than helpful for the new teacher. This echoed their law school colleagues as indicated earlier.

#### *Part-time*

Whilst part-time teachers' concerns were similar, the indication was that for them, opportunities for teacher training support were even less present:

*...I didn't get the chance to go to the meetings and things and I wasn't eligible for the free teacher education courses so this means although I am a practitioner I didn't get access to teacher training in the same way as my colleagues who are full time...*

NU4

For this teacher, a legal practitioner until appointed to a full-time role, there was clear concern at differentiation between the status of the teacher. This is especially important when considering development of practice-focused teaching, which is often dependent on practitioners, who are more likely to be part-time in their role.

#### *CHE*

Turning to CHE it became apparent that decisions about staff development were organisationally driven, and justification for this was driven by budgetary constraints:

*Very little, subject specific anything in terms of training, unless you indicate / find it externally and it is within the budget.*

CHE1

And:

*I wanted to do the HEA fellowship... but they would not pay for it... So I didn't, this was when I was part- time and when I asked, again they said the same ...do the Foundation course*

CHE3

Here, the comments suggest that the linking of training to the discipline provides the route to gain support for the training request, but is also encouraging, in that opportunities for such development are accepted in the same way as subject development. For beginner teachers, the position was somewhat different. A new CHE teacher, who was also a practitioner, commented:

*I am the expert... here there is little that they can teach me about what I need to do to teach.*

CHE4

Here the teacher reflects their lack of understanding about the training, in that they see it as being about knowledge content rather than how to share that content. It also became apparent that within CHE, teacher training was not well supported within the department. CHE3 reflected that mentors were often busy with their wider organisation role and for them this created uncertainty about teaching.

Further, a CHE manager also understood that they were prioritising their management roles that were heavily laden with quality assurance concerns rather than in class teaching and support.

### *Initial conclusions*

In figure 7-9 below, I visualise a summary of the findings from the interviews that relate to comments about training needs. They reflect that there is clear expectation for training on a practical basis but also that this needs to be linked to curriculum and its delivery.



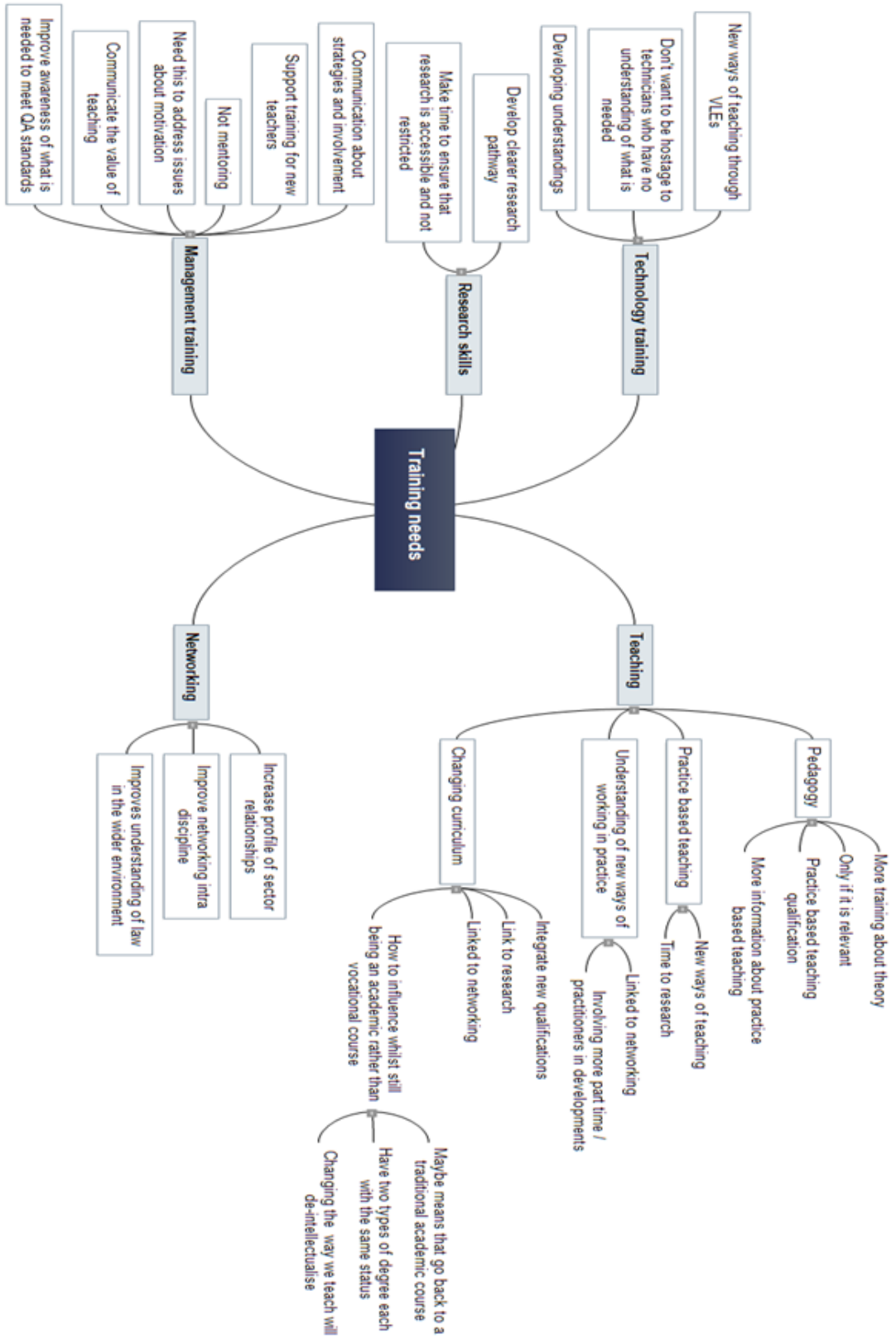


Figure 7-9 Summary of findings on teacher needs

### 7.3.3 Law school influence

#### *Training for practice-focused teaching (PFT)*

The main contributors were from the New universities and CHE. I expected this as PFT is vocational in nature, and so participants in New universities and CHE were more likely to be familiar with this approach.

I was interested that only two participants from the other sectors were prepared to voice a view on how this aspect of teaching could affect them:

*We don't really get into this... we do do things like street law, and of course moots but not really client work*

R3

A CHE new practitioner indicated that for him, teaching was linked to the skills in practice rather than the detailed case law and that as such he recognised that different practical implications existed, commenting that:

*...I swap identities from practice to academic law. It means that I need to have wider knowledge and more command of case law.*

CHE4

This understanding indicates that this new teacher recognises that his approach to teaching and mode of preparation when focusing on practice-focused teaching is different to academic work. The awareness of this transition is important as it indicates that this teacher - who was in the early stages of a foundation degree in adult learning - was becoming more aware of his different identities and how this affected his teaching. In addition, he also observed that academic and practice-focused teaching require different skill sets to be effective. Again, the recognition that practice-focused teaching is different to academic teaching is important. CHE1, a more experienced lecturer and manager felt that his organisation respected and understood a vocational teaching framework. Furthermore, that it was a comfortable method of delivery for the teachers. However, in terms of teacher training for HE level:

*...there needs to be greater awareness of the standards we are expected to have and the students are supposed to reach*

These comments intimate that teachers in CHE consider that their teacher training fails to develop the relevant skills required to teach at HE level as suggests by Feather (2012) and Creasy (2012). A CHE new practitioner indicated the following:

*You can't just throw a new lecturer into teaching a foundation subject which they might not have covered for a while, they need to be developed and have time to refresh what they do and how they do it.*

CHE4

Within the New universities, there was greater reflection on the methods of teaching practice that link to clinical Legal education. NU3 identified that he was aware of different teaching strategies such as the standardised client, problem-based learning (PBL) and problem-solving approaches as well as a legal clinic:

*I am still not sure what they mean by PBL*

NU3

When asked further about who “they “were, NU3 said that this related to his colleagues, rather than teacher trainers. The implication from these comments are important because firstly, that there was an assumption that the new starter would find out about PBL and how it could be applied. Secondly, that there was little collegiate support in learning how to deliver using this approach. Finally, that there was no evidence that this teacher had even contemplated talking to the training department in his HEI. This lack of knowledge of teaching practices used within law was also affirmed by a senior academic (non-traditional university), who said:

*We have introduced a PBL approach to our curriculum (...) it works but lots of teachers struggle to work out what they need to do ... at the start*

NT1

PBL is an immersive, student-led strategy, which is becoming present in HE, but is not a traditional approach to teaching law. The expectation from teachers in this HEI was that training was expected to be provided by centralised department, but even then, there were concerns about whether this was sufficient. A senior academic (NU1) commented that in many cases, whilst practitioners<sup>24</sup> have a practical understanding of what they need to do when working with legal clinics, it needs to be underpinned by theory:

***My focus**<sup>25</sup> is on the law clinic and what we want is not academic understanding of theory ... but an understanding of legal training ... and this is done through mentoring, supporting and coaching. This is what my tutors need more information on ...*

Whilst practitioners accepted the need for training, it was also clear that there was a conflict in terms of what that training should include. Practitioners wanted immediate practical solutions to teaching, rather than a theory driven approach which suggests a blended approach to teaching and learning (Behari-Leak, 2017) . The call for a different approach to teacher training/development that supports a practice-focused approach to teaching is evident in relation to learning strategies and in relation to how the developments in LE appear to require this.

#### *Accreditation v Theory*

#### *Policy and Practices*

Participants responded to questions about the influence of policies and the accreditation process in a similar collective fashion, indicating that institutional policies had affected the decisions of individual law schools in relation to training:

*...Yes, I do think that this has a lot to do with the new policies, which the University is using to enhance teaching and learning.*

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<sup>24</sup> Legal practitioners

<sup>25</sup> Emphasis drawn from participant

NU1

The Russell group university staff development officer (R2) indicated that there was a change in the teacher-training programme, which reflected national policy agenda and followed UKPSF and HEA practices:

*Yes and national reforms in terms of learning and teaching have changed things; there is more of an emphasis on training lecturers...*

For the academic new starter teacher at a non-traditional HEI (NT3), it was clear that they were aware that within HE there were different attitudes and approaches to teacher training but:

*Here I think we are beginning to get to grips with the value of TT but so far, as is getting to the law School ... I am not sure we are there yet.*

NT3

It became evident across all sectors that there were certain common features, such as the introduction of HEA or similar vocational qualifications. However, it became apparent that the university sector focused on using the HEA mechanism for teacher development, whereas CHE adapted their in-house skills in developing foundation degree programmes.

Participants expressed concerns about the relevance and validity of both approaches as methods of teacher training. It became evident that the use of the HEA mechanism had been adapted to ensure overall compliance with university policy:

*...I think that that there is a general commitment that everyone must do it... no matter which department that they are in ...*

NT3

And

*There is some link between the different schools but there is very rarely any formal relationship with the teacher training and the school itself...*

NT2

However, it also became apparent that in some cases the way in which the training was provided left little opportunity for new starters to engage with teacher trainers. Further, that where the application process was completed, the main supporters of the new starters were Law school staff who had little confidence in the way in which the programme was delivered to the new starter. In practice it was felt the HEA process was not training in that it merely reinforced existing practices and offered limited opportunity to research, influence and apply different teaching strategies, it was seen as “*not relevant*” (R1) and:

*...going through the hoops rather than anything useful*

NT1

Secondly, participants commented that the lack of a well-staffed central training team placed the training burden on the law school staff. There was little evidence to suggest that there was a structure to provide discipline specific training. Whilst mentoring programmes were required to exist as part of the HEA programme, there were few law staff mentors who were able to support new starters. The implication of this perhaps should have been that other departments’ HEA mentors would have been drafted in to support new starters, but this was not evident from participant comments. Therefore, the law mentors found that they were placed in an increasingly pressurised position to support new staff, in addition to their existing role. There was also little to suggest that communities of practice or open informal learning through social learning or situated learning was planned or provided. Therefore, it was apparent that universities possess:

*...an academic culture, which will always prioritise subject specialism rather than teaching... so all we need to do, is to get the qualification...*

NT2

CHE are often linked to FE colleges. It is widely accepted that they have a different organisational culture to universities (Feather, 2011a). Although expected to be more student-centred, in practice they appear more managerial and bureaucratic (Leahy, 2011). There is also a far less segregated organisational structure; therefore, common training practices are not unusual, meaning that training is very much in line with broader organisational policies and practice:

*I've been teaching in FE for a long, long time ...if there is one thing that we do here it is to comply with what management says ... we live in a compliance culture... and since I've been here, everyone has to have a teacher qualification*

## CHE2

A CHE senior manager indicated that although they were expected to provide students with an HE experience, opportunities to gain HEA status, which would help to develop the skills necessary for this, were often thwarted. The wider organisational policy preferred the Foundation degree or PGCE route, which the CHE senior manager felt was of limited benefit. Curiously, it seems that CHE preferred an academic approach to teacher training, whereas universities moved towards the vocational HEA, less theoretical method.

All new starters reflected that training was important and indeed they expected that they would find it practical, helpful and hands on. However, in practice this was not the case a new starter working in a legal clinic, the formalised short course was unhelpful:

*We talked about different theories ... like behaviourism and constructivism I can see how they might be relevant in classroom, but for me the reason I have been employed is to work with students in the legal clinic ... this is not classroom teaching ... I know how to mentor trainees... and they can't tell me anything new about this*

## NU3

And

*...I have completed my teaching qualification I know a bit more about teaching, but there isn't enough time to work on new ideas or ... to develop a specialism... There certainly wasn't any training on this.*

CHE 2

This frustration was found across all teacher participants. There was real concern expressed that the model of training that their HEI adopted was weak and often was seen as burdensome rather than developmental. Staff developers indicated that their role within their HEI had been changed so much, that the opportunity to engage with HEA mentors or indeed with new members of staff was very limited. Further, that teacher development was only part of the development opportunities which they needed to provide to all members of staff.

This disengagement with training led for some participants to an inevitable sense of de-motivation. For new staff, that their opportunity to develop as a teacher is limited by process-driven training which is dismissed as “*pointless*”, HEI teachers may feel that their HEI is prioritising other activities or that the commitment to teaching is superficial.

#### *Autonomy the role of the teacher as decision maker*

The research interviews took place before and during the development of the TEF<sup>26</sup> and following on from the rise in HE of managerialism and audit culture (Kok *et al.*, 2010). Lea and Simmons (2012) had indicated improvement in teaching quality and autonomy had been as areas where HE teachers sought greater support. Therefore, I was interested to see whether law teachers had the same issues. However, I found that in some cases law schools were described as being:

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<sup>26</sup> Teaching Excellence Framework



*...keen to be forward thinking about how we do things and always have been.*

RT2

This appeared to contradict earlier comments that had been made about teacher support. When asked further about how teaching quality was or could be judged, the response was different and all participants were very defensive. Whilst it was agreed that teaching quality was valued in their organisation, there was a disparity in what was said and how they accepted the methods of assessing teaching quality across the HE sector. Further, that in practice, few were seen as either relevant or seen as helpful:

*We are assessed through peer observations ... well ... when it comes down to it they are pretty meaningless really... we only do it because we have to ...*

R3

When asked about graded teaching observations, the comments were emphatic:

*Good grief no ... I can't see anyone agreeing to this*

NU4

*Never... they do this in schools, we are not a school ..., and this would be the last straw for many of us ... besides only an expert in the field could do this ...so it is unrealistic*

R4

*In FE, this often happens which is always a worry; we have to jump through lots of different structures and so whilst I know this is likely to happen I dread it ...*

CHE3

These comments are particularly telling bearing in mind the TEF banding proposals, which focus on graduate employability, rather than teaching excellence. It is apparent that teachers see quality assurance as reducing their autonomy, rather than empowering them. Whereas policy-makers claim that a QAA process supports improvement in teaching quality (UK, 2015). Therefore, the contradiction lies where policy-makers align quality as process and compliance, whereas HE teachers assess it through content.

When asked about how curriculum design and content was developed within the law school/department, responses appeared to be sector dependent. In the Russell group universities, what was evident was that the curriculum design was required to meet the objectives of the university, often linked to research and integration within the classroom

*...but really developing the curriculum is dependent on the research  
...carried out by the teachers*

R2

In the new university, the focus on curriculum design which involved students to improve their experience and employment prospects. The implication being that the curriculum needed to serve an economic and consumer function. In doing so, understanding the sector became very important:

*This is really important to us... we need to understand ...law in the wider  
employment context*

NU1

The premise behind this of co creation of the curriculum is not new, but its transmission into the law school and the black letter, foundation courses would appear to be unlikely

*... I don't think that we can change the core courses too much; they are  
what the students want ...besides we use them to introduce research  
and other legal skills...R3*

This comment reinforces the view that core courses remain the workhorses for the degree, where opportunity to diversify was limited. The reasons for this may be linked to marketisation of programmes, where offering the Qualifying law degree is an important aspect of the law school course offer.

In addition to the research-focus, it was also clear that the curriculum needed to engage with employability issues at HE level:

*I know that we need to think about the way in which the students link with other groups... Like the business students for instance*

NT3

This suggests that there was a recognition that teacher and curriculum development cannot take place in isolation. The need to develop content and methods of teaching was an issue which had been addressed informally, but that the centralisation and uniformity of practices was also affecting teaching practices and pedagogical decisions where terms of innovation and integrating wider employability skills was seen as newly important in some HEI. On the other hand, within the CHE sector, it was evident that the curriculum had a vocational and employment focus:

*...well... we work with different professional bodies ...one, which integrates the course.... This is a vocational body really ...and this means we can only do so much to be creative in our approach*

CHE1

In CHE, teacher training focused on skills and technologies rather than research, and this reflects the CHE culture and market where the organisation finds itself. Yet what was evident was that the teacher training offered was based on theory, which was focused on lifelong learning rather than HE or specific vocational needs practice. Networking and generating external links was identified as an important factor that improve and develop authentic relevant curriculum and so lead to teaching change. This was seen to be particularly important:

*...I think that we need to be able to provide a better more relevant curriculum for our students and this means that we need to build in an understanding of the law in the wider employment*

NU3

Further, the participants who had been part-time indicated that they had felt very frustrated as they had not been involved with designing a curriculum and teaching practices and so were less able to contribute to content or design changes to teaching:

*I think that I have something useful to contribute ...which I think that I can now. But when I was only part- time this wasn't possible or asked for*

NT1

A Russell group senior academic indicated that curriculum development linked to staff research rather than any significant external collaboration:

*But really developing the curriculum is dependent on the research that is being carried out by the members of staff so in that context, there is no real external connection...but the new guidance in the REF does mean that we have to think about this*

R1

I had anticipated that considering the movement towards more outcome-based curriculum and the demand for meeting employer needs, there would have been a stronger response to the development of outside partnerships. Indeed, observations from the job descriptions indicated that networking was a crucially important factor for recruitment. Yet, it was only in the clinical LE area that these skills appeared to be used directly in teaching:

*... we are expected to keep our practice going whilst working ... it keeps us alive to the changes we are seeing*

NT4

In this context, and drawing on the findings which related to the law school influence on change as set out in figure 7-10 below there was very little evidence or indeed confidence in the evaluation of the Law school. Further, that it appeared that opportunities for broader curriculum or specific skills or understandings to be integrated within the curriculum were limited because of lack of willingness or commitment. Therefore, where there was no funding for research into teaching and curriculum development, the opportunity to bring new ideas into the classroom based on teaching scholarship was often very limited.

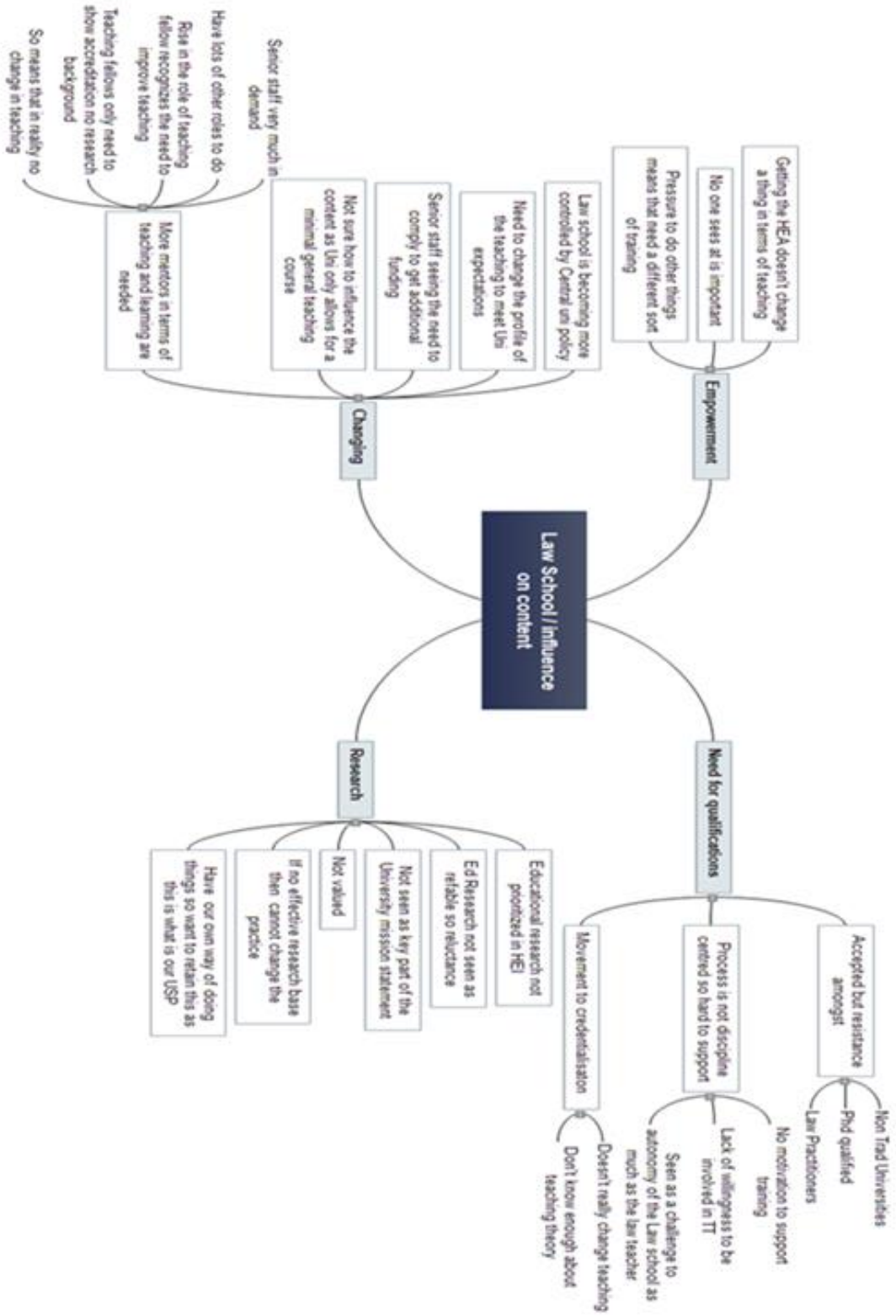


Figure 7-10 summary of Findings on Law school influences

#### 7.3.4 Educational theory, research and the law school

Senior managers and staff developers were most vocal in their views about theory research; in all cases, they commented that there was, overall, minimal involvement within the generic courses provided by the staff development teams:

*The school doesn't really have anything to do with the course content*

NU1

*The school has very little influence on the course itself but there are a lot of innovators in terms of teaching within the law school*

R1

Whilst a senior academic non-traditional and non-legal practitioner indicated that:

*...there really needs to be a commitment to a good understanding of legal pedagogy but there seems to be a resistance...*

NT1

The comments of a senior academic in a new university indicate once again that there is a desire for a relationship in relation to teacher training, but that there was little opportunity:

*It seems like those who carry out TT<sup>27</sup> for law are not working in ... in this environment, there needs to be an interface with the teachers in the law school*

NU1

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<sup>27</sup> TT, Teacher Training

Furthermore, this disconnection between department and teacher training was:

*A shame because there is a lot of academic work based on and about legal pedagogy but the courses are simply not relevant and so they are pointless*

NT1

This is apparent recognition that there is research in the development of teaching and learning strategies. However, there is an unwillingness or inability to create effective relationships between the teacher trainer teams and the law school. When asked the same question, staff developers and teacher trainers recognised that there was a gulf between what was provided, as a staff developer from new university indicated that the generic course:

*...seems to be not well received...*

NU 2

Reflecting a similar sentiment, a senior developer in a Russell group HEI indicated that a reason for this resistance might be:

*...because we don't come from the school and so we don't really have subject expertise which informs the way in which the subject is taught.*

R2

A new clinic teacher indicated:

*What we don't really do is think about teaching in a theoretical sense.*

NU3

This separation is particularly evident when the teachers focus on vocational and practice-focused education. In cases such as this, developers recognise that these areas are specialist, are exclusive to law and require input from the school/department itself:



*We offer training options internally after staff have got the HEA or PGCE HE qualification.*

R2

In such cases, it is likely that when the Law school uses strategies, such as problem-based learning or simulation, which are integral to the curriculum delivery and when the teacher training/development is provided in a broad rather than a specific way, there will be a resistance to generic training. This means that in many cases, the developers might face reluctant learners whose training is undermined by members of staff who indicate that it is jumping through “hoops”.

As such, the reliance on the schools, departments or discipline areas seemed critical in the informal part of the training process. This lack of direct or structured engagement in teacher-training programmes appeared very frustrating:

*I think that now that I have completed my teaching qualification I know a bit more about teaching, but there isn't enough time to work on new ideas or ... to develop a specialism... There certainly wasn't any training on this.*

NU4

*...new teachers are asked to complete a University programme, which is more like going through the hoops rather than anything useful:*

NT1

However, there was some recognition that their organisation had been influenced by Sector reforms. CHE teachers commented that they felt that their CHE bodies had been moved to deliver HE when they were not ready for it:

*My HEI is good at training me how to fill in forms...but I need to keep up to date with the law so I need to have training in this. I can't do it on my own...*

CHE3

And

*I also have learned about teaching... even though it wasn't all relevant and I am not sure about this at unis.*

CHE4

A senior CHE manager with responsibility for training part-time and new members of staff indicated that their role was challenging and often left them feeling very frustrated:

*I know that I should be helping the part-timers but I really am struggling to keep up with my own teaching... there is no real help for them or me from the training people*

CHE1

The sense of isolation in this context for CHE teachers is supported by the literature. It therefore suggests that there is a gap in accessibility as well as quality of CHE teacher training. The frustration of the manager is evident, there is a recognition that existing training and support does not provide new staff with the skills they need to provide HE teaching as well as to develop a suitably challenging HE curriculum development.

However, what was also interesting was that CHE teachers, with professional experience, felt more able to deliver the curriculum demands for employability and practice skills using their individual experiences to contextualise the law. A new CHE teacher indicated that they had little confidence in the teacher trainer or the programme:

*I also got the view that it was a bit amateurish. The person who delivered the training was a schoolteacher so they did not get the issues, which I had regarding teaching practice, based subjects.*

CHE3

*Research – Colleges of Higher education*

CHE3 commented that:

*...I am a bit worried about the competition and the market that we are going in to ...we are going to have to compete with bigger universities who have more research... well actually do research ...*

The implication of this was that the CHE teacher accepted that research is important but that the organisation has no obvious research background. It was not clear that they felt that this was likely to have an impact on the quality or extent of their teaching, but rather that it was a marketing tool to attract students.

What was evident was that CHE had a successful, well-regarded teacher education and research programme, which the law department was not engaging with. The senior CHE manager indicated that for them:

*research is something which I have on my budget but realistically not the skills or the staff to make a go of it ... our strength is the vocational side... we recruit staff for this purpose really so that we can compete in the new Legal education market.*

This indicated that for them, the role of the teacher was that of a practitioner teacher and that this was a deliberate focus on the part of the CHE to concentrate on the vocational/professional training. The CHE senior manager was making it clear that their decisions about research were not linked to teaching.

CHE4, however, indicated:

*I would love to do some research ... into my teaching ...this is the new thing for me and I want to do the best for me ... my job here is a stepping stone to University teaching ... so this is the way for it to happen ... I have enrolled in a course outside the (CHE).*

In the New universities, a similar concern was raised, but its impact was reflected differently. There was a resistance from both practitioners and researchers who were being encouraged to carry out research:

*I don't really know how to do research ... we are told that we have to do it ... but really, I am too busy working... I am a practitioner and a teacher ... now they want me to be a researcher as well...*

NU3

*I was appointed because I am an academic ... or at least I thought I was ... I am now teaching on areas which I have not done since my degree ... which was 5 years ago ... the law has changed and I am having to relearn it ... this isn't research...*

NU4

When asked about their role within the law school, the NU3, they indicated that they were involved in supporting students in the clinical programme and developing materials to support the reflective element of the programme. The group, therefore, which appeared frustrated in their lack of research, were the researchers who felt that they were not able to apply their research skills and understandings to curriculum development.

In figure 7-11 below I summarise the views of the participants with regard to the link between teaching development and HE policy. It is evident from the interviews that HE policy and practice played a significant role in the development of changes within teaching. However, it was not clear that interviewees felt that these supported excellence in teaching.

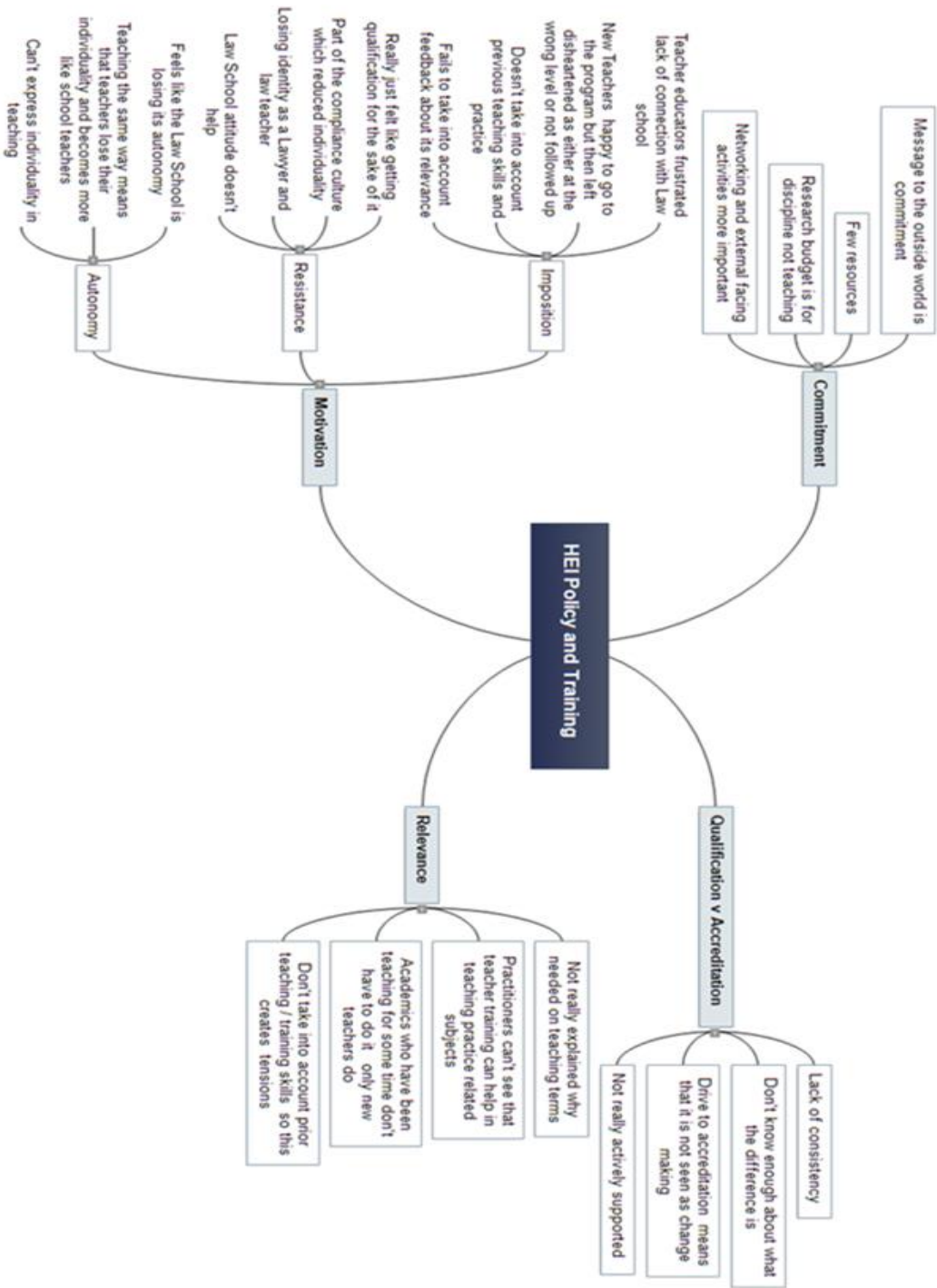


Figure 7-11 Summary of findings on HE policy

### 7.3.5 *Overarching Conclusions*

My analysis identifies that as a result of policy and practical transformations within HE, the role of the law teacher has evolved. My research has identified the following factors which have affected the way in which HEI construct the teacher role: formalisation of HEI expectations for new recruits to teaching which identify teaching and non-teaching skills, Employment status (full or part-time), and the influence of the law school and its teachers on Teacher training and development

My data indicate that within the HE sector, there is a homogenisation of selection practices, which can be linked to the implementation of centralised practices, including the adoption of HERA provisions. This means that there is little opportunity to privilege discipline focused teaching skills and expertise. It is evident that the outcome of the use of the HERA process means that skills designed to support and contextualise teaching such as practice-focused and practice-active learning are often deprioritised in selection.

Traditionally, law teachers have found that their activities centre on teaching, doctrinal law, practice and skills (Cherkassky *et al.*, 2009; Kotzé and Gravett, 2013). Opportunities to build on their specialisms are dependent on the needs of their organisation and their role within it (Cherkassky *et al.*, 2009).

Research within law has been limited to certain HEIs, and even then, within narrow doctrinal areas, with a limited audience. Therefore, researcher skills within law have tended to focus on the universities, which usually provide a black letter, non-socio–legal experience.

As for teacher skill sets, additional categories were identified as being vital for the prospective teacher to possess. These include networking where external and internal networks and contacts are created and supported. As such, networkers develop relationships inter and intra university and subject specialism. There is an expectation that this will generate high-level research, increase research income and reputation, open opportunities to work with local,

national and international bodies, which will in turn raise the profile of the university.

What was also evident was that there is a decline in the need for experience as an educator, which was also linked, to the rise in the use of the HEA accreditation process for indicating and improving the quality of teaching and learning within the university. For CHE, however, there was still the requirement to gain a qualification, and this was usually supported through internal development, i.e. the CHE provided the PGCE or foundation degree, which focused on generic teaching criteria usually linked to the lifelong learning rather than HE sector.

When exploring the perceptions of the role of the teachers, new teachers in particular accepted that training was important. Indeed, many were keen to pursue this to cement their place within the sector and department. However, they were also frustrated at the lack of managed development and training opportunities provided, being mindful that they had never taught before; some were very surprised that they had been immersed in teaching from the outset. When they did access training, they found it largely irrelevant and somewhat unhelpful; they wanted more and they felt that the department should have been more involved as well. Although some indicated that there was a mentoring practice in their workplace, they felt disappointed in the lack of formality. This means that some did not feel confident in their teaching, and this was a concern for them.

For those who were legal practitioners, they felt that they were at a disadvantage to colleagues who had a PhD and that this had an impact in terms of their engagement with learning theory and practice. It was also suggested that they felt that they were at a disadvantage because they were often part-time teachers and as such were not always provided with training or understanding about the organisation. Therefore, their agency was often limited and important skills lost to the law school.

However, they felt more confident in terms of teaching. In relation to development of the core curricula, they did not feel comfortable. Indeed, even

in their own area, practice, there was still a resistance in terms of engaging in reading and contributing to change. Although this appeared to change as the practitioner became more established.

It was apparent that the HEA process was the development method of choice, although in the CHE, this was not always easily available. Formal structures of taught sessions and assessed essays and portfolios meant that they felt that there was a training process, but it was very much geared to other sectors and largely irrelevant to their needs.

In using the HEA and the UKPSF, what also became clear was the mixed views participants reported about its value, some being supportive and others seeing it as a “tick box” exercise (Brown, 2004). Very few senior academics had achieved the HEA fellowship and those who saw it as useful but only in a limited way and largely redundant, as it offered very little opportunity to engage in theoretical discussion. Where there was success, the department had an active education section; however, this was rare and often only supported by already engaged educationalists. Time and relevance were the reasons why many participants declined to become involved in this type of community of practice.

Where there was resistance to being involved in communities of practice and training in general, it arose from senior staff members who felt that the training provided was an additional burden. It was felt that those who were interested should and could be supported in development to drive forward the curriculum change, but this was unlikely because there was little relevant empirical research and little funding for this to proceed.

The next chapter discusses my findings and then in my final chapter I move to consider recommendations about how to use the changing role of the law teacher to support curriculum development through practice-focused learning.



## Chapter 8 Discussion

### 8.1 Introduction

In this chapter, I draw together my contribution to the understanding and development of the undergraduate Law teacher role within HE. I discuss my findings and explore their implications for the structure, culture and teacher agency within Legal education.

Research is often considered in the context of its currency and relevance. In HE and Legal education, the transitions in structure and culture across the sectors have proved to be dynamic over the life of my research. These changes have been led by political, policy, institutional and sector led developments, which have meant to an increasing fragmentation of the teacher role within HE. The additional pressures that HE face to reflect its value to society as well as the economic gains from HE study are inevitably transferred to the teacher. The result is that their role appears to move beyond teaching and developing teacher excellence.

My investigation provides a timely reflection on understanding the teaching role within Legal education. Teachers historically have reported their role as teaching and research coupled with some elements of administration (Orpen, 1982) in effect “obligations, authority and autonomy” (Vongalis-Macrow, 2007, p.428). However, it became clear that other activities, such as management and developing networks were seen as incidental to what they consider their real work (Blaxter *et al.*, 1998; Quinn, 2012) which caused tensions and claims of loss of autonomy and professionalism. My research demonstrates that the teacher role now reflects a focus on organisational needs rather than of the discipline itself. I explore what this means for the teacher and the development of effective teaching practices. At this time of increasing change within Higher education, my contribution not only refers to the development of Legal education but can claim to have potential resonance to the development of other professionally linked programmes such as Accountancy.

It is evident from the literature discussed in chapters 2-4 that the teacher role within HE has evolved beyond a triple tiered understanding of teacher, research and administrator. In this chapter, I explore the implications of transformations in Higher education, framing the discussion around the themes set out in chapter 1 and my findings.

In chapter 7, I explored the data from my Job description analysis and interviews. This identified that recruiting practices, adopting the HERA process now appeared to suggest that new teachers within HEI are being asked to demonstrate seven skills categories that go beyond the teacher, researcher and administrative roles. Whilst this may not be surprising to law teachers, it is evident that the balance of roles has moved to reflect these additional organisationally prioritised functions.

The implication being that for new teachers that their roles are to be immersed within the HEI environment and not segregated from the wider mission of the HEIs. For law teachers used to being seen as on the periphery of the HEI this might be seen as an advantage in terms of agency. For new teachers however, they will know no difference, the impact of this change might be more relevant to their colleagues.

An additional concern had been that recruiting teachers within legal practitioner experience had been affected by the application of HERA. It was not clear that this was the case from the data. However, it became evident that there were limited numbers of practitioner roles advertised and in terms of addressing sector-based understanding, this was worrying. The nature of this wider role for the teacher within the HEI appears to have led to additional concerns about improving and developing their teaching. New teachers reported in chapter 7, that they felt that access to teacher training and support (formal and informal) was unexpectedly disappointing and that as a result this meant that they felt unclear and uncertain about their teaching. This position was particularly felt with part-time teachers who were practitioners. Whereas senior practitioners were disappointed, but failed to see the need for them to actively, promote and be part of teacher education within their department.

I turn now to consider these findings with reference to the themes identified in chapter 1.

### **8.1.1 *Changing ideologies?***

As Susskind (2012) indicates, the teacher role is made increasingly challenging because of the changing context and structures of both HE and legal services sector. The demands placed on the law curriculum to move beyond traditional case law and doctrinal teaching have led to a rethinking of curriculum (Cruickshank, 2016). HEIs face balancing the competing perspectives of organisation, discipline and profession and this provides both challenges and opportunities for new teachers. The increasing government intervention within HE to meet an economic purpose began to affect a change in core values within HE, transforming HE from a sector which focused on the discipline and autonomy of the teacher (mode1 knowledge) to one which was socially shared, application-oriented, and subject to significant accountability (Mode 2). In many respects the development of the undergraduate law degree, with integrated employability and professional links might be seen as an example of just such a programme. Yet in law schools these fundamental shifts in ideological positions in HE study, which on the one hand favoured those with less established disciplines - striving for recognition, but on the other created anxiety about the dilution of the quality of HE students received.

The impact of these tensions appears evident in the transformation of the teacher role across HEIs (Parsons, 2012). It is evident that teachers' roles have become increasingly distanced from the 'Ivory tower' teacher in most HEI sectors ; teaching and non-teaching roles are both structured to support the wider aims of the HEI ((Whitchurch, 2012a; Manatos *et al.*, 2015; Priestley, 2015).

HEI teachers up until the early 1990s had enjoyed a free largely unfettered work environment. As Orpen (1982), Sherr (1998) and Cownie (2004) suggest, lecturers were in charge of their work and work practices and accountability was slim (McCormack *et al*, 2014). Whilst this may have been advantageous, there was clearly a different understanding in what was expected across

different disciplinary and institutional divides (Croxford and Raffe, 2015). Moreover, tensions were further exacerbated by the influence of policy and the application of professional body pressures that challenged academic autonomy (Collini, 2015). It was evident that the pressures challenged fundamental understandings of their teaching role to introduce students to academic study and the wider world of law or preparation for access to the profession. These tensions were felt most within the traditional universities, where there was a competing researcher/teacher agency model.

Fundamental structural and cultural reforms confirm a change in the purpose of HE with universities no longer identified as “Ivory Towers” (Twining 1994, p.1), but rather as economic engines (Cable, 2011). The neoliberal policies that focus on output and competition demand a more pragmatic approach to HE also, therefore, affecting the function of the teacher. As Winberg (2008) indicates, the post 2000s teacher, or the Generation 5 teacher, is expected to be different and offer more. The teacher role was shaped as a result of increasing audit and bureaucratic demands and organisational needs (figure 8.1 below).

The use of HERA criteria to redefine existing roles and to set job descriptions redraws the boundaries and expectations of new appointees and appears to deprioritise teaching and research. It supplants these critical features for organisational requirements, such as management, networking and administration and, therefore, challenges the long held HEI teacher traditional view of their agency and autonomy (Ahlbäck Öberg and Bringselius, 2015).

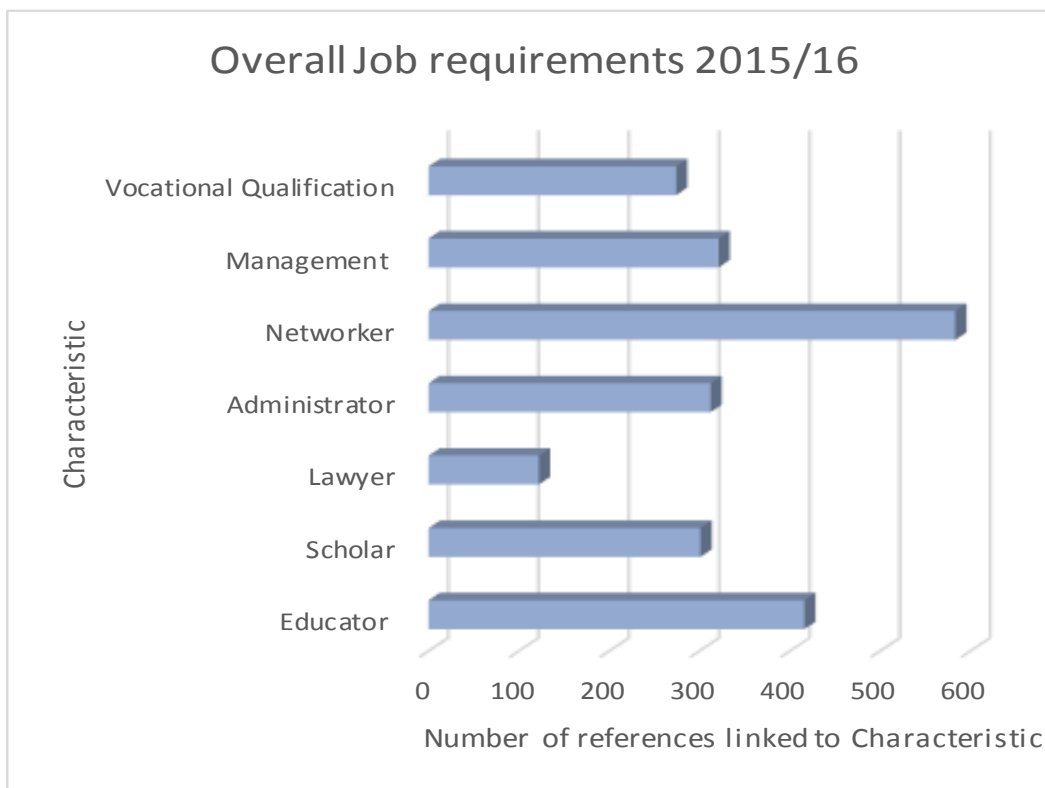
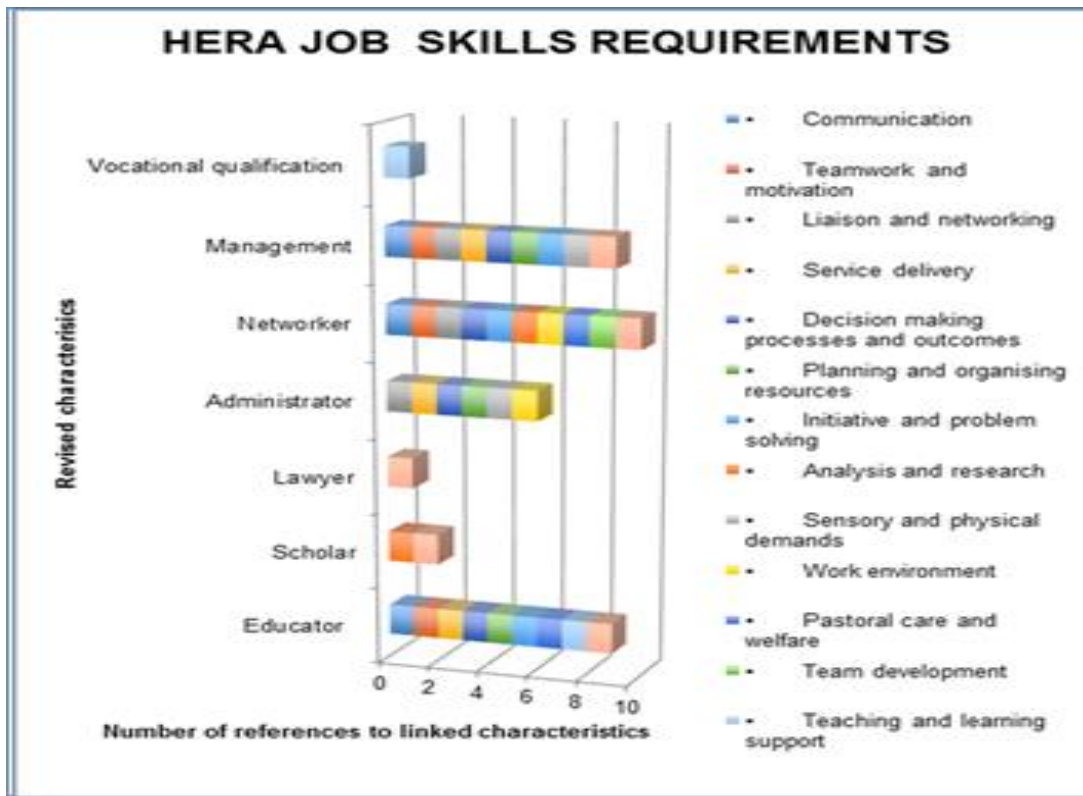


Figure 8-1 HERA v 2015/16 Job requirements

### 8.1.2 *Training and research*

How the teachers engage with the environment is important both to their own and HEI success (Ashwin, 2012). Ensuring that opportunities to use their experiences both in the law school using subject and discipline traditions (Kahn *et al.*, 2012) and outside is important. As their role changes, this affects teachers' expectations, their agency, and it modifies the way teachers engage with their environment. This may lead to workplace tensions because of structural or cultural constraints (Vähäsantanen, 2015).

Some of these struggles appear to relate to engagement with teacher development and the credentialing of the teacher role. In my research, it became apparent that for teachers who had been inculcated within HE or those with PhDs, there was a resistance to training and recognition of the value of research into teaching and learning. Butcher and Stoncel (2012) contend that this is a universal issue within HE, but my research suggests that within Legal education, it was fuelled also by a combination of academic autonomy and the autonomy derived from the discipline of law itself. As Etzioni (1988) indicated, where there is a reluctance to change, then management needs to deploy different strategies to diffuse or to test the resolve.

Teachers new to HE were not reticent to partake in meaningful training (p167 above), they accepted that new roles required new understandings. However, they also resisted centrally provided training programmes and rejected additional formalised qualifications. This suggests that new teachers, unlike their HEIs, did not value or see the relevance of centralised training (Twining, 1990). It is unclear why this was the case; perhaps the attitude of equally resistant senior academics played a part. Where there was support from management this was seen as helpful, but still there was resistance where the training offered theoretical stances, rather than practical outcomes.

With regards to research, the value of research into teaching as asserted by Boyer (1990) and championed by others such as Thornton (2014); van den Bos and Brouwer (2014) and the HEA, appears to have had limited influence within HEIs. Opportunities to carry out research into teaching are often limited

by outward facing activities such as networking, management or administrative functions. Whilst in HE there is a tradition of research, there is little evidence that CHE encourage teaching staff to carry out research or to apply it to their practice (see on p.191). This is concerning, as developing teaching and learning is restricted to the HEA process, which provides a natural ceiling for teachers to develop their understandings of teaching.

In disciplines such as law, where there is a reluctance to be involved in teacher education anyway, the HEA process provides limited access to theory. There are very few formal opportunities for further research or development of practice and therefore build towards a culture of excellence in teaching. As the HEA indicates in its own report on the impact of the UKPSF, there was “resistance and lack of engagement” (Turner *et al* 2013, p32). My research findings support this view. Staff developers’ report that the resistance to teacher training accentuated by the perception held by some senior academics that the HEA process was ineffective because of a lack of use of LE theory (chapter 7 para 7.3.4). As a result, teachers were not motivated to engage and instead their desire was to move their focus to different priorities.

Teachers reported that the success of the HEA process is the reliance on mentors (see on p.166). This supports Thornton’s (2014) view that teacher development should be managed from within the law school. Whilst this may be possible within certain schools, my research indicates that HEA mentors have limited experience of teaching and learning theory beyond their own practice. The implication for this is that any encouragement to move beyond the HEA accreditation is unlikely.

Further, the HEA journey is often linked to a probationary period where new teachers are required to gain a HEA fellowship. My research indicates that it is a process, which, when achieved, new lecturers leave behind (p169). Participants reflect that where there was no centralised system of training, the burden of teacher development and support fell on senior managers who were often not willing or able to be committed to teacher training beyond fellowship

(p 178). In such cases, participants reported that these HEIs had the least effective support mechanisms

It is evident that where teachers want and need support, there is very little specialist help available beyond the law school. This reinforces the lack of involvement in wider organisational training programmes, as Thornton (2012) suggests. It also exposes a further weakness within law schools, which, at a deeper-seated level, is its reluctance to engage in non-doctrinal research and teaching practices.

Further, although research activity is required as organisational objectives for REF and HEFCE funding, this appears to be driven by a knowledge market (Vähäsantanen, 2015). Therefore, development of knowledge for knowledge's sake has become more attuned to organisational research objectives rather than being researcher-led.

New teachers indicate that their agency and engagement could lead to cultural shifts in priorities; but this was often limited by time and organisational objectives. The needs of the market in terms of outward facing research and improved quality of teaching may mean that new teachers will selectively apply their agency to their understandings and that this is likely to be focused on research which is relevant to the REF or commercially viable research.

I turn now to consider the priority categories and the implications for teacher development.

### **8.1.3 *Networking***

My research identified that teachers need to demonstrate different types of networking. Firstly, where they build and develop their social capital in the HEI and the law school through management as well as teaching communities (Clegg, 2011). Secondly, where they work with professional bodies or external groups, which enhances their economic capital. In doing so this indicates that teacher agency is no longer limited to academic activity. It is evident that teachers now demonstrate entrepreneurial activity, e.g. searching and bidding for research grants, consultancy work, collaboration, engagement with



publications and membership of external research groups, some of which may inform teaching, but not always. The focus is often outward facing and commercially oriented, but not obviously student-centred.

This form of networking was rarely explored, as it focuses on aspects of teacher identity and capital, which, are not obviously discipline or teaching-led, yet they are also likely to prove advantageous to the HEI. In applying these skills to the teacher role, they can also support opportunities to access professional and commercial awareness and employability skills. These could support curriculum and research development as well as organisational policy priorities. As a skill itself, networking suggests that the individual recognises the value of relationship building for development and, therefore, is more likely to engage with the organisational structure, opening the possibility of cultural shifts. The challenge will be how teachers exercise their agency and if they bring these elements into curriculum development, especially in relation to developing and using practice-focused teaching.

#### **8.1.4 Teaching**

In terms of teaching, my analysis of job descriptions indicates that experience is valued over qualification see Table 7.9. This applied to the whole of my research period, but it was most important in 2013. I anticipated that because of the HE policy focus on quality assurance and student experience within HE (Cable, 2011; DBIS, 2012; DFES, 2013); the demand for teaching experience and qualification would have featured quite highly.

Where teaching qualifications/accreditation were asked for, the HEA fellowship level was identified as a preferred choice. This was somewhat surprising bearing in mind government policy in relation to school and college education, which demands teacher qualification and continuing professional development. Although some PGCE (HE) programmes were identified as being relevant in job descriptions from 2014 onwards, the priority was clearly to have the fellowship HEA level (p 172). For a beginner teacher, this is a realistic level. However, this creates a barrier for those without teaching experience. This is of concern for lawyers who wish to move into clinical teaching but who do not

have access to ways of gaining a HEA fellowship. For those who had gained fellowship, they reiterated that it was not relevant for their role, but had found it useful as a “getting to know you” exercise with their mentor.

The decline in PGCE/foundation degree HE teaching programmes suggests that, once again, accreditation through HEA is seen as the only way to meet the core teaching requirements within HE. Where courses do exist, they are delivered in New universities or CHE with a history of teacher education. Applicants often need to be teaching within an HE environment and are often limited in the depth and breadth of the programme. Where participants had taken this course, they indicate that they provide little contextual relevance to law and their teaching practice. Therefore, in most cases, the need for a qualification/HEA accreditation was institutionally important rather than practically so, leading to dissatisfaction with the programme.

Policy initiatives that surrounded the development of teaching and learning championed the development of teaching excellence. Yet it was clear that teachers felt that the limitations of both organised teacher training and the approach to HEA accreditation did not provide the necessary opportunities to develop their teaching. As a result, many felt disempowered as teachers but also as curriculum developers.

### **8.1.5 Law and Practice- focused teachers: sector and client**

The calls from LETR (2013) to introduce legal ethics into the curriculum, along with commercial awareness and employability skills, suggests that recruiting a practitioner to a teaching role would be helpful. The advantages of narrative pedagogies to support professional development and the hidden curriculum are understood and have been recognised as supportive to learning. However, these advantages appear to have been ignored Sabri (2010). My analysis of job descriptions indicates that there was no discernible rise in demand to recruit legal professionals from law schools (see figure 7-3). Accordingly, this suggests that law schools have ignored opportunities to develop an undergraduate sector relevant employability element in the wider curriculum. Practitioners can provide relevant experiential context. Accessing commercial awareness as well as professional conduct and knowledge is seen as important within the sector, not just at postgraduate level. For the legal profession, the proposed reforms at degree and postgraduate level set out in the LETR (2013) and (SRA, 2015) reviews were vital to ensure good calibre candidates for professional formation. However, the reluctance within HE to respond to the underlying professional and commercial agenda of the profession indicates that once again there is an impasse. The development of undergraduate LE seems to still remain an academic programme, with HEI unwilling or unprepared to call upon the profession to support the curriculum development. This has led to frustration from the professional bodies and limited the potential for the vocational element of teaching in HE.

### **8.1.6 Colleges of Higher education**

Here CHE indicated a different value placed on legal professional status than other HEIs; it was given priority over teaching, management or administrative experience. The reason for this is more likely to be that vocational qualifications are taught to meet sector needs such as Cilex<sup>28</sup> and these require legally qualified teachers. In such cases, the traditional methods of teaching, outcomes-based approaches focused on passing professional

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<sup>28</sup> CILEX Chartered Institute of Legal executives

exams rather than understanding the content. It is unlikely that the teacher who, from my research is likely to be a part time practitioner will have access to support to develop practice-facing strategies. Further that they are likely to revert to the way that they were taught, which means that the priority is achievement rather than understanding. Innovation is not likely or actively encouraged, therefore even if they were able to demonstrate agency in terms of teaching, organisational hidden and overt barriers restrict this opportunity.

The challenge with practice-focused teaching appears to be locating the time and resources that are required as well as relevant research. The implications for teachers wanting to access such support are that they will rarely gain this from their HEA accreditation process. The key is access to support through collegiate practices and forging small networks or Communities of Practice.

## **8.2 Summary**

In this chapter, I have set out the implications from my research on Higher education structure and teacher agency using Legal education and its culture as a medium for that exploration. In identifying five overarching themes, which influence the teacher role, it has become evident that as policy and practice change HE then so does the teacher role. Archer (1990) indicates that change in agency occurs when events affect not only individuals but also their environment and this can be said to have occurred in Legal education. These changes revealed in my research can be explained through the morphogenesis process as described in Figure 5-3 above. It is apparent that transformation of the teacher role can be explained as a result of structural and cultural development within HE arising from government policy and its application within individual HEI.

The next and final chapter places the research in context and sets out my conclusions, recommendations and next steps for research.

## Chapter 9 Conclusions and Recommendations

This chapter outlines my findings on the developments and changes in the law teacher role within HE, and sets out the implications for the teaching of law and practice-focused teaching. My conclusions will be of interest to directors of teaching and learning within HEIs, managers, staff developers and those who have responsibility for the recruitment of new teachers. Whilst I focus on law teaching, my findings will also be of interest to those involved in the supporting of teachers who are involved in the delivery of programmes with integrated professional elements. In coming to these conclusions, I also draw upon the impact of my research journey on my role as a law teacher, researcher, and practitioner.

### 9.1 My journey

At the start of my research journey, I was excited, but also I felt just as Auden's secret agent, insecure- could I really do this? Like many students who embark on a research project, I knew that there would be bumps along the way and that I would need to learn, build and adapt. The transformation has been important for my teaching, my working life and me.

Part of my journey has been to engage in the academic world of conferences and join networks of like and sometimes not like-minded individuals. In doing so I have been able to share my transformation with patient colleagues, from lawyer and teacher to a researcher. This has helped me to see the rich tapestry that is legal education, but also to recognise that it is also a patchwork of opportunities and challenges.

At the outset, I was met with resistance- why on earth was I interested in teaching and education? Law teachers, do not really engage in this and besides what do educationalists know about law. My research with the backing of ECLS was more to do with education than law- so I needed to reach out beyond my geographical domain to find networks and groups who wanted also to open the lid on legal education. This was a really important aspect of my

journey; it allowed me to look beyond my own horizons, challenge them and to really dig down into the law teacher role and its diversity.

As a private client lawyer and partner in a small practice, the need to be flexible, willing, reflective but also realistic was vital. In HE the pressures are different but it is evident that, new teachers do not have the time to grow or learn about teaching or indeed about themselves as teachers. HEI set out demanding wider, more managerial roles from the outset for new teachers. The ability to learn their profession from other teachers within the workplace or indeed to engage in meaningful study and research becomes less of an option.

New teachers' expectations of effective and relevant support from central training services were often not met and this was frustrating. Similarly, the HEA fellowship process, which offered a glimpse into how to develop excellence in their teaching, was often not enough to provide scope for change. Indeed, I found that this emphasised my role as an experienced teacher to support newer teachers in what they do in the class, but also about what they need to do outside it. This goes beyond management and managing workloads, but is also part of the reprofessionalising of teaching within HE, encouraging wider and more significant conversations, which go beyond compliance with the HEI practices.

In my current workplace, my voice has been listened to and some of my recommendations have been accepted particularly in two areas, firstly, providing opportunities to engage across different professional areas practitioners enhancing interdisciplinarity and collaboration in sharing teaching practices and secondly, developing practice-focused modules which involve curriculum development and team teaching within practitioners. The opportunities to open the HE sector as a whole, to change has become an important part of what I do now, creating conversations about how to teach where previously there was a reluctance to be involved. These areas provide further scope for research and development, which can provide scope to consider the role of the HEA, teachers and HEIs to forge a clearer direction for teaching and learning within the HE sector. .

## 9.2 Conclusions

At the outset of my research, I identified five themes, which helped to frame my research. They provided a route to explore, identify and analyse the impact of policy upon structural changes within HE. They also provided scope to consider how law teachers engaged in teacher development and to consider how this may have been affected by organisation mission and culture; and finally, whether reforms had provided a route to supporting the development of practice-focused teaching.

Critical realism has proved to be an invaluable methodological approach, meaning that my research is firmly placed in the reality of teaching law within Higher education. Using Archer's Morphogenesis lens, the issues, tensions and transitions in the law teacher's role have emerged and provide opportunities to draw conclusions and recommendations surrounding the further development of the law teacher. The changes and transformations reach out and reflect the liminal space, which exists within HE and in LE in particular. The challenges which meeting the ever changing needs of an uncertain HE demands indicates that teachers will be expected to move beyond existing practices. This means that providing scope and opportunity for such development is ever more pressing and that experienced teachers may find that their agency becomes driven organisational policy rather than disciplinary practice.

In the wider context of HE and LE development, this research reaffirms the concerns about the greater levels of bureaucracy and types of accountability within HE. Participants felt that HE managerial practices had restricted the development of teaching and learning, to the extent where experienced teachers felt that their autonomy was being eroded. In interview, it became apparent that the quality assurance mechanisms had led to experienced teachers fearing that the pressures to comply with quality assurance and audit demands affected their capacity to develop and support teachers. In undergraduate Legal education, which has never sat well within HE, the burden of the legal professions' expectations created another level of anxiety.

This sense of loss was not apparent for new teachers: indeed, they seem to demonstrate a different perspective on the role and structure of their HEI. The reason for this difference may relate to the formalization of their role is the clarity of expectations built into the job description, and the very specific skill sets they hold before starting employment. Evidence indicates that experienced teachers developed the skills of networking, management and administration in their employment. As a result, they were seen as incidental to their main role. New teachers start their teaching role more oriented towards the mission of the HEI, which identified their role in a bureaucratic way. This does not mean that new teachers do not have a commitment to law research or teaching, but rather that they see their role through a different lens.

Turning now to consider the ways in which law teachers and teachers access teacher education. There were significant concerns about organisational and departmental commitment to teacher education and development. It was apparent that all HEIs require new teachers to gain some form of recognised accreditation in teaching, usually the HEA fellowship, rather than a PGCE or equivalent. In making this commitment to improving the quality of teaching, HEIs were meeting an audit target. This is particularly important since the formal reporting of HEI teacher qualifications commenced in 2014, through HESA and this information is used in marketing information. What is evident is that the teacher perceptions of the usefulness of an HEA fellowship are not entirely positive. Participants indicated that across all levels, that the HEA accreditation process is flawed for the following reasons: it depends on law staff having the time and experience to mentor new staff members: it reflects existing teaching achievements and does not offer opportunity for engagement with research, which could support forward development. As a result, HE teacher training and education was often restricted to meeting the HEA criteria. Whilst HEA was set up to support the development of teaching and teachers, it appears that in most cases HEIs have applied a quality assurance approach to its application. In doing so, the opportunities for wider scope of for development of excellence in teaching appears to have been lost.



Even where opportunities did arise to bridge entrenched pedagogical gaps using collaborative research, through UKCLE and LTSN, there was limited support within law school senior management and so was rarely pursued. In regulating teacher training in this way, that there has been a reduction in the real engagement with teaching research and development of legal pedagogy. This static approach to developing pedagogical understanding, where teacher education is disconnected from relevant theory this appears to explain reasons for resistance to recognize that scholarship in and about Legal education has value. As a result, this lack of interdisciplinary activity created a lacuna of teaching and practice-based knowledge.

Real engagement with teaching and learning development did exist through informal Communities of Practice (COP). These were limited and rarely supported by HEI Staff development teams. Whilst they did provide opportunities for new teachers to join the fold, gain status and therefore agency within the HEI, it also meant that they were being inured into existing practices.

Where they did appear to work was in New universities, and to a lesser extent Russell group universities, where there was a commitment to either theory or practice, but rarely were they combined. The critical factor in relation to COP is the willingness of the teachers to be involved and deliver change, where HEI had set up COP these were less successful as the teachers felt that this was what they had to do, their motivation was organisational rather than professional. It is not clear if this will change because of the new type of teacher, with a more organisational focus, but what was evident was that new teachers expected more from their teacher education and COP were voluntary and so not considered as effective or important as formal mechanisms.

I turn now to consider my findings, which focus on the development of contextualised, practice-focused teaching. It is evident that the existing practices for recruitment focus on non-teaching skills, and non-professional status. Indeed, my analysis of job description data indicate that legal practitioner status was the least required characteristic across all the HEIs sampled. Yet the Law Society and Bar Council have indicated that revisions in the undergraduate programme should address ethics, professional

development through teaching Law in context. In doing so the future of the sector and students' commercial awareness (LETR, 2013) are recognised as increasingly important. Therefore, in failing to ask whether applicants have these contextual understandings, HEIs are once again distancing themselves from the Legal services sector. This, I assert, has additional implications for the development of practice-focused teaching and the development of practical wisdom as well as legal knowledge.

The implications of this lack of legal practice knowledge in new teacher recruits is that there will be limited opportunities to develop contextualised teaching to undergraduate students. When developing new programmes, the skills and expertise of the developer are important, not only in terms of subject knowledge but also in relation to instructional design. Therefore, having relevant pedagogical support and training available is vital for effective instructional design. It became evident that the lack of commitment to research and teacher education suggests that development of this type of course is likely to be limited to those HEIs that recruit legal practitioners.

It also became evident that across all types of HE provider there were significant issues regarding the HEI approach to part-time teachers. There was universal acceptance of the need to employ part-time teachers and appreciation of their legal practice experience. It was clear that there was a disparity with their full time colleagues in relation to accessing teacher training materials, support and development. Further, that they felt unable to contribute to the development of programmes. This loss of valuable sector knowledge to the development of authentic learning is significant for the quality of the learning experience. Further, in terms of understanding the organisation and its processes these new part-time teachers were left to fend for themselves. These findings are important because many law schools have an expectation that teachers who teach on professional courses will maintain their professional practice. This is vital to the authenticity of the students' experience as well as accuracy of the way in which practice is carried out.

In drawing these conclusions together, it has become evident that the law teacher role continues to evolve because of reforms and developments within

Higher and Legal education. The method of change is complex, but where individual agency, system structure and organisational cultures work together this is likely to build an effective Legal education

### **9.3 Limitations**

In carrying out research, there are inevitably limitations in terms of its reach. Whilst this research has considered the role of the law teacher in undergraduate Legal education, I make a presumption that this requires legal sector knowledge and input. Furthermore, this means I have not considered niche distinctions required for different postgraduate stages of Legal education, but that opens an opportunity for further investigation.

A further limitation is the data collected. When looking at job description data, I only used information from a fixed period, which only gives a snapshot of the job descriptions and HEIs who were placing teaching advertisements. This means that the data may not reflect all the HEIs, who were seeking to employ new law teachers. This is particularly limiting in relation to Colleges of Higher education, who may not use the HE recruitment databases. To develop understandings further, it would also be helpful to collect job description data cyclically, rather than over the staggered period of my research. This would allow for recognition of seasonal and organisational changes in job description details.

It is right also to comment on the interviews and interviewing process. The number of interviews carried out, using a convenience sampling mechanism meant that in many cases I was only able to access participants who were interested in the research aim. It was also evident that the participants did not reflect an institutional management perspective, which could have provided a different view on the development of the teacher. Therefore, whilst the views are not representative of Higher education Institutions, they do reflect concerns derived from educators, which are important to address. Further that the mechanism for collecting data was not fool proof and so to gain further data on this requires a wider research net, which could include methods such as focus groups and surveys.

Whilst these limitations exist, they also identify opportunities for further valuable research. I now turn to reflect on my research journey and how this has affected my approach to research and as teacher.

#### **9.4 Directions for further research**

The study has opened many avenues for further research.

It is not clear from the research how, if at all, law school or departmental managers affect the development of recruitment and selection criteria. It would, therefore, be helpful when looking at the structural management and development within law schools to consider the role and authority of the decision makers in selection policy and process.

My research indicates that there are very different expectations of training content and practices, across different HE sectors. It would be useful to understand the different perspectives, which HE teachers hold in relation to these training functions, as this would allow expectations to be managed across HEI.

It was clear from my research that those new teachers who had experience of well-constructed (legal) professional development felt somewhat let down by the training practices within their HEI. Further research into the different sector practices would provide an insight into developing approaches to training and drawing on external expertise.

Teacher training was often provided by non-specialist teams outside the law school and there was no evidence of embedded specialist pedagogical support within the law school. It would be helpful to identify and explore practices across HE, which support the development of teacher trainers in this role.

Access to and support for developing action research within Legal education was inconsistent. In cases where research was organised this relied on individual motivation rather than group or departmental practice or commitment. Additional research into developing and embedding action

research practices to support not only staff development teaching teams, but also the needs of the existing staff; this could also provide a useful model for professionally linked undergraduate programmes.

## **9.5 Recommendations**

I set out five core recommendations drawn from my research, which reflect the changing nature of the law teacher role. I also recognise that the undergraduate law degree may not include vocational elements of study. My recommendations seek to address the gaps I have identified in teacher training and education within HE. I have taken into account the existing practices and frameworks, which exist within HE, and emphasise value of improved training as was anticipated from the UKPSF and HEA. In calling for interdisciplinary teacher training and externships, I hope to encourage greater transparency and sharing of good practices across disciplines, but also to offer greater connection with professional bodies. In doing so, improving communication across all levels better understanding of the purpose of HE and the undergraduate programmes can be shared.

Whilst reaching out to professional and practitioner colleagues is clearly important to contextualise law and its teaching, it was also evident that communication needs to be improved within the HEI. In encouraging stronger and more effective teaching networks supported by greater links between staff, trainers and law teachers' opportunities to develop and research into different teaching strategies can arise. The likelihood also being that scholarship of teaching becomes a critical part of how teachers can effectively share their disciplinary research.

These recommendations however, are also likely to support necessary organisational expectations in terms of marketisation, management and performativity. Improving necessary connections within the legal services sector will forge relationships with potential employers as well as create opportunities for research and consultancy services. Evidence of improved teacher training and support for full and part time teachers has the potential to

improve the quality of teaching, but is also likely to make compliance with REF and TEF easier.

- An interdisciplinary framework be developed and piloted within individual HEIs, which would support an integrated approach to professional education practice, bringing together clinical professional educators e.g. medicine, nursing, accountancy, teaching and law. This could then be shared on a wider HE sector platform providing an opportunity for further development ;
- HEIs should develop and embed externships, to support teachers and practitioner teachers to maintain, gain and develop practice-focused knowledge and to create effective networks with practitioners, professional bodies as well as Practices. This provides opportunity to gain beneficial teacher understanding of employability awareness which can be integrated within the curriculum;
- HEIs should consider the introduction of greater and more embedded links between the department, teacher training/staff development to provide more relevant and accessible methods of teacher development;
- HEI should develop clearer lines of communication between teacher educator and new and senior teaching staff, encouraging collaboration and improving teaching practice; and,
- HEA specialist mentors should liaise with staff development teams in order to create clearer professional pathways in centralised teacher training.

# Appendices

## Appendix A Semi-Structured Interview Questions

<b>1. What role does teacher training play in the law school?</b>
<b>a. Do you think that this been influenced by institutional policy?</b>
<b>2. Do you consider that your Teacher training is relevant to law?</b>
<b>a. How much does the law School / Department influence the Teacher training course content?</b>
<b>3. What skills and understandings do you feel that a teacher-training programme should prioritise?</b>
(Prompt if necessary)
a. Subject/ Discipline
b. Teaching Practices
c. Pedagogy
i. Seminars
ii. Lectures

	iii. Curriculum linking
	iv. Reflection
d. Theory	
	i. Discipline
	ii. Teaching
<b>4. Do you think that part-time lecturers mean that they may need more support?</b>	
<b>5. Are lecturers involved in co curriculum development with</b>	
	a. Students
	b. External bodies such as professional bodies e.g. Bar council, law Society
	c. Employers
	d. Cross-university linked programmes.
<b>Quality assessment practices - do you think that you would like to have?</b>	
Peer Observation	



Formal graded observations

Formal graded observations Linked to disciplinary actions /

## **Appendix B Letter of request, Information sheet and Consent Form**

Dear

I have been in contact with XXXXX and YYYY the latter has suggested that I contact you I am an Ed D student based in ECLS, Newcastle University and am carrying out research based on the development of legal pedagogy. I am interested in looking that the way in which teaching has been affected by Institutional, Sector and Professional demands as well as the development of pedagogical understanding within HE and those that deliver HE within FE.

I would appreciate if you would be willing to participate in a semi structured interview which considers the way in which teaching has changed within HE and the effect of teacher training programmes on the teaching and learning within law - considering both academic and vocational aspects of law teaching. I have recently presented a paper based on preliminary findings at the SLS conference and a poster presentation at the law PG conference held this year at law school, the interviews which I am now conducting and seeking to build on this work. I have been able to access a range of New teachers, Staff Developers, Senior Educationalists and academics at HE and FE institutions but would appreciate your comments also as the former Director of Teaching and Learning

I do hope that you feel able to participate in this study, if you require any further information then please do not hesitate to contact me.

Yours truly,

Caroline Gibby





Information sheet and informed consent form

My Name is Caroline Gibby and I am an Ed D Candidate at the ECLS School within Newcastle University.

### **What is the Research about?**

My research addresses the way in which law teachers are equipped to carry out their role within HEI – this includes Colleges of Higher education as well as Universities and considers the way in which changes within HE and Legal education has impacted on their role. I am particularly interested in the way in which legal practice based teaching is supported through teacher training.

### **What would I like you to do?**

I would like arrange a time with you to explore a series of 10 questions in total; the last question is open for you to explain your views on any issues, which you feel the questions have not considered.

Please remember that you do not have to participate, but if you do then it is important that you know the following

1. You do not have to answer any questions which you feel you do not want to
2. If you do respond, then you can withdraw your consent at any time and can require your responses
3. I have asked you to identify what level of study you are at, your age and gender, again you do not have to answer these questions
4. Any responses will be confidential and anonymous

5. If you wish to remove your consent to using your data, then you can also do so at any time

### **Are there any drawbacks in my participation in the study?**

I am aware that participating in any form of research interview can be time consuming and on occasion stressful, because of this I have planned to send out the questions to you beforehand, so that you have an understanding of what I intend to ask. I am also mindful that you may find it easier to respond using electronic means or in a neutral environment so you may feel more comfortable in airing your views.

Please also note that the study complies with research guidelines set out by Newcastle University and BERA, the British Educational research association.

### **What privacy will you receive and who will read the study?**

1. If you agree to participate in this study, you will be given a consent form attached to this information sheet at the end to sign up first.
2. All data and Information from your interviews will be stored on the university system only, names and personal details will be removed
3. Interview and any follow up data, which has been recorded (audio data only), will be transcribed by me and will form part of my final data. The transcriptions will anonymously be stored again on the University system.

### **Ethics**

1. This study will not offer any financial inducements to participants
2. This study will not involve any other actions that you feel may be regarded as unethical or illegal.

3. This study cannot induce psychological stress, anxiety, cause harm, or negative consequences beyond the risks encountered in normal life.

4. You may leave this project at any time.

5. This study does not involve NHS patients or staff, their tissue, organs or data. This study has been reviewed by, and received ethics clearance through, the Newcastle University Research Ethics Committee

If you have any issues and would like to discuss your participation in the study, then please contact myself at Newcastle University

[c.gibby@ncl.ac.uk](mailto:c.gibby@ncl.ac.uk)

or my Supervisor

[simon.gibbs@ncl.ac.uk](mailto:simon.gibbs@ncl.ac.uk) or [Jill.clark@ncl.ac.uk](mailto:Jill.clark@ncl.ac.uk)

I, the undersigned, confirm that (please tick box as appropriate):

1.	I have read and understood the information about the project, as provided in the Information Sheet dated _____.	<input type="checkbox"/>
2.	I have been given the opportunity to ask questions about the project and my participation.	<input type="checkbox"/>
3.	I voluntarily agree to participate in the project.	<input type="checkbox"/>
4.	I understand I can withdraw at any time without giving reasons and that I will not be penalised for withdrawing nor will I be questioned on why I have withdrawn.	<input type="checkbox"/>

5.	The procedures regarding confidentiality have been clearly explained (e.g. use of names, pseudonyms, anonymization of data, etc.) to me.	<input type="checkbox"/>
6.	If applicable, separate terms of consent for interviews, audio, video or other forms of data collection have been explained and provided to me.	<input type="checkbox"/>
7.	The use of the data in research, publications, sharing and archiving has been explained to me.	<input type="checkbox"/>
8.	I understand that other researchers will have access to this data only if they agree to preserve the confidentiality of the data and if they agree to the terms, I have specified in this form.	<input type="checkbox"/>
9.	Select only <b>one</b> of the following: <ul style="list-style-type: none"> <li>• I would like my name used and understand what I have said or written as part of this study will be used in reports, publications and other research outputs so that anything I have contributed to this project can be recognised.</li> <li>• I do not want my name used in this project.</li> </ul>	<input type="checkbox"/>
		<input type="checkbox"/>
10.	I, along with the Researcher, agree to sign and date this informed consent form.	<input type="checkbox"/>

**Participant:**

\_\_\_\_\_

\_\_\_\_\_  
Name of Participant

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**Researcher:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Name of Researcher

Signature

Date



Dear Participant,

Thank you for taking part in my research. I will be in contact with you when I have completed the transcription of your interview

As indicated in the information sheet I will provide a copy of this for you to consider and review. Please take your time reviewing the transcript and let me know if you feel that there have been some areas, which you would like to revise or further explore, or agree that the transcript is accurate.

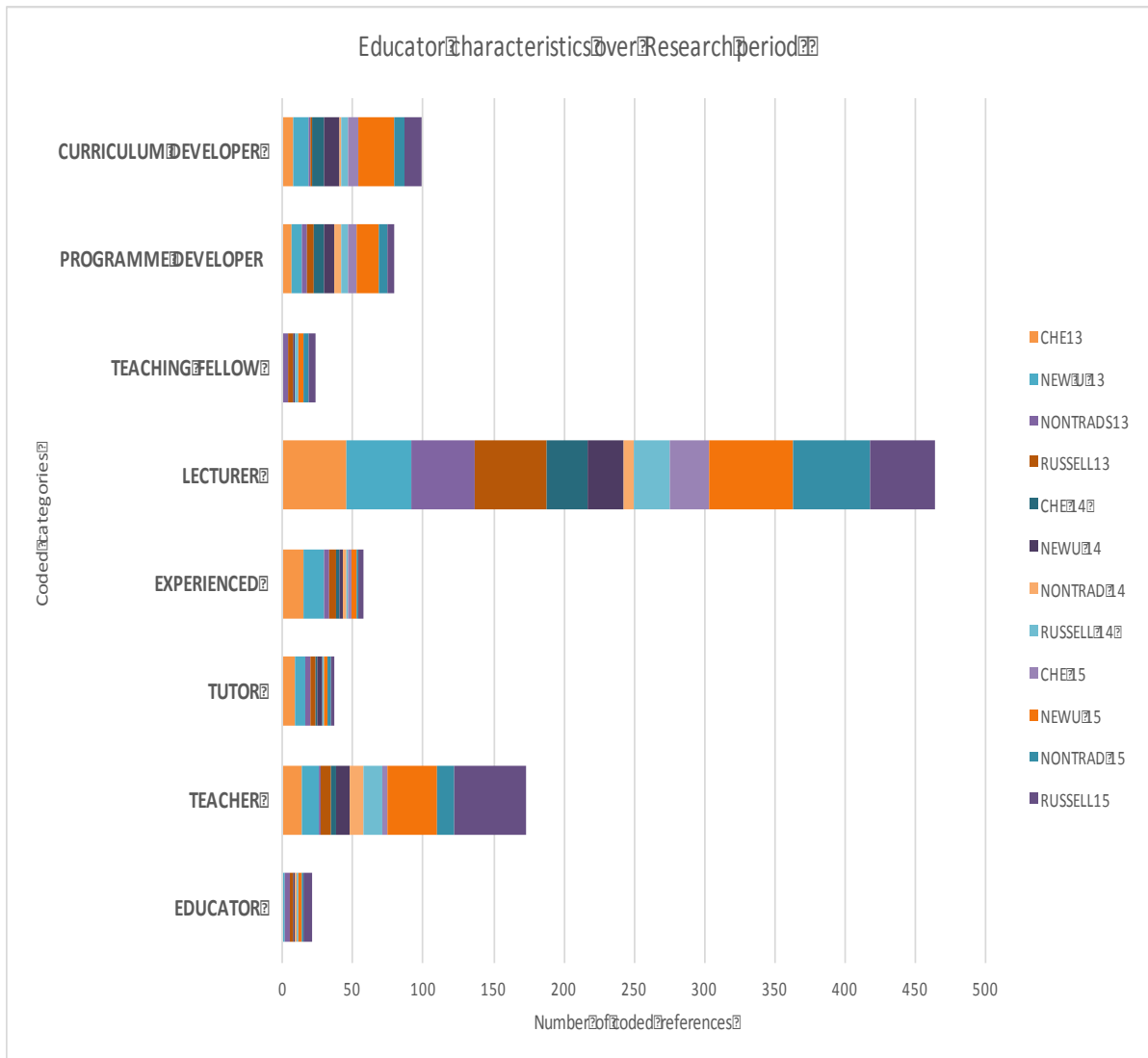
I would like to also remind you that if at any time you feel that you would like to withdraw from the project that you are free to do so.

Thank you again for your assistance in the research project.

Caroline Gibby

EdD candidate

## Appendix C Educator category



## Appendix D Sample Open Coding Analysis

Sample Open Coding analysis separating by sector

Interviews

How much does the School influence the Teacher training course?

Initial	HEI		Yes / No	Coding
R1	Russell	Senior academic	No	<i>1 School does not influence the teaching training courses: understands the weight the HEI places on it: would like the HEI to be more involved but not enough time. Other roles and responsibilities prohibit any influence</i>
R2	Russell	Staff developer	No	<i>Very difficult to get buy in from departments, not just law. Therefore,... law is not on its own. But serious concerns that the opportunity for training restricts broader teacher development. Would really like the influence to be more present than it is. which is not at all</i>
R3	Russell	Senior lecturer	No	<i>Does not see that there is any value in the school being involved in the external teacher training ... dilutes the traditional way in which law is delivered, is focused on maintaining traditional Socratic approach to teaching. teacher centred</i>

R4	Russell	New lecturer	No	<i>Expected to see more involvement in the Teacher training process, but since joined no longer needs to carry out a PCGE ...but needs to get the HEA fellowship.all sorted through HEA mentor in the law school so little to do with Teacher training or staff development</i>
Nt1	Non-trad	Senior academic	No  But would like to	<i>Would love the school to be involved as an educational exercise but have little or no faith in teacher training where there is insufficient contextual theory. Frustrated that teacher trainers insist on broad generic and don't focus on digging into the theory behind law ...also frustrated that senior managers in the law school don't get involved more in the Teacher training process within the school</i>
NT2	Non-trad	Staff Developer	No	<i>Very limited opportunities to engage with different departments, programmes are often short and entry level only so don't expect any significant details. The law school has its own way of doing things and this seems to work. moving towards the accreditation process UKPSF and HEA so really their role is focused on making sure that the applicant gets the fellowship</i>
Nt3	Non-trad	New lecturer	No and disappointed	<i>Not sure, had expected that there would be something, which was relevant which the law school wanted. disappointed that there does not seem any influence</i>

Nu1	New un	Senior lecturer		Sees the issue coming from the Teacher Trainers No desire to make fundamental changes in the way in which teacher training is done... that the teacher trainers know that the law schools will do a good job, but feels that this is not enough
NU 2	New un	Staff developer	No but does deal with HEA so yes but in a different way	Concerned that the only form of teacher training which they know new starters get is a short 5-day course when they start. New U <i>has moved away from qualification to accreditation</i> and this means that they have even less influence ... means that there are pockets of really interesting <i>and useful practices especially when it comes to legal clinic where there is a different student experience but this is not being shared</i>
NU3	New un	New lecturer	No and frustrated	Did not see any evidence of this and <i>was very frustrated at the generic course</i> , would have <i>expected some additional support influence on the entry level course</i>
Nu4	New un	New lecturer	No: but this is the HEIs fault	Felt that the training offered <i>was far too short</i> , but felt that this was <i>an organisation issues</i> , where all that was required to go, <i>no learning involved</i> and that this would happen on the job, so there was <i>no real value in the law school</i> trying to alter a standard practice
Che1	CHE	Senior manager	No and never likely	<i>Can't influence the Teacher training</i> content as this is fixed – it is a qualification and the assessments are set. <i>Can influence when it comes to dissertations</i> but these are often limited because the <i>teacher trainers do not have sufficient expertise</i> to talk about law and legal teaching methods.

## Appendix E Job description coding

Category	Educator	Scholar	Lawyer	Administrator	Networker	Management	Vocational qualification
Text							
A <b>degree in a law or a closely related subject</b> or <b>significant experience in the field of governance and regulation of the legal services sector</b>	✓	✓	✓				✓
Relevant <b>teaching experience,</b> ideally at	✓						

postgraduate level working with adult students within the HE sectors							
Demonstrably effective <b>communication,</b> <b>interpersonal</b> <b>and</b> <b>presentation</b> <b>skills</b> across a range of relevant contexts	✓				✓		
A <b>good</b> <b>understanding</b> of the needs of part-time adult learners and be able to <b>relate well</b> <b>to their individual</b> <b>needs</b> and	✓					✓	



<i>engage their</i>							
<i>interest and</i>							
<i>enthusiasm</i>							

## Appendix F Sample Job Description

### Sample Job description

ESSENTIAL	DESIRABLE
<ul style="list-style-type: none"> <li>• <b>EDUCATION/QUALIFICATIONS</b></li> <li>• First or postgraduate degree (or equivalent qualification such as GDL/CPE) in law <b>plus</b></li> <li>• PhD or Professional Doctorate (<b>For Lecturer grade 5:</b> PhD or nearing completion within the first 12 months of employment)</li> </ul>	<ul style="list-style-type: none"> <li>• Higher degree or relevant professional qualification in subject discipline at postgraduate level PG Certificate in Learning and Teaching</li> <li>• (HE) (PG Cert)</li> <li>• Fellow/Senior Fellow of HE Academy</li> </ul>
<ul style="list-style-type: none"> <li>• <b>EXPERIENCE</b></li> <li>• Successful teaching experience at HE level</li> <li>• Research publications</li> <li>•</li> <li>• <b>KNOWLEDGE/SKILLS</b></li> <li>• Excellent written and oral communication skills</li> <li>• IT literate with a sound knowledge of Microsoft Office</li> <li>• Ability to think innovatively</li> <li>• Ability and willingness to develop personal research/consultancy profile</li> </ul>	<ul style="list-style-type: none"> <li>• Course and curriculum design</li> <li>• Research and/ or consultancy income generation</li> <li>• Relevant commercial and/or professional experience</li> <li>• Research Student Supervision</li> </ul>

<ul style="list-style-type: none"> <li>• Ability to meet deadlines, sometimes under pressure</li> <li>• Ability to contribute to curriculum development</li> </ul>	
<ul style="list-style-type: none"> <li>• <b>PERSONAL QUALITIES/DISPOSITION</b></li> <li>• Ability to work co-operatively and as part of a team</li> <li>• Enthusiastic and flexible approach</li> <li>• Good interpersonal and negotiating skills</li> <li>• Commitment to our values</li> <li>• Willingness to contribute to the collective life of the Faculty</li> </ul> <p>Customer focused</p>	

December 14: Post 92 University Faculty of Arts law and Social Sciences Lecturer/Senior Lecturer in law Person Specification

## Appendix G Sample Transcript Analysis

Sample Transcript Analysis for a New University Participant

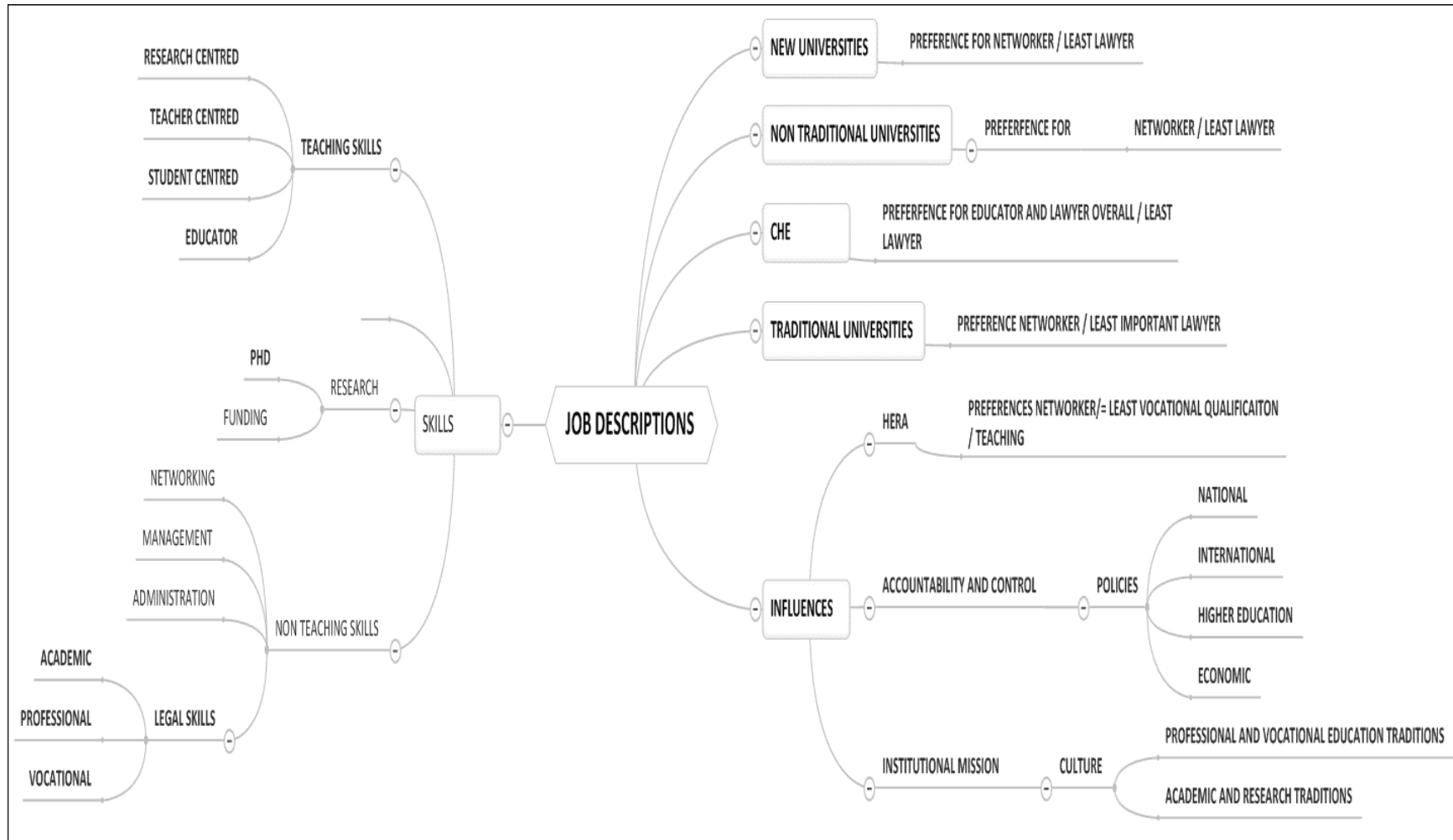
Key	
<b>HE – Higher education</b>	Five themes
<b>R Russell Group - selective group of senior HEI</b>	TS Teaching skills
<b>CHE- College delivering HE</b>	NTS Non-teaching skills
<b>Non trad– Pre 92 University</b>	I Influence of the law school
<b>New Uni- Post 92 University</b>	ES Employment status
	TT Teacher training

Question	Participant 1: Nu1	Transcript analysis	Theme
1. What role does teacher training play in the law school?	<p>I don't really know about <b>this side of things</b> as I have had little if any training. I do know however that my colleagues who are <b>new to the University</b> have to undergo some training.</p>	<p>Not sure about the involvement</p>	<p>TT/I/T</p>
	<p>In my Institution, we are encouraged to take a <b>PGCE (HE)</b> based so that the academic can be trained and if you get over <b>70 in your dissertation then this will be used to make an application for HE fellowship status.</b></p>	<p>Target new members of staff Policy rather than University decisions Qualification and accreditation process – duality</p>	<p>TT//</p>
		<p>Qualification and accreditation process – duality</p>	<p>TT//</p>
		<p>Selective ... costs.</p>	

<p>a. Do you think that this been influenced by institutional policy?</p>	<p>...yes I do I think that this has a lot to do with the <b>new policies</b>, which the <b>University is using to enhance teaching and learning</b>: we know that we need to make sure that we can <b>show that we have good teachers</b>. this is the way <b>they want us to do it</b> ... nothing to do with the department though...</p>	<p>Policies</p> <p>Evidencing performance</p> <p>No real commitment from the department</p> <p>...</p> <p>imposed and compliance</p> <p>– resistance to involvement</p>	<p>TT//</p>
<p>2. Do you consider that your Teacher training is relevant to law?</p>	<p>Not really sure about this I think that <b>teacher training might be helpful to a point</b></p>	<p>Anything will do</p>	<p>TT//</p>
<p>a. How much does the School influence the</p>	<p>The school <b>doesn't really have anything to do with the course content</b> but I am involved in supporting teachers in their learning from the course.</p>	<p>Clear non-involvement – but not clear whose decision this is</p>	

<p>Teacher training course content?</p>	<p>We have our own way of supporting teaching and learning which involves peer observation, review and a clear link that the subject leader is the subject specialist so that they ought to know how and what is required in terms of the subject.</p>	<p>LS thinks is separate</p> <p>Individuality: autonomy reinforced</p> <p>Assumption that expertise in a subject area means that can teach</p> <p>Reliance on ad hoc measures and individual practice</p>	<p>TT//</p>
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## Appendix H Summary of Findings – Job descriptions







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